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Update

U.S. Justice Department seeks reinstatement of antitrust suit

SAN FRANCISCO—Without addressing the "ultimate merits" of the case, the Justice Department last week filed a brief supporting 19 state attorneys general in their effort to pursue an antitrust suit against 31 insurance industry defendants.

The brief asks the 9th U.S. Circuit Court of Appeals in San Francisco to reverse a lower court dismissal of the suit and to remand the case to district court, said a department spokeswoman (*BI*, Sept. 25, 1989).

Continued on next page

Judge defines fair insurer profit

11.2% to 19% return proposed

By LOUISE KERTESZ

SAN BRUNO, Calif.—An administrative law judge's recommendations for an adequate rate-of-return for property/casualty insurers in California could effectively kill Proposition 103's 20% insurance "charge" rollback mandate.

And, in the future, insurers should be allowed between a 11.2% and 19% rate of return on their combined business, Judge William J. Fernandez recommends.

Commercial lines insurers, in particular, should not be held to a specific rate of return, the judge said.

California Insurance Commissioner Roxani Gillespie had said the department would apply a 11.2% rate of return—by line of coverage—to those insurers seeking relief from the controversial law's mandated 20% insurance "charge" rollback provision.

The judge also refused to disqualify himself amid charges of a conflict of interest.

Insurers generally welcome Judge Fernandez's decision, saying it reflects an understanding of their operations.

However, consumer activists are furious with the recommendations of Judge Fernandez, who had presided over five months of testimony by insurers, the Insurance Department and consumer activists.

The state attorney general said "the-business-as-usual regulatory approach recommended by Judge Fernandez would be a disaster for the consumers of California and a betrayal of the voters who enacted Proposition 103."

Ms. Gillespie has 100 days from the day after Judge Fernandez's May 3 decision to adopt, modify or reject the recommendations. However, the commissioner is expected to issue her decision within 30 days, said Karl Rubinstein of Los Angeles-based Rubinstein & Perry, the commissioner's special counsel.

Meanwhile, Mr. Rubinstein is recommending a somewhat narrower range of an allowable rate of return and suggesting that different rates of return be applied to insurers' commercial and personal lines business. If Ms. Gillespie adopts those rates of return, some insurers definitely would have to rebate premiums to policyholders, Mr. Rubinstein said.

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Enserch wins round in WPPSS coverage battle

By DOUGLAS McLEOD

DALLAS—Two professional liability insurers are expected to appeal a jury verdict that could leave them liable to an engineering firm for nearly $65 million in damages stemming from the massive 1983 bond default by the Washington Public Power Supply System.

A federal jury last month resolved several insurance coverage issues in favor of Dallas-based Enserch Corp. and a subsidiary, Ebasco Services Inc., in a lawsuit against their professional liability insurers, General Accident Insurance Co. of America and Evanston Insurance Co., and the insurers' underwriting manager, Shand Morahan & Co. Inc.

Ebasco provided engineering and other services to WPPSS in its ill-fated effort to build two nuclear power plants in Washington state. The project was canceled in 1982, due to cost overruns, management problems and numerous delays, and WPPSS later defaulted on $2.25 billion in bonds issued to fund the construction, one of the largest municipal bond defaults ever.

Ebasco was among numerous parties named in lawsuits filed by WPPSS bondholders after the collapse.

In its April 27 verdict, the Dallas jury threw out a number of defenses raised by General Accident and Evanston, including that the two professional liability insurance policies—each carrying a $25 million limit—were actually intended to provide only a single $25 million limit.

The verdict—coupled with ear-

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More than a tea party

More than 8,100 conference and exhibitor registrants gathered for the 28th annual Risk & Insurance Management Society conference held in Boston April 29 to May 4. Conferees attended sessions tackling risk management issues ranging from what insurance could have covered the 1773 Boston Tea Party to the threat of earthquakes in the future. Reports begin on page 3.

Broker earnings lower than expected

By LINDA J. COLLINS

Publicly held insurance brokers, squeezed by continued rate competition and lower contingency commissions from insurers, are kicking off the 1990s on the wrong foot.

And while some observers see a brighter outlook for 1990, others say rates are still heading downward, which could knock brokers off their stride for several more quarters.

"Earnings were pretty much disappointing across-the-board" in the first quarter for the public brokers, said financial analyst Michael A. Smith, vp of Shearson Lehman Hutton Inc. in New York.

"Revenues in the first quarter did not come in anywhere near where we were anticipating last November after a little bit of wind and groundshake," Mr. Smith quipped, pointing out that Hurricane Hugo, the California earthquake and other disasters last fall "did not cause insurers to change their underwriting practices significantly enough."

"We were surprised that rate competition did not ease more in the quarter, particularly for medium-sized accounts," said financial analyst Thomas G. Rosencrants, senior vp and director of research for Interstate/Johnson Lane in Atlanta.

"Overall results were worse than we expected," he said.

However, some brokers maintain that the soft market is bottoming out.

"I think that this spring we are moving into a stable or neutral pricing environment, in the aggregate, in primary lines," after three years of "significant declines in pricing," said J. Michael Bischoff, vp of New York-based Marsh & McLennan Cos. Inc.'s Corporate Development Group.

However, M&M—the world's largest broker—is still seeing rate competition for excess lines of coverage, he said.

And, "a soft market still existed through most of the first quarter. . .with price reductions in the aggregate," he added.

"There's a little more firming now and rates are gradually getting better," said Patrick G. Ryan, chairman, president and chief executive officer of Aon Corp. in Chicago, discussing Aon's Rollins Burdick Hunter Group subsidiary.

He adds that there was a "modest erosion" in rates in the first

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House approves legislation mandating family leaves
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Court rules excess insurers aren't liable for broke primary
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Underwriter Stephen Merrett settles runoff policy dispute
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Update

U.S. aids states in antitrust suit

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"Our brief expresses our concern that the district court's discussion of the law and its opinion may be understood improperly to expand antitrust immunities," she said. It argues that the opinion "may be read improperly to narrow the scope of the boycott exception to the McCarran-Ferguson Act."

The 30-page U.S. brief takes issue with Judge William Schwarzer's dismissal of the case on the "state action" doctrine, which provides immunity from antitrust laws if the anticompetitive restraint of trade reflects a state policy.

The Justice Department also argues against the judge's decision to dismiss charges against foreign defendants on the basis of comity, a reciprocal respect for foreign law.

In a separate, joint brief, the attorneys general and private plaintiffs contend their suit should not have been dismissed.

Long-awaited pension rules

WASHINGTON—The Internal Revenue Service last week released sweeping, long-delayed pension non-discrimination rules that the IRS claims simplify non-discrimination testing and provide safe harbors that many pension plans will be able to use.

The proposed rules, which entail more than 300 double-spaced pages, cover such areas as integration of pension benefits with Social Security, minimum participation requirements and non-discrimination tests relating to benefits and employer contributions.

The rules generally would be effective for plan years beginning on or after Jan. 1, 1991.

While the rules are enormous in scope, "the big relief is that at least we have something in black and white we can rely on," said Charles Commander, a consultant in The Wyatt Co.'s Boston office. "At first glance, the rules will be workable for many employers."

Insurer bond holding rules

WASHINGTON—The National Assn. of Insurance Commissioners is expected in June to approve two proposals further regulating insurers' bond holdings to enhance insurers' solvency.

One proposal would change bond designations and require life insurers to use six instead of four categories to report their bond holdings on Schedule D of the NAIC's reporting blank beginning this year. The categories range from AAA to "in or near default." Insurers also would have to report whether bonds were publicly or privately placed.

The other proposal would cut approximately in half the time life insurers have to accumulate the Mandatory Securities Valuation Reserve, the amount of money they must set aside to cushion against potential stock and bond losses. The proposal also establishes reserve requirements for the two new bond categories.

Reserve changes should be phased in over five years beginning in 1991 to ease the impact of the changes, said Terry Lennon, chief examiner of the New York Insurance Department and chairman of the working group that made the proposals.

The regulations are different for property/casualty insurers.

Ruling could 'endanger' D&O

BALTIMORE—Directors and officers liability insurance premiums for financial institutions could rise dramatically if other courts follow a Maryland appellate court's lead in striking down two key D&O exclusions for banks and thrifts, lawyers and consultants say.

The Maryland Special Court of Appeals upheld a lower court ruling that D&O insurers cannot deny coverage when regulators take action, or when institutions sue their officers.

Both the "regulatory" and "insured vs. insured" exclusions have been standard since the late 1950s, the experts say.

The May 2 ruling stems from the Maryland Deposit Insurance Fund's 1987 suit against officers of First Maryland Savings & Loan Assn. in Silver Spring, Md. After winning a $387 million judgment, the state also won a suit to recover damages from the S&L's insurer, American Casualty Co. of Reading, Pa., a CNA Financial Corp. unit.

"The impact across the nation will be significant. . .this case will have persuasive value even if it's not binding," said Neil Dilloff of the Baltimore law firm of Piper & Marbury, who represented the state fund. First Maryland had $3 million in D&O limits, he said.

"This decision will definitely endanger the D&O market," said Ed Armstrong, a Wyatt Co. consultant in Washington.

Mr. Dilloff said he expects the insurer to appeal to the State Court of Appeals, Maryland's highest court.

Updates continue on page 79

Errors and omissions

• Gerling-Konzern Allgemeine Versicherungs A.G. of Cologne, West Germany, is participating on a new excess liability line slip in the London market providing $100 million of coverage excess of $200 million. An incorrect Gerling unit was identified as the participant in the April 16 issue.

• Atlantic Security Ltd. in Bermuda sold 60% of a formerly inactive licensed brokerage and captive management subsidiary, which is now Park International Ltd. Atlantic Security continues to broker insurance and reinsurance and manage captives under its own name. A reference to the sale in the April 30 issue could have been misinterpreted.

• Due to a production error that resulted in a photograph being printed in reverse of the proper image, the names of two Euro Disneyland employees pictured in the April 30 issue were reversed.

• A search committee of the Risk & Insurance Management Society Inc. and a search consultant will seek a new executive director to succeed Ron Judd, who is retiring in May 1991. They will not help recruit members to serve as executive officers of RIMS as incorrectly stated in the May 7 issue.

Family leave mandate

House acts despite veto threat

By JERRY GEISEL

WASHINGTON—Legislation nearing congressional approval would require most employers to offer lengthy unpaid family and medical leaves, but only a small percentage of employees are expected to utilize the programs.

The House of Representatives last week approved on a 237-187 vote H.R. 770, which would require most employers with at least 50 employees to provide workers with up to 12 weeks of job-protected unpaid leave per year. A somewhat different bill, S. 345, has been cleared by the Senate Labor and Human Resources Committee and is awaiting action by the full Senate (see story, page 80).

The Bush administration sent out word last week it would veto family leave legislation, commenting that it doesn't believe the government should mandate specific benefits.

Supporters of the measures currently do not have enough votes to override a veto.

Under H.R. 770, the leave could be used to care for a newborn or adopted child or to take care of a seriously ill child, spouse or parent. Unpaid leave also could be taken for an employee's own medical illness.

Only employees who worked 1,000 hours—roughly six months—for an employer over 12 months would be eligible for family or medical leave.

However, companies would not have to extend unpaid leave programs to the highest-paid 10% of salaried employees. In addition, a company could deny unpaid leave to any employee if it could prove that the denial was necessary to prevent "substantial and grievous injury" to the company's operations.

To prevent abuse, the legislation would allow employers to require employees to provide medical certification by a physician to support an employee's request for temporary family or medical leave. The information required could include the date the condition began, probable duration and appropriate medical facts.

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Court rules excess insurer not required to drop down

By STACY ADLER

ST. LOUIS—An excess insurer has no duty to drop down to pay claims when an insolvent underlying insurer cannot pay the claims, according to the 8th U.S. Circuit Court of Appeals.

Attorneys expect the April 13 decision, which is consistent with other federal and state appellate rulings, to have a limited impact.

The 8th Circuit ruling interpreting Missouri law came in a coverage dispute that erupted when Interco Inc. of St. Louis demanded that two excess insurers drop down to fill a coverage gap created by the insolvency of Los Angeles-based Mission Insurance Co.

Interco sued Chicago-based National Surety Corp., a unit of Fund American Cos. Inc., and Warren, N.J.-based Federal Insurance Co., a unit of Chubb Corp.

This ruling's impact, lawyers say, will be limited because excess insurer drop-down cases turn on policy language, which can vary from insurer to insurer.

"There is a lot of different policy language" in the excess insurance policies now being interpreted by the courts, said Robyn Griefzu Fox of Moser & Marsalek in St. Louis, who represented the insurers in the litigation.

The 8th Circuit determined excess insurers had no duty to drop down by examining specific language in each policy.

In 1984 and 1985 there was no standard excess liability policy language, Ms. Fox said. The case involved 1984 policies.

Attorneys also note the ruling is consistent with several other state and federal court rulings.

"The majority of courts do not force excess insurers to drop down," Ms. Fox said.

"This decision is wholly consistent with the majority view," said Sanford Kingsley, a lawyer with LeBoeuf, Lamb, Leiby & MacRae in San Francisco who tracks this

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The Group Inc. seeks to sell insurance units

Ohio seeks control of OGICO

By CAROLYN ALDRED

CONCORD, Mass.—Facing regulatory action in at least two states, The Group Inc. is trying to sell its insurance subsidiaries.

The Concord, Mass.-based holding company, which owns The Oil & Gas Insurance Co. of Westerville, Ohio; Petrosurance Casualty Co. of Tulsa, Okla.; and Chicago-based Millers National Insurance Co., late last week was trying to sell the subsidiaries after the Ohio Insurance Department filed a court order seeking rehabilitation of OGICO.

A hearing on the order is scheduled today in the Court of Common Pleas in Franklin City, Ohio.

The department claims OGICO does not meet Ohio's minimum $2.5 million surplus requirement according to the department's valuation of receivables and liabilities owed OGICO by subsidiaries and affiliates.

OGICO is contesting the rehabilitation order and hopes the sale of the units will resolve the dispute, said Clive Becker-Jones, president of The Group, a public company.

The negotiations "are based on the sale of OGICO and other insurance subsidiaries of The Group to third parties who have already indicated in principle their willingness to acquire (the subsidiaries) at fair value," Mr. Becker-Jones said.

On April 16, the Oklahoma Insurance Department ordered Petrosurance to suspend underwriting and transacting business with affiliate companies, said Mary Clark, the department's general counsel.

The Oklahoma department has several concerns about the company's assets, including shareholdings in affiliate companies, she said. The suspension will remain in force until the state has completed a financial review of Petrosurance, she said.

The Illinois Insurance Department also is examining the financial status of Millers National.

The three property/casualty insurance companies wrote net premiums in 1989 totaling $41.2 million, Mr. Becker-Jones said. ■

Inside

✔ One of two editorials this week congratulates Cheri Hawkins upon her election as president of the Risk & Insurance Management Society, while the other warns health care risk managers to continue to ensure quality care is provided despite the introduction of the National Practitioner Data Bank. **PAGE 8**

✔ The first dispute over an unlimited runoff reinsurance policy to go to trial suddenly was settled last week by the three parties in litigation—underwriters Stephen Merrett and Derek Dolling-Baker and broker Winchester Bowring Ltd. **PAGE 71**

✔ The accuracy and relevance of the Pension Benefit Guaranty Corp.'s list of corporate pension plans with the largest unfunded liabilities is under fire from benefit managers and consultants. **PAGE 74**

✔ Two public entities—Seattle and Santa Cruz County, Calif.—recently began offering health care benefits to their employees' unmarried partners. **PAGE 80**

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1990 RIMS conference

Confronting radical change

Risk managers' creativity valued at home...

By MICHAEL BRADFORD

BOSTON—Excellence in risk management involves innovative thinking and adapting to the profession's changing demands, a panel of experts agrees.

It means going "a little beyond the traditional thinking process," says Jeffrey W. Pettegrew, risk manager and chief administrative officer of the Contra Costa County Municipal Risk Management Insurance Authority in Walnut Creek, Calif.

Risk managers ought to go beyond "linear thinking" to seek "innovative solutions to a growing number of risk management challenges," Mr. Pettegrew said during a panel discussion at the 28th annual Risk & Insurance Management Society conference in Boston.

Those challenges should cause observers to rethink their notions of risk management, said H. Felix Kloman, vp and principal of the Tillinghast division of Towers, Perrin, Forster & Crosby Inc. in Stamford, Conn.

"The discipline itself has changed rather radically. So the technical descriptions of excellence are changing even as we go from one year to the next," he said.

Excellence may be measured "in our capacity to adapt to the future and to change rather than in meeting rigorous criteria established in the past," he said. "We've moved clearly from insurance to risk financing; we've moved from simple loss prevention to risk control; we've moved from prediction to sophisticated risk assessment."

In the 13 years *Business Insurance* has presented the Risk Manager of the Year Award, the nominating statements have reflected the "changing challenges confronting risk managers, their increasing sophistication and the individual needs of their specific employers," said *BI* Editor and Associate Publisher Kathryn J. McIntyre.

Since its inception in 1977, the award has served to "heighten top management's awareness of risk managers," she said.

The field is coming to be regarded as "part of the vanguard rather than part of the mainstream," contends Mr. Kloman.

Mr. Pettegrew, who was the 1989 *BI* Risk Manager of the Year, said innovative thinking has been necessary for the 17-city insurance pool he manages.

"We have found that in trying to make decisions that affect risk management, sometimes our presumptions don't work."

To illustrate, he refers to a problem facing cities in the pool: accidents caused by speeders taking shortcuts to work through residential neighborhoods.

Mr. Pettegrew said the cities avoided using speed bumps because they "create a lot of liability and they are a harassment to drivers." Another elementary approach—multiple stop signs and signals—are "never seemingly that effective," he added.

"We tried a different approach," he explained. A sign was erected in some areas that read: "Our kids thank you for slowing down through our neighborhood."

Studies later found that "we did reduce dramatically the number of speeding incidents. . .and hopefully we did save a number of lives," Mr. Pettegrew remarked.

Risk managers, said Mr. Kloman, can attain excellence by developing proper skills, including:

- Managing people.

"The excellent risk manager does not do it alone, but draws on a team—not only the team within the risk management department. . . but drawing on the entire corporate team. Managing people means developing risk awareness throughout the organization," he said.

- Communicating ideas and results.

Risk managers need a variety of media skills to manage risks, Mr. Kloman said. He referred to Mr. Pettegrew's using a video to show playground workers the seriousness of injuries that result from careless maintenance of equipment.

John A. Lindquist, who recently retired as divisional vp of risk

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Business will ultimately determine whether revolution succeeds in Eastern Europe. Risk managers, says John F. O'Sullivan of Marsh & McLennan, have a crucial role to play.

...And in Eastern Europe, their role is vital

By JUDY GREENWALD

BOSTON—U.S. risk managers have a crucial role to play in establishing joint ventures in the wake of the breakdown of Communism in Eastern Europe, says a Marsh & McLennan Inc. official.

John F. O'Sullivan, managing director for M&M Inc. in New York, said business will determine whether or not political revolution there ultimately succeeds.

But before the energy of business can be unleashed, risk management professionals "must become more knowledgeable about the situation," Mr. O'Sullivan said at a session at the 28th annual Risk & Insurance Management Society conference in Boston.

"We must apply creative risk management techniques. We must provide appropriate responses to the existing uncertainty. Reducing uncertainty is essential to encouraging investments sufficient to make a difference in Eastern Europe," he said.

"Rapid change, transitional governments, devastated economies—all of these translate into uncertainty, and where there is uncertainty there is a need for insurance," said Mr. O'Sullivan.

Without insurance, he argued, it is "very doubtful" that a meaningful trade relationship could develop between East and West.

State-owned insurance companies now predominate in Eastern Europe, he said.

Generally, one insurer writes domestic business on a local currency basis. A separate company writes international business in U.S. dollars, Swiss francs or other widely convertible currencies.

For example, domestic insurance in the Soviet Union is handled by Gosstrakh and international insurance is handled by Insurance Co. of the U.S.S.R. (Ingosstrakh) Ltd., which is free to trade in all "hard," or convertible, currencies and is expected to make a profit.

Foreign insurers are prohibited from doing business in the Soviet Union or from participating in a joint-venture insurer, Mr. O'Sullivan noted.

Press reports have indicated that a new law could allow Western insurers to write Soviet business, but "I don't foresee the Soviets being that hospitable," he said.

However, Ingosstrakh has cooperative agreements with Western insurers, and insurers in Poland, Romania, Hungary, Czechoslovakia and Yugoslavia have cooperative agreements or joint ventures with Western insurers.

Insurance concepts will cause problems in insuring ventures in Eastern Europe, where state-owned insurers have little experience with product liability, environmental pollution and other risks that concern U.S. corporate risk managers, he predicts.

"In many cases, the insurance they consider optional for joint ventures are those of greatest concern to us," said Mr. O'Sullivan.

State-owned companies have indicated a "reluctant willingness" to provide such coverage, though they are concerned about the U.S. liability system, he said.

Mr. O'Sullivan discussed insurance by category:

- Environmental pollution.

Laws do regulate pollution, but the "penalties for violations usually take the form of fines rather than the Western approach of legal liability," he said.

But widespread reform has made concern with the environment into a political issue, he said.

"As Eastern Europeans become more aware of the hazards of environmental pollution, can expanded liability for environmental pollution be far behind?" he asks.

- Product liability.

After reading some East European liability policies, one likely would assume this coverage is provided. But, said Mr. O'Sullivan, the language is misleading. "It is simply an exposure with which many state-owned companies are unfamiliar," he said.

But, Mr. O'Sullivan noted, several countries are studying legislation that would create product liability exposures.

That exposure already exists for goods exported to the West, particularly to the United States, he said.

- Directors and officers liability.

Continued on next page

Eastern Europe

Continued from previous page

To date, there is no law concerning the responsibilities, duties or obligations of board members, managers and officers of Eastern European joint ventures.

"Sooner or later, however, Eastern European criminal or labor law, or perhaps the civil law, might affect corporate officers," said Mr. O'Sullivan.

"It might become very important to have directors and officers coverage, but that form has yet to be developed," he added.

Jeffrey A. Burt, a partner with Arnold & Porter, a Washington, D.C. law firm, emphasized the differences between Soviet and American corporate law.

In the Soviet Union, he said, the tort liability system does not recognize pain and suffering; damage awards are "extremely modest," with no concept of an estate to be passed to survivors; and there is no product liability statute.

Mr. Burt also stressed the uncertainty over legal developments within the Soviet Union in the coming months.

Many laws are being considered and some have already been passed, he said, but the regulatory structures that give them meaning will not develop for many months.

To many Soviet managers, "insurance is an unknown phenomenon," he said.

And explaining it and convincing them to pay an appropriate share of insurance costs will be both "time consuming and painful."

Mr. Burt also warned that the "legal framework. . .requires a great deal of negotiation and time."

As an illustration, he cited a seminar discussion with some Soviet officials on a theoretical joint venture in which a Soviet partner and an American partner each contributed $100,000. After five years, the business was worth $2 million and the partners decided to liquidate.

How much should the U.S. partner get? he asked the Soviets, thinking the answer was obviously $1 million.

To many Soviet managers, 'insurance is an unknown phenomenon,' says Mr. Burt.

The Soviets did not understand the entire concept, he said.

Subsequent Soviet joint venture guidelines said that in the event of liquidation, each partner is entitled to "residual balance value."

Attributing the phrase's obscurity to a problem in translation, Mr. Burt asked an attorney what it meant.

"It has no meaning in any language," came the reply.

Mr. Burt said the issue has to be negotiated in each individual case.

Mr. Burt concluded his talk with a final piece of "bad news": "The legal profession is now becoming respectable in the Soviet Union, so we must take the good with the bad."

Kari Liukkonen, a senior department manager for the Helsinki, Finland-based Pohjola Group, which has worked in cooperation with Ingosstrakh since 1954, also had some advice for companies forming joint ventures in the Soviet Union.

Local risk management is a "key point" for joint ventures in the Soviet Union, said Mr. Liukkonen. "You cannot manage risk long distance. Keep risk management in your own hands."

Mr. Liukkonen said that while Ingosstrakh is the only official insurance company doing international business in the country, it will work with Western co-insurers or reinsurers. Claims are paid in the same currency as premiums, he said.

Insurance is mandatory for property; business interruption; personnel, including injury to the health and property of Soviet workers; and liability, including environmental pollution and general liability.

Non-mandatory lines include machinery breakdown, boiler and machinery, import-export cargo, crime and credit coverages, said Mr. Liukkonen.

Foreign companies doing business in the Soviet Union and Eastern Europe are charged the same rates as local companies, he said. But, differences from from local rates are negotiable, he added.

Policies are available in English, he said, and there are no basic differences between basic language used by Western insurers and by Ingosstrakh. Special wording is negotiable, according to Mr. Liukkonen.

Turning to claims handling, Mr. Liukkonen advised policyholders to read the basic wording and inform their insurers and head office about claims as soon as possible.

He also warned that claims must be filed within a year.

Mr. Liukkonen reviewed other key factors and recommendations in insuring joint ventures in Eastern Europe, including:

- Beware of cultural differences between the West and Eastern Europe.
- Using a combination of local and Western know-how is the best approach to risk management.
- Legislation affecting risk management in Eastern Europe is still "incomplete."
- Put catastrophe plans in place.

Gerard Jansen, general manager for European American Underwriters Agency in Vienna, Austria, discussed the future of the reinsurance market in Eastern Europe.

EAU is a joint venture of Bermuda-based American International Underwriters Overseas Ltd., an American International Group Inc. unit, and state-owned companies in Hungary, Poland and Romania.

"Just as there is on the political side, a certain uncertainty could also arise on the reinsurance side, which will probably settle itself in the years to come," said Mr. Jansen.

"It is true that reinsurance is based on long-term, and not short-term, relations, so patience is required," he advised.

Charles Berry, managing director of Lloyd's of London broker Berry Palmer & Lyle Ltd. in London, and Miles S. Connell, director of London-based Bowring International Insurance Brokers Ltd., reported growth in political risk coverage written for the region.

Mr. Berry cited "incredible growth" in the ratio of political risk inquiries to policies actually placed for ventures in Eastern Europe and the Soviet Union over the last three years.

"All in all, a growing market is available to cover these risks," said Mr. Connell.

Walther Leisler Kiep, a partner of reinsurance broker Gradmann & Holler/Guy Carpenter in Stuttgart, West Germany, and an M&M director, discussed political developments in Central and Eastern Europe.

Charles J. Salek, managing director of risk management services for Asea Brown Boveri in Stamford, Conn., moderated the session. ■

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Deregulation stimulates global market

By CAROLYN ALDRED

BOSTON—U.S. corporate risk managers can expect access to broader and more sophisticated insurance coverage throughout the world as local insurance marketplaces become more international.

Political and economic changes throughout the world, including the European Community, Eastern Europe and the Far East, will lead to increasingly deregulated and less restricted insurance marketplaces, according to speakers at the 28th annual Risk & Insurance Management Society conference held earlier this month in Boston.

For example, "the European market is certainly opening up, and rapidly, in anticipation of 1992," said Stephen P. McGill, a director of London-based broker Lloyd Thompson Ltd.

"Competition is increasing and service is improving. This new European environment will clearly benefit those businesses that get customer service right," he added.

"The major retail brokers, and indeed underwriters, are concentrating more than ever before on getting their office networks in Europe up to a consistently high standard of service in line with an integrated strategy decided by the parent company," he noted.

"The increasingly competitive business environment with which we are faced, combined with the opening up of Europe and 1992, presents great opportunities for the discerning risk manager controlling insurances for U.S. multinational concerns," he said.

For example:

- European insurers that have a large market share in their own nations "realize that to expand they must move beyond their indigenous markets and become even more serious international players."
- Lloyd's of London "has announced plans to dismantle barriers between traditional segments of its business" previously separated into marine, non-marine, aviation and motor markets. "This greater freedom to transact business within Lloyd's should enable Lloyd's to fully harness its capacity and compete on more equal terms with some of the major insurance companies," predicted Mr. McGill.
- A new London Underwriting Center is being established and should be "up and running" in March 1992, housing up to 100 non-marine insurance company underwriters in one building.

"With this setup, the tradition of spreading the risk in London through Lloyd's and the company underwriters will be enhanced and the speed of service will be improved," said Mr. McGill.

- Many underwriters are "going global. This means they are positioning themselves to respond to any multinational client who has a mix of U.S. domestic and foreign non-marine exposures and marine risks," he said.

"With all these developments, there are some very interesting products being developed in Europe that are highly attractive and beneficial to risk managers of U.S. multinational concerns," said Mr. McGill.

For example, property damage and business interruption products being developed include:

- All-risk policies tailor-made to a client's individual needs.

"This is nothing new in London, but more and more European underwriters are accepting business on this basis," said Mr. McGill.

- Blanket policy limits exceeding $1 billion "have been negotiated in Europe in certain cases with no sublimits unless there is a heavy catastrophic exposure such as earthquake, in which case a limitation may be introduced."
- Competitive pricing with staggered premium payments to facilitate cash flow.
- Two- to three-year policies that, in certain cases, cannot be canceled by the insurer.
- Engineering services included in the premium.

However, the same developments may not be apparent in the casualty insurance market, said Mr. McGill.

"Inevitably, it is in a state of flux and reassessment following the H.S. Weavers (Underwriting) Agencies Ltd. situation," noted Mr. McGill (*BI*, April 2).

However, "there are alternatives to H.S. Weavers in London and many London brokers are finding replacement markets for their clients," he pointed out.

Also, certain European insurers are accepting more U.S. liability business, according to Mr. McGill.

"I believe as a generalization the most effective casualty solutions are sometimes found when a client's business is placed as a package also encompassing property and, if possible, marine exposures. This balance to an underwriter makes the acceptance of the casualty risks much more palatable," he explained.

Meanwhile, massive political change under way in Eastern Europe likely will lead to fundamental changes in the insurance industry in those countries, other speakers on the panel predicted.

However, "we have to recognize that all of Eastern Europe is in such a state of transition (that) what we talk about today may not be relevant tomorrow," warned Steve A. Schleisman, president and chief executive officer of Paris-based UNAT S.A., the European underwriting subsidiary of American International Group Inc.

The fastest change probably will occur in East Germany, predicted Mr. Schleisman.

West German insurers probably will be able to operate within East Germany by year-end. "It's going to be open competition there very soon. It's also going to be a hard currency environment," he said.

Meanwhile, Poland began insurance reforms in 1985, "but it did not result in a significant change as the state still insisted on 51% state ownership" of any insurer operating in Poland, said Mr. Schleisman.

Now, Poland is moving away from its 51% ownership requirement, he noted.

The insurance companies currently operating in Poland are Polish National Insurance and WARTA Insurance & Reinsurance Co. Ltd., both based in Warsaw.

In Bulgaria, "the climate is generally improving for joint ventures, but there is still a long way to go," said Mr. Schleisman.

The two insurers currently operating in Bulgaria are Bulgarian Foreign Insurance & Reinsurance Co. Ltd. and Darschawen Sastrachowatelen, both based in Sofia.

The Czech insurance market, which includes international insurer Ceska Statni Pojistovna (Foreign Insurance & Reinsurance Management), has developed very

Continued on page 10

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Opinions

Hawkins blazes trail

WOMEN IN RISK management—and indeed women throughout the insurance business—are taking pride in the election of Cheri J. Hawkins as president of the Risk & Insurance Management Society Inc. for the coming year.

Ms. Hawkins is the first woman to be president of RIMS in its 40-year history, an important milestone both for women in risk management and for the organization.

It was quite an emotional moment for both women and many men during the annual membership breakfast that opened the 28th annual RIMS conference earlier this month when 1989-1990 RIMS President Ronald Stasch announced: "Now, with the greatest of pleasure, I would like to officially introduce your new president, Cheri Hawkins, with words that never before have been spoken within this organization:

"Madam President."

Ms. Hawkins, the director of insurance for Weyerhaeuser Co. in Tacoma, Wash., admitted to feeling goose bumps when she heard those words. Quickly picking up the beat, Ms. Hawkins pointed out that about one-third of RIMS' deputy members are women and—coincidentally—a third of the chapter officers and a third of the RIMS executive committee, which governs the society, are women.

Characteristically cheerful and playful, she added: "Don't worry guys, I'll represent you, too, just as whole-heartedly as I do the women."

An extremely hard worker who always is prepared for her assignments, Ms. Hawkins certainly will make both the males and females among the more than RIMS 9,000 deputy members proud to have her as president.

She's well prepared for her assignment, participating as a member of the Washington Chapter of RIMS since 1972 and having served as its president and a director.

Elected to the RIMS Executive Committee in 1984, Ms. Hawkins served as vp-research for two years, vp-finance and treasurer for two years, vp-conference in 1987 and last year as first vp, the steppingstone to the presidency.

Addressing risk management issues, Ms. Hawkins has the benefit of nearly 20 years of experience in risk management at Weyerhaeuser, where she progressed from assistant to the insurance manager in her first year to director of insurance today. She's an expert in both insurance and alternative risk financing vehicles, including single-owner and association captives. And, as a certified public accountant, she knows finance.

Already, dozens of women and men around the country in risk management and insurance have written to Ms. Hawkins, congratulating her on her election.

So gentlemen, don't be surprised when you see a special twinkle in the eyes of your female colleagues when Ms. Hawkins is introduced at functions in the coming year. It will reflect their pride that another woman is holding the top office of an organization representing 4,300 corporations and governmental bodies throughout the United States and Canada.

Congratulations Cheri!

Data Rx: Handle with care

THE NEW NATIONAL data bank containing information on medical malpractice claims and disciplinary proceedings against health care professionals will be a boon to risk managers at hospitals and other health care facilities—but only if used properly.

As we reported last week, all U.S. hospitals will be required to seek information from the National Practitioner Data Bank when extending or renewing privileges to health care professionals, including physicians, dentists, nurses and pharmacists. In addition, the Federal Health Care Improvement Act of 1986, which authorized the data bank, requires health care facilities to obtain updated information on their staff professionals every two years.

Information about medical malpractice awards and settlements and medical disciplinary actions, by law, must be reported to the data bank by medical malpractice insurers and the health care facilities themselves.

Of course, no one would deny that the data bank will become a powerful tool that health care risk managers can use when it becomes operational this summer. There currently is no central facility a hospital can tap to track a doctor's track record before he or she receives staff privileges. We applaud any tool that will help hospitals weed out careless or unskilled medical professionals and, thus, improve the quality of patient care.

However, once hospitals do get access to this mountain of data, they will have to quickly learn how to make the best use of it. What will be the criteria for not extending privileges to a doctor—or canceling privileges that have already been extended?

We have to wonder if judging a doctor purely on the number of medical malpractice awards and settlements paid on his behalf is always fair. In baseball an excellent fielding second baseman likely will commit more errors than an average player because the good player can reach hard-hit balls that the average player will simply watch go by. And truly skillful doctors may face more medical malpractice claims simply because they are willing to take more risk in order to save the life of a patient than doctors who simply prescribe two aspirin and bed rest or doctors who avoid high-risk cases.

Health care facilities must keep in mind that no matter how well staff members are screened through the data bank, incidents that can lead to medical malpractice lawsuits still will occur. Thus, it is paramount that health care risk managers continue to work with hospital quality assurance personnel to ensure quality care is provided. And risk managers must continue to insist on strict incident reporting procedures so that the hospital can respond to an incident fairly and compassionately before the patient calls his or her lawyer.

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Global markets

Continued from page 6
slowly, noted Mr. Schleisman.

Alex Szabo, an account executive in the international operations of Arkwright Mutual Insurance Co. in Shelton, Conn., commented on the current insurance industry in Romania, Yugoslavia and Hungary.

In Romania, all insurance is written by state-owned ADAS (the Administration of State Insurance), though risks can be reinsured outside of the country, said Mr. Szabo.

ADAS will write all-risk property policies under special circumstances if the policyholder requests it; if the policyholder is sufficiently large; or if there is full or partial reinsurance outside of Romania, he explained.

"Casualty coverage as we know it does not exist in Romania," he noted, adding that any casualty coverage above small limits must be purchased as reinsurance outside Romania. "Product liability as such remains a concept for the future," he added.

Marine insurance, however, is available widely through the ADAS.

Yugoslavia, which is divided into seven federal regions, has an insurer and a reinsurer in each region, according to Mr. Szabo.

The primary insurers have no legal right to deal in hard currency, although the reinsurers do. So if a company wants hard currency coverage, a reinsurer must be involved, he noted.

"And with astronomical inflation rates the norm, you would be quite unwise to write a policy in anything but a hard currency," he said.

Property coverage in Yugoslavia is similar to that available in Romania, according to Mr. Szabo. There is more widespread acceptance of all-risk cover, but these policies still usually exclude flood and earthquake cover, he said.

Casualty insurance does exist in Yugoslavia, though limits tend to be very low, he noted. And, while product liability insurance exists, it is very undeveloped, he added.

As in Romania, all forms of marine insurance are available and Lloyd's of London has certified claims handling agents in all major cities in Yugoslavia.

The Yugoslavian reinsurer with the most dealings with Western companies is the Slavija Lloyd Reinsurance Co., based in Zagreb in the Republic of Croatia. Slavija Lloyd, which can do business in other Yugoslavian regions, conducts business in English and German, said Mr. Szabo.

Until recently, all insurance companies in Hungary also were state-controlled, and until four years ago the only insurer in Hungary was Allami Biztosito.

Today there are six insurance companies in the country, as a result of several joint ventures with Western insurance companies (*BI*, March 19), said Mr. Szabo.

"All are in direct competition with each other for all lines of business," and are able to deal with foreign reinsurers in hard currency, said Mr. Szabo.

Hungarian insurers offer all-risk property coverage, with smaller sublimits applying to particular perils. Casualty coverage exists, although it is not customary and so is mostly reinsured with foreign reinsurers, said Mr. Szabo.

But, "all forms of marine insurance are available at competitive prices and terms," said Mr. Szabo. And other "more exotic lines such as export credit insurance and political risk exist in Hungary as well," he noted.

Companies considering forming joint ventures in the Soviet Union are able to insure and reinsure with Russia's two established underwriters: Gosstrakh, the state insurance company, and Ingosstrakh, the state reinsurer, said John F. O'Sullivan, managing director of Marsh & McLennan Cos. Inc. in New York (see story, page 3).

While Eastern Europe currently is stealing the headlines, the Far East continues to be another important developing market.

"More than one-third of the world's population is in the Asia Pacific region and less than 15% of the world's insurance industry is from that region," said John E. Hatton, managing director of Asia Pacific Operations of Marsh & McLennan Cos. Inc. in New York.

Mr. Hatton and John A. Salaverry, vp and chief executive officer of Frank B. Hall International Inc. in New York, briefly summarized the current insurance markets in several Asia Pacific countries.

These include:

- India. Until now, the Indian insurance industry—consisting principally of the General Insurance Corp. of India and regional subsidiaries—has been state-controlled. However, "it is beginning to respond to a government mandate to deregulate and privatize," said Mr. Hatton. The Indian insurers "are very much prepared to talk and work to develop more sophisticated products," he noted.
- Australia. The Australian insurance market is very sophisticated but consists of too much capacity chasing too little business, said Mr. Hatton.

While Australia has a population of just 17 million people in a country similar in size to the United States, it has 174 property/casualty underwriters, 839 registered insurance brokers and 5,000 registered insurance agents chasing a property/casualty premium pool of $11 billion, he noted.

Australia is the "land of the perpetual soft market," Mr. Hatton quipped.

- New Zealand. The New Zealand insurance industry harbors a "suicidal tendency," said Mr. Hatton. It is a country that is a "buyer's paradise," but buyers must assess the security of their insurers, he noted.
- Papua New Guinea. One of the world's richest countries in minerals, Papua New Guinea has a rate-controlled insurance market.

The country has 16 licensed insurers and nine licensed brokers. However, civil unrest and political disturbance are making it more difficult to obtain insurance for Papua New Guinea risks, Mr. Hatton said.

For example, the London insurance market is "becoming very conservative about Papua New Guinea risks. Watch out for civil unrest exclusions," said Mr. Hatton.

- Japan. The Japanese insurance industry is tightly controlled, noted Mr. Salaverry. Now, Japanese insurers now are aggressively moving overseas to write business directly for Japanese industry with operations overseas.
- South Korea. The Korean insurance industry is very similar to that in Japan, noted Mr. Salaverry. The market in Korea is protected to a large degree from foreign competition and the Korean insurers are industry-owned like their Japanese counterparts, he said.
- Indonesia. "We are seeing a freer, more deregulated environment" in Indonesia than in previous years, noted Mr. Salaverry.

"Until three or four years ago it was impossible to establish a foreign insurer or broker in Indonesia," he said. However, the Indonesian government has passed legislation to allow the establishment of foreign insurers and brokers in joint ventures, although the capitalization required to establish a joint venture is very high, said Mr. Salaverry.

Generally there's a recognition in Asia nations that "they have to begin to bring the barriers down if they are to participate in the global marketplace," said Mr. Salaverry, predicting that the "barriers will continue to come down."

The session was coordinated and moderated by David F. Blake, vp of risk management and insurance for Inter-Continental Hotels in Montvale, N.J.

