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Updates

Aviation underwriting manager charged with fraud in PSA crash

NEW YORK—United States Aviation Underwriters Inc. and former Chairman John V. Brennan are facing criminal fraud charges over their handling of claims from the 1987 crash of a Pacific Southwest Airlines commuter jet.

A federal grand jury in Brooklyn last week returned a 40-count mail fraud indictment alleging that Mr. Brennan and USAU, manager of U.S. Aircraft Insurance Group, defrauded PSA parent USAir Group Inc. and other insurers. PSA Flight 1771 crashed

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Storm damage to top $1 billion

Insured losses grow as storm hits states with hail, floods

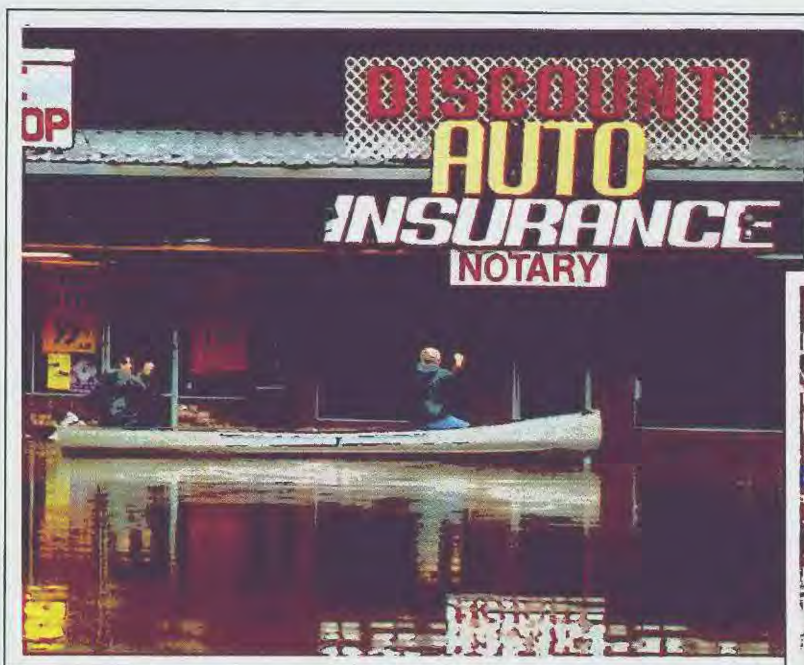
By MICHAEL BRADFORD

DALLAS—Insurers expect nearly $1 billion in claims from two powerful storms a week apart that pelted north central Texas with hail and high winds.

The May 6 storm, which dropped grapefruit-sized hail on the Dallas-Fort Worth area, caused estimated insured losses of about $700 million.

That storm has racked up considerably more commercial and self-insured losses than an April 29 hailstorm that hit the same area and caused an estimated $275 million in insured damage (*BI*, May 8).

The May 6 storm system later moved east, causing extensive flooding in the New Orleans area. Insured losses were estimated at $100 million late last week and were expected to climb.



At left, canoeists inspect a shopping center in Mandeville, La., that flooded after heavy rains from last week's storms. Below, firefighters assess damage to the roof of a Haggar Apparel Co. facility in Dallas caused by the May 6 hailstorm.

AP/WIDE WORLD

Insurer trade groups could not account for an estimate by Louisiana Gov. Edwin Edwards that insurers were expecting at least $2.5 billion to $3 billion in claims from the storm.

"This was a monstrous series of hailstorms," said Jerry Johns, president of the Southwestern Insurance Information Service, an Austin, Texas-based insurer group that estimated the damage.

"It is a major disaster in terms of insured losses," said Mr. Johns. "And we're not even through the spring," he added, noting Texas may be revisited by hailstorms and, later this year, hurricanes.

At least 22 deaths were attributed to the May 6 hailstorm. Hundreds of injuries were reported,

See **Storms** *on page 22*

Product liability differences on agenda

By MARK A. HOFMANN

WASHINGTON—The Senate's approval of a product liability reform bill opens the way for a new debate on just how sweeping an overhaul of the civil justice system is possible in the current Congress.

The Fairness in Product Liability Act, S. 565, which passed the Senate by a 61-to-37 vote last week, will next go to a House-Senate conference committee. The committee will try to resolve differences between the Senate measure, which affects only product liability, and a much more comprehensive bill, H.R. 956, passed by the House in March (*BI*, March 13).

That will not be easy. One of the chief House players, Judiciary Committee Chairman Henry Hyde, R-Ill., has promised to defend the broader House bill. "This will be a negotiation, not a surrender," he said.

At the same time, the Senate bill's two chief sponsors—Sens. Slade Gorton, R-Wash., and John D. Rockefeller IV, D-W.Va.—warn that changing so much as a "semicolon" could imperil chances for Senate bill's passage. The final version of S. 565 emerged only after the Senate repeatedly rejected attempts to broaden it.

The Senate product liability bill would, among other things: cap punitive damages at the greater of $250,000 or double the amount of compensatory damages; set a two-year statute of limitations for most suits; replace joint and several liability with proportional liability; set a uniform evidence standard for punitive damages;

See **Product** *on page 4*

Resolving to cut litigation costs

Employers are turning to ADR for workplace disputes

By SALLY ROBERTS

Employers that require use of alternative dispute resolution for employment-related disputes are cutting litigation costs while maintaining workplace harmony.

Though less than 20% of all employers currently incorporate ADR into their employment contracts, more employers are considering using this method to resolve workplace disputes in a more timely, more amicable and less expensive fashion.

Voluntary ADR programs recently won the endorsement of the Equal Employment Opportunity Commission, which is backlogged with more than 100,000 workplace discrimination complaints. But the agency opposes mandatory programs—those that would require employees, as a condition of employment, to forgo lawsuits and submit any employment discrimination claims to binding arbitration (*BI*, May 1).

If employers make sure their ADR programs are fair and not perceived as coercive and oppressive by employees, even mandatory ADR programs can be successful, experts say.

To do this, employers must provide options to their employees, said Karl Slaikeu, president of Chorda Conflict Management Inc., an Austin, Texas-based consulting firm.

Employers will run "big risks" if they mandate binding arbitration—in which a neutral third party enters a final and binding decision or award—with no other alternatives to resolve employment problems, he said.

Employers need a "comprehensive system with a range of options," he said.

Mr. Slaikeu suggested designing a conflict management system that encompasses three broad sets of options to employees.

The first step would be direct talks, in which employees could go "up and down the chain of command" and negotiate with management to resolve the issue.

If that fails, employees then should have the option of mediation—in which a third party assists in reaching a negotiated settlement. Mr. Slaikeu suggests having the option of an in-house

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Ruling narrows ERISA pre-emption shield

By MICHAEL SCHACHNER and CHRISTINE WOOLSEY

The recent U.S. Supreme Court decision upholding a New York state surcharge on hospital bills may leave little room for challenges by health care payers who argue that federal law pre-empts such state laws.

Benefit law experts, many of whom were caught off guard by the unanimous ruling in *New York State Conference of Blue Cross & Blue Shield Plans vs. Travelers Insurance Co.*, say the decision reverses a trend in recent years of broad court interpretation of the Employee Retirement Income Security Act's pre-emption clause (*BI*, May 1). ERISA pre-empts all state laws that "relate to" employee benefit plans.

A slew of other challenges by health care payers are before lower courts—many of which are now likely to follow the Supreme Court's lead in interpreting the ERISA pre-emption much more narrowly than in recent years.

From now on, those that challenge state laws under ERISA will have to clear a higher hurdle, proving that a particular law has a "direct or extremely acute" impact on benefit plans, said Clifford Stromberg, a partner with Hogan & Hartson in Washington.

The high court's decision in *Travelers* "may not have been a particularly intelligent ERISA decision, but it may have been a good political one," he said.

The justices "admitted the New York surcharge meant different costs for different health plans and therefore meant some plans would have to increase costs or decrease benefits," Mr. Stromberg said. But, "the conservatives on the court. . .didn't want to interfere with the private market, yet they wanted to uphold states' rights to regulate health care providers."

New York imposes a 13% surcharge on hospital bills covered by commercial insurers and a 9% charge on bills paid by HMOs. The

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Updates

USAU, Brennan indicted

Continued from previous page

after a disgruntled former USAir employee shot his former supervisor and the two pilots with a gun he smuggled aboard. Forty-three people died (*BI*, Dec. 14, 1987).

USAU acted as both lead underwriter for USAir and Ogden-Allied Corp., an airport security firm named in crash suits, and as claims lead for PSA and USAir, managing the litigation.

However, USAU had an undisclosed conflict of interest, because it had reinsured 100% of its exposure to USAir losses but only 25% of a $7.5 million layer of Ogden-Allied's coverage, the indictment says.

Following a 1989 settlement of consolidated crash litigation, USAU apportioned 100% of the liability to USAir and none to Ogden-Allied, even though USAU had concluded before trial that a jury might find Ogden-Allied as much as one-third liable, prosecutors allege.

USAU's loss apportionment amounted to a fraud against USAir and its other insurers, the indictment charges.

Each of the charges carries up to five years in prison and fines of $500,000 for USAU and $250,000 for Mr. Brennan.

USAU and Mr. Brennan, who retired last year, will plead not guilty, their representatives say.

"The government is attempting to criminalize the kinds of good faith decisions that are made every day in this industry," USAU Chairman Harold J. Clark said.

"No one was deceived, no one was defrauded, and the government has proceeded on the basis of some unfortunate misunderstandings," added Mr. Brennan's lawyer, Edward A. McDonald.

The indictment mirrors allegations about PSA claims by Robert A. Alpert, former director of claims for USAIG, who also has charged USAU with self-dealing in its handling of claims from the bombing of Pan American World Airways Flight 103 over Lockerbie, Scotland. Mr. Alpert, who has testified before the Brooklyn grand jury, was sued by Mr. Brennan for defamation in a London court (*BI*, Dec. 5, 1994).

A grand jury also has been investigating the handling of Lockerbie claims, including whether Pan Am and its insurers suborned perjury (*BI*, Oct. 11, 1993). Sean F. O'Shea, assistant U.S. attorney in Brooklyn, would say only that the USAU investigation is continuing.

Texas may pass rate rollbacks

AUSTIN, Texas—The Texas Senate this week will consider rate rollbacks for all lines of commercial liability insurance.

The House last week approved the rollbacks as an amendment to a bill designed to streamline the rate approval process. A new state tort reform law will create a "windfall" for insurers (*BI*, Feb. 20), which should pass it on to policyholders, states the amendment.

Under the House version, rates should be reduced up to 30% as of Jan. 1, 1996. The bill calls on Texas Insurance Commissioner Elton Bomer to hold a hearing and issue rate reduction rules by Nov. 1.

If a rate reduction order has not been issued by Jan. 1, 1996, or the order is not final due to action like judicial intervention, the House established reductions will take effect. They range from 30% for professional liability for physicians, health care providers and hospitals and 25% for product liability to 10% for commercial multiperil insurance and a 15% reduction for "all lines and sublines of other commercial liability insurance." The House also calls for a 20% reduction in commercial automobile rates and 15% for personal auto.

Meanwhile, the Texas Insurance Department's accreditation by the National Assn. of Insurance Commissioners depends upon the passage of a bill including solvency-related changes before the Legislature adjourns May 29. The House passed the measure, H.B. 1243, last week.

Texas avoided losing the accreditation last year when a last-minute compromise gave it until May 1995 to change its law to increase the number of dividends regarded as extraordinary (*BI*, March 14, 1994).

Pre-existing condition bill

WASHINGTON—Most pre-existing condition exclusions in group health plans would be barred under legislation introduced last week.

The bill, introduced by House Ways and Means Health Subcommittee Chairman Bill Thomas, R-Calif., and co-sponsored by all subcommittee members, seeks to eliminate "job lock"—being stuck in a job because other employers' plans limit coverage for pre-existing conditions.

The bill would give employees who change jobs credit for the amount of time they were covered by previous employers' plans. This credit would be used to offset any pre-existing medical condition exclusion in their new employer's plan, including self-insured plans.

For example, if an employee changing jobs had been covered under a group health plan for one year and his or her new employer had a six-month pre-existing condition exclusion, the exclusion would not apply to that employee. Many group health plans maintain pre-existing condition exclusions of between three and nine months.

To prevent so-called gamesmanship, in which individuals wait to join a group health plan until they get sick, the limit on pre-existing medical condition exclusions would not apply to individuals with a 60-day break in group coverage. Health care plan waiting periods would not be considered a break in coverage.

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Errors & Omissions

• Reuters Insurance Briefing is available now in the United States. Due to an editing error, a May 8 article incorrectly stated that the on-line service would be released later this year.

• A settlement between Hoechst-Celanese Corp. and Hopewell International Insurance Ltd. was misstated in the April 24 issue. A claims handling dispute between Hoechst-Celanese and Hopewell was settled in December last year. The claim itself was settled with Hopewell and other reinsurers in December 1992 for $507 million.

Aetna appeals bad-faith award in pollution coverage dispute

By DAVE LENCKUS

FREEHOLD, N.J.—Aetna Casualty & Surety Co. is appealing a New Jersey judge's ruling that the insurer acted in bad faith when it denied a small Superfund pollution claim.

The dispute centers on Colonial Foods Inc.'s $173,000 pollution liability claim, which has spiraled into at least a $2.3 million claim for consequential damages and attorneys fees.

Freehold, N.J.-based Colonial, which processed chicken eggs, hired a transporter to dump its U.S. government-approved egg wash detergent in the nearby Lone Pine landfill between 1958 and 1979. Other hazardous waste generators and haulers also used the landfill, which closed in 1979.

Toxic wastes eventually seeped into the nearby Manasquan River and polluted it.

Under the Comprehensive Environmental Response, Compensation and Liability Act, also known as the Superfund Act, the U.S. Environmental Protection Agency named Colonial in 1989 as a potentially responsible party for cleaning up the hazardous waste site, according to Colonial's attorney, Eugene R. Anderson, a partner with Anderson Kill Olick & Oshinsky of New York.

Hartford, Conn.-based Aetna insured Colonial under a $1 million occurrence-based primary comprehensive general liability insurance policy from April 1979 through April 1983. Aetna also wrote $10 million in limits excess of $1 million for Colonial several years during the period, according

See **Bad faith** *on page 14*

Agency to pay claims in health plan fraud

By DOUGLAS McLEOD

NEW YORK—In one of the final steps of a sprawling class-action lawsuit, a federal jury in New York has ordered a Los Angeles insurance agency to pay $2 million to three victims of a massive health insurance scam that involved hundreds of agents and allegedly victimized more than 10,000 people.

Dennis Wilson Insurance Agency Inc. was ordered to pay the award to cover medical and other expenses of three employees of Los Angeles-based Champion Carpet Mills, one of a host of small businesses allegedly defrauded in the scheme.

Along with the Wilson agency, the class action named more than 500 defendants, including several bogus offshore insurers and their operators and several hundred retail and wholesale agents and brokers that marketed the allegedly phony health coverage.

An amended complaint filed in U.S. District Court in New York last year charged that thousands of small businesses and individuals were lured into buying health care coverage from New York's Empire Blue Cross & Blue Shield through a phony labor union set up by convicted felon William Loeb (*BI*, Oct. 3, 1994).

After Empire terminated the sham union's contract in 1990, about half of the policyholders were rolled over into a succession of allegedly fraudulent offshore insurers, including Winston Hill Assurance Co. Ltd., Anchorage Fire & Casualty Co. Ltd., Old American Insurance Co. Ltd. and First Assurance & Casualty Co. Ltd., all of the Turks & Caicos Islands; Promed International Ltd. of the British Virgin Islands; and Provident Capital Indemnity Ltd. of Dominica and Costa Rica.

Many of the defendants—including Empire and scores of agents backed by errors and omissions insurers—settled before trial for a total of about $10 million, according to Robert L. Brace, a lawyer with the Santa Barbara, Calif., firm of Hollister & Brace,

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EAP directory deadline approaching

The June 26 issue of *Business Insurance* will contain the annual directory of employee assistance program vendors and managed mental health networks. The issue also will feature a Spotlight Report on mental health care topics.

Organizations that provide employee assistance program services or managed mental health care services directly to employers are eligible to be listed in the directory.

The directory is published as an editorial service and there is no charge for companies to be included. However, to be included companies must complete and return a questionnaire to *Business Insurance* by the extended deadline of May 19.

If your company provides EAP or managed mental health care services directly to employers and would like to receive a questionnaire, please contact Editorial Assistant Ovie Dent at 312-649-5398.

Treatment debate heats up

Payers in 'Catch 22' between claims of discrimination and ambiguity

By CHRISTINE WOOLSEY

SAN FRANCISCO—Denying health care coverage for medical treatments considered to be experimental or investigational has long been a thorny issue for health care payers—and it appears it's about to get more difficult.

In recent years, insurers and other health care payers have improved their ability to successfully defend decisions to deny payment for medical procedures of questionable value by clarifying contract language.

For example, most health care payers now list specific exclusions in their health care contracts, rather than use terms like "experimental or investigational," which have been labeled ambiguous by the courts and interpreted in favor of policyholders (*BI*, Aug. 1, 1994; June 6, 1994; Jan. 31, 1994).

However, one insurance industry defense attorney says even that strategy is now in jeopardy.

"The plaintiffs bar has recently begun to respond with lawsuits alleging that such exclusions unlawfully discriminate against protected classes," said Thomas E. Johnson, a partner in the Omaha, Neb., firm of Baird, Holm, McEachen, Pederson, Hamann & Strasheim.

Specifically, plaintiffs are alleg-

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Inside

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• Patience has paid off on product liability reform, one of this week's editorials says. **PAGE 8**

• An increase in the Medicare eligibility age is likely, and it will cost employers. **PAGE 13**

• Lloyd's of London is abuzz with rumors of possible restructuring. **PAGE 17**

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California court rules city can be sued

By JOANNE WOJCIK

SAN FRANCISCO—A ruling by the California Supreme Court knocks down one of the few remaining vestiges of public entities' sovereign immunity.

The state high court ruled May 1 that California cities can be sued for negligence by criminal suspects who are injured while fleeing from the police. In this case, an 18-year-old was left a quadriplegic after being struck by a police car.

The ruling resolves a discrepancy between the state's vehicle code, which makes cities liable for harm caused by the negligent on-the-job driving of city employees, and its government code, which gives cities and police officers immunity from suits over injuries caused by people resisting arrest.

For the most part, cities in California and other states have long been liable for their employees' on-the-job negligence.

"This is just one more chink in the armor of municipal immunity," commented Richard Welch, risk manager for the city of Los Angeles.

"It's a liability that has existed for quite some time. The sovereign immunity defense crumbled a long time ago. I know of few municipalities that use it as a shield, and none successfully," said Allen Impaglia, risk manager for the city of Glendale, Ariz.

"I also personally feel that it's improper for a municipality to try to avoid legal liability. That's not what government is all about. We have to be held to the same standard as private business," he added.

The plaintiff's appellate attorney in the case, Beatrice Taines of Walnut Creek, Calif., agreed: "It's not expanding liability; it's always been there."

Under state motor vehicle laws, any employee who acts negligently in the course of his or her employment can put the city at risk, said Ms. Taines.

And the decision is not limited to police, but would apply to all city workers.

To reduce this risk, both he and Ms. Taines recommended that public entity risk managers establish policies on vehicle use and train all employees.

The ruling in *Thomas vs. City of Richmond* settles a conflict that arose in the California appellate courts over what circumstances will subject a city to liability for injuries caused to a fleeing suspect.

Under California Government

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Product liability reform revitalizes general aviation

By STACY SHAPIRO

SAN DIEGO—The U.S. light aircraft industry is taking off following the passage last year of federal aviation product liability reform legislation.

AIA CONFERENCE

As a result of the change in the law, Cessna Aircraft Co. plans to build a new plant in Independence, Kan., to build light aircraft. The company expects to employ about 2,000 additional people by next year.

The value of Piper Aircraft Corp.'s assets, meanwhile, has tripled following the passage of the law. Piper hopes to emerge from Chapter 11 bankruptcy by late summer.

But aviation underwriters question whether the legislation will seriously boost a beleaguered industry or cause more problems than it will solve.

President Clinton last August signed into law the General Aviation Revitalization Act of 1994. The act forbids any civil actions for damages against manufacturers for death or injury arising out of an accident involving light aircraft that seat fewer than 20 passengers and are at least 18 years old. More than 74% of all general aviation aircraft, which includes all aircraft except commercial and military, are 18 years or older, industry statistics show.

The 18-year statute of repose is superseded, however, in states that have lesser statutes of repose. Thirteen states have statutes of repose that range from six to 12 years.

The act also provides an 18-year statute of repose on component manufacturers like engine or instrument makers. However, the period runs from the date that each component is installed in the aircraft. So, if a 19-year old plane had a new engine installed recently, the plane's manufacturer would be protected by the bill, but the engine manufacturer could be sued.

The legislation and its effects dominated conversation at the recent 19th annual Aviation Insurance Assn. conference, held in San Diego April 30-May 2.

The law, widely supported by aircraft and component manufacturers, unions, and pilots, was less a product liability reform bill than a "jobs" bill, noted E. Glenn Parr, general counsel for Piper Aircraft Corp. in Vero Beach, Fla.

General aviation manufacturers fought for the legislation because their industry had nose-dived under the weight of product liability litigation since the late 1970s.

"The act had the intended purpose of revitalizing the general aviation industry," said J. Thompson Thornton, partner of Thornton, Davis & Murray, P.A. in Miami.

There has been a "remarkable decline" of the industry in particularly the last 15 years and "the most widely accepted culprit has been the significant increase in that period of time of product liability litigation and the subsequent skyrocketing insurance costs to protect those claims," he said.

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Breaking up is harder to do

Innovative building techniques helping structures survive catastrophes, reduce losses

By ROBERTO CENICEROS

California's ports—many built atop active earthquake faults that slice through land formed from fill dirt—are prime testing grounds in the quest for new construction techniques that can withstand catastrophes.

But the applicability of the findings are not limited to California's ports—they can apply to building construction in general. Nor are the innovations restricted to the West Coast.

Across the country, engineers and construction firms are developing and applying new building technology that they hope will reduce losses in the event of earthquakes, windstorms and even bombings.

However, the mere existence of systems known to minimize catastrophe damage does not always guarantee their use. The high cost of new construction techniques is often an obstacle, particularly if it is an untested method that may not translate into insurance savings.

