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update

A&A settles for $24 million with ex-Howden auditors

NEW YORK—Alexander & Alexander Services Inc. has collected $24 million in a settlement of a 3-year-old suit against four accounting firms.

The suit, filed in July 1983, alleged breach of contract and negligence against the firms, which had audited Alexander Howden Group P.L.C. and its subsidiaries prior to A&A's 1982 acquisition of Howden

Continued on next page

Coverage suit denied for excluding plaintiff

By STEPHEN TARNOFF

PHILADELPHIA—Adding a new wrinkle to toxic tort insurance coverage litigation, the Pennsylvania Supreme Court says a plaintiff suing a DES producer should have been made a party to litigation between the manufacturer and its insurers.

In *Vale Chemical Co. vs. Hartford Accident & Indemnity Co.*, the state high court ruled that because the plaintiff in the case was not a party to the coverage lawsuit, the coverage case must be dismissed.

As a result of the decision, a Pennsylvania appellate court decision granting to Vale the triple-trigger theory of coverage—the broadest theory of coverage—no longer applies to Vale.

In addition, according to some insurance company attorneys, the Oct. 17 decision casts uncertainty on whether the triple-trigger theory of coverage is any longer the law in Pennsylvania. However, policyholders note that the Vale decision is only one of the cases that established the triple-trigger theory of coverage in Pennsylvania.

And, the decision potentially opens the door to more complex and costly coverage litigation in Pennsylvania and other states if other courts follow this approach, the attorneys speculated.

So far, however, only in isolated instances have courts concluded that the plaintiffs must be included in coverage litigation, and in some cases courts have specifically prohibited plaintiffs from intervening.

Under the triple-trigger theory, which was first handed down in *Keene Corp. vs. Insurance Co. of North America* in 1981, all of a policyholder's insurers must defend and indemnify the policyholder if they were on the risk at any time a person suing the company was exposed to the toxic substance; when the disease manifested itself; or during an intermittent latency period.

Vale filed its suit against Hartford and Manufacturers' Casualty Insurance Co. after a lawsuit was filed against Vale in 1980 by an Illinois woman suffering from vaginal cancer allegedly caused by her mother's ingestion of diethylstilbestrol, better known as DES, a drug that was prescribed to prevent miscarriages.

Continued on page 118

Mead Re sale to cost parent firm $49 million

By DOUGLAS McLEOD

DAYTON, Ohio—Mead Corp. plans to withdraw from the reinsurance business and is negotiating to sell Mead Reinsurance Corp., the company says.

However, Mead Re will be sold as a "going concern" and is still writing new and renewal business, according to President William A. Enouen.

In an announcement last week, Mead said it would take a $57 million charge—about $1.84 per share—against its fourth quarter earnings, $48.7 million of which relates to the decision to dispose of Mead Re.

Mead—with interests in forest products and electronic publishing—said that losses in the reinsurance unit had detracted from improved performance in its other businesses. The reinsurance unit lost 13 cents per share through the first three quarters of 1986, or about $4 million.

Mead Re gradually has become less active in the reinsurance market since 1985, when its Best's rating dropped to 'not assigned.'

Through the third quarter, Mead Corp. reported net earnings of $75.8 million, compared with $80.3 million in the same period in 1985.

"This is a time when people ought to be investing in the reinsurance business," Mr. Enouen said. But for Mead, reinsurance "is not a strategic business, and therefore we are not investing."

Although Mead Re continues to accept reinsurance submissions, Mr. Enouen conceded that he would be "very surprised" if business continues to come in at the same rate.

Mead Re expects to write gross premiums of $40 million to $43 million this year, down substantially from 1985 gross premium volume of $89.1 million.

Brokers report that Mead Re gradually has become less active in the reinsurance market since 1985, when its rating by A.M. Best Co. dropped to "not assigned" from A. The "not assigned" rating resulted from the large volume of business Mead Re ceded to unauthorized reinsurers.

Roughly half—$31.7 million—of the total $64.2 million recoverable by Mead Re from unauthorized reinsurers at year-end relates to a portfolio transfer to Pinnacle Reinsurance Co. Ltd. in Bermuda, according to Mead Re's annual statement.

In 1985, Mead Re reported a cumulative gain of $15.7 million to its policyholders surplus as a result of the Pinnacle deal. Policyholder surplus at year-end 1985 totaled $23.4 million.

However, Mead Re intends to "undo" the portfolio transfer, and a portion of the $48.7 million fourth-quarter charge relates to the expected underwriting loss that will result from this action, Mr. Enouen said. He declined to say how much of the charge will cover such losses.

The principal reason for reversing the transaction, Mr. Enouen explained, is to remove the large unauthorized reinsurance recoverables from Mead Re's convention statement.

"It's been a negative for us with Best and it's been a negative in other ways," he observed.

Mr. Enouen added that he thinks the transaction will make Mead Re a more attractive company.

"When Mead gets finished with this transaction, we will have a company with very clean surplus," he said. "We think (Mead Re) is in far better shape than it was in 1984."

Continued on page 114

Senate shift could kill product liability bill

By MEG FLETCHER and DONNA DiBLASE

WASHINGTON—Democratic control of the U.S. Senate could kill chances for approval of federal product liability reform legislation, Washington observers say.

The 55-45 Senate majority won by Democrats in last week's elections also could change the outlook for other issues affecting risk and employee benefit managers, the observers say.

Meanwhile, tort reform advocates batted .500 in state elections last week. Arizona voters defeated a constitutional amendment that would have allowed state legislators to enact several types of tort reforms, while Montana residents approved a similar constitutional amendment.

On Capitol Hill, the expected ascension of Sen. Ernest Hollings, D-S.C., to the chair of the Senate Commerce Committee is likely to deal a crippling blow to chances for federal product liability reform.

"I don't think we will see any legislation relating to tort reform or product liability coming out of his committee, period," said Mick Staton, manager of political action programs for the U.S. Chamber of Commerce.

The Commerce Committee, under the leadership of Republican Chairman John Danforth of Missouri, approved a comprehensive product liability reform bill during this year's session. However, that bill was pulled from consideration by the full Senate in late September after opponents of the measure, led by Sen. Hollings, vowed to filibuster (*BI*, Oct. 6).

Product liability reform has never been seriously considered by the House of Representatives, which remained in Democratic hands after last week's election.

"I think it is safe to say (Democratic control) considerably diminishes the chances of enacting a product liability reform bill," said Les Cheek, vp-federal affairs at Crum & Forster.

However, "I don't say it entirely eliminates it," he added, explaining that he believes Mr. Hollings—despite his opposition to product liability reform—will not exercise his prerogative as committee chairman to block the measure by refusing to hold hearings.

"He is a great believer in the congressional process," Mr. Cheek explained.

In addition, the Chamber's Mr. Staton predicted an increased push in the Senate to challenge the McCarran-Ferguson Act, which leaves primary regulation of the insurance industry to the states.

Democratic senators, including Paul Simon of Illinois, have proposed amending McCarran-Ferguson so that property/casualty insurers would lose much of their immunity from federal antitrust law (*BI*, Feb. 24).

"I think McCarran-Ferguson will be a significant issue in the next Congress," Mr. Cheek said. "There is more of a pro-regulation attitude on the part of Democrats, compared with Republicans."

However, he predicted Congress will find it too complex and too expensive to devise a federal alternative to state regulation of insurance. "It is much too much of an issue to bite off," he contended.

Continued on page 113

Spotlight on reinsurance . . . Page 3

update

A&A, Howden auditors settle

Continued from previous page
(*BI*, Aug. 1, 1983). Howden was found to be worth $40 million less than A&A paid. And, its underwriting units have cost A&A additional losses, including a $16.6 million charge in the third quarter.

Josolyne Layton-Bennett & Co., contributed $14.2 million to the settlement, de Paula Turner Lake & Co. contributed $5 million and Peat Marwick Mitchell & Co. Bermuda contributed $4.8 million, A&A said.

Carl D. Liggio, general counsel for Arthur Young McClelland Moore & Co., the fourth defendant, said Arthur Young "paid no money in connection with claims against it." Arthur Young was named in the suit because it had acquired the practice of Josolyne Layton-Bennett, which had been Howden's auditor. The $14.2 million was paid on behalf of Josolyne Layton-Bennett's professional liability insurers, led by a Lloyd's of London syndicates, he added.

Peat Marwick's portion of the settlement will also be paid by its insurers, said a spokesman.

Manville exceeds target

DENVER—Manville Corp. says it has reached insurance settlements of more than $730 million with 27 of the 29 parties it sued in 1980 in California Superior Court in San Francisco.

A Manville spokesman said that, assuming there is a mid-1987 consummation of the reorganization plan, the present value of the settlements is approximately $618 million. Manville must contribute $615 million in present-value insurance proceeds to a $2.5 billion reorganization plan that will allow it to emerge from Chapter 11 bankruptcy, the company said last week.

The additional $3 million will go to into a trust fund to pay asbestos property damage claims, the spokesman said.

A hearing is set for Nov. 19 in which U.S. Bankruptcy Court Judge Burton R. Lifland will review the settlements.

The two insurers that have not settled are Continental Casualty Co. and Columbia Casualty Co., both CNA Financial Corp. units.

Florida court to hear challenge

TALLAHASSEE, Fla.—The Florida Supreme Court will hear arguments on the constitutionality of Florida's controversial tort reform and insurance rating regulation law.

And, last week, the court extended until Dec. 1 the provisions of a temporary injunction that, among other things, prevents the state insurance commissioner from exercising his new power under the law to create a joint underwriting association (*BI*, Nov. 3).

New D&O captive

NEW YORK—Twelve mutual life insurance companies are creating a directors and officers liability insurer, Sargasso Mutual Insurance Co. Ltd., based in Bermuda.

The insurers are MONY Financial Services, Massachusetts Mutual Life Insurance Co., New York Life Insurance Co., Northwestern Mutual Life Insurance Co., The New England, The Guardian, Home Life Insurance Co., Mutual of America Life Insurance Co., National Life of Vermont, Pacific Mutual Life Insurance Co., Penn Mutual Life Insurance Co. and The Principal Financial Group.

Sargasso is managed by Johnson & Higgins (Bermuda) Ltd.

Each member company invested about $500,000 in Sargasso, and was required to issue a $1 million finance agreement.

First-year premiums are expected to average about $250,000 for the maximum available primary or excess coverage of $15 million, which will be issued on a claims-made basis.

Membership is open to U.S. and Canadian mutual life insurers with at least $500 million in assets and to certain of their subsidiaries, according to A. Peter Quinn Jr., president of Sargasso and executive vp and general counsel of Massachusetts Mutual.

New excess capacity in Europe

LONDON—American International Group Inc. is forming a new company to provide excess worldwide general liability coverage to European multinationals that purchase the company's shares.

European American Excess Reinsurance will offer up to 462,500 shares of capital stock through a private placement. The offering, which will include two classes of stock, will not take place unless $100 million in shares are subscribed for and purchased. Shares may not be offered or transferred to U.S. corporations.

European American will offer general liability limits of up to $10 million per occurrence excess of $5 million per occurrence.

A spokesman for Salomon Brothers International Ltd., which will act as placement agent, said a startup date could be January 1987.

UNAT-Re, an indirect AIG subsidiary in Belgium, will provide administrative, underwriting and other services to the company. AIG, through a wholly owned subsidiary, will invest $5 million.

Two NYIE units found insolvent

NEW YORK—The New York Insurance Department has filed petitions for two New York Insurance Exchange syndicates to show cause why they should not be liquidated.

The show-cause orders were filed Oct. 31 in New York State Supreme Court in Manhattan against The Burt Syndicate Inc. and The First New York Syndicate Corp., both managed by W.J. Burt Management Inc.

Burt Syndicate is wholly owned by Ormond Re Group in Ormond Beach, Fla. First New York Syndicate is owned by eight U.S. and foreign insurers (*BI*, Sept. 1).

An Insurance Department examination in April found Burt Syndicate insolvent by $3.2 million as of Dec. 31, 1985, and First New York insolvent by $2.5 million as of the same date, an Insurance Department spokesman said.

California high court allows limited reading of Prop 51

By ROBERT A. FINLAYSON

SAN FRANCISCO—Proposition 51 will not apply retroactively to causes of action that arose before the ballot initiative became law following the California Supreme Court's decision not to review such a ruling by an appellate court.

The high court's 4-3 decision on Oct. 30 not to review the 1st District Court of Appeals' ruling means that the appellate court's decision continues to be the controlling decision in the state's trial courts.

Thousands of civil lawsuits pending in California trial courts could be affected by the decision.

It means that defendants in those cases could be held liable for millions of dollars in non-economic damages that they would not have had to pay if Proposition 51 were held to apply to all pending civil suits.

Proposition 51, which was overwhelmingly approved by voters in June, eliminates the application of joint and several liability to non-economic damages in third-party lawsuits.

In addition to refusing to review a Sept. 19 decision by the appellate court in *James Russell vs. Asbestos Claims Facility*, the high court also sent back to the appellate court in Los Angeles for reconsideration two Superior Court decisions on Proposition 51 that conflicted with the Russell decision (*BI*, Aug. 18; Sept. 29).

And, the high court instructed the Los Angeles appellate court to see the Russell decision.

The controversy that has surrounded Proposition 51 centers on the question of whether California voters intended the initiative to apply immediately to all litigation pending in the state's trial courts or only to causes of action that arose after the initiative went into effect on June 4.

Defense attorneys in the state have argued that the voters intended for the initiative to take affective immediately. Plaintiff attorneys argued that the initiative does not address the issue and that new laws normally are not held to be retroactive unless they specifically state that they are to be.

Siding with the plaintiff attorneys, the 1st District Court of Appeal said the initiative language does not specifically state that it is to be retroactively applied to pending cases, and, therefore cannot be.

"While it clearly applied prospectively to causes of action arising after its passage, the act contains no express provision for retroactive application to pending cases based on causes of action which had already accrued prior to its effective data," the appeals court ruled.

Defense attorneys in the Russell case argued that voters wanted Proposition 51 applied to pending cases so the benefit of the new law would not be delayed for several years.

But the appellate court disagreed. "The prospective-only application of Proposition 51 would satisfy an electoral intent for immediate relief of the public entity 'deep-pocket' insurance crisis, and would not delay the curative effect of the act until some 'remote' future time," the appellate court ruled.

The appellate court also rejected the defense attorneys' argument that Proposition 51 is a procedural change, not a substantive change in legal liability, and, therefore, can be applied retroactively.

"Given the reduction of the defendant's liability ex-

Continued on page 117

BI covers worldwide meetings

The Nov. 24 issue of *Business Insurance*, our annual report on multinational insurance programs, will include full reports on two international risk management meetings.

The Asia/Pacific Risk & Insurance Management Society Conference, which was held late last month in Singapore, was attended by *BI* Publisher Alfred Malecki and Editor Kathryn J. McIntyre.

The Management Center Europe Risk Management Conference, which was held in Salzburg, Austria, last month, was attended by London Editor Stacy Shapiro.

The *Business Insurance* multinational insurance spotlight report also will include profiles of the multinational property/casualty insurance and employee benefit networks.

Analyst's report sends insurer stocks tumbling

By JUDY GREENWALD

NEW YORK—Property/casualty insurance stock prices dropped last week after Morgan Stanley & Co. Inc. changed its recommendations on several issues from "buy" to "hold."

Allerton Cushman Jr., vp and analyst at Morgan Stanley, sees a return to insurer price competition and told *Business Insurance*, "I am feeling uneasy" about optimism underlying 1987 profit estimates.

But several other stock analysts disagree, including Gloria Vogel, vp at Legg Mason Wood Walker Inc. in New York. "I don't see companies coming in and fighting each other and slashing each other to get the business," she said. "I don't see a very quick return to the competitive pressures we had in the last cycle."

Ms. Vogel said Morgan Stanley's "hold" recommendations drove down stock prices because "you have a lot of nervous money managers out there today." When stocks have been profitable for a while, "sometimes you just need something to set you off."

Morgan Stanley changed its recommendations Oct. 31 from buy to hold for Aetna Life & Casualty Co., American International Group, Chubb Corp, CNA Financial Corp. and General Reinsurance Co. Aetna's stock price dropped to $55.75 on Nov. 5 from $57 on Oct. 30; AIG dropped to $118.75 from $127.50; Chubb fell to $65 from $69.875; CNA dropped to $53.75 from $55.25 and Gen Re dropped to $53.625 from $56.50.

Even stocks recommended by Morgan Stanley dropped in price, including American General Corp., which dropped to $38.25 on Nov. 5 from $39.625 on Oct. 30, and broker Marsh & McLennan Cos. Inc., which dropped to $65 from $68.625.