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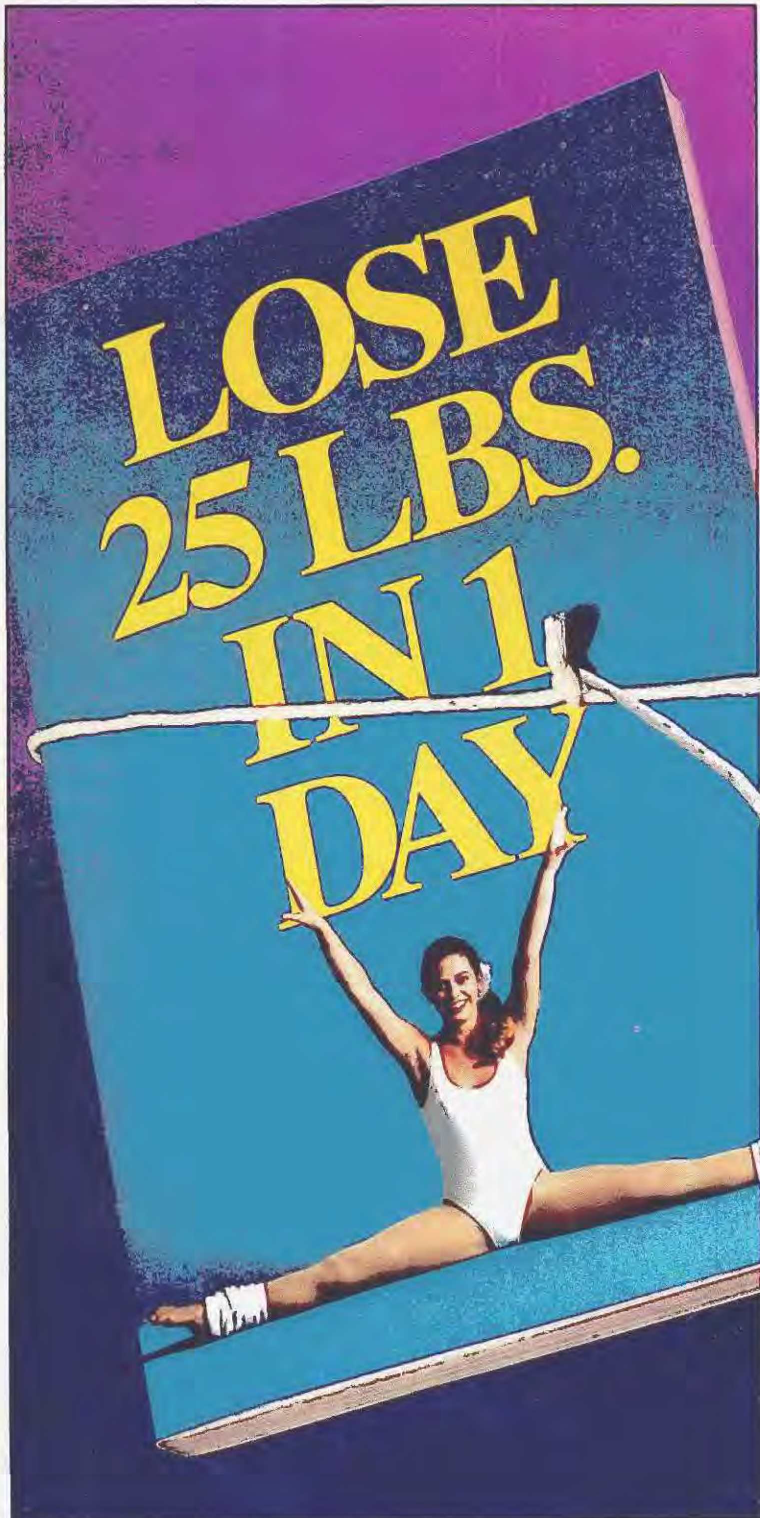

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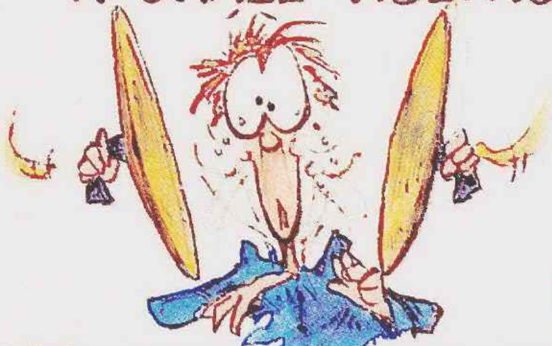

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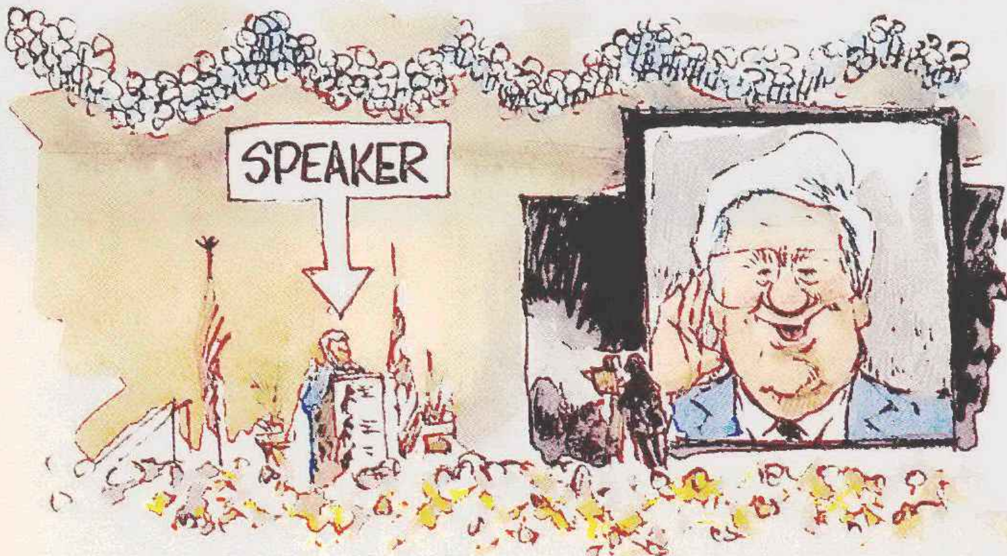

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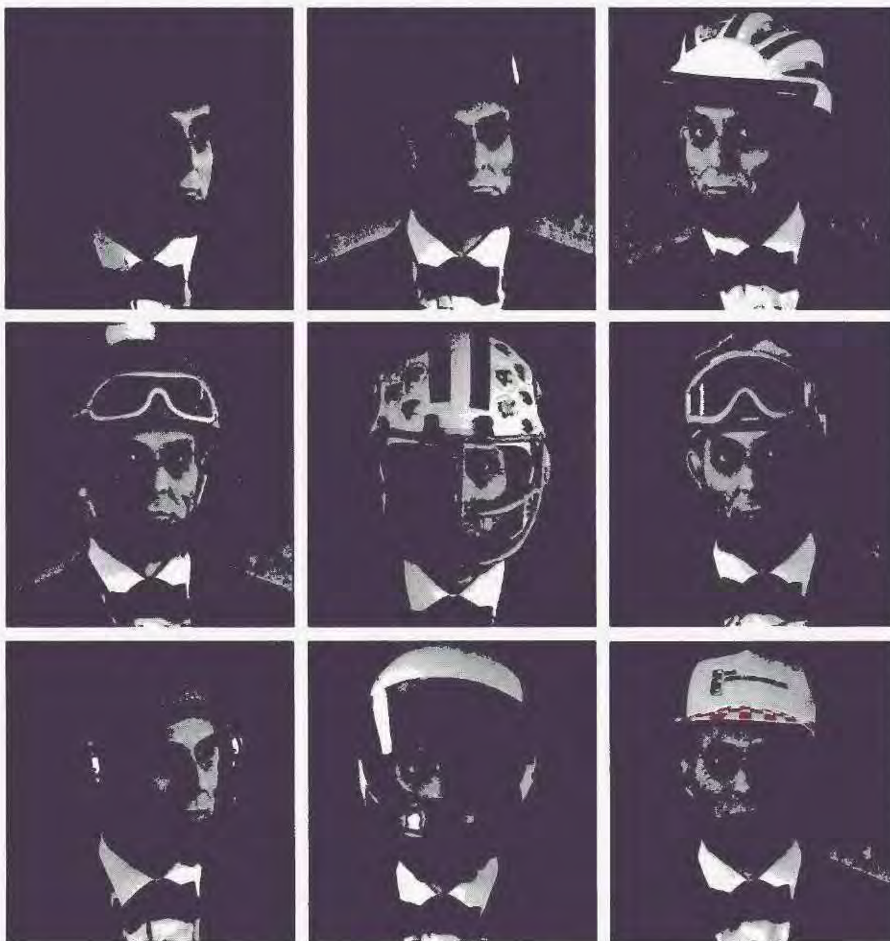

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Excellence

Continued from page 3

management and loss control at Browning-Ferris Industries Inc. of Houston, also stressed communication skills.

"Risk management is misunderstood in many instances throughout the operation of the company," he said. It is important to "sell the value of the risk management programs to all levels of your operation."

- Sophistication in risk finance.

"We moved away from being insurance buyers to risk managers where risk financing is our mandate," Mr. Kloman said. "We need to recognize the increased dependence that we have on internal funding."

Excellent risk managers develop "a revised role for brokers, consultants and other service providers, depending on your staff and your needs," Mr. Kloman added.

- Risk assessment.

"We need to learn a great deal more about the mathematical procedures" of risk analysis, said Mr. Kloman. "We need to learn how to use much more imaginatively the skills of the actuaries and their measurements of reserves."

- Coordination of risk control efforts.

Mr. Kloman said by being "more holistic, not fragmented," risk managers would not overwhelm an organization's overall objectives by stressing one set of risk management imperatives.

- Alternative risk financing.

Risk managers may find themselves in some unfamiliar territory, like financing currency fluctuation or credit risks. These are areas in which "the excellent risk manager in the future may have some degree of responsibility," Mr. Kloman remarked.

- Decentralization of risk management.

"We are now beginning to realize that we need to decentralize more our own operations," he said. "We need increased counsel from the operating managers. We need to give those operating managers increased options at every level of risk management, including risk assessment, risk control and risk financing."

Mr. Lindquist of Browning-Ferris, who was a member of *BI's* Risk Management Honor Roll in 1989, suggested that excellent risk managers require "absolute credibility."

"You can't operate and have excellence without excellent credibility both inside and outside of your company," he said.

And risk managers should improve their skills through continued education, he said. Members of a risk management department should take courses or work toward professional designations whether or not this is required, Mr. Lindquist urged.

The panelists differed on the most important priority in evaluating a candidate for a risk management job.

Mr. Lindquist cited "the ability to

Continued on page 20

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Continued from page 16

adapt to the corporate culture" and integrate a risk management program into that culture.

For Tillinghast's Mr. Kloman, problem-solving was most important criteria, with communication skills a close second.

"Risk management is such a difficult concept and discipline to explain, that I think the ability to communicate it. . .will turn out to be a critical attribute," he said.

To Mr. Pettegrew, an "action orientation"—the ability to "be a conductor" and utilize resources like consultants—was paramount.

Ms. McIntyre said being a "good manager" was most important.

William L. Mather, the session's moderator and administrator of risk management at The Gillette Co. in Boston, rated problem-solving highest. "I think you can take care of most everything else if you've got somebody with a good thought process."

Mr. Mather pointed out that risk managers should rely on brokers and consultants when structuring programs and searching for stable insurance markets.

Gillette's small risk management staff believes "it's essential that we work effectively with and through brokers and consultants to achieve our risk management goals," remarked Mr. Mather, who was *BI's* Risk Manager of the Year in 1988.

"One of the reasons we took this approach is the fact that Gillette has a very wide spread of operations," he said. "We need varying amounts and varying types of assistance from our advisers at our 150 locations in 50 different countries."

Gillette establishes "precisely" what it wants brokers and consultants to do and not to do, he added.

Gillette considers it "important to know where we want to go with our program as a general direction vs. where we may have to go temporarily as an expedient," he said.

The establishment of objectives for Gillette's risk management program is "very formalized, with written proposals and suggestions from our advisers," Mr. Mather said. It is "very much a mutual effort" by brokers, consultants and Gillette personnel.

Having everyone involved understand their roles is critical, said Mr. Mather. "Sometimes we ask brokers to do services for us which would ordinarily be performed by risk management departments at other companies. If we make a somewhat non-standard request, we make sure that request is in writing."

When measuring broker or consultant performance, "we make a distinction between dollar-performance vs. non-financial results," he said.

Tom Irvin, assistant vp of CIGNA Special Risk Facilities, a unit of Philadelphia-based CIGNA Corp., coordinated the session. ■

More insurer failures may mean oversight by feds: NAIC chief

By KATHYRN J. McINTYRE

BOSTON—State insurance regulators are in a "foot race" with Congress to control the future regulation of the insurance industry, warns the president of the National Assn. of Insurance Commissioners.

"If there is a painful series of insolvencies" before states tighten solvency regulation, "we will see changes in the federal level" of regulation, predicts Earl Pomeroy, NAIC president and North Dakota insurance commissioner.

Already, the Senate Energy and Commerce Committee's Subcommittee on Oversight and Investigations is expected to decide by the end of the year whether federal legislation is needed to regulate insurers' solvency, according to John B. Chesson, counsel to the subcommittee.

Mr. Pomeroy and Mr. Chesson were among four panelists who discussed regulating for solvency during a session at the 28th annual Risk and Insurance Management Society conference in Boston.

Mr. Pomeroy described NAIC efforts to improve solvency regulation and Mr. Chesson discussed the subcommittee's investigation of insurer insolvencies and its report, "Failed Promises: Insurance Company Insolvencies" (*BI*, March 5; Feb. 26).

In addition, an insurance broker and an insurance company executive suggested how to improve solvency regulation.

To correct "some serious shortcomings in the regulatory structure," the NAIC has developed minimum standards for solvency regulation and a system to certify whether states meet the standards.

While states cannot be forced to be certified, the unanimous vote by the members of the NAIC for minimum standards shows widespread support for the program, Mr. Pomeroy noted.

The first certifications of states will be accomplished within the next year, he said.

The marketplace could encourage such state certification by showing a preference for insurers domiciled in states that have been certified, Mr. Pomeroy added.

The NAIC also has adopted model laws governing managing general agents and reinsurance intermediaries, both of which have been "unchecked in the past," Mr. Pomeroy said.

And, the NAIC is making more information available on how insurers' financial strength stacks up on a comparative basis, Mr. Pomeroy said.

The NAIC is releasing information developed from its Insurance Regulatory Information System, which analyzes insurers' financial health by calculating certain ratios.

For the future, the NAIC hopes to adopt by June new restrictions on insurers' investments in junk bonds, Mr. Pomeroy said.

The NAIC also is developing a central source of information on the "flagrantly fraudulent" in the insurance business and will seek "tough criminal penalties at the federal level."

In other regulatory changes, Mr. Pomeroy said "it's time to move to risk-based capitalization," which would require insurers that write riskier insurance to support their business with more capital.

And, he said he hopes the NAIC will develop a system to approve reinsurance companies to underwrite reinsurance as it does surplus lines insurers.

However, in response to a suggestion from the audience that captive insurance companies reinsuring the business of their owners be excluded from obtaining such an approval, Mr. Pomeroy said: "We're early enough in the deliberations to consider that viewpoint."

Noting that more than 6,000 people are employed in state insurance departments, Mr. Pomeroy said that "a federal alternative is not likely to get this level of resources."

Mr. Chesson characterized the proposed state regulatory changes as "good ideas that have been kicked around" previously without successful implementation.

Any federal legislation gov-

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Continued from previous page
erning the regulation of insurance companies would originate with the Energy and Commerce Committee, while the Judiciary Committee has jurisdiction over the McCarran-Ferguson Act, he noted.

The subcommittee's first report, "Failed Promises: Insurance Company Insolvencies," which was released in February, "made a lot of factual findings about what is wrong," Mr. Chesson said. It did not make any recommendations on how the problems should be solved because the subcommittee is "keeping an open mind," he said.

However, Mr. Chesson expects the subcommittee to decide by the end of the year whether federal legislation is needed. "We will do whatever needs to be done to avoid what happened with the savings and loans," he said, referring to the estimated $300 billion cost to rescue failed savings and loans.

The subcommittee, under the chairmanship of Rep. John D. Dingell, D—Mich., is looking into insurance company insolvencies in the wake of the S&L crisis because Rep. Dingell perceived that "no one was looking at the problems," Mr. Chesson said.

The subcommittee has investigated the insolvencies of several insurers, including Mission Insurance Co., Transit Casualty Co. and Integrity Insurance Co.

Based on its investigations, the subcommittee found that the current insurance regulatory system fails to check "incompetence and crooks," permitting "greed and incompetence" to lead to insurance company insolvencies.

Not all states require insurance company financial statements to be audited and not all states require annual certification of loss reserves by an actuary, Mr. Chesson pointed out.

Acknowledging Mr. Pomeroy's statement that the 15 states requiring CPA audits of insurers cover 80% to 90% of insurers, Mr. Chesson complained that only the holding companies, not individual insurer subsdiaries, must be audited.

The subcommittee, which has been holding hearings since September 1988, will resume hearings later this month, delving into insurance company investments in junk bonds.

And, the committee will "get into Weavers," Mr. Chesson said, referring to London-based H.S. Weavers (Underwriting) Agencies Ltd., whose affiliate and lead line slip insurer, Walbrook Insurance Co. Ltd., stopped underwriting in March pending an actuarial report on the solvency of all affiliated insurers (*BI*, April 9; April 2).

"If this insolvency occurs, it will have a great impact in the United States," Mr. Chesson said, referring to the possible insolvency of insurers owned by London United Investments Ltd., which owns Weavers and seven insurance companies.

Mr. Chesson said later that the subcommittee could potentially begin hearings on Weavers in June.

C. Richard Peterson, president of the National Assn. of Insurance Brokers and executive vp of Sedgwick James Inc., called the subcommittee's report "well written, informative and even entertaining."

But, "the three insolvencies are not representative of the entire industry," he said, referring to the three major insurer insolvencies investigated by the committee.

Still, the report "does raise serious questions about how this business is regulated," said Mr. Peterson, who also coordinated the session.

However, insurance brokers "can't guarantee the future sol vency" of insurers, he stressed. "We don't have enough data."

Insurance brokers do not have "inside data" on insurers as some in the insurance industry believe, Mr. Peterson said. "Brokers do not know those companies that are about to go belly-up."

In the case of Mission, "yes, Mission did undercut other insurers, but as much as they won, they also lost, and lots of times they lost to the AIGs and CIGNAs," he said, referring to large multiline insurers like American International Group Inc. and CIGNA Corp.

Brokers rely on the same data available to all insurance buyers, he said, citing A.M. Best Co. reports and the annual reports insurers file with insurance regulators.

However, the information in these annual statements filed with state insurance departments "can be inaccurate and misleading," Mr. Peterson said.

He called for anti-fraud laws to be made "insurance specific."

In addition, Mr. Peterson called on state insurance regulators to:

- Make solvency regulation a priority.
- Quickly shut down insurers that are about to become insolvent.
- Adopt minimum uniform standards for solvency.
- Monitor insurance company management of managing general agents.
- Require disclosure of interlocking relationships.
- Require insurers' investments to be marked to market value.
- Disallow discounting of loss reserves.
- Require disclosure of uncollectible reinsurance.

Mr. Peterson urged risk managers to "support these initiatives" and to factor an insurer's financial soundness into their decision when selecting an insurer.

"It doesn't do too much for your career" when a selected insurer goes broke, he warned, drawing nervous laughter from the audience.

D. Byrd Gwinn, senior vp and managing director in the Dallas office of Chubb Corp., agreed with many of the recommended regulatory changes, and added several more.

Mr. Gwinn suggested that state insurance departments' market conduct examiners look further into an insurance company's operations, including MGA contracts. "MGAs should not underwrite, handle claims and buy reinsurance" for an insurer, he said.

In addition, there should be "uniform, minimum capital requirements" and a uniform trigger for liquidation, Mr. Gwinn said.

And, insurers should be licensed by product lines, he suggested.

But, Mr. Gwinn warned against "duplicate regulation by the federal government and the states."

"You can't split rate regulation from solvency regulation," he said.

The session was moderated by C.R. Lindahl, director of risk management for Scott Paper Co. in Philadelphia.

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Risk managers collect info—and more

By MARK A. HOFMANN

BOSTON—Risk managers roving the bustling Exhibit Hall at the 28th annual Risk & Insurance Management Society conference had no problems filling their pockets with all sorts of goodies—and filling their memories full of information—as exhibitors vied for attention.

The well-appointed Exhibit Hall stroller could adorn his or her lapel with a button featuring his or her photograph, courtesy of risk management consultant Deloitte & Touche in Dallas, don a plastic sun visor, courtesy of New York-based Home Insurance Co., and collect countless pins, buttons and badge stickers from a score of exhibitors.

Those who wanted to hold the whole world in their hands could—courtesy of Norwood, Mass.-based Factory Mutual Engineering Corp., which handed out inflatable beach balls bearing the map of the globe.

If visitors wanted to approximate the feeling of visiting a distant land, they needed to travel no further than the Bermuda booth, where uniformed members of the Bermuda Regiment manned sentry boxes.

Anyone who might have felt a bit lost amid the maze of streets in Boston could consult the Rand McNally road atlases available at the booth manned by representatives of the Long Grove, Ill.-based Kemper Group's national insurance companies and Kemper Corp.'s NATLSCO division.

And, for those risk managers who couldn't watch MTV in their hotel rooms, possibly the first-ever risk management music video—"The Risk Manager's Blues"—played repeatedly at the booth sponsored by The Hartford Steam Boiler Inspection & Insurance Co.

But, exhibitors noted that risk managers had considerably more on their minds than simply grabbing trinkets and enjoying free entertainment.

The impact of last fall's twin catastrophes—Hurricane Hugo in September and the San Francisco Bay-area earthquake less than a month later—sent risk managers to the booths of pre- and post-disaster planning and recovery firms in greater numbers than usual, vendors reported.

"Certainly, with the earthquake and Hugo, you've got a lot more interest" in salvaging property, observed Victor Boruta Jr., executive vp of Geo. M. Ruddy & Co., a Piscataway, N.J.-based salvage, appraisal and consulting firm.

The shock of the twin disasters' magnitude also sent risk managers to the booth of Deerfield, Ill.-based Schirmer Engineering Corp., said Thomas J. Reilly, director of safety and health for the fire protection and safety engineering firm.

"It seems like there's a greater interest in catastrophe planning," said Mr. Reilly. He added that there seemed to be unusual interest in retrofitting buildings with sprinklers and other safety devices.

Ray Weigand, Mr. Reilly's colleague and a vp at Schirmer, added that the booth seemed to attract interest from U.S. risk managers whose companies have overseas operations and European risk managers who wished to employ American safety techniques to protect their property.

Risk managers also had questions about overseas disaster recovery work for the staff manning Evans American Corp.'s booth, said Rich Gerady, project manager for the Houston-based catastrophe management specialists. Risk managers wanted to know how the Evans American could replicate its high-speed reconstruction techniques on foreign properties, he said.

"We do work around the globe," said Nelson R. Bean, president of Evans American, noting that he recently spoke about rapid reconstruction techniques in Moscow. Soviet government officials offered his firm some projects, he said.

This was the first year Evans American exhibited its services at the RIMS conference, Mr. Bean noted. "We simply decided it was time to increase our participation."

While many risk managers were interested in disaster planning and recovery, other booths, especially those dealing with workers compensation issues, also "hit a nerve."

For instance, an interactive display at Advantage Health Inc.'s booth seemed to be particularly popular among risk managers whose workers are susceptible to carpal tunnel syndrome.

Sheila M. O'Connor, an occupational therapist for the Kansas City, Mo.-based industrial consultant, demonstrated the "NervePace Electroneurometer" distributed by the company. The hand-held device measures the speed of an impulse traveling along the median nerve as it passes through the carpal tunnel, which allows the person administering the test to gauge possible impairment.

Part of the machine's appeal lies in the fact that it is "non-invasive," Ms. O'Connor said. Rather than requiring needles to be stuck into the hand of the employee being tested, the device works through surface electrodes that adhere to the skin, Ms. O'Connor explained. A mild electrical current is then passed through the hand, forcing the thumb to contract, she said.

Meanwhile, protection of financial assets drew risk managers to booths sponsored by the various captive insurance company domiciles.

Catherine S. Lord, vp with Johnson & Higgins Intermediaries Ltd. in Hamilton, Bermuda, said having members of the Bermuda Regiment at the domicile's booth proved to be "a real attention-getter."

The scarlet- and navy-uniformed soldiers stood motionless before two sentry boxes flanking the domicile's display, occasionally marching to pose for a photograph with a visitor to the booth. Every half-hour, they were relieved in an elaborate changing of the guard ceremony, which attracted risk managers from throughout the Exhibit Hall.

Paul Van Zuiden, a consultant with The Wyatt Co. in Chicago, said that risk managers seemed to have more questions than usual about captives during this year's RIMS conference.

That interest brought smiles to those manning the booth of a considerably newer captive domicile. Only a few aisles from the Bermuda booth, Illinois Deputy Gov. John E. Washburn attempted to persuade risk managers that the Land of Lincoln should be their choice when looking for a captive domicile.

Mr. Washburn, former Illinois insurance director and former president of the National Assn. of Insurance Commissioners, seemed pleased with the response his state was drawing. "There's a lot of interest in captives, and they're starting to look at Illinois."

Continued on next page

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Continued from previous page

Another Midwestern state aimed its sights at drawing commercial insurers to locate within its borders by hosting its first RIMS booth.

William P. Demuth, marketing manager-national marketing for the Iowa Department of Economic Development, donned a green and white baseball jersey and stood in front of a poster from the motion picture "Field of Dreams" to attract attention. Des Moines—Iowa's largest city—is already home to more than 60 insurance companies.

Baseball also served as the hook to draw strollers into Philadelphia-based CIGNA Corp.'s exhibit area.

A video game—"CIGNA All-Star Baseball"—challenged would-be baseball sages with a series of trivia questions about players, rules and teams. Depending on the level of difficulty of the question chosen, correct answers resulted in singles, doubles or triples that were greeted with appropriate crowd sounds.

After playing the game on a personal computer, risk managers could step to a nearby terminal to examine CIGNA's PC/CRIS risk management information system, a new version of which made its debut at the conference.

The new system's reporting and graphics capabilities make the product more "user-friendly," explained CIGNA Assistant Vp Lawrence G. Reilley.

Another form of simulation drew visitors to the booth of Wilmington, Del.-based Flight Safety International.

David W. Kenton, national marketing manager for the firm—which trains pilots, power plant operators and mariners—said that training general aviation pilots remains the most popular service offered by his firm, but the fastest-growing segment is marine training.

He credits the interest in marine training to the Exxon Valdez oil spill.

Visitors looking for something different could visit Hartford Steam Boiler's booth to watch a five-minute music video featuring a singer who looked like a cross between one of the "Blues Brothers" and Leon Redbone belting out "Risk Manager's Blues."

Chris Knopf, vp of the Avon, Conn.-based advertising firm of Mintz & Hoke Inc., explained he started out with "a hootchy-kootchy man riff" bemoaning the trials and tribulations of risk managers.

"People are really upbeat," said Florine Caron, an assistant vp with Johnston, R.I.-based Allendale Mutual Insurance Co., as she handed out boxes of tea bags packed by Davison Newman & Co. Ltd. of London, the firm whose tea ended up on the bottom of Boston Harbor courtesy of the Boston Tea Party in 1773. ■

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Crisis plan eases corporate disasters

By MARK A. HOFMANN

BOSTON—The public outrage over Exxon Corp.'s handling of the 1989 oil spill in Alaska's Prince William Sound underscores the importance of communications when dealing with a corporate calamity, a public relations executive says.

"The Exxon Valdez has raised consciousness" about the value of crisis management, said Alexander H. Stanton, president of New York-based public relations firm Dorf & Stanton Communications Inc., during a session on crisis planning at the 28th annual Risk & Insurance Management Society conference.

According to Mr. Stanton, the Exxon Valdez disaster should have taught corporate leaders a variety of lessons, including:

- Effective communication is vital to crisis management.
- A crisis plan must be tested under actual conditions.
- Never underestimate the severity of a crisis.
- Consistency is important in responding to a crisis.

"One of the things that I think derailed Exxon was that they changed their press strategy two days into the crisis," said Mr. Stanton.

Initially, New York-based Exxon provided the press with regular news bulletins, food and drink, he said. However, the food, drink and news suddenly vanished, leaving the press to its own devices, he said.

Without Exxon feeding the reporters information, "they went out and found some news," Mr. Stanton said, noting that what they found did not reflect favorably on Exxon.

Generally, a company's first actions create the lasting image of its response to a disaster.

"I think the first 90 minutes of the crisis are the key," he said.

Mr. Stanton advised creating a crisis team of managers and communicators that would meet every hour following a disaster. Members of the team should gather information and report back to the team, he said. The key audiences that next need to be informed should be identified and the story should be told, "quickly, openly and honestly," he said.

Mr. Stanton said that several communications flaws must be avoided in dealing with a crisis.

For example, rather than place blame, a corporate spokesperson should address solutions to the problem, he said. Keeping employees informed also should not be overlooked because they are "soldiers in the communications army," he said.

"The lack of a 'party line' can be fatal," if those who respond to the queries don't know what the corporation's response to questions is supposed to be, Mr. Stanton said.

Robert Duty, vp-risk management of Dallas-based Greyhound Lines Inc., said the transportation company has adhered to a consistent corporate message during its current drivers' strike.

Mr. Duty, moderator of the session, said that Greyhound employees have volunteered to staff a media center to answer questions about the strike because the company's in-house public relations department is relatively small.

After completing a training course, the volunteers have worked out of a media room that has a two-word poster on each of its four walls, Mr. Duty said.

The poster reads "Don't speculate," he said. It serves to remind those fielding questions to stick to the facts as they are known, he said.

Harry W. Shirley, Jr., assistant vp-casualty loss prevention for Alexander & Alexander of New York, Inc.'s Lyndhurst, N.J., office, stressed that disaster planning extends from communications to what he called the "nuts and bolts" of disaster response.

"If you have a crisis and you don't have a plan, you're going to be making decisions that are not well-thought-out," he said.

Agreeing with Mr. Stanton, Mr. Shirley said that the creation of a crisis management committee is critical to any response, though Mr. Shirley advocated keeping the team relatively small.

"I recommend keeping it in the half-dozen range," he said.

The committee should have a designated leader as well as an alternate leader, Mr. Shirley said. An up-to-date list of home and office telephone numbers for each team member should be maintained, he said.

Membership in the crisis management team should be drawn from the ranks of senior staff, he said. A clear line of succession also should be established in case any team member is incapacitated, he said.

A written response plan should be drawn up working from the worst case scenario, Mr. Shirley said.

If plans are established to handle the worst case, "you can work backwards through other crises," he said. Being prepared for the worst case, a corporation should be able to handle less serious emergencies, Mr. Shirley said.

Following a disaster, companies should set up a central location for dealing with the media, Mr. Shirley recommended. He also suggested posting security at a disaster scene to keep the media out of the way while rescue operations are being conducted.

In addition, shelters and a first-aid station should be set up, as should a temporary morgue, he said. If there are fatalities, the scenes of death should be preserved for further investigation, Mr. Shirley said.

As soon as possible after a disaster, professional photographers should take pictures, salvage operations should begin and emergency power systems should be established, Mr. Shirley said.

Charyl Sarber, vp and manager-business resumption planning for Los Angeles-based First Interstate Bank of California, also stressed the need for disaster planning, saying that "planning is much more important than the plan itself." She warned her listeners that a plan must be flexible to meet the demands of each situation.

Ms. Sarber spoke from experience, having been directly involved in First Interstate's recovery from a May 4, 1988, fire that ripped through the company's 62-story headquarters (*BI*, July 25, 1988; May 16, 1988; May 9, 1988).

W. Carter Lee, vp and director-research and development in Alexander & Alexander Inc.'s Dallas office, coordinated the session. ■

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Federal oversight of work comp unlikely

By MICHAEL BRADFORD

BOSTON—Handing over administration of workers compensation insurance to the federal government is not the way to solve problems associated with the work comp system, according to a panel of experts.

In a roundtable discussion at the 28th annual Risk & Insurance Management Society conference, the subject of federalization of workers comp insurance took center stage.

"It won't happen," said Susan Drake, senior manager of workers compensation at Ryder System Inc. in Miami. "The states want to do their own thing. I don't think there's any possibility of the states allowing a federal act to come in. They want to keep it under their own control."

"I'm very much against any federalization," said Robert P.J. Booher, senior vp at Marsh & McLennan Inc. in New York.

While some basic standards that could apply to all state work comp systems might be in order, federalization would be too difficult because of the autonomous nature of different states, said Mr. Booher.

"Different states have different economies and each state represents an electorate that's different," he said.

Mark T. Carter, director of corporate insurance at LTV Corp. in Dallas, said, "If you think state policy is bad, wait until the federal government gets hold of it."

Fred O. Kist, principal with Coopers & Lybrand in Atlanta, said resistance to a federal workers comp system would come from state insurance departments.

"There are 50 insurance departments out there that are paying people to review (work comp) rates. Their reason for being is to review rates," Mr. Kist said of those state employees.

'If you think state policy is bad, wait until the federal government gets hold of it,' says Mr. Carter.

"I would see a very strong anti-federal push" by insurance departments that felt responsible for those workers, Mr. Kist observed.

States can use the savings and loan insolvencies as an example of how well federal regulation works, he said.

Federalization also would lead to higher workers compensation costs, according to Mr. Kist, partly because benefit levels would have to be increased.

"The national benefit level would have to be the highest (state) benefit level" he said, because a federal system would in effect penalize some workers if it paid benefits below what they received at the time of federalization.

"They're not going to take anything away from anybody," Mr. Kist said of federal regulators who would be in charge of determining a national benefit level.

"So you're talking about tremendously increased costs" for some states, he said.

On another topic, the panelists pointed to fraud as a serious problem with the current workers compensation system.

Overt, "heavy-handed fraud" is not the big problem, said Mr. Carter. "It's the more subtle milking of the system that's driving a lot of the problem."

Mr. Booher agreed that malingering by injured workers is expensive and common—and it's too easy.

"Once a claimant is in the mainstream of the delivery system, the claimant is allowed to rip off the system," said Mr. Booher.

"The burden is on the employer to prove that the accident didn't happen and that is very hard to do," Mr. Booher remarked.

Panelists agreed that workers are aware of how easy it is to fake some injuries like back ailments or file a claim on Monday for an injury that actually occurred at home over the weekend.

While there are no firm statistics on the magnitude of fraud within the work comp system, Mr. Kist said some of his clients report as much as 80% of their claims are fraudulent.

Ms. Drake said "the general consensus is that 5% of our claims are fraudulent" when filed. But when the number of claims involving persons who initially filed legitimate claims but later decided to malinger are added, the total jumps to 50% of Ryder's claims, she added.

And the misbehavior is not restricted to workers who need extra income, Ms. Drake remarked. "I have found people in high positions" who file claims with the employee benefit department and the workers comp department in an effort to collect twice on a $6 prescription, she said.

Ms. Drake said measures like peer review groups for physicians can cut down on fraud among providers. And keeping physicians informed about the specifics of a workers comp case can keep doctors from unknowingly defrauding the system.

For example, some workers will lie about the physical demands of their jobs in order to receive benefits. An informed physician could spot the deception, according to Ms. Drake.

Ryder provides a manual to its managers that tells them how to investigate workers comp claims, said Ms. Drake. The book includes numerous questions for supervisors who report accidents and instructs them on how to take a statement from an employee involved in an accident.

W. Michael McDonald, group director-risk management at Ryder System Inc. and moderator and coordinator of the panel discussion, noted that the "legal profession has found fertile ground in workers comp" and attorney involvement has pushed up the cost of the system.

In prior years, attorneys focused more heavily on professional liability issues and automobile cases, said Mr. McDonald. But, he said, "it seems the greed is growing."

Ms. Drake, who serves on a gubernatorial committee that is rewriting Florida's workers compensation law, said she has fought "long and hard" for an hourly cap on attorneys' fees in workers comp cases. Her proposal is that the fees be limited to $125 per hour.

Ms. Drake also said she would like to see claimants made to pay legal fees in cases they lose. Such a regulation would cut down on the number of frivolous lawsuits that find their way into the workers comp system, she said. ■

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Planning advised to handle uninsured risk

By MARK A. HOFMANN

BOSTON—Rather than assuming "it can't happen to me," risk managers should ask themselves "What if it happens?" when considering the challenges presented by uninsured risks.

"None of us can afford to ignore the need for planning," said Carl B. Seaholm, manager-corporate risk management for J.C. Penney Co. Inc. in Bethel Park, Pa.

Mr. Seaholm moderated a session on uninsured and uninsurable risks at the 28th annual Risk & Insurance Management Society conference in Boston.

"Finding (uninsured risks) is not as easy as you might think. You have to maintain a keen imagination," said Roy T. Johnson, senior vp of Johnson & Higgins of Pennsylvania Inc. in Pittsburgh and coordinator of the session.

He listed possible reasons why risks would be left uninsured, including risk created by new operations, acquisitions with unknown risks, inadequate coverage limits, lapses of coverage and insurer insolvencies.

Some risks go uninsured intentionally, noted Mr. Seaholm. Reasons for not insuring a risk include unacceptable deductibles, a desire to handle claims in-house rather than through an insurer and intentionally self-insuring risks and allocating them to operating units, thus enhancing accountability, he said.

Other risks—like pollution—simply may be uninsurable, Mr. Seaholm said.

However, risk managers often unintentionally let risks go uninsured, he says. Among the ways a risk can be unintentionally left uninsured include poor communications, where a risk manager doesn't know a peril exists; policy language problems; missing layers of coverage; inadequate limits; and poor loss control.

The insolvency of an insurer also "can suddenly thrust you into an unintentionally uninsured position," Mr. Seaholm said.

He advises risk managers to plan for both intentionally and unintentionally uninsured risks.

Controlling deliberately uninsured risks requires policy review, keeping current on the status of risks and addressing identified exposures, Mr. Seaholm said. "Try to approach things in as consistent a manner as possible."

Developing a plan for responding to uninsured losses is critical to dealing with uninsured risks, Mr. Seaholm said. This includes contracting for alternate production sites if a plant is knocked out of commission, reviewing contracts with suppliers to ensure the availability of reconstruction materials after a disaster and controlling the flow of information to the press through a single spokesman.

Sometimes risk managers have to take unpopular stands like recommending the end to certain operations to reduce uninsured exposures, he added.

When dealing with international risks, risk managers should never assume they're covered, said Edward J. Fitzgerald, manager-foreign, corporate insurance operations for General Electric Co. in Fairfield, Conn.

A "cookbook mentality," or an assumption that insurance requirements will be the same, irregardless of the location of a facility, doesn't allow adequate examination of the exposures, he warned.

For example, risk managers must pay attention to currency exchange and inflation rates, said Mr. Fitzgerald. They should "be especially careful" about insuring properties in currencies that may rapidly lose all but a fraction of their values due to inflation.

In addition, international operations often require special coverages like political risk or kidnap and ransom insurance. In addition, "gap" policies arranged in the United States may be necessary "to raise the level of local property/casualty coverages to generally acceptable state-side standards," he said.

Risk managers must also be aware of local compulsory insurance laws, said Mr. Fitzgerald. Some countries prohibit "unadmitted insurance" altogether, while others permit some use but not as a substitute for local compulsory insurance. Penalties for breaking the laws can be severe, sometimes including imprisonment and hefty fines, he warned.

Before an uninsured event occurs domestically or internationally, "it's very important to develop sources of cash that can be tapped quickly," said Donald E. Freudenheim, vp with AIG Risk Management Inc., an American International Group Inc. unit.

Mr. Freudenheim said ready access to funds is critical in bringing a corporate unit back on line as soon as possible after a loss. Such quick recoveries help reassure lenders, he said.

"Don't bet your bottom line," he warns.

Anthony J. Burlando, vp-risk management for The Hillman Co., a Pittsburgh-based holding company with real-estate and manufacturing interests, stressed effective communications to minimize the risk of uninsuring an exposure.

He urged risk managers to follow a decision-making process he called "the five I's" in dealing with uninsured risks.

Mr. Burlando's five I's are: investigate, interpret, influence, inform and integrate.

He emphasizes the fifth. "No risk manager can conduct an effective risk management program by himself." For a risk management program to accomplish its goals, it must be integrated with other corporate goals, he said. ■

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Self-insurers eye financial reinsurance

Products can aid financial statements

By JUDY GREENWALD

BOSTON—Financial reinsurance products, which until now largely have been used by insurers and reinsurers, can also help self-insurers smooth troughs and peaks in their financial statements, says an insurer.

A growing number of self-insurers are considering obtaining financial reinsurance—also known as structured financial products—to enhance their financial statements, according to Richard Stilwell, senior vp and general manager of the special risk division of Schaumburg, Ill.-based Zurich-American Insurance Group.

Financial reinsurance is a transaction in which anticipated investment income is an acknowledged component of underwriting and in which the reinsurer's ultimate liability is capped (*BI*, April 30).

Generally, financial reinsurance products are written by reinsures operating in tax-free offshore environments that permit discounting of loss reserves. Bermuda is the most popular domicile of financial reinsurers.

Mr. Stilwell said that while financial reinsurance products have been used for years by both reinsurers and primary insurers, self-insurers have not used them until recently.

But this is an appropriate time for insurance buyers to begin using financial products, he said.

The increased use of self-insurance has had a "dramatic effect" on financial statements as losses have started to mount, Mr. Stilwell said.

In the 1990s, self-insurers' liabilities are "starting to have a major impact on financial statements," and there is a need to smooth out their effect, Mr. Stilwell said at the 28th annual Risk & Insurance Management Society conference in Boston.

"In the 1980s, we were in the decade of hidden assets," he said. But the 1990s will be the decade of hidden liabilities, he predicted.

Other factors that have created the need for financial insurance products are an increase in merger and acquisition activity, changes in business direction and the difficulty of buying insurance for certain exposures, such as pollution liability.

Mr. Stilwell said financial insurance products products fall under three categories:

- Loss portfolio transfers, under which a self-insurer cedes loss reserves for known losses on a discounted basis to an insurer.
- Retrospective programs, under which the self-insurer cedes reserves for unknown losses or for losses that have occurred but for which there is insufficient coverage.
- Prospective loss funding programs, which cover future losses for difficult-to-insure risks, such as pollution liability and medical malpractice.

All of these programs involve funding, net present value pricing and risk transfer, Mr. Stilwell said.

Lawrence W. Cheng, president and chief executive officer of Hamilton, Bermuda-based Zurich International Ltd., which specializes in financial insurance products for self-insurers, outlined the characteristics of these products.

Risk transfer, for instance, could be aggregate risk, when the actual aggregate loss incurred exceeds projections; timing risk, when actual claims payments are faster than projected; and interest rate risk, when earnings on invested assets fall short of projections.

Another characteristic of these products is that they spread the risk, which could involve spreading the impact of large losses over time, combining different exposure years in one policy, or combining coverage for different risks.

These products are distinguished by aggregate limits, Mr. Cheng said. Policies always contain overall aggregate limits, and some contain an annual payout cap, he said.

The price of these products is based on, among other things, expected losses, the payout pattern of the losses, the amount of risk ceded, and taxes and fees.

Information required to underwrite the coverage includes loss data, insurance history, a hazard analysis, financial reports, claims settlement practices and claims audits.

Financial insurance products also provide for the return of funds in the event of good experience. Usually, there is a payment schedule, and in all cases there is a maximum limit of funds paid, he said.

Each financial insurance program "stands on its own," with individual programs developed specifically for specific needs, Mr. Stilwell said.

Mr. Stilwell outlined several ways these products can be used:

- To remove loss reserve liabilities from consolidated balance sheets.
- To transfer liabilities of terminated operations.
- To manage and pre-fund difficult-to-insure exposures.
- To fix an operation's liabilities prior to a merger or acquisition.
- To reduce self-insured retentions.
- To provide funding for holes in layers of liability insurance programs.

Mr. Cheng, whose company has written $180 million in net premiums for structured financial products on behalf of self-insurers since it wrote its first policy in September 1988, also presented case studies to demonstrate how these products work.