Some techniques are so new that risk managers and engineers are uncertain how well they will really work. Other methods, though, have already proved their worth during the catastrophes of the last decade.

"I think we have learned some lessons and we are now building some seismically sustainable facilities," said Jane Keegan, risk manager for the Port of Oakland.

The lessons learned at Oakland's port came during the 1989 Loma Prieta earthquake, which caused nearly $50 million in damage to a wharf built in the 1960s atop rigid concrete piles. The piles were anchored at angles that restricted movement and caused the wharf to fracture rather than flex.

But the port's other wharves, which were designed to be more flexible, held up in the quake. So when it came time to rebuild the damaged facility, engineers were quick to improve and expand on the techniques used on the undamaged wharves.

The new facility is now a model that engineers from around the globe continue to study, Ms. Keegan said.

Its pilings are buried in rocks that give and rub against each other, dissipating an earthquake's energy. But they also interlock the pilings in place during the shifting, explained John Wilson, manager of the Port of Oakland's design department.

A ductile frame is built to move without failing. It is made of concrete with embedded steel. If the cement fails, the steel should hold so damage repairs will be limited to patching rather than complete reconstruction.

Sturdy wharves are essential for minimizing business interruption problems for companies that depend on them. They often hold multiple cranes that may weigh about 1,000 tons each and load or unload containers packed with 25 to 40 tons of raw materials, parts and finished products.

TIM PETROS

Engineer Marc Caspe shows some of the devices designed to enable wharves at Los Angeles' port to survive a quake.

The weight adds to the stress placed on the wharves when earthquakes rattle the ground.

"Look on Loma Prieta as a dress rehearsal that folks in Kobe didn't have—which is essentially a moderate earthquake," Mr. Wilson said. "The advantage we had was we found the things that needed to be corrected without a catastrophic loss. We found our weak points and fixed them. That is an advantage people in Kobe never had.

"They needed that rehearsal, and unfortunately when they got it, it was one big one."

Mr. Wilson traveled to Kobe in March and found construction of the Japanese port relied on the use of massive cement caissons he referred to as "static." There was little else for the rigid port facilities to do during

See **Building** *on page 9*

MSAs top possible reforms: Rep. Archer

AP/WIDE WORLD

Rep. William Archer sees hope for elective medical savings accounts.

By MARK A. HOFMANN

WASHINGTON—Don't expect major health care or pension reform legislation to be approved by the current Congress, says the chairman of the House Ways and Means Committee.

But legislation encouraging medical savings accounts may be among a handful of smaller reforms that could be adopted, says Rep. William Archer, R-Texas.

The Ways and Means Committee chairman also hopes that medical malpractice reform will be added to the final product liability bill that will be hammered out later this year by House and Senate conferees, he told those attending last week's annual meeting of the Assn. of Private Pension & Welfare Plans in Washington.

APPWP

The House included malpractice reform in the comprehensive tort reform package it passed in March. Medical malpractice awards were not addressed in the product liability bill passed by the Senate last week.

Rep. Archer also said that if one of his chief legislative goals—replacement of the federal income tax with some sort of broad-based consumption tax—were ever realized, health care would be the one area exempt from the levy.

Health care reform will be generally limited to a handful of insurance reforms, predicted Rep. Archer. These will include portability of coverage, restrictions on the use of pre-existing condition clauses to limit coverage and encouragement of small-group pooling, he said.

"I believe we will adopt some form of medical savings accounts," as well, he said. Such accounts would give the consumer, rather than a third-party payer, more power in the marketplace and help hold down costs, he said. Any MSAs, however, would be elective rather than mandatory, he said.

Rep. Archer also said that he

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Product

Continued from page 1

and limit the liability of sellers who do not alter the goods.

The House bill would do many of the same things, but it would apply to all civil lawsuits. The House bill also addressed medical malpractice liability reform. Attempts to include medical malpractice provisions in the Senate bill nearly scuttled it.

"It's not over yet; you have to develop a consensus between two different bodies," said Victor Schwartz, general counsel to the business-backed Product Liability Coordinating Committee in Arlington, Va.

"The business community has to remain together," in support of reform, said Mr. Schwartz.

"If this doesn't pass, nothing passes, and it's hard for this observer to see who gains in the business community if this doesn't pass," he said.

When members of the conference committee sit down, they will have to bear in mind more than the interests of their fellow senators and representatives. They will have to bear in mind the man sitting at the other end of Pennsylvania Avenue.

President Clinton has vowed to veto any bill that caps punitive damages. Last week, his press secretary said that while the Senate bill was an improvement over previous bills, it didn't go far enough in balancing the interests of consumers, businesses and retailers.

That statement indicates that even the Senate measure won't pass White House muster, said Larry Stewart, president of the Washington-based Assn. of Trial Lawyers in America and a partner in Miami's Stewart, Tilghman, Fox & Bianchi.

Vetoing the bill, though, would be "political suicide" for the president because 15 Democrats—one-third of all Senate Democrats—backed the measure, contended Tom O'Day, associate vp of the Alliance of American Insurers in Washington.

That level of Democratic support is one reason why last week the bill seemed to have a good chance of passing and winning presidential approval.

"Where I was cautiously optimistic a few weeks ago, I'm very optimistic now" that reform will become law, said Mr. O'Day. He added that he believes the final bill will look more like S. 565 than the House measure.

"I liked the vote not simply because we got 60; I liked the composition of the vote," said Mr. Schwartz. Six of the eight women in the Senate supported the bill, including such liberal lawmakers as Sens. Barbara Mikulski, D-Md., and Carol Moseley-Braun, D-Ill., he pointed out.

The overwhelming support given by women senators indicates that contrary to critics' charges, the bill does not discriminate against women, he said. Some critics have charged that product liability reform would lead to unsafe birth control devices and formulas limiting punitive damage awards discriminate against non-working and low-wage women.

The margin of victory in the Senate could have been even greater. Two lawmakers who supported the measure did not vote—Sens. Joseph Lieberman, D-Conn., who had a family emergency, and John Warner, R-Va., who was hospitalized.

"What I think we saw was a finally a consensus arising around a particular bill which like every other bill is not perfect, but this certainly represented much more of a consensus than supported any other legislation," said Mr. Schwartz.

The House and Senate product liability votes came less than a year after passage of a general aviation liability bill in August 1994. Supporters of the general product liability measures credit the earlier bill with helping to set the stage for broader measures.

Opponents of the aviation bill said it would result in shoddily made, unsafe planes and that supporters' contentions that the bill would create jobs were unfounded. Yet after less than a year, 8,000 new jobs have been created and no one has claimed that the planes are unsafe, said Mr. Schwartz (see related story, page 3).

People who generally have supported pro-business product liability bills in the past view the Senate bill differently.

The Senate bill is simply a better bill than the more expansive House version because it contains provisions such as the statute of limitation, said Mr. O'Day. "That speaks to the 14, 15 years of work that the Senate has been doing," he said. "I think they have a better grasp of product liability."

"This victory will serve as a beachhead for expanding product liability reforms to other areas of civil litigation in the future," predicted Paul Huard, senior vp of the National Assn. of Manufacturers in Washington. He called the vote a "new era in legal system sanity."

Chris Mandel, chairman of the government affairs committee for the Risk & Insurance Management Society Inc. and director of risk management for KFC Corp. in Louisville, Ky., said that while "we're happy to see that there have finally been some legislative decisions made," the bill doesn't meet all of RIMS' goals, which call for broader liability reform.

"It's progress, but for all of us who don't actually manufacture and have a products exposure, I consider it a major shortfall in terms of what our overarching objectives were," he said.

The National Federation of Independent Business is also short of totally satisfied with the Senate bill, said Kent Knutson, legislative representative for the NFIB in Washington.

"We tried as hard as we could to extend" the bill's protections to other forms of civil law, he said. "We were disappointed it wasn't expanded to all cases."

But the cap on small business' liability should help stabilize liability insurance rates for those enterprises, said Mr. Knutson. The cost of liability insurance is currently No. 5 on NFIB members' list of the 75 biggest problems facing them, he said.

Nevertheless, "this is the first time trial lawyers have lost anything in the Senate in 200 years, and we're not going to count them out yet," he said. "It's a major victory. We're excited that this is the first time ever we got something through."

Trial lawyers, though, are not throwing in the towel.

"If it goes to a conference committee, we have to wait and see what comes out of the committee," said ATLA's Mr. Stewart.

"If there is any loading up of this in conference with other provisions, such as what was in the House bill or what was pending in the Senate and was stripped out, we will fight it as hard as we can," he said. BI

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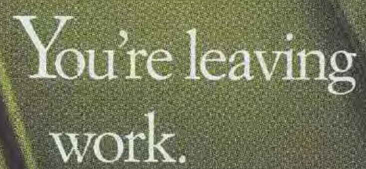

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Tax law changes prompt rise in rabbi trusts

Benefit Beat

More companies are turning to rabbi trusts to provide supplemental non-qualified retirement benefits to their highly paid executives.

Among 194 employers that have established rabbi trusts since 1978, 35 set up their first trust in 1994, up from 18 new trusts in 1993 and 13 new trusts in 1992, according to a new survey on the use of rabbi trusts by Hewitt Associates L.L.C.

In all, 38% of employers with non-qualified plans surveyed by Hewitt Associates said they have adopted a rabbi trust to provide benefits.

Last year's growth in rabbi trusts—a non-qualified plan so named because a Jewish synagogue sought Internal Revenue Service permission in the 1970s to establish such an arrangement for its clergy—coincides with changes in the tax laws that have drastically reduced the amount of benefits that employers can provide highly paid executives through qualified pension plans.

A 1993 tax law, which took effect last year, slashed the maximum employee's wages that an employer can use in computing qualified pension plan benefits and contributions to $150,000 from $235,840.

The reduction in the so-called covered compensation limit—enacted to increase government tax revenue—could decrease benefits by as much as 40% for future retirees, consultants earlier estimated.

As a result, non-qualified benefit plans like rabbi trusts are increasingly being used to supplement retirement benefits.

The government does not place any limits on how much an employer can contribute to a rabbi trust, though an employer only can take a tax deduction at the time benefits are paid out to employees. As a non-qualified plan, a rabbi trust only can be offered to a select group of a company's executives.

But rabbi trusts offer advantages over other types of non-qualified plans. Employers can fully fund benefits promised through rabbi trusts, giving participants a greater sense of security, noted Bob Romanchek, a Hewitt consultant in Lincolnshire, Ill.

For example, if a company were bought out in a hostile takeover, the assets in a rabbi trust could not be seized by the acquiring company. However, rabbi trust assets have no special protection from creditors in the event a company files for bankruptcy.

Still, that additional—if limited—security is important to executives at a time when a greater proportion of their retirement benefits will be provided through non-qualified plans.

Rabbi trusts are becoming better funded, the Hewitt survey found. For example, 50% of rabbi trusts used as a deferred compensation plan are fully funded, while 32% of the trusts used to provide supplemental defined benefits are fully funded.

That's a change from the late 1970s and 1980s, when full funding of rabbi trusts was triggered by a specific event, such as a hostile takeover attempt.

Advance funding, Mr. Romanchek notes, allows assets to build up and later be used to pay promised benefits.

Copies of "Employer Experience with Rabbi Trusts" are available for $50 from Diane Schuett, Hewitt Associates L.L.C., 100 Half Day Road, Lincolnshire, Ill. 60069; 708-295-5000.

—By Jerry Geisel

Xerox expands program

STAMFORD, Conn.—Xerox Corp. is expanding its LifeCycle Assistance program to provide mortgage assistance for employees who are first-time home buyers and money to help employees buy health insurance for extended family members.

Xerox, widely admired for its innovative benefit plans, introduced the LifeCycle program in 1993. The strategy behind providing so-called "life cycle" benefits is to assist employees in balancing work and family demands and to provide money for expenses not covered by Xerox's traditional benefit plans.

Xerox employees who meet eligibility and service requirements receive $2,000 a year for all available LifeCycle assistance programs, up to a lifetime maximum of $10,000.

The company's program already provides a sliding-scale child care subsidy that reimburses a portion of qualified child care expenses over the course of an employee's career.

Beginning May 1, employees can use LifeCycle money to put toward the down payment or closing costs for a new home. The mortgage assistance benefit for full-time employees is $2,000 or 2% of the purchase price, whichever is less. Only first-time home buyers with at least five years of service at Xerox are eligible.

Employees also will be able to use LifeCycle money toward the purchase of health insurance for household members not generally eligible for coverage under Xerox health plans.

Household members who qualify under the program include employees' domestic partners of the same or opposite sex, parents, grandparents and siblings who live with the employee.

Eligible employees can get up to $1,000 per year toward the purchase of health insurance, but the insurance must be purchased outside the Xerox health plans and paid for by the Xerox employee. The household member, other than domestic partners, must be claimed as a dependent on the Xerox employee's federal tax return.

Employees can allocate the LifeCycle money, which is counted as taxable income, on any combination of child care, mortgage assistance or health insurance needs.

The Segal Co., a New York benefit consulting firm, helped Xerox create the LifeCycle program. Metropolitan Life Insurance Co. of New York administers the benefit program.

—By Christine Woolsey

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Highlights of 1994 Results

- Operating profit increased to US$25.5 million from US$19.2 million before realised investment gains.
- Pre-tax earnings reduced to US$41.2 million from US$49.7 million due to lower investment gains.
- Fully paid share capital increased to US$80.9 million from US$27.4 million.
- 9.5% increase in gross written premiums due to growth in property and marine classes.
- Shareholders' funds lower at US$135.6 million reflecting impact of higher interest rates on fixed income investment.

Unaudited shareholders' funds at 31st March 1995 increased to US$151.3 million.

Terra Nova Insurance Company Limited

Audited financial highlights for year ended 31st December 1994

	1994 US$'m	1993 (restated) US$'m
Gross premiums written	**$366.9**	$335.1
Net premiums written	**282.4**	256.4
Operating profit before taxation	**41.2**	49.7
Shareholders' Funds	**135.6**	163.8
Solvency margin (shareholders' funds/net written premiums)	**48%**	64%

Terra Nova (Bermuda) Insurance Company Ltd., created on 21st December 1994, ended the year with shareholders' funds of US$55 million.

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EBRI exec sees silver lining where others see dark clouds

By JERRY GEISEL

WASHINGTON—Predictions of gloom and doom notwithstanding, the nation's retirement income system has never been healthier, the head of a benefit research organization says.

APPWP

Signs of that robust health, says Dallas Salisbury, president of the Washington-based Employee Benefit Research Institute, include:

- More people than ever—thanks to vesting reforms mandated by a number of federal laws—are entitled to receive a pension benefit.
- The number of people covered by pension plans continues to grow.
- Rather than giving up on their defined benefit plans, hundreds of employers in recent years overhauled the plans to make them more attractive to participants.

For these and other reasons, private pension plans are stronger than ever, Mr. Salisbury said last week at the annual Washington conference of the Assn. of Private Pension & Welfare Plans.

His upbeat remarks are a decided contrast to the negativism often expressed by pension experts about the state of the retirement income system in general and employer pension plans in particular.

Among other things, experts cite declining numbers of employer-sponsored defined benefit pension plans and the financial problems of the Social Security program as examples of growing strains on the retirement income system.

Dallas Salisbury's views are in decided contrast to the negativism often expressed about the state of the nation's retirement income system.

But, these problems need to be considered in a broader context, Mr. Salisbury suggested.

Thousands of employers have added new defined contribution plans, leading to an overall increase in the number of people covered by corporate pension plans. In 1990, the last year for which complete information is available, 77 million people were covered by corporate pension plans, up from 45 million in 1975.

"Millions of people are getting benefits that they never had," Mr. Salisbury said.

In addition, liberalized vesting schedules have resulted in a virtual explosion in the percentage of plan participants entitled to receive benefits. About 86% of participants now are vested in a benefit, up from just 52% in 1979.

Defined benefit plans, while declining, are hardly dinosaurs. Because most terminations have been among the smallest firms, the number of people covered by the plans has held steady in recent years at about 39 million.

In addition to liberalizing vesting schedules, employers are taking other steps to make their pension plans more meaningful to employees, Mr. Salisbury said.

For example, hundreds of employers in recent years adopted innovative defined benefit plans, like cash balance plans, which are designed to provide better benefits—compared with traditional final average pay plans—to employees who stay with a company for only a few years.

"High employee turnover always has been with us, but only now are we designing plans to meet the needs of" short-term workers, he said.

Another encouraging development is that individuals are becoming more aware of the need to take individual responsibility and save toward their retirement.

This gradual change in employee attitudes is the result of several factors, Mr. Salisbury said. Increased discussion of the financial problems of the Social Security program has increased employees' awareness that they cannot depend on the federal program as an exclusive source of retirement income.

A changing message from employers also is increasing employee awareness of the need to take individual responsibility and not to depend exclusively on company-provided pension plans.

Employers "are schooling employees in the end of paternalism and an end to the entitlement mentality. This pattern will not reverse," Mr. Salisbury said.

And Republicans and Democrats alike are pushing for legislation that would expand individual savings, Mr. Salisbury said. Both political parties, for example, back legislation to expand the opportunities for employees to contribute to individual retirement accounts. BI

Outlook

Continued from page 3

believes medical malpractice reform is necessary to control health care costs.

"We desperately need to have litigation reform," he said, adding that the House passage of a comprehensive civil justice act in March marked the first time in 40 years that the plaintiffs bar had been "defeated" in the House.

"I don't believe we're going to do much of anything about pensions," he said. The reason for the probable lack of action is simple, said Rep. Archer. The Republican leadership is committed to balancing the budget by 2002. Any savings the current Congress can achieve will go toward deficit reduction, he said.

Republicans are also committed to Medicare reform by slowing the growth of spending for the program, said Rep. Archer. But reform "will be one of the most difficult things we take on this year," he predicted as he blamed President Clinton for having "vacated the playing field" on the issue.

Something Congress is not likely to take up this year but which remains high on Rep. Archer's list of legislative goals is tax reform.

The existing system can't be fixed merely by reforms—Congress must "tear it out by its roots" and replace it with something else, he said. While Rep. Archer regards the single-rate "flat" income tax advocated by many other Republicans as an improvement over the current system, he advocates replacing the income tax entirely with a broad-based consumption tax. Such a tax, the details of which have not been worked out, would resemble a national sales tax, probably at a rate of about 16%, he said. The only exemption, other than some sort of rebate for taxes paid on food by low-income citizens, would be on health care, because it doesn't make sense to add to its cost at a time when everyone's emphasis is on holding costs down, he said.

Chances are "very slim" that any tax reform will occur during the current Congress, he said. But, if President Clinton fails to win re-election, there is a good chance for reform if his successor is sympathetic to overhauling the system, Rep. Archer said. BI

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Group-linking software helping insurance world

Groupware cuts repetitive work, speeds up flow of documents

By **MICHAEL BRADFORD**

Groupware is revolutionizing the way insurers do business.

The concepts behind groupware—software programs designed to let many users communicate simultaneously—are so complex that the programs took years to develop. But the concept that makes it so appealing to insurers is simple: sharing.

"It's real important to draw the distinction that groupware is a concept in behavior," said John R. Flynn, senior vp in domestic claims-technology development at American International Group Inc. in New York. "It's less about technology and more about understanding the behavior of people—how you match the two."

The programs are particularly well-suited to the document-heavy insurance business. The basic premise behind groupware is to allow an unlimited number of users to collaborate on a project at any time, in real time, and to track the location and progress of the project.

"It's added a new dimension to information systems and one that is being greeted with a lot of favor," said Douglas Walters, chief information officer of CNA Insurance Cos.' specialty operations division in New York.

Insurers are finding the technology particularly useful in dealing with producers.

Mr. Flynn said Lotus Corp.'s Notes product, the most popular of the growing range of programs, has allowed AIG to build links with brokers that allow the two sides to discuss risks, coverage information and price and eventually bind coverage from their desktops.

Old methods took "90 to 120 days to wrap up some insurance processes," said Mr. Flynn. Now AIG is cutting that time in half by using Notes. "It's tremendous in its service capacity."

Not only is groupware saving insurers time, it's saving them money.

At Fireman's Fund Insurance Co., savings have been "substantial," said Mark Gire, manager of office information systems at the Novato, Calif.-based company. "We have seen some real dollar savings," he noted, declining to say how much the insurer has pocketed.

Much of the savings is unquantified, though, because it's "really a quality issue and it's hard to measure how much you save with better information," Mr. Gire added.

Groupware is a big leap for an industry that traditionally has shuffled paperwork from place to place via computer or courier only to have it sit in one spot, inaccessible until it is released to the next department.

It is a "paradigm-shift technology," said John Murphy, marketing development manager-insurance at Lotus Corp. in Farmington, Conn.

It is a process so different from traditional systems that users are able to "think in completely different ways about their businesses," Mr. Murphy said. When top managers see what Notes can do, they often turn to their information systems manager and say "Let's get it in here," he added, a reversal of the traditional practice of leaving information systems departments to develop system databases.

In four years, Notes has increased productivity at Fireman's Fund, Mr. Gire said. The insurer has about 2,700 users and expects that about 4,500 will be sharing information through Notes by the end of this year. "Our personal insurance division is completely on Notes," along with the company's information services, corporate and finance departments, Mr. Gire said.

Fireman's Fund expects all its commercial insurance offices around the United States—about 40 locations—will be tied into the Notes system by the end of the year.

Mr. Gire agreed that the ability to share information is what makes Lotus Notes and groupware a revolutionary idea. "Word processing and spreadsheets made processes more efficient—you could edit documents or do calculations faster. But there was no sharing of information."

Tracking a policy application shows how information that is input and accessed from a number of locations can increase efficiency.

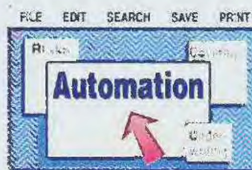
An application for coverage is entered into the groupware system from a forms generation package. Key fields on the form already are linked to Notes, allowing a user to click on a field and view information regarding that area—for example, the cost of coverage for similar risks. The user clicks again and taps into research information regarding such risks, underwriting guidelines or other documentation. If underwriting guidelines have been updated, the changes are highlighted in red and marked with a star.

Users at other locations can view any information as soon as it is added to the file.

As each user completes work on the file, it is moved to the next station.

Like those at AIG, Fireman's Fund underwriters are linked with producers and have the ability to quickly track the status of policies.

"We don't have to track down everybody involved to see what has happened with the contract," said Mr. Gire.



