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Updates

N.Y. to relax ban on coverage of employment liability claims

NEW YORK—Reversing a long-held position, the New York Insurance Department says it will allow the sale of employment practices liability insurance under certain circumstances.

Interest in employment practices liability insurance has been growing as employers face rising numbers of claims for wrongful termination, sexual harassment and discrimination (*BI*, May 31, 1993).

In a recent letter to a state assemblywoman, the department said it will now al-

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Voluntary cleanups covered: Court

By DAVE LENCKUS

OLYMPIA, Wash.—In a major policyholder victory, Washington's highest court says commercial general liability insurers must cover pollution cleanup liabilities that policyholders voluntarily assume, even when the state has not ordered a cleanup.

Citing public policy concerns, the court on May 19 unanimously rejected insurers' argument that coverage is not triggered when a policyholder voluntarily cleans a waste site before it faces a third-party claim, like a cleanup order.

The court said that Washington's pollution liability statute itself is tantamount to a third-party claim. Ruling otherwise would force policyholders to wait for a cleanup order rather than cooperate with the state, which could mitigate the hazard and cleanup costs, the court said.

"The decision says you don't have to sit idly by and wait for a cleanup order to get insurance. You can be proactive," said plaintiffs attorney Robert M. Horkovich, who represented Tacoma, Wash.-based Weyerhaeuser Co.

Although most states have enacted pollution liability laws, the decision is only the second time a state high court has ruled on the issue. The Wyoming Supreme Court ruled similarly in 1988.

But, insurer attorneys say the decision raises several questions, including whether policyholders' liability admissions could threaten their coverage and how well policyholders have to inform insurers about their cleanup actions.

"The thing about a decision like this is that it could have far-reaching consequences that you can't even dream of," said insurer attorney Bud London of London & Fischer in New York.

The ruling stems from a March 1992 suit that Weyerhaeuser filed against 33 insurers and numerous Lloyd's of London syndicates and London underwriters that wrote primary and excess CGL coverage for the wood products manufacturer from 1951 through 1985.

Weyerhaeuser sought a ruling that the insurers must defend and indemnify it in pollution liability cases involving 42 sites across the

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Employers find family leave law loophole

Work comp time off deducted from leave

By MEG FLETCHER

Some companies are minimizing their obligations under the federal Family and Medical Leave Act by counting days off the job following a workplace injury toward the maximum 12-week family medical leave.

Supporters say this innovative strategy limits the time off they have to give employees, which reduces staffing problems and also simplifies administration of leave programs. It also may encourage employees to work more safely and may discourage some abusive workers comp claims.

The strategy developed as a result of a gap between the Family and Medical Leave Act and state workers compensation laws.

Many authorities endorse the strategy, though it has not been tested in the courts. Companies that use this approach do face possible pitfalls, including opposition from unions.

The FMLA, which went into effect Aug. 5, 1993, was designed "to balance the demands of the workplace with the needs of families" (*BI*, Sept. 20, 1993; Aug. 2, 1993).

The law requires that companies with 50 or more employees within a 75-mile radius provide workers up to 12 weeks of unpaid leave each year for the birth or adoption of a child, or for the "serious health condition" of the employee or a member of the employee's immediate family.

While workers on FMLA leaves are not paid, they do have their

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Risk management from afar

Univar exec telecommutes to office 3,000 miles away

By LOUISE KERTESZ

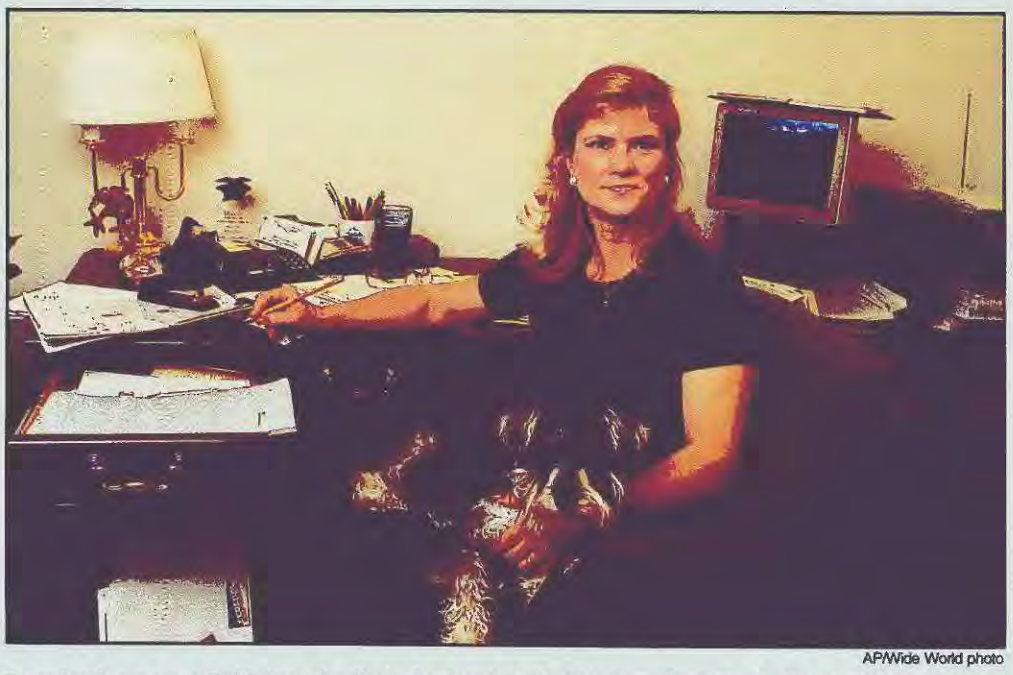
MILLERSVILLE, Md.—Commuting to work every day is no problem for Leslie L. Seabrook, even though her company is 3,000 miles from home.

Thanks to communication technology, Ms. Seabrook can perform all of her duties as risk manager for Seattle-based Univar Corp. from an office in her home about 25 miles northeast of Washington, D.C.

Perhaps even more surprising is that she discovered risk management only about three years ago, while working as an administrative assistant for the company.

Before she began telecommuting, Ms. Seabrook first had to convince her supervisors at Univar—an international chemical distributor with 3,000 employees—that they needed a risk manager. Then she convinced them that they needed her, even if she later moved across the continent.

Those sales skills had been honed earlier in her career when she sold oil and gas partnerships and was a Merrill Lynch & Co. Inc. stockbroker. "The sales background really helped in risk management. You know you have to sell what you're doing to management," she said.



AP/Wide World photo

From her home near Baltimore, Leslie L. Seabrook, with help from Pepper, is able to oversee risk management for Univar Corp. in Seattle.

Until three years ago, Univar had no risk manager.

Previously, all insurance purchasing was done through a senior manager, and the previous people in Ms. Seabrook's post were more support staffers for that senior manager, explained William A. Butler, vp and

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Rosty's woes cloud health reform

Leader's dealmaking skill would be sorely missed if he resigns

By JERRY GEISEL

WASHINGTON—Rep. Dan Rostenkowski's resignation as chairman of the House Ways and Means Committee would be a severe, though perhaps not fatal, blow to the proponents of health care reform.

Speculation about the fate of the powerful Illinois Democrat overshadowed other health care developments last week on Capitol Hill, which included approval of a bill resembling the Clinton administration's proposal by a House panel and continued progress on legislation by a Senate committee.

The fate of Rep. Rostenkowski, who has been under investigation for allegedly misusing office expense accounts and hiring employees who did no work, could be decided this week.

If indicted on felony charges, he would have to relinquish his committee chairmanship under congressional rules. And, if he agrees to a plea bargain—as is widely rumored—he would almost certainly have to resign from Congress and perhaps serve time in jail.

As of late last week, Rep. Rostenkowski had not admitted any wrongdoing.

Still, for the first time in weeks, attention shifted away from the details of the health care reform bills working their way through congressional committees to the ramifications of a Rostenkowski resignation or indictment. While there is disagreement over the magnitude of these scenarios on health care reform legislation, most observers agree that either would further slow the legislation's process, which now can best be described as sputtering.

The importance of Rep. Rostenkowski to the health care reform debate is not linked to his knowledge or understanding of health care issues; he would be the first to admit that many other legislators are far better versed in the intricacies. However, Rep. Rostenkowski has the ability—perhaps unequaled in Congress—to cut deals and move legislation.

"He is a master instructor in the dance of legislation. He knows what has to be done to get a majority and get a bill passed," said Stuart J. Brahs, vp-federal government relations for The Principal Financial Group in Washington.

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Updates

New York to permit bias cover

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low liability insurance for discrimination claims based on "disparate impact" and vicarious liability.

Disparate impact claims use statistics to show that certain neutral practices actually have a discriminatory affect on minority groups. Disparate treatment claims, by contrast, allege intentional discrimination by an employer and still are not insurable in the state.

Vicarious liability suits try to hold employers responsible for the discriminatory acts of employees.

The state's previous ban on any type of discrimination insurance "dates from a period, some 30 years ago, when virtually all discrimination claims" were disparate treatment claims, the letter explains.

"Given the lack of intentional conduct by the employer in either of the circumstances described above, the basis for denying coverage—viz., the public policy of deterring intentional wrongs—vanishes," the department's letter says.

Fewer firms offer health plans

WASHINGTON—The proportion of U.S. workers receiving employer-provided health coverage declined to 61% in 1993 from 65% in 1988, according to a Labor Department report released last week.

The statistics included employees of both private and public entities. The percentage of private-sector workers receiving employer-based health coverage dropped to 58% last year from 62% five years earlier.

Labor Secretary Robert Reich speculated that the rising price of health insurance was at least partly to blame. "My guess is that a significant part of the problem is this substantial increase in costs, plus increasing competition in many industries."

Only 31% of the workers at firms with fewer than 10 employees received health coverage from their employers. But 92% of those who worked for companies with more than 500 employees received employer-sponsored health coverage.

Pfizer sued over implants

SAN FRANCISCO—The leading manufacturer of penile implants has been sued by three Sacramento couples alleging that the inflatable devices are defective and pose serious medical risks similar to those associated with silicone gel breast implants.

The suit, filed May 20 in San Francisco Superior Court, alleges that American Medical Systems Inc. and its New York-based parent, Pfizer Inc., concealed the health risks of the devices.

The implants, which are prescribed as a cure for impotence, are alleged to have caused infection, disfigurement, leakage, immune system problems, pain and loss of sensation.

Some of the side effects are similar to those suffered by women who have had silicone gel breast implants, said Dan Bolton, one of the San Francisco attorneys who filed the suit, which seeks class action status.

The suit seeks unspecified compensatory and punitive damages against American Medical Systems and Pfizer and that medical monitoring be set up to follow the health of the men who have received the implants. An estimated 300,000 men have undergone penile implant surgery since 1973.

Company spokesmen could not be reached for comment.

20th Century reviews capital

WOODLAND HILLS, Calif.—Losses from the Los Angeles earthquake, which battered 20th Century Insurance Co., are forcing the insurer's parent to explore ways to increase capital.

20th Century Industries announced at its annual meeting that it will not pay dividends for the last two quarters of 1994.

The quake, which caused $600 million in losses for the insurer, cut the company's surplus at the end of the first quarter by nearly two-thirds, to $2 million.

"People are standing in line" to help raise capital for 20th Century, Chief Executive Neil H. Ashley said at the meeting. That remark led to speculation that the insurer may be put on the block. But a spokesman said Mr. Ashley "was not implying that he was encouraging offers for sale of the company."

To boost capital, 20th Century is seeking a 172% increase in earthquake rates for homeowners and 400% for condominium owners, which would generate $36 million more in premiums (*BI*, May 16). Another option would be to purchase additional pro rata reinsurance.

Skandia eyes runoff reinsurer

STOCKHOLM, Sweden—Skandia Insurance Co. Ltd. confirmed last week that it is in talks with Trygg-Hansa SPP Holding over the possible purchase of Trygg-Hansa's runoff reinsurance operation in the United States.

Skandia America Group, Skandia's U.S. operation, would manage Trygg-Hansa's runoff portfolio, Skandia Vp Johan Bergenstjerna said.

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Errors & omissions

• An April 18 article incorrectly attributed a comment on the high cost of doing business in Bermuda to Andrew Carr, managing director of Marsh & McLennan Management Services (Bermuda) Ltd. Raymond C. Olsen, vp-risk management at Citicorp in New York, made the comment.

• A May 23 article incorrectly reported earthquake losses incurred by Christiania Re Corp. The correct figure is 15 million Norwegian kroner ($2.1 million).

Latest McCarran reform bill fails to heal rifts in industry

By MARK A. HOFMANN

WASHINGTON—House Judiciary Chairman Jack Brooks, D-Texas, promises swift action on the latest version of a bill that would reduce the antitrust protections granted to insurers by the McCarran-Ferguson Act.

The measure, a substitute for his earlier H.R. 9 that was unveiled last Thursday, grew out of more than two years of discussions involving Rep. Brooks, consumer groups and the American Insurance Assn. The proposal is virtually identical to one approved by AIA's board in February (*BI*, March 7; Feb. 28).

"The bill protects the industry's critical collective activities within well-structured McCarran-Ferguson safe harbors and, combined with the application of standard antitrust rules, allows the industry to operate effectively within a normalized antitrust environment," said David Pratt, AIA senior vp-federal affairs.

Other insurer groups are not so enthusiastic. "It's not going to solve any problems. It's going to cause a lot of litigation," predicted Jack Ramirez, executive vp of the National Assn. of Independent Insurers, which has adamantly fought McCarran-Ferguson reform.

Opponents hope that a rapidly shrinking legislative calendar will doom the bill in the current congressional session, which is expected to end weeks before the November elections.

Like the earlier draft, the new Brooks proposal would: allow insurers to develop and use common

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Risk-based capital fallout

Standards will spur more regulatory attention: Moody's

By DOUGLAS McLEOD

NEW YORK—New risk-based capital rules will increase the number of property/casualty insurers requiring regulatory attention and will change the way some insurance companies do business, a rating agency predicts.

The rules, which will apply to insurers' 1994 statutory financial statements, will push a growing number of insurers below capital thresholds triggering regulatory scrutiny, especially as the rules become tougher in 1995 and 1996, Moody's Investors Service projects.

Insurers may also take several steps to dampen the rules' impact, including manipulating loss reserves, buying less reinsurance and shifting business from long-tail liability lines, the rating agency says.

The projections are outlined in a Moody's report, "Risk-Based Capital Standards for Property/Casualty Insurers: Potential Impact on Creditworthiness," issued this month.

The National Assn. of Insurance Commissioners formally adopted its risk-based capital model law for property/casualty insurers last year (*BI*, Feb. 14).

A formula sets minimum capital levels by measuring four categories of insurer risk:

• Asset risk, including the quality of an insurer's stock and bond

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Legislation targets frivolous suits

Bills propose D&O relief

By RODD ZOLKOS

Proposed federal and state legislation may be good news to directors and officers liability insurers and risk managers concerned about the cost of defending against frivolous D&O suits.

In the U.S. Senate, a bill recently introduced by Sens. Christopher J. Dodd, D-Conn., and Pete V. Domenici, R-N.M., is intended to repair a system of securities litigation that "is not functioning properly," said Courtney Ward, staff director of the Senate Banking, Housing and Urban Affairs Subcommittee on Securities.

Meanwhile, a bill in New York would block meritless shareholder derivative suits, suits that its sponsors say jeopardize the "economic health of New York corporations. . .by causing (them) to expend significant resources to defend themselves."

"(Both bills) are a good idea and a step in the right direction," Steven Anderson, senior vp with Marsh & McLennan Inc. in New York. "Pretty much everyone recognizes the balance between having to hold directors and officers responsible for their activities and the need to avoid vexatious litigation has swung too far toward the plaintiffs' bar."

D&O insurers are closely

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Receivership reform proposed

Plan would target multistate insurers

BY MEG FLETCHER

RAPID CITY, S.D.—Adoption of a proposed interstate compact could streamline the receivership process for financially troubled insurers that wrote coverage in multiple states.

Illinois says it will push for enactment of the compact if at least one other state agrees to participate. A compact in essence is an agreement among states to enact identical pieces of legislation.

A working group of the National Assn. of Insurance Commissioners unveiled its proposal for a model interstate receivership compact earlier this month during a meeting of the NAIC's Midwest Zone in Rapid City, S.D.

The fate of the proposal likely depends on evaluations by commissioners in the Midwest and by the NAIC's Interstate Compact Special Committee, which are expected to consider the draft at the NAIC's quarterly meeting in June.

Input also is expected from insurance industry representatives and the National Conference of Insurance Legislators, which also has drafted a compact proposal.

If the proposed model compact is approved by the NAIC, Illinois is prepared to promote adoption of the measure if at least one other state also acts, said James W. Schacht, acting director of the Illinois Department of Insurance,

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Insurers, legislators criticize NAIC's practices

By SARA MARLEY

NEW ORLEANS—Insurance company executives and state lawmakers are tired of being pushed around by insurance commissioners.

While not necessarily embracing federal oversight, insurers and legislators are critical of the growing influence of the National Assn. of Insurance Commissioners as it begins to enforce sanctions against states that do not enact its package of model laws required for insurance department accreditation.

State regulators, though, claim they are not inflexible and that solvency oversight has improved as a result of the NAIC's accreditation program.

These positions were debated during a panel discussion at the Alliance of American Insurers' annual meeting last week in New Orleans.

Alliance Chairman F. David Rolwing did not mince words in expressing the organization's opposition to the NAIC's tactics.

"Our friends at the NAIC have been actively becoming more and more intrusive into our business. I, for one, think it is time to call a halt," said Mr. Rolwing, who is also president of the Montgomery Mutual Insurance Co. in Sandy Spring, Md.

"It is time we recognize the NAIC for what it is: a trade association of the state regulators, who are not elected nor responsible to anyone (in most cases) except the person who appointed them, but who have taken on the role of legislator, executive and judge. I support state regulation of our industry, but I think it is time the NAIC quit playing one-upmanship with the feds."

However, Steven P. Foster, insurance commissioner of Virginia and immediate past president of the NAIC, said that state legislatures bear ultimate responsibility for the laws they pass, and they should not pass NAIC model laws they consider inappropriate for their states.

Mr. Foster is chairman of the NAIC's accreditation committee, which has given its stamp of approval to 34 states.

Cooperation between "state legislators, governors, insurance commissioners and the industry have brought state regulation up several notches in the past couple of years," Mr. Foster said.

But that is not the message Texas lawmakers are getting, contends state Rep. David Counts, D-Knox City.

"The way it's been presented to me is diametrically opposed" to the cooperation Mr. Foster described, said Rep. Counts, who said the NAIC's stance is more like: "Do it or else."

In New York, state Sen. Guy

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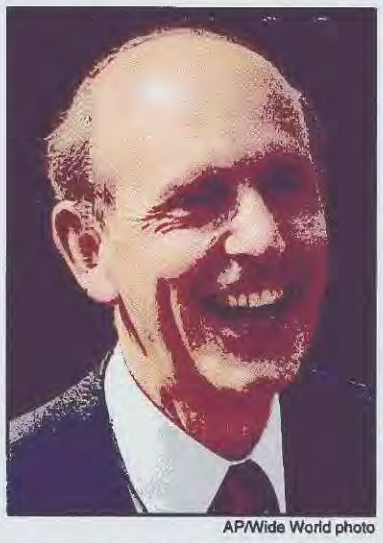

AP/Wide World photo

Judge Stephen Breyer

A difficult man to judge

Breyer seen as pragmatic, neither conservative nor liberal

By JOANNE WOJCIK

BOSTON—Supreme Court nominee Stephen Breyer cannot be pigeonholed.

An analytical thinker and clear writer, the 56-year-old judge from the 1st U.S. Circuit Court of Appeals in Boston breaks out of the confines of statutory language and makes decisions that work in the real world, according to those familiar with his rulings.

While business interests have applauded his conservative skepticism toward government regulation, liberal activists say Judge Breyer always keeps an eye out for his rulings' effects on ordinary people.

That pragmatic approach has worked well across the political spectrum. He managed to bring together his first liberal boss, Sen. Edward Kennedy, D-Mass., and influential Republicans to devise an airline deregulation plan in the mid-1970s when he was special counsel to the Senate Judiciary Subcommittee on Courts and Administrative Practices.

"Judge Breyer has the reputation of being a fair-minded, even-handed judge," said Stephen J. Paris, a partner with Morrison, Mahoney & Miller in Boston and former head of the Defense Research Institute.

"He clearly separates the legal issues from the political issues," concurred Ed Dailey, general counsel of Blue Cross & Blue Shield of Massachusetts Inc. in Boston.

"I don't think you can peg him as being either conservative or liberal," said Mike Gass, a partner

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New risks menace public entities

By DEBORAH SHALOWITZ COWANS

DENVER—Watch out, government risk managers: New public entity liabilities just keep bubbling up like toxic slime in a grade-B horror flick.

New liability exposures arise from such risks as lead poisoning, exposure to electromagnetic fields and improper zoning.

What's more, some liability exposures that have emerged in recent years—like wrongful termination and other employment practices lawsuits—are expected to worsen for public entities.

However, risk managers do have tools to fight these menaces, experts said at the Public Risk Management Assn.'s 15th annual conference earlier this month in Denver.

Government entities increasingly are being held liable for a myriad of risks because the public views them as a "deep-pocket resource—always there and with renewable resources," said Yvonne Norton Leung, risk manager for the state of Nebraska.

Even when government entities are not actually found liable, legal fees will be "astronomical" in defending these suits, said G. Roger Greiner, president of Genesis Underwriting Management Co. in Stamford, Conn.

And, a lack of prior litigation in some of these areas could hinder governments from spotting emerging trends. "There just aren't very good track records available," he said.

Risk managers would be wise to keep up with whatever litigation exists, added Ms. Norton Leung.

Perhaps the most insidious of the emerging liability exposures facing public entities is lead poisoning.

"Public health officials believe lead is the No. 1 threat to children," said Mr. Greiner. "Lead is everywhere"—in water, paint, the ground and toys.

The risk of lead poisoning is most acute in public schools and public housing, he said.

Public entities facing lead paint liability suits should take several steps.

They should obtain the com-

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Huge libel awards no longer the rule, but big risks remain

By SARA MARLEY

The runaway libel verdicts seen in recent years have been reined in, but the cost of an average case remains high.

The media won more than half of the libel cases tried between January 1992 and October 1993, according to a survey by Thomas B. Kelley, an attorney with Denver law firm Cooper & Kelley.

The average award was $1.4 million. However, that figure was skewed by a $7.5 million award by a Los Angeles jury. Only one other verdict during the period exceeded $750,000, he said.

By contrast, during 1990 and 1991, juries found for the media in only 27.6% of the cases and the average award was more than $9 million, according to the Libel Defense Resource Center.

Mega-verdicts in 1990 and 1991 included $58 million awarded to a prosecutor libeled by Belo Broadcasting Corp. and $34 million to another prosecutor libeled by the Philadelphia Inquirer.

In *Feazell vs. Belo Broadcasting Corp.*, a Waco, Texas, district attorney sued television station WFAA for airing rumors that he may have accepted bribes in drunken driving cases and was lax in prosecuting drug cases. Two years later, he was indicted on federal racketeering and bribery charges but was acquitted.

In the Philadelphia case, *Sprague vs. Philadelphia Newspapers*, a former assistant district attorney sued the Philadelphia Inquirer over articles that linked him to an alleged coverup in a murder investigation involving the son of a friend (*BI*, Sept. 14, 1992).

Other 1990-1991 mega-verdicts included: $31.5 million in *Srivastava vs. Harte-Hanks Television Inc.*, $18.5 million in *Prozeralik vs. Capital Cities/ABC Inc.* and $13.5 million in *Newcomb vs. Cleveland Plain Dealer*.

Although the 1993 survey indicated verdicts were more favorable to media defendants, "I hesitate to call that any kind of a trend," Mr. Kelley said during the Media Risk Management conference earlier this month in Kansas City, Mo., sponsored by Media/Professional Insurance. "Those cases just involve easier fact situations, smaller publications and economically conservative jurisdictions."

What the research does show is "the market value of the average media defamation case has gone up," he said. "In the early 1980s, we used to think of anything over $100,000 as significant, even in a town the size of Denver. Now it's clear that in a medium-sized town, a verdict of a half a million dollars is commonplace against a local broadcaster or daily newspaper. In large towns such as Philadelphia, $3 million to $5 million is something that would be considered ordinary, not a runaway verdict."

"Juries are still very unpredictable," said Thomas Harrington, director of risk management for The New York Times Co. in an in-

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AP/Wide World Photo

The Cleveland Indians bought cancellation coverage this season for the first game played in the team's new home, Jacobs Field.

Cancellation coverage a washout for most major league teams

By RODD ZOLKOS

Back in his playing days, Chicago Cubs great Ernie Banks, he of the ever-sunny demeanor, was fond of saying, "Let's play two today"—even in the worst weather.

But, when the rains do come and wash a game away, major-league baseball teams typically are content to play two later in the season, waiting until then to make up the revenue lost to the rainout.

When a game can't be made up, though, or sometimes when it's linked to a major promotion, major- and minor-league teams will occasionally look to cancellation insurance to recoup revenue they'd lose if the game can't be played.