In one example, a company self-insuring the first $250,000 of each workers compensation loss has expected losses of $3 million annually. An actuarial calculation suggests that the probability of annual losses exceeding $6 million is less than 1%.

The risk manager's challenge in this case is to protect the company from loss volatilities, Mr. Cheng said.

The solution would be a structured five-year insurance policy with a $3 million annual premium, which is equivalent to the amount of the expected annual loss. The annual aggregate limit would be $6 million, with a five-year aggregate

Continued on next page

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P R O F E S S I O N A L L I A B I L I T Y

Continued from previous page
of $20 million.

The policy would also have a commutation option, Mr. Cheng said.

Robert M. Lichten, managing director of New York-based Smith Barney, Harris, Upham & Co. Inc., looked at these products from a financial perspective and raised questions he said must be answered before self-insurers decide whether to use these programs.

These include:

- Since there must be a true risk transfer for there to be a premium tax deduction, what is the timing of the tax deduction?
- What impact would a financial insurance product have on the overall tax position of the policyholder, taking into account the alternative minimum tax and current net operating loss carryforward position?
- What are projections of future interest rates?
- What will the impact be on the firm's debt ratings?
- Can this program impact the overall cost of capital for the policyholder?
- What impact will the financial insurance product have on managing financial uncertainty?
- What is its impact on the balance sheet?

The "ultimate yardstick" will be the program's impact on the firm's share price, Mr. Lichten said.

Before obtaining a financial insurance product, the buyer also should identify the risk it is trying to manage as well as specify the goals and objectives of the program, said Donald J. Matthews, senior vp at Johnson & Higgins in New York.

The economic feasibility of a structured financial program also should be determined, Mr. Matthews said.

If a self-insurer knows what self-funding costs, it can properly evaluate whether a structured financial program will be an economic benefit, Mr. Matthews said. "The beauty of this is it gives you an alternative," he said.

A self-insurer also should consider several factors when selecting a financial reinsurer, according to Mr. Matthews.

For example, the reinsurer should be highly rated by an insurer rating agency, said Mr. Matthews, who warned against selecting a reinsurer with lower ratings even if that reinsurer offers a better price.

"His credit is absolutely your No. 1 risk," he said.

The financial reinsurer's appetite for risk as well as its commitment to this business also should be considered, Mr. Matthews said. "Are they in this for the long haul?" he asked.

"You've got to be sure your partner is committed long term," he said.

The submission to the reinsurer should include what the policyholder wants to accomplish; policy limits and terms; the expected loss payout picture; and estimated premiums, Mr. Matthews said.

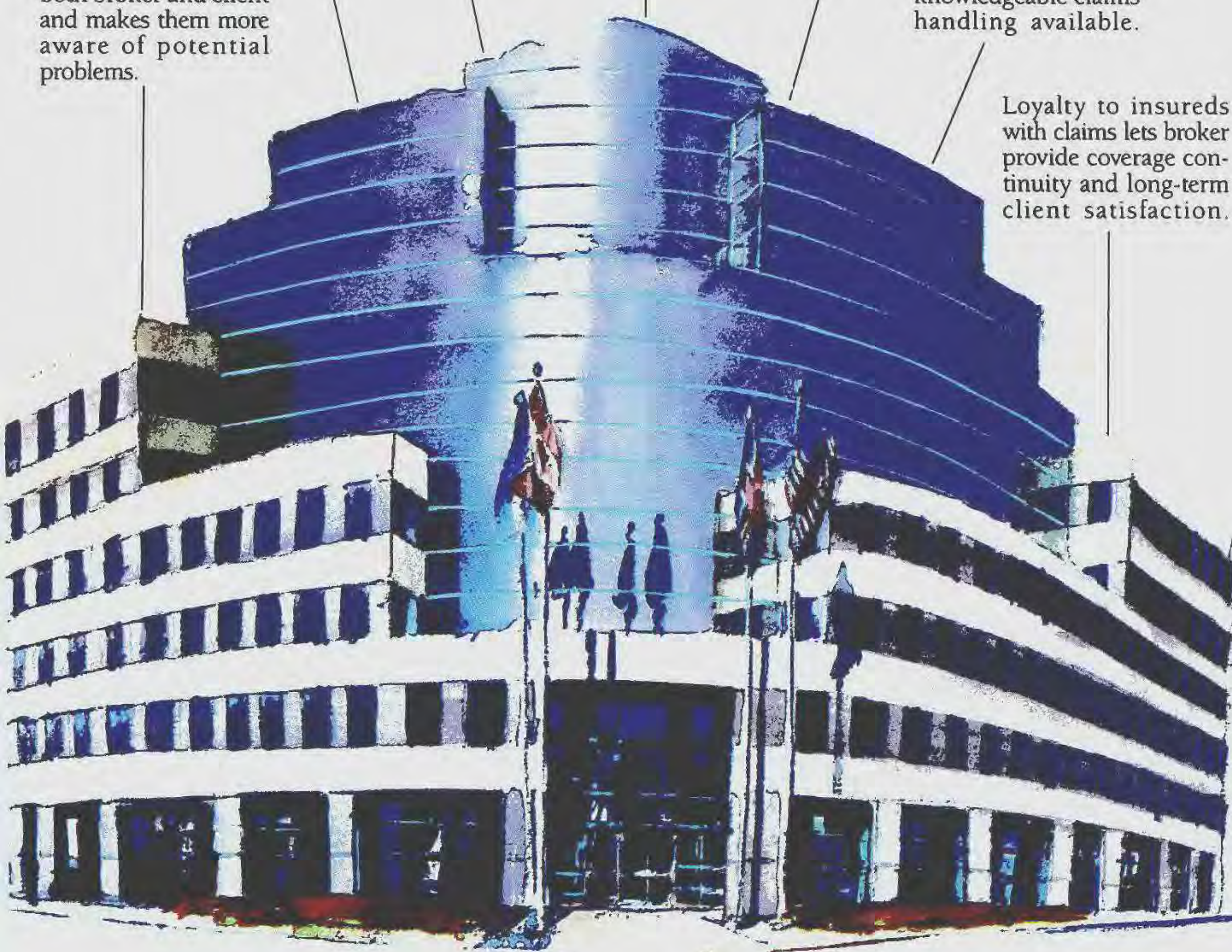
"Determine what you can afford to pay," he said. "Don't waste a lot of time that way."

The submission also should include a draft of manuscript policy wording, he said.

When negotiating details with the financial reinsurer, Mr. Matthews said, include the amount of risk; policy limits; policy wording; claims management and reporting; interest yield assumptions; timing of loss payouts and self-insured retentions; and a contract termination option.

The session was moderated by Arthur Bostwick, risk manager for Chicago-based Stone Container Corp.

Mr. Stilwell coordinated the session. ■



U.S. losing standing: O'Neill

BOSTON—The nature of global power is changing as U.S.-Soviet relations improve, contends a man who spent 10 years only heartbeats from the presidency.

"For years, political power followed military power. Now it follows economic power," former U.S. House Speaker Thomas P. "Tip" O'Neill told a luncheon audience at the 28th annual Risk & Insurance Management Society conference in Boston.

Mr. O'Neill, one of the last New Deal Democrats to wield power in Washington, D.C., added that "power in the world seems" to be moving from arms makers to money makers today.

The United States is "taking a back seat" to the Germans and Japanese in financing peaceful change, said the Massachusetts Democrat, who spent five decades in politics. "While we concentrated on staying ahead of the Russians, we fell behind the others."

"We need to regain control of our economic destiny," said Mr. O'Neill.

He said that the Bush administration and Congress are stuck in an economic straitjacket.

With tacit administration approval, Rep. Daniel Rostenkowski, D-Ill., offered a way out with his package of new taxes and reordered budget priorities, said Mr. O'Neill.

But, "as long as the administration sticks to no new taxes, there will be deep cuts" in spending, he said.

'We need to regain control of our economic destiny,' says former House speaker 'Tip' O'Niell.

Mr. O'Neill also told RIMS conference attendees of meeting Mikhail Gorbachev during a visit to Moscow shortly after the Soviet leader took power.

During a one-on-one meeting, Mr. O'Neill said he was astounded to find that Mr. Gorbachev spoke English. After a disagreement between the two men, the Soviet leader broke off the meeting. Upon returning to Washington, Mr. O'Neill said he told State Department officials that Mr. Gorbachev spoke English.

The officials reacted with disbelief.

However, during the U.S.-Soviet summit in Reykjavik, Iceland, in 1986, officials discovered that Mr. Gorbachev, still pretending he understood no English, corrected his interpreter whenever a phrase was misinterpreted.

Looking back, Mr. O'Neill said that Ronald Reagan probably left less of a domestic legacy than any of the other seven presidents Mr. O'Neill has known.

On foreign affairs, however, it's another matter entirely. The former speaker gives his erstwhile rival Mr. Reagan high marks on his handling of the turmoil in the Philippines and Afghanistan.

Predicting who the Democrats will nominate for president in 1992 is hard, Mr. O'Neill says. But the former political chieftain lists New York Gov. Mario Cuomo, Sen. Bill Bradley of New Jersey and Sen. Sam Nunn of Georgia as possibilities.

—By Mark A. Hofmann

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Edith Lichota receives RIMS' Goodell Award

BOSTON—Edith F. Lichota is this year's recipient of the Dorothy and Harry Goodell Award, the highest honor bestowed by the Risk & Insurance Management Society.

Outgoing RIMS President Ronald W. Stasch, corporate risk manager at Federal Mogul Corp. in Detroit, presented the award to Ms. Lichota during a luncheon May 3 at the 28th annual RIMS conference in Boston.

The Goodell Award recognizes outstanding continuing achievement in furthering the goals of risk management. The award was established in 1978 by Harry Goodell, a founder of RIMS and its first president.

Ms. Lichota, who now heads her own consulting firm—Lichota & Associates of Grapevine, Texas—was selected based on her professional achievements and service to the risk management community over the past 20 years.

Ms. Lichota currently advises clients on risk management, insurance and portfolio management issues. She is vp of administration for Bankers Insurance Co. Ltd. in Bermuda, a policyholder-owned insurer that writes directors and officers liability insurance and financial institution bonds for commercial banks. Ms. Lichota was one of the organizers of BICL.

Ms. Lichota also edits Bank Risk, a quarterly newsletter published by Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc. in New York.

Before establishing her own firm, Ms. Lichota was senior vp in charge of risk management at Irving Trust Corp. in New York. She also has held risk management posts at Carborundum Corp. and Cleveland Work Wear Corp., both in Cleveland.

Ms. Lichota

In addition, she served as vp-government affairs at Insurance Co. of North America in New York.

She served on the RIMS Executive Committee as vp of governmental affairs in 1979-80. She also chaired RIMS' Governmental Affairs Committee in 1978-79 and the International Cooperation Committee in 1985-86.

Ms. Lichota was named Risk Manager of the Year in 1987 by *Business Insurance* (*BI*, March 30, 1987). And, she was honored as Insurance Woman of the Year by the Assn. of Professional Insurance Women in 1986.

Meanwhile, four Texas RIMS chapters have received the Richard W. Bland Memorial Award: the Central Texas Chapter, the Dallas/Fort Worth Chapter, the Houston Chapter and the South Texas Chapter.

The Bland Award recognizes outstanding performance or effort in the area of legislation or regulation.

The four chapters were responsible for spearheading RIMS' efforts to reform Texas' workers compensation laws (*BI*, Dec. 18, 1989).

This is the first time the Bland Award was presented to RIMS chapters rather than to one deputy member of the society, pointed out Howard W. Greene, director of governmental affairs for RIMS.

He noted that four individuals were principally involved in the success of the lobbying effort:

- Pat Doerfler, business insurance supervisor at Dow Chemical Co. in Freeport, Texas.
- Doug L. Campbell, manager of insurance/loss prevention at Mitchell Energy & Development Corp. in The Woodlands, Texas.
- W. Rudd Marlowe, director of risk management at Diamond Shamrock Inc. in San Antonio.
- Mark Carter, director of risk management at The LTV Corp. in Dallas.

In addition, Mari-Jo Hill, senior risk analyst at SAS Institute Inc. in Cary, N.C., received this year's Cristy Award, bestowed by RIMS on the individual with the highest cumulative average in the exams leading to the Associate in Risk Management designation. ■

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Risk Management Planning and Support

Auto insurance reform may hurt businesses

By LOUISE KERTESZ

BOSTON—Risk managers should fight auto insurance reform measures nationwide, because if they are passed insurers will attempt to recoup lost premiums by raising commercial premiums, some industry experts contend.

Proposed voter initiatives, legislation or administrative action in 44 states would roll back or freeze rates for personal auto coverage, according to a regulator, a lobbyist and brokerage executive.

"Risk managers still look at Proposition 103 as a personal lines issue. Well, it's not. The money that carriers lose in personal lines will be recouped in commercial lines," said Howard W. Greene, director of governmental affairs for RIMS.

Demand for premium rollbacks, he said, is "not based on sound underwriting. It doesn't get at the root of the problem," which Mr. Greene said is the high cost of litigation, health care and auto repair.

Consumers, frustrated with rapidly rising rates, remain unconvinced of that argument, said Michael K. White, chairman and chief executive officer of New York-based Alexander & Alexander Inc. and executive vp of parent company Alexander & Alexander Services Inc.

Insurance professionals have not made the public aware of their case against Proposition 103—which required insurers to rollback "charges" 20% in most lines—and similar reform proposals, Mr. White said (see story, page 1).

"We can't and shouldn't let this thing muddle along," he said at a session during the 28th annual Risk & Insurance Management Society conference in Boston.

Ironically, the session, titled "The Progeny of Proposition 103," was recast as a roundtable discussion because only nine people, three of them risk managers, attended.

"I hold it up as a challenge to you to explain the insurance mechanism to anyone willing to listen," Mr. White said.

If personal auto insurance reforms continue to focus on rates, the public will continue to ignore the more serious issue of insurer solvency, Mr. Greene said.

What critics characterize as insurers' exorbitant profits are the springboard for reform proposals, he said. "And that's bad for solvency."

Critics should consider insurers' underwriting income, which has been eroding for personal auto coverage, he said.

"Proposition 103 fuels the type of reform that RIMS does not think is good. It's based on the idea that insurance companies are out there gouging you. It encourages that type of mentality and is an unhealthy approach," said Mr. Greene.

"Risk managers have to realize they are the voice of the educated insurance consumer. It's a voice worth having in the debate," Mr. Greene said.

"You can have an impact by writing letters and visiting your legislators," he asserted.

When Proposition 103 "squeaked by, we first viewed it with amusement," recalled Hawaii Insurance Commissioner Robin Campaniano.

"The National Assn. of Insurance Commissioners saw other issues as more major—such as workers compensation, health care and solvency," he noted.

That amusement has since subsided. "For many states, Proposition 103 has become a big issue," Mr. Campaniano said.

Proposals similar to Proposition 103 are being considered in 44 states, he said, and some insurers have threatened to pull out of some of those states.

The NAIC used to treat such threats as insurers "crying wolf," Mr. Campaniano noted.

But "they are going to pull out" of New Jersey, where a new personal auto insurance reform law abolishes the state joint underwriting association for high-risk drivers and assesses auto insurers $1.4 billion over several years to trim the $3 billion JUA deficit, he said (*BI*, March 12).

State audits show that sloppiness by auto insurers who administered the underwriting association cost New Jersey drivers $900 million over seven years. "Those who prospered the most will pay the most," Gov. James Florio said when he proposed the assessments early this year.

Remaining JUA debt is to be paid off through higher motor registration fees and higher annual licensing fees for doctors, lawyers, chiropractors, physical therapists and auto repair shops in New Jersey.

Proposition 103 even has "raised the consciousness" about personal lines auto insurance rates in states "that didn't seem to have a problem," including Idaho, Michigan, Ohio and Vermont, Mr. Campaniano said.

For instance, there is an effort to put a proposal to roll back rates for all liability lines on the November ballot in Idaho and the governor of Georgia has tried to freeze auto rates.

Activity "whose roots can be traced back to Proposition 103" also is occurring in Arizona, Connecticut, Florida, Maryland and Nevada, said Ohio state Rep. Michael Stinziano. The Columbus Democrat is president of the National Conference of Insurance Legislators and chairman of the in-

Continued on next page

PARTNERS CAN COMBINE UP TO 28 SEPARATE HEALTH PLANS.

Continued from previous page
surance committee in the Ohio assembly.

One reason for the reform measures' popularity is that some legislators and others "view auto insurance as a great political opportunity," said Mr. Campaniano, the Hawaii commissioner.

"The need for insurance reform generally is expected to be a major political issue" in November, agreed Rep. Stinziano. "What is uncertain is whether reform will be politically driven, without sound underwriting consideration."

Proposition 103-type measures "that place the consumer in the ratemaking process probably will have more far-reaching impact than rate rollbacks," Rep. Stinziano added.

The industry was "caught off guard" by the spreading influence of Proposition 103, Mr. Campaniano said. With 50 different commissioners, the NAIC "can't direct policy" on auto insurance, especially since problems vary among the states, he added.

But demands for "20% rollbacks are not going to work. I don't know how that mechanism can kick in," Mr. Campaniano said. Rollbacks "would work if auto insurance profitability were not below mean Standard & Poor's returns," he said.

Consumer groups assert that rates are too high and "insurance companies are inefficient," Mr. Campaniano said. "But 60% to 80% of those rates goes right back for claims costs."

"The flip side of efficiency will be denial of claims," he predicted.

"Another solution" to the high cost of auto insurance "is to cut claims," including those caused by "the most expensive auto part—the nut behind the wheel," Mr. Campaniano said.

Claims also could be reduced by improved highway design, tighter vehicle safety standards, a 55-mph speed limit, a ban on radar detectors and improved mass transit systems, he said.

Meanwhile, the insurance "charge" rollbacks called for by Proposition 103 were "a nonevent" for large companies that pay more than $50 million in premiums annually because "rates for product liability, third-party liability and property insurance are now below 1987 levels for large claims," A&A's Mr. White said.

W. Lee Carter III, vp and director of research and development at A&A in Dallas, coordinated the session. Leonard G. Zawodniak, director of risk management at American Electric Power Co. in Columbus, Ohio, was the moderator. ■

European pollution regulation evolving

By CAROLYN ALDRED

BOSTON—Companies operating in Europe will face environmental regulations similar to the tough anti-pollution laws introduced in the United States in recent years, some experts say.

"What happened in the U.S. . . .will happen in Europe," said Michael J. Murphy, chairman of pollution consultants Environmental Strategies Corp. in Vienna, Va., and Environmental Strategies Ltd. in Chester, England.

"The message I hope to leave you with today is to look at the U.S. regulations and assume that some form or another of those regulations will be introduced in the European Community," he said during a session at the 28th annual Risk & Insurance Management Society Inc. conference.

There already are pollution rules in Europe that are comparable to many of the U.S. environmental laws, but until now the European laws have not been strictly enforced, he said. However, "enforcement will increase" in Europe, he warned.

Moreover, environmental rules in Europe continue to be promulgated, he added.

"The result is that businesses operating in Europe are finding that the rules with which they have been familiar in the past are now changing at a rapid pace," said Mr. Murphy.

And "in spite of the European's best efforts not to mimic U.S. regulations and the nightmare we have lived with in the U.S., when the dust has settled regulations in Europe will look very similar to those in the U.S.," he predicted.

Meanwhile, pollution problems in Europe probably exceed those in the United States, he pointed out.

"Anyone who has been to Europe or looked into pollution problems in Europe knows we are looking at issues that to some degree exceed problems we are dealing with in the U.S. We have some major problems in Europe," said Mr. Murphy.

The massive political changes in Eastern Europe also are revealing horrible environmental problems, he pointed out.

And the issue of the environment has become one of the foremost social and political issues throughout Europe, he noted.

The move toward tougher environmental laws in Europe is being forced by the public as well as by legislators, agreed Stephen Tupper, a lawyer with the Brussels, Belgium-based law firm Stanbrook & Hooper.

"It is now very difficult to exaggerate the seriousness with which people are treating environmental issues in Europe," said Mr. Tupper.

However, so far, "it's really legislation and not litigation that is shaping the trend. The work is being done in lobbying the legislative chamber and not the judges' chambers," said Mr. Tupper.

And most of the legislative thrust is being led by the European Community, partially in preparation for 1992—the year targeted for abolition of trading barriers among EC member nations, said Mr. Tupper.

"1992 has done for Europe what the Boston Tea Party did for independence," he said. "Europe really

Continued on next page

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Pollution rules

Continued from previous page

is moving forward to a situation of a unitary state and it is a momentum that is going to carry on."

Already, the European Council, made up of ministers from each EC nation, has targeted some 200 pieces of environmental legislation, mainly dealing with quality standards for resources like drinking water and emission standards, said Mr. Tupper.

However, the EC is "becoming bolder" and introducing tougher rules, he said, because:

- EC member nations realize that environmental issues cannot be tackled unilaterally and require "multilateral solutions."

"Pollution does not stop at national boundaries. One country's waste easily becomes its neighbor's pollution, particularly water and airborne pollution," Mr. Tupper noted.

- The EC "has strongly asserted its role that it has a right to manage the environment" as outlined in the Treaty of Rome which established the EC.
- The EC "believes that it cannot create a single market unless its produces environmental standards that are uniform in Europe."

The EC is trying to create "level playing fields" across Europe so, for example, the costs of adhering to environmental legislation in one country should not be out of line with the costs a company must pay to operate in another EC nation, Mr. Tupper said.

- The EC is responding to increasing public concern about pollution and the environment.

In recent months, "the EC has taken some initiatives that may affect business operations in Europe more profoundly than anything issued by the commission so far," said Mr. Murphy.

'We do not anticipate as bad a situation in Europe as in the U.S.,' says James P. Flood.

These include a proposed directive on civil liability for waste disposal; a proposed freedom of information directive, which will give citizens an automatic right to government-held information regarding the environment; and a proposal to establish a European Environment Agency and Monitoring Network (see story, page 35).

However, at least one panelist believes corporations and insurers in Europe will not be faced with the same pollution-related costs as companies and insurers doing business in the United States.

"We do not anticipate as bad a situation in Europe as in the U.S.," said James P. Flood, vp of environment claims for Continental Insurance Co. in Cranbury, N.J.

"European laws at the moment aren't as severe" as those in the United States, he said, adding that most environmental laws in Europe deal with prospective pollution and pollution prevention rather than requiring companies to pay for cleaning up past pollution.

"The priority in Europe is focussed on putting an end to ongoing pollution and in addressing prospective issues," said Mr. Flood.

Meanwhile, insurers likely will not face the same kind of pollution-related problems in Europe as they do in the United States because "disputes between insurers and policyholders in Europe are not dealt with in the same way," Mr. Flood noted.

Policy "wording disputes in Europe usually are dealt with by compromise" rather than through bitter court battles that can cost millions of dollars, he noted.

And, if such disputes come to court in Europe, "European courts would be more reluctant than courts in the U.S. to interpret insurance wording so liberally," Mr. Flood said, adding that this means policyholders are less likely to take a dispute to court in the first place.

However, "if the trend toward strict liability (for pollution) continues in Europe, pressure will build up (for policyholders) to bring lawsuits against insurers," he conceded.

"If a pollution liability explosion occurs, insurers (in Europe) do not believe they will have to pay," he said. However, "insurers are concerned about the trend in the EC toward strict liability for pollution and are putting more restrictions into their policies," he noted.

Insurers most likely will resort to issuing strict claims-made environmental impairment liability policies and exclude any form of pollution coverage in general liability policies, he said.

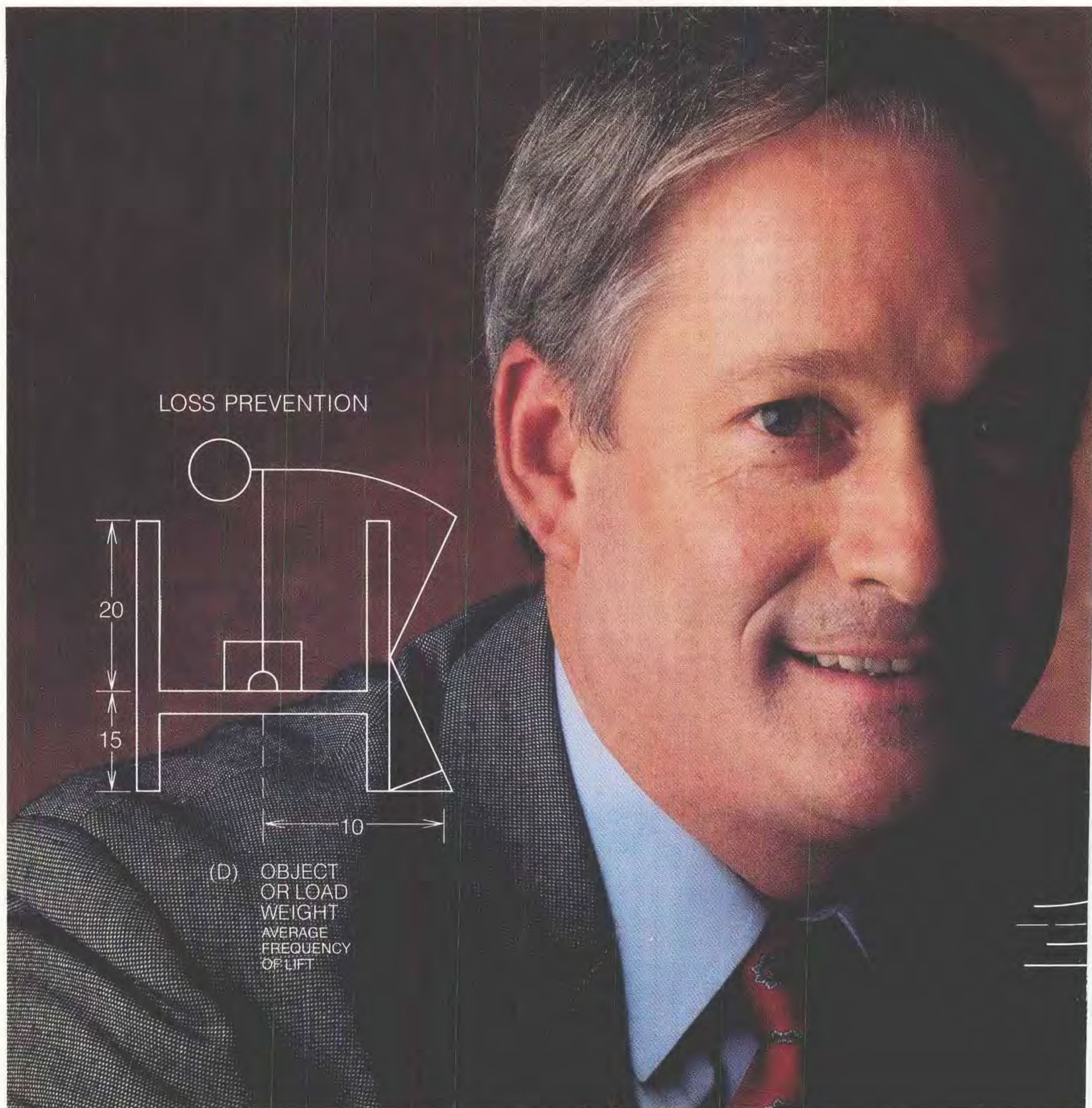
But "because EC laws are not likely to be applied in the same fashion as U.S. laws, and policyholder-insurer coverage disputes are not likely to lead to such liberal interpretation of insurance wording, we will not see the same long-term problems and disputes as in the U.S.," Mr. Flood predicted.

And because insurers "do not anticipate the same problems in Europe, insurers won't retract (from the market) as quickly and to the same extent that they did in the U.S.," he added.

"It's surprising that we see such various degrees of prediction in what's going to happen (in Europe) and how quickly," said Laura L. Markos, director of risk management for Avery International Corp. in Pasadena, Calif. Ms. Markos coordinated and moderated the session.

Whatever predictions come true, risk managers "can no longer assume that the insurance will be available. We have to look at other alternatives, such as self-financing and modifying our corporations' products and manufacturing processes to reduce pollution" exposures in Europe, she said.

Litigation, legislation and pollution control procedures still will vary from one country to another in Europe, Ms. Markos said. But a multinational corporation must "come up with a centralized, internal strategy to know its risks, meet standards, gather financial data and look at its products and processes to ensure environmental-friendly operations," she said. ■



Cost of Europe's 'Green' wave unclear

By CAROLYN ALDRED

BOSTON—A new wave of tough environmental regulations is sweeping Europe, observers point out.

Throughout Europe, "stiff new environmental controls are being proposed which, inevitably, will impact heavily on the costs of doing business in Europe," said Stephen Tupper, a lawyer with Stanbrook & Hooper, a law firm in Brussels, Belgium.

However, "the final form of this new environmental legislation and the level of additional costs for business remain difficult to predict," Mr. Tupper said during a session at the 28th annual Risk & Insurance Management Society conference in Boston.

Environmental legislation is being adopted on two separate levels: by the European Council, the governing body of the 12-nation European Community, and by individual countries, Mr. Tupper explained.

Although the EC has introduced environmental legislation for many years, "the volume and significance of (European) Community environmental legislation has increased exponentially over the last 10 years," he said.

The EC currently is proposing three new initiatives that could have a profound impact on businesses in Europe, agreed Mr. Tupper and fellow panelist Michael J. Murphy, chairman of Environmental Strategies Corp. of Vienna, Va., and Environmental Strategies Ltd. in Chester, England.

A recent EC proposal on liability for damage caused by waste is "probably the single most important proposal affecting risk managers and insurers," said Mr. Tupper.

The proposal makes "the producer of a waste strictly liable for any damage caused by that waste. The purpose of the directive is to provide easier access to compensation for the victims of pollution and to harmonize liability legislation among the EC states," said Mr. Murphy (*BI*, Nov. 27, 1989).

The proposal "clearly states that generators (of waste) will now have a continuing and strict responsibility for their waste," even after they have employed a third party to dispose of it, he said.

The proposal also would establish joint and several liability for waste producers.

The proposal sets a statute of limitations of three years from the time of damage or injury and 30 years from the time of the incident that eventually leads to injury or damage. However, the proposal will not apply retroactively, Messrs. Tupper and Murphy pointed out.

The proposal likely will be debated by the European Council later this year, said Mr. Tupper.

Meanwhile, another important regulation—the Freedom of Information Directive—could also affect business operations, said Mr. Murphy.

This directive, adopted in March by the European Council, is designed to give citizens an automatic right to information held by public authorities, said Mr. Tupper.

"Citizens will get access to a wide variety of information, including internal government reports on the levels of pollution," he explained.

"The real impact on Community business is difficult to gauge. However, adoption of this directive in its present form, coupled with the adoption of the civil liability directive, could have a profound effect on the current environmental liabilities of companies doing business in Europe," said Mr. Tupper.

EC pollution laws have 'increased exponentially' since 1980, says Stephen Tupper.

"Easy access to government-held information will make the incidence of third-party damage actions more likely. As a result, businesses will have to consider strongly whether or not their waste management systems and environmental compliance programs can be improved to avoid exposing themselves to increased liabilities," explained Mr. Tupper.

Meanwhile, the EC also is proposing the establishment of a European Environmental Agency and a European Environment Monitoring and Information Network, said Mr. Murphy.

"The stated purpose of the proposed system is to simplify the acquisition and dispersal of environmental information," Mr. Murphy said, referring to the agency and the network.

The system is not designed to be an enforcement agency like the U.S. Environmental Protection Agency, said Mr. Murphy. However, he also noted that the role of the EPA has been greatly enlarged over the years and that many Europeans believe that, similarly, the powers of the European Environment Agency will expand over time.

"Concerns have been expressed by some in industry that such a system will inevitably become a vehicle for international enforcement," he noted.

Some observers "believe that the creation of a benign data-gath-

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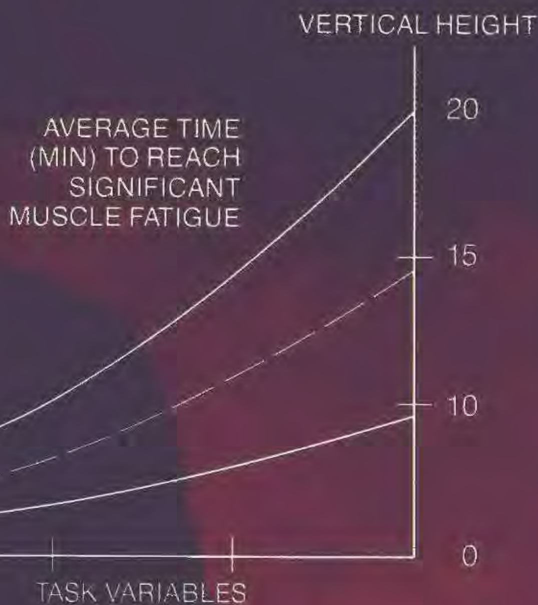

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'Green' wave

Continued from previous page

ering agency is merely the first step on the road toward an environmental enforcement role for the Community," agreed Mr. Tupper.

However, "notwithstanding this general shift to Community legislative solutions" to protect the environment, "for the time being, national law remains pre-eminent," said Mr. Tupper.

Messrs. Tupper and Murphy outlined legislative developments in several European countries, including:

• The United Kingdom. U.K. environmental legislation is likely to increase and become more strictly enforced, they agreed.

The United Kingdom has been called the "Dirty Man of Europe" and has been widely perceived to be an "environmental slouch," said Mr. Tupper. However, things are changing, he added.

An environmental protection bill—widely known as the Green Bill—is currently being debated by Britain's Parliament and is expected to become law in the fall, said Mr. Tupper.

If the bill—which has not yet been completed—becomes law, thousands of businesses will be required to obtain authorizations from Her Majesty's Inspectorate of Pollution.

Currently, "common laws of negligence generally govern liability for pollution (in the United Kingdom). They include establishing a duty of care, a breach of that duty and the presence of a party to whom that duty was owed, and loss or damage arising from that duty," Mr. Murphy explained.

"However, I believe the U.K. will have strict liability for waste relatively soon," Mr. Murphy said.

• Denmark. Environmental regulations enforced in Denmark, particularly for industry, are among the strictest in Europe, said Mr. Tupper.

In addition, Copenhagen, Denmark's capital, is considered the favorite among possible sites for the European Environment Agency, he pointed out.

Meanwhile, the Danish Environment Protection Agency is continuing to pursue companies for costs associated with the cleanup of existing hazardous waste sites, he noted.

The Danish Environmental Act of 1985 imposes strict liability on polluters and there is "increasing emphasis for stiffer compliance control and higher fines for industry" in Denmark, said Mr. Murphy.

• France. Like the United Kingdom, France is greatly expanding its environmental regulations amid increasing public concern about the state of the environment.

The French Environment Ministry's budget is due to be increased by up to 27% this year so it can beef up enforcement, said Mr. Tupper. And, the government is expected to announce new corporate taxes later this year linked to the level of pollution caused by individual companies, he added.

France has a unique system of liability for pollution incidents, Mr. Murphy said. Under this system, the defendant must show an absence of fault to win its case, while the claimant need only show a causal relationship exists between the damage suffered and the pollution, he said.

• The Netherlands. Disagreement over a proposed National Environmental Policy Plan last year led to the downfall of The Netherlands' coalition government, noted Mr. Tupper.

However, pollution issues already are on the new government's agenda. For instance, the government in February introduced a carbon dioxide tax that is levied on coal and natural gas.

The government has warned that the tax is likely to be the first of many it will introduce to make environmentally damaging practices more expensive, according to Mr. Tupper.

The Dutch government also may encourage "closed loop" production techniques, which cause less waste; establishing recycling systems; and imposing strict requirements to rid products of impurities.

Meanwhile, in March 1989, the Dutch environment minister established the Commission for Soil Cleanup of Operative Industrial Sites, which will target tens of thousands of waste sites. Industry is to pay the bulk of the estimated $10 billion needed to clean up those sites, said Mr. Tupper.

However, despite these tough rules, The Netherlands has not yet introduced strict liability for pollution incidents.

• West Germany. Some of the tightest environmental and pollution controls in the world already exist in West Germany, noted Mr. Tupper.

West Germany introduced strict liability for water pollution more than 20 years ago and a bill to extend strict liability to all forms of pollution, including air and soil pollution, is currently pending in Parliament, he added.

Meanwhile, West Germany now could be faced with the enormous task of cleaning up waste sites in East Germany as the unification of the two nations continues, noted Mr. Murphy.

Until now, "70% of industrial waste in West Germany has been shipped to East Germany. The dollars needed to clean up East Germany are mind boggling," Mr. Murphy said.

Until now, '70% of industrial waste in West Germany has been shipped to East Germany. The dollars needed to clean up East Germany are mind boggling,' says Michael J. Murphy, chairman of Environmental Strategies Corp.

• Sweden. Laws passed in Sweden in 1969 and 1986 impose strict liability on polluters.

Meanwhile, "a new (Swedish) consortium has been created to build up a fund that will indemnify third parties for pollution caused by insolvent or defunct polluters or for cases where it is not possible to determine who caused the pollution," said Mr. Murphy, explaining that the fund will be managed by five insurance companies.

Money for the fund will be collected by levying specific amounts—determined by the insurers and officials from the Ministry of Environment and Energy—on companies involved in certain industries, such as gasoline sales and certain types of manufacturing, he explained. ■

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1992 will change many exposures of policyholders

By CAROLYN ALDRED

BOSTON—Risk managers in Europe can look forward to "more choice, more quality and more satisfaction" from insurers as 1992 unfolds, says an executive with a leading French insurer.

At the same time, risk exposures of companies with European operations also likely will change radically, noted Jean-Louis Meunier, director of non-life operations for L'Union des Assurances de Paris.

Mr. Meunier spoke to a packed session at the 28th annual Risk & Insurance Management Society conference last month in Boston.

1992 has been targeted for the formation of a single market by abolishing trade and fiscal barriers among the 12 European Community nations.

"1992 is not an event, it's a process with the aim of creating a single economy," explained Cornelis A. de Kluyver, a principal of management consultant Cresap, a division of Towers, Perrin, Forster & Crosby Inc.

"We will see a market emerging that will rival that of the United States and overshadow that of the Far East," he said.

Many hurdles remain in the political and economic union of Europe, among them language barriers, the massive changes in Eastern Europe and the vexed question of national sovereignty. But "1992 is not to be sneezed at," he said.

It will present challenges and changes for European and U.S. corporations, Mr. de Kluyver pointed out.

Business in Europe already "has grabbed the initiative," according to Mr. de Kluyver.

Cross-border mergers have begun and "we are already seeing the emergence of strong global competitors that likely will do business in the U.S.," he pointed out.

There clearly is "stronger European competition with global companies developing and beginning to compete on (U.S.) turf," he contends.

However, many opportunities exist in Europe for U.S. companies which now face a simpler "set of regulations and opportunities to rationalize production and achieve economies of scale with a coordinated market and distribution network," he explained.

Already major U.S. corporations "are looking at returning to more centralized operations in Europe," he pointed out.

Two other session speakers argued that such changes in corporate structure also will greatly change the risk profiles of European operations.

"Companies will become more European and if they do not, their markets will. Risk exposures are going to take on an international appearance," said UAP's Mr. Meunier.

As trade barriers are dismantled and technical standards are harmonized, "production facilities will become increasingly centralized, producing higher concentration of risks and increasing insurance requirements," he said.

With "changes in the style of production there will be a considerably increased need for protection and loss prevention techniques," he predicted.

Companies "will be fiercely competing" as the single market develops, said Wolfgang F. Friedel, vp of international operations for Arkwright Mutual Insurance Co. of Waltham, Mass.

Cross-border mergers of major industrial companies will create different demands for risk managers than in the past, said Mr. Friedel, who is based in Sheldon, Conn.

Also, consolidation of manufacturing and storage operations will greatly change risk exposures, he warned.

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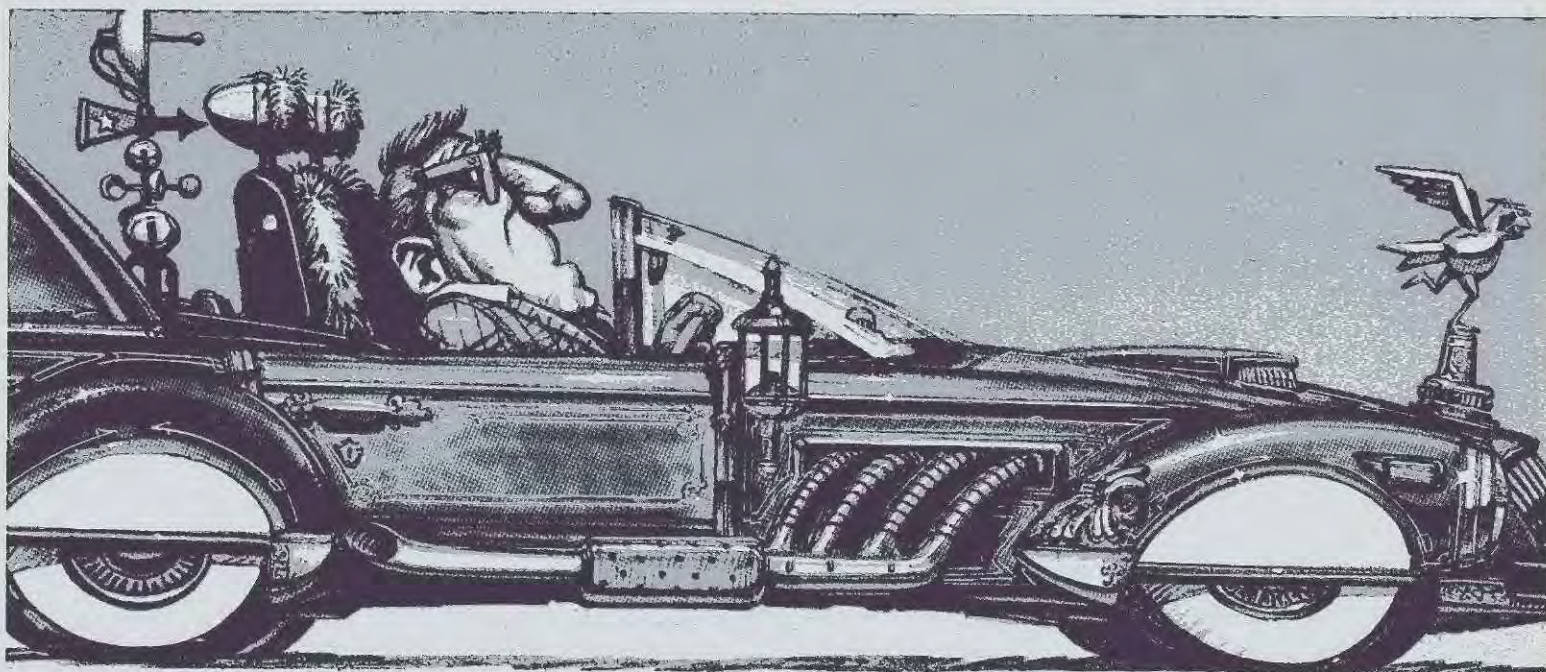

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European market

Continued from previous page

For example, two years ago a European company with 17 manufacturing operations and 12 warehouses acquired another company with 15 manufacturing operations and five warehouses, said Mr. Friedel.

