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Updates

Single-payer plan initiative expected on California ballot

SACRAMENTO—The California Chamber of Commerce and a coalition of business groups, health care providers and insurers are mounting a campaign to oppose a single-payer health care initiative that is expected to appear on the November ballot.

The sponsor of the ballot initiative, Californians for Health Security, submitted about 1 million signatures to the California secretary of state last week, said a CHS spokeswoman. An initiative needs 667,000 signatures to be certified for the Nov. 8 bal-

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AP/Wide World photo

A China Airlines jet crashed in Nagoya, Japan, last Tuesday, killing 263 people. The cause of the crash was not known as of late last week.

Jetliner disaster may step up push to increase rates

By STACY SHAPIRO and ADRIAN LADBURY

LONDON—The crash of a Taiwanese jet in Japan last week could give the global airline insurance market its worst first-half results in history, with industry-wide losses totaling more than $500 million, including up to $270 million from last week's crash.

As a result, aviation underwriters hit hardest by these losses could strengthen their resolve to continue to increase hull and liability insurance rates this year.

China Airlines Flight 140 crashed after an aborted landing attempt April 27 at Nagoya Airport, about 150 miles southwest of Tokyo.

The pilot indicated that he was going to try approaching the airport's sole runway a second time but did not say why, though some London sources claim the plane's landing gear wasn't down. Weather conditions were calm and clear.

Witnesses saw the Airbus A300-622R make a steep ascent, but the plane then tipped and crashed next to the runway.

The death toll stood at 263 as of late last week. The plane carried 256 passengers and 15 crew members. Nine surviving passengers were still hospitalized late last week with serious injuries.

The plane was carrying mostly Japanese tourists returning from Taipei, Taiwan.

London underwriters last week speculated that the insured hull loss could total $70 million while liability claims could hit $200 million.

China Airlines Ltd. places its hull and liability insurance in the Taiwanese market, which heavily reinsures the coverage in London

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Stakes high for Lloyd's in Gooda Walker trial

By STACY SHAPIRO

LONDON—What constitutes sound underwriting practice will be heatedly debated in the High Court for the next three months as 3,095 Lloyd's of London members try to recover nearly $1 billion from syndicate manager Gooda Walker Ltd. and 68 members agencies. The long-awaited trial, the largest ever in Britain, opened last week to much fanfare in a packed courtroom.

The Gooda Walker members have rejected a marketwide settlement offer of 900 million pounds ($1.35 billion), contending their share would be far less than the more than 629 million pounds ($947.3 million) they collectively are seeking in the litigation.

Members say they don't expect another settlement offer until after a judgment. Lloyd's Chairman David Rowland has said he would be willing to mediate any future settlement negotiations.

Gooda Walker members are not just seeking compensation for past losses; they also want members agents to indemnify them for future ones. The settlement offer was rejected in part because it would not have capped members' exposure to future liabilities.

The Gooda Walker trial is one of the first and certainly the largest in a string of cases in which a total of 22,000 members are suing Lloyd's members agents to recover their losses. If the court finds the Gooda Walker underwriters were negligent, it could set a benchmark for the professionalism expected of other Lloyd's underwriters being sued by members.

If defendants are found negligent, damages will be assessed at another trial. Members agents would pay damages from proceeds of their errors and omissions coverage and any other assets they have. Other members action groups are concerned, though, that the members agents' available E&O cover, estimated to be about 1.5 billion pounds ($2.25 billion), may be depleted by Gooda Walker members and other early trials before they ever have their day in court.

Some members agents have already gone into liquidation because their E&O coverage is inadequate to pay members' claims. Only 62 of the 69 members agents being sued by Gooda Walker members are defending the case. At least one of the remaining seven has gone into liquidation with $102 million in liabilities and only $1.2 million in E&O cov-

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Global broker merger

Bain Clarkson, Hogg combination to break into Top 10

By GAVIN SOUTER

U.S. risk managers unfamiliar with the name Bain Clarkson Ltd. are unlikely to get to know the London broker's name any better after its merger with Hogg Group P.L.C.

The merger will catapult the combined firm into the ranks of the world's 10 largest brokers and will give Bain a direct U.S. presence for the first time, via Hogg Robinson Inc.

However, "we will not be doing anything in the short term to change the name of Hogg Robinson," said Ron Forest, chief executive of Bain Clarkson in London.

Once the purchase of Hogg Group by Bain Clarkson parent Inchcape P.L.C. is completed, though, there will be a strategic review of the U.S. business of both brokerages, he added.

It is too early to say what will happen with Bain Clarkson's current business ties with other U.S. brokers, including an alliance with Indianapolis-based Acordia Inc., Mr. Forest said.

The merged broker will have several options for handling its U.S. business, analysts say.

Inchcape announced its plans to buy Hogg for 176.6 million pounds ($264.9 million) last month (*BI*, April 25). The deal is expected to be completed by May 20.

Originally, the new company was to be called Bain Hogg Clarkson, but now the brokerage is expected to be called Bain Hogg, Mr. Forest said. "It was felt that Bain Hogg Clarkson was too cumbersome."

Although there are no plans to change the name of Hogg's U.S. brokerage unit from Hogg Robinson, the U.S. operation may still be subject to change.

"I've agreed with Gary Griffith (president and CEO of Hogg Robinson) that I will go over to the U.S. after the purchase is com-

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Buffett stays the course

Berkshire chief says competition won't affect rates

By DAVE LENCKUS

OMAHA, Neb.—Warren Buffett says he's not easily swayed by competition.

Not even the $4 billion in capital raised by the Bermuda property catastrophe reinsurers will influence how Berkshire Hathaway Inc. runs its super catastrophe reinsurance and retrocessional operations, vowed Mr. Buffett, Berkshire's chairman and chief executive officer, at the company's annual meeting last week.

Berkshire will continue to price super-cat coverage based on the likelihood that a catastrophe causing $5 billion of insured damage will occur; prices will neither be based on recent experience nor set to maintain market share, he said.

Likening writing reinsurance to buying stocks, Mr. Buffett told the 2,800 Berkshire shareholders attending Monday's meeting: "Basically, when you lay out money and insure risk, you have to think for yourself."

The Berkshire annual meeting also featured the "Wizard of Omaha's" down-to-earth explanations about the company's other operations and observations about many of its now-famous investments. But, he rejected questions touching on future investment or divestiture strategies.

Mr. Buffett, supported by Charles T. Munger, Berkshire's vice chairman and Mr. Buffett's straight man, played to an over-

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RIMS sets attendance record

It was virtually standing room only at the 32nd annual Risk & Insurance Management Society Inc conference last month in New Orleans, which attracted a record number of registrants, exhibitors and guests. Complete coverage of RIMS conference sessions begins on page 3.



Updates

Single-payer ballot initiative

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lot. CHS is a coalition of labor and public interest organizations, though its lead member is the California Physicians Alliance, a group of independent physicians that formed around the single-payer issue.

The proposed single-payer plan would replace private health insurance as well as Medi-Cal and Medicare and extend coverage to the estimated 6 million uninsured residents. It would be directed by an elected health commissioner.

The plan would provide comprehensive health insurance to all residents, including mental health, long-term care and prescription drug coverage. Consumers would be able to choose their own providers, whose fees would be negotiated with the state.

The plan, which would require congressional and state legal waivers, would be financed by a 4.4% to 8.9% payroll tax on California employers. Income and cigarette taxes would also be increased.

$400 million in storm claims

DALLAS—Thunderstorms, tornadoes and hail that struck Texas last week caused $400 million in insured damage and may result in 150,000 claims, the Southwest Insurance Information Service says.

The Property Claim Services Division of the American Insurance Services Group believes the number of claims stemming from the storm front, which caused damage in several states throughout the week, ultimately could rival the 260,000 claims filed after the Los Angeles earthquake in January.

The same storm front produced a tornado that killed two people and destroyed the Lafayette Venetian Blind Factory, two gas stations and a mobile home park in West Lafayette, Ind., on Wednesday.

Three people were killed in the Texas storms, which leveled or severely damaged up to 1,200 structures in the Dallas suburbs of Lancaster and DeSoto.

Historic centers in both towns were damaged, but municipal damage is not included in the SIIS estimate.

State Farm Group issued a preliminary estimate of 50,000 claims for commercial and homeowners property damage totaling between $100 million and $125 million in Texas. In addition, State Farm expects about 30,000 automobile claims costing $45 million.

Saxer out in Swiss Re shakeup

ZURICH—Swiss Reinsurance Co. announced unexpectedly last week that Arnold W. Saxer will leave his post as chief executive this summer. He will be replaced by Lukas Muhlemann, 43, a McKinsey & Co. managing director.

Mr. Saxer, who has been with the reinsurer for 25 years, will become chairman of the company's ELVIA Insurance Co. subsidiary following the annual general meeting May 26, the company said. He will remain Swiss Re's chief executive until August. Swiss Re said Mr. Muhlemann will develop a new strategy and long-term goals for the company. The consultant has worked on projects for Swiss Re but has limited experience in insurance and reinsurance.

Charges filed against insurer

BATON ROUGE, La.—Louisiana regulators are charging Texas businessman Hugo E. Pimienta with violating state insurance laws in his takeover and operation of Bradford National Life Insurance Co.

After approving the New Orleans insurer's sale to Mr. Pimienta in 1992, the Louisiana Insurance Department earlier this year filed separate administrative complaints against him and against Bradford, documents obtained by *Business Insurance* show.

The complaint against Mr. Pimienta alleges, among other things, that he: gave regulators false information about his financing for the acquisition; improperly arranged a $16 million loan secured by all of Bradford's stock, $16 million of the insurer's cash and other Bradford assets; and removed $16 million from a Bradford bank account in November 1992 without regulatory approval, depositing the money in a personal account at another bank.

Bradford, which was under the Insurance Department's administrative supervision at the time, is separately charged with: filing a false 1992 financial statement; improperly wiring $4.3 million to Interamericas Investments Inc., another of Mr. Pimienta's companies, under an advisory services agreement; improperly borrowing $11.4 million under a repurchase agreement that did not have prior regulatory approval; and several other alleged violations of the supervision order and the state insurance code.

If Mr. Pimienta and Bradford are found to have committed the violations, regulators could suspend or revoke the insurer's license.

Louisiana officials declined to comment for the record. Calls to Mr. Pimienta and Bradford were referred to a spokesman, who said, "We dispute the allegations and expect to be absolved, but at this point there is no resolution and (the process) is moving forward."

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Errors & omissions

- An article in the March 28 issue incorrectly reported that an Ontario court ruled Manufacturers' Life Insurance Co. improperly used surplus National Hockey League pension funds. Although named as a defendant, the company never faced allegations of wrongdoing and was not included in the ruling.
- A chart on page 3 of the April 18 issue listed incorrect figures for the number of captives in Singapore. The correct figures are 47 at year-end 1993 and 46 at the end of 1992.
- Mental conditions that lead to physical impairment are one of the three types of stress-related workers compensation claims. An article in the April 25 issue omitted this type of claim.

Civil Rights law not meant to be retroactive: Court

By CHRISTINE WOOLSEY

WASHINGTON—Employers are breathing easier following a pair of U.S. Supreme Court rulings barring employees from seeking expanded damages under the Civil Rights Act of 1991 if they filed job discrimination lawsuits before the statute was enacted.

Although the decision does not directly affect employers' existing anti-discrimination policies, it ensures that they will not be exposed to more lawsuits seeking huge damage awards under the 1991 act.

In an 8-1 vote, the high court last week ruled that people with pending suits are not entitled to jury trials, nor can they seek compensatory or punitive damages, if their job discrimination actions were filed before the law took effect on Nov. 21, 1991.

The 1991 act, by allowing jury trials and permitting compensatory and punitive damages in intentional discrimination suits, increased the likelihood of large awards. Previously, victims of intentional discrimination were allowed only back pay and other "equitable remedies" spelled out in the Civil Rights Act of 1964.

"You can hear the sighs of relief rippling across the country," commented Richard Betterley, senior consultant at Betterley Risk Consultants, a Milliman & Robertson Inc. division in Worcester, Mass.

Had the court allowed retroactive application of the law, it would have greatly expanded employers' liability exposures.

"You would have seen an exposure that could have cost $100,000 or so in defense costs and back pay rise considerably" if plaintiffs were allowed to seek further dam-

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Reform debate revs up

Senate panel explores tax on employer-paid benefits

By MARK A. HOFMANN

WASHINGTON—Despite a national day of mourning for former President Richard M. Nixon, the pace of the health care reform debate didn't flag last week.

On Tuesday alone there was enough activity to make up for the loss of Wednesday as a legislative day.

The Senate Finance Committee heard testimony on the impact of changing the tax status of employer-provided health benefits; the House Labor-Management Relations Subcommittee received estimates of the cost savings likely under yet another Democratic alternative to President Clinton's plan; and a new U.S. Chamber of Commerce survey showed that most Chamber members oppose government involvement in health care reform.

A Congressional Budget Office representative told the Senate Finance Committee that not taxing employees on the value of their health benefits contributes to the high cost of health insurance.

Rosemary D. Marcuss, assistant director for tax analysis at the CBO, cited four key points about the subsidy:

- Employees pay for employer-provided health insurance through lower wages.
- The tax treatment of health benefits helps those who get benefits but not those who don't, and it provides companies that can afford to provide benefits with an advantage in seeking and keeping workers over those companies that don't provide benefits.
- A cap on the tax exclusion

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Pair charged with laundering gambling funds

Ex-insurer official indicted

By DOUGLAS McLEOD

NEWARK, N.J.—Two Texas businessmen, including the former president of a defunct life insurance company, have been charged with trying to use the insurer to launder illegal gambling proceeds.

A federal grand jury in Newark, N.J., last month indicted J. Darrell Jordan, former president of United Republic Life Insurance Co. of Salt Lake City, and Houston businessman Michael Clark on conspiracy and money laundering charges.

The indictment alleges that the two men accepted $210,000 in what they believed to be illegal gambling money as part of a plan to funnel the cash through United Republic before returning it to its source.

The money was actually offered by undercover FBI agents conducting a sting operation into money laundering activities, according to Noel Hillman, assistant U.S. attorney in Newark.

If convicted on all charges, Messrs. Clark and Jordan each face maximum sentences of 45 years in prison and fines of $750,000. Under federal sentencing guidelines, though, any actual prison term would likely be lower.

Michael Ellis, a lawyer for Mr. Jordan, denied the allegations.

"My client is just absolutely amazed that he has been mentioned in this indictment," said Mr. Ellis, who is with Chehardy, Sherman, Ellis, Breslin & Murray

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Directory of EAPs, mental health networks approaching

The June 27 issue of *Business Insurance* will contain a directory of employee assistance program vendors and managed mental health networks.

The issue will also feature a Spotlight Report on mental health care topics.

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

The directory is published as an editorial service and there is no charge to be included. However, organizations must complete and return a *BI* questionnaire by the May 13 deadline to be listed.

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

Inside

- The delay in congressional action on Superfund reform is not all bad, this week's editorial says. **PAGE 8**
- U.K. employers are concerned about the government's push to trim health and safety regulations. **PAGE 55**
- The Russian insurance market's growth potential is being stifled, some experts say. **PAGE 55**
- A NewCo official rebuts claims that Lloyd's of London is severely underreserved for long-tail liabilities. **PAGE 62**

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RIMS tackles risk management concerns

Communication key to trimming costs for risk managers

Employees at all levels must learn safety is a '24 hour a day' issue

By JOANNE WOJCIK

NEW ORLEANS—Communication is one of the most effective, yet underused cost control techniques available in risk management today, risk managers say.

But employers need communication strategies that can compete for their employees' attention, they point out.

Therefore, the most effective risk management communication programs are creative and multifaceted so they appeal to every member of an organization—whether it's the chief executive or a secretary.

"You really need a human resources marketing background to reach out to everyone and educate them about what is going on with workers compensation" and risk management, said Sue Rye, director of risk management at Walt Disney World in Orlando, Fla.

And all employees, regardless of their rank, should receive the same message: that "safety is 24-hours a day, not just when you're at your job," added Millie Workman, director of corporate risk management for Belz Enterprises in Memphis, Tenn.

That's why a multimedia approach is the most effective way to get the risk management word out, according to Susan M. Sauer, vp and national workers compensation leader for Johnson & Higgins in Chicago.

All three risk management experts discussed state-of-the-art communications strategies during the 32nd annual conference of the Risk & Insurance Management Society Inc., held April 17-22 in New Orleans.

In addition to reinforcing the corporate safety culture, effective risk management communication "enhances teamwork and improves loss experience," asserted Ms. Workman. "I can guarantee it."

For example, good communications from workers compensation adjusters have helped keep employees injured on the job from hiring attorneys, Ms. Workman pointed out.

"If injured workers feel like their claims are going to be handled fairly, a lot of times that will keep them from going to an attorney immediately," Ms. Workman said.

Indeed, "if you don't communicate with your employees, someone else will," asserted J&H's Ms. Sauer.

She recounted a situation in which an injured worker became disappointed when "the supervisor of his department and the president of his company called,

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From left, Sue Rye, Susan Sauer and Millie Workman view props used in effective risk management communication programs.

Interest growing in risk funding options

Appetite for risk a determining factor, alternative market expert says

By RODD ZOLKOS

NEW ORLEANS—As companies increasingly view the way they finance risk as a bottom-line decision, they're looking more and more at options beyond traditional insurance.

RIMS REPORT

Depending on an organization's needs, financial wherewithal and appetite for risk, a risk financing plan can include a variety of components, like a captive, self-insurance and finite risk coverage, as well as traditional insurance.

And, as markets or the organization's exposures change, the mix of that portfolio could change as well.

Overall, risk financing can be viewed as "the cost of managing, retaining and transferring risk," according to Richard B. Vincelette, vp of Am-Re Managers Inc., a division of American Re Corp. based in Princeton, N.J.

"What we're really looking at, whether we like it or not, is that insurance is the last step in the process of risk management," Mr. Vincelette said. "And we're really looking at it as a financial transaction."

Mr. Vincelette made his remarks as part of a panel on advanced risk funding techniques during the 32nd annual Risk & Insurance Management Society Inc. conference last month in New Orleans.

An organization's appetite for risk is a major consideration in how it structures its risk financing plan. That risk tolerance first comes in to play in the company's determination of its self-insured retentions.

And, a major aspect of making those retention levels work effectively is to put the proper loss prevention and safety programs in place, Mr. Vincelette pointed out.

"People don't stop having losses because they're self-insured," he said. "They stop having losses because they've taken some kind of action to mitigate losses."

Companies also need to understand how much capital they are putting at risk in their self-insurance programs and should be aware of the rate of return on the capital at risk compared with what they could earn if that capital was deployed differently.

With the short-term bottom-line benefits that may be gained through increasing the self-insured retention for various areas of an organization's property and casualty risks, corporate management can tend to get overly courageous if the risk manager doesn't step in.

"Senior management is usually

Continued on next page

Ethics of a decision often too subjective to be clear

RIMS code could clarify appropriate action

By SARA MARLEY

NEW ORLEANS—Many risk managers favor a code of ethics, but few say their job has ever required them to be unethical, according to a survey.

More than 70% of risk managers responding to the survey believe the Risk & Insurance Management Society Inc. needs a formal code of ethics for its members. However, fewer than 10% say they have been forced to act unethically on the job.

The Oregon Chapter of RIMS surveyed 135 insurance professionals—including risk managers, brokers, underwriters, lawyers, and claims and loss prevention professionals—on their reactions to 18 ethical dilemmas and on whether RIMS should enact a code of ethics.

The RIMS Executive Council tabled a proposal at the 32nd annual conference in New Orleans last month to codify the society's ethical guidelines for risk managers, according to Carol Fox, chairwoman of RIMS' membership and chapter services committee.

Difficulty in enforcing the rules was "a major stumbling block," particularly because RIMS' membership is made up of companies, not individuals, said Ms. Fox, who is corporate risk manager for Gibson Greetings Inc. in Cincinnati.

But, the ethics guidelines have been passed on to RIMS education committee, which has been asked to integrate ethics into its courses.

The RIMS Standard of Ethics calls on members:

- To acquire and maintain an appropriate level of professional competence by the ongoing development of knowledge and abilities through continued education in risk management and related fields.
- To improve professional standards within risk management and related fields, and to behave in a manner that will reflect favorably on RIMS.
- To encourage the application of risk management principles for the benefit of the group.
- To perform duties in a diligent manner and in accordance with applicable laws, regulations and technical standards.
- To fully disclose appropriate and reliable information to service providers, to hold in strict confidence privileged information, to protect unique ideas and to treat insurance price quotations in an equitable and impartial manner.
- To establish and maintain professional relationships with other risk managers and with members of other professions.
- To avoid conflicts of interest and to refrain from accepting gratuities and other favored treatment which may affect or appear to affect objectivity.

Several of those issues were addressed in the Oregon survey and were presented by role-playing risk managers during a session at the RIMS conference. A lively debate followed.

Some of the situations were specific to risk management, while others were questions of general business ethics.

The topics were extracted from panelists' own experiences, said Scott Moss, risk manager for Metro, a regional government entity based in Portland. Mr. Moss

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Funding

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kind of gutsy. It's like they're taking testosterone supplements," said Dean A. Reynolds, director of risk management for Nissan North America Inc. in Torrance, Calif.

While in a good year self-insurance might save the company a lot of money, it's not a good way to cover major, unforeseeable losses, he said. Consequently, the risk manager must remind management that a bad year might include several major loss events, which could turn the financial results into something far different than what they had anticipated.

"You say, 'What if we have five of these? What if we have 10?' " said Mr. Reynolds, who moderated the session. "And they get more timid."

In the layer immediately above an organization's self-insured retention, there may be advantages to using captives, whether the captive writes coverage directly for the company or reinsures fronted coverage.

Captives aren't just the province of the Fortune 500. An increasing number of small companies nowadays are finding that they can use captives to meet their needs, said James A. Kellogg, executive vp of Old Republic Risk Management Inc. in Brookfield, Wis.

Discussing fronted captives, Mr. Kellogg suggested that "a fronting company is nothing more than a surety underwriter." But, in selecting a fronting insurer, it's important to look at the company's history and its organizational structure, he said.

While a fronted captive program can be a good way to reduce costs and enhance risk funding of risks like workers compensation, Mr. Kellogg said that, depending on

For captives, 'a fronting company is nothing more than a surety underwriter,' says James A. Kellogg.

market conditions, there may be instances in which a captive program may cost more than the company would pay for commercial insurance.

There is some good news in the voluntary workers comp insurance market, he said, including the fact that costs have declined somewhat due in part to the use of large deductibles and other non-traditional workers compensation programs (see story, page 60). And, premium increases are slowing in the residual market, Mr. Kellogg said.

Still, workers comp costs are being driven in large part by expanding definitions of job-related injuries, he said.

Another alternative a risk manager can consider in structuring his or her corporation's overall risk funding program is finite risk insurance.

Bruce A. Bunner, chairman of Centre Reinsurance Co. of New York, mapped out a "risk financing continuum" with banking and the "risk-free zone" on one end and insurance and the "unlimited risk zone" on the other. Finite risk coverage operates somewhere between the two poles, he said.

While traditional insurance is typically viewed in one-year modules, finite risk contracts are structured over a longer time period, usually three to five years, Mr. Bunner said.

The insurer's liability is capped in the finite risk contract, and the amount paid in by the policyholder is considerably larger as a percentage of the maximum coverage than with traditional insurance.

However, the policyholder can benefit from tax deductions on the premium payments. If there are no claims, the insurer will return a substantial portion of the premium at the end of the contract, though those funds are subject to taxation at that time.

Key elements that come into play in a finite risk structure are investment risk, underwriting risk and timing risk. While the policyholder enjoys the full limits of the coverage throughout the term of the contract, the importance of investment earnings as an underwriting factor causes the insurer to clearly hope that no losses occur in the early years of the agreement, he noted.

Within a framework of costs vs. stability, a multiyear approach allows buyers of finite risk insurance to increase program stability while reducing program costs, Mr. Bunner said.

Meanwhile, when charted in terms of cost vs. coverage, finite risk coverage tends to track along with self-insurance, though finite risk coverage provides an extra layer of coverage, he explained. And, when the tax advantages and some of the profit-sharing aspects are added, it becomes even more attractive, Mr. Bunner said.

Finite risk coverage can be particularly useful in addressing potential long-tail liabilities, for which traditional insurance usually carries high prices, he said. Because those sorts of risks tend to be more predictable over a longer term but less so in a short time frame, they match up well with finite risk programs.

Still, Mr. Bunner pointed out that it's important to measure the pros and cons of finite risk insurance against other alternatives before choosing a risk financing option.

"If rates on line are low, finite risk isn't going to be appropriate for you," he said. "Where finite risk does get triggered is where the traditional market fails."

In putting a risk funding program together, it's important to work closely with those you hire to help design the program, Nissan North America's Mr. Reynolds said. "It does not work well having sent somebody out to put a program together to have them bring it back to you without your participation."

The first step in that effort should be to determine the organization's goals. All aspects of the risk financing program should be evaluated and all the various alternatives considered, though at times making economic comparisons among options can be difficult.

"It is extremely rare that you get enough information from a carrier to do an economic comparison," said Gregory K. Myers, senior vp for Becher & Carlson Risk Management Inc. in Woodland Hills, Calif., who coordinated the panel discussion.

An organization assembling a risk funding program also must weigh the program's impact on its risk management department. And, when considering using vehicles like finite risk or captives, it's important to remember the time frames involved, with finite risk contracts running three to five years and captives requiring a long-term commitment.

For all the potential financial benefits, an emphasis on loss control is an important aspect of an efficient risk funding program, the panelists said. Ultimately, the greatest benefit of a well-designed risk funding program should be a reduction in losses. BI

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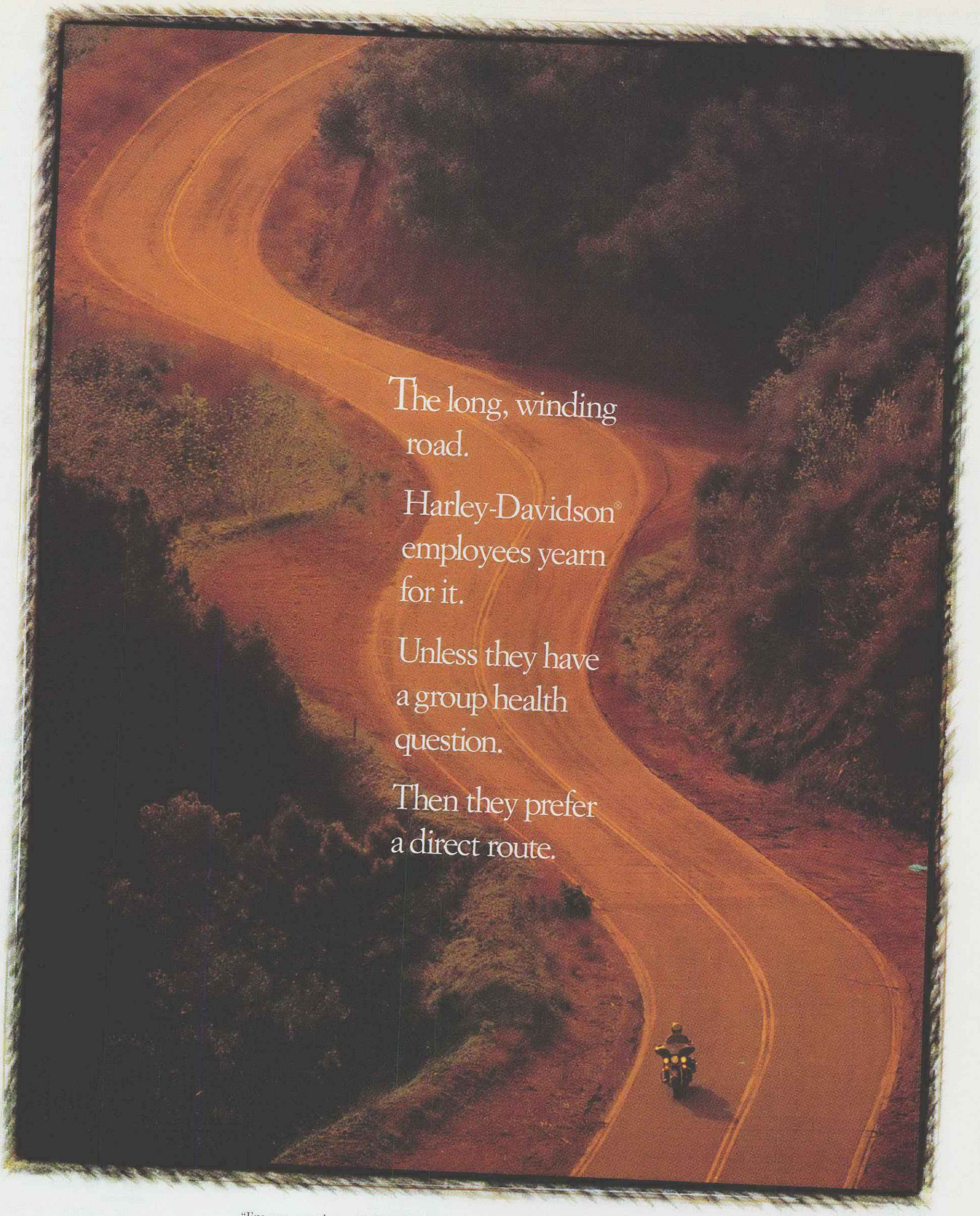
YOU'LL LIKE OUR POINT OF VIEW.

As one of the strongest financial institutions in North America, we have the resources to offer our associates and customers more. But it's the commitment of our people that really separates us from our peers. We don't want to be known just as a good company to work with. We want to be known as the best. To find out what this commitment can mean to you and about the individual, group and pension plans we offer, please call us at 1-800-454-8787. We think you'll like our point of view.*

SunLife of Canada

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In this aerial view of King's Canyon National Park, it's easy to see why the Sierra Nevada are also known as the range of light.



"I'm not sure how Harley-Davidson compares with Wausau's other group health customers, but we ask a lot. Employees with questions expect to talk directly with those handling their claims. They feel comfortable calling Wausau."

Anne Sessner, Benefits Administrator, Harley-Davidson, Inc.

WAUSAU

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Multimedia

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but his own supervisor didn't. That employee will remember," she warned.

In addition to heading off possible conflicts, "a good communications technique can add fun and excitement to safety training," observed Ms. Workman, who pointed as an example to Belz' 45-minute driver training program that features bumper cars traversing a parking-lot obstacle course.

To get Belz' corporate risk management message across to employees, Ms. Workman has expanded the "Feelin' Ducky" communications program she developed several years ago for the company's wellness program (*BI*, March 30, 1992).

The central theme, which features the famed ducks that swim in the lobby fountains of Belz' Peabody hotels, is a consistent message: "You can't really separate health and safety. They're interwoven," she explained.

Under the workers comp and safety program, employees earn "Duck Bucks" that can be used to purchase prizes from a catalog of merchandise that include T-shirts, sports bottles and refrigerator magnets illustrated with the Peabody ducks.

New employees also receive orientation handbooks explaining Belz Enterprises' workers comp and safety programs. And reinforcing that message are newsletters, calendars, videos and posters displayed on bulletin boards throughout the company's diverse locations that range from shopping malls to hotels to industrial and office parks.

Belz even provides employees and supervisors with a toll-free telephone number to ensure early reporting of work-related injuries.

Just as communicating safety can reduce accidents, expedited reporting of occupational injuries can reduce the number of lost time workers comp claims, said J&H's Ms. Sauer.

And while telephone reporting is fast, computer reporting can be even faster, she said, using as an example American Airlines' use of its Sabre computer reservations system for also reporting workers comp claims.

"This is state-of-the-art stuff," she said, explaining that supervisors at the Dallas-based airline can toggle between the work they are doing and a first report of injury claim form with just one click on the keyboard.

Indeed, Walt Disney World has not received a single notice from the Occupational Safety and Health Administration regarding work-related injuries since it implemented its toll-free reporting telephone number, according to Ms. Rye.

"The company was close to hiring a consultant from the outside" when its workers comp costs reached $35 million for the 1992 fiscal year," she said.

Instead, in an effort to contain costs internally, it implemented a sophisticated communications program that would communicate the costs associated with workers comp claims and emphasize safety and accident prevention, she explained.

Many in management didn't realize how much workers comp was contributing to expenses until Ms. Rye communicated that message.

"For every $1 in direct costs, you spend $2 in indirect costs," she explained to management.

In Disney' case, that would mean spending $35 million on workers comp was actually adding $70 million to the company's costs, according to Ms. Rye.

She also pointed out that the workers comp costs were much larger than the $11 million the company spends each year on personal injury claims by visitors to its facilities.

Ms. Rye developed comparisons of the workers comp experience of Disney's various properties, which in addition to theme parks include resorts and motion picture production studios.

Using colorful charts and illustrations narrated by Disney's animated character Professor Ludwig von Drake, Ms. Rye showed how a simple slip-and-fall in a fast-food kitchen could add up to a total workers comp claim cost of $105,000.

"We decided on the professor because we were trying to teach a lesson," she explained.

After the Disney executive presentations were completed in May 1993, Ms. Rye moved on to develop a program that included safety councils, training and publications and development of a toll-free "Safe Line."

Eventually, every employee was given a laminated, wallet-size workers comp information card that provides phone numbers to use in the event of an accident, whether it involves a customer or a member of the company's staff.

Effective risk management communications programs are not limited to internal communications, according to J&H's Ms. Sauer.

Risk managers also can use their communications programs to improve relationships with outside vendors such as consultants, brokers and third-party administrators.

For example, "loss runs by themselves are worthless if no one knows how to read them," she said. "You have the right to go back to your TPAs and carriers and say, 'If you give me loss runs, tell me what they mean.' "

In addition, Ms. Sauer suggests that risk managers use a benchmarking process to compare their organization's claims experience with industry, state and national averages.

Such benchmarking comparisons should be translated into a language that everyone can understand, such as cost of workers compensation as a percentage of payroll or as a percentage of revenues, she said.

And the figures used to show workers comp claim costs should be those for incurred losses rather than paid losses.

The incurred loss figure shows the amount of comp losses being generated in a given time period, while paid losses includes losses from past years that are finally being paid in the time period being measured, Ms. Sauer said.

Risk management communication programs need not be expensive to be effective. Belz Enterprises' "Feelin' Ducky" program, for example, cost just $2,500 to implement, according to Ms. Workman.

"Employees did the graphics for the slide presentation," she said, and the "Feelin' Ducky" logo was designed by a room service waitress at the Radisson Ridgeway, a Belz hotel in Memphis.

But no risk management communications program, no matter how creative, will be effective if its message is not reinforced," Ms. Sauer stressed.

For example, "if they get the workers comp brochure at the beginning of employment, the information needs to be reinforced at the time of injury. If you use PPOs or an industrial clinic, tell them who to go to," she said. "None of this works if you don't get to the right people in the process."

Catherine D. Bennett, vp at Johnson & Higgins in Nashville, coordinated the session. Don MacMeekin, corporate risk manager for Cinemark USA Inc. in Dallas, was moderator for the session. BI

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Opinions

Unite on Superfund goals

IT'S LITTLE SURPRISE that Rep. Al Swift has all but declared the Superfund reform process dead for this year.

Rep. Swift, chairman of the key House subcommittee with jurisdiction over Superfund and chief House sponsor of the Clinton administration's Superfund reform plan, says there simply is not enough time to pass reform legislation before Congress adjourns (*BI,* April 18).

We could not agree more.

The worst thing that could happen to businesses facing Superfund liabilities is for Congress to pass a bill that doesn't include meaningful reform, including modification of retroactive and joint and several liability. No bill that is passed in a hurry is likely to meaningfully ease the excessive burden on business and insurers alike.

Congress must take some action on Superfund by September, or the federal government will lose its ability to tax certain industries to pay for waste site cleanups. It most likely will reauthorize Superfund in its current form for another year.

That would certainly not be the end of the world, but it means that business must cope with what can only be called a massively flawed Superfund law for yet another year.

Who's to blame?

A lot of fingers are being pointed at the Clinton administration, which unveiled its reform plan long after it was promised and nearly six months after Rep. Swift and other congressional allies warned that time was rapidly running out.

However, insurers and industry groups also must assume some responsibility.

Currently, there are two major insurer-supported proposals on the table: the trust fund approach endorsed by American International Group Inc. Chairman Maurice R. Greenberg and the comprehensive proposal drafted by the American Insurance Assn. (*BI,* March 21). While Congress will surely listen to heavy hitters like Mr. Greenberg and the AIA, it would be far better if all property/casualty insurers could unite under one Superfund reform banner.



"IF YOU WEREN'T AND YOU WEREN'T... THEN, WAS ANYONE DRIVING?!!

Likewise, industry groups, including the Risk & Insurance Management Society Inc., have espoused a plethora of different reform proposals. Again, Congress will be more likely to listen to business' cries for help if Corporate America can agree on at least the basics of Superfund reform.

Business and the insurance industry failed to present a united front when Superfund was last reauthorized in 1986. Few meaningful changes were made to the law at that time; in fact, business was saddled with "reforms" that were worse than the status quo.

Temporary reauthorization would give business and insurers some breathing room. They should use the time to agree on a common reform package. Otherwise, it's almost certain that history will repeat itself in the form of an onerous "reform" bill that makes an intolerable situation even worse.

Letters

Better defense a factor in fewer injury awards

To the editor: I read with interest the article written by Sally Roberts entitled "Plaintiffs Winning Fewer Injury Suits: Study," which appeared in the March 28 issue of *Business Insurance.*

While I agree with most of the factors cited by the article, there is one other factor the article did not mention which I feel has also contributed greatly to the improving results defendants have been experiencing. In the "old days," companies would simply trust the defense of their cases to their insurers, which would select a different lawyer depending on where the suit was filed.

In recent years, however, companies that are self-insured, have large SIR's or have retrospective premium agreements have been insisting on more proactive defense of suits while at the same time putting substantial effort into their own product liability loss prevention programs. In particular, companies with high severity, low frequency loss experience have been using attorneys who have spent the time to learn about their products and their companies to defend their suits aggressively on a nationwide basis.

Our experience is that when defense lawyers and companies work together to develop technical and legal expertise in a product and in defending it against product liability attacks, not only are more cases won and settlements more favorable, but in time, the total defense costs—internal and allocated—also come down.

While I agree that part of the reason why defendants are faring better is the growing public recognition that jury awards are not free, they cost everyone, another reason is that defendants are doing a better job of defending themselves.

Edward T. Butt Jr.
Chair, Industrial Machinery,
Products Liability Group
Wildman, Harrold, Allen & Dixon
Chicago

U.S. health care administrative costs small

To the editor: The article on Jane Fulton's pitch for a single-payer health care plan at the Risk & Insurance Management Society Inc. conference repeated the big lie that administrative and marketing costs consume 25% to 40% of American health care dollars (*BI,* April 25). While those percentages may be true for a tiny portion of the market, most Americans today are covered under self-funded plans that spend 2% or 3% on administrative overhead.

While Jane Fulton may (or may not) be an "expert" on the Canadian health care system, she doesn't have a clue about what is going on in the United States.

Ron Jones
President
Mutual Medical Plans Inc.
Peoria, Ill.

Pharmaceuticals not 'buying off' providers

To the editor: I was offended by the suggestion that my industry peddles our products by buying off physicians and I would guess that many physicians were also offended by the report in 'Perks May Defeat Managed Drug Plans: Study" (*BI,* March 14).

To be successful, prescription drug manufacturers must satisfy the needs of our customers.

The market clearly is demanding cost-effective treatments. To that end, pharmaceutical companies are competing fiercely to deliver cost-effective products. . .rather than paying for physicians' "personal travel."

Patrick Bruen
National Account Manager
Eli Lilly & Co.
Indianapolis

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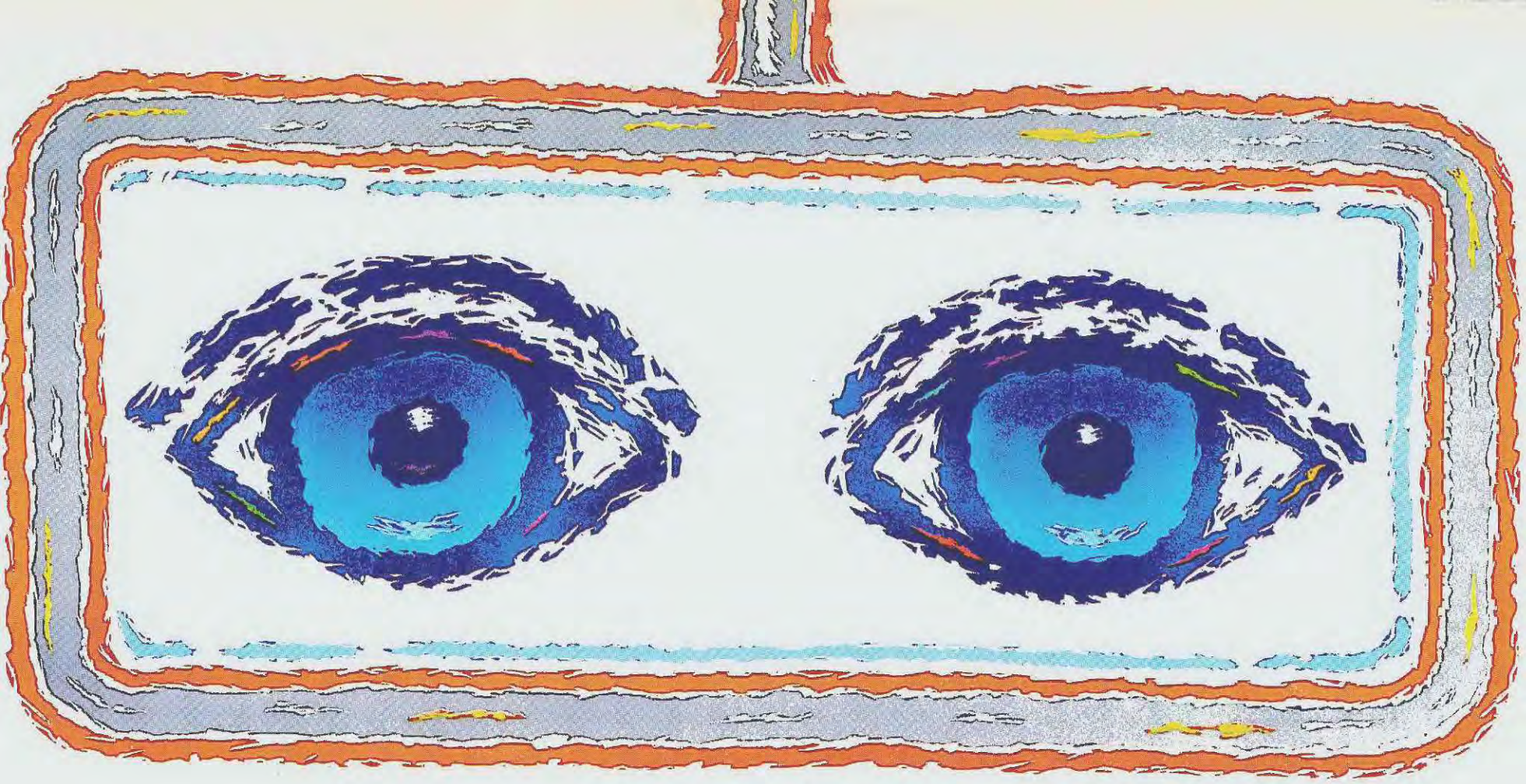
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Rallying support companywide

Risk managers must market their role

By LOUISE KERTESZ

NEW ORLEANS—To avoid falling victim to the outsourcing trend, corporate risk managers not only must do their jobs well, but also need to become adept at selling their services within their company, several experts agree.

RIMS REPORT

Speakers at a Risk & Insurance Management Society Inc. conference session agreed that marketing the risk management function can be long, hard work, but it is essential to risk managers' survival.

A poll of 25 risk managers taken at the session illustrates that risk managers may have their work cut out for them.

More than three-quarters of the respondents—78%—said their organization does not have a risk management statement signed by a high-level senior executive.