That was the case with the American League's Baltimore Orioles, who obtained the coverage for a preseason game with the Philadelphia Phillies of the National League.

"We look at it for a particular game like an exhibition game, a preseason game, that can't be replayed," said Aric Holsinger, the Orioles' chief financial officer.

This was the second year the Orioles played a preseason exhibition at their new Camden Yards ballpark. "We'll look at (cancellation coverage) each year as to whether it's worthwhile," Mr. Holsinger said. "We're drawing well right now, so there's a big risk of revenue loss."

A baseball team's revenue losses from a rainout can include not just ticket sales but parking and concession revenue as well.

The cancellation coverage is based on the condition of a predetermined amount of rain falling in a designated amount of time,

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Rosty

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Rep. Rostenkowski, 66, is a product of Chicago's fabled Democratic "machine." A protégé of former Chicago Mayor Richard J. Daley, father of the city's current mayor, Rep. Rostenkowski has served in the House for more than three decades, including 13 years as Ways and Means Committee chairman.

Legislators and lobbyists alike, even those on the other side of the political fence, marvel at Rep. Rostenkowski's dealmaking ability.

"He knows how to put deals together. Some of that comes from his sixth sense. But some of it also comes from years of learning the backgrounds of members," said John Erlenborn, a former Republican congressman representing the Chicago suburbs and now of counsel with Seyfarth, Shaw, Fairweather & Geraldson in Washington.

"He has an institutional memory. He remembers past favors, betrayals and debts. That is very effective when you are dealing in a highly political environment," Mr. Brahs noted.

As Ways and Means Committee chairman, he has been in the position to do favors for members to win their support on major legislative issues. For example, the 1986 tax reform law was sprinkled with so-called transition rules—special provisions, like tax breaks for certain employers, that Rep. Rostenkowski agreed to insert to win support from fellow legislators as the final bill was being hammered out by a conference committee.

"He knows what he has to give away and what he does not. He is the ultimate pragmatist," said Edward J. Davey, national director of health and welfare services at Buck Consultants Inc. in New York.

With five congressional panels considering health care reform legislation and no consensus on the shape of a final bill, Rep. Rostenkowski's skills at forging deals would be sorely missed if he forfeits the Ways and Means chairmanship.

"It would be a real body blow" to any chance of getting health care reform legislation passed, Mr. Brahs said.

If Rep. Rostenkowski were to leave, his post on the Ways and Means Committee likely would pass to Rep. Sam Gibbons, a 74-year-old Florida Democrat, who is regarded as lacking Rep. Rostenkowski's dealmaking ability despite 16 terms in the House.

Unlike Rep. Rostenkowski—who cemented relationships with many senators and representatives through social events like golf tournaments and gregarious dinners at Morton's in Georgetown, the Washington outpost of the steakhouse chain based in Rep. Rostenkowski's hometown—Rep. Gibbons isn't regarded as especially close with many fellow legislators.

In addition, while Rep. Rostenkowski's views on health care reform have been flexible—he was a supporter of the "play or pay" approach and later became a loyalist for President Clinton's reform package—Rep. Gibbons has been an advocate, though not an especially outspoken one, of a single-payer system.

But while Rep. Rostenkowski's departure could be a "body blow" to the health care reform drive, many say it would not be the coup de grace because:

- Rep. Gibbons, while not the dealmaker that Rep. Rostenkowski is, could surprise people.

"Sam Gibbons may well rise to meet the challenge," said Mr. Erlenborn.

- Ways and Means Committee members, fearful of being accused of holding up health care reform legislation, likely will approve a bill even without Rep. Rostenkowski.

"One way or another, the committee will report a bill," said James Klein, executive director of the Assn. of Private Pension & Welfare Plans in Washington.

- Rep. Rostenkowski would not play a leading role in one of the most important stages in the legislative process: making the rules that determine how the legislation would be considered on the House floor—if it gets that far. Those rules likely would be fashioned by other members of the House leadership, including Speaker Tom Foley, D-Wash., and Majority Leader Richard Gephardt, D-Mo., rather than Rep. Rostenkowski.
- The chances of enactment of comprehensive legislation this year already are so slender that no one person's acumen will seal its fate.

While Rep. Rostenkowski's situation grabbed headlines last week, congressional panels continued to work on health care reform bills.

The House Labor-Management Relations Subcommittee approved on a party-line 17-10 vote a proposal modeled after the Clinton administration's reform bill, though the panel did make a number of changes.

Under the bill passed by the subcommittee, employers with more than 1,000 employees would be required to set up their own corporate alliances to offer health plans and would be barred from participating in state-established regional health alliances. These employers would also be slapped with a 1% payroll tax.

By contrast, the administration's bill would require all employers—except those with at least 5,000 employees—to buy coverage through the regional alliances.

In the Senate, the Labor and Human Resources Committee continued its slow consideration of a reform bill also modeled after the administration's proposal.

The committee rejected an amendment by Sen. Strom Thurmond, R-S.C., that would have stripped a provision that removes health insurers' limited immunity from federal antitrust law now provided under the McCarran-Ferguson Act. The same provision is in the administration's proposal.

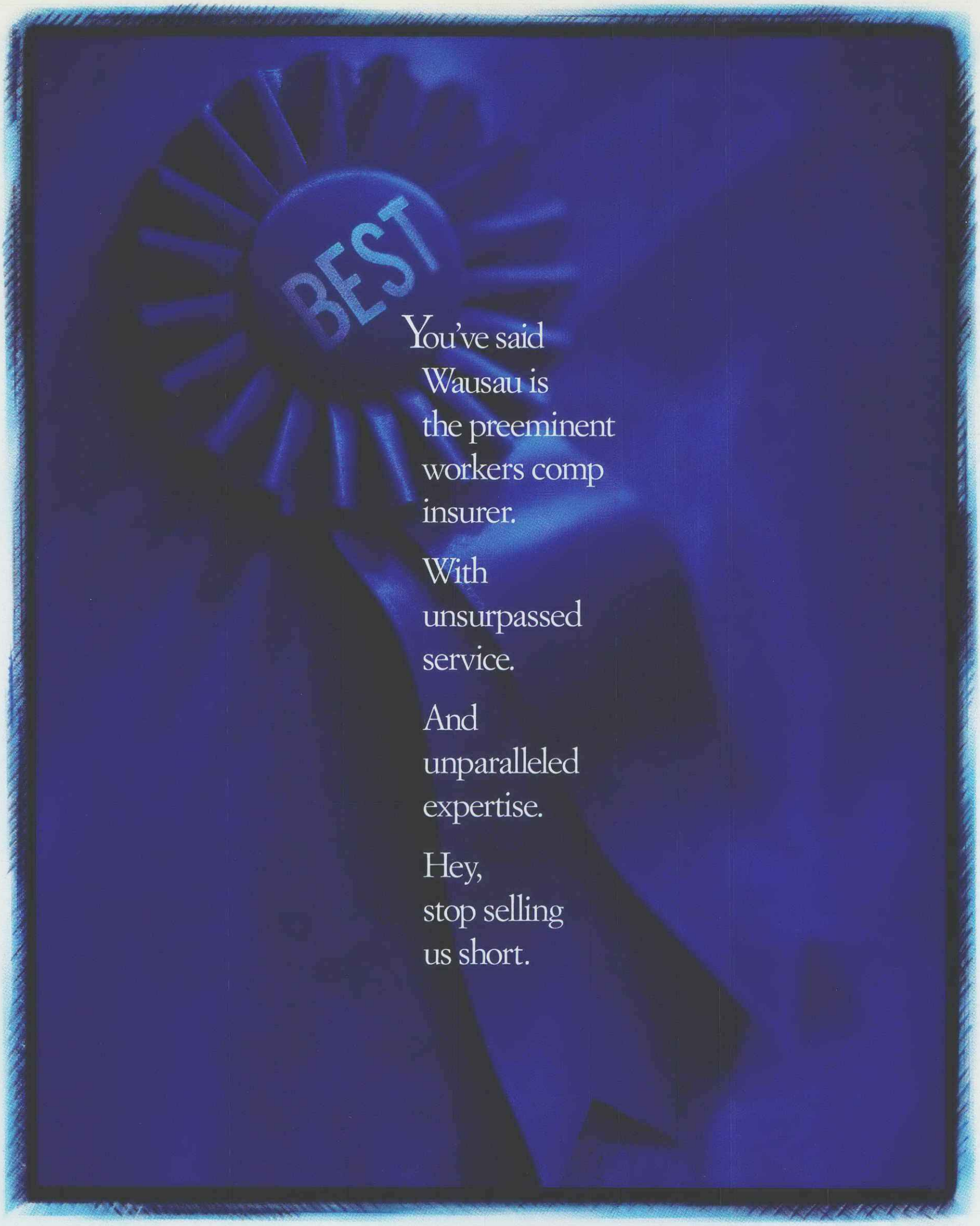
In addition, the committee rejected an amendment by Sens. Christopher Dodd, D-Conn., and James Jeffords, R-Vt., that would set up a new system of damage awards for health care participants whose claims were improperly denied by employers or insurers.

Under the amendment, a beneficiary could recover an amount up to double the actual benefits lost, plus lost wages. Under the Employee Retirement Income Security Act, beneficiaries generally can only recover an amount equal to their actual losses, while courts have the discretion to award attorneys' fees.

By contrast, the committee bill would allow courts to reward all "appropriate relief." While not defined, that term conceivably could include punitive damages.

After the amendment was defeated, Labor and Human Resources Chairman Edward Kennedy, D-Mass., indicated he would be willing to reconsider the issue when the committee resumes its discussions next month after Congress' Memorial Day recess.

Finally, the committee defeated an amendment by Sen. Orrin Hatch, R-Utah, that would have placed a $250,000 cap on punitive damage awards in medical malpractice cases. BI



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Delta sued over retiree benefit changes

ATLANTA—A group of early retirees is suing Delta Air Lines Inc. over health care benefit cuts just as the loss-plagued carrier begins unfolding new early retiree incentives and other programs designed to slash costs.

Twenty-two early retirees filed suit in federal court in Atlanta May 16, charging that Delta reneged on oral and written promises that their health insurance benefits would never be reduced if they opted for early retirement in 1992. The retirees' attorney plans to seek class-action status on behalf of 1,800 to 2,000 early retirees.

Delta assured the retirees that their health benefits would be grandfathered from future cuts, said plaintiffs attorney Larry Chesin, a partner with Kirwan, Goger, Chesin & Parks in Atlanta. But, Delta imposed additional health care cost-sharing requirements on all employees and retirees, including the 1992 early retirees, last year.

The retirees want their benefits reinstated in full. The retirees, who ranged in age from 52 to 62 when they retired in 1992, also are seeking back pay, claiming they would not have retired had they known Delta would later reduce their benefits.

The suit does not specify damages, and Mr. Chesin said he could not estimate how much damages could total. However, a Delta retiree who was instrumental in mounting the legal challenge to the benefit cuts has estimated that damages could amount to $100 million.

A Delta spokesman said the airline did not promise the 1992 early retirees that their health benefits would never change. "To expect that was really unjustified since the future is so unpredictable. We've always said they could change."

Meanwhile, Delta is in the process of unveiling a massive cost-cutting program that includes early retirement incentives. Delta reported $1.4 billion in operating losses from 1991 through 1993, according to the spokesman.

Through the new program, Delta plans to cut its operating costs by $2 billion annually, or 20%, by mid-1997. As part of that effort, the airline plans to eliminate 12,000 to 15,000 jobs. The airline has about 75,000 employees.

Delta still was hammering out some details of the program last week.

Generally, though, Delta will pay 90% of early retirees' health insurance premiums. Early retirees, like regular retirees, still would be responsible for 10% of the cost of coverage. The airline does not guarantee that the early retirees' health benefits will not be altered at a later date, a spokeswoman said.

In addition, Delta will add five years of age or service in calculating retirement benefits and survivor income benefits.

Under a voluntary severance plan being offered to employees with at least one year of service, the airline will cover health care insurance costs for one to 12 months, depending on various termination allowance and travel privileges the employees also may select.

—By Dave Lenckus

Utility retirement plan

BELLEVUE, Wash.—Puget Sound Power & Light Co. is offering an early retirement package to 236 eligible employees as part of its cost-cutting and reorganization program.

The package, available to both union and non-union workers who have reached age 55, includes 1½ weeks' pay for each year of service plus three months' salary. The offer also adds five years of service to each employee's pension benefit formula.

Benefit Beat

Employees accepting the offer would receive the utility's standard retiree medical benefit, under which Puget Sound contributes $6 per month for each year of service toward the cost of a retiree's medical premium. Retirees have the choice of a fee-for-service plan with a $200 deductible and two HMOs, a company spokeswoman said.

The offer is a fair deal for union members and one that could reduce the need for layoffs as the company restructures, said the International Brotherhood of Electrical Workers Local 77.

Employees have until July 1 to accept the offer, the spokeswoman said.

Under a similar program offered in January to 650 professional and managerial employees under age 55, 98 chose to leave the company. The utility has about 2,775 employees. That program cost $4.5 million after taxes, but saved the utility an estimated $7.1 million pretax annually.

—By Louise Kertesz

Health inflation slows

Group medical care plan cost increases, which have slowed dramatically from the torrid pace of the mid 1980s, should remain in the single-digits this year, according to a new survey of large employers.

Employers responding to a Towers Perrin survey project that monthly health plan costs for individual coverage provided through traditional indemnity plans, preferred provider organizations and point-of-service plans will rise an average of 6% this year to $184 per employee, while family coverage will climb 6% to $511 per employee.

Employers project the average monthly cost of individual coverage provided through health maintenance organizations will rise 5% to $159 per employee, while family coverage also will rise 5% to an average of $450 per employee.

Health plan cost increases for retiree coverage will be higher, though still much lower than in recent years.

For example, the cost of individual coverage for retirees under 65 provided through traditional indemnity, PPO and POS plans is expected to rise 9% to a monthly average of $229 per retiree, while family coverage costs are projected to rise 9% to a monthly average of $552.

The cost of individual coverage provided through traditional indemnity programs, PPOs and POS plans for retirees 65 and older is expected to rise 8% to a monthly average of $111 per retiree and family coverage costs should rise 8% to $552.

The survey findings are based on the responses of 202 employers, most of whom are in the Fortune 1000.

Free single copies of the "1994 Health Care Cost Survey," are available from Towers Perrin at 1-800-525-6741.

—By Jerry Geisel

Frivolous

Continued from page 2

watching both bills, particularly the broader Senate measure, said Joseph P. Monteleone, senior vp and claims counsel at Reliance National Insurance Co. in New York. "Anyone who writes D&O insurance is always concerned about the merits of these suits."

Even if both bills become law, though, D&O premiums are unlikely to fall quickly. "I think you're going to have to see some demonstrable results," said Mr. Anderson. He suggested that lower premiums will come only when courts in states like New York, Delaware and California uphold restrictions on suits.

Backed by the electronics industry and other powerful lobbies, the Dodd-Domenici bill would, among other things, bar lawyers from representing a class where lawyers owned the securities involved, and require that lead plaintiffs in class actions hold either 1% or $10,000 worth of the securities at issue.

The bill would also require plaintiffs to prove that management's misstatement or omission, and not some other factor, caused the stock prices to change.

Such restrictions would make investor suits under federal securities laws "more responsible," contends Mr. Monteleone. "Certainly anything like the Dodd-Domenici bill would be welcomed by anyone writing D&O insurance."

According to the Senate securities subcommittee's Mr. Ward, there's a growing recognition that current laws make it too easy to file frivolous suits.

"When you have a situation where plaintiffs' attorneys are recovering 35% of a settlement. . .nobody's winning except perhaps for the attorneys for the plaintiffs," Mr. Ward said.

There's a growing awareness that the law makes frivolous suits too easy to file, says Courtney Ward.

"The risks that do exist for plaintiffs' attorneys and the sort of professional plaintiffs who file these cases are very few," he said. "The incentives are great, and the disincentives are too few."

So-called professional plaintiffs hold small stakes in many companies, particularly high-tech firms with volatile earnings. They follow earnings closely and if the earnings fall short of projections or swing up and down, "you can bet that suits will be filed even if there's not any liability at all," said Mr. Ward.

It is not clear by how much a Dodd-Domenici-type bill would reduce the number of securities lawsuits, though fewer may actually wind up in court. "Fewer suits will survive the initial stages of litigation but the ones that do survive will have a lot more merit to them," Mr. Anderson said.

Even with widespread interest in reducing private securities lawsuits, federal regulators are pushing for expanded authority to bring such actions, particularly after a recent U.S. Supreme Court decision.

The court stunned the legal and investment communities in April with its ruling in *Central Bank of Denver vs. First Interstate Bank of Denver* that shareholders may not sue professionals like lawyers or accountants who worked for a corporation for "aiding and abetting" securities fraud.

But such limits on the liability of professionals might hamper SEC efforts to combat securities fraud, Arthur Levitt Jr., the Securities and Exchange Commission chairman, told the securities subcommittee on May 12. The SEC must be able to pursue such "aiders and abettors," he said.

Private lawsuits are a "necessary supplement" to the SEC's enforcement actions, according to Mr. Levitt.

The suits "serve to compensate injured investors, a role that commission enforcement actions can serve only partially and incidentally," he said.

"I think it's fair to say the SEC finds, and certainly I do as a D&O insurer, that there has to be some place for private securities litigation," Reliance National's Mr. Monteleone said. "I don't think the (Dodd-Domenici) bill winds up throwing the baby out with the bath water."

The subcommittee's Mr. Ward said he isn't sure of the Dodd-Domenici bill's chances for passage. And, based on the past failures of similar legislation in Congress, Mr. Monteleone said he isn't optimistic.

In New York, a bill restricting shareholder derivative suits has passed that state's Senate. The bill has moved out of the Assembly's Committee on Corporations, Authorities and Commissions and is now on the Assembly floor. While the bill has the support of Gov. Mario Cuomo, it has been sidetracked.

Its chances for passage this session depend on the outcome of legislative negotiations currently under way, according to a committee staffer. The state's legislative session is scheduled to end June 30, but since legislators haven't made much headway on the state's budget, the June 30 adjournment date is seen by some as being in jeopardy.

The main feature of the New York legislation is that it would allow shareholder derivative suits to be brought only after the plaintiffs ask the corporation's directors to take action on whatever harmed the organization.

Shareholder derivative suits are brought by shareholders in the name of the corporation in cases where the defendants include directors and officers of the corporation.

If the board determines that the proposed suit is not in the corporation's best interests, the plaintiff must demonstrate to the court that the directors were not independent, were not adequately informed or did not act in good faith.

The bill also would let a corporation move to dismiss a derivative suit if the plaintiff's plea isn't sufficiently factual, and the plaintiff would not be entitled to discovery unless the court denied such a motion.

A corporation also could move for summary judgment of a derivative action based on a determination that the suit isn't in the corporation's best interests, with the plaintiff entitled to discovery with respect to such a motion.

While he said he welcomes the New York legislation, Mr. Monteleone said he has "mixed feelings" about it.

"D&O insurers generally aren't as concerned about derivative suits as they are with shareholder class actions," he said, adding there are fewer abusive derivatives suits than class-action claims. BI

Opinions

Reasonable regulation

BY UNVEILING A NEW, streamlined federal solvency regulation proposal, House Energy and Commerce Chairman John D. Dingell, D-Mich., has demonstrated that he does not want to let the question of who should regulate the solvency of commercial insurers and reinsurers lay unresolved until another major failure shakes the property/casualty insurance industry.

By doing so, Rep. Dingell also has sent a powerful message to perpetrators of insurance fraud: Ply your schemes on an interstate or international basis, and you'll answer to the federal government, not state authorities.

Few people expect the powerful lawmaker to try to push a bill through his committee during the waning weeks of the current Congress. He hasn't even put his most recent solvency proposal into legislative language yet. And that's understandable: Much more pressing issues, like health care reform, demand Rep. Dingell's immediate attention.

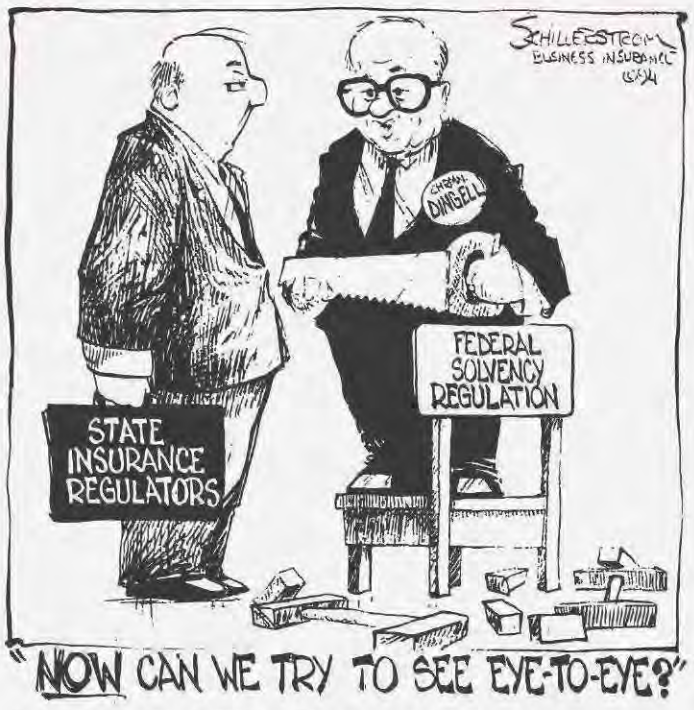
The unlikelihood of immediate action does not detract from the merits of the proposal, which stems from Rep. Dingell's earlier solvency bill, H.R. 1290. The latest proposal seeks to create a single, mandatory federal license for foreign insurers and reinsurers that do business in the United States.

Domestic insurance companies that underwrite surplus lines, reinsurance or certain commercial lines could also seek a federal license if they wished, as could certain captives and risk retention groups. A Federal Insurance Solvency Commission would oversee federal licensees to ensure that they meet financial standards.

In unveiling the proposal earlier this month before a meeting of the Bureau International des Producteurs d'Assurances et de Reassurances (*BI,* May 23), Rep. Dingell noted that his previous bills had been more ambitious.

But he said he decided to follow the advice of supporters who feel that "more ambitious" is "too ambitious." The new plan "focuses primarily on those segments of the insurance industry that our investigations have shown pose the greatest potential for solvency problems in the future—international and interstate insurers."

The new proposal also attempts to banish the specter of dual federal/state regulation of insurers. Fear of dual regulation has led some insurance industry groups and officials that support the concept of federal solvency regulation to withhold formal support



"NOW CAN WE TRY TO SEE EYE-TO-EYE?"

from Rep. Dingell's earlier proposals.

It's a valid fear, particularly given the possibility that a law could be construed to give federal authorities the right to regulate solvency while state authorities retained rate-setting powers. This concern can't be entirely assuaged until the bill's final legislative language spells out just how dual regulation would be avoided.

That caveat aside, his announcement is a welcome one. As he told the BIPAR meeting, insurers by their very nature are "inviting targets for mischief, scoundrels and fraud." State regulation has not always been up to stopping the fraud artists before they've managed to accumulate a heap of loot, as the sorry sagas of Carlos Miro and others of his ilk prove.

"Because a single federal agency will be responsible for regulating these insurers throughout the U.S., my proposal will stop the shell game now played by the bad actors we found in our investigations—insurers who move from state to state, one step ahead of the state regulators. This will become a far, far more difficult game to play with a single regulator for the insurer's nationwide activities," said Rep. Dingell.

That message needs to be heard. By outlining yet again a reasonable system for federal solvency regulation of selected lines of insurance, Rep. Dingell has demonstrated his commitment to busting that shell game once and for all.

Letters

Administrative costs small part of health care equation

To the editor: A report in the April 25 issue of *Business Insurance* on a speech I gave to the National Managed Health Care Congress on health care reform and rationing described an important point in a way that could confuse many readers.

The main point is that if the country is to contain the growth in health care costs at a constant proportion of the gross domestic product, it will not be possible to achieve the required savings through administrative efficiencies alone. Although such items as drug company profits and administrative costs are frequently identified as the villains responsible for runaway health care costs, even elimination of these and similar administrative components of the health care budget would have virtually no effect on the rate at which health care costs are growing.

For a dramatic example, imagine that in 1970 we snapped our fingers and miraculously cut the costs of non-durable goods (including all drugs and drug company profits) by 50%; slashed administrative costs by 50%; cut all physician services by 20%; and eliminated all public health programs, construction and research, forever. If we had done that in every year from 1970 on, health care costs in 1991 would have been set back only to the level they were at in mid-1989, and the rate of increase in health care costs would not have changed.

No matter how many administrative efficiencies we achieve, as long as any remaining component of costs is growing at a rate faster than the GDP, the basic problem of runaway costs will persist.

Unfortunately, about two-thirds of the excess increase in costs—the portion that exceeds general inflation and population growth—is due to the volume and intensity of services that we offer our patients.

The conclusion is that in order to contain health care costs to a constant proportion of the GDP, sooner or later, one way or another, we will need to address not just administrative efficiencies but the content of care.