Mr. Allerton also recommends investing in CIGNA Corp., which dropped to $54.25 on Nov. 5 from $55.25 Oct. 30, and Travelers Corp., which dropped to $43.875 from $44.25. Mr. Cushman's fellow analyst at Morgan Stanley, Norman L. Rosenthal, remains enthusiastic about St. Paul Cos., which dropped to $38.25 from $40.25. ■

inside

✓ Reinsurers' role in liquidations and reinsurers' relationships with original insurance policyholders, as established by statute and case law, are examined in a Perspective article by Jonathan F. Bank, a Los Angeles-based attorney with Buchalter, Nemer, Fields, Chrystie & Younger. **PAGE 63**

✓ Physicians will make the greatest impact in solving the medical malpractice insurance crisis, Dr. James S. Todd, a senior deputy executive vp with the Chicago-based American Medical Assn., told the recent annual risk management conference in Washington sponsored by the American Society for Healthcare Risk Management. **PAGE 92**

✓ The expanded federal Risk Retention Act and the Tax Reform Act of 1986 will give U.S.-based self-insurers an advantage over offshore captive insurers, says attorney John J. Sarchio of the New York firm of Hughes, Hubbard & Reed, who addressed members of the Self-Insurance Institute of America's during their annual meeting in Denver last month. **PAGE 104**

departments

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Reinsurers need more funds

By DOUGLAS McLEOD

The U.S. property/casualty reinsurance industry, already this year the beneficiary of a large capital infusion, will need to boost its surplus still further before any dent is made in the capacity crunch, industry observers say.

Although public stock offerings, private placements and parent company cash contributions have poured nearly $1 billion into the coffers of U.S. property/casualty reinsurers this year, at least that much more may be needed before adequate capacity is restored and some softening of the casualty market occurs, observers say.

Much of the industry's new money has gone to established reinsurers, largely to support renewals of existing business at higher rates, sources report.

In other cases, contributions to surplus have only offset the bolstering of loss reserves for business written in prior years.

Overall, the new reinsurer surplus created this year probably falls short of the industry's estimated reserve deficiencies.

Some of the capital—notably that contributed to new or recapitalized reinsurers—is creating new capacity, but this amounts to "nickels and dimes" compared with the market's total capacity shortfall, sources say.

And, this new capacity probably has not kept pace with the capacity lost through insolvencies, voluntary withdrawals from the market and the strengthening of reserves for losses and uncollectable retrocessions by active reinsurers.

Meanwhile, the market for new property/casualty issues has slowed in recent weeks.

Signs of the slowdown include the temporary withdrawal of one new issue—U.S. International Re Inc., the holding company for The Home Reinsurance Co.—and declines in the offering prices of three other issues.

While analysts note that this reflects a general weakening of the stock market and is not peculiar to reinsurance issues, they also note that the bull market for such issues probably is past and that future issues will be tougher sells.

"I would not say that the window is totally closed if you have a company of high quality with a (track) record," said June Hoffer, an analyst with Prudential-Bache Securities in New York. "But it's more difficult."

By far, the largest public offering by a reinsurance holding company this year was that of General Re Corp. (see chart). The offering—the proceeds of which went primarily to General Reinsurance Corp., a property/casualty subsidiary—netted $322.6 million, more than all other reinsurance public issues combined.

Most of the money raised in public offerings—even if General Re is excluded—has gone to es-

Continued on next page

Where the new money went

Capital increases for property/casualty reinsurers since Jan. 1

Company	Amount	Date	Policyholders surplus as of Sept. 30
General Re[1]	$322.6 million	2/86	$1,603.7 million[7]
Skandia[1]	100.0 million	9/86	250.0 million[6]
Putnam Re[4]	98.9 million	6/86	98.9 million[5]
Trenwick[2]	81.8 million	6/86	109.0 million[7]
Scor Re[2]	52.3 million	10/86	39.0 million[6]
NAC Re[1]	50.2 million	6/86	111.9 million[7]
Kemper Re[1]	50.0 million	4/86	220.5 million
National Re[1]	50.0 million	2/86	130.8 million[5]
N. American Re[1]	50.0 million	3/86	376.6 million[5]
NWNL Re[4]	28.0 million	6/86	45.0 million[6]
United Republic[1]	25.0 million	7/86	24.8 million
U.S. Facilities[2]	24.0 million[6]	11/86	3.0 million[7,8]
Piedmont Mgt.[3]	22.0 million[6]	N/A	45.8 million[5,7,8]
MONY Re[1]	15.0 million	12/86	22.7 million[5,8]

[1] Parent contribution [2] Public offering [3] Public offering not completed [4] Private placement [5] Surplus as of June 30 [6] *BI* estimate [7] Surplus of property/casualty subsidiary [8] Not including surplus contribution

Reinsurance brokers growing

By KATHRYN J. McINTYRE

Despite some accounts lost in the capacity-tight and high-priced reinsurance market, most of the 10 largest U.S.-based reinsurance brokers are reporting continued strong revenue growth this year, following stellar growth in 1985.

Growth rates exceeded 20% for all but one of the 10 largest brokers based on 1985 revenues, which include commissions and fees and investment income earned on premiums held before payment to reinsurers (see chart).

The revenue increases, earned on rising reinsurance premiums and new business, could have been more dramatic if the reinsurance intermediaries had not lost business due to:

- Ceding companies' decisions to increase their net retentions because rate hikes had made business potentially more profitable and raise their excess-of-loss retentions to control the cost of reinsurance.
- Reductions in capacity, making some business impossible to place.
- An increase in the amount of business written by direct-writing reinsurance companies.

"The amount of reinsurance ceded was significantly less and there was less of market to write the business, especially casualty," observes Bernard D. Berry, vice chairman and chief executive of Towers, Perrin, Forster & Crosby Inc.'s reinsurance division.

Brokers accept losing business because the price is too high or there is no market, but they rally against losing business to direct-writing reinsurers.

Direct writers—including General Reinsurance Corp., Employers Reinsurance Corp., American Re-Insurance Co., North American Reinsurance Corp., Munich Reinsurance Co. and National Reinsurance Corp.—have all grown, some dramatically, in 1985 and in the first half of 1986.

10 largest U.S. reinsurance brokers

Company (Parent)	Gross revenues (in millions) 1985	1984	Change	Employees 1985	1984	Change	Percent treaty 1985	1984
Guy Carpenter & Co. Inc. (Marsh & McLennan Cos. Inc.)	$200[1]	$155[1]	29%[1]	1,258	1,200	4.8%	85%[1]	85%[1]
Sullivan Payne Co. (E.W. Payne Cos. Ltd./Sedgwick Grp. P.L.C.)	45[1]	33.3	35[1]	400	338	18.3	85	85
E.W. Blanch Co. Ltd. Partnership (Partnership)	41[1]	31[1]	32[1]	296	232	27.6	99	98
Towers, Perrin, Forster & Crosby Inc. (Employee-owned)	31[1]	23[1]	35[1]	266	235	13.2	80	80
G.L. Hodson & Son Inc. (Corroon & Black Corp.)	23	22[2]	4.5	192	193	—	88.5	85.7
Intere Intermediaries Inc. (Senior staff and profit-sharing fund)	22-24[1]	18-20[1]	25[1]	202	189	6.9	100	100
Willcox Inc. Reinsurance Intermediaries (Johnson & Higgins and Willis Faber P.L.C.)	22-23[1]	18-20[1]	22[1]	125	115	8.7	98	98
Thomas A. Greene & Co. Inc. (Alexander & Alexander Services Inc.)	21	16	31.3	190	193[2]	−1.6	90	84
RFC Intermediaries Inc. (The St. Paul Cos. Inc.)	17.2	13.5[2]	27.4	218	234[2]	−6.8	45	54
Reinsurance Agency Inc. (Privately held)	16-17[1]	10-11[1]	55[1]	60	53	13.2	75	85

Source: *BI* Survey [1] *BI* estimate [2] Restated Chart: Amy Palmer

General Re, for example, increased its net premiums written 48.9% in 1985 to $1.6 billion. And, in just the first six months of 1986, Gen Re's net premiums totaled $1.2 billion.

American Re's net premiums written increased 65.4% in 1985 to $730.2 million, and in the first six months of 1986, it wrote $454.5 million in net premiums.

"Our percentage of facultative business has dropped every year because the broker reinsurance market is just not there for facultative," comments Thomas A. Greene, president of Thomas A. Greene & Co. Inc.

Continued on page 12

Tort reform repercussions

Tort reforms will not lead to increased market capacity until the reforms have passed court tests, reinsurers say. See page 52.

New banking rules may hike LOC rates

Reinsurers will pay more for letters of credit if federal rules take effect requiring banks to capitalize their LOCs. See page 32.

Should reinsurers make offsets?

As more insurers become insolvent, liquidators and reinsurers are coming to loggerheads over the issue of offsets. See page 48.

Keeping tabs on reinsurers

Risk managers should keep an eye on the financial condition of reinsurers that back up their insurers, experts say. See page 37.

Reinsurance arbitration

Arbitration is falling short of its goal of providing a quick and inexpensive way to resolve disputes, experts say. See page 24.

New capital

Continued from previous page
tablished reinsurers, including Scor Reinsurance Co., Trenwick America Reinsurance Corp. and Piedmont Management Co. Inc., holding company for Reinsurance Corp. of New York.

One public issue—by U.S. Facilities Inc.—will allow Massachusetts Plate Glass Insurance Co., a U.S. Facilities unit, to enter the reinsurance business.

Private placements have included one for a newly formed casualty reinsurer, Putnam Reinsurance Co., and one for an existing reinsurer, NWNL Reinsurance Co.

Meanwhile, several other established reinsurers have received cash infusions from their parents.

Several of the reinsurers receiving new funds—including General Re, NWNL, Skandia America Reinsurance Co., Trenwick, Scor Re and MONY Reinsurance Corp.—say the new money will allow them to write more new business in addition to higher-priced renewals, or to increase their net retentions.

Others—including Kemper Reinsurance Co. and National Reinsurance Corp.—say the money will be exhausted by higher premiums on renewals of existing business.

Most of the reinsurers, including General Re, report that the new money will be used up on new or renewal business by the end of this year or early next year.

Meanwhile, one reinsurer—North American Reinsurance Corp.—received a $50 million surplus loan from its parent to offset an earlier transfer of $50 million to North American's loss reserves.

Despite the creation of some additional capacity at some of these companies, the new money has had little effect on the reinsurance market, most reinsurance executives and analysts agree.

"I don't think we have a groundswell of new money coming in to create tons of new capacity," observed Ward B. Gordon, chairman and chief executive officer of Intere Intermediaries Inc.

"I don't see it creating any new capacity," said Leonard J. Meredith Jr., chairman and chief executive officer of NWNL. Mr. Meredith added that exceptions to this rule are the handful of newly formed reinsurers that are unencumbered by prior years' losses.

"But the aggregate of the exceptions is not a big number. The vast majority (of new money) is to boost reserves or to cover writings that they have already committed to. We are talking about nickels and dimes against the total."

Assuming a 10% deficiency in industrywide reserves—or about $1.4 billion on year-end 1985 reserves of $14.7 billion—this year's infusions are not keeping up with the surplus drain of past losses, observed Leandro S. Galban Jr., a vp with Donaldson, Lufkin & Jenrette Securities Corp.

Excluding the General Re issue, "this industry could have raised two to three times the amount of capital it has raised and still be about even without making much headway in the capital problem," Mr. Galban said.

Compounding the draining effect of reserve shortfalls is the loss of capacity through reinsurer insolvencies or companies withdrawing from the market.

"What you can't measure is the people who have gone out the back door," said David Seifer, vp with First Boston Corp.

Estimating that $1.5 billion in new capital has come into the reinsurance market since the beginning of 1985, Mr. Seifer said he suspects that at least an equal amount has been lost.

"It's got to be at least $1.5 billion, because prices are not coming down," he observed.

Reinsurers report that while property reinsurance price increases have leveled—and in some cases dropped—casualty prices remain firm.

"No new capital coming in is going to add enough capacity to cause serious erosion of rates," said Jared J. Cummins, president of MONY Re.

Myron M. Picoult, a senior vp with Oppenheimer & Co. in New York, also notes that the surplus contributions are not keeping pace with the tremendous growth in reinsurance premium volume brought on by skyrocketing property/casualty rates.

If industrywide reinsurance premiums grow to $17.1 billion by year-end 1987 from $10.1 billion at year-end 1985, the industry would need new surplus of $3.5 billion to cover the increased volume at a 2-to-1 premium-to-surplus ratio, Mr. Picoult explained.

"You haven't raised $3.5 billion in the reinsurance area. What you've raised is one-third of that," he said.

But reinsurers' ability to raise capital with new stock issues may be curtailed, at least temporarily, by the weakening market.

The Home Insurance Co. recently withdrew an issue of 5 million common shares of its subsidiary, U.S. International Re. The Home had hoped to raise $105 million to $125 million—all of which would have been contributed to Home Re's surplus—but could not sell the issue at the $21 to $25 per share target offering price.

"We have pulled the offer back and are waiting for a more favorable market," a Home spokesman said.

Three other companies have had to reduce—or consider reducing—their offering prices:

- Scor U.S. Corp. had expected to raise $78 million with an offering of 4 million common shares but was able to raise only $53.2 million on a net basis after underwriting discounts and expenses.

The Scor shares sold for $14.50 instead of the initial target price of $21, and the company's Paris-based parent held back a secondary offering of 200,000 shares because the market was too weak, according to Daniel E. Schmidt IV, vp, general counsel and secretary.

Scor U.S. contributed $52.3 million of the proceeds to Scor Re last month, about $15 million less than Scor U.S. initially had planned to contribute, Mr. Schmidt said.

- Phoenix Re Corp. is renegotiating the $19 to $21 per share target price on its offering of 1.8 million common shares, according to Carole A. Masters, an attorney with Phoenix Mutual Life Insurance Co. of Hartford, Conn., Phoenix Re's parent.

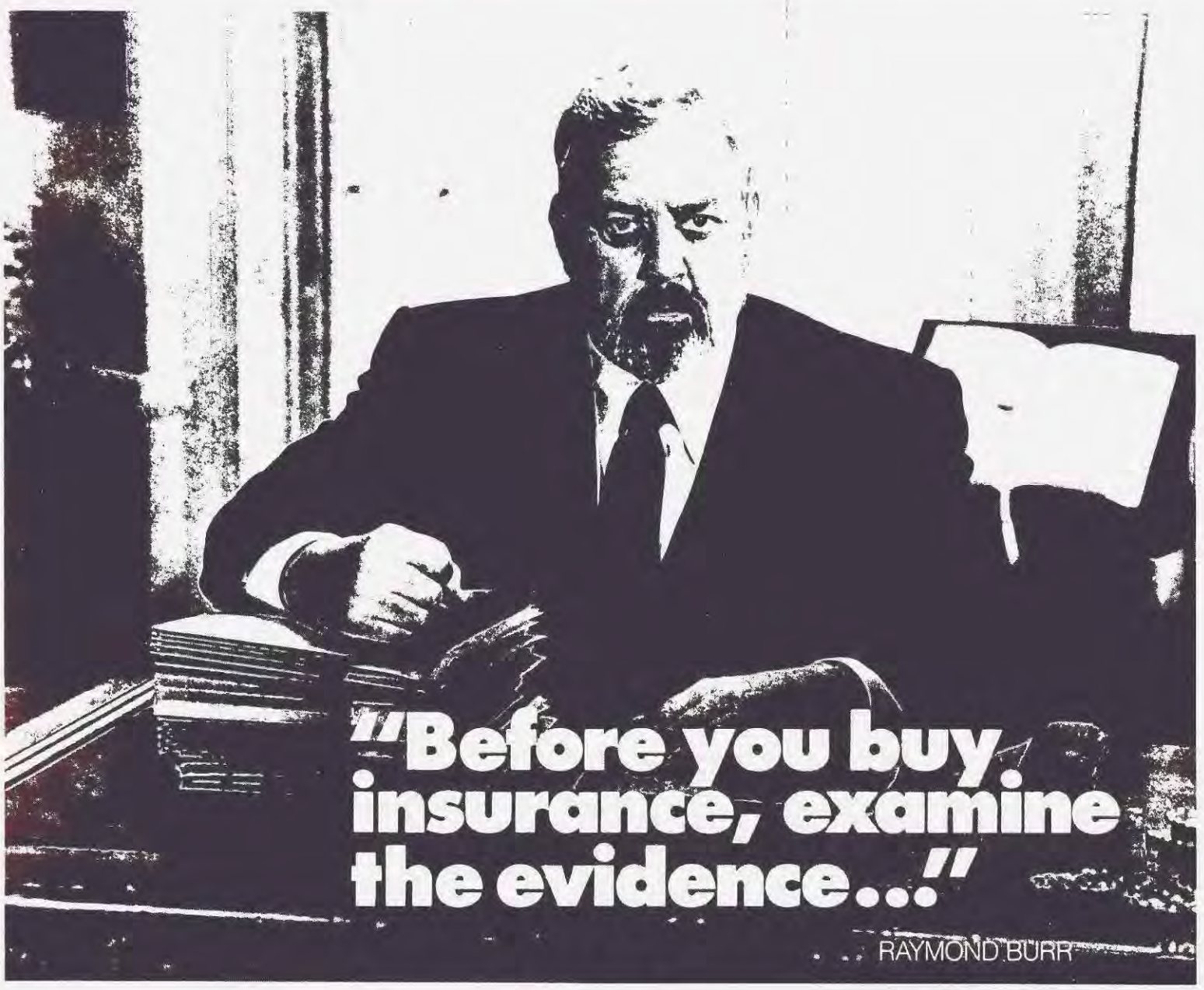
Proceeds from the sale would be used to support Phoenix Re's current business as well as possible expansion into new lines of reinsurance, according to the preliminary prospectus. Phoenix Re was formed in July to take over the reinsurance business of Phoenix General Insurance Co., another Phoenix Mutual unit.

