

Business Insurance

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

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Blood products makers win final approval of settlement

CHICAGO—A federal judge in Chicago gave final approval to a settlement ending the class-action suit over HIV-tainted blood products.

Judge John F. Grady of the U.S. District Court in Chicago signed the accord after the four corporate defendants agreed to pay more than \$12 million to the federal government as reimbursement for the health care costs incurred to treat hemophiliacs who contracted HIV from their blood-clotting products.

The settlement reached last year calls for a
See Updates on next page

State judge to assess EMLICO deal

Reinsurers, regulators battle over settlement

By DOUGLAS McLEOD

BOSTON—A state judge will soon decide the fate of a controversial settlement deal in which the Massachusetts Insurance Division would become ancillary receiver of the defunct Bermuda-based Electric Mutual Liability

Insurance Co.

Supreme Judicial Court Justice John M. Greaney last week presided over a contentious hearing in which the settlement was attacked by EMLICO reinsurers and defended by regulators, EMLICO's liquidators and sole EMLICO policyholder General Electric Co.

Reinsurer lawyers charged that the agreement allows GE to reap the benefits of an allegedly fraudulent scheme to move the hugely insolvent insurer to Bermuda to take advantage of the island's favorable liquidation laws.

The deal also will hamstring reinsurers' efforts to defend them-

selves against massive GE pollution and asbestos claims, the lawyers contended.

The deal is "entirely unworkable, entirely unrealistic, entirely unfair and entirely unreasonable," said Scott Lewis, a lawyer with Palmer & Dodge in Boston, representing Kemper Reinsurance Co. and Hannover Ruckversicherungs A.G.

The parties to the agreement, meanwhile, charged that the reinsurers are merely trying to escape their claim obligations and described the settlement as the best possible deal under the unusual circumstances of EMLICO's collapse.

"The (Insurance) Commissioner has concluded that a return of
See EMLICO on page 33

Branching out in Bermuda

EXEL Ltd. is further diversifying its business with the acquisition of property catastrophe reinsurer GCR Holdings Ltd.

EXEL LTD. ¹	GCR Holdings Ltd. ²
1996 Gross premiums written: \$729.4 million	1996 gross premiums written: \$119.8 million
Net income: \$494.3 million	Net income: \$90.8 million
Total assets: \$5 billion	Total assets: \$516.8 million

¹Based on fiscal year ended Nov. 30, 1996
²Based on fiscal year ended Sept. 30, 1996
Source: Company annual reports

GRAPHIC BY ADAM DOI

X.L. expands lines by acquiring Global Capital Re

By GAVIN SOUTER

HAMILTON, Bermuda—X.L. Insurance Co. Ltd. is continuing its drive to diversify with the purchase of property catastrophe reinsurer GCR Holdings Ltd. for \$637 million.

The deal will give X.L. a quick route into what has been a hugely profitable line of business and further decrease its reliance on the soft excess liability market for premium growth, analysts say.

GCR will benefit by becoming part of a much larger company with more than \$5 billion in total assets to stand behind its policies, analysts say.

The purchase will also make X.L. even more closely resemble its Bermuda rival and occasional partner ACE Ltd., which bought another catastrophe reinsurer, Tempest Reinsurance Co. Ltd., last year.

Analysts say these deals could signal further merger and acquisition activity in Bermuda.

One main benefit of purchasing GCR, the holding company for Global Capital Reinsurance Ltd., will be the diversification it will bring to X.L., said Jay Cohen, an analyst at Merrill Lynch in New York.

"It will give X.L. some immediate diversification, and it will impact its earnings favorably," he said.

Under the terms of the offer, EXEL Ltd., the holding company for X.L., will pay \$27 a share for the 95.1% of the shares in GCR that it does
See Diversify on page 33

High-paid professionals take advantage of MSAs

By JERRY GEISEL

Medical savings accounts, touted as giving employees at small businesses a new health insurance option, also are being tapped by some of the nation's highest-paid professionals: partners at law firms.

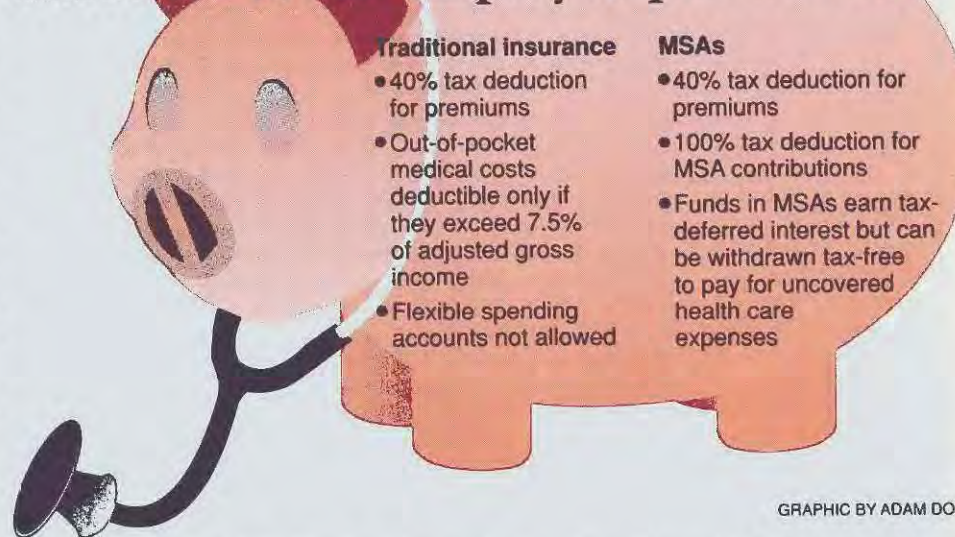
Partners, who for tax reasons are considered self-employed, are latching on to MSAs linked to high-deductible health care plans for the tax breaks they offer.

"We are very cognizant of the tax advantages. MSAs effectively give you a

tax deduction for medical expenses from the first dollar. This really is a winner," said Todd Maynes, a tax partner with Kirkland & Ellis in Chicago, which on Jan. 1 bumped up an existing high-deductible plan for partners to make it eligible for linkage to MSAs.

At Gardner, Carton & Douglas, more than half of the Chicago-

Why medical savings accounts are so attractive to self-employed professionals



GRAPHIC BY ADAM DOI

Traditional insurance

- 40% tax deduction for premiums
- Out-of-pocket medical costs deductible only if they exceed 7.5% of adjusted gross income
- Flexible spending accounts not allowed

MSAs

- 40% tax deduction for premiums
- 100% tax deduction for MSA contributions
- Funds in MSAs earn tax-deferred interest but can be withdrawn tax-free to pay for uncovered health care expenses

based law firm's 86 partners recently opted for a high-deductible plan linked to MSAs.

"The way the figures came out, this really saved money for them. This was something very beneficial for partners," said Richard Menon, a partner with the firm.

In addition, several hundred members of the Chicago Bar Assn.

have selected a high-deductible-MSA-linked plan the association recently sponsored.

"This is another benefit of membership," said Terry Murphy, the bar association's executive director.

While perhaps Congress did not have six-figure partners at law and
See MSAs on page 34

NCCI throws down gauntlet

Demands \$271 million from The Home for comp obligations

By GAVIN SOUTER

BOCA RATON, Fla.—The National Council on Compensation Insurance is upping the stakes in its battle with The Home Insurance Co., demanding \$271.6 million to meet the insurer's past and future obligations to a residual market workers compensation pool.

The demand is in marked contrast to the \$40 million The Home had most recently offered to settle its obligation to the NCCI-administered pool (BI, April 28).

In addition, the NCCI had previously offered to

settle with The Home for considerably less.

Full payment by The Home of what is its largest-known obligation would cut into the already limited financial means of the insurer in runoff. Any settlement would have to be approved by New Hampshire insurance regulators, who are supervising the runoff.

The demand for the full payment of The Home's obligation to the National Workers Compensation Reinsurance Pool, which reinsures residual market pools in about 25 states, follows the insurer's refusal to make four payments totaling \$35.3 mil-

See The Home on page 4

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Updates

HIV settlement approved

Continued from previous page

payment of \$100,000 to each of the approximately 6,000 claimants (*BI*, Aug. 19, 1996). A few hundred other members of the class-action suit have opted out of the settlement and are free to pursue individual litigation.

In addition to paying the federal government, the four defendants—Baxter Healthcare Corp.; Bayer Corp., a unit of Bayer A.G.; The Armour Pharmaceutical Co., a unit of Rhone-Poulenc Rorer Inc.; and the Alpha Therapeutic Corp., a unit of the Green Cross Corp. of Japan—also have agreed to reimburse private health insurers and state governments. The total reimbursement will exceed \$30 million. The four companies will divide the payments based on their market share for the product, with Bayer's 40% share the largest.

The final hurdle to the settlement was reaching an agreement on reimbursing the federal and state governments for their costs of treating the plaintiffs under Medicare, Medicaid, health plans offered by the Department of Veterans Affairs and Defense, the Indian Health Service program and the Federal Employees Health Benefits Program.

Appeals to the settlement can be filed for 30 days. If that period passes without an appeal, the companies will start making payments 30 days later, in early July.

NCQA expands accreditation

WASHINGTON—The watchdog organization that accredits and grades managed care organizations will offer virtually the same service to physician hospital organizations and integrated delivery systems.

The Washington-based National Committee for Quality Assurance said last week it would start accrediting these groups directly. Previously, the NCQA asked health maintenance organizations to evaluate the physician groups as part of their own accreditation process.

The NCQA will judge the physician-owned organizations on the same six basic criteria it uses to certify other managed care organizations: quality management and improvement; utilization management; credentialing and recredentialing; preventive health; members' rights and responsibilities; and medical records.

The program is supposed to ease the burden on health plans that contract with physician organizations and that now must conduct annual onsite audits to obtain NCQA accreditation. Health plans using physician organizations also will be allowed to be evaluated in as many of the six basic categories as they wish.

Colorado comp bills vetoed

DENVER—Two workers compensation bills in Colorado that would have severely restricted benefits for emotional stress claims have been vetoed by Gov. Roy Romer.

S.B. 140 would have reduced benefits to injured workers with mental impairments by as much as 48% while S.B. 139 would have prohibited combining a scheduled injury with mental or emotional stress to get a whole-person rating.

The American Insurance Assn., which lobbied for passage of the two measures, said they are needed to eliminate problems created by 1991 workers comp reforms, which made it easier for workers to file stress claims. The AIA said courts have been interpreting the 1991 statute liberally, leading to increased litigation and reducing return-to-work incentives.

But Gov. Romer countered that the 1991 reforms have helped curb runaway costs while maintaining benefits to injured workers.

"Since passage of this legislation, workers compensation premiums have dropped 27% from fifth-highest in the country to 30th. We also have benefits in the Top 10 as compared to other states," Gov. Romer said in a letter to the Legislature. "This reform is working."

Gov. Romer also pointed out that neither of the bills was reviewed by the workers compensation review group he appointed last year to analyze proposed changes. He said he will ask the group to reconvene to develop more workable reforms.

"I recognize that there may still be inequities in the overall manner in which we figure benefits. However, this legislation does not address them in a realistic way. If we are going to tackle these problems, we must do so in a balanced fashion," the governor said.

Court upholds Tailhook award

SAN FRANCISCO—Hilton Hotels Corp. said last week that the company is disappointed and exploring its options after a federal appeals court upheld a multimillion dollar jury verdict favoring Tailhook whistleblower Paula Coughlin.

The 9th U.S. Circuit Court of Appeals ruled 3-0 on May 2 that there is sufficient evidence supporting the contention that the Las Vegas Hilton and its parent company "showed a conscious disregard for the safety of others." The court rejected Hilton's claim that it was entitled to a new trial because a juror had been dishonest during jury selection.

Ms. Coughlin was a Navy lieutenant and decorated helicopter pilot who was attacked, grabbed and groped by drunken aviators during the 1991 Tailhook Assn. convention, according to court records. She suffered post-traumatic stress syndrome and left the Navy.

Ms. Coughlin settled a lawsuit against the association for \$400,000. In 1994, a federal court jury ordered the Las Vegas Hilton and its parent to pay her \$6.7 million in compensatory and punitive damages. But a U.S. district judge reduced damages by \$400,000 to account for the settlement with the Tailhook Assn. The judge also reduced the award by another \$1.1 million because Nevada law limits punitive damages to three times compensatory damages.

The appeals court also considered a cross appeal filed by Ms. Coughlin and asked Nevada's Supreme Court to resolve a legal issue that could restore the \$1.1 million.

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Superfund vote sought

Oxley hoping to have reform bill on House floor by fall

By MARK A. HOFMANN

WASHINGTON—A key player in the House Superfund reauthorization debate wants the House to vote on reform legislation this fall.

"For the first time, I feel at least some momentum" toward reform, said Rep. Michael Oxley, R-Ohio, and chairman of the House Commerce Subcommittee on Finance and Hazardous Materials.

Rep. Oxley noted that Environmental Protection Agency Administrator Carol Browner has assured him that the Clinton administration is committed to getting Superfund reauthorized during the current Congress. The administration did in fact release its principles for Superfund reauthorization a day after Rep. Oxley's remarks, though those principles demonstrated little if any change in the White House position (see

story, page 11).

No comprehensive reform has been introduced in the House thus far this year, though the Senate Republican leadership introduced its own bill early in the session (*BI*, March 10).

"Under the best of circumstances, I'd like to get a bill to the floor sometime this fall," said Rep. Oxley.

Rep. Oxley made his observation. *See Superfund on page 10*

Pain and suffering awards stand after plaintiffs die, court rules

By JUDY GREENWALD

SAN FRANCISCO—Defendants are still liable to pay jury awards for pain and suffering, even if the plaintiff dies while the award is appealed, the California Supreme Court has ruled, reversing an appellate court opinion.

The state's high court ruled last week that the heirs of a plaintiff who received a jury award for emotional distress but died before the defendant's appeal was complete are entitled to receive the award if it is upheld.

The unanimous decision in

Alene M. Sullivan vs. Delta Air Lines Inc. is particularly relevant in cases where plaintiffs are suffering from terminal illnesses, such as asbestosis or AIDS, attorneys said.

Legal experts say the ruling removes a possible incentive for defense attorneys to stall the appeals procedure until plaintiffs die. California is among the minority of states that do not normally permit heirs to seek pain and suffering awards on behalf of victims.

The decision is not expected, however, to affect a large number

of litigants.

The ruling overturns a 1996 decision by the state Court of Appeals in San Francisco that heirs could not claim juries' pain and suffering awards if an appeal was pending. Before that ruling, it had been widely assumed they could do so, attorneys say.

The May 6 decision stems from a wrongful termination suit originally brought by Joseph A. Sullivan, a Delta Air Lines reservations agent fired in 1991. A jury in 1994 awarded him \$275,000 for emotional distress. But Mr. Sulli-

See Awards on page 23

Tobacco talks continue

By MICHAEL BRADFORD

DALLAS—State attorneys general and negotiators for the tobacco industry left the bargaining table last week closer to a settlement but still hung up on the ultimate payout.

Meanwhile, a tobacco industry victory in a Florida case involving a 49-year-old smoker who died of cancer is not expected to impact the negotiations.

The industry and attorneys gen-

eral have indicated they are optimistic a settlement can be reached in the suits brought by states seeking reimbursement of health costs for treating smokers and restrictions on marketing cigarettes to children. Plaintiffs attorneys in a number of other cases also are negotiating with the industry.

"I'm always optimistic as long as reasonable people are willing to talk," said Russ Herman, an attorney for the Castano Litigation Group, which has filed 17 class-

action suits against the industry. "We're still talking."

A spokeswoman for R.J. Reynolds Tobacco Co. would not comment on the settlement talks, and Philip Morris Cos. referred questions to an outside public relations representative who could not be reached.

Mr. Herman, who was on hand at the talks in Dallas, said figures such as the \$400 billion that has been reported regarding industry

See Tobacco on page 32

Court pre-empts Louisiana law

Risk retention groups not subject to state's rules: 5th Circuit

By JERRY GEISEL

NEW ORLEANS—Risk retention groups licensed in other states do not have to comply with a Louisiana law that set numerous standards for groups writing business in the state, a federal appeals court has ruled.

In a one-paragraph decision, a three-judge panel of the 5th U.S. Circuit Court of Appeals last week unanimously affirmed a 1996 federal court ruling striking

down the Louisiana law (*BI*, June 10, 1996).

The Louisiana law required risk retention groups to maintain at least \$5 million in capital and surplus, post a \$100,000 bond or cash deposit and pay a \$1,000 fee before they could operate in Louisiana.

In addition, Louisiana's risk retention group application procedures required a group's officers and directors to submit to state regulators a set of fingerprints

and biographical affidavits.

The 5th Circuit ruling is a victory for risk retention groups' ability to operate nationwide.

Risk retention group advocates say it upholds the foundation of the federal Risk Retention Act: allowing risk retention groups to provide coverage to members throughout the country after meeting the licensing requirements of one state.

"The Risk Retention Act is the

See RRG on page 26

Inside

• Those negotiating for product liability reform in the current Congress must not give up hope—or too much ground, this week's editorial says. **PAGE 8**

• Although dissident members still owe Lloyd's of London more than \$1 billion, Lloyd's is prepared to collect less than the full amount. **PAGE 29**

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Opponents fight North Carolina bill to restrict fronting

By MARK A. HOFMANN

RALEIGH, N.C.—Opponents of a bill that would restrict fronting arrangements in North Carolina are stepping up efforts to kill the legislation in the state House after the Senate recently approved the bill.

Insurance Commissioner James Long backs the measure, but foes say it is unnecessary, is overly restrictive, discriminates against group captives and could damage national insurance programs if other states follow North Carolina's lead.

"If you want to put North Carolina businesses at a disadvantage, this is one way to do it," said Anne Allen, legislative counsel for the Risk & Insurance Management Society Inc. in New York.

"It sets up cumbersome reporting and pre-approval requirements on fronting carriers, which will naturally have at best an adverse cost effect," said Jon Harkavy, president of the Coalition of Alternative Risk Funding Mechanisms and vp and general counsel of USA Risk Services Inc. in Arlington, Va.

The Insurance Department has held throughout the debate that a fronting law is necessary to protect certain businesses that are involved in self-insured workers compensation programs, though regulators have said they have received few complaints about fronting (BI, Dec. 2, 1996).

"No one has been able to identify a problem, just a solution that

See *Fronting* on page 16

Study sparks inspections

Insurer finds hidden electrical hazards in building survey

By MICHAEL PRINCE

What you don't see can hurt you.

That's the lesson of a recent study into the hazards posed by electrical systems in 200 buildings in New York City. The study, conducted by Hartford Steam Boiler Inspection & Insurance Co., found that electrical systems hidden in walls or buried in the basements of large buildings pose great risks of failing or starting fires if not properly maintained.

As a result of these findings, the Hartford, Conn.-based insurer is now examining approximately 12,000 of the buildings it insures throughout the United States to identify those with a high risk of electrical system failures.

"People believe equipment such as boilers and air conditioning units have a high potential for failure because they have moving

parts: pumps, belts and fans that wear down and can break," the insurer's report states. "But in their minds, stationary wires and electrical components don't have the same failure potential."

"Just because it's static it doesn't mean it doesn't need maintenance," said Bernie Selig, second vp of Hartford Steam Boiler's technology division.

According to the insurer's report, 75% of all electrical system failures result from a lack of maintenance.

Lack of maintenance, for example, allows dirt and moisture to accumulate in the system, while loose wire connections don't get tightened. The combination causes an overload in the system that can lead to an electrical fire.

"Even modern buildings designed within the past 20 years are vulnerable," the report states.

Of more immediate concern, the survey revealed that 25% of the buildings surveyed needed repairs within 30 days of the inspection. "Many of the conditions were public safety hazards, with the potential for fire and loss of life,"



Hartford Steam Boiler will inspect the approximately 12,000 buildings it insures after finding potential electrical problems in a study.

the report stated. An example cited was a building in which a sewer

See *Electric* on page 10

Rates may take off with IATA agreement

Aviation underwriters fear claims will rise

By STACY SHAPIRO

LONDON—Aviation underwriters are starting to count the cost of a voluntary agreement by scores of airlines to offer unlimited passenger liability limits on international flights.

The underwriters are concerned that the new IATA Inter-carrier Agreement, which overrides liability limitations in the Warsaw

Convention governing international flights, will increase the cost of liability claims in the future.

However, these fears may not be justified, as the agreement may result in lower litigation costs, defense lawyers say.

Regardless, the agreement "is a groundbreaking initiative which draws a line in the sand," said Lorne S. Clark, general counsel

and corporate secretary for the International Air Transport Assn. in Geneva. "There is no way that we would ever go back to artificial fixed limits for passenger liability in (the airline) industry. . . . The new liability regime is here to stay, and we have to make it work. And one of the more important elements in the new era is for (airlines) to work with the insurance industry."

The IATA agreement waives the Warsaw Convention's liability

limitations, which include a \$75,000 per passenger cap on flights to, from and through the United States.

The only way the Warsaw limitation could be waived before the agreement became effective in February was for plaintiffs to prove willful misconduct by an airline. This type of litigation to waive the liability limit often took years to conclude.

Eighty-five airlines have signed the IATA Inter-carrier Agreement,

and 53 have signed the Measures to Implement the Agreement (BI, Jan. 20). Mr. Clark said at the 12th annual International Airline Insurance conference run by DYP Group late last month. By the summer, IATA hopes 100 air carriers will sign the IIA and 75 will sign the MIA.

In the future, governments may require that airlines declare to the public whether they are signatories to the IATA agreement. As a

See *IATA* on page 14

Pensions, employment to spawn class actions

Lawsuits will increase from new sources, panelists predict

By RODD ZOLKOS

CHICAGO—Class-action lawsuits clearly will remain a concern for risk managers in the years ahead, with suits emerging from new areas.

Pension administration and employment practices issues will be among the new sources of class action litigation in the near future, predicted some panelists at this year's Harold H. Hines Jr. Memorial Symposium.

Meanwhile, institutional investors will more frequently take the lead role in securities class actions.

The subject of this year's Hines symposium, held last week in Chicago, was "The Use and Abuse of Class Action Lawsuits," with the panelists predicting future trends in class-action litigation, examining the existing environment and discussing situations where class actions are merited, as well as cases in which they are not.

"In the security field you will see more institutional investors taking up the cudgel and representing individual investors," predicted panelist Lowell Sachnoff, a senior partner with Sachnoff & Weaver in Chicago.

Mr. Sachnoff suggested that over the next five years those in-

stitutional investors will increasingly determine that they have an obligation to their individual members to take that lead.

Brian O'Hara, president and

employment practices actions.

"I think this is an extremely fertile field for the plaintiff bar," Mr. O'Hara said, predicting they will take the case of a few employees and use "junk science" to create the appearance of discrimination against an entire class.

"I think there's going to be an explosion of employment-related suits, particularly in light of Texaco," said Mr. O'Hara, referring to the \$176.1 million settlement Texaco agreed to last year to settle a race discrimination suit

brought by African-American employees.

In that case, Mr. O'Hara said, "this thing was basically manufactured" and forced an unusually large settlement, especially with a "hostile press" acting as the "handmaiden" of the plaintiffs.

Plaintiffs class action attorney Arthur Susman, a partner at Susman, Buehler & Watkins in Chicago, said that if he was a risk manager, "I would look at my pension plan" as a possible class-action exposure.

See *Hines* on page 27



PHOTO: MICHAEL MARCOTTE

Plaintiffs class action attorney Arthur Susman suggested class actions are a necessary way of addressing certain claims.

chief executive officer of Exel Ltd. and chairman and CEO of its X.L. Insurance Co. Ltd. subsidiary in Hamilton, Bermuda, predicted that in the near future, many plaintiffs attorneys now active in product liability class-action work will begin taking up

Foundation Health looks to Northeast for expansion

By ROBERT KAZEL

LOS ANGELES—Foundation Health Systems Inc., a giant managed care company created last month from the union of Foundation Health Corp. and Health Systems International, is growing far beyond the company's California roots as it digs into less saturated markets in the Northeast.