David M. Eddy, M.D., Ph.D.
Professor of Health Policy
and Management
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Compact

Continued from page 2

who chaired the drafting group. Enactment by two states is all that is needed to begin to make it effective, he said.

Joining Mr. Schacht in drafting the proposal were regulators from Iowa, Kansas, Michigan, Oklahoma and Wisconsin.

"A number of state insurance commissioners believe that the shortcomings of the existing receivership/guaranty fund system should be reformed in a fashion that preserves and improves upon the strengths of the current state-based system," said Darla L. Lyon, the NAIC's Midwest Zone chairwoman and South Dakota's commissioner.

The shortcomings stem from the fact that the current system for handling insurance receiverships was originally designed for the liquidation of small, single-state companies.

When faced with the receivership of a multistate insurer, the current system breaks down because each state has different statutes and operating procedures. Federal critics of state-based insurance regulation often point to such problems in support of a federal regulatory system.

Specifically, the current system lacks an effective mechanism to coordinate the activities of receivers and guaranty funds and establish performance standards for them. Also, there is no vehicle to share information on the history and status of pending receiverships and to give non-domiciliary regulators a voice in decisions made by the domiciliary receiver or by guaranty funds.

The proposed compact is designed "to promote and develop uniform, efficient insurance receiverships and guaranty fund operations through the establishment of a not-for-profit Interstate Insurance Receivership Commission composed of the insurance commissioners of the member states," Mr. Schacht said in a statement accompanying the proposal.

The commission would have the authority to: promulgate a uniform receivership act; monitor and provide oversight of receivership and guaranty fund operations; serve as a clearinghouse for relevant information; provide training and other resources for receivership and guaranty fund personnel; provide a forum for the resolution of disputes involving member state receivers and guaranty funds; act as a receiver of estates in designated cases; and promulgate rules that are binding on member states through an administrative rulemaking process that preserves the right of the state to reject a proposed rule.

Operations of the commission would be financed through a shared allocation of certain funds among the member states and the insurers operating in those states. Each insurer operating in a state that is party to the compact would be assessed annually for its share of those expenses according to a formula based on premium volume. Receivership expenses, however, would continue to be funded from the assets of an insolvent insurer's estate.

The NAIC's proposal would allow the compact to be amended by unanimous consent. Participating states would retain the right to withdraw from the compact and the commission would have the power to sanction states that violate commission rules and operating procedures.

Some states entering into compacts historically have sought congressional approval after the fact, though Mr. Schacht does not think that is necessary.

The NAIC's proposal is based on, but differs from, a compact developed by NCOIL.

The NAIC's development of an interstate compact proposal is "a move in the right direction," said Robert Mackin, executive director of Albany, N.Y.-based NCOIL.

"State legislators will have an open mind when reviewing the NAIC's proposal," he said. An NCOIL committee is expected to review the proposal later this summer.

However, there is a significant difference in how the commission would function under the NAIC and NCOIL proposals.

The NAIC proposal would limit the commission's role to that of "an overseer and standard-setter," Mr. Schacht said. NCOIL's proposal would expand the commission's role to that of a "doer," including conducting receiverships and creating a national guaranty fund association, he said.

NCOIL hopes that a definitive compact proposal will be available for state legislators to introduce beginning early next year, said Mr. Mackin.

Three states—Michigan, Missouri and Nebraska—already have introduced versions of NCOIL's proposed compact, but none has yet enacted the legislation.

Members of an NAIC advisory committee working on the compact project generally support the NAIC's effort to improve the way multistate receiverships are handled, though its members are concerned about the extent of the proposed commission's rulemaking authority, said the committee's chairman, Michael P. Duncan, who is vp and assistant general counsel for Allstate Insurance Co. in Northbrook, Ill.

"We are still grappling with a way for this organization to have enough authority to make rules so it can do its job, but with enough limitations so it would alleviate concerns we would have about it overstepping its bounds," said Mr. Duncan. BI

Kansas holds off on major reforms

TOPEKA, Kan.—Kansas Gov. Joan Finney has signed health care reforms that will affect small businesses while taking a wait-and-see approach on larger reforms until Congress acts.

The law, which took effect May 19, sets up a 12-member legislative oversight committee that will track federal health care reform initiatives as well as introduce state-based health care legislation.

In addition, the law expands previous state health care reforms affecting groups of three to 25 employees to apply to groups up to 50 employees. Part of those reforms include requiring health insurers to provide coverage to groups regardless of pre-existing conditions among employees.

The law also would waive additional waiting periods for coverage for employees who start new jobs within 31 days of leaving an employer's plan that had met the initial waiting period. Also under the law, the initial waiting period for individuals with pre-existing conditions for small and large employers cannot exceed 90 days. Prior to the law, the waiting period was one year.

—By Sally Roberts

Leave

Continued from page 1

health plans continued by employers. Employees also are guaranteed a job at equivalent pay upon return.

In contrast, nearly all state workers comp laws provide wage-loss compensation to an injured worker, though they do not necessarily require continuation of dependents' health care benefits or reinstatement.

The FMLA does not expressly mention counting workers comp leave toward family leave, but "there is nothing in the (act) that would prevent it," said Howard Ostmann, a U.S. Department of Labor official.

"It's one of the most frequently asked questions," said Mr. Ostmann, chief of the special employment branch of the Employment Standards Administration's Wage and Hour Division, which administers and enforces the FMLA.

"If an employer does not take advantage of the gap between federal FMLA and state workers comp laws, then the employer would have to allow an employee to take a full, 12-week FMLA leave in addition to any workers comp leave," said David L. Weinstein, an employment and labor specialist with law firm Rosenthal & Schanfield P.C. in Chicago.

Jones Intercable Inc. plans to adopt a coordinated leave strategy to avoid the "incredible hardship" the company would face if it had to keep positions open for employees who might otherwise take separate workers comp and family leaves, said Margy McKenna, director of risk and benefits for the Englewood, Colo., cable television company.

"If someone was out for six or eight weeks on workers comp, then returned and asked for family leave for a sick child, that person could be out another 12 weeks," she said. That could create significant staffing problems for decentralized Jones Intercable, which has 3,500 employees in 23 states. While some of those locations employ too few workers—fewer than 50—for the law to apply, Jones is extending FMLA benefits to all employees.

Jones only expects to count "extended" workers comp leaves toward family leave. It is wrestling with whether a two-week leave would be an appropriate starting point, she said.

Counting workers comp leave toward family leave also eases the administration of benefits, though the benefits differ, companies say.

"It makes it a neater package to count workers comp leave toward family medical leave," said Patricia Hirschberg, safety and health manager for OshKosh B'Gosh Inc. in Oshkosh, Wis.

Even before the FMLA went into effect, OshKosh continued its contributions to the health care coverage for workers comp claimants, though it was not required to do so. "It is much easier in terms of paperwork, and we have a much happier employee," she said.

Counting workers compensation leave toward family or medical leave is a good idea, said Megan DeZara, director of human resources for Harris Weber Management Services in Northbrook, Ill. The company owns and operates four retirement centers in the Midwest.

The company in the past has faced many workers comp claims from nursing home attendants, typically for back injuries, including some fraudulent claims.

"We look at it (the strategy) as a tool for employers that we can use to help alleviate fraudulent claims and make people think twice (about filing them)," she said.

As a result, "some employees may be more careful at work and respond to treatment and come back to work as soon as possible so they don't use up family leave days."

Although OshKosh and Harris Weber have employed the strategy for several months, both employers said it is too early to quantify cost savings. Like most companies, they have had few employees take leave under the new act (*BI*, March 7).

Many authorities endorse the strategy of counting workers comp leave toward family leave, as long as it is done properly.

The primary requirements are that companies inform employees

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Leave

Continued from previous page

in advance about the FMLA and the company's specific policy to count workers comp leave against family leave. Employees can be informed through an informational poster, a memorandum or even an amendment to their employee handbook.

Mr. Weinstein, the labor attorney, recommends that employers maintain a log for each employee, listing the workers comp and FMLA leave days that the employee has taken.

In addition, when a specific employee requests a leave, it is up to the company's representative to explain the company's policy pertaining to FMLA leaves.

Advocates of the strategy emphasize several aspects of the law in support of their position.

There is no reason that a work-related injury or illness couldn't be the "serious health condition" that makes an employee eligible for unpaid leave under the FMLA, these advocates say.

In addition, the act allows an employer "to offset paid time against the unpaid FMLA leave, if the employee would have otherwise been entitled to paid leave," points out Marie Lipari, a work and lifestyle consultant with Hewitt Associates in Lincolnshire, Ill.

Mr. Weinstein said the FMLA allows only 12 weeks of leave and it discourages what he describes as "stacking" of disability and other leaves, which may allow an enterprising employee to take more than 12 weeks of leave within a single 12-month period.

"Any employer who counts workers comp leave as FMLA leave has a highly respectable position," he said. "This is not a maverick position, but there are no guarantees that a court will accept it."

The Department of Labor intends to discuss workers comp in clarifying regulations pertaining to the FMLA that are due out later this summer, Mr. Ostmann said.

"There appears to be a real need to clarify the issue," he said. The department has already issued two opinion letters on the FMLA.

First, a division administrator wrote in November 1993 that "an employer could not require an employee to work in a restructured job instead of granting the employee's FMLA leave request."

In April, the administrator clarified that statement: "While FMLA's requirements do not permit an employee to take a job with a reasonable accommodation instead of taking FMLA leave, other laws, such as the Americans with Disabilities Act or state workers compensation, may require employers to offer employees the opportunity to take a restructured job."

However, the "employee could elect to exercise the remainder of his or her FMLA leave rather than accept the light-duty assignment," the administrator wrote.

"This does not mean, however, that the employee would be entitled to continue to receive benefits under the workers compensation program if that program is structured in such a way as to end benefits at the point at which the employee is deemed medically able to accept a light-duty assignment and one is offered by the employer," the administrator added.

Companies using the FMLA-workers comp coordination strategy should beware of potential pitfalls, though, including union opposition to counting workers comp leave as family leave.

"Nothing in the (FMLA) law permits (the strategy), and you can't forfeit your rights under one law as a result of asserting your rights under" state workers comp law, asserted James Ellenberger, assistant director of the AFL-CIO's department of occupational safety and health.

"The (FMLA) statute is quite clear; it exists on top of every other benefit that exists, or existed, at the time of its enactment," said Dick Ramsey, who represents 2,200 employees of the Washington-Baltimore local of The Newspaper Guild.

Mr. Ramsey said his union chapter would "absolutely" challenge any employer using the strategy.

Mr. Ellenberger predicted similar challenges from other AFL-CIO affiliates. BI

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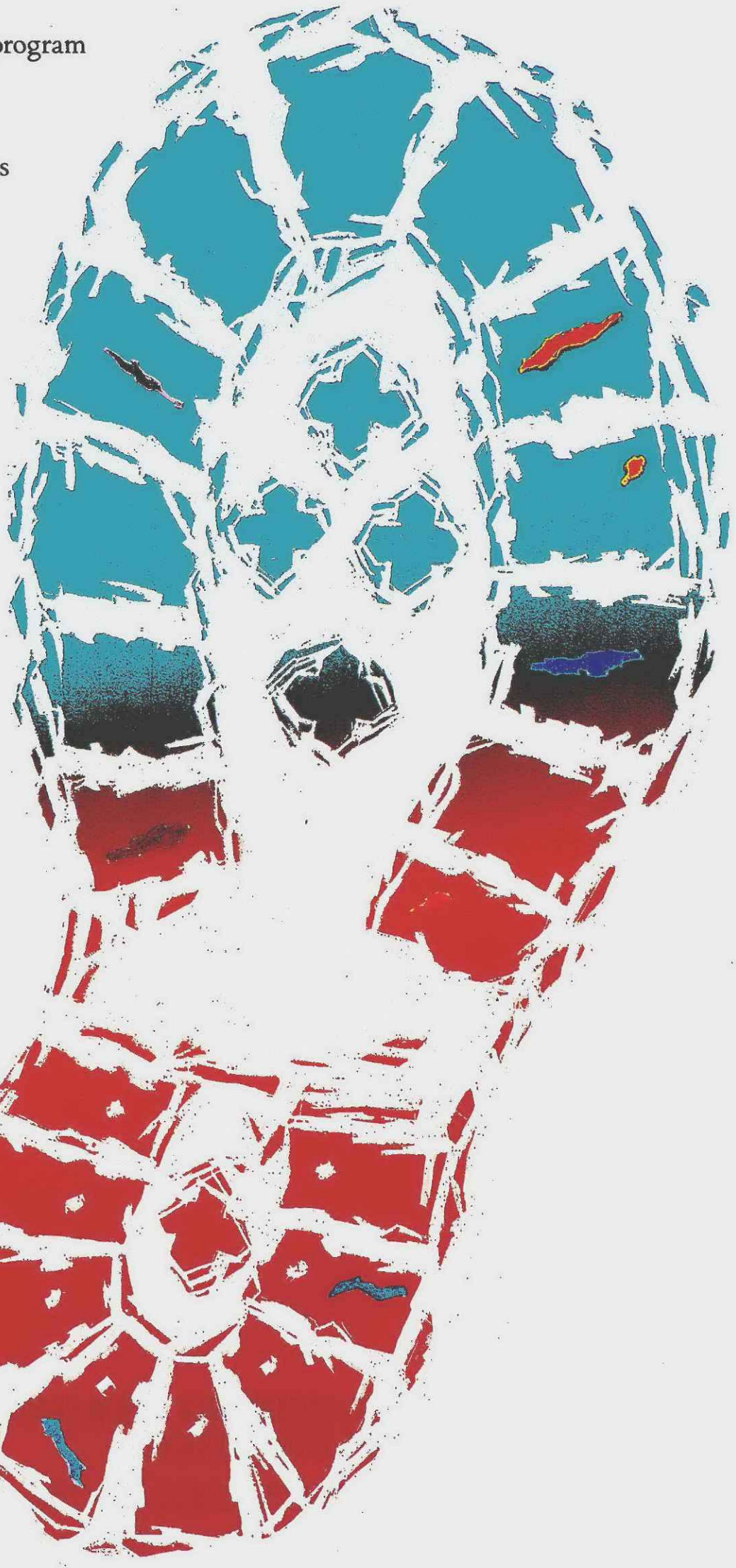

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Liability

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plete medical history of each claimant to determine if other factors could have contributed to their illness.

Similarly, Mr. Greiner said, public entities should collect information on the current and former dwellings of claimants to ascertain if poisoning could stem from other lead exposures.

Finally, public entities should look for others who may share responsibility for any poisoning. Possible co-defendants include previous property owners and outside contractors.

Another new area of public entity liability is claims alleging injury from exposure to electromagnetic fields, which occur near high-power lines, among other sources.

Although some studies have linked electromagnetic field exposure to cancer, scientific evidence overall remains inconclusive.

Utilities are the most common defendants in lawsuits alleging injury from exposure to electromagnetic fields and should expect more of these suits, according to Mr. Greiner.

Although most utilities are winning these cases, they are spending millions of dollars defending themselves, he said.

Public entities are being drawn into the suits because it is their responsibility to decide zoning restrictions, such as how close to schools and residential areas utilities can be located, Mr. Greiner explained.

It is unclear whether commercial general liability policies will cover injuries from exposure to electromagnetic fields—much less for the zoning decisions that may have contributed to the exposure.

So far, insurers have denied coverage for simple exposure claims on many of the same grounds that they have used in environmental coverage disputes (*BI*, April 11).

"Get the issue on the table with the underwriter before the occurrence happens," Mr. Greiner advised.

Another risk on the horizon for public entities: Lawsuits resulting from weather-related catastrophes.

"If building codes are not up to snuff, insurance companies may try to subrogate public entities," said James G. Smith, president of American Governmental Risk & Insurance Programs, a broker in Houston. "Also, insurance companies may try to go after public entities for failure to inspect property properly."

Public entities may also be found liable for failing to implement emergency preparedness plans, he warned.

As public entities enter arenas outside their traditional range of activities, their liabilities will increase and their government immunities may erode, said Ms. Norton Leung.

For example, recreational water parks can be viewed as money-making ventures, not as essential government services, she pointed out.

As a result, she explained, government immunity laws may not cover liabilities related to them.

Public entities can shield themselves from liability in recreational activities by requiring participants to sign explicit liability waivers. Ms. Norton Leung recommended that public entities use waiver forms that have been upheld in previous court decisions.

And when a lawsuit against a public entity differs from the norm, risk managers should make sure they consult with specialized attorneys.

"When you begin to engage in unfamiliar territory, get expert advice," Ms. Norton Leung advised. Don't use in-house attorneys if they are not specialists in the relevant field.

Money spent on outside legal experts is money well-spent, she said. "A single decision against you will leave the door open for every other decision that comes down."

Ms. Norton Leung also pointed out that a public entity can learn a lot about its risk management program from the plaintiffs' attorneys arguing the case.

"Trial attorneys can't make an issue out of nothing. The trial attorney will identify the gaps in

Continued on next page

Communication averts comp complications

By DEBORAH SHALOWITZ COWANS

DENVER—While workers compensation will always be a thorn in the side of risk managers, there are ways to reduce the sting, according to risk managers and workers comp experts.

Too often, a workers comp claim turns an employee and an employer into adversaries, said Leland L. Robinson, senior vp of Alexsis Risk Management Services, a subsidiary of Alexander & Alexander Inc. in Atlanta. This situation typically occurs because injured employees are scared and don't know what to expect, he said.

Employers should "communicate workers comp benefits like you communicate health benefits," Mr. Robinson advised attendees of the Public Risk Management Assn.'s 15th annual conference in Denver earlier this month.

Tell employees how the workers comp system works and how much it costs to provide these benefits, he said.

"You need to. . .change that bottom-line attitude of the employee," Mr. Robinson suggested.

This can be done, he said, by pursuing the three things that injured employees really want:

- A proper medical remedy to return to good health.
- Payment of their medical bills.
- A resumption of a normal lifestyle, including a return to productive work.

Throughout the course of an employee's treatment, the employer should communicate with the worker. Ongoing communication helps defuse the adversarial aspect of the relationship, he said.

"I think we all could be spending a lot less" on workers comp claims if communication was better, Mr. Robinson concluded.

Incentive programs can also be useful in motivating workers to prevent accidents.

Cheryl Johnson, director of risk management for the Dallas Independent School District, uses a point-based accident prevention program to help reduce workers comp claims.

"I needed something that would get to the individual employee, not the group," Ms. Johnson explained.

Under the school district's program, employees are assessed points for each accident in which they are involved that resulted from non-compliance with the

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Liability

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your coverage and your risk management system."

In addition to these new liabilities, public entities in the future are likely to face an increasing exposure to lawsuits alleging wrongful termination or other improper employment practices.

"The incidence of employment-related cases has skyrocketed," commented Mr. Greiner. "The majority of suits seem to be emanating from wrongful terminations."

To minimize their liability from wrongful termination suits, public entities can take several approaches, according to Mr. Greiner.

These include: performing pre-employment checks to avoid hiring people who likely will not work out; avoiding statements upon hiring that promise lifetime employment; conducting and documenting regular performance reviews; keeping a written record of warnings in a personnel file; having written termination procedures; and offering counseling and outplacement services if someone is terminated.

Employment practices liability insurance has become increasingly available over the past few years from U.S. liability insurers and the London market.

In addition, "the government arena. . .has a couple of policies right now that provide employment-related coverage," noted Mr. Smith, who cited public officials liability and educators legal liability insurance policies.

However, these policies weren't originally intended to cover employment-related liabilities like wrongful termination, sexual harassment and discrimination.

As a result, public entities can expect insurers in the future to impose sublimits for employment-related liabilities, raise required retentions and increase rates, he said.

Public entities also should not expect these liability policies to cover awards for back wages, according to Mr. Smith. "The reality is, back wages is a business risk. I don't see back wages becoming a coverage that's readily available."

Mr. Smith predicted that insurers in the future will develop a new, stand-alone employment-related practices liability policy for public entities.

John P. Marchek Jr., finance assistant for the State College Borough in State College, Pa., moderated the session. BI

Proper street maintenance heads off liability losses

By DEBORAH SHALOWITZ COWANS

DENVER—Careful maintenance of streets and sidewalks can save public entities from many liability pitfalls.

The proper placement of signs and traffic signals also can put the brake on street-related liability losses, according to Robert Jones, director of loss control services for CIGNA Corp. in Philadelphia.

One-third of street-related liability losses stem from improper maintenance of streets, and one-fifth of these losses stem from inadequate signs and signals, he told attendees during a session at the 15th annual conference of the Public Risk Management Assn., held in Denver earlier this month.

The remaining half of street-related liability losses stem from improper design and construction of roads, he said.

One way to ensure that streets are maintained well is to plant the right kind of vegetation along the side of the road, Mr. Jones said. The presence of good vegetation can help promote proper road drainage, thereby reducing slippery wet patches.

However, weeds interfere with drainage, Mr. Jones said. He recommended that public entities use herbicides to prevent weeds from becoming too overgrown. Also, dense sod and wildflowers can prevent weeds from flourishing, he said.

Improper and frequent snow and ice removal also can impede good street maintenance, Mr. Jones noted.

He suggested that public entities use snow fences wherever possible to prevent the buildup of snow on roads.

Documenting street maintenance 'is what wins and loses lawsuits,' says Robert Jones.

A snow fence generally should be built about 200 to 300 feet from the side of a road. The fence should be eight to 10 feet high and should begin 10 to 12 inches above the ground.

This gap changes the wind speed and direction, ultimately causing snow to accumulate in the area between the fence and the road, he explained.

Public entities can use salt to remove snow and ice, but heavy salting leads to road corrosion, he warned. Many salt substitutes are being developed that are less corrosive, he added.

Whenever any maintenance is conducted on a street or sidewalk, it should be documented, Mr. Jones said.

Public entities should take photographs before and after repairs and log work time, he advised. "This is what wins and loses lawsuits."

Maintaining an inventory of signs can help prevent liability losses stemming from inadequate signs, he said. For example, as soon as a sign is knocked down or damaged, it can be replaced if an inventory of additional signs is available.

Mr. Jones recommended that every sign be dated and coded on the back with either the letter "N" for new, "R" for replacement, or "M" for moved. This signage history can be helpful in the event of a lawsuit, he added.

Signs should be inspected regularly in different seasons and at different times of the day and night, added Dave M. Parker, risk manager of the Arizona Department of Transportation in Phoenix, who attended the session.

Carole A. Charles, risk administrator for Outagamie County, Wis., moderated the session. BI

Work comp

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district's safety guidelines. Employees also are assessed points for each on-the-job driving accident and for accident reports that are not submitted within 24 hours of the occurrence, she said.

After an employee accrues a certain number of points, he or she must undergo counseling or training, based on the recommendation of the worker's supervisor.

If the worker's point totals exceed an established threshold, he or she may be placed on temporary leave or fired, Ms. Johnson added.

The school district also has instituted a safety incentive program for each of its departments. At the beginning of the year, a certain amount of money is allotted to each department. After each accident that occurs within the department, some of the money is subtracted from the kitty.

If any money is left at the end of the year, the department may use it to buy any kind of new safety equipment it wants. With a good accident record, a department could end up with several thousand to put toward such purchases. This program has been a very successful motivator, Ms. Johnson said.

Another effective way to reduce workers comp costs is to get employees back to work as soon as possible. To do that, the city of Fort Collins, Colo., often uses functional capacity evaluations.

Stewart J. Ellenberg, the city's risk manager, noted that functional capacity evaluations determine the physical capabilities of an injured employee. The employer can use this information to find a modified job for the employee.

Some functional capacity evaluations are limited to a certain area of the body, while others test the abilities of the whole body.

Mr. Ellenberg suggested that employers use whole-body functional capacity evaluations because they take into account the deconditioning that occurs after an injury. A whole-body functional capacity evaluation costs approximately $500, he said.

Lisa L. Getzfrid, executive vp of Focus Healthcare Management, a workers comp preferred provider organization in Brentwood, Tenn., also spoke at the session.

Flora E. Boles, insurance coordinator for the Hernando County Board of County Commissioners in Brooksville, Fla., moderated the session. BI

Driving home safety concerns

Stressing safety, fleet risk management saves lives and money

By DEBORAH SHALOWITZ COWANS

DENVER—Proper fleet risk management can be a matter of life and death.

Vehicle accident prevention is a particular challenge for public entity risk managers because of the diverse range of vehicles in their fleets, said Aden Hogan Jr., risk manager for Oklahoma City.

Every year, vehicle accidents in the United States cause more than 49,000 deaths, 1.7 million disabling injuries and $20 million in property damage, Mr. Hogan said at the Public Risk Management Assn.'s 15th annual conference earlier this month.

The first step in establishing a fleet risk management program is determining exactly what vehicles an entity owns.

When most people think of public entity vehicle fleets, they automatically think of firetrucks and police cars, Mr. Hogan said.

However, public entities own many other kinds of vehicles, including school buses, public-works trucks, garbage trucks, public-transit vehicles and parks and recreation department vehicles. Furthermore, a public entity may own vehicles used by elected officials and volunteers.

