

Business Insurance

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20th Century quake losses jump but raising rates an uphill battle

LOS ANGELES—After losing nearly two-thirds of its statutory surplus to losses from the Los Angeles earthquake, 20th Century Insurance Co. is begging California Insurance Commissioner John Garamendi to let it triple rates for earthquake coverage.

However, the commissioner, who has rejected rate hikes totaling \$4 billion since passage of Proposition 103, says he will "continue to reject rate increases which are not absolutely necessary."

Anticipated total gross claims for 20th
Continued on next page

Superfund reform advances

Subcommittee unanimously passes compromise bill, but opposition looms

By MARK A. HOFMANN

WASHINGTON—Even though the Clinton administration's compromise Superfund reform bill sailed through a key House panel last week, a running clock and efforts by the bill's opponents still could stymie reform efforts this year.

So little time remains in the 1994 legislative session that any delay could effectively kill Superfund reform this year.

Despite at least lukewarm support from insurers, environmentalists and others, the bill faces stiff opposition from a variety of interests. In fact, opponents of the legislation hope to have an alternative measure

ready within the next few days.

Serious consideration of alternatives to the Clinton Superfund proposal could spell doom for the reform effort this year.

Still, that effort received a big boost Wednesday as the House Transportation and Hazardous Waste Subcommittee took less than two hours to unanimously approve a lightly amended version of the White House's most recent bill.

H.R. 3800 would create an insurer-financed "environmental insurance resolution fund" to discourage coverage litigation and would leave intact the law's system of retroactive and joint and several liability (BI, May 9).

It would also create a system of non-binding allocation to determine who pays what portion of the cost of cleaning up a particular site, liberalize the remedy selection process for individual sites and promote greater community involvement in Superfund decisions.

The subcommittee unanimously approved a series of amendments that would, among other things, allow states to seek permission to run cleanup programs at individual Superfund sites, ask the Environmental Protection Agency to carry out a study of "bad actor" cleanup contractors to prevent fraud and promote uniformity of Superfund pro-

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Photo by Alvis Uplis/Image Bank

Spotlight on
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Firms continue to trim retiree health benefits

By CHRISTINE WOOLSEY

NEW YORK—In an effort to reduce staggering retiree health care liabilities, employers continue to terminate retiree medical plans or require retirees to pay more for their coverage.

As employers increasingly cut back on retiree medical care, Congress likely will be pressured to pass a health care reform bill that assures affordable coverage for retirees, particularly those younger than 65 who are not yet eligible for Medicare.

Only 42% of large employers—

those with 500 or more workers—offer health care coverage to retirees under age 65, according to a survey to be released today. And, just 35% of those companies offer coverage to Medicare-eligible retirees age 65 and older.

Smaller firms are even less likely to offer coverage, A. Foster Higgins & Co. Inc. reports in its annual survey of retiree health plans. A mere 8% of employers with 500 or fewer workers provide coverage to pre-65 retirees, while just 9% offer it to Medicare-eligible retirees 65 and older.

Foster Higgins polled 2,395 em-

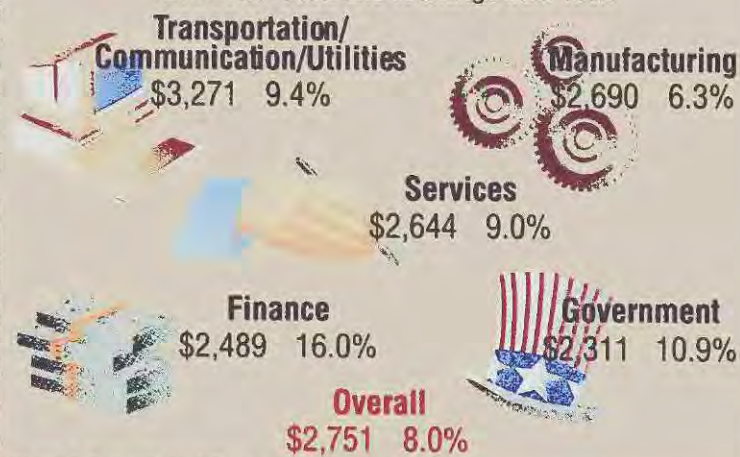
ployers, of which 1,767 have 500 or more employees. Because the consultant changed its survey methodology, comparisons with data in previous years are not available in all cases.

However, the data do show that rising health care costs and Financial Accounting Standard 106 requirements are causing employers to re-examine their role in providing retiree health care coverage, said Stephne Behrend, a managing consultant in Foster Higgins' Stamford, Conn., office.

Within the past two years, 7%
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Trying to retire inflation

While 1993 increases in retiree health care are among the lowest in years, they still outstrip general inflation. 1993 health costs and % change from 1992



Source: A. Foster Higgins & Co. Inc.

GRAPHIC BY MIKE GARVEY

Ruling complicates liquidation process for Union Indemnity

By DOUGLAS McLEOD

NEW YORK—An appellate ruling could more than double the size of Union Indemnity Insurance Co.'s insolvency and jeopardize a 5-year-old settlement between the New York Insurance Department and the insurer's former parent, Frank B. Hall & Co. Inc.

An intermediate New York appeals court this month affirmed a 1992 lower court ruling voiding a group of Union Indemnity's reinsurance contracts, finding that the now-defunct insurer fraudulently misled the reinsurers about its financial condition.

The lower court had acknowledged that if the reinsurance contracts were voided, Union Indemnity's insolvency could hit \$300 million. The insurer was declared insolvent by \$138.5 million at year-end 1984 and ordered liquidated in 1985.

The appellate ruling also raises questions about Hall's 1989 settlement of charges that it was responsible for the collapse. Hall, a former Reliance Group Holdings Inc. unit, and its directors and officers liability insurer agreed to pay \$48 million to the Insurance Department, which is overseeing Union Indemnity's liquidation

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Prescription for savings

Benefit managers hold bargaining power with providers

By CHRISTINE WOOLSEY

Swift drug industry consolidation is creating a buyer's market in prescription drug benefit programs.

Most reasonable employer requests for discounts and deals are likely to be accommodated by drug makers, pharmacy benefit management firms, and possibly retail and mail-order pharmacies, all of which are eager to protect their share of a rapidly consolidating and increasingly competitive market.

The most recent combination involves pharmaceutical manufacturer SmithKline Beecham Corp., which is acquiring Diversified Pharmaceutical Services Inc., a cost containment firm, for \$2.3 billion. That marks the second time in less than a year that a major drug maker has swallowed a prescription drug management

firm—but it's certainly not the last, consultants and industry analysts predict.

More mergers—and more strategic alliances like that announced between Pfizer Inc. and managed care firm Value Health Inc.—are expected as the pharmaceutical industry begins to evolve into a market dominated by bigger and possibly more efficient players.

"Employers shouldn't react to the latest two events in isolation. They should realize the whole industry will look a lot different 12 months from now," commented Kim Babbitt, a Towers Perrin consultant in Houston.

"We are looking at a wide variety of integration," she said. Drug makers' appetite won't stop at prescription drug management firms. They may eventually gobble up retail and mail-order distribution firms as well, she predicted.

"We also may see a collapse

among the drug makers themselves," she said. "There are about 40 different companies now but only 10 major players. We'll see that consolidate down to three or four major players."

Pharmaceutical giant Merck & Co. Inc. turned the prescription drug business on its head last August with its \$6 billion acquisition of Medco Containment Services Inc., a prescription drug cost containment firm. Employers, consultants and analysts warned then that potential conflicts could arise if Merck pressured Medco to push its products over its competitors' drugs (BI, Aug. 9, 1993).

"Manufacturers spent a long time trying to avoid giving discounts. Then pharmacy management firms came on the scene like gangbusters and employers started gravitating toward discounted plans," explained Jim

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Updates

20th Century pleads its case

Continued from previous page

Century, one of California's largest writers of earthquake insurance, are now estimated to reach \$600 million, up from earlier estimates of \$325 million (BI, April 18).

Public hearings began May 11 on 20th Century's request for earthquake rate hikes averaging 172% statewide for homes and 400% for condominiums.

The Woodland Hills, Calif.-based insurer also is trying to obtain \$500 million in reinsurance as a cushion against the risk of another serious quake. But the reinsurance premium would be about \$65 million a year, nearly three times what 20th Century collects in annual earthquake insurance premiums.

Under its current catastrophe reinsurance program, which was raised to \$200 million in April (BI, April 18), the insurer's retention is 25% of each loss after a \$10 million deductible is met.

As a result of the earthquake losses, 20th Century revised its first-quarter 1994 earnings to a loss of \$340 million or \$6.61 per share.

The insurer is under review by both A.M. Best Co., which lowered its rating to A- from A+, and Standard & Poor's Corp., which dropped its rating to BBB+ from AA.

Metzenbaum's 'Bill of Rights'

WASHINGTON—Sen. Howard Metzenbaum's long-awaited pension rights bill would give workers new rights and increase employer costs.

Months before his planned retirement, the Ohio Democrat last week unveiled "The Pension Bill of Rights." It would require employer contributions to defined contribution plans to vest immediately and would virtually eliminate employers' ability to integrate or reduce retirees' pension benefits by the Social Security benefits they receive.

The bill also would generally allow all workers at a company to participate in qualified plans that are primarily intended for highly paid workers.

If an employer violated the Employee Retirement Income Security Act, courts would have the authority to award plaintiffs "other appropriate relief." ERISA now only generally allows plaintiffs to recover actual losses and, at the discretion of the court, legal fees.

GM to reduce underfunding

WASHINGTON—General Motors Corp. plans to contribute an additional \$10 billion in cash and stock to reduce underfunding in what is now the most underfunded of all private pension plans.

GM said it would contribute 177 million Class E shares, worth about \$6 billion, to its hourly workers plan, which at the end of last year had more than \$22 billion in unfunded liabilities.

GM also would contribute \$4 billion in cash in two separate payments. The last payment would be made by Sept. 30, 1995.

The arrangement involving the contributions of GM stock to the plan still needs the approval of federal pension regulators.

Lloyd's aid for '91 losses

LONDON—Lloyd's of London is offering hard-hit members a chance to borrow up to 3% of their potential 1994 premium capacity as an "interim dividend" to help offset 1991 global losses, which the market will announce tomorrow.

Up to 279 million pounds (\$412.8 million) is available, based on individual members' total 1994 capacity of 9.3 billion pounds (\$13.76 billion), out of the market's total 10.9 billion pounds (\$16.13 billion) in capacity.

This is the second year in a row that Lloyd's has allowed members to effectively borrow from potential future profits to pay for current losses.

Lloyd's syndicate analyst Chatset Ltd. last week predicted Lloyd's global loss for 1991 would hit 2.55 billion pounds (\$3.77 billion)—1.13 billion pounds for the 1991 underwriting year alone and 1.42 billion pounds for deterioration on open accounts—when it is announced tomorrow. Members probably will have to find 1.79 billion pounds (\$2.65 billion) in cash or liquidated assets to pay cash calls this summer, Chatset warned.

Wide gulf in WellPoint talks

WOODLAND HILLS, Calif.—Blue Cross of California and state officials remain hundreds of millions of dollars apart in their ongoing dispute over Blue Cross' 1993 creation of its for-profit unit, WellPoint Health Networks Inc.

In a letter to Blue Cross, the state Department of Corporations recently demanded that the insurer pay more than \$1 billion in cash and stock to comply with a state law requiring companies that "convert" to for-profit status to donate their fair value to charity.

In response, Blue Cross—which insists the creation of WellPoint was a "restructuring," not a conversion—is proposing giving \$25 million and stock worth about \$384 million to charity this year. Blue

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Errors & omissions

• Larry Diehl was named director of the U.S. Virgin Islands Department of Banking and Insurance in March. A story in the April 18 issue incorrectly reported that this post was vacant.

• An article that appeared in the April 25 issue failed to identify Dr. David Eddy as a medical doctor. In addition, the story should have reported that U.S. population growth is approximately 0.9% per year.

Medicare data bank law loses some of its sting

By JERRY GEISEL

WASHINGTON—Employers that make a good faith effort to comply with the Medicare data bank law will not be fined even if they are unable to provide required health care coverage information, a federal agency says.

The Health Care Financing Administration said employers that can prove they established a systematic method to obtain coverage information from employees will not be penalized if employees

refuse to provide the information.

That exemption addresses one of employers' primary concerns about the Medicare data bank law.

Long-awaited compliance guidelines were published in the May 10 edition of the Federal Register.

Under the law, employers will be required as of next year to tell HCFA the names, addresses and Social Security numbers of employees and dependents, as well as the specific health plans in which

they were enrolled during the year. The information then will be put into a Medicare data bank, which will be used to spot claims that should be paid by employer health plans, not Medicare.

Many employers say they do not maintain Social Security numbers for dependents and have no way of forcing employees to supply that information. Without the exemption in the guidelines, employers could have been fined up to \$1,000 per employee or dependent.

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Scaling back mandate

Kennedy reform plan would let small employers off the hook

By JERRY GEISEL

WASHINGTON—Reading the political tea leaves, the original Senate sponsor of an employer health care mandate is proposing a milder health care contribution requirement for small, low-wage employers.

Looking to defuse potent small-employer opposition as well as win at least a modicum of Republican support for reform, Senate Labor and Human Resources



Committee Chairman Edward M.

Kennedy, D-Mass., last week

unveiled a proposal that

would set a multi-tiered premium contribution

schedule to allow the smallest employers to make the smallest contributions.

"Our objective is to broaden our constituency as much as possi-

ble," Sen. Kennedy said last week.

Under the Kennedy proposal, which will be considered by his committee this week, most em-

ployers would be required to pay 80% of employees' health care

premiums. But small, low-wage employers—firms with fewer than

six employees and average wages of less than \$24,000 per employ-

ee—would be exempt from paying premiums. Instead, these so-called Mom and Pop employers

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Oklahoma suit says insurer cash traded for bad loans

State seeks to recover funds

By DOUGLAS McLEOD

OKLAHOMA CITY—Oklahoma regulators charge several businessmen with siphoning \$8.6 million in cash from two now-defunct life insurers and replacing it with virtually worthless mortgage loans.

A lawsuit filed by the Oklahoma Insurance Department last month names five men involved with a 1992 takeover of the failed Unison

International Life Insurance Co. and its subsidiary, Bonneville Life Insurance Co.

The defendants include the companies' former president, one of the insurers' directors and three of their financial backers in the 1992 acquisition.

Regulators also plan to name the insurers' former chairman and general counsel, but any litigation against them is temporarily stayed by bankruptcy filings in

Georgia, court filings say.

The suit charges that the defendants worked together to gain control of Unison—formerly known as Professional Investors

Life Insurance Co.—in 1992, while the company was under Oklahoma department conservatorship.

After the takeover was approved, Unison and Bonneville wired \$8.6 million to a group of the defendants in exchange for

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GAO reports on Blues plans

WASHINGTON—Improving state regulation of the nation's Blue Cross & Blue Shield plans will "become increasingly important and challenging" under health care reform, warns a General Accounting Office report.

The report is based on the GAO's examination of 11 plans rated weak or very weak by insurer rating agency Weiss Research Inc. Mismanagement is to blame for some of the plans' current financial problems, the report said. But the GAO also

found that "regulators' oversight efforts have been hampered by the conflict in their roles of ensuring plans' solvency and ensuring that plans offer affordable premiums."

But with health reform pending, "it is essential that state insurance regulators have the tools to enforce new requirements on Blues plans and other insurers," said the GAO.

Although the report was not critical of state regulation in general, the GAO pointed to state mandates as a significant reason that some Blues

plans found themselves on shaky financial ground. Health care reform could exacerbate these problems by, among other things, requiring every

health insurer to accept all applicants on a community-rated basis.

The report was prepared at the request of Sen. Sam Nunn, D-Ga. Sen. Nunn chairs the Permanent

Subcommittee on Investigations, which has been looking into the financial problems of individual Blues plans for about two years.

—By Mark A. Hofmann

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Public Risk Management

Municipal liability underwriters going to town on coverages

Eager to tap market, insurers expanding coverage without raising premiums

By GAVIN SOUTER

The municipal liability insurance market is soft and getting softer. Competition among underwriters has led to flat rates and expanded coverage being granted with no increase in premiums, brokers say.

Insurers that once shied away from volatile types of public entity coverages, like sexual harassment and occurrence-based coverage for public officials liability, are becoming more flexible, brokers say.

Although the types of coverage are increasing, insurers say their profit margins are getting even thinner.

But, the good risk management techniques that are frequently implemented by public-sector organizations make municipal liability business attractive even when insurance prices are at rock bottom, underwriters and brokers agree.

"The market is very soft right now and there is a lot of capacity for municipalities to buy first-dollar coverage, coverage with retentions and high-level excess coverage," said Steve Ring, product manager-municipal liability at Arthur J. Gallagher & Co. in Itasca, Ill.

The low rates apply to all areas of municipal liability insurance, including general liability, automobile liability, law enforcement liability and public officials liability, he said.

On average, rates for all municipal liability coverages have fallen by about 5% annually over the past two years, said Joe Cantu, manager of product development at Titan Indemnity Co. in San Antonio.

Many of the companies covering municipal risks are aggressively protecting their market share, Mr. Ring said.

And, several other insurers are anxious to enter the market, said Mark Ferrano, vp in the national government group at Johnson & Higgins in New York.

"We are contacted on a weekly basis by insurance companies that are interested in developing new products for public entities," he said.

Any rate increases imposed on individual municipalities are usually claims-driven, Mr. Ferrano pointed out.

While there is limited room for rate de-

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Photo by Peter Miller/Image Bank



Photo by Max Hilaire/Image Bank

Special events can explode with risk

Summertime living isn't easy for public risk managers

By DEBORAH SHALOWITZ COWANS

Fireworks exploding in the night sky. Roller coasters whizzing through the air at the county fair. Vendors grilling hot dogs and corn on the cob at the sidewalk festival.

Air shows. Water shows. Horse shows. Antique shows.

Ah, the fun of summertime special events. . . Well, fun for spectators, that is.

For public entity risk managers special events mean a host of loss control challenges and lots of extra work.

Before the first ticket is sold, risk managers must contemplate all possible exposures to the entity from these special activities, plan appropriate loss prevention programs and consider whether they can transfer any of their risks via insurance or other mechanisms, risk management experts advise.

To be successful, this planning must begin months in advance of the event, they add.

In planning for an event, "Go through a mind-bending act, being somewhat exotic in terms of your liabilities," suggested Robert Bieber, vp for the Northeast region of Johnson & Higgins GovernmentGroup in Stamford, Conn., and a member of the *Business Insurance Risk Management Honor Roll* when he was risk manager of Westchester County, N.Y.

Draw a map and an itinerary for all of the events and then ask what-ifs, recommended William DePersis, director of risk management for Onondaga County in Syracuse, N.Y.

Onondaga County offers an average of one special event each week during the summer, including hot-air balloon festivals, antique shows, concerts and water extravaganzas, he said. The county's parks and recreation department "works on these things

12 months a year," and the risk management department is called in to help when necessary, Mr. DePersis said.

Each year, after all the summer events are over, the county looks at the claims and accident and injury reports that were submitted from the events and assesses what can be done to improve risk management for the following year, he said.

Special event planning also should be a team effort with all public agencies that will be involved.

In Chicago, for example, the city's risk management department works closely with the Chicago Park District, which organizes many of the city's summer events, as well as the city's purchasing department and the legal department, said Caroline Cogtella, risk manager for the city. Chicago sponsors numerous summer special events, some of which attract hundreds of thousands of people daily and last for more than a week.

Mr. Bieber also advised coordinating risk management activities with police, fire and other emergency services personnel. For example, risk managers must consider how many police officers will be needed at an event, where they should be stationed, if a mobile headquarters is needed and how officers will communicate with each other.

In addition to plotting their own exposures, risk managers also must make sure that vendors and equipment operators do not pose any added risks.

For example, risk managers should make sure that all carnival rides, like ferris wheels and roller coasters, are mechanically and electrically sound. And, bleachers or other temporary seating as well as temporary structures like tents also should be inspected.

Extra care also must be taken when food

is sold at summertime events.

"The only people who should be permitted to vend or distribute food should have licenses from the local health department," recommended Allen Hyman, principal and senior vp of Johnson & Higgins' GovernmentGroup in Houston.

Mr. Hyman, who previously served as risk manager for Evanston, Ill., noted that during summer special events, there is a risk that food will sit out in the sun for long periods of time or will not be stored at the proper temperature, resulting in spoilage and possible bacterial contamination.

Also, it is a good idea to make sure that food vendors are not situated right next to animal exhibitions or attractions, pointed out Cindy Smith, risk coordinator for Chesterfield County, Va.

The risks associated with fireworks displays should be grouped in a special category by themselves, experts say.

"Use as a vendor a very reputable fire display group," recommended J&H's Mr. Bieber. "If you can't get your hands on a company that has financial responsibility through an insurance mechanism, don't do the event. If they don't have financial responsibility, rid yourself of the risk and go watch someone else's fireworks display."

Because of heightened awareness of the risks associated with pyrotechnical displays, there are relatively few accidents, experts agree.

Many states require pyrotechnicians—the professionals who design and deploy fireworks displays—to have licenses or permits, Mr. Hyman said. Regardless of the pyrotechnicians' credentials, though, public entities sponsoring a fireworks display should always work closely with local fire marshals to minimize the risk of fire damage or

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Civil rights, wrongful termination and employment practices lawsuits are of increasing concern to risk managers... Page 15

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Juries in recent years have generally been handing out smaller awards in cases in which government entities are defendantsPage 18

Recent rulings by a federal appeals court may widen public entities' liability for accidents that occur during police chasesPage 19

A special unit set up by the Los Angeles city attorney's office to handle lawsuits against police got off to a spectacular start—but that may be short-lived.....Page 20

Public risk management varies little down under, as the Australian Public Risk & Insurance Management Assn. meeting shows.....Page 25

Liability

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creases for municipalities, insurers are expanding the coverage offered with little or no increase in premium, he said. For example, underwriters are now more willing to cover sexual harassment incidents by public employees.

"The perception has been that it's an explosive, non-traditional line of coverage and underwriters have not wanted to cover it...but the experience has not been that bad, and underwriters recognize that," Mr. Ferrano said.

Another example of expanded coverage is the inclusion of wrongful dismissal under personal injury coverage, said Gallagher's Mr. Ring.

Some underwriters are also offering a choice between occurrence

forms and claims-made forms for public officials liability coverage in an attempt to attract more business, he said.

Policyholders favor occurrence forms because they allows policyholders to change insurers more easily. However, underwriters have preferred to underwrite public officials liability coverage on a claims-made form due to the long-tail nature of the business, he said.

"The market has not totally accepted occurrence forms, but some underwriters are expanding their coverage in this way."

Underwriters would still prefer to cover public officials on claims-made forms, confirmed Rhonda Miller, vp-marketing at Discover Reinsurance Co. in Farmington, Conn.

"We still feel that claims-made is the best way to write all (errors and omissions) business, but in a

couple of instances, we will consider doing it on an occurrence basis," she said.

Discover Re was established in 1990. It writes municipal liability coverage on an excess and reinsurance basis. The company offers limits of \$5 million with a minimum attachment point of \$250,000, she said.

Other recent developments include more extensive coverage of defense costs, said David Randall, senior vp in the public entity division at Sedgwick James Inc. in Columbia, S.C.

"Insurers are now more willing to cover defense costs outside of the coverage limits," he said.

For example, previously if the defense costs of a dispute were \$100,000, the policyholder's coverage limit would be reduced by \$100,000. Now the coverage limit often remains the same regardless

of the amount paid for defending the case, Mr. Randall said.

Insurers' current enthusiasm for municipal liability business starkly contrasts the market in the mid-1980s when, possibly more than any other coverage, capacity for municipal liability insurance all but dried up, brokers and insurers say.

Municipalities were forced to self-insure or enter pooling arrangements. When capacity returned to the commercial market in the late 1980s, many municipalities continued with their new arrangements instead of buying coverage from commercial insurers.

"Purchasing insurance is now the third most popular (method of financing municipal liability risks) behind self-insurance and pooling," Mr. Randall said.

Municipalities that do buy insurance often have substantial self-in-

sured retentions, he pointed out. "It is not uncommon to have retentions of \$100,000 to \$250,000 per loss, and some of the bigger towns will have retentions of around \$1 million."

Many municipalities are now comfortable with self-insurance or large self-insured retentions, said J&H's Mr. Ferrano. "They found out that you can have a claim that might take four or five years to come through, so you can save a little money each year and keep it in the bank. And, as municipalities don't have to worry about going broke, it's a better use of their money."

Most of the municipalities that buy commercial insurance have populations of less than 200,000, brokers and insurers say.

Municipal liability pools often have advantages over commercial insurance, said Titan's Mr. Cantu (see story, page 6).

Regulations for pools vary from state to state, but generally the financial oversight of pools by regulatory authorities is not as rigorous as for commercial insurers, he said. This often gives them a competitive advantage since they don't have to justify rate increases or decreases to regulators, Mr. Cantu said.

Despite the competition from the pools, municipal insurance is a profitable line of business for insurers, he said.

"We entered the market in 1983, and we have found it to be profitable," Mr. Cantu said.

Most of Titan's policyholders are towns with population of less than 10,000, east of the Mississippi, he said.

However, Titan is expanding its business into the West and Midwest, Mr. Cantu said.

One of the reasons the business is profitable is because the liabilities of small towns are more restricted than those of large cities, he said.

"The smaller towns offer standard services like water and roads, but the larger cities also offer things like parks, zoos and municipal arenas, so they have a much larger variety of exposures," Mr. Cantu said.

Profitability was one of the reasons why The St. Paul Cos. focused on municipal business in 1991, said Dennis Crosby, underwriting officer for public-sector services at the St. Paul, Minn.-based insurer. "The pricing is rather thin, but we are still making a profit."

Claims experience for municipal liability business is generally good, Mr. Crosby said.

"When liability coverage dried up in 1986 and there was the move to self-insurance, the marketplace changed and there was a big focus on risk management," he explained. And, that focus has not blurred with the return of the soft market, he said.

The attention to risk management is especially important for public entities because they cannot jettison their liabilities, said Sedgwick's Mr. Randall.

"A city might get a lot of lawsuits in certain areas but it still has to maintain services in those areas, so it has to be very careful in controlling risks," he said.

Over the past 15 years, risk management expertise at public entities has grown considerably, Mr. Randall said.

The inherent openness of public services also encourages municipalities to concentrate on risk management, said J&H's Mr. Ferrano. "Public entities live in a fish bowl, and as a result of this, they have become very proficient at implementing safety procedures and they have grievance procedures that work." **BI**

Roger Beerworth/United National Group



Some producers struggle with their competition on Truck Physical Damage business. If you are one of those producers, it's probably because you've never discussed the subject with United National Group.

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Pros and cons seen in municipal pools

By JUDY GREENWALD

Municipal liability pools help keep some public entities afloat, but some city risk managers say they'd rather sink or swim on their own.

Risk managers who are active in pools—and even many who are not—say pools are a great way to reduce insurance costs and to develop effective claims and loss control operations, particularly for small public entities that can't afford their own risk manager.

Other risk managers say pools are not for them. Most often, risk managers say they opt out because they are large enough to self-insure. Yet some say they fear the

potential loss of control over their insurance programs.

"If you and I are sitting on opposite sides of the same pool or pond, I have no control over whether you throw a rock in," said John Miall, risk manager for the city of Asheville, N.C. Still, he added, "The waves wash up on my shore."

While pools are a good way for small entities to beat escalating premiums, "if you're large enough to stand up on your own two feet, you're better off. It just doesn't fit for some folks," said Mr. Miall, whose city is self-insured.

Municipal liability pools originally became popular during the hard market of the mid-1970s.

Growth was further spurred by the hard market in the mid-1980s, which left many municipalities without commercial coverage.

"About half of governmental entities are in pools for some kind of coverage or another," estimates Richard Wong, assistant director of the Public Risk Management Assn.

Of the approximately 450 pools in the country, about 190 to 200 pools—representing 23,000 entities—are members of PRIMA.

The degree of municipal pool penetration varies widely across the country.

The arrangements are probably most popular in California, partly

because the state was particularly hard-hit by the insurance crises of the mid-1970s and mid-1980s and because of the propensity toward litigation in the state, said Greg Trout, a consultant with Lake Forest, Calif.-based Advanced Risk Management Techniques Inc.

California has 135 pools, representing approximately 70% to 80% of the state's public entities, Mr. Trout said. The pools include 51 of California's 58 counties, he said.

Donald L. Jones, director of the center for member programs at the Washington-based National League of Cities, said most states are dominated by one large city

but have many smaller cities with populations under 100,000. "Usually the large city will self-insure a large part of its risk, and the smaller cities have found it helpful to be involved with pooling," said Mr. Jones, who works with state pooling operations in 31 states.

Compared with larger cities, smaller cities "are more homogeneous in terms of risk and shared interests," he said. "And one of the big successes of the pools has been their attention to loss control and their willingness to sort of help each other and kind of minister each other's performance on loss control."

Risk managers who do belong to pools tend to be very enthusiastic about them.

For instance, Thomas Vance, risk manager for Anaheim, Calif., said the Authority for California Cities Excess Liability pool has provided Anaheim a "very cost-effective alternative to commercial insurance" since the city joined in the 1986-1987 fiscal year. And, as members of a pool, "we control our own destiny."

Comparing the pool's performance with the last year the city purchased coverage on the open market, the city is saving more than \$1 million annually, Mr. Vance said.

Others, however, have joined

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**'If you're large
enough to stand on
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you're better off' says
John Miall.**

pools but later withdrawn. "We elected to go self-insured and get out of a pool" in 1990, said Joseph L. Page, risk manager for Plano, Texas. "We felt that we could do a better job independently" working with professionals, including insurance agents and brokers. Among the problems with the pool were high costs and the level of claims control, according to Mr. Page.

The move was a good one, he said. "Our losses have come down tremendously. We're quite excited about the turnaround." Despite the current soft market environment, "we're not looking or even considering going back into any kind of pooling environment or anything of that sort."

Nor is the city of Lakewood, Colo.

"We were one of the largest members of the pool and felt that we were large enough to be able to administer a program on our own and not pay as much as we were paying to the pool," said Stephen A. Finley, risk manager for the city, which belonged to a pool from 1986 through 1992.

Now, after two years away from a pool, "it seems to have been the right assessment—that we can do it less expensively on our own and not sacrifice quality."

"We were big enough to make it financially feasible to do it on our own," said Richard Hodgkin, risk manager for Las Cruces, N.M., which was in a pool briefly but is now largely self-insured.

"The other thing that concerned us was the rating system, where we in effect end up paying for the sins of others," he added.

He noted, for example, that three weeks after the city successfully defended itself in a police brutality case, its assessment was nevertheless raised to \$72,000

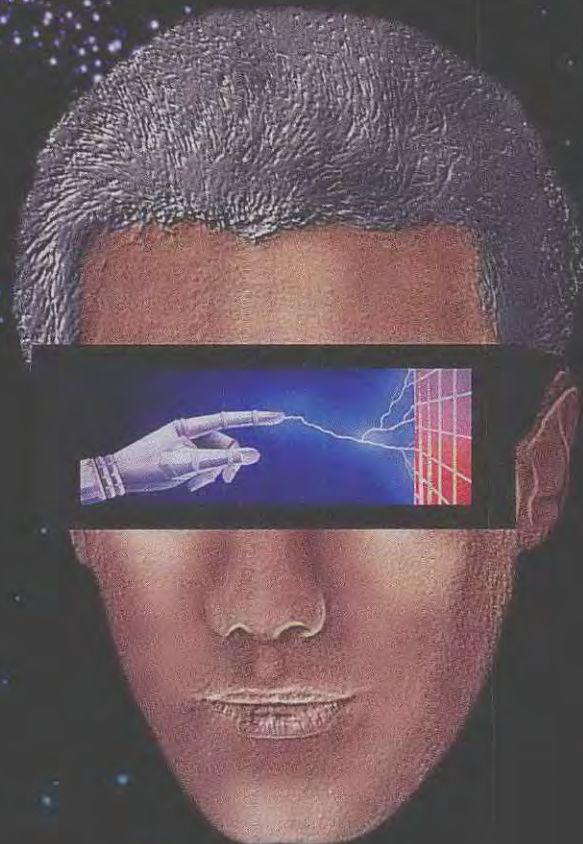
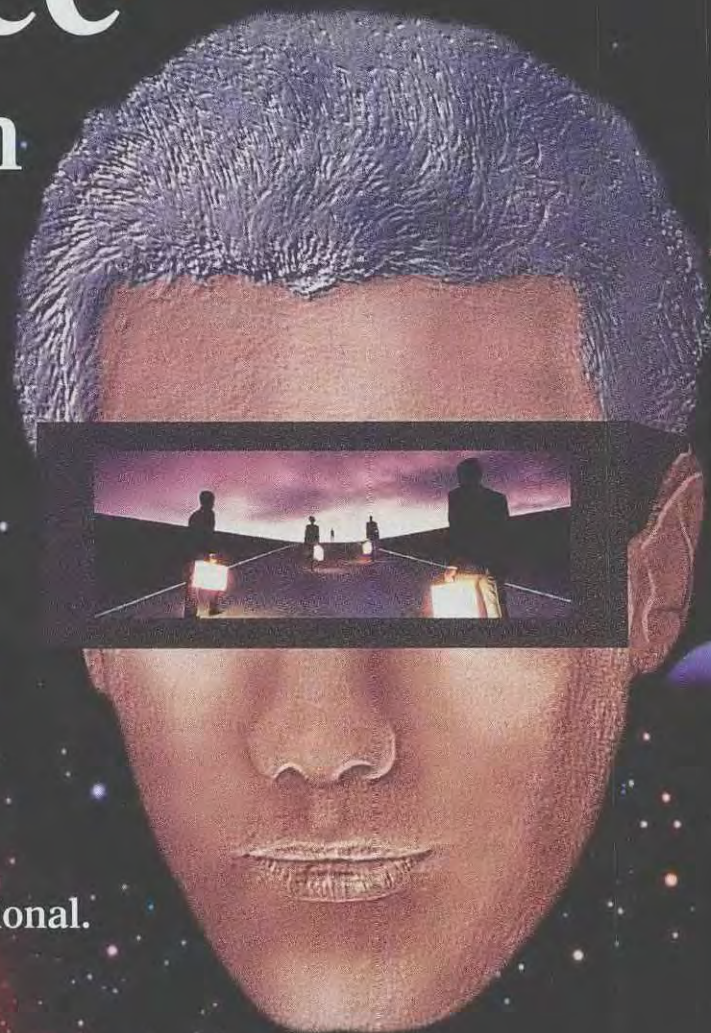
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Opinions

Delay data bank law

WE HOPE CONGRESS quickly passes legislation—recommended this month by the federal Health Care Financing Administration—to delay by 18 months the federal law that requires employers to report health care plan enrollment information to the government.

As we have previously noted, the so-called Medicare Data Bank law is overkill. Under that law, employers starting next year will have to file annual reports with HCFA that list the names and Social Security numbers of employees and dependents covered by employer-provided health care plans. HCFA then will use the information to recover payments made by Medicare for claims, mainly those of older workers and their dependents, that should have been paid by employer plans. The information also is to be used to prevent improper payments in the future.

The basic intent of the law is sound: providing the government with information to ensure that employer health care plans, not Medicare, are the primary payers of health care expenses for workers staying on the job after age 65.

But where the data bank law goes overboard is requiring employers to file health care coverage information for all employees and dependents. Most of this information—which will span the 160 million people enrolled in group health care plans—will be virtually useless to the government.

At the same time, this useless data will be very expensive for employers to collect.

While the General Accounting Office said it is not possible to estimate the cost that employers will incur to comply with the law on a national level, the burden on individual employers will be considerable. For example, one employer with 44,000 employees told the GAO that it faces \$52,000 in new administrative costs, including the price of overhauling its benefit information system, to comply with the law.

We think it is in everyone's best interest for em-



ployers to spend corporate dollars on improving the benefits that they offer to employees and dependents, not wasting those dollars by filing largely useless reports with the government. Indeed, the GAO questioned if the data bank program will provide the government with any useful information beyond what is now collected under another government program in which HCFA and several other agencies search payroll records to determine if Medicare improperly paid claims for workers over 65.

By delaying the data bank law for 18 months, Congress can use the time to draft new legislation that better achieves a laudable public policy goal—that employer plans pay health care claims for which they are responsible—without imposing an unreasonable and unnecessary administrative burden on employers.

Letters

Best chances for Superfund reform are now

To the editor: Your May 2 editorial on Superfund might have reflected the views of highly articulate minority dissenters to too great of an extent. It makes no sense for any of us to follow their line and argue that fine-tuning will be possible next year to produce a much better Superfund bill.

What is presently before Congress represents a fragile coalition and incorporates the essentials of desperately need reform. It would be a pity if your editorial were to be seen as your last word on this crucial matter.

Of course, retroactive liability is offensive to insurers, small businesses and all other innocent parties that have to contribute to the solution. However, retroactive liability has provided a weapon that appears to have done so much to improve the sensitivity of industry to environmental issues that there is no real chance it will be abandoned. Furthermore, it represents the most efficient way of allowing industry to super-vice businesslike and economical clean-

ups, which is generally preferred to the alternative of a public works program in terms of speed, efficiency and cost.

Superfund reform can pass this year. It has strong backing from the Clinton administration and bipartisan support in the committees through which it must pass. No alternative measure has any substantial support anywhere in the legislation process. The reduction in cost that will follow is desperately needed by insurers, as well as by industry and commerce in general.

What real alternative have we to look forward to if we fail to secure reform this year? The current fragile consensus is unlikely to survive into next year, and there is little prospect of recovering a consensus in time for a new Congress (with changes likely in important committees) to pass a bill next year. 1996

looks like a better bet, save the substantial influence of a presidential election. 1997 will be another fallow year for legislation of this type, so we are looking at 1998.

Does anyone believe that we can afford to wait until 1998? Does it not make much more sense to urge passage of the substantial reform demonstrable in the administration's bill this year?

I urge you to take another look and, on reflection, give us a strong editorial in support of Superfund reform that provides victory for all except the attorneys. Regrettably, there will still be plenty for them to do.

Stephen R. Merrett

Chairman

Lloyd's Superfund Working Party

Lloyd's of London

London

Layoffs also claim able execs

To the editor: Knowing Bill Perry, I am sure that he meant well in his April 11 letter regarding laid-off risk managers, headlined "Well-Qualified Risk Managers Still Thriving."

I disagree, though, with his position.

Bill's letter said, "The reality is that those risk managers who have been terminated were not doing the job."

I know a number of risk managers who meet Bill's test of being state-of-the-art but were still laid off. Unfortunately, some of the best risk managers

have been caught up in the wave of restructuring Corporate America, and to imply that those who have lost their jobs are inadequate is factually incorrect.

True, some ineffectual risk managers lost their jobs, but a lot of good risk managers are out on the street despite their high level of competence.

Richard S. Betterley

Senior Consultant

Betterley Risk Consultants

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Public transit agencies 'easy targets' for claims fraud

By **RODD ZOLKOS**

However, risk managers' efforts beginning to pay off

A 32-year veteran of the Chicago Transit Authority, Leon Wool has a lot of memories from his tenure with the agency, including one from a bus accident on the city's West Side in the late 1970s.

"The bus driver closed the doors, got everybody's name on

the bus, and there were four people on the bus," said Mr. Wool, who is first deputy general counsel for the CTA.

"We got 20 claims. We turned the other names over to the state's attorney's office," he said.

Fraudulent claims, built-up medical claims and other forms of litigation abuse are serious prob-

lems for public transit systems, forcing the CTA and other agencies to take serious steps in response.

There's a sort of "cottage industry" that revolves around claims fraud, said James F. Kilcur, general counsel for the Southeastern Pennsylvania Transportation Authority, the Philadelphia area's public transit agency.

"We're such easy targets because people who ride our vehicles are essentially anonymous and it's easy for people to say, 'Yeah, I was on there. Prove I wasn't,'" Mr. Kilcur said.

The problem is particularly acute in Philadelphia.

"It's a major problem and has been for public transit in Philadelphia for quite some time," he said. "We have an environment which is favorable to the filing of claims."

Transit authorities in Pennsylvania can be held jointly and severally liable for damages and, under the state's common carrier law, are held to high standards in caring for their riders. State law also provides for delay damages, "which is a penalty which is assessed against the defendant for not settling a case," SEPTA's general counsel said. Delay damages are determined by a formula linked to Treasury bill rates that

compensates the claimant for the time that the case was tied up in litigation.