For Los Angeles-based FHS, partly penetrated managed care markets of the Northeast represent the new company's jumping-off point to expanding its network of health maintenance organizations and preferred provider organizations across the nation.

To plan sponsors, FHS executives say, the creation of another supersized network of networks will eventually offer efficiency, stability and more care options.

FHS, which expects to generate \$9 billion in revenues during 1997, has completed or begun several acquisitions of regional managed care operations in the past two months. The largest and most recent deal occurred only last week, when FHS announced a definitive agreement to buy Shelton, Conn.-based Physicians Health Services Inc., a 440,000-member physician-controlled managed care company. Physician Health Services primarily serves Connecticut and New York City, and hopes to market in New Jersey.

The \$280 million acquisition, which still must be approved by regulators, is expected to be completed by year's end. The purchase was the latest of several embarked upon by Health Systems International before the merger with Foundation Health Corp. was completed April 1.

FHS's plans for the next 12 to 18 months will be expansion of customer bases in the Northeast, the Midwest and Florida, according to Jay M. Gellert, who became president and chief operating officer of the company last week after serving as president of HSI.

In other management changes last week, Dr. Malik M. Hasan, former chairman and chief executive officer of HSI before the merger, was named chairman and CEO of the newly merged com-

See *Foundation* on page 35

The Home

Continued from page 1
lion to settle its workers compensation residual market obligations that were due over the past nine months.

Under the NCCI rules, the pool is permitted to bill an insurance company for its total estimated future obligations if the insurance company fails to pay past invoices.

"Therefore, in addition to unpaid invoices, . . . Home is also immediately liable for the foregoing reserve liabilities of \$236,237,269," according to Keith T. Shoemaker, vp-residual market operations for the NCCI, in a letter to Risk Enterprise Management Ltd., which

is running off The Home.

However, The Home does have the option of settling for a lower amount, Mr. Shoemaker said in

early response to its previous settlement proposal," the letter concludes.

The National Council on Com-

After the company's deteriorating financial condition was made public, The Home reduced its settlement offer to the NCCI pool to \$40 million.

the letter, which *Business Insurance* obtained.

"Although the Board of Governors (of the Pool) has requested that I advise you of the foregoing action, it looks forward to your

pensation Insurance would not reveal the details of its latest settlement proposal with The Home.

The latest proposal follows a series of offers and counteroffers

made by The Home and the NCCI pool since last summer (*BI*, April 28).

Originally, The Home offered to pay approximately \$72.9 million to settle its obligation to the pool. The offer took into account the potential future investment income on payments made now that would normally be paid over several years.

The NCCI rejected the offer but said that it would consider a payment of approximately \$130 million.

The matter remained unresolved; little further action was taken until The Home published its 1996 annual statement in March (*BI*, March 10).

Then it was revealed that worse-than-expected losses at

The Home resulted in the insurer falling nearly \$552 million short of its authorized risk-based capital requirements.

The Home was placed under formal supervision of the New Hampshire Insurance Department, which has jurisdiction over The Home, following the publication of the insurer's annual statement.

After the company's deteriorating financial condition was made public, The Home reduced its settlement offer to the NCCI pool to \$40 million.

The Home, the NCCI and most of the insurance companies sitting on the pool's board—including Thomas E. Smith, vp in the alternative markets division of Travelers Corp., who serves as chairman of the pool's board—refused to comment on the settlement negotiations.

Despite the demand for the full \$271 million, the NCCI likely does not expect to receive the full amount from The Home, said a source at a board member insurance company who did not want to be named.

"The NCCI is well aware that they are unlikely to collect dollar for dollar from The Home, so this is a negotiating posture," the source said.

Faced with the deteriorating financial condition of The Home, the NCCI will have little choice but to settle for an amount lower than The Home's full obligation, the source said.

The demand for payment in full also reflects solvent insurance companies' wariness of the original deal that put The Home into runoff.

"It calls into question the dangers of liability restructuring arrangements," according to Peter Lefkin, vp-government and industry affairs at Fireman's Fund Insurance Co. in Washington, which has a seat on the pool board.

Under the deal that sent The Home into runoff, an undisclosed amount of the insurer's good business was taken over by Zurich Insurance Group in return for a \$1.3 billion stop-loss reinsurance program that would pay The Home's liabilities once its assets had been exhausted.

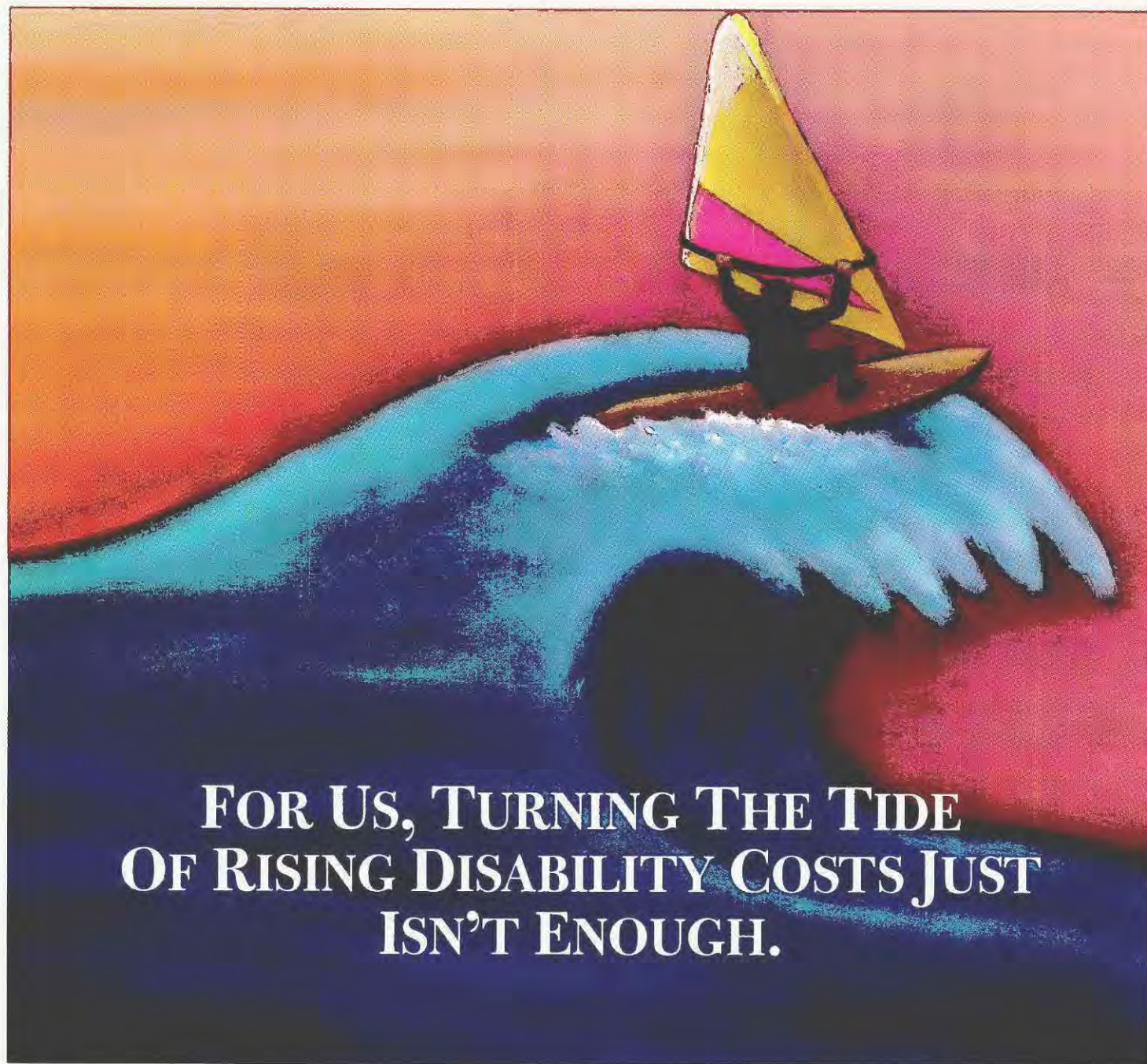
If the reinsurance program is insufficient, policyholders would likely have to settle for partial claims payments or seek payment from other funds, such as state guarantee funds.

The possible complete depletion of The Home's assets would have to be taken into consideration by New Hampshire regulators before they approve any payment to the NCCI pool, as the pool is deemed to be a general creditor of The Home and normally would be compensated after the insurer's policyholders.

But state guaranty funds, which would be called upon to make up incomplete policyholder payments by The Home, would likely not be too concerned if the New Hampshire regulators approve a settlement with the NCCI, explained Kevin Harris, vp and legal counsel at the National Conference of Insurance Guaranty Funds in Indianapolis.

Most large insurance companies would likely write workers compensation and general property/casualty lines, so those companies would have to make up any shortfalls by The Home through guaranty funds.

But, some smaller insurers that write little workers comp business might be concerned by any settlement with the NCCI pool, Mr. Harris added.



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Two public entities extend partner benefits

A public entity in the Southwest and one in the East are taking contrasting approaches to extending health benefits for domestic partners to their employees.

The City Council of Tucson, Ariz., has approved offering health benefits to the same-sex domestic partners of city employees beginning July 1.

In Arlington County, Va., opposite-sex and same-sex partners of county employees may obtain health coverage through the county's self-insured plan and dental coverage through a Blue Cross/Blue Shield plan beginning July 1. Alternatively, employees may cover an adult—such as a parent, a sibling, or a nephew—who is financially dependent on them.

In unanimously approving only same-sex domestic partners coverage, the Tucson City Council on April

Benefit Beat

28 did not rule out eventually extending coverage to opposite-sex partners, said Lynn Greenawalt, human resources administrator for employee benefits and records. But, for now, the city limited the benefit to same-sex partners because gay and lesbian employees cannot legally marry and earn spousal coverage.

The city estimates that 23 of its 4,700 employees will select the partners coverage at an annual cost to the city of \$27,000.

About 105 employees would opt for the coverage if Tucson had extended it to all domestic partners, and the city's costs would have more than quadrupled to \$126,000, the city

estimated.

Tucson contracts with four health care providers that offer four health maintenance organizations and two point-of-service plans. For all covered employees, the city contributes 100% of the employee premium charged by the cheaper of the two plans with the largest employee enrollments. For dependent coverage, the city contributes 85% of the premium charged by the cheaper of the two largest plans.

The providers have agreed not to increase rates when they begin covering domestic partners, Ms. Greenawalt said.

About 3,200 Arlington County employees could become eligible to claim health and dental benefits for a domestic partner or a dependent adult as a result of the county board's

April 12 action, a county spokeswoman said.

The coverage is available only through the county's self-insured plan, which now covers about 60% of county employees. The remaining 40% enrolled in the HMO offered by Kaiser Permanente are not eligible for the expanded coverage, but open plan enrollment begins later this month.

Based on other public entities' experience, the expanded coverage could cost the county an additional \$100,000 to \$400,000 annually, it estimates. The county pays 80% of employees' plan premiums.

But, the county expects its costs will be closer to \$100,000, because many partners are covered by their own employer health plans, the county spokeswoman said.

Employees more likely will elect to cover an aging parent or an immigrant relative who has moved in with them, the spokeswoman said. To be eligible for coverage, non-domestic partners must meet the Internal Revenue Service definition of a dependent, and employees must claim them as dependents on federal tax returns.

Even with the expanded coverage, the county still plans on giving self-insured plan participants a premium holiday in August, as it has for the past few years, the spokeswoman said.

Both Tucson and Arlington County will require that employees with domestic partners show they are in a committed relationship before they can obtain the expanded benefits.

—By Dave Lenckus

State managed care

Like private employers, state governments increasingly are deciding managed care can save them and employees money and are becoming more successful at drawing workers into state-sponsored plans, a study says.

Benefit consulting firm Segal Co.'s 1996 survey of state employee health benefit plans found that the percentage of state employees in health maintenance organizations or point-of-service plans was 50% or more in 18 states, and that participation levels in HMOs or POS plans reached 75% in half of those 18 states.

Enrollment in preferred provider organizations was not included in the calculations.

Affordability clearly has been a major cause of the continued trend, Segal analysts say. The average premium for traditional indemnity plan coverage for state employees was \$128.56 in 1990 but had risen to \$201 in the 1996 survey, up 56%, said Clark Yaggy, senior vp of Segal in Atlanta. Family coverage premiums increased by an average of 51% during the same period.

During that time, the number of states paying 100% of the premium for employees' indemnity coverage also dropped to 21 from 25 for single coverage, he said. States with multiple health plans often are reducing the proportion of the premium they pay to indemnity plan enrollees as an inducement for workers to select managed care options, Mr. Yaggy said.

The survey found that enrollment in state HMOs or POS plans was highest—75% or greater—in Arizona, California, Connecticut, Delaware, Kansas, Maine, Missouri, Washington and Wisconsin. State governments with the lowest enrollment in managed care were Alabama, Alaska, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah and Wyoming, all with less than 10%.

Nineteen states said they have a formal policy to measure the quality of care provided for all their plans. Six said they measure the quality of only some of their plans.

Tools used for quality assessment varied and included: surveys sponsored by health plans, 19 states; surveys sponsored by employers, 13 states; and surveys by the states themselves, 12 states. Several plans also reported using Health Plan Employer Data and Information Set, or HEDIS, data from the National Committee for Quality Assurance as well as other quality report cards and NCQA accreditation status.

A free copy of the study, "1996 Survey of State Employee Health Benefit Plans," may be obtained by contacting Mary L. Feldman, vp-public affairs, 212-251-5029.

—By Robert Kazel



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Electric

Continued from page 3

er pipe was leaking, with water flowing through the main electrical switching box carrying 4,000 volts.

The remainder, about 75%, got warnings about less-critical problems, such as loose or dirty wiring. "Hardly any buildings had no recommendations at all," Mr. Selig said.

Risk managers can take several steps to minimize the risks of an electrical-related loss damaging their business.

To protect electrical equipment from power surges caused by a system failure, for example, surge protectors should be used with all electrical equipment, such as computers.

A risk manager also can talk with a building's owner or manager and ask how his or her business is protected from damage caused by an electrical loss.

And for those that own their buildings, proper maintenance of the electrical system will eliminate most risks of failure, Mr. Selig said.

"Keep it clean," Mr. Selig advised. "Keep it cool. Keep it dry. Keep it tight. It's all an electrical connection needs. If you have those, you won't have any trouble," he said.

One office building that caught fire in Manhattan provided an example of the potential for problems.

In the building, a contractor made "an illegal modification" of the building's electrical system, Mr. Selig said.

As a result, a gap developed between two key elements of the system, causing an electrical current to jump the gap, an occurrence called arcing. The arcing caused a fire that ultimately closed the building for a month while the electrical system underwent special repairs.

As a result, Hartford Steam Boiler paid \$4 million in claims, including \$1 million in claims for tenants' business interruption losses.

That loss and others like it, as well as the frequency of smaller losses, prompted Hartford Steam Boiler to look closely at the buildings it insures to determine the cause of electrical fires. In the past 10 years, the insurer found it had incurred \$100 million in losses due to electrical system failures.

After completing the survey earlier this year, the company performed follow-up examinations of the 200 New York City buildings to see whether the building owners had made the recommended corrections. As of April, 75% of the recommendations were performed.

"This is showing a great deal of responsibility on the part of the building owners," according to Mr. Selig.

Based on the New York survey, Hartford Steam Boiler has created a computer model to identify the most at-risk buildings that it insures. The model examines 15 criteria, such as a building's age, size and occupancy, among other things.

Using the model, the insurer is now embarking on a three-year program to investigate these buildings, 12,000 nationwide, to assess the risks associated with their electrical systems. These buildings include office buildings, retail establishments, hospitals and manufacturing plants.

The study is not available to the public.

BI

Superfund

Continued from page 2

tion last week during a discussion of a proposal to simplify Superfund offered by former EPA Assistant Administrator J. Winston Porter.

The discussion was sponsored by the Reason Public Policy Institute, a Los Angeles-based libertarian think tank.

But neither Rep. Oxley nor Mr. Porter, who is now president of Leesburg, Va.-based consulting and research organization Waste Policy Center, indicated how much liability relief would be contained in the as yet undrafted House Superfund reform bill.

"I would like to get past sloganeering," said Rep. Oxley, adding that he believes Superfund's liability system "all along has been badly flawed." But he said he has

not talked recently to House Ways and Means Committee Chairman Bill Archer, R-Texas, who said earlier this year that he would not support reauthorizing the taxes

perfund taxes, said Rep. Oxley.

Mr. Porter, who had responsibility for administering the Superfund program during President Reagan's second term, said

'I would like to get past sloganeering,' says Rep. Michael G. Oxley, R-Ohio. Superfund's liability system 'all along has been badly flawed.'

that pay for Superfund unless the liability system undergoes a complete overhaul (BI, Feb. 10).

"We hope to be able to satisfy him," said Rep. Oxley. "He hasn't laid down a bright line" regarding how much liability reform would be required before Rep. Archer would back reauthorizing the Su-

perfund taxes, said Rep. Oxley. Mr. Porter, who had responsibility for administering the Superfund program during President Reagan's second term, said

that liability reform would have to be approached carefully. Mr. Porter said he would not like to see reform undo existing cleanup agreements and said the questions of joint and several liability deal in large part with "water over the dam."

Instead of focusing on liability,

Mr. Porter's simplification stresses cutting cleanup times and streamlining the Superfund process, mainly by giving states a larger role.

More than 40 states already have a Superfund-type program in place, Mr. Porter noted, adding that states tend to get sites cleaned up more quickly than the federal government.

States have a natural advantage over the federal program because sites typically only cover a few acres, the state governments are closer to the communities involved and have a better grasp of the land-use concerns, Mr. Porter said.

But Mr. Porter stressed that only states that were capable and willing to assume cleanup authority should receive it. He predicted that larger states would be more likely to seek that authority than

Continued on next page



Continued from previous page
their smaller counterparts.

Sites where cleanup is already under way should not be transferred to state control, Mr. Porter added.

He also called for shortening the process required to get Superfund cleanup under way.

The number of reports and amount of documentation required before action commences should be drastically reduced, so that the emphasis would fall on cleanup options. EPA "micromanagement" of sites must end as well, he said.

"The EPA and the states have become the project engineers on the site, not the regulators," he said.

Reducing the number of potentially responsible parties for Superfund cleanups, though "not critical," would enhance cleanup efficiency, Mr. Porter said.

He recommended that parties responsible for less than 1% of the hazardous waste at a site be exempted.

Three "key implementation issues" would have to be resolved for this simplification process to work, Mr. Porter explained.

The first is whether legislative and/or administrative changes would be needed to affect reform. He stressed the "and/or" portion of the issue, suggesting that a mix of both approaches would be required.

The second issue is determining exactly which sites would be turned over to the states.

The third issue, which he considered the most important, is deciding "if and when you transfer sites to the states, how does the money flow?"

The issue of who would pay what costs remains unclear, he said. **B**

Administration still opposes changes in Superfund liability

By MARK A. HOFMANN

WASHINGTON—Anyone hoping for signs of change in the Clinton administration's Superfund policy won't find them in the list of "Superfund legislative reform principles" released by the Environmental Protection Agency.

The principles were attached to a May 7 letter from EPA Administrator Carol M. Browner to Senate Environment and Public Works Committee Chairman John Chafee, R-R.I. The past two congresses have failed to reauthorize the Comprehensive Environmental Response, Compensation and Liabili-

ty Act, which authorizes Superfund, in part because of disagreements over how to reform the program's controversial system of imposing retroactive, strict, and joint and several liability on potentially responsible parties.

But the latest principles offer little if any significant breaks with past administration positions.

"It's essentially a resubmission" of what the administration has put forth before, said David R. Haight, vp-environmental for the Risk & Insurance Management Society Inc. and director-risk management for CF Industries Inc. in Long Grove, Ill.

For example, the first principle listed is "maintain the principle that those who are responsible for the contamination must pay for the cleanup."

This "polluter pays" principle has been the centerpiece of the administration's Superfund philosophy.

Later in the document, the administration lists proposals that it "strongly opposes." Among those is "repeal of all or part of the current strict, retroactive, and joint and several liability standards."

RIMS and insurance industry groups have repeatedly called for an overhaul of Superfund's liability system, noted Mr. Haight.

The document also repeats the administration's call for "clearly defined exemptions on liability" for certain classes of potentially responsible parties. These include "very small contributors," transporters and generators of municipal waste and "bona fide" prospective purchasers of certain waste sites.

The document reiterates the administration's opposition to "site liability carveouts," or eliminating liability for people based on the type of site, notably multiparty sites.

Mr. Haight also pointed out that the document spells out the administration's opposition to risk assessment requirements, another reform supported by risk managers.

The Clinton administration's principles call for reinstatement of the special taxes that pay for Superfund, which picks up the so-called "orphan shares" of cleanup costs for which no solvent PRPs can be found. Authority to collect the taxes expired more than a year ago, and House Ways and Means Committee Chairman Bill Archer, R-Texas, has promised to fight renewal of the taxes without significant liability reforms.

In addition, the administration's principles oppose a cap on adding more sites to the National Priorities List of locations covered by the Superfund law. Some reform proponents in the past have proposed limits on lengthening the list, at least until sites already on the NPL have been cleaned up.

The EPA document drew a cool response from Washington-based Superfund Reform '95, a pro-reform group that includes businesses, municipalities, insurers and non-profit organizations.

Following those principles would "condemn the program to a perpetuation of the wasteful unproductive legacy that has characterized it for the past 16 years," said George Baker, the group's executive director.

"It just seems more of the same," said Peter A. Lefkin, senior vp in Fireman's Fund Insurance Co.'s Washington office.

He added that he hopes that the principles do not represent the administration's final word on reauthorization.

"My personal hope is that they reflect a negotiating position and not what they ultimately expect to obtain," added Mr. Lefkin.

"This looks to me like the first shot across the bow. I think the EPA itself has already blown by their own principles in their negotiations with the Senate. Those negotiations are showing a lot of promise," said John Arlington, assistant vp of the American Insurance Assn. in Washington. **B**

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Little advances at Hilton Hotels

W. David Little has been named vp-risk management for Hilton Hotels Corp.

Mr. Little, 39, is responsible for overseeing all corporate risk management programs and strategies at the Beverly Hills, Calif.-based hotel chain. He previously worked as Hilton's director-risk management, a position he held for eight years until his recent promotion.

Mr. Little began his risk management career in 1983 as a consultant at Advanced Risk Management Techniques in Laguna Hills, Calif. He was risk manager for CalComp Inc. in Anaheim, Calif., from 1988 until joining Hilton Hotels in 1989.

Mr. Little reports to Robert LaForgia, senior vp and controller.

He graduated from the University of Georgia, where he earned a bache-

Comings & Goings: Buyers

lor of business administration degree with a concentration in risk management and a master of business administration with an emphasis in finance.

Mr. Little holds the Associate in Risk Management designation.

Charlotte A. Sadtler has been promoted to assistant vp-liability and warranty at Rollins Inc. in Atlanta.

Ms. Sadtler previously was director of liability and warranty at Rollins, the parent company of subsidiaries that provide pest control, security services, lawn care and other services. Among her responsibilities in the newly created position are administration of general liability, automobile

and warranty claims.

She reports to John Bultman, executive assistant.

Ms. Sadtler attended Valencia Community College in Orlando, Fla., and holds the Associate in Claims designation from the Insurance Institute of America.

She is second vp with the Atlanta Claims Assn., a member of the Atlanta Assn. of Insurance Professionals and the local chapter of the Risk & Insurance Management Society Inc.

Craig Bollinger has been named vp of risk management at Borg-Warner Security Corp. in Chicago.

In the newly created position, Mr.

Bollinger, 39, is responsible for risk assessment, loss control, claims management and the negotiation and administration of insurance and risk retention programs.

He has worked at Borg-Warner for 12 years, most recently as director of risk management. He reports to Tim Wood, chief financial officer at the security services provider.

Mr. Bollinger has an accounting degree from Stockton State College in Pomona, N.J., and a master of business administration from Seton Hall University.