Some entities also own boats, airplanes or helicopters.

Several sources exist for ownership information on these vehicles, according to Mr. Hogan. People whom the risk manager should contact directly for information include the entity's finance director or clerk, the budget officer, the fleet manager and mechanics. A simple survey should be sent to line supervisors, vehicle users, contract officers and parking attendants.

Risk managers also should review a number of written materials, including the entity's fixed-asset inventories, individual department inventories, maintenance records, vehicle assignment records and fueling records.

"Combine the data from all the sources you've got and then churn that list," Mr. Hogan recommended. Include facts like the identification number, make, model, color and year of all the vehicles.

Sort, list and eliminate duplicate information, then send a copy of the list to all department supervisors and ask them to note any discrepancies right on the printout, he suggested.

Revise the master list annually, taking special care to note vehicles that have been bought or sold or were acquired through a drug seizure, he added.

The next step risk managers should take is to determine the risks that using these vehicles presents.

Answering these four basic questions can outline the risks:

- What is being used?
- How is it being used?
- Where is it being used?
- Who is using it?

If volunteers or part-time workers drive as part of their duties, "you own the liability," Mr. Hogan pointed out.

Police operations present one of the most significant liability risks to a public entity, he noted.

"These folks probably put more miles on your vehicles than anyone else," he said. However, "police vehicle safety is an uphill battle every step of the way."

Government risk managers should make sure that their entities have policies and procedures in place addressing the proper use of police vehicles in patrol, emergency response and pursuit situations, as well as in undercover operations and take-home programs.

Proper hiring and training procedures also can help reduce an entity's risks.

Candidates for positions involving driving should be able to meet job specifications, skills and requirements, Mr. Hogan noted. A candidate's references should be checked, including his or her driving record. "If you don't do this, you could be held liable for negligent hiring."

Ongoing training of public entity employees who drive government-owned vehicles is one of the most effective ways to reduce risks, according to Mr. Hogan.

Drivers should be trained in defensive driving and in the operation of specialized vehicles before they begin work. Also, workers should be trained each year before annual seasonal projects are undertaken, such as mowing lawns and plowing snow.

The Itasca, Ill.-based National Safety Council has several worthwhile publications on safe driving, Mr. Hogan noted.

Another way to reduce fleet risks is to make sure that specialized equipment is in the same place in each type of vehicle. For example, in police cars, the radio, sirens and microphones should be standardized among the vehicles.

Preventive maintenance is another important factor in loss control, he said.

Heavily used vehicles like police patrol cars may need preventive maintenance more often than the manufacturer recommendeds.

Drivers should walk around their vehicles and note any potential problems every time they plan to drive the vehicle. If drivers are held responsible for damage to vehicles during their shift, they are much more likely to report problems they see before they take vehicles out, Mr. Hogan added.

If an accident does occur, it should be investigated and analyzed, he recommended. "There's no such thing as a minor accident," he said. "An accident means something went wrong."

To increase employees' accountability for unsafe driving, Mr. Hogan suggested that vehicle safety criteria be incorporated into the performance evaluations of those people who drive for the entity.

A good source of information about fleet risks can be driver and citizen complaints, he noted. "None of us likes to listen to complaints, but they give us a great deal of feedback."

Steven Klepeis, risk manager for the New Orleans Sewerage & Water Board, was the session's moderator. BI

EEOC offers guidelines for ADA compliance

By MEG FLETCHER

WASHINGTON—New guidelines can help employers comply with the Americans with Disabilities Act when making disability-related inquiries and requiring medical exams of job applicants.

The guidance is contained in instructions that the Equal Employment Opportunity Commission issued May 19 to its investigators.

Unlike other civil rights laws, the disabilities act bars employers from asking certain questions and doing certain types of exams before making an offer of employment.

Specifically, it prevents firms from asking about the "existence, nature or severity" of a disability and from conducting "medical examinations," the EEOC said. That restriction is designed to protect applicants with hidden disabilities. Previously, disabled applicants could not know whether they were rejected for their disability or some other reason.

Once employers make conditional offers of employment, they may require medical exams and may ask disability-related questions if they do so for all entering employees in the job category. If disabled people are screened out, the criterion must be job-related and necessary for the business. The employer must also show that a reasonable accommodation cannot resolve the situation.

The EEOC gave these examples of inquiries that are not disability-related:

- Can you perform the functions of this job with or without reasonable accommodation? Describe or demonstrate how you would perform these functions.
- How did you break your leg?
- Can you meet the attendance requirements of this job? How many days did you take leave last year?
- Do you illegally use drugs? Have you used illegal drugs in the past two years?
- How much do you weigh? How tall are you? Do you regularly eat three meals a day?
- Do you have the required licenses to perform this job?

It cited these examples of proper disability-related inquiries:

- Do you have AIDS? Do you have asthma?
- Do you have a disability which would interfere with your ability to perform the job?
- How many days were you sick last year?
- Have you ever been injured on the job? Have you ever filed for workers compensation?
- How much alcohol do you drink each week? Have you ever been treated for alcohol problems?
- Have you ever been treated for mental health problems?
- What prescription drugs are you currently taking?

The EEOC rules define medical examinations as "procedures/tests that seek information about an individual's physical or mental impairment, or physical or psychological health." Factors indicating that a particular test is medical include that the test is:

- Administered or interpreted by a health care professional or trainee.
- Designed to use medical equipment and is normally done in a medical setting.
- Designed to reveal an impairment or the state of an individual's physical or psychological health.
- Invasive.
- A measurement of physiological or psychological responses.

Tests that are generally not considered medical include: agility or fitness tests without medical monitoring; tests of an individual's skills or tastes; and tests for illegal use of drugs.

The EEOC's latest advice is considered "interim," because it still must be coordinated with other federal agencies. BI

Baseball

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Mr. Holsinger said. In seeking coverage, the Orioles set the rainfall and time-frame assumptions, then put them out for bids from insurers.

In the event of a rainout, payment from the policy is "an all-or-nothing kind of thing," reimbursing the team not just for ticket sales but for total net revenue lost, he said.

The Orioles didn't have to tap the coverage this year, with the Baltimore team winning the exhibition contest 9-3 before a sellout crowd of 46,500.

Good Weather Insurance of Salem, Mass., one of several companies that offer cancellation coverage, wrote the cancellation policy for the Orioles and a similar policy for an April 2 interleague exhibition game matching the Cleveland Indians with the Pittsburgh Pirates, the first game to be played in Cleveland's new Jacobs Field.

That game, too, was completed, though the outcome wasn't as good for the home team—the Indians fell to the National League team 6-4.

The coverage for the two games was similar.

"The limits were very significant—$500,000 to $600,000, I think," said Sean Curtin, operations manager for Good Weather.

"We tried to do it for opening day for the Red Sox," Mr. Curtin said. "We sent them a quote, but it didn't work out. They just didn't feel it was worth it."

The average rate for the coverage is about 3% to 4% of the insured value, he said.

The coverage isn't used frequently by major-league teams. Mr. Curtin said his company typically writes policies two or three times a year at the major-league level, "usually for a special game."

"New stadiums seem to be the big thing," he said, adding that the company wrote policies several times for the Atlanta Braves a few years back when the team started to rise to its present National League powerhouse status. "They were actually starting to get people to show up to the game, so they wanted to insure it."

It wasn't a new stadium or rising status that brought home a potential use for cancellation coverage this season. The threat of a players' strike prompted at least one big-league organization to consider covering rainouts if the policy could be broadened to protect the team from losses due to a player walkout.

For a time it seemed that the coverage would be a reality, but ultimately the underwriter balked at endorsing strike coverage.

Underwriters may have remembered the 1981 baseball strike, when insurers paid to major-league teams nearly all of the $50 million in strike coverage limits that the teams had purchased. The coverage, primarily written by Lloyd's of London syndicates, paid out $100,000 per canceled game—$50,000 for each team (*BI,* Aug. 24, 1991; Aug. 10, 1981; June 29, 1981).

For the most part, rain cancellation coverage is more common down on the farm than in the major leagues.

"We do a lot more AA and AAA teams, farm teams," Mr. Curtin said.

"On the major-league level, I guess they make up the games more readily," he said, adding that most major-league tickets are sold in advance, while minor-league teams rely more on walk-up ticket buyers, who stay away when the weather is bad.

Farm teams buy coverage 'because they have a lot of promotions going on,' says Todd Ellzey.

Good Weather wrote coverage for the home opener for the Portland, Maine, Sea Dogs, the Florida Marlins' AA affiliate, earlier this year, and covered a May 23 matchup between the AAA Norfolk, Va., Tides and their parent team, the New York Mets.

The Sea Dogs' parent team, the Miami-based Marlins, don't carry cancellation insurance. And, despite the summer rains common to their South Florida home, the Marlins had the good luck to have only one rainout last year.

"I think a lot of minor-league ballclubs do (carry cancellation insurance) because they have a lot of promotions going on every night," said Todd Ellzey, supervisor of facility operations for the Marlins.

Prior to joining the Marlins, Mr. Ellzey spent several years working for the Milwaukee Brewers' minor-league organization, "and we did that quite a few times."

Frank Colarusso, general manager of the Tacoma, Wash., Tigers, said his team has used cancellation coverage only in special cases, when the Tigers have had a concert scheduled in connection with a game.

The Tigers, the Oakland Athletics' entry in the AAA Pacific Coast League, have sponsored three such concerts over the past three years but don't have one planned for this season.

The team, which both plays at and manages 10,000-seat Cheney Stadium, would also buy the coverage for a special event at the stadium apart from a game, Mr. Colarusso said.

The problem with the coverage, Mr. Colarusso said, is that the cost would be highest at the time the team needs it most. "It would be cost-prohibitive, especially for the weather environment we're in."

He cited coverage costs running 3% to 9%, "depending on what time of the year you use it."

"We would really need it in April and May, and I think that would be cost-prohibitive," he said.

While one of the hottest draws in the minor leagues this season—on the strength of its rookie right fielder—the Birmingham, Ala., Barons, do not carry cancellation insurance.

While the newcomer in the Barons' outfield, retired NBA superstar Michael Jordan, has boosted ticket sales, Norma Rosebrough, the team's office manager, was quick to note that the Barons "still have plenty of tickets available."

Ms. Rosebrough said she doubts that the Barons, the Chicago White Sox's AA affiliate who play in 10,000-plus-capacity Hoover Metropolitan Stadium, would buy cancellation insurance "because we never have." She added, though, "It might be something that we would consider later."

The White Sox don't buy cancellation insurance, either.

"You might get it if you had a one-shot exhibition game," said Howard Pizer, executive vp of the White Sox. The team hasn't obtained the coverage, however, when it has hosted the annual Crosstown Classic, matching the Sox with Chicago's National League team, the Cubs.

The threat of rainouts "is part of the business," Mr. Pizer said. "That's one of the risks you have by playing in Chicago."

Out in Chicago western suburbs, the Kane County Cougars, the A affiliate of the Florida Marlins, play their home games in 4,800-seat Elfstrom Stadium in Geneva, Ill., where the team is a solid draw.

In 1993, the Cougars' average attendance exceeded the number of seats, leading all A and AA teams in attendance. At one game last year, the Cougars drew 8,200 fans, a club record.

Like their parent club and so many others, though, the Cougars don't buy cancellation insurance, a team spokesman said. "That might explain our general manager's reaction when we have a rainout." BI

Most employers favor gradual reform, poll finds

By JERRY GEISEL

NEW YORK—Although legislators are considering proposals to overhaul the nation's health care delivery and financing system, few employers favor sweeping changes.

Just 7% of employers responding to a new survey by Buck Consultants Inc. said they endorse legislation that would immediately implement wide-scale changes in the health care system.

Forty percent of the respondents said reform legislation should be limited to certain changes in the insurance market, such as eliminating pre-existing medical condition exclusions.

Twenty-six percent of employers favor sweeping reform legislation if it is implemented over a long period of time and if there is a way to fund the changes, while 27% endorse incremental legislation leading to sweeping reform.

The message employers are sending to Congress on health care reform legislation is: "Go slow. Don't bite off too much at first," said Edward J. Davey, Buck's national director of health and welfare services in New York.

This go-slow admonition isn't surprising given that most employers—52%—say they do not believe there is a health care crisis.

These findings are based on the responses of 722 employers, more than half of which had at least 1,001 employees.

Employers are divided, based on company size, on one of the most controversial aspects of health care reform: requiring employers to pay for a significant portion of health care premiums.

For example, 54% of employers with more than 5,000 employees favor an employer health care mandate, while 55% of firms with fewer than 101 employees are against a mandate.

While several congressional committees are considering proposals that would require employers to pay 80% of premiums, companies say that if a mandate is enacted, they should pay a much smaller percentage.

Thirty-six percent of respondents say that if employers are required to pay for health care premiums they shouldn't have to pay more than 50% of the premium, while 26% say employers should pay less than 50% of the premium.

Just 19% say that if a mandate is imposed, employers should have to pay 80% of the premium, while 19% say employers should pay 75% of the premium.

Other survey findings include:

- There is virtually no employer support for a single-payer health care system, with 90% of employers saying the United States should not adopt a Canadian-style system.
- Nearly all respondents—96%—say private organizations, not government, should run health care purchasing cooperatives.
- Seventy-seven percent of employers say government should not limit health care spending.
- Most employers—64%—say corporations should continue to be able to take a full tax deduction for health care expenses, while somewhat fewer employers—58%—say employer health care contributions should continue to be excluded from employees' income.
- Just 30% of employers favor, as the Clinton administration had earlier proposed, allowing companies to shift the bulk of their early retiree health care obligations to the government.

Employers are telling Congress: 'Go slow. Don't bite off too much at first,' says Edward J. Davey.

"Employers saw through this (early retiree health care) proposal. They saw it as a bid by the administration to get big business support. But employers said nothing is solved if retiree health care obligations are moved from the private to the public sector," Mr. Davey said.

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Copies of the "National Health Reform" survey are available for $25 each from Carolee Martin, Manager of Marketing and Public Relations, Buck Consultants Inc., 2 Pennsylvania Plaza, New York,

ASK A CASUALTY ACTUARY

Loss reserving software competition heating up

Q **How would you compare the new Affinity loss reserving software with Exhibitmaker?**

A For the past several years, Coopers & Lybrand's Exhibitmaker has stood alone as the leader in advanced loss reserving software. Recently, however, Price Waterhouse has introduced a similar product, Affinity, that I believe will provide a strong challenge to Exhibitmaker.

Exhibitmaker currently has 325 clients. Of these, 60% are insurers and the remainder are various other types of users. It has gained this extensive group of users in spite of its cost of over $10,000 because:

- It is reasonably comprehensive and easy to use.
- It offers a wide selection of actuarial methods and manuals to help users learn more about each of its methods and options.
- It has well-designed data management capabilities. It has effective facilities for importing and exporting data to and from ASCII, Lotus and API formats. Furthermore, it takes much of the awkwardness out of entering and updating loss triangles. (Such triangles typically consist of incurred or paid losses at successive year-end evaluations for several of the most recent accident years.)
- It offers a broad set of management reports that neatly presents the results of an actuarial analysis of loss information.

However, Price Waterhouse now has introduced software that closely matches Exhibitmaker's capabilities and features, as summarized above. The National Assn. of Insurance Commissioners has already acquired 150 copies of Affinity (three for each state) and is planning to use the software, not only as its standard reserve analysis tool but as a system component to enable commissioners to directly access Schedule P data on any company they are about to examine. That development alone should concern Coopers & Lybrand. At present, Affinity's other users are evenly split among actuaries, risk managers and loss reserving specialists.

Exhibitmaker will clearly remain the better choice for some users. They would fall into one or both of the following categories:

✓ DOS (or other) program users who do not wish to convert to a Windows environment.

✓ Those with personal computers that have 4 megabytes of RAM or less, 8087 or 80287 processors and/or very limited hard disk space.

I would characterize users for whom I believe Affinity would be the better choice as those who satisfy both of the following criteria:

✓ Users with a reasonable facility on any Windows-based spreadsheet program (including Lotus 1-2-3, Quattropro and Excel), or those who intend to gain such a facility in the near future.

✓ Those with PCs that have more than 4 megabytes of RAM, 386 or 486 processors and at least 6 megabytes of available hard disk space.

To the extent that the reader does not clearly fall into one of these categories, the decision of which software would be the best for them could be a very close call. For the prospective user who is not familiar with PCs, my personal experience would lead me to suggest that the Windows environment is preferable. One advantage of Affinity is that much of the effort put into learning it also increases the user's ability to maneuver in the Windows environment. That capability most likely will benefit the user in handling many other applications. In contrast, time spent learning Exhibitmaker generally does not offer a similar transfer value—because the Coopers & Lybrand program is basically an island unto itself.

Where Affinity clearly emerges as the better choice is for users who have a good level of proficiency in Microsoft's Excel spreadsheet program. Affinity is an add-in to Excel. For those who are used to Windows versions of Lotus or Quattropro, learning Excel should be relatively easy. For this reason, I would still recommend Affinity for current users of Windows versions of Lotus or Quattropro. Excel will readily accept existing Lotus and Quattropro files, enabling the user to quickly move work done in either of these two spreadsheets into Excel.

Having to learn a new computer environment and also gain an understanding of actuarial methods at the same time will not be easy, regardless of which software one chooses.

Exhibitmaker provides excellent manuals and user-friendly interfaces to help non-Windows users and non-actuaries perform actuarial analyses without having to gain any proficiency in DOS. That is one of its biggest strengths.

In contrast, climbing into the Affinity saddle is best done by first gaining a reasonable level of proficiency in a Windows-based spreadsheet. Having that, the new Affinity user can quickly acquire an understanding of and facility with actuarial methods. Without that proficiency, however, the prospective Affinity user will likely have difficulty progressing rapidly. One can learn to use a spreadsheet about as rapidly as one can learn to navigate within Exhibitmaker, and then you have a capability that will help you handle a wide range of general applications besides actuarial methods. In my opinion, learning to use a Windows-based spreadsheet is a wise investment in any event, so it is not wasted time.

Exhibitmaker's Achilles' heel is that it is a closed, or proprietary, system. Price Waterhouse has taken direct aim at that limitation. In many ways, Affinity is similar to what one would get by freeing Exhibitmaker from its proprietary box, letting it loose in the wide-open environment of a first-rate spreadsheet. One still has the power of predefined sets of calculations and output exhibits. However, with Affinity the user also has the liberty of changing them at will to meet any conceivable set of unique circumstances.

Affinity's main potential weakness is its newness. It does not have the long track record of user application that Exhibitmaker has.

Although these two software products are quite comparable in many respects, there are numerous, significant differences.

Because these differences may determine which system would be the better choice for any given user, the rest of my response will focus on the nature and extent of those differences.

Actuarial methods available

Both programs provide a wide range of the same actuarial methods, but there are exceptions:

- Exhibitmaker includes the hindsight average outstanding method; Affinity does not.
- Affinity includes these methods, which aren't part of Exhibitmaker: the Cape Cod, modified Cape Cod, and Separation methods and Berquist-Sherman methods III through VI. Exhibitmaker includes an inflation-adjusted paid-loss development and average loss method similar to but less sophisticated than methods III to VI.
- Exhibitmaker has defined routines for estimating discounted loss reserves. Affinity does not have any such predefined exhibits. It would not be difficult, however, for the experienced Excel user to create such routines in Affinity, using some of Affinity's built-in functions.
- Affinity offers the user the option of filling in missing data elements using any one of three methods of interpolation: rational, polynomial or spline. It also has a function that will extrapolate values using the inverse power curve. Exhibitmaker does not have either of these handy facilities.
- Exhibitmaker offers the user the ability to design keyboard and variable macros, which can be very useful in streamlining repetitive operations. Affinity offers the full range of powerful macro features of Excel.

Exhibitmaker offers what can be a bewildering variety of output exhibits that can be produced for detailed analysis. The problem is, getting these exhibits to print out involves keying in exhibit numbers from a lengthy, non-intuitive list. Affinity's output exhibits flow more obviously from the source data, making the analysis process easier for the user to understand.

Exhibitmaker provides some facility for the user to custom design methods, but only if those methods fit into one of several specific patterns. To its credit,

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	Exhibitmaker 5.3	Affinity 1.2
Releasing company	Coopers & Lybrand	Price Waterhouse
Cost of one license	$12,000	$8,000
Cost of two licenses	$15,500	$10,000
Cost of three licenses	$16,500	$12,000
Cost of five licenses	$18,500	$16,000
Cost of ten licenses	$23,500	$26,000
Cost of lease	Not available	50% of license price/year
Annual maintenance charges	Purchase optional; 20% of market price	20% of license price; free if leased.
Phone for sales inquiries	206-628-8156	203-240-2005
Policy regarding upgrades	Included with annual maintenance charge. May choose to pay all unpaid prior maintenance charges to get the upgrade.	Included with annual maintenance charge.
Microcomputer required	IBM and compatibles	IBM and compatibles
Hard disk space required	2 megabytes	6 megabytes
Minimum RAM required	640K	4 megabytes (runs slowly)
Recommended RAM	Speed depends more on central processing unit	8 megabytes
Supporting software required	MS DOS (versions 3.0 & higher)	Windows & EXCEL 4.0 or 5.0
Year first version released	1984	1993

Software

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those choices cover a wide range of typically used options.

In contrast, Affinity is an "open system." As an add-in to Excel, it allows the spreadsheet user virtual total flexibility in modifying and designing custom methods. Affinity does much more than this, however. It provides a wide range of custom functions that the actuary or analyst can quickly use to overcome nearly all of the problems one encounters when trying to work with triangular arrays in a spreadsheet.

All of these functions are available whether one is working with one of the Affinity templates. In other words, someone who is used to designing their own analysis system from scratch can use these functions to speed their work—without ever using any of Affinity's predefined set of formats and exhibits.

In short, Affinity provides a toolbox of functions that makes easy many typical actuarial manipulations that can be a real pain in a spreadsheet. For example:

- Excel normally treats blank cells as zeros, which makes it difficult to work with triangular arrays. Affinity, however, has two functions that preserve blank cells, making it easy to copy formulas that apply to one column of a triangular array to all columns of that array.
- Affinity has two functions that translate left triangles into right triangles and vice versa. This makes data entry for the latest year easy, because data can be entered in columns and then translated into diagonals. It also has a function that grabs any diagonal and converts it into a column of numbers.
- Affinity has a function that computes linear or exponential growth rates of columns of data and another that uses these growth rates to project values into the future.
- Affinity has a function that fits the inverse power curve to rows of data, allowing loss experience to be extrapolated to an ultimate basis.
- In Affinity, if you want to do something to an entire triangle, you merely click on any cell in the triangle and then click on a button on their toolbar.
- Affinity has functions that convert cumulative data into incremental data and vice versa.

In most respects, Affinity and Exhibitmaker are quite comparable in terms of their data management capabilities. Both pieces of software offer a wide choice of input data.

This may sound like so much technical jargon, but it nevertheless represents a major software breakthrough. By making messy and awkward triangular array operations easy to perform in a first-class spreadsheet like Excel, Price Waterhouse has made a major contribution to practical actuarial analysis.

Data management capabilities

In most respects, the two pieces of software are quite comparable in terms of their data management capabilities. They both offer a wide choice of input data. They both easily handle odd-shaped triangles. In my review, I noted the following significant differences:

- Because Affinity is part of the Excel/Windows environment, it gives the user the option of displaying different parts of a file on separate parts of the screen at the same time. One can also display parts of different files simultaneously on the same screen. Both of these are often very helpful in day-to-day work. Exhibitmaker does not offer either of these facilities. Instead, it becomes necessary to print out a hard copy to refer to as you work along.
- Exhibitmaker is set up to explicitly work with data on either a direct, ceded or net basis. Affinity is silent regarding this, leaving it to the user to separately organize data into these reinsurance categories. I do not see this as a significant weakness for Affinity because it so easily handles triangle arithmetic—that is, the adding or subtracting of single or whole groups of triangles.
- Through Excel's import/export capabilities, Affinity users can quickly exchange data with dBase, Lotus 1-2-3 and Quattropro. Of these, Exhibitmaker only provides import/export with Lotus 1-2-3, though Quattropro can be reached circuitously through Lotus. On the other hand, Affinity does not offer import/export for APL—but APL is not widely used.
- Both Affinity and Exhibitmaker offer the ability to perform peer group comparisons of loss information. By tapping a CD-ROM into your PC and extracting information from CD/Insurance, a compact disk product offered by One Source Information Services of Cambridge, Mass., one can directly access Schedule P information from any company that submits its annual statements to the NAIC. This information can also be summed for any combination of companies the user may select and then dropped right into the loss development analysis methods to aid in selecting age-to-age factors. Even though the utilities of both programs are very comparable, Affinity's version is probably easier to use because it operates in a Windows rather than a DOS environment. Affinity also gives the user the option of taking a weighted average of the Schedule P data for any group of companies you may select.

At present, one distinct difference is that Affinity users can obtain the CD-ROM at the significantly reduced price of $3,500—reflecting the fact that the user can only access the Schedule P data. (The full One Source product includes access to more annual statement data as well as an array of screens, data base editors and a facility for direct export of data into Lotus 1-2-3 and Excel.)