A recent study showed that 75% of all property damage auto claims in the city are accompanied by a personal injury claim. "So you take that kind of environment and you put public transit into it and you're going to have a problem," Mr. Kilcur said.

In 1988 alone, 14,551 claims and 4,905 lawsuits were filed against the Philadelphia transit agency. That's when local transit officials decided it was time to fight.

Five years into the battle, claims filings in 1993 had been cut by about 50% to 7,304 while lawsuits were reduced 56% to 2,112.

Continued on next page

Pools

Continued from page 6
from \$18,000 because of the pool's overall loss experience.

Similarly, Stewart J. Ellenberg, risk manager for Fort Collins, Colo., which is partly self-insured, said, "We don't like the possibility of being assessed an additional premium for someone else's poor loss experience. One of the reasons that we are (partly) self-insured is because we want to pay for the known losses of our public entity and not for others."

Sometimes, a difference in risk management philosophies can prompt an entity to withdraw from a pool.

Alan Jenkins, risk management administrator for Farmington, N.M., which is self-insured, said: "Our general attitude is that we saw too many pools being run like insurance companies, which had not kept up with the needs of governmental entities, so as a result we decided to self-insure and manage our own affairs."

While the city was a member of the pool, the pool was spending all its money on litigation and not enough on loss control, but Mr. Jenkins felt the reverse was needed—more money spent on loss control, which would then result in less litigation. The municipal pool has since improved significantly, but "our self-insurance fund has been so successful that it would be rather foolish to bail out on it now."

Sharon Floistad, risk manager for the Douglas County School district in Castle Rock, Colo., said better claims control was among the reasons the district left a pool to become self-insured. "The way I operate our risk management department is very hands-on and very involved, and I like to have a lot of control in claims handling," she said. She also noted that as a self-insured entity, the district was able to use an occurrence form rather than the pool's claims-made form.

The decision to join a pool does not necessarily rest solely with the risk manager.

Ed Raya, risk manager for Corona, Calif., wanted to join a pool, but the city's financial director and city manager "had some philosophical opposition to pooling and insuring risk."

As a compromise, the city chose to participate in a joint purchasing program, which provides some of the purchasing benefits of a pool but does not require the city to share risk. "Personally, I think pooling has some definite advantages," he said. However, "obviously I need to work with management staff."

Some risk managers who do not belong to pools now may join them in the future.

Daniel J. Cullen, risk manager for Ann Arbor, Mich., said he left a pool last year after the city redesigned its insurance program and

found it could save money by buying commercial coverage. But, he said, if or when rates harden—or even if they stay soft—and a well-run pool became available, "then I would not be opposed to going back." **BI**



Continued from previous page
Occurrences—those accidents with five or more claimants—fell even more sharply to 137 from 404 in 1988.

While SEPTA's claims liability totaled \$51.5 million in fiscal 1988, it has since stayed between \$32 million and \$35 million, which represents about a \$70.3 million total reduction in claims liability over the period.

"We see the trend continuing," Mr. Kilcur said.

SEPTA is not alone in taking steps to make itself a less inviting target for fraudulent claims and lawsuit abuse. Transit agencies' principal weapons in the fight are thorough investigations of claims, vigorous defense of lawsuits, and an effort to make the public aware of the problem and the fact that they ultimately pay for it.

As part of that latter effort,

SEPTA has a \$30,000 budget for advertising. It has developed advertising placards for buses and rented billboards, all pointing out the problem and what it costs the public.

While efforts to get riders to turn in claims fraud perpetrators have had little success in most cities, agencies in Philadelphia and elsewhere are trying to give the phony claims issue—and the indictments and convictions of those involved in claims fraud—plenty of publicity.

"There was too much acceptance," Mr. Kilcur said. "People thought it was OK to rip off the transit system, that it was a victimless crime."

The Oakland, Calif., area's Alameda-Contra Costa Transit District will embark on a joint advertising campaign this fall with San Francisco's Bay Area Rapid

Transit to spread the word about claims fraud.

According to Darrel Handy, AC Transit's risk manager, the public has long had the misconception that insurance companies were the only ones burned by phony

have very large self-insured retentions, and it's only the very rare case that the insurance company will get involved," Mr. Handy said. "One way or another, there's no free ride."

Winning the public over on the

Transit agencies' principal weapons against fraudulent claims and lawsuit abuse are thorough investigations of claims, vigorous defense of lawsuits, and an effort to make the public aware of the problem and that they ultimately pay for it.

claims. People didn't make the connection that some of the money they put in the fare box went to defending and paying those claims.

"Agencies which are our size all

issue of claims fraud is only part of the battle, however. Information gathering is probably the most important weapon in transit agencies' efforts to fight fraudulent and exaggerated claims.

Prompt and thorough investigations are key to fighting a fraudulent claim or successfully defending a public transportation agency against a suit.

"The best way to try and control a fraudulent situation, I would say, is to thoroughly investigate the claim," said Wallace Gossett, executive assistant general counsel at MTA New York City Transit. "Obviously, if we know a claim is fraudulent, we will not pay in that situation.

"You've got to get on the case as early as possible," Mr. Gossett said. "You've got to get the statements of the witnesses as early as possible. You've got to go to the scene and see what the situation is."

New York Transit also takes a close look at claimants' injuries.

"Every claimant is examined by our own physician to determine if that claimant has an injury," Mr. Gossett said.

The New York transit agency also has a serious-accident unit on call to investigate major accidents 24 hours a day, seven days a week.

Over the past few years, the Chicago Transit Authority has started taking a similar approach.

"The system we have, we try to get to the people and investigate it," Mr. Wool said. "We have our own claims department and our own investigators so once a claim comes up, we jump on it promptly.

"If we have a major catastrophe, we have a catastrophe program," he said. "We try to get people to the hospitals and get the names of who was there and who was not there."

For the CTA, like New York Transit and other agencies, a bigger problem than blatant fraud is exaggerated claims. Many agencies are finding undercover surveillance a valuable tool in gathering information to fight those claims.

SEPTA officials, for example, have conducted video surveillance "of people who claimed they were bedridden, would never work again, and we caught them doing all kinds of things they said they couldn't do," Mr. Kilcur said. "People who claim that they're bedridden are out there playing basketball and all sorts of things."

Among other things, AC Transit belongs to the national Medical Index Bureau, which allows the transit authority to communicate with other agencies and the insurance industry at large to determine if claimants have been popping up elsewhere in the country, filing claims against transit agencies.

"We look at our files very, very closely," Mr. Handy said.

Once a transit agency collects accident and injury information, it's a cornerstone in defending agencies against suits or prosecuting those who file fraudulent claims.

SEPTA officials recently met with officials from the U.S. Attorney's Office in Philadelphia, the U.S. Postal Service and the FBI, turned over the cases they thought were fraudulent and sought prosecution under mail fraud statutes. To date, there have been 73 convictions and more than 700 cases are pending.

And, unlike the cost/benefit approach insurers typically take in determining whether to fight a lawsuit or try to settle, SEPTA officials have determined that a policy of settling a case when it would be much cheaper than fighting it does not pay off in the long run. Instead it would simply increase the risk of further abu-

Continued on next page

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Continued from previous page
sive claims.

The agency has implemented an early settlement system so that in legitimate cases SEPTA makes an effort to settle "and concentrate our efforts on cases where we suspected there was fraud," Mr. Kilcur said.

"Unless we had a report that you were on a vehicle involved in a SEPTA accident, we took the position that we won't pay the claim voluntarily," the Philadelphia agency's general counsel said.

SEPTA has worked closely with the plaintiffs' bar, advising plaintiffs' lawyers of cases where the agency would take the position that a claimant was not a passenger so that the attorneys would

know payment would be a long time coming.

Philadelphia transit officials believe their program is working, and they're trying to share that approach with other agencies.

New York Transit's Mr. Gossett agrees with Philadelphia's tack and says his agency's approach has much in common.

"You must assume that there is some fraud there. But, if you are effective in trying to defend, you deter people from trying to bring those claims," he said. "You have to demonstrate to the plaintiffs' bar as well as the public that you are vigorously going to try to defend.

"What we basically do," he said, "is we try a lot of cases."

Last year, the New York agency paid \$53.1 million in the disposition of 2,300 claims and lawsuits. In 1992, it paid \$44 million on

1,949 cases and in 1991 \$44.5 million on 2,008 claims and suits.

"I think we have been very successful in vigorously defending cases," Mr. Gossett said. The fact that the New York agency's payments per claim have remained at a fairly consistent level in recent years, rather than increasing, is a measure of victory, he suggested.

For all its improvement in reducing the number of claims and suits it faces, SEPTA still has room to improve, Mr. Kilcur says.

"I think we've still got a problem," he said. "We've still got a lot of claims."

But, the agency and other transit systems are making headway, he said, and they may finally be getting the message out to the public—and to the courts.

"I think juries and judges are a little more suspicious of these claims than they once were." ■

Summer

Continued from page 3
injury, he stressed.

The public entity must also ensure the pyrotechnicians have adequate liability insurance covering risks during the transportation and storage, as well as the actual display, of fireworks, Mr. Hyman pointed out.

Despite the seemingly large risks associated with summertime special events, there are relatively few catastrophic incidents, experts agree.

Much more common are liability claims stemming from such things as trips-and-falls, according to Tony Wittwer, vp of the fairgrounds and events division of K&K Insurance Group Inc. in Fort Wayne, Ind.

In addition to claims stemming

from falls because of uneven walking surfaces—such as might be found at a rural site where a county fair is held—some people submit claims for things as innocuous as bumping into other people and then falling down, according to Mr. Wittwer.

He recommended that a risk manager walk around the site of the event, paying particular attention the surface of the area, anything that is sticking out at eye or throat level, as well as potential hazards for children.

For example, Mr. Wittwer noted that food vendors prefer to have their cooking equipment close to crowds to tempt them with the aroma of the food. However, that can put grills and other equipment within reach of children's hands, creating a risk of injury.

When Knoxville, Tenn., held a three-day celebration for its bicentennial in 1991, eight people from the risk management department spent an entire day "combing every square foot of the whole (celebration) area for hazards that people could trip on," noted Abigail Hudgens, risk and benefits manager for the city.

When the rare catastrophic liability claim does occur, it often stems from liquor-related incidents, said Mr. Wittwer. This exposure typically arises in connection with a person who is involved in an accident after drinking alcohol supplied at a special event, he noted. "Everyone's sensitivity should be focused on (minimizing) liquor liability."

In addition to the risk of accidents caused by drunk drivers, public entities should be aware of other alcohol-related risks, such as drunk people injuring themselves by falling off escalators and balconies, Mr. Wittwer pointed out.

There are several controls on liquor that public entities can impose to minimize the risk of accidents, Mr. Wittwer noted.

These include: prohibiting people from bringing their own liquor to an event; actively enforcing the age limit for buying alcohol; limiting drinks to two per person per trip to the sales area; restricting the availability of pitchers of alcoholic beverages or trays on which to carry several drinks; patrolling parking lots for drunk patrons planning to drive; and curtailing liquor sales half an hour before the close of an event.

If a public entity is planning to offer liquor at a special event and is concerned about its liability exposure, it can ask its general liability insurer for a liquor liability endorsement to its CGL policy on a single event or annual basis, pointed out Mr. Wittwer. Or, host liquor liability coverage can be purchased on a stand-alone basis, he said.

To further reduce a public entity's liability exposure, J&H's Mr. Hyman recommended that public entities arrange for other organizations to handle liquor vending and have proper insurance coverage.

Onandaga County in upstate New York has minimized its exposure to alcohol-related accidents by limiting liquor sales at its summer special events to beer and wine coolers only, said Mr. DePersis.

He noted that a couple of years ago, a volunteer fire company offered mixed drinks at one of the county's special events. "By the end of the evening, there were a couple of alcohol-related" fights. As a result, the county changed its policy regarding hard-liquor sales

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Summer

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at special events.

Chesterfield County, Va., prohibits the sale of any kind of liquor at its Fourth of July celebration and its county fair, said Ms. Smith. "I think that makes a big difference" in the frequency and type of liability claims resulting from a special event, she said.

Even though the county fair has been held for approximately 40 years and offers carnival rides and animal exhibitions, the county has never had a major liability claim from the weeklong summer event, Ms. Smith noted.

The county averages only about 10 to 20 liability claims per fair. A typical claim involves someone who has fallen while getting off a carnival ride, she explained. The Chesterfield County Fair Assn., which sponsors the county fair, buys liability coverage and names the county as an additional insured on the policy, Ms. Smith said.

Public entities often can turn to several mechanisms for transferring some of their liability depending on the risk and the nature of the event.

For example, while some special summer events are planned and sponsored solely by a public entity, others are produced in cooperation with other organizations.

If a special event is sponsored jointly by a public entity and another party, the other organization should be required to obtain liability insurance for the event that names the public entity as an additional insured, recommended Mr. Wittwer. Many cities require event sponsors to do this before a city permit will be granted, he added.

Knoxville, Tenn., is one such city. Ms. Hudgens explained that the city's annual Labor Day fireworks display over the Tennessee River typically is co-sponsored by a local radio station and several other organizations, such as a newspaper and a bank. The city, which self-insures its liability exposure, collects certificates of insurance from other sponsors and reserves the right to inspect the whole policy, she said.

Public entities that are named as an additional insured on another entity's insurance policy should require the organization to submit a certified copy of the policy, not just a certificate of insurance, Mr. Wittwer recommended. The policy provides full details of the coverage, while a certificate of insurance does not, he explained. Furthermore, an organization could submit a fraudulent certificate of insurance, he added.

If a public entity is the only sponsor of a special event, it has to decide if and how to insure the event (see related story).

Despite the most attentive planning, some special event risks cannot be anticipated. But risk managers can still prepare for the unexpected, experts say.

Mr. Hyman related that during one summertime event while he was risk manager of Evanston, Ill., the lights went out in the park in which a nighttime event was being held. To minimize the risk of injury as 30,000 to 50,000 spectators returned to their cars, Mr. Hyman arranged for police cars to turn on their lights to help illuminate the way. The following year, the city arranged in advance of the event for a portable generator that could power temporary lighting if needed.

Weather is another risk that is

beyond risk managers' control.

Mr. Hyman recommended that officials from a public entity stay in touch with professional weather forecasters at least two days before an event. On the basis of these reports, the public entity can decide whether to cancel or postpone the activities.

"The weather can create a real disaster if it turns in the middle of an event," he said.

In addition to watching weather forecasts, public entity risk managers should arrange for a warning system that can alert people at an event to dangerous weather, Mr. Hyman suggested. For example, if lightning is anticipated, attendees should be directed to appropriate shelter, not left to congregate under trees. Even taking refuge in cars is preferable to being out in the open during a lightning storm. **EI**

Sharing special event risks

Special or expanded insurance policies can ease concerns

Faced with an array of liability exposures associated with summertime special events, most public entity risk managers prefer to spread that risk as much as possible.

Commercial general liability policies normally cover special events, according to Guy DeMarco, vp of marketing for Aon Entertainment Ltd., a division of Aon Risk Services Inc. in Universal City, Calif.

However, public entities should notify their liability insurers if they plan to sponsor a special event that could increase their exposure to claims, said Robert

Bieber, vp for the Northeast region of Johnson & Higgins Government Group in Stamford, Conn.

"It's just good practice that you'd like your underwriter to know of any exposures other than traditional exposures," Mr. Bieber said.

Many insurers have a "failure to inform" clause in their liability policies that could be cited to avoid coverage, he pointed out.

An entity also may want to purchase stand-alone special events liability coverage for a specific event.

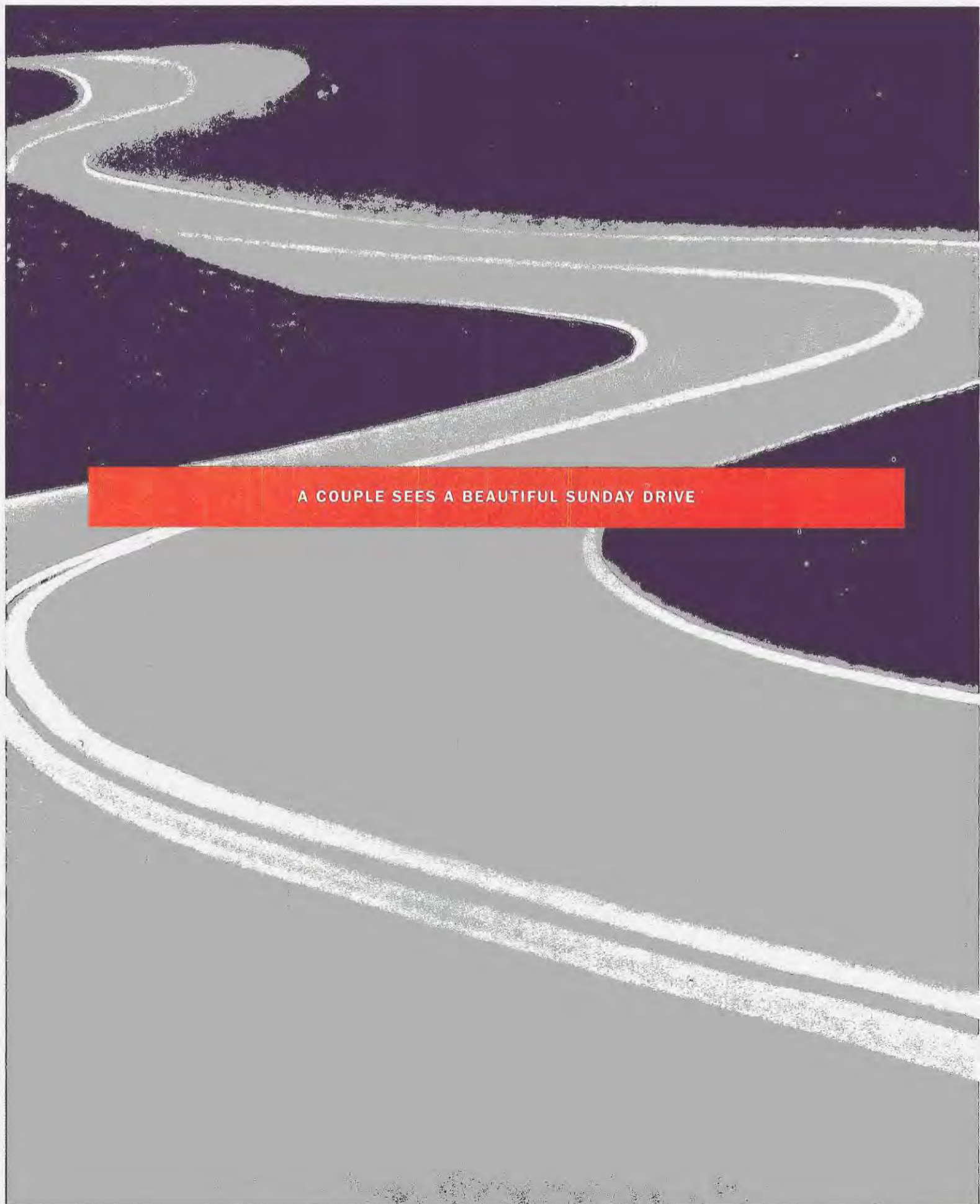
For example, the city of Knoxville, Tenn., which normally self-

insures its liability exposure, decided to buy special events liability coverage for its 1991 bicentennial celebration, said Abigail Hudgens, risk and benefits manager for the city.

"There were so many organizations involved that we had to indemnify" in the event of a loss, such as the University of Tennessee, the Tennessee Valley Authority and businesses along the waterfront whose property was used for the celebration, Ms. Hudgens explained.

Although many general liability insurers do not write stand-alone special events liability coverage, it

Continued on next page



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is available from some specialty underwriters, said Aon's Mr. DeMarco. "A regular commercial general liability underwriter... is going to really go crazy when you tell him you're going to have people walking down the street throwing fiery batons in the air and there's going to be 250,000 people watching."

Public entity risk managers generally look for special events liability coverage with limits of \$1 million per occurrence/\$2 million aggregate, with an umbrella liability layer of \$10 million or \$20 million above the primary coverage, according to Mr. DeMarco.

Blanket special events liability coverage can be useful if some vendors, such as small mom-and-pop operations, cannot provide their own liability insurance, Mr. Bieber pointed out.

Vendors that do not provide their own insurance coverage could be required to pay a fee that covers the public entity's cost of buying the coverage, he said. The premium could be allocated among vendors based on revenue or square footage, he suggested.

Public entities that are members of liability insurance pools with large self-insured retentions may also want to buy specific special events liability coverage to minimize their financial exposure to a loss, Mr. DeMarco said.

After liability insurance has been bought, public entities also may want to consider event cancellation insurance.

Event cancellation insurance is written on a first-party basis by about 12 insurers, according to Mr. DeMarco. Limits are determined by the amount that has been spent by a public entity on a

special event before it is held, including promoters' fees, site preparation, engineering costs and advertising, he said. If an event is canceled due to causes beyond the policyholder's control, such as inclement weather, the policy would reimburse these costs up to specified limits.

"Insurance for cancellation should be considered as part of the budget for putting on an event," Mr. DeMarco recommended.

Besides buying insurance coverage to cover its exposures, public entities should "try to pass off as much liability as possible" to those using public property, like vendors and performers, during a special event, Mr. Bieber said.

"Like most events, one of the key risk management issues would be to get indemnity from the third parties involved in the

event," agreed Greg Berg, a principal in the risk management practice of Towers Perrin in Hartford, Conn.

But, there may be some times when a public entity decides that although it cannot transfer the risk of an event, it will hold the event anyway and assume the risk, pointed out Allen Hyman, principal and senior vp of Johnson & Higgins' Government Group in Houston.

The question risk managers should ask themselves is: "Is the act that's being put on important enough that we, the entity, should accept the liability should an accident occur?"

"It is conceivable that an entity will agree to assume certain risks in order to hold the event," Mr. Hyman asserted.

—By Deborah Shalowitz Cowans

Some risks loom large for public entities

'Cowboys' worry risk managers

By MICHAEL SCHACHNER

Public entity risk managers are dealing with a growing number of wrongful termination and employment practices lawsuits, as well as more complaints of excessive force by law enforcement personnel.

State and local governments are also grappling with greater environmental liabilities and various liabilities arising from sponsoring special events.

While these aren't new issues for most public entities, some are taking on new importance.

Risk managers say their exposure to a variety of types of claims have become far more pronounced in recent years as a result of the Civil Rights Act of 1991; the Americans with Disabilities Act; media coverage of the Rodney King beating, trial and subsequent \$3.8 million liability verdict against Los Angeles; fiscal belt-tightening; state and federal environmental cleanup efforts; and more special events.

"I wouldn't say these issues are new nor would I say they aren't legitimate liabilities, but with a growing number of 'courtroom cowboys' out there that know public entities are deep pockets, we have to do whatever we can to identify emerging problems and do whatever we can not to have them blow up on us," said Yvonne Norton-Leung, risk manager with the state of Nebraska.

Several state and city risk managers pointed to a growing number of civil rights, wrongful termination and employment practices lawsuits as areas of increasing concern for governments.

"With all the budget-crunching that's going on, wrongful termination and employment practices suits are more prevalent," said Eric B. Larson, risk manager with the city of Des Moines. "For many years, we have had formal grievance and civil service boards that have had their share of cases, but with downsizing, the complaints are definitely increasing."

Most of the complaints Des Moines has received recently have come from police officers who have been laid off and have sued to get their jobs back "or are seeking large sums of money" in lawsuits alleging wrongful discharge, Mr. Larson said.

It's the Civil Rights Act of 1991 that has paved the way for such suits, said Ms. Norton-Leung. "Section 1983 of the law allows discrimination suits to be brought in federal court against any public entity besides a state. And, cases can be brought under this act against an individual state employee, and then the state winds up indemnifying the (defendant). In essence, the exposure is the same."

"Within the environment of downsizing comes the need to evaluate the process of determining who gets let go," commented Pat

Continued on next page

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Liabilities

Continued from previous page
Teufel, a principal with KPMG Peat Marwick in Hartford, Conn.

An extension of employment practices liability and discrimination is liability associated with gay rights and anti-gay rights movements, noted Craig Gibbons, risk manager with the city of Springfield, Ore. Springfield and other municipalities across the country are becoming involved in litigation that stems from ballot measures and petition drives aimed at securing or denying special rights for gays, Mr. Gibbons said.

"The state of Oregon had 'Measure Nine' and Colorado had its well-publicized law preventing special measures to protect gays. All these laws and ballot measures yield cutting-edge litigation," Mr.

Gibbons explained.

For instance, a city election in May 1992 included a measure to add to the city charter a provision which "...prohibits the city of Springfield from using money to promote, encourage or facilitate homosexuality..." The measure passed. Several Springfield citizens and an employee labor union later filed an action for declaratory judgment and injunctive relief, claiming that the measure was unconstitutional. They did not include any claims for damages.

From a risk management perspective, this created three challenges, Mr. Gibbons said:

- The lawsuit concerned constitutional issues that are not yet clearly defined.

- Actions seeking injunctive relief are usually not covered by general liability policies. Springfield was fortunate to have an unusually

broad policy that provided coverage. "It's the only policy we have ever had that was broad enough to cover this type of claim," Mr. Gibbons said.

- The lawsuit and original measure raise "highly emotional issues that divide communities and cause political upheaval," Mr. Gibbons said.

"The issue caused a lot of friction on our city council and we've seen it cause friction in other cities," he observed.

Another hot topic was set off by the home video of several Los Angeles police officers beating Rodney King, which led to an unprecedented trial, riots, a federal civil rights conviction of two of the officers involved and a \$3.8 million judgment for Mr. King against the city of Los Angeles. Ever since, state and local governments have been fending off a growing number

of liability lawsuits for police excessive force, risk managers say.

And, liability for excessive force isn't limited to police, said Ms. Norton-Leung. "Misuse of force is applicable to police, mental institution employees and prison guards. Anytime you have a custodial population, the state or city can be held liable. Even if the state makes a foster care assignment, liability is possible."

Mr. Larson of Des Moines attributed the spike in the number of excessive-force complaints directly to the Rodney King incident. "Before, when somebody was roughed up a bit by some cops, they were hesitant to bring action. Now they're much more willing to do so."

But it's not just the publicity generated by one case that has boosted government liability, noted Patrick Gallagher, president of the Gallagher-Westfall Group, a law

enforcement liability consulting firm based in Purcellville, Va.

"With the proliferation of special police forces such as transit police, housing police and university cops, to name a few, the problem is these forces are restricted to a certain area but tend to want to go off the reservation.

"The potential for liability always increases when this happens because it's difficult to draw the line where one's authority stops. When two forces converge, there's two sets of procedures and standards that possibly conflict," Mr. Gallagher explained.

He also pointed out that state police and county sheriffs are seeing their law enforcement roles expanded as small, rural police forces are eliminated because of a lack of financing.

"When smaller forces shift their duties to the state, that naturally creates more liability. Nearly 100 small forces have shut down in Pennsylvania alone in the past few years," he said.

Several risk managers and consultants said governments also increasingly face environmental liabilities arising from polluted sites.

"I'd say environmental liability is the one that's the most significant, not because it's new, but because it's just now being dealt with," said Peat Marwick's Ms. Teufel. "These liabilities have a major cost impact on governments because they're largely inestimable and unfunded. So the chore of recognition and funding is a tough one to swallow."

Ms. Norton-Leung of Nebraska said her state has assumed responsibility for polluted sites that have been left behind by private corporations that have gone bankrupt. "When a company goes into tax default or some other form of bankruptcy, the pollution problem falls to the state."

The city of Virginia Beach, Va., is governed by the Chesapeake Bay Preservation Laws, which place broad restrictions on the types of pollutants that can exist in runoff water. "Adequately reducing pollutants is quite expensive," observed Robert Esenberg, the city's risk manager.

Hosting or issuing permits for special events is another source of liability, public risk managers say (see story, page 3).

"It seems like every city and town wants to host its own event," Mr. Gibbons said. Despite a general trend away from heavy drinking, "many people still want to have a few beers at a festival or parade," he added, noting that this factor alone adds to potential liability for municipalities.

Beach towns like Virginia Beach are very involved in special events and the liabilities can be problematic, said Mr. Esenberg.

"We're sponsoring a lot of family-oriented special events at our waterfront recreational areas, but by doing this you're inviting a larger concentration of people into limited areas."

Virginia Beach also lets the television and movie industries use its beaches for filming, "but when we do this, we have to make sure the moviemakers have adequate security and protection so that liability isn't transferred to us. We can't issue any permits for events that don't fit the space," he said.

Knoxville, Tenn., faces similar problems, said Abbie Hudgens, the city's risk and benefits manager.

"When you host a special event, you get liabilities through closing off streets, garbage left over and fireworks. We have to make sure we're insured for any losses arising from this," she said. **EB**



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Abandoned bases pose EIL risks

Guarantees may not shield public entities from liability

By SARA MARLEY

Military base closings can bring more than an economic challenge to a community: They can also transfer responsibility for polluted land to a local government.

The branch of the military that abandons a base must perform an environmental assessment of the land, clean up any contamination and agree to remediate problems discovered in the future. But that guarantee is untested, and local entities are being told to protect themselves from future pollution claims.

Local governments can either perform their own appraisal of the base or hire a consultant to review the Defense Department's findings. Insurance also can be purchased to transfer the risk.

California State University, which is developing a campus on a portion of Fort Ord, is imposing the clearest language possible in its contract with the Army, said Charlene Minnick, risk manager for the state university system.

CSU-Monterey Bay will be located on 1,300 acres of Fort Ord's 28,000 acres on the Northern California coast. Portions of the base are contaminated with unexploded artillery shells, lead, motor oil and other solvents. Forty-one areas on the base have been listed on the National Priorities List for Superfund cleanup.

"We were pretty selective about the areas" to be used for the campus, Ms. Minnick said. The parcels of land are not seriously contaminated, and existing buildings will be converted into classrooms and laboratories.

To guard against exposure for cleanup of contamination discovered in the future, however, the contract between the Army and CSU is being rewritten to make the university's concerns absolutely clear, she said.

The Environmental Protection Agency, which must agree with the military on what portions of a closing base that contains a Superfund site are uncontaminated, recently concurred with the Defense Department that nearly half of Fort Ord is uncontaminated.

"As a result of identifying uncontaminated property, a significant portion of the land on closing military bases will be available for reuse, without further environmental cleanup," said Jeff Zelikson, director of hazardous waste management for the EPA's Western Region.

Chase Field, a Naval air base in Beeville, Texas, contains no major contamination, but the time-consuming environmental review nearly cost the city industry that was looking at the site, said Brad Arvin, executive director of the Beeville-Bee County Redevelopment Council.

"When bases are closed, the community needs to work with the branch of the military to see that they start the environmental assessment right away," Mr. Arvin said. "You can have a great plan for reuse, you can have industries lined up to lease or buy, but until you get the certification that there are not any environmental problems, you can't do anything. The environmental issues really drive everything."

Because the work required—removing underground storage tanks and cleaning up minor fuel spills—was fairly routine and nothing stood out as a top priority, the Navy allowed the Beeville council to determine which parcels should be remediated first. That let the city accom-

modate the industries that were ready to use the site.

Beeville already has attracted a furniture manufacturer, an industrial equipment manufacturer, a light aircraft manufacturing plant and pilot training center, a state prison and a correctional training facility to the site.

In retrospect, Mr. Arvin believes the transition went reasonably quickly. Chase Field was put on the closure list in July 1991, and Beeville assumed control of the base in the spring of 1993.

He urges communities facing a base closure to work closely with the branch of military involved, but also to keep local interests in mind.

When it came to the environmental review, "we didn't duplicate their work, but we did review it," he pointed out. Local entities must also carefully document what the Defense Department said it would do, what was done and its promise to fix problems in the future.

A good paper trail will also help in attracting industry. Companies moving onto the former base will need documentation that remediation has been completed.

Local entities taking over federal land "should be very careful, like in any other property acquisition these days," said Dennis R. Connolly, principal and senior vp at Johnson & Higgins in New York. "They should

understand what kind of property they are getting. I think they should do all the things traditionally done with acquisitions, like assessments and a detailed contractual arrangement."

The Defense Department's future cleanup guarantees "sound appealing, but in environmental liability there is lots of room for disputes," he said. "It is the most expensive liability around."

Even for public entities that self-insure most of their exposures, purchasing pollution liability coverage may be cost-effective, he said. As the new property owners, local entities could be liable for a portion of future cleanup if they contribute to the contamination in any way.

"When you enter the environmental world, there is so much at stake," Mr. Connolly said. "The opinion of an expert backed by limits of insurance can be an extra comfort and of

considerable value."

One insurance product that may help municipalities is environmental remediation insurance, which covers cleanup for environmental damage to the property occurring before the inception of the policy or during the policy period.

But, few municipalities have expressed in interest in the coverage, said Kenneth Cornell, vp of Commerce & Industry Insurance Co., a unit of American International Group Inc. The policy offers limits of \$25 million per occurrence/\$25 million aggregate. Third-party coverage is also available if the contamination spreads.

Properties that were previously contaminated are considered a higher risk, he noted. "Historic use of the property is a determining factor in underwriting, such as if it was used as a military base for arms production." **BI**

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Awards against public entities

Smaller awards in 1993 may be lull before storm: Expert

By JUDY GREENWALD

Juries in recent years have generally been handing out smaller awards in cases in which government entities are defendants, a recent survey shows.

But an expert warns this may turn out to be only the "lull before the storm" as more high-priced cases alleging violations of the Americans with Disabilities Act go to court.

A survey by the Jury Verdict Research Group of Horsham, Pa., found that the median compensatory jury award against government defendants was \$75,408 in 1993, though complete data for that year has not been tallied.

While this is 17.8% higher than the \$64,000 median award in 1992, the 1993 median still is 44% lower than 1989, when the median compensatory award against government entities was \$135,235, according to the survey.

The survey of jury awards against government entities is part of a larger study of 9,000 jury verdicts nationwide (BI, March 28).

However, awards could increase in the future because of the ADA, warns Susan A. McManus, a professor in the department of government and international affairs at the University of South Florida in Tampa, and a co-author of a 1992 survey on public entity litigation costs (BI, May 17, 1993).

"My prediction is (awards) will go up when ADA lawsuits kick in," said Ms. McManus. Preliminary indications are that these suits will result in high judgments. "I've seen some preliminary discussions from Florida cities and the budget officials fear they're going to have to pay off big bucks on that," she said.

"I see that looming largely on the horizon too," agreed Steven A. Finley, risk manager for the city of Lakewood, Colo., referring to the ADA.

"We're all sure it's going to cost us a lot of dollars, but no one knows exactly how much," he said. Although the city attempts to deal with employees as compassionately as it can, that "does not prevent us from being sued," said Mr. Finley. "We may prevail, but we're going to spend a lot of money prevailing."

The survey found that jurors in all types of personal injury cases are far more likely to side with government defendants now than they were only five years ago, with personal injury plaintiffs recovering in 52% of the trials that resulted in a verdict in 1992, down from 61% in 1987.

Breaking personal injury awards down by defendant, the survey found the median verdict when the government entity was the only defendant was \$64,000 in 1992. This was 51% lower than the \$130,750 median verdict in cases where businesses alone were defendants, and 36% lower than the \$100,000 verdict when governments and businesses were co-defendants.

However, the government-only median was 165% higher than the \$24,122 median verdict against individuals alone; 42% greater than the \$44,790 median verdict for business and individual co-defendants; and 7.6% higher than the \$59,500 median verdict for cases involving individuals and

government co-defendants.

Looking at ranges of awards in negligence claims against government entities, the largest category was \$10,000-\$49,999, which accounted for 24% of the awards in 1993. The next largest range was \$1-\$9,999, which accounted for 19% of the awards; followed by the \$100,000-\$199,999 range, which accounted for 12% of the awards.

The survey also examined settlement negotiations in cases involving government negligence claims where there eventually was a verdict in favor of the plaintiff.

In 1993, the plaintiffs' median final demand was \$212,500, the

median final offer was \$6,000, and the median verdict was \$75,408.

The median number of months it took between the date of an incident and a verdict for a government negligence claim was 41 months between 1989 and 1992. The median period between filing date and verdict was 25 months during the same period.

There was no apparent trend in size of award according to the type of government entity involved. For example, the median verdict for city governments in 1993, based on the incomplete data, was \$92,250, while the median for county government was only \$52,560 and the median for

state governments was a whopping \$350,000.

In 1992, however, when data was complete, a pattern was more evident, with the median verdict for city governments totaling \$47,500; for county governments, \$58,584; and for state governments, \$110,000.

"Governments have become much more cognizant of the fact that they must engage in rigorous risk management," Ms. McManus said, discussing the general downward trend in jury awards.

Many more government entities are creating risk management departments and/or hiring risk management experts with a view toward preventing claims, she said.

Cities are also turning toward

their legal experts earlier and in some cases hiring outside counsel. "In the long term, that's actually saved them money."

Mr. Finley commented that while Lakewood does not go to court often, he has noticed in recent months that defense attorneys are asking for much more reasonable settlements than they have in the past.

"I've been stunned about how reasonable initial offers have been to the point where we just can't walk away from them," he said. "It may be because they're sensing their chances in court have diminished."

For copies of the survey, "1994 Current Award Trends," send \$43.45 to the Jury Verdict Research Group, 747 Dresher Road, P.O. Box 980, Horsham, Pa. 19044, or call 1-800-341-7874.

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More, much more, than

Entities face even greater duty to train police

By DEBORAH
SHALOWITZ COWANS

Court ruling stresses need for proper training in car chases

Recent rulings by a federal appeals court may widen public entities' liability for accidents that occur during police chases, while at the same time limiting individual officers' exposure.

The actions of police officers during car chases must "shock the conscience" before the officers can be held liable for violating the constitutional rights of victims injured or killed during pursuits, according to the April 29 decision by the full 3rd U.S. Circuit Court of Appeals.

However, even if individual of-

ficers are cleared, the government entity for which they work could still be exposed to liability if it failed to train police officers properly, ruled a three-judge panel of the 3rd Circuit deciding this aspect of the case.

This "is a very important case," stated Kathryn Urbonya, a law professor at Georgia State University in Atlanta. "The court adopts a 'shocks the conscience' standard for when bystanders or others are injured as a result of a pursuit... This makes it much tougher to sue police officers."

Although the ruling only applies to Pennsylvania, New Jersey and Delaware, it "is enormously sig-

nificant for risk managers and public entities across the United States," said A. Michael Barker, a partner with Horn, Goldberg, Gorny, Daniels, Plackter & Weiss in Atlantic City, N.J., who represented the public entities. "I think this standard will apply for other substantive due process cases, in addition to pursuit cases."

"Substantive due process"—the doctrine under which the Constitution requires laws to be fair and reasonable in both content and application—has long been the basis for claims not otherwise covered by the Constitution.

The case, *Sarah E. Fagan, et al. vs. the City of Vineland, N.J.*,

stems from an incident that occurred on March 6, 1988. At approximately 1:55 a.m., a police officer on routine patrol spotted a passenger standing up through the open T-top roof of a white Camaro and waving his arms. The police officer turned on his overhead lights and followed the car, intending to give the driver a warning. The Camaro sped away, exceeding the legal speed limit in a residential neighborhood and running several stop signs.

Several police cars joined the pursuit, following the Camaro as it sped down one of Vineland's main streets, running several red lights. At the intersection of an-

other main street, the Camaro ran another red light and broad-sided a pickup truck.

The two occupants of the pickup truck, both in their mid-20s, were killed. A 19-year-old passenger in the Camaro also was killed. Two other 19-year-old passengers suffered crippling injuries, while the 20-year-old driver of the Camaro, Jeffrey Pindale, suffered minor injuries.

After the accident, it was determined that Mr. Pindale's blood alcohol content exceeded the legal limit. He has been convicted of aggravated manslaughter and is serving a 75-year prison term.

The six people involved in the accident sued the police officers involved in the chase, their superiors, the City of Vineland and a liquor store that sold Mr. Pindale wine he drank before the accident.

The plaintiffs claimed that the police caused the chase and conducted the pursuit in violation of state guidelines governing what circumstances should prompt a chase.

The plaintiffs also claimed that the police violated the 14th Amendment substantive due process rights of those killed or injured in the accident.

Making an arrest without cause would violate the Fourth Amendment, explains David Rudovsky, an attorney with Kairys & Rudovsky in Philadelphia, and a law professor at the University of Pennsylvania. However, "a chase is not an arrest... so the question is whether there is some kind of constitutional prohibition against this kind of chase."