Asked "Do you as risk manager participate in strategic decision-making; i.e., business plans, mergers and acquisitions?" 90% of the respondents answered, "No, never."

Only 22% of the risk managers said people in their organization "clearly understand and support risk management."

"Selling yourself and your services within your organization is absolutely critical. . .(but) no matter now good your selling technique is, if you don't have a value-added product, no one is going to buy it. More importantly, your product must be perceived by your audience—your organization from the top down—as a product with value, or you're out of luck," said Wolfgang F. Friedel, senior vp of sales and marketing at Arkwright Mutual Insurance Co. in Waltham, Mass.

That is a tall order for many risk managers, who arrive at their posts relatively unprepared for the challenge, as did George Cirasuolo, risk manager of Southern New England Telecommunications Corp. in New Haven, Conn.

But, like Mr. Cirasuolo, risk managers can rise to the occasion.

"Before George took over, (risk management) had been almost a clerical function" at SNET, said Edward G. Perkins, principal and senior vp at Johnson & Higgins of Connecticut Inc. in Hartford.

"First, he had no staff and no organizational structure in place. He inherited a buying insurance and paying bills function. Secondly, he had limited knowledge of the risk management area in which he was involved. He knew he had to build an effective network internally within his organization, but also knew he needed help from outside resources and his service suppliers," Mr. Perkins said.

"Education is an outside resource—one which George has used effectively," he noted. "We unfortunately encounter too many situations in which a risk manager, for whatever reason, chooses not to share his or her agenda with us. Don't treat us as a vendor. If you keep your external suppliers at arms' length, you are only going to obtain a fraction of the contribution that they can potentially make to your success."

Mr. Cirasuolo said he turned to his suppliers for team building because there has been "a truly amazing expansion" of the risk management function at SNET in the five years since he became risk manager. He previously was an internal auditor for the telecommunications company.

For example, the definitions of risk and insurance were "once easy to understand," but "now we have financing alternatives" that challenge risk managers to expand their expertise, he said.

And the functions of risk management are myriad, covering such areas as "public and employee safety; workers compensation; property fire protection; fire life safety; hazardous materials, waste and other environmental issues; claims processing and analysis; risk insurance management; contract administration; and general and personal security," Mr. Cirasuolo said.

"Risk management should not be considered as the center of a universe around which our brokers, insurers and consultants rotate—unless they're taking us out to dinner," he quipped.

"They must become a part of the marketing team" the risk manager uses to show his or her value to the rest of the organization, Mr. Cirasuolo said.

"Internal marketing means applying marketing strategies and tools within an organization to gain the cooperation and support of other units and employees—everyone from the CFO to the security guard," he said.

"Treat everyone like your customer," Mr. Cirasuolo urged. "Start with co-managers. Find out their needs, and form strategic alliances. The key is you can turn them into partners rather than competitors."

The difficulty is that "sometimes they don't know themselves" what their needs are, he said. Co-managers must be helped to identify what their risk management needs are. Projects to address those needs must then be carefully selected to build credibility for the risk management function, he added.

One fortunate coincidence for the risk management department at SNET was a 1988 fire at an Illinois Bell Telephone Co. switching center in suburban Chicago that caused massive service disruptions for periods ranging from a few days to several weeks. At the time, Mr. Cirasuolo's staff was assisting SNET's safety manager to develop a fire protection program.

The staff's recommendations "got a lot of credibility" and were implemented relatively soon after the fire in Chicago, he said.

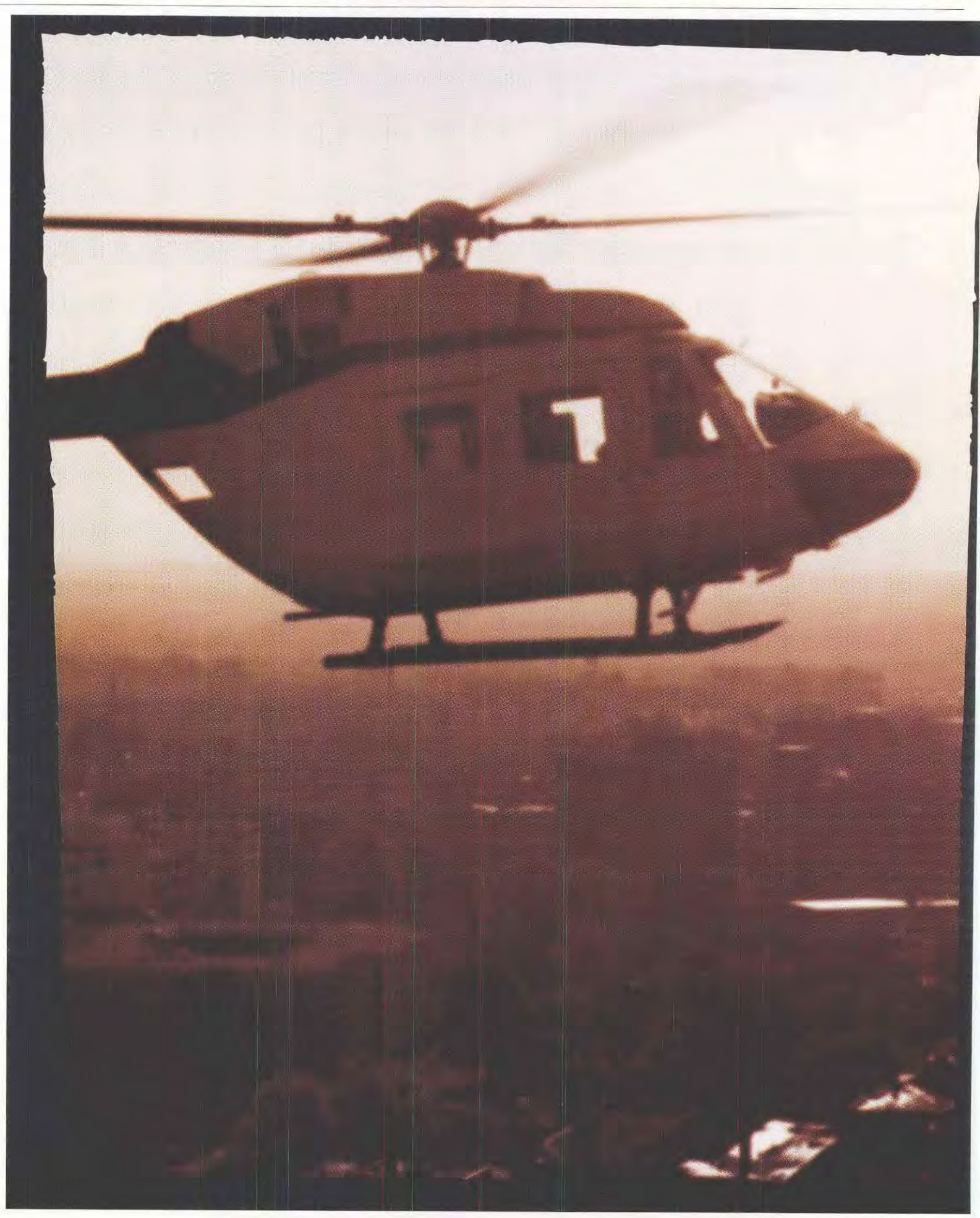
"Start with low-level people" in building support for risk management, Mr. Cirasuolo suggested. "Expand acceptance to successively higher levels through the concept that nothing succeeds like success. Encourage co-managers and lower operating managers to brag about what you helped them accomplish.".

Because Mr. Cirasuolo started with low-level staff, "now I get calls from the CEO. . .about his personal car insurance. At least he knew who to call."

Arkwright's Mr. Friedel warned that no matter where support for risk management begins, the value of the program "has got to reach the top," or the program is in danger of being outsourced.

But, he added, "most of the companies that have outsourced risk managers—they weren't really risk managers. . .they were insurance people. Real risk management you can't outsource."

Mr. Cirasuolo coordinated and moderated the session. BI



Trivial pursuits not risk managers' game

By GAVIN SOUTER

NEW ORLEANS—Risk managers must demonstrate their value by involving themselves in significant corporate decisions.

RIMS RISK PROFIT

"If you preoccupy yourself with trivia, you will be thought of as trivia and be paid accordingly," said Geoff Saunders, risk management adviser at RTZ Corp. in London and chairman of the Assn. of Insurance & Risk Managers in Industry & Commerce.

Being involved in major decisions enhances the risk manager's status, he said.

"You become privy to privileged information, and that makes it hard for your job to be dispensed with and passed on to an outsider like a broker," he said during a session at the Risk & Insurance Management Society Inc. conference.

To hold on to their positions and to encourage a risk management culture within their companies, risk managers must redefine their role, said Michael P. Golden, managing director of Marsh & McLennan Inc. in Stamford, Conn.

"Package your department as managers of uncertainty and financial risk," he advised.

One problem risk managers face is overcoming the limited vision of many senior managers, Mr. Saunders said.

"A risk manager looks beyond the spreadsheet and considers what could kill an organization," Mr. Saunders agreed.

RTZ learned firsthand the folly of not considering risk management implications when the Los Angeles earthquake struck in January, he said. The quake damaged an RTZ administrative office in Los Angeles that could easily have been established outside an earthquake zone, he said.

"We took a $12 million hit on the L.A. quake because during the risk analysis no one had asked why we needed an administrative office there. That was bad risk management," Mr. Saunders said.

To prevent similar situations, risk managers should ensure that no major decisions, like acquisitions, are made without the approval of the risk management department, he said.

Establishing corporate policy on risk management-related concerns, such as environmental issues, can also enhance a risk manager's position, he said.

If the risk management department issues a formal policy to line management, the notion of risk management is spread throughout an organization, he said.

Cost-of-risk analyses for each unit of a company also encourage good risk management, Mr. Saunders said. And, analyzing the cost of risk can help bridge the communication gap that often appears between financial managers and line managers.

For example, the local management at an RTZ unit in South Africa estimated that the cost of risk for the company's operations in the country was 7 million rand ($1.9 million).

"We went to some outside consultants and asked them to do a cost-of-risk exercise, and the figure they came up with was 50 million rand ($13.8 million)," Mr. Saunders said.

The local managers were at first reluctant to accept the consultant's conclusion, but they since have, he said.

During the process, the risk management department was a catalyst to encourage understanding between the company's financial managers and line managers, Mr. Saunders said.

Innovative use of captives can also raise the profile of risk management. RTZ formed its Bermuda captive, Three Crowns Insurance Co. Ltd., in 1981. For the first five years, it was seldom used because it was run as a profit center and other units in the company thought they were competing with it, he said.

"So what we did was throw it into the ring and tell all of our operations that it is a tool for you to use if you want it."

All of the RTZ units that use the captive must provide a board member for the captive. And, any profits the captive makes are returned to the participants, Mr. Saunders said.

"This creates a fiduciary relationship between the operations. . .and it is astonishing how they have taken it on and made it their own."

The captive also pays for a lot of risk management work within the company, Mr. Saunders said.

For example, profits from the captive help pay for loss prevention programs, infrared thermography programs and other risk engineering services.

The captive insures the first $2 million of several insurance programs, including workers comp, auto and general liability, he said.

In some cases, units use the captive to help build environmental liability funds.

Gross premiums written by the captive totaled about $1 million between 1981 and 1984, but by 1992 increased use had brought premium volume to $11 million, he said.

Risk managers can also enhance their status by staying away from the run-of-the-mill insurance issues, Mr. Saunders said. They should farm out issues like auto insurance to their brokers and concentrate on bigger challenges, he noted.

"You are concerned at the level where your company can get hurt, and it can't get hurt by a car crash. You are concerned about where your Bhopal is waiting to happen," Mr. Saunders said, referring the 1984 Union Carbide chemical disaster in India (*BI*, Dec. 10, 1984).

By concentrating on important issues, risk managers can keep ahead of corporate downsizing and pare down their departments to make them more efficient and effective, he said.

Ten years ago, the RTZ risk management department employed 16 people. Now there is a staff of three: Mr. Saunders, a lawyer and an engineer.

Although smaller in staff size, the risk management department at RTZ has grown in importance as risk management has been promoted throughout the company.

In fact, when RTZ sought a listing on the New York Stock Exchange, the fact that it had an aggressive risk management program was mentioned in the company's Securities and Exchange Commission filings, he said.

Lori M. Jorgensen, assistant vp and risk manager at McCaw Cellular Communications Inc. in Kirkland, Wash., also spoke at the session. Mr. Golden moderated and coordinated the session. BI

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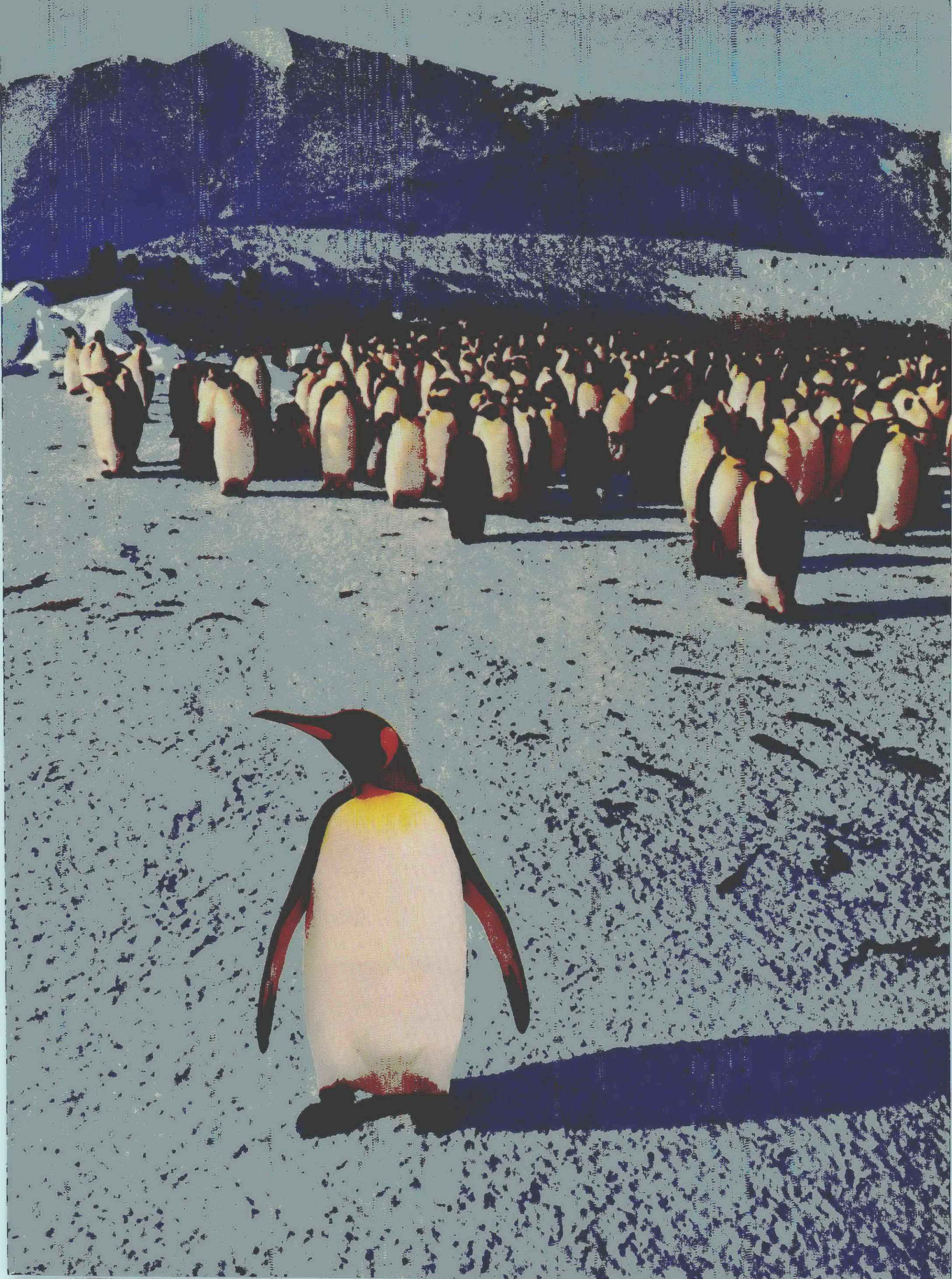
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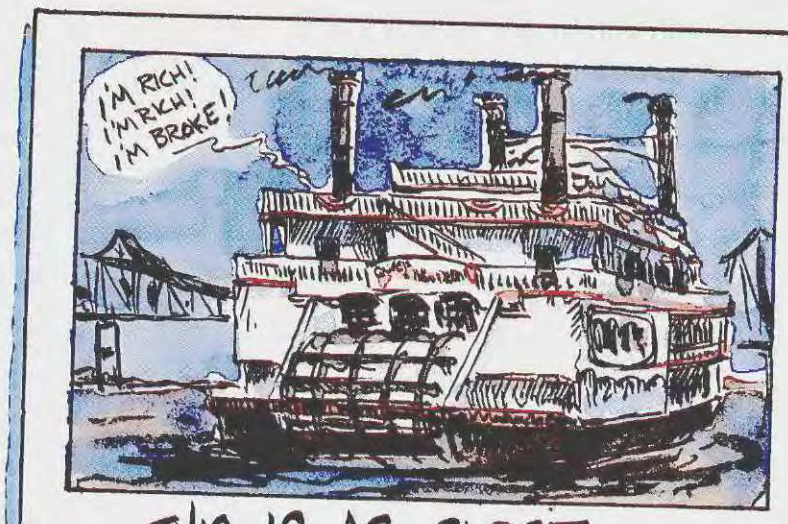
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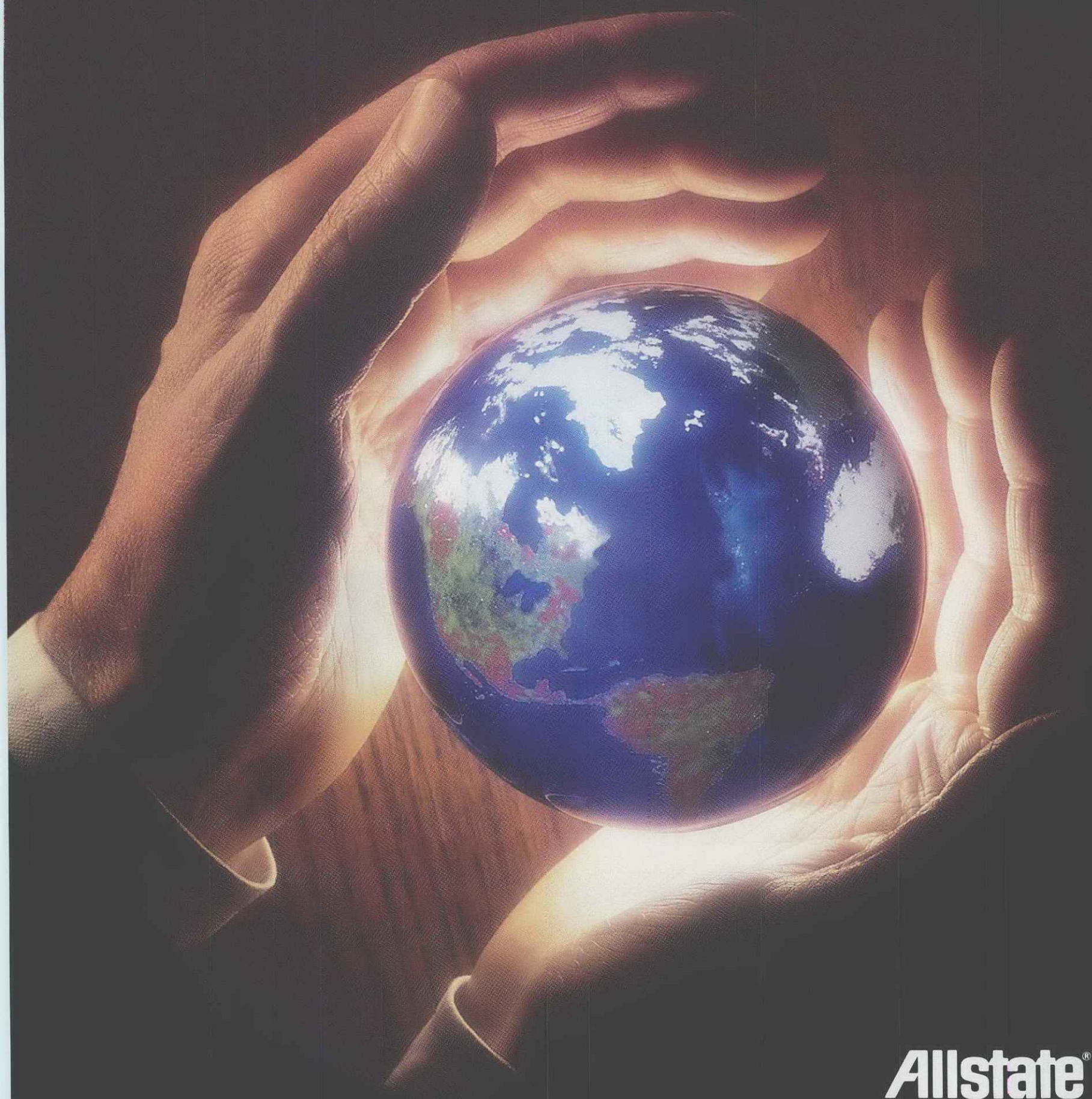


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Intervene early in products claims

Risk manager must possess keen knowledge of product

By RODD ZOLKOS

NEW ORLEANS—The stakes in product liability cases are high, and the companies with the best chances of coming out on the winning end are those that take an active approach to dealing with those claims.

RIMS REPORT

"If you wait until the lawsuit's filed, it's going to be too late to do a lot about it," said Lawrence A. Mann, a partner with New Orleans law firm Leake & Andersson.

Speaking during a panel discussion at the Risk & Insurance Management Society Inc. conference, Mr. Mann advised risk managers to get lawyers and other experts involved in the defense of potential claims before a suit is filed.

In anticipation of a suit, a risk manager should become intimately familiar with the product involved and learn what sort of government regulations might apply to its manufacture or design, Mr. Mann said.

The risk manager also should know the company's record-keeping procedures; learn whether there have been any engineering changes to the product and if they have been properly documented; determine whether product warnings are up to date; and find out whether warranties are in effect.

Most product information will be available to the plaintiffs, but some may fall into privileged areas. Attorney-client communications, documents that are the "work product" of attorneys and information documents created in "anticipation of litigation" all could be considered privileged, Mr. Mann said.

"Having your attorney involved in the investigation from day one can help you keep the information privileged," he said.

In determining whether information is protected under the attorney-client privilege, courts consider whether the communication was made confidentially and with the intent of obtaining an opinion.

Collecting information from the investigation in a separate litigation file and marking it as such can also help the chances it will be ruled privileged, Mr. Mann said.

However, not everyone on the panel was as confident in the ability of a manufacturer to keep information gathered in anticipation of a product liability suit confidential.

"I have no faith in the attorney-client privilege," said James Lotz, vp-general counsel of New York-based Keene Corp.

Mr. Lotz is well acquainted with product liability claims: In 1968, Keene paid $8 million for a company that made thermal installation containing asbestos. Keene in 1972 had the affiliate totally eliminate use of asbestos and closed the company in 1975.

So far, though, that $8 million acquisition has cost Keene $550 million in connection with litigation alleging bodily injury from its asbestos products. Mr. Lotz estimates he's been involved with 250,000 lawsuits over the past eight years and gone to trial 500 times.

"Along with the attorney-client privilege, as a defendant I have almost no confidence in judges," Mr. Lotz said. "You've got to educate the judge. You have to position the judge so that you get a fair trial."

Mr. Lotz believes a company should have a theme for its defense and said, "From the moment you start to pick the jury, you'd better start educating the jury and the judge as to what your theme is."

Risk managers and other corporate officials need to determine if the case is a "bet the company case," a precedent-setting case or a case that is ripe for settlement, he said. "If the case should be settled, get it settled. If the case should be tried, get the right attorney."

He added that there are different attorneys for different types of cases. "There's horses for courses," he quipped.

"If you can settle, I always think it's better to settle," said Mr. Lotz, who did caution risk managers not to settle if it's going to trigger many more lawsuits trying to tap the same pool of settlement money.

"You very seldom litigate a case or groups of cases away," Mr. Lotz said. "If you can limit your liability and get out for all time, settle.

"If you think that you can win, be sure that you can win," he added, emphasizing the importance of getting second legal opinions.

Mr. Lotz believes in-house staff should take a very hands-on approach to product liability cases, adding that the staff should work closely with outside counsel.

In addition to working closely with outside counsel, Mr. Mann suggested that risk managers and other in-house officials need to work closely with expert witnesses brought in to bolster the product liability defense.

There are many considerations in selecting an expert witness, he said, including the witness's general background, education, credentials, prominence in the field, integrity, communication ability and prior case record. It's also important to consider the witness' relationship with the opposing parties, counsel or other witnesses, past court rejections and her income derived from litigation-related sources.

Mr. Mann likes to use experts who have testified on both sides of the fence. That demonstration of objectivity can enhance the witness's position with the jury. It can also help to get your expert from a competitor, he said.

Kevin M. Quinley, vp-risk services at Hamilton Resources Corp. in Fairfax, Va., noted that each product liability case tends to have an impact on public opinion. Hamilton is a unit of MEDMARC Insurance Co. Inc., a product liability insurer for manufacturers of medical devices.

"Studies have shown that these high-profile, highly publicized debacles shape public and jurors' opinions in a very onerous way," he said, suggesting jurors come into the courtroom with preconceived notions that the company has done something wrong.

Mr. Quinley, who coordinated and moderated the session, also cited a Conference Board study that showed that product liability concerns have prompted 47% of companies to withdraw a product from the market, 27% to discontinue some form of research and 15% to lay off workers. "As risk managers we've got to take aggressive proactive roles in managing our companies' product liability exposures," he said.

Mr. Mann offered a similar view in slightly different terms. "In the claims business you don't always get what you deserve," he said. "You get what you work for." BI

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Product liability claims need careful handling

Don't hesitate to put all insurers on notice of claim

By SALLY ROBERTS

NEW ORLEANS—Risk managers need to thoroughly investigate any product liability claim if they want assurance that their liability insurer will provide coverage, according to a risk manager and an insurer.

RIMS RISK EXPOSURE

First and foremost, risk managers should contact all their insurers, regardless of whether they are primary or excess, when any claim alleging damaged caused by a product is received.

Despite the apprehension about reporting a loss to excess insurers, "it's vital that all insurers are notified at the same time," said Barry R. Glaser, director-risk management at Ceridian Corp., an employer services company in Minneapolis.

"Don't prejudice their rights by not reporting the claim. It's very important to give insurers the ability to prepare for action," he said during a session at the Risk & Insurance Management Society Inc. conference. If the claim is not serious, "underwriters will take it into consideration."

And, if risk managers report claims early, insurers can provide valuable advice on handling the claim, Mr. Glaser said.

"Insurers are used to dealing with large claims and do know more things than you," contends Michael T.D. Budge, vp/claims manager for Bermuda-based X.L. Insurance Co. Ltd.

In addition to timely reporting, if risk managers want the claims covered, they need to do their "homework" by investigating claims, Messrs. Glaser and Budge said.

"Insurers will never pay the million dollars unless (risk managers) have spent lots of time in investigation," Mr. Glaser said.

"Early communication and justification for actions is appreciated," Mr. Budge agreed. "We're less likely to second-guess a claim if we feel it was handled effectively."

When a claim alleging damage or injury caused by a company's product does occur, there are several courses of action risk managers can take to mitigate their liability and to ensure insurance coverage.

"Product liability claims start as a small trickle and then become a huge waterfall," Mr. Glaser said. It is important to recognize the claims from the beginning and take an active role in mitigating the potential loss involved.

"For goodness sake, let's not get in a denial mode. Deal with the problem," Mr. Budge advised. "If you don't fix the bad product, you will have punitive damage implications if you continue to sell it."

As part of the damage control process, risk managers need "to think with a national strategy and not just react to events individually," Mr. Budge pointed out.

Risk managers must gather as much information as possible on all the people and organizations that are connected to the product, like the manufacturer, assembly worker, wholesaler and installer, Mr. Glaser said.

Risk managers should determine if the "product could have been tampered with when in someone else's hands," he said, adding it is important to document all transactions with these sources.

Risk managers also must obtain basic information and history concerning the product, he said. For example, who is the intended target market and are they the people making the claims?

It is the risk manager's responsibility to spot trends. While this can be difficult, "it can be done by reviewing all losses and seeing if there is any trend," Mr. Glaser said.

Risk managers also must inspect the product itself. This includes inspecting the dimensions, weight, color and shape. They also should document the serial and model number, batch and patent number, and the brand name.

Another area of concern is the product's label, Mr. Glaser said.

Risk managers need to ask whether the product comes with safety devices. Does the company print the label? Did the label fall off?

Risk managers also should test the product and consult technical experts for assistance, Mr. Glaser advised.

Technicians should be acutely aware of the product, know exactly what the problems are and be ready to address the problems specifically, he said.

It would also be a good idea for risk managers to consult defense counsel outside the company, Mr. Glaser said. In-house counsel often may not know as much about product liability suits as an outside specialist.

The most important detail, though, is to research the product's past experience, Mr. Glaser said. Risk managers need to discover whether the product has ever had a defect or shown a propensity toward a defect.

From an insurer's point of view, risk managers should look to their liability policies as "an asset," said Mr. Budge. "This may sound funny for an insurer saying this, but we don't want to see a buyer waste the asset."

The best way to avoid "waste" is to deal with the loss first and do everything possible to keep the claim small, he said. If a claim is mishandled early on, it can end up doing much more damage than necessary, he cautioned.

It's the company's obligation to declare to its insurer if there is a batch product liability claim, Mr. Budge said. A batch claim can be declared if there are "two or more units of a product involved with one common defect."

After the claim is declared, it is the insurer's obligation to determine if the claims indeed are "integrated." Indeed, it is better to pay $25 million aggregated over a number of claims than to pay $25 million net for one claim with the potential for others, he explained.

It is also common sense for the risk manager to get good public relations advice early on, he said. While public relations expenses usually are not covered under liability policies, risk managers should realize that adverse publicity about a product can sway jurors.

Richard C. Reynell, senior vp for Becher & Carlson Risk Management Inc. in Marietta, Ga., coordinated the session. Mr. Glaser served as moderator. BI

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Wrapping up environmental risks effective, though not always easy

NEW ORLEANS—Environmental wrap-ups are an effective way for property owners to insure against the myriad potential liabilities they face when they undertake a pollution cleanup project.

RIMS REPORT

Although they are more complex than the traditional construction wrap-ups, environmental wrap-ups offer many advantages, said experts at a session of the Risk & Insurance Management Society Inc. conference.

Construction projects are "natural and prolific breeding grounds for claims and litigation. Overlay that with environmental risks, and the complexities (of insuring cleanup projects) increase substantially," explained Richard C. Heydinger, director of risk management services at Hallmark Cards Inc. in Kansas City.

But since the cost of insurance is ultimately borne by the property owner, "there is considerable interest in what is the most economical way of obtaining insurance and controlling overall claims costs" of an environmental cleanup, Mr. Heydinger said.

In a wrap-up, the owner pays the premium for insurance coverage directly to the underwriter as stipulated in the contract documents, explained Kenneth A. Schneider, senior vp and director of AlexEnvironmental, a unit of Alexander & Alexander Inc. in New York.

Rather than the owner accepting "50 different insurance certificates from 50 different contractors," the broker arranges one insurance policy with one insurer.

The coverages in an environmental wrap-up include: contractor's pollution liability; professional liability; general liability; auto and transport of hazardous materials; workers compensation; asbestos liability; and lead liability.

Environmental wrap-ups are more complicated than those for construction projects because "you're taking a very complicated process to begin with and overlaying it with very tricky environmental regulations," Mr. Schneider said.

According to Mr. Schneider, the benefits of an environmental wrap-up insurance program include:

- Attracting a greater number of bidders. It is often difficult for smaller contractors—including the minority and women-owned companies demanded by public projects—to obtain environmental insurance because of minimum premium requirements. A wrap-up policy would encourage them to bid on a project.
- Assuring that coverages meet prescribed standards. When each contractor provides its own coverages, they might not meet prescribed standards. But the broker arranging a wrap-up will exercise "good quality control" in negotiating the coverage, Mr. Schneider said.
- Providing a single coordinated loss control and claims handing program.
- Achieving cost controls through better economies of scale.

"As you pool all the insurance coverages together, the underwriters view this as a much larger project—for example, a $20 million cleanup," Mr. Schneider said. If, on the other hand, one contractor is seeking coverage for its part of the project, valued at $500,000, rates will be higher, he said.

- Arranging programs for smaller projects. Whereas the "critical mass" for a construction wrap-up is a project valued at $100 million, an environmental wrap-up "makes sense" for a $1 million project, he said.

Mr. Schneider said a property owner probably can find about $40 million in limits per project, "perhaps more, if you want to go to the offshore markets, which is certainly adequate."

Gary E. Bird, director of risk management at Phelps Dodge Corp. in Phoenix, spoke on wrap-ups for asbestos abatement work.

The session was coordinated by Melanie A. Gilmore, communications specialist at Alexander & Alexander Inc. in Dallas. Mr. Heydinger served as moderator.

—By Louise Kertesz

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Control costs by investigating accidents

Ignoring cause can lead to ill effect: Risk managers

By LOUISE KERTESZ

NEW ORLEANS—Investigating even minor accidents thoroughly and promptly is the key to preventing more serious accidents and to achieving loss control savings.

RIMS REPORT

That was the consensus among panelists at a session during the Risk & Insurance Management Society Inc. conference.

Yet, there are no formalized procedures in many organizations for investigating accidents and "near misses," said Gregory Myers, senior vp at Becher & Carlson Risk Management Inc. in Woodland Hills, Calif. Such procedures are essential to a safe workplace, because uninvestigated incidents tend to multiply and "frequency breeds severity" of accidents, he said.

Studies have shown that out of 300 incidents with no visible injury or damage—such as someone slipping on a slick floor but regaining their balance—30 will produce some property damage, 10 will result in minor injuries and one will result in a "serious disabling injury," Mr. Myers said.

Therefore, it is imperative to develop a systematic method for investigating every incident, he said.

The first step is prompt reporting of all accidents, panelists stressed.

At Univar Corp., workers are directed to document and report an incident, "no matter how small it is," said Leslie L. Seabrook, manager of insurance and risk services at the Kirkland, Wash.-based chemical distribution company.

Employees have been given a reporting form with specific questions to answer about an incident, and they are told to call a toll-free number with the information, she said.

"We were concerned that some of our locations would not report incidents after we established this procedure," Ms. Seabrook pointed out.

Instead, Univar management at headquarters was pleasantly surprised to find that managers at its more than 100 locations nationwide were meticulous about reporting incidents, she said.

That shows that the branch manager in a far-flung location "really feels good that he can contact someone" after an accident, Ms. Seabrook said.

Once the accident is reported, the investigation must begin immediately because "the accident scene changes, memories get fuzzy and initial impressions get altered," Mr. Myers pointed out.

And the investigator must approach his or her task with the old Japanese proverb in mind: "Fix the problem, not the blame," he added.

The investigator must "essentially be like a police detective" with an open-minded approach, Mr. Myers said.

The accident investigator should be trained in data gathering, problem identification and cause analysis, he added. The investigator also should not "arrive at conclusions prematurely," because an accident can have many causes.

The investigator "needs to be a calm, mature individual (adept at) the delicate art of interviewing" employees and others who were involved in the accident or witnessed it, Mr. Myers said.

By listening carefully and with an attitude of concern, the investigator will "settle them down, allow them to start talking, to clear the air," he said.

Employees may then "gripe about conditions" they believe were the root of the accident and "you will uncover facts you wouldn't otherwise," Mr. Myers said.

Employees of Holiday Inn Worldwide are given a wallet-sized plastic card with instructions on how to report a workplace accident and inspect the scene promptly, said Thomas Whitlatch, director of loss prevention at the Atlanta-based hotel chain. Supervisors are expected to "investigate, investigate, investigate" immediately, he added.

Holiday Inn also has a 24-hour hot line so that someone is available to take information about an accident and answer questions at all times, Mr. Whitlatch said.

In the future, "our intention is to have information entered into computers at hotels immediately" and transmitted to headquarters, he said.

Mr. Whitlatch suggested that risk managers have a "formal, written procedures manual" for accident response that is tailored to their organizations. Holiday Inn has such a manual, and it is provided in Spanish where appropriate, he said.

Such a manual must be accessible to employees, not locked up in a manager's office at night. It must also be readable and appropriate to the educational level of the employees who need to use it, he said.

Among other things, Holiday Inn's manual instructs employees to do the following when a workplace accident occurs:

- Identify the loss.
- Arrange for immediate medical attention.
- Notify the company's claims department. Holiday Inn is self-insured; employees at insured firms would notify their insurer of a potential claim.
- Refer the employee to an appropriate medical facility, if necessary.
- Conduct an accident investigation.
- Take corrective action to prevent a similar accident.
- Cooperate with company investigators or the insurer.

Last year, Holiday Inn's volume of workers compensation claims dropped 20%, partly as a result of its accident response procedures, Mr. Whitlatch said. This year, the company expects a 30% to 40% reduction, he said.

Holiday Inn also has started a program called "Catch a Close Call," which "has every employee looking for potential risks," he said.

Employees simply fill out a two-part form that details what close call they caught and what

Continued on next page



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Accidents

Continued from previous page

they did about it. Employees who participate in the program can take part in a monthly drawing where they can win $50 to $100 and in a year-end drawing where they can win $500. "That's not a lot of money" to have large numbers of employees out looking for potential safety risks, he said.

Surveillance procedures are also useful in accident investigation, said Univar's Ms. Seabrook.

Attendees saw a videotape of a Univar worker who had been on modified work for an extended period because he was complaining of severe pain to his left shoulder. The videotape showed him pushing his car down his driveway, then pushing a trailer with two snowmobiles on it, and then vigorously jump-starting a snowmobile with his left hand.

"What could have been a prolonged claim was resolved" when the physician saw the videotape. The doctor was "aghast" at the sight of the worker's actions, because she had ordered modified duty after the employee had complained of severe pain.

"It's well worth the money to do surveillance" in certain workers comp claims, Ms. Seabrook asserted. "It has paid off, in my experience."

Mr. Myers coordinated the session, which was moderated by Ms. Seabrook. BI

Trimming comp costs by zeroing in on fraud

Reform laws are helping to ease problems

By JOANNE WOJCIK

NEW ORLEANS—Employers are fighting an uphill battle against workers compensation fraud because so many workers think it's OK to abuse the system, a workers comp fraud expert says.

RIMS REPORT

Payments for injuries not traditionally associated with the workplace, like stress and cumulative trauma disorders, also have contributed to the growth of fraud in the workers comp system, he adds.

But all is not lost.

State lawmakers are passing tough new laws that slap perpetrators with stiff penalties for defrauding the workers comp system, and employers are looking for "red flags" to target potentially fraudulent claims, he says.

"In order to understand what workers comp fraud is all about, we have to understand the problems with the workers comp system that allow the fraud problem to be there," observed Scott V. Oxman, vp at Becher & Carlson Risk Management Inc. in Woodland Hills, Calif.

"As you know, things have definitely gone awry" in the workers comp system, Mr. Oxman said during a session on workers comp fraud at the Risk & Insurance Management Society Inc. conference.

Today, "workers compensation fraud in our country has so many zeros behind it that it's hard to tell exactly how much money is being lost. It's estimated to be between $3 billion and $4.5 billion annually across the country," Mr. Oxman said.

Workers compensation was intended to be a non-litigious system for workers to obtain prompt payment of benefits while recovering from occupational injuries, he noted. Instead, it has evolved into "expensive disputes between employees and employers over the cause and nature of illness, large awards for permanent disability and vocational rehabilitation."

Workers' attitudes toward the system aren't helping, he added.

Approximately one in 12 U.S.

Continued on next page



Continued from previous page
adults thinks it's OK to file a workers comp claim for an injury that occurs at home, and 6% say it's OK to file a comp claim for a home injury if their employer doesn't provide health insurance, according to Mr. Oxman.

What's worse, he said, is that one in 20 U.S. adults thinks it's OK to cooperate with lawyers, doctors and chiropractors who file false or exaggerated claims.

Furthermore, 5% of the U.S. population also think it's perfectly acceptable to stay home and receive benefits even after recovering from a work-related illness or injury, Mr. Oxman said.

What these statistics show is a that significant percentage of U.S. workers have no idea that defrauding the workers compensation system is costing them their jobs and preventing legitimately injured workers from receiving the benefits they deserve, he asserted.

Contributing to the problem is the fact that workers compensation has been expanded to pay benefits to workers suffering illnesses and injuries not traditionally associated with the workplace, Mr. Oxman added.

"Our comp system pays for your family's problems," he said, by compensating workers for many stress-induced illnesses like headaches and back pain.

Fortunately for employers in some states, like California and Oregon, state legislatures have passed tough new anti-fraud laws.

California, which has the dubious distinction of being the workers comp fraud capital of the United States, adopted one of the nation's most stringent anti-work comp fraud packages earlier this year. Among other things, the legislation disallows most post-termination stress claims and prohibits physicians and vocational rehabilitation counselors from referring injured workers to facilities in which the practitioner has a financial interest.

Already California's new legislation has given a boost to the special investigations units created by insurers, third-party administrators and self-insured employers, said F. Clarke Walker, chief of the California Insurance Department's fraud division in Martinez.

Reports of suspected fraudulent workers comp claims have grown to 24,000 in 1993 from just 5,500 in 1990, he said.

And funding has been provided to employ 150 investigators in the Insurance Department's fraud division in 1994, up from just 29 in 1990.

A similar anti-fraud bill passed by the Oregon Legislature in 1990 has increased the percentage of rejected claims to 29% in 1993 from 12% in the late 1980s, according to Mr. Oxman.

But instead of waiting for insurance company and insurance department SIUs to solve the fraud problem for them, employers should take the initiative to seek out potentially bogus claims themselves, Mr. Oxman urged.

For example, employers should watch for certain "red flags" such as extensive or prolonged treatment; subjective and unverifiable injuries like headaches, nausea and stress; and "boilerplate" reports that resemble form letters.

Employers also can preserve evidence, quickly conduct field investigations and obtain witnesses when injuries occur, as well as establish layoff planning programs.

Most of all, employers can "rehumanize" the workplace, Mr. Oxman suggested.

Much of the discontent among workers—which in some cases leads to abuse of the workers comp system—can be traced to the increased use of automation in the workplace, he explained.

Therefore, Mr. Oxman said, employees should allow breaks during the workday to eliminate redundancy and repetition; conduct job hazard analyses to find out what is causing illness and injuries; set specific safety goals; reward improvement and penalize thoughtless managers; and communicate with and educate employees.

"I think if we all pay more attention to one another, rehumanize the workplace, your workers compensation costs will drop," Mr. Oxman concluded.

Todd Allen, risk manager for TPI Restaurants Inc. of Memphis, moderated the session, which was coordinated by Mr. Oxman. BI

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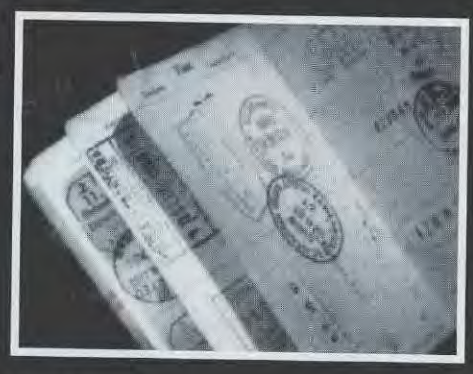
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Risk managers can play big role in mergers

Risk management information may help work out details

By RODD ZOLKOS

NEW ORLEANS—The risk manager can play a critical role in mergers and acquisitions, bringing information to the table that facilitates the transaction and ensuring that appropriate factors are considered in structuring the deal's financial aspects.

RIMS REPORT

The issues a risk manager raises when examining a takeover target aren't likely to derail the transaction, but often should be brought to the table when working out the fine points of an acquisition.