Coopers & Lybrand and One Source are trying to negotiate a similar reduced pricing arrangement for Exhibitmaker users, but an agreement has not yet been reached. Even though the utilities of both programs are very comparable, Affinity's version is probably easier to use because it operates in Windows rather than a DOS environment.

Affinity handles the process of accessing triangles of data quite differently. You drag the area where data is to be inserted and then type in a formula in the upper left-hand cell of the area that specifies the name of the data to be placed there.

Management Reporting Capabilities

Affinity and Exhibitmaker are quite similar in terms of management reporting capabilities, with the following exceptions:

✓ Exhibitmaker is designed to directly produce Schedule P, Page 1 exhibits for all relevant annual statements (current and prior). Affinity does not have this custom ability.

✓ The Affinity users can click on the names of the sections of the loss analysis they wish to have printed, and only those sections will be printed. Exhibitmaker does not have nearly the same flexibility here.

✓ In Exhibitmaker it is easy to create custom exhibits so long as they fit one of the program's standard formats. If not, customization is not possible. With Affinity, there is complete flexibility to modify existing exhibits or to create one's own exhibits or graphics at will, using powerful features of Excel like:

- All exhibits are fully configurable with regard to type of font, bold/italics/underlining, color, borders and patterns.
- All exhibit tables can be graphed as two- or three-dimensional merely by clicking on their name.
- As the underlying data changes, the graph will also dynamically change.

✓ Because Affinity becomes part of Excel, anything produced by Affinity can easily be linked into word processing and other Windows applications.

✓ The power of Affinity within Excel could easily be linked with another Excel add-in, Crystal Ball, which performs Monte Carlo simulation. (Crystal Ball is available from Decisioneering Inc. in Denver. For more information, call 800-289-2550.)

The possibilities for producing reserve analyses, which also include derivations of confidence levels around those reserve estimates, are intriguing. Crystal Ball basically will transform any cell or cells in Excel into any one of 16 different types of probability distributions, including all the actuarial favorites. It will also permit any cell or cells to be changed into forecast cells. After a simulation has been run, the program produces a histogram displaying the variability of results for each forecast cell. By incorporating simulation into a loss reserving program, the degree of variability or reserve projections might be easily estimated.

What should emerge from the software offerings will be a battle for market share in the highly specialized area of loss reserve analysis. The resulting upgrades will likely benefit users.

Future upgrades

Price Waterhouse anticipates releasing a different version of Affinity (corporate vs. the present professional version) during the fall of 1994. It would provide an integrated data base for project and triangle management. One may reasonably expect that future upgrades of the current professional version will include any features of Exhibitmaker that it does not now possess. In addition, Price Waterhouse will endeavor to keep pace with and benefit from the impressive features of Microsoft's Excel's Version 5.0 and other future versions.

Coopers & Lybrand is working on a new version of Exhibitmaker that will, in some way or another, be a Windows-based system. It is the company's plan that this new version will have ties to Excel and linkage, and it will provide tie-ins to word processing programs.

According to Tom Johnson of Coopers & Lybrand, this new version, which is about a year from completion, will be a partially open system. The new system will, of course, still provide all the pre-programmed features of the current version. However, it will provide a framework for the user to design custom methods and exhibits using a spreadsheet program such as Excel.

Coopers is also planning a June release of an upgrade that would include a new module for storing and retrieving strings of development factors in a "library." The company also anticipates a later upgrade that will provide interfaces with other major sources of insurance industry information besides CD/Insurance.

What should emerge from this will be a battle for market share in the highly specialized area of loss reserve analysis. Regardless of how Coopers & Lybrand and Price Waterhouse fare in this battle, users should benefit from more frequent and extensive upgrades as these two Big Six firms strive to outdo each other in providing first-rate loss reserving software. BI

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

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

Mr. Sherman

This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions in the benefits field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. And Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans.

Mr. Sherman's next column will appear in August.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Univar

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general counsel at Univar and Ms. Seabrook's supervisor.

When Univar's broker retired, Ms. Seabrook started doing some work with the company's new broker. "For the first couple of months, I hated it. I was bored to tears. All I did was mark papers that came across my desk, and they would be filed.

"I went down and talked to my former boss, the vp of operations, and asked him what he would like to see come out of the information that I had access to but no one else did—such as management reports related to our losses.

"Based on my discussion with him, I started to get kind of creative, and I began to research our losses," she said. "Out of having no risk management department at all, I sort of began to evolve that department."

On the advice of a co-worker, Ms. Seabrook enrolled in night school courses and earned the Associate in Risk Management designation in a year and a half.

"Getting the ARM helped immensely, not only in basic knowledge but in what to look for. And it gave me some creative ideas and confidence in the area," she said.

Her first real involvement in risk management came when she started tracking workplace injuries as part of a companywide quality control program. After that, her role grew and grew.

Earlier administrative assistants simply monitored claims and were not actively involved in them, recalls Mr. Butler. That changed with Ms. Seabrook.

"Leslie is actively involved with the adjusters, the staff at field locations and field management, first of all to try to avoid workers comp claims through training, safety and those types of activities, and secondly to monitor claims closely and to minimize related expenses when a claim does arise," the general counsel said.

From her first renewal on, lower insurance premiums and reduced administrative costs showed upper management the value of a risk manager.

For example, many of Univar's 106 U.S. locations would order a surety bond "and it just automatically got renewed," whether it was needed or not, she explained. That changed when Ms. Seabrook began handling the surety bond program.

Similarly, Ms. Seabrook assumed oversight of "very disorganized, inefficient" insurance programs at the company's European operations, which employ 500 people. Soon some global programs were adopted and many insurance policies consolidated.

Univar also dropped its old broker and retained two new ones shortly after Ms. Seabrook moved up: Woodland Hills, Calif.-based Becher & Carlson Risk Management Inc. for domestic casualty coverage and management of a Hawaii captive; and Chicago-based Rollins Hudig Hall Group Inc. for international and property coverage.

Everything, in short, was coming together—until Ms. Seabrook's husband, who works for the Bureau of Alcohol, Tobacco and Firearms, was transferred to Washington, D.C. That was just under a year ago.

"The company was faced with replacing me," recalls Ms. Seabrook, the mother of four children —two of them aged 10 and 9—and a recent grandmother.

When she suggested to her managers that she could work from a distance, the company agreed.

Ms. Seabrook was to work out of her home first, and if that didn't work, she had the option of sharing some office space with a Washington law firm that did a lot of work for Univar. From headquarters she brought her personal computer and a fax machine. Univar added a business phone hookup and some leased office furniture.

"We started off thinking we would do this on a trial basis, but now it's not even spoken of in those terms," she said.

'There are a few added expenses, a little extra travel and all of that. That's outweighed in my judgment by the continuity and the fact that you have an employee that knows the job and can continue to do it well,' says William Butler, vp and general counsel.

"It's worked out very well," said Mr. Butler. "Continuity is the advantage.

"There are a few added expenses, a little extra travel and all of that. That's outweighed in my judgment by the continuity and the fact that you have an employee that knows the job and can continue to do it well," he said.

Ms. Seabrook is the only Univar employee with such an arrangement.

"I think, with the changes in society, with the fact you have couples that both work and people get transferred or for other reasons need to move, there's a strong advantage in retaining the current risk manager who knows how the organization works," said Greg Myers, senior vp at Becher &

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Carlson.

Staying with the company carries a price, though: Typically, Ms. Seabrook's day starts at about 8 a.m. Eastern time, and she answers her business phone through the close of business on the West Coast—about 8 p.m.

"I get up in the morning and do as much paperwork and word processing and reading and all that as I can before 11 a.m. (Eastern Standard Time) when our corporate office opens on the West Coast," Ms. Seabrook said.

Early morning is also the ideal time to make international calls. There are no distractions, no one popping into the office and no temptation to pop into anyone else's office, either.

Faxes and phone calls from Seattle come in most heavily from 11 a.m. to 5 p.m. Eastern time. Mail goes directly to Seattle where a secretary organizes it and sends Ms. Seabrook two overnight packages.

"I have an exceptional assistant, Shannon Stratton, and a very good secretary, (Michelle Atwood)," both based in Seattle, Ms. Seabrook said.

She uses corporate electronic mail system to send or receive over the computer anything she needs printed and distributed.

She also is connected with Becher & Carlson by computer.

Ms. Seabrook tries to keep the files she stores in the office in her home to a minimum, but all major files are with her.

Telecommuting has taken some getting used to. "It requires a lot of self-discipline, because you can't allow yourself to be distracted," she said. "I do take time out when the kids come home from school; but I don't eat lunch, and if I do, it's at my desk."

One of the notable disadvantages to Ms. Seabrook's arrangement is the lack of social contacts at Univar. So every other month, she returns to headquarters. "I need to see my people face to face," she said. "It's very important to a risk manager, because you have to know what's going on in a company, and sometimes the only way you know is keeping your ear to the ground."

She relies heavily on her staff. "If I haven't gotten gossip for a while, I bug them, or if I hear some bit of gossip that Shannon didn't tell me, I bug them. We have a very open relationship."

Visits to Seattle last at least a week and are filled with meetings. "It's so jam-packed with meeting people, there's no opportunity to sit down and get any work done. Then I come back here and do the paperwork."

She also visits company sites about once every other month.

"It takes the right person to be able to handle (the adjustments of telecommuting), and she seems to be doing fine," Mr. Myers said.

Telecommuting seems not to have strained the broker/client relationship. "Most of our clients are not in our local area anyway, and when we were working with her in Seattle, we still handled it out of L.A. So it's just a different phone number from our standpoint," he said.

What started out as a three-to-six month trial about a year ago is no longer spoken of as a trial. "This past March 1 renewal was the best we've ever experienced. Everything was done ahead of time," said Ms. Seabrook. "Usually we're down to the wire. Because I'm working long distance, you know it requires that extra effort to meet deadlines, and you adjust and make that effort."

Recently, Univar experienced its first fatality involving its fleet of 600 trucks. A lot of phone calls had to made in a hurry, she recalls. "We covered all the bases very efficiently. It worked really well. We're really a team.

"I do know that a lot of risk management is the coordination of people. I think you could do that anywhere. But you can't go into it cold. You would have had to have been personally active in the risk management function. People respond to me long-distance because they worked with me personally before," Ms. Seabrook said.

"I think it would be difficult for someone to come in who doesn't know the organization and become a telecommuting risk manager," Becher & Carlson's Mr. Myers agreed. BI

INTERNATIONAL

Lloyd's still has loyal following: Rowland

By STACY SHAPIRO

LONDON—Policyholders remain faithful to Lloyd's of London even though some of them are concerned about the financial strain on the market, Chairman David Rowland says.

But many Lloyd's members attending the annual general meeting last week expressed worries about the market's future.

Amid the questions, comments and sometimes angry outcries from members, Mr. Rowland and Chief Executive Peter Middleton restated their confidence in the market's solvency, defended the plan for Lloyd's proposed runoff reinsurer and explained the need for Lloyd's proposal to assign value to members' syndicate participations.

Mr. Middleton also said the market would consider a plan to allow some financially strapped members to retain some of what they may recover from litigation against members agents to reach the minimum amount of assets they are entitled to under hardship rules.

Meanwhile, Mr. Rowland offered his perspective on the market's present state and its future to an audience at the Royal Festival Hall and to members watching from a video screen at Lloyd's Lime Street building.

The chairman acknowledged the 2.05 billion pound ($3.03 billion) loss for 1991 announced two weeks ago under Lloyd's three-year accounting system and some improving trends during 1992 and 1993 (*BI*, May 23). He said he realized that the 1991 and previous three years of losses imposed "very considerable strains" on members.

But "many of our ratios have improved and this development will enhance our customers' confidence," Mr. Rowland told the audience.

"Of course, our customers have been concerned about what has happened at Lloyd's. Many of them, far away from London, see the headline stories and wonder if they should continue to do business with us. Our competitors naturally seek to take advantage of our perceived weakness and to gain profitable business for the future."

Lloyd's has worked alongside brokers and has hired a marketing consultant to help build its relationships with customers, Mr. Rowland added. "I am pleased with the loyalty of our customers and the faith of new ones. You see, they look through the publicity to the reality of a market of skill and competence discharging its proper responsibilities to its policyholders and, like me, they believe that it will continue to do so."

Lloyd's will pass its solvency tests as dictated by the U.K. Department of Trade and Industry on Aug. 31, said Mr. Middleton. The market's premium income to claims ratio in particular has strengthened, which is critical to the DTI, he said.

"I have no doubt in my mind that we will be able to pass our solvency test," Mr. Middleton said. "I don't expect any difficulties on that."

Lloyd's had net resources of 6.31 billion pounds ($9.34 billion) at year-end 1993, up from 6.09 billion pounds ($9.22 billion) in 1992.

Some members still are bitter about their massive losses, though.

Outside the Royal Festival Hall, members—in a more somber mood than the circus-like atmosphere of last year's meeting—passed out leaflets calling for an end to Lloyd's.

One was from the Parliamentary Lobby Group, calling on members to sign a leaflet urging a "cash-strike" to stop paying losses. "The Society of Lloyd's will be wound up, either by the DTI or following an (extraordinary general meeting) of its members. The only question is when," the leaflet warned.

"How can Parliament stand by and let this continue? Deception, corruption and incompetence are the evidence of the recent history of Lloyd's. Parliament has only one thing to do—let Lloyd's fail solvency and be wound up."

Inside, several members expressed even more anger. One woman suggested that members have been "conned" since the 1970s. She suggested that Mr. Rowland was not telling the truth when he said Lloyd's was strong. She called underwriters in the market "tremendously greedy and incompetent," making used car salesmen "look like amateurs."

She added, "Lloyd's should die

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Ontario extends spousal benefits

By MICHAEL SCHACHNER

But same-sex partners won't have pension rights until tax law changes

TORONTO—Ontario employers would be required to provide same-sex couples with rights and benefits equal to those available to heterosexual common-law couples under draft legislation approved earlier this month.

The legislation is groundbreaking but stops short of being monumental, observers say, because it will not require employers to extend pension benefits to the survivor of a same-sex couple until federal tax rules are changed. The rules must be amended to allow pension plans for same-sex spouses to be registered with Revenue Canada for tax-favored status.

Calling the equal rights legislation "right and fair for all Ontarians," Attorney General Marion Boyd expressed confidence that the bill, which faces ample conservative opposition, would survive second and third readings and become law.

The legislation would amend 55 provincial statutes to ensure same-sex domestic partners are treated in accordance with the Canadian Charter of Rights and Freedom.

The act, which passed a first reading by a vote of 57-52 in the Ontario Provincial Parliament, would amend the interpretation of all laws that provide benefits, obligations or rights based on spousal status. But it does not address marriage, which falls under the jurisdiction of the federal government and is currently the subject of multiple legal challenges, some before the Supreme Court of Canada.

Ms. Boyd said the legislation has strong support from business, labor and church groups, mostly because it is not expected to create significant new costs for Ontario employers, about 15% to 20% of which already extend group supplementary health and dental benefits to same-and opposite-sex domestic partners.

Among the major employers that provide benefits to same-sex couples, according to the attorney general's office are: North American Life Assurance Co., Dow Chemical (Canada) Inc., the United Church of Canada, the Toronto Metro Police Force, The Toronto Globe & Mail, the Canadian Auto Workers union, Northern Telecom Corp. and the Ontario government.

Employers that have implemented group benefits for their employees with same-sex partners say that the benefits have not been overly costly nor have a large number of eligible employees taken advantage of them.

"Since all employees can legally register a (common-law) spouse for coverage, allowing someone to register a same-sex partner has not been a big additional cost item for us," said Michael Rodgers, vp-human resources with North American Life Assurance in Toronto, which as an employer implemented a flexible benefits plan in April 1993 that offers full benefits to the same-sex partners of employees.

"Only a handful have taken advantage of the offering," he said, "but it's the right thing to do. Flexible benefits are designed to meet the needs of all types of families, not just traditional, standard families."

While offering group health and dental benefits to domestic partners of its own employees "has not been a big issue" for North American Life, Mr. Rodgers said the company will just have to "wait and see" how it affects it as an underwriter.

Dow Chemical (Canada), which is based in Sarnia, Ontario, for the past year has provided benefits to all couples that meet provincial common-law cohabitation requirements.

"We did it last year voluntarily because we felt it was appropriate in this day and age. There have been no significant cost issues related to the benefits," a spokeswoman said.

Unlike many companies that have extended various group health benefits to the partners of gay and lesbian employees, Dow Chemical has also established that survivor pension benefits will be paid from a separate account if an employee dies.

"No one has made a claim yet, fortunately. But pension benefits are available to the partner, and we'll pay for it when the time comes," she said.

It's the area of pension benefits where the Ontario legislation lacks punch, benefit consultants say. The bill does seek to provide equal rights on survivors' pensions for same-sex couples. But, to avoid subjecting employers to heavy taxes, the amendments pertaining to pensions won't become effective until the Canadian federal government changes its rules to allow employers to register same-sex couples under the same tax-sheltered plans that cover married couples.

Currently, a pension plan must be registered under the Canadian Income Tax Act so employer and employee contributions can be tax-deductible and funds can accumulate on a tax-free basis. But Revenue Canada, the equivalent of the U.S. Internal Revenue Service, refuses to register same-sex couples.

Thus, if a Canadian employer wants to provide pension benefits to the same-sex partner of an employee, the pension benefits must be pro-

Continued on page 25

German insurance reform near approval

By DON LEWIS KIRK

BONN, Germany—Nearly 100 years of strict insurance market regulation is close to ending after the lower house of Parliament's May 19 vote on a reform package.

Under the legislation passed in the Bundestag, Germany would no longer regulate insurance company rates and policy conditions, but would monitor irregularities, such as unpaid claims or unfulfilled policy contracts, that occur after policies reach the market.

The package of legislation is meant to bring Germany into compliance with regulations for the single European Union insurance market, which becomes effective July 1, and is expected to promote competition among German insurers.

A final vote on the reforms is expected June 10 in the upper house, the Bundesrat.

In a surprising move, the Bundestag also voted to uphold a long-standing regulation that prohibits insurance brokers from sharing their commissions with clients. Critics have argued that commission-sharing would increase insurance premiums because brokers forced to share commissions would demand higher commissions from insurers, and insurers would pass that cost onto policyholders. In addition, critics said repealing the regulation would force many captive brokerages out of business (*BI*, April 18).

Commission-sharing is prohibited in several other European countries, including France, Italy and the Netherlands.

Last month, observers expected Parliament to repeal the commission-sharing ban.

Paul Geilenberg, managing director of the in-house broker for Dusseldorf-based FPB Holding, a subsidiary of Swedish paper manufacturer Stora Group, said the backdown will prevent discounting.

"It was never an existential question for larger captive brokers. But smaller brokers would have lost

Continued on page 25

P&I club launched in Bermuda

By GAVIN SOUTER

Mutual will offer coverage for liability under Oil Pollution Act

HAMILTON, Bermuda—A protection and indemnity club is forming in Bermuda to offer coverage for shipowners that meets the higher financial responsibility requirements soon to be enforced under the Oil Pollution Act of 1990.

The new club, Shoreline Mutual (Bermuda) Ltd., is currently putting its reinsurance program in place and expects to be able to offer coverage within weeks after expanded oil pollution liability rules are announced, according to a lawyer who helped establish the club.

The coverage is intended to fill a void left by the 14 members of the International Group of P&I Clubs.

Shoreline Mutual and a management company, Shoreline Mutual Management (Bermuda) Ltd., recently were incorporated in Bermuda, said Hugh Bryant, head of the shipping and aviation practice at Penningtons, a London law firm.

The mutual insurer was set up to meet demand for higher liability limits created by OPA '90, which requires ships of more than 300 gross tons that are involved in trade with the United States to have evidence of financial responsibility for potential oil pollution, he said.

Under the law, oil tankers have to prove the ability to meet liabilities up to $1,200 per gross ton, and non-tankers must be able to meet liabilities of up to $600 per gross ton.

A tanker the size of the Exxon Valdez—which was 211,000 tons dead weight with a cargo capacity of 1.5 million barrels—would be expected to show evidence of financial responsibility of $113.5 million under the law, Mr. Bryant said.

The rules are expected to be enforced by the U.S. Coast Guard.

Ship operators that do not self-insure or use surety bonds to provide evidence of financial responsibility will likely seek insurance coverage to meet the requirements, Mr. Bryant said.

However, established P&I clubs have said they will not extend their coverage to meet the OPA provisions.

The clubs fear that their liabilities will be unreasonably extended by courts in the U.S. after a spillage occurs, a spokesman for the clubs said.

"The problem has been that no insurers out there have been willing to provide the guarantee to the Coast Guard," Mr. Bryant said.

Shoreline Mutual will provide coverage limits of up to $300 million

Continued on page 25

Lloyd's

Continued from previous page

like the dinosaur it resembles....Only over my very dead body will you get any more of my money...."

Mr. Rowland said he admired her eloquence, even if he didn't agree with what she said. In an impassioned reply, he added that he didn't know what more he could say to convince members that they were being told the truth.

The same member suggested that Messrs. Rowland and Middleton take pay cuts and "put their money where their mouth is" to help the membership. Mr. Rowland earned 472,000 pounds ($698,324) last year, while Mr. Middleton earned 324,000 pounds ($479,358), including a 65,000 pound ($96,167) performance-related bonus.

Mr. Rowland replied sternly that "quite a lot of people don't have to work here," meaning that he and Mr. Middleton could command higher salaries in the corporate world.

Jessie Munn of Oxfordshire spoke at length about her serious losses between 1987, when she became a member, and 1991. The elderly woman refused to give Mr. Rowland the floor when he tried to interrupt her, much to everyone's amusement.

Ms. Munn called Mr. Middleton "squeaky clean," a characterization to which Mr. Rowland appeared to take exception.

"I've got news for you. I work with him and he'll do anything for a new motorcycle," he said to laughter.

She added, however, that "Lloyd's is totally devoid of honest men" and believes she was swindled.

Richard Micklethwaite suggested that Lloyd's was financing its future off the backs of its impoverished members.

"Indeed," agreed Mr. Rowland, noting that the members who paid their losses were discharging their contractual duties to the market.

Many constructive questions were raised from the floor, however, which reflected the concerns of many people in the marketplace.

Tom Benyon, director of the Society of Names, noted that a number of elderly members have paid their losses faithfully and have exhausted the capital on which they planned to live out their lives. They are the "can pay, will pay names (who are) disadvantaged to the can't pay, won't pay names," said Mr. Benyon. "These are the names who have checkbooks that never sleep."

These elderly members are now applying to Lloyd's Hardship committee for help. Mr. Benyon would like to see Lloyd's bend its rules and allow these members to maintain some share from the litigation against members agents to recover losses.

Under hardship rules, members are allowed to keep assets that will yield 17,000 pounds ($25,594) per year income and a modest home. But they must relinquish all recoveries from their action group participation to the Hardship Committee.

Mr. Middleton told Mr. Benyon that Lloyd's will discuss this suggestion. The chief executive later said at a press conference that the members who do not have the minimum assets they are entitled to keep under the hardship rules would be able to keep any recoveries from litigation to fund the 17,000 pounds per year income.

The Lloyd's Council had not previously heard the suggestion, it was discovered after the meeting.

Mr. Middleton also said after the meeting that Lloyd's issued 266 lawsuits to names who have failed to acknowledge their losses, but 102 of them have been withdrawn after renewed dialogue with the members.

Other questions were raised on several subjects, including:

- The Value Report, which calls for a value to be determined for each member's syndicate participation, allowing members to sell their participation to other members or corporate members (*BI*, May 9). One member suggested that it was "being rushed and the situation needs far more thought." He called on Lloyd's to centrally buy and sell seats on syndicates and give the proceeds to members' reserves.

Mr. Rowland said he believes the market won't rid itself of the accusation of insider trading unless recommendations in the Value Report are implemented. He noted that all suggestions being made about the report would be considered.

- The viability of NewCo, the runoff reinsurer to be set up in 1996.

An exasperated Mr. Middleton asked, "Why is there a supposition that NewCo won't succeed? I believe it will (and) make money....I don't accept that we're going to fail. I don't accept it."

- The introduction of corporate capital and its impact on the market. One person in particular wondered whether the introduction of corporate capital last year was really necessary as there is "a hint of overcapacity" in the market at the moment and profits are being diluted.

Mr. Rowland said that at this time last year Lloyd's only expected between 5.5 billion pounds ($8.14 billion) and 6 billion ($8.88 billion) pounds in individual membership capacity for 1994, so corporate capital is needed to reach a target of between 10 billion pounds ($15.06 billion) and 10.3 billion pounds ($15.51 billion).

He said he was "delighted" when 800 million pounds ($1.18 billion) of corporate capital was raised, which encouraged others to stay in the market, giving Lloyd's an overall capacity of 10.97 billion pounds ($16.23 billion) this year.

Lloyd's Deputy Chairman Robert Hiscox added, "I don't see a great influx of capital next year, (so) we need what we've got."

Meanwhile, some underwriting activities in the marine market this year are causing concern, Mr. Middleton said. Although he wouldn't be specific, he said Lloyd's has dealt with the situation.