A U.S. District Court in Camden, N.J., issued a summary judgment for the defendants. In dismissing the suit, the court ruled that the officers' conduct did not "shock the conscience" and was therefore not prohibited by the Constitution.

The plaintiffs appealed this decision and a divided three-judge panel of the 3rd Circuit ruled in August 1993 that the district court had incorrectly applied the "shocks the conscience" standard.

The defense then filed a petition for all 12 judges in the 3rd Circuit to rehear the case en banc.

During that rehearing, the defendants argued that the "shocks the conscience" standard is the appropriate standard for judging the actions of the police officers. Since the actions of the police did not "shock the conscience," the defense said, the case should be dismissed.

However, the plaintiffs argued that the District Court had erred in applying the "shocks the conscience" standard to their substantive due process claims. The plaintiffs argued that the appropriate standard of review should be reckless or callous indifference.

The full appellate court upheld the trial court's original summary judgment ruling.

In a lengthy opinion relying on a unanimous 1992 U.S. Supreme Court decision, *Collins vs. City of Harker Heights*, the appellate court ruled that "the substantive component of the due process clause (of the 14th Amendment) can only be violated by governmental employees when their conduct amounts to an abuse of official power that 'shocks the conscience.'"

This standard will be very difficult for plaintiffs to meet in most police chase cases, experts agreed. This is good news for police officers, because when civil rights violations of the Constitution are

Continued on next page

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Continued from previous page
established, plaintiffs may be entitled to collect attorneys' fees in addition to damages.

"That is a real concern for public entities," stated Mr. Barker. These are "big-dollar exposures."

The plaintiffs have not decided whether to ask the U.S. Supreme Court to review the ruling, according to Harry Furman, an attorney for the mother of one of the men in the pickup truck.

Furthermore, both the majority

and the minority opinions in the case note that the "shocks the conscience" standard has no specific meaning, noted Mr. Furman, who is a partner with Berman & Furman in Vineland.

The majority opinion acknowledges that the court is "aware of the amorphous and imprecise inquiry that the 'shocks the conscience' test entails."

While the court determined that police officers must act in a manner that shocks the conscience, municipalities are not held to the same standard, according to decision by a three-judge panel of the

Officers' abuse of power 'is a real concern for public entities,' says A. Michael Barker.

3rd Circuit: that was issued simultaneously.

"The court is separating having a lawsuit against individual police officers and having a claim against the city," explained Mr. Furman.

"It's unfair to allow individual municipalities to be let off the hook when the conduct of the police officers is the result of their training."

The panel agreed: "We hold that in a substantive due process case arising out of a police pursuit, an underlying constitutional tort can still exist even if no individual police officer violated the Constitution. The city is liable... if its policymakers, acting with deliberate indifference, implemented a policy of inadequate training and thereby caused the officers to conduct the pursuit in an unsafe manner and deprive the plaintiffs of life or lib-

erty."

The question of whether the municipality is liable for improper training will be remanded to the District Court.

The District Court had not previously considered the training issue, Mr. Barker noted. He said he plans to ask the District Court to dismiss this question based on the excellence of the City of Vineland's police training program.

Sarah E. Fagan vs. City of Vineland, N.J., 3rd U.S. Circuit Court of Appeals; Nos. 92-5481, 92-5482, 92-5551, 92-5594; April 29, 1994.

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Liability lawsuits rise again for LAPD

Unit established to cut litigation successful in '93

By JOANNE WOJCIK

A special unit set up by the Los Angeles city attorney's office to handle lawsuits against police got off to a spectacular start.

It slashed payouts to plaintiffs almost in half in 1993, its first full year of operation, compared with the previous year.

But the new unit's success may be short-lived: The LAPD has already incurred more liability losses in the first four months of 1994 than for all of 1993.

And police liability experts believe the 1993 decline is an aberration, attributable mostly to fallout from the highly publicized Rodney King case, which increased scrutiny of police activity and may have led police officers to behave in a less confrontational way for a time.

The March 3, 1991, King beating prompted allegations that there was a pattern of abuse by Los Angeles police officers and spurred a review of all police brutality complaints received by the U.S. Justice Department's Civil Rights Division.

The only real, long-term solution to the problem of increasing police liability losses is better risk management of the practices that give rise to claims, experts say.

Last year was the first year in which liability losses incurred by the Los Angeles Police Department declined from the previous year, according to Thomas C. Hokinson, senior assistant city attorney.

Judgments and awards in 1993 totaled \$10.7 million, down 46% from \$19.7 million in 1992.

In fact, the 1993 loss picture is the best since 1990, when the LAPD incurred \$9.1 million in liability losses, he said. Police liability losses for 1992 totaled \$14.7 million, according to Mr. Hokinson.

The losses stem from all non-traffic-related claims against the department, including those alleging false arrest, false imprisonment, assault, civil rights abuses, property damage, excessive use of force and wrongful death, he said.

Continued on page 24



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Police

Continued from page 20

Mr. Hokinson credits the creation of the Police Litigation Unit in 1991 with reversing the upward trend in police liability losses.

With seven of the city's 46 attorneys dedicated to handling police liability claims, "our caseload has dropped, so we are doing a good job of determining what cases to take to trial or to settle," he said.

The unit also has access to police detectives, who conduct often time-consuming investigations that the city attorney's office can use to rebut claims or to take a more aggressive stance in settlement talks.

"We also have a good win ratio" in the cases that are tried, said Mr. Hokinson, pointing out that the department won 75%, or 27 of the 36 cases it took to trial in 1993, and nearly 60%, or 19 of 24 cases that went to trial in 1992.

One of the cases the unit won was a high-profile lawsuit filed by the manager of a McDonald's franchise who accused the LAPD's Special Investigation Section of watching as robbers broke into her restaurant at closing time and terrorized her.

The judge dismissed the case, ruling that the police should not be held liable for damages sought by the manager, even though the SIS officers acknowledged they allowed the robbery to occur. The police did apprehend the robbers after they left the restaurant.

"It's the first time we've ever been able to bring a team approach to these high-exposure cases," said City Attorney James K. Hahn.

Unfortunately, three of the LAPD's high-publicity losses in April alone pushed the city well over the incurred loss total for all of last year:

- The first was the King case itself, with a federal jury on April 20 awarding Mr. King \$3.8 million in compensatory damages. The jurors are still considering punitive damages against the individual defendants. Under state law, the city cannot be held liable for punitive damages.

- The city agreed to pay \$4.5 million to the family of a teen-age girl who was molested by a uniformed police officer in 1989. A Los Angeles Superior Court jury in 1992 had awarded \$6.1 million in compensatory damages to the girl, but the family accepted the settlement offer to avoid protracted appeals (BI, May 9).

- A jury awarded \$1.2 million to a woman who said she was harassed by officers and struck with a baton in August 1991.

And while the Police Litigation Unit's win ratio may be impressive, the number of claims filed against the city involving police incidents rose 24% to 726 in 1993, from 585 in 1992, Mr. Hokinson said.

The city attorney will not release until later this month the cumulative payouts and number of cases filed for the first quarter of

1994.

Some police liability experts feel the 1993 decline in awards against the city of Los Angeles is an aberration due primarily to a reluctance by police officers to become involved in confrontational situations following the

Aggressive claims handling 'may be part of the loop, but you also need to establish accountability and steps to prevent liability,' such as enforcement of use-of-force rules, says Leon M. Oswalt, loss control manager for the Portland Police Bureau.

highly publicized King incident.

"It's a very natural response," said Patrick Gallagher, president of the Gallagher-Westfall Group Inc., a consultant in Purcellville, Va., and author of "Risk Management Behind the Blue Curtain: A Primer on Law Enforcement Liability."

"Generally, as a result of lawsuits, you have decreased self-initiated activity, morale is lowered and productivity goes down," he said.

That view is further supported by police liability experts James Q. Wilson and George Kelling in an article they authored, titled "Broken Windows," that appeared in the Atlantic Monthly in the early 1980s.

In that article, the authors argued that police managers are driven more by the constraints of

the job than by the goals of the job, which usually are "to protect and serve"—a common patrol car motto.

In other words, "Risk managers and police chiefs are concentrating so much on reducing lawsuits that productivity falls," Mr. Gal-

lagher explained.

Police liability experts often refer to this situation as PONC, or the Price of Non-Conformance, a term coined by Philip B. Casey in his book on police liability, "Quality without Tears."

"That price may be paid even if the department wins every lawsuit," said Mr. Gallagher, because the officers who are named in litigation literally become gun-shy.

Defense lawyer F. James Feffer of Los Angeles' Cotkin & Collins, a firm used heavily by Los Angeles County and surrounding cities to defend excessive force suits, agreed that the decline reflects a reluctance by law enforcement officers to become involved in so-called "marginal" situations.

"The police officer on the street is less proactive because he's afraid," he said. "He thinks first about whether he's going to be sued," rather than about stopping crime, said Mr. Feffer, comparing it to doctors' growing aversion to acting as Good Samaritans in

emergency situations for fear of liability.

Because the reduction in police liability awards experienced by Los Angeles may be temporary, police liability experts suggest the city take a more active approach to avoiding claims rather than simply dealing with them after the fact.

"Police departments have to realize they have to take proactive risk management actions" and "set up processes within the department to deal with anticipated risks," advised Mr. Gallagher.

Aggressively handling claims after they have been filed "may be part of the loop, but you also need to establish accountability and steps to prevent liability," such as training and enforcement of use-of-force rules, said Leon M. Oswalt, loss control manager for the Portland Police Bureau in Oregon.

Mr. Oswalt is one of the few full-time loss control managers employed by a municipal police department in the United States.

In addition to a loss control manager, whose post was established two years ago, the city of Portland also has employed for 10 years a police liability administrator, who serves as a liaison between the city attorney and the risk management department, according to Mr. Oswalt.

By contrast, the city of Los Angeles' risk management department has little, if any, contact with the city police department, said Richard Welch, risk manager.

All police liability issues are handled by the Police Litigation Unit, headed by Mr. Hokinson, and officer training is conducted by the Los Angeles Police Academy in Elysian Park. **BI**

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Australian pools' advantages

Public entities well-advised to dive in, experts say

By KATE McILWAINE

SYDNEY, Australia—Regional pooling is the best way for Australia's municipal authorities to finance their property/casualty risks, risk management experts say.

Underwriters, elected members of local government councils and risk managers agreed at the first Australian Public Risk & Insurance Management Assn. conference in Sydney last month that pooling, on a more concentrated regional basis rather than a statewide basis, is the most effective method for local councils in Australia to finance their risks.

Greg Brown, managing director of Sydney-based C.E. Heath Casualty & General (Professional Liability) Pty. Ltd., a unit of C.E. Heath International Holdings Ltd., said councils should join pools because that is where the future lies.

Insurers should provide catastrophe coverage layers only, he said. "Catastrophe claims will occur, and that's what insurance is all about."

He warned that fewer councils are buying coverage solely from commercial insurers, and councils that are not now members of pools could find that, in three years, commercial cover may be unavailable unless their loss experience is very good.

"My advice to councils is to get into pooling one way or another." The advantages have been shown in the six years Australia has had pooling arrangements, he said.

The first local government pools were established in New South Wales in 1988. In South Australia, all councils now belong to a single pool.

C.E. Heath, which writes excess coverage for Australian pools, has reduced rates because of good claims experience.

Regional pools encourage good risk management, Mr. Brown said. On the other hand, many argue that the large size of statewide pools lets participants feel more removed from losses and therefore diminishes the incentive to manage risks. Several years ago, C.E. Heath imposed a \$5,000 Australian (\$3,518) across-the-board deductible or retention on local government claims. This reduced the frequency of claims and helped the insurer return to profitability on its government book of business, he said. But, he questioned whether the reduced frequency of claims was because councils had absorbed the cost or because they had implemented better risk management.

Pools also give councils clout that they do not have individually, he said. "I fail to see why governments can't realize... councils cannot continue to be squeezed in terms of income they can generate and having to pay more insurance premiums. They are being asked to bear more circumstances giving rise to claims... Pools give them breathing space."

However, too few elected officials are committed to the long-term goals of pooling, said Peter Bryant, a council member from Rockdale, New South Wales, which belongs to a group called Metro Pool.

Pooling requires thinking beyond the next election, he told those attending the APRIMA conference. Too many elected members are "nervous Nellies" who won't take the step to pooling, focusing on negatives instead of the positives. For instance, they ask what they can save this year through pooling but lose interest when told savings are four to five years away, he said.

Paul Krix, divisional manager of corporate services for the Hawkesbury City Council, a member of Westpool, a western Sydney regional pool, noted that the Hawkesbury council had simply referred claims to its insurer before it joined the pool. However, pooling gave the council a new concept of self-accountability. In the five years that it has been in Westpool, the Hawkes-

bury council has saved more than \$400,000 Australian (\$281,400).

But, local councils must be committed to achievable, realistic standards, he said. For example, Westpool has a business plan achieved that outlines member benefits—such as collective use of risk management resources—to be achieved over the next three years.

Pooling's principle "is very simple.

It's cooperation" among the pool members, he said. But, members cannot assume commitment; it must be demonstrated, he said.

Other advantages pooling offers public entities include the opportunity to lobby as a united voice for governmental changes, he said. The councils are set up under state government but also are subject to federal legislation.

Michael McMahon, general manager of the Waverley Council in Sydney and executive director of APRIMA, said traditional insurance coverage in the past has been very expensive for local authorities. "In-

surance companies have categorized local government as a risky business and, with limited competition, premiums have remained high."

Pooling has saved councils money. Premature, the pool to which the Waverley Council belongs, refunded about 66% of original premiums that members paid in 1992.

Frank James, chief executive of Redwood Empire Municipal Insurance Fund in California, a 14-city pool, said team effort was needed to get total commitment to pooling from the fund's members. He said cities that don't join a pool will have capacity problems. **B**

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Capping governmental liability

Australian public entities seek relief from claims costs

By KATE McILWAINE

SYDNEY, Australia—Governments should cap liability awards against Australia's local government councils, says the president of the Australian Local Government Assn.

ALGA President Peter Woods told risk managers gathered for the Australian Public Risk & Insurance Management Assn. conference that if the New South Wales state government is prepared to cap workers compensation payouts for employers, it should also cap local government's liability for other claims.

"It's outrageous that the in-

crease in litigation will force local governments to cut (services) because premiums are going through the roof," he said. But, he added that local government councils must implement sound risk management programs to prevent claims in the first place.

Australians, like Americans, are becoming very litigious, and councils must consider that when making decisions, Mr. Woods said. He cited examples of councils that had denied access to lakes used for swimming because of the risk of claims.

Chris Watson, president of the Institute of Municipal Engineering in New South Wales, said people

taking responsibility for their own actions is becoming "a thing of the past."

"People are looking for someone to blame, and someone to pay," he said.

Graeme R. Jeffries, risk manager with Sydney-based broker R.J. Abrahams Pty. Ltd., which manages eight regional New South Wales public entity pools, said local councils must find a case to test the decision of a New South Wales court that held that a local council was liable for injuries to a woman who fell over a tree root growing through a footpath.

"A tree planted by the road is considered an artificial structure,"

he said. "We need to get this (decision) off the books—either that or we invent a tree with no roots, that sheds no leaves and grows around power lines."

Mr. Jeffries said there must be a balance between what people want in their communities, like trees, and the risks that accompany them. The council that was sued had the footpath listed on its risk hazard survey, but had not yet repaired it, he noted.

Insurance lawyer Kevin Gibbons, with the Sydney office of Phillips Fox, said the decision shows that councils' potential liability is more onerous than previously considered possible.

Elizabeth D. Puddington, president of the Public Risk Management Assn., based in Alexandria, Va., said pools must keep good records because public entities can be a target for "deep-pocket" lia-

bility claims.

But, if a pool defends frivolous claims aggressively, incoming claims will eventually be reduced as the pool gains a reputation for taking strong action, Ms. Puddington said.

Greg Brown, managing director of Sydney-based C.E. Heath Casualty & General (Professional Liability) Pty Ltd., a unit of C.E. Heath International Holdings Ltd., said insurers are more likely to settle a claim on a commercially sound basis than continue to defend a claim, even if frivolous, throughout the court process.

"Principle is very expensive," he observed, adding that insurers are likely to weigh the cost to defend unmeritorious claims with the cost of settling them. "It's wrong, but it's a reality of life," he said.

Loss adjuster Les Emerson, managing director of Givens-Emerson in Sydney, advised APRIMA delegates to attempt to settle claims early and amicably. He said pool members should avoid courtrooms, if possible, because the result is unpredictable and uncontrollable. Delays could frustrate the complainant and minimize opportunities for early settlement.

"It's better to resolve it without extensive administrative and litigious procedures," Mr. Emerson said.

Once a claim is filed, a public entity risk manager must ascertain the facts and apply appropriate legal principles to determine liability, Mr. Emerson said. The risk manager must then consider the size of the claim, as that determines how much time and effort should be directed to its resolution. The risk manager should then notify the insurance companies and determine the involvement of any third parties.

The failure to get other potentially responsible parties involved early is a major reason for delay in claims resolution, he said. "The inability of co-defendants to agree on a level of liability is the main thing that delays settlement." Sometimes a claim has to be apportioned on commercial grounds rather than strict adherence to the amount of liability each party has for the claim, he said.

Abrahams' Mr. Jeffries said loss prevention is the best means of claims management because "in court, no one really wins." When claims occur, local councils cannot shelter behind legal or insurance smokescreens. "Remember you are dealing with people and they are unpredictable, particularly if injured, physically or financially."

Public entity risk managers should investigate incidents quickly and accurately, he noted. The aim is for a quick, amicable settlement, but without being seen as "a soft touch or... an uncaring organization that quite happily wounds and maims and then takes shelter behind legal jargon."

The eight pools that R.J. Abrahams manages in New South Wales account for 57 of the 176 councils in that state.

In Adelaide, South Australia, Jardine Australian Insurance Brokers has managed the Local Government Assn. Mutual Liability Scheme since 1989. It is voluntary, but all local government bodies in South Australia—118 councils and 62 other local-government run bodies—are members.

In Queensland, Jardine manages a local authority liability pool that was launched in March.

So far about 80 of Queensland's potential 141 members have joined. They include Brisbane City Council, Australia's largest local authority.

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PRIMA affiliates with Australian public entity group

By KATE McILWAINE

SYDNEY, Australia—Australia's new public entity risk management group, the Australian Public Risk & Insurance Management Assn., is now officially affiliated with the Public Risk Management Assn. in the United States.

The affiliation was formalized at the inaugural APRIMA conference held last month in Sydney.

Elizabeth D. Puddington, president of Arlington, Va.-based PRIMA, reminded the 152 delegates attending the conference that public entities are forced to deal with exposures, regardless of insurance cost or availability. For example, unlike private enterprises, public entities cannot avoid risk by going out of business, discontinuing a service or passing the costs posed by risks to consumers, Ms. Puddington said.

To handle these unavoidable risks, public entity risk managers must become consultants rather than insurance technicians. "Risk managers must become a resource for others to accomplish organizational goals," she said.

Ms. Puddington, who is executive director of the New Hampshire School Buildings Insurance Trust, said local government pools have been criticized by traditional insurance markets because they remove a large chunk of premium volume from the marketplace. But pooling offers public entities budgetary predictability, she said, noting that public entities can use traditional markets until they develop critical mass to form pools.

While some of the first U.S. public entity pools were not well-funded and initially had no understanding of the need for incurred-but-not-reported loss reserves, legislation enacted by states now requires these pools to be actuarially sound, she noted.

The key to successful pooling is commonality of the members' interest, she said. "The more common the purpose, the easier it is to manage."

Albert T. Fierro, risk manager for the city of San Francisco, which is a member of the Assn. of Bay Area Governments Pooled Liability Assurance Network Corp., said public entity pooling began in the United States because the traditional insurers abandoned the public entity market. Rather than paying premium increases of 50% to 70% for minimal amounts of liability coverage or, alternatively, go bare, public entities began to turn to pooling. And, as the traditional insurance market was being somewhat discredited because of solvency and other problems, pooling and self-insurance were legitimized.

Mr. Fierro said pool participants must be constantly vigilant when it comes to risk management.

Accidents that can stem from poor street and sidewalk maintenance are the greatest exposure for Australia's local authorities, he warned. Attorneys constantly are "out there surveying your roads, sidewalks and parks. Identify your exposures and fix them," he said.

Peter Mathews, the conference's chairman and executive manager of pooling administration with Sydney broker R.J. Abrahams Pty. Ltd., which manages eight regional New South Wales local government pools, said Australia had "unashamedly poached the pooling idea from the United States," which was why APRIMA sought affiliation with PRIMA.

Mr. Mathews said APRIMA wants to expand its membership to include

government-related business enterprises as well as the municipal councils that currently make up the majority of its members.

Australia's first pools were set up in 1988, when several local councils joined together to find an alternative to the conventional insurance market. "Peer pressure between pool members ensures that no one lets the team down," Mr. Mathews said.

Bruce Ferguson, director of mem-

bership for the Assn. of Risk & Insurance Managers in Australasia and risk manager for the Sydney Water Board, told delegates that ARIMA and APRIMA have a lot to offer each other and should work together.

When APRIMA was established, some ARIMA members were critical, saying Australia was too small to have two separate organizations for risk managers (*BI*, Jan. 10, 1994). ■

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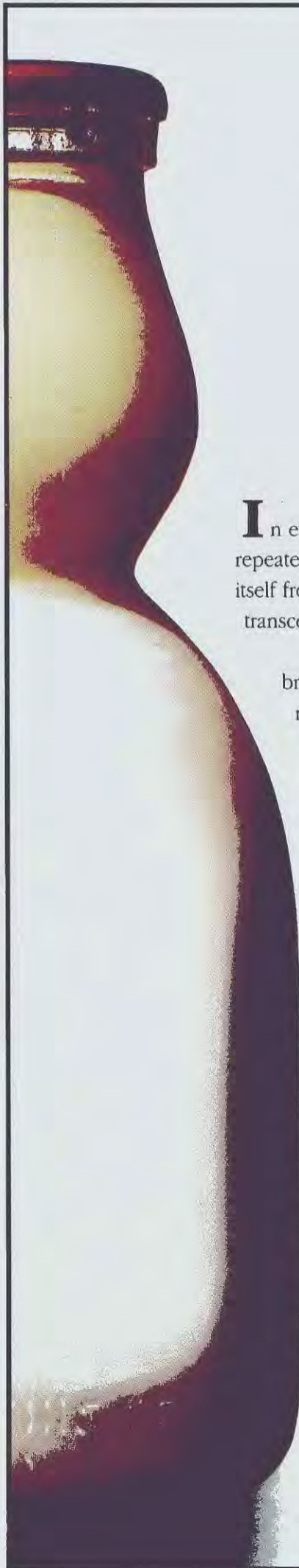
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A relative newcomer takes the reins at PRIMA

Rodebaugh brings intensity, enthusiasm to her new position as president

By DEBORAH SHALOWITZ COWANS

The Public Risk Management Assn. is getting new blood at the top.

With just seven years of membership in the PRIMA behind her, Sharon J. Rodebaugh is the organization's president for the 1994-1995 year.

"I'm kind of intense—when I get involved, I get involved," she explained. "I've always really thrown myself into anything I've been involved in."

While some people might be skeptical about her fast track to

the top, Ms. Rodebaugh, 49, pointed out that "any naiveness might not be a bad thing. I come in pretty fresh, without a lot of preconceived notions" about the organization.

Furthermore, she has worked her way up through the ranks of the organization.

"I had been a risk manager for a full week when I attended my first (PRIMA) conference" in Seattle in May 1987, she said.

A year and a half later, she became treasurer of PRIMA's Texas chapter; the following year she was elected secretary.

Leadership positions in the national organization soon followed.

After serving on a national committee in 1989, Ms. Rodebaugh ran for vp of Region VI in 1990 but lost. Perseverance prevailed, though: In 1992, Ms. Rodebaugh won that election and began serving on the national board.

Arlington, Va.-based PRIMA, which was formed in 1978 with fewer than 100 charter members, now has about 2,100 members, 1,900 of which are public entities. The other 200 members are private-sector affiliates, such as insurance companies and brokers. Membership growth has averaged about 5% a year for the past several years, said Executive Director Dennis Kirshbaum.

The organization's 1993 revenues were approximately \$1.6 million, of which 40% was generated by annual dues of \$189 per member; 40% by educational programs, including the annual conference; and 20% by publications sales. PRIMA has had a surplus every year since its second or third year of operation, he said.

Ms. Rodebaugh's enthusiasm for PRIMA is apparent.

"I have a lot of respect for the association," she said, adding that one of her priorities is "to get the word out about all the exciting things we are doing right now."

PRIMA is developing several new programs designed to involve, educate and train members, she said.

For example, a more extensive committee and subcommittee structure should allow more members to get involved with the organization, she noted.

And, PRIMA plans to create a formal orientation program for new chapter presidents and a manual for new chapter officers, she said. PRIMA also plans to help members form study groups for the Associate in Risk Management designation.

Ms. Rodebaugh brings a variety of risk management and insurance experiences to PRIMA's presidency.

As the first risk manager of Grand Prairie, Texas, a city of 102,000 people located between Dallas and Fort Worth, Ms. Rodebaugh is the liaison between the city and its liability, property and workers compensation insurer, the Texas Municipal League Intergovernmental Risk Pool.

She fought for authorization from the Grand Prairie City Council to hire each of the department's three other staffers. She also had to convince personnel in other city departments that she was interested in helping them, not infringing on their territory.

"You've become a successful risk manager when (other personnel are) no longer hiding things from you—they're bringing things to you."

The newest challenge facing Ms. Rodebaugh in Grand Prairie is a racetrack the city plans to build. The facility, which will occupy 285 acres of land, will house a six-level grandstand for 20,000 spectators, barns for about 1,400 horses and parking for 10,000 vehicles.

"I am becoming immersed in racetrack exposures and associated coverages," she said. "Risk management in the public sector is a continual learning experience."

Ms. Rodebaugh's insurance background should help her with the challenge.

She began her insurance career in 1976 in the claims department of Economy Fire & Casualty Insurance Co. in Freeport, Ill. Ms. Rodebaugh also worked for Western States Insurance Co., Crum & Forster Insurance Co., Houston General Insurance Co. and the city of Fort Worth before becoming Grand Prairie's risk manager.

In addition to adjusting claims, she handled subrogation claims and managed litigation during her insurance career.

Ms. Rodebaugh has a variety of hobbies, including gardening, fitness walking and raising two Shetland sheep dogs. She serves on the adult advisory board of Drug Free Youth in Texas. She has four grown children—two sons and two daughters.

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Insurer Topics

A special editorial section sent exclusively to insurers and reinsurers

By SALLY ROBERTS

The Insurance Value Added Network Services is trying to pave the way for the insurance industry to travel down the information superhighway more efficiently and effectively.

For 11 years, the Greenwich, Conn.-based non-profit organization has been providing electronic data network access to members of the insurance community to help improve communication throughout the industry.

Although it was slow to start, IVANS' membership base has grown from 21 property/casualty insurance companies in 1983 to about 450 members today, running the gamut from property/casualty insurers to managed care organizations to reinsurers to third-party administrators.

IVANS says its large membership base has enabled the organization to wield clout and offer its members an array of cost-effective programs. The network has been especially active this year.

This year's activity includes: a joint venture with MCI; a new international electronic mail directory; a joint venture with Plano, Texas-based Electronic Data Systems Corp. to provide electronic services for workers compensation; and a joint venture with the Reinsurance & Insurance Network to provide low-cost electronic data interchange between U.S.-based reinsurers, their brokers and their business partners.

"We're so busy, we're choking on a fire hose," joked Robert Y. Barham Jr., IVANS' president and chief executive officer. Many projects that have been on the drawing board for some time "hit the street for us this year."

However, IVANS hasn't always been so busy.

The 21 property/casualty insurers formed the organization in 1983 with the mission of being a management entity to enable independent agents to communicate via a data network with their insurers. While the idea sounded good, it encountered a number of startup problems, Mr. Barham recalled.

"We were not universally admired" by a number of larger insurers that had a great deal of technological and monetary capabilities, he said. "They were not happy to see us build a level playing field" among insurers.

The lack of client mass in the early days can be compared to the early days of the telephone, Mr. Barham said. Why would a person buy a telephone if there was no one else to talk with?

At the same time, however, the communication process between



IVANS hooks industry into new world order of telecommunication

Network is now large enough to wield the clout to negotiate cost-effective services for members

agents and insurers was a "Tower of Babel," he said. Agents typically represented seven to 10 insurance companies and "they all spoke different languages" on the computer. It was a problem that needed a solution, he said. Insurers would look out "at a sea of agencies" with different computer networks and only be online with a few of them.

"It is our job to bring order out of chaos," Mr. Barham said. Through IVANS, members have the capability to translate different computer languages into their own language, he explained.

Despite the slow start, IVANS has grown to about 450 members



and 50,000 users. In fact, about 93% to 95% of the nation's independent agencies' premium volume is underwritten by IVANS member insurers, Mr. Barham said.

IVANS has undergone the "mall effect," he added. When a new shopping mall opens up, the halls are empty and many stores are not even there, he explained. But, as shoppers begin to congregate, the

stores fill up. "People start to see where the action is."

The insurance industry has figured out where the action is in automation, he said, referring to IVANS. And this action translates into more cost-effective communication and data services for its members.

Earlier this year, IVANS signed a \$1.4 billion telecommunications deal with Washington-based MCI Communications Corp. under which MCI will provide a variety of telecommunications services to IVANS members at a discount.

"IVANS first struck a deal with MCI in 1987," Mr. Barham said. Since then, IVANS has grown large

enough that it was able to negotiate a better deal for its members, he said.

Columbus, Ohio-based Nationwide Insurance Cos., a two-year IVANS member, was one of the first users of the new MCI service.

Prior to this year's contract, Nationwide received discounts on its MCI services through

IVANS, said Terri Daughters, director of information

services systems

for GatesMcDonald, Nationwide's third-party administration subsidiary.

With the new contract, the insurer will save an additional 20% to 25%, she said.

In addition to the MCI deal, IVANS struck a deal with EDS to develop a national workers compensation claims reporting service.

Through the service, IVANS members can submit workers comp claims reports electronically, which speeds the filing of legally required information with individual states. For example, the service is able to receive, through electronic transmission, the first report of injury form, which then can be electronically submitted to the appropriate state using that state's individualized reporting format, Mr. Barham explained.

This program currently is in being run as a pilot project in California, he said.

In another joint venture, IVANS is expanding its electronic data interchange to the U.S.-based reinsurance community, Mr. Barham said.

The venture with Brussels-based electronic communications organization Reinsurance & Insurance Network provides a low-cost exchange of information between U.S. reinsurers and reinsurance intermediaries and their business partners.

RINET joined with three other associations in 1992 to develop reinsurance standards—common sets of terminology, messages or documents that companies can use to communicate with their partners. IVANS will provide its members RINET's standards to allow for the electronic data interchange of business with the reinsurance community.

While reinsurers have been slow to adopt EDI, a number of IVANS members in the reinsurance industry are using electronic mail functions, Mr. Barham said. The organization is aiming to bring all the reinsurers currently using IVANS' e-mail into the IVANS/RINET system, he said, adding that two reinsurers currently are using the new service.

In addition to the cost savings, IVANS members are most interested in the e-mail service, Mr. Bar-

Continued on next page

Insurers starting to bring policyholders online

By SARA MARLEY

Insurers increasingly are keeping their customers in mind when designing their internal computing systems.

In addition to allowing for the electronic exchange of policy and claims data, many insurers are granting their policyholders online access to safety, engineering and loss control information.

Continental Risk Management Services' Adjuster Notes program allows customers to review the status of a claim, including detailed notes, reports and plans of action determined by the adjuster.

CRMS, a unit of New York-based Continental Corp., was launched last year to provide insurance products and risk management services to large commercial accounts (BI, May 17, 1993).

The division offers a variety of other automated services. Policyholders can report claims 24 hours a day, seven days a week using a toll-free number. Where allowed by law, CRMS will file with the state insurance department the first required notice of injury form for workers comp claims.

The around-the-clock reporting ca-



ability isn't just convenient, it also saves money, said CRMS President Adrian Tocklin.

"We know that the faster a claim is reported, the more likely the cost of the claim will be reduced," she noted. The claims reporting service "was explicitly enhanced to provide our customers with a new service designed to help reduce loss costs."

Arkwright Mutual Insurance Co. developed Arkwright Customer Service Information System to share data with its policyholders and to streamline its own recordkeeping and processing, said William J. Stella, senior vp of information services for the Waltham, Mass.-based insurer.

Before installing the network, Arkwright employees had to take down the same information about policyholders' locations more than 25 times.

The software portion of the system, which is kept in a data base and accessible by personal computers, is

being rolled out to all Arkwright locations this year after being tested in the Dallas regional office, Mr. Stella said.

There are five components: basic customer information, an underwriting module that uses artificial intelligence to determine policy pricing, engineering information from Factory Mutual Engineering & Research, a word processing program to produce policies and reports, and a claims-handling module.

Policyholders will benefit from ACSIS' faster processing, Mr. Stella said. "They will get their policy material quicker and their questions answered faster," he said. "Overall, it will improve customer service."

Arkwright also provides electronic mail to customers and is transmitting policies to some electronically. Soon after ACSIS is installed in the branch offices this year, policyholders will have access to even more information that will allow them to maintain their own insurance data bases and analyze their properties and claim histories.

Warren, N.J.-based Chubb Corp.'s Applied Technology Department, which writes machinery breakdown insurance, used its ability to sort information in its data base to identify

policyholders affected by last summer's flooding in the Midwest.

Holly Giordano, the department's training and marketing coordinator, contacted the National Weather Service for the ZIP codes of flooded areas. Chubb then devised a flood recovery plan, which it distributed to branch offices with lists of potentially affected customers in their areas.

The plan included information on safely drying out machinery that was submerged in floodwaters, Ms. Giordano said.

The data base allows Chubb to sort by other factors, like brand, model and age of equipment.

That comes in handy when the department receives recall or repair information from manufacturers. In some cases, a defective bolt must be replaced or a wire changed from alu-

minum to copper, she noted. The Chubb notices are meant to follow up on the manufacturer's notice, but in some cases the policyholder never gets that.

"They might have bought used equipment, or they moved, or the machinery was there when they purchased the building," she said. "They might not necessarily get the notice from the manufacturer."

The department has used the computing system for five years, but the flooding last year was the first time it was used to communicate directly with policyholders, Ms. Giordano said.

Risk consultants—the loss control personnel in the field—all have laptop computers linked to the mainframe so the information in the data base is updated daily.

"We are expanding what it is used for," she said. Chubb is evaluating the best means to distribute information during a catastrophe in order to communicate with clients faster. **BI**

IVANS

Continued from previous page

ham said. Long Grove, Ill.-based Kemper National Insurance Cos. uses IVANS so its producers can communicate with the insurer by sending policy information and talking to people through e-mail, said Bob Tarjan, Kemper National's vp-information services.

Employees on the road are also able to access Kemper National's computer system with a personalized IVANS access code. Due to "the law of large numbers," Kemper National is able to save money with IVANS on the cost of sending information electronically, he said.

"Tens of thousands of companies have e-mail," Mr. Barham said. However, many only use it internally and do not use it to talk to other companies. "No one knows who has e-mail and who doesn't."

Therefore, IVANS is developing an international electronic mail directory for its members. The directory will contain names, addresses, telephone and fax numbers and e-mail addresses, he said.

While IVANS has been buzzing with activity lately, it is not ready for a rest, Mr. Barham said.

IVANS is looking to expand more into the health insurance arena, he noted. Membership growth among health insurers and managed care firms has been slow.

"We realize we've got a band and a dance hall and got lots of guys and gals, but we have no dance," Mr. Barham explained. Right now, there is no rationalized, sensible way for members of the health care industry to do business together electronically. "We're trying to find out how to do that."

However, IVANS got a boost recently when the Chicago-based Blue Cross & Blue Shield Assn. signed on.

The independent Blues plans need to send information back and forth to each other, explained Keith Grossich, executive director of information systems and technical services for the BC/BS Assn., which joined IVANS in March.

Joining IVANS was "primarily for cost savings," he said. The organization expects to save \$500,000 this year by sending data electronically through the IVANS' network.

And, as an IVANS member, "we have priority in problem resolution," Mr. Grossich said. If there are any problems with the computer system, IVANS deals with the association directly. **BI**

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Match Basis: BUSINESS AT CURRENT ADDRESS Match #1
 Business Name: XYZ, INC.

Loss Location: 87 NORWOOD AVE., LONG BRANCH, NJ 07740 Current Address: 1 MAIN ST., LONG BRANCH, NJ 07740
 Loss Date: 2/13/92 Policy Type: CMP
 Loss Range: \$2,500 - \$3,000 Policy #: HTS00021015
 Cause/Alleged Injury: WATER DAMAGE - BROKEN PIPE
 Carrier: WORLD INSURANCE

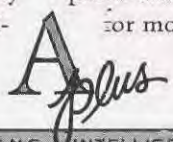
Match Basis: BUSINESS AT RISK ADDRESS Match #2
 Business Name: XYZ, INC.

Loss Location: 87 NORWOOD AVE., LONG BRANCH, NJ 07740 Current Address: 87 NORWOOD AVE., LONG BRANCH, NJ 07740
 Loss Date: 11/5/93 Policy Type: CMP
 Loss Range: \$115,000 - \$120,000 Policy #: PST00032P16
 Cause/Alleged Injury: FIRE
 Carrier: THE INSURANCE GROUP

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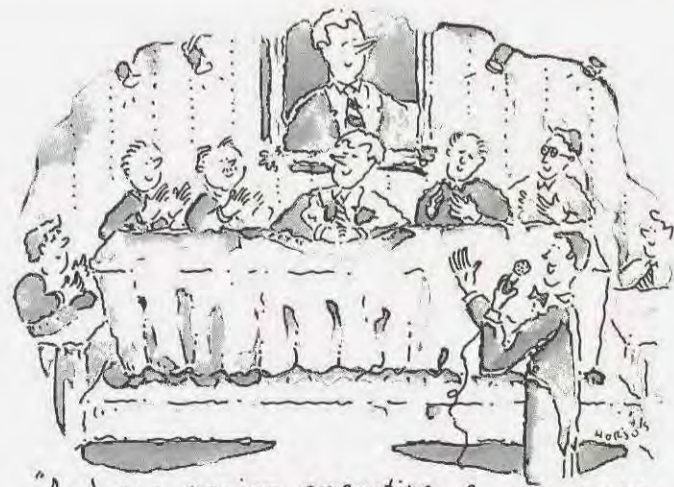
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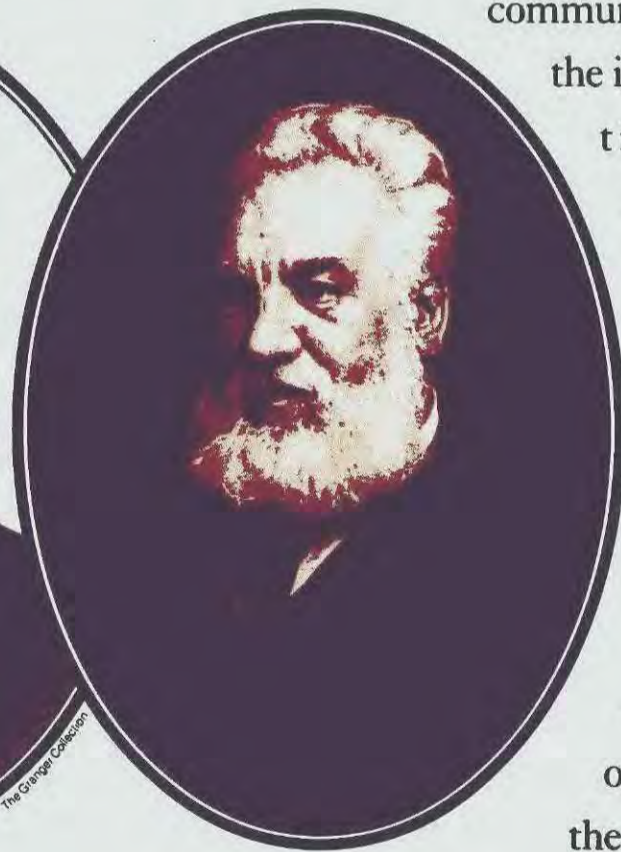
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Policyholder data to be shared with all insurers, court rules

By GAVIN SOUTER

Policyholder information that an insurance agent acquires while acting for one insurer cannot be disavowed when the agent transfers the policyholder to another insurer, a federal appeals court has ruled.