The insurer has mountains of information "tailored for each situation and each risk," Mr. Gire noted. "Notes gives us the ability to handle that free-form information. Things that used to be on memos are now associated with the more structured information on a policy."

It was the challenge of giving structure to lots of information that led Continental Insurance Co. to begin using groupware in 1992, according to Mr. Walters, who was chief information officer of the insurer's specialty operations group before Continental's recent merger with CNA.

Continental's large-risk unit was handling a small number of accounts but ones "that had a large number of important tasks that had to be completed on time and with the proper reviews," he explained.

Continental considered a traditional systems approach, but after seeing a demonstration of Notes, Mr. Walters said he realized "it came with many of the capabilities we had identified, and they were right in the box."

After implementing Notes, the insurer gave it 135 tasks to be completed over the life of a policy, including identification of a potential client, binding coverage and work that continued after a policy expired.

"What Lotus did for us was capture information about the customer and made it available to the team members" working in various parts of the country, Mr. Walters explained.

"Any team member can go online at any time and see how the others are progressing," he pointed out. "It allows one team member to use the information gathered by another."

Lotus' Mr. Murphy said documents in Notes "can contain literally any type of information, including voice, images and video. Anything that can be digitized can be a component of a Notes document."

The ability to replicate information is what makes Notes a breakthrough technology, Mr. Murphy pointed out. "It's the ability to synchronize databases or applications no matter where you are in the world. If I make a change, my change is synched up with all other databases on that application. It can be seen all across the system."

Mr. Murphy, who was director of business planning at The Travelers Insurance Group Inc. before joining Lotus, said Travelers used the technology to speed up work flow.

Travelers uses queues in Notes to house information and tell users when certain functions should be performed on a project, what the work should be, how long the project has been in the queue and where it was beforehand, he explained.

The insurer was able to eliminate work-flow bottlenecks, and "productivity skyrocketed," said Mr.

See **Groupware** *on next page*

Groupware

Continued from previous page

Murphy.

A study completed last year by International Data Corp. shows Travelers spent $88,897 implementing Notes and recouped its cost in about 21 months.

Mr. Flynn said AIG uses the system to communicate with outside attorneys who work for the insurer. A message over the system will alert attorneys of the need for a pleading or other document, for example, and the file is transmitted to the proper department at AIG.

While Lotus was first into the groupware field with Notes and continues to hold the lead, other software companies are developing products that can be used with Notes or can stand alone.

Software giant Microsoft Corp. is chasing Lotus with its Exchange entry into the groupware marketplace, and some insurers are combining elements of the two products.

Introduced in 1994, Exchange operates on the same groupware principle as Notes, integrating electronic mail, scheduling, electronic forms, document sharing and other functions with users' ability to pass the information easily between them.

AIG has bundled tools from Microsoft and Lotus Notes to create IntelliRisk, a Windows-based risk management information system that allows brokers and AIG policyholders to retrieve and share information on claims and policies and to generate standardized or customized reports.

Mr. Flynn said IntelliRisk boasts about 125 accounts and AIG expects twice as many to be logged on by the end of this year.

FirstClass, developed by SoftArc Inc. in Markham, Ontario, is a product that has taken the concept of electronic mail and expanded it to allow businesses to do much more than just swap messages.

"The main application is to allow users to collaborate or disseminate information about their business," said Scott Welch, vp at SoftArc. "Groups of users can form virtual communities where they have interactive or collaborative discussions."

He explained that SoftArc operates like forums on CompuServe, where users with common interests gather for online discussions. But, FirstClass allows the forum-like services to be built quickly and inexpensively without using an online operation like CompuServe.

In addition to conferencing, FirstClass provides some of the forms processing and database access that is found in Notes and Exchange.

Until now, SoftArc hasn't targeted insurers as customers. But, Mr. Welch said development of a new server for Microsoft Windows makes the product more attractive for large companies with many users, like insurers.

And, cost is an attractive FirstClass feature. The server costs $95 and a license for five regular users is $395.

Signing up with Lotus costs about $275 for each Notes user. Lotus Notes Desktop, a more simplified version without all the Notes features, sells for about $155 per license. Lotus Notes Express is an introductory version that has an estimated retail price of less than $100 per license. BI

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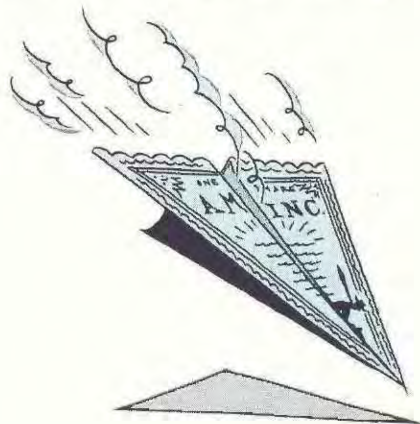

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Groupware applications earn their keep on ITT Hartford's team

By MICHAEL BRADFORD

When ITT Hartford Group Inc. needed an efficient way to solve a problem in human resources about three years ago, it took a look at groupware.

The insurer had to find a way to make its human resources policies and procedures easily available to a diverse group of executives in different business sectors and areas of the country. What it found in groupware not only solved that problem but has added speed and efficiency to a lot of other processes at ITT Hartford.

"Everybody was pointing at Notes as the tool" that would pull the different sectors together, said Ken Holyst, specialist in the insurer's information technologies strategy unit.

Notes, the Lotus Corp. product that dominates the market, let the executives in the human resources project discuss policies and procedures and make improvements from any location. This was a great benefit because "their schedules are such that they are all over the place," Mr. Holyst pointed out.

Such sharing of information is groupware's hallmark. The software programs allow users to collaborate because changes to files are replicated instantly throughout the system, and more than one user can access a file at one time. Also, users can access the system at any hour.

After its initial success, ITT Hartford created a shared-server area and handed out 200 Notes software licenses to users in various departments. The insurer found that Notes could provide efficiencies in so many areas that it is now available to about 1,000 employees.

Groupware is particularly suited to situations in which there is a remote user, like a home worker or salesperson on the road, Mr. Holyst explained. "In addition, we found it useful for areas that normally collaborated via telephone, mail or walking information" to another location, he said.

Mr. Holyst said the technology "is perfect for the sales professional in the field because they're able to use Notes to communicate with the home office."

ITT Hartford's life insurance salespeople are able to dial in using portable computers to access coverage information like policy limits, background on clients' businesses, or simply to check their electronic mail.

Access isn't limited to normal work hours, Mr. Holyst noted, because the sales force and other users can tap into the system from the road at night or on weekends.

ITT Hartford doesn't expect to limit its groupware offerings to Lotus products.

"When we started the groupware venture, we decided groupware was more than Notes," Mr. Holyst remarked. "Our approach is one of a toolbox."

He said the insurer expects its system will have products from vendors other than Lotus that include work management, conferencing and calendar features.

"We see groupware as anything that can foster teamwork," Mr. Holyst said.

Security concerns limiting utilization of Internet

By ROBERTO CENICEROS

Many insurers are intrigued by the possibilities of reaching potential clients via the Internet and conducting business over that global network.

Consider this scenario: A curious computer user browsing the Internet's World Wide Web comes across a graphic image of Massachusetts Mutual Life Insurance Co.'s brick home-office building and some basic information about the company.

Springfield, Mass.-based MassMutual is among a few insurers that have floated a "home page" on the World Wide Web—a subsection of the Internet—that gives a summary of the company and its products.

Although the idea of using the information superhighway is tantalizing, it's not without drawbacks.

"The reason everyone wants to be there is because it's neat," said Ken Shaurette, information security specialist for American Family Mutual Insurance Co. in Madison, Wis. But, there is no business justification to use the Internet, especially given the security problems it poses, he said.

Indeed, security is a huge stumbling block to use of the Internet for commercial insurance transactions. Knowledgeable insurers say banks and credit card companies will lead the way in using the Net for commercial transactions long before the insurance industry jumps in. And, if insurers do use it, it won't be until the communications giants such as MCI establish Internet communication lines capable of ensuring privacy and providing appropriate security.

For now, the Internet remains an uncontrolled network open to anyone with a computer.

Most computer transfers of data between agents and insurers or between policyholders and insurers are now done across dedicated phone lines rather than on the wide-open Net.

To guard against hackers breaking into those lines, insurers have turned to various forms of recently developed computer technology.

A growing number of companies are creating encryption programs that scramble messages until a keyholder unscrambles them, "firewalls" to protect computer systems from outside intruders, and credit-card-sized number generators that produce a new password every 60 seconds.

One of those "dynamic tokens" is sold by a company called Security Dynamics in Cambridge, Mass. Security Dynamics' "SecurID" has a liquid-crystal display of numbers that are synchronized to change with corresponding numbers on a file server.

To log into a company computer system from a remote site, a user must key in a personal identification number along with the current number on the card. Such "smart cards" now are used by some insurers, such as UNUM Life Insurance Co. of America in Portland, Maine.

"We find it very effective in that it helps us support dial-up access," said Lynda Fleury, UNUM manager of information security services in Portland. She said that using the smart card, brokers, executives, employees and computer support staff can gain access to the company's computer data and electronic mail system.

The card works in combination with a "firewall" on a minicomputer that filters out unauthorized calls and connects legitimate calls to a larger system where pertinent data is stored.

While there are a growing number of products to bar unauthorized users from entering a system, potential problems posed by someone with authorized access remains the greatest security challenge for companies.

"Sadly, the greatest threat comes from inside your own organization," according to a report titled "Current and Future Danger" from the Computer Security Institute, a San Francisco-based organization for data security professionals.

"Most theft of proprietary informa tion, disruption of availability, corruption of integrity and loss of confiden-

tiality is achieved by those with access to information system resources from within your perimeter," the study states.

The report was not written specifically for the insurance industry, but the concern applies, said American Family Mutual's Mr. Shaurette, a member of the Computer Security Institute. "I think you would find insurers are not willing to admit how bad off they are" in terms of potential security problems.

While it may come as no surprise that future use of the Internet remains a question mark because of security concerns, Mr. Shaurette said many questions about the technology in use today are unanswered.

The demand for the remote use of computers and new technology grew so fast that there has not been time for security efforts to mature, he said. There is a lack of standardization among computer communications equipment and available security products.

Because of such concerns, some insurers prefer to stick with mainframe systems rather than implement newer technology. Mainframes have been around for many years, long enough for security procedures to mature, said Mike Liddy, vp of operations for Fremont Pacific Insurance Group Inc. in Glendale, Calif.

See **Security** *on next page*

PHOENIX RE

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Security

Continued from preceding page

Insurers that are using the Internet are taking a cautious approach. They are not in a hurry to place information on the Internet that would embarrass policyholders if it became public.

"We will just cautiously step along and see how far we want to go," said Peter J. Daboul, senior vp at MassMutual.

MassMutual does not have plans to use the Internet to conduct business. But, as the company has demonstrated through the use of its home page, the World Wide Web—a portion of the Internet—can be used to provide information about the programs the insurer offers. MassMutual also uses the Internet for some e-mail communications with policyholders.

After accessing MassMutual's home page, a Web browser can call up further information about topics such as pension management and group life and health benefits.

"As one of the first companies in the life insurance industry to go online, we are taking an incremental approach and will focus on providing general information rather than service or sales abilities," Mr. Daboul said.

MassMutual also is considering using the Internet to dispense agent recruiting information.

The computer that MassMutual uses for Internet access is not physically connected to its other computers, so a hacker working on the Internet cannot access valuable or confidential information.

"Even if the world's best hacker could get in there, physically they would not be able to connect to any of those assets we want protected," Mr. Daboul said.

Many insurers believe the day will come when commercial use of the Internet will be a reality. When that does happen, it could lead to the creation of insurance products to protect information passed along the information highway, said Bob Ditmore, an officer in the technology underwriting department of St. Paul Fire & Marine Insurance in St. Paul, Minn.

But, that remains an idea, which St. Paul has not begun to research.

"Insurers are starting to think about that because the Web has become such an interesting thing right now and it's vulnerable," Mr. Ditmore said. BI

Mapping points the way to the future of insurance

Computerized data 'layering' has become a critical analytic tool

By MARK A. HOFMANN

Four years ago, when Metropolitan Life Insurance Co. began using computerized maps in its marketing presentations for group insurance, potential customers didn't know what to make of them.

"It was funny. Nobody wanted them," says Kirk Menard, supervisor-geographic reporting services for what is now MetraHealth Cos. Inc.'s St. Louis office.

McLean, Va.-based MetraHealth was formed by the merger of MetLife's and The Travelers Co.'s group health operations.

According to Mr. Menard, four years ago, people didn't know anything about the maps and didn't understand them. But now, potential clients are demanding maps as part of the presentations.

Although computerized mapping technology is not new, insurers increasingly are using it to meet different needs, such as identifying loss-prone areas or geographic claims analysis.

MetraHealth, for example, uses the maps to show such things as where the physicians in its network are located. The insurer's representative then can call up detailed information on a given physician. This includes the physician's medical specialty, educational background and hospital affiliation.

The maps, which can give information at levels as specific as by ZIP Code, don't show streets but do display major highways as reference points for customers, Mr. Menard said.

In addition to helping employers see where physicians likely to serve their employees are located, the maps help the insurer analyze the extent of its network. Using the maps, the insurer can determine, for example, whether it has too many or too few pediatricians in a particular area, he said.

Mr. Menard said the maps originally gave what was then MetLife "a real big competitive edge" once customers began understanding what they showed.

But as other insurers have adopted the technology, "it's gone from an edge to a requirement," he said.

MetraHealth uses a combination of its own software application and a desktop software program called MapInfo, which is made by MapInfo Corp. of Troy, N.Y.

Randy Drawas, vp-marketing at MapInfo, said that insurance is one of the top three industries currently using desktop mapping for marketing or analysis, the others being government and the telecommunications industry. Banks and retailers also are using the technique, he said.

Desktop mapping wasn't developed for a specific industry, Mr. Drawas said. Mapping is a very convenient way to layer disparate information from various databases to create pictures. "It just happens to be a map because that happens to be a convenient metaphor," he said.

While MetraHealth uses mapping to show where members in its provider networks are located and to spot possible over- or underrepresentation of medical specialties within a given geographic area, some property/casualty insurers have used it as a risk analysis tool, said Mr. Drawas.

Maps can illustrate, for example,

Continued on next page

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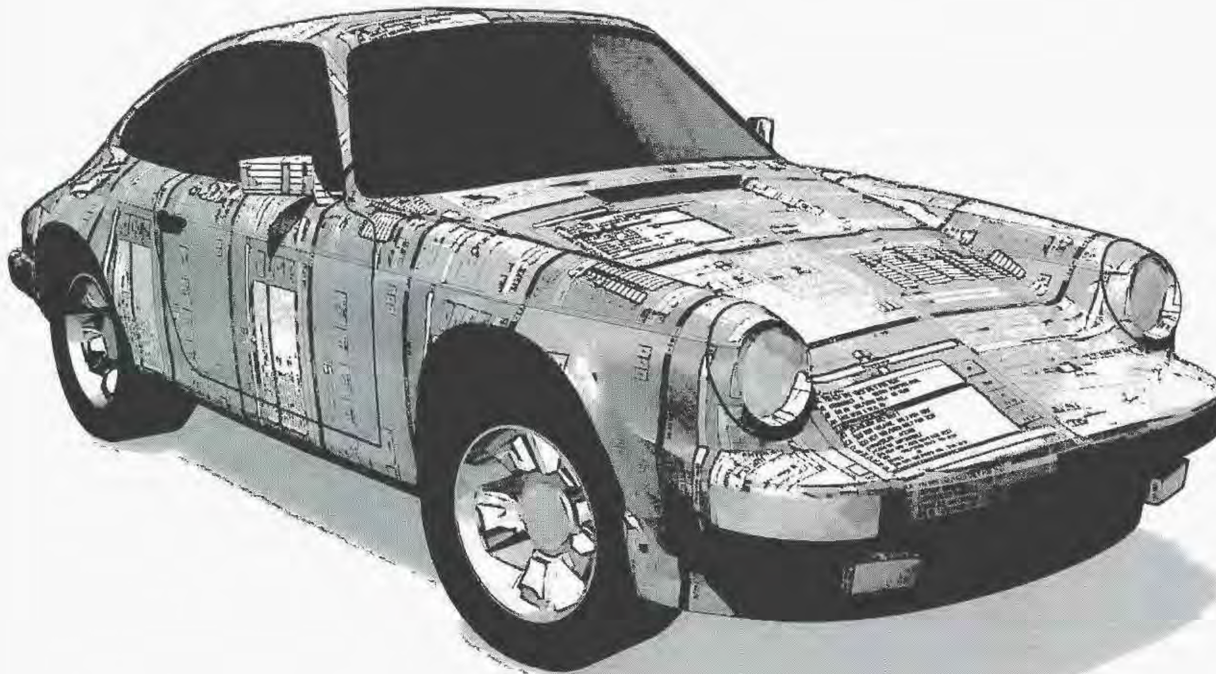

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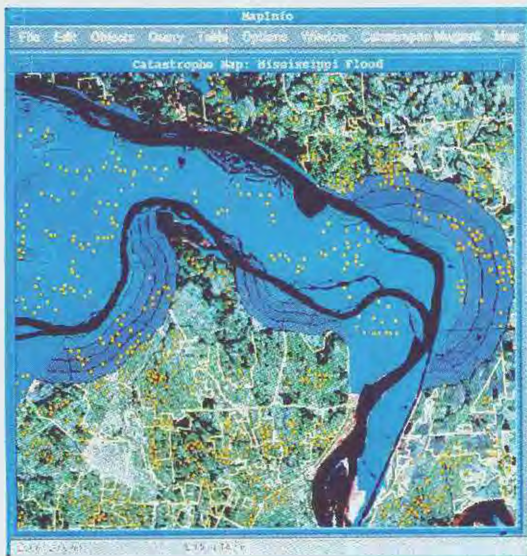

Desktop mapping software like this from MapInfo Corp., allows insurance companies to organize layers of data in the form of a map. Underwriters find this technology has various uses, ranging from geographic analysis of risks to plotting locations of network health care providers.

MAPINFO CORP.

Face to face across the seas

Video linking tradition with technology

By GAVIN SOUTER

Every once in a while, technology—which so often takes the human element out of business—seems to put it back in.

Such is the case at Sphere Drake Holdings Ltd.

A video conference facility between two of its units, Sphere Drake Insurance P.L.C. in London and Sphere Drake Insurance (Bermuda) Ltd., allows underwriters in Bermuda and brokers in London to discuss risks face-to-face.

The video link-up helps maintain the personal relationships between underwriters and brokers that is so valued in the London market. Sphere Drake Bermuda's technology has helped draw business it would not have seen if it contacted brokers by telephone or fax alone, underwriters and brokers agree.

And although Sphere Drake is considering extending the facility to the United States, the set up is best suited to linking up with London, which has a tradition of face-to-face negotiations, underwriters say.

Sphere Drake established a video conference facility between the London and Bermuda companies in December 1993 after Sphere Drake Holdings used $100 million of its September 1993 initial public offering to recapitalize the Bermuda company.

Sphere Drake in Bermuda writes marine and non-marine insurance and reinsurance and much of the business is derived from London brokers.

See **Video** *on page 12F*

Continued from previous page

how many buildings are located in a flood plain, or whether two buildings covered by the same insurer's fire policies abut each other and thus present a potential double loss if fire breaks out in one of them, he said.

"You can overlay on top of potential policyholders information like crime statistics" to get a better understanding of risk, Mr. Drawas said.

Some insurers also have used desktop mapping to understand their own exposure better, said Mr. Drawas.

For example, companies were able to look at the flood plains around St. Louis before the severe Mississippi River flood of 1993 and predict which of their claims offices and district offices would be

Insurers used mapping to help policyholders affected by the Midwest floods in 1993, says Randy Drawas.

affected, he said. That allowed them to draw up plans to better meet the needs of policyholders serviced by those offices, Mr. Drawas said.

Mr. Menard said that MetraHealth produces about 400 maps a month in its St. Louis office and many more in its field offices. The field system runs on a compact disc that's updated every month, he said.

"Basically, we've put together a tool that they can use to do anything they want," he said.

Much of the recent effort in St. Louis has been aimed at easing the integration of the Travelers and MetLife operations, Mr. Menard said.

The maps show where doctors in both insurers' networks have their offices. It also shows "where they overlap and where they don't overlap, which is something they really want to know," he said. BI

Institute on ethics

MALVERN, Pa.—The American Institute for Chartered Property Casualty Underwriters and Insurance Institute of America have created an Institute for Applied Ethics in Insurance.

The institute—funded by the AICPCU and IIA—will support independent ethics research, distribute videotapes and other material and conduct seminars.

For more information, contact Norman A. Baglini, Institute for Applied Ethics in Insurance, P.O. Box 3016, Malvern, Pa. 19355. BI

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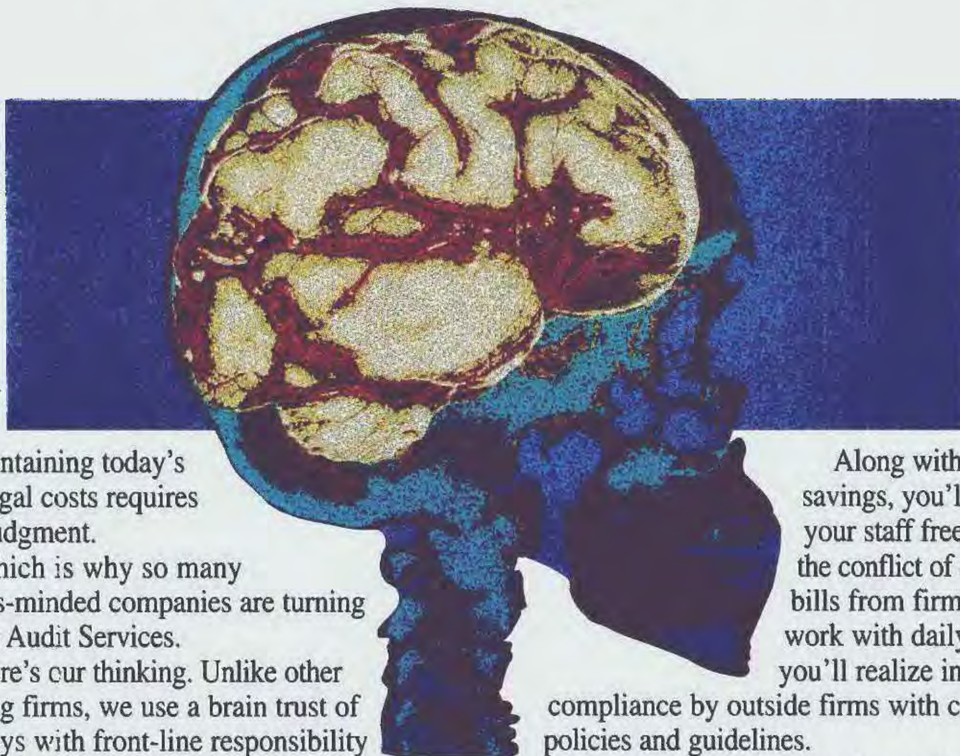

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Video

Continued from previous page

Run over a leased network and available for use 24 hours a day, the facility links the Bermuda office with the Sphere Drake office in the London Underwriting Centre.