Ms. Masters would not comment on a revised target price for the issue.

- Re Capital Corp., which last week sold 3 million shares for $14.50 per share. The company had originally hoped to sell the shares for $19-$21 per share. The proceeds of the sale—approximately $43.5 million—are to be contributed mainly to the capital and surplus of Re Capital Reinsurance Corp., incorporated earlier this year with $25 million in capital.

Mr. Galban noted that the equity market is "getting tired of new issues generally." As this happens, the market becomes "more discriminating," looking for higher-quality issues that are "well-

Continued on page 6



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New capital

Continued from page 4

priced," he added.

While last year's reinsurance issues commanded hefty prices, "the market just is not willing to pay those types of premiums any more," he said.

Reinsurers that expect to reap big underwriting profits on newly raised capital should not wait much longer to go to the equity market, observers say.

"The guy who says, 'Let's get started in a year or two' may find that the best returns have been picked over," said William Potvin, a partner with Touche Ross & Co. "The good investments are going to be the ones that are already in place or that are going to be in place sooner rather than later."

General Re completed its latest public offering in February, and the proceeds will be "fully employed" in the writing of new and renewal business by year-end, said Ronald Anderson, vp-finance.

Another stock offering completed in June 1985 brought General Re $278.7 million, all but $25 million of which went to its property/casualty unit and all of which had been absorbed by year-end 1985, Mr. Anderson said.

The total $601.3 million in new capital has supported not only rising prices on existing business but the addition of new "exposure units," he said.

Skandia America will take two to three years to fully leverage the $100 million contribution it received from its parent, according to James F. Dowd, president and chief executive officer.

Mr. Dowd added the money will allow for an increase in Skandia's per-risk capacity, though he declined to provide details. The number of risks Skandia writes will not rise significantly, but it will take a larger share of each risk, he explained.

Putnam Re was formed earlier this year by American International Group Inc., Transatlantic Reinsurance Co. and four other investors (*BI*, July 28). The reinsurer, with $98.9 million in surplus, is writing excess-of-loss casualty treaty business and casualty facultative risks.

Trenwick Group Inc. received net proceeds of $81.8 million from the sale of 3.3 million common shares and an overallotment of 495,000 shares in June. About $60 million is being contributed to Trenwick America Re, which now has surplus of about $109 million, said Angus Robinson Jr., president and chief operating officer.

The capital will be used to "support" current business and an anticipated expansion, Mr. Robinson said. Trenwick America Re has written primarily casualty and property facultative risks and captive specialty programs, though it established a treaty underwriting department in July.

Scor Re plans to use the $52.3 million proceeds from its offering to support an increase in its net retained writings, said Mr. Schmidt, who added Scor Re's retention will expand to 85% of gross premiums from less than 50%.

NAC Re Corp. recently received net proceeds of $50.2 million from an offering of convertible debentures. About $35 million of this has been contributed to the surplus of North American Co. for Property & Casualty Insurance, whose surplus now stands at $111.9 million, said Ronald L. Bornhuetter, president and chief executive officer.

The new capital will support renewal business and "a substantial amount" of new business, he said.

Kemper Re received a $50 million share of the proceeds of a stock offering by parent Kemper Corp. earlier this year, the "preponderance" of which will be used to support existing business at higher rates, a Kemper spokesman said. Kemper Re—which had also received a $50 million cash infusion in April 1985—has surplus of about $220.5 million.

A $50 million contribution to National Re by its parent, Lincoln National Corp., also will be used "essentially for existing business that was on our books that has grown substantially," including new treaties for existing clients, according to William D. Warren, chairman and president.

NWNL, a unit of Northwestern National Life Insurance Co., will use the $28 million net proceeds from the private placement of common shares to support new business as well as renewals.

NWNL, now with about $45 million in surplus, expects to write 150 contracts with 40 ceding insurers, compared with the current 80 to 90 contracts with 20 ceding insurers, according to Mr. Meredith.

Continued on page 10

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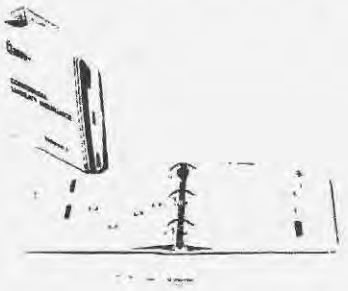

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opinions

Broker market should take heed

BROKER REINSURANCE markets should heed the complaints ofreinsurance intermediaries concerned about the loss of business to direct-writing reinsurance companies.

While the broker reinsurance markets are not in danger of going out of business—and neither are reinsurance intermediaries—the broker-market reinsurers should consider the brokers' complaints about their business practices as an early warning of trouble in their sphere of the reinsurance market and take quick action to resolve the problems.

Many reinsurance brokers expect the coming reinsurance renewal season to be less chaotic than year-end 1985, but it's also clear that there still is not enough reinsurance capacity to meet demands. It's critical that both the direct-writing and the broker-market reinsurers act responsively and responsibly to fulfill the needs of ceding companies that provide coverage to U.S. businesses, governments and institutions.

To improve their responsiveness in this capacity-short marketplace, management of each broker reinsurance market should analyze its company's operations to determine if the complaints raised by reinsurance intermediaries apply to them.

• Complaint: Broker-market reinsurers are taking too long to pay claims compared with the response time of direct reinsurance writers.

The broker-market reinsurers should not be slower than direct writers in responding to claims payments. One reinsurance brokerage executive noted that the response of the broker-market reinsurers is "the ceding companies took their time getting the premium to us. They can wait for claims payments." That is hardly professional.

• Complaint: Broker-market reinsurers lack definitive business plans that establish what kind of business they want to write. We can understand that at year-end 1985, when reinsurance underwriters were pulling out of lines of business to cull their books of loss-making programs, brokers were having a difficult time figuring out who wanted to write what—if anything.

But, the brokers say some reinsurance markets didn't know themselves what they wanted to underwrite. This renewal season, there's no excuse for any reinsurer to lack a business plan that clearly defines what lines of business it wants to write. And, that plan should be clearly communicated to the brokers.

• Complaint: The broker-market reinsurers can't agree on contract wordings. Certainly retrocessionaires contributed to this problem, but they can't be stuck with all the blame. We urge retrocessionaires and reinsurers this renewal season to bring consistency back in contract wording.

It cannot be overlooked—as it appears the brokers have—that the direct-writing reinsurers have been able to increase market share partly because they have acquired the money to absorb much more premium volume. But, the broker-market reinsurers should not seize on this fact as the sole reason there's been a rush to the direct writers.

Brokers do not like to criticize their markets. That the brokers did so underscores how serious they consider the problems.

letters

Brokers should have to prove their 'value added'

To the editor: Lawrence Bell in the Oct. 13 issue asked in this column why risk management consultants don't expand their insurance marketing services. We'd like to. Unfortunately, most insurers won't deal directly with the policyholder or the policyholder's chosen representative—this despite potential savings of 5% to 20% in acquisition costs.

The only explanations seem the usual ones for the insurance industry: inertia, slavery to tradition and fear of offending the "producers," who are themselves innovating to serve their clients (and retain their revenues) even to the point of utilizing direct-writing markets.

On the other hand, why should insurers listen to cries in the wilderness like Mr. Bell's? How many risk managers are willing to give up annual trips to London, RIMS dinner invitations and other "broker-paid" favors in order to buck the system?

We aren't suggesting that consultants can or should replace the conventional marketing mechanism. To the contrary, whatever other services they provide, brokers are the true marketing experts with contact networks to reach markets consultants can't. But when these aren't needed or desired, as when few markets are available and/or claims-made renewals limit shopping, buyers should have the *option* to deal direct (with or without a consultant adviser/advocate).

Brokers, like consultants or any other true professionals, should have to prove their "value added." The good ones can in most—but not all—cases. Direct insurer access would serve everyone's best interest, except featherbedding middlemen.

Arthur J. Levine
President
Jack & Levine Risk Management Inc.
Fullerton, Calif.

CBS risk manager sets record straight

To the editor: The article regarding CBS Inc. and its position on libel insurance coverage (*BI*, Oct. 27) is filled with incorrect information:

• Cost was not the major reason "CBS canceled libel cover." The scope of coverage sought was not available.

• CNA Insurance Cos. insured the risk several years ago and was not the recent insurer.

• The cost of the umbrella policy is incorrect—by several million dollars.

Dennis F. D'Oca
Vp-Risk management, Finance
CBS Inc.
New York

■ *Editor's note: The first two points of information were provided by a CBS public relations person. The third point was taken from an earlier BI story that was incorrect.*

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611.

Picoult formula should be applied to insurers

To the editor: We always benefit from reading the well-prepared articles by Myron M. Picoult, who seems to understand property/casualty insurance better than the majority of us who have been professionally engaged in this industry for years.

However, his article in the Oct. 27 issue is so appropriate that we must express the hope that his "adjusted premium volume-to-surplus" formula can be refined, if necessary, into an acceptable tool for evaluating an insurance company's assumption of risk on a leveraged basis.

Worley Jones
Past President
Independent Insurance Agents of Texas
Fort Worth, Texas

Wholesale brokers, MGAs need coverage

To the editor: Like many of our competitors, we have been hit by the crisis of the lack of an errors and omissions insurance market. Wholesale brokers and managing general agents like us have had tremendous difficulty in obtaining professional liability insurance.

Our organization handles a substantial amount of errors and omissions insurance for the majority of professional classes, and we therefore are able to keep abreast of market conditions. In some states, small limits are available, but in others, coverage for wholesalers is unavailable.

From our observation, errors and omissions insurance for wholesale brokers and managing general agents is one of the hardest professional liability coverages to purchase. I would like to add that we find it very distasteful to see our industry provide professional liability coverage for plaintiffs' lawyers and at the same time refuse coverage for the producers that feed that very same industry.

It would seem to me that there is something very wrong here.

Through your medium, may I make an appeal to those insurance and reinsurance executives who have the ability to provide E&O coverage to wholesalers—and who up to this time have declined to do so? With smart underwriting and good selection of risk, there is no reason why adequate underwriting profits cannot be attained.

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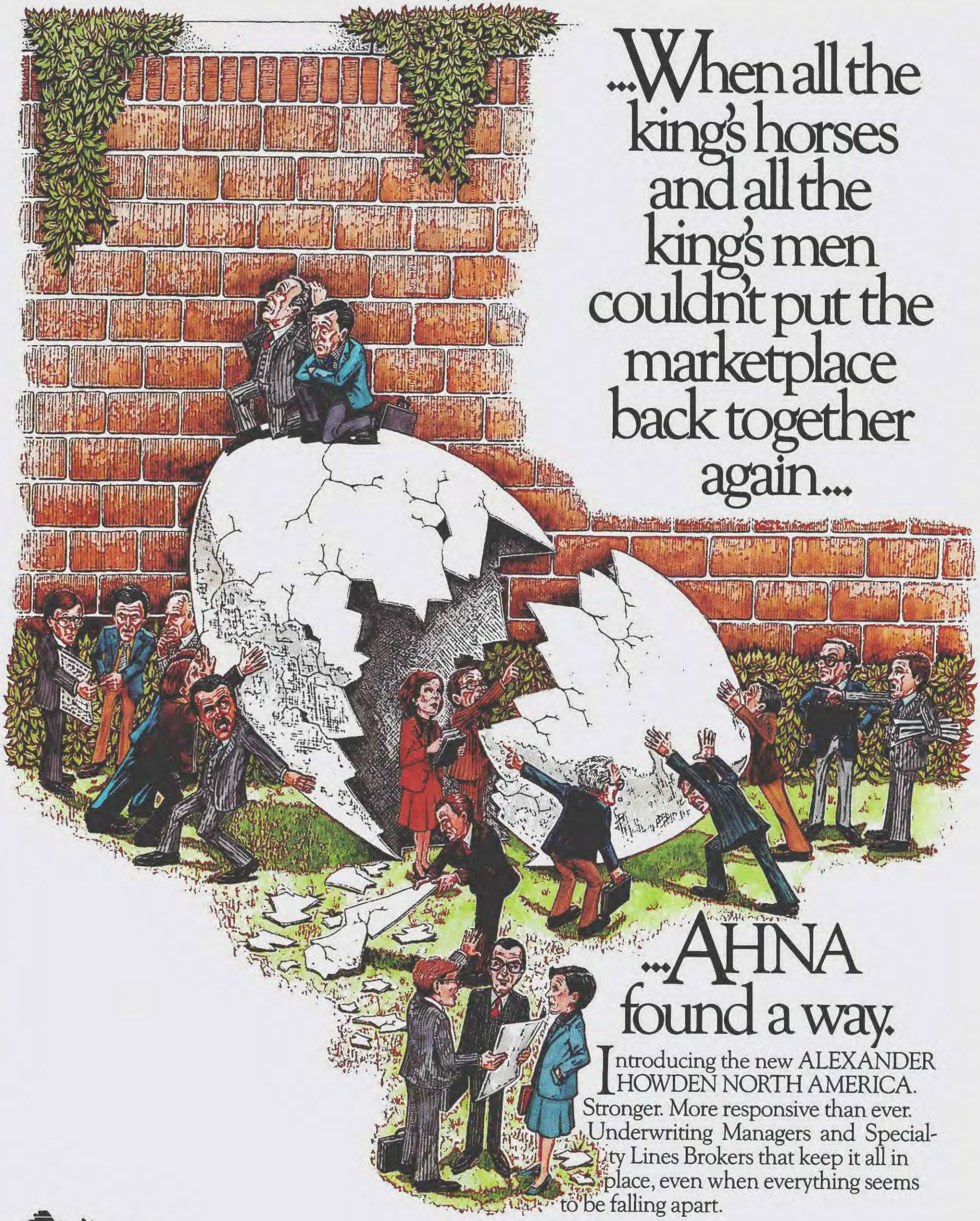

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New capital

Continued from page 6

U.S. Facilities, an insurance holding company, recently filed a public offering of 2.6 million common shares at $10 per share, which will produce gross proceeds of $26 million. After stock underwriting discounts and commissions, estimated net proceeds from the sale will total about $24 million.

The offering's underwriters—Prudential-Bache Securities, Sutro & Co. Inc. and Fox-Pitt Kelton N.V.—have the option to purchase an overallotment of an additional 390,000 shares, according to the prospectus.

U.S. Facilities acts as a holding company for two entities:

- US Benefits Inc., an underwriting manager that provides medical stop-loss coverage through Harbor Insurance Co., a unit of Continental Corp.
- Massachusetts Plate Glass Insurance Co., which in the past has operated as a primary insurer of plate glass risks.

The proceeds of the U.S. Facilities stock sale will be contributed to MPG's surplus—currently $3 million—to allow it to expand into the reinsurance business, according to the offering prospectus.

As a reinsurer, MPG plans to write quota-share treaties covering a portion of the medical stop-loss business underwritten by US Benefits, according to the prospectus.

In addition, MPG will write a book of property and casualty facultative reinsurance managed by RFC Management Co. and placed by RFC Intermediaries Inc. of Atlanta.

RFC Management will have the authority to write property and casualty facultative limits of $250,000 per risk, according to the prospectus. If RFC arranges retrocessions for amounts excess of $250,000, it may write up to $1 million on property risks and $500,000 on casualty risks.

MPG also will write property/casualty facultative risks submitted by other brokers, the prospectus says.

MPG's entry into the reinsurance market is being overseen by President and Chief Operating Officer John T. Grush, a former vp with General Re who joined MPG in July, according to the prospectus. An additional 40 people will be hired over the next two years to manage the facultative business, the prospectus says.