As a result, Jackson National Life Insurance Co. in Lansing, Mich., will have to pay \$250,000 on a so-called key man life insurance policy taken out by Johnson International Co., a Seattle-based hardwood exporter and milling company.

In ruling for Johnson, the 8th U.S. Circuit Court of Appeals in St. Paul, Minn., "set a pretty good precedent for the life insurance industry," said Johnson's attorney, Dan Duffy, a partner at Cassem, Tierney, Adams, Gotch & Douglas in Omaha, Neb.

The case centered on a key man life insurance policy that Johnson bought through insurance agent William Yeager.

The policy covered Howard Warford, a log buyer for Johnson. Mr. Warford died after a heart attack during a business trip in August 1986.

The original policy was issued by Akron, Ohio-based Summit National Insurance Co. in June 1985. Three months later, the Summit policy was replaced by one from Jackson National, which offered lower premiums for smokers like Mr. Warford, court documents show.

"When Warford completed the application for the Summit National policy, he answered affirmatively the question of whether he had ever been treated for chest pain, heart murmur, high or low blood pressure, heart attack or any disease of the heart or blood vessels," according to court documents.

Handwritten below the question on Summit National's application was the statement "chest pain in April 1978."

At a paramedical examination before the Summit National policy was activated, Mr. Warford again admitted that he had suffered chest pains. In fact, he had a heart attack in 1978 and had been on medication in the years since the attack, court papers show.

When the policy transferred to Jackson National, Mr. Yeager told Mr. Warford that he need not report the chest pains to the new insurer because the pains had occurred more than five years earlier, according to the court papers.

When Johnson made a claim on the Jackson National key man policy, the insurer disputed the claim, citing material misrepresentations in the policy application.

A special verdict by the district court in Omaha, Neb., found that Jackson National's denial of the claim represented a breach of contract.

The appeals court combined the precedent of several previous cases in its ruling upholding the lower court.

First, the court ruled that when an insurer's agent instructs the policyholder on the materiality of information given to an insurer in an application, the policyholder is not liable for any misrepresentation that follows.

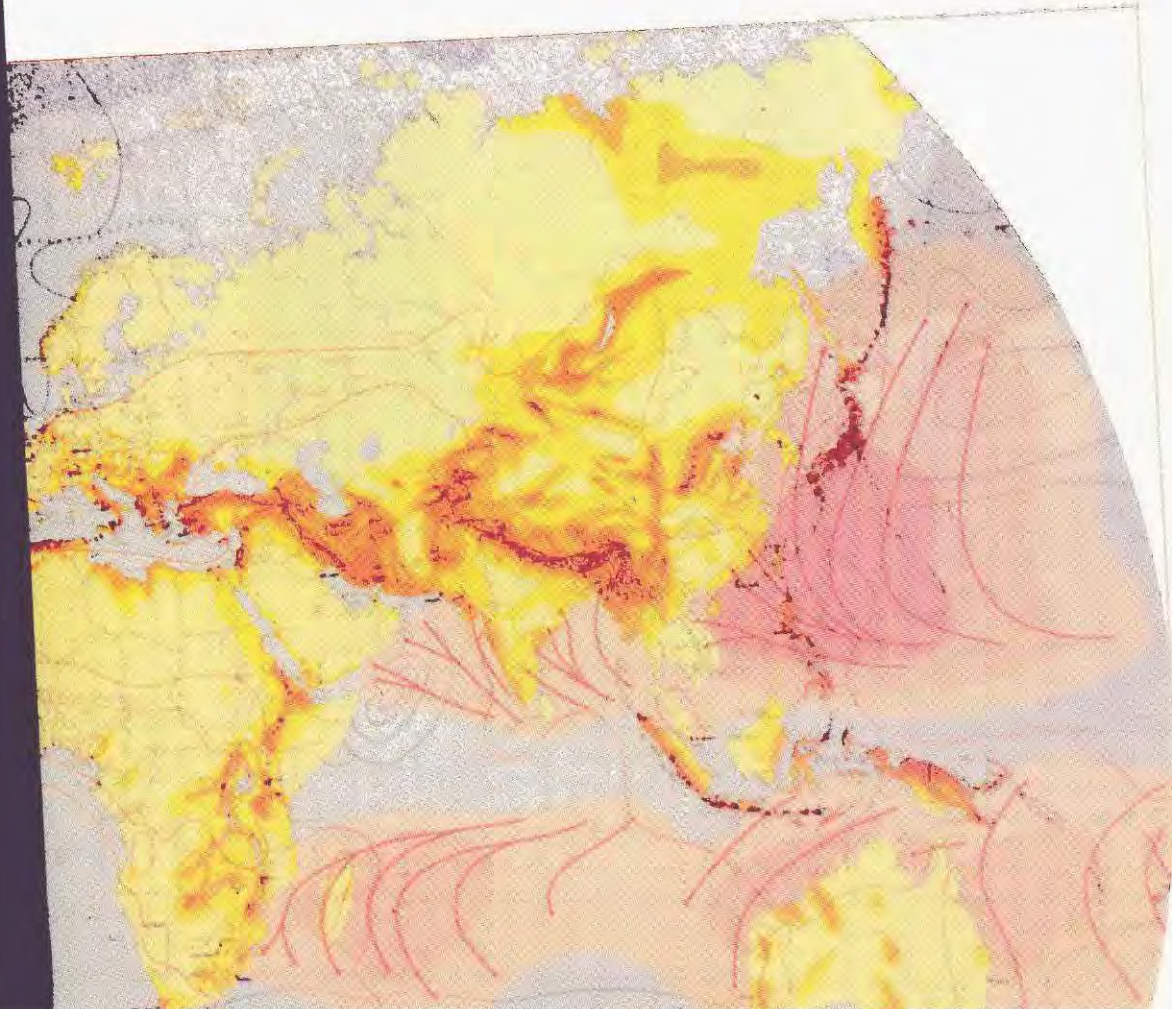
Secondly, because Mr. Warford previously revealed his medical history to the agent and acted on the agent's advice, there was no intent to deceive on his part, the court said.

The agent representing both insurers was given the information by the policyholder, therefore the insurer was compelled to pay the claim even though the agent did not pass along the information, said Mr. Duffy, Johnson's attorney.

"The agent who took the information for the Jackson policy had acquired knowledge as an agent for a different company, and the court said you do not disavow that knowledge even though it was not communicated to Jackson," Mr. Duffy said.

A spokesman for Jackson National said the company would not appeal.

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Making the switch to PC-based technology

By Raymond J. Nawara

New systems can be built from existing information resources

means that most of an insurer's critical data resides in older automated systems not designed to be portable, flexible or accessible to the end-users who must have that information. Accessing this data has proved to be a nearly insurmountable problem for scores of ambitious client/server pilot projects.

Since the bulk of insurers' information resides in older automated systems, the significance of this obstacle cannot be overemphasized.

For example, each day claims handlers access coverage and loss information; agents and brokers inquire about commissions and fees; actuaries analyze and, when appropriate, change rate data; underwriters review policy applications; executives review old insurance products and create new ones. The bulk of this data is computerized and has been for years. These are the "legacy" information resources that are critical to competitive success.

Insurers have spent hundreds of millions of dollars on collecting this legacy data, massaging it into appropriate forms and verifying its integrity. No insurer can afford to throw away this investment, the information pedestal upon which the company's business is built. And there is no reason to do so.

With the right technology tools, valuable and expensive

IT Perspective

information resources can instead be leveraged and put to effective use in today's new systems. These tools enable insurers to take advantage of the latest and greatest in client/server computing without sacrificing current information resources.

Products designed to provide the critical connection between new client/server systems and existing corporate information—often called "legacy data"—fall within a new technology category called "middleware."

These tools have been developed for the purpose of addressing data access and data integration issues that are critical to the insurer. However, not all middleware is alike, and not all products provide a means of getting to critical legacy information.

With that in mind, following are a few questions worth asking when your information systems technologists propose new data access solutions:

- Will the new system provide access to needed information that is stored in both relational and non-relational legacy systems?

If, for example, an agent cannot get to the same rating information with a new rate quote application as is available with the current

system, the fact that the new application can run on a PC platform and is easy to use may not be enough to offset the inability to access required rate files.

- What kind of response time can be realistically expected from the new system?

Pilot projects that run simplistic queries against relatively small files may not be a true indicator of technological viability. The real question concerns how fast the system will respond when information must be drawn from files or data bases with thousands or millions of records. These volumes are typical of data stores in midsize to large insurance firms.

In a time when the level of service may mean the difference between getting a new customer or renewing a current policy and losing business, no insurer can afford any computer system that has a drastically negative impact on current response times. When the customer service representative is asked a question or the agent is asked for a quote, the information has to be there.

- What provision is made for getting to information on other computing platforms?

The user running an application on a PC may need information from multiple sources. Data may be stored on the corporate mainframe, on minicomputers or midframes in the branch offices, or on servers,

workstations and PCs located virtually anywhere.

And, it's a safe bet that much of the legacy information needed for most applications is running on mainframes or minis, while the newer applications are likely to be running on PCs or workstations. Therefore, the client/server solution should support information access on virtually any platform in the organization.

- What about ensuring data security and integrity?

Legacy systems typically feature a high level of information security. This is provided by the sophisticated tools and capabilities offered within the older mainframe infrastructure. No insurer can afford to compromise the integrity of sensitive information.

Taking the time to ask these questions can only have positive results. Getting the right answers minimizes the opportunity for accidentally toppling the legacy information pedestal and improves the chances of success as insurers move to adopt new computer-based technologies. **BI**

Raymond J. Nawara is president and chief executive officer of CROSS ACCESS Corp., an Oak Brook, Ill.-based company that provides data delivery software to enable data access in heterogeneous computing environments.



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Global Focus will appear for the first time as a regular section in 1994. Published quarterly, this section will be distributed exclusively to non-U.S. subscribers.

PUBLISHING DATES AD CLOSING DATES

February 14..... February 2

June 13..... June 1

August 22..... August 10

November 14..... November 2

Windstorm preparation enters the computer age with new software

By MICHAEL SCHACHNER

Property insurers will soon have access to a new underwriting tool that will help them evaluate individual buildings for their wind risk exposure.

By the end of the summer, the Boston-based Insurance Institute for Property Loss Reduction will be marketing WIND-RITE, a computer software program that assigns a relative grade indicating a structure's resistance to wind.

WIND-RITE measures nearly a quarter-century of actual windstorm damage data against particular building characteristics in order to predict how a structure will handle heavy winds. The software program is the culmination of two years of research and development by the Wind Engineering Research Center at Texas Tech University in Lubbock. It is believed to be the first computer program capable of evaluating how a building will perform under certain windstorm conditions.

"Since 1991, we have been committed to giving underwriters a tool that analyzes a structure's potential wind resistance," said Ronald Demerjian, an assistant vp with IIPLR, whose Wind Damage Mitigation Committee commissioned Texas Tech to develop WIND-RITE. "What's different about WIND-RITE is that unlike other windstorm software programs, which are portfolio-oriented, it zeroes in on one structure and gives it a relative grade."

Mr. Demerjian said the WIND-RITE program is ready to go but will not be made available until this summer. Costs and target markets are still to be determined, he explained.

Members of the property insurance community will get a sneak preview of WIND-RITE May 25 when the CPCU Society sponsors a satellite broadcast on new tools for analyzing and underwriting wind peril. WIND-RITE will be a headliner at this presentation.

"For too long, we've ignored one of the deadliest and most costly perils—windstorm," said J. Wesley Ooms, president of the Malvern, Pa.-based CPCU Society.

"This broadcast will explain how the underwriter can bring cutting-edge technology, years of academic research and hard data to bear on each potential risk," he explained.

In the meantime, WIND-RITE, which runs off a personal computer, is a "Windows-like program that's very easy to operate," Mr. Demerjian said. "Underwriters are not engineers, so the program is designed to be simple and easy to understand."

Kishor Mehta, director of the Wind Engineering Research Center at Texas Tech, described WIND-RITE as a "knowledge-based expert system that places a relative value on the damageability of a building by wind."

It's knowledge-based, he said, in that it is based on documented windstorm damage nationwide dating back to 1970. "We have examined 75 different storms since then, and this program takes that and runs it against specific information on a building."

To run the program, an underwriter or loss control specialist must conduct an onsite visual inspection of the premises and then answer 43 specific questions about the property, he said. Those questions include:

- What type of surroundings is the structure situated in?
- What type of frame does it have?
- What type of roofing does it

have?

- How are the walls constructed?
- How old is it?
- What type of general maintenance has it had?

Answers are run against the program, and a wind resistance rating from 1 to 10 is issued, with 1 being the strongest and 10 the weakest.

WIND-RITE can assess the windstorm risk of properties in eight different classifications, ranging from a

"high-rise," which is any engineered building with six floors or more, down to a "non-engineered dwelling" like a house.

Some of the structure classifications in between high-rises and non-engineered properties include reinforced concrete buildings, heavy steel structures and unreinforced masonry complexes.

"This isn't a foolproof (underwriting) device," Mr. Demerjian warned.

"Property underwriters have to look at a lot of different things. Just because a piece of property is a good wind risk doesn't make it a good fire risk."

A spokesman for the New York-based Insurance Services Office Inc., which is putting together a basic survey that WIND-RITE users can use to compile the information needed to run the program, said WIND-RITE is the type of program from which

property underwriters can benefit. "Any type of quantifiable, objective rating is helpful. If it's something an underwriter can put his arms around, it should be helpful."

The CPCU Society's satellite broadcast, "High-Tech Underwriting: Mastering the Wind Peril," will be held from 12:30 to 3:45 p.m. EST on May 25. As of May 9, it was scheduled to be broadcast to 53 sites, but that is subject to change. The cost is \$105 per person. For more information, contact the CPCU Society at 610-251-2774. E1

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*"Evolution Ahead for Reinsurance Market in the 1990s" by Marc Mosca, June 11, 1990



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Lessons from the locker room: 'TeamThink' is good business

"TeamThink: Using the Sports Connection to Develop, Motivate and Manage a Winning Business Team."

By Don Martin.
Published by Penguin Books U.S.A. Inc., 375 Hudson St., New York, N.Y. 10014.
300 pages, including index. \$23

By MARK A. HOFMANN

DON MARTIN DECIDED there was a void in the literature of management when he wrote "TeamThink." Too many business books are written by academic theorists who have no firsthand experience in managing a company, he says. As chief executive officer of The Cal-Surance Cos., an Orange, Calif.-based group of insurance brokerages and service companies, Mr. Martin had plenty of hands-on experience in business management. As a self-confessed lifelong "sports junkie," he also had a considerable knowledge of the sports world.

Struck by the similarities between what makes a winning sports team and what makes a winning business team, Mr. Martin decided to write "TeamThink," which melds the two worlds into a series of near-homilies on management. And, he's clearly come up with a winner. "TeamThink" reads like a series of conversations between author and reader. He also manages to avoid many of the most common pitfalls of this type of business writing, steering clear of pop psychology, self-congratulation and smarminess. Instead, he tells stories and draws conclusions, peppering his narrative with quotes from sports and business figures. For example, he uses the experience of the 1988 UCLA basketball team to illustrate the impact of a negative corporate culture. "In 1988, the UCLA Bruins basketball team had just lost to Washington State in the quarterfinals of the Pacific 10 Conference Tournament. Incredibly, on the bus ride back to their hotel, several members of the

team were rejoicing and singing. "Gerald Madkins, one of the players, explained their bizarre behavior: 'Rather than prolong a 16-14 season by having a post-season berth, the players just wanted to end it, so they wouldn't have to play with Coach Walter Hazzard for one more week.' Obviously, this attitude had affected their play during the tournament—they lost. About a month later, Hazzard was fired," writes Mr. Martin. Taking the thought a step further, he notes that during one miserable season for the New York Yankees, "their much-disliked owner, George Steinbrenner, began flying to meet the team whenever it played on road trips. Alone among his teammates, Craig Nettles welcomed Steinbrenner's presence: 'The more we lose, the more often Steinbrenner will fly in. And the more he flies, the better the chance there will be of his plane crashing.'" Mr. Martin then cites several studies showing how such a negative culture replicated in the business world can lead to higher health care costs, turnover and lowered productivity.

"The bottom line is, if you have a cultural problem, you have trouble with a capital T. A positive culture can't be mandated or eliminated by an executive order. It can only be built by a series of positive events over time," Mr. Martin writes. He applies the same technique of integrating sports anecdotes with business information and expertise to a variety of topics, like creating a mission statement and maintaining an ethical work atmosphere. As he notes in his afterword, "the objective of TeamThink is to help you foster teamwork in your company and to help you let your employees know who you are, what you stand for and where you want to go. It's also important that they accept your goals and make a commitment to help the team achieve them." In a recent interview, Mr. Martin said one of the reasons he chose sports as the framework for a management book is that professional sports are clever in managing people. Some athletes might let themselves down personally, but they rarely deliberately let the team down.

The trick for a successful manager is to get people "looking forward to Monday" because they want to work—just as sports managers get players to look forward to the next game, he said. The relative lack of management examples from the business of insurance was not a deliberate slight to the industry, Mr. Martin said. He cautioned that the book "wasn't written for the insurance industry" but rather for managers in all types of endeavors. Mr. Martin also said that he wrote the book with the managers of small companies in mind. He has been pleasantly surprised that managers at large companies like it, too. In fact, business travelers appear to be among the largest audience for "TeamThink," he said. He recently learned that "TeamThink" had reached the No. 3 spot on the best-seller list at W.H. Smith bookstores, which are located in airports and train stations. About 35,000 hardcover copies of "TeamThink" have been sold so far, said Mr. Martin. An initial trade paperback printing of 20,000 is scheduled for June. **BI**

Allstate hit with more than \$4 million in fines

Texas Insurance Commissioner J. Robert Hunter levied a record \$850,000 fine against Allstate Insurance Group earlier this month for discriminating against unmarried people. In addition to the fine, Northbrook, Ill.-based Allstate must make restitution to customers, retrain its agents to comply with Texas' insurance laws and report quarterly on its compliance efforts. Mr. Hunter said Allstate rejected policyholder applicants for its auto insurers with lowest rates because they were single or had only one car; conditioned the sale of an auto policy on the purchase of other types of insurance; and rejected drivers or charged them higher rates because they had been rejected by other insurers or because they had been insured by high-risk insurers previously. Allstate must locate the policyholders it placed for illegal reasons in Irving, Texas-based Allstate County Mu-

tual Insurance Co., a surplus lines insurer, offer them coverage with companies with lower rates and return to them the difference between the premiums they have already paid and their new premiums. The Texas Department of Insurance is investigating several other insurers whose underwriting guidelines may be discriminatory or otherwise violate Texas laws. The companies could be fined, forced to make restitution, be issued cease-and-desist orders or have their licenses suspended or revoked. Separately, Georgia Insurance Commissioner Tim Ryles last week ordered Allstate Insurance Co. to pay a fine of more than \$3.5 million because its auto insurance non-renewal letters didn't adhere to Georgia law. The state contended 3,547 Georgia consumers had not been properly notified of their rights when Allstate non-renewed their auto insurance. The fine was the largest ever levied against an insurer by a Georgia insurance commissioner. **BI**

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Manufacturers trim comp costs: Study

By MEG FLETCHER

Aggressive loss control activities are helping many manufacturing firms to lower their workers compensation costs.

Nearly half of the manufacturers responding to a survey—48%—report that their workers comp costs as a percentage of total revenues decreased over the past few years, while costs have remained about the same for 15% of the respondents.

In addition, 46% said they expect costs to decrease for the next two or three years and 28% expect costs to hold steady.

But, 31% say their workers compensation costs have increased over the past few years, and 24% predict they will continue to increase.

The survey was conducted by McLean, Va.-based opinion researcher Wirthlin Group on behalf of The Travelers Insurance Cos. The survey focused on manufacturers with more than 2,000 employees or at least \$100 million in annual revenue.

Overall, respondents' workers

underwriter to do things to affect loss costs."

Survey respondents still rank cutting workers compensation costs among the major challenges facing their companies.

Workers comp was the fourth most important challenge, behind remaining competitive, controlling overall costs and increasing sales. However, it ranked above increasing growth and maintaining quality.

Free copies of the survey are available from James Nothem at 10CR, The Travelers Cos., 1 Tower Square, Hartford, Conn. 06183; 203-277-8510.

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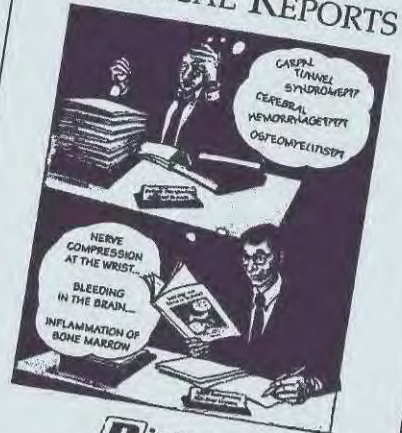
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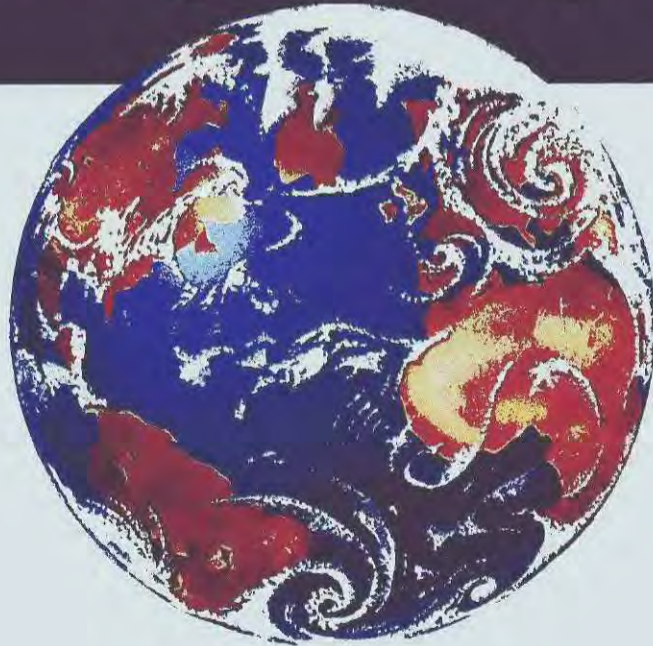
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A portion 'of the upper middle market sees there is light at the end of the tunnel,' says James Nothem.

compensation costs account for about 2% of average revenues of \$200 million, or approximately \$4 million per company, the survey found.

"In the past two years, a significant portion of the upper middle market sees there is light at the end of the tunnel," said James M. Nothem, senior vp and head of national accounts-commercial lines for Travelers. "You would not have had anywhere near that number two years ago."

The survey's findings confirm earlier reports of improved conditions in the workers compensation market, including a 10-point drop in the combined ratio for workers comp insurers after policyholder dividends to 111.5% last year from 121.5% in 1992.

That was the lowest workers comp combined ratio since 1982; the high was 122.6% in 1991 (*BI*, Feb. 7).

Most companies surveyed report using cost reduction strategies designed to promote worker safety, reduce occupational injury and illness and control their workers comp costs.

Prevalent strategies include: early return-to-work programs, in place at 77% of the companies; analysis of safety efforts, 76%; safety services to reduce loss costs, 75%; managed care programs, 68%; fraud prevention programs, 54%; monitoring employee satisfaction with claims handling, 52%; and telephone reporting for quicker claims notification, 51%.

These companies can be considered "enlightened" because they understand that they can control workers compensation costs by engaging in activities to control losses rather than simply pass the problem along to their insurers, Mr. Nothem said. "They are interested in a partnership with the

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RMIS vendors find their forum

Vendors pitch technology, work comp systems at RIMS conference

By David A. Tweedy

THREE WEEKS have now elapsed since the closing of the annual Risk & Insurance Management Society's conference. Each year I try to anticipate what the vendors will be providing in the way of new functionality and/or technical gadgetry. Typically, technology, functionality and market dynamics—that is, new players entering, old players leaving and key personnel movement—are the top three issues every year.

Over the last three years, it hasn't been all that difficult to predict. Anything to do with workers compensation has monopolized vendors' presentations. Most new systems or modules had something to do with workers comp claims or medical cost management.

And, true enough, there were plenty of systems and vendors touting some form of workers comp management—from financing to medical management to loss control.

However, this year was somewhat different. While workers compensation remained an important emphasis of the systems, there was much more of an emphasis on technology. And there were some significant changes in certain vendor's strategic direction.

What does remain constant, however, is that the annual RIMS conference, more than any other, is the chance for each vendor to make a statement as to their product/service line. This essentially is a reflection of their general financial vitality and technological innovation. Therefore, most will tend to have any new services or software releases available to release at the RIMS conference. Here are some observations of the risk management information system industry based on the conference:

- Fine-tuning of the functional product line. The RMIS marketplace is somewhat mature in nature. There are fewer truly new products coming out. Rather, a major trend is a re-tooling and/or "re-positioning" of existing software allocations. Another trend is developing these applications for interactive system

RMIS Commentary

environments to tap into other system environments like human resources, disability, finance, underwriting, legal and executive information systems.

- Windows, Windows, Windows. . . . Perhaps the most obvious observation was that many vendors—even mainframe/timeshare stalwarts like Corporate Systems Ltd., Risk Sciences Group Inc. and Liberty Mutual Insurance Co.—have embraced Microsoft Corp.'s immensely popular operating system, Windows. Stand-alone vendors like Pyramid Services Inc. and Anistics have their versions.

Windows' popularity is mostly derived from its user-friendly design because of its graphical user interface format. Of course, the degree to which each vendor's product is Windows-oriented is the question. Several vendors only had a few screens or applications ready for the RIMS conference. Others, by design, will only have selective parts available on a Windows environment.

One thing is certain, however: Windows and RMIS appear to be in for a long-term relationship.

- More technology. In addition to the move to Windows, vendors are also increasing their investment in new technologies which have long been in existence—in information technology terms:

- ✓ Client-server technology. Client-server is an advanced system technology that is more or less self-explanatory. It means that the data storage and data base management facilities reside at the server level, while the application software, operating system, user interface, etc., are distributed among the users or clients. Essentially, it ties together diverse hardware platforms through a common operating system. The server can be a mainframe, midrange or a personal computer that serves as the coordinator/processor for the other computer platforms hooked into it.

Most vendors in the exhibition hall did

not yet have fully functional client/server products, though they are in development at many of the leading vendors. The technology is still in its infancy as to wholesale usage, especially in the risk management area.

- ✓ Graphical user interface. This has become a common enough term today, with the widespread usage of Microsoft's Windows and Apple's Macintosh products. The great advantage of GUI is that it makes using the system much easier to use. The "point and click" on icons method appeals to the non-technical user person.

However, remember that ease of use is only one characteristic when measuring the true value of a RMIS. I'd take a functional, somewhat more difficult-to-use program any day over an easy-to-use but functionally limited program. So don't be overly "wowed" by the demonstrations. Ask, instead, for the true substance of the system's analysis capability.

- ✓ Multi-tasking. Essentially, this is the ability to run multiple applications concurrently. Many vendors with client/server systems under design will point to this as a great feature. . . and it is. But do you really need to have your own system run two simultaneous programs?

If you have a large self-administered claims program and you want the system to do claims administration and run financial analyses, maybe you do need the multi-tasking ability. But most risk management operations do not need that degree of computing technology and power.

- ✓ Dynamic data linking. This allows various applications to be linked, so as new data flows in or out of one application it is actually updated in all other applications using that data. Dynamic data linking between applications is only possible through the use of "dynamic data exchange" and "object linking and embedding."

DDE provides a communications link between the server program where the data resides and client program that requests the data. OLE allows the data to be exchanged between applications and

retains the link between the data and the applications program from which it came. OLE allows the user not only to link data but also applications from within its operating environments. Although Windows and OS/2 comprise the lion's share of the client/server GUI based markets, there are others to consider as well. Most notable are UNIX and International Business Machine Corp.'s version of UNIX, AIX.

- Indispensable management tools. These improvements are being hailed by the vendors as critical in the assessment, measurement, analysis and handling of risk. One of the most used buzzwords of the last two years in "benchmarking." Most system vendors (as well as consultants) are emphasizing the importance of a well-designed RMIS sitting atop "solid industry data" from which to make useful comparisons and conclusions about one's own situation. While much of it is hype, I do believe that the RMIS is a great tool in conducting comparative studies.

This year's conference was most informative regarding the short-term direction of RMIS. These systems, and their vendors, are positioning themselves to be an indispensable part of the risk management and insurance community by being the vital data links to multiple data sources. The net result of the re-tooling of functional applications, increased ease-of-use, and improved interactivity among diverse systems is an improved management tool which is useful up and down the corporate hierarchy. Also, these systems will be equally important to service providers like insurers, brokers, third-party administrators and specialty consultants. **BI**



David A. Tweedy is a senior manager at Deloitte & Touche in Hartford, Conn. Mr. Tweedy's column on risk management information systems appears quarterly.

Killing two birds with one stone

By Alicia Heine

LATE LAST YEAR, FINANCIAL Accounting Standard 112 went into effect, establishing guidelines for employers that provide post-employment (but pre-retirement) disability-related benefits to former or inactive employees. The rule essentially requires employers to switch from pay-as-you-go accounting to an accrual method for liabilities associated with COBRA plans, life insurance, severance pay, salary continuation plans, workers compensation and self-funded disability benefits. Clearly, this can have a major fiscal impact on a company's financial position.

If we take a closer look, we see that under FAS 112, self-funded benefits to disabled employees will make up a percentage of an employer's overall liability. As a result, any progress a company can make in managing its disability claims and costs will help limit its FAS 112 liabilities.

In the disability management area, vocational

Employers that control disability claims, costs will also limit their FAS 112 liabilities

rehabilitation has proved to be an effective tool. Rehab programs can have a significant effect on helping disabled workers stay productively employed. Thus, it's a good idea to take a hard look at your current rehabilitation program or your insurer's. If necessary, implement a plan of action to revamp the program to minimize any adverse impact FAS 112 may have on your company's financial health.

Here are five suggestions for improving your vocational rehabilitation program:

- If you're aware that an employee has a chronic condition that may eventually lead to a disability

claim, take steps now to avert that exposure.

For example, if someone has multiple sclerosis, consider equipment that can help the employee continue to do his or her job. In one case, a worker with MS had to walk around his plant a great deal. As his condition worsened, he actually went out on disability leave for a short period of time before his employer bought a three-wheeled electric scooter for him to move around the worksite. This simple step allowed the employee to become productive again and resume earning a full paycheck.

Although the scooter purchase required an up-front investment, over the long run it is saving the employer money. The lesson here is to communicate with employees, when possible, before they go out on disability leave. Had the scooter been acquired before the disability claim was filed, the employee would have been able to continue working, eliminating the expense of hiring a temporary replacement.

- Stay in touch with your employees who are out on

Continued on page 34

FAS 112

Continued from previous page
disability leave.

Without consistent, meaningful communication, employees have no way of knowing what rehabilitation resources might be available to them. For employers already offering a strong rehabilitation program (either in-house, through an insurer or vendor, or a combination of the three), the challenge involves educating employees about what's already in place rather than creating or enhancing rehabilitation resources.

Additionally, your disability insurer should have expertise in educating employees about rehabilitation, and should be able to assist you in developing communication materials that send the right "messages" about rehabilitation.

For instance, when communicating with disabled employees, keep in mind they're probably going through a very stressful time, especially if their ailment is progressive. While it's important to counsel them about rehabilitation, it's equally important to impart this information in a non-intimidating way.

In addition, you should inform employees interested in pursuing vocational rehabilitation that a rehabilitation counselor will contact them. If possible, give employees the name of the counselor in advance, to avoid having them feel they've been called "out of the blue" by a complete stranger.

Also, maintain contact with an employee throughout the rehabilitation process. Not only will this give you an indication of how well the rehabilitation is working out, but it will allow you to show the employee that you're interested in his or her progress.

Finally, in all your communications, let employees know how much they are valued, and how much the company would like to see them back at work.

These communication suggestions may seem like common sense, but when dealing with workers who may be going through one of the most difficult periods of their lives—both physically and emotionally—these actions can help people achieve the right attitude for

making rehabilitation efforts succeed.

- Work with your insurer to establish light- and alternate-duty programs for disabled employees.

These programs can be very effective in returning claimants to work. For example, a 50-year old warehouse worker crushed his right hand in an accident. His injury prevented him from lifting more than 20 pounds or working in the cold. With help from the disability insurer, the employer identified a new job for the claimant as a porter that accommodated his physical limitations. The claimant, a 22-year veteran of the company, returned to work at the same hourly wage, generating disability savings for the employer estimated at \$117,000.

In many instances, of course, the employer may not have other jobs available for claimants. Managers should be aware of this and should encourage retraining efforts—even if the ultimate goal is to help a claimant land a job with another company. Either way, the rehabilitation will have been successful, because the claimant will be productively employed again.

- If a disabled employee needs help with a task, be receptive to having a rehab specialist onsite from time to time.

While most employers have no problem with a counselor working "behind the scenes" to assist an employee, sometimes even companies with proactive rehabilitation programs discourage having outside specialists in the workplace. However, an onsite counselor often can mean the difference between an employee remaining active or going out on claim.

No one is expecting companies to disrupt their whole operation to accommodate the needs of one employee; in many cases, however, just a small measure of flexibility on the part of the employer will benefit both the company and the worker.

For example, an employee at a financial services firm had suffered from depression, severe anxiety, and a psychological disability that made it difficult to perform her job. Her supervisors really didn't have the training to help her, so a rehab counselor was brought in. The counselor worked with the employee on prioritizing her tasks, and on structuring her work

environment so she wouldn't be overwhelmed and anxious. The result: A well-adjusted, productive employee, and one less potential disability claim.

- Make sure your disability insurer is keeping up with technological developments that can aid a rehab program.

The insurer's rehabilitation staff should have the latest resources available to help claimants. One new software package, for example, now provides information on workplace modification equipment and adaptive devices available for disabled employees.

Other computer programs can perform a "transferable skills analysis"—a thorough evaluation of a claimant's abilities that can match them with other jobs appropriate to their strengths and limitations. By harnessing the power of technology, a rehabilitation program can be even more effective in keeping disabled workers' productivity up and the costs of disabilities down.

Interest in vocational rehab programs has increased sharply in recent years as a result of the Americans with Disabilities Act. Prior to the ADA, there was often a lack of understanding about people with disabilities and their potential for contributing to the economy. However, the ADA has helped employers see the value of rehabilitating and aiding disabled employees—an attitude that leads to considerable savings on disability claims in the long run.

Still, there's plenty of room for most employers to augment their vocational rehabilitation programs and control disability costs even more. By taking decisive steps now, you can enhance your commitment to your employees. The result will be fewer workers out on disability, and a healthier bottom line. **BI**



Alicia Heine is director of rehabilitation and Social Security assistance for ITT Hartford Group's Employee Benefits Division.

A reference for risk managers

"No Surprises: Controlling Risks in Volunteer Programs"

By Charles Tremper and Gwynne Koston

Published by the Nonprofit Risk Management Center, 1001 Connecticut Ave. N.W., Suite 900, Washington D.C., 20036; 202-785-3891

\$9.95 plus \$3 shipping and handling

By Kevin M. Quinley

THE ROAD TO Risk Management Hell is paved with good intentions. From allegations of sexual abuse to claims of financial embezzlement, from traffic accidents to assaults, risks are a part of every volunteer program. With nearly 100 million Americans volunteering each year, and the passage of the National Service Act expanding the role of community service, the potential for expanded risks goes hand-in-hand with the new zeitgeist of volunteerism.

If you thought that charitable institutions were largely immune from liability, then think again. The legal doctrine of charitable immunity has gone the way of the mastodon. While some states have laws limiting liability for charitable institutions, loopholes abound and lawyers must be hired to dismiss even the most frivolous claim. In reality, being a volunteer organization won't insulate you from claims if:

- A senior citizen falls down the steps

Books & Ideas

of your recreation center.

- A board member is indicted for embezzlement.
- A volunteer abuses or assaults a client.
- A van accident injures a volunteer driver and two passengers.

And you thought only private businesses had these kind of risks management worries?

As Richard Schubert, president of the Points of Light Foundation, observes, "Volunteer service is one of the most potent forces for good in this country. That potential can be wasted, though, if volunteers' mistakes grab the headlines. Every one of us in the volunteer community needs to work very actively to control the risks of our programs."

Amen!

To give volunteer program managers the tools they need to prevent good intentions from turning into disastrous outcomes, the Points of Light Foundation and the American Bar Assn. have teamed with the Nonprofit Risk Management Center to create "No Surprises: Controlling Risks in Volunteer Programs." This 60-page guidebook offers risk managers essential guidance on topics from volunteer screening to insurance purchasing.

Two purposes are served by this new publication. First, it will help volunteer

program risk managers keep things from going wrong. Second, it will dispel myths that cause needless anxiety about lawsuits and cause the insurance market for volunteer programs to shrink. As co-author Charles Temper states, "Unless volunteer programs control risks effectively, they may be crushed by their mistakes."

Without the analysis offered by "No Surprises," many volunteer organizations would seriously jeopardize their missions. In fact, this inexpensive publication should be a best-seller for anyone who is responsible for working with paid or unpaid volunteer staff.

"No Surprises" helps volunteer risk managers face their worst nightmares. In addition to providing techniques that can help reduce any risk, the handbook offers specific suggestions on topics ranging from money management to volunteer screening. It even includes advice on what to do when Mr. Murphy intervenes to demonstrate his infamous Law.

A very practical and readable handbook, "No Surprises" is easy to use and comprehensive. Often overlooked, for example, is the fact that volunteer boards have a directors and officers liability exposure. In fact, the growing realization of this is making it tougher for such volunteer boards to recruit and retain community-minded leaders. By explaining the role that each person within an organization plays in

controlling risks, the handbook is especially valuable for board members who are uncertain about their fiduciary and risk management responsibilities.

Municipalities and their risk professionals are among the many fertile markets for this type of book. Budgetary belt-tightening in the public sector increases the dependence on volunteers and community service organizations. In this era of "reinvented government," this guide will help local governments navigate through the rough shoals of the tort system.

Chock-full of helpful checklists and self-diagnostic appraisals, "No Surprises" contains generic kernels of wisdom that can help even those who are not risk-managing volunteer organizations. In this sense, the book has a wider audience and is useful for even the most veteran risk manager. In fact, the phrase "no surprises" is a wise maxim for any well-run risk management operation! **BI**

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



Factors in funding a pension plan

By The Insurance Institute of America

The following question and answer are drawn from the curriculum for the Associate in Risk Management designation awarded by the Insurance Institute of America. They represent the type of question asked—and the possible answers—in one of the three examinations for the ARM designation.

This exercise—drawn from a recent national examination in ARM 56: Essentials of Risk Financing—focuses on the ways that many of the factors that influence the ultimate cost of providing pensions to an organization's retirees also affect the organization's overall financial health.

Q Ajax Manufacturing has a self-funded, non-contributory pension plan for its employees. What effect, if any, would each of the following factors typically have on Ajax's eventual cost of providing pension benefits and on its profitability and financial strength:

- Lower-than-expected turnover.
- Higher-than-expected investment earnings on the funds in the pension plan.
- Higher-than-expected employee salaries.
- Higher-than-expected average retirement age.
- Higher-than-expected retiree mortality.

Justify your answers.

A The following answers typify those that earned full credit on the exam. Other equally valid answers could be developed.

- Lower-than-expected employee turnover usually raises an employer's cost of providing pension benefits for which the employer bears the entire cost. One main reason for this is that greater average length of employee service increases the proportion of employees whose rights to the employer's pension contributions become vested and do not revert to the employer when the employee leaves the organization before retirement. Another important reason is that employees who have more years of service usually also have higher annual earnings than do more junior

Risk managers must prepare for funding challenges

ARM Exercises

employees. Thus, under benefit formulas that link an employer's contribution to an employee's average final pay or to length of service, employers typically must make greater contributions on behalf of more veteran employees.

Any factor that increases an employer's pension costs typically decreases the organization's profits and its financial strength because the organization usually receives little financial value in return for its greater pension outlay. However, low personnel turnover may well increase long-service employees' skill and productivity, thus tending to increase an organization's profitability and financial health.

- Unexpectedly high investment earnings on pension funds normally reduce an employer's pension costs because these extra earnings typically are credited as offsets against the employer's future contributions. If additional investment earnings are not used to reduce the employer's future contributions—if, for example, such extra earnings merely become general pension funds available to pay greater retirement benefits—these earnings do not affect the employer's ultimate pension costs.