He holds the Associate in Risk Management designation.

Joel H. Rothwax has been appointed senior vp-human resources at Reliance Insurance Co. in Philadelphia.

Mr. Rothwax, 47, will assume responsibility for human resources at the insurer while continuing to serve as vp of human resources at Reliance's parent, Reliance Group Holdings Inc.

in New York. He maintains offices in both cities.

Before joining Reliance Group Holdings in New York in 1994, Mr. Rothwax was vp of human resources at New York-based publisher MacMillan Inc.

He reports to Robert C. Olsman, president of Reliance Insurance Co.

Mr. Rothwax has a bachelor's degree in operations research from City College of New York, a master of business administration from George Washington University and a law degree from Brooklyn Law School.

He is a member of the Society for Human Resources Management and the International Assn. of Corporate & Professional Resources.



Mr. Rothwax



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Technology crucial, says Kemper CEO

By DEBORAH SHALOWITZ COWANS

CHICAGO—Although the insurance industry may seem obsessed with merger mania, one executive maintains that bigger may not necessarily be better.

"I don't know that there's any specific advantage to size" in the insurance marketplace, said William Smith, president and chief executive officer of Kemper Insurance Cos.

Mr. Smith, speaking recently at an Assn. of Professional Insurance Women luncheon in Chicago, noted that "having an awful lot of people (in a company) is a cumbersome task."

While servicing customers is paramount to a company's success, maintaining personal contact with customers doesn't literally have to be face-to-face, he said.

Mr. Smith noted that technology will enable insurers to communicate with and service customers without meeting them in person all the time.

"The winners (in the future) are going to be those who have figured out how to put someone in front of each person, either in person or electronically," he said.

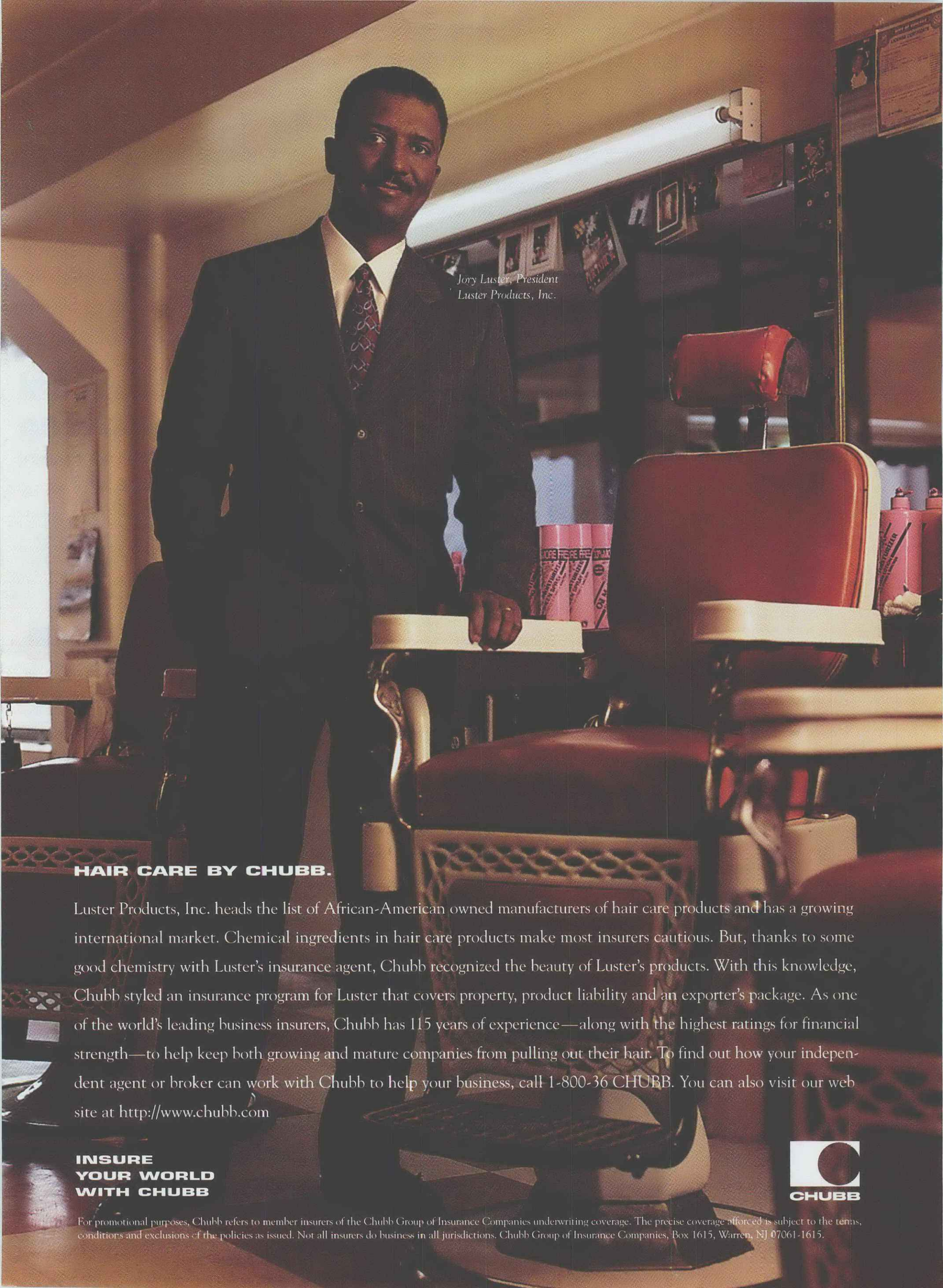
In addition to changing the nature of customer service, technology will change how people within a company work with each other, according to Mr. Smith. "This is going to lead to some redefinition of what is teamwork."

Ultimately, the winners in the insurance marketplace of the future will be "highly focused regional companies," Mr. Smith predicted.

Mr. Smith also noted that with the explosive growth in small companies started by entrepreneurs, many of them women, insurance companies are going to have to look for customers in non-traditional places.

Small, home-based businesses employ 14 million people, Mr. Smith noted. As a result, there has been a "profound change in where our customers really, really are."

Small companies represent "a significant market opportunity for" Long Grove, Ill.-based Kemper. Mr. Smith said.

A man in a dark suit, white shirt, and patterned tie stands in a barbershop. He is leaning on a red barber chair. The background shows shelves with various hair care products and framed pictures on the wall.

Jory Luster, President
Luster Products, Inc.

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Luster Products, Inc. heads the list of African-American owned manufacturers of hair care products and has a growing international market. Chemical ingredients in hair care products make most insurers cautious. But, thanks to some good chemistry with Luster's insurance agent, Chubb recognized the beauty of Luster's products. With this knowledge, Chubb styled an insurance program for Luster that covers property, product liability and an exporter's package. As one of the world's leading business insurers, Chubb has 115 years of experience—along with the highest ratings for financial strength—to help keep both growing and mature companies from pulling out their hair. To find out how your independent agent or broker can work with Chubb to help your business, call 1-800-36 CHUBB. You can also visit our web site at <http://www.chubb.com>

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IATA

Continued from page 3

result, IATA is recommending an insignia such as "a flying heart" be put on passenger documentation of the signatories of the agreement, said Mr. Clark.

There are still troubles to iron out, however.

For example, two passengers who "are sitting side by side on the same aircraft and have paid the same price for their ticket may have vastly different coverage" under the new agreements—depending on whether their tickets originated on a signatory airline—during this transitional period when some airlines have signed and some have not, said Mr. Clark.

"That position is unfair, unconscionable and totally immoral. We must move quickly to resolve this position," he said.

Aviation underwriters at the DYP conference think that if the IATA agreement is designed to give more in compensation to passengers and their relatives, then airlines should be charged more for their airline liability insurance.

The IATA agreement "is a good thing," summed up Andre Clerc, general manager of La Reunion Aérienne in Paris. But because the agreement is designed to give more, then airlines "can pay more in premium and charge the passenger."

Recent data show that airline liability insurance claims will increase because of the new IATA agreement.

Lloyd's aviation underwriter John Westcott, for example, told an IATA meeting in Miami in February that he estimates the new agreement would cost an additional \$300 million in liability claims per year.

He added that if every under-

writer charged an identical additional premium to cover this cost, and the airline passed this cost onto each passenger, "It would put the price of a London-Paris airline ticket up by 1.5 cents or a London-Miami ticket by 50 cents."

At the DYP conference, Swiss Reinsurance Co. estimated that

jurisdiction based on their place of birth, marriage or where they pay their taxes.

"The ingenuity of the plaintiffs bar beckons, and as far as I can tell, they have always risen to a challenge," said Mr. Medniuk. "Not much saving for insurers in that scenario."

Passengers who in the past have

'You may think me cynical, but I foresee a new kind of forum-shopping evolving,' says Tony Medniuk of the British Aviation Insurance Group.

average airline liability claims after the agreement would increase to \$2.5 million per passenger in the United States in the next century from \$1.75 million in the 1990s and to \$1 million from \$200,000 for non-U.S. flights.

Airlines will require higher liability limits as a result of the new agreement and also because third-party personal injury risks on the ground are increasing, added Tony Galbraith, group treasurer for British Airways P.L.C.

The new agreement could cost more than underwriters think, however, warned Tony Medniuk, managing director and chief underwriter of The British Aviation Insurance Group in London.

For example, Mr. Medniuk foresees additional litigation costs as a result of the new agreement. The agreement allows for damages to be decided under the law of the passenger's domicile.

"You may think me cynical, but I foresee a new kind of forum-shopping evolving," said Mr. Medniuk.

Plaintiffs could seek a favorable

accepted Warsaw limits for non-grievous claims such as "nervous shock" or "fear of flying" also may seek unlimited compensatory damages, Mr. Medniuk surmised. Warsaw forbids punitive damage awards.

"The architects and advocates of unlimited airline liability have either ignored or underestimated what will be a significant impact upon claims handling of the individual one-off cases or so called attrition losses," Mr. Medniuk said.

Airlines also will continue to sue manufacturers to try to recover passenger liability costs if there is evidence that some component caused the loss.

But because the IATA agreement is "voluntary" rather than regulatory, plaintiffs may be able to sue the manufacturers directly after they receive damage awards from the airline, said Mr. Medniuk.

That could mean that insurers pay out twice for the same loss—once for their airline client and once for the manufacturer, he noted.

"It does seem that the size of the

legal minefield which insurers are required to traverse is steadily growing and the explosive power of each individual mine is strengthening almost exponentially," said Mr. Medniuk.

However, George N. Tompkins Jr., senior partner at Tompkins, Harakas, Elsasser & Tompkins in New York, thinks Mr. Medniuk is "dead wrong" in many respects.

"The approach to settlements will alter substantially," said Mr. Tompkins, a longtime advocate of the elimination of the Warsaw liability limits.

Plaintiffs lawyers "are interested in one thing and one thing only: money. And they're interested in getting it quickly, and they do not want to have to spend a single day in the courtroom."

The reason passenger cases have been tied up in the courts for

"years and years and years" is because plaintiffs lawyers have had an obligation to their clients to try and prove willful misconduct to break the Warsaw limit, said Mr. Tompkins. "Now they don't have to do it. They're delighted with the new system."

The value of the passenger liability cases will neither go up nor down as a result of the IATA agreement.

What will drive up the cost of the claims is "economics," as it has done in the past, Mr. Tompkins added.

What should be reduced are claims expenses, because willful misconduct litigation will not have to be defended, said Mr. Tompkins.

Airlines now will be able to settle with passengers in a just way, and "no court will penalize the airline for doing the right thing," he said. **BI**

Part of EC proposal has airlines balking

Proposal goes beyond IATA agreement

LONDON—Airlines have some misgivings about a proposed regulation by the European Council of Ministers for implementing a new passenger liability system for international flights.

The regulation "on air carrier liability in the event of accidents," which is under review by the European Union's Parliament in Strasbourg, France, is designed to incorporate the International Air Transport Assn.'s agreement to waive passenger liability limitations on international flights (see story, page 3.)

The E.U. Parliament could approve the measure as early as next month.

According to the regulation, "It is necessary to improve the level of protection of passengers involved in air accidents."

Like the IATA agreement, the E.U. regulation insists on unlimited passenger liability and strict liability for up to 100,000 Special Drawing Rights (\$136,350).

This regulation would override the Warsaw Convention's passenger liability limitations, which currently can be exceeded only if willful misconduct is proved.

However, the E.U. proposal would go further than the IATA agreement, delegates of the 12th Annual International Airline Insurance conference conducted by DYP/LLP Ltd. heard late last month.

For example, a provision in the regulation calls for airlines to make advance payments to surviving relatives "without delay, and in any event not later than 15 days after the identity" of a deceased or injured passenger.

The advance payment should not be less than 15,000 SDRs (\$20,453), though it can count toward the total amount of any payment. The advance payment also is not a recognition of the airline's liability, the regulation states.

This rule could be impossible to fulfill, stated Tony Galbraith, treasurer of British Airways P.L.C.

"Does the E.C. have any idea how difficult proving title (to the

compensation) can be?" he asked rhetorically.

In addition, the E.C. regulation calls for non-European Union airlines that fly into or through the European Union to "expressly and clearly inform" passengers if they are not signatories of the IATA agreement and therefore carry a liability limitation on their tickets.

These limitations should be posted at the airlines' ticket offices and travel agencies so that passengers know before they purchase their tickets, the regulation states.

Although airlines accept most of the proposed regulation, they object to some of it, such as the posting requirement, said Lorne S. Clark, general counsel and corporate secretary of IATA in Geneva. Other provisions that airlines reject are the 15-day time frame for paying compensation and a lack of guidance on insurance requirements.

"They want non-European airlines to put in their storefront windows large signs saying that they do not meet the same standards as the Europeans do," said Mr. Clark. "We believe that that is contrary to the Warsaw Convention," which remains in effect except for the liability limitations. "If necessary, we will challenge that in court."

The E.C. regulation also states that it "clarifies some insurance requirements" for E.U.-based airlines. However, the regulation does address what those requirements are.

These insurance requirements are not stated in the regulation but rather are implied, according to Nicholas Hughes, partner of Barlow Lyda & Gilbert in London.

"There are open references to the expectation that (passenger liability) will be insured," he said.

There is no specific rule stating that airline passenger liability must be insured, "but what other plan is intended by this, I do not know," said Mr. Hughes.

—By Stacy Shapiro

Carvill

Reinsurance Intermediary

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Architects reject contract over liability concerns

By TOM FORD
Crain News Service

CLEVELAND—The Cleveland office of a San Francisco-based architectural firm has turned down a lucrative contract to help choose a site for a controversial low-level radioactive waste dump, citing potential liability issues that could arise from its work.

URS Greiner Inc. walked away from the \$936,000 contract with the Ohio Low-Level Radioactive Waste Facility Development Authority because it was unable to negotiate language that would have shielded the architectural firm from lawsuits by communities identified as possible dump sites.

"It's not every day that you walk away from a contract of that

size," said William Laubscher, managing principal of URS Greiner's Cleveland office.

"But besides our architectural and design interests, we also have to be a business, and the risk of liability was just too large," he said.

URS Greiner won the bid April 11 to do exclusionary screening of potential sites for a low-level radioactive waste dump, which would accept an estimated 2.25 million cubic feet of the waste from Ohio and five other states in the next 20 years.

A spokeswoman for the waste authority would not comment on the liability aspects of the exclusionary contract. She said the authority may need to meet in advance of its regular June meeting to decide how to proceed so as not

to delay the screening process further.

The low-level radioactive waste authority, a quasi-independent wing of the Ohio Environmental Protection Agency, is charged with finding a dump site for the waste by June 2000. The waste stream comprises largely clothing, tools, medical isotopes and other low- to mid-range radioactive materials from nuclear power plants, hospitals and research labs.

Ms. Herby said the state hopes to have the facility functioning by June 2005.

Controversy is nothing new in the effort to site a low-level radioactive waste dump in Ohio.

Under provisions of federal laws passed in 1980 and 1985, states are given the responsibility

for building protected sites for waste generated within their borders, and for protecting those wastes for up to 100 years.

Many states—under the gun to find sites to comply with federal mandates—joined together in groups called "compacts" to build one dump site to handle wastes from all the other states in the group.

The state in the compact generating the most low-level waste was selected to host the facility. In 1991, Ohio was designated the host state for wastes from Indiana, Iowa, Minnesota, Missouri, Ohio and Wisconsin. It earned that designation after Michigan dropped out of what's known as the Midwest Compact.

Authorities in Michigan concluded it was impossible to find

an appropriate site for the dump. So far, no state in the country has successfully sited or opened a facility for such waste.

Meanwhile, low-level radioactive waste generators and environmentalists alike warn that the wastes continue to pile up at the power plants and other generation sites.

One existing national low-level waste site, in Barnwell, S.C., is scheduled to close in 1999. **BI**

Fronting

Continued from page 3
they're dying to use," said Mr. Harkavy.

The bill—S.B. 611—has been sent to the House for concurrence. The House Rules Committee, which meets at the pleasure of its chairman, has yet to look at it. Opponents hope the Republican-controlled House might be less disposed to do a favor for a powerful Democratic regulator such as Mr. Long than the Democrat-dominated Senate was.

The bill, which has gone through several metamorphoses, is based on a 1993 model act promulgated by the National Assn. of Insurance Commissioners (NAIC, Dec. 13, 1993). The North Carolina bill would require that an insurer that delegates any underwriting or claims settlement authority to an unauthorized reinsurer meet a series of new reporting requirements set by the Insurance Department.

The insurer would have to receive prior approval for the arrangement if the reinsurance ceded, including ceding commission or "any other allowances," amounted in total to more than 10% of the insurer's statutory policyholder surplus. Insurers that did not comply would be subject to numerous sanctions. The bill exempts single-parent captives from regulations but would apply to group captives if passed.

No state has adopted the NAIC model, and opponents of the North Carolina measure want to keep things that way.

RIMS' Ms. Allen noted that the current measure is less onerous than some proposals that floated around Raleigh before a final bill was introduced earlier this year.

"But we don't care how much they tinker around with it; it's still going to add another layer of regulation," she said. "It still basically follows the NAIC model."

"The entire structure of the model bill is still in place and is still incredibly cumbersome for businesses in North Carolina that want to pursue an alternative risk mechanism," said Ms. Allen.

RIMS sent a legislative alert to its North Carolina members last week, calling on them to contact their representatives in opposition to this bill.

The American Insurance Assn. also opposes the bill, said Ray Farmer, assistant vp in the insurer trade group's Atlanta office.

"We think the commissioner has enough regulatory authority under current statutes" to deal with fronting questions, he said.

"If each state adopts a North Carolina approach, it's going to make it very difficult to operate a national insurance program," said Mr. Harkavy.

"If states continue to adopt these things, we're back to the Articles of Confederation," he added, referring to precursor of the U.S. Constitution that didn't prohibit states from interfering in interstate commerce. **BI**



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ECS to target chemical firms for pollution insurance

EXTON, Pa.—ECS Underwriting Inc. has formed a new business unit to meet the special insurance needs of the chemical industry, especially in the area of pollution liability.

Daniel Hagan, manager of the new unit, said it will offer chemical manufacturers and distributors comprehensive insurance coverage without the typical pollution exclusion of the standard insurance policy.

Exton, Pa.-based ECS's chemical facilities unit will develop specific insurance programs to meet the needs of a variety of businesses in the chemical industry, including chemical warehouses, drumming and repacking facilities, chemical manufacturers and mixing and blending facilities.

Key coverages available through the unit include commercial automobile liability and physical damage, general liability including products and pollution, workers compensation, umbrella liability, pollution and remediation legal liability and pollution and inland marine.

For more information, call 800-327-1414.

Group buying power

HARTFORD, Conn.—The Hartford Steam Boiler Inspection & Insurance Co. has formed an affinity services group program to provide members of common interest groups, such as associations, with industry-specific coverages and group purchasing power.

Coverage for equipment repair or replacement costs and loss of income due to interruption of business or services because of the breakdown of covered equipment is available.

The affinity services group is made up of a team of professionals concentrating specifically on group programs.

For more information contact Don Hartford, vp in the affinity

Markets

services group, at 800-345-1122.

Investment service

NEW YORK—Reinsurance intermediary and financial consultant Gill & Roeser Inc. has formed a panel of insurance industry investors to small stock and mutual insurance companies, agents and brokers and other service providers to the insurance industry.

The move is aimed at meeting the needs of small to midsize insurance industry entities with capital needs of \$1 million to \$10 million. It also is intended to facilitate other relationships between the investment recipients and the investors—insurance and reinsurance companies—that can provide capacity and other needed services.

For more information contact, Steve Bolland, senior vp at Gill & Roeser in New York at 212-972-4880.

Benefits practice

CHICAGO—Near North Insurance Brokerage Inc. has established a voluntary benefits practice with primary emphasis on payroll deduction life insurance plans for companies with 100 or more employees.

Tom Porter has joined Near North as vp of the new practice and is based in Chicago.

For more information, contact Mr. Porter at 312-280-5551.

M&A funding

BOSTON—Harborside Healthcare Corp. has arranged a three-year, \$25 million revolving credit facility with Chase Manhattan Bank to fund working capital requirements associated with the company's ongoing acquisition

program.

The credit facility is collateralized by accounts receivable as well as certain other assets.

In 1996, Boston-based Harborside increased its bed capacity by about 50%, or more than 1,200 beds through acquisitions. Already this year, the long-term care, subacute care and specialty medical service provider has acquired a 163-bed facility in Baltimore and has announced the pending acquisition of four facilities with 410 beds total in the Boston area.

Harborside officials indicated they plan to bring other banks into the revolving credit facility to increase the amount of capital available to the company.

Sales director

LYNBROOK, N.Y.—Home health care agency All Metro Health Care/Plaza Nurses Agency has hired Elaine Winkler, a disability management specialist and certified case manager, as its new sales director to lead the company's entry into the commercial insurance market.

Among other things, Ms. Winkler is initiating a workers compensation review for self-insured companies, municipalities and insurance agencies to analyze long-term active cases for unnecessary medical care claims that could be driving up costs. Registered nurses will conduct home assessments of claimants' medical treatment.

Companies hiring Lynbrook, N.Y.-based All Metro as their exclusive home-care provider also will receive case management and counseling services.

All Metro currently has 17 offices in six states.

For more information, call 516-887-1200.

Provider network

BRENTWOOD, Tenn.—Workers compensation provider network

manager FOCUS Healthcare Management Inc. rolled out its 20,000-plus provider network for New York effective May 1.

The New York contract brings the total network for Brentwood, Tenn.-based FOCUS to 177,000 nationwide, more than double the number of providers in the company's network a year ago.

In addition to the providers, the New York network includes 101 hospitals, with providers and hospitals covering close to 70% of the state with concentration in New York City and Long Island, the Hudson Valley, the Schenectady/Albany area, Syracuse and Buffalo.

FOCUS is an independently operated subsidiary of Boston-based CRA Managed Care.

For more information call 615-377-9936.

Plan manager sold

CHESTERFIELD, Mo.—Managed care consulting and administration firm CODA Inc. has acquired Atlanta-based HealthPlan Management Services Inc. from John Hancock Financial Services Inc.

Terms of the transaction were not disclosed.

Founded in 1988, CODA specializes in assisting employers with evaluating and administering their managed health care plans.

HPMS, which provides the same services, was founded in 1986.

As a result of the transaction, CODA will have a staff of more than 130 employees and will serve more than 80 national employers and manage more than 1,000 health plans.

Intermediary office

LAWRENCEVILLE, N.J.—Specialty reinsurance brokerage firm Jardine Sayer & Co. has opened offices in San Francisco.

William A. Klepp, vp, will oversee the Lawrenceville, N.J.-based company's West Coast operations. The new offices are at 180 Montgomery St., 5th Floor, San Francisco, Calif. 94104.

The telephone number is 415-986-1310, and the fax number is 415-986-1330.

Name changes

Workers compensation managed care provider CompCare Inc. has changed its name to **CompFirst Inc.** Based in Atlanta, CompFirst serves the Georgia market. For more information, call 770-984-9783.