Having face-to-face contact with brokers in that London insurance and reinsurance market "is almost like having another underwriter in the LUC," said Richard Carver, an underwriter at Sphere Drake in London.

In the London office of Sphere Drake, there are two large television screens. One displays the image of the Bermuda underwriter and the other shows the image of the London office that the Bermuda underwriter is viewing.

One camera is positioned on top of one of the television screens and another is on a tripod in a corner which is used to view larger groups. About 25 brokers a day use the facility. Brokers line up to use the video equipment the same way they do to see underwriters in person, Mr. Carver said.

Sphere Drake in London and Sphere Drake in Bermuda underwrite separately, but if the Bermuda company is considering a risk along with the London company the video conference allows the Bermuda underwriters to become part of a group discussion on a risk, he said.

"Being able to see the broker makes it a lot more personal. When you are seeing 25 brokers a day, you eliminate a lot of paperwork by having the video link," Mr. Carver said.

Without the video conference facility, the Bermuda underwriters would negotiate coverages solely by faxed correspondence and telephone conversations.

"We find that it's very useful, but it's not perfect," said David Long, managing director of the Bermuda company.

Mr. Long has been using the video link with Sphere Drake's London office for seven or eight hours a day since it was established in December 1993.

"That can be a bit of strain on the eyes and there is a slight time delay. . .but you can see the expression on a broker's face so it is better than just using a fax or a phone," he said.

Bermuda underwriters use the video unit only to obtain information on risks. The actual underwriting is done in Bermuda. "Any acceptance by the Bermuda company has to be done in writing by two officers of the Bermuda company," Mr. Long said.

All of the contracts are mailed back to London, he said.

The video link-up works well for Sphere Drake because it has an underwriting affiliate in London, Mr. Long said.

Both companies have a similar underwriting philosophy so the Bermuda office benefits by having a like-minded underwriter on the spot in London, he said.

In 1994, about $35 million in gross premiums of Sphere Drake in Bermuda represented business that was first discussed over the video link and the costs of the link are probably less than 1% of that, he said. The company's total gross premiums were about $150 million.

Sphere Drake's position as a lead underwriter also allows the Bermuda company to gain a greater control over the risks it underwrites, Mr. Long said.

The video link has helped produce business for Sphere Drake, said Mr. Long. "There is guaranteed flow of business into the London company which we can hopefully access."

The video conferencing facility also links up the Bermuda office with Sphere Drake's administrative offices in Brighton on the south coast of England and Sphere Drake's yacht insurance subsidiary, Groves, John & Westrup, in Liverpool.

Again, this makes business easier for the Bermuda subsidiary, Mr. Long said.

"It means that we can have a weekly inter-office meeting with the London and Brighton offices," he said.

Sphere Drake has been approached by a U.S. broker that wants to set up a video link between its office and Sphere Drake in Bermuda, an offer that the insurer is considering, Mr. Long said.

The problem with setting up a link to the U.S. market is that there is no central marketplace like the LUC in London, he said.

The only drawback to the Bermuda-London video link is that Mr. Long has to work on London time, so he has to be in the office at 5:30 a.m. Bermuda time.

"But we finish at 2 p.m. and when you live in Bermuda, that's not all bad," he said.

SPHERE DRAKE INSURANCE P.L.C.

Fred Duncan, chief actuary at Sphere Drake in Brighton, England, monitors a conference linking Sphere Drake's Bermuda office with London underwriters.

London brokers also value the new video conference facility.

"There is so much face-to-face broking in our business because it is essential that we get our points across," said Nicholas Porritt, a director at Swire Fraser Insurance Ltd. in London.

The video conference facility at Sphere Drake allows the face-to-face contact and it also speeds up transactions with the Bermuda underwriter, he said.

As well as speaking to and seeing the underwriters in Bermuda, brokers can show them documents simply by placing them in front of the camera, Mr. Porritt said.

"It is so disjointed using e-mail or faxes. . .I think most people in London wish that other companies with operations in Bermuda or elsewhere had the same thing," he said.

Sphere Drake probably is securing extra business by using the video conference facility, Mr. Porritt said.

All other things being equal, brokers are more likely to show a risk to Sphere Drake than another Bermuda facility that does not have a video link, he said. BI

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Global Focus will appear six times in 1995 as a regular section distributed exclusively to non-U.S. subscribers. It will address the specific risk management and employee benefits concerns of executives in countries other than the United States.

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February 13	February 1
April 10	March 29
May 29	May 17
August 28	August 16
October 2	September 20
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Hall of shame: Top 10 insurance scams

By MARK A. HOFMANN

Hollywood has its Oscars, television has its Emmys and the music business has its Grammys.

The insurance industry has its own manner of recognizing outstanding—and decidedly dubious—achievement in its annual Top 10 Insurance Fraud Cases. The list, compiled by the Washington-based Coalition Against Insurance Fraud and released earlier this year, touches on all forms of insurance, including a few not familiar to the general public.

Take, for example, the type of insurance involved in the first case on the list—horse life insurance. The case, which defrauded insurers of an unknown amount of money, revolved around the deliberate killing of show horses for insurance money. The killings stretched back well into the 1980s and came to light as part of an investigation into the 1977 disappearance of Helen Vorhees Brach, a Chicago-area candy heiress declared dead in 1984. One of the defendants in the insurance scam also was accused of arranging Ms. Brach's murder to cover up the fraud.

Two types of insurance were involved in Case No. 2, in which a Florida dentist pleaded guilty to having two men who were brothers chop off his finger with an ax, call it an accident and collect a total of $5 million from the brothers' homeowners policy and his own practice's disability policy. The dentist, Dr. John Rende, was sentenced to more than two years in prison and was ordered to pay more than $1 million in restitution. His accomplices also received prison sentences and were required to pay restitution.

Fraud centering on multiple employer welfare arrangements earned William Loeb and others the No. 3 spot in insurance fraud's Hall of Shame. Mr. Loeb, who is serving a federal prison term for fraud, set up a phony labor union to sell health insurance. The union moved the policies from New York's Empire Blue Cross & Blue Shield to bogus insurers, many of which were domiciled offshore (*BI*, Oct. 3, 1994; Dec. 13, 1993). Policyholders lost at least $43 million, found they had no coverage and many were left destitute because they could not pay medical bills they believed were covered.

Case No. 4 cost consumers at least $34 million. Stephen D. Coker was indicted in Alabama last September for allegedly taking about $30 million in automobile insurance premiums from California motorists and sending the money through his own Alabama-based management company to a maze of offshore insurers and reinsurers (*BI*, Oct. 24, 1994). He's also accused of serving as a reinsurer for some of the late Alan Teale's bogus insurance operations. Mr. Teale died in federal custody in April 1994 after being convicted of fraud.

Health care fraud appears again in the No. 5 case. Dr. Jeffrey Jay Rutgard, a San Diego eye surgeon, was indicted more than a year ago on charges that he defrauded private insurers and Medicare out of millions of dollars over several years by performing unnecessary surgery.

According to authorities, the surgeon hired non-medical "community relations" personnel who told elderly residents of nursing homes that they needed cataract surgery. The patients then were transported by van to Dr. Rutgard's clinic. Over a five-year period, the surgeon received $18.6 million from Medicare and $2.2 million from insurers.

The Alan Teale connection resurfaces in Case No. 6. Arthur Blumeyer III was convicted in February 1994 of using Bel-Aire Insurance Co. to defraud risk purchasing groups of more than $43 million (*BI*, Sept. 19, 1994; Feb. 14, 1994). Mr. Blumeyer advertised for business once written by Mr. Teale.

Ronnie Lee Johnson of Alva, Fla., earned seventh place on the list after he pleaded guilty to charges involving his role in a multistate truckers liability premium fraud scheme.

Mr. Johnson and other defendants were accused of fraudulently obtaining insurance policies from various state assigned risk pools by claiming to represent small trucking firms. They sold the fraudulently obtained insurance and issued false certificates of insurance to independent truckers, some of whom paid as much as $5,000 a year for the nonexistent coverage. The defendants diverted at least $7 million in premiums. Mr. Johnson is serving a 46-month prison sentence and is cooperating in an expanded investigation.

Workers compensation and professional liability fraud won William and Phyllis Lenahan seven-year prison terms and the No. 8 spot.

The Lenahans, who used their ill-gotten gains to obtain several addresses in Florida, claimed that Mr. Lenahan's back surgery for a work-related injury left him permanently disabled and totally dependent upon his wife. He received $2.25 million from his surgeon's medical malpractice insurer and an additional $900,000 in workers comp payments. The physician spent $42,000 of his own money on an investigation of the Lenahans, in which Mr. Lenahan was videotaped climbing steps, lifting luggage and dancing.

Workers comp and automobile bodily injury claims were the focus of fraud allegedly perpetrated by a Massachusetts chiropractor and his wife. Federal authorities accused Alan and Caterina Rosenthal of defrauding insurers of about $2 million through false or inflated claims and conducting unnecessary tests on insured patients, charges that put the Rosenthals in the No. 9 spot.

The final place on the list of Top 10 Insurance Fraud Cases was earned by practitioners of a time-dishonored practice—auto insurance fraud rings. Authorities in metropolitan Atlanta arrested 57 people on 258 counts of insurance fraud last September. The alleged ring members, who included a chiropractor, supposedly staged fake accidents or claimed to be involved in real accidents in which they had no role. They then submitted false medical bills to insurers and netted more than $1 million. BI

Hailstorm

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Insurer Topics

Study finds people willing to pay for more wind-resistant homes

75% say insurers must help curb property losses

By MARK A. HOFMANN

An overwhelming majority of homeowners in the hurricane-prone Southeastern and Gulf Coast areas of the United States would accept a modest increase in construction costs in return for more hurricane-resistant houses.

And, 93% of the homeowners in a recent survey said they believed including wind resistance in building codes was a good idea. Only 42%, though, said that codes in their areas were adequate as they currently read, while 37% said their codes needed tightening. The remainder weren't sure or didn't answer.

Nearly three-quarters of the homeowners surveyed agreed that insurers should play a role in reducing storm-related property loss levels.

That data comes from 1,241 telephone interviews with residents of six hurricane-prone areas—Jacksonville, Miami and Tampa, Fla.; Biloxi, Miss.; Myrtle Beach, S.C.; and Corpus Christi, Texas. The survey was published by the Insurance Institute for Property Loss Reduction in Boston.

More than nine out of 10 of the homeowners—91%—said builders should be required to follow stricter building codes, even if doing so added $5,000 to the cost of a $100,000 house.

Only two-thirds of those surveyed thought that builders in their area generally followed all local codes, while 21% said they didn't and the remaining 12% said they weren't sure.

Some homeowners are taking action on their own. Thirty-seven percent said they had already made changes to their homes to make them more resistant to hurricane damage. Overall, most homeowners said they would be willing to pay to make their homes more wind resistant, though the amounts they were willing to pay varied greatly by location.

Twenty-nine percent said they would be willing to pay more than $2,000 if doing so significantly increased the chances their houses would withstand a hurricane.

Another 18% said they'd be willing to spend between $1,000 and $2,000, and 21% said they would part with between $500 and $1,000.

One-quarter said they'd be willing to spend only $500 or less. The rest either weren't sure or didn't answer.

Residents of Miami were willing to spend the most. Some 43% endorsed the highest figure and only 17% opted for the lowest figure.

By contrast, the residents of Biloxi, Miss., and Tampa, Fla., were the most likely to draw the line at $500 or less, with 27% of respondents in each city willing to spend that amount.

Only two-thirds of those surveyed thought that builders in their area generally followed all local codes.

Residents of all six areas overwhelmingly agreed that insurance companies should have a role in trying to reduce the property losses caused by hurricanes.

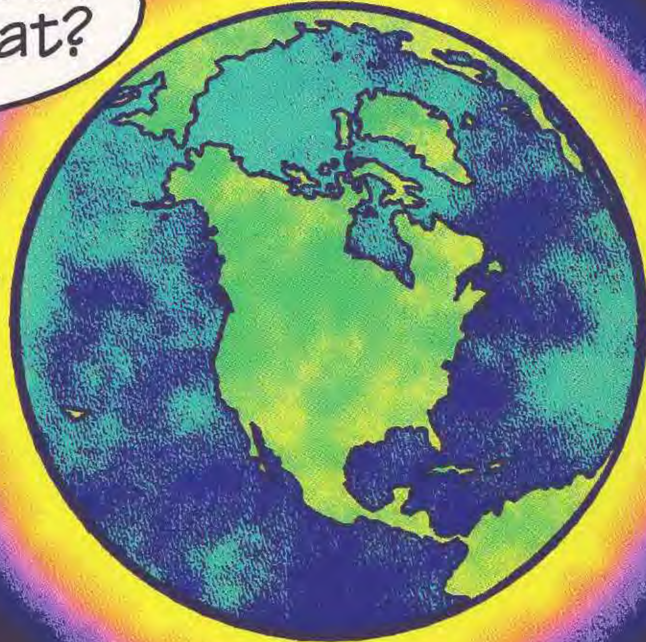
Overall, 71% of homeowners agreed that insurers had such a role, 22% disagreed and the rest of the respondents either weren't sure or didn't answer.

Those who agreed that insurers had a role in trying to reduce hurricane-related property losses endorsed a wide variety of actions, including:

- Inspecting buildings to make sure they were up to code, cited by 17%.
- Offering rebates or discounts for houses that met the code, 14%.
- Working with builders to make certain that houses met the code, 9%.
- Better educating policyholders, 8%.
- Lobbying for stricter codes, 8%.
- Insuring only houses that meet codes, 6%.

Other suggestions for insurers included making quicker assessments of damage, faster claims handling, lower premiums, lower deductibles and improved customer service.

Single copies of "Homes and Hurricanes" are available free of charge from the Insurance Institute for Property Loss Reduction, 73 Tremont St., Suite 510, Boston, Mass. 02108-3910; 617-722-0200.



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Feb 21	Utilization Review Providers
Mar 7	Risk Management Consultants
Mar 21	Employee Benefits Information Systems
Apr 18	Captive Managers
Jun 6	Property Loss Control Consultants
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Jul 4	Alternative Risk Financing Facilities
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May 29	Alternative Facilities
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Jul 17	Agents & Brokers
Jul 31	Dependent Care Resource & Referral Services
Aug 14	401(k) Plan Administrators
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Medicare eligibility age likely to rise, costing firms

By JERRY GEISEL

WASHINGTON—Congress is almost certain to raise the eligibility age for Medicare, a change that would help to avert the looming insolvency of the massive federal retiree health program and would shift billions of dollars in costs to employers, a hospital lobbyist warns.

A higher Medicare eligibility age "is an easy change. I bet it will happen," says Thomas Scully, president and chief executive officer of the Federation of American Health Care Systems, a Washington-based trade association of for-profit hospitals.

Raising the eligibility age from the current 65 is "logical," Mr. Scully noted, because it would put eligibility for Medicare and full Social Security benefits on the same track. Under legislation passed in the early 1980s, the retirement age for eligibility for full Social Security benefits gradually will be raised—shortly after the turn of the century—from 65 until it reaches 67 in 2027.

As was the case with Social Security, a higher eligibility age for Medicare would be ushered in gradually and passed during a non-election year to reduce political fallout, Mr. Scully suggested.

While such a change is likely—House Ways and Means Health Subcommittee William Thomas, R-Calif., recently suggested raising the Medicare eligibility age to 67—Mr. Scully said Congress would wait until at least the next session to act.

Raising the eligibility age would dramatically increase companies' retiree benefit costs because Medicare no longer would be absorbing the brunt of expenses for a portion of their retired workers.

For example, in 1993, health benefits for retirees eligible for Medicare cost employers an average of $1,786 per retiree. But the cost for retirees not yet eligible for Medicare was nearly three times greater—$5,216—an A. Foster Higgins & Co. Inc. survey found.

Few employers, though, have begun to consider how a higher Medicare eligibility age would affect their retiree benefit plan costs, Mr. Scully said.

Other Medicare changes, discussed widely last week as Republican leaders unveiled federal budget proposals, are less certain.

While Congress will make big cuts in the future growth of Medicare, it is unlikely that the cuts will be in the realm of the several hundred billion dollars—over five years—that Republicans have been discussing, he said.

One possible change to reduce the rate of increase in Medicare costs—converting the fee-for-service Medicare program into a managed care plan—places Republicans in a tough spot.

While Republicans say Medicare costs are out of control, many GOP politicians also receive heavy financial support from physicians who oppose managed care, Mr. Scully said.

Turning to another area, he said a U.S. Supreme Court decision last month upholding a New York law that imposes a 13% surcharge on hospital bills of individuals covered by commercial and self-funded plans will encourage other states to pass similar legislation (*BI*, May 1).

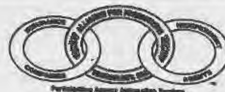
The Supreme Court decision could cause employers "huge problems," he said.

States are especially hungry for new revenue to offset the soaring costs of their Medicaid programs, Mr. Scully noted. BI

APPWP meets

WASHINGTON—About 120 people attended the annual Washington meeting of the Assn. of Private Pension and Welfare Plans, a benefits lobbying group for employers.

For more information on the group, contact the APPWP, 1212 New York Ave., N.W., Suite 1250, Washington, D.C. 20005; 202-289-6700.



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Bad faith

Continued from page 2

to Edward M. Joyce, another partner with Anderson Kill.

Pointing to several of Aetna's internal documents and the insurer's handling of other pollution coverage cases, Monmouth County Superior Court Judge Michael D. Farren was highly critical of Aetna's coverage denial and granted summary judgment for Colonial on April 21.

Referring to the internal memos and other evidence, Judge Farren wrote: "I get the distinct impression. . .that Aetna was looking for a way to deny coverage in this particular case because of the large claims in these environmental cases, because it appears as though they sent this (coverage denial) letter out with total reckless disregard of their internal memos and what they knew to be the facts."

In striking Aetna's argument that Colonial's routine use of the waste site was not an occurrence under its CGL policy, Judge Farren quoted policy language that defined an occurrence as, among other things, a property's "continuous or repeated exposure" to conditions that cause damage.

The judge further noted that internal Aetna memos indicate "that the gradual damage to property can be construed as an occurrence" and that Aetna policies cover Superfund cleanup costs.

Further, Aetna had covered pollution defense costs for Nestle Food Corp., which also had discharged pollutants at the same landfill, Judge Farren wrote.

On Aetna's argument that cleanup costs are remediation and are not covered damages, the judge stated that the argument had "no basis whatsoever."

Case law in most states—including New Jersey—where this issue has been litigated holds that cleanup costs are covered damages, according to the "Handbook on Insurance Coverage Disputes," by Barry R. Ostrager and Thomas R. Newman of Simpson Thatcher & Bartlett of New York.

The judge also rejected Aetna's argument that its coverage should not respond because the pollution occurred before Aetna covered Colonial. Adopting the continuous trigger of coverage that the New Jersey Supreme Court adopted in a 1994 asbestos case (*BI*, Dec. 26, 1994), Judge Farren ruled that Colonial may tap all of its coverage from the time the detergent was first dumped until the landfill is cleaned.

'I get the distinct impression. . .that Aetna was looking for a way to deny coverage,' the judge wrote.

Judge Farren ruled the pollution exclusion does not bar coverage in this case because there is no indication that Colonial intentionally harmed the environment.

Besides its cleanup costs, Colonial is seeking $161,000 for defense costs, attorneys' fees in the coverage suit and more than $2 million of consequential damages, which basically reflect its "business interruption" costs from using its own resources to pay for the cleanup, said Anderson Kill attorney Paul E. Breene.

But, due to a lack of evidence, the judge could not resolve whether Colonial promptly notified Aetna about its liability. Some evidence suggests Colonial may have been aware of its liability eight to 10 years before the company filed a claim with Aetna in 1989, according to court records and Aetna's attorney, Alan G. White, a partner with Harwood Lloyd in Hackensack, N.J.

Mr. Anderson contends that the evidence does not apply to Colonial's Superfund liability and that Aetna is barred from raising the late-notice argument now because the insurer did not raise it when rejecting the claim originally.

A jury trial on the late-notice issue is scheduled for next week, but Aetna has asked the court to postpone it while the insurer appeals the bad faith ruling.

•

Colonial Foods Inc. vs. Aetna Casualty & Surety Co. et al., Monmouth County Superior Court; No. MON-L-0392-93.

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Rates set for takeoff

U.S. airlines expect a bumpy ride during aviation renewals

BY STACY SHAPIRO

AIA CONFERENCE

SAN DIEGO—The only way to go is up for many airline and general aviation insurance rates during renewals this year.

Airlines may attempt to counter this trend by restructuring their insurance programs and taking larger deductibles, one risk manager says.

Hull and liability rates are expected to increase well in excess of 100% for airlines with bad loss records. Rates could rise somewhat for those with average records. Only the world's blue-chip airlines are expected to see more capacity and level rates, underwriters say.

In the general aviation market, which includes most aircraft other than passenger planes and military aircraft, rates are expected to rise sharply (see related story).

The reason: As losses have increased, capacity for these exposures has declined in the past year, aviation underwriters noted recently during the annual Aviation Insurance Assn. conference.

In terms of the number of losses, 1994 was an average year, contends Martin Belcher, managing director of Polygon Insurance Co. Ltd. in Guernsey, an aviation insurer owned by several European airlines.

Worldwide, there were 22 jet losses with 870 passenger fatalities, he said. The statistics are "not unusual....This is the type of year which underwriters should be able to predict."

However, 1994 losses totaled nearly $2.2 billion, which "dwarfs" any previous year's total, he said. This includes $969 million for hull losses; $925 million for liability losses; and $300 million for prior-year losses that were paid in 1994.