MPG received a "not assigned" rating from A.M. Best Co. for 1985 because of significant changes in its operations.

Houston-based United Republic—which was formed in July with a $25 million contribution from the United Savings Assn. of Texas—is writing mainly excess-of-loss property treaty reinsurance, although it may consider some casualty risks submitted by property reinsurance clients (*BI*, July 28).

United Republic's maximum line is $250,000 on property business and will vary on casualty business depending on the risk.

The reinsurer's surplus currently stands at about $24.8 million, according to Rex L. Davis, president and chief executive officer.

Reinsurance Corp. of New York will receive 90% of the proceeds of a public offering of 1.5 million common shares in its holding company, Piedmont Management, according to the preliminary prospectus.

Assuming a price of $15.75 per share—a recent quotation for Piedmont stock—the offering would generate gross proceeds of about $23.6 million and estimated net proceeds of $22 million. The issue's underwriter, Donaldson, Lufkin & Jenrette Securities Corp., has an option to purchase an overallotment of an additional 225,000 shares.

Marion A. Woodbury, the reinsurer's vice chairman, said the new money would be used to support existing and new business. There will be no significant change in per risk capacity or mix of business as a result of the offering, he said.

Reinsurance Corp. of New York's surplus stood at $45.8 million as of June 30. During the first six months of 1986, the reinsurer wrote net premiums of $53.4 million, compared with $30.4 million during the first half of 1985.

Property treaty business accounted for 31.6% of net premiums in the first half of 1986, while casualty treaty accounted for 20.5%, property facultative for 10.6% and casualty facultative for 9.2%, according to the offering prospectus. The remaining 28.1% of net premiums consisted of surety, pool and foreign business.

Reinsurance Corp. of New York's maximum line on property treaty business is $500,000 per risk, while its net line on property facultative business is $250,000, with a maximum gross line with retrocessions of $2.3 million, the prospectus says.

The reinsurer's maximum line on casualty treaty business is $150,000 per occurrence. The gross line on casualty facultative risks is $250,000, and the net line after retrocessions is $182,500 per policy, the prospectus says.

MONY Reinsurance Corp., an affiliate of Mutual Life Insurance Co. of New York, will receive a $15 million contribution to surplus from its parent company before the end of the year, according to Mr. Cummins. Current surplus stands at about $22.7 million, not including the contribution.

The money will be used starting next year to support 20% to 25% increases in MONY Re's net line on property and casualty reinsurance risks, Mr. Cummins said.

Less than 10% of MONY Re's business is facultative, the bulk consisting of treaty risks, he said. Overall, about 75% of the reinsurer's business is property, while about 25% is casualty.

Along with these companies, several other specialty reinsurers are in the process of forming or have already formed. These include:

- U.S. Capital Reinsurance Corp., currently seeking $120 million in capital through a private placement handled by Smith Barney Harris Upham & Co. Inc., according to Theodore A. Verspyck, president of U.S. Capital Services Corp. in New York.

U.S. Capital Re plans to write mainly municipal bond treaty reinsurance, according to Mr. Verspyck.

The private placement memorandum went out to potential investors—primarily financial institutions like banks, credit companies and other insurance companies—in February. U.S. Capital Re has "some commitments" but has not completed the placement, Mr. Verspyck said.

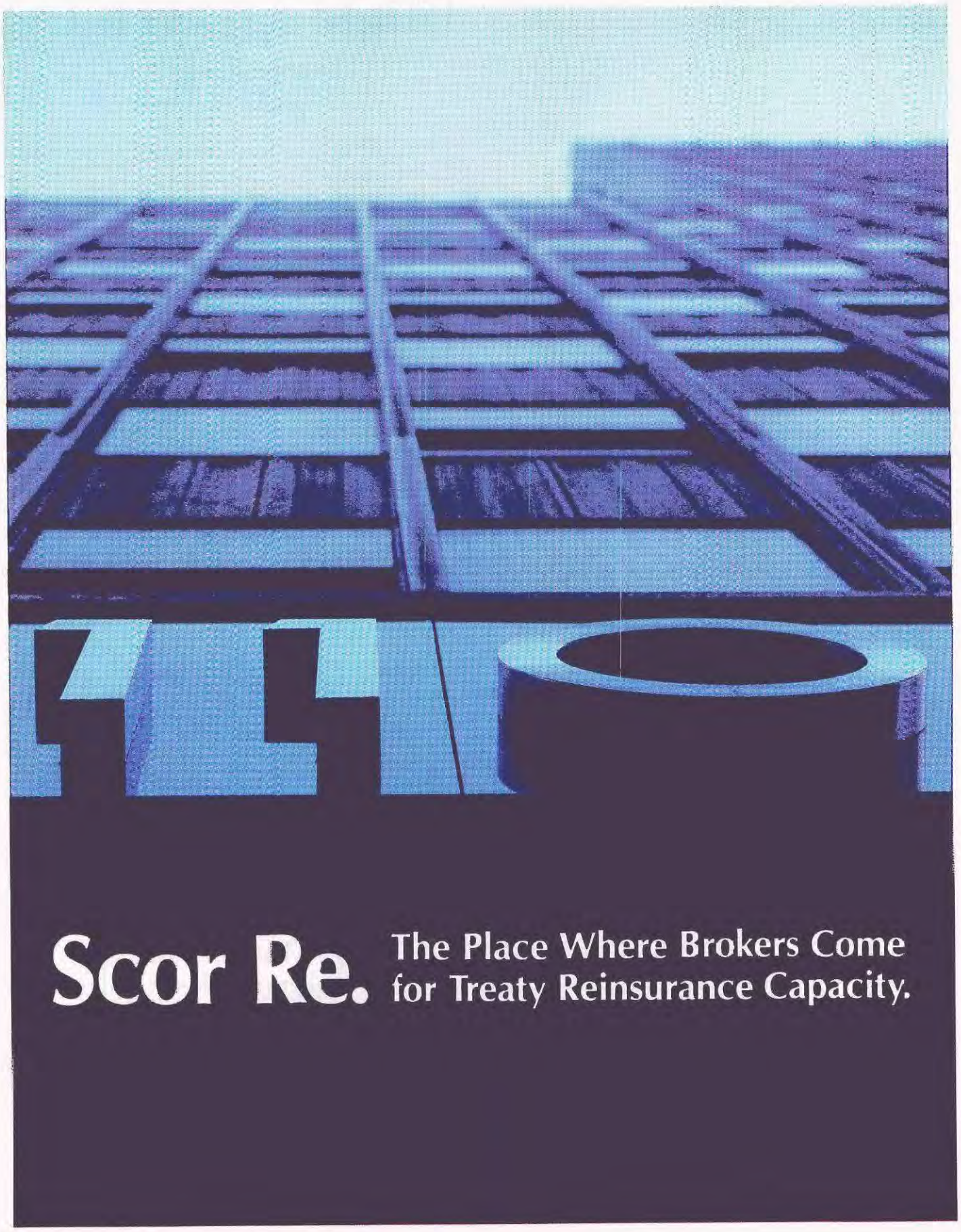
- Enhance Reinsurance Co. of New York, which plans to specialize in financial guarantee reinsurance (*BI*, Oct. 20).

Enhance Re issued a private placement memorandum through Merrill Lynch Capital Markets Inc. in March to raise up to $115 million in capital.

The reinsurer expects to write $52.3 million in net premiums this year.

- Star Insurance Co. of Southfield, Mich., formed earlier this year with $3.5 million in capital contributed by 25 individual investors (*BI*, March 3).

Star was formed to write reinsurance covering captive insurers managed by Meadowbrook Risk Management Ltd. of Bermuda. Star also had planned to reinsure agency, group and association captives managed by other firms. ■



12 ways The Morgan Bank is serving insurance companies in today's changing markets

Morgan officers discussing investment and corporate finance alternatives for an insurance company client are, from left, Jay Whitman, vice president, Insurance Industry; John Spurdle, executive vice president, Investor Services Group; Richard Johnson, vice president, Insurance Industry; George Rowe, senior vice president, Financial Institutions.

The Morgan Bank has a worldwide team of corporate finance specialists who concentrate on helping insurers plan financial strategies to take advantage of developments in their rapidly changing industry.

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5. Investment management. With over $40 billion under management, Morgan is a leading investment manager for a wide variety of clients, including 30 insurers. We pioneered immunization, portfolio protection, and participating annuity products with unique applications for insurance clients.

6. Mergers and acquisitions. When insurers consider restructuring options they value Morgan's worldwide research team of more than 100 analysts, plus our M&A perspective that's long-term, not just deal-oriented.

7. Letters of credit. We issue insurance letters of credit and have syndicated facilities in amounts as large as $500 million. And we've developed other alternatives that insurers find cost effective.

8. Securities safekeeping. Morgan is a pacesetter in global securities safekeeping. We offer accurate, responsive reporting systems, a securities lending program, and experience with mutual-fund-related products.

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12. Financial advice. Morgan is not interested in selling insurance. We want to compete for your corporate finance business, not for your policyholders.

For more information, contact Richard F. Johnson, Vice President, Insurance Industry Department, Morgan Guaranty Trust Company, 23 Wall Street, New York, NY 10015. Telephone (212) 483-9640. Member FDIC

The Morgan Bank

Top brokers

Continued from page 3

But, Mr. Greene says his company has not lost treaty business to direct writers.

Others, however, say broker-market reinsurers often could not decide on terms, and thus lost business to the direct writers.

"The direct market has been able to make headway while the broker market has been working out wordings," said one CEO, referring to disarray in the broker reinsurance market over such conditions as pollution exclusions, sunset clauses and the need for claims-made forms.

However, many of the problems in the broker market were caused by different wordings on retrocessional protections, which are now being changed to provide more common ground, brokers agree.

Mr. Berry sees the loss of business to direct writers from another perspective: "Direct writers are capitalizing on the issue of broker-market security, but that is a little hypocritical since so much of the direct market's retrocessional capacity is supported by the broker market—using captive brokers."

Another brokerage executive, who asked not to be identified, said: "The problem in the broker market is with collectibility of reinsurance. A lot of broker-market reinsurers have failed to recognize the threat from the direct writers and have not cleaned up their act on prompt payment of losses."

But, rising rates producing higher commissions on the business placed in 1985 and 1986 generally more than compensated brokers for lost business, while new accounts also were landed.

Indeed, rising rates added a new broker to the *BI* ranking of the 10 largest reinsurance intermediaries: Chicago-based Reinsurance Agency Inc., which specializes in placing reinsurance for excess/surplus lines insurers.

A reinsurance broker earns commissions based on the type of contract placed:

- Excess-of-loss treaty reinsurance generates a 5% commission in the working layers and 10% in the non-working layers.
- Pro-rata or proportional treaties generate a 1% to 2.5% commission, with domestic business paying the lower commission.
- Excess-of-loss facultative reinsurance generally generates a 10% commission of net premium when no ceding commission is paid and 5% of gross premium when there is a ceding commission.
- Pro-rata facultative contracts generate a 5% commission.

In addition to commissions, reinsurance brokers earn interest on the premiums they hold for 30 to 45 days, which can amount to about 15% of commissions.

While ceding company clients are aware of the increased commissions, there have been only isolated instances of pressure to reduce commissions, brokers report.

Reinsurance brokers expect another good year of growth in 1987.

No one reports seeing a gush of capacity, although reinsurers are particularly interested in writing property risks.

A few executives see signs of more willingness among reinsurers to talk about writing new casualty programs, but most expect casualty capacity to remain tight.

In the facultative market, casualty capacity per risk is now estimated to be $37 million, compared with $185 million in January 1984, said David Cargile, president of FFC Intermediaries Inc., the only predominately facultative reinsurance broker in the Top 10.

Rates, generally, have leveled, the brokers agree. Some property rates may come down, while some casualty rates may jump 10% to 20%, brokers agree.

The best news is that the brokerage marketplace has stabilized.

"A year ago it was chaotic," said Michael Cashman, president of E.W. Blanch Co. "Many reinsurers simply backed off from a realistic approach to business because they didn't know what they wanted to do. Now they have plans and are soliciting business. It's not necessarily cheaper, but you can get them to talk."

Mr. Barry cautions, however, that is could be "premature to say if the chaos has died down. Last year we didn't anticipate the degree of chaos."

And, he notes, there again may be delays in obtaining responses from reinsurers as they arrange their retrocessions.

The recent difficult marketplace has taken its toll on the smaller reinsurance brokers: The number of reinsurance intermediaries licensed in New York, the only state with that specific license, decreased to 286 as of Sept. 30, down from 302 last year and 326 in 1984.

Following are reports on the 10 largest U.S.-based reinsurance intermediaries:

Continued on next page

Reinsurers, brokers form association

MORRISTOWN, N.J.—Major U.S. reinsurers and reinsurance intermediaries are banding together to help address market problems.

A group of reinsurers and intermediaries last month formed the Brokers & Reinsurance Markets Assn. to "address, analyze and seek solutions to problems that may affect the ability of members to meet the needs of their reinsurance clients."

The association will "work to improve the efficiency of the market and to well represent the interests of members to regulators and legislators."

Richard F. Gilmore, president and chief executive officer of The Mercantile & General Reinsurance Co. of America, was named chairman and chief executive officer of the association, while William J. Gilmartin, retired senior vp of CNA Insurance Cos., was named president and chief operating officer.

Other officers include Richard H. Blum, president of Guy Carpenter & Co. Inc., who was named vice chairman, and David B. Mathis, chairman and chief executive officer of Kemper Reinsurance Co., who was named secretary/treasurer of the association.

Charter intermediary members of the group are: E.W. Blanch Co. Limited Partnership; Carpenter; Thomas A. Greene & Co. Inc.; G.L. Hodson & Son Inc.; Intere Intermediaries Inc.; Sullivan Payne Co.; Towers, Perrin, Forster & Crosby Inc.; and Willcox Inc. Reinsurance Intermediaries.

Charter underwriting members are: Allstate Insurance Co.; CNA; F&G Re Inc.; Kemper Re; INA Reinsurance Co.; Mercantile & General; MONY Reinsurance Co.; New England Reinsurance Corp.; St. Paul Reinsurance Management Corp.; and Skandia America Reinsurance Corp.

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Continued from previous page

Guy Carpenter & Co. Inc.

Guy Carpenter & Co. Inc., the dominant U.S. reinsurance intermediary, benefited from rate hikes in 1985 but does not appear to have landed major new accounts in the difficult reinsurance marketplace, competitors say.

Carpenter's revenues approached $200 million in 1985, *BI* estimates, about a 29% increase from 1985 revenues of $155 million.

In comparison, the combined estimated revenues of the next nine largest U.S intermediaries total $238 million.

Marsh & McLennan Cos. Inc., parent of Carpenter, reports Carpenter's revenues consolidated with its London reinsurance subsidiary, C.T. Bowring. Together, their reinsurance brokerage totaled $247 million in 1985, up 29% from $191 million in 1984, not including interest income.

"These reinsurance operations benefited from the steady rise in premium rates which has continued since the fourth quarter of 1983," M&M reported to shareholders in its 1985 annual report.

In keeping with a corporate philosophy of not talking to the press, executives of Carpenter declined to be interviewed for this report.

Competitors, however, would talk about Carpenter from their perspective on the condition their names were not used.

"They have good growth simply because of the business they hold," said the CEO of a competing reinsurance intermediary, referring to the core reinsurance programs they handle for most of the jumbo property/casualty insurers.

"They have the large companies locked up for their core business," the CEO said.

While some of Carpenter's large clients probably took larger retentions because of the rising cost of reinsurance, what they did buy cost more, driving up Carpenter's commissions.

However, Carpenter is not known among its competitors for aggressively producing new business. "They aren't really producers —they haven't had to develop their business," the CEO said.

Carpenter, founded in 1923 and later acquired by M&M, was the first company to recognize the potential of a successful treaty operation, competitors note. In a business where long-term relationships are highly valued, Carpenter holds onto age-old accounts.

But as a result, competitors view Carpenter's business development strategy as passive, suggesting Carpenter just waits for the phone to ring from current clients to develop business.

"I envy them," said more than one CEO of competing brokerages.

Carpenter has even declined to broker reinsurance for some new entrants to the excess/surplus lines market, sources say, because it believes it has exhausted market capacity for this business filling its current client needs.

Carpenter is known to place facultative reinsurance for Lexington Insurance Co., an American International Group Inc. unit and the largest surplus lines insurer based on 1985 gross premiums of $361.7 million written on a non-admitted basis.

Carpenter's lack of aggressiveness in producing business also is mirrored in its marketing of reinsurance, one competitor suggested. "Technically, they are very good. But their programs may not always be as competitive because they they lack aggressiveness."