California Dental Health Plan, the managed dental and vision care subsidiary of PacifiCare Health Systems, has been renamed **PacifiCare Dental**. Founded in 1972, the Tustin, Calif.-based company was acquired by PacifiCare in 1993. The largest managed dental plan in California, PacifiCare Dental plans expansion into Oregon, Washington and Texas this year. For more information, call 800-622-6388.

New offices

Claims adjuster **Maxson Young Associates Inc.** has relocated its Miami office to 2600 Douglas Road, Suite 906, Coral Gables, Fla., 33134-6134. The telephone number is 305-443-9900, and the fax number is 305-443-9908. Michael P. Watters has moved from the company's New York office to be branch manager of the Miami office.

Excess and surplus lines broker, program administrator and man-

aging general agent **Sherwood Insurance Services** has established a Seattle office through its acquisition of health care broker PBA Inc. Robert D. Kelley, PBA's founder, has become a senior vp of Sherwood and manager of the Seattle office. The new office is located at 2800 The Columbia Center, Seattle, Wash., 98104. The telephone number is 206-340-8499, and the fax number is 206-382-1409.

Management-marketing organization **Insurance Marketing Associates** has relocated to 35 Hancock St., Laguna Niguel, Calif., 92677-4709. The phone number is 714-487-1693, and the fax number is 714-487-1695.

Professional Coverage Managers Inc., PCM Intermediaries Ltd., PCM Excess Ltd. and Special Risk Portfolios Inc. have relocated to 5 Hanover Square, 3rd Floor, New York, N.Y. 10004-2614. The telephone number is 212-344-8200, and the fax number is 212-344-5537.

Risk Capital Reinsurance Co. and its parent, **Risk Capital Holdings Inc.**, have moved to new offices in Greenwich, Conn. Both companies now are at 20 Horse-neck Lane, 2nd Floor, Greenwich, Conn. 06380. The telephone number is 203-862-4300. **BI**

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AIG unveils communications coverage

NEW YORK—American International Group Inc. has formed a Communications Risk Group to service the communications industry.

It will sell insurance products and risk management services to communications companies such as regional and local telephone operating companies; cellular, mobile and wireless operators; equipment providers and manufacturers; cable system operators; broadcast and Internet service providers; and advertising agencies.

One product is AI LINK, a new policy providing professional liability coverages for telecommunication and multimedia service firms. AI LINK covers acts such as defamation, libel, slander, copyright infringement, and errors and omissions.

It can be written on a primary or excess basis, as a stand-alone policy or as part of a commercial general liability policy. Coverage is available with limits of up to \$15 million.

The Communications Risk Group is one of AIG's CorporateOne series of industry-specific lines, which consist of several core coverages, each tailored to the needs of particular industries. For more information, call Andrew Lennox, vp-communications risk group, AIG Risk Management Inc., 212-770-7062.

Employer protection

HARTFORD, Conn.—A comprehensive insurance policy protecting employers against dishonest workers, computer fraud and other crime will be available this year from Travelers Bond, a division of The Travelers Indemnity Co.

The product, CrimePLUS, is intended for small to midsize public and private companies and non-profit organizations, and its six insurance agreements have limits that can be identical or scheduled separately.

The product has global coverage and expanded definitions of "employee theft" and "employee." In addition, more coverage is provided for auditing, personal accounts and electronic funds transfer, and coverage for third-party services and investigative costs also is available.

For information, call Susan Drake, senior vp, 860-277-1934.

Hospital safety

OAKBROOK TERRACE, Ill.—"Fire Safety," a Windows-based computer tutorial designed to teach hospital staff to identify fire hazards and handle fire emergencies, is available from the Joint Commission on Accreditation of Healthcare Organizations.

The computerized training program, to be used in orientations and competency tests, uses color photographs to simulate emergency situations and tasks.

Employees will learn to spot fire dangers; sound alarms and contain and extinguish flames in simulated fires; choose the right type of fire extinguisher for the task and learn to use it; and evacuate the hospital.

The program allows facilities to customize the instruction according to skill level, job responsibilities as well as hospital department-specific and hospital-specific policies and procedures.

The software is \$495. For more information, contact the distributor, Computerized Educational Systems, 800-275-1474.

Program for staffers

ATLANTA—An insurance program designed for staffing companies, such as professional employer

organizations and temporary staffing services companies, is being offered by Atlanta-based American Safety Insurance Group.

Businesses purchasing the policy can obtain general liability and workers compensation coverages. Features include guaranteed cost programs, large and small deductibles, a rent-a-captive option with flexible requirements, extensive loss control services, claims management, safety audits and drug screenings.

The company has the capability, through independent agents and brokers, of writing policies throughout the United States on an admitted basis.

Products & Services

For more information, contact Ashley Russ, marketing representative, 800-388-3647.

ERISA guidelines

WASHINGTON—An in-depth guide to 1996 changes in the Employee Retirement Income Security Act is now on sale from BNA Books, a division of the Bureau of National Affairs Inc.

This latest edition of "ERISA: The Law and the Code," outlines ERISA implications of the Small Business Job Protection Act of 1996; the Health Insurance Portability and Accountability Act of 1996; and the Departments of Veterans Affairs

and Housing and Urban Development and Independent Agencies Appropriations Act of 1996.

The text is supplemented by detailed editors' notes, and changes from previous years' editions are noted. A full annotated text of the act also is included.

The 935-page paperback is available for \$75 plus tax, shipping and handling. For information, call 800-960-1220.

Non-profit insurance

KING OF PRUSSIA, Pa.—The United States Liability Insurance Group has introduced two insurance products, both available throughout the United States.

The Non-Profit Social Service Package Program can cover non-residential settings such as individ-

ual and group counseling, referral services, sheltered workshops, and adult day care. Residential locations might include respite care, hospices and homeless shelters.

Coverage, with separate limits available, includes commercial general, professional and molestation and abuse liability. Limits are \$1 million per occurrence, \$3 million general aggregate for both commercial general and professional liability, and up to \$1 million per claim for molestation and abuse liability.

A second new product, USLI's Vacant Building Program, offers three-, six- and 12-month policies in either package or monoline form. Limits for buildings are \$150,000 or \$300,000, depending on protection class. Liability limits are \$1 million per occurrence and \$2 million general aggregate.

For information, call John G. Donahue Jr., marketing director, 610-688-2535. **B1**

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Kazakhstan's riches not without risk

Obtaining proper insurance coverage should be on list of priorities

By Paul G. Merlino

LIGHTS FROM WESTERN EUROPE to Almaty, Kazakhstan, land before dawn. Even for a planeload of seasoned travelers, it's somewhat disconcerting to be told to "brace for landing." The runways in Almaty are potholed and pitted.

However, behind the facade of the 1960s, Soviet-era terminal (now being renovated) lies an opportunity for businesses willing to take a risk for potentially large gains in the future.

Kazakhstan has an abundance of oil, gold and infrastructure projects, yet it still is frustrating for international investors, even those accustomed to the old Soviet-era bureaucracy. There aren't many places on earth where contradictions are more extreme: The government boasts of oceans of oil and mountains of gold, yet the average monthly wage for a Kazakh worker is about \$50.

Although Kazakhstan has problems with crime—as does the rest of the former Soviet Union—its levels are relatively low compared with Moscow and St. Petersburg, which are far more prosperous than Almaty. When a professor at a local university was asked to explain this discrepancy, he said the Kazakhs are gentle by nature and learned to be patient under the iron rule of the Soviet Union. For many international executives, this friendly attitude is a welcome contrast to the fast-paced lifestyles evident in the Russian Federation.

And while Almaty may be considered backwater by Moscow standards, it's a showplace in the former Soviet Union, where the Tien Shan mountains are visibly snow-peaked throughout the summer and lush green trees line the centrally planned streets.

Despite the tranquility, there's an undercurrent in the foreign community akin to that of Moscow in 1992 and 1993: The country is ready to boom, and Western expatriates stationed there are laying the groundwork to reap rewards of early investment in this developing nation.

The first businesses to enter Kazakhstan were oil companies that, with patience and abundant monetary resources, have been able to establish a foothold in the Caspian Sea region. Chevron Corp., for example, began exporting oil profitably from Kazakhstan in 1996 and reportedly expects to build on its profitability in the foreseeable future.

Nonetheless, most companies investing in Kazakhstan are infrastructure companies seeking to participate in the renovation of Almaty and the change of the country's governmental capital city from Almaty to Akmola. This initiative is expected to involve a multiyear process believed scheduled to begin in 1998.

Funding sources for all this work remain a mystery. Some Kazakh government officials have suggested that Parliament might ultimately pass a "relocation tax" to apply to businesses in general and operations owned by non-Kazakh businesses in particular.

Meanwhile in Almaty, representative offices, warehouses, distribution centers and a few assembly lines are sprouting up as international businesses strive to build an infrastructure to begin marketing their goods and services throughout the region. As these companies hire staff and contribute to the rising living standards, consumer goods companies—such as soft drink manufacturers, confectioners and fast-food chains—all are gaining a foothold in anticipation of the region's oil boom.

As businesses prioritize tasks to establish a presence and hire and train a sales force, insurance and risk management issues tend to fall to the bottom of managers' to-do lists.

Kazakhstan has but a handful of licensed insurers, compared with 3,500 in Russia. Even so, it lacks an insurer with the stature of Russia's Ingosstrakh or Rossiya Insurance Co. that stands well above the others in terms of capital and reserves. Local Kazakh

International Issues

companies are notoriously under-capitalized, and their experience lies in "fronting a risk" rather than "rating and insuring" risks. There's a clear need for reinsurance in this market; a third-party motor or physical damage loss of \$200,000 could bankrupt just about any Kazakh insurance company. Technical support from joint-venture partners is virtually non-existent; most international insurers either are approaching this market cautiously or waiting for changes in local legislation that would allow a foreign joint-venture partner to own 51% of a local insurance company and exercise management control.

In the meantime, it's up to the broker to establish basic standards for the Kazakh insurers and to train them in everything from policy issuance and claims handling to facultative and treaty reinsurance. In terms of insurance, nothing can be assumed or taken for granted in Kazakhstan.

For example, a few Western companies insured locally and suffered an "insured" loss only to be informed it wasn't the insurance company's intention to pay this "particular type of claim," despite policy statements to the contrary. Yet successful programs have been implemented in Kazakhstan with the help of local brokers and international reinsurance. A recent example of this is a Canadian mining company. After implementation of an international property/casualty and motor program, an accident occurred, claiming the lives of several local workers and resulting in a judgment in excess of \$300,000. Clearly, no local Kazakh insurer would be able to support such a claim.

Fortunately, this company worked closely with its local broker and the London reinsurer to ensure that proper payment was made in Kazakhstan. Local requirements were met, and goodwill for the Canadian company was ensured by meeting its obligations locally, not to mention balance sheet protection against this unforeseen loss.

What type of insurance program should a company consider? Start-up companies or joint ventures in Kazakhstan should buy these coverages:

- **Property.** This coverage is usually required under the terms of the lease when an international company leases office space locally. Because of the scarcity of office space, consider purchasing an element of extra expense insurance in addition to physical damage insurance. International reinsurers are usually eager to participate on property visits.

- **Motor.** A new law pertaining to motor insurance requires the owner of a vehicle to purchase at least \$5,000 of third-party liability insurance locally. This insurance is relatively expensive and must be purchased through certain approved local insurers. Seventy percent of the funds collected go into a reserve account for paying claims. Virtually all international companies purchase excess third-party liability cover; it's possible to purchase \$1 million locally. Due to the high propensity of collision and theft, physical damage insurance should be considered, and it would be prudent to reinsure this if a Western reinsurer can be found.

- **General liability.** Although instances of high third-party liability claims are currently uncommon, Kazakhstan has many expatriates residing in the country. It's important to have adequate limits (at least \$1 million) and to structure programs so reinsurers can participate in the transaction.

- **Marine.** Goods traveling into or through Kazakhstan require evidence of local insurance. This generally must be purchased within the country. Local insurers are happy to front for international companies and will usually retain 5% to 10% of the risk.

- **Oil and gas.** There was some speculation in 1996 as to whether a new insurance law would be passed requiring multinational insurers to purchase insurance cover

starting from the first dollar or above a small deductible.

The law was designed to generate income for the local insurance industry, because many international oil and gas companies forgo purchasing local insurance in light of the large excess coverages they typically carry. The proposed insurance law has yet to be implemented, and the government has not yet identified the insurers that would be licensed to issue such policies. In addition, the Kazakh government is considering a law to govern pollution and environmental liability that is expected to be enacted later this year.

- **Personal accident.** Kazakhstan's health care system is similar to those throughout Eastern Europe. Technically, Kazakhs are entitled to receive medical treatment. However, it is difficult to access adequate medical coverage without hard currency. Personal accident insurance provides Kazakh employees with the confidence that if they're injured on the job, funds would be available to them.

- **Medical.** This cover generally includes both illnesses and injuries on and off the job, unless specifically excluded. Coverage is expensive, although it seems to be embraced as a "perk" by most senior Kazakh employees.

- **Life.** This benefit is just becoming popular among Kazakhs working for international companies. Group life policies are available but, as with every other insurance coverage, it's advisable to reinsure 95% of the risk to a Western reinsurer.

A well-placed program should be structured as follows: A local broker places a policy with a local Kazakh insurer, which retains 5% of the risk and receives a fronting fee of at least 10% for issuing the local policy. The remaining 95% of the risk can be reinsured outside Kazakhstan, but the Central Bank applies a 5% reinsurance tax on the 95% ceded. Despite the extra costs for the fronting fee and reinsurance tax, it's important for international policyholders or joint-venture partners to insist on an international reinsurance program. Without reinsurance, most Kazakh insurers will not pay large claims.

The future of the Kazakh insurance industry remains open. The local market was prudent enough to opt for an open and free market and ignore suggestions from one broker to create a monopoly state insurance company or, alternatively, a local pool led by a state insurance company.

This decision has had a direct impact on multinationals establishing operations in Kazakhstan, giving them the freedom to structure insurance programs with selected insurers in a way that best suits their needs and is consistent with their corporate philosophies. As tax legislation is rationalized to allow foreign companies to keep or repatriate a large share of profits, the country's development will begin picking up momentum. A few international brokers are meeting with the largest global insurers to encourage mergers between the insurers and local Kazakh insurers to bring technical expertise and capitalization to the marketplace.

As has been the case in Russia, insurers brave enough to risk setting up operations in Kazakhstan now are likely to reap rewards in the future that include a significant share of this dynamic market. In addition, the first to invest in Kazakhstan may benefit further down the road as it becomes a regional hub for Central Asian operations. **BI**



Paul G. Merlino is senior vp and area coordinator of Eastern Europe and the former Soviet Union for J&H Marsh & McLennan Inc.

ASK A BENEFIT MANAGER

Q What do you anticipate regarding the level of health care costs?

A I am hearing this question more and more often.

I believe we may be viewing the trend of health care costs much in the same manner in which the stock market is being viewed. The thought in back of our minds is:

When will the correction occur in the stock market? The thought with regard to health care is: When will health care costs start increasing again?

Most employers have been very happy with the moderation in health care costs during the past three years. The annual survey by benefit consulting firm A. Foster Higgins & Co. Inc. shows the following changes in health care costs during the past three years.

- 1994: -1.1%.
- 1995: 2.1%.
- 1996: 2.5%.

The decrease in 1994 was preceded by an 8% increase in 1993. It was a pleasant change of pace for employers to have little to no increase in their health care costs and, in some cases, to experience cost decreases.

Reasons for moderation of health care costs

There are several reasons that health care costs moderated during the past three years. These reasons include:

- Shifting employees into managed care and away from indemnity plans.

This is the main approach that employers have taken to help control their health care costs. Enrollment in managed care plans was 77% in 1996, compared with just 48% in 1992. This is a significant enrollment shift in a relatively short period.

- Employer cost-shifting.

This took the form of implementing or increasing premium contributions made by employees, increasing deductibles and increasing copayments. For the most part, premium contributions have been experience-rated based on the type of health plan in which an employee is enrolled. Therefore, those employees opting for the generally higher-priced indemnity plans were required to contribute proportionately more than those individuals in the lower-priced managed care plans.

- Price competition by health plans.

As employers have shifted to managed care, the health plans were very eager to obtain additional business. To increase their market share, some health plans knowingly pegged their rates at unprofitable levels.

Factors affecting health care costs

A number of factors will help push up the cost of health care. These include:

- Pressure on health care plan earnings.

Any organization can use a strategy of lower prices to obtain additional business for only a limited period of time. As the health care plans' pricing strategy begins to depress earnings, changes will be made quickly in that strategy. For example, some for-profit health plans have experienced a significant decrease in their stock prices when the health plans reported lower earnings.

- Managed care backlash. As health care plans decreased rates or did not increase rates, they worked hard on controlling costs, which in some cases resulted in restricting care. There have been some unfortunate examples of proper health care not being administered. As a result, an anti-managed care campaign is fully in motion. Most significant has been the anti-managed care legislation being passed at the state level.

Legislation by body part has become the norm. At the federal level, legislation was passed in 1996 to require minimum hospital stays for mothers and newborns after childbirth and to put mental health benefits on an equal level with regular medical benefits (BI, Sept. 23, 1996).

The type of legislation being passed at the state level includes requiring coverage for non-urgent emergency room visits, requiring managed care doctors to discuss their financial arrangements—e.g. do the doctors have incentives to withhold care?—and requiring doctors to discuss with patients all treatment options, including expensive options. This

An anti-managed care campaign is fully in motion. Most significant is the anti-managed care legislation being passed at the state level.

type of legislation will result in health care cost increases.

Another form of managed care backlash is an increasing trend toward doctors joining labor unions. Those doctors who think the managed care organizations are controlling too tightly how they practice medicine are resisting this and are joining labor unions in an attempt to regain control of how they practice medicine.

- Aging baby boomers.

This large group is getting older. Of course, as this group ages, it will consume additional health care services. Also, the intensity of treatment will increase, which translates to higher health care costs.

- New medical treatments and techniques.

As medical research continues, a significant increase in new health care treatments and techniques is anticipated. The upside of this is that individuals will have longer and healthier lives. The downside is that new treatments and techniques are typically more expensive.

Issues that may help to reduce employers' health care costs

A few items may be working in our favor regarding controlling health care costs.

- Increased focus on quality.

While costs have been moderating during the past several years, employers increasingly have been focusing on quality initiatives. Quality initiatives such as the National Committee for Quality Assurance, which provides accreditation of health plans and provides data and report cards through HEDIS, and the Foundation for Accountability are helping a great deal in the quality health care movement. Also, there are significant efforts in the area of outcome management. In the long term, this focus on increased quality will pay dividends in more effective and efficient health care delivery.

- Increased cooperative efforts among employers, health plans and providers.

Some employers are joining forces and are partnering with health care plans to improve quality and control costs. Examples include the Pacific

Business Group on Health in San Francisco, Gateway Purchasing Assn. in St. Louis and the National HMO Purchasing Coalition. These groups have been successful in improving health care quality and lowering costs.

Other employers are bypassing the health plan and are contracting directly with providers. An example is the Minneapolis Business Health Care Action Group, a coalition of 25 employers. Other efforts have focused on identifying health plans that provide the highest level of patient satisfaction and quality, such as the Chicago Health Plan Value Project, sponsored by the Chicago Business Group on Health. This same group is considering expanding into a purchasing coalition. The outcome of these efforts is providing employees valuable information—satisfaction and quality indicators—upon which employees can make informed choices of health care plans.

- Mergers and acquisitions.

Mergers and acquisitions have received a fair amount of attention. There has been M&A activity with health plans as well as providers, such as hospital systems. If health plans and providers both are getting larger, then their respective increases in size, which equates to clout, is probably offset in the marketplace. That means there may not be an impact on price. Employers can hope these larger plans and providers reduce redundancies and become more efficient.

It is very difficult to predict what will happen with regard to health care costs. Many variables impact health care costs, only some of which have been discussed here. I am confident we will see increasing health care costs, most likely at levels higher than we have seen in the past three to five years.

As benefit professionals, we need to review our organizations' situations and take steps to help control costs. We cannot be complacent, but rather continually manage our health care costs. We need to avoid the knee-jerk reaction when high increases in health care costs are reported. What is needed is a long-term goal and a strategy to work toward that goal each year.

Material in this article does not constitute accounting, tax, investment, legal or business advice. Employers should review their specific situation with professional advisers. **BI**

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

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

This month's column on employee benefit management issues is written by Dennis J. Nirtaut, managing director of compensation and benefits for Andersen Worldwide S.C. in Chicago. Christopher E. Mandel, director of risk management at PepsiCo Restaurant Services Group in Louisville, Ky., answers questions on risk management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611.

Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.



Mr. Nirtaut

Awards

Continued from page 2

van died of AIDS in 1995, before the appellate process could be completed. The case is now being pursued by his mother, Alene.

The Supreme Court decision, however, does not automatically mean Ms. Sullivan will receive an award, because numerous other issues involved in the complex litigation first will have to be decided by the appellate court, said Delta's attorney, Gilmore F. Diekmann Jr. of Bronson, Bronson & McKinnon in San Francisco.

The decision written by Justice Stanley Mosk says that while California law prohibits recovery of damages of pain and suffering in an "action" brought or maintained on behalf of a deceased plaintiff, "we address here the narrow question whether this statute applies when a judgment for such damages is rendered while the decedent is alive, but the decedent dies during the pendency of an appeal from that judgment."

The decision notes that the Court of Appeals construed the law to bar recovery for damages while an appeal is pending. Judge Mosk wrote: "...the (appeals) court stressed that the statute applies generally to 'an action' and construed that word to include an appeal."

However, in ruling that the appellate court erred, Judge Mosk noted that different rules apply depending upon whether or not the plaintiff dies before or after a judgment, and a jury verdict can be considered a final judgment.

"In its most fundamental sense, 'finality' is an attribute of every judgment at the moment it is rendered; indeed, if a judicial determination is not immediately 'final,' in this sense it is not a judgment, no matter what is denominated," said Judge Mosk.

Judge Mosk concluded the relevant statutory language "did not abolish the common law rule that death after judgment does not abate any aspect of personal tort actions, including the right to recover damages for pain and suffering."

The decision will apply to relatively few cases, according to Roy G. Weatherup, a defense attorney with Haight, Brown & Bonesteel in Santa Monica. Mr. Weatherup submitted a friend of the court brief in the case on behalf of the Center for Claims Resolution, a group of asbestos manufacturers.

"It's difficult to say how big an impact it's going to have economically," because cases in which a plaintiff dies between the jury verdict and completion of the appeals process "are not very common."

Delta attorney Mr. Diekmann said pain and suffering is only one category among many for which damages can be awarded, "and often times it's not that significant a category of damages."

Furthermore, he said, before the appellate decision, it had been commonly assumed that surviving heirs could be given a jury's pain and suffering award, "although there was little in the way of court authority to support it."

The Court of Appeals decision "had a lot of plaintiffs attorneys worried," and it would have had an impact had it been upheld, said Mr. Diekmann.

"It was a great deal of work in order to get back to where we were already," said Dianna Lyons, of Kazan, McClain, Edises, Simon & Abrams in Oakland, who represents Ms. Sullivan in the case.

"The effect of the decision is to return the law to where, I think

virtually all attorneys and all litigants believed it was before the Court of Appeals decision a year ago," said plaintiffs attorney Harry F. Wartnick of Wartnick, Chaber, Harowitz, Smith & Tigerman in San Francisco.

Mr. Wartnick submitted a friend of the court brief in the case on behalf of two asbestos victims groups, the Baltimore-based National White Lung Assn. and the Scotts Valley, Calif.-based Asbestos Victims of America. Had the appellate court decision been upheld, "it would just have been devastating for people with AIDS, people with cancer, people with asbestosis and the elderly. It would have turned the court system into a

very cruel irony for those people," said Mr. Wartnick.

To move up a trial date, someone with a terminal illness must establish he or she will die within six months, noted Mr. Wartnick.

The appellate decision would

with the decision. "It creates a windfall for the heirs of somebody who dies after receiving an award," though the plaintiff himself "will never see it or get to spend it," said Kevin J. Dunne, a defense attorney with Sedgwick, Detert, Moran & Arnold in San Francisco.