If added investment earnings reduce an employer's future contributions, extra investment earnings on pension funds enable the organization to devote more funds to its normal productive operations, which usually generate a more profitable rate of return than do monies invested in pension funds. Under these circumstances, unexpectedly high pension fund investment earnings increase an organization's profitability and financial strength. However, if these earnings are not credited against the employer's contributions, they are not likely to affect its profits or financial vigor.

- Higher-than-expected employee salaries have no effect on eventual pension costs as long as an employer's pension contributions are not tied to salary levels.

However, if contributions are tied to compensation, higher salaries generally increase pension costs.

When an employer's pension contributions are independent of salaries, pension costs do not increase, and the employer's overall profits and financial condition are not jeopardized. However, if pension contributions rise with salary levels, the added costs tend to weaken an employer's profits and financial position, even if the higher salaries are in response to greater employee productivity.

- Under most circumstances, higher-than-expected retirement ages tend to reduce an employer's ultimate pension costs because retirement benefits are payable for fewer remaining years of retirees' lives. However, higher costs may result if deferred retirements mean employees become entitled to higher periodic pension payments because the compensation base on which their pensions are calculated increases.

If delayed retirements reduce overall pension costs, they tend to enhance an employer's profits and financial strength; if they increase pension costs, they can impair profits and financial condition. These results assume that employees who delay their retirement remain fully productive. If their productivity falls markedly while they remain working after normal retirement, the employer is likely to lose profits and financial strength.

- Unexpectedly high retiree mortality reduces ultimate pension costs because retirees received benefits over a shorter average time. (Note that this question does not address life insurance for employees or retirees.)

These lowered pension costs tend to increase an employer's profits and enhance its financial position. This assumes that the organization no longer receives tangible values from retirees' longevity and thus suffers no financial loss from their death. **BI**

The sample questions and answers used in this column are taken from the Associate in Risk Management designation curriculum of the IIA. For more information on the content of the ARM program, write Dr. George L. Head, Vp, Insurance Institute of America, P.O. Box 3016, Malvern, Pa. 19355-0716.

Comp covers after-hours stabbing

Is an employee's injury caused by the unprovoked stabbing by another employee in the "bunkhouse" after work compensable as "arising out of" employment? The Supreme Court of Vermont ruled that it was.

Bradley Shaw, a migrant farm laborer, worked at a farm in Vermont in 1990. On July 16, he was stabbed by a fellow worker after work. The injury occurred at a workers' bunkhouse, where Mr. Shaw and eight other workers lived. The stabbing followed harsh words exchanged over a pair of dirty socks on a co-worker's bed.

Mr. Shaw applied for workers compensation benefits. The commissioner of labor and industry denied benefits because, in his view, the injury was not "arising out of" Mr. Shaw's employment.

The appellate court said that focusing merely on what Mr. Shaw was doing at the time of his injury was overly restrictive. The court said that the unexpected, unprovoked knifing was within Mr. Shaw's "positional risk" because he and his attacker would not have been in the bunkhouse at the time "but for" their employment. Thus, the court concluded that Mr. Shaw was entitled to benefits.

Legal Briefs

Shaw vs. Dutton Berry Farm, Supreme Court of Vermont, June 11, 1993 (BI/05/M.-\$10).

'Mental disorder' ambiguous

The 9th U.S. Circuit of Appeals found that the term "mental disorder," as used in an employee benefit plan, was ambiguous.

Martin Patterson, an employee of Hughes Aircraft Co., was covered under a disability insurance plan underwritten by the Centennial Insurance Co. He filed a claim for disability benefits due to headaches. He was found totally disabled and benefits were paid for two years after which benefits were terminated on the ground that his disability was mental rather than physical. The policy limited benefits for mental disorders to two years.

Mr. Patterson sued the insurer in state court. The case was removed to federal court under the Employee Retirement Income Security Act. The trial court ruled for the plan and against Mr. Patterson.

The appellate court concluded that the term "mental disorder" in the plan was

ambiguous because the plan did not specify whether a disability was to be classified as "mental" by looking to the cause of the disability or to its symptoms, nor did it make clear whether a disability qualified as a "mental disorder" when it results from a combination of physical and mental factors. The case was returned to the trial court for further proceedings.

Patterson vs. Hughes Aircraft Co., 9th U.S. Circuit Court of Appeals, Dec. 15, 1993 (BI/04/Ju.-\$10).

CGL bodily injury exclusion

Does a comprehensive general liability insurance policy that excludes coverage for bodily injury to employees arising out of and in the course of employment deny an employer coverage for a claim of wrongful discharge? The Supreme Court of Oregon ruled that the policy exclusion applied.

State Farm Fire & Casualty Co. issued the CGL policy to Tecorp International Ltd. The policy provided coverage for bodily injury except for bodily injury to any employee arising out of and in the course of their employment by Tecorp.

Tamira Lynn McLeod sued Tecorp and its chief executive officer for wrongful

discharge and intentional infliction of emotional distress. Ms. McLeod was awarded a default judgment and then sought to collect from State Farm. The trial court ruled for State Farm. The Court of Appeals reversed.

The state Supreme Court said that Ms. McLeod's claims, which were based on sexual harassment, arose during her employment at Tecorp and while she was on the job there. Thus, the court said her claims fell within the CGL policy exclusion for bodily injury to an employee arising out of and in the course of employment. Accordingly, the court said that State Farm had no duty to defend Tecorp under the bodily injury provisions of the CGL. The trial court was affirmed.

McLeod vs. Tecorp Intern Ltd., Supreme Court of Oregon, Dec. 30, 1993 (BI/03/Ju.-\$10). **BI**

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available by sending a \$10 check payable to Mayo H. Stiegler, to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.

Employment practices coverage for public officials

Products & Services

NEW YORK—National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of American International Group Inc., is offering employment practices insurance coverage for its public officials liability insurance policyholders.

Available by endorsement, the coverage applies to claims alleging discrimination, sexual harassment, workplace harassment, wrongful termination, employment misrepresentation and failure to promote, in addition to claims alleging slander, defamation and mental anguish.

The endorsement is meant to cover violations of laws and regulations, like the Americans with Disabilities Act and the Civil Rights Act of 1991, that result in claims by past and current em-

ployees, job applicants and volunteers.

Public officials liability policyholders include municipal governments and authorities, their elected and appointed officials, and employees and members of municipal boards and commissions.

For more information about the coverage, contact Michael Bohm at 212-770-6335.

Health cover program

INDIANAPOLIS—Small employers in the Indianapolis area can guarantee their employees

health care coverage through a new program designed by the Indianapolis Chamber of Commerce and Acordia Small Business Benefits.

Chamber member companies with fewer than 100 employees are guaranteed the option to buy basic health care coverage despite any pre-existing medical conditions, as long as they currently offer a health care plan.

Chamber member companies that currently do not offer health care coverage can still buy the health insurance product—Chamber Care 2000—but are subject to pre-existing condition clauses, said Dave Scott, vp-sales and marketing for Acordia Small Business Benefits.

Under the program, small em-

ployers have three plans to choose from: an indemnity plan offering basic benefits; an indemnity plan with more comprehensive benefits; and a managed care plan with a preferred provider network. Premiums and out-of-pocket expenses vary depending upon the plan selected.

All three plans cost 8% to 10% less than comparable plans, according to Mr. Scott.

This is due in part to "community commitment" from area agents and brokers. The intermediaries know that many small businesses do not provide health insurance for their employees because they cannot afford it, so the agents and brokers have agreed to take smaller commissions to reduce employers' overall premium

cost, Mr. Scott said.

Health and dental coverage is underwritten by Associated Insurance Cos. Inc., the Indiana Blue Cross & Blue Shield plan, and life and disability coverage is underwritten by Anthem Life Insurance Co. of Indiana.

For more information on Chamber Care 2000, contact Jeanette Claffey at 317-464-2200.

Ergonomics on video

ST. PAUL, Minn.—Ergonomic training programs for manufacturing, health care and office settings are available on videotape.

The tapes, produced by St. Paul, Minn.-based Ergodyne, are designed to educate and train management, supervisors and employees on worker safety and how to reduce the risk of workplace injuries.

The programs are developed by Certified Safety Professionals and ergonomists with extensive backgrounds in safety training and compliance for all types of work environments.

Each program includes one or more color videotapes, a participant handbook and an instructor guide.

Programs focus on back health, back injury prevention, understanding and preventing cumulative trauma disorders, ergonomic task analysis and eliminating workplace risk factors, basic office ergonomics, and controlling workers comp costs.

Ergodyne also offers an extensive line of personal support products and ergonomic office accessories. The product line also includes a stretching software program, which reminds computer users to take stretching breaks at regular intervals.

For more information, call 800-225-8238, extension 49.

Best expands service

OLDWICK, N.J.—A.M. Best Co. has expanded its Bestline automated voice and fax service to provide users quicker access to more detailed data about insurance companies and industry news.

In addition to 24-hour access to Best's ratings of more than 3,800 property/casualty and life/health insurance companies by touch-tone telephone, the service now allows callers to receive faxes of Best's latest reports on individual insurers.

The service offers two billing options. Callers may choose to have orders billed directly to their phone by dialing 900-555-2378, or they can change their orders to a MasterCard or Visa account by dialing 800-424-2378.

For additional information, call 908-439-2200, extension 5742.

NCOIL almanac

ALBANY, N.Y.—The National Conference of Insurance Legislators has published a 1994 edition of its Insurance Legislative Fact Book & Almanac.

The almanac is a directory and compendium of articles on insurance legislation, containing more than 4,500 listings of public officials and agencies regulating insurance in the United States and overseas.

The state legislative directory section includes names, biographies, addresses, telephone and fax numbers of governors, insurance commissioners, legislative

Continued on next page



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Continued from previous page
leaders and legislative insurance committee chairs in all 50 states.

The almanac also includes listings of key congressional committees addressing insurance issues, as well as information on Canadian and international regulatory bodies.

Articles in the 504-page volume focus on health care reform, natural disaster insurance, interstate compacts, insurance investment law and workers comp reform.

Copies are available for \$49.50 each, with discounts available for orders of 10 or more, from NCOIL, 122 S. Swan St., Albany, N.Y. 12210; 518-432-3210, fax: 518-432-5651.

Work comp survey

SCHAUMBURG, Ill.—The Alliance of American Insurers, a Schaumburg, Ill.-based trade group, has published a Survey of Workers Compensation Laws, a reference tool for understanding state workers comp laws.

The survey summarizes a wide range of laws, including those pertaining to benefits, cost-containment strategies, restrictions on provider choice, vocational rehabilitation, second-injury funds, rating laws, statutory provisions for insurance, self-insurance and state funds.

The workers comp survey is available free to Alliance members and for a \$20 fee plus \$5 for shipping and handling to others. For information, call the Alliance's customer service department at 708-330-8530.

Archives report

NEW YORK—The Inland Marine Underwriters Assn. has released a new research report titled "Libraries and Archives: An Overview of Risk and Loss Prevention."

Developed by the trade association's Arts and Records Committee, the report focuses on exposures and loss prevention for libraries and archives that must protect and insure against property losses involving books and other documents.

The report is available free to IMUA members and at a nominal charge for non-members. For 10 or fewer copies, call Tracey O'Donnell at IMUA, 212-233-7958. For larger quantities, contact Gail DeFino at Alampi & Associates Management Corp., 201-379-1100.

Patent infringement

BOSTON—Lexington Insurance Co., a unit of American International Group Inc., is offering patent infringement liability insurance.

The policy covers defense and indemnity costs in lawsuits claiming patent infringement by the U.S. operations of high-technology and biotechnology firms as well as other product manufacturers, users or sellers.

The claims-made policy offers \$1 million in limits for claim expenses and damages for lost profits and royalties. The minimum premium is \$25,000.

For more information about the patent infringement coverage, contact Peter Foster, 617-330-8458.

Health reform data

ARMONK, N.Y.—The Employee Benefit Research Institute and International Business Machines Corp. are jointly sponsoring a new electronic program, The Health

Care Reform Bookshelf, that will enable personal computer users across the country to read and analyze various congressional health care reform bills.

The Bookshelf allows individuals to view, search and cross-reference on diskette the full text of all major health care reform proposals introduced in Congress, along with supporting documents. The program contains the IBM BookManager programs to read and search these electronic documents in either DOS or IBM OS/2 computer operating environments.

The Health Care Reform Bookshelf sells for \$99, plus \$7 shipping and handling for second-day UPS delivery. To order, call 800-776-8284. The Bookshelf is also available through online services for \$99 through the CompuServe and Lotus Partners networks, by dialing 800-776-8284. **BI**

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Datebook

MAY

MAY 23. Ohio Health Care Reform Summit in Columbus, Ohio, sponsored by The Health Coalition of Central Ohio; \$30 by May 19. Health Coalition of Central Ohio, 261 E. Livingston Ave., Columbus, Ohio 43215; 614-221-1381.

MAY 23-24. Dealing With an Angry Public: Protecting Your Reputation and Market Share seminar in Cambridge, Mass., sponsored by the Harvard Law School's Program on Negotiation; \$1,175. Also Nov. 17-18 in Cambridge, Mass. Ms. Elizabeth Walker, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

MAY 23-24. Medicaid Managed Care forum in Washington, sponsored by the Institute for International Research; \$1,195. Also June 9-10 in San Francisco. Conference Administrator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

MAY 25. High-Tech Underwriting: Mastering the Wind Peril satellite broadcast, sponsored by the CPCU Society; \$105. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2774.

MAY 25. Qualified Retirement Plan Non-Discrimination Requirements seminar in Farmington, Conn., sponsored by the Southern New England Chapter of the International Society of Certified Employee Benefit Specialists; \$20 for ISCEBS members, \$30 for non-members. Also May 26 in Norwalk, Conn.; \$15 for members, \$25 for non-members. Southern New England Chapter, ISCEBS, P.O. Box 8089, Stamford, Conn. 06905-8089; 203-328-2817.

MAY 25. Sacramento Valley Chapter of the CPCU Society All Industry Day in Sacramento, Calif.; \$65. CPCU Society, P.O. Box 2726, Rancho Cordova, Calif. 95741-2726; or call Susan George at Interwest, 916-488-3100.

MAY 25-26. Integrating Managed Health Care & Disability Benefits conference in Chicago, sponsored by International Business Communications; \$1,195. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

MAY 26. Drugs Don't Work in Washington forum in Seattle, sponsored by King County Medical Blue Shield and Washington Drug Free Business; no charge. For information, call 206-223-6305.

MAY 27. Fundamentals of Risk Management and Insurance for Non-Insurance Executives seminar in San Francisco, sponsored by the American Management Assn.; \$695 for AMA members, \$800 for non-members. Also June 13 in Scottsdale, Ariz., June 24 in New York, Aug. 5 in Boston and Sept. 26 in Washington. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

JUNE

JUNE 1. Americans with Disabilities Act seminar in Bethesda, Md., sponsored by the CPCU Society; \$85 for CPCU Society and Metropolitan Washington Assn. of Independent Insurance Agents members, \$95 for non-members. CPCU Society, P.O. Box 3009, 720 Providence Road, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE 1-3. Health Agenda '94 conference in Washington, sponsored by the Washington Business Group on Health; \$635 for WBGH members, \$755 for non-members. Michelle Hood, WBGH, 777 N. Capital St. N.E., Suite 800, Washington, D.C. 20002; 202-408-9320, ext. 3009.

JUNE 2. D&O, Fiduciary Liability and Employment Practices Liability Coverage Aspects & Marketing Strategy seminar in Pittsburgh, sponsored by the CPCU Society; \$85 for CPCU Society members, \$95 for non-members. Also June 9 in Dallas. CPCU Society, P.O. Box 3009, 720 Providence Road, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE 2. Society of Insurance Research Networking Meeting in Des Plaines, Ill.;

\$15 for SIR members, \$20 for non-members. Society of Insurance Research, 3285 Crawford Circle, Marietta, Ga. 30066; 404-919-8862.

JUNE 2. Strategies for Dealing with Contaminated, Non-Superfund Sites seminar in Chicago, sponsored by Boelter Environmental Consultants; \$45. Kristi Jatho, Boelter Environmental Consultants, 1300 Higgins Road, Suite 301, Park Ridge, Ill. 60068-5772; 708-692-4700, ext. 249.

JUNE 5-7. Building Competitive Advantage through Risk Management forum in Atlanta, sponsored by Liberty Mutual Insurance Group and CFO magazine; no charge to CFO subscribers, \$495 for non-subscribers. Beth Myers, Liberty Mutual Insurance Group, 175 Berkeley St., Boston, Mass. 02117; 617-574-5657.

JUNE 5-8. National Assn. of Health Underwriters 1994 Symposium in New Orleans; \$350 for NAHU members, \$450 for non-members. NAHU Symposium Registration, 1000 Connecticut Ave. N.W., Suite 810, Washington, D.C. 20036; 202-223-5533.

JUNE 6-7. Advanced Strategies of Risk Management and Insurance: Managing the Total Cost of Risk seminar in Washington, sponsored by the American Management Assn.; \$1,150 for AMA members, \$1,325 for non-members. Also Sept. 22-23 in New York, Oct. 17-18 in Chicago and Nov. 29-30 in San Francisco. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

JUNE 6-7. Managing the Workers Compensation Crisis: Effective Cost-Reduction Strategies seminar in Chicago, sponsored by the American Management Assn.; \$1,075 for AMA members, \$1,235 for non-members. Also July 21-22 in Boston and Sept. 19-20 and Nov. 7-8 in Chicago. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

JUNE 6-8. Corporate Benefits Management Conference in Boston, sponsored by the International Foundation of Employee Benefit Plans' Corporate Benefits Institute; \$735 for IFEBP members, \$810 for non-members. Corporate Benefits Institute, International Foundation of Em-

ployee Benefit Plans, 18700 W. Blue-mound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

JUNE 7. Workers Compensation: Strategies for Success seminar in New York, sponsored by Willis Corroon Corp.; no charge. Debbie Ciaburri, Willis Corroon Corp. of New York, 7 Hanover Square, New York, N.Y. 10004-2594; 212-344-8888, ext. 230.

JUNE 8. Excess/Surplus/Specialty Markets seminar in Buffalo, N.Y., sponsored by the CPCU Society; \$75 for CPCU Society members, \$85 for non-members. CPCU Society, P.O. Box 3009, 720 Providence Road, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE 8. Sixth Annual Chicago Reinsurance Conference sponsored by Tribler & Orpett P.C.; \$90. Tribler & Orpett P.C., 30 N. LaSalle, Suite 2200, Chicago, Ill. 60602; 312-201-6400.

JUNE 8-10. Controlling the Cost of Workers Comp through Managed Care conference in Washington, sponsored by Global Business Research; \$1,195. Con-

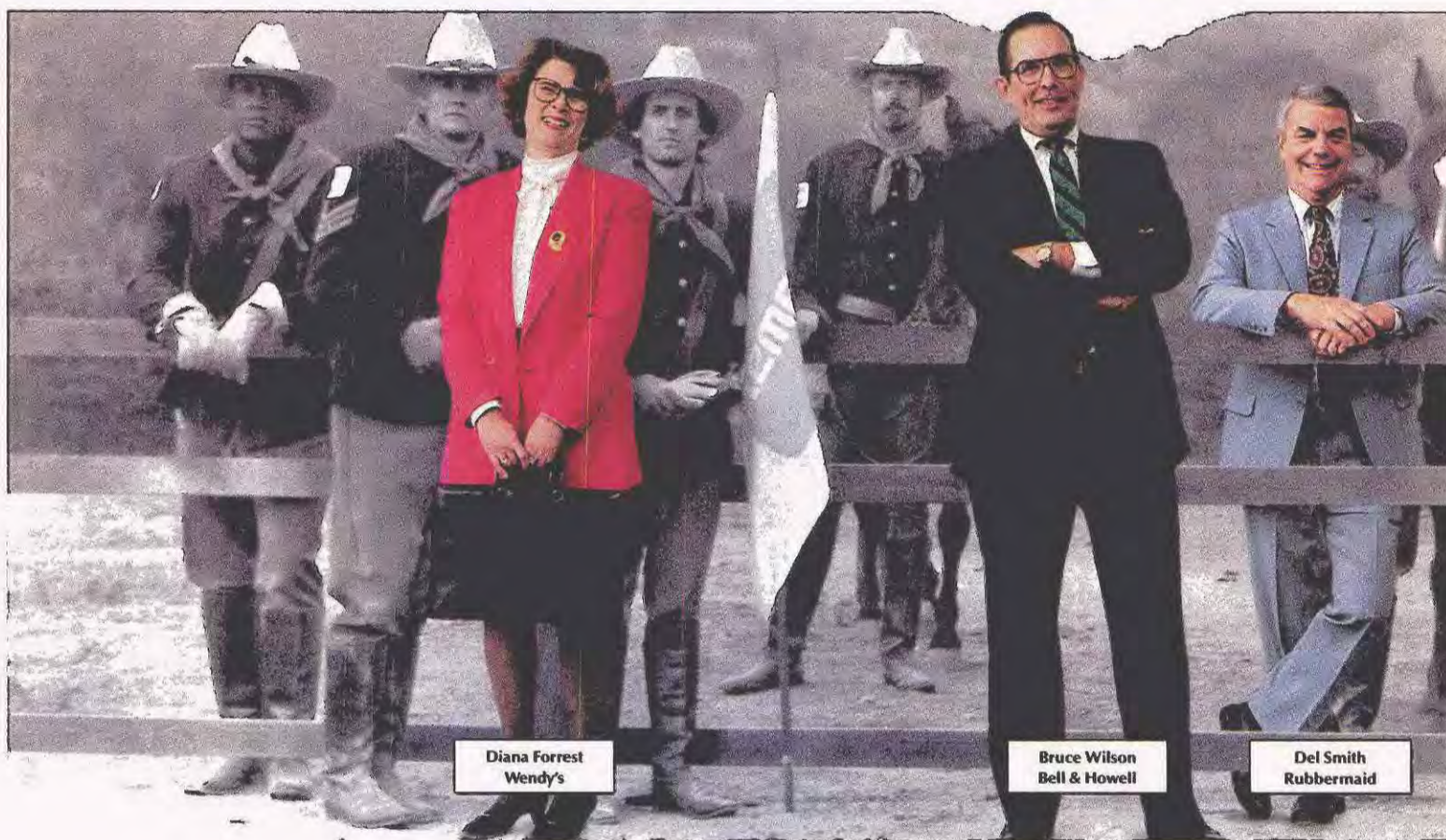
ference Administrator, Global Business Research Ltd., 151 W. 19th St., Eighth Floor, New York, N.Y. 10011; 212-645-4226.

JUNE 9. Form 5500's Annual Return/Report of Employee Benefit Plans seminar in Farmington, Conn., sponsored by the Southern New England Chapter of the International Society of Certified Employee Benefit Specialists; \$20 for ISCEBS members, \$30 for non-members. Also June 10 in Norwalk, Conn.; \$15 for members, \$25 for non-members. Southern New England Chapter, ISCEBS, P.O. Box 8089, Stamford, Conn. 06905-8089; 203-328-2817.

JUNE 9-10. How to Audit Your Insurance Program: Getting Your Money's Worth seminar in Dallas, sponsored by the American Management Assn.; \$1,050 for AMA members, \$1,210 for non-members. Also Aug. 15-16 in Washington, Sept. 12-13 in Chicago, Oct. 6-7 in San Francisco and Oct. 24-25 in Atlanta. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

Continued on next page

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JUNE 9-10. Fourth World Insurance Congress in London, sponsored by Lloyd's of London Press; 699.13 pounds (about \$1,035). The Conference Division, Lloyd's of London Press Ltd., 1 Singer St., London EC2A 4LQ; 071-250-1500.

JUNE 12-14. 401(k) Profitability Issues national conference in Washington, sponsored by the Society of Professional Administrators & Record Keepers; \$425 for SPARK members, \$575 for non-members. Karen Sidel, SPARK, 8 Griffin Road North, Windsor, Conn. 06095; 203-683-0336.

JUNE 13-14. Willis Corroon Third Annual Health Care Industry Conference in Nashville, Tenn.; no charge. Connie Gould, Willis Corroon Health Care Concepts, P.O. Box 305024, Nashville, Tenn. 37214; 615-872-4000.

JUNE 13-14. Managed Pharmacy and Health Care Reform conference in Washington, sponsored by Capitol Publications; \$695. Peggy Dwyer, Director of Seminars, Capitol Publica-

tions Inc., 1101 King St., Suite 444, Alexandria, Va. 22314; 800-847-7772.

JUNE 14-15. Disaster Planning and Preparedness Workshop in Detroit, sponsored by Factory Mutual Engineering & Research; \$495. Also Sept. 1-2 in Atlantic City, N.J., Oct. 13-14 in Norwood, Mass., Dec. 8-9 in Santa Clara, Calif., and Dec. 12-13 in Los Angeles. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

JUNE 15. Directors & Officers Liability Insurance seminar in New York, sponsored by the Practising Law Institute; \$355.50 for PLI members, \$395 for non-members. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 16. Preventing and Controlling Fire Losses seminar in Grand Rapids, Mich., sponsored by Factory Mutual Engineering & Research; \$295. Also Nov. 1 in Pittsburgh, Nov. 9 in Baltimore and Nov. 16 in Norwood, Mass.

Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

JUNE 16. Solving Additional Insured Issues seminar in Kenner, La., sponsored by the CPCU Society; \$80 for CPCU Society members, \$90 for non-members. CPCU Society, P.O. Box 3009, 720 Providence Road, Malvern, Pa. 19355-0709; 610-251-CPCU.

JUNE 16. Environmental Insurance Coverage Claims and Litigation seminar in New York, sponsored by the Practising Law Institute; \$355.50 for PLI members, \$395 for non-members. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 16-17. Chemical Exposure Seminar in San Francisco, sponsored by Defense Research Institute; \$425 for DRI members, \$475 for non-members. Defense Research Institute, Chemical Exposure Seminar, 750 N. Lake Shore Drive, Suite 500, Chicago,

Ill. 60611; 312-944-0575.

JUNE 16-17. Provider Network Management conference in Washington, sponsored by the Institute for International Research; \$1,295. Conference Administrator, Institute for International Research Inc., 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

JUNE 17. Reinsurance Litigation and Arbitration seminar in New York, sponsored by the Practising Law Institute; \$395. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 17. Warehouse Hazards and Protection seminar in Grand Rapids, Mich., sponsored by Factory Mutual Engineering & Research; \$295. Also Nov. 2 in Pittsburgh, Nov. 10 in Baltimore and Nov. 17 in Norwood, Mass. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

JUNE 17. Reinsurance Litigation: Current Issue and Strategies seminar in New York, sponsored by the Practising Law Institute; \$355.50 for PLI members, \$395 for non-members. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

JUNE 19-23. International Insurance Society 30th Annual Seminar in Madrid, Spain; \$1,250. Nancy J. Allen, Operations Assistant, International Insurance Society Inc., Box 870223, Tuscaloosa, Ala. 35487-0223; 205-348-8974.

JUNE 20. Environmental Litigation study course in Boulder, Colo., sponsored by the American Law Institute-American Bar Assn.; \$900. Alexander Hart, Director-Courses of Study, ALI-ABA, 4025 Chestnut St., Philadelphia, Pa. 19104-3099; 215-243-1630.

JUNE 22-29. Ergonomic Analysis of the Workplace workshops in Atlanta, sponsored by Work Injury Management; \$645 for Section I, \$365 for Section II. Also July 20-27 in Las Vegas. Work Injury Management, 1430 Wilamette St., No. 213, Eugene, Ore. 97401-4049; 503-484-5853.

JUNE 23-24. China: Scaling the Great Wall seminar in New York, sponsored by NYNEX and World Congress Inc.; \$1,050. World Congress Inc., 1000 Winter St., Suite 3600, Waltham, Mass. 02154; 1-800-767-9499.

JUNE 23-24. Insurance Coverage and Practice Symposium in Seattle, sponsored by Defense Research Institute; \$425 for DRI members, \$475 for non-members. Defense Research Institute, Insurance Coverage and Practice Symposium, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

JUNE 23-25. Annual Conference of the American Hospital Assn.'s Section for Psychiatric & Substance Abuse Services in Washington; \$390 for AHA members, \$565 for non-members. AHA Registration, P.O. Box 825, Deerfield, Ill. 60015; 312-280-6451.

JUNE 27-28. Catastrophe Reinsurance conference in New York, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research Inc., 708 Third Ave., New York, N.Y. 10017; 1-800-345-8016 or 212-661-8740.

JUNE 27-29. Environmental Regulation Course in Minneapolis, sponsored by Executive Enterprises; \$1,195. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6990; 1-800-831-8333.

JULY

JULY 5-14. Summer Insurance Institute in Burlington, Vt., sponsored by the Vermont Insurance Institute; \$1,100. Larissa Vigue, Vermont Insurance Institute, Champlain College, Burlington, Vt. 05402-0670; 802-860-2700, ext. 2595.

JULY 17-20. Eighteenth Annual National Symposium on Workers' Compensation in East Lansing, Mich., sponsored by Michigan State University; \$595. School of Labor and Industrial Relations, Michigan State University, 422 South Kedzie Hall, East Lansing, Mich. 48824-1032; 517-355-9591.

JULY 18-19. Accountability & Performance Measurement for Health Care Payers conference in Boston, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research, 708 Third Ave., New York, N.Y. 10017; 1-800-345-8016 or 212-661-8740.

JULY 18-19. Liability & Litigation Management for Managed Care conference in Boston, sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590; fax: 312-280-3174. Please include the cost, if any, to attend the meeting and information on registration. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be published.



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Pharmacy

Continued from page 1

Norton, a managing consultant with A. Foster Higgins & Co. Inc. in Stamford, Conn.

"The drug companies could see they were faced with a situation in which the retail market was shrinking and more and more drugs were being sold through managed prescription plans. They decided that rather than stand on the outside and let themselves get whipsawed by (managed care firms), they'd join the game and gain control," said Mr. Norton.

Drug makers have much to gain from having a stake in the distribution process. An estimated 50% to 60% of large employers have some type of prescription drug benefit program in place. Medco alone manages prescription drug benefits for 33 million people, while Diversified Pharmaceutical, previously a division of United HealthCare Corp. in Minneapolis, manages benefits for about 11 million people.

By squeezing out substantial discounts, these and other prescription drug management firms have cut profit margins for the entire pharmaceutical industry. Now drug manufacturers are trying to increase sales by gaining a top spot on pharmacy managers' preferred drug lists, known as formularies.

Prescription drug formularies are lists of preferred medications that prescription drug managers encourage pharmacists and doctors to prescribe based on their efficacy and the discounts negotiated with drug makers.

"We have assured Pfizer of posi-

management firms and health maintenance organizations to see which will offer the best terms in this highly competitive market, consultants advise. And employers should re-evaluate existing prescription drug benefit programs to make sure they are getting the best deal possible.

"If an employer has not moved into the managed prescription drug environment yet, I would be very aggressive about doing so," said Jim Braun, a consultant with The Wyatt Co. in Washington. "Go out to bid with the major vendors and get significant guarantees of prices, utilization rates and use of generics," he said.

"There is a tremendous amount of competition in the market right now. It's definitely an employer's market," agreed Ms. Babbitt.

However, Hershey Foods Corp. doesn't plan on changing its existing pharmacy management program, despite the turmoil in the marketplace, said Richard Dreyfuss, director or executive compensation and benefits. "I don't see anything out there right now that suggests to me there is a better alternative to manage our" prescription drug program.

The company currently contracts with National Prescription Administrators, which provides a drug card program to its employees. Workers pay a 40% deductible for brand-name prescriptions and receive generic prescriptions at no cost, he said.

NPA, which is not affiliated with a drug manufacturer, has been able to negotiate very effective deals with a number of manufacturers, Mr. Dreyfuss said.

"I'd like to take a careful look at how the market is really going"

With the market changing rapidly, employers probably shouldn't enter into prescription management agreements that run more than three years, consultants advise. Benefit managers should, however, attempt to negotiate agreements that guarantee a specific price increase—or decrease—over the term of the contract.

Employers can also negotiate minimum rebate levels and require a specific percentage of generic medications to be dispensed. "That should increase over time because so many drugs are coming off patent," Mr. Braun said of the

growing number of generics.

In this competitive market, some drug management firms also may be willing to offer employers capitated rates for prescription drugs, in which pharmacy benefits would be provided to employees based on a flat cost per person, consultants say.

And, employers with large and concentrated workforces may consider setting up corporate pharmacies.

Quad/Graphics Inc., a printing company employing 6,800 people in Pewaukee, Wis., set up its own corporate clinic and pharmacy in 1991. The firm spends about \$125

per employee on pharmacy benefits, less than half the national average, said Dr. Robert Kessler, director of medical services.

Nationwide, total prescription drug costs for benefits provided through medical plans and free-standing plans averaged \$386 per covered employee in 1992, according to a study by Foster Higgins.

Part of Quad/Graphics' success is due to its demographics: the average worker is only 29 years old. But the company also arranged discounts with drug makers and works directly with physicians to carefully manage pharmacy benefits, Dr. Kessler said. **BI**

'If an employer has not moved into the managed prescription drug environment yet, I would be very aggressive about doing so,' says Jim Braun. 'Go out to bid with the major vendors and get significant guarantees of prices' and utilization rates.'

tions on our prescription formularies for their drugs, in return for receiving enhanced rebates which we can use to lower costs to our customers," Robert Patricelli, the chairman and chief executive officer of Value Health, said when describing the two companies' alliance at Value Health's annual meeting earlier this month.

Last month, drug distributor Caremark International Inc. announced an alliance with three drug makers that would, among other things, assure their drugs a preferential spot on Caremark's formularies.

"The fact that each (pharmacy benefit management firm) may be owned by a manufacturer isn't necessarily a conflict, because in most cases one manufacturer's drug is as good as another's," pointed out Mr. Norton. "But there is a perception among employers that preferential treatment will be given to the owner's drugs" in cases where there may be a difference, he said.

Pharmacy management firms will have to work hard to get beyond that perception, Mr. Norton said. "They'll have to figure out who the client really is. Is it the employer that's buying the drugs or the drug company?"

Employers should not let their anxiety about vertical integration in the pharmaceutical industry stop them from taking advantage of the turmoil, though.

Begin negotiating now with drug makers, prescription drug

before making any changes, he said. "I want to make sure it stays open and competitive."

For employers that do decide to make changes in their prescription drug programs, there are no hard and fast rules about which company will offer the best managed prescription services. Employers may choose independent pharmacy management firms, those aligned with manufacturers or have their HMO manage employees' pharmaceutical needs as part of their overall medical care.

Most of these companies will try to offer significant discounts or to obtain rebates from manufacturers in return for volume or top billing on the management company's formulary.

But that is only a small part of effectively managing prescription drug costs, consultants say. Employers should also look at the strategies each company has to manage the clinical component of drug benefits.

For example, employers should pressure pharmacy management firms to use their massive databases to determine which drugs provide the best outcomes for certain diseases. They also look for programs that monitor physicians to be sure they are prescribing medications on the formulary.

And, all programs should have quality controls in place that allow pharmacists or others to make sure a patient is receiving proper medications and is taking them as prescribed.

READER REPLY SERVICE

PRODUCTS & SERVICES LISTING

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FREE LITERATURE FOR READERS

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Robert F. Driver names new chairman, CEO

Thomas W. Corbett has been named chairman and chief executive officer of broker Robert F. Driver Co. Inc. in San Diego.

Mr. Corbett assumes the title of CEO from **Richard B. Gulley**, who now is vice chairman, and the title of chairman from **Irwin Sklar**, who has retired.

Mr. Corbett previously was president of Robert F. Driver Associates, an arm of the brokerage in Newport Beach. **Ted E. Davidson** has been promoted to president of Driver Associates from senior vp.

In other agent/broker changes:

Susan G. Smith named managing director of the Philadelphia risk management division at Alexander & Alexander Inc. Also at A&A Inc.: **Michael J. Ammiano** joined the broker as managing director of its Florida risk management division in Fort Lauderdale.

Allan Sittnick joined the Detroit offices of Rollins Hudig Hall of Michigan Inc. as vp-construction.

Robert M. Prior named vp-dealer division of Acordia Lloyd Insurance Services, a San Francisco-based unit of Acordia Inc. Also at Acordia, **Jerry McCord** assumed the position of chief operating officer of American Business Insurance and executive vp of Acordia of Southern California in Los Angeles.

Timothy M. Matthews named senior vp-client management for Johnson & Higgins in Costa Mesa, Calif.

Willis Corroon Corp. of Michigan announced several new appointments in Livonia, Mich.: **Lawrence N. Diggs** named executive vp and chief operating officer; **David Q. Laabs** named executive vp; **James J. Warzyniec** named senior vp; and **James R. Gargaro** and **Sharon A. Fleming** named vps.

Also at Willis Corroon, **Anita Z. Bourke** named chief operating officer in the Seattle office.

Thomas W. Knaup named president of Near North Insurance Brokerage Inc.'s western region in Los Angeles.

Kaye Insurance Associates announced several new appointments in New York: **Rubin Alpector** and **Jane Williams** named group vps; **Ronald Hausch** and **John Warren** named first vps; and **Marc Cohen** and **Michael Zeldes** named vps.

Arlene S. Mayer named corporate senior vp at Foa & Son Corp. in New York.

Insurers

William J. Flynn will retire as chief executive officer of New York-based Mutual of America Life Insurance Co. Oct. 1, though he will remain chairman of the insurer. **Thomas J. Moran**, currently president and chief operating officer, will assume the position of president and CEO upon Mr. Flynn's retirement.

Tony Borgese named senior vp-construction for Argonaut Insurance Co. in Menlo Park, Calif.

USLIFE Corp. announced several new promotions in New York: **Gordon E. Crosby Jr.** chairman and CEO, named to the additional post of president; **William A. Simpson** named president-chief operating officer of its life insurance division; **James P. Addiego** named senior vp-financial actuary; **James F. DeVarso**, named senior vp and counsel-real estate; **Diane A. Brand** named vp and counsel; **Henry B. Ramsey** named vp-actuary; and **Linda Miller** named senior vp-secretary and treasurer of USLIFE Equity Sales Corp., a wholly owned subsidiary.

Comings & Goings: Industry

William H. Mowat named executive vp and chief financial officer of New York Life Insurance Co. Also at New York Life, **Michael J. Pisani** named vp and general counsel and **Mary Moore Hamrick** named vp in the company's government affairs office in Washington.

Judith McElya joined Energy Insurance International Inc. in Houston as vp-financial services and general counsel.

Robert E. Dobbs named a vp at Great American Insurance Cos. in Cincinnati. **Alan R. Schutte** named divisional senior vp in Great American's commercial division.

Linda B. Emory named executive vp and corporate actuary at ING North America Insurance Corp. in Atlanta.

Arthur S. Phillips has resigned as executive vp of The Home Insurance Co.'s specialty lines group in New York. **Lars-Goran Nilsson**, president and CEO, has assumed Mr. Phillip's responsibilities until a replacement is named.

Wausau Insurance Cos. announced several new appointments: **Dan Moericke** named director of management-financial services in Wausau, Wis.; **Joe Lathrop** named account services manager in Dallas; **Ed Steele** named vp-loss control services in Wausau; **Fred Frey** named senior vp-risk management and services in Wausau; **Mike Mayers** named senior vp-risk management underwriting in Wausau; **Bruce Bay** named vp-risk management loss management services in Wausau; **Dennis Mealy** named vp and chief actuary in Wausau; and **Dave Hall** named Midwest division vp-underwriting in Chicago.

Barry Persofsky named national director of corporate accounts in the domestic brokerage group of American International Group Inc. in New York.

John J. Pomeroy named vp, secretary and general counsel at Allendale Mutual Insurance Co. in Johnston, R.I.; **James T. Johnson** named vp-operations in Los Angeles; and **John M. Lyons** named vp-operations in Dallas.

Eileen C. Farrar and **Donna T. Mundy** named senior vps at UNUM Corp. in Portland, Maine. Also in Portland, **Gary E. Kirkner** and **John S. Roberts** named senior vps at UNUM Life Insurance Co. of American, a UNUM Corp. affiliate.

William L. Gentz will become president and CEO of Superior National Insurance Group Inc. in Calabasas, Calif., on June 1.

Reinsurance

Kenneth J. Rutkowsky named senior vp of U.S. RE Corp. in New York.