The old-year losses include estimates for liability losses for the 1988 explosion of Pan American World Airways Flight 103 over Lockerbie, Scotland. Though the current Pan Am Lockerbie loss reserve is $475 million, Mr. Belcher said he believes insurers will end up paying the full $750 million limit of Pan Am's policy.

Only 1985 aviation losses—which were $1.15 billion, or $3.5 billion in 1994 dollars—would top last year's losses, according to Mr. Belcher.

Major U.S. domestic airline losses between 1989 and 1994 totaled $1.6 billion, including $270.4 million for hull losses and $1.34 billion for liability losses, according to Associated Aviation Underwriters of Short Hills, N.J.

New liability trends are a major reason for the increase in losses last year, with families of non-North American airline passenger victims receiving upwards to $1 million per passenger; and U.S. airline awards hitting as high as $25 million per passenger, said Mr. Belcher.

Airline hull and liability insurance premiums, though, haven't kept pace.

Total worldwide aviation premiums totaled $1.8 billion last year and could reach $2 billion this year. Even that higher total would be inadequate if losses hit 1994 levels and could be a "staggering" $1.5 billion short in the event of losses on the scale of those in 1995, according to Mr. Belcher. Without knowing what aviation losses will be this year, "only the Almighty knows if we're on a precipice or about to make profits."

As of the beginning of this year there was up to 200% capacity available for the world's blue-chip airlines "and the rates are unlikely to increase," he told AIA members.

However, up to half of the hull and liability insurance capacity for the blue-chip airlines may disappear "quickly" by next year, as the number of Lloyd's of London aviation syndicates is halved, and many insurers dabbling in the aviation market pull out, Mr. Belcher said.

Aviation insurance capacity has already declined this year for other, less well-known airlines and those with bad loss records, he said.

"Because the market knows it can't get any increases at all on good accounts, the bad accounts are now being penalized, achieving significant increases in overall premium," said Mr. Belcher. Rate increases of well beyond 100% leave some "paying quite stupendous premium dollars."

Rather than penalizing only a few airlines, Mr. Belcher said, aviation underwriters should increase rates for airlines in the middle range, with average loss ratios of between, say, 50%-75% over the past five years. "If we can't get rate increases on blue-chip accounts, what we must try to do is get increases on the average accounts and not rely on a few airlines subsidizing the average airlines."

U.S. airlines are ready for bumpy renewals, and are taking steps to smooth the ride.

"Aviation will be an interesting renewal this year," said Floy Oliver Daugherty, risk manager for Delta Air Lines Inc. in Atlanta. As part of a major restructuring and cost control program at the airline, "I can honestly say we at Delta have dramatically changed the way we handle our insurance," she said at the AIA conference.

"We take every coverage line by line. We look at the amount of limits. We look at deductibles," she said. "And where we can reasonably do so we take a deductible, which we have never done in the past. I think most of the airlines have not done that and you will see them in the future become more creative and more cognizant of what losses they take on."

"We can't continue to justify to a chief financial officer a 20%-30% increase in premiums when it appears we can take on more losses internally. That will be an interesting challenge to us when dealing with our lessors of aircraft because most of them are very nervous about airlines taking on any self-insurance," she said. BI

Some general aviation rates to go sky-high

AIA CONFERENCE

SAN DIEGO—While most general aviation insurance rates are flat, a shortage of capacity for high liability limits is driving up rates for some buyers. Corporations with aviation risks that need over $200 million in limits will be particularly hard-hit at renewals.

The general aviation market is divided into certain categories, each with different insurance scenarios.

The private "pleasure and business" aviation liability insurance market—where each aircraft is individually owned and flown for pleasure or business trips—is still "highly competitive," summed up Joseph Benero, executive vp of aviation underwriter American Eagle Group Inc. in Dallas. Liability limits in this sector are usually around $1 million per aircraft and $100,000 per passenger. There are some hull rate increases of 3% or 4% depending on the model of the aircraft, but that's not across the board, Mr. Benero said during the Aviation Insurance Assn. conference held in San Diego April 30-May 2.

Liability insurance rates also are "flat" for small "fixed-base operators," which offer aviation services at airports around the country, noted another senior general aviation underwriter.

However, major U.S. aviation liability losses last year have prompted a contraction in the market for substantial limits in the "industrial aid" sector, which includes corporate-owned aircraft that are flown for non-commercial purposes.

There are now fewer general aviation underwriting agencies and insurers than there were last year, noted William E. Kingsley III, a vp with American Eagle.

We're seeing "stronger rate support on the upper end of liabilities above $25 million," said Mr. Benero. Rates could increase 10% to 15% for limits above $25 million; and 25% to 50% for limits between $50 million and $100 million, he said.

"At the higher limits of liability, this year for the first time costs have gone up," added a senior general aviation underwriter. "Whereas in the past you may have been able to buy $200 million to $500 million in limits for general aviation liability and the costs per million insured actually go down as you got to the higher limits, it seems that some of the losses that have happened in the last year have drawn the attention of the people who provide reinsurance and excess capacity. And there's sensitivity to the markets that are going under overseas."

This scenario "has changed the shape of how the limits are priced," the underwriter said. "So at the higher limits you're now paying more per million."

Corporate aircraft fleet owners have seen the rate hikes coming, though. Rates have been going up progressively in recent years on the order of 20% to 30% across all levels of liability limits to pay losses and expenses, reserve for unknown catastrophes and still make a profit.

"What's different this year is that liability limits of $20 million may be going up 20%, but as you go up to say limits of $500 million—if that's available—you could be going to 100% increases," said the underwriter.

Hull coverage, meanwhile, is "more stable," in that it's going up in the order of only 10% for corporate jets, the underwriter said. This year "liability will be the major portion of the premium."

Reinsurers, though, would like to see more resolve among insurance companies to raise rates for general aviation risks.

"There is an attempt by some companies to raise rates in general aviation and their success level is not what reinsurers hoped for. There is plenty of capacity for general aviation," said one reinsurer. "I think you're going to see some more consolidations in the general aviation market with some companies leaving the market."

—By Stacy Shapiro

Revitalize

Continued from page 3

By 1993, aviation product liability insurance premiums skyrocketed to $200 million from $24 million in 1979, even though only 954 aircraft were sold—far fewer than during the height of the industry in 1979, Mr. Thornton added.

Altogether, from 1973 to 1993 the number of general aviation aircraft in use has risen and fallen, said William E. Kingsley III, vp of Team Express of American Eagle Group Inc. in Dallas, an aviation underwriting group formerly known as Aviation Office of America Inc.

The total general aviation aircraft in use reached a height of 221,000 aircraft in 1984, said Mr. Kingsley. "Since 1984, we've lost 20% of our fleet. In the last five years, we've lost 14.5% and in the last year alone we've lost nearly 5% of the active general aviation fleet. We're down to 176,000 aircraft."

If the numbers still decline at the same rate, then there may be only 120,000 light aircraft in the air by the year 2000, said Mr. Kingsley.

The General Aviation Revitalization Act, however, could reverse this decline. The passage of the act "has tripled the value of Piper Aircraft Corp. in six months," by reducing its potential liabilities, Mr. Parr told AIA members. Approximately 80% of Piper planes still flying are 18 years or older and will therefore be protected by the act.

"Before this bill was passed, we had an asset sale with a blue ribbon around it almost ready to go to the court for approval that would have brought $25 million in value to the company," said Mr. Parr. On May 5, however, Piper was scheduled to have another court hearing that would discuss an asset sale "of approximately $90 million. And the only thing that's changed is that statute of repose."

This boost in value is a result of returning "a level of predictability to the aviation product liability risk," he added. "When it's predictable, it becomes insurable and when it becomes insurable, then you can attract investment. People don't mind investing in an industry if they know they're not going to get wiped out with one lawsuit from one plane crash."

Piper—which is still the largest aircraft piston-engine manufacturer in the country, employing 400 people—has plans to come out of Chapter 11 with its creditors becoming its owners, including Dimeling, Schrieber & Park and Teledyne Industries. Mr. Parr expects Piper to be out of bankruptcy by August.

Piper has self-insured its product liability risks since 1986, but has been testing the water recently to see if the commercial insurance market will provide affordable coverage for the new company, said Mr. Parr. "We have been in the market and we have talked and we do think we'll get insurance at an affordable rate."

In addition to the product liability reforms, Mr. Parr would like the FAA to go one step further. He recommends requiring all light aircraft pilots and mechanics to carry mandatory liability insurance. Such coverage "would deepen the pockets of those responsible for the vast majority of aviation-related injuries: negligent pilots and mechanics," he said. "Mandatory insurance will provide the risk-spreading effect envisioned by strict product liability theory but which has not occurred in practice."

This coverage also could promote safety as pilots and mechanics "achieve and maintain higher levels of competence," he added.

Wichita, Kan.-based Cessna Aircraft Co. has kept its promise of creating more jobs if the law was passed (*BI*, May 23, 1994).

Within 24 hours of the law being passed, Cessna announced that it was considering one of 16 sites in Kansas to build a new manufacturing facility for single-engine planes. In December, the company chose Independence, Kan., and ground will be broken for the new plant on May 19, said a Cessna spokesman.

Cessna has announced plans to start manufacturing four new single-engine plane models starting in 1996, after a nine-year absence from the market.

Cessna will employ 1,000 people at the Independence plant and another 1,000 people in Wichita manufacturing components for the new aircraft, said the spokesman.

The company hasn't yet considered its product liability insurance requirements for the new aircraft, but all Cessna's aircraft "are designed to eliminate product liability costs by making them the safest that we can," said the spokesman. "If you don't have accidents, you don't have product liability problems."

Aviation product liability underwriters may not be out of the woods yet, however, since the General Aviation Revitalization Act could open up a whole new set of lawsuits against component manufacturers, mechanics and pilots to get around claims that are time-barred by the statute of repose.

Creating new aircraft is going to be helpful to underwriters because there will be new aircraft and new pilots to insure, said one aviation reinsurer.

However, "there's going to be a period where our defense costs are going to be a little higher," said the reinsurer. "The plaintiffs bar will start looking for everything and everybody who is last on the scene to do away with the time bar. They'll look at everything that may or may not have contributed to an incident."

General aviation liability coverage won't reflect this change, he added. "We need to look ahead and say if we're going to have more suits we need to adjust the rating for the pilots. They're the ones flying the planes. The manufacturers are now safe."

Fixed-base operators who service aircraft also may see premiums go up in the future if they become responsible for incidents, but rates are stable at the moment, he said.

Another senior aviation insurer added that his company is watching the situation "because we think the act is going to go through a test in the legal process as to what kind of teeth it has. I don't know if overall the act is going to be momentous in terms of changing the shape of insurance."

Whether the act will transfer the product liability risk to component manufacturers and mechanics from aircraft manufacturers is yet to be seen, the insurer added. BI

AIA draws over 500

SAN DIEGO—Some 548 aviation brokers, agents, lawyers claims adjusters and insurer and reinsurer executives attended the 19th annual Aviation Insurance Assn. conference April 30-May 2.

Next year's conference is at the Broadmoor in Colorado Springs, Colo., on May 5-7. The 1997 conference is in Tampa, Fla., and the 1998 conference will be in Vancouver, British Columbia.

For more information, call Robert Cannon, Aviation Insurance Assn. executive director, Forbes Westar Aviation Inc., 206-453-4550; fax: 206-453-5262.

ADR

Continued from page 1

third-party mediator or an outside mediator.

If those options fail, employees then should have the third option of turning to either binding or non-binding arbitration or litigation, he said, adding that at any point, employees retain the option of filing formal charges with the EEOC.

"In that scenario, an employee's due process rights are not violated," said Eric R. Galton, a partner with Wright & Greenhill in Austin, Texas, and a full-time mediator.

Today, courts are overburdened with employment-related claims and the court system can be inefficient as well as expensive for litigants. "My theory is that building in ADR procedures as a part of an employment agreement makes sense to both sides of the equation, as long as someone doesn't lose his or her fundamental rights," Mr. Galton said.

A recent decision highlights the concerns Mr. Galton has expressed. A U.S. District Court judge in Houston recently found that River Oaks Imaging & Diagnostic was infringing on its employees' rights and enjoined it from requiring employees to sign arbitration agreements to settle all internal grievances.

The EEOC in Houston sued the X-ray and diagnostic medical center, alleging the employees were deprived of their rights to utilize the full range of remedies available to them under Title VII of the Civil Rights Act.

According to the suit, the company unilaterally imposed a mandatory ADR policy after 17 charges had been filed by employees with the EEOC.

The suit alleged the company's owner, Dr. George Allibone, "intended to manufacture a reason to terminate employees who had lodged complaints of discrimination with the commission."

Under the policy, not only were employees required to share the fees and costs of the arbitrator, but employees who refused to sign the agreement were considered to have quit.

The memo sent to all employees explaining the new policy suggested they could consult with an attorney. However, two women who previously had filed sexual harassment claims against the company were dismissed immediately after refusing to sign the agreement before speaking with their attorneys, according to court papers.

On April 19, Judge Norman Black revoked the mandatory ADR policy. He further instructed the company that it could not implement an ADR policy that would require employees to pay the costs of the ADR proceeding or which would interfere with employees' rights to file EEOC charges or to file suit once administrative remedies have been exhausted.

Unlike River Oaks' policy, Brown & Root Inc.'s mandatory conflict management program allows employees to go to any state or federal program and file employment-related charges.

"We never had any intentions of interfering with the government programs," said Bill Bedman, associate general counsel of human resources for the Houston-based engineering and construction firm.

Beginning in 1993, Brown & Root required employees, as a condition of employment, to resolve all legal claims against Brown & Root through an internal program.

Prior to adopting the program, the 60,000-employee company averaged fewer than 20 employment-related lawsuits per year, Mr. Bedman said.

However, after one case cost the company five years of time and $500,000 in legal fees, Brown & Root decided to develop an alternative to the litigation process, he said.

Brown & Root's program includes four options for resolving conflicts:

• Open door policy. Under this option, employees can go to personnel or corporate employee relations to try to resolve the problem, or they can call an employee hot line and talk with a confidential adviser.

Mandatory ADR has entered 'virgin territory,' says a champion of arbitration, Joseph P. Decaminada.

• Conference. Employees sit down with the company representative and the conflict program administrator to decide what process the employee would like to use to settle the dispute. If both parties agree, an in-house resolution process is arranged. If the dispute involves a legally protected right, such as the right to be free of discrimination or harassment, employees can choose to go to mediation or arbitration.

• Mediation.

• Binding arbitration.

"It is a sincere attempt by the company to better resolve conflicts in the workplace," he said.

Brown & Root does not have employment practice liability insurance. Its general liability coverage is from Highlands Insurance Co. of Houston, which, like Brown & Root, is a unit of The Halliburton Co.

"When a company employs a large number of people, conflicts in the workplace are an inevitable consequence. We thought it was a good idea to develop a system. . . .to handle workplace conflicts in a fundamentally different way," he said.

Part of this "different way" includes offering legal assistance to employees. Brown & Root pays 90% of the cost for legal expenses up to $2,500. Employees pay the remaining 10% over a $25 deductible. If a dispute ends in mediation or arbitration, employees contribute $50 to the legal fees.

Within the past two years, roughly 900 of its 60,000 employees have used some form of the conflict-management process, Mr. Bedman said. Of those, only six filed motions to compel arbitration. This resulted in close to an 80% decline in the company's litigation expenses over the first year of the program.

The program has not been challenged in court.

KFC Corp. of Louisville, Ky., offers another possible way to handle employment-related disputes.

Since 1992, everyone applying for a job there has been required to agree that if they are hired, they will submit any wrongful termination or sexual harassment claims directly to binding arbitration, said Chris Mandel, director or risk management for the self-insured company.

KFC is now consulting with its lawyers about whether those agreements will be enforceable after four female employees in California filed a sexual harassment suit.

That suit, filed last month in Alameda County Circuit Court, alleges a supervisor raped one employee and sexually harassed the others at an El Sobrante, Calif., outlet.

The courts are not clear on whether they will enforce employment contracts with mandatory ADR features.

In a 1991 case, the U.S. Supreme Court ruled that an age discrimination claim against a securities firm could be subjected to mandatory arbitration, as required in an employee's registration application with the New York Stock Exchange.

Employment law experts point out that some federal appeals courts have extended the reasoning of that case, *Gilmer vs. Interstate-Johnson Lane Corp.*, to contracts between employers and employees, but others have read the court's holding more narrowly.

Mandatory ADR has entered "virgin territory," said Joseph P. Decaminada, executive vp and general counsel for Atlantic Mutual Insurance Co. in New York and also the chairman of the American Arbitration Assn.

"It still needs to be fine-tuned," but "I think it is worth trying to resolve discrimination disputes through the ADR method. It makes sense for everyone to do it, particularly if the employee wants to stay on staff. ADR is a much friendlier and quicker resolution." BI

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INTERNATIONAL

Strategies behind European deals may be changing

By GAVIN SOUTER

NEW YORK—Insurers and brokerages in Europe are changing their merger and acquisition strategies to fit their individual needs rather than simply building empires across Europe, according to an investment banker.

One of the casualties of these new strategies will be small brokerages, which will increasingly be absorbed by large international firms, he said.

While large companies will continue to buy and sell units, the deals will be mostly focused on consolidating operations or establishing new distribution networks, predicted Martin Dolan, vp at Salomon Bros. International Ltd. in London.

Mr. Dolan was speaking earlier this month at the International Insurance Council's Roundtable on Insurance Conditions in Europe.

Rather than buy a European rival, U.S. insurers and brokers seeking to expand in Europe should consider investing in Lloyd's of London, he suggested. And any U.S. companies that do take the plunge into Europe should be prepared to spend significant amounts to buy quality operations.

Mergers and acquisitions in Europe have changed markedly in the last five years, said Mr. Dolan. "Most insurers and brokers wanted to expand to integrate for the single market in 1992."

But several factors have combined to sour those deals: declining investment yields led to a fall in profits; the growth of telephone sales of insurance put pressure on expenses; banks began to compete aggressively in life insurance sales; old liability losses cut further into profits; runoff costs for old accounts grew; and most companies had to spend large amounts on new technology.

As a result, the average return on equity for acquisition-minded European insurers was around 6% between 1989 and 1993, he

See **Europe** on page 19

Lloyd's market is buzzing over possible restructuring

By EDWIN UNSWORTH

LONDON—The Lloyd's of London market is full of speculation over what Lloyd's Chairman David Rowland may reveal at the annual meeting later this month.

Officially, Lloyd's is remaining tight-lipped, saying only that May 30 will be "a suitable occasion to report progress to the membership."

Many in the market, though, expect Mr. Rowland will announce a three-point plan to resolve Lloyd's problems and that the plan will indicate what a settlement offer could entail.

The details of the points, according to market speculation, are as follows:

• The first point of the plan would move up the timetable for the establishment of Equitas Ltd., the proposed runoff reinsurance company for settling past open years, and would increase the number of underwriting years that Equitas reinsures. Initially, Lloyd's planned for Equitas to close pre-1986 underwriting years by the end of 1995 and post-1986 open years by the end of 1997. Mr. Rowland is expected to propose that Equitas close all of 1992 and prior years by the end of 1995.

• The second point of the plan would be to raise about £600 million ($951.6 million) through a levy on Names for the 1993, 1994 and 1995 underwriting years, all of which are expected to show a profit. The size of the assessment would likely be about 1.66% over the three years.

• To help compensate for the levy, the third point would propose ending Lloyd's three-year accounting system. Under that system, which allows time for reporting delayed claims, Lloyd's is due to report a loss for its 1992 results this month. Lloyd's is expected to propose that the 1993, 1994 and 1995 underwriting years should be closed into 1996, with the 1996 results being reported in a year's time. After five successive years of major losses, all of these years are expected to show a positive result, and names would welcome the earlier release of profits.

But, Lloyd's cannot impose a levy without the agreement of the names involved, noted Val Powell, managing director of the Assn. of Lloyd's Members. "To make it acceptable, Lloyd's must make sure it is not money poured into a black hole," or in other words, Lloyd's must convince names that the market has a long-term future, he said.

The levy is widely expected because any settlement offer to names would have to include a contribution from Lloyd's Central Fund, which is designed to pay claims if members fail to meet their share of losses. The size of that fund has fallen dramatically in recent years and is unlikely to be able to produce enough to

See **Lloyd's** on page 20

Seizure in Sierra Leone

One partner in mine venture insured for losses in takeover

By KATE TILLEY and MICHAEL SCHACHNER

FREETOWN, Sierra Leone—Nord Resources Corp. carries enough political risk and expropriation insurance to cover about one year's worth of lost revenues from a jointly owned mining operation in Sierra Leone that has been shut down for nearly four months after being taken over by anti-government rebels.

The Dayton, Ohio, mining company's joint venture partner, Consolidated Rutile Ltd. of Brisbane, Australia, was unable to buy political risk coverage on its share of the West African mine, which now is under partial government control but still is not operating. The company does have property and business interruption policies, but both exclude coverage for war risks.

Nord Resources has $23 million of combined war and expropriation coverage through the Overseas Private Investment Corp. and $8 million in expropriation coverage from a U.S. insurer, said Karl Frydryk, comptroller.

No claim has been filed yet, though. Ongoing strife in the West African nation has prevented both partners from inspecting the mine for damage.

"First the mine was taken by rebels, then it was taken back by the Leonean government. Then the government left the mine and it was back in the hands of rebels. We understand the government now has some control over it," said Mr. Frydryk.

The Sierra Leone mine accounted for about $30 million of Nord Resources' $70 million in 1994 global sales, he said.

That mine is Nord Resources' only mine producing

GRAPHIC BY KIM ROME

rutile, a titanium ore.

"We have to assess damages and compile data before filing a claim. But all that will be done within the time requirements of our policies," he said.

Consolidated Rutile was never able to find political risk coverage for the mining venture.

It first sought coverage of its exposure in 1992, when it began considering the venture, and made further attempts to get coverage until June 1993, when it entered the 50/50 joint venture, called Sierra Rutile Ltd.

"We knew we couldn't get cover when we made the decision to invest there," said P. Richard Boys, company secretary.

See **Seizure** on page 19

GLOBAL BRIEFS

Fondiaria overhaul proceeds despite director's suicide

FLORENCE, Italy—Despite the apparent suicide a week ago of its recently-appointed managing director, Fondiaria S.p.A, one of Italy's largest insurers, last week announced a radical restructuring in an effort to increase efficiency and return to profitability.

At the same time, Fondiaria reported its third straight annual loss—this time of 493.4 billion lire ($303.9 million), a 10.6% deterioration from the 1993 loss of 445.9 billion lire ($260.3 million).