"I don't know how many times a 12-year-old claim has popped up and it's a $50,000 carnal tunnel claim that nobody considered accruing to this transaction," said Cyrus P. Quadland, senior vp at Marsh & McLennan Inc. in New York.

Mr. Quadland spoke as part of a panel on the politics of mergers and acquisitions at the Risk & Insurance Management Society Inc. conference.

The panel suggested that in dealing with a merger, a risk manager should raise insurance and risk issues, offer solutions to those issues that fit in with the overall merger or acquisition strategy, and implement the best possible risk management and insurance program after the deal is completed.

While a merger can present considerable challenges for a risk manager, it also offers some opportunities, another panel participant suggested.

According to James S. Cole, director of finance in the merchant banking division of Morgan Stanley Capital Partners Inc. in New York, a risk manager has a chance to add value to the transaction, while enhancing his own reputation as a "can do" team player. A merger also can present a risk manager with some interesting new job situations.

Confronted by a merger situation, a risk manager needs to "keep the panic in perspective," Mr. Quadland said. At the outset, principals to the deal typically plan to close it as soon as possible, but "it's the rare transaction that actually goes on that short-fuse time frame," he said.

Because the timetables of mergers and acquisitions tend to be flexible, a risk manager needs to stay informed of the current schedule.

It's also important that the risk manager "manage the expectations" of the people he's dealing with, and define and negotiate those expectations, Mr. Quadland said. Confronted by a demand for a 300-page report on the takeover target's risk and claim profile "by next Wednesday," the risk manager should negotiate on the basis of what information the dealmakers really need.

While saying "the days of the mega-unfriendly transaction have sort of passed," Mr. Quadland noted that the "friendliness" of an acquisition is relative. When acquisition details start posing new job demands on target company employees, a deal quickly can become unfriendly.

A risk manager having problems obtaining information from his counterpart at the target company should notify key players in the transaction immediately that he isn't receiving the cooperation he needs, Mr. Quadland said.

As risk and claim information arises in scrutinizing a merger or acquisition, a risk manager should bring it to the table quickly, not waiting for every detail to be uncovered.

"When you see an issue, raise it," said Michael Rosenberg, manager of international insurance for PepsiCo Inc. in Purchase, N.Y., another panel participant.

Despite a natural bias toward his or her own company's approach, a risk manager should provide an objective evaluation of the existing programs and risk exposures of the other company involved in the deal, he said.

Mr. Rosenberg said he's "learned a lot" about insurance from the companies PepsiCo has acquired.

That willingness to learn from the acquired entity's program can help a risk manager handle the politics between his company and the acquired firm, Mr. Rosenberg said. To that end, a risk manager also should respect the acquired company's existing relationships, make changes that add value and, in moving toward global programs, follow through on the changes with local management.

According to Mr. Rosenberg, a risk manager involved in an acquisition can heighten his or her importance within the organization by getting to the key decision makers, explaining the risk manager's role in terms that are easily understood and listing accomplishments in areas like risk financing, claim management, coverage, costs and loss prevention.

The risk manager also needs to understand the politics within his own company during an acquisition, he said, recognizing that all the various disciplines in the organization—accounting, finance, marketing and operations among them—want their point of view considered.

An insurance broker, too, can play a significant role in a merger or acquisition, Mr. Quadland said. A broker can assist in presenting information on the target's history, losses, risk exposures and any pending litigation.

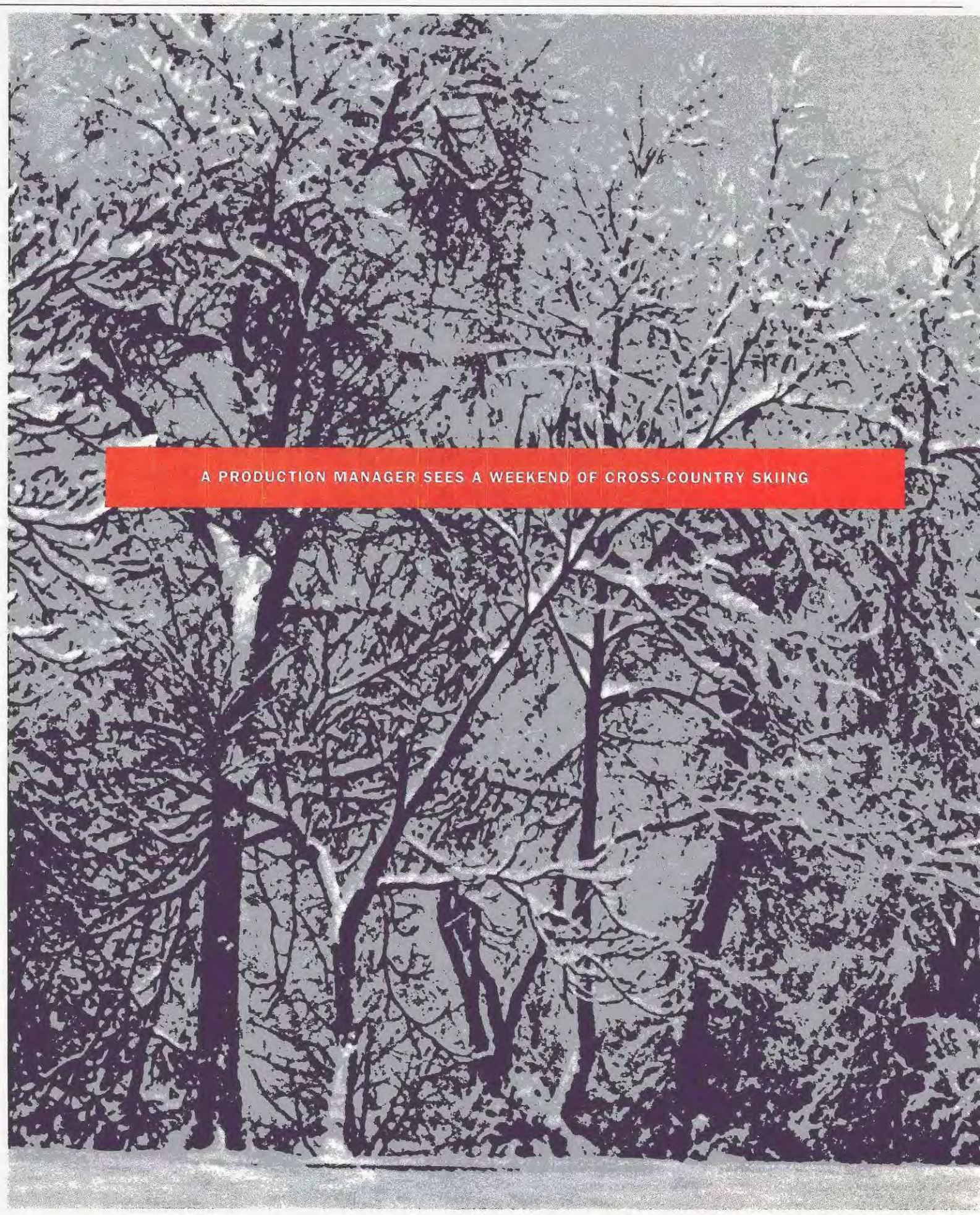
A broker also can uncover key issues, both past and present, including identifying dangerous management procedures, raising historical issues like safety violations or claims, and spotting incorrect property valuations. And after raising the issues, the broker can help in developing solutions.

"We're not in there for a one-shot deal or to make a fee; we're in there for a long-term favorable relationship," Mr. Quadland said.

Mr. Rosenberg added that it's important for a risk manager to meet with the acquired organization's brokers to explain the acquiring company's objectives. The risk manager should be direct and clear on those brokers' roles and opportunities in the newly merged arrangement.

With his or her own brokers, once the merger or acquisition has

Continued on next page



Continued from previous page
closed, a risk manager should stress that they must earn the new business, Mr. Rosenberg pointed out.

While there's often a great deal of secrecy surrounding impending mergers or acquisitions, a risk manager can recognize some unmistakable signs that something's brewing, according to Morgan Stanley's Mr. Cole.

"You do get some interesting signals as a risk manager," he said. "Somebody has to come to you and ask questions that in the normal course of events you don't get asked.

"If someone walks into your office and says, 'Do we have directors and officers insurance?' you know something's going on," he observed.

Mr. Quadland coordinated the session, which was moderated by Mr. Rosenberg. BI

Handling claims in-house not for everyone

TPAs and outside attorneys offer their own advantages

By SARA MARLEY

NEW ORLEANS—Risk managers should consider carefully how claims are handled, whether in-house or by a third-party administrator.

RIMS REPORT

"The general trend is for companies to downsize and cut back," said Brian P. McPartland, division vp for Arthur J. Gallagher & Co. in Miami. However, risk managers should not be tempted into believing that bringing claims in-house will result in automatic savings.

Using an in-house attorney may also appear cost-effective at first, but a corporate general counsel may lack the expertise to litigate insurance claims, Mr. McPartland said during a session at the Risk & Insurance Management Society Inc. conference.

Even after 17 years of self-administration, "it isn't easy," said Ronald Torre, risk manager for the city of Fort Lauderdale, Fla.

Despite the city's history of self-administering claims, it may not be cost-effective to continue to handle workers compensation claims in-house, Mr. Torre said.

The city's workers comp claims have remained steady at about 500 claims annually out of an employee population of 2,250, but budgeted costs are up 50% over 1992-1993. Mr. Torre estimates that the city, which also self-insures its workers comp risks, will pay out more than $3 million in 1993-1994.

To handle the increase, he must double his workers comp claims staff of one adjuster and two clerical workers at an annual cost of about $60,000 per adjuster and $35,000 per clerical worker, including benefits.

So, next year the city may hire a TPA for workers comp claims but continue to handle the remainder of its claims.

"For automobile and general liability, I think we can do a much better job in-house," Mr. Torre said. "We can respond immediately to all claims. There is no lag time."

Fort Lauderdale receives about 240 automobile liability claims per year, about 265 general liability and about 60 police professional liability claims. Two adjusters and one clerical worker handle those claims.

Budgeted costs for auto claims are up 8.5% to $668,000 in 1993-1994. Police professional claims costs are up 5% to $670,000, and costs for general liability are down 22% to $543,000.

When an auto accident has occurred or a police officer or firefighter has been injured in the line of duty, Fort Lauderdale adjusters sometimes arrive at the hospital before the injured employee, Mr. Torre said.

"My employees know the ropes. They know who to ask and what to ask for," he added.

Training TPA adjusters on the specifics of an account is time-consuming and costly. Some TPAs have high turnover because their adjusters are hired by clients to be in-house adjusters, Mr. Torre said.

Another pitfall of using a TPA is that the most experienced adjusters often are only assigned to catastrophic claims, Mr. Torre said. Day-to-day occurrences may be handled by much less experienced staff.

But, employers should not enter into self-administration lightly, Mr. Torre said. For example, even though Fort Lauderdale receives only about 500 workers comp claims per year, the department mails out nearly that many checks every month to workers injured in years past.

"Little cases remain with you," he said. "Someone gets the same amount every two weeks. It adds up year to year."

If Mr. Torre opts to hire a TPA for workers comp claims, he should not have to give up control of all his claims.

If clients begin their own investigations, their costs can be reimbursed, Gallagher's Mr. McPartland said.

"They're at the scene, they can take pictures and statements," he said. "We can adjust fees for the amount of the investigation before the TPA comes in."

Even when a TPA administers all claims, the risk manager should still call the shots.

"The risk manager is the liaison and key link with the TPA," Mr. McPartland said. "The risk manager is the quarterback."

Once a TPA is selected, Mr. McPartland recommends working closely with the provider and the adjusters on the account.

"You need a TPA that is up-to-date on the law," he said. Mr. McPartland also advises against choosing a TPA based on price alone.

Once an administrator is chosen, risk managers should not be afraid to audit their TPAs, though it is often viewed as a negative by a TPA.

"It's not a question of if I do it; it's when I do it," Mr. McPartland said. "It keeps them on their toes.

"Get tough with your TPA. Tell them what you demand and what you want. There is a lot of competition. You are the boss."

One advantage TPAs have over in-house adjusters is that employee adjusters are difficult to fire if they are not working out, given today's litigious employment environment, Mr. McPartland noted.

Finally, risk managers should learn to spot TPA problems, like numerous penalties, increasing reserves or excessive attorney involvement, he said. BI



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Special events require planning, experts say

Don't overlook any details

By MICHAEL SCHACHNER

NEW ORLEANS—The motto of special event risk management should be to plan for the worst, hope for the best and expect something in between, according to two risk managers with plenty of experience in planning special events.

RIMS REPORT

"The nature of special events is that they're constantly changing," said David Mair, risk manager with the United States Olympic Committee in Colorado Springs, Colo.

As the risk manager for the USOC, Mr. Mair finds himself regularly moving from one special event to another. He has found that many things that risk managers wish were true are not.

To begin with, low-bid insurers don't do everything they promise, major entertainers rarely have simple requests or contracts that hold the sponsoring party harmless, and special-event audiences consume more than moderate amounts of alcohol. Worst of all, special event managers seem to never confer with the risk manager before making commitments, Mr. Mair said at a session during the Risk & Insurance Management Society Inc. conference.

"But if everything goes well, you stand a good chance of someone telling your CEO how great the event was, and pretty soon the event becomes an annual affair," said Gregory Hidden, director of risk and insurance with American General Hospitality Inc., a hotel management company based in Dallas. Mr. Hidden is also the risk manager for USA Hockey, which oversees many amateur hockey associations across America, including the U.S. Olympic team.

Messrs. Mair and Hidden said solid special event risk management should occur in three distinct phases: pre-event planning, active risk management during the event itself, and post-event summarization and documentation.

Prior to an event, the risk manager should begin his or her work by surveying the facility or venue for the event.

The risks associated with indoor and outdoor sites are quite different, Mr. Mair said.

Several features must be considered in the site evaluation:

- Entrances and exits should be clearly marked and there should be exits that are accessible to disabled persons.
- Floors, walkways and surface conditions should not pose any abnormal risks.
- The stage must be structurally sound.
- Stairs, ramps, seating and spectator areas need to be examined for safety.

Lighting and electrical supply sources also should be tested.

For open areas like a park or fairground, Mr. Mair urged risk managers to employ fencing, barriers and markers to keep people within a designated area. "You don't want somebody's 5-year-old wandering away from the company picnic and showing up at the Wal-Mart next door."

Pre-event planning is especially important if there is going to be any audience participation or if elderly people will be in attendance.

"The single highest risk event we have is a Lawrence Welk-type concert," said Mr. Mair. "Old people are brittle and they break. If some grandmother can't see a railing because the lighting isn't any good and she falls and breaks something, you can almost bet that her grandson lawyer will sue the snot out of you even though it may not be your fault."

If the audience will actively participate in the event, be it in a

Continued on page 32

E&S Casualty: Challenge and Opportunity

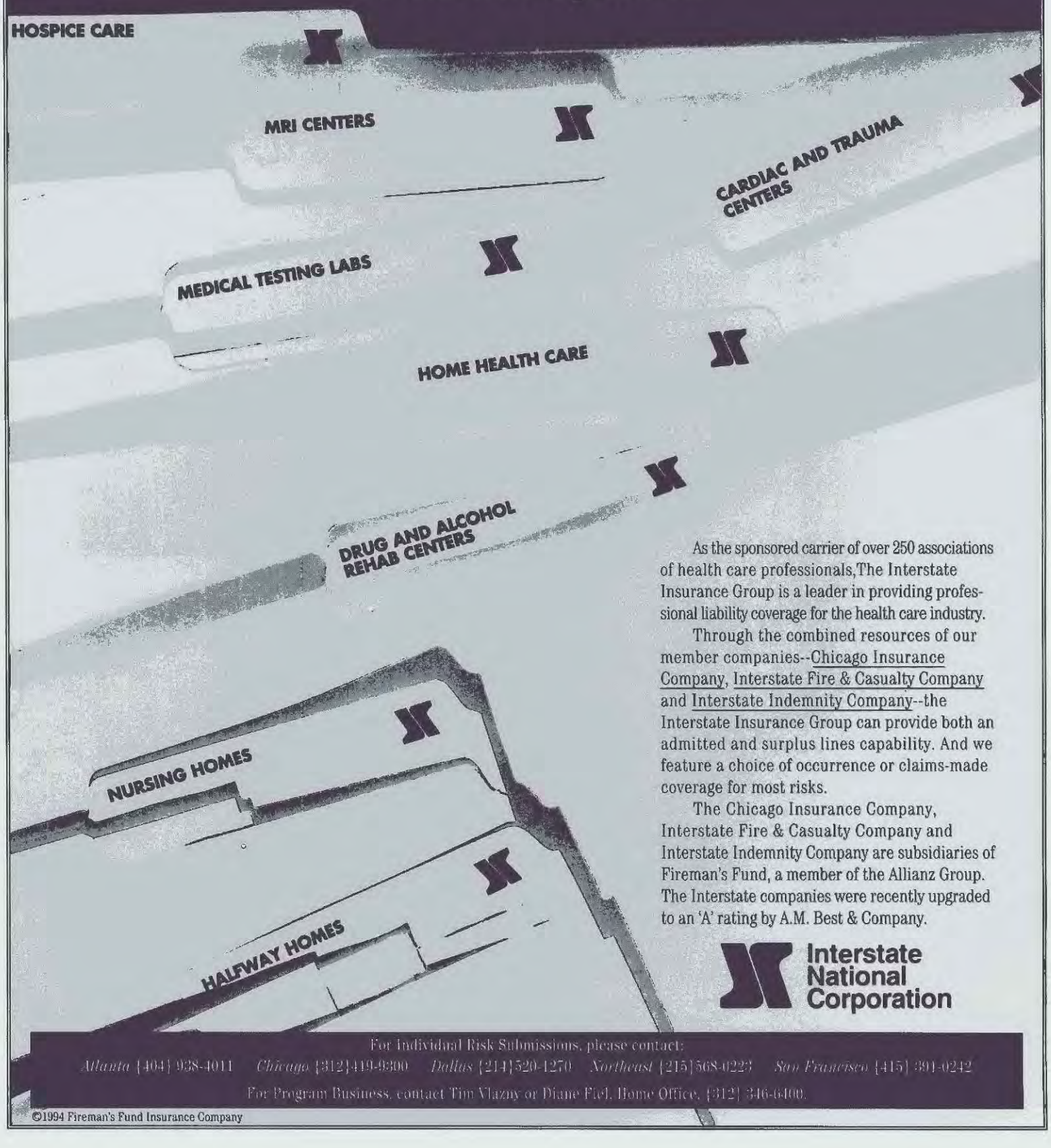
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Special

Continued from page 29

company softball game or a big parade, risk managers must do everything within their power to prevent liability.

For a sporting event or a corporate team-building event like whitewater rafting or rock climbing, something as simple as a release from liability might do the trick, Mr. Hidden pointed out.

Obtaining properly worded contracts from all vendors and insurers is another element of pre-event planning, the speakers said.

"I highly recommend working with your legal people and CFO to get into the contract review process, and not just the insurance section, which is what they'll want you to look at," said Mr. Mair. "I want to see what I'm responsible for and what I'm indemnified for. This way I can negotiate a balanced contract with the arena risk manager, if necessary."

In terms of contracting with caterers, subcontractors and other vendors, both speakers insisted that these suppliers be fully insured.

"And make sure you see the policies, not just a certificate," said Mr. Mair. "A lot will say they have coverage when they really don't."

Another key element of pre-event planning is making sure all support services are in place for the event itself. Those support services include: security and risk management communications; medical services, if needed; a lost and found area; parking; and traffic control.

"First off, I'd say invest in cellular phones, but know where a 911 call will go and where you are. For traffic and parking, you want as many exits to be open as possible at the end, but you want control," Mr. Mair commented.

Once the event begins, the risk manager's job doesn't end. "If you're watching too much of the event, you're not really doing your job," said Mr. Hidden.

During the event, risk management staff should be walking around to identify trouble areas, make sure spills are cleaned up promptly and to simply keep a general eye on as much as possible.

Once the event concludes, the risk manager should "vigilantly" oversee the exit process, especially cars leaving the parking lot. If mass transportation is involved, the risk manager should know where the pickup points are.

Lastly, the risk manager should conduct a final inspection of the grounds and, if possible, videotape or photograph the site as a defense against any damages that may later be sought by the venue owner.

Written reports and customer surveys can also be helpful in preparing a final report, they said.

"If a picture is worth a thousand words, then a videotape is worth many thousand," Mr. Hidden said.

The session was coordinated by Mr. Mair. BI



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The cost of health reforms

Coverage denials may lead to claims

By JOANNE WOJCIK

NEW ORLEANS—Employers that use managed care techniques to cut health care costs increase their susceptibility to negligence suits filed by benefit plan participants, managed care liability experts say.

RIMS Reesponsible

Although the federal Employee Retirement Income Security Act so far has shielded employers from such "vicarious liability" claims, health care reform may change all that, the experts warn.

Fortunately, insurers are beginning to offer coverage to employers to pay for their defense should lawsuits allege that the employers are responsible for poor treatment decisions.

Meanwhile, employers that contract with utilization review providers should make sure that any coverage denials issued under their benefit plans "emphasize the distinction between denial of coverage and the treatment decision," advises Edward Ressler, manager of corporate risk management for Aetna Life & Casualty Co. in Hartford, Conn.

Indeed, the employee benefit handbook should state that "just because a doctor orders a specific treatment doesn't mean it will be covered," agreed Maureen Corcoran, a partner in the San Francisco-based law firm Pillsbury, Madison & Sutro specializing in managed care liability.

With the increasing use of managed care to curb health care inflation, employers are becoming more closely tied to treatment decisions, agreed a group of managed care liability experts speaking at a session during the Risk & Insurance Management Society Inc. conference.

While most managed care liability suits so far have been filed against insurers, UR firms, health maintenance organizations and their affiliated providers, "some day in the not-too-distant future, the employer will be named," Ms. Corcoran predicted.

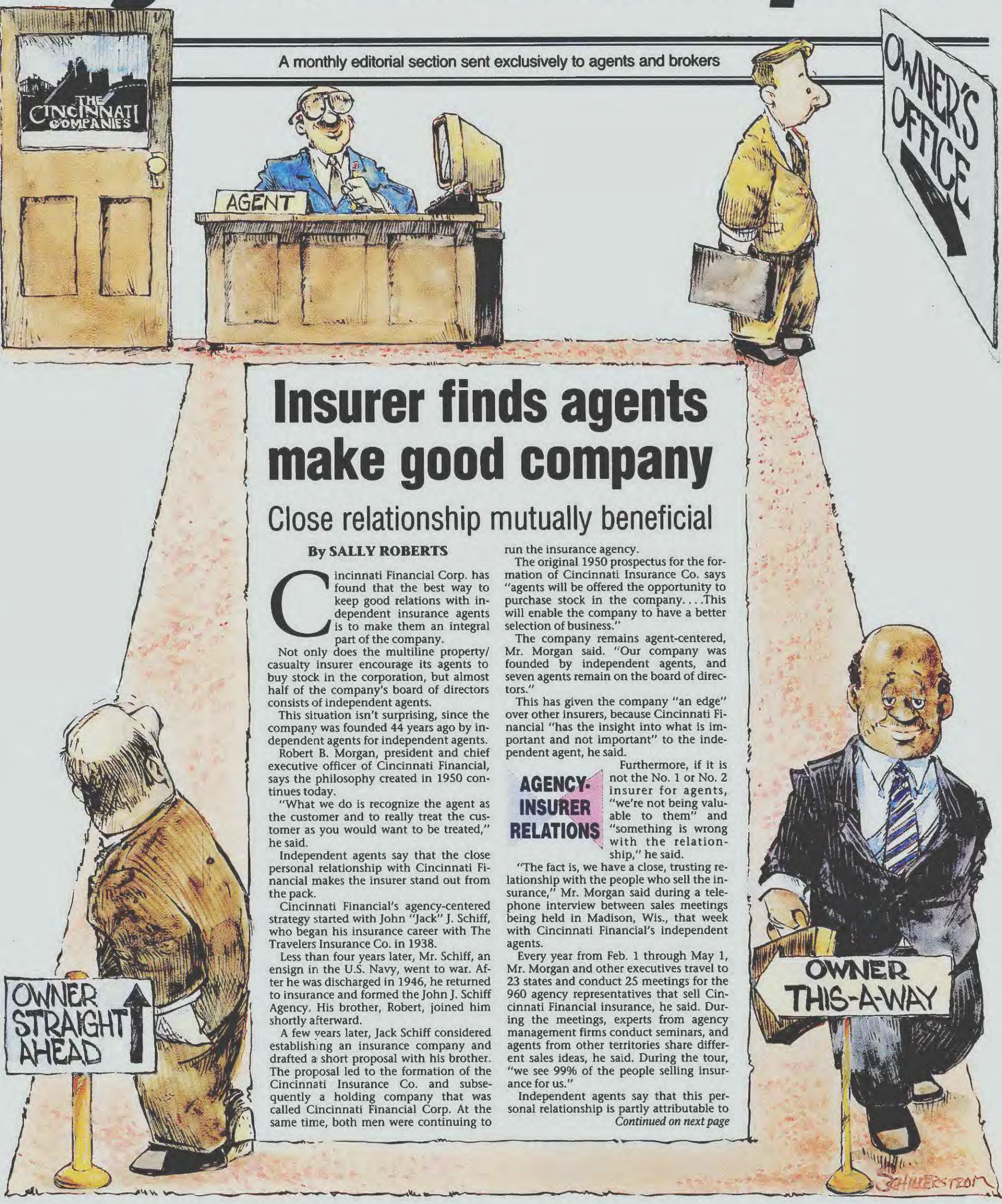
At least two recent court cases involving the UR decisions of health plans can apply equally to employers, she said.

In 1992, a California appellate court ruled in *Wilson vs. Blue Cross* that insurers conducting UR might be liable under certain circumstances for the death or harm

Continued on next page

Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers



Insurer finds agents make good company

Close relationship mutually beneficial

By SALLY ROBERTS

Cincinnati Financial Corp. has found that the best way to keep good relations with independent insurance agents is to make them an integral part of the company.

Not only does the multiline property/casualty insurer encourage its agents to buy stock in the corporation, but almost half of the company's board of directors consists of independent agents.

This situation isn't surprising, since the company was founded 44 years ago by independent agents for independent agents.

Robert B. Morgan, president and chief executive officer of Cincinnati Financial, says the philosophy created in 1950 continues today.

"What we do is recognize the agent as the customer and to really treat the customer as you would want to be treated," he said.

Independent agents say that the close personal relationship with Cincinnati Financial makes the insurer stand out from the pack.

Cincinnati Financial's agency-centered strategy started with John "Jack" J. Schiff, who began his insurance career with The Travelers Insurance Co. in 1938.

Less than four years later, Mr. Schiff, an ensign in the U.S. Navy, went to war. After he was discharged in 1946, he returned to insurance and formed the John J. Schiff Agency. His brother, Robert, joined him shortly afterward.

A few years later, Jack Schiff considered establishing an insurance company and drafted a short proposal with his brother. The proposal led to the formation of the Cincinnati Insurance Co. and subsequently a holding company that was called Cincinnati Financial Corp. At the same time, both men were continuing to run the insurance agency.

The original 1950 prospectus for the formation of Cincinnati Insurance Co. says "agents will be offered the opportunity to purchase stock in the company. . . .This will enable the company to have a better selection of business."

The company remains agent-centered, Mr. Morgan said. "Our company was founded by independent agents, and seven agents remain on the board of directors."

This has given the company "an edge" over other insurers, because Cincinnati Financial "has the insight into what is important and not important" to the independent agent, he said.

AGENCY-INSURER RELATIONS

Furthermore, if it is not the No. 1 or No. 2 insurer for agents, "we're not being valuable to them" and "something is wrong with the relationship," he said.

"The fact is, we have a close, trusting relationship with the people who sell the insurance," Mr. Morgan said during a telephone interview between sales meetings being held in Madison, Wis., that week with Cincinnati Financial's independent agents.

Every year from Feb. 1 through May 1, Mr. Morgan and other executives travel to 23 states and conduct 25 meetings for the 960 agency representatives that sell Cincinnati Financial insurance, he said. During the meetings, experts from agency management firms conduct seminars, and agents from other territories share different sales ideas, he said. During the tour, "we see 99% of the people selling insurance for us."

Independent agents say that this personal relationship is partly attributable to

Continued on next page

Cincinnati

Continued from previous page
the insurer's internal structure.

Cincinnati Financial and its four wholly owned subsidiaries have no branch offices. Instead, they operate from one office in Cincinnati, Mr. Morgan explained. Field managers and claims representatives work out of their homes and have complete underwriting authority with their agents, he said.

Mr. Morgan contends that the agents are in the best position to know their clients and to evaluate their risks. He added that the relationship is built entirely on trust. "We don't want to do business with agents we don't trust."

The insurer is also able to control expenses by having no branch offices, he added. For agents, this means more money can be allocated to contingent commissions.

Not only does the structure allow for high rewards for good performance, "it makes life easier" for the independent agent, says Larry R. Webb, treasurer of Webb Insurance Agency Inc. in Lima, Ohio, and a 15-year director of Cincinnati Financial.

Unlike most insurers, Cincinnati Financial field managers go to individual agencies and meet face-to-face with agents. The field managers can quote business without first having to seek authorization from the company, Mr. Webb explained.

This underwriting authority eliminates the extra time and effort spent over the phone and through the mail and fax machines, he said.

By encouraging independent agents to buy its stock, Cincinnati Financial enhances the personal relationship it maintains with the agents because both the insurer and the agent have a stake in the company's profitability.

In addition, Cincinnati Financial independent agents know that they have a direct line to the company president at any time, said Alan R. Weiler, president and CEO of Archer-Meed-Weiler Agency Inc. in Columbus, Ohio, and a director of Cincinnati Financial for the past two years.

The personal relationship is also enhanced because both the insurer and the agent have a stake in the company's profitability.

While it is not mandatory to own stock in the company, "we encourage it," Mr. Morgan said. This benefits the company because agents are less likely to sell the stock if they are contributing to its profits, he explained.

Mr. Morgan added that agents also tend to work harder to bring in the business if they are sharing in the profits.

The hard work is exemplified in the fact that the independent agencies averaged $1.2 million per agency in premiums placed with Cincinnati Financial subsidiaries in 1993, he said.

For shareholders, the hard work resulted in a 23.9% increase in net earnings per share to $4.20 in 1993 from $3.39 in 1992. Dividends also increased to $1.12 per share in 1993 from $1.03 in 1992.

It is this close, personal relationship that caught the eye of William Gassie, vp and manager of Gassie Insurance Agency Inc. in Port Allen, La., who in 1992 decided to form his own insurance company, emulating Cincinnati Financial.

After Hurricane Andrew cut a swath of destruction through southern Florida and parts of Louisiana in 1992, Mr. Gassie's insurance agency lost 10 of its 12 admitted insurers. This prompted the formation of United Agents Insurance Co. in Baton Rouge, La. (*A/BT*, Dec. 6, 1993).

Like Cincinnati Financial, Mr. Gassie sought independent agents for ownership in the insurance company.

Although United Agents is still seeking additional capital, the company has 86 independent agencies that have each bought at least $15,000 worth of stock.

"The fact that agents own part of the company is reason enough for each party to treat each other with respect," Mr. Gassie said. Agents treat Cincinnati Financial with respect by bringing in good business, and the insurer treats agents with respect because they own part of the company, he said.

In addition, Cincinnati Financial works with "consistency" and "common sense." For independent agents, when Cincinnati says it, "you can go to the bank with it," he said.

It was this sort of work ethic that first attracted Mr. Weiler of Archer-Meek-Weiler Agency to Cincinnati Financial.

"Cincinnati has built a very unique and personal relationship with their agents," he said. This was exemplified back in the mid-1980s when it "was a real catastrophic marketplace." Companies raised their rates by four or five-fold, Mr. Weiler recalled.

Cincinnati, on the other hand, honored multiyear rate agreements and did not raise rates, he said. "If it had not been for Cincinnati, we would have had problems."

Universal Bonding Insurance Co. in Lyndhurst, N.J. is among the handful of other insurers formed by agents and still operating that way. BI

Errors & Omissions

John T. Lockton III, chairman and CEO of The Lockton Cos., in explaining the Lockton cost-plus system for producers, did not refer to Lockton producers as the best-paid in the industry (*AB/T*, April 4). What he said was: "It's a great deal for our non-producers as well. Without their marketing expertise and passion for customer service, it would be impossible for our producers to have built and maintained such substantial books of business. Lockton executive committees know who butters their bread. Lockton associates (non-producers) are among the best-paid and, more importantly, the most appreciated in the industry."

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Agent/Broker Topics

No strict checklist for agent selection

Numbers are important, but insurers say there's much more to it

By LOUISE KERTESZ

What are insurers looking for in an agent or broker?

With many insurers actually cutting back on agency contracts, it's a sensitive question, so sensitive that officials at several leading property/casualty insurance companies wouldn't answer it.

AGENCY-INSURER RELATIONS

"No person here can find a positive spin on this," said one insurance company spokesman wearily.

Other insurers, though, had plenty to say about the producers they want to enlist in their sales force. Although there are some common denominators among qualities sought by insurers, each company has a unique way of viewing its selection standards.

For example, as CIGNA Property & Casualty Insurance Co. changes its approach to the insurance business—shifting from a multiline generalist to more specialized business—so is it changing its approach to agents and brokers.

"We have re-examined our whole distribution strategy (and). . .are beginning to look more and more to producers who are not generalists but in fact are more specialized in terms of their own expertise," said Frank McNamee, senior vp of marketing and national sales management at the CIGNA Corp. unit in Philadelphia. For CIGNA, that means providing certain types of coverage in certain geographical areas and not in others, he explained.

"The principle is profitability. We're of no use to our customers or producers if we're not making money," a spokesman added.

The company is also trying to "improve the balance" among agents, large brokers and other distribution channels, Mr. McNamee said.

Once the company finds an agency that has a strategy compatible with its own, the insurer considers factors like how long the agency has been in business and the agency's reputation within a market.

"We're trying to make an assessment as to whether a relationship can exist," said Mr. McNamee. "It's judgmental. There are no hard and fast rules."

Discussions, though, can center on the historical performance of an agency's book of business.

For years, CIGNA had very specific volume criteria it looked for in an agency. Not anymore.

"Growth for growth purposes is no longer a criterion. . .the whole notion of. . .volume for that purpose has really been de-emphasized. That's consistent with a specialist company. We look at the company, look at the geographics, look at the distribution sources and ask how can we do it consistently over time," Mr. McNamee said.

"We're moving more toward developing a relationship with producers we have compatibility with to grow with them. For those agents that we can find compatibility with, there's a great opportunity for them as well as for us," he said.

Compatibility is also a chief selection standard at Harleysville Mutual Insurance Co., which owns a network of regional companies.

"Does the agency have the same interests? Is it going in the same direction (as we are)?" asks Angelo Tartaro, assistant vp of marketing for the insurer in Harleysville, Pa. "We look at product mix, pricing philosophy, coverages sold, commissioning schedules, acceptable loss ratios."

"Compatibility—that's the cornerstone of making our agency appointments. Too often, companies and agencies marry for the wrong reasons," he asserted.

Once the marriage between an agency and insurer is made, "How do you keep that relationship fresh? You do that through mutual business planning, identifying the features that each of you have in common each year," he said.

"If you're going after widget manufacturers and I have a widget manufacturing program, I want a significant piece of that. If you don't go after widget manufacturers, I shouldn't close you down and out. I should still be providing a market for you for other lines of products," said Mr. Tartaro.

Each Harleysville subsidiary and branch office sets its own criteria for premium volume expected of agencies.

"We're looking for people who through the years have demonstrated expertise and success in penetrating their market, and they pay their bills on time. A large company may look down on this. They're looking for the $1 million account. But this is our bread and butter," said Mr. Tartaro.

Long Grove, Ill.-based Kemper National Insurance Cos. says it tries to see behind the numbers.

"Obviously, loss ratio, premium volume and sound financials are all important, but we start with a different premise," said Bruce Fritz, vp of marketing for commercial lines.

"Our basic philosophy is if you're dealing with the top 25% of the agency plant, in terms of reputation, professionalism and how they conduct and manage their business, this is a big plus and probably worth a couple of points on the loss ratio," said Mr. Fritz. Kemper National has about 750 agents.

Professionalism is based on an agent's reputation in the community. "In talking with agencies and other agents, it's pretty easy to determine who has a good reputation, how well-managed their agency is," Mr. Fritz said.

"We want them to have a per-

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petuation plan—that's a key" to the long-term relationship sought by Kemper with its agents, he added.

"We are a firm believer in a very, very close relationship. If we run into a loss ratio problem, our solution is not to terminate (the agent) but to work on a redevelopment plan. . .to find out what the problems are and work with them," Mr. Fritz said.

"We think we're dealing with the better agencies within a community, and we feel that way we can get the premium volume we need without having an agent in every corner of the street. That way, the agent has a protected market."

Multiline giant ITT Hartford Group Inc., which does business with 6,000 independent agents and brokers, breaks the commercial market into three segments: small accounts, which generate $15,000 or less in premium; medium-sized, $15,000 to $300,000 in premium; and large, $300,000 to $1.5 million in premium.

"We like to look at agents as being capable of giving us a reasonably good flow of business in one or more of those segments," said Stephen Witt, vp of commercial sales in Hartford, Conn. "If an agency is interested in and producing business in all three of those areas, that's wonderful."

But Hartford will also appoint agencies that concentrate in only one market segment. That's why its agency force is so large.

Hartford requires "a financially stable agent, an agent representing a good degree of professionalism and expertise in the business and access to the business we're an underwriter for," Mr. Witt said.

Professionalism "is not something you can define," he said."They've been successful in the business, have a good technical understanding, manage their shops well, are customer focused and deal with their companies in a responsible way, from providing full information to timely payment."

Hartford wants agents "that themselves are interested in a long-term, durable business relationship and will over a period of time work with us so that we can be if not their No. 1 company, at least their second or third," though that ranking can be lower for larger agencies, he said.

SAFECO Insurance Co. has no specific guidelines for agencies.

"We're interested in a track record of success that could be demonstrated in an existing growth plan that they are executing," said Nancy Carlson, marketing director for the Seattle-based insurer. "That's not to say that we won't look at brand-new startup agencies if we feel there are some factors that point toward that success.

"We're pretty flexible in terms of what we're looking for in an agency. We spend quite a bit of time getting to know (prospective agents). If we feel we can develop a partnership for the long term, then we're interested."

Growth is important to the company, and the lack of growth objectives "might be a red flag for us," she said. "We're interested in new business development and we want the agency to have those objectives.

"Sustained unprofitability is probably an important discriminating factor, and again recognizing that. . .we look at the entire picture of the agency, not just one singular issue. If there were other things that were real positive, then we could discuss that. . .we'd want to talk. We are very interested in developing good, profitable agencies, so we don't dismiss them out of hand." BI

Agents also ponder the tough question about insurer criteria

What do insurers look for in agencies?

It's a question agents themselves often ask.

When the National Assn. of Professional Insurance Agents last asked the question in a 1991 report, the answer was that, first and foremost, insurance companies look for good loss ratios.

AGENCY-INSURER RELATIONS

But the answer is not quite that simple, said Patricia Borowski, PIA senior vp of government and industry affairs.

Companies "change their minds" about the importance of loss ratios and are individualistic in their willingness to accept higher ratios in competitive markets, Ms. Borowski said.

At No. 2 on the insurer priorities list was volume.

"Bigger is now perceived as being better, and if the companies don't think you have or can fairly quickly produce a book in the six and seven figures, you're going to have a hard time getting a general appointment," said Stephen Young, staff counsel for the Independent Insurance Agents & Brokers of California in Sacramento.

Other criteria identified by the PIA were professionalism, financial stability, automation, underwriting procedures, internal business strategy and sales programs.

Insurer executives interviewed in recent weeks agreed that automation was desirable in an agency. However, they added that they take into consideration an agent's willingness or plans to automate rather than requiring that all the technology already be in place.

Another element insurance companies look for is perpetuation plans, the Independent Insurance Agents of America advises agents.

Turning the tables a bit, both agent groups say agents themselves should have criteria for the insurers they select.

"Agents are a lot more savvy; they are beginning to regain market power," Ms. Borowski said.

"I feel definitely that agents should evaluate the company when they're considering markets," said Rebecca Choi, IIAA's general counsel.

But, being choosy is difficult when markets are shrinking, notably in California, where insurers have left the state or restricted their writing, Mr. Young pointed out. "There is no state in the country where agents have faced greater challenges and adversities in the last five years than California."

—By Louise Kertesz

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Agent/Broker Topics

Taking a closer look at broker compensation

Switching to fees from commissions often better for both broker and customer

By GAVIN SOUTER

Basing brokers' pay on fees rather than commissions can increase flexibility and control, risk managers are being told.

Although commissions are the simplest form of compensation, the less traditional method offers brokerages stable income and a more clearly defined role, said a brokerage executive and two risk managers.

They did urge risk managers to make the transition cautiously, though.

Their session at the recent Risk & Insurance Management Society Inc. convention offers a candid glimpse at how companies decide how to pay brokers and how brokers want to be paid.

Many risk managers prefer commissions simply because it is way they have always paid for broker services. "People believe that this is the way it's always been and therefore it is the only way," said Ellen Pfeiffer, corporate risk and safety manager at Borland International Inc., a Scotts Valley, Calif.-based software company.

Commissions are easier for companies to administer and they conceal the actual cost of individual brokerage services from upper management, so they are less likely to be cut in tough times, Ms. Pfeiffer said.

Commissions can also hide the cost of services from the broker who is providing them if he or she is required to provide extra services during a policy year, she said.

"This can be very significant in a rapidly expanding company with a small premium budget," Ms. Pfeiffer said.

In addition, in a soft market, commissions are usually lower than a negotiated fee for equivalent services, she said.

Brokers too often prefer commissions to fees, said Brian M. Kawamoto, executive vp in the major account brokerage division of Rollins Hudig Hall Co. in San Francisco.

Commissions allow brokers to more easily spread the cost of research and development of insurance products over an entire client portfolio without having to itemize the cost to individual clients, he said.

Commissions also provide an easier way to account for brokerages' costs of winning new business, Mr. Kawamoto said.

"In our business, advice is often given for free and right now there is no specific compensation for that (under commission-based compensation)."

Commissions also focus all parties involved in the process of buying insurance on the total cost of the risk because individual details of service are not itemized on the broker's bill, he said.

But, despite the traditional advantages of commissions, risk managers and brokers both can benefit by changing to a fee-based compensation, Ms. Pfeiffer and Mr. Kawamoto said.

Risk managers benefit from a sense of control over the services they receive, Ms. Pfeiffer said.

Fees also limit brokers' compensation when rates rise for coverage, as rates now are rising for California property risks.

"This is becoming very obvious to me as a risk manager at a high-tech company in California, where since 1990 my premium budget has gone up by 400%. If you pay your broker by commission, his compensation would have gone up 400% also with no increase in the level of service," Ms. Pfeiffer said.

Another benefit of fees is that a company only pays for the services it wants, she said.

Fee-based compensation stabilizes brokers' income, and ensures that in a soft market a broker is not penalized for finding cheaper coverage, said Mr. Kawamoto.

"Since 1986, the buyer has been king, so why, if you have done your job in reducing the cost of risk, should you be punished?" Mr. Kawamoto said.

Fees also remove any conflict of interest in the broker's actions. There is no reason not to find the best value coverage available for the client because there is no risk of compensation being lowered in line with the premium, he said.

Fees also change the role of the broker from a salesperson to a consultant, Mr. Kawamoto said.

"If I'm selling you an idea, there is no reason for you to look at me and say, 'Why are you selling me this idea?' " he said.

When fees are paid instead of commissions, the focus shifts to the services provided, Mr. Kawamoto said.

Although fee-based compensation can be attractive for both brokers and risk managers, the changeover does present some challenges, said Karen J. Miller, risk manager at semiconductor supplier LSI Logic Corp. in Milpitas, Calif.

"Moving to fees requires the risk manager to develop a clear definition of services and deliverables," she said.

When LSI Logic decided to pay its broker a fee, Ms. Miller had to draw up a service agreement that listed all of the brokerage services the company would require over the next 12 months, she said.