"We have to keep reminding underwriters that their sole purpose is to earn profits."

- Disciplinary action against those who have caused the losses.

Sir Alan Hardcastle, head of regulation, would not give any specific details. However, he said that 35 to 40 cases have gone through the disciplinary process, and at any one time there are 10 to 12 formal investigations.

At the end of meeting, Mr. Rowland was asked at a press conference to describe the mood. He said that was for observers to decide. However, he added, "It was a perfectly reasonable meeting to manage."

Meanwhile, Lloyd's still had enough clout to force the Royal Festival Hall bookseller to remove its window display until after the meeting. One book in the display was "Significant Loss," a murder mystery novel by David Brierley that revolves around Lloyd's. BI

INTERNATIONAL

Ontario

Continued from page 23

vided on a pay-as-you-go basis or funded through a costly retirement compensation arrangement, which carries no tax benefits.

"Without the tax benefits, employers have been inhibited from extending pension benefits. Even if the Ontario legislation passes, the federal government will have to do something about the tax laws to level the playing field for these domestic partnerships," said Sheryl Smolkin, director of The Wyatt Co.'s Canadian Research & Information Center in Toronto.

For example, Revenue Canada requires an employer with a retirement compensation arrangement to pay a 50% refundable tax based on its pension contributions. Pay-as-you-go benefits, meanwhile, must be made from corporate revenues and are taxable in the hands of the survivor.

"The package doesn't proclaim much unless the federal government changes the tax laws. We may be old and gray before that happens," said Jolanta Morowicz, a consultant with William M. Mercer Inc. in Toronto.

Otherwise, the Canadian Supreme Court would have to rule in a case scheduled to be heard this fall that the traditional definition of "spouse" in the Old Age Security Act is discriminatory and inconsistent with the Charter of Rights and Freedom.

Mercer's Ms. Morowicz said even though such a ruling would send a strong signal to legislators that the high court believes same-sex spouses should be treated in the same manner as common law couples, lawmakers could still turn a deaf ear to the ruling and override it. BI

Shoreline

Continued from page 23

to meet the law's requirements, he said. The club will also cover liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, better known as the Superfund Act. Provisions of Superfund require shipowners to provide a certificate of financial responsibility for non-oil pollution of $300 per ton.

Shoreline Mutual's underwriting will be based on a schedule of rates set by the club, rather than individually negotiated.

Ships other than tankers will pay an annual advance call of between $3,000 and $5,000 depending on their size.

Tankers will pay substantially more, based on several different factors. For example, a 15-year-old tanker the size of the Exxon Valdez carrying crude oil could expect to pay $200,000 per voyage.

"There is no way you can get around the fact that it will be expensive. However a tanker owner will be able to pass on the cost of additional insurance in every barrel of oil he carries," Mr. Bryant said.

The day-to-day management and administration of Shoreline will be handled by Mutual Risk Management Ltd. in Bermuda on behalf of Shoreline Mutual Management.

The P&I club plans to raise $300 million in working capital through a private placement bond issue in New York, Mr. Bryant said. Shoreline Mutual will retain the first $10 million of each risk and reinsure the remaining $290 million. The reinsurance program for the club is currently being placed by Willis Faber North America with the assistance of other smaller brokers, he said.

Reinsurers in Bermuda, North America and continental Europe are expected to participate on the program, but underwriters at Lloyd's of London have been less enthusiastic, Mr. Bryant said. "The Lloyd's market has shown limited interest, but the company market has been more interested."

Shoreline Mutual will attract additional premiums into the insurance market rather than compete with established P&I clubs, Mr. Bryant said.

Another facility designed to meet the new requirements has been jointly planned by brokers Johnson & Higgins in New York and Bankassure, an Aon Corp. unit in London. Facility details have been filed with the Coast Guard but won't be announced until the final OPA '90 rules have been published. BI

Germany

Continued from page 23

their commissions as discounts to companies," said Mr. Geilenberg, the former chairman of the German risk managers' association. "In my view, other criteria like premium, insurance coverage or broker service should have priority for deciding which policy to accept."

The reform legislation also would give German employers more flexibility in financing pension plans. By easing regulation of pension funds, the reforms would open a variety of new investment possibilities. Currently, the government limits the amount of pension funds that can be invested and the investments are restricted to domestic property, loans, stocks and bonds.

"It's now possible to gain higher yield for (pension) funds," said Heike Hoppach, pension consultant for broker Jauch & Huebener KGaA. "By our calculations, a 1% higher yield means a 10% drop in contributions or a 10% increase in pension payments."

However, as Ms. Hoppach pointed out, because of administrative costs, the pension reform would only benefit German companies with pension plans of at least 50 million deutsche marks ($30.5 million).

The regulations also open new options for funding group life insurance plans.

The package of reform bills requires final approval by the Bundesrat next month to go into effect as planned on July 1. But, several points of contention remain.

The legislation, as passed by the Bundestag, would uphold the decennial policy period for German insurance policies. Under current law, German policyholders may choose policy periods of one, three, five or 10 years.

But the Social Democrat Party, which has a minority in the lower house but holds a majority in the Bundesrat, wants to limit the maximum policy period to three years. The Social Democrats argue that a 10-year period "enslaves" the policyholder and is unfair because it provides no cancellation opportunities. Insurers say the longer policy period is cheaper for the policyholder.

Germany's reform legislation also would allow personal lines policyholders to cancel policies at every rate increase if policy conditions do not change. Policyholders also would have a 14-day grace period before a policy took effect, during which they could cancel the coverage.

German Finance Minister Theo Waigel has lauded the proposed changes in the nation's insurance system, and said market freedoms would "increase the variety of insurance products." BI

Libel

Continued from page 3

terview. "My general feeling is that the situation is getting worse rather than better."

The New York-based media company does not purchase libel insurance for its flagship, The New York Times, but it does buy it for the more than 30 other newspapers it owns, as well as for several of its television stations.

The defendants targeted in recent libel cases—as well as the amounts awarded—are surprising, Mr. Kelley said.

"There were several cases in the late 1980s and 1990 that involved huge verdicts against mainstream media defendants," he said. "Up until then, they were landing with some frequency against magazines like Penthouse and Hustler, but not daily newspapers."

Smaller publications, including trade journals and newsletters, are increasingly being targeted because they are viewed as "feeders" to the general press, said James T. Borelli, senior counsel at Media/Professional, an underwriting and claims management subsidiary of Aon Corp. that specializes in libel coverage.

"Plaintiffs attorneys are suing the feeder to stop wider distribution," he said. "You don't have to be Time or CBS to be sued."

"Fringe claims are being brought more frequently" as pure libel cases become more difficult to win, said Chad Milton, vp-law and claims and assistant general counsel at Media/Professional. Savvy plaintiffs attorneys are adding charges of invasion of privacy and publication in false light.

Publicity about large verdicts has heightened the media's awareness of libel, said Joseph Mallia, assistant vp of risk management at Time-Warner Inc. in New York.

"All aspects of the media are practicing a great deal of loss control," Mr. Mallia said in an interview. "They want to make sure everything is strictly in line with the laws and is as factual as possible."

The media are also fighting questionable claims more aggressively, he added.

In addition, editors are seeking more legal advice on stories and have changed their attitudes about libel, Mr. Mallia said.

"They are attuned to the legalities of what they say," he said. "They are less likely to take the posture that they can do anything they want. They are less likely to make blanket statements."

Mr. Kelley excluded supermarket tabloids from his research, in which he interviewed attorneys involved in libel cases in 1991 and again in 1993 to try to identify some of the factors that lead to huge verdicts.

The No. 1 indicator of a huge verdict is a jury trial, which most plaintiffs demand.

"If you have a case that is going to be tried by the judge. . .the risk of a huge verdict is small in comparison to cases that are tried before the jury," Mr. Kelley said.

Any cases that involve a dispute between a reporter and source will wind up before a jury, whose members often don't understand the standards of proof, he said.

'You don't have to be Time or CBS to be sued,' says James T. Borelli of Media/Professional.

In cases involving public officials and public figures, the plaintiff must prove with clear and convincing evidence that the publication intended to harm his or her reputation, that the information is false and that the publisher either knew it was false or acted with subjective awareness that it was probably false. In cases that do not involve a public figure or public official, the plaintiff only must show that the defendant acted negligently in printing a falsehood.

"Without a real understanding of what the legal standard is, juries tend to look at the case more or less in terms of a morality play, testing which side is good and which side is evil," Mr. Kelley said.

Reporters often make less than ideal witnesses, he said.

"The biggest concern is getting the reporter into the frame of mind that you have to be in to present yourself to a jury," Mr. Kelley said. "It involves being thoughtful and sensitive. You've got to get the reporter to get over his anger at being sued, and you've got to get him over his reluctance to admit lack of knowledge on any subject and get him over the tendency to be flip."

The identity and status of the plaintiff also play a role in the size of the award, Mr. Kelley found. Several of the plaintiffs who won massive awards in the 1991 survey were lawyers or prosecutors. In the later survey, in which the lower awards were found, plaintiffs were a more diverse lot.

Other typical claimants include private-sector professionals, such as doctors, lawyers and business executives. They can pose a greater problem than public officials because reporters may not have public records to rely on when writing about them.

"Surprisingly, (ordinary) people, as sympathetic as they are, are just not given the same deference by juries as the big people, who've got the big reputations and the big money," Mr. Kelley said. "The bigger the plaintiff's reputation, or the bigger person he is in terms of earning capacity, the higher the damage award is going to be."

While investigative reports often result in large awards, everyday mistakes also lead to many libel claims, said Mr. Milton.

"Ninety-nine percent of cases are not a willful attempt" to damage someone's reputation, he noted. "They are human errors."

Publishing file photos or broadcasting old footage can cause problems if the images are put into an unintended context. Live microphones can lead to insulting remarks being inadvertently broadcast.

The recent popularity of "reality" television shows, in which reporters accompany police officers on raids and busts, has raised the question of whether police can authorize reporters and camera operators to enter private homes.

Other types of reporting are precarious by their nature.

Radio call-in shows can amount to "trusting the keys of the station treasury to a complete stranger," Mr. Milton said.

In some cases, technology is the culprit. Enhanced recording equipment can put media outlets at more of a risk for intrusion claims. Electronic devices intended to conceal a person's identity can fail. Or a reporter could just slip and say the "unidentified" source's name. BI

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
NO. 535 of 1993

IN THE MATTER OF BRISTOL REINSURANCE LTD.-IN LIQUIDATION
and
IN THE MATTER OF THE COMPANIES ACT 1981
and
IN THE MATTER OF THE INSURANCE ACT 1978

(under an Order for Winding-Up the above-named Company, dated the 13th day of May, 1994)

NOTICE TO CREDITORS OF FIRST MEETING

NOTICE IS HEREBY GIVEN that the First Meeting of Creditors in the above matter will be held at The Chartered Insurance Institute, Insurance Hall (Committee Room 2), 20 Aldermanbury, London, EC2V 7HY, U.K. on Friday 8th July, 1994, at 10:00 a.m..

Proofs of Debt and Proxy forms to be used at the Meeting, must be lodged with me, at the address shown below, not later than 5:00 p.m. on Friday 1st July, 1994.

Dated this 18th day of May, 1994

Malcolm L. Butterfield
Official Receiver and
Provisional Liquidator
Bristol Reinsurance Ltd. - In Liquidation
Chevron House,
11 Church Street
P.O. Box HM 2261
Hamilton
HM JX
BERMUDA

NOTE

At the First Meetings of the Creditors and Contributories they may amongst other things:-

1) By resolution determine whether or not an application is to be made to the Court to appoint a Liquidator in place of the Official Receiver.

2) By resolution determine whether or not an application shall be made to the Court for the appointment of a Committee of Inspection to act with the Liquidator and who are to be the members of the Committee if appointed.

NOTE: If a Liquidator is not appointed by the Court the Official Receiver will be the Liquidator.

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Sub-total 29,216
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Insurance Companies 8,258
Accountants, Actuaries, Attorneys & Consultants 3,576
Managers & Health Care Providers 1,941
Others Allied to the Field 1,351
TOTAL 52,949

★ Source Business/Occupational breakdown of qualified circulation, November 29, 1993 Issue, as submitted to BPA for December 1993 BPA Publisher's Statement.

Pollution

Continued from page 1

nation, some of which Weyerhauser owns.

Weyerhaeuser says that it should be covered for the cost of cleaning the sites it owns because the pollution threatens groundwater. Weyerhaeuser vowed to clean the sites regardless of its coverage.

Mr. Horkovich, an attorney with Anderson Kill Olick & Oshinsky in New York, said Weyerhaeuser attempted to negotiate with its insurers throughout the cleanup process, but that the insurers refused to participate.

The sites include ponds, landfills, wholesale distribution centers and sites with underground storage tanks that have been contaminated with substances including ash, diesel fuel, chlorine, PCPs and mercury, court records show.

The coverage litigation was unusual from the onset because of the concerted efforts by Weyerhaeuser's risk manager to maintain good relations with the defendant insurers and encourage a settlement. Cheri J. Hawkins, Weyerhaeuser's assistant treasurer and director of insurance, personally wrote each of the insurers when the suit was filed, expressing the company's hope that the dispute could be settled amicably (*BI*, March 16, 1992).

The company had never sued one of its insurers before.

Among the defendants, only Commercial Union Insurance Co., Twin City Fire Insurance Co., and the London underwriters did not settle with Weyerhaeuser.

The terms of the settlements were not disclosed.

A trial court in July 1993 dismissed Weyerhaeuser's complaint regarding 15 of the sites, ruling that the company had not faced any third-party claims for property damage at the sites. Remediation costs at those sites, about a half dozen of which are located in Washington, totaled about $28 million.

A state appeals court on its own last November certified the case to the state Supreme Court because of public policy concerns.

The high court's 9-0 ruling, written by Chief Justice James A. Andersen, focused on the dilemma faced by policyholders with pollution liabilities: Acting on their own to clean up polluted sites can reduce cleanup costs but could jeopardize their coverage.

Justice Andersen noted the cleanup work was mandated by various state and federal statutes that impose strict and joint and several liability for pollution damage. And, the company was required by law to report contamination.

Pointing out that Weyerhaeuser and the insurers agree that the CGL policies provide coverage for all sums that Weyerhaeuser is legally obligated to pay for property damage stemming from the pollution, Justice Andersen wrote: "The policy language does not specify whether this liability must be imposed by formal legal action (or threat of such) or by a statute which imposes liability."

If insurers intended to provide coverage only when a lawsuit was filed or threatened, that requirement "could have been included in the policy," Justice Anderson said.

"We decline to add language to the words of an insurance contract that are not contained in the parties' agreement," he wrote.

The court also noted that it would put policyholders in an untenable position if it accepted the defendants' arguments: Policyholders would lose their coverage if they cleaned up sites before receiving a cleanup order from the state. But, policyholders that wait for a cleanup order could be denied coverage for not taking steps to mitigate the pollution damage.

That would "result in fundamental unfairness to policyholders who reasonably believed they had insurance coverage for certain kinds of property damage caused by pollution."

But, Justice Andersen also tried to allay insurers' fears that the ruling could lead to unintended coverage for policyholders' costs to comply with pollution laws.

Pointing to the high court's decisions in other pollution coverage cases, Justice Andersen explained that Weyerhaeuser's insurance "does not cover safety measures or other preventive costs taken in advance of any damage to property."

Weyerhaeuser still faces additional coverage disputes with Commercial Union, Twin City and the London underwriters over the original sites and about 20 more. A trial scheduled to begin in October will consider issues like whether Weyerhaeuser expected or intended to cause the pollution. More than $100 million of coverage is at stake in that case.

Insurer attorneys disagreed over how influential the Washington ruling will be to other courts, but they expect that most state high courts will address the issue if the Superfund law is not reformed.

The decision, though, raises potential problems for policyholders as well as insurers and could spawn even more litigation, some insurer attorneys said.

For example, the CGL insurers for a policyholder that follows in Weyerhaeuser's footsteps could argue the policyholder voided its coverage by admitting liability. "If you want someone to pay for you, you should at least let them look at (the case) without tying their hands behind their back," Mr. London said.

The issue will be even more complicated in cases involving more than one potentially responsible party for a polluted site, said David C. Roston of Altheimer & Gray in Chicago. "If a PRP says, 'I belong to this group, this is how much I'll pay,' insurers will say they're not sure you're paying the right amount."

Mr. Roston also foresees a potential problem should policyholders try to burnish their public image by cleaning up substances that state or federal environmental agencies have not determined to be hazardous and then seeking recovery of those costs from insurers.

However, the decision could lead to lower cleanup costs by expediting the cleanup process, he said.

David M. Spector, a partner with Mayer, Brown & Platt in Chicago, said a principal problem that the decision raises—but that the court does not address—is how policyholders and insurers "will work out the duty to cooperate" under CGL policies. The parameters of that duty "under these circumstances are hard to envision," he said.

"Will the insurers insist on simply being kept informed? Will they want a prior right of approval? Will they take over the remediation effort by themselves? I suspect issues like this will be considered on remand and will torment most policyholders and insurers called upon to address circumstances like this in the future," he said.

But David P. Rosenblatt of Burns & Levinson does not believe the case sounds the pollution coverage "death knell" for insurers in Washington or elsewhere. Insurers still can raise exclusions like the owned property exclusion, which denies coverage for pollution cleanups on the policyholder's property. The Boston law firm represents both insurers and PRPs

Continued on next page

States

Continued from page 3

Velella, R-Bronx and Westchester County, has asked the governor to prohibit state insurance regulators from spending any money on NAIC expenses following the NAIC's revocation of the state's accreditation because legislators failed to pass two required model laws (*BI*, March 14).

Some Texas legislators say they will not pass any more NAIC model laws until they receive an explanation of why the bills must be enacted exactly as worded to conform with the NAIC models, Rep. Counts said.

Texas legislators were discouraged when the NAIC threatened to withdraw the state's accreditation "over a very minute matter," he explained. "There was absolutely no flexibility. It was, 'This is it.' "

The NAIC informed Texas Insurance Commissioner J. Robert Hunter that the state's accreditation was at risk because a Texas law regarding payment of extraordinary dividends by insurers is different from the NAIC standard, due to "an inadvertent error" in the last session of the Texas Legislature.

Because the Legislature meets in odd-numbered years, the law cannot be changed until 1995. Efforts to change it in 1993 were unsuccessful. At its spring meeting, though, an NAIC subcommittee voted to give Texas until May 1, 1995, to adopt legislation that would bring its laws in line with NAIC requirements (*BI*, March 14; Feb. 21).

Mr. Foster cited that compromise as an example of how the NAIC is becoming more flexible regarding compliance with its accreditation standards.

"There is no question that nothing is better for the industry than uniformity in solvency oversight," acknowledged H. Peter Hudson, chairman, president and chief executive officer of Monroe Guaranty Insurance Co. in Carmel, Ind. Mr. Hudson is a former insurance commissioner of Indiana and past president of the NAIC.

However, he is frustrated with state regulators' rigidity in requiring an insurer to obtain a license to write even "incidental" business in a state. As an example, he cited a client who needs to also cover a single employee, such as a salesperson, located in an adjoining state.

The licensing process just to cover that lone individual can take years, in which time the business is long gone, he said.

"Some days I am ready for federal regulation," Mr. Hudson said. "I might have to cancel a policy midterm because another state won't recognize me for an incidental exposure. And then I get my own commissioner mad at me" for canceling the coverage.

Interstate compacts, rather than federal regulation, may be a solution to that problem, he suggested. These essentially are agreements between at least two states to enact the same legislation. There currently are proposals under consideration for a compact on interstate receiverships (see story, page 2).

"The NAIC has moved regulation in the right direction substantially," said C. Donald Ainsworth, executive vp of Safety National Casualty Corp. in St. Louis. "The worst thing that could happen to the insurance-buying public is federal regulation."

States must also acknowledge, though, that federal oversight is more appropriate in some circumstances, such as the flood insurance program and a pending proposal for a federal catastrophe reinsurance program, he said.

"There needs to be a dialogue between the NAIC and congressional leaders to identify areas where the states need congressional help," said Mr. Ainsworth, suggesting Superfund, product liability and tort reform as logical areas for cooperation.

The future of insurance regulation remains murky, said Jay Angoff, director of the Missouri Department of Insurance.

For years, "the industry has assumed it was getting a better deal at the state level. Now it's not quite sure. Current trends are it might be better off with federal regulation."

Despite some complaints with the NAIC, state legislators are also interested in maintaining oversight of insurance at the state level, Rep. Counts said.

"We can do a better job locally for companies than someone in Washington," he contended.

The NAIC has also sought closer ties with the National Conference of Insurance Legislators, an organization of state legislators.

"It would be to our benefit to reach out more to NCOIL," Mr. Foster said. "The last thing we want to do is adopt a model act that will not be embraced by legislators."

The accreditation process, in fact, has breathed new life into NCOIL, he said.

Rep. Counts quipped that the reason for NCOIL's added activity is that "we've never been run over by a train before."

Kathryn J. McIntyre, vp, publisher and editorial director of *Business Insurance*, moderated the panel. BI

Trust fund needed in Superfund reform, says NETF director

By SARA MARLEY

NEW ORLEANS—The establishment of an environmental trust fund funded by a broad-based tax on U.S. business should be part of legislation reauthorizing Superfund, says the head of an insurer-supported group.

The trust fund approach is appropriate because most Superfund sites—and the insurance policies being called on to help clean them up—are decades old, said Jan Edelstein, director of the insurer-backed National Environment Trust Fund Project in Washington. The NETF was created by American International Group Inc. Chairman Maurice R. Greenberg.

Under the current system, most money is being consumed by transaction costs, rather than cleanups.

"We want to get the EPA out of the fund-raising business and into the cleanup business," she said.

"Right now the EPA operates from a blank-check mentality. They have the (potentially responsible party's) checkbook and, indirectly, some of your checkbooks," Ms. Edelstein told insurance company executives gathered at last week's annual meeting of the Alliance of American Insurers.

"By creating a global budget for Superfund through a trust fund, and then holding the EPA and the states accountable for how much cleanup we get out of this trust fund, we should finally provide some incentives for cost-effective remedies," she said.

Unfortunately, according to Ms. Edelstein, that's not the approach taken in pending Superfund reform legislation. The compromise bill, H.R. 3800, approved by the House Energy and Commerce Committee earlier this month, would create an "environmental insurance resolution fund" designed to reduce coverage litigation over hazardous waste cleanup. The fund would raise as much as $8.1 billion over 10 years through taxes on property/casualty insurers (*BI*, May 16; May 9.)

However, Ms. Edelstein noted that the mechanism to reduce coverage litigation would be optional; a policyholder could still sue its insurer if the policyholder "chose not to buy in."

The bill also would retain Superfund's current system of retroactive and joint and several liability, which Ms. Edelstein's group also does not support.

The Risk & Insurance Management Society Inc. opposes the EIRF because the fund would interpret the contracts between insurers and policyholders, said David B. Kuhnke, vice-chairman of RIMS environmental committee.

"We simply do not believe the federal government should be defining what was covered in a contract written between us and you," said Mr. Kuhnke, who is also director of risk management and environmental compliance at Treadwell & Rollo Inc. in New Britain, Conn.

"We believe it's against public policy to have the government intervene in private party disputes. RIMS recognizes that (insurers) have as much of a problem as we do. However, we want to make sure there is some valid negotiation between policyholders and their insurers so that there is a reasonable compromise that can satisfy all of our concerns."

RIMS also proposes replacing joint and several liability with proportional liability shared by identified and viable parties. Unallocated liability should be paid by a broadly based tax mechanism like, for example, a premium tax (*BI*, April 25).

Another speaker, Kelly Quirke of Greenpeace's energy and atmosphere campaign in San Francisco, urged the insurance industry to help reduce emissions causing global warming.

Wallace R. Hanson, president of the Property Loss Research Bureau in Schaumburg, Ill., moderated the session. BI

Pollution

Continued from previous page

but not in environmental coverage lawsuits.

For Ms. Hawkins, Weyerhaeuser's risk manager, the case validates her attempt to initiate a kinder, gentler coverage lawsuit. Referring to the 30 insurers that settled the case with Weyerhaeuser, she said, "I think it definitely had an impact on their willingness to come forward and settle."

But she said she was particularly frustrated in trying to reach a settlement with the Lloyd's underwriters and the London market. The settlement with the other insurers was facilitated because of the willingness of insurance company officials to meet with Weyerhaeuser officials, Ms. Hawkins explained. Lloyd's underwriters and the London market companies were not accommodating, though, she added.

A Lloyd's spokesman was unable to comment.

The attorney for the defendant insurers, Frankie Crain of Williams, Kastner & Gibbs in Seattle, did not return phone calls.

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Weyerhaeuser Co. vs. Aetna Casualty & Surety Co. et al., Washington Supreme Court; No. 61000-2.

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Senate delays markup on Superfund reform but other action seen

WASHINGTON—The Senate Superfund, Recycling and Solid Waste Management Subcommittee will not mark up its Superfund reform bill until June 14—three weeks later than planned.