"It's not an unreasonable decision in my opinion," however, said James N. Penrod, a defense attorney with Brobeck, Phleger & Har-

rison in San Francisco. In dealing with an essentially personal issue, such as awards for pain and suffering, the decision must be made to either not allow them at all, to allow them under all circumstances, or to permit them only un-

der certain circumstances, the middle ground taken in California, Mr. Penrod said. This requires drawing an arbitrary line to decide when they will and will not be permitted, he added.

The arbitrary line drawn in this case is that if the plaintiff survives long enough to obtain a judgment, his heirs can retain the award, said Mr. Penrod.

Mr. Penrod added that, in his view, if an heir is dependent on someone for earnings, an award should survive the plaintiff's death. But, "when its purely pain and suffering damages, it's harder to rationalize others getting those damages, philosophically speaking."

Alene M. Sullivan, as special administrator, etc. plaintiff and respondent, vs. Delta Air Lines Inc., defendant and appellant, No. 5052972, California Supreme Court.

Pain and suffering is only one category among many for which damages can be awarded, 'and often times it's not that significant a category of damages,' says Gilmore F. Diekmann Jr.

have meant that plaintiffs would have had to survive two to three additional years to go through the appeal. "That is the Catch-22 effectively that this court removed," Mr. Wartnick said.

Not everyone was as pleased

We streamlined
everything else
under the umbrella.



Datebook

MAY

MAY 19. Insurance Industry Competitive Intelligence Research in New York, sponsored by The College of Insurance; \$350. The College of Insurance, 101 Murray St., Room 436, New York, N.Y. 10007; 212-815-9201.

MAY 19. Educational Outreach Programs in Association with the U.S. Department of Labor in Tampa, Fla., sponsored by the International Foundation of Employee Benefit Plans; \$200. Also May 20 in Houston, June 18 in Philadelphia, July 8 in San Diego, July 9 and July 10 in San Francisco, July 15 in St. Louis, July 22 in Chicago, July 29 and July 30 in Tarrytown, N.Y., Aug. 4 and Aug. 5 in Cincinnati, Sept. 9 in Boston. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis.

53008-0069; 414-786-6710, ext. 8257.

MAY 19-20. Insurance Law: What Every Lawyer and Businessperson Needs to Know seminar in New York, sponsored by the Practising Law Institute; \$795. Michelle Schwartz, PLI, 810 Seventh Ave., New York, N.Y. 10019; 800-260-4PLI.

MAY 19-21. Utilizing and Operating Group Owned and Rent-A-Captives to Cover Workers' Compensation, Employee Benefits, Property & Casualty, Professional, Product and General Liabilities conference in Bermuda, sponsored by International Business Communications; \$1,495. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-431-6400.

MAY 22. The Pension Seminars Series: ERISA Update in Seattle, sponsored by Accountant's Education Services; \$200. Also May 29 in Dallas, June 2 in Charlotte, N.C., June 5 in Atlanta, June 12 in San

Francisco, June 16 and Dec. 8 in Denver, June 26 in St. Louis, Aug. 7 in Honolulu, Sept. 25 in Chicago, Oct. 20 in Tampa, Fla., Nov. 6 in Washington, Nov. 20 in Minneapolis. AES, 1900 Olive St. #F-102, Denver, Colo. 80220; 800-426-8802.

MAY 22. Negotiation and Conflict Resolution for Health Care: New Skills and Changing Models seminar in Boston, sponsored by the Harvard School of Public Health Center for Continuing Professional Education; \$265. Harvard School of Public Health, Center for Continuing Professional Education, 677 Huntington Ave., LL-23, Department B, Boston, Mass. 02115-6096; 617-432-1171.

MAY 22-23. Fourth Annual Lead Liability seminar in New York, sponsored by Law Journals Seminars-Press; \$595. Law Journal Seminars-Press, 345 Park Avenue South, New York, N.Y. 10010; 800-888-8300.

MAY 23. Virginia State Corporation Com-

mission's Bureau of Insurance public meeting in Richmond, Va., sponsored by the Bureau of Insurance; no cost. State Corporation Commission Bureau of Insurance, P.O. Box 1157, Richmond, Va. 23218; 804-371-9741.

MAY 23. The Pension Seminars Series: 401(k) Seminar in Seattle, sponsored by Accountant's Education Services; \$200. Also May 30 in Dallas, June 3 in Charlotte, N.C., June 6 in Atlanta, June 13 in San Francisco, June 17 and Dec. 9 in Denver, June 27 in St. Louis, Aug. 8 in Honolulu, Sept. 26 in Chicago, Oct. 21 in Tampa, Fla., Nov. 7 in Washington, Nov. 21 in Minneapolis. AES, 1900 Olive St. #F-102, Denver, Colo. 80220; 800-426-8802.

MAY 28. Catastrophes and Insurance workshop in Deerfield Beach, Fla., sponsored by The CPCU Society; \$85 for members, \$95 for non-members. CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE

JUNE 3. Reviewing Boiler and Machinery Coverages workshop in Dallas, sponsored by The CPCU Society; \$75 for members, \$85 for non-members. CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE 4. APIW's 1997 Insurance Woman of the Year Award Ceremony in New York, sponsored by APIW; \$75. Paula J. Gould or Lorraine C. Sullivan, APIW, 285 Hunting Ridge Road, Stamford, Conn. 06903; 203-968-1548.

JUNE 4-6. International Assn. of Insurance Fraud Agencies Inc. Annual Meeting in Chicago, sponsored by IAIFA; \$200 for members, \$250 for non-members. IAIFA-Chicago Registration, P.O. Box 10018, Kansas City, Mo. 64171-0018; 816-756-5285.

JUNE 5-6. Crittenden's Third Annual Use the Alternative Markets to Increase Your Business seminar in San Francisco, sponsored by Crittenden; \$695. Also June 12-13 in Washington. Crittenden Conference, P.O. Box 1150, Novato, Calif. 94948; 800-421-3483.

JUNE 5-6. Financial Analysis: Property/Casualty Insurance in Philadelphia, sponsored by Fells Road Group Inc./Michael Conn Associates Inc.; \$1,050. Also Sept. 25-26 and Oct. 30-31. Fells Road Group Inc./Michael Conn Associates Inc., 271 Route 46 West, Suite D-207, Fairfield, N.J. 07004; 201-227-5955.

JUNE 8-11. The Western Pension & Benefits Conference in Phoenix, sponsored by WPBC; \$595. WPBC, 602-953-8007.

JUNE 9. Excel Basic for Risk Management workshop in Atlanta, sponsored by Shelter Island Risk Services; \$395. Also June 11 in Chicago, June 12 in New York, Sept. 22 in Roswell, Ga., and Dec. 4 in New York. Shelter Island Risk Services, P.O. Box 568, 14 Tarkette Road, Shelter Island, N.Y. 11964; 800-749-1535.

JUNE 9-10. Changing Market Condition and Emerging Exposures in Professional Liability conference in New York, sponsored by American Conference Institute; \$1,299. AMI, 175 Fifth Ave., Suite 2182, New York, N.Y. 10010; 416-926-8200.

JUNE 9-11. The Construction Industry Benefits Conference in Monterey, Calif., sponsored by the International Foundation of Employee Benefit Plans; \$625 for members, \$715 for non-members. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 8257.

JUNE 9-12. Cost-Effectiveness Analysis for Medical Technologies and Pharmaceuticals seminar in Boston, sponsored by the Harvard School of Public Health Center for Continuing Professional Education; \$1,995. Harvard School of Public Health, Center for Continuing Professional Education, 677 Huntington Ave., LL-23, Department B, Boston, Mass. 02115-6096; 617-432-1171.

JUNE 10. Excel Advanced for Risk Management workshop in Atlanta, sponsored by Shelter Island Risk Services; \$445. Also June 13 in New York. Shelter Island Risk Services, P.O. Box 568, 14 Tarkette Road, Shelter Island, N.Y. 11964; 800-749-1535.

JUNE 10-13. Human Rights and Health: A New Perspective in Public Health seminar in Boston, sponsored by the Harvard School of Public Health Center for Continuing Professional Education; \$695. Harvard School of Public Health, Center for Continuing Professional Education, 677 Huntington Ave., LL-23, Department B, Boston, Mass. 02115-6096; 617-432-1171.

JUNE 12. Risky Commerce at the Millennium: Facing & Financing the Year 2000 Risk in Toronto, sponsored by ADVice Inc.; \$350. Patrick Vice, ADVice Inc., 135
Continued on next page



THE FIFTH ANNUAL

Business Insurance

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- ★ EMPLOYEE ASSISTANCE PROGRAMS
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Datebook

Continued from previous page

George St., South Unit 1003, Toronto, CN M5A 4E8; 416-363-7355.

JUNE 12-13. Risk Management and Risk Financing in Europe conference in Cologne, Germany, sponsored by Risk & Insurance Research Group Ltd., 1,750 DM. Risk & Insurance Research Group Ltd., 44 Maiden Lane, Covent Garden, London WC2E 7LJ; 44-171-836-0614.

JUNE 12-13. Professional Liability Seminar in Boston, sponsored by Defense Research Institute Inc.; \$525 for members, \$575 for non-members. DRI, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

JUNE 12-14. PIA's 1997 Convention and Trade Show in Lake Tahoe, Nev., sponsored by PIA; \$295 before May 30, \$320 after May 30. Dawn Bell, PIA CA/NV, 1315 I Street, Suite 1315, Sacramento, Calif. 95814; 800-553-4221.

JUNE 15-17. The Expense Management Exchange conference in San Diego, Calif., sponsored by LOMA; \$595 for members, \$1,190 for non-members. Greg Storey, LOMA, 2300 Windy Ridge Parkway., Suite 600, Atlanta, Ga. 30339-8443; 770-984-6453.

JUNE 16-17. Insurance: Opportunities in a Global Industry in New York, sponsored by The College of Insurance Center for Professional Education; \$895. The College of Insurance Center for Professional Education, 101 Murray St., Room 426, New York, N.Y. 10007-2165; 212-815-9201.

JUNE 16-17. Corporate Legislative Benefits Forum in Washington, D.C., sponsored by the Corporate Benefits Institute of the International Foundation of Employee Benefit Plans and the International Society of Certified Employee Benefit Specialists; \$560 for members, \$660 for non-members. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 888-33-IFEBP.

JUNE 16-19. The Disease Management Congress in New York, sponsored by The National Managed Health Care Congress Inc.; \$995 for members, \$1,595 for non-members. NMHCC Inc., P.O. Box 360034, Boston, Mass. 02241-0634; 617-505-8000.

JUNE 17-20. Managing Ergonomics in the 1990's: A Discussion of the Science and Policy Issues conference in Cincinnati, sponsored by American Automobile Manufacturers Assn. Center for Office Technology; \$495. Managing Ergonomics Conference Secretariat, The Pearson Group, 1150 S. Washington St., Suite 210, Alexandria, Va. 22314; 703-683-6334.

JUNE 17-20. Measurement, Design, and Analysis Methods for Health Outcomes Research seminar in Boston, sponsored by Center for Continuing Professional Education; \$1,995. Harvard School of Public Health, Center for Continuing Professional Education, 677 Huntington Ave., LL-23, Department B, Boston, Mass. 02115-6096; 617-432-1171.

JUNE 18-19. Captive Insurance Company workshop in London, sponsored by Risk & Insurance Research Group; £790. RIRG Ltd., 44 Maiden Lane, Covent Garden, London, WC2E 7LJ; 44-171-836-0614.

JUNE 18-19. Third Annual Environmental Sampling, Onsite Analysis and Sample Preparation Conference in Pittsburgh, sponsored by PACS Inc.; \$495. PACS Inc., 409 Meade Drive, Coraopolis, Pa. 15108; 412-457-6576 or 800-367-2587.

JUNE 18-20. Fourth Annual Congress on Natural Hazard Loss Reduction in Irvine, Calif., sponsored by Insurance In-

stitute for Property Loss Reduction; \$75 for members by June 1; \$100 for members after June 1; \$125 for non-members by June 1; \$150 for non-members after June 1. 1997 Congress, Insurance Institute for Property Loss Reduction, 73 Tremont St., Suite 510, Boston, Mass. 02108-3910; 617-722-0200.

JUNE 19-20. Advanced Premium Fraud seminar in Houston, sponsored by PAAS; \$325 for PAAS subscribers, \$390 for non-subscribers. Also **Sept. 9-10** in Hartford, Conn. PAAS, c/o AISG, 85 John St., New York, N.Y. 10038; 212-669-0435.

JUNE 22-25. The Trustees and Administrators Institute in Lake Tahoe, Nev., sponsored by the International Foundation of Employee Benefit Plans; \$675 for members, \$750 for non-members. IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

JUNE 22-25. American Society of Ap-

praisers International Appraisal Conference in Houston, sponsored by ASA; \$395 for members, \$445 for non-members before May 23; \$495 for members, \$545 for non-members after May 23. ASA Headquarters, P.O. Box 17285, Washington, D.C. 20041; 800-272-8258.

JUNE 22-27. FICC Litigation Management College program in Evanston, Ill., sponsored by the Federation of Insurance & Corporate Counsel; \$995. Paul N. Steinlage, Wausau Insurance Cos., 2000 Westwood Drive, Wausau, Wis. 54401; 715-842-6147.

JUNE 23-24. Health Care Stop Loss: Innovative Strategies for Risk Contracting and Carve-Out Negotiation conference in Chicago, sponsored by Infoline; \$1,295. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

JUNE 23-25. Selling Physical Therapy and Occupational Rehabilitation Ser-

vices in the Workers' Compensation Market: An Executive Seminar in Strategic Planning, Service Differentiation and Building Relationships in San Antonio, sponsored by Work Injury Management News & Digest and Advantage Health Systems Inc.; \$695. Work Injury Management, 8704 Bourgade, Lenexa, Kan. 66219-1400; 888-621-2382.

JUNE 23-27. Managing Operations: The College of Insurance Management Program seminar in New York, sponsored by The College of Insurance Center for Professional Education; \$1,995. NMHCC, 101 Murray St., Room 426, New York, N.Y. 10007; 212-815-9201.

JUNE 23-27. Fundamentals of Industrial Hygiene conference in Atlanta, sponsored by American Industrial Hygiene Assn.; \$955 for members, \$1,095 for non-members. Also **Oct. 6-10** in Seattle. AIHA, Continuing Education Department, 2700 Prosperity Ave., Suite 250, Fairfax, Va. 22031; 703-849-8888.

JUNE 24. Insurance Industry Secondary Market Research in New York, sponsored by The College of Insurance; \$350. The College of Insurance, 101 Murray St., Room 436, New York, N.Y. 10007; 212-815-9201.

JUNE 24. Insurance Industry Secondary Market Research in New York, sponsored by The College of Insurance; \$350. The College of Insurance, 101 Murray St., Room 436, New York, N.Y. 10007; 212-815-9201.

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For the Record

Ergonomics revision draws criticism

SAN FRANCISCO—Newly revised ergonomics standards from the California Occupational Safety and Health Standards Board are "confusing and will be costly to California business," an employer group says.

In a letter responding to Cal-OSHA's release last month of the revised standard, the Alexandria, Va.-based Center for Office Technology criticized three changes:

- By removing the term "workplace" from the definition of repetitive motion injury, the board has broadened the standard and weakened the work-relatedness of the regulation.

- Adding the specific tasks of "word processing, assembly and loading" implies a presumption that these tasks cause repetitive motion injuries.

- The regulation does not state who should be responsible for determining whether the injury is predominantly caused by work.

Cal-OSHA was forced to revise the standard in January after it was rejected by the Office of Administrative Law for being disorganized and short on detail. It was the second time Cal-OSHA reworked the standard, which was required under 1993 workers compensation reform legislation.

If the OAL approves the revised standard this time, it will take effect by mid-January 1998, making California the first state with an ergonomic standard to protect workers.

Age suit barred by time limits

CHICAGO—Statute of limitations provisions prevent an individual who learned of age discrimination against him two years after the alleged incident from suing, a judge for the U.S. District Court for the Northern District of Illinois ruled last month.

In 1994, Gary L. Gastineau inter-

viewed for a position as a sales representative in the Chicago office of Austin, Nichols & Co. Mr. Gastineau was not offered a job, he was told, because ANCO superiors in New York refused to approve the hire, not because of his age, which he inquired about, according to court papers.

Two years later, Mr. Gastineau learned that indeed the wine and spirits distributor did not hire him because he was over 40.

Mr. Gastineau subsequently filed an age discrimination charge with the Equal Employment Opportunity Commission and later a lawsuit against ANCO alleging violations of the Age Discrimination in Employment Act of 1967.

In Illinois, and in every other state but two, a plaintiff seeking to pursue a civil action for age discrimination must first file a charge of discrimination with the EEOC within 300 days of the alleged unlawful employment practice. In Louisiana and Mississippi, plaintiffs have 180 days to file a charge. Mr. Gastineau filed his charge nearly 900 days after the alleged discrimination occurred.

Mr. Gastineau argued the statute of limitations should be delayed because it was not until two years after the incident occurred that he learned his age was the determining factor in ANCO's decision not to hire him.

In quoting a decision issued in another case, Judge David H. Coar ruled that "a mere denial of liability cannot be the foundation of an equitable estoppel. Otherwise statutes of limitations would be toothless. . . . It is not the denial of liability or a refusal to cooperate in making the plaintiff's case that extends the statute of limitations but affirmative efforts to delay the plaintiff's bringing suit."

Kansas deregulates commercial P/C rates

TOPEKA, Kan.—Kansas Gov. Bill Graves has signed a bill that deregulates commercial property/casualty insurance rates in the state.

The measure, H.B. 2081, will create

a competitive rating system in Kansas, one of 15 or so states left with a prior-approval rating system.

Kansas' measure, which won the overwhelming approval of both houses of the Legislature, pertains only to commercial property/casualty rates in the state, not to personal lines.

The bill will preserve the Kansas Department of Insurance's authority to intervene if the state commissioner decides the market is not competitive.

Information in brief

CIGNA Corp. said that its subsidiary, **CHC Acquisition Corp.**, is extending its offer to purchase all outstanding shares of common stock of Healthsource Inc. to May 30 from April 30 (BI, March 10). A CIGNA spokesman said the offer has been extended because the company has not yet received all of the required state regulatory approvals, though these "are progressing as we expected."

...S. 543, the **Volunteer Protection Act**, a congressional measure that would grant volunteers limited immunity against civil suits stemming from their charitable activity, won Senate approval May 1 by a 99-1 vote. . . . Zurich Insurance Co. does not have a duty to defend certain physicians under the company's contracts with silicone breast implant maker **Dow Corning Corp.**, a Texas appellate court has ruled. The physicians had argued that they should be covered as additional policyholders under vendor endorsements to six insurance contracts Zurich entered into with Dow Corning between 1989 and 1994. However, the court ruled that the doctors were not covered under the endorsements because the sale of breast implants was not their sole occupation. . . . Legislation introduced earlier this month by Rep. Harris Fawell, R-Ill., and supported by several dozen business groups, would allow employers to band together and purchase or self-insure their health care benefits and be **exempt from state-mandated benefits rules**. . . . A Michigan circuit court recently declared **First Security**

Casualty Co. of Madison Heights, Mich., insolvent and slated it for liquidation. The insurer wrote primarily auto and liquor liability coverages. . . . **Ohio's new managed care program** requires workers compensation claimants to obtain drugs through pharmacies or a mail-order service

operated by RxNet Inc., a Fresno, Calif.-based subsidiary of ValueRx Inc. . . . **The U.S. Chamber of Commerce** is joining the Montana Chamber of Commerce to try to overturn a state law that prohibits businesses from spending corporate money to support or defeat ballot initiatives **BI**

RRG

Continued from page 2

embodiment of lead state regulation. Congress wanted to facilitate the formation of these self-help policyholder-owned captives," and it did so through the pre-emption of non-domiciliary state laws and regulations, said Jon Harkavy, a vp with USA Risk Services Inc. in Arlington, Va., and chairman of the governmental and industry committee of the National Risk Retention Assn.

The NRRA, along with several individual risk retention groups, challenged the Louisiana law and application procedures.

"The importance is not only the decision itself. It is important because it sends a clear message to the states that the federal act means what it says and is not to be meddled with," added Karen Cutts, managing editor of The Risk Retention Reporter in Pasadena, Calif.

Others note that if the Louisiana law had not been struck down, other states would have passed measures imposing similar rules and restrictions on risk retention groups, effectively ending the principle of regulation by a group's domiciliary state and pre-emption of other states' rules.

"If the decision had gone the other way, pre-emption for risk retention groups would have been nullified and rendered meaningless, as I assume other states would have followed" Louisiana's lead, said Philip Olsson, a principal with Olsson, Frank & Weeda in Washington and the NRRA's general counsel.

And if that had happened, "the bottom line would have been: Why bother to have a Risk Retention Act," said Mr. Harkavy, noting that the net effect of having to comply with a maze of state requirements would have been to preclude risk retention groups from operating nationally.

The Louisiana Department of Insurance is now reviewing the decision and will consult with the state attorney general on whether or not to seek an appeal, said Deputy Commissioner Kip Wall in Baton Rouge.

Earlier, though, in court papers, the

Insurance Department said it was not trying to regulate non-domiciliary risk retention groups, but "rather satisfy itself that they are financially suitable to conduct business and provide liability coverage in the state."

The appellate decision should be a deterrent for state regulators to develop rules that are clearly pre-empted by the Risk Retention Act and utilize the authority federal law gives them to regulate the groups, risk retention group supporters say.

"What I hope happens is that the regulatory community stops bemoaning the powers they don't have under the RRA and focus on what they can do to regulate the groups," Mr. Harkavy said.

For example, the Risk Retention Act allows any insurance commissioner—not just the commissioner in the group's domicile—to obtain a court order shutting down a risk retention group nationwide if the regulator can prove the group is in a financially hazardous condition, he said.

The origins of the Risk Retention Act go back to the late 1970s when the cost of product liability insurance soared and coverage became scarce. A federal interagency task force found that insurers in many cases were irrationally pricing coverage.

In response, Congress passed legislation in 1981 giving manufacturers a new alternative to the commercial market: risk retention groups. After meeting the licensing requirements of one state, a group, which could only provide coverage for its own members and not for the public, could do business in any state and not have to comply with other states' rules.

Initially, the groups could only write product liability coverage, but in 1986 the law was expanded to allow risk retention groups to provide all types of liability coverage except workers compensation.

Sixty-seven risk groups are now operating. Last year, the groups generated an estimated \$755 million in premiums, according to a survey by The Risk Retention Reporter.

National Risk Retention Assn. et al. vs. James H. Brown, 5th U.S. Circuit Court of Appeals; No. 96-30752.



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Hines

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Mr. Susman suggested class actions are a necessary way of addressing certain claims.

"If you think class actions are going away, they're not," he said.

"We're a complex, litigious society with limited judicial resources. It's just the way things have to happen since we're no longer an agrarian society and have 250 million people," Mr. Susman said.

Steven Gilford, a partner with Mayer, Brown & Platt in Chicago who moderated the discussion, described a class action as "a procedural device for resolving a lot of claims at the same time."

"Sometimes that's really helpful to a company, and sometimes that's a curse," he said.

A class action can benefit a company by providing a way to resolve mass torts that couldn't be settled if it required dealing with thousands of lawyers in thousands of individual courts, Mr. Gilford said.

On the other hand, they also can create situations in which a number of tiny claims so small they never would be filed individually are built into a single claim suddenly posing a multimillion-dollar exposure for a company.

Mr. Sachnoff, who represents both plaintiffs and defendants in securities litigation, suggested, "There are many instances where the mere threat of a class action acts as a deterrent effect on managers who might otherwise attempt to push the envelope into something that would be illegal."

Class actions also can provide a way of compensating small shareholders with a legitimate claim who might never recover damages without the involvement of the large shareholders often responsible for bringing a case to court, he said.

Donald Sullivan, vp-risk management at Deerfield, Ill.-based Baxter International Inc., agreed that class-action suits are not going to stop, and he suggested risk managers need an "early detection system" for potential class-action litigation.