"It was quite a challenge to predict what we would want because we could not predict things like what new products we would be launching or whether we would sell off a subsidiary."

Also, it is difficult to predict what loss control services will be required in any given year, she said.

Risk managers also have to take on the responsibility of negotiating the size of the fee paid to the broker and often risk managers have little experience in this type of negotiation, Ms. Miller said. "I have experience negotiating my own compensation, but I have little experience of negotiating someone else's compensation."

When a risk manager changes over to fees, it also means there is one more item that needs management approval, she said.

Whereas commissions are paid automatically, a risk manager's boss will want to see full details of how a fee is calculated before it can be paid, she said.

And, if fees are paid on a time-and-expense rate rather than a flat fee, risk managers may become reluctant to call their brokers, she said. "The clock starts ticking every time you pick up the phone."

As a result, most risk managers opt to pay a flat fee for brokerage services.

There are four basic ways of calculating the fee paid to a broker.

One method is to "back into" the fee based on the level of compensation that was formerly paid through commissions, she said.

To do this, a broker must prepare a five-year history of premiums and commissions and a pro forma premium and commission budget for the coming year. Then, the fee is based on the historical remuneration and adjusted to take into account any changes at the company or any change in the services required from the broker, she said.

Another method of calculation involves bidding and negotiation, in which the broker makes a "best guess" as to what the risk manager is prepared to pay, Ms. Miller said.

However, this method does not provide the risk manager any explanation of how the fee is calculated, she said. "This is the worst approach."

A third method is to base the fee on costs plus profit expectations, she said.

The broker estimates the time that will be spent on the account, and each account team member is assigned an hourly rate, which includes an overhead and profit component, Ms. Miller said.

The fourth method is to base the fee on the services asked for and delivered, said Mr. Kawamoto. Under this method: The required brokerage services are analyzed; a break-even cost is determined; benchmarks for performance are set; and, if the broker provides even better service than the benchmarks set, the broker is rewarded with a bonus, he said. BI

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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 of the ruling, 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 in favor of Johnson, the 8th U.S. Circuit Court of Appeals in St. Paul, Minn., "set a pretty good precedent for the life insurance industry," according to 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.

Because Mr. Warford had acted on the agent's advice, there was no intent to deceive on his part.

The policy covered Howard Warford, a log buyer for Johnson. Mr. Warford died after having 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 ruling.

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 might follow.

Secondly, because Mr. Warford had previously revealed his medical history to the agent and had 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.

•

Johnson International Co. vs. Jackson National Life Insurance Co., 8th U.S. Circuit Court of Appeals; No. 93-1556, No. 93-1598.

Broker covered shows he loved

Industry mourns death of William Kent, agent who specialized in fireworks shows

By LOUISE KERTESZ

Gazing skyward, spectators at fireworks displays seldom see the team of experts working behind the scenes to launch the show.

One of those key people on the ground was broker William Kent III, former vp at ISU Insurance Services in San Francisco, who died April 10 at age 65 after a heart attack.

Mr. Kent was one of a handful of brokers specializing in placing coverage for fireworks displays. At ISU from 1989 until his death, he placed property/casualty insurance for commercial accounts, including a worldwide pyrotechnic liability program.

"He provided that rare combination of a person highly skilled in insurance who was also an expert in fireworks," said John Conkling, executive director of the American Pyrotechnics Assn. in Chestertown, Md.

"You'll find people who know fireworks and people who know insurance, but to find someone with expertise on both sides of the firing line is a rare combination," Mr. Conkling said.

"I think it was actually his love for the whole field of fireworks that got him into the insurance side of it," he said. "He realized that the industry was certainly in need of insurance expertise."

"There's a very small number of brokers able and willing to place insurance in the (fireworks) business. I didn't know anyone who was interested in it like Bill. He was really knowledgeable and he really loved it," agreed Charlie Weeth, publisher of The Journal of Pyrotechnics Arts and Sciences in La Crosse, Wis., and a representative for Mighty Mite Mortars of Green Bay, Wis., among other aerial fireworks firms.

"It's a small, seasonal trade. You have to have the right kind of character (to broker pyrotechnic liability coverage). It's not a business for the meek at heart," Mr. Weeth said.

"You work all year long to prepare for that one week" of fireworks displays, usually around the Fourth of July, he explained.

A broker placing pyrotechnic liability insurance would have fireworks manufacturers, municipalities and private organizations like country clubs as clients, Mr. Conkling said.

It was Bill Kent's love of fireworks that drew him to specialize in pyrotechnic liability, Mr. Weeth said.

"He would go to all of the (fireworks) events, see all the things to be seen and try to understand everything there was to understand. He just loved them. He was like me; when it came to fireworks, his eyes would light up. We called ourselves 'pyros,'" Mr. Weeth said. "He often wrote about the different aspects of liability and how a fireworks company could manage its liability. He didn't just sell insurance. He did very much to educate the trade."

Mr. Weeth, who is on the National Fire Protection Assn. pyrotechnics committee that writes the codes for fireworks displays, said he and Mr. Kent often discussed safety issues.

"He'd often have a suggestion about something he had learned or a problem he had encountered. He wasn't on the committee, but he'd pass something along" to us.

"He was very adamant about the fact that a lot of the problems (in managing liability) didn't have anything to do with the fireworks show but with crowd control" because thousands of people are drawn to fireworks displays, Mr. Weeth said.

"He had an awareness and sensitivity to fireworks issues and safety. He promoted the use of NFPA standards in the work that

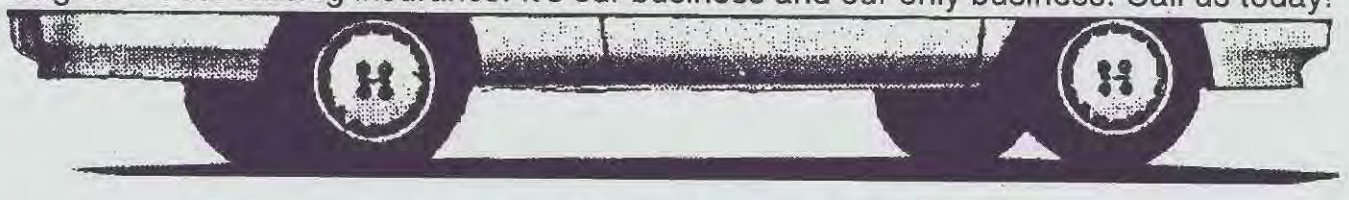
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Agent/Broker Topics

Bill Kent

Continued from previous page

he did," added Martha Curtis, senior chemical specialist at the NFPA in Quincy, Mass.

Mr. Kent was born in San Francisco. He was the grandson of U.S. Rep. William Kent, who was the heir to a Chicago meatpacking fortune in the late 19th century. Rep. Kent moved to Marin County, Calif., in the late 1800s and purchased vast areas of land north of San Francisco.

The congressman gave the federal government part of his land, which was later named the Muir Woods National Monument in honor of naturalist John Muir. The woods preserve a virgin stand of redwood trees.

Other parts of the congressman's holdings became the Kent Woodlands luxury housing development in Marin County and the Seadrift housing development on Stinson Beach.

The young Mr. Kent became a director of Kent Woodlands Properties and president of the Seadrift development upon the death of his father, William Kent Jr., in the mid-1960s.

Mr. Kent began his full-time insurance career in 1953, after serving in the military and holding a job as a property underwriter and later as special agent for Deans & Homer in San Francisco.

In 1963, he joined G. Hartman, Inc./American Factors as a broker. From 1966 through 1980 he was a vp at Fred S. James & Co. and in 1981 moved to Rollins Burdick Hunter—which is now known as Rollins Hudig Hall Group Inc.—as vp.

Mr. Kent was a licensed pyrotechnic operator since the 1960s.

He was also a member of the American Pyrotechnic Assn., the Pyrotechnicians Guild International and the International Pyrotechnic Society.

Besides publishing articles on safety and avoidance of claims in fireworks industry publications, he assisted with an A.M. Best Co. insurance profile of the fireworks industry.

Mr. Kent also was a published cartoonist, frequently amusing his colleagues with a humorous drawing.

Mr. Kent also was a published cartoonist, frequently amusing his colleagues by summarizing meetings with a humorous drawing.

Mr. Kent was a "fabulous" cartoonist, Mr. Weeth said.

"It's a serious business and he was serious, too, but if you can't poke fun at yourself," you're less effective, he said.

Always a supporter of the arts, Mr. Kent was an opera buff.

As a young man, he was an extra in San Francisco opera productions. Mr. Kent later became director of the Merola Opera Program, a fund that finances the training of young opera singers.

He was named Outstanding Young Man of 1965 by the San Francisco Junior Chamber of Commerce.

Among his other cultural and civic involvements, Mr. Kent was appointed to the California Arts Commission by Gov. Ronald Reagan in 1971 and served as chairman until 1975.

Mr. Kent also served on the advisory board of the Cartoon Museum and he was a member of the Northern California Cartoon & Humor Assn.

His wife, Joan, died three years ago. He is survived by two sisters, a daughter, two sons and three grandchildren.

"He was an absolutely brilliant man," said Mr. Conkling.

"I thoroughly enjoyed my conversations with him. He never failed to add insight to any topic. We will certainly miss him in the fireworks industry," Mr. Conkling said.

"Yeah, I'm going to miss him. He had a real dry wit. He'd just say something quietly, with a little smirk, we'd all crack up," Mr. Weeth said. BI

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Agent/Broker Topics

Minimize E&O liability by following precautions

Evolving legal standards putting agents, brokers on defensive

By Stephen R. Levine

EVERY DAY WE SEE examples of the growth in litigation in today's society. Attorneys and litigants are becoming more creative in advancing legal theories, and juries are accepting those theories often enough to both encourage more lawsuits and strike fear in any claims handler's heart. As a result, I am being asked to defend more and more errors and omissions suits against insurance agents and brokers.

When I review these suits, I am often reminded of Lizzy Borden and how she resolved her family problems with an ax.

Poor, misguided Lizzy would still be acquitted. (If you don't believe me, review the Bobbitt and Menendez trials.) Today, however, her attorney might well file a civil suit against the manufacturer of the ax for failure to properly warn. The manufacturer, of course, would then sue its insurance agent for failing to provide the proper coverage to protect it from the consequences of such a suit.

A flight of fancy? Perhaps. But, we are all familiar with suits against insurance agents and brokers with little more basis than that.

As the law enhances the status of insurance agents and brokers from "salespersons" to "professionals," agents and brokers *must* follow standards of due care in the conduct of their business.

Increasingly, agents and brokers are being held liable for errors and omissions. They are subject to agency law, obliged to obey instructions and make prompt, full and frank disclosures in all matters regarding both their agency and the policies they are providing.

Most importantly, insurance professionals must make certain that they do not misrepresent, by act of omission or commission, what they can and cannot do, or what they have or have not done. Many courts are holding that agents and brokers owe these duties to their customers as well as the insurers, MGAs or brokers with whom they deal.

Economic conditions have forced everyone to examine budgets, looking for areas where costs can be "contained." Insurance is often at the top of the list. Deductibles can be raised and limits can be lowered. Different types of policies carry different premiums, as well as different coverages.

A/BT Perspective

The insurance professional must negotiate this mine field, for as surely as night follows day when a claim is made for damages for which there is no coverage, when damages exceed the available limits or when payment of a deductible adversely impacts the balance sheet, the insurance professional will likely be the target of a lawsuit to recoup the losses.

No one can prevent the filing of a lawsuit. However, insurance agents and brokers can take steps, in their everyday contact with their clients and operation of their business, to minimize both the possibility that a suit will be filed and the probability that a suit will be successful. Simply put, insurance agents and brokers can be their own best friend simply by being prepared.

Points to consider include:

- First and foremost, know your business. Spend time learning the insurance industry and business of your clients. Then make certain that you keep up with recent developments and issues. For example, the acronyms SMP, CGL, OLT, and M&C may not have specific technical meaning to you, but you do not want to be learning them at the same time some attorney is educating a jury.
- Be honest and straightforward in your dealings with the policyholder and the underwriter. Most E&O lawsuits result from unfulfilled expectations. If the policyholder and underwriter are kept completely and honestly informed, they can make intelligent decisions. Anyone who has made an intelligent, informed decision is unlikely to blame someone else for the consequences of that decision.
- Take the time to review everything. Being too busy to check the work product is no excuse.
- If the binder or policy reviewed is not exactly as requested, find out why and advise everyone. More than one agent has earned the gratitude of an underwriter by simply pointing out a clerical error. Likewise, errors in the application can cost both policyholder and insurer dearly. Every year, millions of dollars are lost by insurance companies and policyholders alike based solely on clerical errors. These errors can result in E&O claims against agents and brokers by policyholders and insurers.
- Be independent in your judgment. Whether you work for salary or on commission, treat every client and every deal as if it is your own. Know whom you are dealing with and anticipate possible problems. A quick sale can lead to lasting problems. Sometimes, the best deal is the one that you did not make.

Dealing with clients who fail to pay premiums or cannot qualify for financing can be a major problem, especially if you or your business are required to pay the insurance company the minimum earned premium and you cannot collect from the policyholder. Likewise, an insurer, particularly a non-admitted company, offering low premiums and high commission may not be there when a claim is made. Your client's attorney will be very interested in the results of your investigation of that company prior to placing that coverage.

- Do not be afraid to promptly tell your client the news, particularly if it is bad. This accomplishes two things. First, if you follow the suggestions in this article, you will have more than just the bad news. You will have a plan of action. Second, your client will view you as able, competent and a person worthy of trust.

When you face your customer, it will not be just to say, "It's a hard market, premiums have doubled." You will have suggestions for bringing the payments into line with the needs of the company. Do not just walk in and say, "Your present insurer will not renew." Bring suggestions with regard to other markets, even if it means you have to share or lose a commission. Your client will remember that you placed his or her interest before your own and will be back.

Being brave and communicating immediately carries another benefit. Clients often are misled into believing that coverage exists simply because they have not been told it does not.

- Remember, once you tell a customer that you will try to obtain insurance, the courts may impose a duty to do so. If the insurance is unavailable or only available with restrictions or exclusions, notify your client immediately. It's too late to tell a client that his daughter is an excluded driver once she has had an accident with the car.
- Representations by your co-workers, including receptionists and secretaries, may also lead to liability. Assurance of coverage over the telephone before a binder or policy is issued could establish oral contacts, making you liable for the coverage quoted.

Conversations, whether over the telephone or otherwise, can be misconstrued. Nowadays, with express mail delivery, messengers and fax machines, there is no excuse for not "putting it in writing."

In writing your client or an insurer, each of these rules applies—and then some. Strive for simplicity and clarity. Each memo, letter or fax should be capable of standing on its own without explanation.

- Keep a diary, suspense or tickler file to remind you of what needs to be done for each client. If you submitted an application or request for endorsement, review the file in a timely fashion. If you have not received a response, find out why and put it in writing. Once coverage is placed, keep track of the binder and policy. If you do not have the policy in a timely fashion, find out why and follow up in writing.
- Finally, once the proper coverage has been obtained, your client advised and the policy in his or her hands, remember that your job is not done.

Check with the client on a regular basis to ensure all is going well and that there are no developing problems. Be ready to intercede, if necessary. See to it that any claims responsibility is promptly handled. And, do not forget, renewal is coming. Be sure there are no lapses and earn that new commission.

While I will be the first to say that no one has *all* the answers, I can tell you confidently that by following these recommendations, you will significantly reduce the risk of becoming involved in E&O litigation.

More importantly, there is no doubt that by striving to keep clients informed and by documenting these efforts, the agent is implementing a philosophy of putting the customer first. A satisfied customer will become a loyal customer, and this is the insurance professional's best advertising and biggest promoter. BI



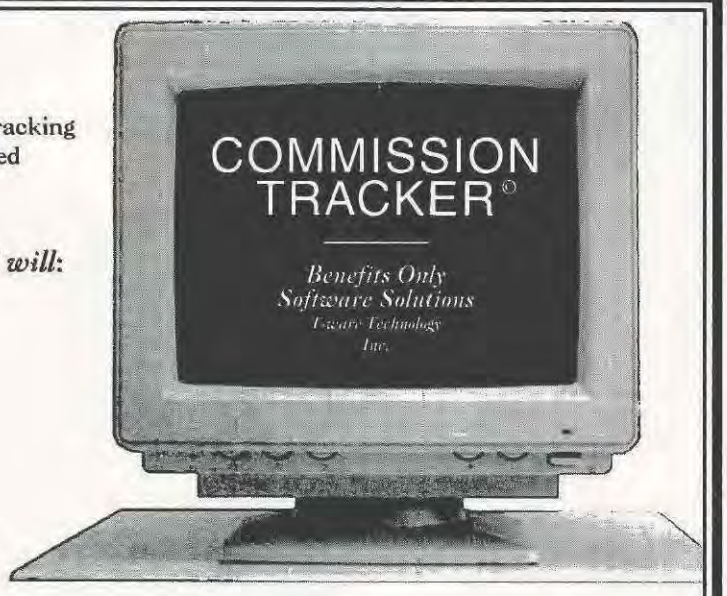
Stephen R. Levine is a partner in the Detroit law firm Kaufman & Payton, which specializes in issues related to insurance law.

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

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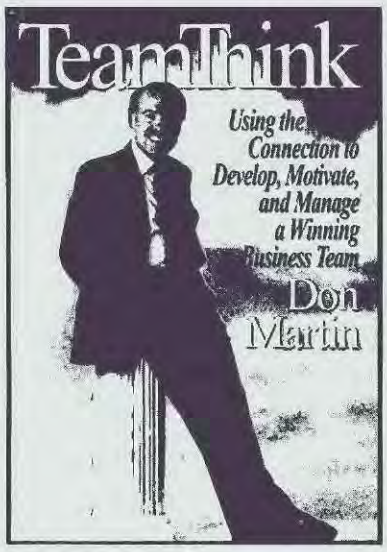
By Mark A. Hofmann

Books & Ideas

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. And as a self-confessed lifelong "sports junkie," he also had a considerable knowledge of the sports world.



'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,' Mr. Martin writes.

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. The author 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 integrates sports anecdotes with business information and expertise in covering a variety of topics, like mission statements and ethics.

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, Mr. Martin said. He said 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, and 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

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Agent/Broker Topics

Ruling widens brokers liability exposure

Appellate court expands duty of care to investigate insurers

By MICHAEL SCHACHNER

Agents and brokers that do not investigate the financial soundness of an insurer before placing coverage with the company can be held liable to policyholders or even to designated loss payees if the insurer becomes insolvent, New Jersey's highest court has ruled.

Falling in line with what courts and commentators in most other states generally have agreed upon, the New Jersey Supreme Court found that brokers owe a duty to the policyholder to act with "reasonable skill, care and diligence" in selecting financially secure insurers.

But, the New Jersey court went a step further than many courts have in ruling that brokers owe that same duty of diligence to other parties that could be harmed by the broker's negligence—namely, designated loss-payees.

While the court stopped short of making agents and brokers pure guarantors of insurer solvency, the April 12 ruling opened a window of potentially costly liability for brokers by requiring them to look into the financial status of potential markets and possibly pay for claims against insolvent insurers that they fail to investigate.

"Based on the relationship of reliance between brokers and their insureds, the foreseeable harm that may result if a carrier proves to be insolvent, and the broker's ability to protect against that harm, leads to the conclusion that brokers should perform a reasonable investigation of the carrier with which they intend to place an insured's policy," the court wrote in affirming a 1993 appellate ruling.

In addition, the court said, "The insurance broker or agent owes a duty of care not only to the insured with whom the broker contracts but also to other foreseeable parties injured by the broker's or agent's negligence."

That does not automatically make brokers liable for the claims of a failed insurance company, though.

"The general rule is that an insurance agent or broker is not a guarantor of the financial condition or solvency of the company from which it obtains the insurance. He is required to use reasonable care, skill and judgment with a view to the security or indemnity for which the insurance is sought. Consequently, where a policy is procured from a company which is known by the agent to be insolvent, the agent is liable for a loss.

"On the other hand, where the company was solvent when the policy was procured, the subsequent insolvency of the company does not impose liability on the broker or agent," the court said.

One brokerage executive said the ruling does not impose any duty beyond what brokerages should already be doing.

"We take a hard look at companies and if they don't measure up to what we think is adequate, we inform our client that the quote they're getting is coming from a carrier that falls below our standards. If they still want the coverage, we ask them to sign a document acknowledging this fact," said Robert Hilb Sr., president of Hilb, Rogal & Hamilton Co. of Glen Allen, Va.

As a result of the New Jersey ruling, an auto dealer that leased a diesel rig to a long-haul trucking firm will be able to proceed with its case against the broker that placed a collision policy for the trucking firm with an insurer that was teetering on the brink of insolvency.

The case involves broker EMAR Group Inc. of Livingston, N.J., which obtained coverage in 1988 from American Lloyds Co. of Metairie, La., for All Points Inc., a New Jersey long-haul trucking company. Because All Points leased rigs from dealers, it designated Carter Lincoln-Mercury Inc. of Woodbury, N.J., from which it leased a diesel tractor, as a loss-payee for insurance purposes.

The problem for Carter was that American Lloyds—which according to court papers was unauthorized to do business in New Jersey and was not rated by A.M. Best Co.—was in conservatorship in Louisiana when the coverage was placed and was put into liquidation only months after the coverage became effective. The insurer is not affiliated with Lloyd's of London.

Several months after the coverage became effective, the rig leased from Carter Lincoln-Mercury was damaged in New Mexico. When Carter filed a claim as the loss-payee for $22,919 for the amount it paid the owner of the other truck involved in the accident, no payment was ever made by American Lloyds.

Carter Lincoln-Mercury filed a lawsuit in May 1989 against All Points and EMAR, claiming EMAR had breached its duties as broker to properly investigate the financial status of American Lloyds. It argued that EMAR should be held responsible for the claim because it failed to properly investigate American Lloyds' financial status.

"Had EMAR called either the New Jersey and/or Louisiana insurance departments or looked at Best's ratings, they likely would have seen that American Lloyds was in conservatorship and wasn't authorized to operate in New Jersey. They, by their own admission, never did this and thus breached their duties to us as the loss-payee," explained William G. Wright of Farr, Lyons, Burke, Gambacorta & Wright in Bellmawr, N.J., which represents Carter.

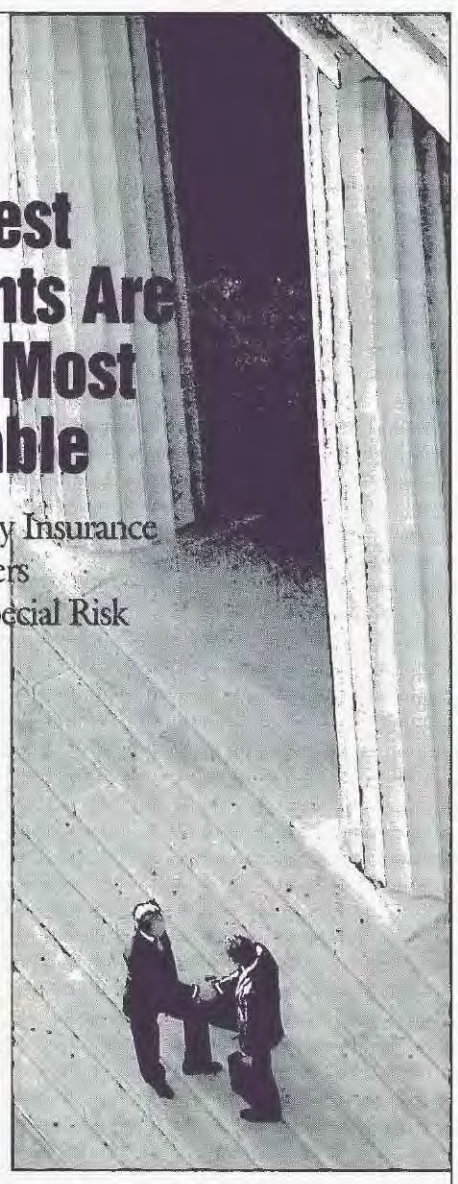
"When you place coverage with a company already in conservatorship, there's a problem with that broker's ability and competence," observed HRH's Mr. Hilb. If that ever happens, "there should be some semblance of responsibility" on the agent's part.

Mr. Wright said that while he's very happy with a ruling that has "far-reaching implications" for the brokerage business, he simply could not understand why EMAR chose to litigate a $23,000 claim, "when the ruling could be so damaging if it came from the Supreme Court."

Attorneys for EMAR did not return phone calls.

•

EMAR Group Inc. and All Points Inc. vs. Carter Lincoln-Mercury Inc., New Jersey Supreme Court; No. 36318.



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Continued from previous page
to a patient discharged from a hospital if the review caused a premature discharge and if the patient was harmed or died as a result.

The case involved a psychiatric patient who committed suicide after he had been discharged from a substance abuse treatment program (*BI*, April 27, 1992).

While the jury hearing the case in Los Angeles Superior Court did not award any damages after a coroner's report found the actual cause of death to be cardiac arrest, the physician's record stated that "the patient was discharged under UR pressure and might benefit from a longer stay," Ms. Corcoran recounted.

She also cited *Hughes vs. Blue Cross of California*, a 1989 California appellate court decision involving health plan documents as potentially increasing employers' exposure to liability.

In that case, "the policy said one thing and the UR administrator said another," she said.

Because Blue Cross' UR decision involving retrospective review was found to be more stringent than the community norm, the jury awarded $150,000 in compensatory damages and $700,000 in punitive damages to the plaintiff.

"Most courts say they are troubled that nobody looks at UR," she pointed out, adding that in a 1992 decision by the 5th U.S. Circuit Court of Appeals, *Corcoran vs. United HealthCare Corp.*, the court invited Congress to amend ERISA because "there was no UR when ERISA was passed."

In *Corcoran*, to which Ms. Corcoran has no relation, the court held that a vicarious liability action is pre-empted by ERISA only if it is based on an administrative, cost-containment decision as opposed to a medical decision made in the course of treatment.

In the case, a pregnant plaintiff's unborn child went into distress and died after United HealthCare determined that the physician-recommended hospitalization was unnecessary and instead authorized 10 hours per day of home nursing care.

The implication of *Corcoran* is clear: "We don't know how long the courts will maintain that level of pre-emption," Ms. Corcoran said.

And, employers that think the employers liability endorsement to their commercial general liability policy will help them defend litigation that arises when an employer uses managed care to contain costs had better read their policies again, cautioned Jake Powell, the health care department operations manager for Alexander & Alexander Inc. in Seattle.

"It's unlikely you're covered if your GL policy is on an ISO form," he said, referring to the general liability form developed by the Insurance Services Office Inc.

"There also may be limits on the amount of liability you can transfer to providers with hold-harmless agreements."

In response to this potential new exposure, Lexington Insurance Co., a unit of American International Group Inc., has introduced a health care service purchasers professional liability policy that provides up to $5 million in claims-made limits on a manuscript form.

Up to $10 million in limits are available through an aggregate facultative commitment from Lexington's reinsurers, according to Mr. Powell.

The policy, which is available exclusively through A&A as Lexington's managing general agent, is intended to cover exposures created by employers that contract directly with health care providers as well as those that contract indirectly through the use of managed care intermediaries like HMOs, preferred provider organizations and third-party administrators.

It is also intended to cover exposures created by using other cost-containment measures such as UR and case management, Mr. Powell said.

For further information about the policy, contact Mr. Powell at 206-623-7070.

Mr. Ressler moderated the session, which was coordinated by W. Lee Carter, director of research and development for Alexander & Alexander Inc. in New York. BI

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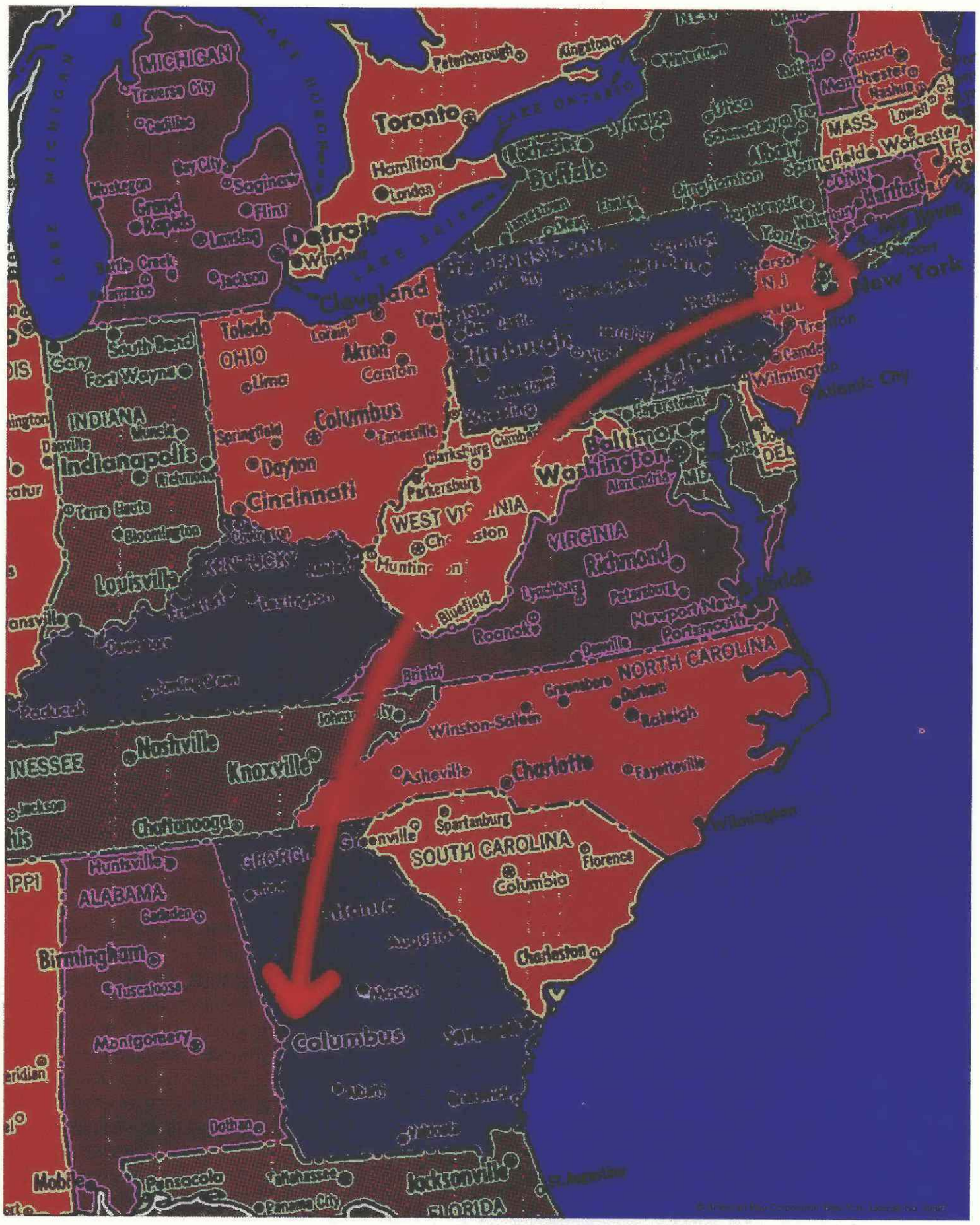
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Controlling work comp costs

Employer, provider partnerships can trim expenses

By William G. Dodge Jr. and John Roberts

FROM A WORKERS compensation perspective, the most important development in the health care arena is not health care reform and managed competition. Rather, it is the partnerships that employers and medical providers are forging in an effort to control workers comp medical costs and to reduce lost time due to workplace injuries and illnesses.

These partnerships must be built upon a common mission, defined responsibilities and agreed-upon outcome measurements.

Kaiser Permanente and the University of California have worked to develop such a partnership and from our discussions have gained several insights into managing workers comp medical costs.

In building this partnership to reduce workers compensation costs, employers and providers must begin by acknowledging three key elements of a successful collaboration:

- **The partners must have compatible interests.** Toward this end, the two parties can negotiate a common mission statement.
- **The incentives of the partners cannot be in conflict.** For example, there is an economic conflict in "fee-for-service" methods of compensating providers vs. the employer's return-to-work goals.
- **Partners must have sufficient trust in one another.** This ensures respect for different perspectives and allows each party to maintain a degree of independence. Efforts should be made to build trust on a personal level, as well as between companies.

The common mission statement that Kaiser and the University of California created still is in draft form because we acknowledge there must be flexibility in maintaining a meaningful partnership and our goals will be subject to change. However, the mission statement currently is:

"To deliver high-quality, cost-effective industrial medical care through appropriate utilization of services, rapid claims handling, worksite health promotion, direct employer communications and consistent quality control. This process will return good health to the worker, return a healthy employee to work and reduce costs for the insurer while minimizing time lost from productive work."

To accomplish the goals outlined in a mission statement, the partners also should define individual and mutual responsibilities. Accountability is a critical element that ties together the mission and strategy of the partnership.

By managing all medical aspects of workers compensation, there is accountability and the goals of the mission statement can be accomplished. To that end, Kaiser and the university developed a model for managed workers compensation. This model was built upon six primary responsibilities, followed by our rationale for emphasizing these responsibilities:

■ **Specialized occupational medicine.**

Workers compensation is not only medical care, it is also a multifaceted legal indemnification system. Occupational medicine providers must be dedicated exclusively to the goals of our mission statement if the partnership is to reduce costs and employee lost time. Levels of services and outcome measurement must satisfy the needs of the three primary customers: worker, employer and union.

■ **An injury- and drug-free workplace.**

It is the legal responsibility of the employer—as well as good business practice—to provide a safe workplace. A comprehensive workplace loss prevention program includes data analysis, ergonomic review, evaluation of employer and worker attitudes, and safety training. Employer and worker needs must mutually be satisfied if costs and employee lost time are to be reduced.

■ **A consistent corporatewide policy on employee health.**

Cost shifting is common between group health care and workers comp. As group health care costs are reduced through cost containment efforts, workers comp medical costs increase. A partnership between the employer's various group health, workers comp and employee assistance departments can only lead to lower workers comp cost and reduced lost time.

■ **Modified duty programs.**

One must understand the psychology of workers' injuries to appreciate the value of modified duty programs. Returning injured employees to the workplace as quickly as possible will facilitate the resocialization process. As soon as possible, medical providers must report to the employer the physical and psychological limitations of the injured worker and define a controlled release of the worker to the job. The employer must assign modified light duty to the injured worker that is consistent with the extent of medical improvement.

■ **Control of the first 30 days of treatment.**

Many states allow employers to control where the worker receives medical care. In California, recent changes to workers comp law generally permit an employer to control treatment up to 365 days. It is critical that employers and unions exercise their rights to ensure that workers receive appropriate medical care. We have found that injured workers who remain away from work longer than 21 days have less likelihood of ever returning to work.

■ **Case management.**

This is one of the least understood aspects of our partnership and continues to be refined. Kaiser and the University of California agree that both of us should assume equal responsibility. A case management model that was jointly developed outlines a written and mutually agreeable strategy to assist the worker physically and psychologically in returning to work in as timely a period as possible.

After outlining the partners' primary areas of responsibility, the next step in developing a model for managed workers comp was to list several cost-containment initiatives. These included:

- Fee schedule compliance.
- Utilization review, including preadmission and retrospective evaluations.
- Control on referrals.
- Services standards.
- Quality outcome measurements.
- Pre-employment physician examinations.

The weakness in our relationship is the incentive agenda. The financial risk of workers compensation still lies with the employer. The provider bears little risk because workers compensation has historically involved primarily fee-for-service reimbursement. This type of medical care is a real anachronism in light of widespread support and commitment to managed care today. The employer can only do so much at the workplace. By applying managed care principles of some kind to workers compensation, the provider can play a greater part in holding down overall costs.

However, we found that there is not a clear understanding of managed care. We do agree that the classic definition is:

"A mutually exclusive contract between a community of patients, employers and organized medical providers for the provision of comprehensive health care benefits, where the medical provider assumes financial risk through the prepayment of a community-based monthly rate that rewards wellness, and the employer assumes the costs of not providing early return to work opportunities to injured workers."

In California, one vision for managed workers comp is a 1992 law, A.B. 3757, that allows pilot 24-hour coverage programs to be run in the state.

Applying the managed care concept to this combination of group health plan and workers comp medical benefits will be difficult because no one knows how to cost out "a prepaid and community-based monthly rate where the medical provider assumes substantial financial risk" for industrial injuries.

While we can't be sure of the outcome of the pilot project, we believe that workers compensation costs can be effectively managed by providers and employers using partnership principles. BI

William Dodge is an account manager with Kaiser Permanente in Oakland, Calif., and a consultant on workers compensation issues. John Roberts is manager of the workers compensation program for the University of California, based in Oakland.



Mr. Dodge



Mr. Roberts

Mental injuries aggravated by work injuries compensable: Court

Legal Briefs

A mental disorder aggravated by a work-related injury to an employee's arm was compensable under the workers compensation law, according to a decision of the Supreme Court of Iowa.

Roy Honeywell II suffered a complete amputation of his upper right arm in 1983, while employed by Allen Drilling Co. The arm was successfully reattached but he did sustain permanent partial disability. He received workers comp benefits during the healing periods.

In May 1986, he was hospitalized and treated for addiction to pain-killing drugs. The record showed that Mr. Honeywell had a pre-existing personality disorder and substance abuse disorder.

Mr. Honeywell sought additional benefits claiming 100% disability of his right arm and his body as a whole. He was granted 227.5 weeks of disability benefits based upon an impairment of 91% to his right upper extremity, a scheduled injury under the workers comp law. Mr. Honeywell appealed, arguing that the injury should have been treated as an injury to the body as a whole and thus the award of healing period benefits was inadequate. The trial court ruled against Mr. Honeywell, concluding that he failed to prove that he suffered an industrial disability as a result of his work-related injury.

The appellate court said that a psychological condition caused or aggravated by a scheduled injury (loss of his right arm) is to be compensated together as an unscheduled injury. According to the court, whether the spillover effects are physical or mental, the result is the same: disability. The court was satisfied that the record here clearly reflected that the work-related aggravation of Mr. Honeywell's psychological disorder caused psychological impairment. The court sent the case back for a determination of his industrial disability benefits.

Honeywell vs. Allen Drilling Co., Supreme Court of Iowa, Oct. 20, 1993 (*BI*/01/Ju.-$10).

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.

Risk & Insurance Management Society installs new officers

NEW ORLEANS—A reconstituted executive council, led by Lucille A. "Lucky" Gallagher, is taking over the reins of the Risk & Insurance Management Society Inc. this week.

Ms. Gallagher formally assumed the presidency of RIMS on Sunday with the rest of the new executive council.

Ms. Gallagher, vp of risk management at the ConAgra Red Meat Cos. and Monfort Inc. in Greeley, Colo., succeeds J.A. "Tony" Bridger as RIMS president. Mr. Bridger is risk manager for the Bank of Montreal in Toronto.

Ms. Gallagher was first elected to the RIMS executive council in 1990. She has served as vp-conference, vp-governmental affairs and most recently was first vp, the traditional steppingstone to the RIMS presidency.

Succeeding Ms. Gallagher as first vp is William J. Kelly, senior vp at J.P. Morgan & Co. Inc. in New York.

Mr. Kelly was first elected to the executive council in 1993 as vp-international.

Two new members of the executive council are beginning their terms of office this week:

- Judith M. Lindenmayer, vp-education and research. Ms. Lindenmayer is director of risk management for Fidelity Investments in Boston.
- Susan R. Meltzer, vp-member and chapter services/secretary. Ms. Meltzer is assistant director of risk and insurance for Bell Canada in Toronto.

The executive council members winning re-election for 1994-95 are:

- Freida L. Jackson, vp-conference. Ms. Jackson is president/risk manager of Park South Associates Inc. in Charlotte, N.C.

Ms. Jackson, who was first elected to the executive council in 1992, has served as vp-education and research.

- David R. Haight, vp-environmental for a second term. Mr. Haight is director of risk management for CF Industries Inc. in Long Grove, Ill.

He was appointed to the executive council in 1990 and subsequently elected to the council in 1991. He has served as vp-member affairs/secretary and vp-research.

- Louis J. Drapeau, vp-finance/treasurer. Mr. Drapeau is manager of insurance and risk management at The Budd Co. in Detroit.

He was initially elected to the executive council in 1991 and has served as vp-education, vp-business and industry liaison, and vp-conference.

- Gerald J. Ciardelli, vp-government and public affairs. Mr. Ciardelli is corporate risk manager for Jostens Inc. in Minneapolis.

Initially elected to the executive council in 1990, he has served as vp-education, vp-member affairs/secretary and vp-finance/treasurer.

- Jay B. Waters, vp-health and safety. Mr. Waters is director of corporate risk management at Forest City Enterprises Inc. in Cleveland.

He was first elected to the executive council in 1993 as vp-government and public affairs.

- Stephen M. Wilder, vp-international. Mr. Wilder is vp-risk management at The Walt Disney Co. in Burbank, Calif.

Mr. Wilder also was elected to the executive council in 1993 as vp-health and safety. BI

RIMS presents Goodell Award to Felix Kloman

NEW ORLEANS—Risk management expert H. Felix Kloman, who recently retired as vp and principal of the Tillinghast division of Towers Perrin, has been recognized with the highest award given by the Risk & Insurance Management Society Inc.

Mr. Kloman was presented with the Dorothy and Harry Goodell Award at the annual membership meeting at the RIMS conference last month by J.A. "Tony" Bridger, the outgoing RIMS president.

Mr. Kloman "has not only recorded outstanding individual achievement in furthering the goals of risk management. . .he has actually established many of the key concepts and standards that have defined and punctuated its role in the corporate financial structure," Mr. Bridger said.

Mr. Kloman began his career as an insurance broker and consultant in Philadelphia. After his firm merged with Alexander & Alexander Services Inc. in 1967, he became an assistant vp in A&A's consulting division.

He founded Risk Planning Group Inc., an independent risk management consulting firm, in 1970. RPG merged with Tillinghast, Nelson & Warren in 1985, and Tillinghast merged with what was then Towers, Perrin, Forster & Crosby in 1986.

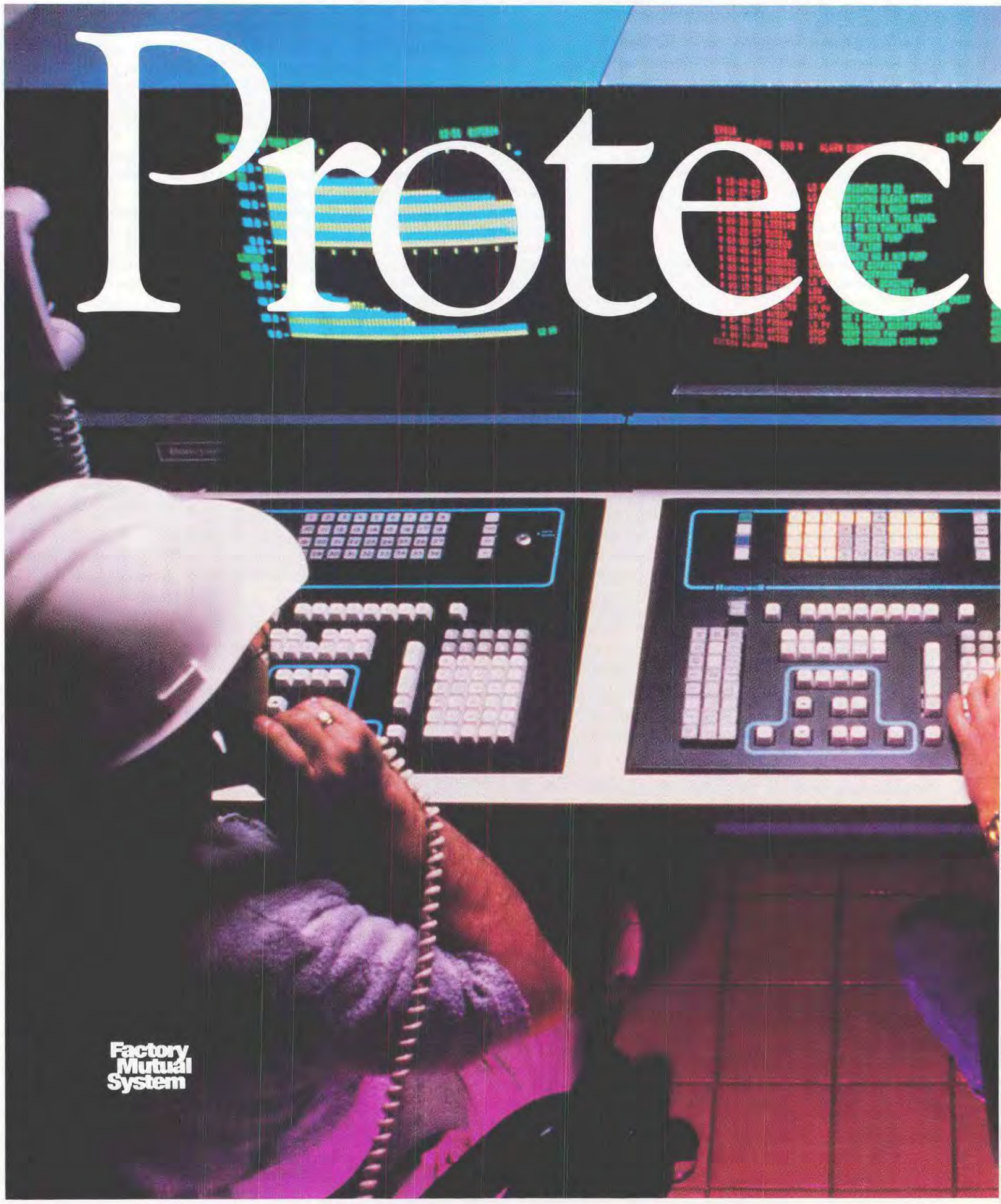
Although retired from Tillinghast, Mr. Kloman will continue to publish Risk Management Reports, a newsletter he founded during his days with RPG.