Total manufacturing operations for the new company already have been cut to 14 and storage facilities to four, he noted.

"The whole complexity of the operation has changed with obvious implications for risk managers," he said.

In addition, "the interdependencies between the operations have changed, with more eggs in each basket."

Nine of those 14 operations depend on the five others for raw materials, said Mr. Friedel.

In two years, the company's largest property exposure nearly doubled to $132 million from $67 million and its business interruption exposures almost tripled, he said.

Another likely development that would affect risk management, according to Mr. Friedel: Fierce competition will force companies to rely on tighter cost margins.

"But the true challenge to risk managers in Europe will be to demand what you need" from insurers and other vendors, said Mr. Friedel.

Risk management still varies a great deal between Europe and the United States, he said. "The buying of insurance as the single method of risk management still applies to the majority of organizations in many EC countries."

But that is changing fast. And the changes, said Mr. Friedel, are coming from the top down rather than beginning with middle management.

So far, however, it's "only half-heartedly supported by the brokers and insurers in Europe," he noted.

Risk managers still are confronted by a tightly controlled insurance industry with rigid, inflexible procedures, he said.

For example, companies in West Germany find it very difficult to purchase comprehensive policies that provide wide coverage including fire damage, theft and business interruption. Until recently, policyholders were required to purchase up to dozens of separate policies, each insuring a specific risk.

"Ultimately it's the risk managers' demands based on the changes within their corporations that will force changes in the insurance industry—and not dozens of EC directives," noted Mr. Friedel.

And insurance companies will change as competition increases, said Mr. Meunier of UAP, France's largest insurer.

Massive changes already are afoot in Europe's insurance industry, he said.

To position themselves in a new marketplace, insurers are merging, acquiring other insurers and forming joint ventures, he said.

That concentration, he adds, "is set to continue for some time."

About 20 insurers in Japan serve a market on par with that of Europe, which is home to about 1,000 insurance companies, he said.

By the end of the merger battle in Europe it will be "realistic to talk of a group of between 10 to 20 insurers with a Europeanwide presence," said Mr. Meunier.

Many insurers are also joining with or acquiring other financial companies to set up financial conglomerates offering services like banking, pensions, life insurance and other insurance services, said Mr. Meunier.

In France, this is known as "bancassurance." The West Germans call it "allfinanz."

This concept of bancassurance is very important "because the fight to be the European insurer of tomorrow will be the fight for distribution today," he pointed out, referring to insurers' desire to increase their retail operations.

Commercial policyholders are not affected directly. But premiums and revenues a bancassurance company derives from its other operations will provide the capacity corporate clients require, said Mr. Meunier.

Meanwhile, "the repercussions of the changes in the European insurance industry will be far reaching for corporate clients," he said.

Corporate risk managers "are going to get a lot more attention from more specialized professionals in the future," he said.

"International programs will be the rule and only one insurance company will become responsible for all the risks of a corporation across Europe. For America this is normal, but our national states have existed for hundreds and thousands of years with different languages and different cultures, and these changes will be great," said Mr. Meunier.

In the new market, "insurers will be required to give cover in each European country and will need to be present in each European country to service their clients," he said.

Increased competition among insurers "inevitably can only be to the corporate client's advantage," said Mr. Meunier.

There "is going to be an increasing need for expertise and specialization (from insurers) to meet the increasing demands of the market," he added.

All in all, risk managers of European operations can "look forward to more choice, more quality and more satisfaction. See you in Europe," said Mr. Meunier.

Stephen M. Wilder, director of corporate risk management for The Walt Disney Co. in Burbank, Calif., moderated the session. H. Felix Kloman, a principal of Tillinghast, another division of Towers, Perrin, Forster & Crosby, was the coordinator. ■

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It's Our V

Factory Mutual System

Panel views insurance around the world

By CHRISTINE WOOLSEY

BOSTON—Unstable or oppressive political and economic conditions in some areas of the world are limiting investment opportunities for multinational corporations, causing little change in local insurance marketplaces, says a panel of experts.

"Insurance doesn't change much unless there is economic development," summed up David B. Kuhnke, director of environmental affairs at the Stanley Works, a tool manufacturer in New Britain, Conn.

Mr. Kuhnke moderated a panel discussion on insurance in the Middle East, Mexico, South America and Africa at the 28th annual Risk & Insurance Management Society conference in Boston April 28-May 4.

Most of these areas are not hotbeds of investment activity.

And for those in which investment is picking up, the experts expect only limited changes in the insurance marketplace over the next decade.

"In my part of the Arab world, the beginning of the 1990s signifies a pickup in the Arabian economies," noted William H. Allman, a senior vp of the North American Division of American International Underwriters, a unit of American International Group in New York. Mr. Allman's territory includes Kuwait, the United Arab Emirates and Saudi Arabia.

Mr. Allman said Middle Eastern governments are preparing for a mid-1990s crude oil shortage in other oil-producing nations that may strengthen their economies.

"These governments are increasingly motivated by the possibility of increased oil revenues and are gearing up for significant crude oil installations" and construction expansion within their borders, Mr. Allman explained.

Such increased economic activity may give foreign investors some limited new opportunities, Mr. Allman said.

Most insurance for risks in the Middle East is handled by state-owned monopolies, as in Iraq and Syria, or by arrangements between governments and local insurers, as in Egypt and Kuwait, Mr. Allman explained.

The Saudi Arabian government is the largest purchaser of insurance in that country. But the Saudi government—alone among Middle Eastern nations—believes that under Islamic law, insurance is gambling, said Mr. Allman.

As a result, "the Saudi government formed its own insurance company along Islamic lines and won't let other companies" underwrite coverage, he said.

All insurers doing business in the Middle East must be admitted in the countries in which they do business, he said. "All of the risks situated within these countries must be placed with an insurance company in that country, or if insurance is government-run, placed with the government insurance company."

Premium income is increasing in most of these countries, "following the growth of their economies," Mr. Allman said. Some national laws, designed to strengthen internal markets, require all goods and services to be purchased locally, according to Mr. Allman.

Although he is not generally enthusiastic about Middle Eastern opportunities for outside insurers, Mr. Allman said he expects the construction of new crude oil facilities to spur business for U.S. insurers. Local underwriters, he said, cannot underwrite all the foreign risks present in Middle Eastern countries.

Meanwhile, an economic recovery in Mexico is helping to change that nation's insurance market, said Fernando Ortega, partner and director at Brockman y Schuh, Agente de Seguros, S.A. de C.V., a brokerage in Mexico City.

Mexico is restructuring its foreign debt and deregulating many industries, insurance among them, Mr. Ortega said.

"Insurance can't be left aside. It was the first financial service to be deregulated," he noted.

One major change in the deregulation proposal President Carlos Salinas sent to the Mexican congress: Mexican insurance companies can now be up to 49% foreign-owned.

"This will bring money into the insurance market here," Mr. Ortega said.

Insurers will have to meet a minimum capital requirement set each year by the country's finance minister. "Right now, its close to $2 million and has to be paid by June," he said.

"We anticipate fewer companies in the market, but there will be stronger companies," he said.

Property/casualty insurance rates—historically high in Mexico—will drop with deregulation, raising questions about the health of some Mexican insurers, he said. But even with lower rates, Mr. Ortega said he expects Mexican insurance companies to remain profitable.

Property/casualty insurance rates also are falling in other Latin American nations like Argentina and Chile, said J. Kenneth Seward, senior vp and director at Johnson & Higgins in New York.

The state insurance monopoly in Argentina has been weakened and "local companies can now reinsure 40% of risks freely—abroad or with other companies" in Argentina, said Mr. Seward. "This has resulted in overall rate reductions and a consolidation in the number of insurance companies there."

Chile's economic turnaround has been the region's most notable, he said, explaining that the nation's economy has posted five years of steady growth and it has a favorable balance of trade.

"Insurance has been free since 1980 when the Caja state insurance monopoly was abolished," Mr. Seward said. "The insurance market in Chile is completely free."

Chile could be a standard for other insurance markets throughout Latin America, he said.

In fact, Colombia may be on its way to a free insurance market, he said. Tariffs recently were abolished on fire insurance policies, he explained.

Economic and political conditions in Africa are among the world's worst and that is not expected to help the insurance environment there, said another speaker, Claude Sautiere, deputy managing director of Gras Savoye, a brokerage in Paris.

The session was coordinated by David F. Blake, vp of risk management and insurance for Inter-Continental Hotels in Montvale, N.J. ■

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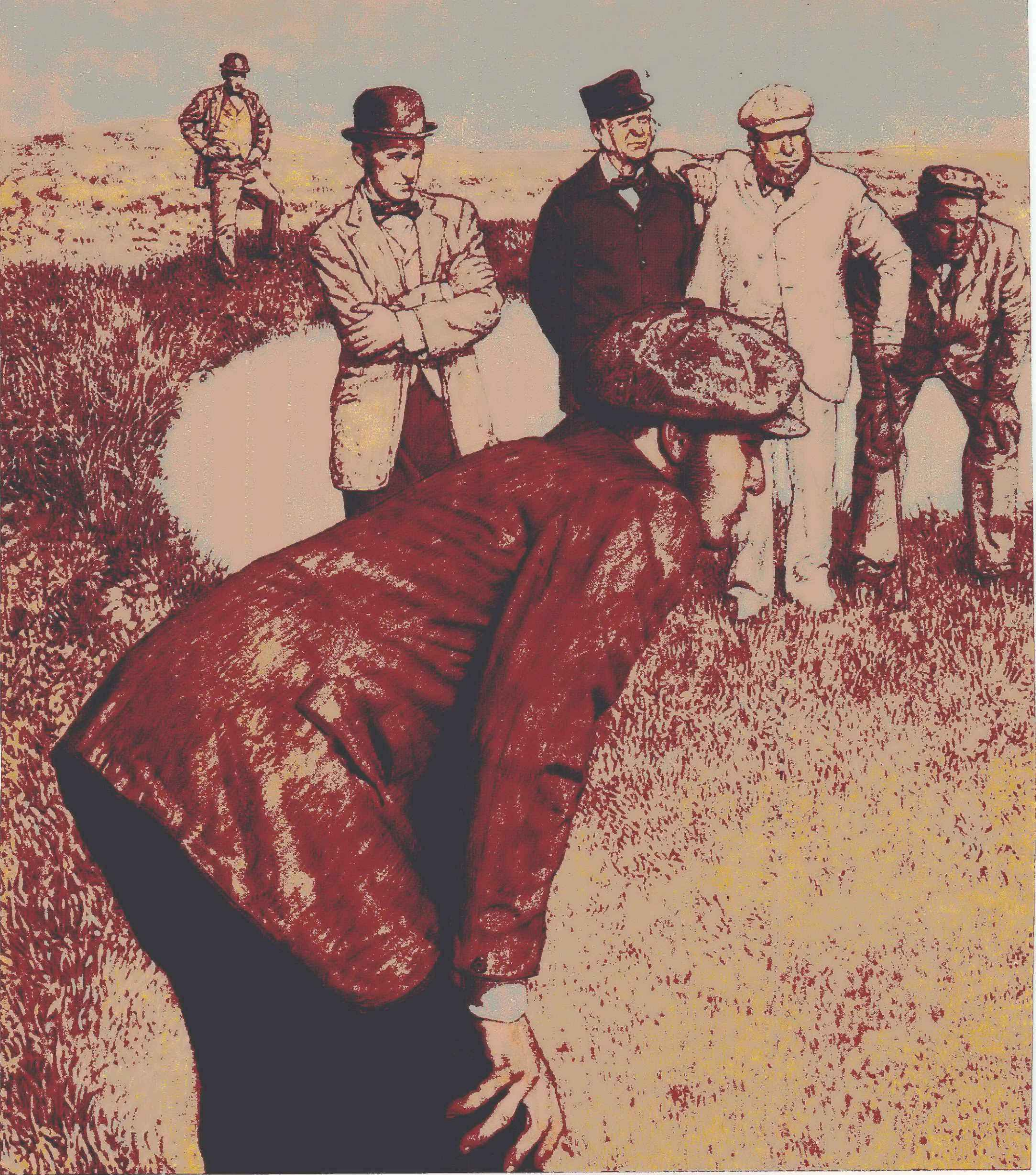

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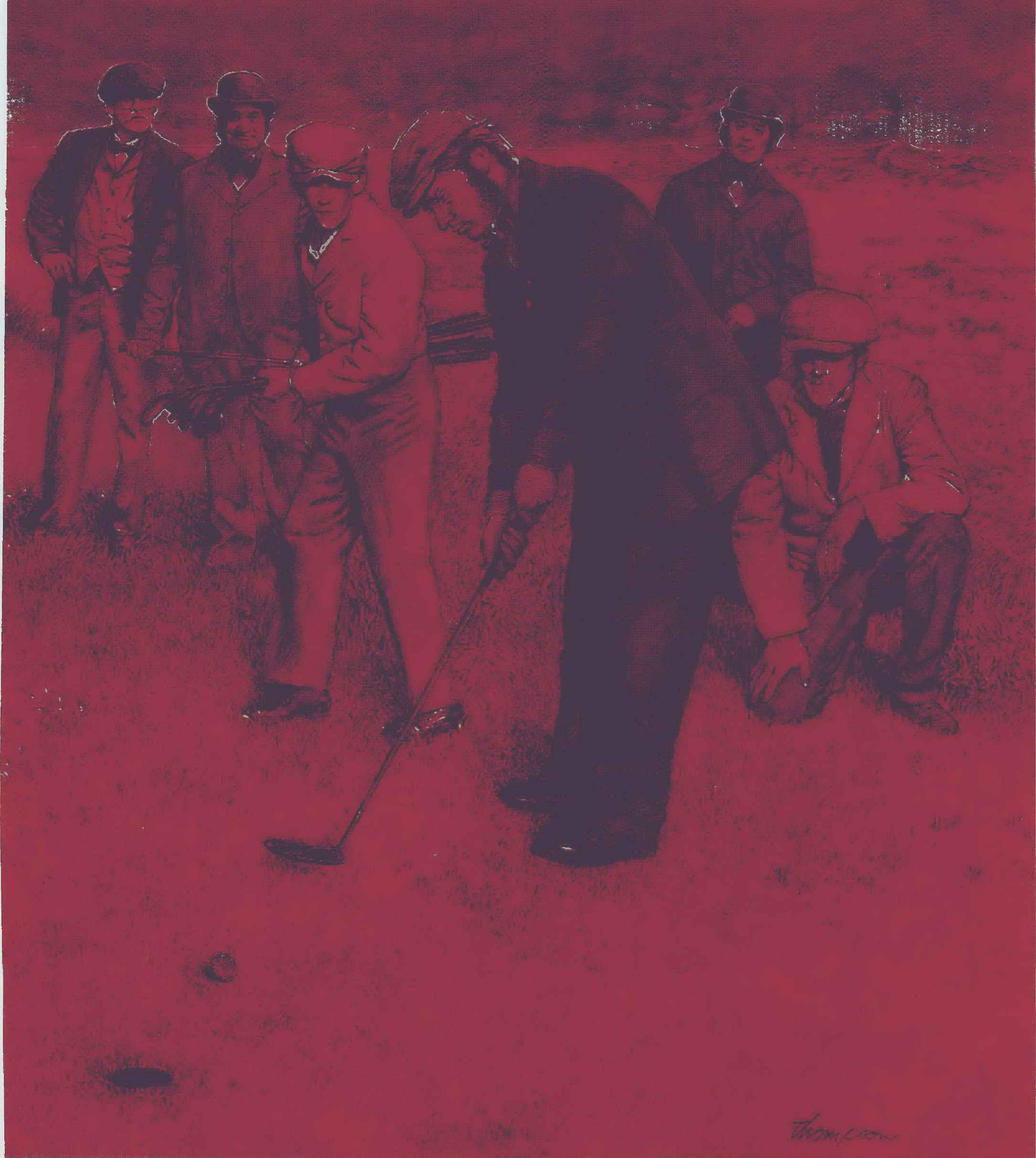

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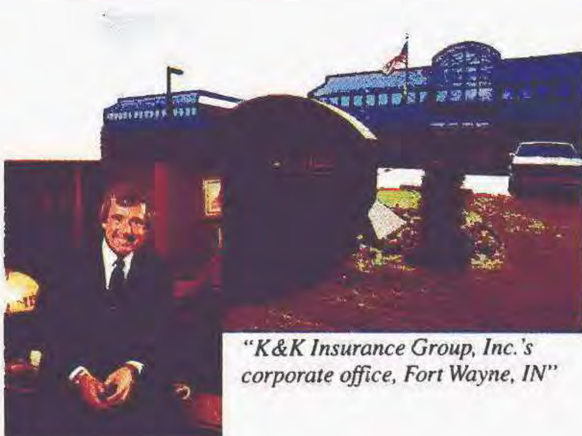
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ASK A CASUALTY ACTUARY

Gauging 'confidence' in ability to absorb loss

Q **What is a confidence level? Can you explain it in terms I can understand? How can I determine what confidence level should be maintained by my program?**

A Actuarial estimates of reserve or funding levels are often subject to a great deal of uncertainty. This uncertainty arises out of the fact that such estimates are really "forecasts" of the outcome of future events. In the case of a rate or funding level for a future period, it is very clear that the actuary is making a forecast that can be as subject to change must like the weather three days hence.

In the case of currently open claims, these future events often include the entire gamut of possible outcomes in terms of what each claim will settle for. The amount of the final settlement of any given claim can be influenced by a wide range of possible events, including the mood of the claims adjuster, whether a lawyer is retained and the chance that some court decision or piece of legislation will be applied to claims that already have been filed.

The weather forecaster often says things like, "There is a 70% chance of rain tomorrow," and his meaning is clear. We all know that this means seven times out of 10 it will rain and three times out of 10 it will not. He could also have said he was 70% confident that it will rain tomorrow and it would mean the same thing.

When an actuary says that total loss reserves, at a 70% confidence level, should be $5 million, he means that seven times out of 10 it will turn out, when all the claims are settled, that the total payout will be less than $5 million. And, in three times out of 10, the total payout will be more than $5 million.

Let's consider another example: The high water level of a river during flood season. During an average year, the high water mark might be 10 feet above the river bed. So the 50% confidence level for the high water mark is 10 feet. From records over the past 100 years, we know that the high water mark exceeded 20 feet in only 10 years. So the 90% confidence level is at 20 feet—if we assume that there have not been any shifts in weather patterns.

The Consolidated Conjured-Up Co.

Ultimate losses for accident year 1990 at various confidence levels

Confidence level	Ultimate losses in thousands of dollars
1%	$250
10	500
30	750
50	1,000
75	1,250
90	1,500
95	1,750
97.5	2,000
99	2,250
99.5	2,500
99.75	2,750
99.9	3,000

BI/JOHN HEILAND

During the worst year in the past 100 years, the high water mark was 30 feet, which is the 99% confidence level. And history records that the worst flood was more than 200 years ago, when the high water mark reached 50 feet, which would represent a confidence level higher than 99%. If it were the 99.8% confidence level, it would be referred to as a 500-year flood level $(1/(1-.998)=500)$, and a 99.9% confidence level would be called a 1,000-year flood level $(1/(1-.999)=1{,}000)$.

Now, you ask yourself, if you were going to buy a riverfront residence, at what confidence level would you want the floor of your house? Not many would choose the 50% confidence level, even though it would be quite enjoyable to live right on the water. Under that scenario, your house would be flooded about every other year.

Even a 75% confidence level would mean your home would be flooded about once every four years $(1/(1-.75)=4)$. And a flood every 10 years is still too often, so you would want it higher than the 90% confidence level. I think most of us would want it at least above the 100-year mark, or above the 99% confidence level.

But when you are deciding on a reserve or funding level for a self-insurance program, few would opt for the 99% confidence level. There are several reasons for this. First, a self-insurance program typically represents only a small portion of the liabilities of a corporation or pubic entity. So if losses exceed funded levels by some degree, that difference usually doesn't represent an unmanageable financial event.

Second, if a shortfall in funding begins to become evident, it is unlikely that all those payments will become due right away. In other words, there will usually be some time available to try to make up for the shortfall. So, the consequences of a shortfall in reserves or funding are not nearly as catastrophic as a flood.

As a result, most would decide to fund at a confidence level of between 70% and 90%, just to be a bit on the safe side and reduce the likelihood of some unpleasant surprises.

But why not just fund at an average, or expected, level (i.e., around 50%)? The basic problem with such an approach is that the chances are fairly high that actual losses will be significantly higher than what has been funded. The only ways to solve this problem are to fund at a higher confidence level or to buy excess or aggregate excess insurance.

A relatively simple example should help to illustrate some key points here. Let's suppose that an analysis of your program's loss experience looks like what is depicted in the chart of an analysis of the Consolidated Conjured-Up Co.'s loss experience. After this analysis has been completed, you conclude that the expected level of ultimate losses for accident year 1990 is $1 million.

The Consolidated Conjured-Up Co.

Analysis of loss experience

Accident year	(1) Reported losses	(2) Factor to ultimate	(3) Ultimate losses [(1)x(2)]	(4) Payroll	(5) Ultimate loss rate [(3)÷(4)]
1985	$195,000	1.026	$200,000	$10,000,000	2.00
1986	1,200,000	1.083	1,300,000	11,000,000	11.82
1987	420,000	1.190	500,000	12,000,000	4.17
1988	800,000	1.375	1,100,000	13,000,000	8.46
1989	400,000	2.250	900,000	14,000,000	6.43
Total	$3,015,000		4,000,000	60,000,000	6.67
Projected for 1990			1,000,000	15,000,000	6.67

BI/HOLLY SEGUINE

The actuarial analysis also provides you with ultimate losses at a wide range of confidence levels, as shown in the chart of Consolidated Conjured-Up's ultimate losses for accident year 1990 at various confidence levels. This latter analysis could be quite disturbing, because it indicates there is a chance that losses may be quite substantial, just as in the example of the flood.

But this is all a matter of whether or not total losses of $2 million or $3 million would be difficult to handle financially if you booked something more around $1 million or $1.5 million. If your company or hospital or public entity could easily absorb an additional $1 million to $2 million in losses, and if those to whom you are accountable are prepared to assume the risk of an unpleasant surprise of that magnitude, then funding at a confidence level of 50% to 65% may be quite reasonable.

If investment income associated with your program's reserves and funding will inure to the benefit of the program, then this adds a further reason not to be as conservative in selecting a confidence level. An actuarial analysis should apprise you of the expected magnitude of the impact of investment income and you might want to have an exhibit, such as the chart of ultimate losses at various confidence levels, prepared that displays indications after the anticipation of future investment income.

Other considerations that might enter into your decision would include:

- The need for alternative use of funds that could be allocated to the self-insurance program.
- The likelihood that loss experience for subsequent years will be unfavorable at the same time you are trying to make up a shortfall from prior years.
- How much time would really be available to amortize the shortfall before claim payments would come due.

The value of the type of analysis that is presented in the chart of ultimate losses is that it should give you a clear idea of how bad things can get and how likely it is that things will get that bad. Once you determine how easy or difficult it would be to face various catastrophic scenarios, you can then decide which confidence level is the most appropriate one for your program. ■

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

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

Mr. Sherman

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

Mr. Sherman's and Mr. Miner's columns usually appear alternately on the first Monday of each month. Ms. Werner's column appears on the second Monday of alternate months. Mr. Sherman's next column will appear in July.

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.

Preventing back injuries can reap savings

By MICHAEL SCHACHNER

BOSTON—Implementing a comprehensive back injury prevention program is much less expensive for an employer than paying for an employee's rehabilitation from work-related back problems, according to a back injury expert.

"The back injury problem in industry is so significant that a comprehensive plan is necessary to combat the number of injuries and lost time days," asserted Nancy C. Selby, president of the Spine Education Center Inc., a back injury prevention training school in Dallas.

Eighty-five percent of working Americans experience back pain at some time in their lives, and 2% to 5% of those lose work time because of their injuries, Ms. Selby pointed out during a session on conquering back injuries at the 28th annual Risk & Insurance Management Society conference.

However, a comprehensive program that consists of pre-employment job training, ergonomic education, post-injury control and a modified duty return-to-work program for injured employees can reduce the cost and lost time related to back injuries by as much as 75%, she asserted.

And, such a program is relatively inexpensive, Ms. Selby said. 'It doesn't cost nearly as much as the $90,000 you have to put in reserves for a back injury" to cover the approximate cost of surgery and rehabilitation for an injured employee, Ms. Selby said.

A comprehensive injury prevention plan should contain definitive pre-employment hiring procedures, according to Ms. Selby.

For example, written job descriptions should spell out the amount of lifting required for a particular job to ensure that candidates are well matched for the demands of the position, she said.

And, employment materials should describe how the company would compensate workers for their injuries.

"People often don't understand how they'll be paid if they get injured. That's usually when they call their friendly neighborhood attorney" and costs skyrocket, she explained.

Ergonomic education should include providing information on proper body mechanics, posture and manual lifting techniques, Ms. Selby said.

"While workers may spend 40 hours per week on the job, they are spending the rest of their time somewhere else. Education for the employee is perhaps the most critical component of a good, sound back injury prevention program," she said.

While proper lifting techniques should be stressed during an ergonomic training program, the program also must cover proper sitting and standing positions, how to bend down or reach for an object, how to properly push and pull objects, and proper loading and unloading mechanics, according to Ms. Selby.

Despite all the training and education available, back pain—especially lower back pain—remains a common ailment throughout the United States, Ms. Selby noted.

However, most back injuries tend to be short-lived and usually do not require surgery, she said.

Most lower back pain can be attributed to one of several things: a tear in the disc wall; a bulging or herniated disc; a collapsed disc that leads to bone spurs; synovitis, where synovial fluid builds in the vertebrae's joint; or common slippage of the spine, noted David K. Selby, an orthopedic surgeon and senior partner with the Dallas Spine Group.

About 70% of back patients get well within one week, and of the remaining patients, 90% are well again within six weeks, said Dr. Selby, who is married to Ms. Selby.

Only 1% of all back patients are surgical candidates, he noted.

"I stress conservative, non-operative care, but there's an old saying that goes, 'Never try to teach a pig to sing. It wastes your time and annoys the pig,' " said Dr. Selby, referring to how some patients do not want to believe that they will probably be free of back pain within six weeks.

The best way to treat acute or chronic lower back pain is with non-steroidal anti-inflammatory drugs, ice and stretching, he said.

"Bed rest is no longer the 'gold standard.' We have found that ligamental tissues heal faster through activity," Dr. Selby explained.

Employers and injured employees must realize that in almost all cases injured workers' backs are not "out forever and they will probably be better in a short time," Ms. Selby added.

"The medical doctor for your industry should not be sending the employee home for several weeks with narcotics. It is now recognized that two to three days of bed rest should be the maximum and that intermittent rest and activities are going to promote wellness for a back injury much more quickly" she said.

Once an injured worker is up and moving again, a modified duty return-to-work program is beneficial because it allows an injured worker to gradually progress back into his prior job, according to Ms. Selby. The worker remains active but is not overexerted, she said.

"As long as the job is not too strenuous and (the employee) uses good body mechanics, he is better off at the job site than he is at home becoming a couch potato," she said.

In addition, employers should reward employees for coming back to work early, Ms. Selby said.

"Industry needs to take a proactive position in rewarding healthy behavior rather than sick behavior," she said.

"The safety director or foreman should go out and visit all injured employees and tell them that they're wanted back," Ms. Selby said.

And, as is the case with most risk management and loss control programs, top management must be committed to reducing the number of work-related injuries for a back injury prevention program to be successful, she noted.

"If the reduction of back injuries is to become a priority, management must become actively involved. Employee and supervisor attitudes are directly responsive to that of top management," said Ms. Selby, who coordinated the session.

Sol Wolchansky, risk manager with Dallas Corp. in Dallas, moderated the session. ■

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Global firms must cope with terrorism

By JUDY GREENWALD

BOSTON—Multinational firms should not assume that local employees working in their foreign operations are safe from kidnappings, a loss control expert warns.

Contrary to some multinational firms' assumptions, kidnappers often do not care whether they kidnap fellow citizens or American citizens, said Christopher Grose, executive director of Bethesda, Md.-based North American division of Control Risks Ltd., a London security consulting firm.

For example, a Control Risk survey found that 57, or 35%, of 165 kidnap victims who worked abroad for U.S. and Canadian corporations or non-profit entities between 1973 and April 1990 were neither U.S. nor Canadian citizens, Mr. Grose told *Business Insurance*.

Mr. Grose also noted that of the 165 kidnap victims, 15 are known to be dead.

Another misconception some firms have is that maintaining a low profile is the best approach to minimizing the risk of kidnappings, Mr. Grose said during a session on security outside of the United States at the 28th annual Risk & Insurance Management Society conference in Boston.

"A low profile isn't a guarantee of safety," Mr. Grose said. He noted that employees of relatively small, little known multinational firms also are kidnapped.

On the other hand, executives cannot guarantee their safety by hiring several bodyguards because determined kidnappers could always outnumber them, he said.

Nevertheless, kidnapping "is an insurable risk," he said.

"There's both a legal and moral responsibility to be aware of risks that are foreseeable," Mr. Grose said.

All executives should be made aware of possible risks, given guidelines they can follow and "possibly accept there will be times when restrictions" on their activities will be needed, he recommended.

Mr. Grose said the problem multinational executives are most likely to encounter abroad is being caught in the crossfire of turmoil or demonstrations they personally have nothing to do with.

"There's a real potential for simply being caught up in the violence that's going on," he said.

And, while "most, if not all (terrorist actions) are insurable," they can be harmful to a firm's corporate image if not correctly handled.

Once a kidnapping occurs, companies could "care less" whether they are insured, according to Mr. Grose. Their main concern is finding a kidnap and ransom consultant who knows how to handle the problem, he said.

Terms and conditions in kidnap and ransom insurance policies tend to be similar, Mr. Grose noted. What distinguishes kidnap and ransom insurers are the consultants they use to advise them once a kidnapping occurs, he said.

Bombings, hijackings, kidnappings and other terrorist actions occur more often in foreign countries than in the United States because there are fewer "safety nets" to prevent them and fewer resources to handle such an incident if it occurs, Mr. Grose explained.

Focusing on bombings, Mr. Grose warned that airports and airline offices are particular targets. Executives overseas who can avoid airline ticket offices should do so, Mr. Grose said.

In fact, when a multinational company is searching for office space, it should consider how close potential sites are to airline offices.

In particular, "the threat to major national carriers can be quite high," he said, noting these airline offices are often used as surrogate targets to exert pressure on foreign governments.

Mr. Grose added that while the probability of a bombing is low, executives should avoid airports that do not maintain high security standards.

"Another area of gloom" for executives is illegal detention or arrest under "dubious circumstances." These instances can arise out of contractual disputes or allegations of bribery, "which may mean allegations of non-bribery," quipped Mr. Grose, citing incidents in Iraq, Iran and Nigeria.

Other actions by executives that could lead to their detainment include traffic offenses and possession of literature that some countries consider "subversive," such as a Bible, he said.

The only way to avoid these problems is to be clear on local laws, said Mr. Grose.

"It's worth finding out what the local rules and customs are, then scrupulously obeying them," he said.

Focusing on specific areas of the world, Mr. Grose noted that while Eastern Europe represents "tremendous opportunities" for business, it also means considerable challenges on the security front.

He predicted problems arising out of raised expectations of prosperity and people's attitude that they "want it, and want it quickly."

He also warned that there are "extremely violent ethnic divisions" to contend with in Eastern Europe.

And in Western Europe, the European Community members have eased border restrictions, which has made terrorist movement easier, he said.

For example, Mr. Grose pointed to circumstances surrounding the December 1988 bombing of a Pan American World Airways jetliner over Lockerbie, Scotland (*BI*, Dec. 23, 1988). The terrorists who planted the bomb apparently traveled freely within several European countries, he said.

Executives also must be aware of the risks inherent in Moslem fundamentalism when traveling in Moslem countries, Mr. Grose warned.

It is important that executives in Moslem countries understand "the depth of distrust and distaste—indeed hatred—that the extreme—and I do mean extreme—Moslem has for our culture."

To avoid problems, executives should be sensitive about how their lifestyle can be interpreted by Moslem extremists, he said.

Looking to the future, Mr. Grose predicted that "we will see the U.S.S.R. take a more responsible attitude toward terrorists" and help to reduce the incidence of terrorism.

Also speaking at the session was Paul F. York, international risk manager for Danbury, Conn.-based Union Carbide Corp., who moderated and coordinated the session. ■

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Loss control vital to risk management

By ADRIENNE C. LOCKE

BOSTON—An effective and well-planned loss control program is the essence of a company's overall risk management program, a risk manager contends.

"You get out of loss control what you put into it," said James E. Crockett, manager of risk and benefits at the Denver Board of Water Commissioners.

Loss control is essential to a risk management program because "it limits the impact of loss on a business," he said during a session on the basics of loss control at the 28th annual Risk & Insurance Management Society conference.

An effective loss control program should closely involve corporate management and site managers, seek the input of employees and outline the roles of all participating parties, Mr. Crockett said.

Loss control can be broken down into three parts, he explained:

- Loss prevention, in which a situation is examined to determine if a possible loss can be prevented.

For example, with fire risks, if one of the three elements needed to create fire—air, fuel and ignition—can be eliminated, the chance of an accidental fire is eliminated, he said.

- Loss reduction, which deals with what can be done before or after an accident to limit its severity, Mr. Crockett said.

Fire reduction measures such as firewalls, sprinkler systems or fire-resistant containers can be implemented before a fire to lessen its impact. Also, salvaging usable equipment will cut losses after the accident, he said.

- Loss avoidance, which eliminates a risk completely by removing the procedure that could cause that accident, Mr. Crockett said.

For example, if a product a company manufactures could create a loss, the company could avoid that exposure by halting production.

"But, sometimes it's not always practical" to eliminate a risk because it is a vital part of the production process, or because a loss prevention or reduction measure would accomplish the same results, he said.

In a loss control program, the risk manager should identify and analyze potential risks, and then determine if loss prevention, avoidance or reduction would best manage the situation, he said.

After the appropriate method of loss control has been selected, the risk manager must monitor the cost of controlling the risk and the effectiveness of the loss control measure to determine if the results are acceptable or if the measure needs to be revised, he said.

Another panelist said any decision to implement changes in loss control or safety procedures should not rest solely with the risk manager.

The decision to implement a safety measure should also rest with those company managers whose employees' safety is at issue, said Erin A. Oberly, a risk management consultant with the Tillinghast division of Towers, Perrin, Forster & Crosby Inc. in San Francisco.

"Risk managers can influence" the solutions to a problem, "but cannot and should not act" to fix the problem themselves, she contends. "Risk managers should influence, advise and consult," but not have the authority to implement changes themselves, she said.

Ms. Oberly said she strongly believes that all risk managers should have a fair amount of sales training since they must sell their proposals for loss control to both upper management and a plant's managers.

In addition, a risk manager should listen to the plant managers, Ms. Oberly said, and find out what problems they have, what they want out of a loss control program and what factors the other managers face that could affect the loss control program.

Risk managers should try to evaluate risks from the plant managers' viewpoint, Ms. Oberly stressed.

In addition, employee involvement in loss control can be improved by making sure management is giving workers the right kind of safety message and providing employees with information about the safety procedures in place at the worksite, she said.

But, employees must also understand that they must take responsibility for following those safety procedures, she said.

As a loss control program takes shape, a risk manager may need outside help to evaluate existing safety programs, develop new programs, or improve cost savings, Ms. Oberly said.

One option might be to enlist the help of an insurance broker who can provide the services necessary to help a company maintain a safe operating record, said Dean W. Ward, senior vp of Alexander Consulting Services Inc., a subsidiary of broker Alexander & Alexander Services Inc. in Dallas.

A broker can provide safety consultants to review a company's loss control program to assure the client that "there is no problem, or if a problem exists, to recognize it and address it," Mr. Ward said.

These services can be purchased as a part of a brokerage agreement or separately as consulting services, he said.

"We do not seek to duplicate the services" provided by a client's insurance coverage, but only offer the services that the client needs, Mr. Ward said.

Such services can include:

- On-site safety inspections.

This can include performing inspections, providing technical assistance to the company during its own inspection or assisting in training employees for self-inspections, Mr. Ward said.

- Safety programs.

This can include preparing reports to pinpoint problem areas or trends, or developing training or incentive programs, he explained.

- Serious accident investigations.

This can include performing an investigation, assisting the company with its own investigation, developing a company's own accident investigation program and developing accident prevention solutions, he said.

Other loss control services provided by a broker can include hazardous material handling and waste management, ergonomics, and product liability programs, Mr. Ward said.

The moderator for the session was Linda Huennekens, corporate risk manager at VICORP Restaurants Inc. in Denver. Mr. Crockett coordinated the session. ■

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RIMS elects new officers to serve 1990-1991 term

BOSTON—A new slate of officers is taking the helm of the Risk & Insurance Management Society Inc.

As previously announced, Cheri J. Hawkins was elected president for the 1990-1991 term. Ms. Hawkins is director of insurance of Weyerhaeuser Corp. in Tacoma, Wash. (*BI*, May 7; April 23).

In addition, Robert W. Esenberg, risk management administrator of the city of Virginia Beach, Va., was elected RIMS first vp, the traditional stepping stone to the presidency.

Mr. Esenberg was first elected to the executive committee in 1986. He has served as vp-member affairs/secretary and vp-conference and most recently served two terms as vp-governmental affairs.

Ms. Hawkins

Mr. Esenberg

Two newcomers were elected to the RIMS executive committee this year. They are:

- Gerald J. Ciardelli, corporate risk manager for Jostens Inc. in Minneapolis, vp-education.
- Lucille A. Gallagher, vp of risk management for Monfort of Colorado Inc. in Greeley, Colo., vp-governmental affairs.

Re-elected executive committee members include:

- J.A. Bridger, risk and insurance manager at Canada Packers Inc. in Toronto. This year he is vp-business and industry liaison. Mr. Bridger, who was first elected to the executive committee in 1987, previously has been vp-member affairs/secretary and vp-conference.
- Denis A. Julien, director of risk management for Florida Progress Corp. in St. Petersburg, Fla., will remain vp-communications. First elected to the executive committee in 1987, Mr. Julien also has been vp-education and vp-conference.
- Suzanne H. Crager, assistant vp-risk management and insurance for PNC Financial Corp. in Pittsburgh.

Mr. Ciardelli

Ms. Gallagher

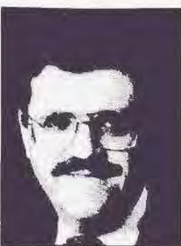
Mr. Bridger

Mr. Julien

Ms. Crager will be vp-conference. Ms. Crager, who was first elected to the RIMS executive committee in 1989, was vp-finance/treasurer last year.

- J.A. Yvon Menard, manager of risk and insurance for Marathon Realty Co. Ltd. in Toronto. Mr. Menard continues as vp-research. Mr. Menard first was elected to the RIMS executive committee in 1989.

Ms. Crager



Mr. Menard

Mr. Murphy

Mr. Belfiglio

- Justin A. Murphy, director of insurance for Nestle Foods Corp. in Purchase, N.Y. Mr. Murphy will serve as vp-member affairs/secretary. Mr. Murphy, who was first elected to the RIMS executive committee in 1986, previously has been vp-research, vp-communications and vp-business and industry liaison.
- Gerald L. Belfiglio, pensions and insurance manager of Ford New Holland Inc. in New Holland, Pa. He will serve as vp-finance/treasurer this year. Mr. Belfiglio, who was first elected to the RIMS executive committee in 1989, was vp-members affairs/secretary last year. ■

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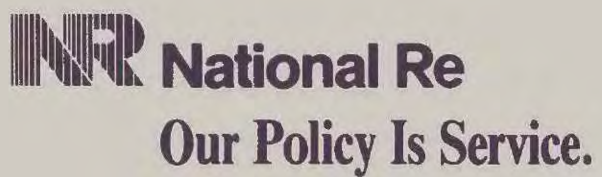

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Businesses can reduce legal expenses

By LOUISE KERTESZ

BOSTON—Businesses have a variety of options they can use to control legal costs, an auditor of legal bills says, though he admits there is "no panacea, no magic wand" that companies can use.

Statistics vary, but a recent New York University study estimates that property/casualty insurance-related legal fees will hit $20 billion this year, said John J. Marquess, chairman and legal director of Legalgard, an auditing firm in Bala Cynwyd, Pa.

As legal costs soar, companies are battling "the idea that every case has to be prepared as the legal equivalent of Armageddon, with no concern about controlling legal fees," said Kevin M. Quinley, vp of risk services at Hamilton Resources Corp. in Fairfax, Va. Hamilton manages MEDMARC Insurance Co. Risk Retention Group Inc., which writes product liability insurance for medical device and diagnostic product manufacturers.

Legal costs for all casualty lines of insurance rose 45% from 1978 to 1988, according to the Insurance Services Office Inc., Mr. Quinley noted.

ISO found that legal costs rose to $12 billion—or 14% of losses—in 1988, from $8 billion—or 9% of losses—in 1978, Mr. Quinley said during a panel discussion at the 28th annual Risk & Insurance Management Society conference. Mr. Quinley, who moderated and coordinated the panel, predicts that utilization review principles increasingly will be applied to corporate legal bills.

Companies will also fight rising costs with alternative dispute resolution and computer tracking of legal cases, experts said.

Mr. Marquess outlined ways a company can control legal costs.

One way—litigation management—involves making in-house staff into utilization specialists.

Working with a vendor, corporate staff can study legal bills to identify potential savings. Specific billing guidelines can then be set up for each law firm.

Companies "think lawyers are going to hate this, but I was never comfortable practicing law without guidelines," said Mr. Marquess, a former trial lawyer, after the discussion. Lawyers want to know their clients' expectations and "don't want disgruntled clients," he said.

Each firm's practices should be reviewed before guidelines are set up. Because procedures vary so greatly, "general guidelines just don't work," added Mr. Marquess.

For instance, some firms now charge for heating and air conditioning, he said. And one secretary who operated a computer appeared on bills as a "data input specialist," he said.

"There's no such thing as overhead anymore," he quipped.

Mr. Marquess noted that "probably the No. 1 accountability program" for law firms is the legal bill audit. An audit involves matching bills against depositions, plane tickets or other materials.

In selecting legal bill auditors, Mr. Marquess advises considering the range of services, geographic scope, professional qualifications, point of service, reporting capabilities and references offered by each firm.

A potential client also should consider a vendor's billing method—a flat fee; a percentage of the bills being audited; or a percentage of savings.