"Typically when a class action happens it's not a surprise," Mr. Sullivan said.

Usual warnings include a loss affecting a large number of people or negative publicity. "In the worst case it's been on '60 Minutes,'" he said. "At this point, if you haven't done your homework, you're in trouble."

His advice to risk managers would be to "insert yourself into the process," the Baxter risk manager said, "be bold" and communicate with top management and the company's insurance company and manage the entire litigation process.

A company facing a class action suit should assemble a litigation response team that includes risk management, corporate communications, the company's legal department, senior management, the company's insurance broker and outside counsel, Mr. Sullivan said.

"The communication has to start early in the process," he said, adding that hopefully the company already has discussed the potential for a class action with its excess liability carrier during renewal.

Stressing the importance of working closely with the insurer, Mr. Sullivan said Baxter rarely has gone to its insurer with a proposed settlement and seen the insurer refuse to settle if the settlement was reasonable. "Normally

they just tell you to do whatever you think is best," he said.

In working with X.L., Mr. Sullivan said he thinks the philosophy has been "first we battle the plaintiffs and then we resolve the coverage issues."

The risk manager added that Baxter always selects its outside counsel in class-action cases, "and we have not had a problem with our insurance carriers in doing so."

Mr. O'Hara said X.L. tries to work closely with policyholders facing class actions, not just to reimburse them for their loss, "but hopefully to develop a strategy to minimize the ultimate cost."

"Even if it consumes our entire level of insurance we'd hope we could provide them a helpful service so it wouldn't go through all their other insurance," Mr. O'Hara said.

"One of the things we've

learned is that the plaintiffs will try to divide and conquer," he said, suggesting the plaintiffs will try to separate the interests of the policyholder from those of the insurance company.

X.L. tries to "circle the wag-

'One of the things we've learned is that the plaintiffs will try to divide and conquer,' says Brian O'Hara.

ons," and keep all the parties focused on their common interests, he said.

"My experience is the insurance carrier and their attorneys are vital members of the team," Mr. Sachnoff said.

Obviously the insurer is involved by paying defense costs, he said, but beyond that its input can be essential to providing the best defense.

Questioned as to whether lawyers take on class actions for the money, Mr. Susman said the current attack on attorneys' fees is "The attorneys received \$5 million and I'm getting \$6."

"If the attorneys are getting \$5 million, chances are there was \$25 million made available to the class," he said. "That's what class action's all about."

Although there are "reprehensible settlements where lawyers give up their fiduciary duties for a fee," Mr. Susman said those are rare, and he noted all settlements and attorneys fees in a class action must be approved by the court.

In addition, while they often seem like a great deal of money,

with fees usually set as a percentage of the recovery "there is a huge risk involved," both in the attorney's capital and time, he added.

Mr. Susman cited a case he has been working on for nine years that is only now about to go to trial.

"If I win, I expect to be paid handsomely for taking the risk involved," he said. "Everything is on a contingent basis."

The annual Hines Symposium honors Harold H. Hines Jr., former president and CEO of Rollins Burdick Hunter Co., now Aon Group Inc. Kathryn McIntyre, publisher and editorial director of *Business Insurance*, opened the program, which was presented by the Chicago and Northeastern Illinois chapters of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*. BI

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Institute creates incentives for disaster planning

By ROBERTO CENICEROS

SAN DIEGO—The Insurance Institute for Property Loss Reduction is developing financial incentives for communities that take disaster mitigation planning to new levels.

In doing so, the institute joins a small but growing list of organizations and employer alliances working to minimize losses from natural disasters—including business interruption losses—by advocating broad mitigation efforts for entire communities (*BI*, Feb. 17). Proponents of the movement point out that some of the disaster-preparedness efforts taken by individual businesses or homeowners could be compromised if the surrounding community does not take similar measures.

The Boston-based institute wants to make disaster preparedness part of the general public's value system by arranging 30 incentives for communities that meet certain preparedness

criteria, said Harvey G. Ryland, the institute's president.

"That is where we are really going in the long term," he said. "Institutionalizing it as a public value means encouraging people to say, 'I will not live or work in a building that does not protect me from the type of disasters that can happen in my community.'"

Mr. Ryland made his comments during a panel discussion he moderated at the Alliance of American Insurers' annual meeting in San Diego last week.

While property loss prevention steps taken by individual businesses or homeowners are valuable and should be encouraged, taking strictly an individual approach is not always sufficient to reduce business disruption after a disaster, panelists said. If the entire community suffers a loss of its transportation lifeline, utilities or emergency services, then companies also suffer from a loss of suppliers,

materials, customers and distribution channels, they said.

"Harden your facilities, harden your process," said Joanne N. Nigg, co-director of the Disaster Research Center at the University of Delaware in Newark. "Make sure you are in good shape. But unfortunately there is no relationship between level of individual preparedness and business closure or disruption—disruption not being physical damage but interruption of business operations."

Ms. Nigg's comments are backed by an ongoing survey project conducted by the Disaster Research Center. In 1995, researchers polled 1,400 small and large businesses in the Los Angeles area after the Northridge earthquake and then conducted follow-up interviews.

The survey found that 48% of the businesses sustained damage to their structure or contents. Losses ranged from \$100 to \$15 million. Nearly 60% of the businesses with damage had to close, and the median period was four days.

There were several reasons for the business shutdowns. For example, 44% said that key employees or managers were dealing with damage to their homes. About 55% cited the inability of workers to reach their operations. Almost 60% said loss of electricity was a factor, while 50% cited loss of telecommunications.

Therefore, there is a pressing need to create disaster-resistant communities, something that individual business owners alone cannot accomplish, the panelists said.

The time is right for such community-wide planning, according to Donald E. Geis, director of community planning programs for the International City/County Management Assn. in Washington. In general, residents are now demanding that local governments provide them with bet-

ter living environments, including safer and healthier neighborhoods, he said.

Mr. Geis' organization is working to provide local government managers with the education and contacts they need to make disaster mitigation a part of the drive for improved municipalities. Unfortunately, he said, more is known about building codes and methods of making individual buildings safe than is known about tying together the preparedness efforts of entire neighborhoods.

"We talk about safe buildings a great deal, but you cannot have a safe building if you don't have a safe community to put it in," he said.

However, organizations are at work on the problem.

The Federal Emergency Management Agency has developed a "national mitigation strategy" aimed at creating disaster-safe communities. The plan calls for ensuring that builders, local governments and other key players are aware of available measures to reduce risks and disaster costs, said Richard W. Krimm, executive associate director for mitigation for FEMA in Washington.

The effort received \$2 million this year from Congress. But FEMA is seeking another \$50 million in 1998 to help encourage the development of model communities, Mr. Krimm said.

Although those funds are merely seed money, the need for broader disaster mitigation is vital, Mr. Krimm said. He cited the example of a major soft drink bottling company that shut down for several weeks in 1994 when flooding damaged a public water treatment facility in Macon, Ga. The bottling operation depended on the water facility, and it could not reopen until FEMA delivered funds needed for repairs.

In contrast, a major beer distributor located in Northridge, Calif.,

spent \$30 million for earthquake mitigation before the 1994 disaster struck there. That effort is an example of how awareness of risk reduction measures can spare businesses and communities from damage and sustained business interruption.

"They didn't have any losses," Mr. Krimm said. "But they figured out, had they not done this work to make their plant seismic-resistant, they would have lost over \$300 million."

To obtain a similarly successful result, the Insurance Institute for Property Loss Reduction has already started work on its "total immersion natural disaster mitigation program," Mr. Ryland said.

Among other measures, it is encouraging communities to adopt strong building codes, obtain minimal fire suppression ratings and conduct natural hazard risk assessments as well as risk assessment training for public officials and business leaders.

The institute is developing the list of incentives that can be made available for showcase communities. The potential incentives include property insurance discounts, bank loans with lower-than-usual costs to finance mitigation measures, construction product discounts and local tax waivers for disaster preparedness improvements to property.

So far, the institute has met individually with eight insurers and several banks that have agreed to cooperate.

"Our intention is that if it costs \$1,000 more for natural disaster mitigation, we want to give them \$1,100 in incentives," Mr. Ryland said.

This year's conference marked the Alliance's 75th anniversary. Next year's conference will be held April 26-28 in San Antonio. For more information, call the Alliance headquarters in Schaumburg, Ill., 847-330-8538. **BI**

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Cal-OSHA fines contractor

SAN FRANCISCO—Los Angeles subway contractor Tutor-Saliba/Perini was fined \$70,500 in connection with the death of a construction worker earlier this year.

The California Division of Occupational Safety and Health found the Sylmar, Calif.-based company violated 14 state workplace safety regulations after investigating the Feb. 15 accident in which a worker was killed when chains holding a refuse bin broke, sending the bin crashing into the worker (*BI*, Feb. 24).

Among the violations were not providing adequate safety protection to employees from various equipment and not establishing, implementing or maintaining an effective injury and illness prevention program.

"As a result of our investigation, our inspectors determined that certain safe operating practices were not followed which might have prevented this tragic accident," said Deputy Cal-OSHA Chief Mark Carleson in announcing the fines. "Eleven of the violations are classified under the serious category, with seven of them relating directly to the death of Tutor-Saliba/Perini's employee."

A spokeswoman for Tutor-Saliba/Perini declined to comment on the Cal-OSHA findings or fine.

Cal-OSHA's Bureau of Investigation also is investigating the accident for possible criminal liability. That investigation is expected to be completed in about a year, a Cal-OSHA spokesman said.

—By Joanne Wojcik

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INTERNATIONAL

Global Briefs

Lloyd's resumes debt collection after court decisions clear way

By SARAH GODDARD

LONDON—Lloyd's of London would be delighted if it manages to collect even half of the £600 million (\$1.01 billion) still owed by members who rejected the market's reconstruction and renewal plan.

Unveiling the Corporation of Lloyd's annual report and accounts, Lloyd's Finance Director Bob Hewes said the collection process has resumed after two recent U.K. court decisions allowing Lloyd's to recover the debts (*BI*, April 28).

Lloyd's has issued writs against 1,300 members who have not paid their so-called "finality bills" reinsuring their pre-1993 liabilities into Equitas Ltd. But it is taking a pragmatic view toward the collection process.

"We know that some members are not in a position to meet their gross debt," said Mr. Hewes.

In those cases, Lloyd's is still prepared to enter into payment arrangements, though many members in this position are finding their bills much higher than they would have been if they had accepted the R&R settlement.

This is because under the settlement, Lloyd's provided "debt credits" to cushion bills, giving more debt credits to members on successful action groups or on particularly badly performing syndicates. The offer of debt credits was withdrawn from members who either rejected the R&R proposals or failed to pay their final bills on time.

The costs of setting up Equitas and resolving Lloyd's old-year problems have pushed the

Corporation's accounts deeper into the red for 1996. It reported an overall loss of £484.1 million (\$829 million) for the year—compared with a £13.8 million loss (\$23.6 million) for 1995—primarily due to its £486.4 million (\$833 million) contribution to the R&R settlement. In 1995, the Corporation put £66 million (\$102.5 million) toward the settlement process.

During 1996, Lloyd's disposed of a number of assets, including its flagship headquarters on Lime Street, which it now leases. In 1995, Lloyd's sold its publishing subsidiary, Lloyd's of London Press Ltd.

Meanwhile, Lloyd's created a new company last year, Omnifine Ltd., to assume ownership of its second building on Lime Street. That building, commonly known as the 58

See Lloyd's on next page

Business awaits Labour changes

Party's policies not yet clear to U.K. market

By SARAH GODDARD

LONDON—Risk managers and members of the U.K. insurance industry are still assessing what the Labour Party's victory in the general election earlier this month means to them.

With an unprecedented majority of 179 seats, the new Labour government immediately began organizing its ranks. Prime Minister Tony Blair announced the core members of his cabinet within two days of the election, and the ministers—many of whom have never served in government—began reorganizing their departments.

Within a week of the election, the financial community was

pleased to see Chancellor Gordon Brown raise interest rates slightly and grant independence to the Bank of England, meaning the Bank can now set interest rates and make other policy decision independent of the government. The U.K. Stock Exchange price index, which had faltered when former Prime Minister John Major called the election, responded to Mr. Brown's moves by hitting an all-time high.

But many Labour government policies are yet to be clarified. It has committed to maintaining the overall low inflation, low interest-rate environment inherited from the departed Conservative government—a departure from Labour Party's workers' rights approach before Mr. Blair took the reins.

"Economic stability is the essential platform for sustained growth," said the Labour Party

See Blair on page 31



AP/WIDE WORLD PHOTOS

New British Prime Minister Tony Blair greets supporters along London's Downing Street.

Dusseldorf airport settles claims dispute with six insurers

By DON LEWIS KIRK

DUSSELDORF, Germany—The Dusseldorf Rhein-Ruhr airport and its six insurers have agreed to a settlement of 245 million DM (\$142.5 million) for coverage of property damages resulting from a spring 1996 fire.

A spokesman for the insurance consortium led by Dusseldorf-based Provinzial Versicherungs A.G. said "duty violations" by the airport were the chief reason the settlement was negotiated down from the initial claim of 350 million DM (\$203.6 million).

An investigation by a state commission concluded that sparks from welders ignited a power line and insulation in the building (*BI*, June 10, 1996). The commission found that the airport did not adhere to fire protection regulations when the building was constructed.

Several insurers representing tenants at the airport are seeking several million deutsche marks in damages from the airport. Iduna Allgemeine A.G., Deutscher Lloyd A.G., Securitas Bremer Allgemeine A.G. and Neckura A.G. are among more than a dozen companies that have sued the

airport for gross negligence.

The suit is based on allegations that the airport failed to have proper fire protection. Airport management is accused of not acting on knowledge of flammable insulation in the ceiling, which contributed to the fire. The suit is scheduled to be heard in state court on July 17.

In the meantime, the commission concluded the same thing could occur in other German airports and public buildings. The state commission found that non-adherence to fire codes in constructing these buildings is widespread. An investigation at other German airports found smoke indicators often were missing in the air ducts and flammable insulating material was used around cables in the air ducts, two of the factors contributing to the spread of the Dusseldorf fire.

Total property damage at the Dusseldorf airport is estimated at 485 million DM (\$282.1 million). Besides 245 million DM in property damage, insurers will pay liability claims amounting to 20 million DM (\$11.6 million) for 17 people who died in the blaze. Liability claims are insured by a consortium of insurers, called Luftpool.

BI

Latin American market growing

By EDWIN UNSWORTH

The Latin American non-life insurance market will almost double in size over the next five years, according to a survey by management consultant Datamonitor.

In the six countries that account for more than 90% of Latin American non-life insurance premiums—Argentina, Brazil, Chile, Colombia, Mexico and Venezuela—premium volume will nearly double to \$38.04 billion in 2001 from \$20.85 billion in 1996, Datamonitor predicts.

The average rate of growth in general insurance premiums in these countries will be 12.8% annually, led by Venezuela, with 17.6% annual growth, and Brazil, with 15.1%.

In its study, Datamonitor says prospects of such growth rates have attracted the attention of international insurers, which already have established operations in these countries, helped by the opening of national markets to foreign investors and the relaxing of controls on foreign ownership.

Mexico has been a particular target of international insurers since signing the North American Free Trade Agreement. Foreign entrants now account for 25% of Mexico's market, and the proportion is increasing as more companies such as AEGON Insurance Group, Aetna Inc., American International Group Inc. and Allianz A.G. Holding increase their involvement, says Datamonitor. "This trend is to be duplicated in other countries as the rich rewards to be reaped attract more international companies," it adds.

Datamonitor analyst David Romani says: "It is not surprising that foreign insurers are rushing into Latin America. The very high growth predicted for the next five years means that the potential rewards are huge."

He said it is only necessary to look at figures showing the low penetration of insurance in Latin America—general insurance premiums per capita are under \$100 in all countries compared with almost \$1,400 in the United States—"to realize that the scope for growth is tremendous."

Copies of the report, "Insurance in Latin America," are available for \$3,995 from Datamonitor, 41 Madison Ave., Fifth Floor, New York, N.Y. 10010; 212-661-2525.

INTERNATIONAL

Lloyd's

Continued from previous page

Building, was subsequently mortgaged for £24 million (\$41.1 million), and the proceeds were put toward the settlement funding.

To tide the Corporation over during the R&R period, it also raised a £300 million (\$513.8 million) syndicated loan, backed by seven banks led by Citibank International P.L.C.

Mr. Hewes said Lloyd's had drawn upon £285 million (\$488.1 million) of the loan facility, and £7.5 million (\$12.8 million) interest had accrued on it by the end of the year, meaning Lloyd's has used £292.5 million (\$500.9 million). At last year's annual general meeting, Lloyd's Chief Executive Ron Sandler predicted only two-thirds of the loan would be used.

Lloyd's is paying the banks back over a five-year period by a 1.1% levy raised on all Lloyd's policies issued from the beginning of this year. So far, about £10 million (\$17.1 million) has been paid back, said Mr. Hewes, explaining it is collected and handed over to the bankers monthly.

An increase in subscription rates to Lloyd's is covering the rest of the deficit. Last year, the Corporation raised £53 million

(\$90.8 million) by charging an entrance fee of 0.5% of premium limit. That proportion has been raised to 0.7% for 1997, which Mr. Hewes expects will raise more than £70 million (\$113.4 million), but he hopes the fee can be reduced for next year.

Subtracting the R&R costs from the bottom-line figure in the Corporation accounts leads to a loss of about £10 million. Part of that is still due to R&R expenses, said Mr. Hewes. For example, the Corporation is still footing the cost of managing members in the process of resigning, though this expense is rapidly diminishing as the members pay their finality bills and leave the market for good. In addition, the Corporation is bearing the legal costs of recovering unpaid debts from non-accepting members.

Mr. Hewes said he is confident the Corporation's 1997 accounts will show a "modest surplus" that will be sustained into the future.

On a more pessimistic note, Lloyd's warns that members may have to wait to receive their share of the record 1993 profits, estimated at more than £1 billion (\$1.61 billion).

"We shall do our very best to release available surpluses as early as possible, but the complexities are considerable, and the timing of the releases is subject to ensur-

ing that each member's Canadian and American Trust Fund is sufficiently funded to meet regulatory requirements," the report states.

Complications include the first-ever distribution from Members Agents Pooling Arrangements, devices similar to mutual funds that were created by Lloyd's to give members' investment a wider spread of syndicates.

Mr. Hewes predicted most members should get their profits by the end of June but said that after last year's problems, when Lloyd's "didn't manage the distribution... as we wanted to," Lloyd's will not tie itself to a timetable this year.

Also, Lloyd's is in the final stages of negotiating the reinsurance of Lioncover Insurance Co. Ltd., the company set up in 1997 to reinsure the liabilities of the notorious PCW syndicates. Lloyd's negotiated a settlement with members on syndicates managed by the PCW Underwriting Agencies Ltd., WMD Underwriting Agencies Ltd. and Richard Beckett Underwriting Agencies Ltd., as well as syndicates 2 and 49, after they collapsed with huge exposures to pollution and asbestos claims in 1982.

Lioncover's liabilities currently are guaranteed by Lloyd's Central Fund, a fund of last resort designed to cover members' short-

falls for the annual solvency test administered by the U.K. Department of Trade and Industry and to protect policyholders from syndicate failures.

By the end of last year, the Central Fund stood at £236.3 million (\$404.7 million), a 56.3% drop from 1995, but nevertheless a lot stronger than Lloyd's had predicted. At the beginning of 1996, Lloyd's was warning that the fund could be exhausted by the R&R process.

In the end, the Central Fund contributed £382.2 million (\$654.5 million) to the settlement. Provisions for Lioncover liabilities took £149.3 million (\$255.7 million) out of the fund, compared with £73 million (\$113.4 million) in 1995. In total, Lioncover has cost the Central Fund £487 million (\$785.8 million).

Equitas provided Lloyd's with an indicative premium for reinsuring Lioncover's liabilities of £300 million (\$465.9 million) at the end of 1995. This is made up of the £222.3 million (\$380.7 million) supplied by the Central Fund in 1995 and 1996, plus £78 million (\$133.6 million) to cover the "risk premium" and arrangement costs.

In the meantime, two analysts have criticized Lloyd's for allegedly trying to push out traditional unlimited liability members. In its latest newsletter, CBS

Analysis, part of members agent Christie Brockbank Shipton Ltd., accuses Lloyd's of trying to push unlimited liability members out of the market by moving from its current annual venture status to a longer-term capital base. Instead, it thinks Lloyd's should aim for "a method combining the best from the past with an update to the current structure," perhaps involving three-year commitments with penalties if the investor decides to withdraw within that time. Some members agents already have made longer-term commitments to syndicates, says the newsletter, and it suggests this system should be formalized.

Also mourning the possible demise of the traditional member is analyst Chatset Ltd. In its recently published evaluation of the Lloyd's market, Chatset said that by increasing the minimum total means for unlimited liability members, or the personal wealth that they must show to join Lloyd's, Lloyd's is squeezing them out of the market.

"The number of failures of DTI-authorized companies over the past three decades provides little comfort to the assured," says the report. "Is a limited-liability, DTI-regulated Lloyd's likely to be a stronger entity than the traditional Lloyd's based on unlimited liability?" **BI**

The Professional Marketplace

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Total Qualified **53,083**

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TOTAL CIRCULATION **53,108**

★ Source Business/Occupational
breakdown of qualified circulation,
November 25, 1996 Issue, as
submitted to BPA for December 1996
BPA Publisher's Statement

INTERNATIONAL

Blair

Continued from page 29
manifesto. "In a global economy, the route to growth is stability, not inflation. The priority must be stable, low-inflation conditions for long-term growth."

This position encouraged the business community, though it is sending signals that "New Labour" still must win its trust.

"There is a risk that the new government will implement an emergency budget and introduce a range of measures aimed at honoring manifesto promises," warned Ina Barker, executive director of the Assn. of Insurance & Risk Managers.

Political commentators are anticipating a budget within the next few months, instead of the normal November timetable. The government's impatience to implement changes immediately appears to bear out this expectation.

Already Robin Cook, the foreign secretary, has committed the United Kingdom to joining the "social chapter" of the European Union's Maastricht Treaty, conferring certain rights such as a minimum standards in working conditions and employee consultation. And in its manifesto, Labour said it plans to implement minimum wage levels.

Both AIRMIC and the Assn. of British Insurers say they are concerned that the new government will use the Insurance Premium Tax, raised to 4% from 2.5% in the last budget, as a means of generating income. The IPT applies to personal and some small commercial insurance coverages.

Some small businesses have already responded to the introduction of IPT by reducing—and in some cases canceling—their insurance coverage, and AIRMIC sees any further increases as potentially "disastrous."

Ms. Barker also warned against the new government pushing National Health Service costs onto the insurance market. "There should not be back-door funding of the NHS by recovering medical and other costs from liability insurers," she said, referring to last year's Law Commission report suggesting that medical expenses relating to accidents and illnesses in liability situations—such as the workplace—should be borne by insurers rather than the NHS (*BI*, Dec. 23, 1996).

In its manifesto, Labour took a fairly pragmatic stance on the issue of Northern Ireland, calling for a "new political settlement that can command the support of both" sides. In recent years all major terrorism-related claims have been the

result of activities by the Irish Republican Army on the U.K. mainland.

For risk managers in mainland Britain, terrorism remains a major issue. AIRMIC has called for the government to maintain Pool Reinsurance Co. Ltd., the government-backed reinsurer of property terrorism risks, though it does concede

ing to the party manifesto. Not only would pension funds see their investments depleted by this move, but also a rumored reduction in tax relief on dividends from investment income could hit them, say political commentators. Currently the tax credit on so-called "advanced corporation tax," or ACT, on dividends stands at 20%.

'There is a risk that the new government will implement an emergency budget and introduce a range of measures aimed at honoring manifesto promises,' says Ina Barker.

that the insurance industry should also try to provide new products.

There may be hazard lights on the horizon for occupational pension plans as well.