Jeffrey L. Sirt appointed senior vp in the marine, international and aviation division of Willis Faber North America Inc., the New York-based reinsurance brokerage arm of Willis Corroon Group. Willis Faber also announced seven new senior vp appointments in New York: **Stephen M. Breen**, **Clark A. Hontz**, **Mark B. Maxson**, **Robert N. Ellington**, **Orren Beth Falk**, **Michael S. Cross**, and **Thomas M. Gunyan**.

Eleni Kourou named vp in the treaty pricing unit of Constitution Reinsurance Corp. in New York.

Owen M. Gleeson named senior vp and director of the actuarial department at TIG Reinsurance Co. in Stamford, Conn. Also at TIG,

Brian D. Quinn joined as vp-underwriting.

Ray Heenan and **Scott Lohman** named vps at Reinsurance Solutions Inc., a Seattle-based reinsurance services subsidiary of Sedgwick Group P.L.C.

Excess/surplus lines

William W. Weir named vp of Swett Insurance Managers, the Ardmore, Pa.-based unit of Swett & Crawford Group.

Thomas J. Trimble named chairman and **Richard M. Haden** named vice chairman of Energy Insurance Mutual, the excess liability insurance company for electric and gas utilities in Tampa, Fla.

Kevin Jeffery joined Frontier Insurance Co. as vp of the excess and surplus lines division in Rock Hill, N.Y.

Other suppliers

Gerald L. Middel named national practice leader-executive benefits,

compensation, estate planning and financial planning at Sedgwick Noble Lowndes in Denver.

The Segal Co. announced several new appointments in New York: **Peter Driscoll**, **John A. Evans**, **Steven J. Glowiak**, and **William Robinson** named senior vps; **K. Paul Duxbury** named senior vp and actuary; **Keith Anderson**, **James Bigham**, **David Blumenstein**, **Erin E. Burns**, **Donna Burroughs**, **Michael Butera**, **Francesca G. Scandra**, **Jordan Hill Smith**, **William H. Stahl**, **Hilary Kish Wilson**, and **Richard J. Wondra** named vps; **Thomas P. Dawidowicz**, **Robert Drozd** and **Ann D. Gineo** named vps and actuaries; **A. Donald Morgan**, **Thomas Olmich** and **Doron Scharf** named vps and associate actuaries.

Barbara Levy Landes joined The Wyatt Co. as vp and chief financial officer in Washington.

Todd Foster named senior vp-employee services at Personal Performance Consultants, Inc., the Maryland Heights, Mo.-based subsidiary of Medco Behavioral Care Corp.

Marcel L. Gamache named president and CEO of Farmington,

Conn.-based managed care organization ConnectiCare Inc.

Robert L. Natt named executive vp and chief operating officer of Physicians Health Services Inc., a Trumbull, Conn.-based managed care organization.

David P. Jones named senior vp-marketing officer at Diagnostek Inc., the Albuquerque, N.M.-based pharmacy service company.

Walter J. Blasberg, president of New York-based Continental Asset Management, has assumed the additional position of CEO. Also at the Continental Corp. subsidiary: **Jeffrey R. Margolis** named executive vp and chief operating officer; **Catherine Waterworth** named executive vp and head of the fixed income division, replacing **Robert Stricker**, who resigned; **Alfred Weinberger** joined as senior vp-investment policy and strategy. At Continental Risk Management Services: **Paul Bonds** named senior vp-claims services in New York, and **Mark Smith** named vp-claims in Dallas.

Janice C. Forsyth named senior vp and general counsel at Blue Cross & Blue Shield of Missouri in St. Louis. **BI**

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For the Record

Exclusion doesn't apply to lead paint claims

NEW YORK—The absolute pollution exclusion in commercial general liability insurance policies does not apply to claims of bodily injury from exposure to lead paint, a New York Supreme Court has ruled.

The April 13 decision by the trial-level court in *Generali-U.S. Branch vs. Caribe Realty Corp.* counters an earlier ruling by the court in *Oates vs. State of New York* that denied coverage based on the pollution exclusion.

The *Oates* decision had been appealed, but the appeal was dropped when the case was settled out of court last fall.

In *Generali*, the New York court relied primarily on the reasoning of the Supreme Judicial Court of Massachusetts in *Atlantic Mutual Insurance Co. vs. McFadden*, which is the only appellate-level decision so far on the application of the pollution exclusion to lead paint claims.

In that 1992 case, the Massachusetts court held that the pollution exclusion was not intended to apply to bodily injuries caused by leaded materials, but rather to environmental pollution caused by improper disposal or containment of hazardous waste.

Researcher to appeal denial of coverage

LARAMIE, Wyo.—The Wyoming Research Corp. is appealing a U.S. District Court decision denying it insurance coverage for a \$749 million default judgment in a research contract dispute.

International Surplus Lines Insurance Co. won its motion for summary judgment April 25, when Judge Clarence Brimmer found that WRC did not disclose a 1988 contract dispute before purchasing its \$1 million liability policy from ISLIC in 1991, said Peter G. Thompson of Washington law firm Ross, Dixon & Masback, which was lead counsel for the insurer.

The underlying litigation stemmed from a suit in which Wyoming Coal Refining Systems Inc. claimed WRC had not performed certain research tasks as required in its contract.

To settle the suit, WRC agreed to assign its insurance rights to WCRI if the refining company sought recovery solely from the insurer. To execute the agreement, WRC was not to appear in court and instead accept a default judgment.

However, the default judgment approved by the court was \$749 million—more than \$700 million greater than the alleged damages.

When the insurer denied coverage, WRC and WCRS sued for bad faith, but the insurer won on summary judgment.

WRC and WCRS have until May 25 to appeal, which they plan to do, said Bruce Waters, a partner with Stanfield Waters in Laramie, Wyo., who represented WRC.

Arizona bars insurers writing comp cover

PHOENIX—The Arizona Insurance Department has issued a cease-and-desist order against two insurers that sold "discounted" workers compensation insurance and claimed they were exempt from state insurance regulation.

Neither Arlington, Texas-based Assn. of Trust & Guaranty nor Phoenix-based Four Corners Benefits Assn. are licensed to sell insurance in Arizona, according to state Insurance

Director Chris Herstam. The companies also are not exempt from state insurance regulation, he said.

Several other states also have issued cease-and-desist orders against ATG, according to Arizona regulators: Colorado, Florida, Georgia, Illinois, Michigan, Missouri, Nevada, Texas and Utah.

Meanwhile, under the terms of the cease-and-desist order, both companies are prohibited from selling any new policies in the state, but they must continue to pay valid claims covered by policies in effect.

Also named in the cease-and-desist order is Lawrence D. Kenemore Jr., managing senior partner of ATG, and Alex Malcolm, secretary/treasurer for FCBA. Mr. Malcolm holds an Arizona insurance agent's license, as do others associated with both

FCBA and ATG, according to the Insurance Department.

"The department's investigation into ATG and FCBA is ongoing and we will take disciplinary action against agents involved where appropriate," Mr. Herstam said.

Employers that have purchased coverage from ATG or FCBA should contact the Arizona Department of Insurance Consumer Affairs Division at 602-912-8444 to file a complaint. Written complaints may be sent to the Consumer Affairs Division at 2910 N. 44th St., Suite 210, Phoenix, Ariz. 85018.

Solvency implications hard to predict: CBO

WASHINGTON—A solvency crisis in the insurance industry could "temporarily exacerbate" the harm caused by the losses that created the crisis in the first place, "but it is dif-

ficult to be very precise about the dimensions of these additional impacts," a congressional report says.

But, while a solvency crisis could cause a temporary drop in spending in the economy, it "would probably not be large for the economy as a whole, except possibly in some worst-case scenarios," says the report, "The Economic Impact of a Solvency Crisis in the Insurance Industry."

The report, which was released last month, was prepared by the Congressional Budget Office at the House Banking Committee's request.

Factors that could cause a solvency crisis include natural disasters, collapse of asset markets, runs on life insurers and the property/casualty insurance industry's underwriting cycle, the 59-page report states. However, "the magnitude of this potential is difficult to determine."

Among other conclusions, the re-

port also says that while all analysts agree the state regulatory system should be strengthened, it is "less certain" whether a federal role is necessary to strengthen insurer solvency regulation.

Arizona law establishes health savings accounts

PHOENIX—Arizona has become the third state this year to approve medical savings accounts, which permit employers to purchase high-deductible insurance policies and put premium savings into tax-deferred savings accounts for employees' future health expenses.

Mississippi and Idaho enacted MSA laws earlier this year, according to the Alexandria, Va.-based Council for Affordable Health Legislation. Missouri passed a law last year and additional legislation is

Continued on next page

High Tech Workers' Comp

CommonwealthRisk . . .

Continued from previous page

pending in several other states, said the council, a lobbying group of small to medium-sized insurers seeking federal MSA legislation. The state laws already passed allow the accounts to be tax-deferred.

The Arizona bill was signed April 6 by Gov. Fife Symington. The legislation provides that up to \$2,000 a year per employee and \$4,000 per family can go into these accounts.

Arizona Sen. Matt Salmon, R-Mesa, who sponsored the bill, said that at the end of each year, employees may roll over unused funds for use the following year or withdraw the funds from their accounts.

Funds not used for medical expenses will be taxed, however.

This approach gives employees the incentive to control their own medical expenses and lets them choose their own doctors, said Sen. Salmon, who is running for Congress. "It's a win-win situation all around."

Hawaiian health care studied by GAO

WASHINGTON—Hawaii's mandated employer-sponsored health coverage shows that an employer mandate alone may not result in universal access to health care, a General Accounting Office report says.

The report, prepared at the request of the House Energy and Commerce Subcommittee on Oversight and Investigations, gives "information... on topics central to the current debate on national health care reform."

Although Hawaii's system has been widely studied (*BI*, May 6, 1991), lawmakers considering health care reform apparently wanted information from the GAO's Health, Education and Human Services Division prepared, the report states, "in accordance with generally accepted government auditing standards."

"Hawaii's experience offers three

lessons," the GAO says:

- To achieve universal coverage, public programs plus an employer mandate are needed for residents who cannot obtain health insurance at work or are unemployed.

- "Hawaii's system of near-universal access has resulted in lower health insurance premiums, particularly for small businesses." Still, its law mandating employer-based coverage "did not have explicit cost control provisions, and Hawaii's health care costs have risen at a rate similar to the national average."

- Although small businesses fear a national employer mandate will prove too costly and force them to lay off workers or close down, the GAO report found the mandate in Hawaii "has not created large dislocations" for small businesses.

But, the report cautions, a unique factor in Hawaii is that when it introduced its Prepaid Health Care Act in 1974, it "may have started with a

higher percentage of insured individuals than the U.S. has now."

The cost of providing health insurance was also "significantly lower" in 1974 than today, according to the report.

Loan receipt pacts not covered: Court

SAN FRANCISCO—Loan receipt agreements between insurers and their policyholders are not the same as subrogation rights and therefore are not covered claims under the Oregon and Louisiana insurance guaranty fund laws, a court has ruled.

Such claims "are excluded from the definition of a 'covered claim' because any money paid on these claims will go to the insurer," reasoned the 9th U.S. Circuit Court of Appeals in San Francisco.

The case stemmed from a product liability suit against Buhler-Miag,

the designer of part of a grain loading facility in Oregon that was damaged in 1976 and 1983. The owner of the facility, Columbia Grain Inc., won at trial and Buhler-Miag's insurer, Republic Insurance Co., paid the resulting judgment of \$796,214. Afterward, the designer and Republic made a loan receipt agreement in which Buhler-Miag pledged to Republic any claims or recovery it got from third parties or their insurance companies.

Buhler-Miag then brought a third-party action against Sharp Electric, a Louisiana company also involved in constructing the facility, for contribution. While this suit was pending, Sharp's insurer, Transit Casualty Insurance Co., became insolvent and the Louisiana Insurance Guaranty Assn. took on its defense. Sharp sued the Oregon Insurance Guaranty Assn. to resolve issues arising from the insurer insolvency. Buhler-Miag and Sharp later settled, with Sharp paying \$449,900 and assigning to Buhler-Miag all claims and rights it might have against the two state guaranty funds.

While a district court found loan receipt agreement claims to be recoverable from the guaranty funds, the appellate court reversed, ruling the agreement was not the same as subrogation rights, which the guaranty funds would have covered.

Information in brief

Minnesota legislators earlier this month passed another **health care reform** bill that would, among other things, require the state to provide universal medical coverage to all Minnesotans by 1997. Key decisions on funding were postponed until next year and some insurance reforms were delayed by one to three years... The 9th U.S. Circuit Court of Appeals ruled that Southern California waterbed maker Intex Plastics Sales Co. is not entitled to coverage from its insurers in a **patent infringement** suit. The court found there is no coverage under the advertising injury endorsement to the CGL policy when a policyholder is sued for direct infringement under the state Unfair Business Practices Act... **Ford Motor Co.** has settled a lawsuit for \$1.35 million stemming from an accident in which a Bronco II rolled over, leaving a California man a quadriplegic... The House of Representatives approved last week a bill that would require lenders to obtain **flood insurance** for borrowers who don't buy coverage but want a loan for property in flood-prone areas. H.R. 3191, approved 335-60, was supported by major banking associations and is similar to provisions in a community development banking bill passed by the Senate two months ago. The bills will go to conference committee to reconcile differences... Boston-based **Liberty Mutual Insurance Group** will sell part of its group medical insurance business so it can leave that market and focus on other lines. The Travelers Insurance Cos. of Hartford, Conn., will take over some group health plans, and Framingham, Mass.-based Consolidated Group will become administrator of other medical, dental, prescription drug and vision coverages... The California Office of Administrative Law has approved a state law that requires insurers to establish fraud investigation units and train workers to spot false claims. The rules, which take effect June 2, also require insurers to file reports of their **anti-fraud programs** to the Insurance Department... The **401(k) services units** of John Hancock Mutual Life Insurance Co. and John Hancock Mutual Funds will be merged over the next several weeks. The new unit's distribution system has yet to be decided, the company said.

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Two specialty brokers acquired by Gallagher

ITASCA, Ill.—Arthur J. Gallagher & Co. has expanded its specialty brokerage services with the acquisition of two companies, Donald P. Pipino & Associates Inc. in Youngstown, Ohio, and Steel Agency of Wayne, N.J.

Donald P. Pipino & Associates, founded in 1952, specializes in general liability, workers compensation, automobile liability and physical damage coverages for shopping center developers and department stores. The agency currently provides coverage for more than 150 million square feet of shopping center property.

The agency also provides claims management, loss control and automated data base services.
CEO Edward W. Muransky Jr.

Markets

and President Mary T. Pipino, as well as a staff of 40, will remain with the company, which will operate as Gallagher Pipino Inc.

Steel Agency specializes in public entity and workers compensation pooling programs for school boards and municipalities.

The company will operate from its Wayne, N.J., location as Arthur J. Gallagher & Co. of New Jersey. President Thomas Pepe will continue in that post with the newly named agency.

A&A in Colombia

NEW YORK—Alexander & Alexander Services Inc. has purchased a majority stake in a Bogota, Colombia-based insurance broker.

Marmorek & Asociados Ltda., La Correduria de Seguros, was founded in July 1992 by Jorge Marmorek, who will head the newly acquired A&A office. Mr. Marmorek previously was president of Colombian insurer Seguros Colmena.

M&A Ltda. is at Carrera 7, Suite 71-52, Bogota, D.C., Colombia; 57-1-312-2847; fax 57-1-312-2980.

PacifiCare purchase

CYPRESS, Calif.—PacifiCare of Washington has acquired Preferred Health Resources, a managed care organization in Seattle.

The company operates Network Health Plan, a health care services contractor with more than 32,000 members and Network Management Inc., a third-party administrator with more than 40,000 covered lives.

Mary McWilliams, president and CEO of PacifiCare of Washington, will oversee Network Health Plan and Network Management Inc. Jill Marsden will continue as chief operating officer of both companies.

PacifiCare of Washington is a unit of PacifiCare Health Systems Inc., a Cypress, Calif.-based HMO.

Ergonomic services

NOVI, Mich.—Clayton Environmental Consultants Inc. has acquired ErgoTech Inc., a Minneapolis-based ergonomics consulting firm.

ErgoTech provides ergonomics analysis and training for companies in the airlines, food manufacturing, paper, printing, meat packing, health care, pharmaceutical, financial and retail industries.

The new company will be called Clayton ErgoTech and becomes part of Clayton's Safety Services Group and National Environmental Health Services practice.

Novi-based Clayton provides environmental and risk management consulting services.

New offices

San Francisco-based Wexford Underwriting Managers Inc. has opened an office at 230 W. Monroe, Suite 2550, Chicago, Ill. 60606-4997; 312-201-3040; fax: 312-201-3014.

William M. Mercer Inc.'s Washington Resource Group has moved to new offices at 2300 N St. N.W., Suite 730, Washington, D.C. 20037; 202-778-7800. **BI**

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Repetitive strains can be complicated by new disorder

CHICAGO—The alphabet soup of repetitive strain injuries is getting a little thicker.

Experts now say that an improperly treated RSI may give rise to RSD, or reflex sympathetic dystrophy.

Repetitive strain injuries of the hands and arms are among the fastest-growing occupational injuries, primarily due to increased use of computer keyboards. RSD is a complication that can occur after an RSI or even a minor trauma. Some researchers believe it is related to abnormal actions of the sympathetic nervous system or an exaggerated inflammatory response in the affected limb.

In early stages, RSD causes burning pain. Later, reduced blood flow typically causes coldness while other symptoms like weakness and involuntary movements also appear.

In advanced stages, the skin "is mottled, shiny, blue or pale. Atrophy, loss of calcium and serious depression also can occur," said Dr. Emil Pascarelli, corporate medical director of ambulatory care at St. Luke's/Roosevelt Hospital Center and medical director of the Miller Health Care Institute for Performing Artists, both in New York.

RSD is frequently mistaken for ailments like carpal tunnel syndrome or a rotator cuff injury. Surgery or injections can cause or worsen RSD, said Dr. Pascarelli, who also teaches medicine at Columbia and Cornell universities.

In an article in the October 1993 "Lancet," a leading British medical journal, Dutch researchers noted that "RSD has been considered to occur in patients who are emotionally unstable, depressive, manic, insecure, anxious or pathological malingerers."

"These opinions, although never proven, have done patients a lot of harm because their complaints are often not taken seriously," they said.

And early diagnosis is important. RSD "must be diagnosed and treated within approximately six months of onset or it is likely to worsen and become chronic," Dr. Pascarelli said.

RSD "can be worsened by treatments such as splints, bed rest and ice massage, alcohol, barbiturates and drugs such as Valium, Librium and Halcion," according to a new book co-authored by Dr. Pascarelli and Deborah Quilter, "Repetitive Strain Injury: A Computer User's Guide."

The best treatment is "early, aggressive physical therapy because it counteracts harmful immobility," Dr. Pascarelli said.

Employers' response to RSD claims varies greatly, ranging from cynical to sympathetic, he said.

"How many people have been damaged by employers not responding properly and doing something for employees early?" asked Dr. Mario Feliberty of Barrington, Ill., a former medical director who reviewed policies for three life insurers operated by Kemper Corp. He now has RSD in both hands.

He alleges that his condition resulted from working at a poorly designed computer setup from 1992 to 1993, which caused RSIs in both hands and subsequent carpal tunnel surgeries.

He now has claims pending against Kemper Corp. under Illinois' state workers compensation law and the federal Americans with Disabilities Act.

Kemper declined to comment.

The National RSI Foundation, established last month, is now working to establish a data bank of employees and employers that have experienced problems with RSIs, according to Neal Taslitz, president and CEO of The Back-Care Corp. in Chicago. For more information, call 800-363-7747.

—By Meg Fletcher

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Translating quality goals into results

Panel discusses industry's quality improvement efforts

By SALLY ROBERTS

CHICAGO—When a survey showed Zurich-American Insurance Group that its policyholders valued quick responses to phone calls, it provided incentives and disincentives to its customer service employees based on the time it took them to answer the phone.

Today, if an unmanned phone rings in the insurer's service center, "people dive for (it)," said William H. Bolinder, president and chief executive officer of the Schaumburg, Ill.-based insurer.

This is just one example of how to get tangible results from a quality improvement program that was discussed last week during the 1994 Harold H. Hines Jr. Memorial Symposium in Chicago.

While the quality management bee—which has been buzzing around the property/casualty insurance industry as of late—has stung some companies, it has yet to show many results, panelists said.

The insurance industry must "resist the temptation of instant gratification," warned J. Bransford Wallace, vice chairman of Willis Corroon Corp. in Nashville, Tenn.

Many people believe that a quality management program implemented today will show results tomorrow, he added. "This is not the case in applying total quality management into a company."

"I'd like to say that quality is a total way of life at our organization, but in all candor, at this stage of the game, we're in for a fairly long learning curve," said Mr. Wallace, who is chairman of the Quality Insurance Congress, an industry group started by Willis Corroon (*BI*, Oct. 4, 1993; Sept. 6, 1993).

At Willis Corroon, quality is measured by the willingness of employees to come forward to talk "in an unafraid manner" about duplicative services and what is causing errors, Mr. Wallace said.

A "time/event chart" is another kind of measure brokerages and other service companies should be using to improve quality, according to William G. Marshall, treasurer of Nalco Chemical Co., in Naperville, Ill.

Risk managers should sit down with their broker and make sure both agree on the events that need to take place and on the time frame in which they will be accomplished, Mr. Marshall said. For example, they can determine when the correct policy should be delivered after the binding date or how many days prior to renewal the correct quote should be delivered.

After the events have occurred, they can assess whether the goals were accomplished and the customer was satisfied, Mr. Marshall said.

Such partnerships are growing more popular with risk managers, said Mr. Wallace.

Mr. Marshall also said that senior insurance executives should start asking their customers directly what their needs and wants are.

"I can't recall ever having had an officer of an insurance company come visit with Nalco and ask what was going on," he said. If this were to start happening, "it would send a message to other people that customers are important and it's OK to talk to them."

In addition to talking directly with policyholders, insurers and brokers need to survey clients to see whether they are satisfied with their current service, said Aleta Holub, vp and manager of quality

at The First National Bank of Chicago.

However, insurers and brokers must make sure they extend their survey initiatives to their entire customer base to truly have the voice of the customer represented, she said.

Ms. Holub advises brokers and insurers to have personal conversations with clients in addition to surveys. "We're being surveyed to death," she said, adding that many times surveys are tossed in the trash due to lack of time.

While surveys will let insurers and brokers know if their customers are satisfied, the whole philosophy of quality management revolves around empowerment of em-

ployees, Mr. Wallace contends.

If employees in the insurance industry are truly empowered, "they get energized and the whole thing takes off like a rocket," he said.

"Insurance companies are not necessarily known as coaching and counseling kinds of companies," Mr. Bolinder responded. "We're more of a command and control (company)."

"Point to the wall and run through it," he added jokingly.

Initially, Zurich-American employees did not take to an empowerment program. "So we tried to be a little playful and issued licenses to question," Mr. Bolinder said.

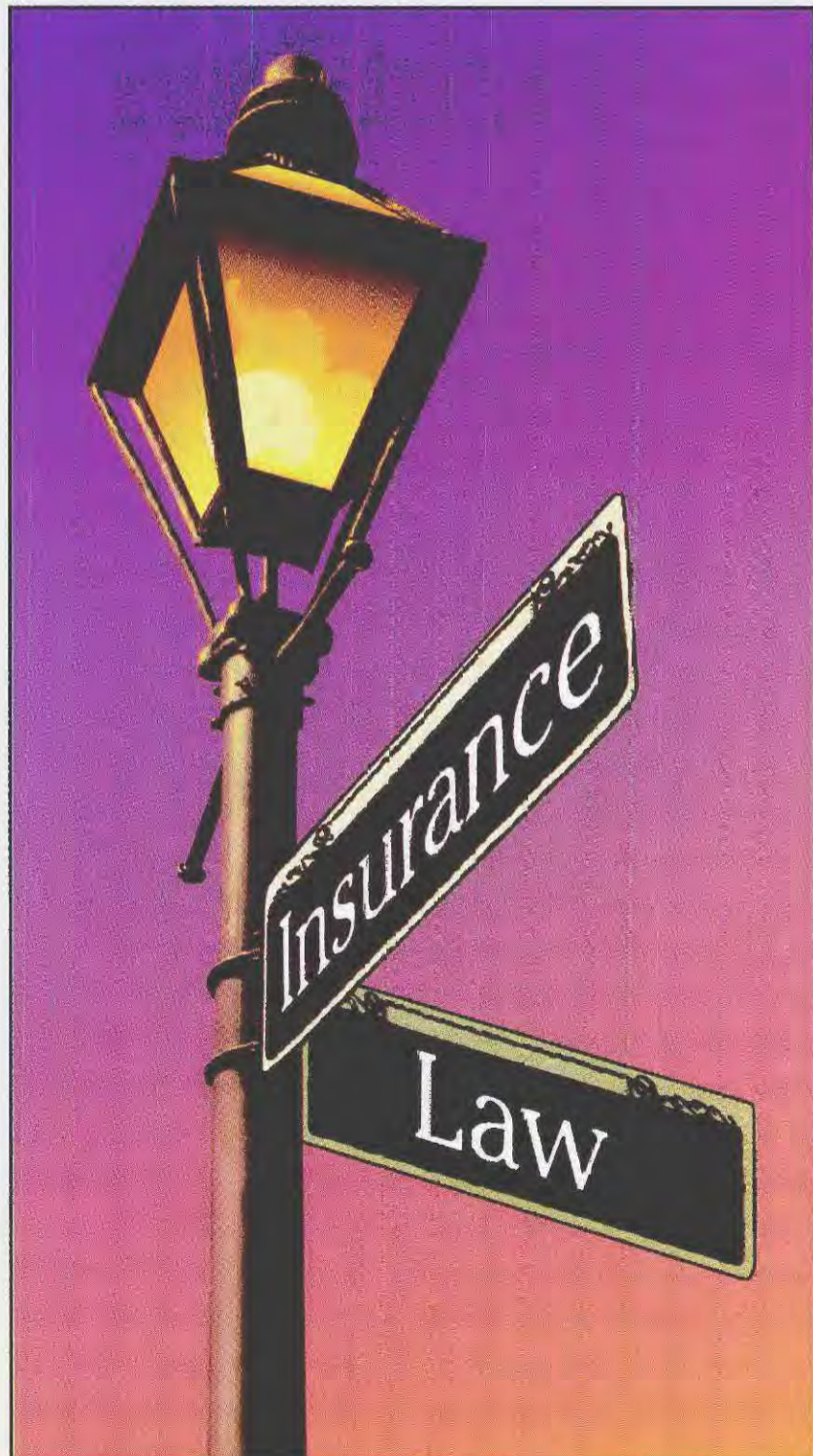
Now, when the boss says "be-

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Photo by Michael A. Marcotte

William G. Marshall, foreground, and J. Bransford Wallace were among the speakers at the annual Harold H. Hines Jr. memorial symposium.



Continued from previous page
cause I told you so," employees show their badges and say, "You're telling me this, but I'm supposed to be questioning."

Employee empowerment will ultimately increase customer satisfaction, the panelists agreed, as will uniform quality standards that the panelists predict will be adopted in the future for the entire insurance industry.

Mr. Marshall noted that European manufacturers write down all the procedures used in making a product to make sure it is done the same way every time. This is part of a voluntary process to be certified as meeting certain quality manufacturing guidelines, he explained. Buyers won't buy products from non-certified manufacturers, he said.

"I would not be surprised that in the next five to 10 years, this evolves into the service sector," Mr.

Marshall said, specifically noting that insurers in the future could be required to meet quality standards in order to compete.

Mr. Wallace said that he would not be shocked if quality standards were to evolve into the insurance industry. He warned, though, that it would be "totally unrealistic" to think standards could be set before management is educated and processes changed.

"The education process involves unlearning what we've learned," he continued. "Quality is like a race with no finish line, and we're just getting off the starting line."

Kathryn J. McIntyre, publisher and editorial director of *Business Insurance* moderated the panel.

The symposium is co-sponsored by the Chicago and Northeastern Illinois chapters of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*. **BI**

Hall

Continued from page 1
(*BI*, June 5, 1989).

The settlement was not to become final without court approval, and a New York court has withheld that approval while the reinsurance dispute was pending.

If the department is unable to collect claims from reinsurers, it will have to decide whether to reopen litigation against Hall's successor company to try to recover more than the \$48 million settlement amount, those involved in the case say.

Reliance sold Hall to Aon Corp. in 1992, but Hall's Union Indemnity-related assets and liabilities were retained in a Reliance-owned successor company to Hall, Prometheus Funding Corp. (*BI*, July 27, 1992)

"We are reviewing the (appeals)

court decision and trying to determine the effect on the Hall settlement," an Insurance Department spokesman confirmed. "Obviously, it will probably have a significant impact on that settlement."

Reliance and Prometheus have no plans to reassess the settlement, though.

"We feel we have a signed deal with the Insurance Department. The deal is not conditioned on the reinsurance issue and we have no reason to believe they will not support the settlement," a Reliance spokesman said.

Meanwhile, the New York department also is deciding whether to appeal the reinsurance ruling, either by asking the appellate panel for a rehearing or by seeking a review by the New York Court of Appeals, the state's highest court.

The 1985 collapse of Union Indemnity, a market for Hall brokerage clients, has generated a morass

of litigation.

The case that led to this month's appellate ruling began in 1985, when Michigan National Bank-Oakland, the beneficiary of a \$2 million Union Indemnity surety bond, filed suit to bypass the insurer's estate and collect directly from Union Indemnity's reinsurers.

The New York department intervened, arguing that reinsurance proceeds could only be paid to the estate for the benefit of all policyholders, not directly to Michigan National Bank.

The reinsurers, meanwhile, filed counterclaims to have their treaties rescinded, charging that Hall had operated Union Indemnity improperly and that the insurer had failed to disclose its insolvency.

Separately, the New York department itself filed suit in 1987 against Hall as well as the directors and officers of Hall and Union Indemnity, charging them with mismanagement, breach of fiduciary duties and failure to disclose the insurer's insolvency.

In the course of that case, the Insurance Department submitted affidavits from its outside lawyers charging that evidence showed Hall's "active participation in a scheme to defraud."

Reinsurers in the Michigan National Bank case then submitted those affidavits and moved for a summary judgment to rescind their treaties, arguing that the Insurance Department, in the affidavits, had admitted the alleged fraud.

In a series of rulings, New York Supreme Court Judge Ira Gammerman granted the reinsurers' request to cancel the treaties from inception (*BI*, Nov. 16, 1992).

A four-judge panel of the Supreme Court's appellate division unanimously affirmed the rulings on May 3.

The appeals panel rejected arguments by the New York department and Michigan National that the affidavits should not be construed as admissions of fraud, concluding that they were "informal judicial admissions" that reinsurers were free to use against the department.

The court also rejected arguments that cancellation of the treaties would violate public policy by granting reinsurers a preference over Union Indemnity policyholders.

A liquidation should not place the liquidator in a better position than the insolvent insurer it takes over, the appellate court observed.

"Here, as the reinsurers correctly maintain, their claim of fraud in the inducement created rights at the time the treaties were entered into, prior to Union Indemnity's liquidation. Those rights were not altered by the liquidation, and the amounts sought never became assets of the insolvent estate," the panel found.

The appeals panel also rejected Michigan National Bank's claims against the reinsurers, noting that a policyholder cannot claim to be a third-party beneficiary of a reinsurance contract unless the contract allows it. The bank's claims also are barred by the treaties' cancellation for fraud, the panel said.

"The bottom line was that all the parties to the suit were in agreement that the reinsurers had been defrauded, and the real question was whether the reinsurers would be able to invoke that defense," observed Lawrence Brandes, a lawyer with Rosenman & Colin in New York, representing several of the reinsurers.

Reinsurers involved in the case
Continued on next page

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Hall

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include Allianz Syndicate and The 1792 Co., both syndicates on the defunct New York Insurance Exchange; American Centennial Insurance Co.; Aneco Reinsurance Underwriting Ltd.; Atlas Assurance Co. of America; First Horizon Insurance Co.; GTE Reinsurance Co. Ltd.; Hannover Ruckversicherungs A.G.; Kansa Reinsurance Co.; Philan Insurance Ltd. and Benodet Insurance Ltd., Cayman Islands captives formerly managed by Hall; Puritan Insurance Co.; Republic Insurance Co.; and Simcoe & Erie General Insurance Co.

Lawyers involved in the case are uncertain how much the Union Indemnity estate stood to collect from these reinsurers. While voiding the treaties, the appeals court also ruled that the Insurance Department is entitled to return of premiums paid by Union Indemnity.

Other reinsurers are expected to file similar actions to void their contracts with Union Indemnity, substantially cutting into the estate's potential assets and boosting

the size of the insolvency.

As it decides whether to appeal the latest ruling, the New York department must also decide whether to go ahead with its \$48 million settlement with Hall or reopen the litigation in hopes of recovering more money for the failed insurer's estate.

Under the settlement, Hall's D&O insurer, National Union Fire Insurance Co. of Pittsburgh, Pa., was to cover an initial \$19 million payment, with Hall paying the bulk of the remaining \$29 million in installments over 10 years.

National Union, an American International Group Inc. unit, wrote a primary D&O policy for Hall with a \$35 million limit.

National Union already has paid \$19.4 million to Prometheus, Hall's successor, which is fully reserved for its share of the remainder of the settlement, the Reliance spokesman said.

A National Union official declined to comment on the settlement.

The Insurance Department noted in papers filed in the reinsurance case that "the resolution of this appeal may have a material effect

upon the approval of the proposed (Hall) settlement agreement."

The department must now weigh the chances of winning a larger amount from Prometheus or other parties against the financial drain of protracted litigation and the possibility that it might even lose the case.

Lawyers for the department raised that possibility in the reinsurance litigation: If the department's case against Hall goes to trial, a jury could contradict the court's findings in the reinsurance case and decide that Hall was not part of a fraudulent scheme, court filings say.

In this worst-case scenario, the liquidator would lose both its reinsurance recoveries and the Hall settlement, the filings suggested.

In the matter of the Liquidation of Union Indemnity Insurance Co. of New York; Michigan National Bank-Oakland vs. American Centennial Insurance Co. et al.; Liquidator vs. American Centennial Insurance Co. et al., Supreme Court of New York, Appellate Division, First Department, Nos. 50535-50538 and M-6086.

Excess insurers' rights restricted

Ruling clarifies settlement challenges

By MEG FLETCHER

CHICAGO—Excess insurers may become more aggressive in protecting their interests during settlement talks following a federal appellate ruling that limits how an excess insurer can challenge a primary insurer's handling of a settlement.

Only the policyholder, not the excess insurer, has a direct right to recover for a primary insurer's bad faith handling of claim, Judge Richard Posner of the 7th U.S. Circuit Court of Appeals wrote in a May 5 opinion interpreting Illinois law.

Instead, an excess insurer has only a "derivative"—rather than a direct—right to recover when a primary insurer unnecessarily settles for amounts beyond its policy limits, the court ruled.

As a result, an excess insurer can only recover from a primary insurer through subrogation, not direct recovery.

The decision clarifies lower federal courts' interpretation of Illinois law on the issue of a primary insurer's duty to an excess insurer and steers it firmly into the mainstream of U.S. judicial interpretation.

Specifically, it resolves prior uncertainty caused by two federal courts interpreting Illinois law as being sympathetic to a direct duty theory, said Shaun McParland Baldwin, a lawyer with Tressler, Soderstrom, Maloney & Priess in Chicago who specializes in primary and excess insurer disputes. A third federal court, though, rejected such a theory outright.

At the center of the 7th Circuit ruling was a dispute between primary and excess liability insurers that grew out of a 1983 accident in which three teen-age boys died after the car they were in collided with a school bus, passed under the bus chassis and struck another car.

Country Mutual Insurance Co. wrote primary coverage for the school district. The Bloomington, Ill.-based insurer settled all remaining claims about seven years after the accident—on the eve of a trial—by paying out its full \$1 million in limits.

The settlement also required the district's excess insurer, Twin City Fire Insurance Co., to pay an additional \$400,000 under its \$5 million policy.

Twin City, an Indianapolis-based unit of ITT Hartford Group Inc., subsequently sued Country Mutual in federal court, alleging that Country Mutual could have settled the claims within the limits of the primary policy.

The jury agreed with Twin City, awarding the excess insurer \$336,000. The reason for the \$64,000 discrepancy is not clear.

Country Mutual appealed, arguing that it had only a derivative, not a direct, duty to Twin City in settling the underlying dispute.

The 7th Circuit extensively reviewed the settlement negotiations, including a letter written by a Country Mutual attorney describing an earlier, lower settlement offer.

"The relation between insurer and insured is created by contract," Judge Posner wrote for the three-judge panel. "A standard provision in liability insurance contracts gives the insurer control

over the defense of any claim against the insured, and an implied correlative of this right is the duty not to gamble with the insured's money by foregoing reasonable opportunities to settle a claim on terms that will protect the insured against an excess judgment."

Although the three-judge panel found that the excess insurer's complaint should have been stated as a derivative claim, rather than a direct one, it upheld the jury's verdict.

"The arguments in favor of the direct duty are not so compelling that we could responsibly predict that the Supreme Court of Illinois would buck the national trend and declare that under the common law of Illinois a primary insurer has a direct duty, actionable in tort, against the excess insurer," the judge wrote.

The decision is noteworthy because "there are very few cases anywhere in which any appellate court has ruled on this issue," said Mary Cannon Veed, an insurance lawyer with Robinson Curley & Clayton in Chicago. In addition, Judge Posner is recognized as "a leading interpreter of law on economic issues."

The decision is likely to cause excess insurers to be "more assertive in demanding their interests be protected in a settlement," she added.

Primary insurers did win a "little victory" in that the 7th Circuit rejected Twin City's direct action approach but reaffirmed the rationale of equitable subrogation, said Tom Hamilton, an attorney with Hinshaw & Culbertson in Chicago.

"This (subrogation approach) makes it much more difficult for an excess insurer to sue a primary insurer for its conduct," said John J. Foley of John J. Foley & Associates in Chicago, who represented Country Mutual in the case.

"It appears we won the battle but lost the war," he said. Country Mutual is considering seeking a rehearing of the case.

Excess insurers prefer not to subrogate against a primary insurer because to bring such a suit they must first pay a claim, and then they will be constrained by any defenses the primary insurer may have against the policyholder, explained Ms. Baldwin of Tressler Soderstrom.

Insurance attorneys say the case contains some practical advice, too.

"Letters describing settlement negotiations might, under this opinion, become evidence in subsequent litigation over whether settlement should or should not have been made," said Steven Gilford, an attorney with Mayer, Brown & Platt in Chicago.

Also, "expert testimony (on industry practice) is necessary to any insurer engaged in claims handling disputes," said Hinshaw Culbertson's Mr. Hamilton.

A lawyer for Twin City, Richard R. Ryan of McCullough, Campbell & Lane in Chicago, declined to comment on the case because there may be additional proceedings.

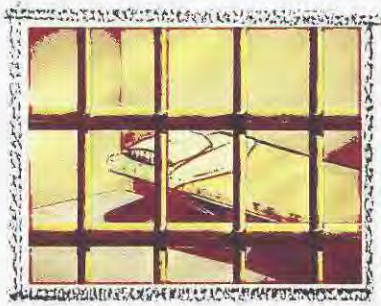
Twin City Fire Insurance Co. vs. Country Mutual Insurance Co., 7th U.S. Circuit Court of Appeals, No. 93-2684; May 5, 1994.

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Retirees

Continued from page 1

of large employers terminated health care plans for future retirees and 3% terminated plans for current retirees, Foster Higgins reported.

"That's a significant change over two years, and it's driven by the cost issue associated with FAS 106," Ms. Behrend said.

FAS 106 requires employers to account for future retiree health care obligations on their income statements, rather than on a pay-as-you-go basis.

That accounting change, along with ever-rising medical costs, is driving employers to try to limit their retiree health care liabilities.

In 1993, large employers offering retiree health care coverage paid \$2,751 per retiree, up 8% from \$2,548 per retiree in 1992, the survey found.

A comparison to previous years' increases isn't available, but Ms. Behrend said that, based on data showing a slowdown in general health care inflation, the increase is probably the lowest in five years.

"The rate of health care inflation has dropped significantly, and that's good news," she said. "But, the bad news is it is still ris-

prescription drug management programs, the survey found.

Most large employers now have some type of prescription drug management program in place to battle rising retiree drug costs, Ms. Behrend said.

"It's become an enormously important area. This is a very big piece of retiree costs and employers are rapidly moving to control these costs," she said.

About one-third of Medicare-eligible retirees' overall health care expense is attributable to prescription drugs, she added.