During a 1980s expansion, holding company Fondiaria S.p.A. was created to control all the operating companies. Latina Assicurazioni S.p.A. was set up as a subholding company for all foreign operations.

Under the restructuring, the main holding company will be renamed La Fondiaria Assicurazioni S.p.A., and will itself become an operating company incorporating Latina and Fondiaria Assicurazioni. It will take control of the operating companies: Milano Assicurazioni S.p.A., La Previdente Assicurazioni S.p.A., and La Previdente Vita S.p.A.

However, the holdings of Latina, which Fondiaria has been running down over the past two years, are slated to be sold off.

Fondiaria said the restructuring should add 300 billion lire ($184.3 million) to its balance sheet, principally through the sale of Latina's assets, including its stake in German insurer AMB Aachener und Munchener Beteiligungs A.G. It added that group net debts should fall by the end of 1995 to below 600 billion lire ($368.6 million).

The restructuring will involve the exchange of three Fondiaria Assicurazioni or three Latina shares for two Fondiaria S.p.A.

See **Global Briefs** on page 19

Russian insurance market shows little progress

By ELENA KUDIMOVA

MOSCOW—Russia's stagnant insurance market seems to be facing the same questions that have dogged the nation's intelligentsia for more than a century: "What to do?" and "Who is to be blamed?"

At the Third International Insurance Rendezvous in Moscow recently, the nation's chief insurance regulator, Yuri Bugaev, said the market still faces the same three main obstacles to development that it faced last year: undercapitalized insurers, high taxes and low interest among the public.

Nevertheless, insurance is beginning to be considered a significant part of the national economy,insists Mr. Bugaev, who is head of the Federal Insurance Supervisory Service of Russia, or Rosstrakhnadzor.

The numbers, though, tell a different story. Gross premium volume accounted for about 1.2% of gross domestic product in 1994 and 1.3% of GDP in 1993. That compares with four or five years ago, when Russia was part of the Soviet Union, the premiums that state-run Gosstrakh—now called Rosgosstrakh—collected in the region amounted to 3% of GDP.

The domestic market is highly concentrated. Just 200 insurers, or 7.3% of the total, account for 75% of the premium volume of about 7.5 trillion rubles ($1.46 billion), according to Rosstrakhnadzor. Rosgosstrakh and its subsidiaries alone collect 15% of that volume.

Low capital requirements still mean an insurer can be launched with only a couple of thousand dollars.

A Rosstrakhnadzor survey found that 70% of domestic insurers have paid-in capital of less than 50 million rubles ($9,750), with 3.5% of them having less than 2 million rubles ($390). One in three insurers was established less than a year ago; 43% of the companies are between 1 and 2 years old.

Those low barriers to entry may be raised after the state Duma, or Legislature, begins discussing several proposed amendments to the nation's insurance law this summer. Efforts to amend the law have been stalled for several years.

"Capital requirements must gradually be raised," according to a draft legislative proposal, which would require all insurers to have 500,000 European Currency Units ($670,600) in capital by Jan. 1, 1997.

See **Russia** on page 19

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NO PHONE CALLS.

Europe

Continued from page 17

said. "That's really pretty poor."

The poor results have led insurers to shift their focus. "They have moved away from increasing their product mix and expanding geographically. Now they are making deals for internal reasons," he said.

Many European insurers now are looking to improve their return on equity from their acquisitions, which they largely had ignored in the past, Mr. Dolan said. "And they are realizing that they have allowed serious problems to grow in their home markets while they were looking to expand internationally."

In the past two years, deals have reflected the separate goals of individual companies, Mr. Dolan said.

For example, last year General Reinsurance Corp. sought to become a global reinsurer by gaining control of Cologne Re, and Sun Life Assurance Co. of Canada sought to strengthen its operations in Britain by buying the British subsidiary of Confederation Life Insurance Co. (*BI*, Aug. 29, 1994).

Acquisitions within the same country are likely to continue, Mr. Dolan said.

Small brokerages also will be swallowed up by larger ones. Family-owned brokers on the continent and small brokers in London will increasingly be bought by international brokers, Mr. Dolan said.

And banks will continue to enter the insurance market through joint ventures with insurers. Usually the banks will own most of the shares in the ventures, he added.

U.S. companies looking to expand into Europe should ensure they are buying high-quality companies, Mr. Dolan said. "A real commitment has to be made. Try and buy a quality business whether it is big or small."

And the U.S. buyers must be prepared to pay high prices when they make the acquisitions, he said.

An alternative to buying a stock insurance company in Europe is to become a corporate investor in Lloyd's, he said.

"Lloyd's represents a very interesting opportunity for insurers looking to establish a European beachhead," Mr. Dolan said.

Some of the syndicates at Lloyd's can be very profitable and they do not have expensive distribution systems or large staffs, he said. Many of the Lloyd's managing agencies are eager to attract corporate capital for their syndicates, so U.S. corporate investors will be able to wield significant influence over the business strategies of the syndicates, he said.

Several large insurers already have invested in Lloyd's.

Among the more recent moves, Duncanson & Holt Group Inc., a reinsurance unit of UNUM Corp. of Portland, Maine, is planning to acquire Lloyd's syndicate 957 and establish a new managing agency.

The new agency, Duncanson & Holt Agency Ltd., will be a joint venture between Duncanson & Holt and Barder & Marsh, an existing Lloyd's agency that will provide administrative services. Syndicate 957 covers aviation and personal accident risks and formerly was managed by Barder & Marsh. BI

Russia

Continued from page 17

As of Jan. 1, 1995, Rosstrakhnadzor issued licenses to 2,295 insurers, 74 of them partly foreign-owned.

The newest of the joint insurance ventures in Russia is AIG (Moscow) Ltd., which was licensed in December.

Even the draft amendments to the insurance law maintain a 49% cap on foreign ownership, so that restriction probably will not change until 1999, when various European Union agreements will require Russia to open up its market.

That law was appropriate for 1992, when it took effect, but it "does not consider current realities," said Mr. Bugaev. Liberalizing the foreign ownership restrictions would foster development of the market, he added.

Russian insurance company executives at the meeting—such as Konstantin Pylov, head of the Russian Insurance Center, and Vladimir Krouglyak, president of Ingosstrakh—are far less excited about outsiders coming into the market.

Foreign insurance brokerages are not covered by the insurance law and two London-based brokers, Sedgwick Group P.L.C. and Willis Corroon Group P.L.C., already have established entities here with the legal status of Russian companies and with 100% Russian capital along with their representative offices in Moscow (*BI*, March 20).

The best thing Russian lawmakers could do for the insurance market would be to make premiums tax-deductible, said Bengt Westergren, senior representative/president of American International Group Inc. in Central and Eastern Europe.

"This is now seen as a problem internationally," Mr. Westergren said.

He advised the Russian lawmakers to set a good example for other Commonwealth of Independent States nations that restrict foreign ownership because Russian capital now is considered foreign in those nations.

He also advised against establishing a state-owned reinsurer, citing the failure of similar arrangements in Argentina and Brazil.

Lack of long-term investment is another problem in Russia.

Sergey Tikhonov, vice chairman of St. Petersburg-based Progress-Neva Insurance Co., admitted that "there are no objective reasons for long-term insurance in this country and the investment climate produces only short-term investment."

That poor climate keeps an estimated $250 billion to $300 billion of Russian private capital abroad.

Mr. Tikhonov blamed the Russian government for the lack of public confidence, because it has not indexed savings to inflation at the state-owned Sberbank, which had a monopoly during the Soviet era.

And Boris Pastukhov, president of Industrial Insurance Co. of Moscow, blamed Rosgosstrakh, which under the Soviets was the domestic monopoly Gosstrakh, for not indexing long-term insurance products to inflation. He said this discourages long-term investment and causes problems for the development of pension insurance and private pension funds, both of which were recently introduced in Russia. BI

Seizure

Continued from previous page

Several times the company approached the Export Finance & Insurance Corp. in Sydney, which, like OPIC in the United States, is designed to help exporters and investors in overseas projects. One of its functions is to provide insurance for Australian investors in offshore enterprises against the risks of loss from restrictions on currencies, expropriation or war damage.

And, several times the company was rebuffed. Mr. Boys said the export finance agency officials said they preferred to focus on Asian projects.

Consolidated Rutile also sought coverage through the Switzerland-based Multilateral Intergovernment Agency, a World Bank subsidiary. Those attempts failed because Australia is one of the few developed countries that is not a signatory to a World Bank agreement that allows companies access to the agency's insurance arrangements.

Consolidated Rutile also sought coverage in the London market but was unable to buy war risk insurance for Sierra Leone. Mr. Boys said it could have bought only limited cover, and the price was prohibitive.

CRL's investment in Sierra Leone is valued at $84 million Australian ($62 million).

The mine, which had operated without incident since 1971, was seized by rebels on Jan. 21, and has not operated since, although government forces loyal to Capt. Valentine Strasser, Sierra Leone's president who was installed in a rebel coup in 1992, claimed to have retaken the mine on April 24.

Seventeen people, including three employees of Sierra Rutile, were taken hostage by the rebels on Jan. 21 and released unharmed on April 20.

Although government forces claim to have retaken the mine, Mr. Boys said no employees would go back to the mine, which usually employs 1,500 people, until their safety could be guaranteed.

The mine produces 150,000 tons of rutile and 60,000 tons of ilmenite a year. Both are used in production of titanium dioxide, which is used to make pigment.

Operations are not expected to resume in the short term.

Sierra Rutile is unable to claim on its property and business interruption policies, placed by Sedgwick Group P.L.C., because of a war risk exclusion, said Mr. Boys, who would not give coverage details.

"Sierra Rutile Ltd.'s insurance brokers have advised that its policies are unlikely to cover damage or loss of equipment, if any, at the mine site," or any consequential losses, he said. BI

GLOBAL BRIEFS

Continued from page 17

shares.

Shortly before the restructuring and results were to be announced, Ludwig Von Hackwitz, the company's new managing director, died in a fall from a 21st floor Milan apartment. He had joined on April 3.

Fondiaria's problems stem from an attempted takeover by the Italian industrial group, Ferruzzi Finanziaria, which started building up a stake in the late 1980s and then was found in 1993 to be suffering from huge debts. It has been alleged that Fondiaria's losses were linked to operations that siphoned off large parts of its assets.

—By Edwin Unsworth

Credit losses

MUNICH, Germany—Record postwar levels of bankruptcies are producing underwriting losses for Germany's largest credit insurer.

At Hermes Kreditversicherung A.G., underwriting losses more than doubled—to 17 million DM ($11 million) in 1994 from 7.97 million DM ($4.6 million) in 1993, said Wolf-Ingo Darius, chief executive officer of the Hamburg, Germany-based insurer. And, this year losses could increase as more companies fail in the wake of Germany's worst recession since World War II.

At the same time, gross premiums rose 4.5% to 726.7 million DM from 695.5 million DM in 1993 ($468.9 million from $400.5 million).

The underwriting result lowered earnings. Net income sank to 8.0 million DM from 24.6 million DM in 1993 ($5.2 million from $14.2 million).

Hermes Kreditversicherung administers the German government export guarantees, and Hans Janus, a board member, expects 1995 losses in that program will approach the records set in 1994.

In 1994, the government guaranteed export contracts amounting to 33.4 billion DM ($21.6 billion). Losses hit 7.4 billion DM ($4.8 billion), with losses in Russia alone at 3.9 billion DM ($2.5 billion). Premiums fell 8% to 840 million DM ($542.1 million) from 915.6 million DM ($527.3 million) in 1993.

The guarantee program ran a deficit last year of 4.4 billion DM ($2.8 billion), down 13.7% from 5.1 billion DM ($2.9 billion) in 1993.

—By Don Lewis Kirk

Insurance Services Guide

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CEO's, Presidents, and Owners,	2,009
Vice Presidents, General Managers and Other Administrative Fersonnel	5,645
Financial:	
Chief Financial Officers and Vice Presidents of Finance	3,539
Secretaries, Treasurers, controllers and other Financial Personnel	3,279
Risk/Employee Benefits:	
Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	15,529
Sub-total	**30,001**
Associations	343
Government, Unions and Educational Institutions	950
Commercial Consumers Sub-total	**31,294**
Insurance Agents and Brokers	8,285
Insurance Companies	7,687
Accountants, Actuaries, Attorneys & Consultants	3,563
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,844
Others Allied to the Field	1,028
Total Qualified	**53,701**
Non-qualified	74
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INTERNATIONAL

Lloyd's

Continued from page 17

cover the debts of loss-making names.

In the recently released annual report of the Corporation of Lloyd's, Mr. Rowland said the Central Fund had shrunk by 18% in 1994 to £738 million ($1.15 billion).

The reduction in the Central Fund also explains why any settlement offer is expected to include a contribution from other participants in the Lloyd's market, such as agents and brokers.

Names would like for those who have profited from their dealings at Lloyd's to contribute to a package to help those who have made losses, Mr. Powell said.

Chris Hitchins, a leading Lloyd's analyst with stockbroker UBS Ltd. in London, said the stock market widely expects a settlement offer to include a levy on names. There is a gap between what names owe and what they can afford to pay and what the Central Fund can afford to contribute on their behalf, he said.

"If a settlement of outstanding liabilities is to be full and final, that gap has to be bridged" and a levy is the most likely means, he said.

The need for a levy may be one of the reasons that Lloyd's will leave a time gap between unveiling its recovery plan on May 30 and making a settlement offer.

A levy will anger many names, particularly those who have not been involved in litigation or who have been on profitable syndicates. If the levy falls on 1994 and 1995, and is agreed to by members, corporate members would also be assessed.

A delay between unveiling the recovery plan and making a settlement offer would give those names time to cool off, said Mr. Hitchins.

Regarding a possible move to a one-year accounting system, Mr. Powell said that while names would welcome this move, it also "would entail a lot of technical problems," such as accounting for delayed claims.

It is near certain that any offer will have to include a cap or ceiling on what members can be asked to pay to meet past losses. Lloyd's Chief Executive Peter Middleton has already said as much, acknowledging that the lack of a capping mechanism was a main reason names rejected a £900 million ($1.43 billion) settlement offer last year (*BI*, Feb. 21, 1994).

Most of the current disputes and cases of litigation stem from business written in the 1980s, largely on risks such as asbestosis and pollution, primarily in the United States. These turned into disastrous lines for Lloyd's, with hundreds of millions paid out already and claims still coming in. Names, who agree to unlimited liability when they join Lloyd's, fear future such claims.

Lloyd's desperately needs the settlement as a means of ending litigation involving thousands of names in more than 50 action groups.

If a settlement offer is not forthcoming at the annual meeting, the question of when it is likely to materialize remains open.

At an ALM conference in late April, Mr. Middleton refused to be pinned down to a date, while ALM Chairman Sir David Berriman said he expected an offer to be made in June.

Mr. Powell believes that the offer will not come that soon. After allowing for debate and a vote, a settlement will not be finalized before October, he said. His timetable also takes into account the belief that a settlement offer will have to include a cap on losses, that this will have to be done through Equitas, and that it will take months more before Equitas will be able to do this.

But, even October might be too optimistic, said Mr. Hitchins, who also linked his reasoning to the need for a cap involving Equitas. But he believes Equitas cannot take on this responsibility by October.

Reports also have circulated that rather than impose a levy on names, Lloyd's may try to press them for a similar-sized loan. Yet other rumors, which Lloyd's denies, say it might seek assistance from the Bank of England.

However, Mr. Hitchins said that Lloyd's cannot fund a recovery without collecting the hundreds of millions of pounds still owed it by non-paying names.

"The reality is that you can only borrow money if you know how you're going to repay it," he said. "A loan cannot make Lloyd's solvent." BI

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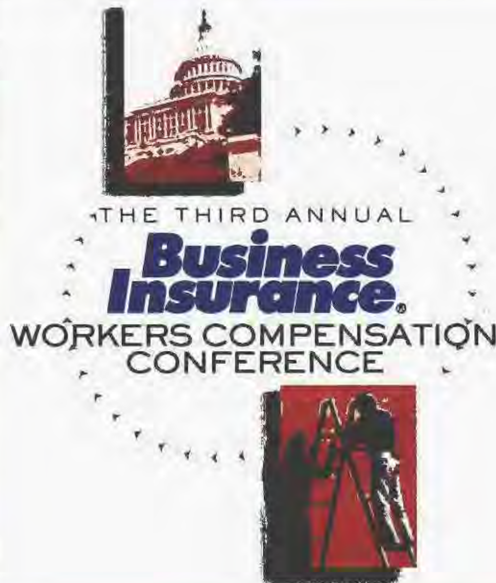

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ERISA

Continued from page 1

surcharge later was extended to self-insured plans, though patients in Blue Cross & Blue Shield plans are exempt.

Mr. Stromberg predicted that if Republicans retain control over Congress and state legislatures, a broad reading of the pre-emption clause will remain out of favor.

Realizing that, employers and other ERISA proponents should carefully pick and choose which state laws they challenge in court, said Harold Iselin, a partner with Couch, White, Brenner, Howard & Feigenbaum in Albany, N.Y.

Mr. Iselin, one of the attorneys who argued against New York's surcharge before the Supreme Court, said that pushing forward cases in which the challenge involves an indirect link to employee benefit plans is not a good idea. "We'll end up getting a lot of lower court decisions against an ERISA pre-emption and then we'll all be left without the weapon," he said.

"If we can reach a national consensus to only force 'pure' ERISA issues, then we may see ERISA's pre-emption rise from the ashes and recover its vitality," Mr. Iselin said. Pure ERISA issues are those in which a state law clearly regulates an employee benefit plan.

Following the *Travelers* ruling, ERISA's pre-emption will be upheld only when the state law forces a plan administrator to change a course of action or make a benefits related decision that would not have otherwise been made, says Bartley J. Costello, a lawyer with Hinman Straub Pigors & Manning in Albany, N.Y., which represented the New York State Conference of Blue Cross & Blue Shield Plans, the defendant in the Travelers case.

As a result, state laws being challenged in several lesser-known lawsuits that have been sitting in federal courts awaiting the high court's decision on *Travelers* are more likely to be upheld, Mr. Costello said.

These cases involve surcharges on hospital bills and assessments on insurers and HMOs that generate more than $1.45 billion annually.

In one, the International Brotherhood of Electrical Workers asserts that ERISA pre-empts a New York law that tacks on a 5.5% surcharge to all hospital bills in order to fund a hospital bad debt and charity pool, which is used to subsidize indigent care. This surcharge generates about $1 billion per year.

In 1993, the IBEW challenged the state's surcharge system, claiming it forced employee benefit plans to pay more for health care and, thus, was "related to" benefit plans. A federal judge in Brooklyn has delayed ruling on the case pending a ruling in the *Travelers* case.

Two other appeals challenging two separate Connecticut surcharge laws are pending before the 2nd U.S. Circuit Court of Appeals.

In the first, the New England Health Care Employees Union is challenging an 18.7% surcharge on hospital bills. The surcharge was designed to raise $300 million per year. A federal district judge struck down that surcharge in February 1994.

Following that February ruling, Connecticut instead put an 11% tax on hospital revenues and a 6% sales tax on patient services. Those charges were challenged by the Connecticut Hospital Assn. on ERISA grounds and in November 1994 that law, too, was struck down.

Both cases have been argued, but no appeals rulings have been issued.

In another New York case, the New York State Health Maintenance Organization Conference and the Health Insurance Assn. of America both are challenging the state on ERISA pre-emption grounds over a system in which insurers and HMOs with healthier risk pools must contribute to a pool of money for insurers and HMOs that service the state's poorer health risks.

The demographic and high claims pooling requirement arose out of New York's 1993 community rating and open enrollment legislation. The pool is designed to provide demographic adjustments to health insurance rates and functions as a form of reinsurance for insurers with high medical costs.

In February 1994, a U.S. District Court judge ruling on *NYSHMOC vs. Curiale*, found on behalf of the HMO association. Relying on the 2nd Circuit's ruling in the Travelers case, the judge found that HMOs are not in the business of insurance and, therefore, could not be regulated under a state's authority to regulate insurance. Insurance regulation is specifically exempt from ERISA pre-emption.

That case is now on appeal to the 2nd Circuit. Once that ruling is issued—probably sometime later this year—a ruling will be issued in the similar action brought by the HIAA, probably in 1996.

In the meantime, health insurers and HMOs have been placing their pool assessments in escrow. About $150 million is currently in escrow.

"The judges in all these cases simply have been waiting for a final decision in the Travelers case. In light of *Travelers*, there is a good chance that the NYSHMOC and HIAA courts will hold that the (regulation calling for the demographic pooling) does not relate to ERISA plans and therefore is not pre-empted by ERISA," said Mr. Costello.

He said the Supreme Court ruling is a major victory for states in their efforts to craft health care legislation that ensures fairness for all health insurers and HMOs.

"Before the Supreme Court ruling, the 2nd Circuit had decided that any state law impacting any ERISA plan would be pre-empted. But the Supreme Court has acknowledged that almost everything has indirect impact on ERISA plans and the measurement for pre-emption is whether the law forces a plan administrator into doing something it wouldn't do otherwise. Surcharges and rate differentials don't automatically do that," Mr. Costello said.

"Anything to do with hospital rates is probably dead," Mr. Iselin agreed. "But there is some room left to challenge anti-managed care laws and any willing provider legislation," he said. BI

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Treatment

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ing that coverage exclusions for certain controversial treatments—most notably autologous bone marrow transplants with high-dose chemotherapy for breast cancer—violate state and federal anti-discrimination laws.

"For about six years, I've worked with insurance companies on designing contracts that limit coverage for experimental treatments," Mr. Johnson said during a session at the Group Health Assn. of America's sixth annual managed care law conference, held in San Francisco May 8-10.

"No matter what, we always wound up in court arguing about what constitutes 'experimental and investigational' treatments," he said.

Plaintiffs attorneys argued insurers' definitions of experimental treatments were too vague and confused the average person, Mr. Johnson explained. Defense attorneys responded by writing contracts that listed the specific procedures or treatments that insurers didn't wish to cover.

But that hasn't stopped the deluge of lawsuits, Mr. Johnson said. And now, insurers and other health care payers face the nettlesome task of trying to defend charges that coverage denials violate state civil rights laws and the Americans with Disabilities Act of 1990.

"During the last year, 80% of the cases in my office have also contained the charge that the exclusion in the coverage contract violates some anti-discrimination law," Mr. Johnson said.