As institutional investors, pension plans own about 35% of U.K. stock, amounting to £650 billion (\$1.05 billion) of investments. Labour plans to levy a "windfall tax" on the profits from the recently privatized public utilities—raising between £3 billion (\$4.84 billion) and £10 billion (16.14 billion)—to fund youth and long-term unemployment programs, accord-

Alan Fishman, chief actuary at employee benefit consulting firm Sedgwick Noble Lowndes Ltd., estimates a 5% drop in the rebate would result in a loss of £600 million (\$968.1 million).

"Pension funds tend to live off the dividends from their equity investments," explained Mr. Fishman. "Increasing the tax on dividends would have an impact on their investment income."

In particular, employees and retirees in defined contribution plans could see their funds decline, "when many of these are already

failing to deliver an adequate pension for retirement," he warned.

Mr. Fishman also foresees employers moving away from defined benefit plans if ACT rebates are reduced, as they see their investment income eroded, requiring larger contributions.

Tom Ross, chairman of the U.K. National Assn. of Pension Funds, predicts that removing ACT completely will cost U.K. pension funds about £50 billion (\$80 billion).

"This additional burden will be on top of an endless stream of costly regulatory requirements under the Pensions Act and could accelerate the trend toward defined contribution schemes where employers do not have to carry the investment risk," Mr. Fishman said.

But he welcomed Labour's proposals for "stakeholder" pensions, a second-tier pension system designed to supplement the state pension. In its manifesto, the Labour party recognized the need for more portable private pensions, to parallel the changing patterns of employment, and said it will "encourage new partnerships between financial service companies, employers and employees to develop these pension schemes."

Whether these plans would be mandatory is not known. Nevertheless, Mr. Fishman said the plans "merit serious discussion." **BI**

Benefit plan gives flood victims a reprieve

MINNEAPOLIS—As residents gradually returned to their flood-damaged homes and businesses in the Red River region of North Dakota and Minnesota, one group gained a temporary reprieve from having to make monthly employee benefit premiums while they sorted through the mess.

Churches affiliated with the Minneapolis-based Evangelical

Lutheran Church in America that pay the benefit expenses of pastors, lay workers, retired employees and their families have a 60-day disaster grace period under the terms of their contract covering their health and dental coverage, defined contribution retirement plan, term life insurance and long-term disability program.

Their benefits, bundled in a

package by Hartford, Conn.-based Aetna Life & Casualty Co. and paid for by congregation contributions, would otherwise be in jeopardy, because hundreds of churches may have been uprooted and placed into turmoil by the disaster, said John G. Clark, president of the church's Board of Pensions.

There are 1,091 ELCA congregations in eastern North Dakota,

southern North Dakota, northwest Minnesota and southwest Minnesota that could have been affected by the flooding, though Mr. Clark said it was too early to say just how many congregations had problems.

The denomination has 13 churches in Fargo, N.D., and seven in Grand Forks, N.D., two

cities hit the hardest by the floods.

Rev. Leon Phillips, director of Lutheran Disaster Response, said he witnessed "huge damage in some of the churches and parsonages (ranging) to minor damage," and that in many of the congregations, about 70% of their members were driven out of their homes by the flooding.

—By Robert Kazel

J&J Snack insured for harassment settlement

PENNSAUKEN, N.J.—J&J Snack Foods Corp. said it expects insurance to cover a settlement it made last month with a former male employee who sued the company, alleging his male supervisor sexually harassed him.

Last month, a jury in a Los Angeles trial court awarded the former employee \$1.7 million in compensatory damages and \$2.5 million in punitive damages.

The company said it later settled the same-sex sexual harassment case for "substantially less" than the \$4.2 million award, but would not disclose the amount.

Dennis G. Moore, senior vp and chief financial officer of J&J, said the company expects its employment practice liability insurance policy to cover the entire settlement, even though the amount exceeds the policy limit.

"The insurance company had the opportunity to settle the case within the policy limits but did not," he said, declining to identify the company's insurer.

—By Sally Roberts

Gas release not covered by CGL: Court

DENVER—Injuries arising from the release of ammonia gas are not covered under commercial general liability policies containing the 1985 absolute pollution exclusion, the Colorado Court of Appeals has ruled.

Further, damages are not payable under personal injury coverages, the court ruled.

In upholding the lower court's decision, the appeals court rejected the policyholder's argument that the pollution exclusion only pertained to industrial environ-

mental pollution.

The case was brought by Terramatrix Inc., an engineering and environmental consulting firm. In 1994, the firm's printing machine allegedly emitted ammonia gas due to improper ventilation, and another tenant in the building suffered bodily injuries and was forced to move offices.

The tenant sought damages from Terramatrix, which turned to its insurers, United States Fire Insurance Co. and Reliance National Indemnity Co., to cover the claim.

Both insurers denied coverage.

The appeals court held that "ammonia constitutes a pollutant under the pollution clause."

Further, the court ruled that personal injury coverage for wrongful entry or invasion of the right to private occupancy were inapplicable in this case.

Personal injury coverage is unambiguous and is "applicable only to entries, evictions and invasions committed by or on behalf of the owner, landlord or lessor," the appeals court ruled.

The decision is important because it explicitly rejects a common policyholder argument that the pollution exclusion is only applicable to hazardous waste cleanups, said Laura A. Foggan, a partner at Wiley, Rein & Fielding in Washington who represents the Insurance Environmental Litigation Assn., which filed an amicus brief in this case.

"The court recognized that the exclusion contains no such limitation," she said.

—By Gavin Souter

Insider Trading

American International Group Inc.: Lloyd Bentsen, director, purchased 113 shares of common at \$125.63 each on March 11, and now directly holds 2,373 common.

Pei Yuan Chia, director, purchased 113 shares of common at \$125.63 each on March 11, and now directly holds 1,337 common.

Marshall Cohen, director, purchased 113 shares of common at \$125.63 each on March 11, and now directly holds 2,138 common.

Barber B. Conable, director, purchased 113 shares of common at \$125.63 each on March 11, and now directly holds 5,288 common.

M. Bernard Aidinoff, director, purchased 113 shares of common at \$125.63 each on March 11, and now directly and indirectly holds 8,547 common.

Petros K. Sabatacakis, vp, exercised an option for 39,375 shares of common between \$38.06 and \$53.00 each on March 19, and now directly holds 39,511 common.

AIG stock closed at \$132.38 a share on May 2.

Chubb Corp.: Percy Chubb, director, exercised

an option for 22,936 shares of common between \$17.50 and \$41.78 each on March 10. To cover expenses of the transaction Mr. Chubb turned in 11,490 of them for \$60.88 each on March 10, and now directly and indirectly holds 248,086 common shares.

Chubb stock closed at \$59.00 a share on May 2.

Fremont General Corp.: Conrad Douglas Kravinkle, director, exercised an option for 15,470 shares of common between \$8.89 and \$15.68 each on March 14, and sold 10,610 shares between \$31.50 and \$31.63 each on March 14, and now directly holds 34,985 common.

David William Morrisroe, director, sold 950 shares of common at \$29.25 each on March 7, and now directly holds 30,525 common.

Fremont General stock closed at \$29.13 a share on May 2.

Humana Inc.: Gail H. Knopf, vp, exercised an option for 10,000 shares of common at \$6.56 each on March 31, and sold them at \$21.50 each on March 31, and now directly and indirectly holds 8,948 common.

Humana Inc. stock closed at \$21.88 a share on May 2.

NAC Re Corp.: Ronald L. Bornhuetter, chairman, purchased 1,000 shares of common at \$35.75 each on April 1, and now directly and indirectly holds 125,828 common.

Nac Re stock closed at \$39.50 a share on May 2.

USF&G Corp.: Robert J. Lamendola, officer of subsidiary, exercised an option for 4,798 shares of common at \$22.50 each on March 13. To cover expenses of the transaction, Mr. Lamendola turned in 1,757 of them for \$22.50 each on March 13, and now directly holds 5,028 common.

John C. Sweeney, vp, exercised an option for 8,879 shares of common at an unreported price from March 13 to March 31. To cover expenses of the transaction, Mr. Sweeney turned in 3,277 of them for \$22.50 each from March 13 to March 31 and now directly holds 7,402 common.

USF&G Corp. stock closed at \$20.13 a share on May 2.

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

Tobacco

Continued from page 2

payouts have been wildly speculative.

"Those figures came out of somebody's smokestack. They were never discussed," Mr. Herman said.

He would not say whether figures that were discussed were higher or lower.

Mr. Herman said the \$250,000 cap that the industry has suggested on future claims is unrealistic. "Nobody will accept that."

Cigarette makers have abandoned their call for immunity from future lawsuits in the face of stiff opposition from the attorneys general.

"Any kind of immunity is out of the question," said a spokesman for Texas Attorney General Dan Morales.

A major sticking point in the negotiations, which are expected to resume this week, reportedly centers on how to ensure that citizens retain their right to sue the tobacco industry while establishing some predictability in how much the cigarette makers would have to pay if they lost smoking-related suits.

Limiting damages awards does not sit well with some tobacco industry opponents.

Such a cap would limit plaintiffs' rights to a fair recovery from tobacco companies in smoking lawsuits, said Edward L. Sweda, senior attorney with the Tobacco Products Liability Project based at Northeastern University Law School.

Any industry proposal should be treated with skepticism, Mr. Sweda said.

"One of our principal concerns is the absolute lack of trustworthiness of the tobacco industry over the last 30 to 40 years," he said.

"Even if an agreement is

reached, there will be ongoing concern about enforcement of any provisions. There will have to be some plan to deal with the eventuality that tobacco companies will try to run around any restrictions they agree on in settlement talks to get what they want," Mr. Sweda said.

Because any kind of settlement will require congressional approval, it is unlikely that an agreement can be reached in time to forestall the states' lawsuits, Mr. Sweda pointed out. Mississip-

pi's case is scheduled for trial in early July.

R.J. Reynolds said in a statement that its recent victory in the Jacksonville, Fla., suit filed by the estate of smoker Jean Connor shows that juries can reach "reasoned conclusions about cigarettes and smoking when given all the facts."

"Our faith in the jury system is very much reaffirmed," said Daniel W. Donahue, R.J. Reynolds' senior vp and deputy general counsel-litigation, in the

statement.

R.J. Reynolds would not say how the verdict might affect settlement negotiations with the attorneys general. "We couldn't begin to speculate on that," a spokeswoman said.

The verdict "may be a bit of good news" for the industry, said Trey Bobinger, assistant attorney general in Mississippi. "But we certainly don't think it will make any difference in the negotiations."

The spokesman for the Texas

attorney general agreed. "That's a minuscule case in the full context of tobacco litigation."

Meanwhile, another suit has been filed against the tobacco industry.

Ohio Attorney General Betty D. Montgomery filed suit late last week in the Franklin County Court of Common Pleas. The suit is similar to others seeking recovery of costs for treating smoking-related illnesses and stopping the marketing of cigarettes to children. **B**

European insurers evaluate liability

By EDWIN UNSWORTH

LONDON—In light of Louisiana Attorney General Richard P. Ieyoub's naming more than 100 insurance companies in his lawsuit to recover the costs of treating tobacco-related illnesses, debate has heated up on this side of the Atlantic Ocean about how much of the claims, if any, insurers will have to bear.

Already B.A.T Industries P.L.C., a party to U.S. tobacco litigation through its Brown & Williamson Tobacco Corp. subsidiary, has said it is examining insurance policies going back decades to see if there are any grounds for making a claim.

While insurers have maintained that exclusion clauses relieve them of liability for any successful claims brought against the tobacco companies, B.A.T's decision to examine the small print of its policies has received an endorsement from an independent source.

Paul Hodges, an insurance industry analyst at Schroders Securities Ltd., has claimed in a report on the implications of U.S. tobacco litigation that "comprehensive general liability insurance cover-

age probably exists for a variety of tobacco-related claims."

However, other analysts aren't that certain.

John Russell, insurance industry analyst at Hoare Govett Securities Ltd., said he thinks it is unlikely tobacco-related liability claims will get as far as insurers.

In order for claims to reach insurers, it first would have to be es-

liable in the death of a smoker.

According to Mr. Hodges, insurers are most likely to be drawn into the fray on policies written prior to the late 1960s, because up to this time the wording of exclusion clauses "appears to have been relatively weak."

However, Mr. Hodges said that after speaking to representatives of Badon & Rainer, one of the law

rectors and officers policies, said Mr. Hodges.

Mr. Hodges says both E&O and D&O claims would result mainly from attempts to claim executive officers knew of, but ignored or hid, the potential dangers of smoking. However, he emphasized that any such claims would be only peripheral, as the real bulk of any claims could come from CGL policies.

Potential claims against insurers will come not only from the tobacco manufacturers, warns Mr. Hodges. "Most of the other entities which have been or will be implicated in third-wave litigation—the component part suppliers, public relations firms, law firms etc.—unquestionably have liability insurance," he said.

The European insurers most likely to be affected are Commercial Union P.L.C., Royal & Sun Alliance Group P.L.C., Allianz Holdings A.G., and Zurich Insurance Group, according to Mr. Hodges' report.

Ian Frater, spokesman for Commercial Union, said the company has always maintained it has only minimal involvement in tobacco coverage. He said Mr. Hodges' study fails to take account of the specific terms of cover in CU's policies or of the various exclusions, particularly exclusions for product liability. Nor did Mr. Hodges take account of the aggregate insurance limits of CU's policies, he added.

Royal & Sun Alliance limited its comments to a written statement saying the liabilities go back over many years but are subject to continuing monitoring.

A spokesman for Equitas Holdings Ltd., the company set up last year by Lloyd's of London to reinsure syndicate liabilities for 1993 and prior years, said, "We don't believe that tobacco litigation poses any great threat to Equitas."

B.A.T's research into its insurance policies was unveiled by the group's Chief Executive Martin Broughton earlier this month, when the company reported its first-quarter results.

He acknowledged that the issue of insurance availability for tobacco companies regarding liability claims is highly complex, both factually and legally, because it involves different types of cases, laws that vary from state to state, periods of many years, and insurance policies combining all sorts of policy wordings and exclusions.

Mr. Broughton declined to comment further, saying he did not want to prejudice any future legal actions.

However, Lord Cairns, B.A.T's chairman, said that while the company believes any lawsuits would ultimately have no material impact on its financial condition, "we must nevertheless brace ourselves for occasional reverses along the way, especially at the lower court level." **B**

Even the most recent policies with much tighter policy wordings might not be able to exclude the types of claims states are bringing, analyst Paul Hodges says.

established that liability falls on the tobacco companies, which have so far successfully defended most claims, Mr. Russell said. Then tobacco companies would have to successfully claim against their insurers.

Mr. Russell added that it seems even less likely that either of these events will come to pass after a Florida jury last week found that R.J. Reynolds Tobacco Co. was not

firms assisting the Louisiana attorney general, he believes even the most recent policies with much tighter policy wordings might not be able to exclude the type of claims being brought by individual states for health care cost reimbursements.

Claims are most likely to come from CGL policies, although insurers could also be drawn in under errors and omissions and di-

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EMLICO

Continued from page 1

EMLICO from Bermuda is unlikely and has negotiated accordingly," said J. David Leslie, a lawyer with Rackemann, Sawyer & Brewster in Boston representing the Insurance Division.

The reinsurers' legal attack "is clearly intended to destroy the settlement and nothing more," he said.

Justice Greaney ordered the sides to submit a new round of briefs by Friday replying to each other's arguments. He is expected to rule within several weeks.

The schedule already means the judge will miss a May 12 deadline set by the parties for court action on the settlement. The agreement allows EMLICO's liquidators—Bermuda and London partners of Coopers & Lybrand—to back out if the deal is not approved by the deadline.

Reinsurers have charged that the deadline was an attempt to coerce quick court approval, but those involved now say the delay is unlikely to scuttle the deal.

Meanwhile, the Massachusetts Attorney General has rejected a call by the head of the state Legislature's Insurance Committee to withdraw from representing the Insurance Division in the EMLICO case. State Sen. Dianne Wilkerson, D. Suffolk, also said Insurance Commissioner Linda Ruthardt acknowledged her belief that EMLICO misled the division when it sought approval to redomesticate to Bermuda (see related story).

EMLICO, a longtime GE liability insurer, won quick regulatory approval in June 1995 for a reorganization plan in which it spun off its non-GE liability business into a former subsidiary, Massachusetts-based Electric Insurance Co.

EMLICO, retaining scores of loss-plagued GE policies dating back to 1952, then moved to Bermuda. A few months later, it declared itself massively underreserved for asbestos and pollution claims and insolvent by more than \$500 million.

The collapse triggered an international legal brawl in which EMLICO reinsurers charged that the insurer concealed its insolvency from Massachusetts regulators in a fraudulent scheme with GE to take advantage of Bermuda liquidation law. That law, reinsurers note, allows liquidators to estimate future liability losses and recover their discounted value immediately from reinsurers, a practice that would not be allowed in a Massachusetts liquidation.

Commissioner Ruthardt last year declined to reopen the EMLICO redomestication but said she would investigate the fraud charges as part of an examination of EIC, the former EMLICO unit.

In March, the Insurance Division, EMLICO's liquidators, GE and EIC announced a settlement that would continue the Bermuda liquidation but name Commissioner Ruthardt as EMLICO's U.S. receiver (BI, March 17).

Under the settlement, GE environmental claims settlements negotiated by the Bermuda liquidators will be reviewed in Massachusetts by a court-appointed special master recommended by the Insurance Division, GE and EMLICO's liquidators.

Commissioner Ruthardt, in turn, agreed to drop her investigation of the alleged fraud and withdraw her support of other investigations, including efforts by the U.S. Attorney's office in Boston to obtain sealed EMLICO documents.

At last week's hearing and in court filings, reinsurers and a Massachusetts-based consumer group lashed out at the proposed settlement.

Commissioner Ruthardt "has abdicated her regulatory responsibility throughout the EMLICO affair and now comes before the court and asks it to abdicate to her," Mr. Lewis told Justice Greaney.

EMLICO's move to Bermuda was itself illegal, as state law does not allow regulators to approve redomestication to a foreign country and because EMLICO in fact was insolvent at the time, reinsurers charged.

"The entire structure that the commissioner asks you to approve is based on the assumption that the redomestication was lawful," Mr. Lewis told the judge.

Kemper Re and Lloyd's of London underwriters asked the court either to throw out the settlement or defer action until a court resolves challenges to the legality of EMLICO's move.

The reinsurers also argued that Massachusetts law does not allow Commissioner Ruthardt to act as ancillary receiver, because EMLICO is no longer domiciled or authorized as an insurer in the state.

Kemper and Lloyd's raised several other objections to the settlement agreement itself, labeling it inherently unfair.

The agreement, for example, still calls for GE's claims to be settled in Bermuda with liquidators GE itself has chosen, a situation that will result in "collusive" and inflated settlements, reinsurers allege.

"The fox is guarding the hen house—GE is effectively adjusting its own claims," Kemper Re argued in a brief.

In addition, the special master will be reviewing only the claim information submitted by the Bermuda liquidators; reinsurers will be allowed to comment on the settlements but cannot conduct discovery or cross-examine witnesses as part of the review, reinsurers note.

The time allowed reinsurers to comment—50 days after receiving notice of a settlement—is far too short for claims as large and complex as GE's, reinsurers say.

In fact, GE and EMLICO's liquidators may well combine some or all of GE's claims relating to more than \$2 billion in potential cleanup costs at 600 sites into a single global settlement, a move that would put a "truly extraordinary" burden on reinsurers, the special master and the court, Kemper Re argued.

"If we never slept one minute from the time the claim was filed to the end of the 50-day period... we would have two hours to review each of 600 Superfund sites" and GE's related liabilities, Mr. Lewis argued.

While the settlement agreement would apply Massachusetts law to reinsurance coverage disputes, the reinsurers point out that it does not apply state insurance insolvency law to claims settlements by the estate. The result, reinsurers say, is that EMLICO's liquidators still will be able to estimate future liabilities and try to collect immediately from reinsurers through the special master process.

Kemper Re also rejected EMLICO's arguments that arbitration is the best place to resolve the reinsurers' disputes.

"It is a certainty that EMLICO will argue in subsequent arbitrations that reinsurers are bound by the outcome of the special master process," Kemper Re said in a brief. "They will assert that the special master's approval of any claim by definition means that the settlement was 'fair and reasonable' and, therefore, that reinsurers cannot object to the claim."

Other reinsurers objecting to the settlement included Commercial Union Insurance Co., Hannover Re and National Indemnity Co., a Berkshire Hathaway unit. All have begun arbitrations with EMLICO and asked the judge to throw out a stay of arbitrations called for in the settlement.

Also objecting was the Center for Insurance Research, a Cambridge, Mass.-based consumer group that has clashed with Commissioner Ruthardt in other cases. CIR argued that the deal could lead to higher insurance rates for Massachusetts policyholders and could jeopardize the Insurance Division's accreditation by the National Assn. of Insurance Commissioners.

General Re Corp., which also has fought the redomestication, withdrew its objections to the settlement agreement after regulators answered General Re questions on how the agreement would work.

The Insurance Division, EMLICO and GE, meanwhile, argued that the settlement is reasonable and within the commissioner's power. They also rejected the reinsurers'

State attorney general rejects call to end representation of Ruthardt

BOSTON—The Massachusetts Attorney General has rejected a call by the head of the state Legislature's Insurance Committee to withdraw from representing Insurance Commissioner Linda Ruthardt in the Electric Mutual Liability Insurance Co. case.

The office of Attorney General Scott Harshbarger last month withdrew as counsel to the Insurance Division in another case involving a life insurer demutualization, complaining that regulators had given its lawyers inaccurate information.

In a May 6 letter, state Sen. Dianne Wilkerson, D. Suffolk, chairwoman of the Joint Committee on Insurance, urged Mr. Harshbarger to take similar steps in the EMLICO case.

"If the actions of the commissioner raised serious 'ethical issues' in the State Mutual (Life Assurance Co.) case, then I would submit that there are similar concerns in the EMLICO matter," Sen. Wilkerson wrote.

During a Feb. 13 meeting to review the proposed EMLICO settlement, Sen. Wilkerson said Commissioner Ruthardt told her "unequivocally that it was clear to her that EMLICO had not been forthcoming in its application (to redomesticate to Bermuda) and further that they clearly knew more than they stated about their financial condition at the time of the application," the letter said.

"If the commissioner believes misrepresentations were made... as the chief law enforcement officer in the Commonwealth, why are you allowing the commissioner to negotiate away her investigatory powers and provide a release to those who may have committed the fraud?" the senator asked. "Perhaps... you should not merely withdraw as counsel but should be conducting your own investigation with an eye toward prosecution."

Thomas Barnico, assistant attorney general involved in the EMLICO case, said Mr. Harshbarger's office will not withdraw.

"The only effect of withdrawing as counsel to the division would be to remove the attorney general's supervision and control over the division's litigation position. Nothing in the circumstances of the EMLICO case make this necessary or appropriate," Mr. Barnico said.

An Insurance Division spokeswoman declined to comment on Sen. Wilkerson's letter.

—By Douglas McLeod

objections as groundless efforts by EMLICO debtors to avoid their obligations.

"All parties with cognizable interests support the petition," Mr. Leslie said. "Only certain debtors of the insurer object."

Among other things, the three parties urged Justice Greaney to ignore arguments about the legality of the redomestication and the alleged fraud; the only issues to be decided are whether EMLICO is insolvent and whether the settlement is in the best interests of the estate and GE, EMLICO argued.

A Massachusetts court recently ruled that reinsurers lack standing to challenge the redomestication, and a Bermuda judge separately concluded that arbitration is the proper forum to air the reinsurers' disputes, EMLICO said in a brief. Reinsurers are appealing both decisions.

The redomestication debate may be an "intellectually interesting exercise," but it has no practical effect because EMLICO is now a Bermuda company under control of a Bermuda court, said Thomas Martin, a lawyer with Shearman & Sterling in Washington, representing the Bermuda liquidators.

In fact, EMLICO could not be moved back to Massachusetts now

because Bermuda law bars redomestication of an insolvent company, the liquidators note.