The survey also found that employers are increasingly changing the way they integrate their retiree health care plans with Medicare, which for retirees age 65 and older, is the primary payer of health care benefits. The Medicare integration method determines how the retiree and employer split

Continued on next page

'The rate of health care inflation has dropped significantly, and that's good news,' says Stephne Behrend.

ing twice as fast as regular inflation."

In February, Foster Higgins announced that overall employer health care costs also rose 8% in 1993 to \$3,781 per employee from \$3,502 in 1992 (BI, Feb. 14).

Because the rise in retiree health care costs are still double the overall inflation rate, employers are continuing to modify their plans to reduce future obligations. Most commonly, they are increasing retiree contributions and shifting more costs.

In 1993, only 17% of large employers provided free coverage to single retirees under age 65, 42% shared the cost and 41% required retirees to pay the full cost.

Employers are much more likely to require retirees to pay the full cost for dependent coverage. Only 2% of employers paid the total cost, 39% required retirees to pay all of the cost and 60% shared the cost of dependent coverage with retirees.

Retirees under age 65 paid \$109 per month on average for single coverage in 1993 and \$204 per month on average for family coverage, the survey found. Contributions varied considerably by industry, with highly unionized industries generally requiring the lowest average contribution.

Many large employers have changed their retiree medical plans in the last two years. For example, 23% increased retiree contributions, either by hiking premiums or restructuring length-of-service requirements. And, 15% increased cost-shifting to retirees by raising deductibles, coinsurance levels and out-of-pocket maximums.

Other employers responded to high costs by tightening eligibility requirements, changing from a defined benefit to a defined contribution approach or by adding

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Retirees

Continued from previous page
the remaining expenses after Medicare benefits are paid.

"Employers are moving away from the coordination-of-benefits approach," which typically provides retirees 100% coverage, Ms. Behrend said. In 1993, just 13% of large employers took such an approach.

A carve-out approach is used by 37% of large employers. This approach requires retirees to pay deductibles and coinsurance before Medicare or the employer's plan kick in. And, 30% of employers use an "exclusion" method, which requires retirees to pay deductibles and copayments on the portion of the bill not covered by Medicare.

As more employers reduce or eliminate their retiree medical plans, the need to provide affordable coverage to retirees younger than 65 and therefore not yet eligible for Medicare, will grow, said Walter Maher, director of federal relations for Chrysler Corp. in Washington.

"A wide variety of employers are restructuring and downsizing—just take a look at the defense industry or state and local governments—and they are not laying off entry-level employees but providing early retiree incentives," he pointed out.

"As we start looking at health care reform and how it will be structured, there has to be a way to provide early retirees with affordable coverage. It's very expensive for them to buy on their own," Ms. Behrend said.

President Clinton's promise to pick up 80% of early retirees' health care costs isn't convincing large employers that their cost burdens will be reduced.

"Clinton's original plan would have saved us about \$40 million or \$50 million" in retiree medical costs, said Dr. Robert Hertenstein, medical director of group insurance for Caterpillar Inc. in Peoria, Ill., which provides medical benefits for 22,000 retirees.

But, companies that transfer early retiree liabilities to the government would be required to pay a payroll tax, Dr. Hertenstein pointed out, asserting that the Clinton administration's plan seemed like just another way to get employers to foot the bill.

"I don't see any proposal at the present time that would truly reduce our obligations," Dr. Hertenstein said.

Copies of the 1993 Foster Higgins National Survey of Employer-Sponsored Health Plans are available for \$500 from Lisa Gilleeny at A. Foster Higgins & Co. Inc., 125 Broad St., New York, N.Y. 10004; 212-574-9025. Prepayment is requested.

Oklahoma

Continued from page 2
grossly overvalued mortgages on residential property in East St. Louis, Ill., Houston and Jefferson, La., regulators charge.

None of the defendants has answered the complaint and none could be reached for comment.

Unison, which has written some group health business, and Bonneville were formerly units of Professional Investors Insurance Group Inc. of Tulsa, Okla., which also owned United Republic Insurance Co. of Utah.

United Republic was separately ordered into rehabilitation in Utah earlier this year. Its former president, J. Darrell Jordan, was indicted last month on charges of trying to use the insurer to launder purported illegal gambling proceeds (BI, May 2).

Unison was placed in conservatorship by Oklahoma regulators in 1989. New owners acquired Unison and Bonneville in 1992 with a promise to infuse new capital but operated the insurers for only a few months before they were taken over by regulators.

Liquidation orders have since been entered against Unison in Oklahoma and Bonneville in Utah.

The Oklahoma department's lawsuit, filed April 29 in Oklahoma County District Court in

Oklahoma City, names:

- Robert Feige, Steven Sechrest, Robert Martin III and two companies they controlled: DP Realty Trust Inc. of Wellesley, Mass., and The French Co. of Davidson, N.C.

These defendants provided financing for the acquisition of Unison and Bonneville and/or later received cash from the insurers in exchange for mortgage loan portfolios, the complaint says.

- William G. Vandever, former president of Unison and Bonneville.

- Richard Nielsen, a director of the two insurers starting in April 1992.

The Oklahoma department says it also plans to name Dan Johnson, who spearheaded the acquisition and took over as chairman of the two insurers in April 1992; and Gerald Pugh, who became executive vp and general counsel of both companies after the takeover.

However, Messrs. Johnson and Pugh have both filed bankruptcy petitions in Georgia and cannot be named until the bankruptcy court lifts a stay of litigation against them, according to the Oklahoma complaint.

The complaint charges that Messrs. Feige and Sechrest and DP Realty agreed to provide \$3.6 million in financing for Mr. Johnson's acquisition of the two insurers if the insurers agreed to buy millions of dollars worth of mortgages from DP Realty within one day of the takeover.

Messrs. Sechrest, Johnson and Nielsen signed an agreement to that effect in February 1992, though the agreement was never disclosed to the Insurance Department or conservatorship court and Mr. Johnson falsely told regulators he had no plans to liquidate the insurers' assets as part of the takeover, the suit alleges.

At the time of the acquisition, Unison and Bonneville wired a total of \$8.6 million to Messrs. Feige, Sechrest, Martin and DP Realty, the complaint says.

However, Insurance Department investigators later found that neither insurer had actually received any mortgages. When demands were made on DP Realty to

provide the mortgages, the company instead turned over loans that failed to meet Insurance Department criteria for admissibility as assets, the suit says.

According to the complaint, these included:

- Incomplete mortgage files on slum property in East St. Louis. The mortgages had been issued by French Co. to DP Realty and were encumbered by tax, sewer and other liens, the suit says.

- Thirty mortgages on condominiums in a Houston complex. However, DP Realty itself did not actually have title to the mortgages at the time they were supposedly sold to Unison, and the

Investigators later found that neither insurer had actually received any mortgages.

defendants had not even contracted to buy 15 of the mortgages until after they were allegedly sold to the insurer, the suit charges.

- Forty-one mortgages issued by French Co. to DP Realty on condos in a Jefferson, La., complex. While DP apparently assigned title to Bonneville, the records of a DP affiliate show the assignments went to Unison, leaving the actual chain of title unclear.

DP Realty, French and Messrs. Feige, Sechrest and Martin also sold these mortgages to the two insurers for far more than they paid for them, regulators charge.

These and other transactions represented fraudulent conveyances of the insurers' funds, Oklahoma regulators allege.

The complaint levels a variety of other charges, including fraud and conspiracy and breach of DP Realty's contracts to provide admissible mortgage loan assets. Unison and Bonneville became insolvent as a result of the alleged transactions and caused more than \$16 million in losses to state guaranty funds covering their claims, the complaint says. **BI**

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ORIGINATING PETITION 27 OF 1994

IN THE MATTER OF

ICS REINSURANCE PRIVATE LIMITED

-and-

IN THE MATTER OF SECTIONS 210 AND 211 OF THE SINGAPORE COMPANIES ACT (CHAPTER 50, 1990 REVISED EDITION)

-and-

IN THE MATTER OF THE SINGAPORE COMPANIES ACT

-and-

IN THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES, CHANCERY DIVISION

NO 008942 OF 1993

IN THE MATTER OF

ICS REINSURANCE PRIVATE LIMITED

-and-

IN THE MATTER OF THE COMPANIES ACT 1985

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Claims against the Company under contracts of insurance (or otherwise) should be submitted to the Joint Scheme Administrators at the following address:

ICS Reinsurance (Pte) Ltd.
137 Cecil Street,
13-00 ICS Building,
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Dated this 27 day of April 1994.

INTERNATIONAL

Evolution at Lloyd's syndicates advances

By ADRIAN LADBURY

LONDON—The first tentative steps to replace Lloyd's of London syndicates with limited liability corporate syndicates are being taken by managing agents eager to stem a predicted fall in capacity next year.

At least three agents plan to set up "dedicated" corporate investment funds that would allow investors to concentrate their capital solely within one managing agency.

The agents' actions follow the recent publication of "Value at Lloyd's," a report that, among other proposals, suggested the creation of corporate syndicates at Lloyd's that would effectively operate like insurance companies (BI, May 9).

Corporate investors joined Lloyd's for the first time this year as part of a series of structural changes to the market introduced in last year's business plan (BI, May 3, 1993). Corporate investors, which unlike individual names have limited liability, generated 904 million pounds (\$1.34 billion) of Lloyd's 1994 capacity, mostly through investment trusts that allocated capacity to a variety of syndicates (BI, Jan. 10). Individual investors with unlimited liability contributed another 9 billion pounds of capacity (\$11.84 billion).

The proposals in the latest document make way for a corporate investment fund to be the sole member of a syndicate. As envisioned, individual members would sell their membership in an existing syndicate to the corporate entity, or exchange their membership for shares in the corporate investment fund.

The new corporate syndicates would not have to follow Lloyd's current three-year accounting system or deal with a capital base that fluctuates annually—two problems that many managing agents believe must be resolved for Lloyd's to remain competitive in the future.

Three leading agents—Cater Allen Syndicate Management Ltd., R.J. Kiln & Co. Ltd. and Brockbank Syndicate Management Ltd.—confirmed last week that they are considering efforts to raise dedicated corporate capital.

Managing agents were allowed to raise dedicated capital along with traditional capital last year, but only one did so: Hiscox Syndicates

Continued on next page

German buyers ready to shop

Policyholders rethink captives as discontent grows with traditional market

By DON LEWIS KIRK

BONN, Germany—German industry is threatening to abandon the traditional insurance market in droves as relations sour with commercial insurers.

Corporate buyers, who contend insurers are "bullying" them by narrowing the scope of coverage and raising rates, say they will increase their reliance on alternative risk financing mechanisms.

Insurers, though, complain that commercial policyholders have done little to control their losses, leaving

underwriters with few options. Only 6% of German companies have professional risk managers, according to Manfred Illner, a member of the executive board of Allianz Versicherungs A.G.

As the contentious debate continues, several German companies are setting up captives outside the country, said Guenter Schlicht, managing director of Deutsche Versicherungs-Schutzverband DVS, a 4,200-member association of German insurance buyers that took insurers to task at a May 3 meeting.

Interest in captives is heating up

despite the fact that German tax authorities have yet to resolve uncertainty over the government's attitude toward the creation of captives in domiciles that offer tax advantages to parent companies (BI, April 18).

Steep rate hikes combined with changes in coverage terms and conditions are prompting the exodus from traditional markets, Mr. Schlicht said.

For example, buyers have seen the cost of coverage for environmental impairment liability rise 20% to 25%, while rates for commercial

property and business interruption insurance have risen by as much as 100%, he said. "Rate hikes of over 100%, coupled with (insurers') lack of compromise, leave few choices."

In January, German chemical companies Bayer A.G., Hoechst A.G. and BASF A.G. together established a group reinsurance captive in Luxembourg. The captive, Indu-Risk Rückversicherungs A.G., has relieved the companies of the rate pressure exerted by EIL insurers, said Friedrich Schuessler, a member of BASF's risk management staff.

Continued on page 55

A new era dawns in Argentina

By MARIA KIELMAS

BUENOS AIRES, Argentina—Economic restructuring and the sweeping privatization of state-owned businesses are transforming Argentina's insurance market.

As domestic insurers struggle to come to terms with the legacy of poor underwriting during the era of hyperinflation and a state reinsurance monopoly, brokers are trying to introduce risk management techniques. And private-sector investors are modernizing formerly state-owned entities like gas and power utilities.

Accompanying the transformation is the introduction of insurance products to meet the needs of privately owned businesses.

But, even with all of the new products being offered for corporate insurance buyers, significant future growth in the Argentine market is expected to come from pension funds and life insurance.

A law authorizing the creation of private pension funds was passed by

Insurance shakeout likely amid change



Photo by Andy Caulfield/Image Bank

Brokers are offering new services for Argentine businesses.

Argentina's congress last year. The new funds, known as Administradores de Fondos de Jubilacion y Pensiones, started business in May.

Many of the country's underwriting problems began because of a reinsurance monopoly.

Prior to the deregulation of the in-

surance market in 1991 and 1992, government regulations stipulated that all reinsurance be placed with the state reinsurance monopoly, Instituto Nacional de Reaseguros, better known as INDeR.

"There was no real underwriting. Insurance companies acted as commission agents (because) everything went to INDeR," said Eduardo Dundas, president of Sedgwick Argentina S.A. "So here was poor risk selection and bad management."

INDeR's reinsurance rates exceeded international market prices. When the INDeR monopoly was abolished in 1991, insurance rates in Argentina fell between 30% and 40%, Mr. Dundas said.

INDeR is no longer writing business, though more than \$200 million has been paid out in its runoff.

Another factor affecting the insurance market is the progress that has been made on Argentina's once out of control economy.

The current administration in Argentina, headed by President Carlos

Continued on page 53

M&G Reinsurance back in the black

LONDON—Mercantile & General Reinsurance Co. P.L.C., the U.K.'s largest reinsurance company, has announced a "dramatic" turnaround earning a record pretax profit of 104 million pounds (\$154.8 million) following a 1992 loss of 45 million pounds (\$66.9 million).

M&G is owned by the U.K.'s biggest life insurer, Prudential Corp. P.L.C.

M&G's general reinsurance business, so badly scarred in 1992 by both natural catastrophes and man-made ones—like the London marine market excess-of-loss reinsurance spiral—saw a massive 150 million pound (\$223.3 million) improvement.

After Chief Executive John Engestr

strom imposed stringent new underwriting controls and big reserves for the LMX business last year, the general reinsurance business posted a 1993 profit of 6 million pounds (\$8.9 million), compared with a 144 million pound loss (\$214.3 million) in 1992.

And M&G's consistently profitable "long-term" business—life, health and pensions—grew strongly again this year: by 9%, up to a 1993 record profit of 73 million pounds (\$108.7 million). A large portion of that growth is attributed to medical coverage written by its subsidiary, M&G of the Americas in Toronto.

Net premiums for general non-life business fell 18.8% to 332 million pounds (\$494.2 million) in 1993

from 409 million pounds (\$608.8 million) in 1992. Mr. Engestrom was not concerned with any decline in premium volume but rather pleased to see the success of his stated policy of "profit before volume."

"Before the 1992-93 renewal season, we publicly announced that it was M&G's intention to bring commercial realism back into general business underwriting. Our 1993 result clearly shows that it is possible to deliver profits after properly assessing risks and agreeing to realistic rates," he said.

"We saw success in long-term and property/casualty business in 1993 in all areas," said Gary Patterson, president and chief executive officer of M&G of the Americas. "We see

the biggest area of growth as medex business, which is very interesting at the moment, what with the Clinton health care reform program."

Mr. Patterson said its strong U.S. claims network and joint ventures with benefits managers, like its 25% share in National Benefits Resources of Minneapolis, will enable it to make profits out of the proposed new U.S. health care system.

He also predicts big growth in demand for life/health coverages in Mexico following the signing of the NAFTA agreement, and similar prospects for growth in Canada following recent moves by the Canadian government to pare back state spending in the area.

—By Adrian Ladbury

Australia weighs federal comp oversight

By KATE McILWAINE

MELBOURNE, Australia—The Australian Industry Commission's final report on its 15-month study of the nation's workers compensation system recommends the formation of a federal regulatory board to eliminate the added costs it says are inherent in the current mix of state-run and federal programs.

Each of Australia's eight states currently has its own workers comp system, some of which are compulsory for employers. In some states,

workers comp is partially privatized, with insurers offering coverage as an alternative to the government-run programs. Employers in certain states also are permitted to self-insure if they meet government-imposed requirements.

In addition, the federal government offers two workers comp programs for government employees.

The commission, an independent advisory panel funded by the federal government, has recommended establishing a national panel to oversee the 10 government-run pro-

grams throughout Australia. The panel, the National WorkCover Authority, would set standards to ensure uniformity of workers comp benefits. It also would license underwriters and self-insurers and monitor rate-setting.

The government would have to decide whether to implement experience rating for employers, or establish this new body to do so. Some of the workers comp plans already are experience-rated.

Under the panel's oversight, employers that operate throughout

Australia would be governed by one set of workers comp regulations, reducing the administrative burden.

The commission also recommends establishing a separate program that would allow employers that operate nationwide to insure their workers in multiple states under a single workers comp plan.

That program would compete with the currently available state and federal programs.

Australian Prime Minister Paul J. Keating said he supports the proposals in the Industry Commission's

report. But, he said, "Careful consideration of any new, uniform benefits structure is required."

While industry and trade unions had the opportunity to comment on the interim report last year, labor ministers from all states will meet this month to provide their initial comment on the report, and the federal government will prepare an official response by August, Mr. Keating said.

Workers comp costs total \$10 billion Australian (\$7.12 billion) a year,

Continued on page 53

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INTERNATIONAL

Lloyd's

Continued from previous page
Ltd., which created Hiscox Dedicated Insurance Funds P.L.C. to attract investors. Hiscox Chairman Robert Hiscox is Lloyd's deputy chairman and leader of the working party that produced the recent syndicate value report.

HDIF provided four Hiscox syndicates with 10%, or 45 million pounds (\$66.6 million), of their total capacity this year.

"This route allows an agency to solve many of the problems of a Lloyd's syndicate: the lack of continuity (and) the need to invest assets short term while liabilities are long term," said Bronek Masojada, director of HDIF and managing director of Hiscox Holdings Ltd. "(It gives) the ability to write multiyear

contracts and potentially the ability to move away from three-year accounting."

It also solves the inequity of one class of syndicate members with unlimited liability, while another class has limited liability, he added.

The proposals in the syndicate value report appear to have prompted others to act, too.

Robin Gilkes, chairman of managing agency Cater Allen, last week unveiled plans to raise dedicated capital in the United States among former clients of the agency's syndicate 190.

"John Wetherell and I have traveled to the U.S. many times recently and have had meaningful meetings with a number of potential backers for the syndicate, and (we) hope to be announcing details in the near future," Mr. Gilkes said at a meeting to inform members agents of plans for syndicate 190's future. Mr. Wetherell is underwriter of the syndicate, which will be renamed 1235.

"For many of the agencies with a successful track record, there will be an increase in the trend toward dedicated capital," Mr. Gilkes predicted.

Brockbank Syndicate Management also is considering raising dedicated corporate capital for its three syndicates.

"We are looking into the question of raising dedicated corporate capital. Everyone who is anyone is exploring it, not least because we are uncertain how much members agents can raise for next year," said George Stevens, chairman of Brockbank.

Dedicated capital also makes sense for planning and control purposes, he added.

"Under the traditional system, your capital can be wiped out by other syndicates regardless of your own performance. Take this year, for instance: We have had an excellent year, but because of losses across the market, we don't know what capital we will have going forward. Also, you can talk to dedicated capital, explain your plans and look ahead."

Andrew Fleming-Williams, director of R.J. Kiln & Co., confirmed his agency's interest in raising dedicated corporate capital for 1995. Mr. Fleming-Williams said he believes that the investment community's improved knowledge about Lloyd's will mean that capital will inevitably flow to managing agents rather than to members agents.

"The last tranche of capital raised for Lloyd's came in through investment trusts, largely because the institutional investors did not have the knowledge about the market and were happy to leave management up to the advisers. But now the level of expertise and expectations is that much higher, and therefore they will seek to invest directly through managing agents and Kiln is interested in the possibility of going that route," he said.

Mr. Fleming-Williams also confirmed that he and other managing agents would probably look to persuade individual members to transfer their syndicate participation rights to the dedicated capital as soon as a method can be found.

He did, however, point out that significant hurdles still remain, such as the loss of tax benefits, before such a transfer could be made attractive for current individual members.

In addition, a mechanism first must be developed for converting the value of syndicate participation into shares that could be traded, which was among the proposals in the syndicate value report. **BI**

INTERNATIONAL

Argentina

Continued from page 51

Saul Menem, was elected in 1989 and inherited an annualized inflation rate of nearly 5,000%. The country was \$5.3 billion in arrears on a total foreign debt bill of \$63 billion. Most state-owned businesses, including insurers, had serious debts and did not have significant capital investment for more than 20 years.

These problems were the result of decades of political turbulence and military dictatorships.

In 1989, the Menem administration embarked on a series of stabilization plans, but it was not until 1991 that the current economic policy was introduced by Finance Minister Domingo Cavallo. The crux of the policy has been to peg the Argentine peso to the U.S. dollar.

Money in circulation is backed by an equivalent amount in reserves, a strategy that has succeeded in removing much inflationary pressure.

Gross premiums in the Argentine insurance market currently is about \$4 billion, making it the third-largest market in Latin America. This volume is expected to rise to \$5 billion annually if the life insurance and pension markets expand as expected, according to Argentina's insurance regulator, the Superintendencia de Seguros.

However, Insurance Supervisor Alberto Fernandez has said that Argentine insurance companies must

reduce their expense ratios. His figures show that as a result of high underwriting expenses, only 25 of some 200 insurance companies in the Argentine market—including domestic insurers and joint ventures with foreign insurers—produce underwriting profits.

As a result, insurance industry executives and the insurance supervisor are predicting that there will be a big shakeout of companies in the Argentine market.

Carlos Bober, president of Johnson & Higgins Argentina, believes the Argentine market is large enough for only 30 to 50 insurers. "Many companies need to be recapitalized. Their costs are too high, and they need downsizing."

One of the biggest problems faced by the insurers is an accumulation of losses from an avalanche of workers compensation claims. Insurance executives say this trend began several years ago as small claims for industrial accidents ballooned into a litigation business.

Because of the hyperinflation in the economy at the time, courts awarded claims indexed to the cost of living, noted Roberto Ayling, president of Buenos Aires-based broker Ayling Barrios. "Companies had reinsured with INdeR, but INdeR wouldn't pay."

Sedgwick's Mr. Dundas adds that inflation had wiped out the value of insurers' loss reserves. "So many companies suffered big losses, and many stopped writing industrial ac-

cident insurance. This is still a problem."

One of the challenges the insurance industry faces in putting its past behind it is introducing new products.

"It was difficult to develop new products before, but now we can develop new things," Mr. Dundas said. "Machinery breakdown and business interruption insurance were never developed here. They were never sold. Now these are potential growth markets."

J&H's Mr. Bober said that his company is offering risk management consulting services to large industrial companies in Argentina, educating them about the use of deductibles and alternatives to traditional insurance. "The risk management techniques will filter down slowly to the smaller companies."

One important concept for the Argentine insurance industry is that of captive insurers, he said.

Traditionally, the Argentine private sector has been composed mainly of family-owned conglomerates, which include industrial companies, banks and insurance companies. The challenge for these organizations is how to establish efficient captives. "They do not need 200 people in a loss-making insurance company, but one professional," Mr. Bober said.

Developing sound insurance programs for the newly privatized com-

panies like gas and electricity utilities has been a particular success.

"Most of the risks in the (former) state companies were in a very bad state of repair and were difficult to insure or were not insured at all. We had to do detailed surveys and needed to improve the risks in order to interest the reinsurance market," said Mr. Dundas. "We needed to demonstrate the willingness of the new owners to improve the risks."

Commercial reinsurers were presented detailed investment plans drafted by the companies' new owners and, over time, the reinsurance market has become interested.

"The problem was the lack of reliable loss statistics in the privatized companies," said Mr. Bober. "It's a very delicate matter for the broker to negotiate adequate coverage and at the same time guarantee to his client that the coverage is the best in terms of price and scope."

The new private pension funds offer another source of growth in the Argentine insurance sector. Employers can invest in these funds for their employees, while the employee may also contribute.

The new funds are offered by a consortia of foreign and Argentine financial institutions. Among them are:

- Previnter S.A., a joint venture between American International Group Inc., Bank of Boston and Banco del Sud, an Argentine bank.

- Activa AFJP S.A., a joint venture between the largest Argentine insurer, Caja de Ahorro y Seguros, local banks Banco Mariva and Banco Mercantil, and Nationale-Nederlanden Latin American Holding, an affiliate of the Netherlands-based ING Group.

- The Dignitas AFJP S.A., a joint venture between CIGNA Corp., Omega Seguros and a local mutual insurer, Sancor Cooperativa de Seguros Ltda.

Argentine pensioners receive between \$155 and \$1,500 per month through the state pension plan. But this plan is heavily in debt—by as much as \$7 billion—even though some 40% to 60% of payrolls went to social security payments.

"People in Argentina believe that the government has robbed them," said one Argentine businessman.

Receipts from the privatization of state assets, such as the sale last year of the former state oil company YPF, were used by the government to meet some of the pension liabilities.

Under the new system, Argentine employees may choose to remain in the state system or join a private pension plan.

All Argentine nationals earning less than \$3,780 per month must join one of the pension systems. Each employee must pay a minimum of 11% of gross salary into the fund, while the employer contributes slightly less. **BI**

Australia

Continued from page 51

and the variety of programs around Australia has led to inefficiency, the prime minister said.

But Australia's largest employer group, the Melbourne-based Australian Chamber of Commerce & Industry, opposes what it calls the "additional bureaucracy" of the proposed National WorkCover Authority.

"Adding an expanded federal system of compensation and regulation...to the existing framework" would raise costs, said Ian O. Spicer, ACCI's chief executive.

The chamber wants the existing

state-based system to continue, or to completely privatize workers comp.

A spokesman for the Insurance Council of Australia, which represents private insurers, said if economies of scale could be achieved with the National WorkCover Authority, insurers would support it. Although the insurance industry favors privatization of workers comp, as well as other government-run insurance programs like automobile liability, it is not opposed to the federal government setting umbrella regulations.

A spokesman for Melbourne-based C.E. Heath International Holdings Ltd., a major workers comp insurer, said insurers would favor laws that bring stability to the market. **BI**

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RMCA REINSURANCE LIMITED

-and-

IN THE MATTER OF SECTIONS 210 AND 211 OF THE SINGAPORE COMPANIES ACT (CHAPTER 50, 1990 REVISED EDITION)

-and-

IN THE MATTER OF THE SINGAPORE COMPANIES ACT

-and-

IN THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES, CHANCERY DIVISION

NO 008941 OF 1993

In the matter of

RMCA REINSURANCE LIMITED

-and-

IN THE MATTER OF THE COMPANIES ACT 1985

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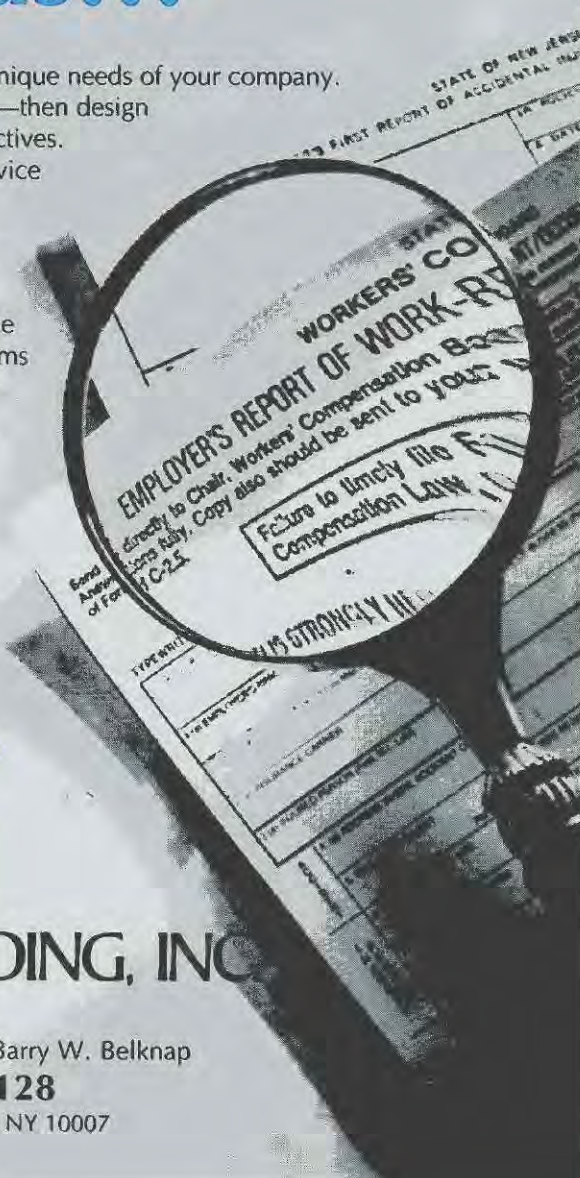
The Effective Date of the Scheme is 26 April 1994.

Philip John Singer and Christopher John Hughes partners of Coopers & Lybrand were appointed Joint Scheme Administrators on 26 April 1994.

Claims against the Company under contracts of insurance (or otherwise) should be submitted to the Joint Scheme Administrators at the following address:

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LEGAL NOTICE

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

IN THE MATTER OF THE LIQUIDATION OF RIVER FOREST INSURANCE COMPANY
NO: 93 CH 11234

NOTICE OF CLAIMS DATE AND PROCEDURES

PLEASE TAKE NOTICE, that on March 10, 1994 an Agreed Order of Liquidation With a Finding of Insolvency was entered against River Forest Insurance Company ("River Forest") by the Circuit Court of Cook County, Illinois. James W. Schacht, Acting Director of Insurance of the State of Illinois ("Liquidator") is the statutory and court affirmed Liquidator of River Forest.

TAKE FURTHER NOTICE, that on April 7, 1994, the Circuit Court of Cook County, Illinois, entered and Order Fixing the Final Date For the Filing of Claims ("Fixing Order"). All persons and entities, who have, or may have, claims against River Forest, or the property of River Forest, shall have the right to present and file with the Liquidator, proper proofs of claim on or before 4:30 p.m., C.S.T., on March 20, 1995.

TAKE FURTHER NOTICE, that the form of, and required content of, all proofs of claim are described in 215 ILCS 5/209 (1993). Proofs of Claim, together with supporting documents, if any, are to be filed with, and may be secured from, the Liquidator of River Forest Insurance Company, In Liquidation, 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. Filing shall occur upon the receipt of the Proof of Claim by the Liquidator. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to River Forest upon all filed claims. All Proofs of Claim must be notarized.

TAKE FURTHER NOTICE, you may be entitled to the protection of the Insurance Guaranty Fund of the state in which you reside. Therefore, it is in your interest to first attempt to obtain payment of your claim, including unearned premium claims, from your Insurance Guaranty Fund. The Guaranty Fund will not be in position to pay claims or reply to questions until they have received the records of River Forest and have had an opportunity to establish procedures. The name and address of the Insurance Guaranty Fund for residents of Illinois is:

Illinois Insurance Guaranty Fund
19 South LaSalle Street, 11th Floor
Chicago, Illinois 60603

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST RIVER FOREST INSURANCE COMPANY, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY, UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MARCH 20, 1995 AT 4:30 P.M., C.S.T.

Office of the Special Deputy Receiver, 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654 (312) 836-9500

We are seeking a Casualty Consultant who will advise and support all Zurich International offices. This position will involve the analysis of business activities, acquisition policies and portfolio structures as well as the monitoring of developments in domestic and international industrial business. You may also assist in the organization of courses and seminars for underwriters.

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INTERNATIONAL

Germany

Continued from page 51

"Of course, it means carrying our own risks... but in our judgment, it's the better course."

Indu-Risk was capitalized at 15 million deutsche marks (\$8.6 million) and provides EIL coverage limits of 20 million deutsche marks (\$11.5 million).

Mr. Schuessler said the captive wouldn't have been necessary if insurers had been a little more flexible in the evaluation of the companies' risk and in the rates charged.

"Insurers have gone overboard in implementing coverage (restrictions) and establishing (higher) rates," he said. "The captive is our reaction."

Fritz-Juergen Cremer, chairman of the insurance division of the Federation of German Industries and risk manager for Hoechst, agreed that insurers are unwilling to compromise with commercial buyers.

"That is why we set up the captive. We feel we can evaluate our own risk better than the insurers," he said. "I've always tried to understand the insurer position, but too much is too much."

In addition to the rate hikes, the furor has been fueled by the fact that some risks previously covered by commercial liability policies, like pollution liabilities, have been excluded and are now covered only by more expensive separate policies.

But insurers contend the underlying risks have changed, requiring new coverages and higher rates.

"Past experience is no longer a basis for calculating risk," said Herbert Schilling, an executive board member of insurer Gerling-Konzern. The method of evaluating the potential exposure to environmental claims has changed completely, he said.

Last year, for example, a single incident at Frankfurt-based Hoechst triggered an EIL claim in excess of 50 million deutsche marks (\$28.8 million), said Mr. Schilling (BI, April

5, 1993). "Ten years ago, the same accident would have cost perhaps 2 million deutsche marks (\$1.2 million)."

Allianz's Mr. Illner also blames increased rates on what he describes as the risk management "deficit."

"Only 9% of the industrial complexes and facilities have automatic sprinkler systems, and a few more are protected by fire alarm systems," he said. As a result, insurers have raised property rates or tried to get the policyholders to retain more risk.

Large corporations, however, have attacked the "heavy handed" means insurers have used to "push" through higher property insurance rates. In particular, they have criticized Germany's rating system for large industrial risks, which are set by quasi-cartel commissions called KOKOs (BI, Feb. 14).

"We have market conditions in which competition is largely eliminated and there are no reasonable alternatives at home or abroad. With all respect for past insurance problems in industrial fire and business interruption... this form of 'improvement' is unacceptable, especially at a time of recession," said Mr. Schlicht of DVS.

Members of DVS, which include corporate risk managers, also say their efforts to improve loss control have not been rewarded by insurers.

In 1993, German insurers' premium volume increased 11% to 4 billion deutsche marks (\$2.3 billion), on top of a 7.4% increase in 1992. Underwriting losses amounted to 2.9 billion deutsche marks (\$1.67 billion) in 1993, compared with losses of 3.3 billion deutsche marks (\$2.04 billion) a year earlier.

With a loss ratio of 70% for 1993 and a return to underwriting profitability, Mr. Schlicht said corporate buyers expect more flexibility from insurers. "If the situation does not improve very soon, companies have no choice. Alternative forms of financing risk will be a reasonable and logical consequence." ■

GLOBAL BRIEFS

LONDON—The European Court of Justice is expected to again rule in favor of European Union employers in a decision concerning the equalization of men's and women's pension benefits.

A preliminary opinion issued by the court's advocate-general earlier this month said companies that raised the retirement age of their female employees to match that of male employees were not obliged under E.U. law to compensate for the resulting lost benefits earned before the May 1990 ruling in *Barber vs. Guardian Royal Exchange* or after the date of the company's action.

In the *Barber* case, the court said company pension plans are governed by the European Union's equal pay law and therefore men's and women's pension benefits must be equalized. The court ruled in a subsequent case that employers need not make back payments to equalize pensions before the *Barber* decision (BI, Oct. 18, 1993).

The latest decision was made on a case brought by a group of 78 female employees of Avdel Systems Ltd. in Bedfordshire, England, who were backed by the U.K. Equal Opportunities Commission.

In July 1991, the company raised the pension age of its female workers to 65 from 60. It decided to apply the rule change to past service as well as service from the date the company's equalization policy went into effect. Most, if not all, other U.K. employer pension managers have complied with the *Barber* ruling by raising women's retirement ages to 65, but have built in safeguards to protect their service benefits accrued prior to the change.

Avdel refused to compensate the women for the loss of pension benefits, claiming E.U. law did not stipulate that retirement ages have to be equalized to the most favorable level.

The women said if they retired at age 60, as planned, they would lose 20% of their total benefits.

The court agreed with Avdel and ruled that employers are free to set whatever retirement age they like. Companies may raise the retirement age of women to equal men's age for service completed before May 17, 1990, if they wish, as well as from the date that the plan is officially equalized, the court said.

"The only winner in this case is the pension fund itself," said Vereena Jones, attorney for the U.K. EOC. "We have actuarial evidence which estimates that the fund will save 15% to 20% of the pension bill for the female employees as a result of the change in July 1991."

Pension experts doubt that many employers will follow Avdel's lead.

Alan Jenkinson, policy director at Sedgwick Noble Lowndes, said, "Not only will it complicate the administration of their pension schemes, but the changes it will bring would be harsh on their female employees."

The EOC said it may pursue the case further on the basis of a breach of U.K. employment laws.

—By Adrian Ladbury

Winterthur profit

WINTERTHUR, Switzerland—The Winterthur Group companies reported a 1993 profit of 324.4 million Swiss francs (\$218.5 million)—an increase of 31.3% from 1992.

The fast-growing Swiss insurance group, announced that it plans to seek shareholder approval of a 6 million Swiss franc (\$4.2 million) contingent capital fund to finance further growth and to appoint new board members.

Winterthur Group's consolidated gross premiums from life and non-life operations were 16.4 billion Swiss francs (\$11.04 billion) last year, up 5.6% over 1992 premium volume "despite negative effects from exchange rates," the company

said. In 1992, gross premiums were up 6.2% over 1991.

Winterthur Swiss Insurance Co., the group's lead multiline insurer, posted a 1993 profit of 168 million Swiss francs (\$113.1 million), up 12% from 150 million Swiss francs (\$102.4 million) in 1992. The insurer's gross premium volume increased 3.7% to 5.72 billion Swiss francs (\$3.85 billion) last year.

Winterthur Group earlier this year took majority control of German insurance group DBV Holding A.G., as part of its plans to build a major presence in its key European markets—Britain, France and Germany.

—By Adrian Ladbury

Damages for AIDS

BONN, Germany—A German court has ordered a Frankfurt company to pay 203,000 deutsche marks (\$116,908) in damages to a 13-year-old hemophiliac who contracted the human immunodeficiency virus from a blood coagulant.

The Bonn District Court found May 2 that Biotest A.G., a pharmaceutical manufacturer, neglected to adequately test for the virus that causes AIDS. The company also must pay a monthly 1,000 deutsche mark (\$576) pension to the victim.

Since 1989, 10 people in Germany have contracted acquired immune deficiency syndrome from tainted blood coagulants manufactured by Biotest. A Biotest A.G. spokesman said other claims have been settled out of court. Damages will exceed 3 million deutsche marks (\$1.7 million) for all claims filed against the company to date. Biotest has insurance coverage for the damages.

A spokesman for Colonia Versicherungs A.G., which covers such claims, said the court decision is unlikely to affect other tainted blood claims. Managers of another German company, UB Plasma are charged with distributing tainted coagulants (BI, Nov. 15, 1993).

—By Don Lewis Kirk

The Professional Marketplace

Business Insurance

Circulation Breakdown
Commercial Consumers

Administrative:	
CEO's, Presidents, and Owners,	2657
Vice Presidents, General Managers and Other Administrative Personnel	4005
Financial	
Chief Financial Officers and Vice Presidents of Finance	2359
Secretaries, Treasurers, controllers and other Financial Personnel	3700
Risk/Employee Benefits:	
Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	15,138
Sub-total	27,859
Associations	371
Government, Unions and Educational Institutions	986
Commercial Consumers	
Sub-total	29,216
Insurance Agents and Brokers	8,607
Insurance Companies	8,258
Accountants, Actuaries, Attorneys & Consultants	3,576
Managers & Health Care Providers	1,941
Others Allied to the Field	1,351
TOTAL	52,949

★ Source Business/Occupational breakdown of qualified circulation, November 29, 1993 Issue, as submitted to BPA for December 1993 BPA Publisher's Statement.

LEGAL NOTICE

IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF
IDEAL INSURANCE COMPANY (BERMUDA)
LIMITED- IN LIQUIDATION

NOTICE is hereby given that a Final General Meeting of Creditors of the above-named Company will be held at the offices of Cork Gully, Dorchester House, 7 Church Street, Hamilton HM 11 on 12th July, 1994 at 10:00 a.m. to be followed at 10:30 a.m. by a Final General Meeting of Members, pursuant to Section 223 of The Companies Act 1981 for the purpose of having an account laid before them showing the manner in which the Winding-Up has been conducted and the property of the Company disposed of, and of hearing any explanation that may be given by the Joint Liquidators, and also determining by resolution the manner in which the books, accounts and documents of the Company and of the Joint Liquidators thereof, shall be disposed.