The problem in defending such suits, particularly those that claim discrimination under the ADA, lies in how the Equal Employment Opportunity Commission, which enforces the ADA, categorizes people with disabilities.

The EEOC issued its interim enforcement guidelines for the ADA in June 1993 (*BI*, June 14, 1993).

"The probable interpretation of the ADA that is likely to prevail is anyone suffering from incurable cancer will meet the definition of disabled under the ADA," he predicted.

"Under the ADA, you cannot exclude coverage for specific diseases or disabilities related to a group of diseases" if they affect a particular group of individuals. Since breast cancer affects females, it could be argued under the ADA that denying autologous bone marrow transplants with high-dose chemotherapy is discriminatory toward women, Mr. Johnson said.

"That flies in the face of what the plaintiffs bar had gotten us to do" by abandoning vague contract language and adopting specific exclusions, he complained.

"No one can predict where the definition of disabled will come down as this filters through the federal courts," Mr. Johnson said. But, "the nature and quality of the defense insurers and other health care payers put on will have a big effect."

Technology assessment experts, who conduct research designed to determine whether specific treatments like ABMT actually prolong or improve the quality of life for patients, say one way to stem the tide of rising litigation is to create a new coverage decision-making system.

"We have to create a system that makes strides in creating public trust," said Jeffrey C. Lerner, vp of strategic planning at ECRI, a non-profit technology assessment agency in Plymouth Meeting, Pa.

Too often, patients think insurance companies and other health care payers make coverage decisions based purely on selfish financial reasons, rather than a careful evaluation of whether controversial treatments improve the health of patients, Mr. Lerner said.

In reality, though, "technology assessment is what underpins coverage decisions in the payer community," he explained.

Technology assessment evaluates drugs, medical devices and procedures on the basis of their safety, effectiveness in both research and real-world settings, economic implications and relative merit compared to other available treatments.

Different medical technologies come into the market in different ways, Mr. Lerner explained. For example, prescription drugs go through a rigorous evaluation process by the Food and Drug Administration. Medical devices go through a less rigorous process and procedures don't go through an evaluation process at all.

"But we have to figure out what works as soon as possible, because once a technology is on the market, you can't get rid of it," Mr. Lerner said. "Once a technology comes into use, it is difficult to abandon it—even after it becomes ineffective."

ECRI recently completed an extensive evaluation of whether ABMT with high-dose chemotherapy prolongs the life of breast cancer patients. After reviewing 1,500 research articles on the treatment and evaluating evidence from 40 clinical trials, ECRI concluded "there is absolutely no evidence of benefit for using high-dose chemotherapy for breast cancer patients," Mr. Lerner said.

In fact, "there is evidence of harm" in using the therapy. "Patients survive for a substantially shorter period of time when they get high-dose chemotherapy. And, many of them die from the bone marrow transplant, not from the breast cancer," he said.

Insurers, managed care companies and other health care payers have an obligation to get this information into the hands of patients, Mr. Lerner said. One way of reaching them is through advocacy and support groups. "When a new study comes out, make sure it gets out to the public that day, because people are going into surgery every day."

Patients want to know how coverage decisions are made. Health care payers "must be publicly accountable for their decisions. You can't just say, 'I have a competent staff of physicians, but you can't see how they reached their conclusions.' We need to forge a relationship with consumers based on trust," Mr. Lerner said. BI

GHAA draws 200 to City by the Bay

SAN FRANCISCO—More than 200 health law attorneys and managed care professionals attended the Group Health Assn. of America's sixth annual managed care law conference held May 8-10 in San Francisco.

Dozens of health law and managed care experts, as well as a handful of state and federal regulators, gave presentations on legal issues facing the managed health care industry.

Several sessions discussed provider antitrust and liability issues, while others focused on the effect of ERISA on state regulation of health care and coverage of experimental treatments.

The GHAA is a Washington-based trade association representing more than 400 health maintenance organizations. The group provides legislative and lobbying services, research and analysis on trends in the managed care industry and sponsors educational programs.

For more information, contact Don White at the GHAA, 202-778-3274.

Antitrust, regulatory hurdles raise PHO stability questions

By CHRISTINE WOOLSEY

SAN FRANCISCO—Benefit managers who may have been counting on physician/hospital organizations and other local provider affiliations to provide a competitive option to large managed care plans could be left waiting in some markets.

While many PHOs and other provider-organized delivery systems are running smoothly and are capable of assuming risk under a managed care contract, others are struggling to become viable managed care entities.

Antitrust regulations and current tax laws are blocking physicians and hospitals from banding together or forming joint ventures to sell services as an integrated delivery system, according to health care and antitrust experts.

As a result, employers may find it easier—and more predictable—to contract with traditional health maintenance and preferred provider organization networks, at least until these new types of provider-affiliated systems pass muster with federal antitrust authorities and other regulators.

"In a large number of markets where I'm working with hospitals and physicians to form integrated delivery system entities, they have a lot of water to cross before becoming successful," said Mark Lutes, a partner with Epstein, Becker & Green in Washington.

Mr. Lutes participated in one of several discussions about health care antitrust issues that took place at the Group Health Assn. of America's managed care law conference, held May 8-10 in San Francisco.

"The Internal Revenue Service isn't making it easy for tax-exempt hospitals to partner with physicians or to use tax-exempt capital for integrated delivery system development," Mr. Lutes explained.

The challenge that regulatory authorities like the Federal Trade Commission face when studying these entities is "discerning when an integrated delivery system goes beyond its ability to improve network management and results in anti-competitive practices," he noted.

The FTC is studying vigilantly all proposed mergers among acute care hospitals and various physician groups, said Mary Lou Steptoe, deputy director of the FTC's bureau of competition in Washington.

Indeed, the number of premerger filings to the FTC by providers—including physician groups, hospitals, outpatient surgical centers, rehabilitation facilities and retail pharmacies—doubled between 1993 and 1994 and will likely double again in 1995, she said.

The FTC is less concerned about mergers among health maintenance organizations, she noted.

"The FTC's historic role in health care has been to protect competition because it leads to innovation, lower prices and better choices for consumers," Ms. Steptoe explained. "That theme remains true today. We will challenge anti-competitive mergers and cartel providers."

While physician groups aren't too happy about FTC constraints, it's not likely the FTC will back off.

"There is the potential for anti-competitive mergers, like those of physician practices. We haven't seen any cases yet, but the issue is, at some point, doctors will come together so that they restrict competition for consumers," Ms. Steptoe said.

Physicians say the FTC regulations that prohibit them from forming networks are too strict.

"Our motives for wanting to modify antitrust laws are simple," said Edward Hirshfeld, associate general counsel with the American Medical Assn. in Chicago. "Physicians want to participate in managed care on a managerial level."

But, antitrust regulation is precluding many from doing so. Under current FTC guidelines, for example, physicians can form risk-bearing organizations with panels of providers, but they are prohibited from forming intermediary units, like preferred provider networks, because it's illegal for physicians to form a PPO that sets prices for services.

"We recognize there are physician organizations that cause problems by forming large panels involved in conspiratorial activities. And we recognize the problem in distinguishing between good and bad physician groups because superficially they can look identical," Mr. Hirshfeld said. "But we think we are being too conservative in thinking an organization that has the potential to be anti-competitive will be so." BI

Liability

Continued from page 3

Code Section 845.8(b), both police officers and cities are immune from liability for any injury caused "by" a person resisting temporary detention.

In 1989, one appellate court held in *Hooper vs. City of Chula Vista* that the statute provides absolute and unqualified immunity to officers and cities for injuries to fleeing suspects. But four other appellate courts held that cities could be sued under the California vehicle code, which says a city is liable for injuries or property damages caused by the negligent driving of its employees on the job.

The ruling appears to eliminate the so-called "pursuit immunity," which protects public entities from liability involving police vehicle pursuits.

However, that immunity was not intended to apply to vehicle vs. pedestrian pursuits, said Tom Vance, risk manager for the City of Anaheim.

"I don't believe that the case at hand has dealt a serious blow to pursuit immunity in California," said Mr. Vance. "If a city has a reasonable pursuit policy and follows it," it will still be protected from liability associated with police car chases.

In the case before the high court, 18-year-old Pele Thomas was rendered a quadriplegic after he was struck by a patrol car driven by officer Jim Jenkins on the night of Sept. 4, 1990.

The police said they were investigating a report of two black teen-agers carrying rifles or shotguns, and Mr. Thomas and a companion bolted when officers approached them on a street corner.

Officer Jenkins, who was driving the patrol car, said he braked, but his foot slid off the brake pedal and onto the accelerator. As a result, his vehicle hit Mr. Thomas as he ran into the street.

Mr. Thomas is now paralyzed from the neck down. No guns were ever found.

Mr. Thomas sued for negligence later that year, but Contra Costa Superior Court Judge Ellen Hames dismissed the case, saying both the officer and the city were immune from liability under the California Tort Claims Act.

But in February 1994, the Court of Appeal in San Francisco reinstated a part of Mr. Thomas' suit, saying that while Officer Jenkins was immune, the city was not.

The city of Richmond then persuaded the state Supreme Court to review the case. It was backed by 26 other California cities as well as the California Police Chiefs Assn., the California Peace Officers Assn. and the California State Sheriffs Assn., all of which urged the high court to give municipalities blanket immunity as the appellate court did in *Hooper*.

However, the Supreme Court, by a 6-1 vote, said that the liability created by the Vehicle Code prevails over the immunity created by the state Government Code.

"One can make policy arguments on both sides, but this is a question of statutory interpretation," said Justice Armand Arabian, writing for the majority.

"If the Legislature is dissatisfied with the policy reflected in the current statutes, it can modify them at any time."

In fact, that's just what Orange County attorney Tom Barham, a former police officer who often represents plaintiffs in police liability cases, predicts will happen.

"The League of Cities will go to Sacramento and pass remedial legislation to cover that loophole, and this will be a blip on the radar screen," he said.

"You can see what the Legislature will say: If we're not giving a third party a right to sue, why give a first party that right?"

The Supreme Court decision does not become final until 30 days after it has been published. After that, the Thomas case will return to the Superior Court for trial, at which time a jury will be asked to assess the city's responsibility for the injury.

The attorney for the city of Richmond did not return phone calls.

•

Thomas vs. City of Richmond. California Supreme Court; No. SO38958, May 1, 1995.

Storms

Continued from page 1

including those of about 65 people bombarded by hail at an outdoor celebration near Fort Worth.

The storm continued its deadly march eastward, dumping as much as 18 inches of water in the New Orleans area. At least five deaths were related to the storm in southeastern Louisiana.

New Orleans Mayor Marc Morial estimated last week that flood damage to public property would cost the city at least $76 million, some of which will be covered by insurance.

Insurers, already busy with claims from the earlier hailstorm, expect the May 6 storm will push losses in Texas to nearly $1 billion.

State Farm Group is taking the biggest hit. The Bloomington, Ill.-based insurer said last week it expects the May 6 storm to produce 109,000 personal lines claims totaling an estimated $400 million.

State Farm also estimates it will pay 68,000 claims from the April 29 storm that will amount to $121 million.

GEICO Corp.'s personal lines policyholders had filed 3,024 claims from the May 6 storm as of last Thursday. The April 29 storm had produced 1,228 claims. Nearly all the claims have been from automobile owners.

Washington-based GEICO did not break out damage amounts from the storms but said the two Texas storms, flooding in New Orleans and a hailstorm that hit Shreveport, La., in April altogether have produced about $20 million in claims for the insurer.

Allstate Insurance Co. handled 11,500 personal lines claims from the first of the Texas storms and 19,000 after the second. The Northbrook, Ill.-based insurer had not compiled a dollar estimate as of late last week.

Because the storms were so close together, some insurers were reporting combined claims totals.

Los Angeles-based Farmers Insurance Group had logged $170 million in claims from the two hailstorms late last week, nearly all from personal lines policyholders. The insurer recorded 16,000 automobile claims and 10,500 property claims. Farmers expects the total to climb.

Fireman's Fund Insurance Cos. in Novato, Calif., had recorded 224 personal lines claims and 50 from commercial policyholders from the two Texas storms. "It's not going to amount to large numbers for us," a spokesman said.

The insurer did not release a dollar estimate of the storm losses.

Kemper National Insurance Cos. of Long Grove, Ill., had 362 personal lines claims from the storm and another 116 commercial lines claims. A dollar estimate was unavailable.

The second weekend of Texas storms left a wide swath of damage, including considerably more commercial property damage.

"This storm was extremely powerful and very widespread," said Susan Bulla, risk manager for the city of Fort Worth.

Damage to city-owned property in Fort Worth will exceed $10 million, said Ms. Bulla. The figure includes uninsured costs of about $250,000 to repair about 1,000 vehicles, streetlights, signs and other equipment.

Damaged buildings are covered under the city's $100 million property insurance program underwritten by Hartford Fire Insurance Co. of Hartford, Conn. The coverage is excess of the city's $100,000 self-insured retention.

The Will Rogers Memorial Center Complex was one of the hardest-hit areas of Fort Worth. "There was significant damage to all the roofs in the complex," said Ms. Bulla, including about 500 roof vents that were hammered shut by hail.

Glass in a greenhouse at the city's Botanic Garden Center & Conservatory shattered from the hail's force.

Damage to the city's Holly Water Treatment Plants was perhaps the most telling example of the storm's ferocity, said Ms. Bulla. Red tile roofs on about 15 buildings, which are approximately 80 years old, were pulverized. "You would be hard-pressed to find one intact tile. Those are going to be very expensive to replace."

And it will cost $500,000 to repair the roof and skylights at Fort Worth City Hall, she estimated.

Facilities at Fort Worth-based KXAS-TV were banged up by the hail and the station was unable to broadcast for about an hour after transmission equipment was pummeled. Two of the station's nine satellite receiving dishes were destroyed and "three or four others will require repair," said Dan Fair, director-business affairs at KXAS. "They took quite a hit."

Hailstones blasted through about a dozen windows at the station and caused structural damage to the roof, he said. Water pouring in damaged office furnishings and equipment. Mr. Fair said he expects damage at the station to reach $250,000.

Property coverage written by Fireman's Fund will pay "all but a fraction" that represents the station's deductible, he said. The coverage was placed by Willis Corroon Corp. in Nashville, Tenn.

Business interruption losses that may result from the station being knocked off the air for about an hour "will probably be so slight they won't initiate a claim," he remarked.

The deadly storms raked eastward from Fort Worth into the Dallas area.

The city of Dallas was totaling damages late last week from hail and high water and estimates were not available. A spokeswoman said damage to city-owned buildings and contents is covered for replacement costs under a policy written by Royal Insurance Group of Charlotte, N.C.

The Dallas Zoo, which is owned by the city, suffered "in excess of $300,000" in property damage, according to a spokeswoman. A massive accumulation of mud washed into the zoo and the roof of the guest relations center collapsed.

The zoo lost only two animals, a pair of roseate spoonbills that perished in the storm.

Dallas Area Rapid Transit has a $100,000 self-insured retention with excess coverage written by an unidentified insurer.

Altogether, 94 DART vehicles were damaged by water and will cost an estimated $2.3 million to repair. It will cost an additional $656,000 to repair an employee parking garage and concrete fence, a DART spokesman said.

Two people were killed and 21 injured when the roof of a Haggar Apparel Corp. building collapsed in Dallas. The company would not release details of the incident.

Heavy rains also caused the roof to collapse at Mrs. Baird's Bakeries Inc., a family-owned bakery company in Dallas. Company officials declined to comment on damage costs or insurance that might cover repairs.

The emergency room at Baylor University Medical Center was flooded and remained closed late last week. "It was almost like a tidal wave," said William Jennings, director-risk management. "At one point, the water was standing 18 inches deep in the emergency room."

Mr. Jennings said water came from three directions, rolling 5½ feet over a loading dock to rush into the hospital.

"It's extensive," Mr. Jennings said of damage at the facility. "We're still finding flooding across the campus." He was unable to quantify the damage because it was unclear last week how much of the medical equipment, furniture and other damaged property was salvageable.

Mr. Jennings said Kemper National Insurance Cos. provides property and business interruption coverage with adequate limits to cover the loss.

One of the April 29 storms' biggest commercial casualties—AMR Corp., parent of American Airlines—last week indicated the storm losses would hurt-second quarter earnings. Commenting on airline industry analysts' estimates that the airline will incur losses of as much as $50 million from the April 29 hailstorm, Michael Stoeckert, manager of corporate insurance, said that projection "is in the ballpark" and most of that should be covered by insurance.

After pummeling north central Texas, the storm system retained its strength and moved east, dumping heavy rains into Louisiana early last week. The low-lying southeastern part of the state was the hardest hit.

In New Orleans, the mayor last week released figures showing that flood damage to city property had topped $76 million and was expected to grow. Risk Manager Robert Martin said the city has insurance but did not provide details.

The mayor's report estimated it would cost $34.9 million to repair city streets and the Regional Transit Authority suffered an estimated $30.8 million in losses that included lost revenue and damage to buses and facilities.

The Housing Authority of New Orleans suffered an estimated $4.2 million in damage to buildings, vehicles and equipment, and city-owned hospitals and clinics reported losses of around $3.2 million.

Damage to 29 of 60 city buildings was expected to cost just over $1 million to repair.

There was heavy flooding to homes and businesses in New Orleans and Jefferson Parish and thousands of cars were ruined by the rising water.

About 100 rooms at The Royal Sonesta Hotel in the French Quarter were damaged by water from a flooded courtyard, and basement flooding forced Harrah's Casino to close. Ten Norfolk Southern Corp. railroad cars were derailed in St. Bernard Parish by high winds that also demolished a Sherwin-Williams Co. paint store.

"When all that rain comes down in a short period of time, the drainage system can't cope," said Michael Wiltz, risk manager for St. Bernard Parish, which is east of New Orleans.

He said there was scattered damage to parish property and, though estimates were unavailable, the loss would be covered under property insurance written by Reliance Insurance Co. of Philadelphia. The parish policy carries a $25,000 deductible.

State Farm expects to handle 30,000 flood claims from property owners, while homeowners and auto owners are expected to file from 15,000 to 24,000 additional claims, a spokeswoman for the insurer said.

State Farm is sending 1,200 adjusters into the New Orleans area to handle claims.

GEICO had received 3,446 claims as of last Thursday, mostly from New Orleans area auto owners.

Allstate had about 1,000 claims last week from the Louisiana storm, all in personal lines.

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Michael Schachner contributed to this story.

Updates

First KWELM payment set

LONDON—The administrators of the scheme of arrangement for the so-called KWELM companies, whose failure remains one of the world's largest insurance insolvencies, have set aside $563 million for the first payment to policyholders who are owed some $10.6 billion.

The administrators for the five London United Investments subsidiaries will make an average initial payment of 6% of the total claims to about 100,000 policyholders. KWELM administrators Chris Hughes and Ian Bond of Coopers & Lybrand L.L.P. said that to date recoveries total $585 million (*BI*, July 18, 1994).

Fertilizer maker in bomb suit

OKLAHOMA CITY—ICI Explosives U.S.A Inc. was negligent in not using an additive to reduce the explosive potential of the fertilizer allegedly used in the Oklahoma City bombing, four survivors charge.

Their suit, filed last week in U.S. District Court, seeks class-action status and damages of more than $50,000 for each plaintiff, including victims, their families, and anyone whose property was damaged.

The bomb would not have been made if fertilizer-grade ammonium nitrate had been made with the additive, the suit claims, and alleges that bombing suspect Terry Nichols bought the fertilizer from the Mid-Kansas Co-op in McPherson, Kan., which obtained it from Dallas-based ICI Explosives.

An ICI spokesman said investigators have not told the company that its fertilizer was used in the bombing that killed 167 people and caused insured damages estimated at $125 million to $300 million (*BI*, May 8).

N.J. tort reform progresses

TRENTON, N.J.—New Jersey is closer to modifying its tort laws after GOP legislative leaders and Gov. Christine Whitman last week agreed to caps on punitive damages and a percentage threshold for joint and several liability, among other things.

A six-bill tort reform package was passed in December by the state Senate, but had stalled in the Assembly. With the new agreement, the package likely will be passed this summer, said Scott Garrett, chairman of the Assembly's Insurance Committee.

The agreement would limit jury awards for punitive damage to the greater of five times compensatory awards or $350,000, except in cases involving discrimination, sexual harassment, bias crimes and injuries caused by drunk drivers. The agreement would continue a state law restricting joint and several liability to those defendants found to be more than 60% responsible for wrongdoing, but would not apply to toxic tort and environmental claims.

Catastrophe exchange planned

PRINCETON, N.J.—A group headed by former New Jersey Insurance Commissioner Samuel F. Fortunato is developing an exchange for trading standardized catastrophe risk units.

Catastrophe Risk Exchange Inc., a New York corporation, has applied for a New York reinsurance intermediary license and is seeking subscribing insurers, reinsurers, self-insurers and brokers. It plans to be operating by Nov. 1. Intended to be a low-cost method of spreading catastrophe risk, CATEX is developing exchange rates for units of various cat exposures that would, for example, allow a company to swap Florida windstorm risks for California earthquake risks. CATEX will trade current insured property risks and will not deal in derivative products, its organizers say.

Arthur Andersen & Co. is assisting in developing exchange rates. Science Applications International Corp. of La Jolla, Calif., will provide data and transmission services to CATEX subscribers.

House mulls Medicare changes

WASHINGTON—Republicans on the House Budget Committee are considering various ways to raise revenue, including raising the Medicare deductible, boosting premiums and encouraging retirees to use managed care in an effort to slow future Medicare cost increases.

Under one option, the current $100 deductible for physician services would be doubled and then indexed to match inflation.

In addition, the current Part B monthly premium of $46.10 for physician services would be roughly quadrupled for individual retirees earning more than $70,000 and couples earning more than $90,000. Less well-to-do retirees would face lower premium increases. Future beneficiaries would face additional increases in Part B premiums unless they chose coverage through managed care plans.