RIMS also presented its Cristy Award to Chris Anderson, risk and insurance manager for the Worldwide Church of God in Pasadena, Calif.

The Cristy Award is given annually to the risk manager with the highest cumulative average on the three exams leading to the Associate in Risk Management designation.

In addition, RIMS bestowed chapter recognition awards in five categories:

- Overall Chapter Excellence awards were presented to the San Diego Chapter and the Atlanta Chapter.
- Outstanding Chapter Programming awards were presented to the Bluegrass Chapter in Kentucky, the Greater Kansas City Chapter and the Golden Gate Chapter in California.
- Advancing the Risk Management Profession awards were presented to the Inland Empire Chapter in California, the San Diego Chapter and the Washington Chapter.
- Outstanding Member Services awards were presented to the Western Michigan Chapter and the Houston Chapter.
- Outstanding Membership Development awards were presented to the San Diego Chapter and the Ontario Chapter. BI



Addressing environmental issues

Environmental consultants don't come in one size fits all

By LOUISE KERTESZ

NEW ORLEANS—Matching the right environmental consultant to a company's needs requires some advance planning and basic knowledge of what services are required because "a whole gamut" of consultants have emerged, a risk manager says.

RIMS REPORT

Risk managers must be aware of the types of environmental consultants available, determine what they need from a consultant and then learn how to evaluate whether a consultant is a right fit for their company, said Heather E. Pearson, director of lease administration and risk management at Edgecombe Group Inc., a Toronto-based property developer.

There are two basic types of environmental consultants, she said: technically oriented consultants, which include scientists, engineers and geologists; and management consultants.

Ms. Pearson moderated and spoke at a session during the Risk & Insurance Management Society Inc. conference.

The first group are best used "before you have a problem. . .(or) to quantify an exposure" that has been identified. But they are not usually trained to provide ongoing management of an environmental exposure, she said.

Management consultants can have technical training, but they focus more on managing a risk, training corporate staff and keeping a client informed of legal developments that may affect an environmental exposure, she explained.

A single environmental consultant may not be equipped to provide the entire range of environmental services a company requires, she noted. Those services include audits, remedial and other technical work, reports, assistance in developing environmental policy and procedures, and assistance with presentations to senior management.

It is necessary to understand what those environmental services involve, stressed Robert Patzelt, group corporate counsel and risk manager at Scotia Investments Ltd., a diversified holding company in Bedford, Nova Scotia.

The basic service, an audit, is "a report that follows a disciplined method of collecting measurable environmental information and compares it to accepted standards to draw relevant conclusions," Mr. Patzelt said. The key is that the information is measurable, he said.

Audits are further categorized, he said, as:

- Environmental audits, which provide information on compliance with regulations and management systems.
- Environmental site assessments, which essentially entail a search for contamination.
- Environmental risk assessments, which examine future environmental liability.

To find the right environmental consultant, "use plain common sense and follow the same routine you would use if you were hiring any other type of outside professional," Ms. Pearson said. "Remember, there are currently no standards for environmental consultants, and it is up to you to make sure you are getting qualified advice."

She recommends the following approach to selecting a consultant:

- Prepare some guidelines and specifications "to weed out" consultants who would not be acceptable.
- Select one or two firms and allow them to become "familiar with your organization, properties, processes, objectives and concerns."

"Give each consultant a cross-sampling of your properties and ask them to detail the type of information their reports would include, as well as an outline of their fees, information concerning their own organization, and evidence and details of their own professional liability insurance coverage," she said.

- Ask for and check references.

Most companies are generally in one of three phases of environmental risk management, according to Scotia Investment's Mr. Patzelt.

In phase one, a company is in the "stay out of trouble phase." It wants to "solve the most pressing and immediate problems" and deal with the "most significant hazards," but there are few or no corporate standards or procedures for environmental risk management, he said.

In phase one, environmental concerns have "not gotten to the corporate level yet" but are handled at the plant level, such as by engineers and technical personnel.

Companies should strive to get beyond this phase. Since they have not taken "all due diligence" to control any pollution caused by their operations, they may be exposed to charges of negligence, Mr. Patzelt warned.

Most companies are in phase two, the compliance stage, he said. They do what is required by law and implement "enough operational procedures to avoid significant environmental incidents."

They have a system that can measure the results of their efforts and they have "moved beyond" concern with only the most significant hazards, he said

Phase three is "where we all want to be—Mecca," Mr. Patzelt said. In this phase, companies have a broader environmental risk management program that involves searching for unknown risks and "trying to avoid the surprises."

The environmental program in this phase is "formalized at the corporate, division and plant level (and) supported by a highly specific management and control system. There is also a focus on the need to reduce future risk," he said.

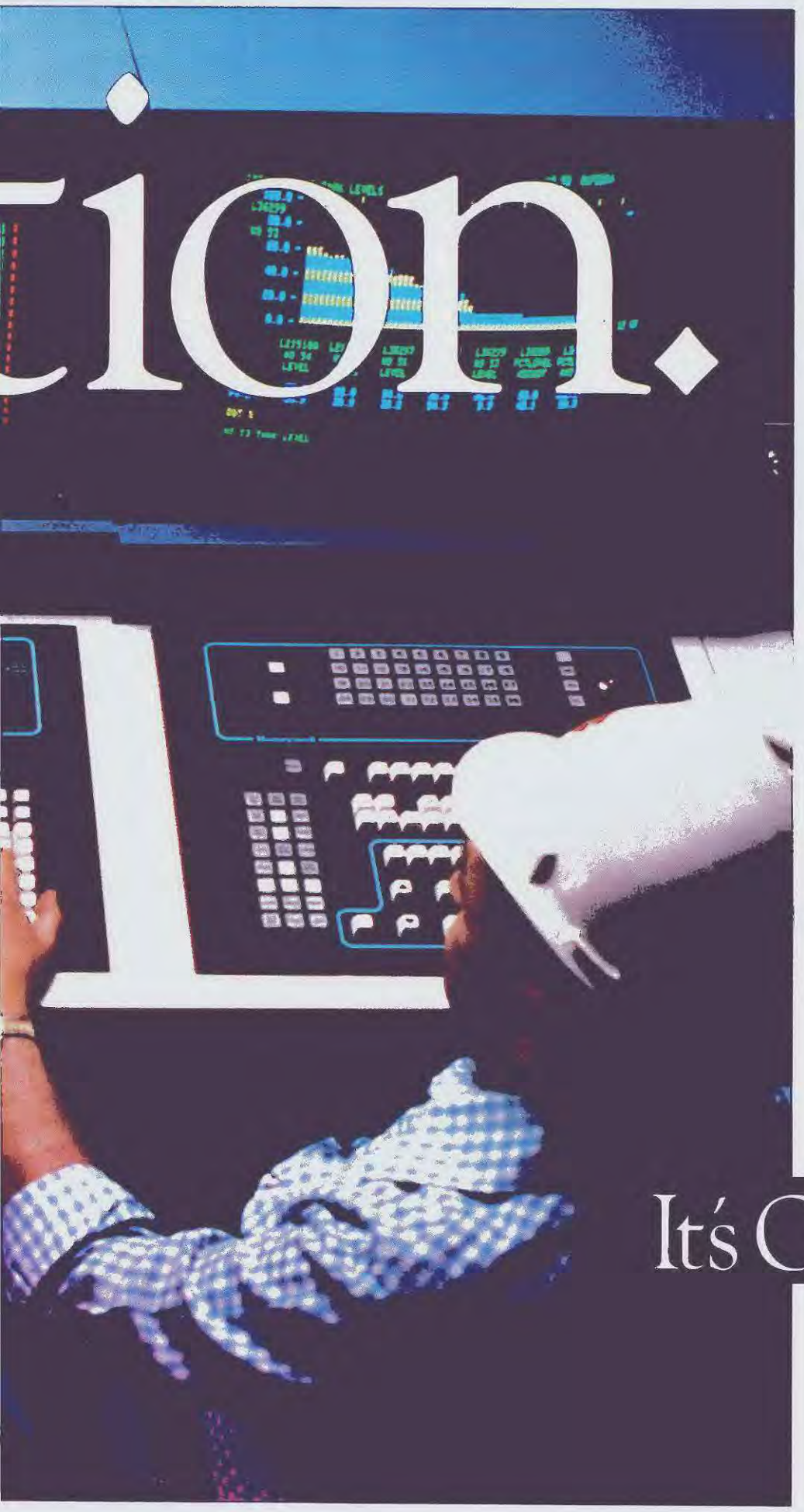
Some companies never leave phase two, and some are very sophisticated in certain areas but not in others.

The quality of the environmental audit provided by a consultant can motivate companies to move into more sophisticated phases of environmental risk management, Mr. Patzelt said.

However, the audit must "ask the right questions," he stressed. "Don't blame the waiter" if you ask for a drink and he brings you a Coke when you really wanted milk.

David Slutzky, senior policy consultant at Environmental Management Group Inc. in Baltimore, also spoke at the session.

It was coordinated by Nancy Chambers, risk and insurance manager at the University of Guelph in Guelph, Ontario. BI





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THE QUALITY INSURANCE CONGRESS

Changing market will require global view

Multitude of skills needed for success

By SALLY ROBERTS

NEW ORLEANS—Future risk managers who have an international perspective will gain a competitive edge in what is becoming an increasingly global business, a brokerage executive says.

RIMS REPORT

"The ongoing integration of the world economy is an irreversible trend that is impacting all businesses and all professions," says Lawrence E. Burk, chairman and chief executive officer of retail broker Alexander & Alexander Inc. in New York.

For example, he noted that in 1970, A&A operated in about 20 cities with almost 100% of its revenues coming from domestic business. Today, A&A operates in more than 300 cities in 80 countries around the world with approximately 46% of total revenues generated outside the United States, he said.

Mr. Burk addressed risk management students on the major dynamics that will impact their future careers during a session at the Risk & Insurance Management Society Inc. conference.

An individual now entering the risk management field needs a "comprehensive understanding of local conditions, combined with a universal approach and service network to ensure continuity across operations," he said. For example, in addition to facing a full range of "typical" exposures, a risk manager for a multinational organization also faces risks arising from different governments, laws and traditions in other countries.

But the global marketplace is not the only area of concern for future risk managers, Mr. Burk said.

"The role of the risk manager within companies has changed dramatically in recent years and continues to change."

Almost 25 years ago, the standards for career growth in the risk management industry were hard work, achievement and accomplishment. "Give the company your best, and as the company grew, so would you."

However, hard work alone is not enough for the person entering the risk management profession today. "The demands have changed. The world has changed. Business has changed and it continues to change."

For example, many risk managers need to "act as a team leader" within their organization, Mr. Burk said. They will be managing resources and coordinating with the chief financial officer, directors of marketing, production and distribution, he said. Above all, risk managers "need to constantly anticipate change."

In addition, the risk manager's relationship with insurers now "extends far beyond the purchase

Continued on next page

Continued from previous page
of insurance," Mr. Burk said.

Risk managers also require an array of financial and analytical skills to cope with their employers' financial needs, he said, referring to the growing use of alternative risk financing methods. Therefore, risk managers need to have an understanding of foreign currency exchange and tax management as well as the alternative risk financing marketplace.

The challenge for risk managers is "to have access to more information and more knowledge for a greater scope than ever before," Mr. Burk said.

In addition to insurance and finance, risk managers require a working knowledge of such subjects as accounting, law, government, marketing, engineering, production, business administration, history and economics, he said.

Another area likely to affect the future risk manager is the relationship between the government and the insurance industry, Mr. Burk said. "It's important for the risk manager to recognize that government has a great deal at stake in the world of business and that business has a great deal at stake in the world of government."

Besides issues like health care reform and insurance company

Future risk managers will have to 'anticipate the unimaginable,' says Lawrence Burk.

solvency, tort reform is one issue driven by the government that is likely to have great impact on the area of risk management for the next three to five years, Mr. Burk predicted.

According to a recent Alexander & Alexander survey, 85% of executives and risk managers polled said the need for caps on non-economic or punitive damages is their No. 1 concern (*BI*, April 18).

"In 1991, U.S. liability insurance costs totaled $132.2 billion, and it appears that product liability problems are actually accelerating," Mr. Burk said.

And, because it is unlikely that Congress will address tort reform any time soon, "the open-ended financial vulnerability of private- and public-sector organizations will remain unchecked," he said.

Risk managers are seen as "problem solvers," so employers will call on them for more than just training, education and dedication to their job. "They will call for creativity in approach, for innovative thinking, adaptability to change and great sensitivity to the entities involved," Mr. Burk explained.

Creativity will also be demanded in identifying new and more complex exposures facing their organizations, he suggested.

Indeed, some risks may seem impossible to predict, Mr. Burk said, citing terrorism as an example.

"We know it exists. We even know some of the people responsible for its existence. But who could have predicted the bombing of the World Trade Center last year in New York?" Mr. Burk asked.

Nevertheless, risk managers will have the responsibility to "anticipate the unimaginable," said Mr. Burk. He predicted that the future belongs to "those who will come to the table and work together in formulating solutions."

Risk managers will also be required to effectively deal with economic transformation, Mr. Burk said.

"Global competition, spiraling liability costs, ever more esoteric exposures all are squeezing profit margins in even the most tightly run firms."

Winston W. Riddick, chief deputy commissioner of insurance at the Louisiana Department of Insurance, and Cheri J. Hawkins, assistant treasurer and director of insurance for the Weyerhaeuser Co. in Tacoma, Wash., were also speakers during the roundtable discussion.

Harold C. Lang, director-insurance and risk management for Kohler Co. in Kohler, Wis., moderated the session. BI

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LINDSEY MORDEN

International risks need not be foreign

Tap local expertise: Risk manager

By GAVIN SOUTER

NEW ORLEANS—Risk managers who are adept at handling exposures for organizations based in the United States must learn a new array of skills when their companies buy or launch operations overseas, a risk manager says.

RIMS REPORT

Unfamiliar legislation and insurance practices in foreign countries can stump unprepared risk managers.

To tackle these problems, risk managers should ensure that they use a broker who is familiar with the foreign markets and is prepared to work closely with risk managers to develop suitable programs, said Timothy J. Bunt, director of insurance and risk management at Witco Corp., a specialty petroleum and chemical company in New York.

But, despite the differences in insurance and risk management practices in other countries, U.S. risk managers will find that the skills they have learned in the United States will put them in good stead in other markets, a broker added.

Changing regulations and case law in Europe bear a striking resemblance to U.S. legislation, pointed out Teresa L. Pahl, executive vp-international at broker Rollins Hudig Hall Co. in Chicago.

Mr. Bunt and Ms. Pahl participated in a session on international risk management at the Risk & Insurance Management Society Inc. conference.

When Witco acquired part of German pharmaceutical company Schering A.G., the company's largest business interruption and property insurance exposures were transferred from the United States to Europe, said Mr. Bunt. The shift in location of the risks led to a plethora of new risk management considerations.

"We found that we now had to deal with issues like the onerous environmental laws in Germany," he said.

Buying the gradual pollution coverage that is available in Germany increased Witco's insurance budget for that unit by 25%, he said.

In addition to dealing with new regulations, the company had to adapt to the German insurance market, Mr. Bunt said. This included being aware of underwriting committees made up of insurers and reinsurers that set property and business interruption rates for very large property risks in Germany (*BI*, Feb. 14).

Witco's insured property values in Germany currently are not large enough to be set by the committees, but that could soon change, Mr. Bunt said.

"In the U.S., we would call it a cartel, but they call it an advisory panel," Mr. Bunt said.

Risk managers with sites overseas also have to choose the level of fire loss control protection they want, he noted. Do they opt to follow local standards, which often do not insist on sprinkler systems, or should they export highly protected risk standards to overseas locations?

Witco is aiming to install HPR property loss control standards at all its sites. However, it will also seek premium reductions for the extra protection in the same way it would in the United States, Mr. Bunt said.

Directors and officers liability insurance is also becoming a major issue in overseas markets, particularly concerning environmental issues, he said. "They are starting to hold people accountable, and it is no longer just a U.S. problem."

Risk managers with operations outside the United States, especially in the European Union, will have to face up to a lot more legislation concerning D&O liability, he predicted.

To function successfully in foreign countries, risk managers must make good use of local brokerages as consultants, Mr. Bunt said.

The broker for the global program should: have experience in dealing with international clients; be willing to put clients in contact with their lead insurers and reinsurers; give excellent information on local practices; and have a flexible approach to claims, he said.

As U.S. risk managers face up to unfamiliar legislation and practices throughout the world, they will be able to rely on many of their existing risk management skills to cope with problems in other parts of the world, but they also must be willing to learn, said RHH's Ms. Pahl.

The changing environmental legislation in Europe, in particular, will have a familiar ring for U.S. risk managers, she said. "It looks suspiciously like Superfund."

However, to the credit of E.U. member countries, they are revising the proposed legislation, rather than copy the U.S. example, she said. "They have gone back to the drawing board, which is very smart."

Nevertheless, any future legislation will likely put extra burdens on risk managers.

And, U.S. risk managers who have experience dealing with pollution issues will be able to use that experience to deal with similar problems in Europe, Ms. Pahl said. "The considerable experience of the U.S. risk manager in dealing with anything like Superfund will go a long way in developing a comprehensive risk management approach" outside the United States.

Worker safety problems in Europe also are beginning to resemble those in the United States, she said.

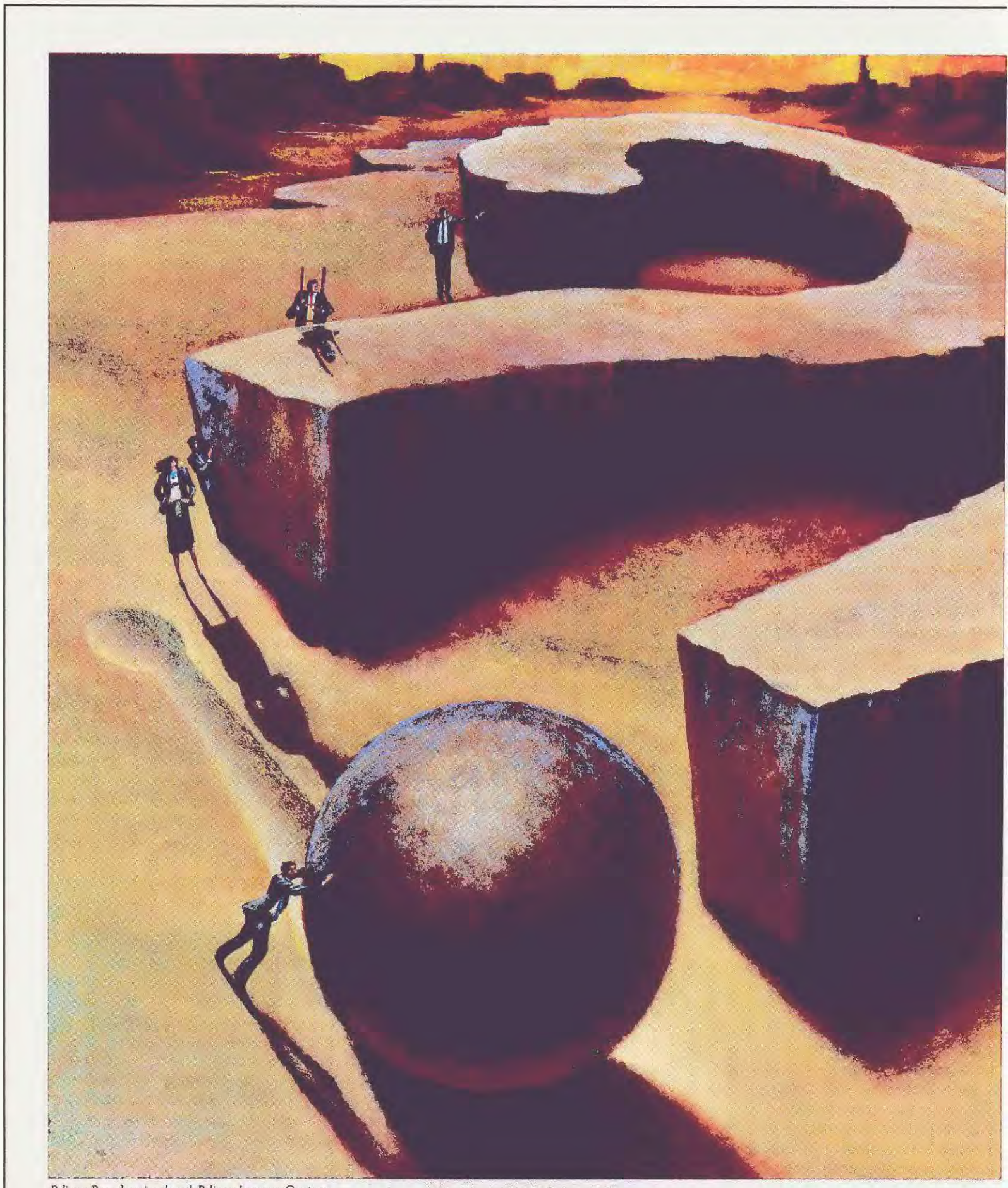
For example, several cases brought by workers suffering from repetitive strain injuries like carpal tunnel syndrome have been heard in British courts, she noted (*BI*, April 11).

As a result of these and other occupational injury exposures, "employer liability limits are getting higher and higher."

U.S. risk managers with experience in workers compensation and compliance with government safety regulations again will be able to use their home-grown skills in foreign countries, she said.

Also speaking at the session were: David G. Pugh, senior insurance officer for the International Finance Corp. in Washington; John J. Salinger, president of American International Underwriters in New York; and Charles J. Bird, global manager of Zurich Insurance Group in New York.

The session was coordinated by Cynthia R. Ziegler, senior vp of the CPCU Society, and moderated by Witco's Mr. Bunt. BI



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U.S. business losing allure for Lloyd's

Property losses prompting London underwriters to look elsewhere

By GAVIN SOUTER

NEW ORLEANS—U.S. property risks do not hold their former allure for many Lloyd's of London underwriters, a broker says.

RIMS REPORT

Instead, Lloyd's underwriters who formerly hungrily sought U.S. property business are now seeking business elsewhere in the world where competition is less cutthroat and rates are higher.

And while casualty underwriters in London remain anxious to write U.S. risks, they, too, are increasingly looking for more profitable business from other areas of the world.

"Over the last two to three years, the London market's appetite for U.S. property business has diminished," said Michael A. Barnfield, chairman of broker Lowndes Lambert North America Ltd. in London.

The huge property losses that have emanated from the United States over the past several years have been the main reason for the change in taste in London, he said.

"If the U.S. rang its own Lutine Bell every time there was a disaster, it would be as cracked as the Liberty Bell," Mr. Barnfield joked, referring to the bell traditionally rung before special announcements at Lloyd's.

Although rates for catastrophe coverage have increased as a result of the many catastrophe losses in the United States, other property coverages remain competitively priced. That situation has prompted London underwriters to seek more, higher-priced property risks from other markets, he said.

"Rates have been in free-fall since 1986," Mr. Barnfield said of the U.S. property market.

Despite Lloyd's large losses, capacity at Lloyd's has returned to a level exceeding 10 billion pounds ($15 billion) in 1994, after slipping for several years, and many syndicates are looking away from the United States and using their capacity to write in other markets, he said.

"There is a new breed of underwriter who is sensitive of the need to make a profit for investors," Mr. Barnfield said.

In particular, companies in France, Germany, Italy, Australia, and Latin America are taking advantage of the freed-up capacity in Lloyd's and the London market, he said.

In some cases, syndicates whose business mix formerly was 85% from the United States and 15% from the rest of the world are reversing those ratios, he said.

On a more positive note for U.S. risk managers seeking to buy coverage in the London market, London is still a major insurer of Fortune 1,000 accounts, he said. And, London underwriters still are willing to write U.S. catastrophe risks, more esoteric and difficult-to-place risks, and participate on the global insurance programs of many U.S. companies, Mr. Barnfield said.

While casualty underwriters in London remain keen to write U.S. business, their competitiveness is hampered by the policy forms they offer.

"The claims-made form without doubt reduces the attractiveness of London in some areas," Mr. Barnfield said.

But, the lack of interest that some U.S. buyers have in the London market for casualty coverage is being partially made up by risk managers from other areas of the world, he said.

Risk managers from other countries are increasing the casualty coverage they buy and London underwriters are benefiting from this, Mr. Barnfield said.

"Increasingly, risk managers around the world are looking to buy the broad coverages that U.S. risk managers are buying," he noted.

And, for some casualty insurance lines—like directors and officers liability and errors and omissions insurance—capacity and the number of underwriters in London willing to lead this coverage are increasing, Mr. Barnfield said.

Another speaker observed that London's marine insurance market has settled down since the "craziness" of the late 1980s and early 1990s.

At that time, "you had underwriters participating in business they did not understand," said Richard Q. Beard, executive director of Fenchurch North America, a division of Fenchurch Insurance Brokers Ltd. in London.

Since then, the number of marine syndicates at Lloyd's of London has greatly contracted and the underwriters who remain are concentrating on areas where they have expertise, according to Mr. Beard.

The Institute of London Underwriters, which is an association of marine underwriters, is returning to writing only marine business and refusing to cover non-marine risks, he said.

Like the non-marine market, the marine market in London has been forced to re-evaluate its position, Mr. Beard said.

"The London marine market simply cannot afford to follow a downward spiral in rates, so for the foreseeable future it might be unpleasant for buyers of marine insurance."

Marine underwriters, too, are seeking new markets around the world where buyers are prepared to pay the premiums they are demanding, Mr. Beard said.

For example, London underwriters have been a market for energy projects in the Philippines that would otherwise have difficulty in finding insurance coverage, he said.

"Without the London market providing the coverage, these people would be held back because the investors in the projects would not want to proceed without insurance," Mr. Beard said.

The session was moderated by Dean A. Reynolds, director of risk management at Torrance, Calif.-based Nissan North America Inc. The session coordinator was Gregory J. Ryan, senior vp at Becher & Carlson Risk Management Inc. in Woodland Hills, Calif. BI


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Exhibits offer 'virtually' anything—from ideas to products

By SARA MARLEY

NEW ORLEANS—How does an oceanographer from the University of Alaska find himself in the Risk & Insurance Management Society Inc. exhibit hall?

RIMS REPORT

Blame it on the weather.

The Bank of Bermuda invited scientists affiliated with the Bermuda Biological Station for Research to present some of their research at the bank's booth at this year's RIMS conference.

"We want to bring information locked in the scientific community to the insurance community," said Mark A. Johnson, an oceanographer with the Institute of Marine Science at the University of Alaska in Fairbanks.

By tracking the phenomenon of El Niño and changes in ocean temperature, scientists can improve their weather predictions up to one year in advance—a service that could interest risk managers and insurers.

Scientists and the insurance community "have much in common, but we never talk to each other," said Colin Murdoch-Muirhead, manager of institutional investments for the Bank of Bermuda in Hamilton.

Grant money becomes scarce once a scientist moves from pure to applied science, Mr. Johnson said.

"Business and science is good joint partnership," Mr. Murdoch-Muirhead added.

While the Bank of Bermuda's colorful computer program tracking Pacific Ocean temperature changes is an example of how high technology can benefit risk managers and insurers, another exhibitor lured RIMS attendees with high-tech whimsy. A few booths down, exhibit hall visitors could experience virtual reality thanks to Reliance National Insurance Co. The exhibit ties in with Reliance's advertising campaign, "Virtual Reliance."

Two small, raised platforms flanked by television screens were set up outside Reliance's railway car, now a fixture at the annual RIMS conference.

Each experimenter donned a heavy helmet that covered the eyes and ears and grasped a joystick attached to a hip belt. Once connected, participants found themselves inside a video game in which they were the primary character. Press the button and the image walks; turn your body and the image turns.

With the help of a coach who followed along on the television screen, virtual reality fans from risk managers to Sir John Swan, premier of Bermuda, navigated through doors, dove off cliffs, walked under tables and ate cheese.

The cutting-edge exhibit ties in with Reliance's innovative approach to risks, said Senior Vp Bill Watson.

"It's a creative company meeting the needs of its insureds," Mr. Watson said. "This is really 22nd century," he said of the VR pods.

Once finished with virtual reality, risk managers could meander to the CAE-Link Corp. booth for a demonstration of virtual anesthesiology.

Best known for its flight simulators, the company has branched into medical simulators that are used to train doctors and prevent medical malpractice claims.

Marketing Director Jim Doyle and Systems Engineer Harry Johnson sat next to a full-sized mannequin hooked up to life support systems and computers.

The highly sophisticated model can be programmed to reflect different body weights, drug interactions and health conditions that determine how anesthesia should be administered. As student doctors practice administering anesthesiology, the trainer can program complications requiring student response.

One real complication that RIMS and exhibitors had to respond to was a trucking strike called by the Teamsters union.

The RIMS registration material was scheduled to be shipped April 5, the day before the strike began. But RIMS made arrangements to send the material by air, said Christine Zahn, exhibits manager.

RIMS also contacted all exhibitors about alternative methods of transportation and how to recover materials that were held up by union shippers.

Media/Professional Insurance staffers had to cross picket lines in Kansas City, Mo., to retrieve its shipment of brightly colored T-shirts, which were then sent with an overnight carrier, said Chad Milton, a vp with the Aon Specialty Group Inc. unit.

Avert Inc. was grateful to have its eye-catching booth back for RIMS. During a trade show the previous week, the employment background-checking company had to do without it when striking truckers "held the booth hostage," said Sam Solt, vp-marketing of the Fort Collins, Colo., company.

The back panel of Avert's red-and-white booth is a photograph of numerous people wearing Groucho Marx noses and mustaches attached to eyeglasses. It's intended to underscore Avert's contention that potential employees may not be the people they appear to be.

Advanced Ergonomics Inc. performs employee testing of another kind: to see whether potential employees have the physical ability to perform taxing work.

The company also will work with employers to make existing jobs less stressful, said Executive Vp Kirby L. Dalton.

Advanced Ergonomics returned to RIMS after a five-year hiatus. One of the changes the company's exhibitors noted was that more brokers attended this RIMS conference and that they are increasingly interested in providing ergonomics services to their clients.

And, many more ergonomics companies exhibited this year compared to Advanced Ergonomics' last appearance at RIMS.

The booth touting a new insurance policy, dubbed Prodtect, also drew interest from brokers as well as risk managers. Prodtect is the only product on the market to cover both accidental and deliberate product contamination, explained Charles J. Bacciocco IV, specialty products director with Aon Specialty Group.

Aon Specialty Group manages the program, which is underwritten by CNA Insurance Cos.

Prodtect offers $25 million in limits with a standard deductible of $5 million for both accidental and deliberate tampering to food and beverage companies with more than $300 million in annual revenues.

Eventually, the product may be expanded to cover pharmaceuticals and consumer goods like shampoo and toothpaste.

Most insurance products cover only deliberate tampering, said Mr. Bacciocco, passing out leather coasters emblazoned with the product's name.

A handful of other insurers, including some Lloyd's of London syndicates, write stand-alone accidental tampering coverage but only with limits of $3 million to $5 million, he asserted.

The policy also covers product recalls and lost profits from any product that must be destroyed, as well as possible reductions in sales after an incident has been publicized.

Control Risks Ltd., whose booth was next to the Prodtect exhibit, provides crisis management and recovery services like brand rehabilitation to Prodtect customers.

Control Risks also offers disaster and contingency planning and has an exclusive arrangement with a Lloyd's syndicate managed by Cassidy Davis Underwriting Ltd. to provide crisis response to its kidnap and ransom policyholders, said Darrell W. Heasley, marketing director with the company in McLean, Va.

The company had not exhibited at RIMS previously, but the Prodtect affiliation "was the push we needed," he said. "We have histori-

Continued on next page



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Continued from previous page
cally dealt with security and human resources, but we'd like to make ourselves more aware to risk managers."

The opportunity to see existing clients is what brought GENEX Services Inc. back to RIMS for a sixth year.

"It reinforces to our customers that we are a national provider," said Vice Chairman Maurice D. Kent. "We don't look to RIMS so much to develop new business as to reinforce the business we have."

And, exhibitors may learn a thing or two from each other. "We can also keep updated on the technology and products and services that are being made available," he said.

The Wayne, Pa.-based cost-containment and disability management firm handed out triangular pocket knives and duffel bags, perfect to use "to load up on Christmas stocking stuffers" from other booths, he joked.

At the Protection Mutual Insurance Co. booth, risk managers picked up bottles of "Dean Johnson's Hot Sauce," named for and selected by the president, chairman and CEO of the Park Ridge, Ill.-based insurer.

"Better a small fire in your belly than a large fire in your warehouse," quipped John Holcomb, district vp in Indianapolis.

At the Arkwright Mutual Insurance Co. booth, risk managers who tried out an interactive computer system received a stylish "Arkwright Advantage" T-shirt.

The computer program "helps customers and prospects understand the products and services that make up the Arkwright advantage," said Johanna Hetherton, communications specialist with the Waltham, Mass.-based company.

The interactive system, first used in Monte Carlo at last year's Risk Management Forum co-sponsored by the European Assn. of Risk Managers and RIMS, allows risk managers to follow a case study through Arkwright's total asset protection program for difficult risks, risk management information systems or loss control training.

Alexander & Alexander Services Inc. also offered an interactive computer system. Risk managers could punch up their own industry group to see how their concerns compare with the responses published in A&A's 1994 U.S. Risk Management Survey (*BI*, April 18).

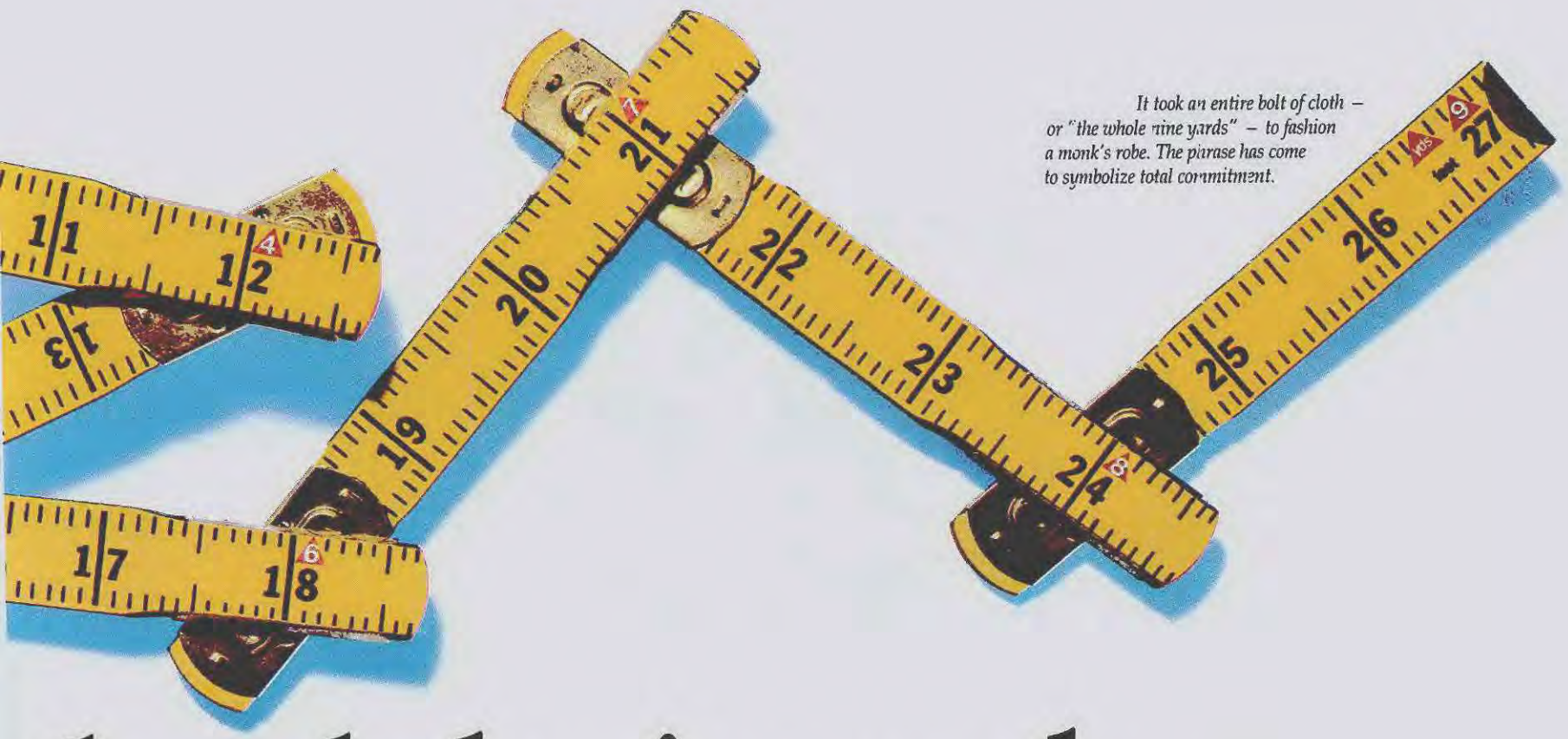
Acordia Inc. gave the gift of time—digital clocks.

"Give us the time to tell you why Acordia is the only insurance broker you need," pleaded William W. Carmichael, vp of corporate communications.

Other exhibit hall treasures were Swiss Army knives doled out by Chubb Corp.

Liaison Inc., a workers comp disability case management firm, passed out giant red chewing gum lips to promote its Limited Intervention Program, or LIP, explained Randy Davis, director of corporate training and development in Dallas.

Under that program, medical case management is performed entirely over the phone for a flat fee, which Liaison says is more cost-effective than managing cases in person. BI



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GENEX
Solving the Cost/Care Equation

Property rates will rise, executive says

Disaster losses alter insurers' attitude on pricing

By MICHAEL SCHACHNER

NEW ORLEANS—Forces in the commercial insurance marketplace beyond risk managers' control will push North American property insurance rates skyward over the next two years, says an official with a risk pool for Canadian universities.

RIMS REPORT

Property "prices will increase substantially over the next couple years, primarily due to a changing business environment that is resulting in less preventive maintenance and reduced attention paid to safety," said Keith R. Shakespeare, chief operating officer with the Canadian Universities Reciprocal Insurance Exchange in Oakville, Ontario.

In addition, the well-publicized recent string of natural disasters is also causing insurers to seek increases in property insurance rates, he said.

"With the smaller staffs we're all operating with as a result of downsizing, preventive maintenance has turned into deferred maintenance. It's having an effect on both property and boiler and machinery losses. We're left with less knowledgeable loss prevention people, so either we retrain or let it go," Mr. Shakespeare explained.

Impending property insurance rate increases will also be a product of insurers cutting back on loss control services. "As loss prevention programs suffer, loss ratios climb and prices follow," he said.

Mr. Shakespeare offered these views on the immediate future of the property market at a session during the Risk & Insurance Management Society Inc. conference.

"The property market has us all very nervous. Coming off a prolonged soft market, one can only expect prices to harden. But by how much and with what impact are the questions we as risk managers are asking," said Joe Hardy, director of risk management and insurance with the Oshawa Group Ltd. in Etobicoke, Ontario.

Ron Davis, vp-French operations with Arkwright Mutual Insurance Co. in Annecy, France, who until recently was with Arkwright in Canada, offered the industry's perspective on property pricing in the near future.

"I have to agree that prices are going up," he said. "The industry needs premiums, so it appears at this point in time that there's little incentive to being a good risk. Prices even for the good risks are escalating now.

"However, by 1995, the good risks will again start seeing rewards. I hope that within two years property renewals will be non-events for good risks," Mr. Davis said.

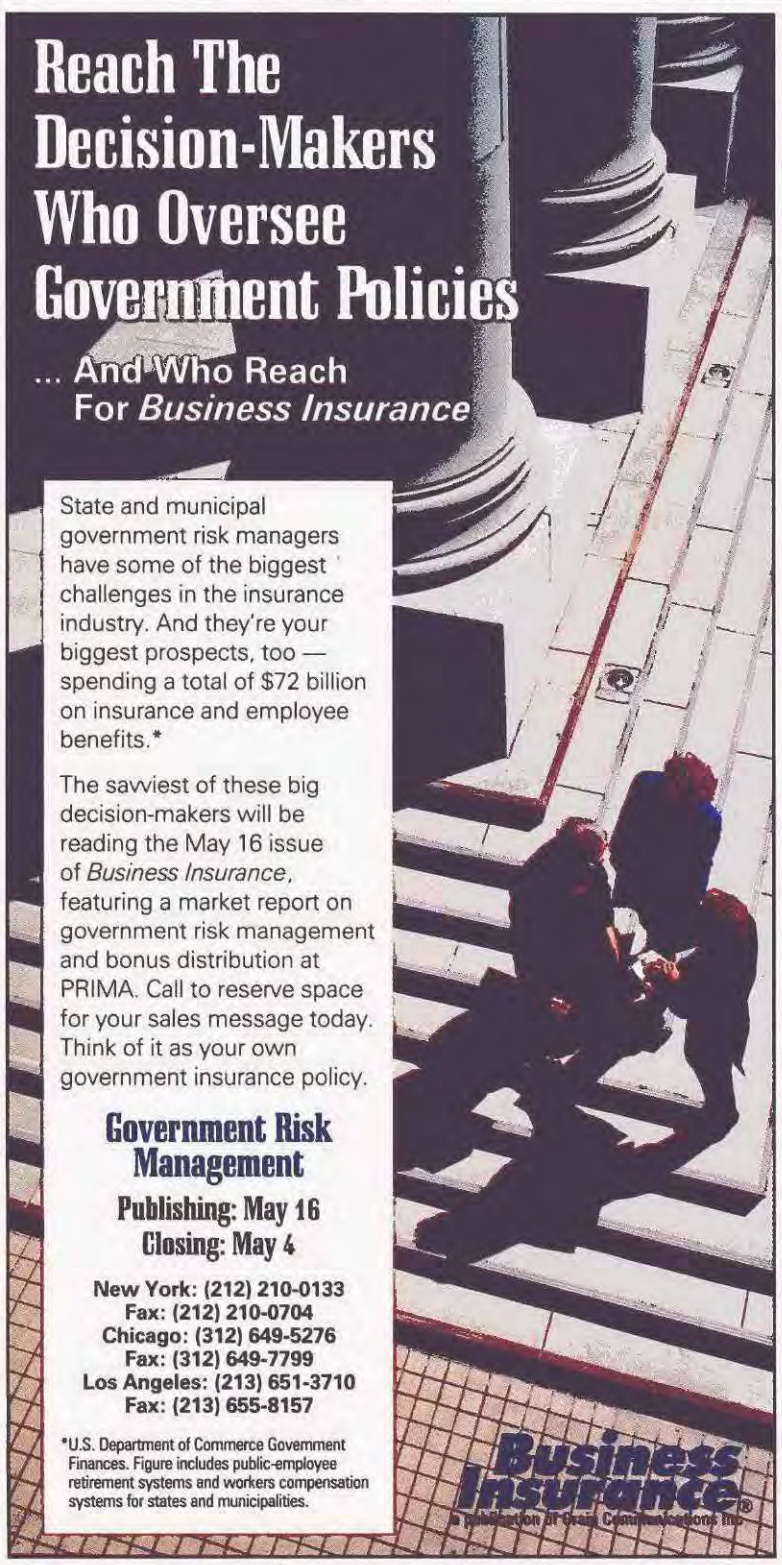
He said property pricing is on the rise because insurers are focusing on their aggregate exposure—including business interruption, freeze, wind and earthquake losses—and many insurance companies are realizing that they're overexposed in certain geographical areas.