Creditors who have not yet done so must lodge their claims with the undersigned, at the address shown above, by no later than 30th June, 1994, or in default thereof will be excluded from the benefit of any final distributions to be made by the Company.

A member or creditor entitled to attend and vote at either of the above meetings may appoint a proxy to attend and vote instead of him. A proxy need not be a member or creditor of the company. Forms of proxy for the above meeting must be lodged with the undersigned, at the address shown above, by 5:00 p.m. on 8th July, 1994.

Peter C.B. Mitchell
Joint Liquidator
5th May, 1994

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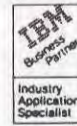
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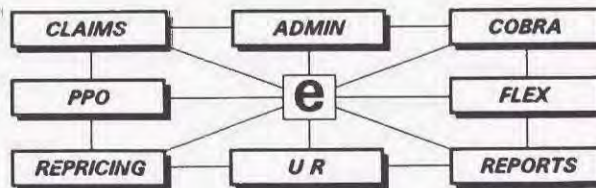
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Kennedy

Continued from page 2

would pay a tax equal to 2% of payroll and the federal government would subsidize premiums for their employees.

The Kennedy proposal follows earlier efforts by House Democratic leaders to carve out separate and lower premium requirements for small firms.

For example, staffers working for House Energy and Commerce Committee Chairman John Dingell, D-Mich., circulated a proposal in March that would cap small employers' premium costs at as little as 1% of payroll (BI, March 28).

Rep. Dingell has yet, though, to introduce a health care reform bill.

On the heels of the Kennedy proposal, Clinton administration officials indicated they could accept health care reform legislation that would impose lower contribution requirements on small firms.

"I do think the realities of the situation are that there will be some modification (of an employer mandate) for small employers," said Treasury Secretary Lloyd Bentsen, who spoke last week at the annual Washington meeting of the Assn. of Private Pension & Welfare Plans.

The unveiling of the Kennedy proposal, which also would junk the most widely criticized provi-

sion in President Clinton's health care reform package—mandatory, monopolistic health care purchasing alliances—comes amid new setbacks in the drive to enact legislation this year.

Those setbacks include:

- House Ways and Means Committee Chairman Daniel Rostenkowski, D-Ill., said his committee may not begin voting on health care reform legislation until next month. However, deliberations are expected to start this week.

"I don't know whether or not you're going to see us taking votes until after Memorial Day," he said last week.

The administration had hoped the Ways and Means Committee would complete action before the holiday. Although Rep. Rostenkowski has yet to introduce a bill, he has said a broad new tax would be needed to fund universal coverage.

- The House Energy and Commerce Committee also has not scheduled a vote on health care reform legislation.

Rep. Dingell, lobbyists say, continues to be two to three votes short of lining up a majority of panel members.

- The Senate Finance Committee has yet to schedule a vote on reform legislation, and there are no suggestions from the panel's staff on when voting will begin.

Meanwhile, the House Labor-Management Relations Subcommittee was nearing approval last week of a reform bill. But the bill

is considered so out-of-touch with political reality—the measure would include, for example, the much-maligned mandatory purchasing alliances—that few representatives outside that panel take the measure seriously.

The constant slippage in deadlines for consideration of health care reform legislation—Democratic congressional leaders once spoke of winning House approval for legislation by Memorial Day—decreases the chances with each passing day that a major health care reform bill will be passed this year.

"The clock is ticking away very rapidly. With each day that goes by without committee action, it becomes more difficult to pass a bill," said Frank McArdle, a consultant with Hewitt Associates in Washington.

These delays indicate the continuing difficulties that backers of health care reform legislation have in building a consensus behind a proposal.

"I think it is very telling that Chairmen Rostenkowski and Dingell—two of the most experienced and skilled dealmakers in Congress—have not been able to forge a passable bill," said Leslie Aubin, senior director of government relations at the National Assn. of Wholesaler-Distributors, a small-employer trade group in Washington.

Whether employers should be required to offer and pay most of the cost of health care coverage

has been one of the biggest stumbling blocks in the way of health care reform legislation.

A slew of employer groups, including the NAW, the National Federation of Independent Business and the U.S. Chamber of Commerce, have denounced an employer mandate on philosophical grounds as well as economic grounds.

"For some employers on the (economic) edge, even a 2% contribution will be too much," said the NAW's Ms. Aubin.

The small-employer lobby has plenty of allies in Congress: Virtually all congressional Republicans are against a mandate, while many conservative and middle-of-the-road Democrats also have major misgivings.

By proposing a much lower contribution for small firms, Sen. Kennedy hopes to reduce the opposition to a mandate.

But, so far, the senator hasn't succeeded.

A spokesman for the NFIB, for example, described Sen. Kennedy's proposal as a "sham and a charade."

While the initial contribution for small employers appears low, the contribution undoubtedly would be increased over time just as other mandated employer contributions, like Social Security payroll taxes, have been significantly raised over the years, the spokesman said.

"Government cost estimates have never been right," the spokesman added.

"Our opposition to mandates

has not softened. Nothing in our experience suggests that the initial contribution threshold will stay where it is," says the NAW's Ms. Aubin.

Republican members of Sen. Kennedy's committee say the new proposal has not changed their minds.

"Basically, it is President Clinton's proposal done up in new packing," said Sen. Nancy Kassebaum, R-Kan., the ranking minority member on the Labor and Human Resources Committee.

"The Kennedy plan includes the same heavy mandates, extensive government controls and high price tags that have already turned the American people away from the president's plan," she added.

Most of the other provisions in the Kennedy bill are based on legislation President Clinton sent to Congress last year.

However, unlike the Clinton bill, which would require all employers with fewer than 5,000 employees to purchase health care coverage through state-organized alliances, the Kennedy bill would make participation in alliances voluntary.

In addition, the Kennedy bill sets somewhat different out-of-pocket limits on health care costs. Under the Kennedy bill, employers with at least 1,000 employees could self-insure their health care benefits.

The Clinton bill effectively would bar self-insurance for employers with fewer than 5,000 workers. **BI**

Data bank

Continued from page 2

dent not included in the data bank report.

Now HCFA says an employer will not be fined if it makes a systematic effort to obtain names and Social Security numbers for dependents. A systematic effort is defined as:

- A documented initial effort to obtain the necessary information from employees.

- A documented follow-up effort if the employee does not respond to the initial effort.

Benefit experts welcome the exemption from fines, adding that HCFA is demonstrating some basic fairness.

"It is a reasonable gesture. What was the employer supposed to do if employees wouldn't provide the needed information? It wouldn't have been fair to penalize the employer," said Frank McArdle, a consultant with Hewitt Associates in Washington.

The exemption from fines isn't the only relief HCFA is proposing. The agency also is asking Congress to delay the data bank reporting requirements for 18 months. The delay, benefit lobbyists say, could give employers more time to muster forces to win repeal of the law.

Unless the effective date of the law is pushed back, employers will be required to file 1994 health care coverage reports with HCFA by Feb. 28, 1995.

Despite the exemption, other rules that employers hoped would be waived or delayed remain largely intact.

For example, employers had hoped that HCFA would scrap, or at least delay, the requirement that firms supply dependents' Social Security numbers. Earlier, HCFA officials said they were considering a one-year delay.

Instead of an across-the-board delay or elimination, HCFA is offering much narrower relief. Employers will not be required to

provide Social Security numbers of infants who are less than 1 year old at the end of a plan year. In addition, employers will not have to report Social Security numbers for individuals in group plans that are barred under law from having a number. Those individuals would include dependents of migrant farm workers who are not U.S. citizens.

And, the guidelines do not provide relief from or clarification of reporting obligations for another group of plan participants—COBRA beneficiaries—that present special problems for employers.

Under the law, reports must be filed by Feb. 28—in the case of calendar-year plans—for coverage during the previous year. But, that deadline is troublesome for employees who become eligible for COBRA health care continuation near the end of the year, explained Bill Gibson, a senior consultant at Sedgwick Noble Lowndes in Philadelphia.

Under the Consolidated Omnibus Budget Reconciliation Act, beneficiaries have up to 105 days to opt for coverage and make the first premium payment. So if workers become eligible in December, an employer might not know until April of the next year whether they opted for coverage and which plan they chose.

For the most part, though, the HCFA guidelines lay out in nuts-and-bolts fashion exactly what employers must report to comply with the data bank law.

Among other things, employers will have to provide to HCFA:

- The names and Social Security numbers of individuals who were covered by a health plan during the year. These include employees, dependents, former employees such as workers who terminated employment during the year, COBRA beneficiaries and retirees.

- The type of coverage—single or family—selected by the beneficiary.

- The name, address and identification number of health plans

selected by beneficiaries.

- The actual dates an individual had coverage under a group plan.

This last requirement is a big problem for employers with benefit information systems that are not designed to retroactively track employees' coverage changes.

- The name and address of the entity that processes claims for the group health plan selected by an individual.

HCFA also said it will provide scannable paper forms and preformatted diskettes for employers to use to report coverage and other enrollment information.

How much time employers will have to comply with the law is unclear. Even though HCFA is recommending an 18-month delay in the data bank law, any delay must be approved by Congress.

The administration's urging for a delay significantly increases the chances—but does not guarantee—that a delay will be enacted.

Sen. Joseph Lieberman, D-Conn., who has introduced bills to delay and repeal the data bank law, said he was encouraged that the administration wants the law delayed. He said he is looking for a legislative vehicle on which to attach a delay amendment.

In the House of Representatives, one possible vehicle is a so-called technical corrections bill, which could come up for a vote this week.

Benefit lobbying groups say they welcome the proposed delay and will use the time to work with regulators and congressional staffers to reduce the administrative burdens imposed by the data bank law. However, they still would prefer repeal of the law, which they say is unnecessary and will needlessly boost employers' administrative costs.

"Employers still have to keep up the pressure for repeal," said Mark Ugoretz, president of the Washington-based ERISA Industry Committee, adding that pressure from employers and legislators led HCFA to propose the 18-month delay. **BI**



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Superfund

Continued from page 1
cedures among the EPA's regional offices.

The compromise has support—with caveats—from groups like the Chemical Manufacturers Assn., the National Assn. of Manufacturers and the American Insurance Assn.

But, disagreement over the EIRF, the details of which were hammered out in White House negotiations that included the AIA but not other insurer trade groups, has divided the property/casualty insurance industry deeply. The AIA is the only insurer trade group to support the compromise.

"Companies with the largest liabilities will favor this new law because they hope that they will convince the (Senate) Finance Committee to change the allocation of tax so that it will be based on current market shares," said Maurice R. Greenberg, chairman and chief executive officer of the American International Group Inc. in New York.

The House panel's 21-0 vote means that the full Energy and Commerce Committee could take up the bill as early as this week.

Meanwhile, the Senate Superfund, Recycling and Solid Waste Management Subcommittee also is preparing to mark up its version of the bill, which some supporters had given up as all but dead only a month ago (BI, April 18).

Some maintain that despite the House subcommittee's attempt to move the bill quickly, the legislative calendar is simply too tight to allow passage this year.

"I believe it will fail and that reason will prevail," said Mr. Greenberg. "It's a dumb bill."

If the bill fails to win approval in 1994, it would open the way for passage next year of a bill that would eliminate retroactive liability, said Mr. Greenberg, who has long advocated replacing retroactive liability with a no-fault cleanup system funded by a broad-based tax.

"I don't think anything's changed; it's always been said that it would be very doubtful that it would get through during this term," said David Haight, vp-environmental for the Risk & Insurance Management Society Inc., which opposes the compromise bill (BI, April 25).

"We still think the calendar will work to our advantage, and we're still going to be examining our options," said Mr. Haight, director-risk management for CF Industries Inc. in Long Grove, Ill.

During opening remarks before last week's vote, the House subcommittee chairman noted the short time remaining to pass a bill.

"With fewer than 40 legislative days left in this Congress and with three other committees who must look at this bill when we complete action, the calendar remains a serious problem," according to Rep.

Al Swift, D-Wash.

"Our sense is it's too early to tell whether we're going to move forward," observed David M. Farmer, senior vp-federal affairs for the Alliance of American Insurers. "It would be very unlikely that the process would move forward without changes to the proposal that we have yet to see. It still remains a fragile effort. Undoubtedly, the next 30 days are crucial." The Alliance opposes the resolution fund proposal in the current bill.

Superfund could be crowded out by issues like health care reform or by extraneous matters like the Whitewater scandal, he said.

"Passage is still hovering in the 50/50 range, though the unusual thing about Superfund in its history is that it doesn't follow a predictable legislative course," said Joel Wood, vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"Both in 1980 and 1986, when amendments were adopted, the

'I believe it will fail and that reason will prevail,' says Maurice R. Greenberg. 'It's a dumb bill.'

legislation was widely considered to be dead and came back in the waning days of the sessions. All of us have to be prepared for legislation this year," he noted.

The Council does not support the administration bill.

"I'm a bit surprised that the bill has gotten as far as it has," said Peter A. Lefkin, vp-federal affairs for Fireman's Fund Insurance Co. in Washington. However, momentum now appears to be on the proposal's side, he said, adding that Fireman's Fund is "ambivalent" about the compromise bill.

Mr. Lefkin also said he is not surprised that the opponents of the bill are seeking ways to unite against it. "Once the possibility of legislation becomes real, a heightened opposition seems to arise, and this bill is no exception."

Opponents are slowly coalescing around various counterproposals.

An alternative, sponsored by New Hampshire Republicans Sen. Robert Smith and Rep. Bill Zeff, has been gaining some credibility but has yet to attract a single Democratic co-sponsor. The Smith-Zeff bill would eliminate retroactive liability and create a system of binding allocation for cleanup (BI, March 28).

The bill is politically significant in that three of its co-sponsors sit on the Senate Superfund subcommittee, the first panel scheduled to deal with the compromise in the upper chamber.

In addition, a broad-based coalition of Superfund reform advocates called the Alliance for a Su-

perfund Action Partnership is drafting its own legislation, according to its executive director, W. Larry Wallace, a partner in the Falls Church, Va., law firm Hazel & Thomas and counsel to the National Assn. for the Advancement of Colored People.

The group "is one step away from specific language," he said, and hopes to have its bill introduced soon or at least have significant portions of it incorporated into another bill, possibly the Smith-Zeff bill.

Membership in the group stretches from the NAACP to AIG. In fact, the group's approach resembles the National Environmental Trust Fund that AIG's Mr. Greenberg has advocated and the two groups may be merged. The Superfund alliance favors junking retroactive liability in favor of publicly funded cleanup, with an emphasis on urban economic redevelopment.

"There's more movement with trying to come up with something and I think that ASAP will be the most interesting political force to watch if an opposition movement truly advances, because it is a broad-based group of interests," said the Council's Mr. Wood.

What unites such diverse interests is the belief that the current Superfund law doesn't work and that the administration's alternative won't be much better.

"Our intention is not to kill the Superfund reauthorization but instead to pass the right bill," he said, adding that the administration proposal "is the wrong bill."

Ten senators and five representatives have expressed interest in the ASAP approach, Mr. Wallace said, declining to identify them. He added, though, that "we're actively working" with supporters of the Smith-Zeff bill "and we're prepared to work with others."

RIMS' Mr. Haight echoed that sentiment. He said RIMS representatives will meet this week to coordinate its efforts to oppose the administration bill.

Jennifer Cromwell, federal affairs representative for the National Assn. of Mutual Insurance Cos. in Washington, said creating a formal coalition against the administration bill would be "ideal."

"At the rate it's going now, I think we need to do something. If people have problems with this bill, they really need to speak up," she said.

"They did not have a representative group at the table hammering out this so-called compromise... (but) I really believe that Congress will afford people who were not part of the negotiation an opportunity to point out the flaws in it," said Jack Ramirez, executive vp of the National Assn. of Independent Insurers, in a clear jab at the AIA.

Once dissenting voices are heard, "it will be difficult for this thing to proceed without some changes," he said.

Major changes could doom the compromise, several observers pointed out.

"There are undoubtedly going to be competing legislative solutions, and the competing legislative solutions certainly could imperil any kind of perceived fragile consensus," said the Alliance's Mr. Farmer.

"The battle has not been fully joined on retroactive liability, and it was clear from yesterday's markup that so delicate was the deal, if you pulled out one thread, the whole fabric would fall apart," Mr. Wood said.

Gavin Souter contributed to this report.

Updates

Wide gulf in WellPoint talks

Continued from page 2

Cross has already agreed to donate \$5 million a year for 20 years (BI, June 14, 1993).

Blue Cross made its proposal public after news reports detailed the state demands. The department has not accepted the offer, however, and negotiations were continuing late last week.

Consumer groups and medical groups were among those arguing that in creating WellPoint, Blue Cross exploited a loophole in state law and took in hundreds of millions of dollars that rightfully belonged to the public.

Redlining information sought

WASHINGTON—The Clinton administration wants more information from insurers to determine if they are illegally denying property insurance to residents of certain neighborhoods.

"Improved reporting would certainly aid our law enforcement efforts," said Assistant U.S. Attorney General Deval Patrick as he testified last Wednesday at a Senate Banking Committee hearing on redlining allegations. Mr. Patrick said that knowing the race of applicants who were accepted or rejected for coverage, the types of policies issued and the locations of insurance company offices would greatly help the government prosecute alleged cases of redlining.

Meanwhile, the National Fair Housing Alliance filed complaints with the Department of Housing and Urban Development, alleging that Allstate Insurance Co. and Nationwide Mutual Insurance Co. had illegally denied property coverage to inner-city residents in four cities. Both insurers denied the charges.

Sex discrimination not covered

BOSTON—Sexual discrimination is not covered under comprehensive general liability policies because employers act intentionally when they discriminate, the Supreme Judicial Court of Massachusetts has ruled.

In its ruling last week, the state high court upheld a lower court decision that the CGL policy form does not cover acts of sexual discrimination.

The Massachusetts Commission Against Discrimination found that Hub Manufacturing Inc. in 1980 denied Judith Rideout and Marilyn Thomas equal pay, overtime opportunities and promotions on the basis of their gender. The commission also found that the swimming pool manufacturer retaliated against the women after they filed complaints by laying them off and not recalling them with other employees.

Hub ceased operations in 1986 without paying Ms. Rideout and Ms. Thomas, but a Superior Court judge ordered the company to pay each woman more than \$90,000 plus costs. In 1990, Crum & Forster Commercial Insurance Co. denied coverage for Hub's claims, and the former employees sued the insurer.

Briefly noted

Wind, hail, tornadoes and torrential rains caused an estimated \$750 million in insured damage in the South and Midwest in late April, the Property Claims Services division of the American Insurance Services Group says. The \$750 million comes on top of \$6.5 billion in insured property damage during the first three months of 1994, PCS said. . . E.I. du Pont de Nemours & Co. Inc. last week agreed to pay an undisclosed amount to settle more than 50 Benlate DF fungicide liability suits brought by Florida nursery owners and farmers. Subsequent to the settlement, a Florida state court jury found Du Pont not liable in a suit brought by Native Hammock Nursery. Du Pont, which still faces about 200 Benlate suits, paid out more than \$500 million in settlements related to Benlate during 1991-1992. Last year, it reached an agreement with X.L. Insurance Co. Ltd. over coverage for those settlements (BI, Oct. 25, 1993). . . The New York Court of Appeals ruled unanimously on Thursday that personal injury coverage under the CGL policy does not apply to pollution-related property damage. This is the first state high court ruling in the country to address the personal injury issue in an environmental context, according to the Insurance Environmental Litigation Assn. . . A.M. Best Co. upgraded its rating of Re Capital Reinsurance Corp. to A from A-. . . Richmond, Va.-based Stuart Circle Hospital dropped a lawsuit against Aetna Life & Casualty Co., ending its effort to force admission to the insurer's managed care network under Virginia's so-called any willing provider law (BI, Dec. 6, 1993; June 14, 1993). . . A marathon toxic exposure trial is entering its second phase after a Los Angeles Superior Court jury last week found 10 of 20 chemical supplier defendants—including E.I. du Pont de Nemours & Co. and Ashland Oil Co.—guilty of negligence for failing to provide adequate warnings on products shipped to a Lockheed Corp. plant in the 1970s and 1980s. The jury also found that two firms—Dexter Corp. and J.T. Baker Inc.—could be held liable for punitive damages due to their "despicable conduct" . . . Travelers Corp. and its Travelers Insurance Co. unit will restate their 1989 earnings after the Securities and Exchange Commission alleged that they misstated their 1989 earnings by \$231 million in implementing an accounting standard. . . A federal judge in Raleigh, N.C., has issued a preliminary injunction barring Assn. of Trust & Guarantee, a self-described employer group, from marketing workers compensation and health coverages. Separately, Oklahoma regulators have obtained a temporary restraining order against ATG, ATG principal Lawrence D. Kenemore Jr. and several affiliated groups and agents (BI, Dec. 27, 1993). . . The City of Austin, Texas, became the first to repeal benefits for domestic partners of city employees when voters defeated the policy May 7 by a 2-to-1 margin (BI, May 2). . . General aviation insurer American Eagle Group Inc. launched an initial public offering last week on the New York Stock Exchange with a value of \$31.25 million, less than the company had hoped.

Insurer exec wins Spencer raffle

NEW YORK—Brian Duperreault, chairman and chief executive officer of American International Underwriters Inc., the overseas property/casualty operations of American International Group Inc., won the \$10,000 grand prize in the second annual Spencer Educational Foundation Inc. raffle.

The \$2,500 second prize was won by Ellen Vinck, risk manager of Southwest Marine Inc. in San Diego and treasurer of the San Diego chapter of the Risk & Insurance Management Society Inc.

The raffle raised approximately \$10,000 for the foundation, net of the prize money and expenses.

Now in its 15th year, the Spencer Foundation awards scholarships to full-time risk management and insurance students. Named for the late Robert S. Spencer, a former president of RIMS, the foundation is based at RIMS headquarters in New York.

Brokers hardening resolve

In an effort to stem soft market, brokers turn to cost control measures

By LEONARD M. WILSON

Special to Business Insurance

The latest crop of insurance brokerage annual reports now graces our desk. Annual reports typically contain a summing up of the prior year and some insights on the outlook for the current year. Soft market or not, the publicly owned brokers have continued to seek ways of enhancing operating performance.

In alphabetical order, we offer excerpts from the latest annuals that we believe are indicative of current directions:

• Alexander & Alexander Services Inc., facing profit stagnation, began a quest for a new chief executive at the initiative of the board of directors. The directors' bill of particulars for the new CEO includes emphasis on stringent cost control, productivity and strong leadership. Lagging profitability and stock performance seem to have motivated the change.

In the interim, though, A&A continues to expand through acquisition. The latest addition to the corporate family is Clay & Partners, a major U.K. actuarial firm.

• E.W. Blanch Holdings Inc. celebrates its first year as a public company.

The reinsurance broker has a three-pronged strategy for growth that encompasses expansion of the traditional client base, development of the large national insurer market and acquisition of reinsurance intermediaries. The firm views itself as an innovator in the vanguard of reinsurance risk management programs.

• Arthur J. Gallagher & Co. cites mergers as an ongoing element in growth plans.

The brokerage segment completed three acquisitions in 1993, while Gallagher Bassett Services, the company's self-insurance unit, consummated a single merger during the year. Gallagher Bassett sustained its strong growth and handled 226,000 claims during the year. Employee benefit operations have the capability of designing, brokering and administering self-funded as well as conventional employee benefit programs.

• Hilb, Rogal & Hamilton Co. emphasized

disciplined cost control in 1993 as a response to the soft market. The company closed its 122nd acquisition during the year. Efficiency, high production and management discipline are keynotes of operations. The balance sheet was strengthened through a \$22 million common stock offering early in the year.

• Marsh & McLennan Cos. inaugurated a worldwide brokering process that aims to coordinate placements from all offices through electronic linkage to offices located in the world's principal insurance markets. The expected result is superior access to insurance markets and faster and more efficient insurance placements. The Mercer Consulting Group has readied itself to meet the need of health care reform in a wide range of relevant areas.

M&M's annual gives increased prominence to Marsh & McLennan Risk Capital Corp., which organizes and invests in underwriting entities geared to alleviating capacity shortages.

Putnam Investments, now a significant contributor to corporate profits, achieved the exalted level of \$90 billion of assets under management.

• Poe & Brown Inc., the result of a merger between Poe Associates and Brown & Brown Inc., set forth ambitious goals for the future.

The broker seeks to achieve growth of 15% annually after 1994 and thereby double revenues and profits in five years. Retail brokerage will expand through internal growth as well as through acquisitions. The company's important National Program Division expects to develop additional insurance products targeted to specialized professions or industries.

• Rollins Hudig Hall Group, a subsidiary of Aon Corp., achieved revenues of \$1.2 billion in 1993, placing it among the largest of the insurance brokers.

The company is directing its efforts at capitalizing on its increasing global presence. One element of the company's strategy is to focus on industry specializations and specific insurance markets. With the June 1993 acquisition of Oslo, Norway-based

broker A/S Duo, a former unit of UNI Storebrand International Insurance A/S, RHH established a strong presence in the Norwegian market.

• Willis Corroon sustained its program of widening international operations. North American reinsurance activities were integrated with U.K. reinsurance operations. Brokerage offices were opened in a number of new areas, including Mexico, Peru and Taiwan, as well as a marine claims recovery agency in Russia. The momentum in international brokerage seems to be gathering speed.

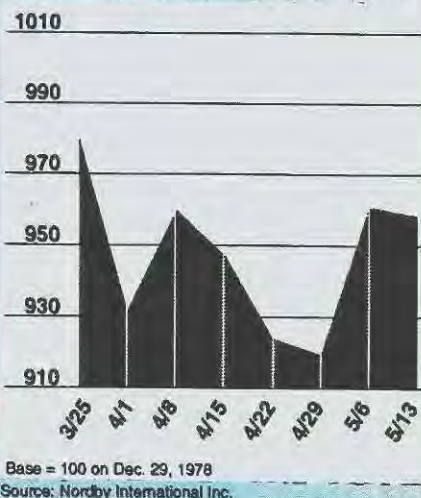
Last year was a difficult one for insurance brokers in general. With few exceptions, annual reports allude to the tough pricing market for commercial lines. None venture guesses as to the timing of a turn in rates, particularly with respect to 1994. Cost control, enhanced service to clients, new products and initiatives are common strategies outlined in the reports.

Trends in the industry include additional international capabilities, better use of electronics and data processing, both for internal controls and optimizing brokerage services. Diversification into facets of benefit consulting is also a common theme.

Although 1993 was not a stellar year for brokerage profitability on an overall basis, it is clear that brokers are not standing still.

Managements continue to seek approaches and strategies that will afford growth. Although the commercial markets may be competitive, the public brokers remain a vibrant group that seeks new challenges as an antidote to the growth-slowing effect of less than hospitable external conditions.

BI Insurance Index



Insurance stocks fell last week, as the Business Insurance Index lost 2.5 points to 958.3 May 13 from 960.8 on May 6. Advancing issues were led by: Phoenix Re Corp., up 11.2%; EMPHESYS Financial Group, up 7.8%; and Sphere Drake Holdings, up 6.5%. Declining issues followed: Seibels Bruce Group, down 20.7%; Continental Corp., down 9.6%; and American Indemnity/Financial, down 9.4%. The most active issue was U.S. Healthcare, 5.2 million shares traded. The BI Index fell 0.3%; the Dow Jones 30 Industrials lost 0.3%; the NYSE Composite fell 1.1%; and the Standard & Poor's 500 fell 0.8%.

British Issues

May 12 Companies	Price pence	P/E	Div. pence	Yield %	1 week	
					High-Low pence	value
Comm'l Union	570	18.1	31.0	5.4	576-570	
Gen'l Accident	553	11.1	34.4	6.2	563-553	
Gdn Royal Exch	178	11.5	9.5	5.3	183-178	
Royal	262	11.4	9.4	3.6	268-258	
Sun Alliance	331	14.8	18.4	5.6	337-331	

Brokers	Price	P/E	Div.	Yield	High-Low
Bradstock	123	13.8	6.9	5.6	124-123
CE Heath	382	14.7	20.5	5.4	382-382
Hogg Group	254	N/M	7.1	2.8	254-254
JIB Group	190	16.7	9.4	4.9	192-190
Lloyd Thompson	240	16.2	8.4	3.5	251-240
Lowndes Lmbrt	417	13.0	18.8	4.5	418-417
PWS Holdings	73	10.7	5.0	6.8	73-72
Sedgwick Grp	202	22.4	7.5	3.7	206-202
Steel Bri Jones	143	N/M	11.3	7.9	143-143
Willis Corroon	235	21.5	8.3	3.5	237-234

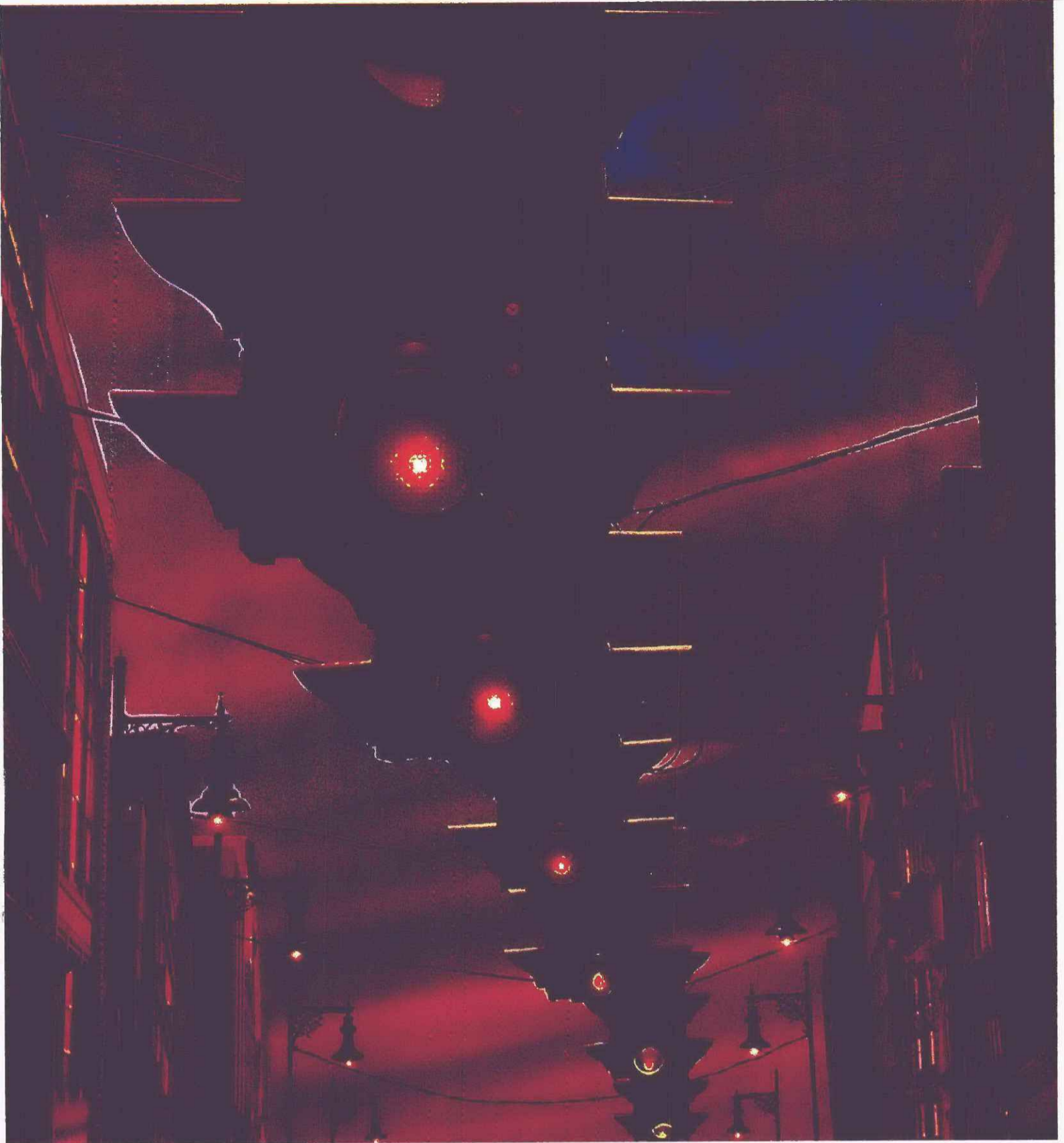
Source: Philip Olsen, London* Estimated; others actual 1993



Leonard M. Wilson is a senior vp with Lazard Asset Management Inc. He is a member of the New York Society of Security Analysts.

BI Industry Stock Report MAY 9, 1994, THROUGH MAY 13, 1994

BROKERS	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
				High	Low										High	Low						
ACE Ltd.	27.63	-0.90	-9.43	36.00	24.50	200	0.44	1.50	6	28.74	0.96	22.63	-9.05	-24.58	32.75	21.16	199	0.28	1.24	14	5.71	3.96
Acceptance Insurance Cos.	12.25	0.00	5.38	15.63	11.13	18	0.00	0.00	14	9.65	1.27	29.75	-1.65	2.15	38.25	24.00	752	0.16	0.54	14	19.24	1.55
AEGON N.V.	52.13	4.77	-4.79	58.50	43.25	28	2.94	5.64	10	34.71	1.50	29.50	-1.67	-3.67	37.25	26.88	278	0.16	0.54	10	16.89	1.75
Aetna Life & Casualty	53.50	0.47	-11.20	66.25	49.75	1511	2.76	5.16	-8	71.84	0.74	19.00	2.01	-45.71	39.00	16.50	81	0.00	0.00	10	16.99	1.12
Allied Group Inc.	25.25	1.00	1.00	32.75	21.34	58	0.60	2.38	7	10.45	2.42	8.38	6.35	9.84	8.44	6.25	85	0.00	0.00	5	6.84	1.22
Allmerica Prop. & Casualty	15.50	-6.77	-28.05	22.16	15.00	131	0.16	1.03	8	56.97	0.27	32.38	-2.26	-0.38	38.75	26.50	206	0.88	2.72	11	23.97	1.35
Allstate Corp.	24.38	-3.47	-18.07	37.25	22.63	1415	0.72	2.95	15	18.43	1.32	28.75	-4.17	-9.80	36.00	27.25	258	1.44	5.01	13	47.68	0.60
American General	26.13	1.95	-8.33	36.50	24.88	1643	1.16	4.44	21	22.09	1.18	22.00	-3.83	-2.22	27.63	21.50	323	0.48	2.18	3	23.57	0.93
American Heritage Life Ins.	17.25	1.47	-7.38	25.13	17.00	13	0.60	3.48	11	12.42	1.39	32.00	0.39	3.64	37.50	28.63	84	0.72	2.25	8	27.43	1.17
American Indemnity/Fin'l	12.00	-9.43	-7.69	16.25	11.25	10	0.24	2.00	4	16.18	0.74	6.69	0.99	-13.00	9.50	6.50	61	0.00	0.00	8	N.A.	N.A.
American International	87.13	-1.83	-1.13	100.25	81.75	1886	0.40	0.46	14	45.25	1.93	26.13	11.17	-5.00	38.25	18.50	1085	0.28	1.07	8	19.99	1.31
American Re Corp.	32.25	0.78	14.16	37.50	23.50	682	0.00	0.00	-17	14.80	2.18	24.75	-1.98	-21.74	31.88	24.75	74	1.04	4.20	-12	26.38	0.94
Aon Corp.	47.75	2.14	-1.04	58.50	45.00	263	1.92	4.02	12	33.10	1.44	13.25	3.92	-2.75	15.50	12.75	49	0.32	2.42	12	16.88	0.78
Argonaut Group	27.25	-1.80	-10.66	35.50	26.25	52	1.16	4.26	8	27.65	0.99	5.88	-4.08	-24.19	10.38	5.00	322	0.32	5.45	8	4.22	1.39
AVEMCO Corp.	15.50	-2.36	-17.33	22.00	14.50	52	0.44	2.84	13	8.13	1.91	22.00	-0.56	-17.76	27.75	21.63	39	0.56	2.55	-36	22.91	0.96
Baldwin & Lyons Inc.	13.88	-0.89	-6.72	16.25	12.16	0	0.24	1.73	9	12.59	1.10	75.75	-4.42	-15.60	98.00	75.75	385	3.00	3.96	E	57.84	1.31
Berkley W.R. Corp.	38.13	-2.24	16.41	48.00	32.00	228	0.44	1.15	16	28.12	1.38	54.13	0.46	-0.92	65.75	48.50	1295	1.96	3.62	10	41.59	1.30
Berkshire Hathaway Inc.	16400.00	-0.30	0.46	17800.00	13400.00	0	0.00	0.00	25	8115.28	2.02	11.38	0.00	-9.90	18.13	10.13	83	0.36	3.16	63	16.08	0.71
Capital Re Corporation	20.50	-4.09	-20.39	28.50	18.50	86	0.20	0.98	8	21.66	0.95	1.44	-20.68	-17.83	2.13	0.31	86	0.00	0.00	-1	1.90	0.76
Capsure Holdings Corp.	14.50	0.87	7.41	19.38	12.75	115	0.00	0.00	14	13.08	1.11	26.25	1.45	-13.22	31.00	22.75	32	1.12	4.27	13	23.11	1.14
Chubb Corp.	78.25	0.32	-0.48	93.38	70.75	461	1.84	2.35	25	46.59	1.68	15.00	6.45	0.00	21.63	14.63	05	0.12	0.73	7	12.17	1.36
CIGNA Corp.	64.75	5.50	2.37	70.50	56.50	1312	3.04	4.69	15	78.23	0.83	19.50	-0.83	20.00	15.25	9.75	2091	0.10	0.67	6	8.65	1.73
CNA Financial Corp.	62.75	-0.99	-20.32	96.75	62.75	222	0.00	0.00	-30	77.92	0.61	19.50	-4.42	-15.60	98.00	75.75	385	3.00	3.96	E	57.84	1.31
Continental Corp.	17.83	-9.62	-36.20	34.63	17.25	2784	1.00	5.67	20	38.99	0.45	11.38	0.00	-9.90	18.13	10.13	83	0.36	3.16	63	16.08	0.71
EMC Insurance Group Inc.	9.00	2.86	-5.26	10.75	8.50	5	0.52	5.78	13	N.A.	N.A.	26.25	1.45	-13.22	31.00	22.75	32	1.12	4.27	13	23.11	1.14
Emphesys Financial Gr. Inc.	27.63	7.80	NA	27.75	21.25	660	0.80	2.17	7	N.A.	N.A.	15.00	-0.83	20.00	15.25	9.75	2091	0.10	0.67	6	8.65	1.73
EXEL Ltd.	42.00	0.30	-6.67	49.75	39.88	171	1.20	2.86	6	33.81	1.24	11.38	0.00	-9.90	18.13	10.13	83	0.36	3.16	63	16.08	0.71
Fremont General Corp.	23.63	-0.53	-2.07	28.75	21.00	76	0.72	3.05	7	23.40	1.01	64.75	2.98	19.91	67.00	49.25	7	0.37	0.57	-	57.72	1.12
Frontier Insurance Group	45.00	0.00	2.56	50.00	36.81	146	0.60	1.33	15	16.33	2.76	39.13	2.98	19.91	67.00	49.25	7	0.37	0.57	-	57.72	1.12
Genesco Inc.	9.13	-2.67	1.39	14.41	7.84	134	0.04	0.44	13	3.49	2.61	52.00	1.22	-2.58	61.50	45.38	66	0.36	0.69	14	29.60	1.76
General Re Corp.	120.13	-4.19	-13.06	133.38	101.75	1361	1.92	1.60	16	55.54	2.16	32.75	-4.38	-15.76	49.50	32.53	3776	0.60	1.83	8	33.35	0.98
Guaranty National Corp.	14.63	-2.50	-16.43	24.75	13.75	24	0.48	3.28	10	11.81	1.24	39.50	1.94	1.94	47.75	33.25	96	1.00	2.53	15	26.00	1.52
Harleysville Group	21.25	-1.16	-25.44	30.25	20.50	87	0.64	3.01	12	18.35	1.16	39.75	4.61	10.42	44.00	34.75	0	1.08	2.72	10	28.96	1.37
Hartford Steam Boiler	45.00	0.00	1.12	57.38	42.63	102	2.12	4.71	129	15.80	2.85	39.50	0.									



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