Another way to save on legal bills is to cut back on the number of law firms used, Mr. Marquess said. A company can thus say, "We want to be partners with you, we want you to be a preferred law firm. And we expect the service" such a relationship entails, he said.

Ultimately, hiring lawyers in-house also will cut a company's legal bills, he said. "There's very little question that the use of in-house counsel saves money."

Alternative dispute resolution also helps control legal costs, said Lisa J. Kramer, a consultant with the Tillinghast division of Towers, Perrin, Forster & Crosby Inc. in Philadelphia.

"Lawsuits, unlike wine, don't improve with time. They just cost more," Ms. Kramer said.

The longer a case goes on, the more expensive it is, Ms. Kramer explained after the session.

Not only do legal costs rise, but the indemnity losses incurred through jury awards become higher with time, she said. Those awards are increased both by inflation and by "new theories of liability," she said.

Using alternative dispute resolution procedures saves an average of about $1,000 to $6,000 per case, Ms. Kramer said, citing figures from four insurers. These savings translate into lower premiums for employers, she said.

Vendors of ADR services can help a company choose an appropriate alternative. Choices include arbitration, mediation, mini-trial, summary jury trial or moderated settlement conference.

A company should appoint an in-house ADR coordinator to "learn the cost and success rates of vendors and then advise. . .when and how to use ADR. The last and most important duty of the ADR coordinator is to collect success stories and communicate them to the company in a newsletter," Ms. Kramer said after the session.

The coordinator will thus help overcome "the 'I don't want to go first mentality' " that is present in most companies, Ms. Kramer said.

Limitations to ADR use include an unwillingness of the opposition by the claimant to settle, injuries or damages that have not stabilized and the need for a court ruling in a specific case because one of the parties wants to set a legal precedent, she said.

ADR also will not work when one party seeks the publicity a court case will generate; the case is dependent on resolution of other cases; and fact-gathering in the dispute is incomplete, Ms. Kramer said.

Another speaker, M. Kenneth Doss, vp, secretary and general counsel of Fieldcrest Cannon Inc. in Eden, N.C., detailed the advantages of computerizing information concerning legal cases in progress.

"It gives us information quickly," he said after the session, and helps meet the company's goal of reducing claims by "making a better product."

Fieldcrest Cannon has changed production techniques and altered warnings on its products as a result of computer-aided monitoring of liability cases, Mr. Doss said. ■

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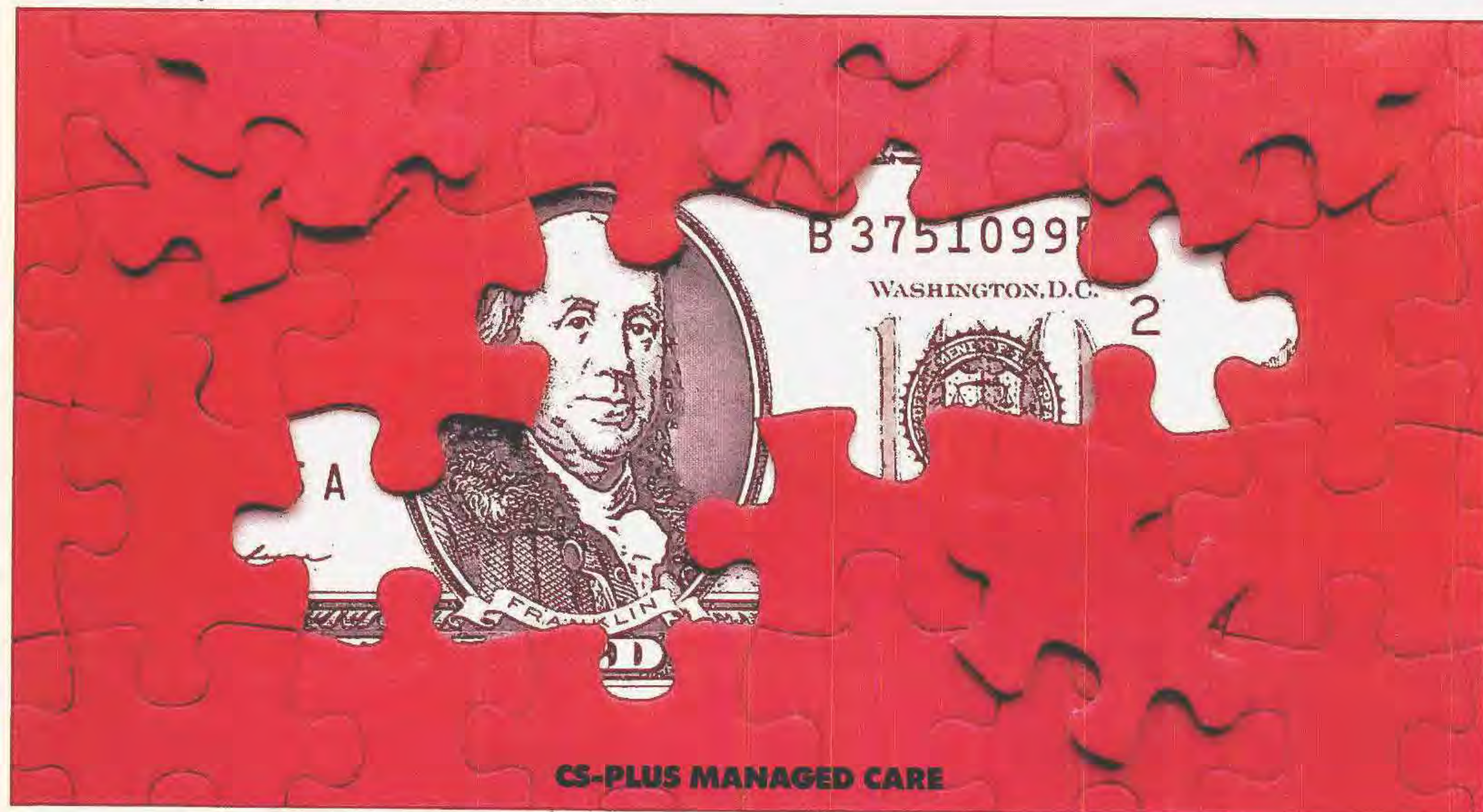

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Return workers to work and save: Experts

By MICHAEL SCHACHNER

BOSTON—Returning injured employees to work as soon as they are medically able can dramatically cut the cost of a workers compensation claim, says the insurance manager for a nationwide retailer.

Claims management is the workers comp cost control method that shows the greatest immediate return on investment, said Stephanie Craig, insurance manager for Braintree, Mass.-based Grossman's Inc., a nationwide chain of home improvement centers.

Ms. Craig, who moderated a panel discussion on removing return-to-work barriers at the 28th annual Risk & Insurance Management Society conference, acknowledged that while accident prevention is a sure-fire way to cut work comp costs, work site accidents will always occur and risk managers should concentrate most on mitigating costs after accidents.

"Accident prevention, while critical for long-term cost control, takes time to become part of the corporate culture. Claims management, however, can cut your cost today," she said.

One of the main problems in returning injured workers in a timely fashion is that supervisors and line managers often do not want injured workers back, said Missy Quay, corporate risk manager for Dennison Manufacturing Co. in Framingham, Mass.

Ms. Quay said too often foremen worry that a newly returning employee, who has been off work for a long time, will be reinjured or will display a poor attitude that will lower morale.

But by communicating to supervisors that their compliance in returning injured workers to the workplace as soon as possible is necessary, employers can cut work comp costs, said Ms. Quay.

However, not all return-to-work barriers are created after an injury, says Alan Pierce, a workers compensation plaintiffs lawyer with Pierce, Schneider & Ricci in Salem, Mass.

"Employers should avoid creating barriers to begin with," Mr. Pierce suggested. "Better pre-hiring practices, safety programs and annual physicals will create a better working atmosphere."

However, the accident itself often establishes a monumental barrier, Mr. Pierce said.

"Normally, the employer gets defensive at this stage. There's no contact with the injured employee and if there is contact, it's usually negative contact," Mr. Pierce explained. "As an employer, you have to make immediate positive contact. Tell the employee who their work comp insurer is and help them out. If they're running short on funds, tell them you'll advance them until their claim is paid. When the money isn't coming in is usually when they seek counsel.

"Recognize the barriers and you're only one step ahead. Not creating them at all is much better than trying to remove them," Mr. Pierce added.

Mark Noonan, an assistant vp with Johnson & Higgins of Massachusetts in Boston and a lawyer specializing in defending employers in workers compensation litigation, concurred, explaining that an open line of positive communication between the injured employee and the employer is vital to avoiding expensive lawsuits and extended lost time.

"Communication with an employee is extremely important. Employers should talk with the employee continuously. Many employees don't even know the options that are available to them. Also, let them know if modifications have been made in the work station where they were hurt. Tell them you have improved the situation that caused their injury," Mr. Noonan said.

He also stressed that costs can be reduced by providing restricted or modified duty for recovering workers. "The object of claims management is not to deny benefits, but to reduce expense by getting employees back to work."

"Sometimes we get too wrapped up in injury prevention and we forget that the job includes mitigating the cost after an injury occurs," added Philip Goldsmith, director of loss control services for J.H. Albert International Insurance Advisors in Needham Heights, Mass., and coordinator of the session.

Mr. Goldsmith urged risk managers to carefully create alternative return-to-work jobs at all of a company's sites. He also suggested that the program be detailed in writing and information about the program be spread among employees, supervisors, insurance companies, the plaintiffs' bar and various state workers comp organizations.

Another reason why employers experience difficulties in getting injured workers back on the job is that they must secure a release from the attending physician or physical therapist, who often is unaware of the subtleties governing the workers comp system, a panelist said.

"Only 40% of medical school students ever hear the term occupational health," said Dr. Glenn Pransky, chief of clinical services with the University of Massachusetts Medical Center's occupational health program in Worcester.

"Doctors need training in workers comp. They often don't know if the employer has a light-duty program. The only information they get is from the injured employee," he said.

"Doctors today are very afraid of reinjury and liability and, therefore, are on the side of the employee. Their responses are dictated by what's in front of them, and that's not the light-duty program at some factory but the employee," said Dr. Pransky.

He recommended that employers make local physicians familiar with the work site and actual job requirements. "Select a physician who is willing to work with you and establish credibility with the employees. Also, develop a form for the employee to bring to the physician that describes your light-duty program, identifies a contact person and requires the physician to state the employee's actual limitations."

"Political, not physical, reasons keep an employee out of work more often than not," said Edward Swanson, vp of The Return to Work Center, a physical therapy center in Holyoke, Mass. "Offer alternative work and make the alternative work fit the injury," he said. ■

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Insure risks of foreign trade: Experts

By CAROLYN ALDRED

BOSTON—As U.S. companies increasingly produce and market their products worldwide, risk managers must develop a greater understanding of the political and credit risks associated with operating overseas, experts agree.

"With U.S. firms increasing their investment and trade activities in Third World countries—where there is certain political instability—there is growing demand for corporations to analyze exposures, adopt risk transfer options, provide loss control alternatives or, in other words, do political risk management," said Thomas A. Cook, a broker with NIA Ltd. of Paramus, N.J.

"Change is the name of the game today. The world is one of flux with trade barriers coming down worldwide. Trade operations are expanding and so is the risk," said John A. Hanson, president of the Foreign Credit Insurance Assn. in New York.

And political and credit risk management is not just confined to historically unstable areas, agreed speakers during a session at the 28th annual Risk & Insurance Management Society conference in Boston.

"You not only have to be sensitive to political risks but you have to realize that political risk comes in all sizes and shapes and can rear its head in all sorts of places," said former risk manager Edith F. Lichota, president of consultant Lichota & Associates Inc. in Grapevine, Texas, who moderated and coordinated the session.

For example, the Foreign Credit Insurance Assn. recently paid a large claim following a credit default in the United Kingdom, said FCIA President John A. Hanson.

Foreign 'trade operations are expanding and so is the risk,' says Mr. Hanson of the FCIA.

The FCIA is a New York-based association that issues export credit insurance to U.S. exporters and their financiers. The FCIA writes export credit insurance on behalf of Liberty Mutual Insurance Co. of Boston; American Credit Indemnity Co. of Baltimore; and Asset Guaranty Reinsurance Co. of New York. It also has an agency agreement to write insurance for the federal Export-Import Bank of Washington, D.C.

Export credit insurance covers the payment of receivables related to the sale of products and services overseas. U.S. companies expose themselves to such a risk even when trading in Western nations like West Germany and the United Kingdom, said Mr. Hanson.

"We insure an item on your balance sheet that often is forgotten—the risks of extending credit internationally," he said.

Last year, the FCIA wrote export credit insurance for about 1,000 U.S. companies, covering about $5.2 billion of exports, he said. More than 50,000 U.S. exporters probably export about $200 billion worth of goods a year, according to Mr. Hanson.

Heavy losses in the 1970s and 1980s prompted many insurers to leave the political/credit risk insurance market, according to Mr. Hanson. For example, he estimates that the FCIA paid out more than $1 billion in claims in the 1980s.

Several companies recently began writing political and credit risk insurance again on a short-term basis, usually for up to a 360-days policy period. And "more players are going to come back as the market is pretty good these days," he noted.

Currently, however, "only a handful of markets both here and abroad can provide" the coverage, said NIA's Mr. Cook.

Credit and political risk policies are individual policies that "must be manuscripted to follow the nature of the trade, transaction or contract occurring in the foreign market," he said.

Risk managers must analyze each exposure, carefully considering "the social, the economic, the political and the financial situation of the foreign buyer or partner, the host country and the world situation in general," Mr. Cook explained.

Political risk insurance covers financial loss caused from a variety of risks associated with doing business overseas.

New political risk products are constantly being developed, according to Mr. Cook, but he said the main products provide protection against financial loss caused by:

- Expropriation, confiscation, nationalization and seizure of assets.
- Currency convertability risks.
- Government-imposed trade restrictions.
- Deprivation of use of assets on a temporary basis.
- Terrorism.
- Damage caused by ethnic or politically motivated violence, riots, strikes and other civil commotion.
- Trade disruption.

Companies usually are better off covering a range of overseas operations and a variety of different political risks under one policy rather than just focusing on one risk and one operation, the speakers agreed.

"On occasion, we will insure one single risk on a short-term basis. But, by and large, we like a contract covering a spread of risk," said Mr. Hanson.

John G. Pinner, assistant treasurer for toy manufacturer Mattel Inc. of Hawthorne, Calif., said risk managers usually "get a better rate overall covering a wide spread of risk in one policy, rather than covering individual projects separately."

Moreover, if a risk manager insures an operation in one country he considers politically unstable, invariably an uninsured claim will arise in another country he had believed was risk-free, pointed out Mr. Pinner.

Meanwhile, risk managers can take other measures to ensure minimal trade disruption from political upheavals abroad, said Ms. Lichota.

For example, a company manufacturing or buying components overseas should obtain the components from more than one country, thereby ensuring a supply of parts when supply is disrupted in one country, she suggested. ■

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Residual markets burden comp system

By LOUISE KERTESZ

BOSTON—Employers that purchase commercial workers compensation insurance will continue to be stung by sharply increased assessments on insurers to subsidize state assigned risk pools.

Employers can try to reduce these "pass-through" charges that insurers add to workers compensation premiums by negotiating with their insurers or by self-insuring, experts say.

However, they add, the only solution to the residual market problem is to curb workers compensation costs through reform of the work comp system.

With increasing workers comp medical and litigation costs driving up residual market assessments on insurers, "the major way insurance companies have of recouping this assessment is to pass it through to their large risks," said Kathleen S. Gibson, vp at Marsh & McLennan Inc. in Dallas and coordinator of a session on the residual market at the 28th annual Risk & Insurance Management Society conference.

"The real solution is to control costs in the workers compensation program," said Ms. Gibson.

"The assigned risk problem is just part of the larger problem" of soaring medical costs and "high attorney involvement" in workers comp claims, agreed David B. Cox, an actuary with the New Mexico Department of Insurance.

"The increasing cost of dispute resolution" is adding to workers compensation costs, agreed Richard L. Thomas, senior vp at American Home Assurance Co., a unit of American International Group Inc. in New York.

Operating losses in the assigned risk pools hit $1.9 billion in 1989, estimates Mr. Thomas

This cost escalation is the result of injured employees knowing that if lawyers and medical experts "fight it out. . .you'll get more money" for a work comp claim than what is specified on a state schedule of benefits, he said.

Also driving up employers' workers compensation premiums are the servicing fees charged to state assigned risk plans by commercial insurers, which in New Mexico amount to 30% of assigned risk premiums plus commissions. These fees are "an added inefficiency of the system," Mr. Cox said.

Detailing "the current, most disastrous period of residual markets," Mr. Thomas explained that the rapid premium growth in residual markets coupled with increasing workers compensation costs have driven operating losses in the assigned risk pools from $400 million in 1982 to an estimated $1.9 billion in 1989.

"The mess of having these large deficits," which inexorably result in higher workers comp insurance premiums, "is a pretty depressing picture," said Mr. Thomas.

The burden of the residual market on insurers nationwide is estimated at 12.4%, meaning "12.4 cents out of every dollar paid in workers compensation (premium) has to be paid to the residual market. Twelve percent is rather extreme," said Mr. Thomas.

The combined ratio for both the voluntary workers comp market and the assigned risk pools is projected to be 119% in 1990, Mr. Thomas said, which explains why "generally, carriers are getting out of the market."

The number of risks in the workers compensation residual market nationwide has grown to an estimated 21.8% of direct written premiums in 1989, up from 5.5% in 1985, he said, adding the 5% level is considered normal.

Meanwhile, insurers have to project expected increases in residual market assessments so they can calculate pass-through charges to policyholders, M&M's Ms. Gibson said. Insurers are assessed for residual market costs based on their share of the voluntary workers comp premium in a given state.

Projections of increased assessments vary widely, since "insurers have different forecasts of what will happen" in the way of workers comp reforms in each state, she said. Consequently, pass-through charges will also vary widely, she noted.

"Everybody views it differently," Mr. Thomas agreed, noting that the size of pass-through charges to policyholders have become another way insurers can compete for a business.

A policyholder looking for a good rate on workers compensation coverage should "get a good broker," Mr. Thomas advised.

M&M's Ms. Gibson encouraged negotiating rates with work comp insurers. "They may not reduce their quote in that line," but they may reduce a quote "in another" line if they want to keep the company's business, she said.

Employers may also want to reconsider self-insuring their workers compensation risks, she said.

"The residual market loading may be high enough so that the economics of self-insurance may be different from the last time you looked at it," she suggested.

But self-insurance has to be viewed as "a long-term commitment," Ms. Gibson warned, noting that administrative costs, cash flow and bonding requirements must also be considered.

Meanwhile, insurers are not able to raise workers compensation rates adequately because "rates in any state are tied up in the political and economic fabric of the state," Mr. Thomas said. Many observers fear that work comp rate increases "will drive business out" of a state, he said.

"This isn't just an insurance carrier problem," Mr. Thomas said. Employers, workers, regulators and politicians all must address the problem, to ensure that "fair and equitable" compensation to injured workers is available.

Ms. Gibson predicted "increasing cost differentials between insurance companies" will emerge from the workers compensation crisis. But she also predicted legislative reforms will take hold at some point, costs will "peak and level off," and work comp combined ratios will decline.

The discussion was moderated by Ruth Von Spreckelsen, risk manager at Southmark Corp. in Dallas. ■

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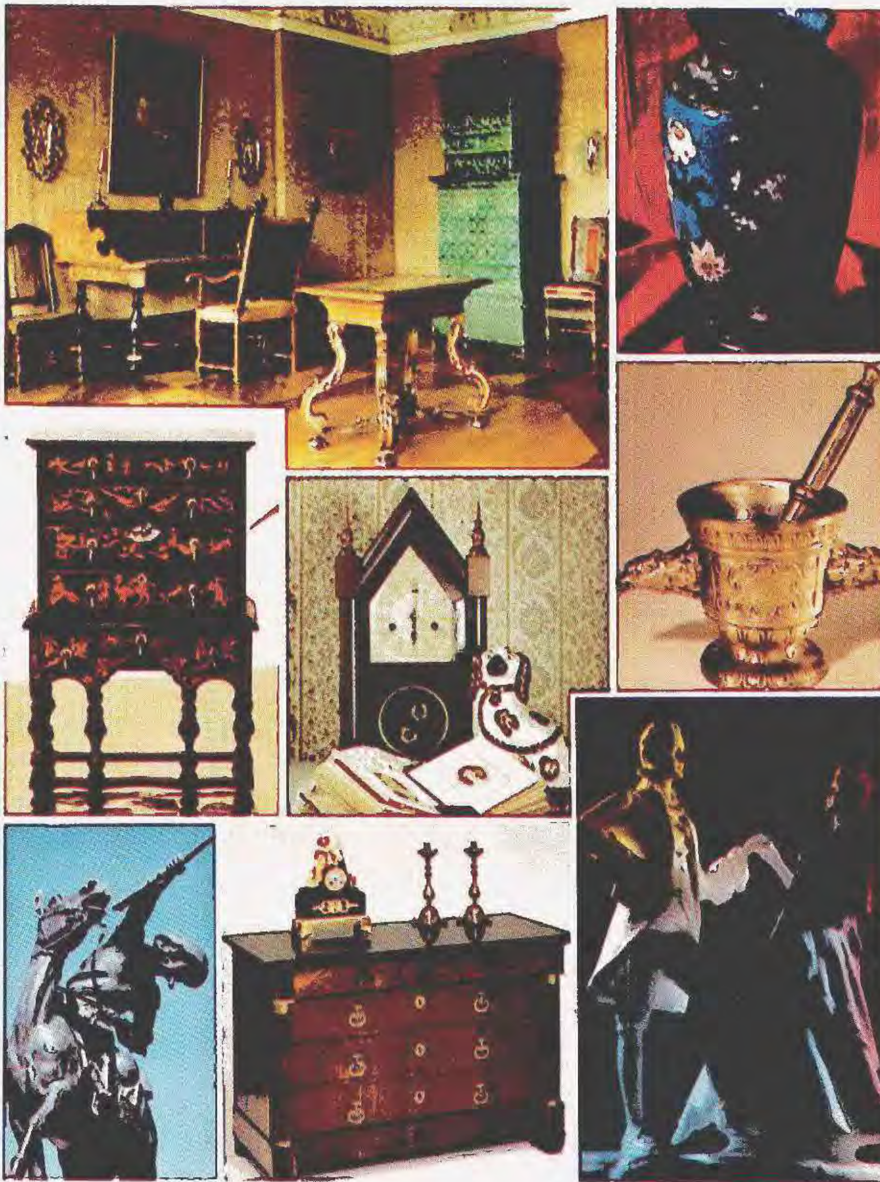

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Investigate factors behind injury claims

By MARK A. HOFMANN

BOSTON—Finding witnesses to an incident that allegedly led to a claim is a critical, yet sometimes overlooked, facet of claims handling, agree several claims experts.

"There's nothing more important than identifying witnesses," said John P. Ryan, an attorney with the Boston law firm Sloane & Walsh, during a seminar on claims handling during the 28th annual Risk & Insurance Management Society conference.

"A very important aspect of claims handling is providing witnesses," concurred Richard P. Pray, a liability claims specialist with CIGNA Corp. in Quincy, Mass.

"Without a witness, you're pretty much left with the plaintiff's version of what happened," said Mr. Pray.

"Disinterested" witnesses, such as other customers who have no financial stake in the outcome of a claim, are the type of witnesses to seek, he added.

However, Mr. Pray questioned the value of using preprinted witness forms to record witnesses' observations. These forms can tend to intimidate some witnesses, he said. Other witnesses simply resist signing them, he said.

"Leave the statement-taking to the pros—the adjusters," Mr. Pray advised.

In addition to finding witnesses, risk managers need to pay special attention to little-noticed factors that might have led to a claim, he said.

For example, the risk manager should know what the weather was like when the incident occurred, Mr. Pray said. Was it raining, so that customers might have tracked water into a store, thus causing the floor to become slippery and a customer to fall? he asked.

Another panelist stressed the importance of communication in claims investigations.

"Communicate, communicate, communicate," said Deborah B. Meyer, risk manager for Irvine, Calif.-based Taco Bell Inc., which operates about 1,800 fast-food outlets in 40 states.

Employees should be briefed on what to expect when a claims adjuster interviews them about a claim, she said.

For example, they should not "bare their souls" to the adjuster, Ms. Meyer said. They might not know what they are saying, and they might simply be wrong, she said.

Management must be educated, too, she said, citing the example of a manager who disposed of evidence that was critical to a claim.

A bean pot exploded, and the flying beans burned an employee. Supposedly, the top of the pot had been fastened incorrectly, because the employee normally in charge of the bean pot couldn't speak English well enough to tell another employee how to affix the lid.

The manager thought he knew all the facts and threw out the pot without an adjuster ever having seen it, thus losing what could have been a key piece of evidence, she said.

Communication is key in handling the claimant as well, Ms. Meyer said. "What we communicate to the claimant sets the stage for the claims," she explained.

"It's very important to be upfront. Let them know what to expect, but above all, don't give them false information. Don't make promises," said Ms. Meyer.

Risk managers shouldn't withhold information from their attorneys, either, said defense attorney Mr. Ryan.

"It's very important that the attorney receives all of the information—good, bad and indifferent," he said.

"Always assume that anything is potentially discoverable in the litigation process," he said.

Companies need to ensure that anything they put down as part of the claim record maintains "a professional tenor," Mr. Ryan said.

For example, a person who allegedly slipped on a cabbage leaf in a store should not be referred to by claims personnel as a "cabbage head," he said.

"Your people should be educated to avoid opinions and surmises," he said.

"It's very important to designate someone who can speak well" if a claim ends up in court and a company official must tell the defendant's story, said Mr. Ryan.

The person testifying should be "someone who can personify the company," he said. "The jury ultimately wants to hear from people," not from an anonymous corporation, said Mr. Ryan.

Attorneys' need for as many particulars of a claim does not stop with the written record, he also stressed.

"There's no substitute for putting on safety glasses and hard hat and going out to a plant," said Mr. Ryan, who said that he often has taken such a first-hand look at clients' operations. "It's amazing what you can learn when you see something."

But Mr. Ryan expressed reservations about re-enactments. They aren't always admissible in court, and they don't always turn out the way their authors intended, he pointed out.

Re-enactments might record something their authors would prefer to keep off videotape, such as a piece of machinery repeatedly failing and leading to unsafe conditions, he said.

"There's no substitute" for a factually complete and professionally recorded claim file, said Mr. Ryan.

W. Robert Faust, manager-loss control for Walt Disney World in Lake Buena Vista, Fla., coordinated and moderated the session. ■

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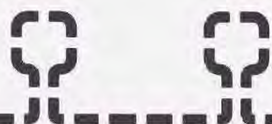

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Global risk managers face tax headaches

By JUDY GREENWALD

BOSTON—Risk managers structuring international insurance programs should use tax strategies that fall somewhere between very aggressive and "rolling over and playing dead," a tax expert says.

Edward Maguire, a principal with the accounting firm Deloitte & Touche in Washington, D.C., stressed the importance of early tax planning when structuring international property/casualty insurance programs during a session at the 28th annual Risk & Insurance Management Society conference in Boston.

Do not wait until a loss has occurred before considering the tax implications of an international insurance program, Mr. Maguire warned.

If tax planning is completed ahead of time, "then you can be a little bit better prepared" when tax issues invariably arise, he said.

Mr. Maguire said he wanted to raise risk managers' awareness of the importance of taxes in conjunction with insuring overseas risks. The tax issues are not someone else's problem, he said. "They are an element of cost in the very work that you're doing."

Mr. Maguire said tax considerations in structuring an insurance program are not all that difficult if only one country is involved. But, he said, when that number grows, the situation can become complicated by different laws in the different nations involved.

Premiums, losses and receipt of insurance proceeds are all factors that must be considered when planning for taxes, said Mr. Maguire.

He noted that when insuring overseas risks, "sometimes you can't get good enough local insurance." This puts companies in a position where they must contract with a U.S.-based insurer to insure the risks of a subsidiary in another country, he said.

"This is where problems start to arise," he said.

The question, for instance, of whether premiums paid on behalf of foreign subsidiaries to a U.S. insurer are deductible by their U.S. parents "is not entirely resolved," said Mr. Maguire. Depending on the circumstances, he said, opposing arguments can be made by both the corporation and the Internal Revenue Service.

Uninsured losses can be another problem area. Mr. Maguire noted that when a foreign subsidiary incurs a loss, it cannot be reflected in the consolidated U.S. tax return of the U.S. parent company.

Insurance proceeds for losses represent the greatest potential for a tax mismatch, said Mr. Maguire. For instance, he noted that although the U.S. parent company cannot deduct a loss incurred by an overseas subsidiary, it could find itself taxed for insurance proceeds it receives as a result of that loss.

If the subsidiary has deducted the loss locally, said Mr. Maguire, it is possible that matters could even themselves out, but he noted that this situation can vary depending on the applicable tax laws of both the United States and the foreign nations involved.

Thomas J. Drag, senior vp and director of global account services at broker Alexander & Alexander of New York Inc., discussed three basic designs for international insurance programs.

The first is a non-admitted insurance program, where insurance is purchased in United States to provide coverage for operations outside the United States. In this case, Mr. Drag explained, the policy is negotiated, the premium is paid and the losses collected all in the United States.

The advantage of these programs is "they're quick and easy," said Mr. Drag.

The policy is negotiated and issued in the United States, while coverage tends to be uniform and is not subject to local insurance tariffs.

Continued on next page

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However, there are problems with such an approach, Mr. Drag said. The biggest concern, he said, is that the premium paid in the United States may not be tax-deductible by the parent company because the premium benefits an overseas subsidiary. Also, claims payments to the parent company will be considered to be ordinary income by the IRS and taxed accordingly.

The second type of program, Mr. Drag said, is an admitted insurance program, where coverage is purchased locally by the foreign subsidiary, and both premiums and claims are paid in the foreign currency.

Among the advantages of this approach, he said, is that because premiums are paid locally, they are tax-deductible by the local subsidiary. There is also no need to worry about by exchange rate fluctuations, he said.

However, there are concerns about this approach as well, Mr. Drag said. Among these are that tariffs in many nations can greatly increase the cost of the coverage over what the cost would be if the coverage were purchased in the United States. Also, misunderstandings can arise over the scope and terms of the coverage provided by the local insurer, said Mr. Drag.

There could also be concern about local management's handling of the risk management program, said Mr. Drag. For instance, inexperienced local management could be tempted to buy insurance at the cheapest cost with insufficient concern about the scope of coverage provided.

The third kind of coverage, which is "the best of both worlds," is a combination of admitted and non-admitted insurance, he said.

Under this approach, coverage by local insurance companies is backed up by a "master"—or difference-in-conditions policy—that is issued in the United States. Under this approach, the parent company controls the risk management program and premiums and claims are tax-deductible by the local affiliates since primary coverage is issued locally, he said.

There are two variations of this approach, said Mr. Drag. Under the first, a controlled master program is developed by a worldwide insurance company that has subsidiaries in the foreign nations in question.

The second variation of this, said Mr. Drag, involves the use of the parent company's captive insurer. Policies are issued by a local insurer and then reinsured by the captive, he explained.

This approach can be advantageous from a risk financing standpoint, but not necessarily from a tax standpoint, Mr. Drag said, noting that captives do not offer the tax advantages they did a few years ago.

Thomas J. Dalton, staff vp-risk management for Dallas-based Kimberly-Clark Corp., who moderated the session, discussed his company's foreign insurance program.

Property insurance for Kimberly-Clark's Canadian and other foreign operations is reinsured by a Bermuda captive established in 1982, Mr. Dalton pointed out.

In Canada, Kimberly-Clark purchases a highly protected risk insurance program with a high deductible. The company then insures its deductible with a Canadian insurer and then reinsures that policy with its Bermuda captive, so it is, in effect, a self-insurance mechanism, Mr. Dalton said.

In other countries, Kimberly-Clark negotiates with fronting insurers, and the business is then reinsured by the captive, said Mr. Dalton, who described the company's program as successful.

Mr. Dalton said one problem with purchasing fronting insurance in each country is that Kimberly-Clark faces high local tariffs, though the bulk of these premiums is recaptured by the captive through the reinsurance arrangement. He also noted that Kimberly-Clark purchases a difference-in-conditions policy that wraps around the captive-financed program.

The session was coordinated by W. Lee Carter III, who is director-research and development for Alexander & Alexander Inc. in Dallas. ■

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Give them liberty, yes, but insurance?

By MARK A. HOFMANN

BOSTON—Was the Boston Tea Party an insurable loss?

A bit of historic revisionism enlivened the 28th annual Risk & Insurance Management Society conference as risk managers pondered what 20th century insurance policies might be brought to bear against losses incurred in the Boston Tea Party.

The unusual session was designed to make participants look at a risk management problem from a variety of angles, explained Cathy L. McKeon, a senior consultant with Coopers & Lybrand in New York and coordinator of "The Boston Tea Party—A Risk Management Case Study."

"We're going to be applying modern risk management techniques to a historical event," said Ms. McKeon, from behind a podium decked with the yellow and black, serpent-emblazoned "Don't Tread on Me" banner of the rebellious colonists.

To make the session more "interactive," attendees were given boxes of tea bags blended by Davison Newman & Co. Ltd. of London, "the firm that supplied tea for the historic Boston Tea Parties," according to the wrappers.

To further promote interaction, Paul K. Sprague, insurance director for CIBA-GEIGY Corp. in Ardsley, N.Y., and the session's moderator, roamed the audience with a wireless microphone to amplify questions and comments.

There was 'no duty to provide a safe vessel' for the vandal-patriots, says James T. Brady.

And Peter M. Farnam, a senior vp of Sedgwick James of New England Inc. in Boston and former history teacher, clarified a number of misconceptions about the event.

For example, the ships were owned by Bostonians, even though they carried tea owned by the East India Co. Each of the full-sized tea chests tossed from the vessels weighed about 90 pounds when empty and could hold about 340 pounds of tea, he said.

Many of the tea chests were actually half- or quarter-chests, he said. A modern half-chest—about the size of a two-drawer file cabinet—stood before the podium to prove that these containers were definitely bigger than a breadbox.

And despite popular belief, the patriots didn't toss the tea while the ships were at anchor out in the harbor, said Mr. Farnam. Instead, they towed the ships to a wharf, a process that took about six hours.

"The tea party didn't happen in 15 minutes," he said. "It wasn't quite as simple as it seems."

But when it was over, 340 chests of tea lay at the bottom of Boston Harbor. Although there is no easy way to convert 1773 British pounds into 1990 dollars, the value of the lost tea represented "a substantial sum," said Mr. Farnam.

After a brief videotape about the tea party, a fourth panelist, James T. Brady, vp-special risks facilities in CIGNA Corp.'s New York office, began the discussion by assuming the role of the East India Co.'s risk manager.

Mr. Brady said it could be assumed the company had marine cargo insurance that included all-risk, war risk and strikes, riots and civil commotion coverage.

"Is there coverage under my cargo insurance policy for the tea?" asked Mr. Brady.

After some discussion, the audience agreed that the tea would be covered under the cargo policy, though Mr. Brady noted that it might be up to the underwriter to decide which portion of the policy would respond. To prevent drawn-out coverage disputes, risk managers generally place war risks, all-risks and strikes, riots and civil commotion coverages with one underwriter, said Mr. Brady.

"In our opinion, the coverage would be strikes, riots and civil commotion," he said.

No tea was salvaged, but Mr. Brady asked what should have been done if some tea could have been saved. "You want to make sure as a risk manager or insured that you are getting credit for any salvage that's occurred" to prevent unnecessary premium increases, he said.

Donning another risk manager's hat—perhaps a tricorn rather than a fedora—Mr. Brady assumed the role of the vessel owners' risk manager. Three ships—the Beaver, the Dartmouth and the Eleanor—were involved. Once again, the shipowners of 1773 were assumed to enjoy the protection of 1990 insurance programs, he said.

Would damage to the ships done by the patriots be covered? he asked.

The audience agreed that the war risks coverage should respond to the costs of repairing the vessels.

A thornier question arose concerning the patriots themselves. Given that 1990 law and insurance were being applied to a 1773 event, Mr. Brady asked if there would be any coverage for the claims of patriots who said they were injured while looting the ship.

"The shipowner really has no duty to provide a safe vessel for vandals," said Mr. Brady. But he added with a smile, since "we're projecting into today's world," who can really know?

Mr. Farnam, representing the merchants of Boston and New England, noted that "when you look at what happened to the colony and you consider the fact that the East India Co. had a monopoly, all the merchants and wholesalers had a problem."

Because they couldn't find an alternative source of tea, they faced a significant loss of income and possibly financial ruin, he said.

An audience member asked why the the Hudson Bay Co. in Canada could not be called upon to supply the tea. Mr. Farnam replied that the Hudson Bay Co. had been granted no right to import tea to Massachusetts.

Because there was no alternative supply of tea, merchants would have needed "some form of contingent business interruption" insurance to cover their losses, he said.

Ms. McKeon, representing the Crown and colonial and municipal civil authorities, asked whether Boston city fathers would be protected against claims from citizens injured during the ruckus.

That, she said, was an open question. Apparently, no extra law enforcement officers had been called up to maintain order, so there was some question whether the officials had carried out their duty to maintain the peace, she said. Whether or not sovereign immunity would apply is also problematic, she said, because it depends on the statute in force.

As for King George III's government, recovery for lost import duties might be possible under business interruption policies, Ms. McKeon said.

Mr. Sprague touched on a final subject—loss control. Asked how to avoid the risk, several audience members responded, "Stay away from Boston."

In an interview after the session, Ms. McKeon said that she has been attending RIMS conferences since the mid-1970s.

"After a while, you look for a different twist, something lighthearted," she said. By adopting the unusual approach of applying risk management principles to the Boston Tea Party, she said that the panel hoped they would impress upon their audience that "there are so many gray" areas in determining which aspects of an individual loss are covered by insurance. ■

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Agreements are few, far between in wrap-up debate

By MICHAEL BRADFORD

BOSTON—Owner-controlled insurance programs save money for some construction project owners, but they aren't for everyone, according to a broker and a risk manager.

That's about the only thing that was agreed upon in a lively and mostly polite debate between Dan Knise, vp and chairman of Johnson & Higgins ConstructionGroup in Washington, D.C., and David G. Adler, risk manager at Portman Cos., a real estate development firm in Atlanta.

Messrs. Knise and Adler hammered out the pros and cons of owner-controlled insurance programs, which are also known as "construction wrap-ups," during a seminar at the 28th annual Risk & Insurance Management Society conference in Boston.

They were joined on the panel by Edward L. McCormick, manager of risk management services for Hobbs Group Inc. in Atlanta, a brokerage unit of Arkwright Mutual Insurance Co.

Mr. Knise explained that insurance for construction projects is traditionally written individually for each contractor, subcontractor, and architectural and engineering firm.

Under a wrap-up program, an owner purchases coverage for all the parties, though some types of coverage, like automobile liability insurance, may still be purchased separately by contractors and subcontractors.

From a broker's perspective, an owner-controlled insurance program "is a viable alternative for managing the risks of large construction projects," according to Mr. Knise.

"It is not the only alternative. It doesn't work in every case. It clearly doesn't work if you don't manage the process well. But it is an alternative you should consider on large construction projects," he adds.

Portman's Mr. Adler, who coordinated the session, conceded that in some cases—like projects for which the owner also acts as the general contractor—wrap-ups are acceptable. But usually each party working at a construction project should be responsible for its own insurance, he contends.

Wrap-ups have several advantages over traditional construction insurance programs, according to Mr. Knise.

An owner-controlled program allows "adequate limits of coverage" under a single set of policies written for the owner, he said. "You're going to have significant limits of (coverage) dedicated to your project."

That continuity is not available under conventional programs in which each party is responsible for coverage and some subcontractors may be unable to buy adequate limits during hard insurance markets, said Mr. Knise.

Bringing "huge volumes of premium into one procurement" allows project owners to obtain "broad coverage terms and conditions," Mr. Knise noted. "And you will have the same terms and conditions for all parties."

Coverage is generally placed for the term of the project, not on an annual basis, which may be the case under individual policies.

Mr. Knise warned, however, that very few non-cancelable wrap-up policies are available. "But isn't it still better than taking your chances on annual policies" that may not be renewed? he asked. "Isn't it still better in the sense that you will get senior management commitment from carriers who do wrap-ups again and again to be committed for the term of the project?"

Another advantage, he said, is "a single, coordinated safety program. Typically, the insurer works with the owner, the broker and the con-

Continued on next page

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Wrap-up policies

Continued from previous page

struction manager or general contractor to meld the general contractor's existing safety program to the owner's particular safety needs."

Claims management is simplified when one insurer represents everyone at a job site, said Mr. Knise. "Instead of having 15 different carriers scurrying around trying to pass the liability off to somebody else through these inter-contractor lawsuits, you now have one carrier representing all the defendants in a case, or at least most of them." This eliminates "the hunt for the guilty."

And prompt claims payment makes for good public relations, said Mr. Knise. "The last thing you want if you are a high-visibility owner is for somebody to get hurt at your facility and have trouble getting their claim paid because nobody wants to step up to the plate and take on the liability."

Overall costs generally are lower under a wrap-up program, he said. With conventional programs, insurance costs generally comprise about 4% to 7% of total project costs and a wrap-up can reduce that figure by 20% to 40%, according to Mr. Knise.

Savings come partly from the volume discounts insurers give project owners.

And, Mr. Knise pointed out, broker commissions are figured on a declining scale that works out to about 5% to 7% of premium—or less—if "it's a real mega-project."

Further savings come from eliminating the contractor's markup for insurance, he remarked.

In addition, cash-flow components which save even more can be designed into a wrap-up, Mr. Knise noted.'

Mr. Adler disagreed.

"There are many who would advocate that wrap-ups are cost-effective. I beg to differ. I don't believe they're cost-effective in most situations," he said.

Volume discounts may vanish when the insurance market hardens, Mr. Adler pointed out. "Owner-controlled insurance programs may be great until the market hardens."

Project owners usually don't save anything by eliminating contractor markup, he contends.

Most contractors don't know how to lower their bids by eliminating insurance costs "and if they do it, they're just guessing," said Mr. Adler. "In fact, many contractors, and particularly the smaller (subcontractors), have. . . no idea" what impact insurance has.

Mr. McCormick of Hobbs Group agreed that "some contractors cannot estimate insurance" costs, pointing out that in auditing wrap-up programs, he has found some contractors did not know how to credit the costs and were still charging for insurance.

Wrap-ups, in fact, can "nickel and dime you to death" through deductibles and uninsured losses, Mr. Adler claimed, noting that wrap-ups sometimes cause the owner to pay "directly for the contractor's goof."