That would be hard to convince Carpenter clients, however.

"They enjoy credibility with clients, and deservedly so. Plus, they have great stability," observed an executive of another brokerage.

"They get business because of their perceived clout," said another executive.

"They're very professional," commented another competitor. "They invested substantial money in their back office," including their security analysis and claims services, he added.

"Carpenter seems as invulnerable as ever," said the executive another reinsurance broker.

For the first time in four years, Carpenter reports expanding its staff. Carpenter employed 1,258 people at year-end 1985, a 4.8% increase from the 1,200 employees reported to *BI* since 1983.

Carpenter is particularly adding younger people now, in support services and as broker trainees, a source close to the company says.

During 1985, Carpenter President Richard H. Blum was elected to the board of directors of the parent company.

Sullivan Payne Co.

The new Sullivan Payne Co. formed July 1 by the merger o John F. Sullivan Co. with E.W Payne Inc., is coming out of a difficult period following the merge and the loss of two top officers, its new president says.

Sullivan, a subsidiary of Fred S James & Co., and Payne, a subsidiary of Sedgwick Group P.L.C.'s E.W. Payne Cos. Ltd., were merged nine months after Sedgwick acquired James.

Sullivan Payne now reports to Payne in London and no longer reports through James.

The change took its toll.

In April, before Sullivan Payne was created, Sullivan's president and chief executive officer of 16 months, James J. Meenaghan, announced he would resign, effective May 15.

Mr. Meenaghan, formerly president of Fireman's Fund Insurance Cos., joined Sullivan in April 1984 as president and was named CEO in January 1985, succeeding W.E Taylor.

Roger D. Espe, formerly executive vp of Sullivan and president of E.W. Payne Inc. in Des Moines, was appointed president of Sullivan in April.

Then, on July 31, Mr. Taylor retired from his position as chairman several months earlier than he had planned.

Mr. Meenaghan and Mr. Taylor explored starting a new reinsurance brokerage together, but Mr. Meenaghan has since joined The Home Insurance Co. as president and Mr. Taylor has started his own treaty brokerage firm in Seattle, Taylor Reinsurance Intermediaries Inc (*BI*, Oct. 6; Oct. 27).

In addition to these departures, Robb K. Peglar resigned as president of Sullivan's New York office at the end of July and founded Peglar & Associates Inc. in Stamford, Conn. in August. The intermediary now employs seven people.

The loss of senior personnel and the emergence of new competitors with links to Sullivan Payne clients has sent competitors tongues' wagging about Sullivan Payne's "problems" and the potential loss of business.

Competitors, who use strong terms in describing the changes at Sullivan as ranging from "self-destruction to total chaos," expect Sullivan Payne's 1986 revenues could slip and are predicting that enough clients will switch brokers at year-end to reduce Sullivan Payne's 1987 revenues.

Mr. Espe strongly disagrees.

"The rumors that persisted, and to some degree still persist, were blown out of perspective," he said.

While "the factor of two top people leaving makes it more difficult," Mr. Espe said, "the merger did not cause any great disruptions

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Top brokers

Continued from previous page

—no more than the normal pains resulting from a merger."

Sullivan Payne has lost some accounts, he confirmed, "but not a huge number. That's part of what's been blown out of reason. We've gained some accounts and we have received very good support generally from our clients.

"We are coming out of the merger with another substantial increase in revenues and we are looking forward to '87 and the future with a great deal of confidence," Mr. Espe said.

Sullivan's 1985 revenues increased 35% to an estimated $45 million, excluding Payne's revenues, which are estimated at about $5 million. This was accomplished with just an 18.3% increase in staff, which was mostly in the treaty support area, although some producers also were hired.

Mr. Espe said rate increases and new business fueled the growth in 1985.

There will be no general change in strategy at Sullivan Payne, said Mr. Espe. The company wants to maintain a balance of regional and national accounts, continuing to operate primarily as a treaty broker, with 85% of 1985 business involving treaty business. "Facultative is mostly accommodation business," he noted, although some facultative clients are not treaty clients.

Facultative business is handled out of Seattle, Los Angeles and New York. Sullivan Payne also has offices in Dallas, Des Moines and Philadelphia and a Canadian subsidiary, John F. Sullivan Co. of Canada Ltd.

While Sullivan handled strictly U.S. ceding companies' business, Payne had brokered non-U.S. accounts to U.S. reinsurers, fed by Payne and other London brokers. The employees who handled this business for Payne in the New York office continue to do so.

Sullivan Payne is not mandated to use Payne as its broker in London, Mr. Espe noted. Over time, the percentage of business placed for Sullivan Payne in London by Payne probably will increase, he said, but it will be "a function of our clients' wishes," he added.

In new personnel developments, Michael J. Wybar, formerly managing director of the North American division of E.W. Payne in London, became senior vp of Sullivan Payne and head of its Philadelphia office.

Mr. Espe, who reports to E.W. Payne Chairman James M. Payne, also was named vice chairman of E.W. Payne in London late last month. "It signals the significance of the North American activity as part of E.W. Payne," Mr. Espe commented.

Sullivan Payne contributes about 40% of E.W. Payne's revenues (see story, page 22).

Mr. Espe maintains his home in Des Moines for family reasons but spends half his time in the Seattle headquarters and traveling to other Sullivan Payne offices and London.

With the eight-hour time difference between Seattle and London, Mr. Espe's permanent office location is under review.

But, Mr. Espe says "there is no reason to believe we will decentralize the claims, administration and accounting services, etc., in Seattle."

E.W. Blanch Co.

E.W. Blanch Co. is investing in staff and providing services "beyond the normal services a reinsurance broker is expected to deliver," according to President and Managing General Partner Michael W. Cashman Sr.

"We want to be a more complete brokerage firm, to bring more to the equation" than just aggressive marketing, said Mr. Cashman.

Blanch, for example, employs five actuaries, three of which are devoted entirely to actuarial analysis for clients, helping them to analyze the cost of reinsurance on a net basis. Blanch's actuaries also can communicate with outside actuaries, a skill that is understandably beyond that of an account executive.

"It's enabled us to market casualty in a tough market," Mr. Cashman noted.

In addition, Blanch recently hired Robert A. Bailey, formerly chief property/casualty analyst at A.M. Best Co. Mr. Bailey is developing a system for Blanch that will produce information more thoroughly and on a more timely basis than other services used to determine the financial security of a reinsurer, Mr. Cashman said.

Blanch does not now intend to market the service, he said.

Blanch's growing revenues are supporting the development of these services.

Blanch does not release its premium volume or gross revenues, but Mr. Cashman said Blanch's growth "started picking up in 1985 and really accelerated in 1986."

"Growth in '86 will outpace '85 and '85 outpaced our historic growth record," he said.

BI estimates Blanch's 1985 revenues at $41 million, based on growth of about 32% compared with 1984, which again ranks Blanch as the third-largest U.S. reinsurance intermediary.

Treaty business "has grown tremendously while facultative stayed relatively stable," Mr. Cashman noted. As a result, facultative business generated just 1% of Blanch's business in 1985.

Blanch's facultative business exists both to accommodate treaty clients' facultative needs and to produce profits, he said.

The staff at Blanch also grew in 1985: 27.6% to 296 employees, with all but 17 employees assigned to treaty business. Mr. Cashman expects the number will exceed 300 by year-end 1986.

Blanch's client mix is changing, Mr. Cashman said, from predominantly regional insurers to a mix of all sizes of insurance companies.

Blanch has been known as the major force in the middle part of country, competing against General Reinsurance Corp. for the business of small- to medium-sized insurance companies.

The Chicago office, however, has branched further east and developed large regional companies and big stock companies, Mr. Cashman said.

The just more than 1-year-old New York City office is up to about 35 people and performing "quite well," according to Mr. Cashman.

Blanch Chairman E.W. Blanch Jr. is directing the development of the office.

Among its broad range of clients, Mr. Cashman said, are large stock companies and small- and medium-sized regional Northeastern companies, whose business resembles that of the Midwest companies Blanch has developed as clients.

Previously, Blanch served its New York-area clients from an office in Stamford, Conn.

The New York office also has developed a new specialty for Blanch: political risk.

The West Coast office in San Francisco "has done a good job of penetrating the West Coast," Mr. Cashman said, adding that Blanch intends to make its next major investment in the West Coast area.

While Blanch's client base is changing, he stressed, "we have some very small Midwest clients we've had for 20 years who have been our bread and butter. We don't want to forget them."

Blanch now wholly owns a London broker, after purchasing the outstanding equity in Bradstock Blanch Ltd. in September. The company, which had been operated as a joint venture with Bradstock Group in London, was renamed E.W. Blanch (U.K.) Ltd.

The U.K. broker, which employs 17 people, is seeking status as a Lloyd's of London broker. In the meantime, Robert Fleming Insurance Brokers Ltd. provides the company access to Lloyd's.

The new London subsidiary handles mostly Blanch business from the United States, but also handles some business from the United Kingdom and elsewhere in the world.

The amount of business Blanch places with Lloyd's has grown slightly, although the amount placed with international markets outside Lloyd's has dropped slightly, Mr. Cashman observed.

Among the officers of the new Blanch subsidiary are Chairman Richard V. Craig, formerly with C.T. Bowring & Co. Ltd.

Blanch also has an office in Copenhagen, Denmark.

Towers, Perrin, Forster & Crosby Inc.

A new chief executive officer will take the helm Jan. 1 of the reinsurance division at Towers, Perrin, Forster & Crosby Inc.

With 32 years in the business and 10 years as CEO of TPF&C's reinsurance division, Bernard D. Berry is preparing to retire. He will continue as vice chairman until retirement at year-end 1987, the same time as TPF&C corporate Chairman and Chief Executive Officer Quentin I. Smith reaches his 60th birthday, which is the traditional retirement age at TPF&C.

Mr. Berry said he is retiring 12 months earlier than normal "in order to get the whole succession transition issues over at the same time."

Mario Leo, 55, who was elected corporate executive vp in April, is Mr. Berry's successor Jan. 1 as CEO-reinsurance. Mr. Leo has been vp-finance and legal counsel for the corporation and had directed the long-range planning for the reinsurance division in 1983-84.

James E. Kielley, 55, TPF&C president, was elected manager of the consulting division Sept. 1 and successor-elect as CEO of the corporation.

TPF&C, which merged with Tillinghast, Nelson & Warren earlier this year, is one of the largest independent management consulting firms, with estimated annualized 1986 revenues of $400 million.

Mr. Berry turns over a growing reinsurance division.

TPF&C's reinsurance division revenues grew about 35% in 1985 to about $31 million from $23 million in 1984, *BI* estimates. And 1986 revenues are estimated at $41 million, a 32% increase compared with 1985.

TPF&C was spared lost business experienced by some other reinsurance brokers by maintaining its strategy of handling "more traditionally oriented reinsurance covers—covering property/casualty books basic to an insurance company portfolio," Mr. Berry said.

Some reinsurance brokers, Mr. Berry noted, "took advantage of the soft marketplace and were willing to look at anything," including novelty types of coverage and managing general agent programs, many of which no longer can be placed in a tight market.

"Our client base is more of a traditional, old-line type of company, ranging from the very very big—although not necessarily the entire account—down to some relatively small mutual companies. We even have some county mutuals."

TPF&C's reinsurance division employees now number close to 300, with additions to the support staff. Administration and support services are centralized, including claims, contract wording, client reporting and accounting and computer systems.

Employees grew to 266 at year-end 1985 from 235 at year-end 1984. Most of the growth was in the treaty area, with only six of the additional 31 employees assigned to facultative reinsurance.

In addition to support staff, he said TPF&C is "focusing on the next generation of outstanding producers," which TPF&C develops by hiring people with three to four years of experience in the insurance or reinsurance business and training them in reinsurance brokering.

Among senior personnel, TPF&C lost two employees hired last year.

Stewart H. Steffey Jr., who joined TPF&C in early 1985 as vp and senior administrative officer from CIGNA Corp., returned to CIGNA this year.

"He joined us to set up a centralized administration and he did a very good job of getting it organized and attracting talent," Mr. Berry said. It had been planned for Mr. Steffey to become a full-time reinsurance broker.

In addition, Keith D. Gilles, the former chairman of London-based C.E. Heath & Co. (Reinsurance Broking) Ltd., resigned from TPF&C just six months after joining the firm last fall. Mr. Gilles had never moved to the United States, for personal reasons, and now is chairman of London reinsurance broker Golding Stewart Wrightson Holdings P.L.C.

In business growth, facultative reinsurance continues to keep pace with treaty reinsurance, contributing a steady 20% of revenues in 1984, 1985 and again in 1986.

"We're awfully happy we stayed in the facultative market," Mr. Berry remarked. "It's a credit to Bob Jones, who has done an outstanding job," he said, referring to Robert F. Jones, vp-facultative operations.

TPF&C believes it is "our obligation is to provide full-service intermediary services and it is very profitable for us," Mr. Berry said of facultative reinsurance. "We also develop facultative business independent of our treaty clients."

Geographically, the year-old Stamford, Conn., office under Jacobus J. Van de Graaf is "maturing," Mr. Berry said.

"It is not as good a start as we had hoped, but that's probably due to market conditions," Mr. Berry said. "We have attracted new business," he noted.

Philadelphia-based TPF&C also has reinsurance offices in Hartford, Conn., New York and San Francisco.

TPF&C's international business for non-U.S. clients has been "about flat because of very difficult market conditions over here. Most of ours is LMX (London market excess business) and the market is not there, even though we think there is tremendous opportunity."

TPF&C also is attracting some Continental and Japanese business, Mr. Berry noted.

Last year international and marine business represented about 7% of revenues; it's down to 6% in 1986.

TPF&C currently is reviewing its market security program, with the assistance of the Philadelphia office of Tillinghast. "We had a good one, but we think it can be improved—as anything can be," said Mr. Berry.

"The process we went through to evaluate our program was very important," commented Mr. Leo, who says he is an advocate of tapping all available resources—inside TPF&C and outside—to improve the quality of service provided by TPF&C.

G.L. Hodson & Son Inc.

G.L. Hodson & Son Inc., the fifth-largest U.S. reinsurance intermediary, is in the midst of a management transition—in people and in style.

The veteran top officers of Hodson, Robert G. Hodson and Thomas M. Hearn, both 61, have decided to begin the transition toward their retirement before they reach 65.

In September, Ronald J. Taylor, 45, was named president and chief executive officer, succeeding Mr. Hearn as president and Mr. Hodson as chief executive officer. And, Duane Hitz, 47, was named executive vp and chief operating officer.

Mr. Taylor

Mr. Taylor had been president and chief operating officer of G.L. Hodson & Son Inc. of Georgia in Atlanta, and Mr. Hitz was president and chief operating officer of the sister subsidiary in St. Paul, Minn.

Mr. Hitz

Mr. Hodson continues as chairman, and Mr. Hearn is now vice chairman—positions that Mr. Taylor says he hopes they will fill for several more years.

"Our intention is that Messrs. Hodson and Hearn continue their participation in the operations of the company for another eight years—albeit the latter stages on a consulting basis," Mr. Taylor said.

"They are not inactive by any means," Mr. Taylor stressed. "Mr. Hearn is in every day and Mr. Hodson not quite every day, but they are both active in the operations."

But, the management style Mr. Taylor and Mr. Hitz are bringing to the company is changing.

"We share a similar management style," Mr. Taylor said, referring to Mr. Hitz.

"It's somewhat different than the prior style, with a heavier emphasis on production of new business and greater delegation of authority and autonomy with our senior people," Mr. Taylor explained.

"It's participative management as contrasted with more traditional management style," Mr. Hitz pointed out. "We're trying to get our senior brokers more involved in the decision-making process."

"I'm not saying our style is better or worse," Mr. Taylor noted. "It's simply what we know. We hope it will be as good or better," he said, adding that Mr. Hodson and Mr. Hearn "are a tough act to follow."