In addition, Mr. Davis said personal lines losses are "finally having an impact on commercial lines." Specifically, personal lines losses from Hurricane Andrew, last year's California wildfires and the recent Los Angeles earthquake "have stressed resources and changed (the industry's) attitude toward commercial property."

"Given that 80% of losses in recent years have been catastrophic, it's natural that prices are going to rise," Mr. Davis said. But he did offer one possible solution. "Maybe the large losers should pay surcharges, while our best customers should continue receiving breaks."

Another way to curb rising property insurance rates is for in-

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Continued from previous page

surers to incorporate better technology into their underwriting, administrative and service procedures, suggested the university pool's Mr. Shakespeare.

"There is still way too much paper pushing going on. High (insurer) overhead only gets passed on to the buyers," he said.

The speakers all said that catastrophe coverage is one of the areas of greatest concern.

"The availability of quality cat cover will diminish. We have questions about the security of the primary carriers based on the reinsurers they're dealing with," said Mr. Shakespeare. But, dealing with these questions of insurer strength is what a risk manager's job is all about, he added.

"If you have a loss and your insurers are weak, you may suffer from a serious cash-flow problem, especially if you get into a business interruption situation," he said.

"But ultimately, the responsibility is on the risk manger to analyze the strength of his or her insurers. You have to determine what the likelihood of getting paid is before you sign on. You must realize that many primary carriers are buying reinsurance solely on price. But if all you end up collecting is 10 cents on the dollar, that's trouble," Mr. Shakespeare said.

Arkwright's Mr. Davis agreed that risk managers need to know more about the insurers they're contracting with, rather than relying entirely on their brokers and consultants to know this information.

"If you don't know your primary and reinsurance companies, start now. You may also want to try to estimate your maximum loss exposure to determine whether you can self-fund it or can afford to pay the cost of transferring the risk."

Mr. Shakespeare concluded by urging insurers and risk mangers to unite in the area of property loss control.

"There have to be significant expenditures made on loss control. The industry isn't helping here. There are virtually no incentives to participate in a loss control program and no penalties for ignoring an underwriter's suggestions," he said.

In response, Mr. Davis said property loss control almost always suffers when the insurance market is price-driven, as it is now.

"This is the way it is, but it shouldn't be. A company with loss control is in charge of its own destiny. We believe continuous loss control engineering is necessary to keep pace with operational changes and enhancements, especially at large, industrial facilities," he said.

The session was coordinated by Mr. Davis and was moderated by Oshawa's Mr. Hardy. BI

Don't admit defeat on denial

Try tactics to change insurer's mind on the claim

By GAVIN SOUTER

NEW ORLEANS—Denial of a claim by an insurer can be a risk management nightmare.

RIMS REPORT

If a company's top management thinks it is covered for an incident but finds out that it is not, the risk manager most often is the person who has to fix the problem, a consultant says.

The best method of dealing with a claims denial problem is to avoid it in the first place, said Jane Y. Rastallis, a consultant with The Wyatt Co. in Wellesley Hills, Mass.

But, when it is too late to prevent a claims denial, risk managers should not be over-awed by insurers' rejection, she said.

Indeed, several strategies can turn around a claims denial, said Anton T. Moehrke, a partner at the law firm Wright & Moehrke in Boston.

Claims denials are often gray areas and risk managers have a variety of weapons to chose from when they confront their insurers, he said.

Mr. Moehrke and Ms. Rastallis reviewed claims denials during a session at the Risk & Insurance Management Society Inc. conference.

"One of the greatest nightmares you face as a risk manager is a situation where you tell your superiors that you are all set and then several months later you find that the insurer is not going to pay your claim," said Ms. Rastallis.

Nevertheless, claims denials happen frequently and for a variety of reasons, she said. "It can be due to lack of attention to detail, someone's negligence or just plain bad luck."

Denials can be due to 'someone's negligence or just plain bad luck,' says Jane Rastallis.

However, the chance of a claims denial happening can be diminished if insurers and risk managers both take greater care in drawing up the original insurance program, she said.

Detailed documentation of insurance agreements gives clarity of coverage, while effective communication between insurers and risk managers can clear up any misunderstandings, she said.

But, if a dispute still occurs, risk managers should not be afraid to confront their insurers, she said. "Most people give up because they feel that insurance companies are too big to deal with."

However, risk managers should not take no for an answer and should discuss the claims denial with the insurance company's underwriter and claims manager, Ms. Rastallis said.

Reversing a claims denial is an art rather than a science, said Mr. Moehrke. But, he added, there is a growing sophistication among insurers and policyholders in disputing claims.

Insurers use several tactics in denying claims that a risk manager should be able to combat, he said.

For example, an insurer might refer to precedents set in some states that have no relevance to the state in which the policyholder resides. "You will get insurers coming to you in Massachusetts citing some case that was heard in Georgia. It might be well-reasoned and it might be a good analogy, but it is not binding," Mr. Moehrke said.

In a similar way, policyholders are often unable to sue an insurer for denial of a claim under a state's unfair claims act. Often, only state authorities can pursue such cases under the act.

However, policyholders can use the law as an effective tool when they are fighting a claims denial, he said.

"You can say that a violation of the law is a violation of a standard of care and is proof that something was wrong."

Insurers often make other slip-ups in denying claims that can be turned to a policyholder's advantage, he said.

For example, many states require insurers to investigate a claim within a few months after it is filed, Mr. Moehrke said.

And, many states have an implied duty of good faith. If insurers slip up here, for example, by failing to pay for a defense lawyer, then policyholders can seek damages higher than the policy limits, he said. "In some jurisdictions, you can even try for punitive damages. You are unlikely to get them, but it will grab the insurer's attention."

Clearly, there are gray areas in insurance regulations and case law, so policyholders should ensure that they have expert advice when they are challenging a claim, he said.

Also, when dealing with several insurers, policyholders should make the insurers act in unison so they do not separately try to prolong the dispute by denying the claim on different grounds, Mr. Moehrke said.

Another delaying tactic used by insurers is to ask for numerous documents.

"Make sure you give the insurer everything you can and ask them if there is anything else they need. That will really annoy them."

Finally, policyholders should ensure that they take control of the dispute and that they are the ones dictating when meetings should be held and who should attend them, Mr. Moehrke said.

The session was coordinated by Ms. Rastallis and moderated by Gail G. Copelan, manager of workers comp, property, claims administration, risk management, employee benefits and office services at Holiday Inn Worldwide in Atlanta. BI

Little faith in health care reform: Poll

By JAMES M. BURCKE

NEW ORLEANS—Risk and employee benefit managers are pessimistic that health care reform will be enacted this year, a new survey shows.

RIMS REPORT

And, if a reform bill is passed, they believe it most likely will increase their organizations' health care costs.

Only 23.5% of the risk and benefit managers surveyed by *Business Insurance* at the Risk & Insurance Management Society Inc. conference last month believe that Congress will pass comprehensive health care reform legislation this year.

However, 28.9% of the brokers, insurers, consultants and other vendors who answered the survey believe comprehensive reform will be enacted by year end.

Altogether, 25.8% of those responding to the survey predict passage of comprehensive health care reform legislation in 1994.

Some 356 RIMS conference attendees participated in *Business Insurance's* fourth annual One-Minute Opinion Poll. The survey was conducted at *BI's* booth in the RIMS exhibit hall. Approximately 57% of the respondents were risk or benefit managers; the remainder were vendors attending the conference.

If health care reform legislation is approved, the survey respondents believe the law will increase health care costs. But, again, risk and benefit managers were more pessimistic than brokers, insurers and other respondents.

Slightly more than 80% of the risk and benefit managers predicted that their organizations' health care costs would rise if reform legislation is passed, compared with only 78.2% of the vendors.

Only 8% of the risk and benefit managers said costs will drop as a result of health care reform, compared with 10.3% of the vendors.

The remaining respondents in both groups said health care reform would have no impact on health care costs.

Likewise, a greater percentage of risk and benefit managers—as compared with vendors—reported that group health care costs and workers compensation costs are rising as quickly today as they were two years ago.

Two-thirds of the risk and benefit managers surveyed said health care cost increases have not moderated during the past two years at their organizations, compared with 55.3% of the vendors. And, 52.9% of the risk and benefit managers said workers comp costs are increasing as quickly today as they were two years ago; while only 43.2% of the vendors surveyed said workers comp costs were increasing as steeply in 1994 as they were in 1992.

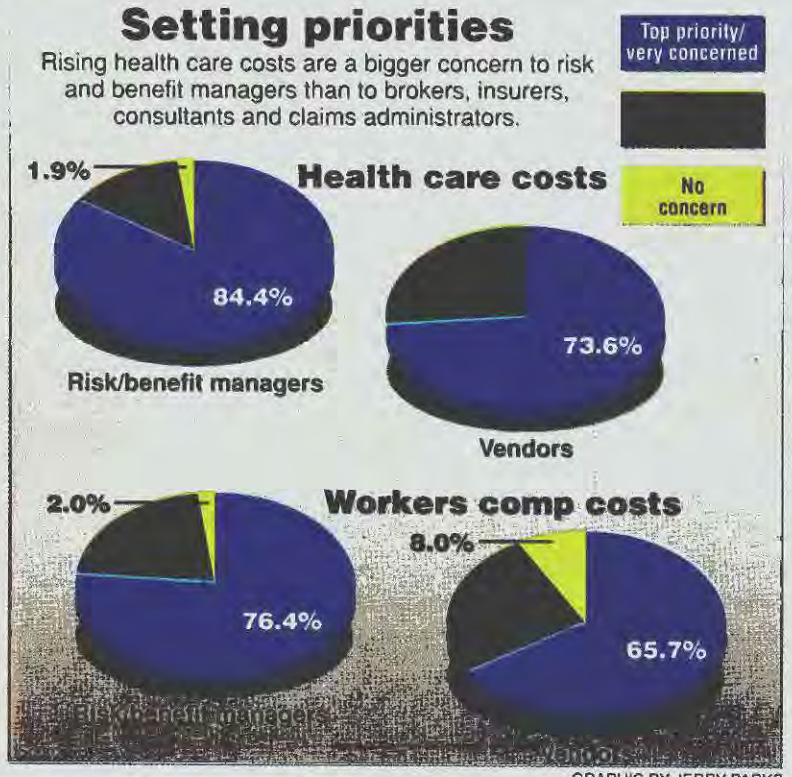
Risk and benefit managers are more likely to report that their organizations are highly concerned about rising health care and workers comp costs than the vendors.

About 84% of the risk and benefit managers said their organizations' managements are "very concerned" about rising health care costs, with 27.5% regarding health care increases a "top priority" (see chart).

By comparison, only 73.6% of the vendors said their managements were very concerned about health care costs, though 28.9% did say that rising health costs are a top priority.

Likewise, 76.4% of the risk and benefit managers said that rising workers comp costs are a big concern to their organizations, with 17.6% calling workers comp costs a top priority. Only 65.7% of the vendors said that workers comp costs are a big concern at their companies, though 28.9% said they were a top priority.

Somewhat predictably, risk and benefit managers were less likely than vendors to believe that employers should be required to offer and pay most of the cost of employee health care coverage. Only 36.4% of the risk and benefit managers favored the so-called employer mandate, compared with 42.1% of the vendors surveyed.



GRAPHIC BY JERRY PARKS

Risk and benefit managers, however, were more likely than vendors to believe that employees should be taxed on a portion of employer-paid health care benefits to finance coverage for the uninsured. Slightly more than 35% support such a proposal, compared with only 24.3% of the brokers, insurers, consultants and other vendors.

Finally, nearly half of all respondents believe that workers comp benefits should somehow be "coordinated" or "merged" with the group health care system, but a significant percentage have not yet formed an opinion.

Forty-six percent of the respondents favor coordinating or merging the two reimbursement systems, compared with 28.1% that say the two systems should be kept separate. However, 25.9% say they are not sure whether the two systems should be coordinated or combined.

There was little difference in the responses of risk and benefit managers and vendors on this question. BI

Employment liability lawsuits increasing

Most risk managers shying away from buying employment practices coverage

By CHRISTINE WOOLSEY

NEW ORLEANS—The odds are greater than ever that most U.S. companies will be hit with at least one employment-related lawsuits this decade, an attorney and a risk management consultant say.

But, despite the threat, corporate risk managers are not scrambling to buy employment practices liability insurance, which generally protects corporations against claims for employment discrimination, wrongful discharge or sexual harassment.

While risk managers acknowledge that the risk of employment practices litigation has increased, they aren't sure they need employment practices liability coverage. Some risk managers say the coverage could be redundant, noting that endorsements to their general liability or directors and officers liability policies may be sufficient.

Other risk managers who work for larger companies say that their self-insured retentions would cover most claims or settlements.

"We are faced with a corporate environment of consolidations, restructuring and layoffs," said Karen Edlund, assistant treasurer for M/A-COM Inc., a microwave electronics firm in Lowell, Mass.

"That means strife and stress for employees. There is a lot of confusion and that makes it a turbulent (employment) environment for companies compared to 10 years ago," she said during a session on EPL coverage at the Risk & Insurance Management Society Inc. conference.

In addition, new legislation protecting employees from discrimination during the interview process or on the job—or even if they are discharged—provides more remedies should workers feel they've been treated unfairly by their employers, Ms. Edlund explained.

Armed with the ability to collect damages for unfair treatment or discrimination, employees are becoming more litigious.

"Employees are looking for protection if they are fired. They are more savvy and sophisticated. And, they are seeking legal counsel more quickly," Ms. Edlund pointed out.

Despite the volatile employment environment, M/A-COM hasn't been hit with many EPL lawsuits, Ms. Edlund said.

Between 1990 and 1994, the company conducted a series of layoffs after it sold seven divisions, closed three facilities and consolidated four more. More than 1,000 employees were let go and a number of them brought complaints against the company, claiming discrimination or wrongful discharge following their terminations.

Specifically, 57% of the EPL claims brought against M/A-COM alleged age discrimination, while 20% alleged race or sex discrimination, 7% alleged breach of contract and 7% alleged handicap discrimination. The rest of the claims alleged discrimination based on a combination of factors, Ms. Edlund said.

However, the company's in-house legal counsel handled 88% of those claims, she noted. And, 69% of those claims were administrative actions, which did not cost anything because they were dismissed by federal or state agencies that oversee employment disputes.

Of the remaining actions, 23% ended in a court settlement and 8% resulted in an administrative settlement, Ms. Edlund explained. One percent of the cases wound up in court and were dismissed at no cost to M/A-COM.

"I filled out an EPL insurance application but haven't yet purchased a policy," she said. "My main goal in making a decision is to be sure I'm not duplicating coverage under my general liability" or other policies. Also, "I want to make sure we are insuring against large claims. I want to manage most of our risk in-house and retain a big portion of the risk so we don't have to pay high premiums."

'From a risk manager's standpoint, EPL coverage may not be in the budget yet,' says Richard Betterley.

EPL coverage has become increasingly available from several U.S. casualty insurers and from the London market over the last several years, noted Richard Betterley, senior consultant with Betterley Risk Consultants, a division of Milliman & Robertson Inc. in Worcester, Mass.

The EPL market "is open and competitive," he said. Coverage is easy to buy now, premiums and deductibles are reasonable, and employers can negotiate any part of the policy.

Risk managers are not buying the coverage for several reasons. "The vast majority of losses are small and fall well within an employer's self-insured retention," Mr. Betterley said.

And, "from a risk manager's standpoint, EPL coverage may not be in the budget yet. It's a new policy and represents new thinking. A lot of risk managers don't want to buy another (insurance) policy."

Also, most EPL policies have many exclusions and risk managers do not want to get stuck paying for a policy that won't cover their claims.

Yet, some attorneys—like J. Dennis Molloy, an attorney with Hanson & Molloy in Washington, who also spoke at the session—stressed the need for companies to protect themselves against employment-related claims.

And, James C. Gray, product line manager for Lexington Insurance Co. in Boston, discussed EPL policies available from his company.

Ms. Edlund was the session moderator. Mr. Betterley coordinated the session. BI

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'Perfection' possible in financing risk

By RODD ZOLKOS

NEW ORLEANS—There may be no such thing as a perfect risk financing program, but it *is* possible to craft a program that's close to ideal for a given organization.

RIMS REPORT

Among the factors that determine what constitutes a "perfect" program for an individual organization are: the size of the organization, its sophistication, the mix of frequency and severity of losses, and the company's tolerance for risk.

The fourth factor is "the one that probably hangs us up the most," said Richard S. Betterley, senior consultant at Betterley Risk Consultants in Worcester, Mass. "It's something more than financial. There's financial tolerance and then there's psychological tolerance."

And even after an organization has assembled the ideal risk financing program, external forces like an insurance crisis or a soft market can force deviations.

In evaluating a risk financing program, Mr. Betterley, who participated on a panel at the Risk & Insurance Management Society Inc. conference, said he would look for its long-term financial efficiency, with an eye toward eliminating costs that don't add value, like market loads and taxes. He would also be wary of the unnecessary transfer of risk.

In assembling a perfect risk financing program, it's necessary to make some long-term predictions—something that is easier said than done since the predictability of costs is affected by insurance cycles.

Short-term predictability is also important, he said, and the program should be set up in such a way that it can contain costs.

While details of a risk financing program may be unique to individual organizations, each program has three common elements: the working layer, the buffer layer and the excess layer. "Where those layers lie is probably the $64,000 question—or sometimes the $640,000 question," Mr. Betterley said.

An actuarial analysis can be an important component in making those determinations, said Joel S. Chansky, a consulting actuary at Milliman & Robertson Inc. in Wakefield, Mass.

Working on the assumption that the risk financing program will include some sort of risk retention or self-insurance, actuarial analysis can be used to forecast cost allocations and reserve needs and to determine how much risk should be transferred, he said.

"Conventional risk management theory" is to retain the entire working layer or as much as possible, said John B. Stites, vp-alternative risk transfer for Chubb & Son Inc. in Warren, N.J.

Losses in the working layer are those of high frequency and low severity and, most importantly, are predictable.

At the high end in the excess layer are the shock losses, the unpredictable losses with little frequency and high severity. Conventional risk management wisdom dictates trying to transfer all the risk in that layer.

In between, in the buffer layer, there are various considerations that drive the decision of how to finance the risk, Mr. Stites said.

"I think more and more, appetites for risk on the insurance side of an organization are starting to match up with risk-taking in other areas," he said. That appetite for risk and the organization's financial capability "tend to define the upper limit of the buffer layer."

Cost of risk, predictability, market conditions and gains for the risk management program also all come into play.

Within the buffer layer there are various ways of dealing with risk. One is to buy traditional guaranteed-cost umbrella coverage. "I can tell you, it is as competitive right now as it has ever been," Mr. Stites said. "An extraordinarily soft market right now makes this something you have to look at."

Another option is to increase self-insured retentions.

"I see a lot of companies increasing their retentions, looking primarily at the financial benefits," Mr. Stites said. But, organizations increasing their retentions should push for more than financial gains, he said. In exchange for larger retentions, they should receive consideration in their policies' terms and language.

While there are benefits to be gained by increased retentions, Mr. Stites offered a caveat: "If your exposures are changing rapidly, your buffer is changing rapidly and now might not be the right time to jump into greater retention in the buffer layer."

Another option in the buffer layer is the use of blended finite risk insurance, an approach Mr. Stites defined as any program that blends risk funding with a "fair amount" of risk transfer.

He likes the use of blended finite risk coverage in the buffer and noted that if there are no losses over the period of the finite risk contract, the insurer will repay a significant amount of the premium paid by the policyholder.

John B. Hughes, director of risk management for Alex Lee Inc. in Hickory, N.C., moderated the session. BI

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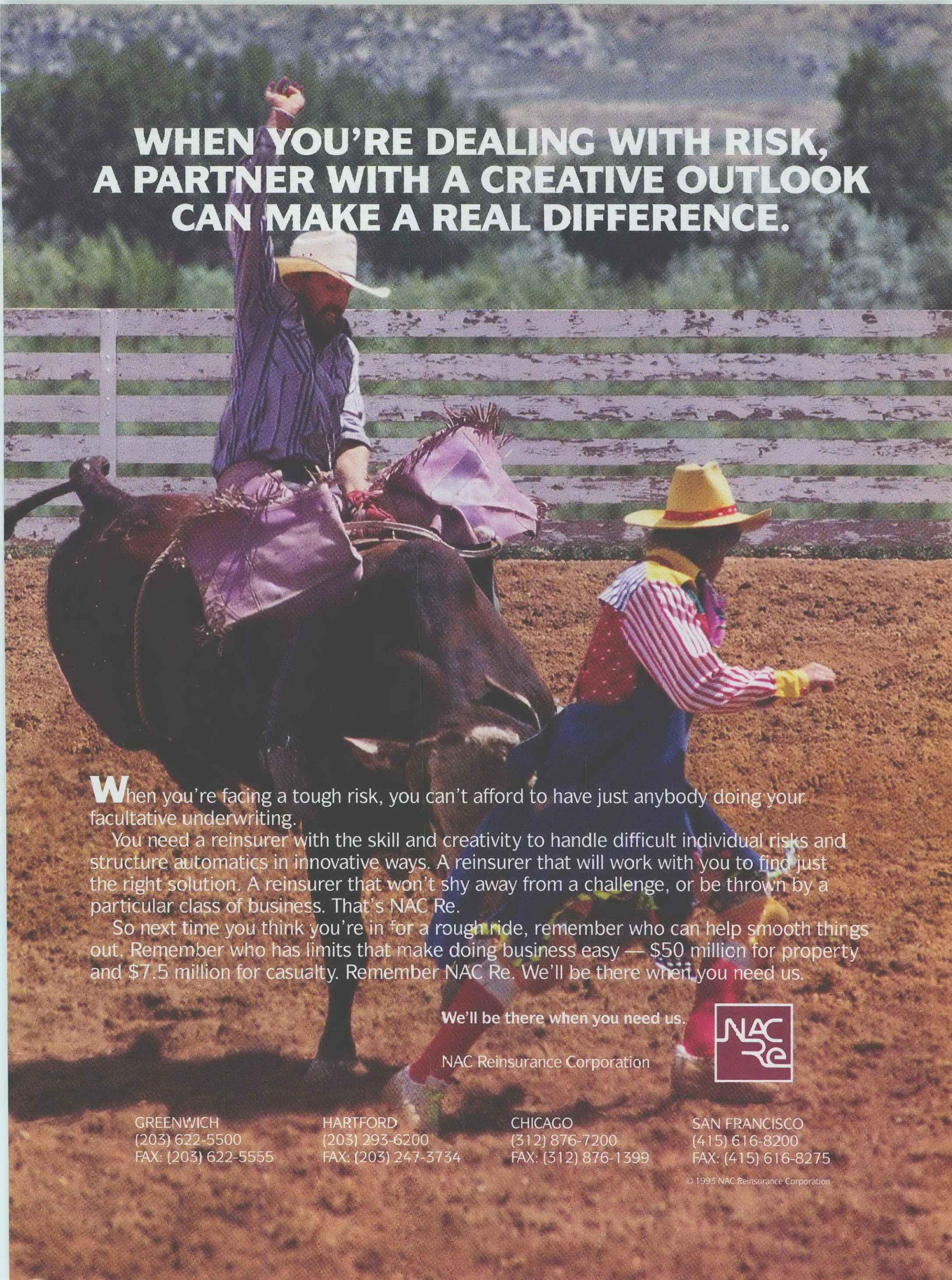
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Ethics

Continued from page 3

coordinated and moderated the session.

Reactions varied widely among those surveyed. For example, 31% said they had strong reservations about accepting an all-expenses-paid Caribbean cruise from a service provider in return for speaking at a training seminar on the cruise. Thirty percent said they had no reservations and 36% had some reservations.

Another quandary that produced divided responses was that of a risk manager who has $25,000 in contract authority and a project that can be broken down into three parts worth $10,000 each.

The risk manager should not separate the project into three parts, even though it would put them within his or her contract authority, according to 36% of the respondents. One-third said they had some reservations about splitting up the project, while 27% had no reservations.

In another scenario, a risk manager wants his company to purchase an approved dip tank for flammable liquids, even though it is not required by fire code.

Such a tank would allow the company to consolidate several small containers of flammable liquids, such as degreasing agents, into a central container with built-in fire protection.

During an inspection with his property insurer, the risk manager asks the inspector to cite the condition to exert added pressure on the company to purchase the dip tank.

Of the insurance professionals surveyed, 37% had strong reservations about requesting the inspector to issue the citation, 41% had some reservations and 22% had no reservations.

Responses were even more divided on other issues.

Nearly half of those surveyed had strong reservations about passing a favorable insurance quote from a broker not currently on an account to the company's incumbent broker to match. About 30% had some reservations and 24% had none.

Unilateral indemnification agreements, in which companies require a contractor to assume all liability arising from a project, were rejected by 20% of the respondents. Twenty-seven percent had no reservations of such a transfer of liability and 46% had some.

On some issues, the survey contained additional questions to determine if there are degrees of ethical behavior.

For example, risk managers were asked if they would alert the risk manager at another company, a personal friend, of a legal technicality that would let the other company avoid paying a $100 settlement that the two had just reached. Sixty-five percent said they would inform the friend of the technicality, 7% said they would attempt to negotiate a lower settlement and 22% said they would not mention the technicality.

When the amount in question was increased to $1 million, the responses changed little. And, only 10% said they would react differently if the other party was not a personal friend.

Other portions of the survey related more to questions of ethics for risk management service providers.

For example, a consultant receives a request for services outside his direct area of expertise.

Eighty-two percent of the respondents reported having either strong or some reservations about the consultant accepting the business in order to gain expertise in that area. Fourteen percent had no reservations.

Another service provider scenario addressed "buying business." A broker has the opportunity to obtain a prestigious account by underpricing the business this year, but plans on raising the price the following year. Nearly 40% of insurance professionals had strong reservations about this practice, 38% had some reservations and 23% had none.

Ultimately, discussion is a better tool for examining ethics than a survey, Mr. Moss said.

"The more you know about a situation, the easier the ethics become," he noted.

The survey contained only a brief description of a situation, but after hearing the panel and audience's discussion, some risk managers found themselves changing their attitudes.

"It's helpful to find out others' opinions," said Mr. Moss, adding that the process of conducting the survey and presenting its findings caused him to question some of his own business practices.

Participating on the panel were Robert V. Cornell, business manager for Parr Lumber Co. in Aloha, Ore.; John Hoffman, risk operations manager for the city of Portland; Chris Novotny, senior risk analyst for the Port of Portland; and John G. Sweitzer, director of risk management for Red Lion Hotels & Inns in Vancouver, Wash. BI

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RIMS session topics vary from jury research to family leave

NEW ORLEANS—The Risk & Insurance Management Society Inc. conference gives risk managers an opportunity to hear expert perspectives on a variety of issues, learn solutions to problems and exchange ideas with their peers.

Following are summaries of several sessions offered during the 1994 conference:

Jury research

Pretrial jury research can be just as effective in cases that end up in mediation or arbitration, a legal expert says.

But the research—which involves analyzing reactions by focus groups and prospective jurors—should be conducted early in the discovery process to be cost-effective, said Pete Rowland, a legal professor at the University of Kansas in Lawrence.

In some cases, jury research can be used to persuade top management that the company should settle a case, he said.

"Jury research can also be used to modify the settlement position" so that any offer made is more seriously considered by plaintiffs, he added.

Also speaking during the session was Allan J. Campo, president of American Litigation Analysts in Lafayette, La. Lance Ferris, risk manager for Zurich-American Insurance Group in Schaumburg, Ill., moderated the session, which was coordinated by Donna Briggs, vp of Mr. Campo's firm.

Dark side of downsizing

Downsizing puts risk managers between a rock and hard place.

They must deal with increased exposure to employment-related claims from laid-off employees, while at the same time try to protect themselves from being the next victims of downsizing.

Poor morale and litigation accompany every downsizing, but with each successive layoff, the potential for claims against a company increases, said John B. Lewis, a partner with law firm Arter & Hadden in Cleveland.

In response, risk managers need to identify their exposure to such claims as age, race or sex discrimination, unfair labor practices, breach of contract and violations of the Americans with Disabilities Act. Then, risk managers must develop downsizing plans that eliminate or minimize those risks.

Developing such a plan increases a risk manager's value to his organization and helps establish the risk manager's identity within the organization, something all risk managers should try to do in the current corporate climate, said Bill Perry, president of Logic Associates Inc. in New York.

James J. Conerty, manager of risk and insurance management at International Business Machines Corp. in Armonk, N.Y., moderated the session. Thomas V. Irvin, vp of CIGNA Special Risk Facilities in New York, was the session coordinator.

Family leave issues

Employers are trying to resolve a slew of issues that have cropped up since the federal Family and Medical Leave Act went into effect last year.

For example, while the law only requires employers to offer family leave benefits in locations where they have at least 50 employees, national employers that want to maintain a uniform benefit program may want to extend benefits to employees at all company worksites, said Margy McKenna, director of risk and benefits at Jones InterCable Inc. in Englewood, Colo.

In addition, while the law only requires employers to extend benefits to workers who have been employed at least one year and worked at least 1,250 hours during the prior 12 months, some employers, especially those that don't track hours worked by employees, may want to consider waiving the service requirement.

"It all depends on your corporate culture," Ms. McKenna said.

Also speaking was Marty Hurd, a consultant in the Denver office of Towers Perrin. The session was coordinated by James Crockett, manager of risk and benefits at the Denver Water Department.

Preparing for disasters

The past five years have brought disasters of all sorts, from natural and human causes, to the doorsteps of risk managers.

And while the floods, riots, earthquakes, windstorms and even terrorist bombings have been nightmares for risk managers, some valuable risk management lessons have been learned.

"First and foremost, be prepared because eventually it's going to happen to you. We've learned lessons from everywhere because the disasters have been varied and widespread," said Harvey Michael, a partner with Deloitte & Touche in Houston.

Recommendations offered by insurance experts included carrying ample business interruption and extra expense coverage, preparing for code upgrades if an older facility is damaged and dealing with closures mandated by civil authorities, among other things.

The session was coordinated by William D. O'Connell, national director of business insurance consulting with Deloitte & Touche in Dallas. Jeffrey J. Gehrke, senior director-risk management with Continental Airlines Inc., moderated the session.

Loss control specialists from Deloitte & Touche participated in a similar seminar at the Canadian RIMS conference last fall (*BI*, Sept. 27, 1993).

Safety and corporate culture

A commitment from senior management, support from local managers, employee involvement and accountability are the keys to successfully integrating safety into the culture of an organization.

Conversely, increased costs, inadequate staffing, the potential for reduced output, resistance to change and inconsistent application of safety programs are persistent obstacles to workplace safety.

These were the views offered by

Continued on next page



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April 12, 1994

Summaries

Continued from previous page
several risk managers and safety consultants during a session on integrating safety programs.

Speakers were: Stephen Bennett, vp with Johnson & Higgins in Chicago; Bradley Hart, senior vp with Willis Corroon Corp. in New York; Jack Kester, manager-technical sales and marketing with NATLSCO, a unit of Kemper Risk Management Services Co. in Long Grove, Ill.; and David Manning, manager-regulatory affairs with Occidental Chemical Corp. in Dallas.

The session, which was coordinated by Mr. Kester, was moderated by Robert Alkire, risk manger and assistant treasurer with 21 International Holdings Inc. in Saddle Brook, N.J.

Violence in the workplace

The issue of liability for security and violence in the workplace will be a hot litigation topic for attorneys in the '90s, according to two loss control specialists.

If employers display a gross disregard for the safety of their employees, prosecutors can circumvent the exclusive remedy clause in workers compensation policies and sue the employer, said Warren Miller, a senior training specialist for Kemper National Insurance Cos. in Long Grove, Ill.

Therefore, employers must develop specific policies to help prevent workplace violence and to help deal with its aftermath.

"Crime prevention through environmental design" is essential for risk managers to prevent liability, Mr. Warren said, noting that this combines access control with surveillance.

Risk managers need to look at the workplace environment psychologically as well as physically, added Julianne Stanton, senior training consultant with Kemper in Chicago.

"Employees feel better and work better in an emotionally healthy work environment," she said.

Carol A. Fox, corporate risk manager for Gibson Greetings Inc. in Cincinnati, moderated the session.

Mexico reforms on course

Recent political upheaval in Mexico—including the assassination of the leading presidential candidate, an uprising in the Southern states and kidnappings—should not affect investors attracted by the North American Free Trade Agreement, several panelists agree.

NAFTA continues to bring more and larger investments to Mexico, they say.

"Investment is moving from the stock market to direct investment," commented Miguel E. Silva, president of Seguros Interamericana S.A., a joint venture between American International Group Inc. and the Prime Group, a major Mexican financial services group.

Whether to invest in Mexico "is not a short-term discussion," he said. "The changes have to mature over five to 10 years. You have to look at the investment in that regard."

"The political system is fundamentally solid," said Harald Feldhaus, chairman and CEO of Brockman y Schuh Agente de Seguros, a UNISON partner in Mexico that is 25% owned by Johnson & Higgins. "These events do not undermine the progress that has been made."

Brian W. Jones, senior vp of Johnson & Higgins Ltd. in Toronto, also spoke at the session, which was moderated by Marc Darby, director of risk management of Bombardier Inc. in Montreal.

Marie Gorey, a vp with Johnson & Higgins in New York, coordinated the session.

Risk retention comfort level

Risk managers can feel more comfortable with their corporate risk retention level by gaining a better understanding of the risks they face, a financial executive says.

While risk managers will never be totally comfortable with their risk retention levels due to increasing competition and a changing insurance marketplace, they can minimize their exposure through internal and external supports, said Douglas M. Waddell, senior vp and treasurer of International Distillers & Vintners North America in Farmington, Conn.

For example, in-house safety and environment staff can be relied on to respond to emergencies when they occur, while outside help like banks and brokers can monitor such financial exposures as customers' debt ratings and company investments, Mr. Waddell said.

Risk managers can use a variety of analytical techniques to measure their retention levels to ensure they are within the company's comfort level, added Harry L. Shuford, global director for Anistics, the risk consulting division of Alexander & Alexander Consulting Group in New York.

Ratio analysis is one way to measure risk retention, he said. This method uses figures found in financial statements to determine values and evaluate risks, and compares such ratios to those of prior periods and other companies to reveal trends and identify eccentricities.

Gregory F. Sosbee, general manager-risk management for Caltex Petroleum Corp. in Irving, Texas, also spoke during the session. W. Lee Carter III, director-research and development for Alexander & Alexander Inc. in Dallas, coordinated the session. Paul Grzybowski, assistant treasurer for Overhead Door Corp. in Dallas, was the moderator.

OSHA reform flaws

Legislation now before Congress aimed at reforming the Occupational Safety and Health Act is flawed, according to an American Society of Safety Engineers position paper presented at a session of the RIMS conference.

But, certain provisions of the legislation—H.R. 1280 in the House and S. 575 in the Senate—could prove effective if properly enacted, said Thomas F. Bresnahan, the ASSE's director of technical services, who presented the paper.

Inclusion of all federal, state and local government employees within the provisions of the OSH Act—or 25% of the nation's workforce—"may be the most significant reform offered by this legislation," the ASSE said. The ASSE suggests "a phased approach so that OSHA's resources will not be significantly removed from currently covered employers."

Among its positions on the reform legislation, the ASSE "lauds the objectives of developing more data to create new and fresh insight" into the causes of injury. But it warns that "each new request for data be supported by a rationale which will demonstrate the meaningful use of the data."

Allen Offinitz, vp at Johnson & Higgins in Los Angeles, also spoke at the session, which was moderated by Dave Fisher, risk and benefits manager at Mitsubishi Electric America Inc. in Cypress, Calif. It was coordinated by Ms. Gorey of J&H in New York. BI

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Gooda

Continued from page 1

erage, the court heard last week.

Epic losses on coverage underwritten by Gooda Walker underwriters Derek Walker, Stan Andrews and Anthony Willard showed "incompetence on a spectacular scale," said Geoffrey Vos, barrister for the litigating members of the Gooda Walker Action Group, on the opening day of trial.

Losses for defunct syndicates 298, 290, 299 and 164 during the 1988 through 1990 underwriting years total 850 million pounds ($1.28 billion). That total exceeds that amount at stake in the trial because not all syndicate members are litigating.

Each underwriter totally ignored or was oblivious to "expected" and "obvious" underwriting principles that most reinsurers use in the normal course of business, said Mr. Vos.

In particular, the underwriters did not properly track the aggregate exposures created by the excess-of-loss reinsurance contracts they wrote, Mr. Vos alleged. And they didn't assess their syndicates' "probable maximum loss" from a catastrophe. "Any responsible and professional reinsurance underwriter ought to know what will happen to his syndicate when a catastrophe occurs and if he doesn't he's negligent," he said.

"(When) the inevitable catastrophes occurred, names were ruined," said Mr. Vos, who noted that several have committed suicide. "It would be charitable to describe these underwriting methods as gambling, (but) a roulette player at least knows how much he has put on the table and how much he can lose."

The defendants counter that members were told that the syndicates—Mr. Walker's in particular—were "high-risk," so profits would be better than market averages in good years, but worse than average in bad years. Indeed, in their briefs they pointed to Mr. Walker's 1986 syndicate report, which said: "We must always live with the problem which must apply to all syndicates: that in the event of a major loss we could run out of reinsurance protection."

However, Mr. Vos argued that the syndicates' losses were out of all proportion to what members could have reasonably expected. Profits between 1982 and 1988 ranged between 1% and 18% of the premiums on business underwritten by syndicate members, while losses between 1988 and 1990 ranged between 53% to 730% of premium.

Defendants contend, though, that no one could have anticipated the spate of catastrophes that rocked the market between 1988 and 1990: Nine separate events each produced insured losses in excess of $1 billion during this period, while another five events together totaled $2.25 billion in insured losses.

"The plaintiffs' case," they add, "is founded upon the remarkable proposition that during a period when the insurance industry suffered vast losses as a result of a series of unprecedented catastrophes they are entitled to 100% of all their losses in respect of the syndicates in question (which specialized in catastrophe risks) for the relevant years. Such a case is completely misconceived. It (assumes) a false premise that it is negligent for an underwriter to expose his name to any loss at all."

While Mr. Vos would not deny that catastrophes plagued the three underwriting years in question—"we don't shy away from that"—those disasters were not of the magnitude of an earthquake that would devastate Tokyo or San Francisco, generating insured damage of between $20 billion and $50 billion, he argued. They were predictable, he said.

It's clear, too, that the underwriters didn't have a clue how big their ultimate losses would be, Mr. Vos argued. When the disasters struck, the underwriters didn't give members accurate information about the syndicates' exposure to these events.

For example, when Hurricane Hugo struck in 1989, producing $4.1 billion in insured losses industrywide, Mr. Walker told members that he hoped reinsurance would cover all of syndicate 290's Hugo losses, said Mr. Vos.

However, the syndicate's available reinsurance was far outstripped by gross losses of $385 million, leaving it with a net loss of $228 million.

In each case, Messrs. Walker and Andrews—and, to a lesser extent, Mr. Willard—were "wholly incapable" of judging what the effect these catastrophes would have on their syndicates, Mr. Vos alleged. Therefore, they couldn't have been running competent syndicates, he said.

Justice Phillips, who is presiding over the trial, interrupted Mr. Vos with questions all during the opening day. For instance, Justice Phillips asked whether all underwriters would have been considered negligent for reinsuring these types of catastrophe risks.

Mr. Vos answered that his clients don't go that far. As long as a reinsurer bought adequate retrocessional coverage, there would be no negligence, he said. The plaintiffs also are not criticizing the structure of the LMX market, in which syndicates reinsured and retroceded risks among themselves, causing a large amount of losses to remain within Lloyd's and the London company market.

But the amount of risk retained by the Gooda Walker syndicates was "way out of proportion" to what it should have been and "sentenced the names to ruin," Mr. Vos contends.

Justice Phillips indicated that the members' case appears to rest on what the underwriters did and why they did it, though Mr. Vos answered that the case should hinge on what the underwriters ought to have done.

To prove their case, the defendants will be calling at least six witnesses and experts, including Derek Walker and the other underwriters. Plaintiffs will be calling David Jewell, who was active underwriter for syndicate 298 following Mr. Andrews' resignation and other experts.

The trial could center, however, on the testimony of two expert witnesses who also testified in a much-celebrated 1991 trial involving members losses stemming from 32 run-off reinsurance policies written by syndicate 317/661 managed by R.H.M. Outhwaite (Underwriting Agencies) Ltd. In that case, syndicate members settled for 116 million pounds ($174.7 million) four months after the trial began (*BI*, Feb. 17, 1992).

The experts are: Ulrich von Eicken, former managing director of the U.K. branch of Munich Reinsurance Co., who will testify for the plaintiffs; and former Lloyd's underwriter Richard Outhwaite, for the defense. BI

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Indictment

Continued from page 2

in New Orleans. There is "absolutely no wrongdoing that he has been engaged in whatsoever."

He specifically denied that Mr. Jordan knew the funds were purportedly illegal gambling proceeds.

"It was going to be a legitimate business transaction," Mr. Ellis said. "Certainly it was not to hide or wash the funds."

Don Lambright, a Houston lawyer representing Mr. Clark, declined to comment on the indictment.

The two men are scheduled to be arraigned May 5.

United Republic was placed in rehabilitation by Utah regulators earlier this year after an examination found it insolvent by about $3.7 million as of year-end 1992. Regulators first moved to take over the insurer last September, but the company's management initially contested the action.

The Utah insurer is a subsidiary of Professional Investors Insurance Group Inc. of Tulsa, Okla. Two other former PIIGI units—Unisom International Life Insurance Co. and Bonneville Life Insurance Co.—were sold to new owners in 1992 and have since been ordered into liquidation.

Mr. Jordan, formerly a vp of United Republic, took over as the insurer's chief executive officer, president and treasurer in 1992.

He also acts as an insurance industry mergers and acquisitions specialist, operating Lime Street Investments Ltd. and Charles Street Investments Ltd., both of Dallas.

Mr. Clark, an official with American Annuity Holdings Inc. of Houston, described himself as a broker for interests in the insurance, annuity and mortgage industries, the indictment states.

Mr. Clark previously assisted a former business associate, Hugo Pimienta, in an unsuccessful effort to acquire AMS Life Insurance Co. of Phoenix. AMS was ordered liquidated in 1992.

Mr. Pimienta separately is the focus of an administration action filed by the Louisiana Insurance Department in connection with his operation of Bradford National Life Insurance Co. of New Orleans, according to documents obtained by *Business Insurance* (see Update, page 2). Mr. Pimienta is not named in the indictment of Mr. Clark and Mr. Jordan.

In the United Republic case, federal prosecutors charge that between May and August 1993, Messrs. Jordan and Clark conspired to inflate the assets of United Republic by using the insurer in a money laundering scheme.