Briefly noted

Insured property damage from the January **1994 Northridge, Calif., earthquake** has reached an estimated $11.7 billion, according to the Property Claim Services division of the American Insurance Services Group. . . .**Tempest Reinsurance Co. Ltd.** of Hamilton, Bermuda, has appointed John C. Etling, who is president and CEO of General Reinsurance Corp., as president, CEO and co-chairman. He will retain his Gen Re post until Nov. 30. . . .Florida Gov. Lawton Chiles has said he will veto a bill passed in the final hours of the Florida legislative session that repeals a year-old law enabling the state to **sue tobacco companies** for Medicaid-related costs. . . .A Pennsylvania Commonwealth Court last week approved a $47.2 million settlement that **Alexander & Alexander Services Inc.** agreed to pay policyholders of failed Mutual Fire, Marine & Inland Insurance Co. The settlement stems from losses principally generated by former A&A subsidiary Shand Morahan & Co. Inc. (*BI*, Nov. 8, 1993). . . .An unidentified suitor is offering to acquire Minneapolis-based **Employee Benefit Plans Inc.** for about $14.86 per share. EBP's stock rose $2.625 per share to $12 Thursday after the negotiations were revealed. EBP, though, said no deal is certain.

Fraud

Continued from page 2

which represents the plaintiffs in the class action.

Damages to the class plaintiffs total more than $20 million, said Timothy Cohelan, another plaintiffs lawyer with Cohelan & Khoury in San Diego.

The Wilson agency was the only agency defendant responding to the suit that did not settle, Mr. Brace said.

Wilson—which has E&O coverage with Peoria, Ill.-based RLI Insurance Co. with limits of $1 million per occurrence and $2 million aggregate—offered a $150,000 settlement before trial, but plaintiffs lawyers turned it down.

After a one-week trial and one day of deliberations, the jury on May 1 returned a $2 million verdict against Wilson, which consisted of compensatory damages for unpaid medical bills, interest and legal fees, Mr. Brace said.

The insurance agency will ask U.S. District Judge Milton Pollack to throw out the award, and, failing that, will appeal to the 2nd U.S. Circuit Court of Appeals, said John Gladych, a lawyer with Gladych, Hyland & Steevens in Newport Beach, Calif., representing Wilson.

Among other things, Mr. Gladych argued that the Champion health plan was covered by the Employee Retirement Income Security Act, which would bar claims against the agency.

Along with the award and other settlements, plaintiffs lawyers have obtained default judgments against many other individuals, agencies and insurers that failed to respond to the suit.

Most recently, Judge Pollack entered a $50 million default judgment against Old American and Promed, which stand to be trebled under federal racketeering laws. Previous judgments have included $10 million against the now-jailed Mr. Loeb and $6 million against two agencies that represented several offshore insurers.

The actual amount that plaintiffs will ultimately collect on the defaults remains uncertain: Old American, for example, still has $150,000 on deposit in California, but Mr. Brace said he is not aware of any other assets held by either Old American or Promed. BI

For the Record

CNA ratings lowered, Continental's stable

CHICAGO—Rating agencies are downgrading CNA Financial Corp. and affirming or upgrading ratings for Continental Corp. following last week's Continental shareholder approval of the $1.1 billion purchase.

Standard & Poor's Insurance Ratings Services lowered its ratings of CNA Financial's senior debt and preferred stock to A-from A+. The CNA intercompany pool's claims-paying ability rating was lowered to A+ from AA- and the Continental Assurance Co. intercompany pool's claims-paying ability rating was lowered to AA from AA+.

S&P affirmed the senior debt rating of Continental at BBB- and Continental's intercompany pool claims paying ability at A-.

All of the ratings have been removed from CreditWatch. The rating outlook on CNA Financial is stable and Continental's outlook is positive, S&P said. About $900 million of CNA's and $350 million of Continental's rated long-term debt is affected.

Moody's Investors Service downgraded CNA Financial's senior debt rating to A3 from A1. The financial strength ratings of CNA's property/casualty and life/health insurance units were downgraded to A1.

Moody's upgraded Continental's senior debt to Baa1 from Baa3. The agency also upgraded the financial strength ratings of Continental's property/casualty insurance subsidiaries to A2. Moody's also is continuing its review of CNA parent Loews Corp. for possible downgrade.

Duff & Phelps Credit Rating Co. downgraded CNA Financial's senior debt rating to A- from A+ and preferred stock rating to A- from A. CNA unit Continental Casualty Co.'s intercompany pool's claims-paying ability was downgraded to AA- from AA+ and Continental Assurance Co. to AA from AA+. Duff & Phelps does not rate Continental Corp.

A.M. Best Co. affirmed the ratings of 28 property/casualty companies affected by the merger, including the A rating of CNA's intercompany pool and the A- rating of Continental's intercompany pool.

Separately, Best downgraded two CNA life/health subsidiaries, Continental Assurance Co. and Valley Forge Life Insurance Co., to A from A+. Those downgrades are based primarily on the insurers' modest overall operating performance and earnings, Best said.

GA, Royal post better first-quarter results

LONDON—Improved U.S. underwriting is buoying several major U.K. insurers.

At Perth, Scotland-based General Accident P.L.C., net first-quarter income rose 64% to £80.9 million ($131.1 million) from £49.3 million ($73.2 million) in 1994.

Underwriting losses fell 76.8% to £13.7 million ($22.2 million) from £59.1 million ($87.8 million) in 1993. In U.S. underwriting alone, losses fell 30.3% to $40.3 million from $57.8 million. This reflected underlying improvement and much lower catastrophe losses.

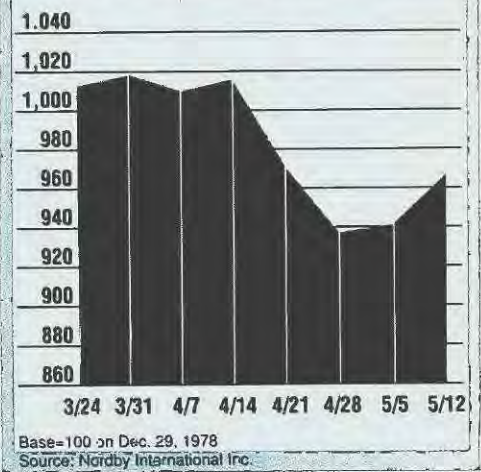
At Royal Insurance Holdings P.L.C. of London, net first-quarter income rose 58.1% to £78 million ($126.4 million) from £43 million ($63.9 million) in 1993.

Underwriting losses narrowed 72.9% to £26 million ($42.1 million) from £96 million ($142.6 million), including a 68.2% reduction in U.S. losses to £28 million ($45.3 million) from £88 million ($130.7 million). The turnaround was largely owing to a marked decline in weather-related and catastrophe losses to £7 million ($11.3 million) from £48 million ($71.3 million).

Information in brief

Toplis & Harding Inc. and McLarens Loss Adjusters have formalized a May 1994 joint marketing agreement that formed **McLarens Toplis Inc.** McLarens Toplis provides worldwide adjusting services for global insurance programs as well as developing claims-handling systems based on customer demand. Under the financial agreement announced last week, Chicago-based Toplis and London-based McLarens each will hold a minority share in the other (*BI*, Aug. 22, 1994). . . .The New York Insurance Department is reviewing **insurance company catastrophe modeling** after Superintendent of Insurance Edward J. Muhl expressed skepticism about the modeling techniques used. Some insurers have submitted models to the department to justify rate increases on coastal property. BI

BI Insurance Index



Catastrophe insurance option call spreads

As of May 12

Call spread	Price bid/ask	Rate on line %	Call spread	Price bid/ask	Rate on line %
Eastern September 1995			Western Annual 1995		
45/65	6.0/6.9	30/34.5	20/30	—/—	—/—
50/70	5.4/5.9	27/29.5	30/40	0.3/1.8	3/18
60/80	4/5.5	20/27.5	30/50	0.5/2.5	2.5/12.5
100[illegible]	[illegible]	8.5/12	50/70	0.6/1.8	3/9
150[illegible]	3.5/4	7/8	60/80	0.3/3.5	1.5/17.5

Total volume: 30   Total open interest: 2,163

For quotes, call the CBOT trading floor at 312-341-3342. For general information, call 312-435-3674.

Source: Chicago Board of Trade

British Issues

May 11 Companies	Price pence	P/E	Div. pence	Yield %	1 week high—low
Comml Union	594	11.9	33.0	5.6	594—572
Genl Accident	593	8.7	36.3	6.1	593—573
Gdn Royal Exch	197	N/M	10.3	5.2	197—190
Independent	282	7.3	11.9	4.2	282—281
Royal	327	6.2	15.0	4.6	327—315
Sun Alliance	353	11.9	19.7	5.6	353—338
Brokers					
Bradstock	82	9.2	7.1	8.6	82—82
Fenchurch	162	[illegible]	10.0	6.2	162—159
CE Heath	247	12.3*	20.0*	8.1	247—242
JIB Group	129	[illegible]	9.4	7.3	130—129
Lloyd Thompson	145	10.1	9.8	6.7	145—145
Lowndes Lmbrt	167	9.8*	10.4*	6.2	167—166
Nelson Hurst	143	11.1	8.3	5.8	145—143
PWS Holdings	18	N/M	0.8	4.4	18—18
Sedgwick Grp	166	15.2	8.1	4.9	166—163
Steel Brl Jones	104	12.3	11.3	10.9	104—104
Willis Corroon	164	N/M	8.3	5.1	164—156

Source: Philip Olsen, London   * Estimated 1994 data

BI Industry Stock Report MAY 8, 1995, THROUGH MAY 12 1995

Company	Exch.	Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
BROKERS												
Acordia Inc.	NYS	30.38	-2.02	-9.33	34.50	24.63	44	0.72	2.37	15	13.24	2.29
Alexander & Alexander	NYS	25.38	7.41	37.16	25.63	14.00	568	0.10	0.39	-13	6.08	4.17
E.W. Blanch Holdings Inc.	NYS	18.25	-2.67	-11.52	23.00	17.50	158	0.40	2.19	15	4.55	4.01
Gallagher Arthur J. & Co.	NYS	36.38	3.93	13.67	36.38	29.00	46	1.00	2.75	16	6.48	5.61
Hilb, Rogal & Hamilton	NYS	11.63	-1.06	-4.12	13.00	10.50	55	0.56	4.82	14	4.72	2.46
Marsh & McLennan	NYS	78.25	0.32	-1.26	88.75	71.25	955	2.90	3.71	15	19.40	4.03
Poe & Brown	NDQ	23.00	1.10	5.75	24.25	18.75	4	0.48	2.09	15	4.49	5.12
BROKERS	AVERAGE		1.0	4.3					2.6	11		
INSURERS/REINSURERS												
ACE Ltd.	NYS	25.88	-0.48	10.70	28.75	20.75	582	0.56	2.16	-11	22.45	1.15
Acceptance Insurance Cos.	NYS	15.88	0.00	5.83	18.00	12.00	91	0.00	0.00	9	9.83	1.61
AEGON N.V.	NYS	77.25	-1.75	21.65	80.50	51.00	22	9.08	11.75	12	43.84	1.76
Aetna Life & Casualty	NYS	59.88	2.13	27.06	60.25	42.25	2002	2.76	4.61	12	57.21	1.05
AFLAC Inc.	NYS	40.00	0.00	25.00	42.75	31.38	1345	0.52	1.30	13	57.21	0.70
Allied Group Inc.	NDQ	29.25	0.43	18.18	31.00	22.00	197	0.68	2.32	6	23.43	1.25
Allmerica Prop. & Casualty	NYS	20.38	4.49	20.74	20.50	14.25	375	0.16	0.79	9	19.45	1.05
Allstate Corp.	NYS	31.38	1.21	32.11	31.50	22.63	1988	0.78	2.49	11	19.60	1.60
American General	NYS	33.25	-1.48	17.70	34.25	25.63	1237	1.24	3.73	13	20.39	1.63
American Heritage Life Ins.	NYS	18.50	-1.66	-2.63	19.75	16.25	41	0.68	3.68	10	12.42	1.49
American Indemnity/Fin'l	NDQ	11.75	-2.59	16.05	12.75	10.00	18	0.28	2.38	3	15.92	0.74
American International	NYS	113.88	4.95	16.20	114.25	86.38	2584	0.46	0.40	16	49.75	2.29
American Re Corp.	NYS	38.75	-0.96	20.16	39.88	25.25	1141	0.32	0.83	16	16.85	2.30
Aon Corp.	NYS	36.88	1.03	15.23	38.00	29.25	471	1.36	3.69	11	21.96	1.68
Argonaut Group	NDQ	29.88	-0.42	5.75	31.25	26.50	74	1.32	4.42	10	29.80	1.00
AVEMCO Corp.	NYS	17.50	0.72	13.82	18.25	13.38	26	0.44	2.51	14	6.30	2.78
Baldwin & Lyons Inc.	NDQ	16.25	0.00	10.17	17.63	14.00	7	0.32	1.97	12	13.56	1.20
Berkley W.R. Corp.	NDQ	37.13	-2.94	-1.00	42.00	32.50	310	0.48	1.29	20	36.47	1.02
Berkshire Hathaway Inc.	NYS	22950.00	0.66	12.50	25200.00	16100.00	0	0.00	0.00	55	9157.79	2.51
Capital RE Corporation	NYS	24.00	2.13	-12.33	27.38	19.88	154	0.20	0.83	9	21.48	1.12
Capsure Holdings Corp.	NYS	13.63	5.83	-6.84	16.13	12.13	109	0.00	0.00	13	13.72	0.99
Chubb Corp.	NYS	83.88	1.82	8.40	84.88	68.63	1357	1.96	2.34	12	48.40	1.73
CIGNA Corp.	NYS	74.25	2.59	16.70	76.38	59.00	877	3.04	4.09	7	80.98	0.92
CNA Financial Corp.	NYS	82.13	1.70	26.59	82.50	60.00	161	0.00	0.00	19	73.33	1.11
Continental Corp.	NYS	19.88	0.00	4.61	20.13	12.00	369	0.00	0.00	-2	29.69	0.67
EMC Insurance Group Inc.	NDQ	10.50	-2.33	10.53	10.88	8.50	3	0.52	4.95	7	10.77	N.A.
Emphesys Financial Gr. Inc.	NYS	25.25	-4.27	-20.47	39.50	25.25	283	0.60	2.38	7	N.A.	N.A.
EXEL Ltd.	NYS	46.50	0.00	17.72	47.50	36.00	351	1.32	2.84	21	31.62	1.47
Fremont General Corp.	NYS	25.25	9.19	8.02	26.13	18.88	638	0.88	3.49	7	22.90	1.10
Frontier Insurance Group	NYS	25.00	3.09	14.29	37.50	16.75	237	0.48	1.92	19	14.94	1.67
Gainsco Inc.	ASE	10.00	0.00	21.21	11.00	7.25	136	0.04	0.40	13	3.79	2.64
General RE Corp.	NYS	134.00	2.98	8.50	135.38	104.50	635	1.96	1.46	15	57.17	2.34
Guaranty National Corp.	NYS	16.25	-0.76	-11.56	18.50	14.63	160	0.48	2.95	9	11.84	1.37
Harleysville Group	NDQ	24.13	1.05	-0.52	26.50	19.75	67	0.68	2.82	10	20.18	1.20
Hartford Steam Boiler	NYS	45.38	2.83	13.79	47.38	35.88	123	2.20	4.85	17	14.62	3.10
HCC Insurance Holdings	NDQ	22.75	-1.09	8.33	25.75	17.25	14	0.00	0.00	13	10.75	2.12
Home Holdings Inc.	NYS	9.75	0.00	4.00	14.50	3.00	47	0.00	0.00	-1	22.36	0.44
ITT (Hartford Group)	NYS	113.13	5.23	27.64	113.50	77.00	2997	1.98	1.75	13	49.95	2.26
Lincoln National	NYS	43.13	3.92	23.21	43.88	34.63	567	1.72	3.99	13	31.99	1.35
Markel Corp.	NDQ	53.88	0.94	29.82	54.75	39.00	47	0.00	0.00	15	25.15	2.14
Mid Ocean Ltd.	NDQ	30.13	4.78	10.55	30.50	22.25	219	1.00	3.32	12	23.24	1.49
Mutual Risk Mgmt. Ltd.	NYS	32.75	3.15	24.76	34.00	21.13	235	0.32	0.98	18	9.11	3.59
NAC Re Corp.	NDQ	32.38	0.78	-3.36	35.25	24.25	51	0.16	0.49	16	19.75	1.64
National Re Corp.	NYS	31.13	3.75	18.57	31.75	22.25	[illegible]	0.16	0.51	18	17.31	1.80
Navigators Group	NDQ	12.88	-4.63	-11.21	19.75	12.75	41	0.00	0.00	-3	10.21	1.26
Nobel Insurance Ltd.	NDQ	9.38	-0.66	13.64	9.63	7.63	34	0.20	2.13	4	6.84	1.37
Ohio Casualty Corp.	NDQ	31.25	-3.85	10.62	34.25	26.50	810	1.52	4.56	12	24.68	1.27
Old Republic Int'l	NYS	25.88	1.47	21.76	26.00	18.88	240	0.48	1.86	10	24.60	1.05
Orion Capital Corp.	NYS	38.00	5.56	7.80	38.00	28.13	120	0.80	2.11	9	25.86	1.47
Partner Re Holdings Ltd.	NDQ	23.56	-1.31	13.55	25.25	18.50	533	0.40	1.70	7	N.A.	N.A.
Penn-America Group Inc.	NDQ	8.13	1.56	10.17	8.50	6.50	19	0.00	0.00	9	6.21	1.31
Phoenix RE Corp.	NDQ	23.00	-8.91	-18.58	29.25	21.75	499	0.60	2.61	4	22.86	1.01
Provident Life	NYS	25.00	12.99	14.94	29.88	20.50	267	0.72	2.88	11	27.09	0.92
Reliance Group Holdings	NYS	6.25	8.70	20.48	6.75	4.88	1364	0.32	5.12	10	3.48	1.80
Reliastar Financial Corp.	NYS	35.88	3.61	23.71	36.25	27.00	299	1.00	2.79	10	24.81	1.45
RLI Corp.	NYS	25.63	3.02	25.00	25.75	19.88	52	0.60	2.34	10	20.51	1.25
St. Paul Companies	NYS	50.13	3.62	12.01	51.88	38.00	1322	1.60	3.19	9	31.88	1.57
SAFECO Corp.	NDQ	58.00	-1.49	11.54	59.75	46.75	338	2.12	3.66	12	46.94	1.24
SCOR U.S. Corp.	NYS	8.75	6.06	4.48	12.25	7.50	131	0.20	2.29	15	13.60	0.64
Seibels Bruce Group	NDQ	1.00	-5.88	-60.00	3.50	0.88	125	0.00	0.00	-1	1.05	0.95
Selective Ins. Group	NDQ	29.00	-1.28	14.85	30.00	23.25	69	1.12	3.86	9	23.36	1.24
Sphere Drake Holdings	NYS	16.13	4.03	16.22	17.00	10.75	46	0.16	0.99	8	13.15	1.23
TIG Holdings	NYS	23.13	2.21	23.33	23.50	17.00	431	0.20	0.86	21	17.25	1.34
Titan Holdings, Inc.	NYS	10.63	-3.41	8.97	11.38	7.75	66	0.28	2.64	8	9.31	1.14
Tokio Marine & Fire	NDQ	58.63	-2.49	-3.50	66.00	[illegible]	44	0.44	0.75	-	57.72	1.02
Torchmark Corp.	NYS	39.25	1.62	13.77	44.50	32.38	506	1.12	2.85	11	17.49	2.24
Transatlantic Holdings	NYS	65.13	2.76	16.55	65.13	47.75	123	0.40	0.61	13	32.43	2.01
Transnational Re Corp.	NDQ	19.88	-1.85	-15.43	25.50	18.75	362	0.00	0.00	6	N.A.	N.A.
Travelers Corp.	NYS	42.25	-0.88	30.50	44.00	30.38	3524	0.80	1.89	11	24.26	1.74
Trenwick Group Inc.	NDQ	43.50	-1.69	2.65	45.75	36.00	106	1.12	2.57	11	29.20	1.49
United Fire & Casualty	NDQ	28.50	2.70	3.01	29.81	25.66	2	0.80	2.81	8	28.96	0.98
Unitrin	NDQ	48.75	1.04	13.37	51.50	36.50	261	2.00	4.10	15	38.64	1.26
UNUM Corp.	NYS	40.50	-4.14	7.28	50.00	35.13	1785	1.06	2.62	21	27.78	1.46
US Facilities Corp.	NDQ	14.63	-0.85	46.25	15.13	9.13	242	0.20	1.37	10	11.07	1.32
USF&G Corp.	NYS	16.63	9.92	23.15	16.63	12.13	4710	0.20	1.20	7	10.04	1.66
USLIFE Corp.	NYS	38.00	0.33	8.96	39.00	30.88	136	1.32	3.47	9	40.82	0.93
Washington National	NYS	19.88	1.27	4.61	23.13	17.75	77	1.08	5.43	8	23.61	0.84
Zenith National Ins.	NYS	21.00	3.70	-7.69	27.38	19.38	26	1.00	4.76	11	17.54	1.20
Zurich Reinsurance Centr.	NYS	30.13	1.26	4.33	30.88	25.00	48	0.00	0.00	-41	22.26	1.35
INSURERS/REINSURERS	AVERAGE		1.1	11.0					2.4	11.1		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	NDQ	22.00	8.64	-14.56	31.00	19.50	2982	0.00	0.00	12	12.22	1.80
Humana Inc.	NYS	21.00	12.00	-7.18	27.13	15.88	13124	0.00	0.00	17	6.04	3.48
Pacificare Health Sys.	NDQ	64.25	4.05	-1.34	79.50	44.25	208	0.00	0.00	20	14.21	4.52
Safeguard Health Enter.	NDQ	10.56	0.60	14.19	14.75	8.25	7	0.00	0.00	70	6.16	1.71
Sierra Health Services	NYS	25.50	2.51	-19.37	33.63	21.25	856	0.00	0.00	14	6.04	4.22
United Healthcare Corp.	NYS	37.88	6.69	-16.07	55.33	34.13	9209	0.03	0.08	22	6.57	5.76
U.S. Healthcare	NDQ	23.88	5.75	-27.58	49.00	26.50	21747	1.00	3.35	12	5.04	5.93
Wellpoint Health Networks	NYS	29.63	3.49	1.72	39.00	24.25	468	0.00	0.00	14	12.73	2.33
HMOs	AVERAGE		5.5	-8.8					0.4	20		
ALL COMPANIES	AVERAGE		2.5	2.2					2.5	14		

Top advancing issues: Provident Life; Humana Inc.; USF&G Corp. Leading decliners: Phoenix RE Corp.; Seibels Bruce Group; Navigators Group. Most active issue: U.S. Healthcare. The BI index rose 2.7%; the Dow Jones 30 industrials rose 2.0%; the S&P 500 increased 1.0% and the NYSE Composite gained 1.1%.

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