Owner-controlled programs offer the potential for abuse by contractors and subcontractors, Mr. Adler charged. He cited a Portman development in Atlanta as an example.

Wrap-up coverage for a building project that was nearly completed included builder's risk insurance that carried a $10,000 deductible. "It was the middle of the summer. I was amazed at how much vandalism or mysterious glass breakage occurred at the upper levels of this building, always on opposite sides of the same floor. Now there's no evidence that the contractor intentionally broke that glass, but I'll tell you that whenever I went up on those floors there was a real nice cross-breeze.

"It takes a lot of glass panes to meet a $10,000 deductible."

An owner-controlled insurance program is "risk transfer for the contractor, not the owner or developer," said Mr. Adler. "The contractors no longer must be responsible for their own wrongdoing, for any errors they make on the job. The owners agree to insure the contractor for their negligence."

Mr. Adler also said he has not noticed better safety conditions on wrap-up projects than on those insured conventionally.

"It may be coincidence, but I've seen more fatal accidents on wrap-ups than on contractor-controlled programs," he said. "In fact, we had three fatalities on one job that was a wrap-up. And you know what? When the workers compensation program was not renewed, it sure wasn't the contractor's problem. . . it was mine." ■

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Buyers, sellers liable for waste cleanup

By ADRIENNE C. LOCKE

BOSTON—Selling contaminated property is a complicated—but manageable—risk as long as buyers, sellers and banks can agree on who should pay for a hazardous waste cleanup, experts say.

Because of strict laws that make property owners liable for waste cleanups, even if they did not contribute to the pollution, any potential property buyer should conduct an environmental assessment before a transaction is closed, they warn.

And sellers of property that has never been tested also should conduct such assessments to determine whether hazards exist and, if they do, how much cleanup would cost, said experts at the 28th annual Risk & Insurance Management Society conference held in Boston.

Both buyers and sellers should look at transferring contaminated land as just another risk that needs to be managed, said Douglas A. Cohen, an environmental lawyer with Schatz & Schatz, Ribicoff & Kotkin in Hartford, Conn.

"You manage the financial risks, you manage all the other risks," he said. "The problem is that (this risk) is new, and people aren't used to that."

Given the prevalence of pollution sites and the level of asbestos often found in buildings, every piece of real estate is now environmentally suspect, said David I. Brandwein, principal and environmental counsel at Environmental Risk Ltd., a Bloomfield, Conn., consulting firm.

Federal law makes owners of contaminated property responsible for cleanup, regardless of who polluted the property, stressed Mr. Brandwein, who moderated and coordinated the session.

The Superfund Act—or Comprehensive Environmental Response, Compensation & Liability Act of 1980—established a comprehensive program to identify and clean up substances that threaten public health or the environment.

That Superfund law also established an excise tax on chemical companies that finances part of the U.S. Environmental Protection Agency's efforts to clean up closed or abandoned hazardous waste sites.

The EPA tries to recoup cleanup costs through seeking civil and criminal actions against site owners. The agency also can enforce a strict joint and several liability standard against any party that is judged responsible for contamination.

It is due to these laws that many commercial real estate sales include a Phase One environmental assessment, Mr. Brandwein commented.

"People have become so aware and sophisticated about environmental liability, the marketplace now demands it," Mr. Brandwein said.

Phase One assessments include physical testing of the property and an examination of historical records to determine what types of operations have been conducted on the site, explained Frederick W. Johnson, senior hydrogeologist at United Technologies Corp. in Hartford, Conn.

> **'A borrower can't pay his loan back if he's going to be hit with a $20 million' claim, Mr. Bernstein says.**

Such an assessment takes six to 19 weeks to complete, depending on the scope and approach, and costs from $1,000 for a simple assessment to more than $50,000 for a major site assessment, said Mr. Brandwein of Environmental Risk Ltd.

These evaluations also provide basic information on the property's condition for future sales, Mr. Brandwein said.

Assessments can create new problems, cautioned Mr. Johnson. Uncovering hazardous substances can push the price of a piece of property well beyond what was originally budgeted, he said.

Increasingly, banks are making assessments a condition of approving financing for commercial real estate deals or other transactions where such property is used as collateral, said Judah W. Bernstein, vp of Chemical Bank's realty group in New York.

"A borrower can't pay his loan back if he's going to be hit with a $20 million environmental lawsuit or cleanup bill," Mr. Bernstein said.

In some states, payment of costs for a hazardous waste cleanup initiated by state environmental authorities takes priority over the property owner's mortgage payments, noted Mr. Cohen, the environmental lawyer.

Banks prefer to conduct their own assessments and usually require borrowers to use a consultant they have chosen, said Mr. Bernstein of Chemical Bank.

In instances where a study is done without its participation, Chemical Bank reviews a consultant's report and credentials to determine whether the study meets bank standards and provides all the necessary information, Mr. Bernstein said.

United Technologies has saved millions of dollars by canceling property transactions where pollution cleanup was not a viable option, Mr. Johnson said.

However, buyers and sellers can often reach an agreement that takes cleanup costs into account, according to Mr. Brandwein of Environmental Risks.

Options include:

- Adjusting a purchase price to reflect cleanup costs, if they are known.
- Establishing an escrow account to cover undetermined cleanup costs.
- Prorating cleanup costs so that, for example, the seller pays the first $100,000 and the buyer pays the remainder.
- Agreeing that the buyer and seller each will be responsible for a certain portion of the cleanup costs.

Negotiated cleanup agreements also should include an indemnification clause stating that the seller will pay to clean up any hazardous waste that was not discovered during the initial cleanup, Mr. Brandwein said.

While risk managers should hire consultants to conduct an assessment, one must look carefully through the maze of so-called experts, Mr. Brandwein advised.

He said an environmental consulting firm should:

- Have had experience with the particular sort of assessment that a customer needs.
- Be able to provide specific information, rather than a report full of generalities.

Technical data should bolster any findings, and a report should "stick to the facts," he recommended.

- Be able to estimate cleanup costs.

To find a good environmental consultant, a company should solicit recommendations from other businesses that have contracted for assessments, Mr. Brandwein advised.

Without state or federal licensing of these consultants, word of mouth may be the best way to distinguish a good firm from a bad one, he said.

Risk managers also should make sure the professionals who make the presentations soliciting the business are actually the experts working on the project, Mr. Brandwein said.

Some clients have met impressive consulting staffs during the interview process—and never seen them again, Mr. Brandwein pointed out. ■

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Quake cover requires careful thinking

By LOUISE KERTESZ

BOSTON—With experts warning that disastrous earthquakes are possible east as well as west of the Rockies, a California broker advises risk managers to "plan now" to manage their earthquake exposures.

However, risk managers also must keep in mind that they "are making financial decisions, not simply insurance decisions" when considering earthquake insurance. Thus, they "should do a cost-benefit analysis of each" alternative when managing earthquake exposures, said Mark S. Dawson, vp at Alexander & Alexander of California in San Francisco.

Mr. Dawson spoke at a session titled "Earthquakes—Not Just California's Problem" during the 28th annual Risk & Insurance Management Society conference in Boston.

Mr. Dawson said that risk managers faced with earthquake exposures have a variety of alternatives to consider, including moving operations out of an earthquake zone, moving all operations to earthquake-resistant facilities or at least moving "sensitive exposures" elsewhere, and retrofitting existing facilities to make them less susceptible to earthquake damage.

"You would be amazed at the reduction in probable maximum loss by performing relatively inexpensive" modifications to buildings, like horizontal bracing, tying walls to the roof and foundation, and tying major equipment to the foundation, Mr. Dawson said.

Such retrofitting also "provides a comfort level" to insurers and will lower the cost of earthquake insurance premiums. It may even make an uninsurable risk insurable, he said.

Risk managers must bear in mind that earthquake insurance can be an emotional issue for insurers as well as the general public, because of media attention generated after a major quake, he noted.

"First, forget logic, common sense and fairness. I realize that can apply to all lines of insurance, but it's particularly true with earthquake. At least in fire and auto and general liability insurance, companies can produce reams of statistics to provide some sort of actuarial justification for their decisions. But earthquake insurance is bought and sold on more of an emotional level," he said.

After an earthquake like last year's San Francisco Bay area temblor increases attention to earthquake exposures, risk managers commonly are told by top management that they had "better get some earthquake coverage in L.A. or San Francisco or San Jose or whatever," he related.

However, when the risk manager's broker contacts earthquake insurers, the underwriters will say, "I can't sell you insurance. I just saw Tom Brokaw last night and he said you haven't seen anything yet—the really big one is going to hit before the end of the year," Mr. Dawson commented.

Mr. Dawson said he received "dozens" of requests for earthquake insurance in the three months following last October's earthquake. "I've also had dozens of letters, memos and faxes from carriers saying, 'We don't want to sell it anymore,' " he said.

"These are the same carriers practically giving this coverage away six months before," he said.

Mr. Dawson advised risk managers who must buy earthquake insurance to follow the "Mark Dawson Christmas Card Rule" to get the best deal. He explained that risk managers should negotiate earthquake coverage "during the late third quarter with an effective date right before Thanksgiving. This gets the underwriters at a time when they are particularly anxious to put premium on the books—but before they get caught up in the holiday parties and year-end renewals," he said.

Another rule is to "buy coverage you don't need," Mr. Dawson said. "Most of the carriers that will provide earthquake coverage will not provide what they refer to as 'single location quake,' " claiming that is "adverse selection."

The solution? Buy earthquake coverage for a building in Boston and a building in Los Angeles at the same time. The underwriter may not even charge a premium for the Boston location "because we all know we don't have earthquakes in Massachusetts," Mr. Dawson said.

When buying earthquake coverage, deal with underwriters and brokers on the West Coast, he advised. An insurer's West Coast offices are "generally responsible for the accumulation of limited (earthquake) capacity among all offices countrywide," he explained.

A West Coast broker is more likely to be able to procure coverage for a client from a West Coast underwriter, since that broker brings the underwriter other business, he said.

Besides, West Coast brokers, who "deal with the earthquake markets all the time, can tell you if you're wasting your time or not and put together a submission in a format that will make sense to the carriers," Mr. Dawson said.

In an interview following the session, Mr. Dawson said California earthquake insurance capacity has been cut as a result of last October's San Francisco earthquake, explaining that insurers still are in a "wait-and-see mode."

Insurers also are insisting that policyholders now accept a deductible equal to a certain percentage of their property's value. "Before the quake, we could talk them into" a dollar-amount deductible, he said.

Meanwhile, a scientist warned East Coast risk managers that "just because we have a lower level of seismicity in the East (than California), it doesn't mean we have a lower seismic hazard."

A quake of relatively low magnitude on the East Coast could be devastating because of "the fundamental property of the earth, which allows waves to travel large distances east of the Rocky Mountains," said Klaus H. Jacob, senior research scientist at the Lamont-Doherty Geological Observatory of Columbia University in Palisades, N.Y.

Many brick buildings in Eastern cities are vulnerable to collapse during a quake, Mr. Jacobs explained.

"The land you're sitting on will drop into Boston Bay" if a major earthquake rocks Boston, agreed E.L. Lecomte, president of the National Committee on Property Insurance in Boston.

Dennis Kwiatkowski, assistant associate director of the Office of Natural and Technological Hazards of the Federal Emergency Management Agency in Washington, D.C., also spoke at the panel.

The panel was coordinated by W. Lee Carter III, vp and director of research and development at Alexander & Alexander Inc. in Dallas.

The session was moderated by M. Roena Baum, insurance manager for Westin Hotels & Resorts in Seattle. ■

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Rules will reduce storage tank leakage

By MICHAEL SCHACHNER

BOSTON—The number of leaky underground petroleum storage tanks will be greatly reduced by government rules that become effective for all tank owners and operators no later than October 1991, says a risk manager whose company owns several thousand underground tanks.

Under the Environmental Protection Agency rules, owners of petroleum USTs are responsible for corrective action caused by leaks, including: cleaning up any petroleum leak; correcting any resulting environmental damage; supplying drinking water; compensating people for personal injury or property damage; and paying plaintiffs' legal costs.

To ensure that tank owners meet these responsibilities, the EPA's 1988 guidelines include minimum financial responsibility requirements for UST owners and operators.

For example, tank owners with monthly throughputs of 10,000 gallons or more are required to maintain environmental impairment liability coverage with limits of $1 million per claim. Owners of smaller tanks must maintain EIL limits of $500,000 per claim and $1 million in the aggregate (*BI*, Feb. 19).

Owners may use other means beside insurance—like self-insurance, letters of credit and surety bonds—if the owners meet EPA criteria.

Under the threat of paying for expensive environmental cleanup, tank owners will now practice more cautious pre-loss risk management, including installing better double-sided tanks and removing many of the old tanks that are candidates for corrosion and subsequent leakage, predicts Mary C. Russell, director of corporate insurance for Englewood, Colo.-based U.S. West Inc., which owns several thousand USTs throughout the country.

The reason why the UST requirements are being implemented is clear, according to Ms. Russell, the moderator of a session on leaky underground storage tanks at the 28th annual Risk & Insurance Management Society conference earlier this month.

"There are several million underground storage tank systems throughout the U.S. and tens of thousands leak, with more expected to leak in the future. These rules say that if your tanks leak and threaten groundwater, you're going to have to pay for the cleanup," Ms. Russell said.

"The federal government is looking for a way of ensuring that the environment is kept clean and damaged third parties get restitution," she added.

Petroleum marketers with between 13 and 99 underground tanks will, beginning April 26, 1991, be required to meet the EPA financial responsibility requirements. Those with fewer than 13 tanks have until Oct. 26, 1991, to comply.

Petroleum marketers with 100 to 999 tanks were required to meet the standards by Oct. 26, 1989, while those with more than 1,000 tanks were the first group to meet the standards. They had to comply by Jan. 24, 1989.

Non-marketing operators with tangible net worth less than $20 million have until Oct. 26, 1991, to meet the requirements. Non-marketers with net worth exceeding $20 million faced a Jan. 24, 1989, deadline.

Local governments with petroleum USTs also have until Oct. 26, 1991, to comply. State governments and the federal government are immune from the rules.

In addition, the EPA regulations apply only to commercial petroleum USTs. Tanks holding heating oil, tanks on small farms or residential land, and septic tanks are exempt from the requirements, said Bill Torrey, an EPA representative based in Boston and responsible for the Northeastern United States.

Underground storage tanks containing regulated substances like petroleum, and tanks containing any hazardous substance as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 are required to have leak detection and prevention systems, pointed out Mary McCormac, an environmental attorney with Haynsworth, Baldwin, Johnson & Greaves in Greenville, S.C.

In addition, existing petroleum tanks must be retrofitted for corrosion protection and spill and overflow prevention by September 1998, she said.

To ensure that tank owners are in compliance with all technical and financial requirements, owners should "determine the age, size, content and current condition of all underground storage tanks," Ms. McCormac recommended.

"Next, the applicable deadlines for compliance with the technical and financial responsibility requirements should be determined. Finally, (owners) should take immediate steps toward compliance, particularly with regard to financial responsibility obligations, in order to avoid penalties," she said.

To help prevent future leaks, companies that must use USTs should install "non-corrosive, double-sided tanks," recommended Salvatore Filippi, regional coordinator-environmental services with M&M Protection Consultants in Rochester, N.Y., a unit of Marsh & McLennan Cos. Inc.

In addition, tank owners can protect themselves from the high costs of cleanup by installing their tanks in pit-like structures surrounded by restraining walls made of clay, bentonite, cement or asphalt so that any leaks are captured.

Tank owners can even build vaults to insulate their tanks, according to Mr. Filippi, though he noted that tank vaults are "extravagant and expensive."

Mr. Filippi said a proper tank management program includes:

- Diligent monitoring of the material stored in the tank.
- Filing the required paperwork with the proper state agency.
- Installing an inventory monitoring system and constantly reviewing the system.
- Developing a course of action in case of a spill.
- Keeping detailed records.

"The old adage that everyone's entitled to one fire is no longer true in the case of underground tanks," Mr. Filippi said.

Also speaking at the session was David Sands, regional manager and senior geologist with Kemron Environmental Services in Marietta, Ohio.

Stella A. Wagner, assistant vp with Hewitt Coleman & Associates Inc. in Denver, coordinated the session. ■

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Capacity for 'executive risks' still ample

By CAROLYN ALDRED

BOSTON—Companies can find ample capacity to cover risks faced by executives, from fiduciary liability to the threat of being kidnapped for ransom, according to industry executives.

Capacity for directors and officers liability insurance, the most common coverage bought for executive risks, has increased dramatically in recent years, noted a speaker during a session on executive risks at the 28th annual Risk & Insurance Management Society conference in Boston.

Although D&O insurance became a critical issue during the hard market of the mid-1980s—when capacity shrank dramatically and rates soared—the D&O insurance market today is "fairly stable, with more capacity for large limits available," said William K. Brown, managing director of the professional liability practice for Marsh & McLennan Cos. Inc. in New York.

With new underwriters still emerging, particularly in the London market, up to $300 million of D&O limits can currently be purchased in the world market, Mr. Brown estimates.

However, while D&O liability until recently has been very much a North American phenomena, directors' liabilities in other areas of the world are increasing, Mr. Brown said.

For example, D&O claims currently developing in the United Kingdom show a pattern very similar to the initial emergence of D&O claims in the United States, he said.

Moreover, several U.S. law firms now are opening London offices. "And they're not there just to sip port and eat Stilton cheese," quipped Mr. Brown. American lawyers have spotted an "evolving area of liability outside the United States."

Another area of risk for U.S. executives is the fiduciary liability associated with the management of corporate pension funds, said Ann M. Longmore, product coordinator of pension trust liability for American Home Assurance Co. and National Union Fire Insurance Co. of Pittsburgh, Pa., both units of American International Group Inc.

The fiduciary duties and standards expected of corporate executives involved in pension plan administration were first outlined in the Employee Retirement Income Security Act of 1974.

ERISA, among other things, holds pension plan trustees personally responsible for financial losses and allows for civil as well as criminal penalties against plan fiduciaries, according to Ms. Longmore.

However, ERISA also allows fiduciaries to purchase insurance to protect themselves from liabilities imposed by the pension reform law. National Union writes a pension trust liability insurance policy that specifically covers executives for costs arising from allegations of breach of fiduciary duty under ERISA, according to Ms. Longmore.

Under the policy, the insurer has a duty to defend the policyholder against any allegation, no matter how "spurious the charges," and to pay any loss or damages arising from judgments or settlements of any claim, she said.

The policy protects an executive against any negligent act, error or omission, though it is not fidelity insurance and does not cover dishonesty of the trustees or administrators of the plan. It also does not provide a guarantee of benefits for plan participants, she noted.

According to Ms. Longmore, 48.5% of claims filed against these policies stem from denying benefits to employees; 28.5% arise from the communication of plan benefits; 18.6% arise from administrative errors; and 6.8% arise from the termination of pension plans.

Employees and former employees or their dependents file 96.2% of all claims, she noted.

Another important coverage for executives companies should consider purchasing is kidnap and ransom and extortion insurance, said Albert M. Van Wagenen, vp of New York-based Professional Indemnity Agency Inc.

"People fail to realize that these events don't only occur in far off lands," he said.

Extortion incidents and kidnappings occur in most Western countries as well as political hot spots like the Middle East and Latin America, Mr. Van Wagenen pointed out.

For example, in 1989 there were 200 kidnappings and 3,000 extortion incidents in the United States alone, he said.

And kidnappings and extortion are not limited to large, influential companies but can affect small companies as well, he said.

PIA currently handles about one loss a month from its 3,500 clients, Mr. Van Wagenen said.

The market for kidnap and ransom and extortion coverage tends to be fairly stable, Mr. Van Wagenen said.

Mr. Van Wagenen also predicts a "continual expansion of policy terms." For example, PIA recently began covering malicious product tampering, which covers policyholders when their products are made unsafe for no financial motive. These acts are often performed by protest organizations, Mr. Van Wagenen explained.

Kidnap and ransom and extortion policies generally are very broad, covering a company's employees, directors and officers and relatives all over the world on business and on vacation, he explained.

Such a policy usually would cover the payment of any ransom as well as compensation for any bodily injury and property damage, he noted.

However, "the most important thing you are buying is not the financial coverage but the security team that usually is retained by the underwriter," he said.

The security team is able to respond on a 24-hour basis and will advise the policyholder how to handle a situation as it develops, he explained.

Meanwhile, companies face a different type of executive risk: "white-collar crime," said John P. Coonan, vp of Chubb & Son Inc., a unit of Chubb Corp. in Warren, N.J.

The U.S. Chamber of Commerce recently estimated that white collar crime costs industry about $40 billion annually, Mr. Coonan said. Indeed, companies probably lose an average of 1% to 2% of their sales to crime, most committed by or in collusion with employees, he said.

Commercial crime or fidelity insurance policies usually provide a company with financial protection against losses arising from: employee theft from the workplace or during transit; computer-aided theft or fraud; and fraud or alteration of documents by an employee or an outsider.

Coverage extensions can be purchased that can, for example, broaden the definition of an employee to include part-time workers or representatives or agents of the company, Mr. Coonan said.

The commercial fidelity insurance market currently is "very competitive and very good for buyers," he noted.

In fact, policyholders probably can expect to pay flat renewal rates or, in some instances, can obtain rate reductions of up to 20%, he said.

When pricing such a policy, an underwriter considers several fundamental factors, according to Mr. Coonan. These usually include:

- The nature of the buyer's operations. For example, a company manufacturing or handling small but valuable items, such as computer chips or valuable metals and stones, likely will be considered a greater risk than a company manufacturing large, less easily transportable, objects, he noted.
- The thoroughness of a company's audit procedures. A company should implement these procedures at least once annually to avoid undetected losses for a long period of time, he noted.
- Internal controls to hinder corporate theft.
- The size of the company, the number of employees, and the size and locations of all its operations.
- The company's financial condition. "A company which is financially unwell tends to raise red flags to underwriters of corporate crime policies," Mr. Coonan said.
- A company's growth rate. "It's been our experience that companies that are very fast growing often have trouble controlling and managing their expansions, whether they are growing via acquisitions or through organic growth," Mr. Coonan said. He added that internal controls can deteriorate as a result of rapid growth.
- A company's loss experience.
- A company's money and securities exposure—how much is kept at each location and how well the company protects them. ■

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Loss control plans trim work comp costs

By ADRIENNE C. LOCKE

BOSTON—Employers that self-insure their workers compensation program should implement a multifaceted loss control program, a panel of workers compensation experts agree.

The program should consist of adopting a corporate philosophy that all injuries are preventable, studying claims data to determine where safety improvements are necessary, establishing realistic goals, tracking the progress of all claims, managing all claims and evaluating the program, experts said.

"The better your risk control techniques, the less expensive the risk financing," summed up Philip E. Goldsmith, director of lost control services at J.H. Albert International Insurance Advisors Inc. in Needham Heights, Mass.

To start, an employer should adopt the philosophy that a workers comp loss control program can either perform well or poorly, depending on how it is run, said Noe Salazar, director of safety and security at Michelin Tire Corp. in Greenville, S.C., during a session at the 28th annual Risk & Insurance Management Society conference in Boston.

Mr. Salazar, who also moderated the session, believes that a workers comp loss control program should be based on two philosophical cornerstones:

- All injuries are preventable.

"It doesn't mean that all injuries will be prevented," he said. But it does mean that the program is actively seeking ways to make the workplace as safe as it can be.

- Management is responsible for providing a safe workplace.

The use of claims data can greatly increase the program's ability to pinpoint areas where the employer needs to improve safety, said Willard L. Quinn Jr., senior vp of operations at Hewitt, Coleman & Associates Inc., a claims administrator in Greenville, S.C.

"Data processing is one of the most underused tools available in loss control," he said.

Mr. Quinn listed six pieces of information that a company always should pull from its workers comp claims files to help the company control workers comp costs:

- Length of service of injured employees, broken down into segments, such as less than 30 days, less than one year, one to five years, and five years and more.

For example, "if we find that a number of injuries are occurring within the first few months of employment, it can be a sign that changes need to be made in the employee training program," Mr. Quinn said.

Data processing also has uncovered trends that many workers employed for long periods of time without incident suddenly suffer injuries. Upon further investigation, the employer has found that those workers had no additional safety training since beginning their jobs, he said.

- Accident descriptions, including the type of accident, the nature of injury, the injured body part and the cause of the injury.
- Severity of injuries in terms of dollar amount and amount of time lost.
- Frequency of injuries and claims, reported in monthly, annually, and year-to-date formats.
- Seasonal injuries, segmented by day of week, week of the month, and month of the year.
- Departmental injuries by plant, shift, supervisor and work section.

An employer then can consider all of this information to pinpoint when, where and how accidents are occurring, Mr. Quinn said.

From that point, the loss control program can begin to target these areas for improvement, he said.

Planned objectives of the loss control program should be based on realistic, tangible goals, Mr. Salazar said.

For example, a loss control program could set a target of inspecting 10 pieces of equipment a month instead of five, or offering four training seminars annually instead of two, he said.

In addition, a loss control program should be committed to training employees to comply with federal health and safety regulations and encouraging engineers to design safety features into new equipment, he said.

As the loss control program develops, it should be evaluated based on such short-term measures as the number of claims reported, the number of safety and training measures implemented, and the level of employees' safety awareness, said Mr. Goldsmith of J.H. Albert.

A company also should look at the long-term results of its program, such as the amount of claims paid, changes in accident frequency, average time lost as a result of injury and changes in productivity, he said.

Meanwhile, when a worker suffers a work-related injury, employers "should avoid unnecessary litigation and pay legitimate claims quickly," advised Richard B. Kale Jr., an attorney with Haynsworth, Baldwin, Johnson & Greaves P.A. in Greenville, S.C.

The employer should closely track the progress of the case and contact the attending physician so the worker can return as soon as possible, if he can, Mr. Kale said. Tracking the injured employee's recovery not only establishes a good relationship with the employee, but also allows the company to keep track of the medical cost and services provided, he noted.

But, if after a formal investigation the company still questions the claim, litigation management will help employers determine when to settle claims and when to dispute them, Mr. Kale said.

Mr. Kale recommended that employers consider several factors before litigating a claim:

- The facts of the case. If there is not much evidence to dispute the claim, it might be better to settle, he said.
- The cost of litigation. It does not make sense to spend $20,000 to dispute a $5,000 claim, he said.
- The state laws that apply to the case.
- The judge who will be hearing the case. Some judges may be more conservative or liberal in interrupting work comp laws, he said.

Stella Alexis Wagner, assistant vp at Hewitt, Coleman in Dallas, coordinated the session. ■

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Federal scrutiny of industry intensifies

By ADRIENNE C. LOCKE

BOSTON—Property/casualty insurance issues are taking center stage with consumers and lawmakers alike.

The result, observers say, will be tough scrutiny of the insurance industry that possibly could lead to federal regulation.

Concerns over insurer insolvencies, unavailable coverage for some types of risks and the general public dissatisfaction with the entire insurance marketplace have made insurance the focus of many reports and proposals coming out of Congress, said Roger N. Levy, vp-federal government affairs at Travelers Insurance Co. in Washington, D.C.

"The insurance industry needs to recognize that we have a problem with policyholders and needs to communicate with them more than we do," Mr. Levy said.

To stem the tide toward federal regulation, state regulators and the insurance industry itself must make significant and voluntary changes in regulation, communications and their general policies, said experts during a session at the 28th annual Risk & Insurance Management Society conference in Boston.

Experts said they expect no definitive congressional action this year on legislation that would reform the insurance industry, but warned that the issue will resurface unless serious reforms are adopted voluntarily.

Consumer mistrust of insurers and industry practices spurred individual rate rollback laws like California's Proposition 103 and national initiatives like the proposed modification or repeal of the McCarran-Ferguson Act of 1945 to eliminate insurers' limited antitrust exemption (*BI*, Jan. 30, 1989), Mr. Levy said.

Legislators, for their part, have begun to question the efficacy of state solvency regulation after the well-publicized failures of Mission Insurance Co., Transit Casualty Co. and Integrity Insurance Co., said Barbara S. Haugen, director of federal affairs of the National Assn. of Insurance Brokers in New York (see story, page 20).

A House subcommittee report released in February found state solvency regulation "seriously deficient" and said parallels between insurer insolvencies and the failure of savings and loan institutions are "obvious and deeply disturbing" (*BI*, Feb. 26).

Ms. Haugen said that report—released by subcommittee Chairman Rep. John D. Dingell, D-Mich.—makes public many of the current system's problems and could promote federal regulation of the insurance industry.

The message from Congress, she said, is clear: "Either the insurance industry and its regulators address these issues, or Mr. Dingell is prepared to do it for us."

With the 12 subcommittee members apparently unanimous in their support of the report, Ms. Haugen said she has "no doubt that the panel will pursue" solvency regulation.

While the subcommittee's report makes no recommendations, it strongly suggests that insurers and regulators work on some of their problems, she said.

According to Ms. Haugen, the subcommittee's "hit list" includes:

- Delegation of authority. Insurers rely excessively on judgments of managing general agents, brokers and others who may be incompetent or have conflicting interests.
- Holding companies and affiliates. "Insurance companies can be too easily overleveraged and milked of their liquid assets by affiliated companies," Ms. Haugen explained.
- Inadequate monitoring of reinsurance. It is not clear how extensive the reinsurance "chain" is or whether "all the links are sound, yet the very existence of some companies is based on the belief that reinsurance will actually pay their stated portion of claims," she explained.
- Unreliable information. State regulators must rely on information provided by insurers.
- Ineffective regulation. Oversight is hindered by infrequent examinations, uneven implementation, inadequate resources, and lack of coordination and communication among regulators.
- Enforcement. Insufficient effort is now devoted to investigating insurer insolvencies and punishing those responsible.

However, David Gates, a former Nevada insurance commissioner and former president of the National Assn. of Insurance Commissioners, defended state regulators.

"Many of the problems cited (in the Dingell report) are already well on their way to being fixed," he said.

The NAIC, for example, is working to improve its Insurance Regulatory Information System to provide more useful information for solvency evaluations, and is improving both its training program for examiners and the examinations they use, according to Mr. Gates.

The NAIC also is trying to set up minimum standards for solvency regulation for state departments, though it is unclear what would be done to a state that did not comply, he said.

A desire to keep regulation at the state level should motivate states to do a better job of regulating insurer solvency, he said. "If given a choice between state and federal regulation, states believe they are going to do it better."

But some form of federal regulation would be likely if another "major insurer were to go belly-up and state regulators were to have a difficult time dealing with it" or "if the market were suddenly to turn hard, and consumers complained to their representatives," said Ms. Haugen.

Meanwhile, another bill pending in Congress—federal product liability reform legislation sponsored by Sen. Robert Kasten, R.-Wis.—will not be approved this year, said Laurie Londoner, vp of government and industry affairs for Alexander & Alexander Services Inc. in Washington, D.C.

Opposition to the bill is too stiff in the Senate for the bill to pass, though product liability reform will continue to be considered, she said.

Bart Canon, director of risk management at Fleming Cos. Inc. in Oklahoma City, moderated the session. W. Lee Carter III, vp and director of research and development at Alexander & Alexander Inc. in Dallas, coordinated the session. ■

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INTERNATIONAL

Merrett settles suit over runoff contract

By STACY SHAPIRO and CAROLYN ALDRED

LONDON—The first dispute over an unlimited runoff reinsurance policy to go to trial suddenly was settled last week by the three parties in litigation.

Lloyd's of London underwriters Stephen Merrett and Derek Dolling-Baker and Lloyd's broker Winchester Bowring Ltd. last Tuesday signed a confidential agreement ending the litigation, which had begun April 24 (*BI*, April 30).

Mr. Merrett in 1988 had voided an unlimited runoff reinsurance policy written in 1982 by two of his syndicates for syndicate 544, whose underwriter was Mr. Dolling-Baker.

Mr. Merrett had contended that his syndicates were misled by incomplete information given the Merrett underwriter who had accepted the policy. The policy provided 50% of unlimited runoff reinsurance for claims paid on or after Jan. 1, 1982 by syndicate 544 for years 1978 and prior, excess of $9.2 million.

Mr. Dolling-Baker, former underwriter for syndicate 544, managed by A.J. Archer Holdings P.L.C., sued Mr. Merrett to force payment on the policy written by syndicates 421 and 417, managed by Merrett Underwriting Agency Management Ltd.

Mr. Dolling-Baker also sued Winchester Bowring, the broker that placed the runoff reinsurance policy. He contended that if the Merrett syndicates did not have to pay due to misrepresentation of the risk and Winchester Bowring was found negligent, the broker should cover syndicate 544's compensatory damages.

Winchester Bowring is a unit of Marsh & McLennan Cos. Inc.

The parties agreed to keep the terms of the settlement confidential and would not comment last week on the settlement.

Stephen Merrett

In previous settlements of disputes over runoff reinsurance policies, the parties have capped the reinsurer's liability at a figure higher than the known liabilities.

Known losses to be paid by syndicate 544 under the runoff policy are estimated at $18 million to $20 million.

Following the settlement of the dispute between Messrs. Merrett and Dolling-Baker, syndicate 544 also settled a dispute with underwriter Richard Outhwaite, who wrote the other 50% of the runoff coverage on behalf of syndicate 317/661, managed by R.H.M. Outhwaite (Underwriting Agencies) Ltd.

The Outhwaite agency had not disputed the validity of the runoff policy, but had been discussing the amount of claims filed against the policy with syndicate 544, an Outhwaite spokesman said.

"The terms of the agreement are subject to a strict confidentiality clause," said the Outhwaite spokesman, who would not comment on whether the settlement followed the terms of the Merrett settlement.

The High Court trial in the dispute between Mr. Dolling-Baker and Mr. Merrett and Winchester Bowring was in its third week when the settlement was made. The three parties' opening statements had been given, but witnesses had not yet been called.

The trial, which began April 24, was the first dispute over the costly and controversial unlimited runoff reinsurance policies to be heard in an open court.

More than 30 runoff reinsurance contracts were written in the early 1980s, mainly by former Lloyd's underwriter John Emney for syndicates 417 and 421, managed by Merrett, and by Mr. Outhwaite.

Winchester Bowring was the

Continued on next page

Coverage litigation to proceed in Spain

By MARIA KIELMAS

MADRID, Spain—Two suits filed in coverage litigation over losses at Spain's largest aluminum plant will proceed in Spain, after a Spanish court last month rejected a defendant's bid to have its case heard in a New York court.

Madrid-based aluminum producer Industria Espanola del Aluminio S.A. is seeking 11 billion pesetas ($106.1 million at current exchange rates) for property and business interruption losses stemming from a December 1987 work stoppage at its San Ciprian aluminum smelting plant.

Separate actions were filed in Spain against Spanish insurer Musini Sociedad Mutual de Seguros y Reaseguros a Prima Fija, a state-owned insurer, and reinsurer American Home Insurance Co., a unit of American International Group Inc. of New York.

After the litigation was filed in December 1988, American Home had argued that the portion of the litigation against it should be heard in a New York court, a spokesman for Inespal said. However, all parties agreed to abide by the Madrid court's ruling on the proper forum for the case, he said.

At issue in the litigation is Inespal's $150 million in property damage and business interruption insurance underwritten by Musini, which covers all of Inespal's Spanish operations. Musini retained 1.5% of the risk and ceded the remainder to AIG.

Musini and AIG would not comment on the litigation.

The coverage dispute dates from a December 1987 walkout at Inespal's San Ciprian smelting plant (*BI*, Jan. 18, 1988). The employees stopped work without maintaining what Inespal termed minimal services necessary to maintain the aluminum smelting process. As a result, the metal under process solidified and the plant was forced to shut down until June 1988.

The workers left their posts fearing contamination from drums of toxic chemicals stored at the plant's private harbor facilities. The drums were recovered from a Panamanian-registered freighter, the Cason, that ran aground off the coast of Cape Finisterre on Dec. 5, 1987.

Part of the ship's cargo—8,800 tons of toxic dimethyl isocyanate and cyclohexane—exploded on Dec. 6, killing 23 of 31 crew members. A second explosion followed on Dec. 10.

On Dec. 11, more than 200 containers of chemicals from the ship's cargo washed up on the coast. Government officials ordered the chemical containers to be transported to Inespal's private wharf at the San Ciprian plant.

The company is claiming 2.5 billion pesetas ($24.1 million) for material damage losses and 8.5 billion pesetas ($82 million) for business interruption losses stemming from the damage caused by the work stoppage.

In addition, Inespal filed a claim for property damage losses with the government catastrophe insurer, Consorcio de Compensacion de Seguros, under a civil commotion clause of the Consorcio policy. However, the claim was rejected by Consorcio, which ruled that because there was no violence, the employee walkout could not be

Continued on page 73

BI/JOHN HALL

Aetna, Generali disband Aegen

NEW YORK—Aegen International Inc., a marketing and underwriting venture formed in 1981 to provide property/casualty coverage to multinational corporations, is being disbanded.

Aetna Casualty & Surety Co. of Hartford, Conn. and Assicurazioni Generali S.p.A. of Trieste, Italy each owned 45% of Aegen. Taisho Marine & Fire Insurance Co. Ltd. of Tokyo owned the remaining 10% stake.

The partners say that they each will offer insurance on a direct basis for companies doing business abroad.

"Aetna and Generali have been working together since 1966. . . .Now, after nine years the companies have re-examined the Aegen structure and concluded that they can provide coverage more efficiently directly," Aetna said in a statement.

The joint venture—which reported $10 million in direct written premiums in 1989—was dissolved May 4. Operations will be phased out as existing business expires, according to Aetna. Aegen will retain sufficient staff to service accounts until they expire, Aetna said.

"Aegen was simply a means of selling the underwriting services of Aetna, Generali and Taisho," Aetna said. "The companies involved still will be offering the same services, only now directly."

The Aetna/Generali International Benefits Network, a joint venture providing employee benefits for foreign employees of multinational corporations, will not be affected by the change, Aetna said.

—By Michael Schachner

Debaters see end to face-to-face dealings

London traditions in peril?

By STACY SHAPIRO

LONDON—Electronic networks will have a chilling effect on the London insurance market's unique face-to-face negotiations, the majority of leading brokers and underwriters decided at a recent debate.

But those who argued computer networks would weaken the tradition of negotiations and those who maintained they won't agreed on one point: The networks would make the market more efficient and less costly.

The motion discussed during the debate—held May 2 and sponsored by Skandia U.K. Insurance P.L.C. —was: "This house believes that traditional underwriting and broker skills (in London) will flourish in the age of networks and expert systems."

The motion was voted down by a margin of 13-3 at the black-tie dinner attended by London insurance market leaders.

"Be careful, progress is here," said David Springbett, chief executive of PWS Holdings P.L.C., who seconded the opposition and warned that market traditions "will not flourish" with the growth of computer networks.

However, Philip Marcell, who proposed the motion, argued that face-to-face negotiation skills still would be essential even with the development of computer networks. Mr. Marcell is chairman of Unionamerica Insurance Co. Ltd. and subsidiary Continental Reinsurance Corp. (U.K.) Ltd.

Gerhard Schonbeck, managing director of Skandia U.K., a subsidiary of Skandia International Insurance Corp. of Stockholm, Sweden, said: "We are convinced that London will continue as the world's greatest insurance market, no matter what the challenges may bring.

"The reason why we at Skandia International decided to organize and sponsor an event such as tonight's is that we recognize the immense strategic importance of the London market in international insurance and reinsurance," he said.

As information technology "takes giant strides, the world seems to be shrinking about us," Mr. Schonbeck added.

Two insurance computer systems —LIMNET, the London Insurance Market Network, and RINET, the European Reinsurance and Insurance Network—"are already at the starting blocks," he noted.

Because Skandia—along with Munich Reinsurance Co. and Swiss Reinsurance Co.—is a founding member of RINET, "it feels appropriate that we should host a debate on the implications for the industry of the impact of modern technology," Mr. Schonbeck said.

During an open discussion on the motion from the floor, most guests initially seemed to support the motion.

But one underwriter noted that if, with the advent of computer networks, brokers only negotiated face-to-face with leading un-

Continued on next page

Merrett settles

Continued from previous page
broker on four of the 11 contracts written by Mr. Emney and many of the more than 30 contracts written by Mr. Outhwaite.

Mr. Merrett had repudiated the runoff contract written for syndicate 544 because, among other things, information was not disclosed to Mr. Emney to give the true deterioration of liability losses to Mr. Dolling-Baker's syndicate, Mr. Merrett's lawyer Anthony Temple had told the court.

And "deterioration is a highly significant factor," he said.

In addition, in a 1987 letter Mr. Merrett said the policy was valid only because he incorrectly thought that information shown to him at a March 1987 meeting with Mr. Dolling-Baker was "accurate," according to Mr. Temple.

The letter led Mr. Dolling-Baker to think that the contract was valid and unquestioned and allowed Mr. Dolling-Baker to close syndicate 544's 1984 and 1985 underwriting years.

"There was non-disclosure or misrepresentation which Mr. Dolling-Baker either knew of or suspected," but he did not disclose to Mr. Merrett, said Mr. Temple. That would make the letter invalid, he said.

Justice Hirst, who had presided over the case, interjected, "If you know of a defect on the file, then it's your duty to disclose it?"

"Yes, my lord," said Mr. Temple. "It's a meeting of underwriter to underwriter. . . .It's a meeting of professionals in the market where one is entitled to trust the other."

Mr. Dolling-Baker asserted that he and Mr. Merrett were to discuss the scope of claims on the contract, but Mr. Temple said the two men met to discuss "the placing of the contract."

Addressing the placement of the policy in 1982, Mr. Temple said that in order to decide whether the coverage could be written, Mr. Emney needed to see the known claims outstanding and incurred-but-not-reported loss reserves of 1980 and 1981 for syndicate 544.

But "the parameters of disclosure between 1980 and 1981 were altered," he said. The figures that Mr. Emney thought were comparable between the two years in fact were not, Mr. Temple said.

As a result, a disclosed deterioration between the two years of nearly $1.2 million ought to have been $500,000 greater, said Mr. Temple. The amount that wasn't disclosed is quite small, but it is more than 50% of the amount that was disclosed, he said.

In addition, there was a tenfold increase in specific asbestos reserves between 1980 and 1981, which was not disclosed based on the figures Mr. Emney claims he saw, said Mr. Temple. This huge increase "should have been materially disclosed," he said.

Because "a very incomplete picture was given" of the 1980 and 1981 figures, there was no fair presentation of syndicate 544's figures and the information was "very materially obscured," Mr. Temple told the court. "This is essentially an unfair presentation" that disguised the true situation.

In addition, Mr. Merrett had asserted that the exclusion of key information led his syndicates to believe that known asbestos claims and incurred-but-not-reported claims for 1978 and prior years totaled $1.8 million at year-end 1981. However, the $1.8 million related to reported-but-not-yet-paid asbestos claims as of March 1982 and did not include IBNR, Mr. Temple said.