Subcommittee Chairman Frank Lautenberg, D-N.J., made the announcement last Tuesday after meeting with members of his panel.

Rep. Lautenberg said he was "optimistic that we have removed roadblocks to moving ahead" with the bill, which has the backing of the Clinton administration. He added, however, that the "crunch of Senate business makes it imperative that we mark up Superfund as soon as possible."

The panel began working on Superfund May 19, and Sen. Lautenberg expressed confidence that a markup would occur during the week of May 23. But the panel's first hearing on the matter revealed considerable Republican opposition to the Lautenberg bill, which is nearly identical to one that had sailed through the House Energy and Commerce Committee May 18 (*BI*, May 23).

In fact, most of the panel's GOP members are co-sponsors of a competing bill that would repeal Superfund's system of retroactive liability, which remains intact in the administration proposal.

While senators postponed action on Superfund, the Treasury Department kept the focus on reauthorization alive in the House by sending the Ways and Means Committee a proposal for funding the Environmental Insurance Resolution Fund, which is opposed by most insurer groups (see story, page 28).

The Treasury proposal would tax property/casualty insurers retrospectively on total commercial premiums collected between 1971 and 1985 at a rate of 0.2% for two years and 0.27% for the next three, raising $2.17 billion over five years. An earlier proposal would have raised $1.75 billion over that period of time through a 0.19% retroactive tax.

The Senate panel's first hearing revealed considerable Republican opposition to the Lautenberg bill.

The proposal also calls for a prospective tax of 0.34% or 0.44%, depending on when the policy is issued, on premiums collected after Superfund is reauthorized to raise an additional $930 million. The administration had previously sought a tax of 0.30% to raise $750 million.

Meanwhile, opposition to the administration's proposal continues to grow. On Monday, a group of businesses, civic groups and trade associations, including the Risk & Insurance Management Society Inc., wrote to Sen. Lautenberg, urging him not to proceed with the current bill. The signatories wrote that the bill "falls short of real comprehensive reform" and "should not pass in its current form."

—By Mark A. Hofmann

Comp law does not bar employee suit for false imprisonment: California

By LOUISE KERTESZ

SAN FRANCISCO—California workers compensation law does not bar an employee who allegedly was falsely imprisoned by her employer from suing that employer in a civil action, the state Supreme Court has ruled.

False imprisonment would not be within the domain of the workers compensation authorities because such actions are outside the proper role of employers, the court ruled.

Julie Fermino, a sales clerk at a Fedco Inc. department store in Los Angeles, claims she was prevented from leaving a room for an hour while two store managers and two security agents interrogated her after she was accused of stealing $4.95 while making a sale.

In demanding that Ms. Fermino confess, a security agent said that a customer and an employee, waiting in an adjoining room, had witnessed the theft, the clerk charges.

"(He) told her that the interrogation could be handled in two ways: the 'Fedco way' or the 'system way,'" she charges. "The 'Fedco way' was to award points each time she denied her guilt. When 14 points were reached, she would be handled the 'system' way—that is, handed over to the police.

"After each of plaintiff's repeated and vehement denials, the security agent said 'one point.' The loss prevention manager 'hurled profanities' and demanded that (Ms.) Fermino confess.

"(Ms.) Fermino's repeated requests to leave the room and to call her mother were denied," according to the court papers. When she rose from her chair to leave, a security guard stepped in front of the door and raised his hand to stop her. She broke into tears. Eventually, her interrogators said no employee or customer was waiting to testify against her, that they believed her and that she could leave, court papers say.

Ms. Fermino sued in Los Angeles Superior Court for false imprisonment and intentional and negligent infliction of emotional distress. Fedco, based in Santa Fe Springs, Calif., protested on the grounds that Ms. Fermino's suit was barred by the exclusive remedy doctrine, which basically bars injured employees from suing their employer in return for workers comp benefits.

Fedco also argued "that its alleged false imprisonment was motivated by legitimate employer objectives" and was reasonable.

The trial court dismissed Ms. Fermino's suit, which was upheld last year by the Court of Appeal in Los Angeles.

But the state Supreme Court unanimously ruled May 12 that "false imprisonment is, by definition, an unreasonable and indeed criminal confinement. It is the close cousin of assault, which was... considered beyond the compensation bargain by most California courts," as subsequent law has recognized.

"When an employer forcibly and criminally deprives an employee of her liberty, even as a means to otherwise legitimate ends, it steps outside its 'proper role,' whether it uses assault and battery to enforce that false imprisonment, or employs some other coercive stratagem," the high court ruled.

"We conclude that her suit would not be barred, because an employer that falsely imprisons its employee has stepped outside its proper role, and an injury resulting therefrom is beyond the scope of what we have termed the 'compensation bargain.'"

Ms. Fermino's lawsuit, which seeks $200,000 for her pain and suffering and unspecified punitive damages, will now proceed in Los Angeles Superior Court, said her attorney, Robert M. Ball of Beverly Hills.

"I feel very comfortable that Fedco hasn't done anything wrong," said Nathaniel Lord, the company's risk manager.

For the Record

Utility not liable in cancer claim

DOUGLASVILLE, Ga.—A 41-year-old Georgia woman and her husband will appeal a Douglas County, Ga., jury verdict that high-tension wires did not cause her cancer, their attorney says.

The Superior Court jury's May 11 verdict ended a month-long trial that was watched closely by lawyers and utility officials nationwide. Those observers believed that if Nancy Jean and Larry Jordan were successful in their case against Georgia Power Co. and Oglethorpe Power Corp., utilities nationwide could be ordered to pay billions of dollars in judgments.

The plaintiffs alleged, based on published studies, that the electromagnetic field surrounding a power line located 50 feet from their bedroom could have caused Ms. Jordan's cancer. The utility companies said the studies did not demonstrate a statistical link between the plaintiff's cancer and the power line.

Robert Shields, the Jordan's lead attorney and a partner with Doffermyre, Shields, Canfield & Knowles in Douglasville, Ga., said the appeal to the Georgia Court of Appeals likely will claim that the trial court judge excluded key evidence.

Blimp owner sues aviation insurer

EUGENE, Ore.—The owner of a promotional blimp that crashed on July 4, 1993, in New York is suing its London insurer for refusing to pay a $3.7 million claim for a total loss.

Eugene-based US/TLA Inc., which built and operated the blimp, and the blimp's owner, Japanese company Nakano Lines Ltd., filed suit May 10 in Circuit Court in Lane County, Oregon, against British Aviation Insurance Group. The suit claims that the insurer has failed to honor the terms of a $3.7 million hull policy.

The blimp was damaged when a piece of the propeller broke off and pierced the blimp's surface, causing it to deflate. Neither of the two pilots on board were injured.

"We believe the blimp is totaled. Beyond maybe $150,000 in salvage value, it's 100% damaged," said William G. Wheatley, an attorney with Jaqua & Wheatley in Eugene, which represents the plaintiffs. He said BAIG is contending that the blimp, which featured a unique visual screen on its side that was showing a Pizza Hut advertisement when it crashed, is repairable.

"Presumably, if this blimp had crashed in the ocean and sunk, they'd pay the full value of the policy. Now there's a dispute over how badly it's damaged," Mr. Wheatley said.

BAIG declined to comment.

HMO information claim pre-empted by ERISA

CHICAGO—State anti-deception laws do not apply to employee benefit plan documents regulated by the Employee Retirement Income Security Act, a federal court of appeals has ruled.

Vernita Anderson, who signed up for the Humana-Michael Reese HMO as one of the health plan options offered by her employer, filed suit in state court claiming the HMO and its sponsor provided fraudulent information by not disclosing information about the HMO's finance and delivery structures. The suit alleged violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.

The district court held that the action was pre-empted by ERISA and therefore should be removed to federal court.

In its May 11 decision, a three-judge panel for the 7th U.S. Circuit Court of Appeals held that "the claim is both pre-empted and properly removed" to federal court. "An effort (which this suit is) to control the information provided to employees choosing benefits provided by an employer's plan is squarely within the pre-emption clause" of ERISA.

Claims services for network

SAN FRANCISCO—StellarNet Inc. has signed an agreement with Dallas-based EDS to provide electronic claims transaction services to the California Health Information Network.

The network was established last year by four of California's leading managed care plans—Health Net, TakeCare, Blue Shield and PruCare of California—to use computer linkages to speed transactions between health plan payers and providers.

With the addition of Blue Cross of California last month, the network participants' combined health plan enrollment totals 10 million, or nearly one-third of the California health care marketplace.

StellarNet is a private electronic communications company based in San Francisco.

California Assembly passes comp bills

SACRAMENTO, Calif.—The California Assembly unanimously passed two workers compensation bills earlier this month.

A.B. 3075, sponsored by Assemblyman Jim Costa, D-Hanford, would authorize the introduction of large deductible workers compensation policies. In addition, the bill would set certain parameters that such policies would be required to meet before being offered to California businesses.

The bill will be considered by the Senate Industrial Relations Committee in June.

"A.B. 3075 would permit insurers to offer any size deductible and apply them on an individual or aggregate basis, or even apply them specifically to certain benefits," said John Norwood, lobbyist for the Insurance Agents & Brokers Legislative Council in Sacramento. Some 35 states allow such policies, the ABL said.

Another measure, A.B. 327, sponsored by Assemblyman Joe Baca, D-San Bernardino, would repeal the current law requiring public entities to purchase their workers comp insurance from the State Compensation Insurance Fund.

The measure will now go to the Senate Industrial Relations Committee.

Earlier this month, the Assembly Insurance Committee rejected a measure, A.B. 3445, sponsored by Assemblyman Burt Margolin, D-Los Angeles, that would have repealed several existing statutes that limit the application of Proposition 103. For example, the bill would have repealed laws that, among other things, allow insurers to use advisory organization manuals, deem rate change filings to be approved if the commissioner doesn't act within 180 days, and exempt surety and credit life insurers from Prop. 103.

Information in brief

Under a recent **Pension Benefit Guaranty Corp.** proposal, federal contractors that terminate underfunded pension plans would have funds owed to them by the federal government reduced or offset by their debts to the PBGC... **Blue Cross & Blue Shield of the National Capital Area** and its subsidiaries posted a net gain of $1.7 million during the first quarter, compared with a net loss of $2.3 million a year earlier. The plan was one of several examined by the Senate last year during a probe of alleged mismanagement of Blues plans (*BI*, Feb. 1, 1993)... The Louisiana Insurance Department has imposed $285,000 in fines on Gerald E. Thornton and two companies he used to write $1.6 million in **bogus trucking insurance** in three states. The two companies were Kelmer Court Ltd. of the Turks & Caicos Islands and First Premium Services, a premium-finance company. Mr. Thornton is serving a 3½-year prison sentence in the Turks & Caicos for the fraud... A Missouri court has ordered Kansas City, Mo.-based **M&M Management Corp.**, M&M consultant Ferrell Travis Riley Sr. and several others to turn over records of their insurance transactions to the Missouri Insurance Department. M&M—which is unrelated to Marsh & McLennan Cos. Inc.—and Mr. Riley were involved last year in efforts to place property coverage for Chase Manhattan Corp. with two offshore insurance companes (*BI*, Jan. 31). BI

Breyer

Continued from page 3

with Palmer & Dodge in Boston who has argued several antitrust cases before Judge Breyer. "He doesn't bring to the table any hidden agenda." And, "I expect him to take a leadership role in antitrust cases involving the insurance industry because he understands the issues."

Although Judge Breyer has generally been sympathetic to defendants in antitrust cases, a former clerk said it would be difficult to predict how he might rule in a case like the insurance antitrust case the court ruled on last year.

"He is sensitive to the context" of each case that he reviews, explained Dan Bussel, who is now a law professor at the University of California Law School in Los Angeles.

"Stephen Breyer would gather all the information relative to the problem, including the legislative histories, (and) the impact on the industry involved" before ruling, Mr. Bussel said.

"He also would be aware of the practical implications of construing the statutes" in various ways, he added.

That approach could bring him into conflict with Justice Antonin Scalia, a critic of basing interpretations on legislative records beyond the language of statutes themselves.

While Justice Scalia "doesn't care what the legislature intended or the impact of the decision will be, Judge Breyer takes a sensible approach and looks at the secondary sources of information relative to the issue at hand," Mr. Bussel said.

Indeed, in a June 1992 interview at a judicial conference, Judge Breyer described his role this way: "A judge decides the case before him. You take the facts, you look at the law, and you try to work it through to the right result."

Judge Breyer's antitrust experience could prove relevant to health care decisions in coming years. One major component of President Clinton's health reform proposal is large purchasing groups that would use their buying clout to force down prices. Earlier this year, the Justice Department concluded that a large purchasing group arrangement in San Francisco did not violate the Sherman Act (*BI*, Feb. 28).

In fact, Judge Breyer already has ruled on a similar issue in *James P. Kartell vs. Blue Cross & Blue Shield of Massachusetts Inc.*

In that 1984 case, Massachusetts doctors had sued Blue Shield over a ban on balance billing, the practice of doctors billing patients for the difference between their fees and the reimbursements from an insurer.

A district court had held that the practice constituted an unreasonable restraint of trade, but the 1st Circuit reversed that ruling, finding that the insurer was simply a buyer free to set prices with sellers.

Writing for the majority, Judge Breyer said that "Blue Shield seems simply to be acting as every rational enterprise does, i.e. to get the best deal possible" and that "a legitimate buyer is entitled to use its market power to keep prices down."

Looking to the legislative history of federal antitrust law, he wrote that "the Congress that enacted the Sherman Act (in 1890) saw it as a way of protecting consumers against prices that were too high, not too low. . . .These facts suggest that courts at least should be cautious—reluctant to condemn too speedily—an arrangement that, on its face, appears to bring low-price benefits to the consumer."

"Judge Breyer is someone who remembers the consumer in antitrust litigation," observed Akhil R. Amar, a Yale Law School professor and former Breyer clerk.

However, unlike some other interpreters of antitrust law, Judge Breyer doesn't define "consumer" too narrowly, according to Mr. Dailey of BC/BS of Massachusetts. "He's not someone who looks askance at large purchasers," he said.

"In his decision he says that size is not an evil under antitrust laws," an indication that he believes "antitrust laws condemn abuse of size, not size itself," Mr. Dailey theorized.

But while Judge Breyer may not stand in the way of any attempt to increase competition in the U.S. health care market, it is uncertain how he would rule on whether the Employee Retiree Income Security Act of 1974 exempts employers from a federal benefit mandate.

Still, Judge Breyer has a reputation of questioning the value of mounting government regulation.

In his book, "Breaking the Vicious Cycle," published last year by Harvard University Press, the judge wrote that efforts to regulate small risks in the current system "are plagued by serious problems of tunnel vision, random agenda selection and inconsistency."

He suggests that regulations—particularly those for environmental compliance—be "rationalized" through a "cost/benefit analysis" conducted by "a small, centralized administrative group" that is free from the political pressures that beset Congress and federal agencies.

But even though his non-legal writings suggest that he advocates the use of cost-benefit analysis in enforcing environmental regulations, that stance is not reflected in his written judicial opinions, said Bill Lahey, a partner with Dodge & Phelps in Boston.

Still, "his willingness to challenge the 'sacred cows' (such as environmental regulation) is encouraging for business," Mr. Lahey said. BI

McCarran

Continued from page 2

policy forms; phase out McCarran protection for collective trending of data by industry-affiliated organizations but "presume" that such activities by non-affiliated sources do not violate federal antitrust laws; and allow insurers to agree to collect and disseminate historical loss data.

The proposal would also: provide a "state action defense" for insurers, which means that some joint activities would be exempt from federal antitrust law if those activities were regulated by the state; allow insurers to conduct joint fire hazard inspections; and create "safe harbors" for residual market pools and industry pools already in existence by a certain date.

Workers compensation insurers also would be given a safe harbor under the new proposal. They would be allowed to jointly compare one employer's occupational injury and illness experience to other employers' and to modify rates for an individual employer as long as the employer would have a reasonable opportunity to appeal that rate to a governmental entity.

The safe harbor for existing pools was also rewritten to cover explicitly insurance pools for "boilers, machinery and pressure vessels" and grain elevators and feed mills. The bill would set April 30, 1994, as the cutoff date for creating a pool that could enjoy this safe harbor status.

The new bill also would clarify the safe harbor for common policy forms.

Insurers still would not be allowed to impose common policy form requirements. But the mere fact that two or more insurers use the same forms "would not be sufficient to show adherence" to a standard form and, thus, violate antitrust law, said Mr. Pratt.

In addition, the new version of the bill would set the phaseout of the existing McCarran-Ferguson safe harbor for trending activities by industry-controlled organizations at three years after the law is enacted. It also would provide clearer guidance on the Justice Department's responsibilities in providing review letters on pooling arrangements.

The new H.R. 9 would not, however, provide an explicit safe harbor for the rate manuals used by insurance agents to compare prices and coverages offered by different insurers.

Mr. Pratt said that a "large part of what would comprise a rate manual" currently is protected with safe harbors and noted that the Independent Insurance Agents of America has been meeting with Rep. Brooks to resolve the matter.

"We have made significant progress. Negotiations are, however, continuing," said Robert Rusbuldt, vp-federal affairs for the IIAA. "We want (a rate manual safe harbor) made explicit."

Rep. Brooks called the AIA's support of an amended H.R. 9 "a turning point in the drive for reform." He called McCarran-Ferguson a "barrier to competition" and "an invitation to price-fixing arrangements."

The Texas lawmaker said he intends "to move the legislation promptly through the Judiciary Committee, so we can proceed to the floor with the bill as either a stand-alone or an amendment to a larger vehicle, such as the health care reform bill" when Congress returns from its Memorial Day recess on June 7.

And, it appears the Senate may get involved in the McCarran debate, as well.

An aide to Sen. Howard Metzenbaum, D-Ohio, noted her boss and Rep. Brooks were "simpatico" on McCarran-Ferguson. The senator is studying the Brooks bill, she said, adding she was "very optimistic" that McCarran-Ferguson would be amended by the Senate as well.

She cautioned, however, that "we have no plans to add it to the health care reform bill."

Not all voices praised the new measure, however.

Amending McCarran-Ferguson would grant insurers "at best a temporary lull" before consumer groups began attacking the idea of any safe harbors, the NAII's Mr. Ramirez said.

"There's no dishonor in defending a system that has worked so well for so many years for both the consumer and the industry," he said.

Mr. Ramirez disagreed that McCarran-Ferguson reform could be approved by Congress this year on its own. "As a stand-alone measure, this has very little chance of success in this Congress." he said.

"It's interesting they tried to address the issue of workers comp, but all they've done is create a 'safe harbor' mined with uncertainty," said a spokeswoman for the Alliance of American Insurers, which also opposes changes to McCarran-Ferguson.

"Fortunately, due to time constraints and a full plate of major legislative proposals such as health care reform, the chances of this proposal being passed out of Congress this year are slim," said David M. Farmer, the Alliance's senior vp-federal affairs. BI

Updates

Skandia eyes runoff reinsurer

Continued from page 2

Managing the runoff of its own U.S. reinsurance operations last year was profitable for Skandia, and the acquisition would be "consistent with our strategy in reinsurance, which is to reduce the risk."

Talks on buying Trygg-Hansa Reinsurance Corp. began earlier this month and it is too early to speculate on the outcome, he said.

However, asked whether Skandia would acquire Trygg-Hansa Reinsurance Corp.'s liabilities, Mr. Bergenstjerna reiterated, "We will not put more risk onto the balance sheet."

Trygg-Hansa announced last year that it would stop writing international reinsurance.

Setback for Missouri comp law

JEFFERSON CITY, Mo.—Both the Missouri Department of Insurance and the state Legislature overstepped their authority last year in setting up a plan to depopulate the state's residual workers compensation insurance market pool, a Cole County Circuit Court has ruled.

In a ruling that regulators plan to appeal, the court found that the Assembly's delegation of rulemaking authority was unconstitutional and that procedures for legislative review were ineffective.

The 1993 law, S.B. 251, authorized the department to issue a regulation to encourage Missouri companies that met specific criteria to leave the state's residual market by requiring insurers to sell them voluntary market coverage, which is typically less expensive. The rule was to take effect Jan. 1 but was blocked by an insurance industry lawsuit last December (*BI*, Dec. 20, 1993).

Insurers argued that the plan would replace "sound business judgment" with "politically based government standards," said Fred McGarvey, a spokesman for the American Insurance Assn. as well as the group of insurers that filed the suit. Insurers seek a mutually acceptable means of depopulating the pool and addressing core system problems like lawsuits and rising medical costs, he said.

The outcome will not increase rates for coverage from the pool, though companies remaining there after the plan went into effect would have faced a 16.8% increase.

Because a constitutional issue is involved, the department will appeal directly to the Missouri Supreme Court, which is expected to hear the case, a department spokesman said.

Briefly noted

A group of 52 **U.S. reinsurers' average combined ratio** deterioriated to 113.6% during the first quarter of 1994 from 108% during the same period in 1993, according to the Reinsurance Assn. of America. Net written premiums for the group, however, increased by nearly 17% to $3.7 billion during the first quarter from $3.2 billion during the same period a year ago. . . .**Alexander & Alexander Services Inc.** said it has resolved for an undisclosed amount a long-running tax dispute with the Internal Revenue Service stemming from its 1982 Alexander Howden acquisition. A&A said the settlement is within reserves previously established by the company. . . .**Great-West Life Assurance Co.**, a unit of Montreal-based Power Financial Corp., and Paris-based AXA S.A., will explore the possibility of establishing a joint-venture insurer in China that would write life and health insurance, a Power spokesman said. He and an AXA spokeswoman said press reports that the two companies are definitely joining forces in China are "premature and not entirely true." . . .Louisville, Ky.-based **Columbia/HCA Healthcare Corp.**, the nation's largest for-profit hospital chain, will acquire Medical Care America Inc. of Dallas, the leading operator of outpatient surgery centers, in a stock deal valued at $858.4 million. . . .**The Blue Cross & Blue Shield plans of Iowa and Illinois** called off a proposed merger last week, citing differences in "corporate culture, structure and style." . . .Leo W. Fraser Jr., a state senator from New Hampshire, will become president of the **National Conference of Insurance Legislators** June 1. He succeeds Missouri state Sen. Dennis W. Smith. . . .The U.S. Supreme Court refused to hear an appeal by the parents of a teen-ager killed in a pickup truck accident who claimed a Georgia statute requiring them to give 75% of their **$101 million punitive damage award** to the state was unconstitutional. General Motors Corp. is appealing the award (*BI*, Dec. 6, 1993). . . .Thomas C. Sutton, chairman and CEO of Pacific Mutual Insurance Co. of Newport Beach, Calif., has been elected chairman of the **Health Insurance Assn. of America**. . . .Blue Cross of California will make an additional $100 million in health-related charitable contributions this year in connection with the 1993 restructuring and creation of its for-profit unit, **Wellpoint Health Networks Inc.** Blue Cross also will file "a comprehensive plan for expanding its public benefit obligations by Sept. 15, 1994," it said in a statement (*BI*, May 16). . . .Fund American Cos. is not liable to former Fireman's Fund Insurance Co. Chief Executive **William M. McCormick** for losses he allegedly suffered when he sold his stock in the holding company shortly before it sold Fireman's Fund in 1990, substantially increasing the stock's value. . . .The Health Insurance Assn. of America is shelving its infamous **"Harry and Louise" ads** that attack the Clinton health plan. A spokeswoman said the HIAA is pulling the commercials because "the discussion about health reform is now centered in (congressional) committees and we felt it's not the appropriate time to be running ads." . . .Florida Gov. Lawton Chiles signed a bill last week that allows the state to sue **companies whose products cause illnesses** for which Medicaid pays (*BI*, May 9). Associated Industries of Florida, a business trade group that urged Gov. Chiles to veto the bill, will lobby to have the law repealed during a special session on health care beginning June 7. . . .**Lexington Insurance Co.** is opening a branch office in Bermuda to write excess liability business. The American International Group Inc. unit will offer policy limits of $25 million with an attachment point of $25 million. The coverage falls just under that offered by Starr Excess Liability Insurance Co., another AIG unit, which writes limits of $100 million excess of $50 million.

Moody's

Continued from page 2

portfolio.

- Credit risk, including unrecoverable reinsurance.
- Underwriting risk, reflecting the risk of errors in pricing and reserves.
- Off-balance sheet risk, such as the risk created by excessive growth.

The model law also creates a risk-based capital ratio that compares an insurance company's surplus to its "authorized control level" of capital, which is defined as a percentage of the insurer's minimum net capital requirement.

Insurance companies falling below a 2-to-1 ratio of surplus to authorized control-level capital trigger different levels of regulatory attention, depending on how far below the threshold they fall. Levels of regulatory attention range from requiring an insurer to submit a corrective business plan to rehabilitation or liquidation.

Using 1992 financial data for 1,570 property/casualty insurers, Moody's estimated that about 5% of the companies would fall below the threshold for regulatory attention in 1994, a slightly larger number than the NAIC had predicted based on 1991 data from another test group.

In addition, the number falling below the threshold will grow to nearly 8% of the 1,570 companies by 1996, when the risk-based capital standards become tougher, Moody's predicted.