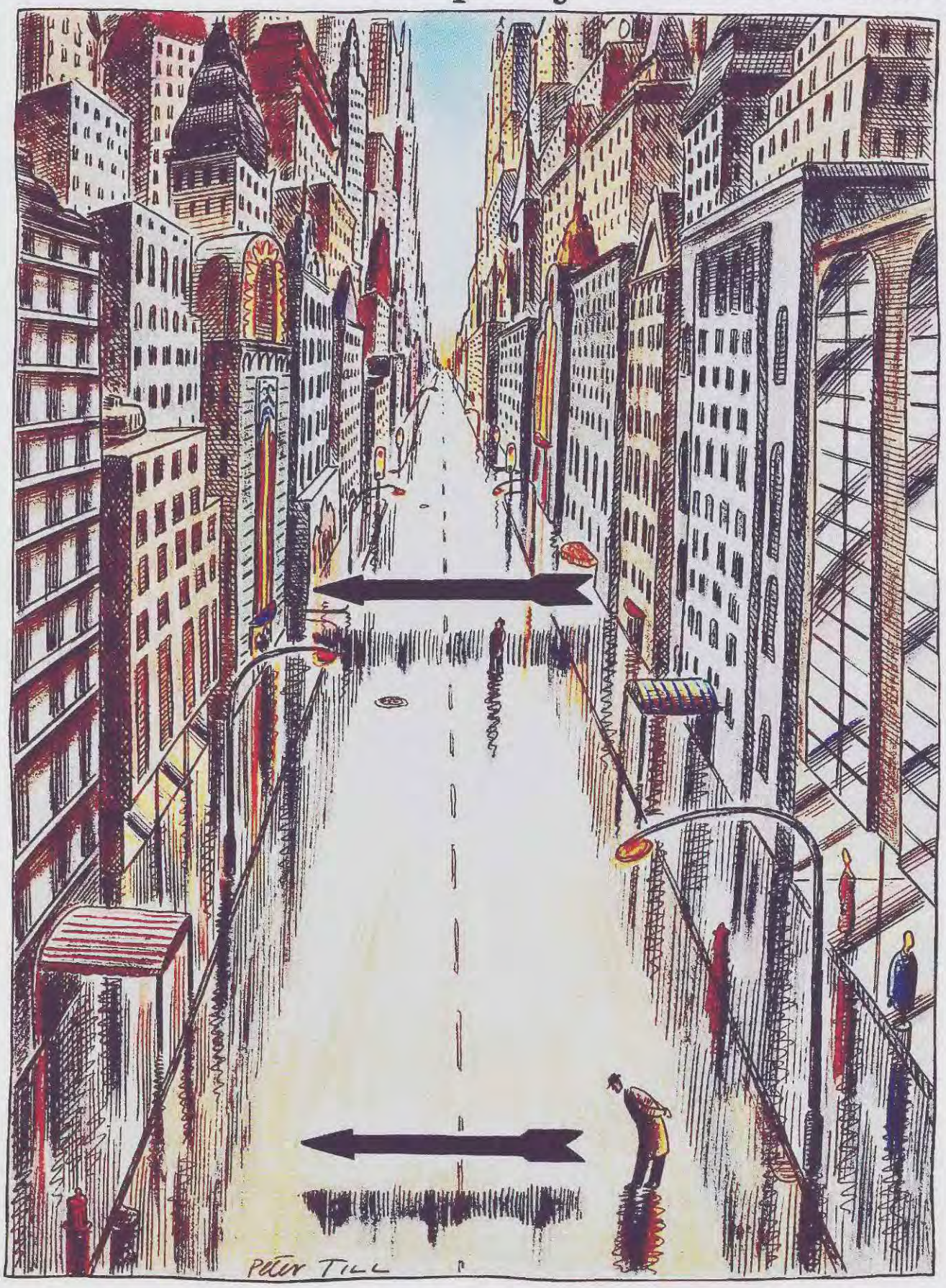
While 1986 is a period of management transition, 1985 was a period of only small revenue growth at Hodson, a subsidiary of Corroon & Black Corp. Hodson reports 1985 revenues of $23 million, up just 4.5% from 1984 revenues of $22 million.

(Hodson's 1984 revenues were restated this year to include only reinsurance revenues associated with business produced by Hodson and excluding any other intercompany transactions and commission sharing arrangements with Corroon & Black.)

Explaining the flat revenue growth during 1985, Mr. Taylor said: "We have had to recommend to our clients in some instances to keep business net rather than pay the prices that were not economically feasible. And some

Continued on page 16

How far down the road should a reinsurance company be before it's considered secure?



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Top brokers

Continued from page 14

business has gone by the boards."

Some contracts are no longer purchased, including some retrocessional contracts that had been written by companies that have pulled out of that market, he explained.

"The good news is it did not go to the competition," Mr. Taylor added.

Rate increases are reflected in 1985 revenues, but Mr. Hitz noted that "our client base is buying less reinsurance, so although there have been rate increases on virtually every program, buyers have increased their retentions commensurately."

And, new business was obtained, offsetting the lost business, Mr. Taylor noted, citing new business from existing clients, new reinsurance programs and contracts involving new classes of business.

The St. Paul and Atlanta offices have produced new business "beyond our expectations," Mr. Taylor said. Both direct writers and other reinsurance brokers have been the losers when the accounts involved existing business.

Currently the Los Angeles office handles only facultative reinsurance, but treaty expert Gail Willson will move to a yet-to-be-determined West Coast city after the first of the year to develop treaty business. Mr. Willson, formerly with Intere, is a vp in the New Hyde Park corporate office.

"We'll add as many support staff as is necessary" on the West Coast, Mr. Taylor said.

Mr. Taylor and Mr. Hitz are targeting annual growth of about 20%, which Hodson has attained in the past.

"We are working on lots of new business," Mr. Taylor said. "'86 and '87 should be very good years."

"The mix of business is changing dramatically and will continue to change," Mr. Hitz noted.

While Hodson historically was known as a predominantly Northeast broker entrenched with the big stock companies, Hodson has been operating in the Midwest and on West Coast since 1982, developing a base of medium sized as well as large company clients.

Hodson wants to serve one-state mutuals as well as nationwide stock companies, Mr. Taylor noted.

However, Hodson does not intend to seek non-U.S. based clients, Mr. Taylor said.

In 1985, 88.5% of Hodson's business involved treaty business, slightly more than in 1984, when 85.7% of the business was treaty.

However, 45 people are now assigned to facultative reinsurance compared with 40 in 1984, while overall the staff decreased by one to 192.

Mr. Hitz noted, "We're committed to the concept that a full service reinsurance intermediary needs the capacity to handle individual risk reinsurance for the benefit of its treaty clients," as well as operating the facultative department as a profit center.

Hodson places as much as 25% to 30% of its business in the London market, according to Mr. Hitz.

Corporate structure also will be altered, with the two subsidiary corporations in St. Paul and Atlanta undone and the offices becoming branch offices of G.L. Hodson & Son.

In addition to management transition, Hodson is involved in a major data processing project to develop a reinsurance management information system. A new facultative system is being installed now, and the first phase of the treaty system will be implemented early next year.

The project is expected to take 12-18 months to complete.

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Intere Intermediaries Inc.

Domestic business has grown dramatically, but international business has fallen off for New York-based treaty broker Intere Intermediaries Inc., according to Chairman and Chief Executive Officer Ward Gordon.

"We're just caught in the cycle," he explained.

Two years ago, about 20 U.S. markets entertained international business, but at least half are gone, Mr. Gordon said. "Someone could say there are more, but I'm talking about good, solid, viable capacity," Mr. Gordon said.

The companies that stopped reinsuring non-U.S. business wanted to free their surplus for the capacity-tight U.S. market, Mr. Gordon explained.

With domestic business growing and international shrinking some, international business accounts for a little more than 10% of 1986 revenues compared with 15% in 1985 and 20% in 1984.

However, Intere maintains a large international department of 25-30 people, including accounting staff, Mr. Gordon said.

The international department handles: home-foreign business, which includes insurance companies that assume an international portfolio of business and buy their protections though Intere; London Market Excess business; international business from correspondent brokers and directly from non-U.S. insurers; and marine and aviation, "which crosses international lines," Mr. Gordon explained.

While not disclosing premium volume or revenues of
held company, Mr. Gordon said revenues grew about 25% in 1985 and he expects to see growth of about 20% this year.

Intere is owned by its senior executive staff and the company's profit-sharing fund.

BI estimates Intere's 1985 revenues at $22 million to $24 million.

Intere's business strategy has been to identify the better, well-managed smaller insurance companies and to grow with them, Mr. Gordon noted.

With a client base of medium to large insurance companies, Intere did not lose business in 1985 as did some brokers whose clients chose to reduce their reinsurance buying because of high prices.

"Most of our clients bought what they could buy," Mr. Gordon said, explaining that Intere's ceding company clients are not in a position to drop their reinsurance programs as jumbo companies can do.

About 10% of Intere's business is placed outside the United States, primarily in London. However, very little of Intere's business is led in London, except for large property capacity treaties, Mr. Gordon notes.

Intere's employees now number 230, with additions made primarily in accounting and computer systems operations. At year-end 1985, employees totaled 202, up 6.9% from 189, also due to hiring support staff.

Intere opened an office in Minneapolis three months ago, which is serviced by its Chicago branch in Itasca, Ill. Intere President Wallace E. Winter is based in Itasca.

Intere also operates branch offices in Atlanta, Dallas and Walnut Creek, Calif., and has subsidiaries in Bermuda and Taipei.

Intere is the only leading U.S. reinsurance intermediary with pure reinsurance brokering offices in Bermuda and Taipei.

"Bermuda is doing extremely well. It's a very successful office for us," Mr. Gordon commented, noting Intere has been careful to do business with the reinsurers with professional underwriting staff in Bermuda.

Continued on page 18

COVERING THE CONTINENT, TOGETHER

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ENCON

Top brokers

Continued from page 16

Intere's London liaison office that opened last year no longer is staffed because John Gale resigned from Intere to move back to the United States for personal reasons, Mr. Gordon said.

Willcox Inc. Reinsurance Intermediaries

The resulting joint venture since New York-based Johnson & Higgins sold 49% of its Willcox Baringer subsidiary to London-based Willis Faber P.L.C. almost three years ago is a new, more aggressive and larger reinsurance intermediary, says Chairman Willis King.

Willcox Inc. Reinsurance Intermediaries is now "professional, aggressive and realistic," Mr. King said, noting that being aggressive is a "change in direction."

Also new at Willcox is about 70% of its staff, hired over the last three years, including its president and chief operating officer, who were named in the past year.

And today, New York-based Willcox has three times as many ceding company clients for treaty business as it had in 1984, Mr. King noted.

Mr. King characterizes 1985 growth as "good," 1986 growth as "outstanding" and predicts 1987 growth will be "equally good."

Growth has come half from new business, about 20% from additional business from existing clients and about 30% from rate increases, according to Mr. King.

Willcox does not release its gross revenues or premium volume. *BI* estimates that Willcox's 1985 revenues were about $22 million to $23 million, if they accounted according to U.S. accounting standards.

Willcox's financial statements as shared with clients, however, are very confusing, Mr. King said. The results of Willcox's wholly-owned Lloyd's broker, Willis Faber & Willcox Ltd., are consolidated with Willcox's results for determining the revenues to be shared by J&H and Willis Faber.


Mr. King

But, the Lloyd's broker's accounts are prepared by British accounting standards, not U.S., and the resulting accounts are distorted, he said.

That Willcox is growing is certainly clear. Willis Faber recently announced to employees: "The development of the business and profits of (Willcox) are now most exciting and showing the fruits of the investment of money and people in it."

Willcox is focusing its efforts on handling the entire reinsurance account for small to midsized companies in which the broker deals directly with senior management—a market that has been the domain of direct reinsurance writers.

Acknowledging that the "direct market has had a field day" with these clients, Mr. King said, "The broker markets are beginning to fight back."

Willcox also "continues to increase our position with the major stock and mutual companies."

Willcox staff grew to 125 in 1985 from 115 in 1984, the first growth since pulling out of facultative reinsurance in November 1983.

Willcox's staff appears small for the revenues because the reported staff does not include the 20-25 people who work on a contract basis for Willis Faber & Willcox in London, handling business only for Willcox. They are employees of Willis Faber & Dumas.

And, Willcox uses other London brokers, Mr. King noted.

Mr. King also pointed out, "there are advantages to being centralized" in New York and not operating branch offices. But at some point, Willcox will want a West Coast office, to make it easier to service business there, he said.

Among the growing lines of business are aviation and marine, Mr. King noted. "We're not chasing existing aviation treaties," he said, but helping companies enter the aviation business for the first time.

Growing marine reinsurance business makes Willcox second only to Carpenter in marine reinsurance, according to Mr. King.

However, domestic property/casualty treaty business continues as Willcox's mainstay.

About 35% to 40% of Willcox's business is placed with international insurers, but that is down because of the contraction in the non-U.S. market, especially for U.S. casualty business, Mr. King noted. Willis Faber directs non-U.S. business to Willcox, as do other brokers, Mr. King said. About 10% of Willcox's business is for non-U.S. clients.

Willcox's continued growth will be generated internally and by acquiring new people, not other brokers, Mr. King pointed out.

Mr. King was drafted at the end of 1983 from his position as a casualty department manager in J&H's Los Angeles office to become senior vp of Willcox. He was made president and CEO in April 1985 and in July was named chairman while continuing as CEO.

Former Chairman Kenneth A. Hecken returned to J&H as an executive vp.

Also in July, Richard Stone, formerly president of First State Insurance Co. and most recently chairman of L.W. Biegler Inc. in Chicago, was named president with his office in Boston, where he prefers to live.

Graves D. Hewitt, retired chief executive officer of Cameron & Colby in Boston, where he worked with Mr. Stone, also became a director of Willcox and an exclusive consultant in Boston.

The Boston office's staff of four can work with New York because "our back room is fully automated, so we don't have to be in the same place," Mr. King noted, stressing, "We operate as one company. Dick is our president—not our president in Boston."

The Boston staff may grow to 10, Mr. King said.

Also in July, Robert O'Leary, who joined Willcox from John P. Woods in New York in June 1985 as vice chairman, was named chief operating officer.

Other new recruits include: Joseph Capezza, chief financial officer, who came from Skandia America Corp. in January; E. (Barney) Barber as senior vp, who came from American Reinsurance Co. in July; and Dave Beebe, vp-contracts, who came from Prudential Reinsurance Co. in August.

Thomas A. Greene & Co. Inc.

A 31.3% increase in revenues in 1985 to $21 million pushed Thomas A. Greene & Co. Inc. up a notch to the eighth-largest reinsurance broker.

And growth in 1986 will outpace that in 1985, says Thomas A. Greene, president of the New York-based company, which is a subsidiary of Alexander & Alexander Services Inc., the second-largest retail broker in the country.

Unlike some of the larger reinsurance intermediaries, Greene did not see clients drop coverage in 1985, Mr. Greene said.

"We're seeing a bit this year," Mr. Greene said, but not enough to hurt good growth.

In addition to overall rate increases, new clients and new trea-

Continued on page 20

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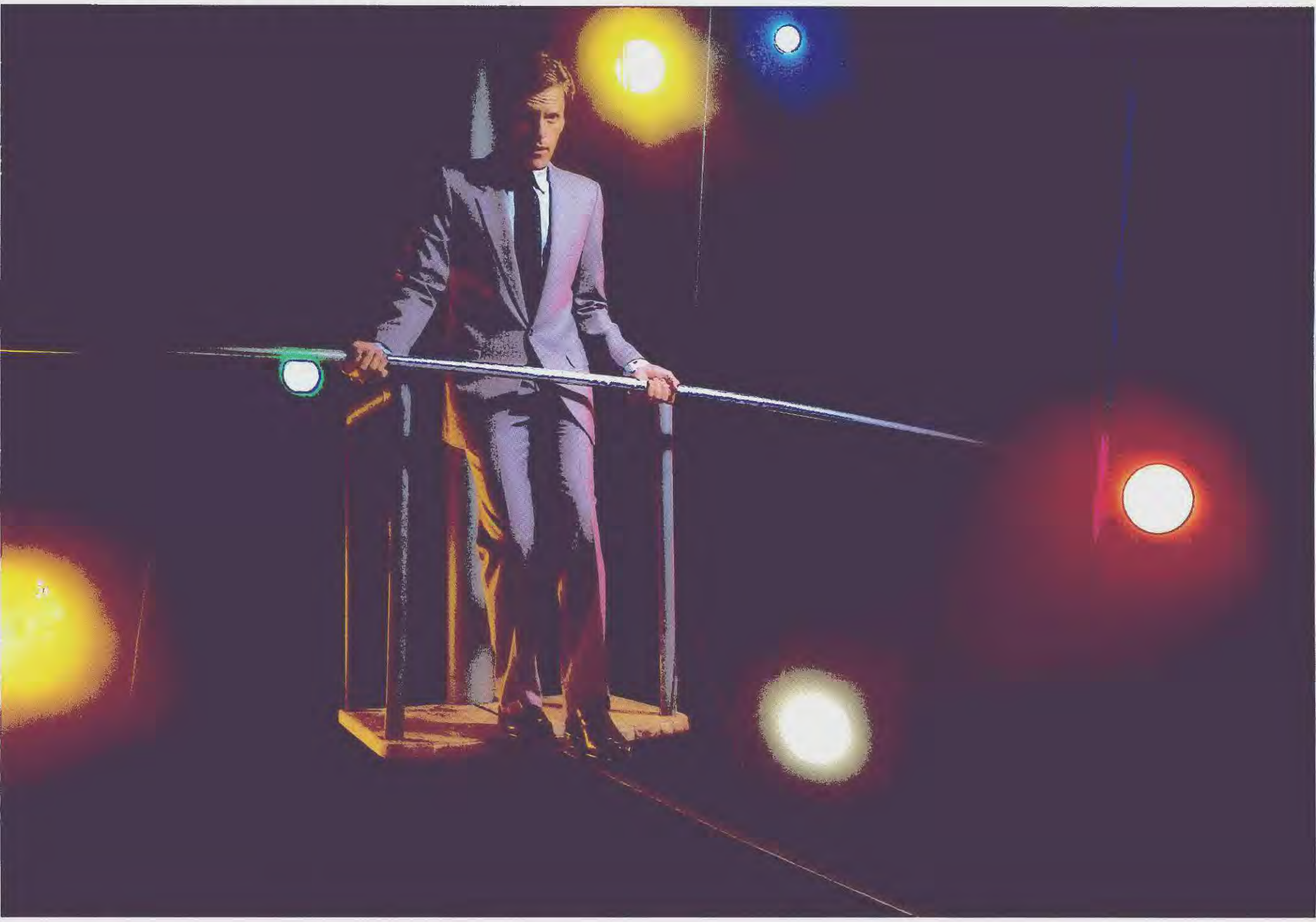

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Top brokers

Continued from page 18

ties from existing clients fueled growth in the last two years, with new client development strongest in 1986.