Three pieces of information that should have been disclosed to Mr. Emney would have given him an idea that IBNR reserves for syndicate 544 were not disclosed, according to Mr. Temple.

Two of the documents contained information on syndicate 544's reinsurance-to-close of 1980 and 1981, which would have included information on IBNR. The IBNR of the syndicate should have been disclosed to Mr. Emney in order for him to assess the risk, said Mr. Temple.

Another piece of information that Mr. Merrett says was excluded was paragraph four of a four-paragraph memo that would have included information on the formula used to assess syndicate 544's IBNR, said Mr. Temple.

The missing paragraph would have shown that syndicate 544's total known claims and IBNR for asbestos totalled $3 million rather than $1.8 million.

It also explained that a formula was used to come to this figure. If Mr. Emney had seen the paragraph, he would have seen that "in fact what they have done is under-reserved," said Mr. Temple.

By itself, the missing paragraph would not have been as important provided the other "underlying information" from the other two missing documents on reinsurance-to-close had been shown to Mr. Emney, he said. Questions would have arisen that Mr. Emney would have wanted answered before writing the policy, he said.

But that information was not in the broker's placing file, said Mr. Temple.

However, Winchester Bowring's attorney Michael Collins says that Mr. Emney had the information that he and Mr. Outhwaite asked for in the placing file in order to write the coverage and the information was not misrepresented.

When the coverage was placed in May 1982, asbestosis claims "were becoming a big problem," said Mr. Collins, and the whole market, including Mr. Emney, knew about them.

In addition, by the time syndicate 544's runoff contract was written, two other runoff contracts had been written by Mr. Emney through Winchester Bowring for other Lloyd's syndicates, he said. None of the information that Mr. Merrett now says is "so critical" for syndicate 544's contract was in the placing files of either of the other contracts, said Mr. Collins.

And in neither of the two other cases did Mr. Emney require IBNR or reinsurance-to-close figures or underlying information about how those were reached, said Mr. Collins.

In other cases, Mr. Emney asked for other information like existing reinsurance programs in place and outstanding claims. But he did not ask for information on IBNR reserves, said Mr. Collins.

Nevertheless, two of the documents on 1980 and 1981 reinsurance-to-close that would have shed light on IBNR reserves were in syndicate 544's placing file at the request of Mr. Outhwaite, according to Mr. Collins. So Mr. Emney would have seen them.

As for the missing paragraph, Mr. Collins maintained that it was the Archer agency and syndicate 544 that wanted the paragraph removed. And the paragraph was removed because syndicate 544 believed the IBNR figures and asbestosis loss reserves were not yet finalized or approved by the auditors and would therefore be subject to change, Mr. Collins said.

"Quite simply, the plaintiff was not satisfied that the information in that paragraph was accurate," said Mr. Collins, referring to syndicate 544. ■

London debate

Continued from previous page
derwriters, the broker would lose the insight that following underwriters can add about the risks.

Another underwriter said that while his company was "very much" in favor of new technology, London has achieved its preeminence "because of its unique system of broker/underwriter face-to-face (placement). I would hate to see that disappear."

In the end, opponents of the motion had won over more guests.

Mr. Springbett had the last word before the votes were cast.

"You haven't paid proper attention to the question," he scolded the audience.

Traditional brokering and underwriting skills will "flourish" in the age of networks and computer systems, the motion said. Mr. Springbett pointed out that "flourish" means, among other things, "to increase (and) to expand."

But traditional market ways "will not flourish when screen trading becomes a reality," he said.

"I am one of the greatest fans of networking. . . .It's a shame it didn't happen 10 years ago," Mr. Springbett said.

"There's no question that networking will replace face-to-face contact. But it will make our industry more efficient. Ours is one of the most inefficient industries," he said.

Networking will allow underwriters to call up important information on risks without the broker looking over his shoulder, and come to some "right answers," Mr. Springbett said.

Brokers will spend less time giving sales pitches and persuading reluctant underwriters to agree to risks, he added.

"Traditional skills are not going to flourish," Mr. Springbett stressed. "There will be fewer and fewer brokers and fewer underwriters. . .and rates could take further reductions if we were efficient" because overheads wouldn't be so high, Mr. Springbett said.

'It's a shame it (networking) didn't happen 10 years ago,' says David Springbett.

Also opposing the motion in the debate was Hamish Ritchie, chief executive of Bowring U.K. Ltd., and director of parent company C.T. Bowring & Co. Ltd.

Supporting the motion with Mr. Marcell was Richard Clayton, responsible for all non-marine assumed reinsurance for the Eagle Star Holdings P.L.C., who seconded the motion.

"I firmly believe that traditional underwriting skills will continue no matter how the framework changes," Mr. Marcell said.

Underwriting decisions need a degree of face-to-face negotiation between brokers and underwriters, he said.

Junior brokers will not have to go door-to-door to place everyday risks, he said. But face-to-face negotiations will still be needed when dealing with leading underwriters and trying to place "difficult" and unusual coverages, Mr. Marcell said.

Computer networking will not supplant traditional skills and will, in fact, allow them to flourish, he said. Networks will let brokers answer underwriters' complex questions quickly and easily, he added. And claims and policies will be administered faster with the electronic system.

But to keep its unique position in the world, London "will need to keep face-to-face negotiations and traditional skills," Mr. Marcell said. "These arguments apply just as much to brokers as to underwriters."

Mr. Clayton pointed out that if his opponents really thought computers would replace people, they wouldn't have been present at the debate.

"They would be up on a screen!" Mr. Clayton quipped, drawing laughter from the audience.

If the traditional way of placing risks in London isn't going to continue, then 24 companies were gambling 55 million pounds ($91.8

Continued on next page

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INTERNATIONAL

Continued from previous page
million at current exchange rates) by moving into the new London Underwriting Center, Mr. Clayton said.

The same evening the debate was held, ballots were being drawn for office space in the LUC, which will house non-marine insurance companies.

Mr. Ritchie of Bowring U.K.—who officially opposed the motion—asked the assembled brokers and underwriters to consider a key question.

"Is our industry going to remain static over the next decade? Or will we strike out to make it more efficient?"

Mr. Ritchie continued, wondering aloud whether members of the audience would vote with their heads—which he said must know that the London market's traditional ways must change—or with their hearts.

"Our lives have been altered by the phone, the telex, and the fax," he said. Instead of going to a teller in a bank to get money, people now withdraw cash "from a hole in the wall," he added.

Automated robots now work on factory floors instead of people, and autopilots are used on aircraft and the pilot is only there "in case of emergency," Mr. Ritchie said.

On-screen trading for personal lines insurance policies already exists, he said, "though it has its problems."

And computer networking within the London insurance market could reduce the number of brokers tenfold in the next five years, he said.

Is the industry really efficient when brokers stand in line for hours, and policies and claims take so long to agree and administer? he asked.

"Is face-to-face the best way of conducting business? Many of the problems in the market have been caused by face-to-face underwriting," Mr. Ritchie contended.

On-screen underwriting will be as successful as face-to-face underwriting, he asserted. ■

Coverage suits

Continued from page 71
classified as a civil commotion.

The coverage dispute involving Musini and American Home stems in part form from the fact that the Inespal coverage was written on a U.S.-type, all-risk property insurance policy, which is broader than a typical Spanish property policy. Spanish policies typically insure only specified risks.

Inespal named American Home as well as Musini in its coverage litigation "because our legal advisers said we have to work a tactical action," said the Inespal spokesman. He denied suggestions in the Spanish insurance market that Musini wanted to settle but was pressured by American Home not to do so.

Before Inespal filed its suit in December 1988, a Musini spokesman had told *Business Insurance* that the insurer was inclined to settle (*BI*, Oct. 3, 1988).

Rafael Merry del Val, managing director of Marsh & McLennan Espana S.A., which was Inespal's broker, denied reports in the Spanish press that the broker was also named in litigation by Inespal. An Inespal spokesman confirmed that the Spanish subsidiary of Marsh & McLennan Cos. Inc. is not being sued by the company.

Inespal is 72.75% owned by the state holding company Instituto Nacional de Industria, which also owns 100% of Musini. Montreal-based Alcan Aluminum Ltd. owns 23.9% of Inespal and the remainder is held by various Spanish banks.

While it appears somewhat unusual that two companies with a common parent would litigate an issue, "the action has to be seen from the perspective of Spanish law," the Inespal's spokesman said. It is "quite normal in Spain" for two companies from the same state-controlled holding group to take such legal action against one another, he added. He said the government itself was not involved in the dispute.

A source in Madrid who asked not to be named said there was no acrimony in the coverage dispute, noting instead that it centered on differing Spanish and American legal interpretations of the workers' walkout and the responsibility for it.

"The two sides have agreed to disagree and decided to go to a court to decide the outcome. It is all very civilized," the source said.

The San Ciprian plant is Spain's largest aluminum smelter and the third-largest in Europe, according to a plant spokesman. ■

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PBGC tally of underfunded plans blasted

By JERRY GEISEL

WASHINGTON—Benefit consultants and employers are questioning the accuracy and relevance of the Pension Benefit Guaranty Corp.'s list of corporate pension plans with the largest unfunded liabilities.

Critics charge the information released last week is out-of-date and misleading, but the PBGC says the figures will be updated periodically.

Fifty programs, including pension plans sponsored by some of the nation's largest companies, are underfunded by a total of $13.47 billion, according to the PBGC list.

These companies, concentrated in the steel, transportation and automotive industries, have promised $59.7 billion in "guaranteed" benefits but had only $46.24 billion in assets in their underfunded plans as of 1988, according to the PBGC.

Guaranteed benefits are those that the PBGC must provide to retirees if a pension plan fails and there are insufficient assets to pay benefits.

PBGC Executive Director James B. Lockhart said the information is in the public interest.

"Employees and unions should be aware of the funding levels in their pension plans. One of the ways we can reduce future losses is to encourage companies to better fund their plans," Mr. Lockhart said.

But the information—drawn from annual reports covering corporate fiscal years ending between June 1988 and May 1989—is in some cases, nearly two years old.

As a result, the list does not reflect big contributions some companies made last year to reduce pension liabilities, benefit consultants and employers say.

"We are talking about dated information," said Mark Ugoretz, executive director of the ERISA Industry Committee, a Washington, D.C.-based benefits lobbying group representing large employers.

For example, Bethlehem Steel Corp.—third on the PBGC list with $1.38 billion in unfunded liabilities in 1988—contributed nearly $400 million to plans last year, reducing its unfunded liabilities to less than $1 billion, a spokesman said.

In addition, certain interest rate assumptions by the PBGC overstated the plans' liabilities by understating future growth of plan assets, benefit experts say.

"The PBGC numbers are, at best, a rough cut. They are definitely overstated," said Dominick Cardase, a partner at Kwasha Lipton, a benefit consulting firm in Fort Lee, N.J.

Liability figures also may be misleading for other reasons, according consultants and employers.

In some cases, the liabilities of non-U.S. pension plans were included, even though the PBGC does not guarantee such benefits, Mr. Cardase said. Where possible, the PBGC said it excluded non-U.S. plans.

Employers complain that the PBGC did not compare their pension liabilities to the size of the companies.

For example, General Motors Corp. was second on the list with unfunded pension liabilities of $1.91 billion in 1988. That figure represents less than 2% of corporate revenues, a GM spokesman said.

The list is not intended as a reflection of the companies' financial health or an indication that some companies are about to terminate pension plans, said Mr. Lockhart.

The PBGC also found a wide range of "funding ratios"—the ratio of pension assets to liabilities. Underfunded plans at GM, for example, were 90.1% funded in 1988, one of the highest ratios. By contrast, the two lowest ratios were 28.5% for CF&I Steel Corp. and 31.2% for Sharon Steel Corp.

Employers on the PBGC list and their 1988 unfunded pension liabilities are:

- Chrysler Corp., $2.63 billion.
- General Motors Corp., $1.91 billion.
- Bethlehem Steel Corp., $1.38 billion.
- Pan Am Corp., $602 million.
- Texas Air Corp., $555 million.
- Navistar International Corp., $454 million.
- Westinghouse Electric Corp., $451 million.
- Uniroyal Goodrich Tire Co., $394 million.
- Trian Holdings Inc., $389 million.
- Armco Inc., $323 million.
- Western Union Corp., $285 million.
- American Airlines Inc., $258 million.
- Reynolds Metals Co., $248 million.
- LTV Corp., $244 million (excluding three plans in litigation before the U.S. Supreme Court with $2 billion in unfunded liabilities).
- CSX Corp., $203 million.
- ASI Holding Corp., $194 million.
- Maxxam Inc., $182 million.
- Rockwell International Corp., $175 million.
- Sharon Steel Corp., $170 million.
- UAL Corp., $166 million.
- CF&I Steel Corp., $152 million.
- National Steel Corp., $143 million.
- Dana Corp., $142 million.
- Trans World Airlines, $108 million.
- Loews Corp., $106 million.
- Goodyear Tire & Rubber Co., $101 million.
- Tenneco Inc., $96 million.
- United Technologies Corp., $93 million.
- Keystone Consolidated Industries Inc., $91 million.
- Allegheny Ludlum Corp., $79 million.
- Weyerhaeuser Co., $79 million.
- Borg-Warner Corp., $74 million.
- Burlington Northern Inc., $74 million.
- Anchor Glass Container Corp., $66 million.
- Textron Inc., $66 million.
- Jesup Group Inc., $64 million.
- Kellogg Co., $60 million.
- The BF Goodrich Co., $56 million.
- Honeywell Inc., $56 million.
- Peter Kiewet Sons Inc., $56 million.
- RJR Nabisco Inc., $56 million.
- Allegheny International Inc., $52 million.
- Eaton Corp., $52 million.
- Boise Cascade Corp., $49 million.
- K-H Corp., $49 million.
- United Brands Co., $49 million.
- American Financial Corp., $47 million.
- Carter Hawley Hale Stores, $47 million.
- Phelps Dodge Corp., $47 million.
- James River Corp. of Virginia, $44 million. ■

Datebook

MAY

MAY 20-22. Effective Management & Direction of Malpractice Insurers & Trusts seminar in Kailua-Kona, Hawaii, sponsored by the Tillinghast division of Towers, Perrin, Forster & Crosby Inc.; $750; $700 for each additional attendee from the same company. Mary Tschopp, Tillinghast Seminars, 1 Atlanta Plaza, 950 East Paces Ferry Road, Suite 1100, Atlanta, Ga. 30326-1119; 404-365-1642.

MAY 21-22. Insurer Solvency: New Market Trends and Regulatory Directions conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

MAY 21-23. Environmental Regulation Course in New Orleans, sponsored by Executive Enterprises Inc.; $990. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

MAY 22. Questions on the New CGL and CP Policies? Ask the Claims Department workshop in Vienna, Va., sponsored by The Society of Chartered Property & Casualty Underwriters; fee for two workshops: $140 for Society of CPCU members, $175 for non-members; fee for one workshop: $85 for Society of CPCU members, $105 for non-members. Mari Jennings, Continuing Education Coordinator, The Society of CPCU, Kahler Hall, 720 Providence Road, CB No. 9, Malvern, Pa. 19355-0709; 215-251-2741.

MAY 22-23. Environmental Pollution Liability Workshop in London, sponsored by the Insurance & Reinsurance Research Group Ltd.; 420 pounds ($688). Insurance & Reinsurance Research Group Ltd., Bridge House, 181 Queen Victoria St., London, England EC4V 4DD; phone: 01-236-2175; fax: 01-489-1487.

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MAY 22-23. Successful Claims Management & Litigation Cost Control Strategies for the 1990s conference in New York City, sponsored by Infoline Inc.; $995. Infoline Inc., 633 Third Ave., Suite 2227, New York, N.Y. 10017; 212-557-3400.

MAY 23. Introduction to Risk Management for Non-Insurance Managers seminar in Columbus, Ohio, sponsored by The College of Insurance; $195 for college sponsors; $225 for others. **Also Sept. 26** in New York City; and **Nov. 7** in Atlanta. Jane Wechsler, The College of Insurance, 101 Murray St., New York, N.Y. 10007; 212-815-9201.

MAY 23-24. Banks and Insurance Update: 1990 conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

MAY 23-25. Techniques of Loss Control course in Atlanta, sponsored by the Risk & Insurance Management Society Inc.; $540 for RIMS members; $640 for non-members. RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

MAY 23-26. Annual Physician Insurers Assn. of America meeting in Kauai, Hawaii, sponsored by PIAA; $290 for PIAA members; $415 for non-members. Medit Associates, P.O. Box 9011, Winnetka, Ill. 60093; 312-446-3100.

MAY 24. Controlling Legal Expenses seminar in Dallas, sponsored by The Society of Chartered Property & Casualty Underwriters; $95 for Society of CPCU members; $120 for non-members. Bonnie Kinsley, The Society of CPCU, 720 Providence Road, CB No. 9, Malvern, Pa. 19355-0709; 215-251-2735.

MAY 24. Flexible Benefits: Fact or Fiction? breakfast seminar in Lisle, Ill., sponsored by the West Suburban Chicago chapter of WEB; $15 for WEB members; $25 for non-members. L. Zoeller, 200 W. Adams, Suite 2015, Chicago, Ill. 60606; 312-558-4585.

MAY 29-JUNE 1. Reinsurance Accounting & Finance for Ceders & Assumers seminar in Ossining, N.Y., sponsored by Robert W. Strain Seminars Inc.; $1,545 including lodging and meals. Strain Seminars Inc., P.O. Box 1000, Wingdale, N.Y. 12594; 212-677-5974 Monday-Wednesday, 914-832-9384 thereafter.

MAY 30-JUNE 1. Fourth Annual Health Benefits Conference: Health Challenges of the 1990s in New York City, sponsored by New York State Public Sector Coalition on Health Benefits; $150 members; $200 non-members. Sharon Goldberg, Executive Director, New York State Public Sector Coalition on Health Benefits, P.O. Box 15, Albany, N.Y. 12260; 518-473-6217.

MAY 30-JUNE 1. 10th Annual Midwest Business Group on Health Conference: Circles of Influence in Health Care Systems in Chicago, co-sponsored by MBGH, Ford Motor Co. and Honeywell Inc.; $385 MBGH members; $485 for non-members. MBGH, 830 W. Higgins Road, Suite 200, Chicago, Ill. 60631-2941; 312-380-9090.

MAY 30-JUNE 1. Recognition of Accident Potential in the Workplace Due to Human Factors course in Los Angeles, sponsored by the University of Southern California's Institute of Safety and Systems Management; $460. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-Service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6383.

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Drop down ruling

Continued from page 2

type of litigation nationwide.

Every federal appellate court that has looked at this issue—the 4th, 5th, 7th and 11th Circuits—has determined there is no drop down, said Mr. Kingsley. "When an excess policy specifies a finite amount of insurance underlying it, there is no basis for drop down," he said.

However, the decision could influence the Missouri Supreme Court, which has never ruled on this issue, lawyers say.

The decision stemmed from a dispute between Interco and two of its 1984 excess insurers.

In 1984, Interco had $100 million in excess liability coverage written by three insurers excess of a $1 million primary layer written by Liberty Mutual Insurance Co. of Boston. The primary policy required a $10,000 per-occurrence deductible.

Interco had $30 million in first-layer excess coverage written by Los Angeles-based MIC, which was declared insolvent on Feb. 24, 1987. Interco then purchased a $40 million layer excess of $31 million from National Surety. Finally, Interco bought a $30 million layer excess of $71 million from Federal.

Interco sought coverage for a series of unrelated settlements it made in 1984. MIC would have had to pay $450,841 in claims stemming from the settlements, according to court papers.

On June 15, 1988, Interco sued National Surety and Federal in federal court in St. Louis, claiming they should drop down and pay the settlements that were left unpaid by MIC's insolvency.

On March 15, 1989, U.S. District Judge Stephen N. Limbaugh dismissed Interco's claim, finding the excess insurers had no duty to drop down and provide coverage.

Interco appealed to the 8th Circuit the following month.

In an opinion by Judge Frank J. Magill, the appeals court affirmed the lower court's decision.

"Excess coverage. . .attaches only after a predetermined amount of primary coverage is exhausted" by the payment of claims, the judge wrote.

Judge Magill first noted that there is no general duty for an excess insurer to drop down when an underlying insurer becomes insolvent.

"Ordinarily, excess insurers are not deemed to have provided drop-down coverage in the event of an underlying insurer's insolvency," he said.

"Excess policies are intended to provide low-cost coverage for catastrophic losses beyond the bounds of ordinary primary limits, and the insurer must be able to ascertain the point at which its liability will attach in order to evaluate the insurance risk and its cost of coverage," Judge Magill said.

The judge noted in his opinion that National Surety charged a premium of $12,000 for $40 million of coverage, while Federal charged a premium of $7,500 for $30 million of coverage.

The judge also examined the specific language of the policies at issue to show that the excess insurers had not intended to provide coverage in the event of an underlying insurer's insolvency.

The National Surety policy stated coverage was "to indemnify the insured for the insured's ultimate net loss in excess of the insurance afforded. . .(by) underlying insurance."

The National Surety policy expressly provided for coverage in the event of exhaustion of the underlying policies "solely by reason of losses paid." The National Surety policy also provided that the policyholder was responsible for maintaining the underlying insurance.

"If such underlying insurance is not maintained in full effect by the insured or if there is any change in the scope of the coverage under any underlying insurance, the insurance afforded by this policy shall apply in the same manner as though such underlying policies had been so maintained and unchanged," the policy stated.

The court found that "no specific intent existed to provide for coverage in the event of the insolvency of the underlying insurer."

"It is clear the parties intended 'exhaustion' to mean payment and not insolvency," Judge Magill wrote. "Therefore, the insolvency of an underlying carrier like Mission does not constitute exhaustion of underlying insurance within the meaning of the National policy triggering drop down."

The court looked next at the language of the Federal policy, which stated that "insurance afforded by this policy shall apply only in excess of and after all underlying insurance. . .has been exhausted."

The Federal Insurance policy also provided that the policyholder was responsible for maintaining the underlying insurance. In the event the policyholder failed to maintain the underlying insurance, the Federal policy stated that Federal's liability would not change.

"The Federal endorsement clause indicates that Federal coverage would only be triggered by the exhaustion of underlying insurance through the payment of claims," Judge Magill wrote. "Further analysis involving the Federal maintenance clause leaves no question that drop down was precluded," he said.

Attorneys for Interco would not comment on the ruling.

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Interco Inc. vs. National Surety Corp., Federal Insurance Co.; United States Court of Appeals for the 8th

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Broker results

Continued from page 1

quarter.

At present, "our average property/casualty business is remaining flat, with some slight movement upward," observed William F. Poe, chairman of Poe & Associates Inc. in Tampa, Fla.

"Since the last half of 1989, the property/casualty market has been stabilizing. Unfortunately, it's stabilized at the bottom and I'd like to see it start climbing the hill," Mr. Poe said, adding that "it's tough to make a buck as a broker" today.

Other brokers report rates are still falling.

"Our renewals are still being renewed at depressed prices and our plan for 1990 indicates that on an overall annual basis, renewals will be down," albeit less than they were in 1989 and 1988, said John R. Lamberson, executive vp and chief executive officer of Corroon & Black Corp. in New York.

Donald R. Bell, chairman and chief executive officer of New York-based Frank B. Hall & Co. Inc., said that although insurers may say they are not cutting rates, "when it gets down to the wire, they will make adjustments."

And, while insurers may be willing to increase rates on their own renewal business, they will also undercut a competitor to attract new business, Mr. Bell observed.

In the first quarter, rates were down an average of 4% across Hall's book of business, he said.

Insurers seem to be "waiting until they get right to the edge of the cliff and start to fall over" before taking corrective action on rates, said Robert H. Hilb, president of Hilb, Rogal & Hamilton Co. in Glen Allen, Va.

"We're still seeing renewals flat to down 5% to 10%," said Frank R. Wieczynski, corporate secretary for New York-based Alexander & Alexander Services Inc. in Baltimore.

In addition, A&A's contingency commissions in this year's first quarter "were $3.5 million less than they were in the first quarter of 1989. This is a situation that, unfortunately, is saddling the brokers and is an ancillary negative to the soft market," he said.

Contingency commissions are paid to brokers by insurers based upon an insurer's prior year's profits and the profitability of the book of business the broker places with the insurer. Because premium rates were down in 1989 while incurred losses rose, insurers slashed contingency commissions in the first quarter, when the bulk of those commissions are paid.

"About 80% of our total contingents for the year hit in the first quarter," Mr. Wieczynski noted.

Arthur J. Gallagher & Co. in Rolling Meadows, Ill., was "also faced with a sharp falloff of contingency income," said Vp-operations J. Patrick Gallagher Jr.

"Our entire decline (in revenues) was because of reductions we suffered in contingency commission and overrides. They were down about $1 million, and that is all bottom-line profit," said HRH's Mr. Hilb.

"Contingent commissions were really the news of the quarter. When we see them down by this magnitude, it tells us things might be worse for insurers than their reported earnings might lead us to believe," speculated financial analyst Ira H. Malis, vp of Alex. Brown & Sons Inc. in Baltimore.

Considering the current property/casualty market conditions, Shearson's Mr. Smith said that he is "anticipating true mediocrity in terms of broker earnings for the rest of the year."

"Contingents are just the gravy," Mr. Smith observed, adding that brokers' "core business is suffering."

But Mr. Malis says rates appear to be headed higher.

"I expect that by the third quarter of this year there won't be lower rates anymore. I'm looking for positive earnings comparisons for most brokers for every quarter ahead," Mr. Malis said.

Mr. Rosencrants agreed. "We believe that rate competition has bottomed, and even some of the skeptics among the broker ranks now believe there will be a rate firming later in the second quarter and into the third quarter of 1990."

He observed that the current market "has much the same feel to it as did 1984, when insurance company profitability was poor and sinking rapidly." Rates rose tremendously in late 1984 and throughout 1985.

Because any rate increases by insurers will immediately translate into revenue growth for brokers, Mr. Rosencrants said his firm is "very bullish on insurance brokerage stocks."

Following are reports on individual brokers' performances:

Marsh & McLennan

M&M reported an 11.7% increase in gross revenues in the first quarter to $695.7 million from $622.7 million in the first quarter of 1989. M&M's net income rose 6.7% to $94.2 million from $88.3 million during the same period.

Breaking M&M's first-quarter revenues down by business segments:

- The insurance services group's revenues increased 9.3% to $413.6 million from $378.5 million in 1989.
- Consulting operation revenues jumped 20.7% to $214.9 million from $178 million a year ago.
- Investment management revenues grew 1.5% to $67.2 million from $66.2 million.

"Across-the-board, we had fairly good revenue increases," said Mr. Bischoff. "Insurance broking was up quite strongly" and "both pricing and demand were stable" for reinsurance brokerage, he noted.

"Consulting revenues, even without acquisitions, would have been up 17%," Mr. Bischoff added.

Investment management revenues grew less significantly "because the majority of its investments are in fixed-income securities and the bond market was weaker," Mr. Bischoff said.

But, overall, "we were very pleased with this quarter. We maintained expense controls in areas we needed to and thus maintained earnings growth," he added.

"Marsh & McLennan did a little better than we had expected. Their results were favorable in comparison with other brokers," said Interstate's Mr. Rosencrants, noting that the "continued robust growth in its consulting/employee benefits business" contributed significantly to M&M's overall revenue growth.

First-quarter 1990 broker results

In thousands of dollars

Broker	Gross revenues	% change	Net income	% change
Marsh & McLennan	$695,700	11.7%	$94,200	6.7%
Alexander & Alexander	311,200	2.9	5,200	-56.7
Corroon & Black	117,096	-4.2	9,130	-29.2
Frank B. Hall	103,689	12.1	3,048	N/M
Rollins Burdick Hunter	101,613	34.5	14,041	48.8
Arthur J. Gallagher	45,652	9.3	2,926	-35.8
Hilb, Rogal & Hamilton	20,814	-5.6	2,340	-28.7
Poe & Associates	11,404	14.9	1,250	1.5

1 RBH reports only pretax income. N/M Not meaningful.

Source: Company reports

M&M's "results were up, as opposed to most other brokers, and an increase in its domestic reinsurance brokerage revenues suggested that the reinsurance market is stabilizing in terms of both pricing and retention levels," said Shearson's Mr. Smith.

M&M had a "solid quarter," said Alex. Brown's Mr. Malis, adding, "We're very bullish on the stock. This company is a market leader in about everything that it does."

Alexander & Alexander

A&A's gross revenues grew 2.9% to $311.2 million in the first quarter from $302.5 million in the first quarter of 1989. However, net income fell 56.7% to $5.2 million from $12 million.

Part of the reason for the drop in income was a 6.4% increase in expenses to $293 million in the first quarter of 1989, from $275.4 million in last year's first quarter.

But, Mr. Wieczynski noted that A&A reduced its operating expenses by $7.9 million in the first quarter of 1989 by purchasing annuities to fund pension obligations for certain U.S. retirees (*BI*, May

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Broker earnings

Continued from previous page

15, 1989). Without that non-recurring credit in 1989, A&A's first-quarter 1990 expenses would have risen only 3.4%, Mr. Wieczynski said.

In addition, the $3.5 million drop in A&A's contingency commissions in the first quarter of 1990 further exacerbates the unfavorable comparison with last year's first quarter, Mr. Wieczynski explained.

First-quarter results were essentially "as we had anticipated, with such a tough market—both the problems with the soft market and the shortfall in contingent commissions," he added.

Alex. Brown's Mr. Malis said A&A is positioned for growth if market conditions improve. But he cited as a potential drain on future earnings the $40 million punitive damage judgment against the company by a Maryland state court jury earlier this month over a breach of contract dispute with a Baltimore brokerage (*BI*, May 7).

"I'd be shocked if the full judgment held up, but any judgment that does hold up they will have to take a hit on because breach of contract disputes are not covered by errors and omissions insurance," Mr. Malis said. As a result, he has changed his recommendation on A&A stock from a "buy" to "neutral," he said.

While it is "very impressive that A&A has been able to hold its expense growth as well as it has," A&A's revenues are not growing as quickly as expenses, said Shearson's Mr. Smith, who said he was "pretty disappointed" in A&A's results.

Although A&A earnings "came in below our expectations. . .we believe that we are right at the bottom of the cycle and that A&A's revenues and earnings will be accelerating sharply within the next couple of quarters," Mr. Rosencrants said.

Corroon & Black

Corroon & Black's gross revenues dropped 4.2% in the first quarter to $117.1 million from $122.3 million in the first quarter of 1989. Net income fell 29.2% to $9.1 million from $12.9 million.

Mr. Lamberson explained that because of continuing losses, Corroon & Black's life/health underwriting subsidiary, Consumer Benefit Life Insurance Co. of Nashville, Tenn., re-underwrote its business last year. As a result, the parent company lost $4.9 million in revenues from that business in the first quarter of 1990 compared with the corresponding period a year ago (*BI*, Feb. 26).

However, the unit "showed a $800,000 net profit in the quarter against a loss in the prior quarter," Mr. Lamberson stressed.

The broker's net income in the first quarter was hurt by losses from the broker's third-party claims administration business, Corroon & Black Benefits Inc., he noted. "We expect a turn-around in that business in the fourth quarter of this year," he said.

The broker's expenses—excluding acquisitions—were down compared with the first quarter of 1989, while commissions and fees were up slightly, he said. And, while "we're not pleased with the quarter, our business plan had predicted results of that nature," he added.

According to Shearson's Mr. Smith, "you can point to all the little ups and downs at any given time, but the problem is that they don't have the basic core business up where it needs to be."

Mr. Malis and Mr. Rosencrants also characterized Corroon & Black's first-quarter results as disappointing.

Frank B. Hall

Hall reported an 11.6% jump in gross revenues to $111.9 million in the first quarter from $100.2 million in the same period of 1989. Net income exceeded $3 million in the first quarter, compared with a $3.1 million loss in the first quarter of 1989.

This profit represented the first quarter in two years that Hall—which has been plagued with losses stemming from litigation and discontinued operations since 1984—has reported net income.

Mr. Bell said that in light of Hall's "aggressive revenue growth, despite a soft market, I am convinced that our strategies" of paring down unprofitable operations, hiring aggressive new salespeople and making strategic acquisitions over the past 18 months "have been absolutely correct."

However, because Hall is paying dividends on preferred shareholdings held by Reliance Group Holdings Inc. by issuing new common stock quarterly, Hall reported a 7-cent-per-share loss in the first quarter of 1990.

All three financial analysts contacted acknowledged that Hall's operational picture is improving. None recommend Hall stock.

"Hall is a viable entity out there; it's just not much of a stock investment," said Shearson's Mr. Smith.

Rollins Burdick Hunter

RBH Group revenues leaped 34.5% in the first quarter to $101.6 million from $75.6 million in the first quarter of 1989. This represents the largest revenue increase among publicly held brokers.

RBH's pretax income rose 48.8% to $14 million from $9.4 million in the first quarter of 1989. Aon does not report net income of its subsidiary operations.

Mr. Ryan said that about 60% of RBH's revenue growth was attributable to its purchase of broker Bayly, Martin & Fay International Inc. last summer.

In the first quarter, revenues from RBH's retail brokerage operations grew 27.2%; revenues from reinsurance brokerage grew 117.9%; revenues from employee benefits consulting operations grew 44.1%; and specialty marketing group revenues grew 6.7%.

Aon has "been investing in this business for several years, and a lot of our work of the past is starting to give us the rewards we expected," Mr. Ryan said.

Julie A. Hilt, assistant vp with Interstate/Johnson Lane, said that RBH had "positive revenue contributions from all areas. While the Bayly, Martin & Fay acquisition contributed to that growth, indications were that overall growth was good" as well, she said.

Shearson's Mr. Smith said that RBH "appears to have made an excellent acquisition in BMF, which is already adding substantially to its top line and appears to be adding to its bottom line as well."

Arthur J. Gallagher

Gallagher reported a 9.3% increase in gross revenues to $45.7 million in the first quarter from $41.8 million in first quarter of 1989. However, net income fell 35.8% in the quarter to $2.9 million from $4.6 million in 1989.

While Gallagher's fee income rose 23.4% and its investment rose by a healthy 12.4%, its commission income remained relatively flat, up only 0.8% to $24.7 million from $24.5 million. Mr. Gallagher attributed this to continued rate competition and a decrease in contingent commissions.

The decline in profitability was fueled by a 17.9% increase in expenses, including a major data processing conversion project under way in Gallagher's benefit administration operations; an increase in errors and omissions insurance costs related in an increase in Gallagher's coverage limits; costs incurred in three recent mergers; the addition of new sales and marketing staffers; and an increase in rent costs due to the relocation of five Gallagher branch offices, Mr. Gallagher said.

"We expect 1990 to be a difficult operating environment, but we are meeting that challenge with a very serious look at our expenses and a significant push for new business growth," Mr. Gallagher said.

"Our fee business is a bright spot, although it doesn't carry the margins" of retail brokerage business, he said. "We've had strong new account production" in unbundled claims management services, loss control consulting and risk management information services, "and it's growing stronger."

While both Mr. Malis and Mr. Rosencrants were disappointed with Gallagher's first-quarter results, Mr. Rosencrants said that "because of its management's outstanding long-term track record, I am not willing to bet against Gallagher."

Hilb, Rogal & Hamilton

HRH reported a 5.6% decrease in gross revenues in the first quarter to $20.8 million from $22 million in the first quarter of 1989. Its net income fell 28.7% to $2.34 million from $3.28 million in 1989.

"Our revenue line was down, but expenses were in line with our revenues," said Mr. Hilb, attributing the decline to lower contingency commissions.

"We're not terribly distraught about our first quarter. It was disappointing due primarily to the drop in our contingency income, but the rest of 1990 still looks optimistic from our standpoint," Mr. Hilb added.

Both Mr. Malis and Mr. Rosencrants also anticipate improved earnings for HRH for the rest of the year and still recommend the stock.

"We expect substantially improved earnings in the second quarter of 1990 and beyond," said Mr. Rosencrants.

Poe & Associates

Poe & Associates reported a 14.9% increase in gross revenues in the first quarter to $11.4 million from $9.9 million in the first quarter of 1989. Poe's net income rose 1.5% to $1.25 million from $1.23 million.

Mr. Poe said that because "a lot of our premium volume is not subject to contingency income," Poe's contingency commissions were basically flat compared with a year ago.

He attributed most of Poe's revenue increase to acquisitions since the first quarter of 1989. Without those acquisitions, Poe's revenues would have been flat, Mr. Poe explained.

Mr. Rosencrants, the only analyst contacted who tracks Poe's stock, said that Poe "continues to be one of our favorite stocks, not just in the insurance group, but in the overall stock market. Poe represents the best value among insurance brokerage stocks." ■

AGENT/
BROKER
PROFILES

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Coverage battle

Continued from page 1

lier rulings by the judge in the coverage litigation—amounts to a finding that the each of the two insurers is liable for the full $25 million limit of its policy, said Bobby R. Burchfield, a lawyer with the Washington firm of Covington & Burling, representing Enserch and Ebasco.

The jury also found that Enserch and Ebasco have incurred $10.2 million in defense costs arising from the underlying bondholder litigation and $4.5 million in court costs related to the insurance coverage litigation.

An actual order requiring the insurers to pay out their policy limits and reimburse Enserch and Ebasco for legal costs must come from U.S. District Judge Robert B. Maloney, and Enserch and Ebasco have asked the judge to immediately enter such an order, Mr. Burchfield said. He added that the plaintiffs also have requested $11.5 million in prejudgment interest.

Entry of an order by the judge would allow the two insurers and Shand to appeal the jury's findings, and Mr. Burchfield said he expects the defendants to appeal.

Edward Phoebus, corporate counsel for Shand, agreed that an appeal would have to wait for entry of a final order by the judge. However, Mr. Phoebus declined to comment further on the litigation.

The jury delivered its verdict in the first stage of a two-stage trial.

In the second stage—the start of which has not yet been scheduled—a jury will address bad faith claims leveled by Enserch and Ebasco against the insurers and Shand, according to Mr. Burchfield.

Shand and the two insurers, meanwhile, will pursue a counterclaim charging Enserch and Ebasco with violations of the federal Racketeer Influenced and Corrupt Organizations law, he said.

The RICO suit charges Enserch and Ebasco knew they were committing securities fraud in issuing opinion letters on the cost and period of construction for the nuclear power plants.

The 1983 WPPSS bond default triggered a series of bondholder lawsuits, most of which were consolidated in U.S. District Court in Tucson, Ariz. The consolidated lawsuits sought to hold Ebasco and numerous other parties involved in the WPPSS bond issues jointly and severally liable for more than $2.25 billion in damages.

The trial of the bondholder actions started in September 1988, and Ebasco reached a settlement with the bondholder plaintiffs in February 1989. The settlement, approved by the Arizona federal court last September, calls for the bondholders to recover $50 million, the limits of Ebasco's two professional liability policies.

Ebasco paid the bondholders $7.2 million up front, and the bondholders agreed to recover the remainder solely from the proceeds of the two insurance policies.

Proceeds from the insurance policies will be allocated between Ebasco and the bondholders until Ebasco recovers its initial $7.2 million payment, after which the bondholders will receive all proceeds from the policies, court papers say.

If Ebasco was unable to recover from its insurers, the firm agreed to guarantee at least $3 million in additional payments to the bondholder plaintiffs, court papers say.

Ebasco and parent Enserch sued General Accident, Evanston and Shand Morahan in a Texas state court in Dallas in July 1985, and the suit was later moved to U.S. District Court in Dallas.

The suit sought to recover the $25 million limit of each of the two professional liability policies—in force from April 1, 1982, through June 30, 1983—along with the costs of defending the bondholder action and the costs of the insurance coverage litigation.

The suit also charged that General Accident and Evanston breached their duties to defend Enserch and Ebasco under the policies—for which Enserch paid $1.3 million in premiums—and repeatedly refused to participate in settlement negotiations.

General Accident and Evanston denied liability on several grounds. Both companies argued that policy exclusions barred coverage.

General Accident claimed policy exclusions barred coverage:

- For any loss caused intentionally by Ebasco or any knowingly wrongful acts, errors or omissions.
- For any failure to complete drawings, specifications or schedules on time, or to act on shop drawings on time.
- For failure to meet express warranties or guarantees, or estimates of probable construction costs.
- For losses arising from acts related to the financing of a construction project.

Evanston claimed that the knowingly wrongful acts exclusion barred coverage, court papers show.

Enserch and Ebasco never asked the insurers to provide a defense in the bondholder actions, and failed to give timely notice of the WPPSS-related claims, the insurers alleged.

General Accident and Evanston also argued that Enserch and Ebasco obtained the coverage fraudulently, misrepresenting information in their applications for coverage.

The applications required Ebasco to poll its officers to determine if they knew of any act, error or omission that might produce a claim, according to court papers.

Although Ebasco officials knew of circumstances surrounding the WPPSS project that could give rise to a claim, Ebasco failed to disclose this information, the insurers charged.

The insurers also alleged that there was a "mutual mistake" regarding the limit to be provided under the two policies. While each policy appears to provide a separate $25 million limit, the insurers argued the policies were intended to be "tied" to provide a single $25 million limit.

Enserch and Ebasco disputed this contention.

Before the policies were issued, Alexander & Alexander of Texas Inc., Enserch's broker, pointed out that the policies did not contain any language tying the policy limits or the $5 million per claim/$7.5 million annual aggregate deductibles.

Shand later issued an endorsement tying the two policies' deductibles into a single deductible, but never issued a similar endorsement tying the policy limits, Enserch and Ebasco argued.

Judge Maloney granted the insurers' request to divide trial of the lawsuit into two parts, the first dealing with interpretation of the insurance contracts and the second dealing with Ebasco's bad faith claim and the insurers' RICO allegations.

Judge Maloney also disposed of several coverage issues on pretrial motions.

Among other things, the judge dismissed the insurers' argument that since 14 separate WPPSS bond issues were involved in the underlying bondholder litigation, 14 separate deductibles should be applied, Mr. Burchfield said.

In its verdict last month, the jury threw out most of the insurers' other defenses.

The jury concluded that the claims against Ebasco in the bondholder litigation were covered by the General Accident and Evanston policies and that the claims were not barred by the policies' various exclusions.

The jury also found that Ebasco notified the two insurers of the bondholder claims within a reasonable period and advised them before expiration of the policies that it would be presenting a claim for coverage.

In addition, jurors rejected the insurers' allegation that Ebasco provided false information in its coverage applications and threw out the argument that the issuance of two separate $25 million policies had been a "mutual mistake."

While finding that Enserch and Ebasco incurred $14.7 million in defense costs arising from the bondholder and coverage litigation, the jury also agreed with Ebasco that the insurers failed to provide a defense in the bondholder suits and rejected General Accident's contention that it was never given an opportunity to participate in the defense.

Mr. Burchfield said it is unclear whether the same jury will hear evidence in the second phase of the trial.