The majority of these insurance companies will trigger milder forms of regulatory action—such as a mandatory corrective business plan—rather than rehabilitation or liquidation, the study found.

Moody's also noted that the insurers that fall below the threshold in 1994 represent a minimal percentage of industry surplus. The rating agency also cautioned that its estimates of companies triggering regulatory scrutiny may be overstated because many will manage their way out of trouble or receive capital infusions from parent companies or affiliates.

Meanwhile, if insurers are to maintain their 1994 capital levels as risk-based capital requirements tighten in 1995 and 1996, they will have to increase their statutory surplus at a rate about 25% higher than the normal rate of surplus growth, Moody's concluded.

Insurance company managers will thus take steps to obtain additional surplus rather than let their risk-based capital ratios deteriorate, especially since risk managers and brokers will likely use the ratios to assess insurers' financial strength, the study predicted.

Insurance holding companies that rely on dividends from their subsidiaries also will face conflicting pressures over whether to continue taking dividends that could damage the units' ratios and harm their competitive position in the market.

Insurance company managements likely will use a variety of methods to manipulate their risk-based capital ratios, Moody's predicted.

The greatest balance sheet benefits, for example, will come from manipulating reserves, either by reducing prior-year reserves or underreserving on current-year business, the study noted.

Many insurers will avoid triggering regulatory scrutiny by managing their way out of trouble or by boosting capital, Moody's says.

Insurance companies with large books of long-tail liability business—like asbestos or pollution exposures—would see the biggest gains from reserve manipulation, even though these are precisely the companies that need the most capital, Moody's pointed out.

The tightening rules could also increase the use of "double leverage" by holding companies: In these cases, a parent company takes on debt to fund an equity investment in an insurance unit to boost the unit's apparent capital level.

However, double leverage can harm the parent and subsidiary by increasing the parent's cash-flow needs and making it more dependent on dividends from the subsidiary.

Moody's predicted an increase in the use of surplus notes, in which an insurance subsidiary agrees to pay a portion of its excess surplus to its parent in exchange for a capital infusion.

The risk-based capital rules could also result in changes in insurers' reinsurance programs, since the rules impose a 10% capital charge on reinsurance recoverables from non-affiliated reinsurers and from affiliated reinsurers not based in the United States.

Insurers that have tried to smooth their earnings by building extensive reinsurance programs with low attachment points could face sizable charges on their relatively high volume of recoverables, the study explained.

These insurance companies may reassess their programs, deciding to retain more working-layer exposures and to buy only high excess and catastrophe reinsurance that does not generate excessive amounts of recoverables.

However, this will also mean greater earnings volatility for ceding insurers, which could produce lower ratings from Moody's and other agencies.

The rules also may lead insurers to shift their mix of business away from lines like long-tail liability, which require the highest capital levels, to property, private passenger auto and other less capital-intensive lines, the study predicted.

Insurance companies can also be expected to raise prices in capital-intensive lines like long-tail liability coverage.

The banking industry, which adopted risk-based capital standards in 1990, similarly shifted loan portfolios away from commercial and industrial loans to less capital-intensive residential loans, Moody's noted.

Risk-based capital rules will also speed up consolidation and specialization in the property/casualty industry, the study predicted.

Large insurers with healthy risk-based capital ratios will have more flexibility in pricing and will be able to focus on new product development. Those with low ratios, meanwhile, will be preoccupied with improving their standing and will be forced to shrink their operations by pulling out of non-core businesses and markets, Moody's concluded.

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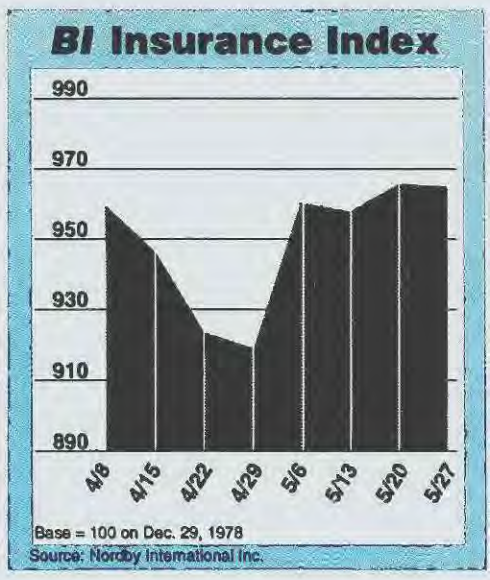
Copies of the study, "Risk-Based Capital Standards for Property/Casualty Insurers: Potential Impact on Creditworthiness," may be obtained by writing to Moody's Investors Service, Corporate Press Office, 99 Church St., Second Floor, New York, N.Y. 10007.



Insurance stocks fell slightly last week, as the *Business Insurance* Index slipped 0.6 points to 965.2 May 27 from 965.8 on May 20. Advancing issues for the week were led by: USLICO Corp., up 12.3%; US Facilities Corp., up 9.1%; and EMC Insurance Group Inc., up 8.8%. Declining issues followed: Ohio Casualty Corp., down 7.8%; Guaranty National Corp., down 7.6%; and Phoenix Re Corp., down 5.9%. The most active issue was U.S. Healthcare, 9.2 million shares traded. The *BI* Index fell 0.1%; the Dow Jones 30 Industrials lost 0.2%; the NYSE Composite gained 0.5%; and the Standard & Poor's 500 rose 0.5%.

British Issues

May 26 Companies	Price pence	P/E	Div. pence	Yield %	1 week High—Low pence	pence
Comml Union	540	17.2	31.0	5.7	563—540	
Genl Accident	540	10.8	34.4	6.4	568—540	
Gdn Royal Exch	165	10.7	9.5	5.7	168—165	
Royal	250	10.9	9.4	3.8	265—250	
Sun Alliance	301	13.4	18.4	6.1	318—301	
Brokers						
Bradstock	114	12.8	6.9	6.0	115—114	
CE Heath	374	14.4*	20.5	5.5	393—374	
Hogg Group	257	N/M	7.1	2.8	257—256	
JIB Group	179	15.7	9.4	5.3	182—179	
Lloyd Thmpson	234	15.8	8.4	3.6	240—234	
Lowndes Lmbrt	411	12.8*	16.8	4.6	412—411	
PWS Holdings	60	N/M	2.5	4.2	60—60	
Sedgwick Grp	178	19.7	7.5	4.2	190—178	
Steel Brl Jones	129	N/M	11.3	3.8	138—129	
Willis Corroon	170	15.6	8.3	4.9	184—169	

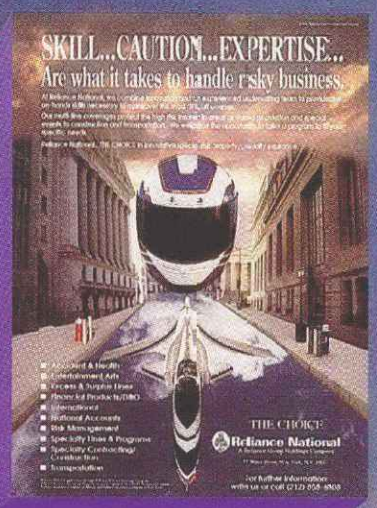
Source: Philip Olsen, London* Estimated; others actual 1993

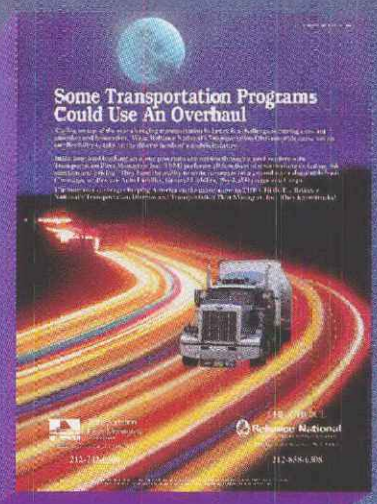
BI Industry Stock Report MAY 23, 1994, THROUGH MAY 27, 1994

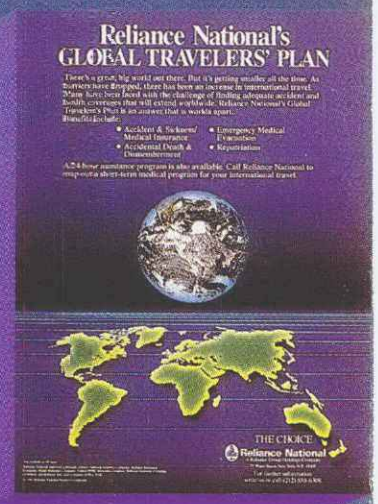
BROKERS		Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
Acordia Inc.	NYS	28.63	0.88	16.24	28.75	18.38	13	0.60	2.10	14	10.22	2.80
Alexander & Alexander	NYS	15.63	-8.70	-21.38	28.00	14.00	745	1.00	6.40	18	6.73	2.32
E.W. Blanch Holdings Inc.	NYS	20.13	-1.23	15.83	23.50	15.75	2	0.32	1.59	19	4.10	4.91
Gallagher Arthur J. & Co.	NYS	32.00	0.00	-10.49	37.13	28.13	24	0.88	2.75	15	7.52	4.26
Hilb, Rogal & Hamilton	NYS	12.25	-4.85	-6.67	15.13	11.13	70	0.48	3.92	19	4.51	2.72
Marsh & McLennan	NYS	87.00	0.00	6.91	91.88	77.00	328	2.68	3.08	18	16.76	5.19
Poe & Brown	OTC	20.00	0.00	11.11	20.75	16.88	8	0.40	2.00	16	3.02	6.62
BROKERS	AVERAGE		0.5	1.7					3.1	17		
INSURERS/REINSURERS												
ACE Ltd.	NYS	27.13	-4.82	-11.07	36.00	24.50	234	0.44	1.62	6	28.74	0.94
Acceptance Insurance Cos.	NYS	12.38	0.00	6.45	15.63	11.13	103	0.00	0.00	15	9.65	1.28
AEGON N.V.	NYS	53.88	-1.37	-1.60	58.50	43.25	22	2.94	5.46	10	34.71	1.55
Aetna Life & Casualty	NYS	53.88	-2.27	-10.58	66.25	49.75	712	2.76	5.12	-9	71.84	0.75
Allied Group Inc.	OTC	25.13	1.52	0.50	32.75	21.34	77	0.60	2.39	7	10.45	2.40
Allmerica Prop. & Casualty	NYS	15.38	-4.65	-28.63	22.16	15.00	118	0.16	1.04	8	56.97	0.27
Allstate Corp.	NYS	24.88	0.51	-16.39	34.25	22.63	1255	0.72	2.89	15	18.43	1.35
American General	NYS	27.13	3.83	-4.82	36.50	24.88	1491	1.16	4.28	22	22.09	1.23
American Heritage Life Ins.	NYS	18.00	4.35	-3.36	25.13	16.75	24	0.60	3.33	11	12.42	1.45
American Indemnity/Fin'l	OTC	11.75	-2.08	-9.62	16.25	11.00	18	0.24	2.04	4	16.18	0.73
American International	NYS	92.88	0.54	5.39	100.25	81.75	2736	0.40	0.43	15	45.25	2.05
American Re Corp.	NYS	33.50	1.52	18.58	37.50	23.50	167	0.00	0.00	18	14.80	2.26
Aon Corp.	NYS	33.13	-2.57	2.98	39.00	30.00	214	1.28	3.86	13	33.10	1.00
Argonaut Group	OTC	27.75	1.83	-9.02	35.50	26.25	65	1.16	4.18	8	27.65	1.00
AVEMCO Corp.	NYS	15.75	-0.79	-16.00	22.00	14.50	20	0.44	2.79	13	8.13	1.94
Baldwin & Lyons Inc.	OTC	14.50	3.57	-2.52	16.25	12.34	2	0.24	1.66	9	12.59	1.15
Berkley W.R. Corp.	OTC	37.75	-1.95	15.27	48.00	32.00	76	0.44	1.17	16	28.12	1.34
Berkshire Hathaway Inc.	NYS	16250.00	-0.91	-0.46	17800.00	14000.00	0	0.00	0.00	24	8115.28	2.00
Capital Re Corporation	NYS	20.00	0.00	-22.33	28.50	18.50	22	0.20	1.00	8	21.66	0.92
Capsure Holdings Corp.	NYS	15.38	3.36	13.89	19.38	12.75	39	0.00	0.00	15	13.08	1.18
Chubb Corp.	NYS	81.25	0.78	3.34	93.38	70.75	761	1.84	2.26	26	46.59	1.74
CIGNA Corp.	NYS	68.00	1.30	7.51	70.50	56.50	1018	3.04	4.47	16	78.23	0.87
CNA Financial Corp.	NYS	66.50	0.38	-15.56	96.75	62.50	120	0.00	0.00	-32	77.92	0.85
Continental Corp.	NYS	17.75	-3.40	-35.75	34.63	16.88	989	1.00	5.63	20	38.99	0.46
EMC Insurance Group Inc.	OTC	9.25	8.82	-2.63	10.50	8.50	61	0.52	5.62	13	N.A.	N.A.
Emphesys Financial Gr. Inc.	NYS	27.13	0.46	NA	28.25	21.25	217	0.60	2.21	6	N.A.	N.A.
EXEL Ltd.	NYS	42.25	-3.70	-6.11	49.38	39.88	288	1.20	2.84	6	33.81	1.25
Fremont General Corp.	NYS	24.00	-1.03	-0.52	28.75	21.00	101	0.76	3.17	7	23.40	1.03
Frontier Insurance Group	NYS	46.63	0.00	6.27	50.00	38.13	59	0.72	1.54	15	16.33	2.86
Gainsco Inc.	ASE	9.25	0.00	2.78	13.03	7.84	58	0.04	0.43	13	3.49	2.65
General Re Corp.	NYS	121.25	2.21	14.12	133.38	101.75	833	1.92	1.58	17	55.54	2.18
Guaranty National Corp.	NYS	15.13	-7.63	-13.57	24.75	13.75	27	0.48	3.17	10	11.81	1.28
Harleysville Group	OTC	22.25	0.00	-21.93	30.25	20.50	28	0.64	2.88	13	18.35	1.21
Hartford Steam Boiler	NYS	44.88	0.00	0.84	57.25	42.63	89	2.12	4.72	128	15.80	2.84
HCC Insurance Holdings	OTC	20.63	1.85	2.27	23.84	12.66	311	0.00	0.00	17	14.94	1.38
Home Holdings Inc.	NYS	13.50	-4.42	-21.74	18.50	10.63	25	0.00	0.00	-4	19.96	0.68
ITT (Hartford Group)	NYS	84.25	-2.03	-8.17	95.97	74.44	1148	1.96	2.33	11	57.11	1.48
Kemper Corp.	NYS	58.25	0.00	62.37	62.00	32.25	586	0.92	1.58	-74	38.98	1.49
Lawrence Insurance Group	ASE	2.50	0.00	-31.03	6.75	1.50	0	0.00	0.00	-6	4.26	0.59
Lincoln National	NYS	40.13	-1.23	-6.69	48.25	36.75	723	1.64	4.09	8	32.53	1.23
Markel Corp.	OTC	39.75	0.63	3.25	44.50	34.50	14	0.00	0.00	10	24.68	1.61
Mid Ocean Ltd.	OTC	30.25	3.42	7.08	34.75	25.00	340	0.00	0.00	16	20.24	1.49
Mutual Risk Mgmt. Ltd.	NYS	23.63	-0.53	-21.25	32.75	21.16	118	0.28	1.19	14	5.71	4.14
NAC Re Corp.	OTC	28.88	-5.71	-0.86	38.25	24.00	308	0.16	0.55	13	19.24	1.50
National Re Corp.	NYS	30.00	-2.44	-2.04	37.13	26.88	91	0.16	0.53	10	17.51	1.71
Navigators Group	OTC	17.75	-2.74	-49.29	39.00	16.50	55	0.00	0.00	-10	16.99	1.04
Nobel Insurance Ltd.	OTC	8.38	1.52	9.84	8.50	6.50	14	0.20	2.39	5	6.84	1.22
NWNL Companies	NYS	32.25	6.17	-0.77	38.75	27.00	460	0.88	2.73	11	23.97	1.35
Ohio Casualty Corp.	OTC	26.50	-7.83	-16.86	36.00	26.50	587	1.44	5.43	12	47.68	0.56
Old Republic Int'l	NYS	22.50	1.12	0.00	27.63	21.50	285	0.48	2.13	8	23.57	0.95
Orion Capital Corp.	NYS	32.88	0.77	6.48	37.50	28.63	70	0.72	2.19	9	27.43	1.20
Penn-America Group Inc.	OTC	7.00	7.69	-8.94	9.50	6.50	48	0.00	0.00	8	6.21	1.13
Phoenix Re Corp.	OTC	26.00	-5.88	-5.45	38.25	18.50	178	0.28	1.08	8	19.99	1.30
Provident Life	NYS	25.38	0.50	-19.76	31.88	24.38	290	1.04	4.10	-13	26.38	0.96
Re Capital Corp.	OTC	12.63	0.00	-7.34	15.50	12.25	1027	0.32	2.53	11	16.88	0.75
Reliance Group Holdings	NYS	5.63	0.00	-27.42	10.38	5.00	880	0.32	5.69	8	4.22	1.33
RLI Corp.	NYS	21.88	-0.57	-18.22	27.75	21.63	63	0.56	2.56	-36	22.91	0.95
St. Paul Companies	NYS	77.50	-0.16	-13.65	98.00	75.38	673	3.00	3.87	8	57.84	1.34
SAFECO Corp.	OTC	55.13	-0.90	0.92	65.75	48.50	1015	1.96	3.56	10	41.59	1.33
SCOR U.S. Corp.	NYS	11.25	1.12	-10.89	17.63	10.13	32	0.36	3.20	63	16.08	0.70
Seibels Bruce Group	OTC	1.75	-3.47	0.00	2.13	0.31	55	0.00	0.00	-2	1.90	0.92
Selective Ins. Group	OTC	24.75	-4.81	-18.18	31.00	22.75	86	1.12	4.53	13	23.11	1.07
Sphere Drake Holdings	NYS	15.88	-0.78	-3.79	21.63	14.63	38	0.12	0.76	7	12.17	1.30
Statesman Group Inc.	NYS	14.75	0.00	18.00	15.25	10.00	504	0.10	0.68	6	8.65	1.71
TIG Holdings	NYS	20.75	1.84	-8.29	28.00	17.25	402	0.20	0.96	-15	18.49	1.12
Titan Holdings Inc.	NYS	9.25	0.00	-14.94	13.38	9.00	34	0.24	2.59	7	8.93	1.04
Tokio Marine & Fire	OTC	64.50	0.00	19.44	67.00	49.25	3	0.38	0.59	-	57.72	1.12
Torchmark Corp.	NYS	41.50	2.79	-7.26	59.75	36.75	561	1.12	2.70	10	17.35	2.39
Transatlantic Holdings	NYS	54.75	0.46	2.58	61.50	45.38	97	0.36	0.66	14	29.60	1.85
Travelers Corp.	NYS	33.50	-5.30	-13.83	49.50	32.13	3822	0.60	1.79	8	33.35	1.00
Trenwick Group Inc.	OTC	41.50	1.84	7.10	47.75	33.25	236	1.00	2.41	15	26.00	1.60
United Fire & Casualty	OTC	39.00	-1.89	8.33	44.00	34.75	0	1.08	2.77	10	28.96	1.35
Unitrin	NYS	40.75	2.52	-4.12	46.75	38.50	432	1.40	3.44	25	38.90	1.05
UNUM Corp.	NYS	47.00	1.08	-10.48	60.13	44.50	1601	0.96	2.04	12	27.55	1.71
US Facilities Corp.	OTC	14.25	9.09	20.00	14.25	8.25	877	0.00	0.00	15	10.48	1.36
USF&G Corp.	NYS	12.38	-1.00	-18.18	19.63	11.69	1366	0.20	1.62	13	10.60	1.17
USLICO Corp.	NYS	19.38	12.32	17.42	20.50	15.75	151	0.24	1.24	9	25.22	0.77
USLIFE Corp.	NYS	36.38	0.69	-6.13	45.75	34.88	189	1.24	3.41	3	41.73	0.87
Washington National	NYS	21.63	1.17	-10.82	26.13	20.63	54	1.08	4.99	3	28.40	0.76
Zenith National Ins.	NYS	23.13	0.54	4.52	29.13	20.63	42	1.00	4.32	9	17.71	1.31
Zurich Reinsurance Centr.	NYS	25.75	2.49	-8.85	34.00	24.25	23	0.00	0.00	-	24.41	1.05
INSURERS/REINSURERS	AVERAGE		0.2	-4.3					2.4	10.3		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	22.00	-2.22	-15.38	30.00	18.25	1622	0.00	0.00	13	11.43	1.92
Pacificare Health Sys.	OTC	56.25	4.17	49.01	58.25	30.50	214	0.00	0.00	22	11.15	5.04
Safeguard Health Enter.	OTC	14.00	-5.08	12.00	15.50	8.00	16	0.00	0.00	16	5.71	2.45
Sierra Health Services	NYS	26.75	2.39	20.22	30.75	15.13	246	0.00	0.00	18	4.60	5.82
TakeCare Inc.	OTC	70.50	-1.74	29.36	76.00	37.00	660	0.00	0.00	21	18.69	3.77
United Healthcare Corp.	NYS	47.88	-0.26	28.09	50.25	26.00	2765	0.03	0.06	35	10.64	4.50
U.S. Healthcare	OTC	39.56	1.12	3.21	47.50	26.66	9231	0.68	1.72	20	6.21	5.37
Wellpoint Health Networks	NYS	31.25	-1.19	1.21	37.00	24.00	156	0.00	0.00	15	10.94	2.86
HMOs	AVERAGE		-0.4	16.0					0.2	18		
ALL COMPANIES	AVERAGE		0.1	4.5					2.6	13		

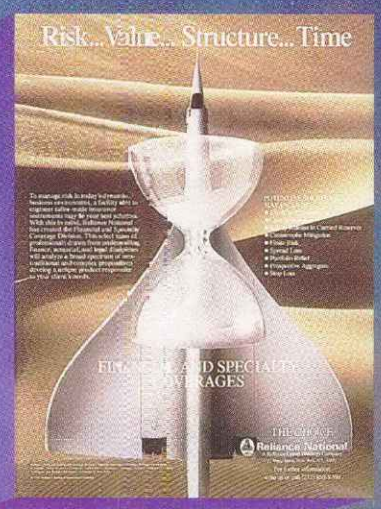
System design: Nordby International Inc.

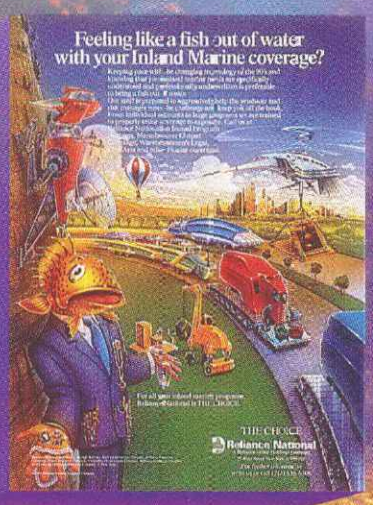
Reliance National talks to you in ways you understand.

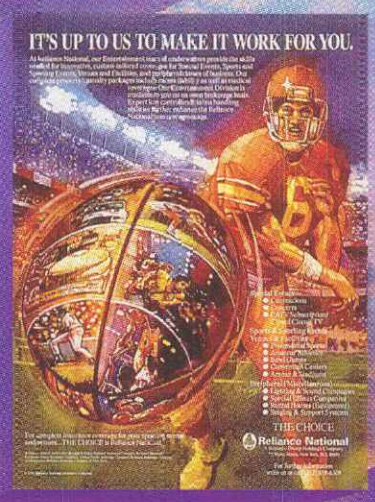


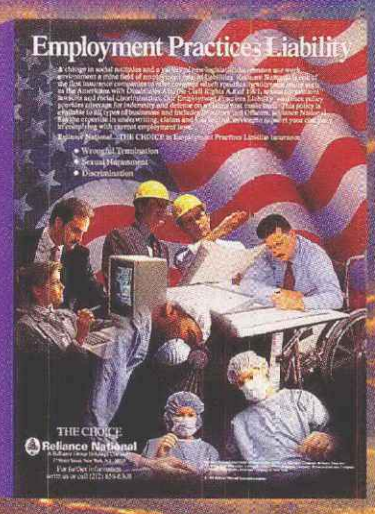


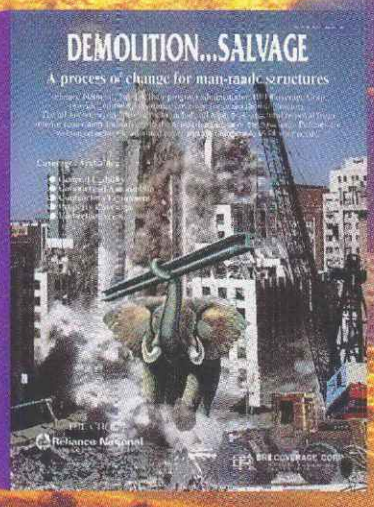












THE CHOICE

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