New clients were landed from both large and small competitors, although mostly from others among the 10 largest U.S. reinsurance brokers.

Since it was founded in 1979, Greene has focused its production efforts on the large stock and mutual companies that would rank among the 100 largest property/casualty insurers.

"More than half our brokerage" is from that market, Mr. Greene said.

Greene's other clients resulted less from a production effort than from referrals or prior contacts with Greene employees.

Treaty business grew to 90% of Greene's revenues in 1985 from 84% in 1984, due partly to the direct writing reinsurers' gain of market share in facultative and also because "the margins are not as good" for facultative business, Mr. Greene said.

Only about 8% of Greene's revenues are related to non-U.S. clients.

And Greene is placing slightly less reinsurance with non-U.S. reinsurers "because London has not been able to, or chosen not to, respond to some of our casualty accounts," Mr. Greene said.

"But nothing is forever," Mr. Greene commented. "I expect we'll see a viable casualty market in London," although "it may be on their terms."

Greene's staff—located in New York, Chicago and San Francisco—was down to 190 at year-end 1985 from 193 at year-end 1984, but it has grown this year to 215.

More efficiency allowed Greene to grow in 1985 without adding staff, but this year "we had the opportunity to pick up very good, key people, who are always difficult to find," Mr. Greene commented. "We decided to make the investment."

Among the new employees in 1986 are: Senior Vp John Tornquist in San Francisco, from American Re-Insurance Co.; Senior Vp John Langen in New York, who was last with Willcox Inc. Reinsurance Intermediaries; Vp Len Barkinge in Chicago, from American Re; and Vp Edward Kelley in Chicago, from Reinsurance Corp. of America.

Among those promoted at Greene this year were: Michael O'Halleran in Chicago to executive vp; Michael Bungert in Chicago to to senior vp; Susan Fisch in San Francisco to senior vp; and Paul Dreuth in Chicago to senior vp.

Senior Vp Roy Thompson retired at year-end 1985.

RFC Intermediaries Inc.

An increase in facultative reinsurance business helped boost revenues 27.4% to $17.2 million in 1985 for RFC Intermediaries Inc., the only predominately facultative reinsurance broker among the 10 largest U.S. reinsurance intermediaries.

At the same time, the now Atlanta-based broker trimmed staff 6.8% to 218 at year-end 1985 "by becoming more efficient," according to President David Cargile.

RFC's revenues in 1985 were generated 55% by facultative business compared with 54% treaty business in 1984 as growth in facultative business outpaced growth in treaty business.

Although the facultative marketplace shrunk dramatically in 1985, RFC was able to place facultative business because "we have a series of well-positioned offices, systems and relationships that go back a long time," Mr. Cargile said.

Growth came from new clients, new business from existing clients and increased prices, Mr. Cargile said.

RFC, which is a subsidiary of St. Paul Fire & Marine Insurance Co., is continuing to develop both its facultative and treaty business, Mr. Cargile says, with growth in 1986 "doing well."

This year, about 60% of revenues will be generated by facultative business as its growth continues to exceed that in treaty business.

However, the number of employees is up only slightly from year-end 1985 to 220 employees now.

RFC's clients range from regional insurance companies to national insurance companies.

RFC moved its headquarters to Atlanta from Los Angeles in May, which many observers thought was related to Mr. Cargile's desire to return to his native Atlanta, where he had been an RFC branch manager before becoming president.

Mr. Cargile

The move actually was based on the results of an independent study that showed Atlanta would be the best headquarters for RFC, which had established four criteria for its headquarters: the Eastern time zone, where most of its business is generated; close to its customers and market base; an area that would afford its employees a high standard of living; and an area supported by excellent communication and transportation services.

RFC opened a facultative office in St. Paul in April. It also has offices in Chicago, Dallas, Hartford, Conn., Los Angeles, New York, Philadelphia and San Francisco.

The Columbus, Ohio, RFC facultative office was closed in 1985 and the territory shifted to the Chicago office.

RFC handles only a small amount of business for non-U.S. clients and places only a small portion of its business with non-U.S. markets.

However, Mr. Cargile noted that during the Rendez-Vous de Septembre in Monte Carlo he met with foreign reinsurers who were interested in U.S. property treaty business.

And although "the largest number were very leery about U.S. casualty business, some said they would look at it if it was not extra-hazardous and there was one that wanted to look at all U.S. casualty business."

Among new recruits at RFC in the last 12 months was Jay Merkel, who was hired from John P. Woods in New York to run the treaty operation in the Los Angeles office.

RFC founder Mac Henderson retired from RFC as vice chairman on Dec. 31.

Continued on next page

How French's avoid whenever it s

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And it isn't just the food that turns sour. It's retail sales. And shelf space. And with the market for damaged goods as highly regulated as it is, even salvaging the stock could leave French's with a bad taste in their mouth.

Continued from previous page

Reinsurance Agency Inc.

Reinsurance Agency Inc. in Chicago shot into the spot of the 10th largest U.S. reinsurance intermediary in 1985 on the strength of dramatic rate increases in the excess and surplus lines insurance and reinsurance business.

BI estimates that Reinsurance Agency's 1985 revenues surged to between $16 million and $18 million.

The agency does not release its premium volume or gross revenues, but does report that it had 60 employees at year-end 1985 and that 75% of its revenues were generated by treaty business and 25% by facultative business.

While not disclosing revenues, John Charles, chief operating officer since May, confirmed the company experienced dramatic growth in 1985 and 1986. The firm acquired "a few new clients," he said, and "rate increases were very important."

"We tend to specialize in E/S casualty business and there have been dramatic rate increases in those classes," Mr. Charles said.

Excess and surplus lines underwriters and brokers reported rate increases in 1985 of 100% to 600% and even as high as 1,000% (*BI*, Aug. 12). And, casualty rates continued to increase this year, although not to the same extent as in 1985.

In addition to the extremely large rate increases on the underlying business, which balloons premiums to reinsurers under quota-share treaties, excess-of-loss reinsurance rates for this casualty business also have increased greatly with capacity extremely tight.

As a result, a reinsurance intermediary specializing in this business would experience dramatic growth in its commissions.

"We've always been a quiet giant," commented Mr. Charles, a description many competitors confirm.

BI estimates that in 1984, Reinsurance Agency could have generated revenues near the $11.25 million reported as domestic revenues by Frank B. Hall (Reinsurance) Holdings Inc.

Reinsurance Agency's clients are mostly regional insurers, located throughout the United States, Mr. Charles said.

Among its clients is Scottsdale Insurance Co., the fourth-largest surplus lines insurer in the United States, based on 1985 premiums of $150.9 million written on a non-admitted basis. In 1984, Scottsdale wrote only $20.5 million in premiums on a non-admitted basis. Reinsurance Agency places Scottsdale's casualty reinsurance (*BI*, Aug. 11).

Reinsurance Agency employed 60 people in 1985, up only seven from 53 in 1984, and now employs 65 people.

In 1985, 15 employees worked on facultative reinsurance and 45 worked on treaty reinsurance.

"We're extremely efficient," Mr. Charles said, adding that employees also work very hard.

Mr. Charles, a 10½-year veteran of the firm, was promoted to chief operating officer in May. At the same time, J. Michael Garrity was promoted to senior vp in charge of production.

President Paul R. Davies, who celebrated his 25th anniversary with the company this year, recently purchased 100% of the agency from other individuals in the firm.

Charles A. Pollock, chairman of Reinsurance Agency, is retiring Dec. 31 after more than 30 years with the company. ■

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ARKWRIGHT BOSTON INSURANCE

Two brokers set sights on Top 10

Two East Coast-based reinsurance intermediaries could rank among the 10 largest intermediaries in the United States in the coming years.

Frank B. Hall & Co. Inc. is making a new commitment to its reinsurance subsidiary, Frank B. Hall (Reinsurance) Holdings Inc., signaled by the appointment of Henry E. Froebel as chairman.

Mr. Froebel, vice chairman of the parent company, was named chairman of the New York-based reinsurance intermediary subsidiary in October after Paul Butler left the position to become president and chief executive officer of St. Paul Reinsurance.

"I'm bullish about the future of the company under Mr. Froebel," comments Joseph A. Zaffarese, president of Frank B. Hall Re of New York Inc., the largest domestic office of Hall (Reinsurance) with about 82 employees. "He's well-respected and has a tremendous track record. We welcome his management skills."

Mr. Froebel, a 45-year veteran of Hall, also is chairman of Frank B. Hall & Co. of New York Inc. and a member of the executive committee of the parent company. He has held numerous positions in the company.

"We need to have a bigger, better presence," Mr. Froebel said of the reinsurance brokerage operation. "And that will come."

Meanwhile, Cole, Booth, Potter Inc. in Edison, N.J., a subsidiary of Chicago-based Combined International Corp., intends to rank among the 10 largest intermediaries in a couple years, according to President Richard E. Cole.

Mr. Cole predicts revenue growth of 20% to 25% in 1987 from new treaty business and notes the company is interested in acquisitions.

Combined International does not break out reinsurance brokerage revenues, but *BI* estimates Cole, Booth, Potter's 1985 revenues at about $8 million to $10 million.

Hall (Reinsurance) was pushed from the slot as the 10th largest U.S. intermediary in 1985 by the dramatic growth of Reinsurance Agency Inc. in Chicago.

Hall (Reinsurance) Holdings also lost market share domestically, with U.S. reinsurance brokerage revenues falling to about $11 million from $12 million in 1984, Mr. Zaffarese said.

Hall officials declined to discuss the reasons for the decrease, but it appears that the 1985 insolvency of Hall's Union Indemnity Insurance Co. cost the company some reinsurance clients. These clients objected to Hall's decision not to pump more money into Union Indemnity.

The most slippage occurred at

Continued on next page

Runners-up

Continued from previous page

Hall Re of New York, admits Mr. Zaffarese, while offices in Philadelphia (IOA Re), San Francisco (Interocean Agency) and Los Angeles (Interocean Agency) grew in 1985.

"We're rebuilding our domestic business," Mr. Zaffarese said. "And we will interface more with Hall in 1987."

U.S.-based employees grew to about 175 in 1985 from 150 in 1984, Mr. Zaffarese said.

Worldwide, Hall (Reinsurance) revenues edged up to $18.7 million on the strength of international growth, especially in Latin America, Mr. Zaffarese said.

Hall (Reinsurance) subsidiaries are located in Mexico, Panama, Venezuela, Peru and Colombia The Coral Gables, Fla., branch office also handles Latin American business.

Other international offices of Hall (Reinsurance) are located in Belgium, France, Italy and Denmark.

Hall (Reinsurance)'s worldwide revenues in 1985 were generated 60% by treaty reinsurance and 40% by facultative reinsurance, compared with 65% treaty and 35% facultative in 1984.

These revenues do not include revenues generated in Bermuda by Frank B. Hall (Intermediaries) Ltd., which reports through Hall's retail brokering operation.

Worldwide, Hall (Reinsurance) reports maintaining employees of 325.

Hall (Reinsurance) decided not to make the acquisition of John Gilbert Intermediary Group in New York that was to be completed this year.

"Because of recent changes in the management of Hall, it was decided to cancel the agreement," said John Gilbert, chairman and president of the brokerage that would have brought about $1.25 million in revenues and 16 employees to Hall (Reinsurance).

Cole, Booth, Potter reports brokering 1985 premiums of $175 million, compared with $140 million in 1984.

Cole, Booth, Potter is strictly a treaty broker now, after pulling out of facultative reinsurance brokering July 1. Facultative reinsurance had contributed 5% of revenues in 1985.

"The facultative markets had reduced substantially and it doesn't seem to be an area we could make a reasonable return on," Mr. Cole said.

Mr. Cole is focusing the company's production efforts on larger ceding companies. Currently, the firm serves mostly regional companies in the Northeast and Midwest, handling their entire reinsurance accounts.

"We will continue that," Mr. Cole stressed, "but in addition we are going after larger accounts."

The company, which employed 80 people at year-end 1985 and now employs 92, also specializes in association business and directors and officers liability and professional liability accounts.

Cole, Booth, Potter was created in July 1985 after the principals of Sten-Re, Cole Associates bought out the 50% share of their firm held by Reed Stenhouse Cos. Ltd. and sold the entire firm to Combined International.

Sten-Re Cole was then merged with Combined's Booth Potter Seal & Co., and Mr. Cole was named president and chief executive officer. Mr. Cole, who founded Sten-Re, Cole in 1979, now reports to Patrick G. Ryan, president and chief executive officer of Combined.

Combined reported a pretax operating profit of $230 million in 1985.

Cole, Booth, Potter is moving into new offices in Old Bridge, N.J., on Dec. 1. ■

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International image is goal of E.W. Payne

By STACY SHAPIRO

LONDON—E.W. Payne Cos. Ltd. wants to be regarded as a truly international reinsurance broker, not just a London-based broker that owns the second-largest U.S.-based reinsurance broker: Sullivan Payne Co.

"The objective is to establish a reinsurance brokerage business that does not perceive itself to be a national broker but to be a global broker," noted James M. Payne, chairman of E.W. Payne.

"We should not perceive ourselves to be a U.S. broker or a U.K. broker or a Taiwan broker. We are reinsurance brokers. By definition, a reinsurance broker must efficiently move exposures from one place in the world to another place in the world," he explained.

But, Mr. Payne admits that, "We didn't have the structure for being a global broker five years ago. We do now, and we are unique in this respect."

Payne, the reinsurance brokerage arm of the world's third-largest broker, Sedgwick Group P.L.C., employs about 1,500 people in its three main divisions and generated more than $125 million in gross revenues in 1985.

The largest of the divisions is E.W. Payne Ltd., located in Payne's London headquarters. The reinsurance broker is responsible for all U.K.-based clients and U.S. and international exposures it reinsures in the London market.

E.W. Payne Ltd. produces approximately 50% of the company's gross revenues and employs about 1,150 people, Mr. Payne said.

The second-largest division, which generates about 40% of the group's revenues, is Sullivan Payne Co., the result of the merger of Payne's U.S operations with John F. Sullivan Co. (see story, page 3). Sedgwick acquired Sullivan's parent company, Fred S. James & Co. Inc., in 1985.

Merging Sullivan into E.W. Payne followed a long-term plan that E.W. Payne developed after Marsh & McLennan Cos. Inc. bought C.T. Bowring & Co. Ltd. in 1980, according to Mr. Payne.

M&M's U.S. reinsurance brokerage, Guy Carpenter & Co. Inc., moved most of its London business to Bowring after the acquisition, which affected other London brokers including E.W. Payne.

"Our supply lines were cut off," Mr. Payne said. "We had to have a U.S. interest under our influence."

E.W. Payne first set up a small New York office in 1982 staffed with eight people to place its business with U.S. reinsurers. It then acquired Capitol Intermediaries of Des Moines, Iowa.

Sullivan next came onto the scene and fit well into Payne's plans to be a global broker. Sullivan was one of the "significant considerations" that induced Sedgwick to acquire James, Mr. Payne said.

He said only a small amount of Sullivan Payne's business is now brokered in London by E.W. Payne. But, "that means huge possibilities," he said.

The third division is E.W. Payne International Ltd., which brokers reinsurance for clients headquartered outside the United States and the United Kingdom. The division includes E.W. Payne Australia, the second-largest broker in Australia, and a company in Scandinavia.