The bad faith claim by Enserch and Ebasco charges the two insurers wrongfully refused to cover the WPPSS claims, reneged on an early promise to defend the bondholder lawsuits and conducted a discovery campaign in the insurance coverage litigation they knew would interfere with Ebasco's defense of the bondholder suits, Mr. Burchfield said.

Enserch and Ebasco will also file a motion to dismiss the RICO counterclaim, he said.

The RICO counterclaim includes a securities fraud allegation based on an Ebasco status letter included in the WPPSS bond prospectuses, Mr. Burchfield said. The status letter included Ebasco's opinion on the feasibility of the WPPSS project and estimates of cost and completion time.

Ebasco committed securities fraud by fraudulently concealing the cost of the project, Shand and the insurers charge.

While knowingly committing securities fraud, Ebasco concealed the potential for professional liability claims in its applications for coverage with General Accident and Evanston, the insurers and Shand allege. ■

Court denies bank agent license

LANSING, Mich.—Insurance trade groups in Michigan are celebrating an Ingham County circuit court ruling that a banking company cannot sell insurance through an agency.

Judge Thomas Brown's April 27 ruling upheld a June 1988 order by Dhiraj Shah, the acting state insurance commissioner, which denied Ludington Service Corp. an insurance license. The bank had planned to buy an agency, but the commissioner ruled such a purchase would violate state law.

LSC sued in August 1988, charging that the decision was illegal because federal banking law preempts such action, and that the ruling denied equal protection.

The trade groups argued in a brief that the bank could coerce or mislead customers by distributing promotional materials and encouraging customers to think their loans depended on buying coverage. The bank argued that the restriction violated its free speech rights.

Judge Brown ruled that the LSC was considering activities "that are misleading and coercive to the public —therefore undeserving of First Amendment protection."

"We're very pleased because it's one of the strongest opinions anywhere," said Fritz Lewis, executive vp of the Independent Insurance Agents of Michigan. "Our position is not anti-competitive, but one of concern for the consumer."

Previous Michigan court rulings did not address constitutional questions of banks in insurance, said Frank Venuto, partner in Zagaroli, Colpean & Venuto, the Lansing firm representing the trade groups.

It is anticipated that the case will be appealed.

—By Laura Mazzuca

Update

Indiana wants insurer enjoined

INDIANAPOLIS—The Indiana Insurance Department is asking a state judge to enjoin the operations of an offshore insurer the department says is doing business illegally in the state.

In complaints filed in Marion County Superior Court May 1, the Insurance Department seeks preliminary and permanent injunctions against Zenith Re-Insurance Co. Ltd. of the Turks & Caicos Islands. It is not related to Zenith Insurance Co. of Woodland Hills, Calif.

Zenith Re is not licensed in Indiana and is operating in violation of the Indiana Unauthorized Insurers Act, the department alleges.

The Insurance Department charges that Zenith Re wrote workers compensation coverage for Indianapolis-based Affiliated Truckers of America Inc. Affiliated Truckers is headed by Paul M. Myrehn, an Indianapolis insurance agent who is also managing director of Zenith Re, the complaints say.

Superior Judge Pro Tem William Fatout ordered Zenith Re to post $300,000 in cash, securities or a bond before responding to the complaints. A hearing on the preliminary injunction is set for May 30.

Store sued in hepatitis outbreak

CHICAGO—A supermarket in a Chicago suburb is being charged with negligence in a lawsuit seeking class-action status after more than 50 people contracted hepatitis A from its delicatessen food.

The suit, filed last week in Cook County Circuit Court, also alleges that Dominick's Finer Food Stores of Northfield, Ill., breached a warranty that its food was safe and that store owners had a duty to detect the hepatitis in workers. The suit, filed on behalf of one claimant, seeks $15,000 in damages for each count for each member of the class, pending certification of a class.

A spokesman said Dominick's is paying to test people who fear they have contracted hepatitis A from the store and is paying the medical expenses of those who have contracted the disease, which causes flu-like symptoms. He would not discuss the store's insurance.

Johnson & Higgins and the Boockford Agency in Oakbrook Terrace, Ill., each place some of the store's coverage.

Separately, the Illinois Appellate Court last week upheld a 1987 jury verdict that Melrose Park, Ill.-based Jewel Food Stores does not have to pay punitive damages to people who became ill after drinking salmonella-tainted milk in 1985 (*BI*, Jan. 26, 1987). A plaintiffs' attorney plans to seek a rehearing.

Brokers to appeal restitution

NEW YORK—A brokerage firm and two surety bond brokers say they will appeal a $3.2 million restitution award upheld last week by an intermediate appeals court.

The New York Insurance Department in May 1989 ordered DEF Brokerage Facility Inc. of Great Neck, N.Y.; David Flatlow, a DEF executive; and Phillip Montuori, another broker, to make restitution to contractors for alleged violations of state insurance law.

The department charged the parties collected service fees for placing surety bonds without providing contractors with written agreements detailing the nature and cost of services they would receive.

Between 1982 and 1986, the brokerage and the brokers collected five times more in service fees than premiums, said the department.

DEF and the brokers must offer refunds to each contractor within 60 days. Both brokers were fined $2,500 for 759 violations. If they fail to make restitution, their licenses could be revoked.

Briefly noted

Petroleum Marketers Mutual Insurance Co.—the second-largest U.S. market for underground storage tank liability coverage—has been ordered into liquidation. Petromark entered rehabilitation April 10 (*BI*, April 16). All policies will be canceled on June 4. . . .Pan American World Airways settled last month for an undisclosed amount with 309 people injured and the families of 11 others killed in **Lockerbie, Scotland**, when a Pan Am Boeing 747 crashed there in December 1988 (*BI*, Dec. 26, 1988). . . .New York City corrections officers may be subjected to **random drug testing** after the New York State Court of Appeals—the state's highest court—ruled last week that jail guards' Fourth Amendment rights would not be violated by such tests. The guards' union is considering requesting a review by the U.S. Supreme Court. . . .Former **North Carolina Insurance Commissioner John R. Ingram** failed to win the Democratic nomination for the U.S. Senate. . . .Wind, hail, tornadoes and flooding caused an estimated **$60 million in insured property damage** in the Southeast from April 24 to April 28, reports the American Insurance Services Group. . . .**Aetna Life & Casualty Co.** is attempting to withdraw from the Pennsylvania private-passenger auto market, citing inadequate rates and burdensome regulations. . . .**Phillips Petroleum Co.** says it will contest $5.67 million in fines proposed by the Labor Department for alleged violations of federal workplace safety regulations that the department claims caused the 1989 explosion of a petrochemical plant in Pasadena, Texas (*BI*, April 23; Oct. 30, 1989). . . .MBIA Inc., holding company of **Municipal Bond Insurance Co.**, plans to sell 4.5 million shares of its stock for an estimated $149.6 million. Aetna Life & Casualty Co.—MBIA's largest shareholder—is offering 2.5 million shares, which would reduce its stake to 31.3% from 38.7%. . . .**Harbor Medical Administrators Inc.**, a Boston-based claims administrator that closed its doors April 30, is under criminal investigation by the U.S. Department of Labor, Vermont regulators confirm. Harbor was affiliated with Harbor Medical Administrators of Georgia Inc., which was indicted in January on embezzlement and kickback charges related to its operation of Omni Employee Benefit Trust (*BI*, Jan. 29). . . .An intermediate New York appeals court has ruled that the liquidator of insolvent Nassau Insurance Co. is not bound by an arbitration clause when it sues to recover $10 million in reinsurance owed by Bermuda-based **Ardra Insurance Co. Ltd.** Federal and state courts have disagreed over whether arbitration clauses are enforceable with alien reinsurers. . . .The 2nd U.S. Circuit Court of Appeals has asked the New York Court of Appeals to decide if **Lloyd's of London** is legally "doing business" in the state. The request stems from a suit by Alexander & Alexander Services Inc. against a syndicate with which it placed political risk coverage (*BI*, Jan. 18, 1988).

Proposition 103

Continued from page 1

The issue of what constitutes a fair rate of return for property/casualty insurers stems from a May 1989 California Supreme Court ruling upholding most provisions of Proposition 103.

In upholding the voter-approved insurance reform law, though, the high court found unconstitutional a provision that granted relief from the law's mandatory 20% rollback of insurance "charges" to only those insurers that would be "substantially threatened with insolvency." Insurers are entitled to a "fair rate of return," the court ruled (*BI*, May 8, 1989).

Risk managers should welcome Judge Fernandez's decision, asserted a Risk & Insurance Management Society Inc. official.

"The judge has stood up for sound underwriting principles, and hopefully the rest of the country will see that California took a simplistic approach" to insurance reform with Proposition 103, said Howard W. Greene, director of governmental affairs at RIMS in New York.

The mandate to roll back "charges" 20% below November 1987 levels is most important for buyers of personal automobile insurance because rate competition in the commercial insurance market already has driven rates at least 20% below November 1987 levels. But, RIMS has warned that inadequate personal auto insurance rates could have adverse results in the commercial insurance market in California and nationwide (see story, page 32).

Insurers said that the judge's decision generally showed a good understanding of the insurance business, though they were not particularly pleased with the recommended rate of return for determining whether insurers can be relieved from the law's one-time rollback provision.

As insurers argued during the hearings, any rate of return established for the purposes of a rollback is "arbitrary," said Gary L. Fontana, an attorney representing the American Insurance Assn. and the Assn. of California Insurance Cos.

The judge's decision on rollbacks is "in error" and "will punish the efficient companies" because those insurers will have higher rates of return, he said.

However, insurers are relieved that Judge Fernandez recommended that insurers in the future be allowed to use their own methodologies to determine a fair return as long as they can justify their methodologies and the return falls between 11.2% and 19%. The judge suggested a methodology but did not prescribe one.

"The best thing I like (about the decision) is the awareness that insurers each have a story to tell," said Colin McRae, general counsel for Transamerica Insurance Group.

But, insurers remain wary of what a Fireman's Fund Insurance Co. spokesman called the "wild cards" in the California insurance scene, including what rate of return Ms. Gillespie ultimately will adopt, the reaction of consumers angered by delays in implementing Proposition 103, the upcoming election of a state insurance commissioner and remaining issues to be resolved over personal automobile insurance.

"This is not a time for wild celebration," the spokesman said. "It's round 1½ of 10 rounds."

Harvey Rosenfield, head of Voter Revolt, the organization that sponsored Proposition 103, demanded that Ms. Gillespie "rewrite the decision to conform to what the people voted for."

Judge Fernandez "never understood how Proposition 103 works," he asserted. "It's exactly what we expected from a judge whose wife works for insurance companies," he said.

Attorney General John Van de Kamp had called for Judge Fernandez to step aside because his wife is a partner in a law firm representing several major insurers in the proceedings over which Judge Fernandez presided (*BI*, April 23).

"This just makes us angrier" Mr. Rosenfield said.

Mr. Rosenfield said he plans a response to Judge Fernandez's recommendations, but he would not elaborate.

Mr. Van de Kamp said: "Judge Fernandez's decision could just as well have been written by the insurance companies. Indeed, the judge's opinion acknowledges that he relied heavily on the suggestions of the two industry-paid experts with whom he secretly met last month."

He continued: "While we are confident that Judge Fernandez's decision would ultimately be reversed in the courts, the commissioner should herself reject his ruling and move forward to provide consumers with their rebates without any further delay."

Judge Fernandez issued his decision in two parts.

The first involves the one-time 20% insurance "charge" rollback mandated by Proposition 103. The judge ruled that for insurers to be exempted from the rollback, insurers must not have exceeded a 13.2% rate of return on their combined business from Nov. 8, 1988, to Nov. 7, 1989.

Judge Fernandez said: "The 'base measure'. . .against which the. . .'allowable rate of return'. . .to the equity owner is to be measured should be the insurer's 'statutory equity.' Statutory equity, for rollback and refund purposes, is to be calculated by the use of the long-term industry-wide average premium-to-surplus ratio of 2 to 1."

This formula "determines how much surplus should have been dedicated to premium," that is, half of the premium written in California, said Kenneth B. Schnoll, an attorney with LeBoeuf, Lamb, Leiby & MacRae in San Francisco, which represents Aetna Life & Casualty Co.

Therefore, insurers with lower premium-to-surplus ratios would show a higher rate of return than insurers with the same amount of surplus that write a greater premium volume.

Mr. Schnoll speculated that Judge Fernandez may have developed this methodology based on a theory that insurers with low premium-to-surplus ratios have a surplus level that is "unnecessary to support the volume of written premium."

"We don't necessarily agree with this," said James B. Woods, another attorney with LeBoeuf, Lamb. "It penalizes a conservatively-run company."

While the decision does not address how premiums and related losses and profits from lines of business exempted from the rollback, like workers compensation insurance, are to be handled, insurers understand that these would be excluded from the rate-of-return calculation, Mr. Schnoll said.

Mr. Rosenfield asserted that the 13.2% rate of return for purposes of figuring the rollback "translates into 30% to 50%" because Judge Fernandez did not establish either an efficiency standard that would prohibit insurers from figuring into rates such expenses as executive salaries or a cap on insurance executives' salaries.

Several insurers doubt that they would have to refund premiums to policyholders based on Judge Fernandez's recommendations.

A spokesman for Farmers Group Inc. said Farmers' combined rate of return "falls well below" 13.2%.

The Fireman's Fund spokesman said: "As we understand it, if the decision is upheld, we would not be required to make any rebate."

"If the judge's decision were to stand, it is unlikely" that we would have to issue refunds, said David Nadig, assistant counsel for Allstate Insurance Co. in Northbrook, Ill.

Kent Keller, an attorney for Travelers Corp. with Barger & Wolen in Los Angeles, said he does not know whether Travelers would have to issue refunds. Travelers did not earn a 13.2% rate of return on its combined business nationwide, including workers compensation.

But, Proposition 103 does not apply to workers comp, and Mr. Keller said he did not know whether excluding workers comp from Travelers' rate of return on combined business would boost its rate of return in the state over the 13.2% benchmark.

Meanwhile, James Michener, a Travelers counsel in Hartford, said that while Judge Fernandez's recommendation "is an encouraging sign," Travelers will not re-enter the personal automobile market in California (*BI*, Feb. 5).

Several other insurers, including Transamerica and Aetna, last week said they had not yet determined whether they would be exempt from Proposition 103's rollback provision under Judge Fernandez's recommendation.

In the second part of his recommendation, Judge Fernandez suggested that a fair rate of return for insurers filing rates as of Nov. 7, 1989, should range from 11.2% to 19% on an insurer's combined business, depending on the cost of capital.

"The insurer would be permitted to develop a rate of return using sound actuarial principles," under the judge's recommendations, Mr. Schnoll explained.

In his recommendation, Judge Fernandez said: "The cost of equity capital at any given time for any particular company or group, as well as the appropriate return on equity for such company or group, are company-specific factual issues that should be determined, using any economically acceptable model, by the evidence, in the same manner as other factual issues.

"No specific finding as to the cost of equity capital or required rate of return can be made for any particular insurance company on the record of these proceedings. The evidence, however, does suggest a range of 11.2% to 19%," Judge Fernandez said.

"Commercial lines cater to sophisticated buyers who have unique risks, unique exposures, and individualized insurance needs. Clearly there is no generic standardized method that can be set up which would not do substantial damage to such an insurance market, which needs maximum flexibility," he said.

The recommended rate of return is in line with the average 11.2% return enjoyed by property/casualty insurers for the last 15 years, Mr. Rubinstein said.

Insurers have said they would not seek rate hikes to provide them the highest rate of return allowable if Ms. Gillespie adopts the judge's recommended range because of competition in the soft market.

Although "a wealth of insurer testimony" during the hearings supported the upper range of a 21% rate of return, Mr. Keller, Travelers' attorney, agreed insurers would not raise rates.

"I don't believe they (insurers) will be able to run to the trough," said Consumers Union attorney Nettie Hoge.

Ms. Gillespie can modify Judge Fernandez's decisions only on the basis of evidence brought out during the hearings.

Parties in the hearings may file briefs to Ms. Gillespie by May 18.

Mr. Rubinstein said his staff will file a brief recommending 11.2% as the benchmark rate of return for rollback purposes. He said evidence brought out in the hearings would support this figure.

And, for future rates of return, the Rubinstein & Perry staff will recommend that Ms. Gillespie separate commercial lines from personal lines.

Mr. Rubinstein will recommend an 11.2% to "something higher than 15%" as a rate of return for commercial lines and a 11.2% to 15% rate of return for personal lines.

In a separate ruling from his recommendations, Judge Fernandez denied the motion by Mr. Van de Kamp and consumer groups to disqualify himself.

"There is no financial interest or conflict of interest that is any legal or ethical basis for disqualification," the judge said.

"Disqualification after this matter has been submitted for decision would not only be irresponsible but would result in a failure of justice. Adequate safeguards exist to correct any imperfections in the record," the judge ruled.

Separately, the Insurance Department and Voter Revolt each will appeal Superior Court Judge Miriam A. Vogel's May 7 decision striking down Ms. Gillespie's regulations implementing Proposition 103 provisions on personal auto insurance pricing (*BI*, Dec. 11, 1989).

Judge Vogel restrained Ms. Gillespie from enforcing a plan setting aside territorial rating and the use of gender and marital status in pricing auto insurance. Judge Vogel said the plan conflicts with the requirement established by the California Supreme Court in its ruling on Proposition 103 that an insurer is entitled to a fair return. ■

2 family leave bills vary only slightly

WASHINGTON—While the core portions of family leave legislation passed by the House and pending before the Senate are identical, there are several differences in the two bills.

Those differences include:

- Length of leave.

The House bill, H.R. 770, would require employers to offer 12 weeks a year for unpaid medical and family leave. The Senate bill, S. 345, would require companies to offer 13 weeks unpaid medical leave during a 12-month period and 10 weeks of unpaid family leave during any 24-month period.

- Small employer exemption.

The House bill would exempt companies with fewer than 50 employees at one work site. However, companies would be required to count employees at different work sites within 75 miles to determine if they are under this 50-employee threshold.

The Senate bill would apply to companies that employ at least 20 employees at one work site; the Senate legislation makes no mention if companies have to include employees at work sites within any geographic radius.

- Scope of family leave.

Under the House bill, employees would be allowed to take family leave for birth or adoption of a child, as well to take care of a seriously ill child, spouse or parent. The Senate bill includes these requirements and also would allow family leave to enable an employee to take care of an ill parent-in-law.

- Eligible employees.

Under the House bill, employees who have been on the job for at least one year and have worked 1,000 hours over a 12-month period would be eligible for family or medical leave. The Senate bill would allow employees who have been on the job for at least a year, but only worked 900 hours over a 12-month period, to be eligible for family or medical leave.

Benefits extended to unmarried partners

Unmarried partners of employees are entitled to health care benefits under policies recently adopted by two West Coast public entities.

Domestic partners of Seattle city employees on May 1 were given the option of receiving fully paid coverage from either the city's indemnity plan or from one of two health maintenance organizations.

In addition, unmarried partners of employees of Santa Cruz County, Calif., were offered the option of receiving health care coverage from the county's self-insured indemnity plan as of April 30.

Santa Cruz County is treating the benefits as taxable income to the employee since domestic partners do not meet the definition of dependent under current tax law. The county, though, is seeking an Internal Revenue Service ruling on the tax treatment of these benefits.

Seattle has not yet decided how it will treat the benefits.

Seattle decided last fall to extend the benefits after its Human Rights Department ruled that the city was violating its own anti-discrimination laws by not providing coverage to unmarried partners, explained Sally Fox, benefits manager.

The city pays 100% of the premium for its 10,000 employees, which have three coverage options:

- King County Medical Blue Shield, a Blue Cross & Blue Shield indemnity plan that pays 80% up to $1,000 over a $100 deductible, with 100% coverage to a $1 million lifetime cap per covered individual.
- Group Health Cooperative of Puget Sound, a Seattle-area HMO that pays all costs except for a $3 per-prescription copayment and $25 emergency room copayment.
- And, Pacific Health, another Seattle-area HMO that provides the same coverage level as Group Health.

So far 194 of the 318 Seattle city employees eligible to receive domestic partner coverage have enrolled, Ms. Fox said.

Ms. Fox could not estimate how much it will cost the city to extend the coverage to domestic partners since it plans to fully self-insure that portion of its benefit plan and actuarial studies have not yet been completed. Seattle has not yet decided whether to purchase stop-loss coverage for the self-insured benefit.

Only eight employees of Santa Cruz County's 2,000 workers have signed up for domestic partner coverage through the county's self-insured health care plan, according to Pruit Tully, employee relations manager.

Under Santa Cruz County's health care plan, employees receive 80% coverage above a $100 deductible for each covered individual. Employees' maximum out-of-pocket expenses range from $1,250 to $2,500, depending on the terms of the union contract involved, Mr. Tully explained.

An estimate of the cost of the county program was not available.

—By Joanne Wojcik

Family leave mandate

Continued from page 2

For an employee to secure medical leave, the certification would have to include a statement that the employee is not able to perform his or her job.

A company also could require an employee to obtain a second medical opinion and to file periodic medical certification during the leave.

During the unpaid leave, an employer would have to continue an employee's health insurance coverage at the same level and under the same conditions as if the employee had stayed on the job.

For example, if the employer paid 80% of the health care premium before the employee went on family or medical leave, it would continue to pay 80% of the premium while the employee was on unpaid leave.

After an employee returns from unpaid family or medical leave, a company would have to restore the worker to his or her job or an "equivalent position" with equivalent pay and benefits.

The legislation generally would go into effect six months after enactment. In the case of workers covered by collective bargaining agreements, the legislation would take effect at the termination of the contract or one year after enactment, whichever is sooner.

Some employers, such as American Telephone & Telegraph Co., have launched family leave programs that exceed the requirements laid down by the legislation. For example, AT&T's new work and family program allows employees to take up to 12 months of unpaid leave—with company-paid health care coverage for six months—to care for a family member (*BI*, May 7; June 5, 1989).

But most companies do not offer such programs. A soon-to-be-released survey of 250 employers by Buck Consultants Inc. found that only 27% of companies offered unpaid family-leave-type programs.

While family leave programs will be a new benefit for most employers, benefit experts question how many employees will take advantage of the program.

Most employees lack the financial resources to stay off the job for a lengthy unpaid leave, benefits experts say.

"I wonder how many employees will use the programs. It strikes me as more of a 'yuppie benefit' than a program that will be widely used," said Richard Gisonny, a technical consultant with TPF&C, a division of Towers, Perrin, Forster & Crosby Inc. in Valhalla, N.Y.

"It is not that big a deal. I'd be surprised if a small proportion of workers use it," agreed John Hickey, a partner with Kwasha Lipton, a benefit consulting firm in Fort Lee, N.J.

"While employees may view leave programs as important, that does not mean they will rush to use it," said Jane Ginsburg, a consultant in The Wyatt Co.'s San Francisco office.

Employers that currently offer family-leave-type programs say leave is most typically taken in pregnancy situations.

For example, Philadelphia-based CIGNA Corp.'s personal leave program, which provides up to three months of unpaid leave, is typically tapped by pregnant employees who want additional time before the birth of a child as well as after the baby is born. CIGNA provides paid leave while a pregnant employee is considered disabled.

"Sometimes women like to stay out for a few months after the baby is born," said Robert Gackenbach, CIGNA's vp-employee benefits.

While only a small percentage of employees may actually use leave programs, the benefit still could create administrative complications.

> **'I wonder how many employees will use the programs. It strikes me as more of a "yuppie benefit," ' says TPF&C's Mr. Gisonny.**

For example, employers with contributory health care plans will have to devise administrative systems to collect premiums from employees on leave.

"Payroll deduction won't work because there is no paycheck. There are some practical problems that employers will have to deal with," said Kathy Dupree, director of employee benefits at MetroVision Inc. in Atlanta.

At the same time, companies will have to find equivalent positions for employees returning to work after unpaid leave, noted Wyatt's Ms. Ginsburg.

The direct economic impact of the legislation on employers is expected to be relatively small. The General Accounting Office found the Senate legislation would cost employers $236 million annually to continue health care coverage for employees on leave.

But other costs are harder to measure. No precise estimates are available on the cost of training temporary staff to replace employees on leave.

"There is no way to estimate the replacement cost except to say it would be substantial. It is an incalculable cost," said a spokesman for the National Federation of Independent Business in Washington, D.C., a small business trade group opposing the legislation.

The family leave legislation has aroused strong debate.

An analysis prepared by the House Democratic Study Group of arguments for and against the family leave legislation noted supporters of the bill say it will save companies money.

"By providing leave to meet family needs, the (legislation) increases the likelihood that employees will stay with a firm, thereby leading to productivity gains, as well as savings on costs of recruiting, hiring and training replacement workers," the analysis said.

On the other hand, the House Democratic Study Group said an argument against the legislation is that "the kinds of benefits that a firm provides to its employees should continue to be decided by negotiations between labor and management—not mandated by the government. No kind of mandated national benefit can take into account the unique circumstances that individual businesses face."

Some employers who are sympathetic to the concept of family leave programs don't like the idea of Congress mandating employee benefits.

"No one likes a mandate. This is a program employers should design on their own to fit individual company and employee needs," said Catherine Corse, assistant vp at Barnett Banks Inc. in Jacksonville, Fla.

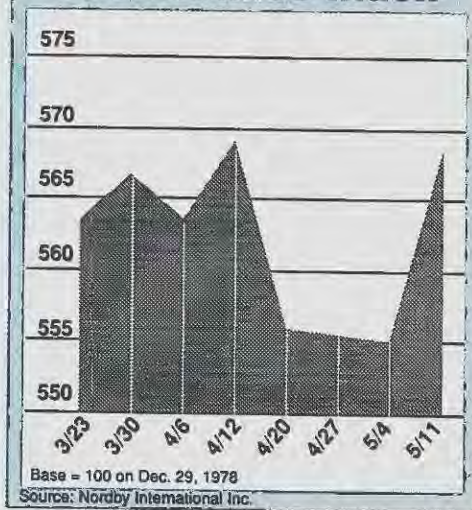
"Few would question whether family leave benefits are good or bad policy. The question is whether these benefits should be offered on a voluntary basis or whether the government should mandate that employers must offer them," said Frank McArdle, a consultant in the Washington, D.C., office of Hewitt Associates.

Even if the family leave legislation is not enacted, more employers are expected to begin such programs.

The Buck survey found that 43% of employers expect to offer a parental leave program by the year 2000, up from 27% today.

"There is a recognition that the workforce is changing," noted Barbara Adolf, manager of Buck's work and family consulting practice in Secaucus, N.J.

With more two-income families, it is less likely that there is a parent at home to meet family needs, experts say. ■



Insurance industry stocks continued to shoot upward last week, as the *Business Insurance Index* rose 13.1 points to 568.2 on May 11, from 555.1 on May 4. Advancing issues were led by Nobel Insurance Ltd., up 13.6%; Hilb, Rogal & Hamilton Co., up 12.6%; and American Indemnity Financial Corp., up 11.1%. Declining issues followed Hanover Insurance Co., down 12.4%; Sierra Health Services, down 11.7%; and Safeguard Health Services, down 11.5%. The most active issue during the period was Argonaut Group, 7.9 million shares traded. The *BI* Index gained 2.4% for the week; the Standard & Poor's 500 was up 4.0%; the New York Stock Exchange Composite gained 3.7%; and the Dow Jones 30 Industrials were up 3.4%.

British Issues

May 10 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	446	20.6	28.7	6.4	460—446
Genl Accident	1034	15.8	66.7	6.4	1043—1034
Gdn Royal Exch	218	19.1	15.3	7.0	225—218
Royal	435	23.4	34.0	7.8	450—435
Sun Alliance	295	10.8	16.7	5.6	299—295
Brokers					
Bradstock	235	16.5	10.0	4.3	235—235
CE Heath	525	14.8	34.5	6.6	525—523
Hogg Group	161	10.6	9.7	6.0	161—159
Lloyd Thompson	287	17.9	9.7	3.4	287—286
PWS Holdings	73	11.4	3.3	4.6	76—73
Sedgwick Grp	265	19.9	16.0	6.0	267—264
Steel Brrl Jones	269	16.4	14.7	5.5	269—269
Willis Faber	269	16.9	16.0	5.9	271—269

Source: Philip Olsen/Paul Hodges, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

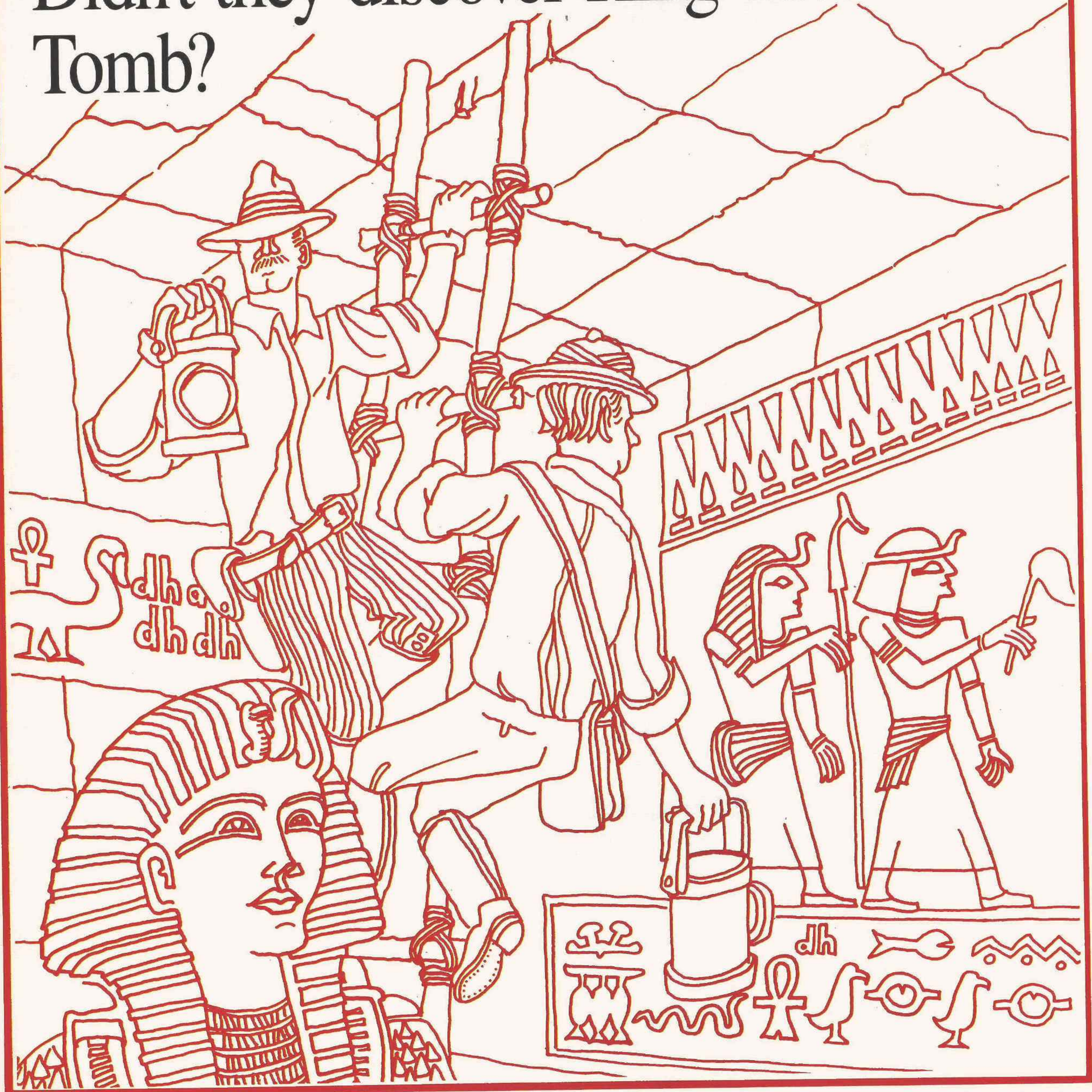
BI Industry Stock Report

MAY 7, 1990 THROUGH MAY 11, 1990

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	24.00	-1.54	-23.81	34.00	23.25	483	1.00	4.17	19	9.18	2.61
Corroon & Black	NYS	31.25	2.88	-18.30	41.00	28.50	184	1.36	4.35	17	12.73	2.45
Gallagher Arthur J. & Co.	NYS	21.38	1.79	-13.64	26.50	19.00	44	0.60	2.81	16	5.33	4.01
Frank B. Hall	NYS	3.75	-3.23	25.00	4.50	2.50	25	0.00	0.00	-2	-2.80	-1.34
Hilb, Rogal & Hamilton	OTC	14.50	12.62	-22.15	20.63	11.25	120	0.28	1.93	20	4.60	3.15
Marsh & McLennan	NYS	70.63	3.29	-9.46	89.75	60.63	1084	2.48	3.51	17	10.56	6.69
Poe & Associates	OTC	12.00	0.00	-9.43	13.00	8.00	0	0.40	3.33	15	1.93	6.35
BROKERS	AVERAGE		2.3	-10.3					2.9	14		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	42.50	1.80	2.10	46.50	30.25	4188	0.44	1.04	9	25.06	1.70
Berkshire Hathaway Inc.	NYS	7475.00	7.17	-13.33	8900.00	5675.00	0	0.00	0.00	-28	2869.00	2.61
ITT (Hartford Group)	NYS	57.00	9.09	-4.80	64.50	51.38	2740	1.60	2.81	8	56.33	1.01
Sears (Allstate)	NYS	37.50	3.45	-3.23	48.13	34.75	2413	2.00	5.33	10	37.75	0.99
CONGLOMERATES	AVERAGE		5.4	-4.8					2.3	0		
INSURERS/REINSURERS												
Aetna Life & Casualty	NYS	51.75	5.08	-10.78	62.50	45.25	1773	2.76	5.33	9	58.11	0.89
Ambase Corp.	NYS	6.25	0.00	-50.50	16.38	5.75	322	0.20	3.20	2	29.08	0.21
American General	NYS	48.75	1.04	48.85	50.63	28.13	4021	3.20	6.56	14	34.68	1.41
American Heritage	NYS	22.00	-0.56	-22.81	24.63	19.50	0	1.00	4.55	11	22.60	0.97
American Indemnity/Fin'l	OTC	6.25	11.11	-21.88	13.00	4.25	5	0.08	1.28	-1	17.38	0.36
American International	NYS	92.00	4.69	-12.80	112.00	81.25	2198	0.48	0.52	11	41.92	2.19
Aon Corp.	NYS	38.13	5.90	-10.03	43.25	32.50	293	1.52	3.99	11	19.62	1.94
Argonaut Group	OTC	72.50	0.52	5.26	73.50	54.25	7916	1.60	2.21	9	36.83	1.97
AVEMCO Corp.	NYS	25.75	3.52	5.64	27.50	20.38	200	0.40	1.55	17	9.52	2.70
Baldwin & Lyons Inc.	OTC	20.00	0.00	-6.98	24.00	17.00	3	0.28	1.40	7	20.80	0.96
Belvedere Corp.	ASE	4.38	0.00	-20.45	5.63	4.13	3967	0.04	0.91	-5	8.03	0.54
Chandler Insurance	OTC	8.88	4.41	-24.47	13.25	7.63	27	0.00	0.00	4	9.53	0.93
Chubb Corp.	NYS	89.75	3.76	-6.39	102.75	67.50	1028	2.64	2.94	9	55.49	1.62
CIGNA Corp.	NYS	49.00	6.23	-18.67	66.75	45.25	787	3.04	6.20	11	66.64	0.74
CNA Financial Corp.	NYS	72.50	3.39	-27.50	108.75	68.25	268	0.00	0.00	9	54.87	1.32
Continental Corp.	NYS	29.13	2.19	-7.17	38.63	25.75	1697	2.60	8.93	11	41.36	0.70
Durham Corp.	OTC	29.00	-3.33	-5.69	34.75	29.00	7	0.92	3.17	14	26.32	1.10
Fireman's Fund	NYS	32.50	3.17	-7.80	40.75	29.50	780	0.68	2.09	49	32.74	0.99
Fremont General Corp.	OTC	16.25	-3.70	-19.25	22.50	14.38	138	0.80	4.92	7	19.09	0.85
Frontier Insurance Group	NYS	19.75	1.28	6.76	21.75	13.63	90	0.00	0.00	8	7.29	2.71
General RE Corp.	NYS	82.50	4.76	-8.33	96.25	63.63	1449	1.52	1.84	13	29.04	2.84
Hanover Insurance Co.	OTC	23.00	-12.38	-24.59	33.00	23.50	189	0.44	1.91	7	32.03	0.72
Harleysville Group	OTC	22.50	-1.64	-18.18	28.75	19.50	62	0.60	2.67	7	18.94	1.19
Hartford Steam Boiler	OTC	57.00	2.24	5.07	60.75	39.75	113	1.60	2.81	15	18.94	3.01
Kansas City Life Ins.	OTC	35.75	0.00	-0.35	36.00	34.50	3	1.12	3.13	10	39.22	0.91
Kemper Corp.	NYS	37.25	7.97	-21.16	51.88	34.00	406	0.92	2.47	9	29.97	1.24
Lawrence Insurance Group	ASE	8.38	0.00	17.54	9.13	6.50	4	0.36	4.30	16	4.40	2.55
Liberty Corp.	NYS	49.88	2.31	17.35	49.75	32.50	13	0.92	1.84	17	31.82	1.57
Lincoln National	NYS	54.75	5.04	-10.25	62.88	47.50	300	2.60	4.75	10	49.19	1.11
NAC Re Corp.	OTC	32.13	4.47	-11.38	41.00	24.38	396	0.20	0.62	14	22.81	1.41
Navigators Group	OTC	30.75	-0.81	11.82	31.75	23.75	1	0.00	0.00	11	15.22	2.02
Nobel Insurance LTD.	OTC	3.13	13.64	56.25	3.38	1.50	96	0.00	0.00	-2	7.76	0.40
NWNL Companies	OTC	29.88	2.58	-24.37	44.13	26.50	451	1.32	4.42	6	37.50	0.80
Ohio Casualty Corp.	OTC	42.25	-1.74	-11.52	52.50	34.75	1029	2.32	5.49	11	33.30	1.27
Old Republic Int'l	OTC	22.50	-3.23	-12.20	29.00	21.13	293	0.72	3.20	5	30.70	0.73
Orion Capital Corp.	NYS	18.75	-1.96	-19.35	28.50	18.50	60	0.84	4.48	6	19.72	0.95
Phoenix RE Corp.	OTC	9.63	-1.28	-25.96	15.50	8.75	4	0.20	2.08	-13	12.99	0.74
Protective Life Corp.	OTC	13.38	-1.83	-6.14	16.25	10.88	7	0.68	5.08	8	14.54	0.92
Provident Life	OTC	21.13	8.33	-18.36	30.13	19.00	431	0.80	3.79	6	23.24	0.91
Re Capital Corp.	ASE	13.88	-0.89	-4.31	15.25	10.75	4	0.00	0.00	11	12.60	1.10
RLI Insurance Corp.	NYS	11.50	-2.13	29.58	12.38	6.88	12	0.40	3.48	6	12.42	0.93
St. Paul Companies	OTC	57.50	2.22	-4.17	63.50	48.63	1361	2.40	4.17	7	43.47	1.32
SAFECO Corp.	OTC	36.50	4.66	-8.18	42.38	27.75	837	1.36	3.73	8	24.87	1.47
SCOR U.S. Corp.	NYS	11.00	4.76	-22.81	14.50	8.25	30	0.20	1.82	14	10.61	1.04
Seibels Bruce Group	OTC	11.25	-2.17	3.45	13.63	8.75	94	0.80	7.11	-2	13.75	0.82
Selective Ins. Group	OTC	16.25	0.00	-15.03	20.25	15.50	94	1.04	6.40	6	15.72	1.03
Statesman Group Inc.	OTC	2.19	2.96	-20.44	3.63	1.88	42	0.16	7.31	4	4.19	0.52
Tokio Marine & Fire	OTC	52.00	9.47	-31.01	78.13	40.88	10	1.00	1.92	-	70.93	0.73
Torchmark Corp.	NYS	47.00	5.03	-17.90	58.75	37.88	228	1.40	2.98	12	13.23	3.55
Transamerica	NYS	37.88	4.48	-15.13	48.00	33.75	392	1.92	5.07	9	34.63	1.09
Traveler's Corp.	NYS	30.25	-0.41	-17.97	45.00	29.38	2675	2.40	7.93	6	44.85	-
Trenwick Group Inc.	OTC	22.00	4.76	-9.74	26.88	16.00	66	0.36	1.64	14	16.91	1.30
United Fire & Casualty	OTC	30.75	-0.81	-6.82	34.50	29.63	0	1.20	3.90	9	22.56	1.36
USF&G Corp.	NYS	28.88	0.87	-2.53	34.00	26.88	919	2.92	10.11	35	22.87	1.26
UNUM Corp.	NYS	48.38	4.88	1.31	51.38	32.13	427	0.80	1.65	9	31.20	1.55
USLIFE Corp.	NYS	37.88	3.77	-16.30	48.13	34.75	61	1.48	3.91	4	54.34	0.70
Washington National	NYS	19.75	-3.66	-30.09	29.13	19.75	115	1.08	5.47	81	32.90	0.60
USLICO Corp.	NYS	22.00	3.53	-7.37	25.38	21.00	27	1.00	4.55	6	27.73	0.79
Zenith National Ins.	NYS	15.00	1.69	-20.00	21.50	13.50	95	0.84	5.60	0	13.81	1.09
INSURERS/REINSURERS	AVERAGE		2.1	-9.2					3.6	10.6		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	15.75	-3.08	-25.88	26.38	12.63	1442	0.00	0.00	4	3.54	4.45
HMO America Inc.	OTC	5.13	0.00	-33.87	10.63	4.38	475	0.00	0.00	25	1.12	4.58
Pacificare Health Sys.	OTC	21.25	8.97	-18.27	30.38	13.25	236	0.00	0.00	5	6.35	3.35
Safeguard Health Enter.	OTC	5.75	-11.54	-32.35	12.50	5.50	247	0.00	0.00	10	2.99	1.92
Sierra Health Services	ASE	6.63	-11.67	-25.35	9.63	4.25	34	0.00	0.00	21	0.62	10.69
United Healthcare Corp.	OTC	12.88	7.29	5.10	13.25	7.88	3422	0.00	0.00	11	0.34	37.87
United Medical Corp.	ASE	8.50	-2.86	41.67	9.13	5.38	13	0.20	2.35	27	5.70	1.49
U.S. Healthcare	OTC	15.00	6.19	5.26	15.50	9.63	0	0.28	1.87	0	3.07	4.89
HMOs	AVERAGE		-0.8	-10.5					0.5	13		
ALL COMPANIES	AVERAGE		1.9	-9.0					3.0	10		

System design: Nordby International Inc.

Duncanson & Holt.



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