The two men planned to take money they believed to be the proceeds of illegal gambling and transfer it first to a Dallas bank, then to United Republic and ultimately back to the original source of the money, prosecutors charge.

One aim of the plan was to allow United Republic to report the cash as an asset in its financial statements before the money was returned to its source, said Mr. Hillman, the assistant U.S. attorney.

To put the alleged scheme into effect, Messrs. Clark and Jordan set up an account at NationsBank in Dallas on Aug. 12, 1993, according to the indictment.

The next day, they caused $110,000 in purported illegal gambling money to be wired into the account, the indictment says.

Also, Mr. Clark met with undercover FBI agents in Cardiff, N.J., a town near Atlantic City, on Aug. 16, 1993, and accepted a briefcase containing another $100,000 in cash, prosecutors charge.

The indictment charges both men with one count of conspiracy and two counts of money laundering. BI

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INTERNATIONAL

U.K. rethinks safety regulations

By ADRIAN LADBURY

LONDON—U.K. employers and safety inspectors are concerned that government proposals to streamline workplace safety regulations could result in increased accidents and ultimately higher insurance costs.

The U.K. Health and Safety Commission is proposing changes to about 400 workplace health and safety regulations as part of the government's effort to cut back bureaucratic costs and red tape. The commission will forward its recommendations to the U.K. Department of Employment for approval.

The government asked the HSC for its recommendations when it submitted the Deregulation and Contracting Out Bill before Parliament on Jan. 19.

The 1974 Health & Safety in the Workplace Act precludes the removal or amendment of any of its provisions without replacement by an improved piece of legislation.

But the new legislation would give the government the power to change or remove safety regulations enacted after 1974 without having to first create a replacement.

The HSC began reviewing the regulations in May 1993 and called for industry comment by the end of January 1994. The HSC said many rules were created to cover industries that no longer exist or operate in the United Kingdom.

"The government's deregulation task forces have made over a hundred recommendations which concern the work of the commission and the Health and Safety Executive. I can see already that there are a good number of things to which we can make an early positive response," said Frank Davies, chairman of the Health and Safety Commission, when the bill was published earlier this year.

The Council for Industrial Inspecting Authorities in Manchester, a trade group whose members carry out 90% of all U.K. safety inspections, acknowledges that many regulations have become obsolete. But they are concerned that the government may decide to make all or some of the safety regulations optional and leave the power to decide when safety inspections are made with the companies themselves.

The council's concern prompted it in November to form a lobbying group called Inspect.

"The condition of most potentially hazardous equipment is regulated by the provisions in various acts of Parliament and other statutory provisions. This means that all owners are bound by law to have a qualified, competent person perform inspections at defined intervals.

"Apart from the prospect of serious, even fatal, accident, failure to do this can result in prosecution. As important from the point of view of the owners' financial liabilities is the possible effect on their insurance coverage," said a statement from Inspect upon its formation.

"If the bill gets passed as it stands, then they could be giving power to ministers which would enable them to deregulate without proper debate in Parliament. We applaud and support the move to get rid of all the things that are no longer needed, but at the same time we are frightened that some of the better elements could be lost," said Colenel P. Elrington, secretary of the CIIA.

Geoff Saunders, chairman of the Assn. of Insurance & Risk Managers in Industry & Commerce, voiced employers' concerns at a recent seminar held at the House of Commons. Mr. Saunders told seminar delegates, which included Department of Trade and Industry Minister Neil Hamilton, that he also sees dangers in the deregulation bill.

"Risk managers in industry and commerce like myself are hoping that the sweeping away of hundreds of apparently superfluous regulations in our areas of responsibility will not result in an increase in the frequency and severity of loss events, particularly large-scale disasters. The prospect of saving hundreds of millions of pounds looks attractive. One slip like Piper Alpha, though, can cost a billion pounds," he said.

"We should not lose sight of the fact that many of our smaller companies find it difficult to adhere to the high standards which large corporations set for themselves," which could become even more difficult to attain without added regulatory incentives, Mr. Saunders said.

Despite risk managers and safety engineers' concerns, the HSC is sticking by its guns.

"We can't say what we plan to recommend to the government yet, but the general impression we got from the people we talked to (during the consultation process) is that they do not, on the whole, think that the health and safety regulations are too much of a burden and accept that they are there for a purpose. I have certainly not been led to expect anything radical," said an HSC spokeswoman. BI

Rough road in Russia

Insurance market's growth potential still hindered by regulatory obstacles

By ADRIAN LADBURY

MOSCOW—Although the Russian Federation's insurance system is a free-market in theory, in practice it is being squelched by undercapitalized domestic insurers, burdensome tax laws and a public that still isn't sold on the need to buy insurance.

Insurers and even some Russian regulators at the Second International Insurance Rendezvous, held April 19-21 in Moscow, conceded that much work must be done before Russia can support an insurance market of substance and potential profitability.

"There is no civilized insurance market in Russia, but an insurance bazaar," said Vladimir P. Krouglyak, president of the state-owned Ingosstrakh Insurance Co. Ltd., Russia's largest insurer.

The fundamentals of a ready, sound supply of insurance balanced by strong demand still are not in place in Russia.

The supply of domestic carriers is abundant, but most are woefully undercapitalized.

Mikhail A. Safronov, former chairman of Ingosstrakh (*BI*, Sept. 7, 1992) and now president of private non-life insurer Westrosso Insurance Co. Ltd. in Moscow, said in an interview that "only about 10% of the current insurers are truly viable."

Westrosso was created last year with capital of 321 million rubles ($179,129 at the current exchange rate for the Commonwealth of Independent States) and reported 1993 premium volume of 1.57 billion rubles ($876,116).

The lack of true domestic insurance capacity forces insurers to in effect function as brokers, ceding a large proportion of premiums to non-Russian reinsurers.

If premiums were retained, some Russian regulators and insurers argue, it would help stabilize the market and allow the struggling young Russian insurers to build up currently inadequate reserves.

The question of retaining premiums proved to be a constant source of friction and debate over the three days of the conference and is seen by many as the crux of Russia's insurance market problems (see related story).

But, despite the apparent state of flux, the Russian insurers that attended the conference seem determined to overcome the myriad of problems facing them.

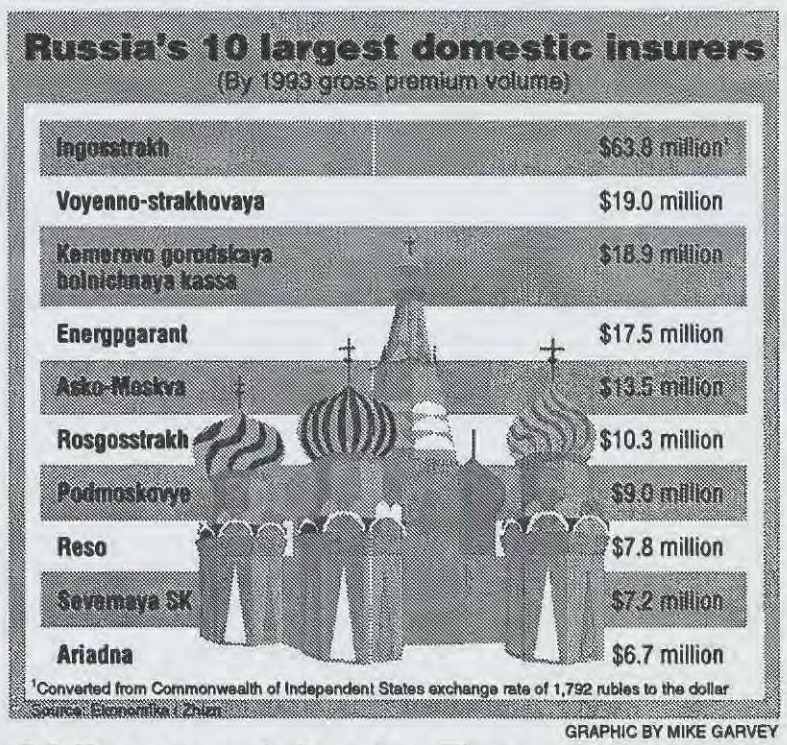
According to Yuri S. Bugaev, head of the Insurance Supervisory Federal Service of Russia or Rosstrakhnadzor, the gross premium volume underwritten in the Russian Federation is increasing rapidly.

Rosstrakhnadzor's latest figures show that gross premiums written by domestic insurers in 1993 totaled roughly 1.109 trillion rubles ($618.9 million).

Of the 1993 total volume, 44% was personal insurance including life, accident and health insurance, 28% was property insurance and 18.3% was liability coverage.

But in the first quarter of this

Continued on next page



GRAPHIC BY MIKE GARVEY

AIG exec blasts Russia's cap on foreign stake in insurers as against its best interests

By ADRIAN LADBURY

MOSCOW—A 49% cap on foreign companies' ownership of Russian insurers is "hypocritical" and runs counter to the Russian Federation's "own self-interest," says an executive with American International Group Inc.

"When I see Russian insurers fronting 100% for foreign interests, they are nothing more than brokers with all the cash going abroad," says Bengt Westergren, AIG's Vienna-based senior representative president.

Adding his voice to the call for a more liberal insurance market was regulator Yuri Bugaev, head of the Insurance Supervisory Federal Service of Russia, or Rosstrakhnadzor, and an advocate of a stalled 1993 draft decree on insurance that aimed to lift the cap on foreign ownership (*BI*, Oct. 25, 1993).

But while most Russian delegates at the Second International Insurance Rendezvous in Moscow recognize the benefits of foreign participation in the market—especially training—most seem determined to keep control of Russian insurers out of foreigners' hands for now.

Russian insurers generally contend the domestic market must be given time to build itself up so it can resist being overwhelmed by a tide of cash-rich overseas investors.

However, Mr. Westergren argued that the Russians would be unable to increase capacity, investment and training without the help of the Western world. "I predicted last year that with (the 49% cap) there would be no further foreign investment, and that is just what has happened. Non-insurance business has come here, but there are no insurers. If that is what (the government and domestic insurers) wanted, then they were short-sighted," he said.

According to Rosstrakhnadzor's latest figures, there are only 25 foreign insurers licensed in Russia, of which seven are Russian-German joint ventures and four are Russian-U.S. joint ventures.

AIG opened a representative office in Moscow in 1992 and the

Continued on next page

Employers fight safety proposal

BONN, Germany—German employers and unions are sharply attacking the government's proposed tightening of workplace health and safety regulations—but for opposite reasons.

Employers' Assn. President Klaus Murmann said reform proposals would be costly for employers and would mean nearly total government control of job safety. "Company costs would rise even more and burden the competitiveness of German industry," he said.

Under the government proposal, all German employers would be required to conduct extensive risk and safety analyses, and more extensive reports about workplace health and safety standards would have to be filed with the government. Currently, only large companies must report safety information.

The government proposals also would restrict the use of medical information attained by company doctors or trade associations in screening potential employees.

The government is reforming its regulations to comply with European Union guidelines, which call for greater evaluation of and documentation of workplace health and safety standards than currently required under German law.

Employers say the German proposals go beyond the demands placed by E.U. directives.

Yet trade associations, which act as administrators and overseers for national workers compensation and pension plans, have criticized the government for not implementing regulations sooner. E.U. guidelines should have been implemented in 1992, said a spokesman for the DGB, the German federation of unions. The DGB strongly supports the proposed ban on medical testing before an employee is hired.

In addition, unions back parts of the government proposal that would extend the authority of professional and trade associations to implement broad measures to reduce possible health hazards. Germany has a dual system of state and trade association monitoring of company compliance with safety standards. The new law extends their authority to check not only accident prevention but prevention of health hazards.

The proposal is in a parliamentary committee and must be passed by both houses to be implemented.

—*By Don Lewis Kirk*

GLOBAL BRIEFS

Insurer ratings

WELLINGTON, New Zealand—The New Zealand Parliament is considering a bill to require

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Russia

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year, the 1,080 companies that reported figures—fewer than half of the companies registered—have already underwritten 802 billion rubles ($447.5 million), the regulatory agency said.

Mr. Bugaev said two statistics present particularly good news: The rise in the proportion of personal coverages to 44% in 1993 from 29.3% in 1992, and the decline in the proportion of credit risks, which now account for less than 10% of the total premiums written.

Mr. Bugaev attributes the shift to a "more professional approach" by the insurers that is beginning to win customer confidence.

But while premium volume is growing quickly, it is rising from a very low base. Insurance penetration in Russia is still extremely low by international standards. According to the regulator, the premiums represented only 1.3% of Russia's 1993 gross national product.

One of the main reasons for this lack of market penetration is the tax regulation, attendees said.

Insurance is not a tax-deductible expense in Russia, so already struggling entrepreneurial ventures regard it as a luxury, insurers say.

Tax laws also hurt insurers' financial results. Until last Jan. 1, Russian insurers were taxed at a maximum income tax rate of 25%. But on Dec. 22, 1993, a presidential decree stated that insurers' and banks' profits would be taxed on the same basis as all other companies. Thus, insurers can now pay up to a 43% income tax: 13% in federal taxes and 30% in regional taxes.

Mr. Krouglyak attacked the tax laws, and labeled the state and its officials who implemented them "bureaucrats and dilettantes (who) pretend to govern."

"Officials view the importance of insurance capital in connection with taxes, so that the state can have the means of subsistence. Enterprises and citizens still consider that insurance is an excessive luxury, the more so as insurance is paid from profits," he said.

"At the same time, the state cannot decide on an elementary stimulating law similar to those in all countries which understood many years ago the advantages of insurance and including the premium in the production cost. Actually (tax is) the only attention that the state is constantly paying to insurers."

But change may well be on the horizon, judging from views expressed at the conference.

The tax laws also were attacked by Alexander Pochinok, chairman of one of the state Dumas' economic commissions and ex-head of the state budget and economic department responsible for insurance.

"Tax reform is key. I disagree with the tax changes last year. They are too high, and we obviously need serious changes. We need to implement the old promise and free profits completely of taxation. We also need to decrease the number of tax laws (Russia currently has 42), and the level of (corporate) taxation is too high—about 30% too high."

The tax system does not seem to have discouraged new insurers. But the problem is, as most attending the conference acknowledged, quantity rarely means quality.

Mr. Bugaev's figures showed that as of January, 2,269 insurance companies had been granted licenses, and about 540 applications were pending. Based on those figures, Russia will have about 3,000 insurers by year end. On Jan. 1, 1992, only 659 companies were registered.

Gennadiy Devanov, president of the All Russian Insurance Union, which represents most of the new domestic companies, pointed out that private companies are rapidly eating into the former state monoliths' market share.

Mr. Devanov said that in 1989 only 0.1% of total premiums were written by private insurers. That figure rose to 5% in 1991, 24% in 1992 and 66% last year.

But as of July 1, 1993, only 2% of the companies had assets exceeding 100 million rubles ($55,803), and only 2.4% had between 50 million ($27,902) and 100 million rubles.

This imbalance is reflected in the spread of premiums among insurers. The 50 biggest companies underwrote 54.6% of all premiums last year, and the state insurers—Ingosstrakh and Rosgosstrakh—together accounted for a massive 40% of the premiums—just more than 130 billion rubles ($72.5 million).

Russia's capitalization rules are very low and many have predicted big problems for some time, especially in light of the high, albeit slowing, rate of inflation.

According to the Insurance Law of the Russian Federation, effective Nov. 27, 1992, to receive a license, insurers must have paid-in capital of 2 million rubles ($1,116) and reinsurers must have paid-in capital of 15 million rubles ($8,370). There are still only a handful of reinsurers in Russia.

More than 70% of the licensed insurers had capital of less than 6 million rubles ($3,348). Rosstrakhnadzor says total reserves have only grown to 114 billion rubles ($63.6 million) in 1993 from 48.2 billion rubles ($26.9 million) in 1992.

Mr. Bugaev warned that probably "two-thirds of all Russian insurers (generate) premium income of less than 500 million rubles ($279,018); we could be awaiting (cancellation of) their licenses."

His warning is likely to ring true after July 1, when Rosstrakhnadzor plans to introduce new regulations that will stiffen the current rules.

Details are scarce, but it is thought that paid-in capital requirements could shoot as high as 150 million ($83,705) or 200 million rubles ($111,607). Mr. Bugaev is believed to favor the higher rate, though he may give the smaller companies up to two years to meet with the new requirements or merge with other insurers.

Most Russian insurers and regulators agree a radical shakeout is required to build a strong market.

Bengt Westergren, senior representative president of American International Group Inc. in central and eastern Europe and a co-sponsor of the conference, said in an interview that between 200 and 300 insurance companies "would be sufficient for this market. I see a clear trend toward a lot of insurance bankruptcies and probably merger-mania."

In fact, a consolidation into fewer but better-capitalized companies is universally accepted by both foreign and domestic insurers as the most desirable route to a strong market. Even without regulatory action, it seems market forces, especially from investors and banks, should hasten a consolidation.

"The high-value hard currency risks are reinsured abroad to find sufficient capacity. We have come across cases where the banks are strongly demanding that up to 90% of the risk is reinsured abroad, because they and the brokers feel much more confident with foreign rather than domestic insurers," according to Dmitry S. Ignatiev, vp of Westrosso.

George Grishin, director of Oakeshott Insurance Consultants Ltd. in London, who claims to have been the first Soviet citizen employed as a broker in the London market, suggests pooling would also be a good way to bolster capacity. BI

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Market

Continued from previous page
company since has been negotiating with the Russian authorities to set up a joint venture.

AIG Chairman Maurice R. Greenberg said in the insurer's 1993 annual report that he hopes to gain the license in the "near future."

Vyacheslav Shakov, president of state-owned insurer Rosgosstrakh, conceded that Russian insurers need Western help, but warned against simply trying to impose Western models on the Russian economy.

"Insurance markets throughout the world develop on the basis of the conditions peculiar to that soil. Our economic past presents a big problem and we face big changes, but we cannot mechanically just bring your experience here. It has to develop with the domestic economy," he said.

Others argued for fair competition and said Western insurers should not be allowed freedoms in Russia that Russian insurance companies do not enjoy overseas.

"In response to Mr. Westergren's rebuke, I'd like to say I know he is acting on Mr. Greenberg's orders, who would like to add one more flag to his collection. But I don't know why AIG demands 100% ownership. If a company wants to set up in the U.S., it has to deposit $5 million, so why shouldn't we demand the same is invested here with the Russian state bank? Why should they be treated any differently here?" asked Rudolph V. Shuravin, vp of Ingosstrakh, the state-owned international insurer and reinsurer.

Support for the Russians came from Michael Kier, chairman of London broker C.E. Heath P.L.C., who warned against foreign competition eager to "pillage" the market.

"I would ask you to be wary of opening up the market to too many foreigners, thereby allowing all the good business and profit to leave the country. I am not advocating protectionism but would ask you to guard against letting yourself be (pillaged) by the international insurance broking and underwriting market." BI

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Berkshire

Continued from page 1

flowing audience at the Orpheum Theater in Omaha.

Shareholders from across the nation and abroad began filing into the ornate theater two hours before the meeting began. The theater's main floor, balcony and box seats were filled 40 minutes before Messrs. Buffett and Munger hit their marks on the theater's grand stage promptly at 9:30 a.m.

They took their seats in front of a huge monitor, which gave even those seated in the back row of the balcony a front-and-center view of every sip the Berkshire brain trust took of their prominently displayed Cokes. Berkshire is one of The Coca-Cola Co.'s largest shareholders, with about 7% of Coca-Cola's stock.

Shareholder attendance at the meetings has ballooned in recent years, from 2,200 last year and 1,700 the year before. The meeting is attracting so many shareholders that this year's meeting probably marked the last time the Orpheum will host the event.

The growing interest in the meetings is no surprise. Berkshire stock traded at $15,450 per share the week of April 25, up 22.1% from $12,650 a year ago. But, it is trading at a significantly lower level than its all-time high of $17,800 during the third and fourth quarters last year. Mr. Buffett attributed the stock's unusual volatility to short-term investors looking for a quick score.

As usual, Mr. Buffett raced through the formal meeting, dispensing of the re-election of Berkshire's board and some other matters in five minutes. Messrs. Buffett and Munger devoted the remainder of the 3½-hour gathering to answering questions—even the most convoluted—about Berkshire's operations and the business world in general in a clear, straightforward manner.

Throughout the meeting, the 63-year-old Mr. Buffett delighted shareholders with folksy sayings he spun to drive home his points, as well as wisecracks at Mr. Munger's expense:

- On keeping good managers: "We find .400 hitters and don't tell them how to swing."
- On the Federal Reserve's efforts to ease inflationary pressures by pushing up short-term interest rates: "Part of the responsibility of the Fed is to take away the punch bowl at the party occasionally."
- On what happens to Berkshire if Mr. Buffett is incapacitated: "I'm glad you didn't say Charlie Munger."
- On his next goal in life now that he is the richest man in the country, with a net worth of $8.3 billion by Forbes magazine's reckoning: "That's easy—to be the oldest man in the country."

Regarding the seven new property catastrophe facilities formed in Bermuda last year (*BI*, April 18), Mr. Buffett told shareholders, "It's no plus for us any time there's new capacity."

However, he said there "may be greater pressure on those managers to write business" than there is on Berkshire's reinsurance operations.

For many reinsurers, reinsurance is their only business, he said. That means they have to write contracts even when "prices don't make sense." But Berkshire, with its many different operations, is in a "favored position." It can be more flexible and not write the business when there isn't a market for it at the price Berkshire wants to charge.

Mr. Buffett noted in his 17-page letter to shareholders in Berkshire's annual report that the new facilities won't affect Berkshire's 1994 business.

Berkshire's super cat business—which requires that overall industry losses from an event exceed a certain level—has expanded in recent years. Indeed, a storm comparable to Hurricane Andrew, which caused $125 million of losses for Berkshire in 1992, would cost the company $600 million now.

But, there are signs of price deterioration, which could hurt Berkshire's future super cat business, Mr. Buffett wrote in the report. "If this trend continues, we will resign ourselves to much reduced volume, keeping ourselves available, though, for the large, sophisticated buyer who requires a super-cat insurer with large capacity and a sure ability to pay losses."

Berkshire's $11.5 billion of statutory surplus at year-end 1993, which supported $742.7 million of net written premiums last year, gives the company that flexibility.

But, in a warning to the insurance industry, Mr. Buffett said at the meeting: "The industry still may have its head in the sand a little bit in terms of what an earthquake in Los Angeles or a storm on the East Coast can do."

He continued: "You may not know who's been swimming naked until the tide blows out."

The few questions from shareholders about Berkshire's primary insurance operations focused on the operations' intrinsic value—rather than their carrying value.

In answering those questions, Mr. Buffett pointed to the operations' "cost of float," to which he devotes more than a page of his letter in the annual report. That benchmark, with which Berkshire shareholders have become familiar, is a compendium of numbers designed to show whether the company's cost of funds for its insurance operations is less than the year-end yield on long-term government bonds.

The "float" is the amount of money available for investment, defined as the total of loss reserves and unearned premium reserves, less agents' balances, prepaid acquisition costs and deferred charges applicable to assumed reinsurance.

For the first time since 1981, Berkshire in 1993 incurred no cost of float. Indeed, it essentially was paid about $31 million—its pretax underwriting profit—to use its $2.6 billion float last year.

But, in the annual report, Mr. Buffett is quick to temper any exorbitant shareholder enthusiasm about the cost of float. He noted that Berkshire paid only about $14 million in catastrophe losses

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GLOBAL BRIEFS

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insurers to obtain and disclose credit ratings.

The Insurance Companies (Ratings & Inspections) Bill, prompted by the Jan. 1, 1993, privatization of earthquake insurance coverage, would mandate that insurers be rated by a recognized rating agency, like Standard & Poor's Corp. or Moody's Investors Service (*BI*, Dec. 14, 1992). The ratings would have to be made public and disclosed on policy documents.

The current proposal contains an "opt-out provision" for foreign-controlled insurers writing only offshore business and for insurers writing particular classes only, excluding property. The bill currently is before the Justice and Law Reform select committee, which can recommend changes to the current proposals, said David Sargeant, CEO of the Insurance Council of New Zealand.

He said the ICNZ supports the bill, but its comments to the committee recommend ratings for all insurers. He said a niche underwriter writing a specific line only, such as professional liability, does not have to be rated. But, for a company writing professional liability and other lines, its professional liability business would be taken into account in its rating. That would place the latter company in "an unfair position."

The ICNZ had lobbied for the bill and it contains no surprises, Mr. Sargeant said. It is likely the ICNZ would be able to select the agency that would rate all insurers. The comment period ends May 6. The committee is likely to report to Parliament in early June, with the bill going through in June or July, he said.

Insurers currently must deposit a $500,000 New Zealand bond ($287,000) to be licensed, but that is the only regulation with which they must comply.

The ICNZ also plans to prepare a case for the New Zealand government to consider making catastrophe reserves tax-deductible. Mr. Sargeant said the ICNZ plans to commission researchers to work on the project in the next few weeks, but no concrete action is expected before the end of the year.

The ICNZ has consulted with representatives of the Insurance Council of Australia, which also is seeking tax-deductibility of catastrophe reserves from the Australian federal government (*BI*, Nov. 22, 1993). "A lot of our arguments are the same," Mr. Sargeant said.

New Zealand already allows its insurers to deduct premiums paid offshore for reinsurance to ease the capacity crunch created by deregulation of commercial earthquake insurance (*BI*, Aug. 16, 1993).

—By Kate McIlwaine



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Berkshire

Continued from previous page
last year, compared with $125 million in 1992 and $38 million in 1991. Those kind of results can't be expected every year, he said.

Berkshire's insurance group's earned premium was stable last year, dropping just 1.2% to $656.3 million from $664.3 million in 1992. Direct premiums earned jumped 36.3% to $208.3 million from $152.8 million because of the business written by credit card insurer Central States Indemnity Co., of which Berkshire acquired an 82% stake in December 1992. Reinsurance assumed dropped 12.4% to $448 million from $511.5 million.

The insurance group generated $703.2 million in net income in 1993, while the parent company reported only $688.1 million of net earnings.

While Berkshire's other businesses contributed $166.1 million toward earnings, profits were cut by more than $141 million of charges stemming from new accounting rules affecting income taxes and marketable equity securities held by non-insurance units.

And, while Berkshire's 1993 net income still was 68.9% higher than the $407.3 million reported in 1992, that increase is largely the result of Berkshire's sale of 1 million shares of Capital Cities/ABC Inc. stock in a tender offer by Cap Cities during the fourth quarter last year.

The insurance group reported a $457.5 million pretax investment gain from the sale. Its aftertax investment gains totaled $362.7 million. In 1992 and 1991, the insurance group's aftertax investment gains totaled $36.1 million and $73.8 million, respectively.

A shareholder questioned why Berkshire cut its Cap Cities holdings by one-third to 2 million shares after Mr. Buffett had identified the stock as one of four investments that Berkshire would never divest. The others are: Coca-Cola; GEICO Corp., in which Berkshire holds a 48% stake; and the The Washington Post Co., in which Berkshire holds a 15% stake.

Mr. Buffett explained that the transaction was not unusual because Berkshire has similarly sold back some Washington Post and GEICO stock when the terms of the transactions benefited Berkshire. He also noted that Berkshire still remains Cap Cities' largest shareholder, with a 13% stake in the company.

Insurance group assets are invested in the Federal Home Loan Mortgage Corp., General Dynamics Corp., The Gillette Co., Guinness P.L.C. and Wells Fargo & Co., among others. BI

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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 18, 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.

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IN THE MATTER OF ENGLISH & AMERICAN INSURANCE COMPANY LIMITED

NOTICE IS HEREBY GIVEN that Anthony James McMahon and Roger Smith, as Joint Provisional Liquidators of English & American Insurance Company Limited (the "Company"), have obtained an extension through October 14, 1994 of the Preliminary Injunction from the United States Bankruptcy Court for the Southern District of New York first issued on June 10, 1993, which Preliminary Injunction (a) enjoins the commencement or continuation of any judicial, administrative or regulatory action or proceeding against the Company or any of its property in the United States; (b) enjoins the enforcement of any judicial, administrative or regulatory judgment, assessment or order and commencing or continuing any act or any judicial, administrative or regulatory proceeding to create, perfect or enforce any lien or other claim against the Company or any of its property in the United States; and (c) requires all persons to turn over and account to the Joint Provisional Liquidators for all funds resulting from the drawdown of letters of credit in excess of what is expressly authorized by the terms of the contract and any related trust or other agreements pursuant to which such letters of credit have been posted, in their possession, custody or control after written demand for turnover and accounting is made by the Joint Provisional Liquidators against such entity. Copies of the Preliminary Injunction have been provided to all known parties in the United States. Any party who has not received one should contact counsel for the Joint Provisional Liquidators at the following address:

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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.

Reforms

Continued from page 2

would promote cost-containment, though it might be hard to administer.

• The short-term effect of such a cap would depend on how the new revenue was spent. Its long-term effects would be tied to how well the cap and other market reforms control health care costs while maintaining quality.

Ms. Marcuss' enthusiasm for capping the amount of tax-free benefits was not shared by another witness before the Senate panel. Peggy Connerton, director of public policy for the Service Employees International Union of the AFL-CIO, said that a tax cap would hurt the middle class the most. In fact, she said there was no way to design a cap that wouldn't cause workers pain.

Senate Minority Leader Bob Dole, R-Kan., asked Ms. Connerton if organized labor would be able to support scaling back, but not eliminating, the tax exclusion, to which Ms. Connerton replied that her union remained opposed to any change.

Another suggested change—employer-provided individual medical accounts for health insurance—received a generally favorable reception from Republicans on the committee.

J. Patrick Rooney, chairman of Golden Rule Insurance Co. of Lawrenceville, Ill., explained how such a plan works at his company. Although the money is treated as taxable income, employees like the plan, in part because they're allowed to keep what isn't spent on premiums at the end of the year, he said.

Sen. Dole asked Mr. Rooney what the "downside" of the plan was; he replied there is none. More than 90% of Golden Rule's employees now participate in the plan.

On the other side of the Hill, members of the House Education and Labor Committee's Labor-Management Relations Subcommittee heard panel staffers' estimates of how much money a proposed alternative to the president's bill would save.

The alternative bill is sponsored by the chairman of the subcommittee, Rep. Pat Williams, D-Mont. (*BI*, April 25).

According to the staff analysis,

A cap on the amount of tax-free benefits would hurt the middle class the most, says Peggy Connerton.

subsidies for small business and the poor under the Williams bill would amount to $417 billion over five years, as opposed to $396 billion over the same period under the president's plan.

However, the Williams proposal would raise more revenue through a payroll tax on companies that remained outside of the regional alliance or cooperative structures called for by both plans. The Clinton plan would raise $8 billion over five years based on CBO estimates of how many firms with more than 5,000 would choose to self-insure.

Because the Williams plan wouldn't allow large firms to join cooperatives and thus escape the tax, the staff said it would raise $33 billion during the same period.

Meanwhile, the Chamber of Commerce found that 55.9% of its nearly 40,000 members said the best health care reform approach would be to "enhance the current system" and to keep the government's role to a minimum.

That option was nearly five times as popular as the next most cited option—an individual mandate, with 11.3% of the votes. Nearly 9% of those surveyed favored some sort of mandated access to health insurance and 7.7% percent favored expanded coverage for low-income citizens. Only 6.6% favored an employer mandate and 4.3% wanted a government-run health care system.

Following the survey, the Chamber indicated it will remain uncommitted to any existing proposal, buy will not support the call for universal coverage.

That stance prompted the chairman of the Chamber's Health & Employee Benefits Committee to resign over its refusal to support even positions that it had supported for the past two years.

Robert E. Patricelli, chairman and chief executive officer of Value Health Inc. of Avon, Conn., said the Chamber had supported expanding health care subsidies for the poor, provided that funding was available; and requiring that "employers offer, but not pay for insurance." He said that virtually every reform bill includes these tenets, so there is "little or no political risk in advancing these positions."

The survey respondents were about evenly split over those issues. Some 45% of those the Chamber surveyed support expanded subsidies and 44% opposed them. Forty-nine percent support requiring employers to offer, but not finance, coverage; another 44% opposed such a requirement.

"Without these two positions, the Chamber will have virtually no proposal that deals with the problem of lack of insurance for 38 million Americans. . . .And then, with the Chamber having little positive to say on the access issue, the likelihood of a Clinton-type solution goes up in my view. You can't fight something with nothing," Mr. Patricelli wrote.

He said he had "no choice in good conscience other than to resign" as chairman, but would remain committed to the goals of the Chamber and would keep his seat on the board of directors. BI

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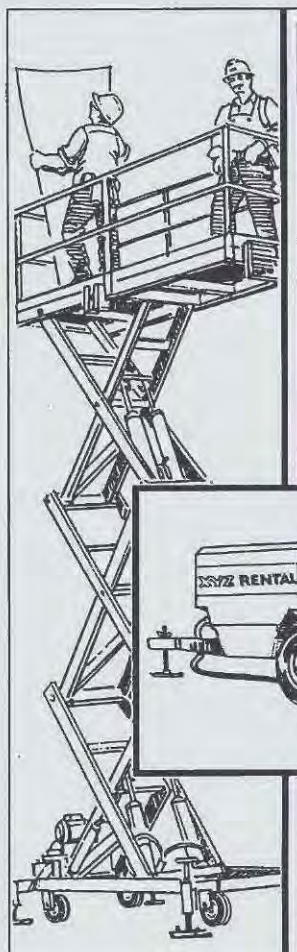
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Comp insurers' combined ratios finally drop

By MEG FLETCHER

ORLANDO, Fla.—Workers compensation insurers are rejoicing about a record improvement in their industry's combined ratio last year, though their joy may be short-lived.

The National Council on Compensation Insurance estimates that insurers' combined ratio after policyholder dividends dropped 12 points to 109.5% in 1993 from 121.5% a year earlier.

"That is the first significant decrease in a decade and it is the largest one-year drop in the history of workers compensation," NCCI President William D. Hager told 470 attendees at the NCCI's 75th annual meeting, held April 20-21 in Orlando, Fla.

It's "the first glimmer of hope for a reversal of fortune in the workers compensation line," said Ronald C. Retterath, senior vp and chief actuary for the NCCI, a statistical, research and data collection organization based in Boca Raton, Fla.

The NCCI's estimate is two percentage points better than the 111.5% estimate for workers comp insurers' 1993 combined ratio made by A.M. Best Co. earlier this year (*BI*, Feb. 7).

The improvement is the result of "quantum change" in several areas, including state workers comp reform, greater emphasis on workplace safety and aggressive anti-fraud efforts, Mr. Hager said.

"If the system is working better, a key contributor has been reform efforts across the country," he said. He praised a handful of states that have taken on "what Shakespeare called 'the caterpillars of the commonwealth,' those silent predators who have been dining too long and too well on the workers compensation vine."

Mr. Hager included in that group Alabama, Arkansas, Connecticut, Florida, Kansas, Kentucky, New Hampshire and New Mexico.

He also praised last year's "good starts" at reforming workers comp laws in Colorado, Hawaii, New Hampshire, North Carolina, Oklahoma, Utah, Vermont and Virginia.

A cornerstone of the NCCI's efforts to improve workplace safety is its experience rating program, which provides a financial incentive for employers to operate safer workplaces by linking their workers comp premiums to their loss experience.

The NCCI is taking special steps to help smaller employers maintain safe workplaces by applying experience rating to them as well as distributing a new loss control magazine and packet of safety tips.

In addition, "significant yet fair" price increases for residual market risks "is working well in some states, but we need to do better," Mr. Hager said.

"A number of regulators still refuse to set pool premiums high enough to pay the claims," which is "a tragedy because that means that reckless, unsafe employers are actually subsidized by their safe competitors and by their insurance companies," he said. Residual market risks produce loss ratios 50% higher than risks in the voluntary market, an NCCI study found.

However, recent "dramatic" improvements in the financial status of residual markets also helped workers comp insurers' overall results. For example, the projected ultimate underwriting loss for all residual market pools in 1993 is less than half of 1989 levels, when it was $2.3 billion, according to the NCCI.

Aggressive anti-fraud efforts also helped to improve insurers' results, Mr. Hager said.

The NCCI's broad-based National Fraud Advisory Commission just finished an 18-month review of workers comp fraud issues, identifying the roles played by a wide variety of perpetrators, including employers, workers, fraudulent leasing companies, and some health care providers and attorneys.

The commission's report also includes a compilation of state anti-fraud statutes.

As of year end, the NCCI and residual market servicing insurers had recovered more than $50 million in premiums through anti-fraud efforts, including settlements and judgments. The NCCI also has targeted an additional $175 million in outstanding premiums in civil litigation.

Several individual insurers have also had significant success in this area.

"The improved 1993 results give us some long overdue good news," said Mr. Retterath. "However, the improvement is not all-embracing, nor will it be enduring without a continued effort by everyone with a stake in the workers compensation system."

"While the decrease is encouraging, we can't let down our guard," Mr. Hager added. "With system costs inflating at about 6% a year, if insurance commissioners block increases for just this year and next year, combined ratios in the 120s will return swiftly."

The NCCI is still seeking double-digit rate increases in Alabama, Georgia, Kentucky and Rhode Island. And, significant reforms are needed in Missouri and Tennessee, he said.

"Before we at NCCI are satisfied, we'll want to see an additional material drop in that combined ratio to the point of rate adequacy," Mr. Hager said.

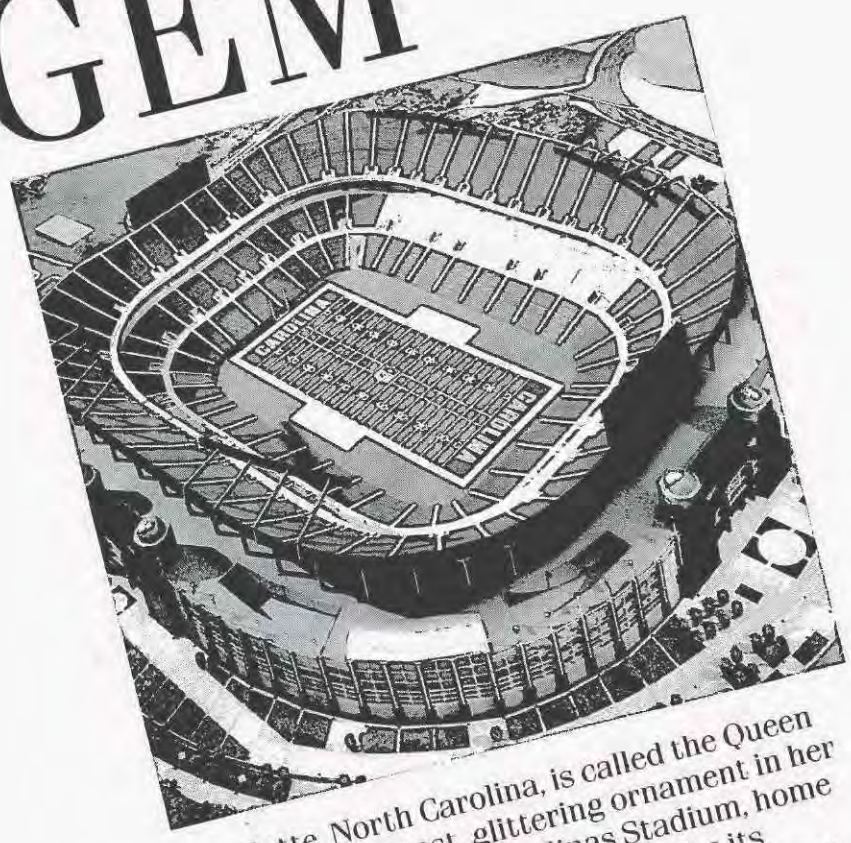
However, there are differences of opinion about what constitutes an acceptable combined ratio for workers compensation insurers.

From the NCCI's perspective, a combined ratio of 109% "is just a start," Mr. Hager said. "Going from a combined ratio of 121% to 109% is like drowning in 10 feet of water instead of drowning in 30 feet of water."

Insurers need a combined ratio "very close to 100%" to obtain an adequate rate of return, Mr. Retterath contends, especially in light of interest rates and tax laws that require insurers to discount loss reserves.

However, in estimating workers comp insurers' 1993 results earlier this year, an A.M. Best executive said an insurer whose combined ratio is below 110% is probably making a "decent" return on workers comp overall, after investment income. BI

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Brokers

Continued from page 1

pleted and we will form a view of the business," said Mr. Forest, who is no stranger to the U.S. brokerage market: He was chairman and chief executive officer of Alexander & Alexander Services Inc.'s U.S. retail brokerage unit until late last year.

Mr. Griffith said last week that the merger will continue the expansion of Hogg Robinson in the United States.

Since Mr. Griffith arrived at Hogg Robinson in 1990, the company has cut staff and costs, withdrawn from some areas but opened offices in other areas of the country.

"Two-thirds of our offices are east of the Mississippi but we have offices in San Francisco, Los Angeles and Albuquerque. In 1993 we opened significant operations in Chicago, we've just opened an office in Milwaukee and we are about open offices in St. Louis and Denver," he said.

The merged company will continue the transformation of Hogg Robinson into a significant national broker, Mr. Griffith said.

"If we are No.7 worldwide, we are not going to sit back and be No. 11 or 12 in the U.S," he said.

However, lackluster results at Hogg Robinson have curbed profits at its British parent over the past two years (*BI*, July 5, 1993).

Hogg Group reported unaudited pretax profits of about 6 million pounds last year, down 55.2% from 13.4 million pounds in 1992. In dollar terms, profits fell 62% to $9 million from $23.7 million in 1992.

However, if a 4.96 million pound ($7.4 million) adjustment for goodwill on discontinued activities under new U.K. financial reporting standards is taken into account, the 1993 profit is cut to about 1.1 million pounds ($1.65 million).

The cost of restructuring the brokerage and benefit consulting divisions of Hogg Robinson, soft property/casualty rates and reduced third-party administration business all contributed to the drop in profits, according to the company.

By comparison, Bain Clarkson had another good year in 1993, with profits increasing 25.8% to 19 million pounds from 15.1 million pounds in 1992. In dollar terms, profits rose 6.7% to $28.5 million from $26.7 million.

In terms of the gross revenues, the combination of the two brokers would create the world's seventh-largest brokerage, based on 1992 gross revenues.

Individually, Bain Clarkson was ranked No. 11, based on 1992 revenues of $242.6 million, while Hogg Group was No. 12, with $220.3 million in revenues.

Bain Clarkson also edged Hogg in number of employees: 3,200 vs. 2,686 at year-end 1992.

Both companies have extensive operations in Britain and the London market. Bain Clarkson has strong aviation, construction and marine departments, while Hogg's strengths lie in its political risk, marine, Latin American and African operations, Mr. Forest said.

Both companies have different approaches to U.S. business.

While Hogg has Hogg Robinson Inc. as a U.S. presence Bain Clarkson has no offices in the United States. Any U.S. business that the company receives or places in the United States is conducted through retail brokers here.

In particular, Bain Clarkson has the trading agreement with Acordia.

"Part of our strategic review will look at that. We will look at the strengths of our new operations and whether they are adequate," Mr. Forest said.

While Hogg Robinson is strong on the East Coast, Bain Clarkson's relationships with other retail brokers in the United States would enable the company to cover the whole country, Mr. Forest noted.

The future of the U.S. operations will present the merged brokerage with a dilemma, said one stock analyst in London.

"Bain Clarkson is independent in the U.S. at the moment, and it gets a lot of business from all sorts of retail brokers there. They could be giving that up. . .and they may not be getting back enough business (through Hogg Robinson) to replace what they might lose," he said.

But Bain Hogg could end up with the best of both worlds with a direct U.S. outlet, as well as arrangements with other retail brokers in the United States, speculated Roman Cizdyn, insurance analyst at Smith New Court Securities Ltd. in London.

"It depends how they handle it. Other brokers in London that are owned by U.S. companies don't get all of their business from their U.S. parents," Mr. Cizdyn said.

Bain Clarkson is unlikely to want to dispense with its agreement with Acordia, according to Tony Silverman, insurance sector analyst at Nat West Securities in London.

Following the merger, Bain Clarkson clients will have access to Hogg Robinson offices, Mr. Griffith stressed.