The settlement, with its special master review, "repatriates the significant issues that were 'lost' to Massachusetts through the redomestication," the Insurance Division maintains in a brief.

Reinsurers will have ample opportunity to challenge GE's claims in the Bermuda and Massachusetts proceedings, EMLICO's liquidators add.

"Before the joint liquidators determine whether to enter into any compromise with GE, they will provide the reinsurers with the opportunity to investigate claims, review documentation... and interpose defenses," the liquidators contend.

Between the Bermuda claims review and later reviews in Massachusetts, reinsurers wanting to challenge claims will have several "bites at the apple," not even counting later arbitration, the liquidators say.

"The work of the liquidation remains to be done and the longer the delay, the more assets are wasted," Mr. Martin told the judge. "You need not, should not, be the arbiter of every problem (the reinsurers) have in life."

BI

Diversify

Continued from page 1

not already own. Although X.L. already has a reinsurance subsidiary, X.L. Reinsurance Co. Ltd., its reinsurance business is substantially different from GCR's. X.L. Re frequently writes multiyear business and finite risk business as well as quota share and excess-of-loss reinsurance.

GCR's primary focus is property catastrophe reinsurance, though it has diversified to cover other lines, such as excess property, marine and aviation, and satellite reinsurance.

"Given GCR's client base, it gives X.L. the opportunity to potentially cross-sell some of its insurance and reinsurance products," Mr. Cohen said.

The purchase also gives X.L. immediate access to a new line of business that has been very lucrative for the eight specialized property catastrophe reinsurers that set up in Bermuda in 1992 and 1993, said Craig Elkind, associate director at Standard & Poor's Corp. in New York.

"You don't have to buy a company to get into the catastrophe business, but if you want to get the preferred accounts and a geographic spread it may save a lot of time... it creates a global multiline insurance and reinsurance company," he said.

GCR will likely be combined with X.L. Re to create one reinsurance operation within X.L.

X.L. executives could not be reached for comment, but in a taped conference call with stock analysts, Brian M. O'Hara, chairman and CEO

of X.L., said the combined companies would have about \$750 million in capital, which would likely be reduced to about \$500 million if rating agencies approved of the reduction.

The purchase of GCR is a better deal for X.L. than the purchase of Mid Ocean Ltd., another Bermuda catastrophe reinsurer in which X.L. has a substantial shareholding, Mr. O'Hara said in the conference call.

GCR is largely a catastrophe reinsurer, whereas Mid Ocean is a more diversified reinsurer, and through its interest in Lloyd's of London, it writes a substantial amount of excess liability business in competition with X.L., he said. Mr. O'Hara has a seat on the Mid Ocean board and is awaiting its reaction to the GCR purchase.

X.L. was considering purchasing a property catastrophe reinsurer when

it bought 4.9% of GCR last year, Mr. O'Hara said.

"We were just waiting for a more sober attitude to prevail among the would be acquired (companies)," he said.

And although property catastrophe rates have substantially slumped since the highs after Hurricane Andrew in 1992, property cat reinsurance is still likely to be a profitable long-term business, Mr. O'Hara said.

The slump in property cat reinsurance rates will likely lead to further merger and acquisition activity among Bermuda companies, said Peter Wade, vp at Lehman Bros. Inc., in New York.

Well-capitalized cat reinsurers in Bermuda are finding that rates in their core business have declined to such a level that cat business alone cannot provide the return on equity

their investors are seeking, he said.

And though most of the cat reinsurers have diversified into other areas, several of them will find it difficult to diversify as much as necessary given the overall competitive reinsurance market, Mr. Wade said.

"I think there will be more deals, and they will happen sooner rather than later," he said.

Future deals will likely involve insurers and reinsurers in the United States and Europe buying Bermudian companies or Bermudian companies reaching out in other markets in the same way that Partner Re Ltd. bought Paris-based Societe Anonyme Francaise de Reassurances earlier this year (BI, April 7), Mr. Wade said.

"Most companies in Bermuda are probably exploring their options right now," he said.

BI

Deadline set on surcharge program

ALBANY, N.Y.—Employers that missed two previous deadlines to comply with New York's medical surcharge program have yet another chance to avoid stiff penalties.

Group health plans that elect to pay the surcharges directly to a state health care pool administrator are not liable for additional surcharges that can total more than 50% of the medical bill. The state set two previous deadlines—Dec. 2, 1996 and March 3—for plans to make the election.

Under a 1996 New York law, a

basic 8.18% surcharge is added to hospital bills for health care plans that agree to directly pay the surcharge to a state health care pool administrator. Employers with employees living in New York are liable for an additional assessment based on where in New York their employees live.

Employers that failed to elect to pay the surcharges directly to the pool administrator by the earlier deadlines have been liable for surcharges of up to 57.27% of hospital and laboratory bills their employ-

ees incur in New York.

The next filing deadline is June 2 and would apply for bills incurred on or after July 1. The higher surcharges would apply on bills incurred before then.

About 27,000 employers, insurers and other health care plan payers have filed applications to directly pay the surcharges. About 23,000 of those applications have been validated, according to a spokeswoman for the New York State Department of Health.

—By Jerry Geisel

MSAs

Continued from page 1

other professional firms in mind when it passed legislation bestowing tax-favored status on MSAs meeting specified standards, the nation's professional elite may reap the most advantages from MSAs.

Typically, law firm partners pay their own health insurance premiums. But because they are considered self-employed, they are currently only entitled to take a tax deduction on 40% of the premiums.

Those premiums are paid for with after-tax dollars. Self-employed professionals, such as partners at law firms, are not eligible for flexible benefit plans in which premiums and other health care expenses can be paid for with pre-tax dollars.

While law firm partners, like other taxpayers, can deduct uncovered medical expenses exceeding 7.5% of income, their incomes often are so high that it would take a catastrophic medical bill in order for partners to be eligible to deduct the expense.

But the tax situation in a high-deductible-linked MSA is vastly different. Like traditional insurance, 40% of the premium for the high-deductible plan is tax-deductible. But 100% of the annual contribution—currently up to \$1,462 for those opting for single coverage and \$3,375 for family coverage—to the MSA is tax-deductible.

Money in the MSA, like an individual retirement account, earns tax-deferred interest. However, money can be withdrawn tax-free to pay for uncovered medical expenses, like those that fall under the deductible. Funds withdrawn for other purposes are taxed as ordinary income with a 15% surcharge tacked on. The 15% surcharge, though, is not assessed on money withdrawn by individuals after they turn 65.

Indeed, an administrator of one law firm said MSAs should be looked at as a kind of supplemental retirement plan with the potential for a significant accumulation of assets. In fact, the administrator noted that an MSA has even more tax breaks than a pension plan, pointing out that money taken from an MSA at retirement to pay for medical expenses can be withdrawn tax-free, while pension benefits are taxable.

These tax breaks are a boon to the self-employed, such as law firm partners.

"The self-employed have never had a health insurance tax break like this before," said Tenna Merchant, an assistant vp with Golden Rule Insurance Co. in Indianapolis.

"MSAs make a lot of sense for the self-employed," added John DiVito, a partner and president of Flexible Benefits Service Corp., a

brokerage and general agency in Des Plaines, Ill.

But not all high-paid professionals can qualify for MSAs. Written into last year's law creating tax-favored MSAs is a provision that restricts MSAs to employers with fewer than 51 employees.

Despite this 50-employee cap, partners at law firms and other professional firms with hundreds of employees are eligible for MSAs. Because partners are considered self-employed, the sizes of their firms are irrelevant.

Still, not all law firms are jumping to give partners an MSA option. For example, McDermott, Will & Emery decided against offering MSAs because, among other things, the pricing of high-deductible health insurance plans linked to MSAs was not attractive enough to give partners a significant enough incentive to opt for the plans, said Sophia Chrusciel, a partner at the Chicago-based firm.

While tax breaks are a powerful attraction for professionals and others to opt for MSAs, they are not the only reasons why individuals are signing up for them.

"If you are a young, healthy male, an MSA may be very appealing" because a significant nest egg can be built up, said a spokesman for Green Bay, Wis.-based Employers Health Insurance Co., a Humana Inc. unit that offers high-deductible linked MSAs in 14 states.

On the other hand, MSAs won't be very attractive for families with heavy medical expenses, the Employers Health Insurance Co. spokesman said.

While MSAs are being snapped up by tax-savvy partners at professional firms, MSA providers say the going is much slower in the small-employer market.

Providers say one of the things holding back MSA growth among smaller employers is that the heart of their distribution network—independent insurance agents—do not always fully understand all the tax implications of MSAs.

"You need a real education process for agents," said Scott Stevens, vp-marketing at United Chambers, a Naperville, Ill.-based insurer that became one of the first insurers to offer an MSA product for the small-employer market.

"It is a long learning curve for distributors, like agents and third-party claim administrators," concurred Porter O'Meara, second vp-intercompany marketing and development at Time Insurance Co. in Milwaukee.

But some MSA providers are doing something to educate agents on how MSAs work. For example, Blue Shield of California in San Francisco held an MSA workshop for agents to explain the ins and outs of MSAs.

"This was very important to get key agencies to understand MSAs and the law," said Ken Prewitt-Wood, a senior vp at Blue Shield of

California, which says it has sold a couple thousand high-deductible-linked MSA plans.

And one company, MSAver Resources L.C., an MSA administrator in Kansas City, Mo., works with insurers to help them train and educate agents in how to communicate the benefits of MSAs to policyholders.

But it isn't only agents that don't always understand how MSAs work. One of the biggest misunderstandings about MSAs is the limit Congress imposed on the number of MSAs that can be established, MSA experts say.

Under law, only 750,000 MSA policies can be established. The Internal Revenue Service is charged with conducting several censuses to determine how many MSAs have been set up.

If, for example, the IRS found that 2 million accounts were established during the first four months of 1997, no more MSAs could be established. But contrary to what some people believe, it could not force already established MSAs to be terminated, said Bill Draznik a vp with Trustmark Insurance Co. in Lake Forest, Ill.

Until the IRS completes its census—which isn't expected until June—it won't be known how many MSAs have been set up.

But it is widely believed that the number is not close to the 750,000 MSA cap.

"I don't think the cap will be an issue this year, because many programs are now only being established," said Dennis Stover, a vp with Mellon Network Services in Pittsburgh, a unit of Mellon Bank that entered the MSA market earlier this year.

Even if the cap is hit, some say it would only be a matter of time before legislators increase or remove the cap.

"Congress could listen to the public and ultimately lift the cap," said Marty Rosen, senior vp and chief operating officer for NYL-Care, a subsidiary of New York Life Insurance Co.

Others, though, note that MSAs—despite the tax breaks bestowed upon them by Congress—are unlikely to ever be more than a niche product in the health insurance market.

"I don't think the tax advantages are so compelling that people would leave an HMO that provides first-dollar coverage and has small copayment requirements," said Mr. Prewitt-Wood of Blue Shield of California.

And MSAs may not work for all those interested in the concept. For example, some people want higher deductibles than the law allows for health insurance plans linked to MSAs, noted Ron Mimick, product manager for Mutual of Omaha.

Under law, the maximum deductibles for a health insurance plan linked to a tax-favored MSA are \$2,250 for individual coverage and \$4,500 for family coverage. **B**

Updates

Suit against gun maker dismissed

SAN FRANCISCO—A San Francisco superior court judge last week dismissed a lawsuit against Miami-based Navegar Inc., the maker of assault weapons used in a 1993 massacre that left eight people dead and six others wounded at a San Francisco law firm.

Judge James Warren's action scuttled attempts to hold the manufacturer liable for the criminal use of a non-defective product that was legally made and marketed.

The lawsuit, filed in 1994, was a unique effort to use a product liability lawsuit on behalf of violence victims (*BI*, June 20, 1994). The plaintiffs claimed the nature of the firearm itself creates liability when used in a crime.

Because of the unique character of the lawsuit, gun makers and other manufacturers feared it would open the door to new suits.

Two years ago, Judge Warren ruled that the victims and their survivors could try to prove that the guns used in the massacre were designed and marketed for mass killing, making them an "ultra hazard." That decision has been cited by plaintiffs attorneys in other cases, said Ernest Getto, a Los Angeles partner at Latham & Watkins who represents Navegar.

But last week the judge said the manufacturing or marketing of a gun is not an ultra hazard. An ultra hazard activity gives rise to strict liability.

The judge also said there was not enough evidence to hold Navegar responsible and that the plaintiffs lacked evidence linking the killer's actions to Navegar's advertisements, according to Mr. Getto.

Golden Eagle penalized heavily

SAN FRANCISCO—Golden Eagle Insurance Co. and a related company received more than 10% of the total penalties assessed against workers compensation claims administrators in 1996 by the Division of Workers Compensation's Audit Unit.

The San Diego-based insurer, which is in conservation pending its sale to American International Group Inc. of New York, was assessed 788 penalties totaling \$116,975 for improperly handling workers compensation claims during 1996.

In addition, 204 penalties totaling \$26,175 were assessed against a related company, Big Bear Markets. Big Bear, also based in San Diego, is a self-administered, self-insured employer whose claims are handled at the same location by the same claims staff.

The penalties against Golden Eagle and Big Bear represent more than 10% of the 9,030 penalty assessments totaling \$1,164,120 the division levied against workers compensation claims administrators during 1996.

The penalties against Golden Eagle also were the most ever assessed in a single audit, according to DWC's 1996 Annual Report to the Legislature on its audit activities.

When asked to comment on the fines, Karl Rubinstein, deputy conservator and chief executive officer of Golden Eagle, said, "It's not surprising." Mr. Rubinstein was appointed by Insurance Commissioner Chuck Quackenbush to oversee the conservation of the insurer after it was seized by the Insurance Department Jan. 31.

John Mabey, Golden Eagle's former president and the current president of Big Bear Markets, did not return phone calls.

Responding to the report's overall findings, DWC Administrative Director Casey L. Young said: "The statistics . . . paint a troubling picture. Auditors are continuing to find the same problems of unacceptably high amounts of unpaid compensation due, late payment of benefits, and failure to notify employees of their rights to benefits in a timely matter."

"Overall, the workers compensation claims administration industry has not significantly improved its performance since last year," he said.

Briefly noted

The Alabama Supreme Court has **dramatically reduced the punitive damages** awarded a doctor who was not informed the paint on his new BMW had been damaged in transit and subsequently touched up. Ruling last year in the case of *BMW of North America Inc. vs. Ira Gore Jr.*, the U.S. Supreme Court held that a \$2 million punitive damage award was unconstitutionally excessive, sending the case back to the Alabama high court, which on Friday cut the award to \$50,000. . . . A federal district judge in Tacoma, Wash., ruled last week that a state law requiring **employer-sponsored health plans** to provide beneficiaries with all categories of providers—including acupuncturists and naturopaths—is pre-empted by the federal Employee Retirement Income Security Act. The ruling follows a lawsuit filed by 12 insurers (*BI*, April 22, 1996). . . . Small employers that miss **quarterly required contributions** to their pension plans will only have to file one notice to the Pension Benefit Guaranty Corp. covering all missed payments rather than within 30 days after each payment's due date. The notice would be filed by the due date for payment of PBGC premiums. The regulatory relief applies to missed contributions due after Jan. 1. . . . **Charles (Chick) Kwasha**, 90, who founded the employee benefit consulting firm Kwasha Lipton in 1944, died last week in North Miami, Fla. . . . Voting members of Seattle-based **Group Health Cooperative of Puget Sound** have approved a proposal to affiliate with Kaiser Permanente (*BI*, Dec. 23, 1996). As a result of the vote, a non-profit organization called Kaiser/Group Health will be formed to oversee many administrative functions of Group Health Cooperative, its eastern Washington affiliate, Group Health Northwest, and Kaiser Permanente in the Northwest, making up an expanded Northwest Division of Kaiser Permanente that will serve more than 1 million people. . . . The 6th U.S. Circuit Court of Appeals upheld its 1996 decision that **lawsuits against silicone breast implant maker Dow Corning Inc.** and its parent companies—Dow Chemical Co. and Corning Inc.—be consolidated in federal bankruptcy court in Michigan. The appeals court ruling will affect about 10,000 cases pending in state and federal courts nationwide.

Foundation

Continued from page 3

pany. Daniel D. Crowley, former chairman and president and CEO of Foundation Health Corp. and briefly chairman of the newly merged FHS, will step down as chairman to become a member of the board and consultant to FHS for three years. He will receive a severance amount of about \$8.4 million. These changes were to occur a year after the merger, but in a statement released Friday Mr. Crowley said he was not hesitant to give up his top post because FHS was "firmly in the capable hands" of a new management team.

The company also plans to compete for the business of Medicare beneficiaries in the Northeast who spend winters in Florida, Texas and Arizona, which also are among the 17 states that the network serves, he said. FHS also will work on "completing our strong position" in California, Arizona, Washington and Oregon, Mr. Gellert said.

"We have a clearly defined strategy of concentration in the Northeast and concentration in existing markets," he said.

Despite the recent expansions, Mr. Gellert said that FHS for the next 12 months will concentrate most of its energies on integrating existing plans and not building empires. He said the flurry of HMO deals in recent weeks was the fruition of HSI projects long in the works.

FHS will not be aggressively seeking new acquisition opportunities during the next year, he said.

Plan sponsors with FHS contracts will gradually notice administrative improvements, stronger partnerships with providers and a larger choice of specialty managed care services, such as behavioral health options, dental plans and pharmacy benefit management, Mr. Gellert said.

Among the merger advantages for plan sponsors will be more extensive networks—giving members more choice—and the ability of multistate employers to cover far-flung workers under the same plan, he said.

"The most important thing a large managed care company has to do in order to be successful is to prove there is advantage to size," Mr. Gellert said. "We have to prove to our customers there is demonstrable advantage to

these kinds of mergers."

Buyers should not expect, however, that economies of scale achieved through mergers will be reflected in lower HMO or PPO premiums, Mr. Gellert said. "The era of reductions is over," he said. "The challenge is to provide reasonable and predictable increases over a period of time."

Health plans in the Northeast that cover fewer than a million lives have a tough time competing, said Robert Natt, president of Physicians Health Services. PHS posted its

clude a \$51.7 million investment on May 2 in FOHP Inc. of Red Bank, N.J., owner of First Option Health Plan of New Jersey, an HMO. With 254,000 HMO and PPO members in New Jersey and licenses pending in New York and Pennsylvania, the cash-starved plan—like FHS in Connecticut—accepted FHS's offer in search of long-term survival and to avoid erosion of its competitive position.

Another part of FHS's Northeast strategy already was in place: In April, FHS completed the \$12.5 million purchase of Pittsburgh-based Advantage Health, a managed care company with 40,000 members, \$56 million in 1996 revenues and markets in Pennsylvania, Ohio and West Virginia.

FHS also agreed last month to purchase PACC, a 116,000-member health plan based in Portland, Ore., as part of its continual shoring up where the company already is strong.

When FHS goes back to the market looking for deals, the Northeast is surely where Foundation will continue to focus attention, especially in light of market saturation on the West Coast, said Rick Shaw, financial analyst for A.M. Best in Oldwick, N.J.

"They're focusing on densely populated areas where they can get the most bang for their buck, where they can dramatically increase enrollment," he said.

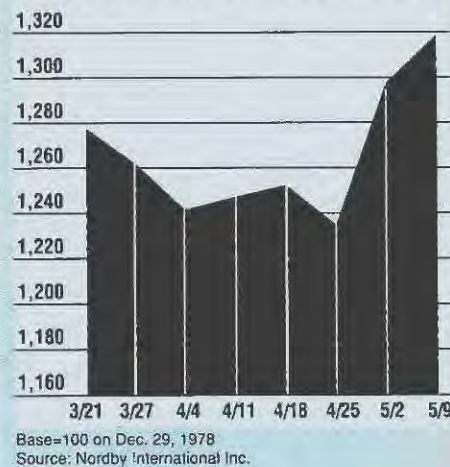
Buyers of health care coverage aren't sure whether the debut of FHS will have strong positive effects on their companies or employees, said Patricia E. Powers, executive director of the San Francisco-based Pacific Business Group on Health. PBGH is a non-profit coalition of West Coast employers that negotiates on behalf of its members with managed care companies, including FHS, for better rates and quality.

"We have sort of mixed feelings about these mergers and feel it will take another year to see how it turns out," she said.

Plan sponsors could benefit by increased efficiencies, expanded networks and closer ties between FHS and providers, Ms. Powers said. The possible risk, she added, would be the creation of a managed care oligarchy consisting of FHS and a few other vast HMO and PPO networks.

"The jury's out on whether a small, regional plan will survive," she said. "If you're looking at overall trends, certainly bigger is better in the eyes of the payer."

BI Insurance Index



PCS catastrophe options

As of May 9			
Call spread	Price bid/ask	Call spread	Price bid/ask
Southeastern September 1997			
40/60	2.5/—	California Annual 1997	
60/80	—/2.5	60/80	—/1.8
80/100	—/2	70/90	5/1.5
National Annual 1997			
80/100	—/7	Western Annual 1997	
120/140	—/4.5	60/80	—/2
June Midwestern 1997			
10/20	—/6	70/90	7/1.6
5/15	3/6		
Total volume: 320 Total open interest: 11,997			
For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.			
Source: Chicago Board of Trade			

British Issues

May 9	Price	P/E	Div.	Yield	52 week
Companies	pence	pence	%	high—low	
Comml Union	732	12.9	30.3	5.2	759—550
Genl Accident	954	8.8	34.3	4.6	954—614
Gdn Royal Exch	289	5.9	10.0	4.3	301—227
Independent	727	9.1	13.3	2.3	727—373
Royal & Sun	513	14.9	19.0	4.6	515—357
Brokers					
Bradstock	84	13.6	5.7	8.5	84—54
CE Heath	89	10.8	4.5	6.4	115—74
Lloyd Thompson	185	NA	10.0	6.8	206—167
Lmbri Fenchurch	111	12.8	8.4	9.5	150—101
Nelson Hurst	140	12.8	8.6	7.7	206—121
Sedgwick Grp	128	11.0	8.0	6.2	152—115
Steel Bri Jones	29	9.9	5.5	6.6	48—22
Willis Corroon	146	12.4	6.6	5.7	169—117

Source: Nordby International Inc.

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BROKERS

Acordia Inc.	NYS
E.W. Blanch Holdings Inc.	NYS
Gallagher Arthur J. & Co.	NYS
Hilt, Rogal & Hamilton	NYS
Kaye Group Inc.	NDO
Marsh & McLennan	NYS
Poe & Brown	NDO
BROKERS	AVERAGE

INSURERS/REINSURERS

ACE Ltd.	NYS
Acceptance Insurance Cos.	NYS
AEGON N.V.	NYS
Aetna Life & Casualty	NYS
AFLAC Inc.	NYS
Allied Group Inc.	NYS
Allmerica Prop. & Casualty	NYS
Allstate Corp.	NYS
AMBAC Indemnity Corp.	NYS
American Bankers Ins.	NDO
American Financial Group	NYS
American General	NYS
American Heritage Life Ins.	NYS
American Indemnity/Fin'l	NDO
American International	NYS
Aon Corp.	NYS
Argonaut Group	NDO
AVEMCO Corp.	NYS
Baldwin & Lyons Inc.	NDO
Berkley W.R. Corp.	NDO
Berkshire Hathaway Inc.	NYS
Capital RE Corporation	NYS
CapMac Holdings Ltd.	NYS
Capsure Holdings Corp.	NYS
Chartwell Re	NYS
Chubb Corp.	NYS
CIGNA Corp.	NYS
CNA Financial Corp.	NYS
EMC Insurance Group Inc.	NDO
Enhance Financial Services	NYS

Top advancing issues: GCR Holding Ltd., Executive Risk Inc., EXEL Ltd. Leading decliners: Gainco Inc., CapMac Holdings Ltd., Vesta Insurance Co. Most active issue: Oxford Health Plans. The BI Index rose 1.6%; the Dow Jones 30 Industrials increased 1.4%; the S&P 500 increased 1.5% and the NYSE Composite increased 1.5%. Average P/E: Brokers, 16.6; Insurers/reinsurers, 18.4; HMOs, 29.5.

System design: Nordby International Inc.