And, "now that Bain Hogg is significant in the U.S., we would look at opportunities to leverage the business and employ the global network of Bain Hogg for both reverse-flow business (into the United States) and U.S. clients," he said.

Hogg Robinson's U.S. operations will make Bain Hogg a more attractive prospect if Inchcape were to float its insurance operations on the stock market, Mr. Silverman said.

"It makes the company more attractive because you can say that you are on the ground in the U.S. and typically most medium-sized companies have operations in the U.S.," Mr. Silverman said.

In Britain, Bain Hogg will be seeking to cut expenses, said Mr. Forest. "We will be a much stronger company with a wider range of clients and we will be able to reduce our back-office expenses."

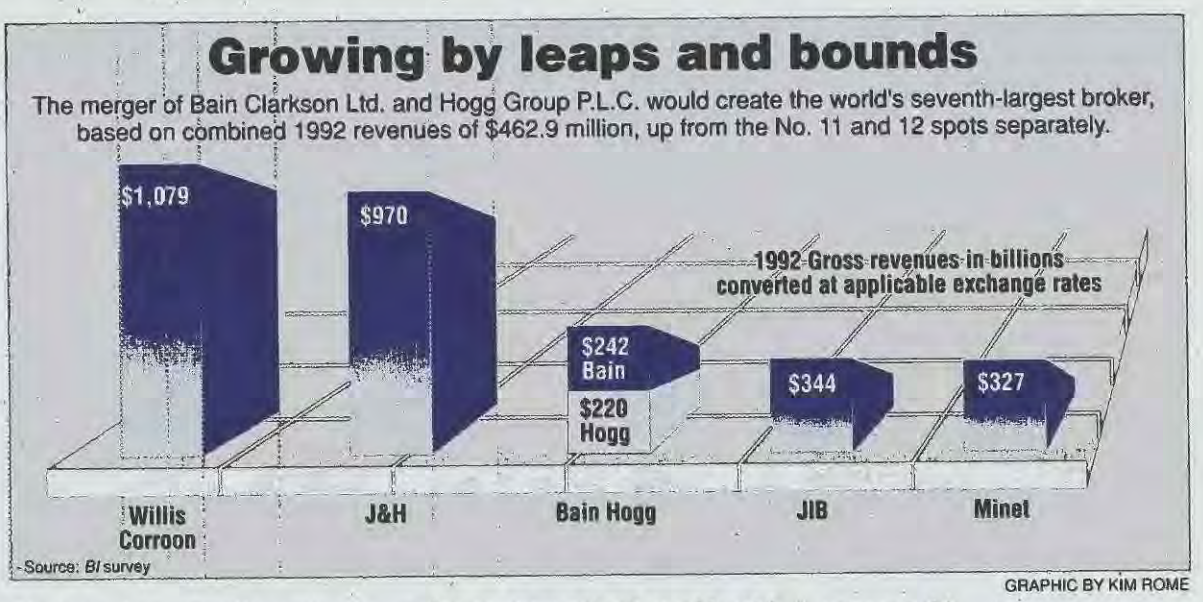
The expenses of Hogg's London market operations are too high, said one analyst.

"They say that there is nothing wrong with being a medium-sized company and they are right, but there is something wrong with being a medium-sized company and having large company expenses," he said.

Hogg's costs could be cut quickly if the new management "takes an axe" to some of its London market operations, the analyst said.

Hogg does have an expensive London market operation compared with other brokers, agreed Mr. Cizdyn.

"There will have to be a rationalization of its London market setup," he said. BI



GRAPHIC BY KIM ROME

Settlement doesn't end retiree suits

BLUE BELL, Pa.—Unisys Corp.'s tentative $111 million settlement with 7,000 retirees does not close the books on litigation over its planned cutoff of retiree medical benefits by 1996, a spokesman says.

The spokesman said the agreement announced last month, covers only non-union early retirees from Sperry Corp. and Burroughs Corp., which had merged to create Unisys.

Still before the U.S. District Court in Philadelphia is litigation filed by about 12,000 regular non-union Sperry retirees and early retirees of Unisys, said the spokesman.

Litigation involving 4,500 union retirees is also pending in federal courts in Brooklyn and Detroit, said the spokesman.

However, litigation brought by between 12,000 and 13,000 regular non-union retirees from Burroughs and Unisys was dismissed by the federal court in a summary judgment in October, he said.

Meanwhile, the spokesman noted the $111 million settlement agreement is still awaiting court approval, which is expected within 90 days.

Unisys said in 1992 that it would stop paying for retiree medical benefits by 1996 (*BI*, Nov. 9, 1992). The self-insured company said at the time that without the cut, it would have to take a one-time aftertax charge in 1993 of about $700 million to account for its retiree health care liabilities. Eliminating retiree medical benefits would reduce that charge to $170 million.

—By Judy Greenwald

Civil rights

Continued from page 2

ages, Mr. Betterley said.

The ruling also is a "victory for those who believe in strict interpretation of congressional language," Mr. Lammi pointed out. The Supreme Court's action makes it clear that when "Congress wants to make a law apply retroactively, it has to say so specifically," he said.

Unfortunately, he added, Congress too often is ambiguous and leaves it up to the nation's courts to decipher its intent.

"I'm thrilled with the outcome," said Frank Locke, administrator-risk and insurance for Oklahoma Natural Gas Co. in Tulsa, Okla. "Employers look to the courts for definitions of rules, and this case gives clear definitions of the rules applying to discrimination cases," Mr. Locke said.

"I don't believe the intention of Congress in passing the Civil Rights Act of 1991 was to make it retroactive," said James Crockett, manager of risk and benefits for the Denver Water Department.

"(The decision) helps employers as they negotiate possible settlements of EEOC cases pending in the federal courts," Mr. Crockett said.

"At least we know the financial limits of those cases only involve 'make-whole' remedies like back pay."

If such cases are allowed to reach a jury, the awards can be huge.

Last year a jury found Denver Water guilty of discrimination and ordered it to pay $481,000 plus attorneys fees for failing to promote a white male to head its loss control and safety department, Mr. Crockett said.

Lucky Stores Inc., a grocery store chain in Dublin, Calif., recently settled a class-action sex discrimination suit for $105 million.

And, in March 1993, a jury ordered St. Louis-based McDonnell Douglas Corp. to pay more than $20 million to 900 employees that were discharged when the firm downsized.

Writing for the majority, Justice John Paul Stevens said Congress did not clearly express whether the 1991 act applies to cases arising before its passage. But, he said, the absence of language relating to the retroactivity of the statute "cannot realistically be attributed to oversight or to unawareness."

In one of the cases before the high court, the justices had to determine whether a Texas woman who sued her former employer in 1989, alleging she had been sexually harassed by a fellow employee, had the right to seek compensatory and punitive damages under the 1991 act. The 5th U.S. Circuit Court of Appeals in New Orleans had ruled that the woman, Barbara Landgraf, was eligible only for back pay because her case was on appeal when the Civil Rights Act of 1991 became law.

In affirming that ruling, Justice Stevens wrote that it would be unfair to impose "new burdens" on individuals or companies "after the fact."

The "presumption against retroactive legislation is deeply rooted in our jurisprudence," Justice Stevens added.

The ruling saved employers 'potentially millions of dollars,' says Glenn Lammi.

"Applying the entire Act to cases arising from pre-enactment conduct would have important consequences," including the possibility that cases already closed would need to be retried, Justice Stevens wrote.

"We are not free to fashion remedies that Congress has specifically chosen not to extend."

Ruling on another case before it, *Rivers vs. Roadway Express*, the high court upheld a ruling by the 6th U.S. Circuit Court of Appeals in Cincinnati that prevented two black mechanics, who claimed they were fired in 1986 because of their race, from seeking protection under provisions in the 1991 Civil Rights Act.

Some risk managers say they are ambivalent about the decision.

"From a legal and financial standpoint, (the ruling) is great," said Don MacMeekin, corporate risk manager for Cinemark USA Inc. in Dallas.

"But I don't think it's necessarily fair to the employees involved," he admitted.

Mr. MacMeekin, who also oversees Cinemark's human resource department, said prohibiting employees who happened to sue before the law was passed from seeking the same remedies available to employees who sued later isn't fair.

"There should be some method of transitioning that would allow those employees to achieve a middle ground," he said.

Attorneys point out that the high court's ruling does nothing to mitigate defense costs, which can be significant in employment discrimination cases.

"Two out of three dollars are spent on defense costs in employment-related litigation," said J. Dennis Molloy, an attorney with Hanson & Molloy in Washington. Employers that lose job discrimination suits still face the prospect of paying defense costs, as well as back or future pay, Mr. Molloy noted.

Justice Harry Blackmun was the lone dissenter.

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Barbara Landgraf, petitioner vs. USI Film Products et al. No. 92-757, Supreme Court of the United States; Rivers vs. Roadway Express. No. 92-938, Supreme Court of the United States.

Reserve woes at Lloyd's denied

NewCo exec defends proposed reinsurer

By STACY SHAPIRO

LONDON—An official of NewCo, Lloyd's of London's proposed syndicate runoff reinsurer, is lashing out at critics who claim the market is severely underreserved for long-tail liability losses.

A report issued late last month by insurance archaeologists R.M. Fields & Co. contends that Lloyd's requires 15 billion pounds ($22.5 billion) in reserves to pay for its portion of billions of dollars in global asbestos and pollution claims, but only has a reported 4 billion pounds ($6 billion) to pay for those losses.

Of the 4 billion pounds in stated reserves, Fields says there's a shortfall of 1.4 billion pounds due to extensive use of time-and-distance reinsurance policies (*BI*, April 25).

The shortfall could affect the availability of syndicate resources needed to capitalize NewCo at the end of 1995, Fields contends.

Syndicate analyst Chatset Ltd. also has said syndicates are underreserved, estimating last year that about 8.6 billion pounds ($12.9 billion) more in reserves will be needed to run off open years (*BI*, Dec. 20, 1993).

NewCo, which was proposed in Lloyd's 1993 business plan, is intended to reinsure all syndicates' pre-1986 liabilities, which are primarily long-tail losses for asbestos, pollution and other health hazards. A Lloyd's working group is examining whether NewCo should also reinsure all open syndicate accounts from 1986 onward (*BI*, Feb. 14).

"Not everyone believes NewCo will succeed," Heidi Hutter, project director for NewCo, acknowledged at a recent seminar on the facility for the Assn. of Lloyd's Members.

"Some commentators wrote off our project even before we began it (six months ago). For them, the NewCo project is like the charge of the light brigade. . .cannons to the left of them, cannons to the right of them, volley and thunder. In the past few days, the cannons have certainly been thundering, but unlike the real charge of the light brigade, I think the cannons of our critics are misfiring," she said.

The Fields report claims there is a shortfall in reserves for long-tail liabilities among some open syndicates that are to be reinsured into NewCo, because the syndicates purchased time-and-distance policies that effectively discount reserves.

Time-and-distance policies guarantee ceding companies specific payments at specific times in the future based on the initial premium paid and the investment returns expected by the reinsurer.

"Discounting occurs when insurers take into account the time value of money in setting aside their reserves. With long-tail liabilities, claims frequently materialize and are paid only after 10 or 20 more years," said Ms. Hutter, who did not refer directly to the Fields report. "So I become rather impatient with any suggestions that the purchase of time-and-distance policies has somehow left a hole in Lloyd's reserves. My impatience grows when I hear people say that if Lloyd's needed all this money tomorrow, it wouldn't be there. The whole point about long-tail liabilities is that not all of the claims need to be paid tomorrow," she explained.

Lloyd's has said from the outset that NewCo will discount reserves and the scope of discounting will depend on the value of time-and-distance policies, she said.

Lloyd's Deputy Chairman Richard Keeling, who is heading the NewCo project, added that the time-and-distance policies are placed primarily with very strong financial reinsurance companies that have letters of credit and trust funds backing the policies, so they are unlikely to default.

There also are cash reserves that can be discounted, thus freeing some money to provide capital for NewCo, said Ms. Hutter.

NewCo critics have published "apocalyptically large estimates" for Lloyd's total long-tail liabilities to show that the market only has modest reserves to cover them, Ms. Hutter said. The market has not responded with its own estimates for "two very good reasons," she said.

Lloyd's has not come out with its own estimates because it doesn't want to prejudice the work of the NewCo team and because the critics' estimates are based on the "false premise" that NewCo would operate like Lloyd's, when in fact it will be a limited liability reinsurance company, she said.

Lloyd's could release preliminary reserve figures in the summer, but final figures won't be known until NewCo is authorized by the Department of Trade and Industry at the end of 1995, said Mr. Keeling. Syndicates are being encouraged to commute liability claims now with policyholders rather than wait and let NewCo do it, he added.

Although the time-and-distance policies could limit the reserve assets needed to capitalize NewCo, Ms. Hutter said capitalization also could come from a bond issued by the Central Fund and from external investors.

The Central Fund, though, is stretched at the moment. Of the 903.7 million pounds ($1.34 billion) in the fund at the end of 1993, 661.6 million pounds ($979.2 million) is earmarked to pay underwriting losses for members who cannot or have refused to pay, the Corporation of Lloyd's recently published annual report shows.

NewCo is being set up to be "sustainable," and only a worldwide "insurance meltdown" should force it to go bust, said Ms. Hutter. However, if NewCo does go into liquidation, liabilities would fall back on the members, she warned. BI

Crash

Continued from page 1

through broker Nicholson Leslie Aviation Group Ltd. The reinsurance is led by British Aviation Insurance Group. Other underwriters include Lloyd's of London's syndicate 48, better known as the Ariel syndicate, managed by Methuen (Lloyd's Underwriting Agents) Ltd.

"It's not really possible to comment at this stage. It's far too early. We don't even know how many are dead yet," said Robin Walker, claims manager at BAIG.

The Ariel syndicate's claims manager refused to comment. Nicholson Leslie would only say that no reserves had been set yet.

Opinions vary as to what the size of the liability reserve will be.

Passengers who bought round-trip tickets in Japan would be governed by the Warsaw Convention and the Hague Protocol on international flights, which would set the liability limits at 100,000 Special Drawing Rights ($140,405) per individual. If all the passengers held round-trip tickets issued in Japan, liability losses would total only $25.6 million, unless the airline were found guilty of "willful misconduct."

However, 158 of the passengers on board the flight were Japanese, who often receive levels of compensation similar to Americans.

Also, Japanese airlines provide unlimited liability for death or injury to passengers on international flights and recently urged other airlines to seriously consider adopting that option as an alternative to costly and protracted litigation (*BI*, April 11).

Therefore, there will be extreme pressure from Japan to settle Japanese passengers' claims for $800,000 to $1 million per person, London sources say.

"I think there will be settlement above 100,000 SDRs," said one lawyer. Another lawyer said that if the airline and its insurers resist the pressure, the case could take up to four years to resolve.

Compensation for the Taiwanese citizens is governed by local law which provides only $37,500 in compensation per passenger.

Airline underwriters' hull and liability losses in the first quarter of this year already total $264 million, said Martin Belcher, managing director and chief underwriter for Polygon Insurance Co. Ltd. The China Airlines loss could therefore bring the total this year to more than $500 million, meaning that "we could be looking at the largest loss for a first half of the year to date."

These losses will hit some aviation underwriters harder than others, which means some underwriters will have a greater resolve to keep rates climbing, he added.

Airline hull and liability insurance rates have been increasing by 10% to 15% during renewals so far this year, he said. However, these increases are only being felt by smaller airlines. The major air carriers don't start renewing their programs until June and July—with the largest concentration of renewals taking place in the fall.

A Lloyd's broker, however, suggested that the China Airlines loss will have an affect on the market "for about a week."

David Trezies, chairman of Sedgwick Aviation Ltd., agreed that the loss is not enough to move the market from its downward slope. "Aviation market (rates increases) have stalled and we could see reductions around the corner," he said.

This is the second crash for China Airlines in five months. In November, one of the airline's Boeing 747s plunged into Hong Kong harbor, wrecking the $145 million jetliner but injuring no one.

According to loss adjusters Airclaims Group, China Airlines has suffered six total losses and three major partial losses since 1980. The last fatal disaster involving the airline occurred in October 1989 when a Boeing 737 crashed in Taiwan, killing all 54 people on board.

This is believed to be the first crash of an Airbus A300-622R jetliner. However, there have been 10 disasters involving other models of the Airbus A300 since 1980, Airclaims said.

The rates charged to China Airlines for its coverage have increased markedly since 1991. Hull rates increased 44% during last October's insurance renewal, while the airline's liability rate increased 31%. BI

Updates

Prudential real estate scandal

NEWARK, N.J.—Prudential Insurance Co. of America expects to pay "not more than $50 million" to investors after admitting that many commercial properties held in one of its leading investment funds were overvalued from 1988 to 1993.

Prudential had for months denied allegations in a "whistle-blower" lawsuit that company officials systematically inflated the value of several properties held in the Prudential Investment Separate Account for the purpose of defrauding investors.

The allegations later were substantiated by separate investigations by accounting firm Kenneth Leventhal & Co. and law firm Sonnenschein Nath & Rosenthal. Prudential has requested the resignation of two executives who were implicated in the overvaluation.

"While we truly believed the allegations were untrue based on the evidence we had at the time, we now have an outside report finding that 28 of 141 properties were overvalued by at least 10%. All these properties will be reappraised and calculations will be made as to what degree clients have been harmed. At that point, all clients will be reimbursed," said a Prudential spokesman.

Former Prudential employee Mark Jorgensen alleged in the suit that he was fired from his job as a managing director after he began questioning the real estate valuations. Prudential says it has settled the suit and offered him his job back. He declined.

Austin vote on partner benefits

AUSTIN, Texas—Austin residents will vote late this week on whether the city should continue to offer benefits to the domestic partners of municipal employees.

A group called Concerned Texans gathered 20,000 signatures to place a referendum on the ballot for the May 7 citywide elections, calling the domestic partner program the city council approved last year too costly.

So far, 98 employees have enrolled their domestic partners, including 29 who are in same-sex relationships. Insuring the partners will cost the city an estimated $104,000 this fiscal year.

Austin is the only city in Texas to offer benefits to domestic partners. A similar proposal was tabled recently in Dallas.

Health care reform bill passed

FRANKFORT, Ky.—Gov. Brereton Jones recently signed a health care reform bill that establishes a voluntary single health purchasing alliance in Kentucky.

The alliance, which will be established by July 15, 1995, will negotiate with health plans for lower premiums, collect premiums, review and report on health plans and regulate their marketing practices. The pool will be open to individuals and businesses with 100 or fewer workers. State employees and possibly Medicaid recipients will be required to join the alliance, while local government employees will have to join by 1996 unless they are covered by a contract. The alliance could work with independent insurance agents.

Among other reform measures, the law also: establishes a five-member health policy board to collect information on health care and costs, develop benefit standards and approve health care facility construction and expansion; requires physicians, pharmacists and hospitals to post fees and not charge more than the posted fee; limits doctors and other providers from referring patients to facilities they own; prohibits insurers from excluding or limiting coverage for more than six months after a policy takes effect for individuals with any health condition existing six months prior to the policy; prohibits insurers from limiting coverage for pre-existing conditions if policyholders cancel or lose insurance coverage and get a new policy within 60 days; and establishes a modified community-rating system that would limit premiums.

Briefly noted

The Pension Benefit Guaranty Corp. **terminated four Blaw Knox Corp. pension plans** on April 30. The plans had assets of about $60 million and liabilities of $82 million. In a related matter, the PBGC said it will continue to pursue legal action against White Consolidated Industries for underfunding the plans when they were transferred to Blaw Knox in 1985. . . .**Great Lakes Dredge & Dock Co.**, the firm sued because pilings it drove into the Chicago River bed caused the city's 1992 underground flooding, has sued its insurers in federal court in Chicago, seeking more than $100 million. . . .The Los Angeles County Board of Supervisors has given its approval to the Los Angeles District Attorney's Office to use $9.2 million in already-designated funds to hire **workers compensation and auto fraud prosecutors and investigators.** Deputy District Attorney David Guthman, who is in charge of auto fraud, said his division's $4 million share will be used to hire another 10 attorneys and 23 investigators. His counterpart in workers comp was unavailable. . . .Kerr-McGee Chemical Corp. has agreed to spend about $150 million removing **soil contaminated with radioactive thorium** from a site in suburban Chicago. The company currently is litigating with its insurers over indemnification for the cost of the cleanup, said General Counsel Jack Horner. . . .Duff & Phelps Credit Rating Co. has reaffirmed its "A" claims-paying ability **rating for Aurora National Life Assurance Co.** after reviewing the results of the opt-out election, in which holders of contracts representing 34% of the insurer's liabilities opted out of the court-approved rehabilitation plan for its predecessor, Executive Life Insurance Co. (*BI*, March 21). . . .A shareholder suit has been filed in an Ohio state court charging several executives of Cincinnati-based **Procter & Gamble Co.** with violating fiduciary duties by authorizing interest rate swaps. P&G took a $157 million pretax charge in its fiscal third quarter in connection with two leveraged swap transactions that turned bad when U.S. and German interest rates began to rise.

For the Record

Health reform amendment

WASHINGTON—Rep. Cass Ballenger, R-N.C., plans to introduce an amendment to a Democratic health care reform bill that would effectively end unions' right to strike over health care issues.

A spokesman for Rep. Ballenger said the amendment will be offered this week as the House Education and Labor Subcommittee on Labor-Management Relations debates an alternative to President Clinton's health care reform bill (*BI*, April 25).

The spokesman said current labor law makes health care a mandatory subject for collective bargaining. Rep. Ballenger's amendment would make it a "permissive" subject, meaning that unions and managers could discuss the matter if they wished, but unions would lose the right to strike over health care benefit questions.

Drug benefit bill vetoed

DENVER—Saying it would increase prescription drug costs and unnecessarily involve government in health insurance, Colorado Gov. Roy Romer has vetoed a so-called "any willing pharmacy provider" bill.

The bill, S.B. 98, would have required Colorado insurers and managed care providers to accept any willing pharmacy in their pharmacy provider networks. Opponents said the measure would have stymied efforts by health maintenance organizations and insurers to negotiate discounts on prescription drugs by selectively contracting with pharmacies. Backers of the bill argue that selective contracting excludes many rural pharmacies from prescription drug plans.

After vetoing the bill, Gov. Romer created a nine-member task force of pharmacists and health insurers to help ensure that consumers in rural areas have adequate access to reasonably priced prescription drugs. That panel is to report to the governor and the General Assembly by year end.

Minnesota comp pool refund

MINNEAPOLIS—Minnesota's Workers Compensation Reinsurance Assn. must turn over $246 million in surplus reserves to insurance companies or post a $14.75 million bond while state officials appeal a judge's order that workers comp insurers, not employers, are entitled to a refund from the state fund.

U.S. District Judge Jim Rosenbaum on April 22 ordered Minnesota to post the bond by May 4 or release the $246 million to dozens of insurers. The WCRA has already returned more than $155 million to self-insured employers in the state.

Judge Rosenbaum ruled in February that the insurers, not employers, should receive a refund of $402 million of surplus reserves because the insurers paid premiums to the WCRA and were "members" as defined by a 1979 statute.

The state commissioners of labor and commerce have appealed that decision to the 8th U.S. Circuit Court of Appeals.

Lloyd's arranging financing for syndicates

LONDON—Lloyd's of London is putting together a $500 million medium-term financing facility to help syndicates ease their cash flow crunch and to reduce cash calls on members this year.

The facility would allow Lloyd's syndicates to borrow against their reinsurance recoverables. Financing would be provided via five- to seven-year bonds issued by various banks in U.S. dollars, British sterling and Canadian dollars.

A letter from Lloyd's Chief Executive Peter Middleton informed the market that more details should be available in July and the scheme could be available in August or September.

"Negotiations are being held with several major financial institutions to provide a finance program collateralized by acceptable reinsurance recoverables on paid claims," wrote Mr. Middleton. "It is proposed that this finance program will be available to all syndicates, both on-going and those in run-off."

The financing would provide liquidity to the syndicates without having to make cash calls on members; reduce cash advances to the syndicates from the Central Fund; and reduce long-term negative balances within the Lloyd's American Trust Fund, he said.

The facility will be administered and controlled by Reinsurance Finance Management Ltd., a company jointly owned by Trinity Square Services Ltd. and Randall Holdings Ltd.

—By Stacy Shapiro

Zurich realigns Centre Re

NEW YORK—To streamline operations, Zurich Insurance Co. has created a new wholly owned subsidiary, Zurich Centre Investments Ltd., to act as a holding company for the Centre Reinsurance group of companies.

The reorganization does not change the ultimate ownership of any of the Centre Re companies, though Centre Reinsurance Holdings Ltd. will transfer its shares in the publicly traded Zurich Reinsurance Centre Holdings Inc. to the new holding company.

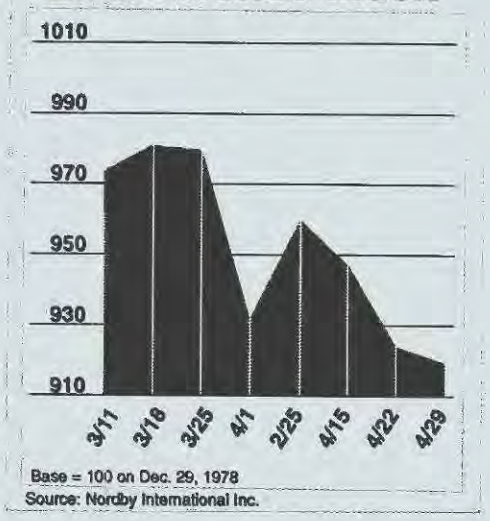
Steven M. Gluckstern, chairman, president and chief executive officer of ZRC, has been named president of Zurich Centre Investments.

The companies that now will report to Zurich Centre Investments are: Centre Reinsurance Cos., which writes finite risk reinsurance; ZRC Holdings and its operating reinsurance subsidiary, Zurich Reinsurance Centre, which writes traditional reinsurance in the broker market; Centre Investment Services, which provides investment management services for other members of the group as well as unrelated companies; and Centre Financial Services, which is headed by futures expert Richard L. Sandor.

Information in brief

SAFR Reinsurance Corp. of the U.S. has received a $10.4 million surplus contribution from its parent. The reinsurer's surplus now exceeds $100 million. . . .Two reinsurers are appealing a U.K. High Court ruling that **rejects their denial of coverage** to insurers of the Weavers line slip. The two reinsurers—Deutsche Ruckversicherung A.G. and Group Josi Reassurances S.A.—argued that the coverage is void because of alleged fraud by former directors of H.S. Weavers Underwriting Agencies Ltd. . . .Bermuda-based Belvedere Insurance Co. Ltd., Belvedere Underwriting Agents Ltd. and Brittany Insurance Co. Ltd. have agreed to pay the rehabilitator of **Mutual Fire, Marine & Inland Insurance Co.** $3.4 million to settle Mutual Fire reinsurance claims. . . .Funds may not be transferred from a non-qualified deferred compensation plan to a **401(k) plan,** the Internal Revenue Service has ruled in overturning a 1993 private letter ruling, PLR 9317037 (*BI*, Sept. 6, 1993). . . .**Blue Cross & Blue Shield of Missouri** plans to spin all of its managed care operations into a new, for-profit subsidiary called RightCHOICE Managed Care Inc. The new company has filed a registration statement with the Securities and Exchange Commission for an initial public offering. BI

BI Insurance Index



Insurance stocks fell last week, as the *Business Insurance* Index lost 4.6 points to 919.7 April 29 from 924.3 on April 22. Advancing issues for the week were led by: US Facilities Corp., up 29.4%; Statesman Group Inc., up 18.4%; and SCOR U.S. Corp., up 15.3%. Declining issues for the week followed: U.S. Healthcare, down 13.3%; Sierra Health Services, down 9.7%; and UNUM Corp., down 9.4%. The most active issue was U.S. Healthcare, 20.8 million shares traded. The *BI* Index fell 0.5%; the Dow Jones 30 Industrials rose 0.9%; the NYSE Composite increased 1.0%; and the Standard & Poor's 500 gained 0.8%.

British Issues

April 28 Companies	Price pence	P/E	Div. pence	Yield %	1 week High—Low pence	pence
Comml Union	553	17.6	31.0	5.6	573—553	
Genl Accident	576	11.5	34.4	6.0	592—576	
Gdn Royal Exch	179	11.6	9.5	5.3	183—179	
Royal	262	11.3	9.4	3.6	262—255	
Sun Alliance	335	14.9	18.4	5.5	335—331	
Brokers						
Bradstock	127	14.2	6.9	5.4	134—127	
CE Heath	379	14.5*	20.5*	5.4*	379—377	
Hogg Group	254	N/M	7.1	2.8	255—254	
JIB Group	192	16.8	9.4	4.9	192—192	
Lloyd Thmpson	279	18.9	8.4	3.0	283—279	
Lowndes Lmbrt	427	13.3*	18.8*	4.4*	427—427	
PWS Holdings	7[illegible]	10.4	5.0	7.0	75—71	
Sedgwick Grp	198	21.9	7.5	3.8	198—195	
Steel Brl Jones	144	N/M	11.3	7.8	144—143	
Willis Corroon	235	21.5	8.3	3.5	236—233	

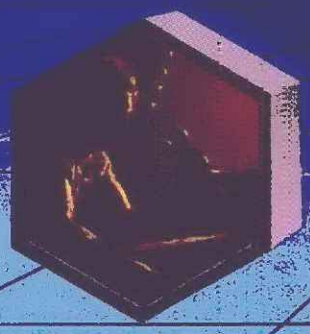
Source: Philip Olsen, London* Estimated; others actual 1993

BI Industry Stock Report APRIL 25, 1994, THROUGH APRIL 29, 1994

BROKERS		Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
Acordia Inc.	NYS	27.75	5.21	12.69	28.25	18.38	18	0.60	2.16	14	10.22	2.72
Alexander & Alexander	NYS	14.63	-0.85	-26.42	28.00	14.38	217	1.00	6.84	163	6.73	2.17
E.W. Blanch Holdings Inc.	NYS	17.38	-0.71	0.00	23.50	15.75	3	0.32	1.84	18	4.10	4.24
Gallagher Arthur J. & Co.	NYS	31.75	3.25	-11.19	37.13	28.13	68	0.88	2.77	15	7.52	4.22
Hilb, Rogal & Hamilton	NYS	12.25	0.00	-6.67	15.63	11.13	30	0.48	3.92	19	4.51	2.72
Marsh & McLennan	NYS	84.50	0.60	3.84	92.00	77.00	206	2.68	3.17	17	16.76	5.04
Poe & Brown	OTC	19.25	1.99	6.94	20.50	16.88	28	0.40	2.08	16	3.02	6.37
BROKERS	AVERAGE		1.4	-3.0					3.3	37		
INSURERS/REINSURERS												
ACE Ltd.	NYS	28.50	2.70	-6.56	36.00	24.50	136	0.40	1.40	6	28.74	0.99
Acceptance Insurance Cos.	NYS	12.50	0.00	7.53	15.63	11.13	64	0.00	0.00	14	9.65	1.30
AEGON N.V.	NYS	52.38	1.45	-4.34	58.50	43.25	60	1.22	2.33	10	34.71	1.51
Aetna Life & Casualty	NYS	52.00	-0.95	-13.69	66.25	49.75	1155	2.76	5.31	-10	71.84	0.72
Allied Group Inc.	OTC	25.25	6.88	1.00	32.75	21.34	81	0.60	2.38	7	10.45	2.42
Allmerica Prop. & Casualty	NYS	16.88	9.76	-21.66	22.16	15.00	68	0.16	0.95	4	56.97	0.30
Allstate Corp.	NYS	23.88	1.60	-19.75	34.25	22.63	871	0.72	3.02	15	18.43	1.30
American General	NYS	25.50	-1.92	-10.53	36.50	25.50	2257	1.16	4.55	22	22.09	1.15
American Heritage Life Ins.	NYS	17.50	0.00	-6.04	25.34	17.00	12	0.60	3.43	11	12.42	1.41
American Indemnity/Fin'l	OTC	14.25	9.62	9.62	16.25	9.75	30	0.24	1.68	5	16.18	0.88
American International	NYS	85.25	-2.01	-3.26	100.25	81.75	2065	0.40	0.47	14	45.25	1.88
American Re Corp.	NYS	28.00	2.75	-0.88	39.25	23.50	85	0.00	0.00	13	14.80	1.89
Aon Corp.	NYS	46.13	-0.54	-4.40	58.50	45.00	194	1.92	4.16	11	33.10	1.39
Argonaut Group	OTC	27.00	0.93	-11.48	35.50	26.25	67	1.00	3.70	8	27.65	0.98
AVEMCO Corp.	NYS	15.88	-2.31	-15.33	22.00	14.50	20	0.44	2.77	13	8.13	1.95
Baldwin & Lyons Inc.	OTC	15.50	8.77	4.20	16.25	11.16	0	0.20	1.29	10	12.59	1.23
Berkley W.R. Corp.	OTC	36.50	2.10	11.45	48.00	32.00	94	0.44	1.21	13	28.12	1.30
Berkshire Hathaway Inc.	NYS	16100.00	4.21	-1.38	17800.00	12350.00	1	0.00	0.00	25	8115.28	1.98
Capital Re Corporation	NYS	18.88	-1.95	-26.70	28.50	18.50	140	0.20	1.06	8	21.66	0.87
Capsure Holdings Corp.	NYS	14.00	5.66	3.70	19.38	12.75	9	0.00	0.00	13	13.08	1.07
Chubb Corp.	NYS	76.50	-0.49	-2.70	93.38	70.75	434	1.84	2.41	25	46.59	1.64
CIGNA Corp.	NYS	58.50	-4.10	-7.51	70.50	56.50	641	3.04	5.20	18	78.23	0.75
CNA Financial Corp.	NYS	63.50	-1.74	-19.37	97.75	62.88	142	0.00	0.00	15	77.92	0.81
Continental Corp.	NYS	22.50	0.00	-18.55	34.63	21.50	339	1.00	4.44	8	38.99	0.58
EMC Insurance Group Inc.	OTC	8.63	-6.76	-9.21	11.25	8.50	1	0.52	6.03	12	N.A.	N.A.
Emphesys Financial Gr. Inc.	NYS	24.88	6.99	NA	24.88	21.25	452	0.00	0.00	6	N.A.	N.A.
EXEL Ltd.	NYS	44.00	-2.49	-2.22	52.25	39.88	462	1.20	2.73	7	33.81	1.33
Fremont General Corp.	NYS	23.13	0.54	-4.15	28.75	21.00	149	0.72	3.11	7	23.40	0.99
Frontier Insurance Group	NYS	46.25	-1.07	5.41	50.00	36.72	31	0.60	1.30	15	16.33	2.83
Gainsco Inc.	ASE	9.13	7.35	1.39	14.41	7.84	83	0.04	0.44	13	3.49	2.61
General Re Corp.	NYS	111.50	-0.67	4.94	133.38	101.75	605	1.92	1.72	14	55.54	2.01
Guaranty National Corp.	NYS	14.75	0.00	-15.71	24.75	13.75	73	0.48	3.25	10	11.81	1.25
Harleysville Group	OTC	21.50	-6.52	-24.56	30.25	21.50	115	0.64	2.98	9	18.35	1.17
Hartford Steam Boiler	NYS	45.63	1.11	2.53	57.38	42.63	88	2.12	4.65	130	15.80	2.89
HCC Insurance Holdings	OTC	17.38	2.21	-13.84	23.84	12.66	16	0.00	0.00	16	14.94	1.16
Home Holdings Inc.	NYS	14.38	15.00	-16.67	18.50	10.63	26	0.00	0.00	-7	19.96	0.72
ITT (Hartford Group)	NYS	89.75	3.46	-2.18	95.97	73.88	1037	1.96	2.18	12	57.11	1.57
Kemper Corp.	NYS	59.00	2.39	64.46	62.00	32.25	1059	0.92	1.56	-25	38.98	1.51
Lawrence Insurance Group	ASE	1.94	10.74	-46.54	6.75	1.50	19	0.00	0.00	-5	4.26	0.45
Lincoln National	NYS	38.13	3.39	-11.34	48.25	36.75	986	1.64	4.30	9	32.53	1.17
Markel Corp.	OTC	40.50	2.53	5.19	44.50	32.25	50	0.00	0.00	10	24.68	1.64
Mid Ocean Ltd.	OTC	27.75	-2.63	-1.77	34.75	25.00	622	0.00	0.00	14	20.24	1.37
Mutual Risk Mgmt. Ltd.	NYS	23.63	-0.53	-21.25	32.75	21.16	146	0.28	1.19	15	5.71	4.14
NAC Re Corp.	OTC	27.00	-0.92	-7.30	39.63	24.00	456	0.16	0.59	12	19.24	1.40
National Re Corp.	NYS	27.50	-0.45	-10.20	39.25	27.13	34	0.15	0.58	9	16.89	1.63
Navigators Group	OTC	18.00	-8.86	-48.57	39.00	16.50	29	0.00	0.00	10	16.99	1.06
Nobel Insurance Ltd.	OTC	7.88	0.00	3.28	8.44	6.25	38	0.00	0.00	5	6.84	1.15
NWNL Companies	NYS	33.63	4.26	3.46	38.75	26.50	152	0.88	2.62	13	23.97	1.40
Ohio Casualty Corp.	OTC	30.75	0.41	-51.95	36.00	28.81	149	1.44	4.68	13	47.68	0.64
Old Republic Int'l	NYS	23.13	2.78	2.78	27.63	21.50	291	0.48	2.08	8	23.57	0.98
Orion Capital Corp.	NYS	31.00	-1.20	0.40	37.50	28.63	43	0.72	2.32	8	27.43	1.13
Penn-America Group Inc.	OTC	6.63	0.00	-13.82	9.50	6.50	2	0.00	0.00	8	N.A.	N.A.
Phoenix Re Corp.	OTC	23.50	4.44	-14.55	38.25	18.50	313	0.23	1.19	7	19.99	1.18
Provident Life	NYS	25.50	-0.97	-19.37	31.88	25.38	80	1.04	4.08	-13	26.38	0.97
Re Capital Corp.	OTC	13.00	-3.70	-4.59	15.75	13.00	41	0.32	2.46	11	16.88	0.77
Reliance Group Holdings	NYS	5.75	-2.13	-25.81	10.38	5.00	672	0.32	5.57	6	4.22	1.36
RLI Corp.	NYS	22.25	-2.73	-16.82	27.75	22.25	34	0.56	2.52	-6	22.91	0.97
St. Paul Companies	NYS	79.38	-2.91	-11.56	98.00	76.38	312	3.00	3.78	9	57.84	1.37
SAFECO Corp.	OTC	54.00	2.37	-1.14	65.75	48.50	1033	1.80	3.33	10	41.59	1.30
SCOR U.S. Corp.	NYS	12.25	15.29	-2.97	19.13	10.13	34	0.36	2.94	9	16.08	0.76
Seibels Bruce Group	OTC	1.75	0.00	0.00	2.13	0.31	54	0.00	0.00	-1	1.90	0.92
Selective Ins. Group	OTC	23.75	-3.06	-21.49	31.00	21.75	31	1.12	4.72	14	23.11	1.03
Sphere Drake Holdings	NYS	16.13	1.57	-2.27	21.63	14.63	6	0.12	0.74	7	12.17	1.32
Statesman Group Inc.	NYS	14.50	18.37	16.00	14.75	9.75	755	0.10	0.69	6	8.65	1.68
TIG Holdings	NYS	18.00	0.70	-20.44	28.00	17.25	1360	0.20	1.11	-9	18.49	0.97
Titan Holdings Inc.	NYS	9.63	5.48	-11.49	13.38	9.13	31	0.24	2.49	7	8.93	1.08
Tokio Marine & Fire	OTC	63.25	1.20	17.13	67.00	49.25	1	0.37	0.58	-	57.72	1.10
Torchmark Corp.	NYS	37.38	-4.47	-16.48	59.75	37.38	816	1.12	3.00	10	17.35	2.15
Transatlantic Holdings	NYS	46.13	-3.40	-13.58	61.50	45.38	108	0.36	0.78	12	29.60	1.56
Travelers Corp.	NYS	34.75	-1.42	-10.61	49.50	32.53	2720	0.48	1.38	9	33.35	1.04
Trenwick Group Inc.	OTC	36.25	1.40	-6.45	47.75	33.25	66	1.00	2.76	13	26.00	1.39
United Fire & Casualty	OTC	38.00	-1.30	5.56	44.00	34.75	3	1.08	2.84	10	28.96	1.31
Unitrin	OTC	39.00	-0.64	-8.24	46.75	38.75	151	1.40	3.59	25	38.90	1.00
UNUM Corp.	NYS	49.38	-9.40	-5.95	60.13	47.00	3128	0.96	1.94	12	27.55	1.79
US Facilities Corp.	OTC	13.75	29.41	15.79	14.00	8.25	2292	0.00	0.00	12	10.48	1.31
USF&G Corp.	NYS	12.50	0.00	-17.36	19.63	11.69	1265	0.20	1.60	13	10.60	1.18
USLICO Corp.	NYS	17.00	-0.73	3.03	19.00	15.75	16	0.24	1.41	8	25.22	0.67
USLIFE Corp.	NYS	37.63	-0.33	-2.90	45.75	36.38	130	1.24	3.30	9	41.73	0.90
Washington National	NYS	22.88	3.98	-5.67	26.13	21.50	27	1.08	4.72	9	28.40	0.81
Zenith National Ins.	NYS	22.88	5.17	3.39	29.13	20.63	167	1.00	4.37	8	17.71	1.29
Zurich Reinsurance Centr.	NYS	25.50	-0.97	-9.73	36.38	24.25	54	0.00	0.00	33	24.41	1.04
INSURERS/REINSURERS	AVERAGE		1.5	-6.8					2.3	11.4		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	24.25	9.60	-6.73	30.00	18.25	952	0.00	0.00	15	11.43	2.12
Pacificare Health Sys.	OTC	50.75	0.00	34.44	57.25	30.50	97	0.00	0.00	21	11.15	4.55
Safeguard Health Enter.	OTC	13.75	0.92	10.00	15.50	8.00	28	0.00	0.00	16	5.71	2.41
Sierra Health Services	NYS	25.50	-9.73	14.61	30.75	14.00	395	0.00	0.00	17	4.60	5.54
TakeCare Inc.	OTC	73.19	5.31	34.29	76.00	35.75	489	0.00	0.00	23	18.69	3.92
United Healthcare Corp.	NYS	41.50	1.53	11.04	47.50	26.00	4272	0.03	0.07	33	10.64	3.90
U.S. Healthcare	OTC	37.50	-13.29	-2.17	47.50	26.66	20824	0.52	1.39	19	6.21	6.04
Wellpoint Health Networks	NYS	31.75	2.42	2.83	37.00	24.00	338	0.00	0.00	16	10.94	2.90
HMOs	AVERAGE		-0.4	12.3					0.2	18		
ALL COMPANIES	AVERAGE		0.8	0.8					2.4	16		

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Reliance National's
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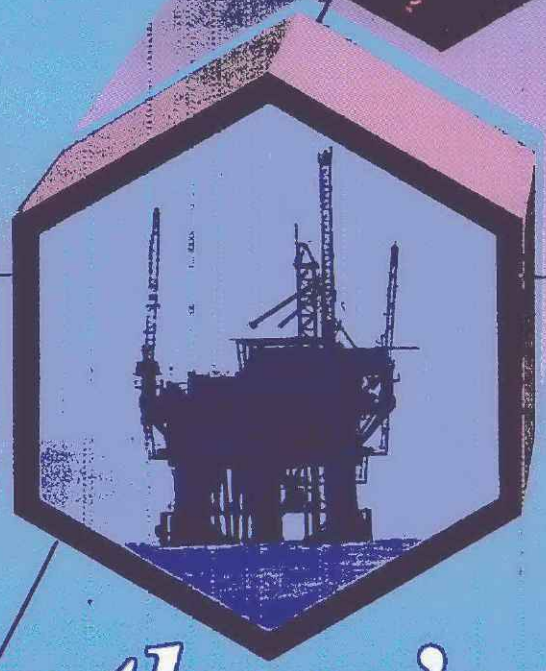














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THE CHOICE

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