"We will do whatever we can to assist Sullivan Payne and encourage cohesion of the three units," Mr. Payne added. "We want to develop an international system and build high-grade units." ■

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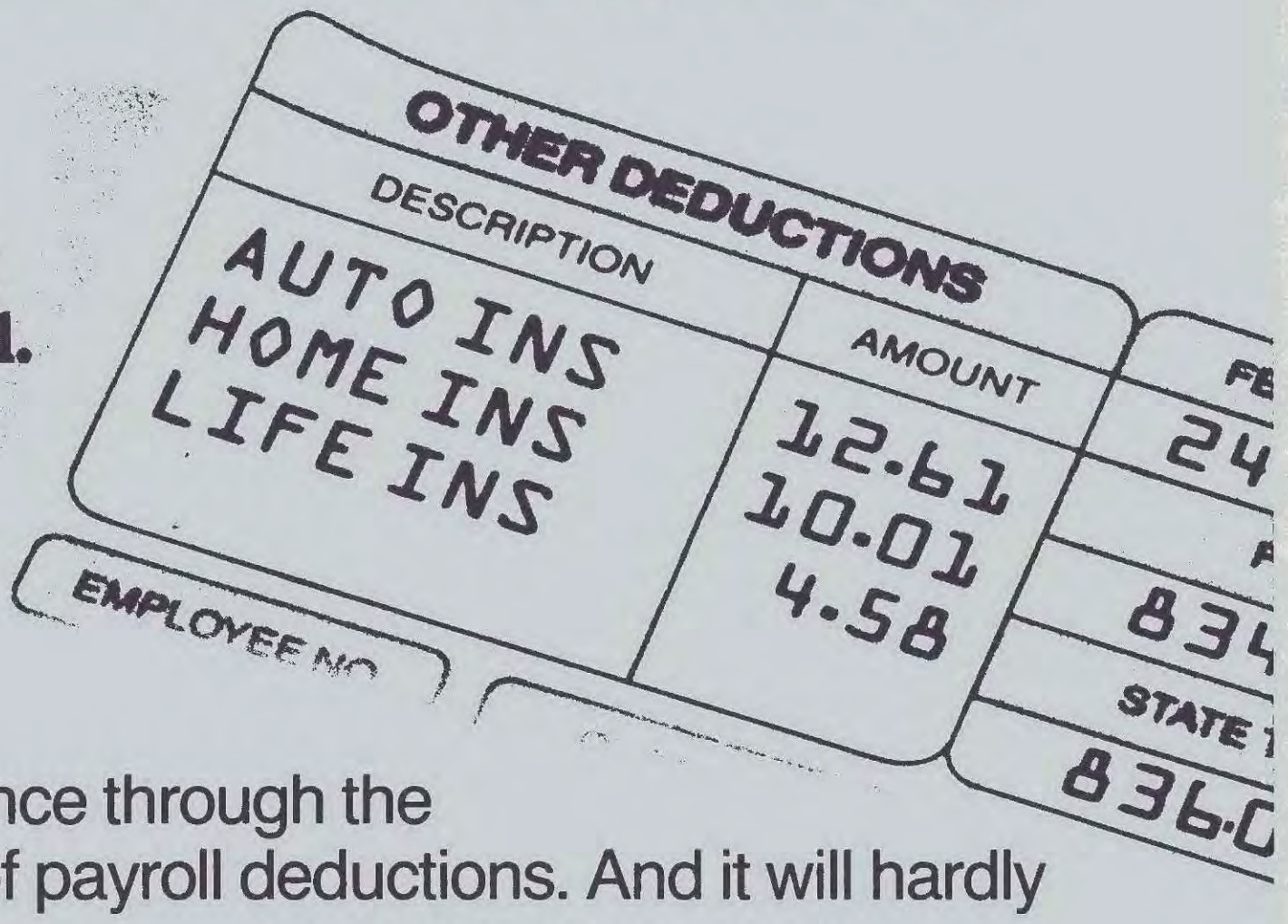

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Reinsurance arbitration not meeting goal

By DOUGLAS McLEOD

NEW YORK—Arbitration in many cases is falling short of its goal of providing a quick and inexpensive alternative for resolving reinsurance disputes, several experts say.

Part of the problem stems from the increasingly contentious nature of arbitrations and the failure of arbitration panels to control tactics that some describe as "abuses" of the arbitration process.

"What was originally intended as an informal means of resolving disputes between parties that wanted to resolve disputes has ended up being used in a much more aggressive fashion, where one of the parties is not interested in resolving the dispute," observed Jonathan Bank, a lawyer with Buchalter, Nemer, Fields, Christie & Younger in Los Angeles. "Its strengths are not being utilized, and its weaknesses are being exploited."

"I would have to join those who feel that we are far short of an efficient arbitration process," said N. David Thompson, president and chief executive officer of North American Reinsurance Corp. and a director of the American Arbitration Assn., an independent group that administers arbitrations.

A shortage of experienced arbitrators and poorly drafted arbitration clauses in reinsurance contracts are principal reasons for the lack of efficiency, he noted.

Others point to shortcomings inherent in the system, including the lack of any precedential value in arbitration decisions and the limited ability to appeal awards the losing side feels are unjust.

Despite the drawbacks, however, observers add that arbitration—if properly administered—has the advantages that were originally envisioned for it.

"The biggest strength is that it's expeditious, it's less expensive than litigation and you tend to get results that are more business-oriented, more practical," said Eugene Wollan, a lawyer with Rein, Mound & Cotton in New York.

"It goes without saying that it is probably the best, most responsible method of dispute resolution," added Albert B. Lewis, a lawyer with Cole & Deitz in New York and a former New York insurance superintendent.

Reinsurance arbitrations are typically overseen by a three-person panel consisting of two arbitrators chosen by the two sides and an umpire. The umpire may be chosen by agreement of the two parties, by a drawing of lots—with the candidates selected by the two parties—or by appointment by a judge or another neutral authority.

Once the panel is chosen, the two sides develop briefs and may pursue various forms of discovery, including exchanges of documents and—increasingly—taking depositions from witnesses. This is normally followed by a hearing at which the two sides present their cases to the panel.

Panels typically have wide latitude in setting the schedule for completing the various phases of the arbitration and establishing limits on discovery and other proceedings, observers note.

An arbitration award may include a detailed explanation by the panel of its reasons for the decision, but usually it is simply an announcement of the decision.

The winning party may go to court to have a judge confirm the award, and the losing party may ask the court to vacate the decision, although grounds for an appeal are limited. An award may be appealed, for example, if it was fraudulently arrived at, if an arbitrator had an undisclosed bias or if the award was beyond the scope of the panel's power, observers say.

However, courts generally will

Continued on page 26

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Judge bars arbitration of dispute

NEW YORK—A federal judge has ruled that state control over Ideal Mutual Insurance Co.'s liquidation bars application of a federal act that would compel arbitration of a dispute between Ideal and Optimum Insurance Co. of Illinois.

U.S. District Judge Pierre N. Leval ruled Sept. 15 that the McCarran-Ferguson Act supersedes the Federal Arbitration Act and bars arbitration of a reinsurance dispute between regulators overseeing Ideal and Optimum.

New York-based Ideal Mutual was ordered liquidated by the New York Insurance Department in February 1985, and Optimum—51% owned by Ideal—entered voluntary rehabilitation under the supervision of the Illinois Insurance Department in December 1984.

The departments later had a dispute over proceeds of reinsurance contracts covering business written by Optimum. Optimum and Ideal had a pooling agreement under which they shared premiums, expenses and liabilities on business they wrote.

The agreement provided that Optimum would assign to Ideal the "rights and benefits" of reinsurance covering Optimum business. The New York department later claimed that as Ideal's liquidator, it alone was entitled to the proceeds of the reinsurance. The Illinois department, meanwhile, claimed that it was entitled to a share (*BI*, April 29, 1985).

The New York department petitioned the New York State Supreme Court for a declaratory judgment regarding its rights under the reinsurance agreement, which included an arbitration clause, court papers show.

Illinois did not answer the New York action or ask the state court to refer the matter to arbitration, but last year filed suit in U.S. District Court for the Southern District of New York seeking to compel arbitration under the Federal Arbitration Act, court papers say.

The New York department then sought dismissal of the suit on the grounds that McCarran-Ferguson bars application of the Federal Arbitration Act.

In his opinion, Judge Leval cited McCarran-Ferguson's provision that no act of Congress will "invalidate, impair or supersede" state laws regulating the business of insurance. He also cited *Knickerbocker Agency vs. Holz*, a 1958 decision by the New York Court of Appeals that found that New York insurance law confers exclusive jurisdiction over insurer insolvencies on the state Supreme Court. ■

Arbitrations

Continued from page 24

not consider an appeal of an arbitration award based on the merits of the case.

Many of the exponentially growing number of arbitrations involve attempts by reinsurers to rescind their contracts, with the reinsurers charging fraud, misrepresentation or non-disclosure of significant information, observers say.

Other common disputes involve charges of late notice of claims and disagreements over the scope of the underlying insurance coverage.

One of the more time-consuming phases in many arbitrations is the selection of the panel, and particularly the selection of the umpire, who represents the swing vote in many decisions, observers say.

Choosing the panel has taken months in some cases, and lawyers complain that in cases where the umpire is chosen by drawing lots, the outcome of a multimillion-dollar dispute can become a "crap shoot."

"It's used as a form of gamesmanship," said Stuart Cotton, a lawyer with Rein, Mound, referring the umpire selection process.

"In the old days, you could agree on the selection of an umpire and never had to rely on lot selection," Mr. Bank added.

However, others pointed out that the "crap shoot" analogy also can be applied to litigation.

"How would you like to talk about retrocessions to 12 people, to a blue-collar foreman from the gas company?" Mr. Lewis asked, referring to the hazards of presenting a case to a jury. "All he hears is 'insurance company' and insurance companies are bad."

Ronald A. Jacks, a lawyer with the Chicago firm of Isham, Lincoln & Beale, added that the risks of umpire selection can be reduced if both sides make a good-faith effort to select well-qualified, impartial candidates for the job.

Lawyers involved in arbitrations also complain of increasing delays and "dilatory tactics" pursued by some lawyers in the course of arbitration proceedings.

"People are taking discovery now when they never used to," Mr. Bank lamented.

Mr. Jacks observed that discovery—including limited deposition of witnesses—actually can save time and expense when the arbitration reaches the hearing stage.

However, he also noted that the freedom to conduct discovery can be abused.

"There are some attorneys who make a habit of attempting to distort the process," Mr. Jacks said. He added that he has seen "absurd disputes" over discovery that "unnecessarily heighten the tension and provide an undue distraction."

"Litigators have to learn that arbitration requires some degree of diplomacy and tact rather than a blunt instrument," he said.

Mr. Wollen added that arbitration panels—which are not bound by the strict rules of evidence that govern litigation—"tend sometimes too far in the opposite direction," allowing forms of evidence, like hearsay testimony, that would not be allowed in court.

"The rules of evidence are there for a very good reason," he said.

The real solution to long delays caused by legal maneuvering is for the panel to exercise strict control over the scope and schedule of the arbitration, according to Mr. Jacks.

"If properly administered, arbitration can work, but it is directly dependent on the skill and strength of the panel, and particularly the umpire," he said.

"I see an increasing resolve on the part of experienced arbitrators to take control of the proceeding and move things along to an expeditious and—I think—fair conclusion," he added.

Despite the delays that have plagued some proceedings, several lawyers opposed strict procedural rules being written into the Federal Arbitration Act—which governs reinsurance disputes—or into the arbitration clauses of reinsurance contracts.

"If you established some sort of overriding set of rules, it would partly be a self-defeating exercise," Mr. Wollen said, explaining that procedural requirements differ from case to case and that one of arbitration's advantages is the flexibility the panel has in deciding what rules should apply.

"Most parties do not tend to wander as far afield" during discovery in an arbitration as in litigation, Mr. Wollen said.

He added that "it's very rare that an arbitration is not resolved within six to eight months after the first arbitration demand." Cases that drag on for years are the exception rather than the rule, he noted.

"In the end, the key is the willingness of the panel to impose some reasonable restraints on the parties and their lawyers," Mr. Jacks said.

Another problem inherent to the arbitration process is that arbitrators may not base their decisions on precedents established in similar arbitrated cases, according to attorneys. This results because of the confidentiality of most arbitrations and the fact that many panels offer no explanation of the reasoning behind their awards.

Each arbitration "only settles one dispute and has no value in other disputes," Mr. Cotton observed. "So in the long run, maybe (arbitration) is more expensive for the industry."

Other lawyers, however, question the value of precedent in arbitrations.

One problem with creating a body of precedent is that even if the names of the parties were removed in the reporting of the case, "it would still be sufficiently clear who the parties were and what the nature of the dispute was," Mr. Jacks pointed out.

"That would destroy one of the main inducements to arbitration, and that is confidentiality," he said.

Mr. Jacks also said that complications could arise if panels were required to render detailed explanations of their decisions.

"I'm a little concerned about spelling it out in great detail because that invites petitions for rehearing and judicial review," he explained.

A body of precedent in arbitrations would be difficult to develop in any case, since the procedures followed vary from dispute to dispute, Mr. Jacks also noted.

But, he added that an "informal" body of precedent is developing to the extent that the same individuals are involved in—and bring their experience to—more arbitrations.

Finding experienced, but impartial, arbitrators also has been a problem in many disputes, observers say.

Reinsurance arbitrators are typically current or retired insurance and reinsurance executives, and finding arbitrators that have no present or former relationship with one of the parties can be difficult sometimes, Mr. Thompson said.

"The reinsurance community is small, and a number of people have conflicts of interest," he explained.

One reinsurance executive, who asked to remain anonymous, said that he had been asked to act as an arbitrator in several cases but had to decline in all of them because of business relationships with one of the parties.

"That's absolutely typical," he said. ■

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U.S. reinsurers active in London market

By STACY SHAPIRO

LONDON—U.S underwriters operating reinsurance subsidiaries in the London market say there are several good reasons to maintain these overseas outposts rather than write business solely from their U.S. offices.

Reinsurers in London have the opportunity to write more international business than underwriters anywhere else in the world. In fact, U.S. reinsurers' London units see U.S. business that is not brokered their U.S. parents.

In addition, a presence in London helps U.S. reinsurers maintain contact with their own retrocessionaires, which can ease their renewals.

And, by having a London branch, the reinsurers can tap the London market's well-known information network.

"Reinsurers throughout the world feel that London is the hub of the world's reinsurance business, especially to write non-U.S. business," said Malcolm Webb, general manager for Employers Reinsurance Consultants Ltd., the newly established London subsidiary of Employers Reinsurance Corp.

"We feel that the London market is different than the market in the U.S." agreed Victor Blake, chairman and chief executive of CNA Reinsurance of London Ltd. "Being here provides a passport to non-U.S. reinsurance business without having to open offices in many other countries. By being in London, the business comes to London.

"Another reason to be here is to write U.S. business. U.S. business in London is not necessarily the business that you see in the U.S.," Mr. Blake explained. "We take the view that London is a distinct marketplace and we forget about the geography.

"I have always felt that U.S. companies not having a presence in London are shortsighted," he added. "We rely on London for our own reinsurance, and by being here, we have a greater relationship with our London reinsurers."

Currently, about 30 subsidiaries of U.S. companies are approved by the British Department of Trade and Industry to write reinsurance in the United Kingdom.

About two-thirds of these companies write reinsurance for non-U.S. insurers, while the remaining companies write mostly U.S. business that is ceded to the London market, underwriters say.

Some of the DTI-approved reinsurers that are owned by U.S. parents are considered to be leading writers of U.S. reinsurance business in the London market.

One of the oldest of these reinsurers is Excess Insurance Group Ltd., which was founded in 1894 by Lloyd's of London underwriter Cuthbert Heath to write excess business so that his Lloyd's syndicates did not exceed their premium income limits, said an Excess spokesman. The company was bought in 1973 by International Telephone & Telegraph Corp., parent of Hartford Insurance Group.

Today, Excess is one of the London leading underwriters of U.S. property/casualty reinsurance treaties, according to Excess's 1985 annual report. About 34% of its 1985 gross premium volume of 313 million pounds ($453.9 million) is composed of international, U.S. and London Market reinsurance treaties. The remainder is primary and excess commercial business and personal lines business.

Net premiums totaled 224 million pounds ($324 million).

In December 1985, Excess increased its capital and surplus to 85.7 million pounds ($120.4 million) from 69.5 million pounds ($100.8 million) "to enable the company to take further advantage of the widespread opportunities to write better-rated business—domestic and international—in London and elsewhere," noted R.A. Barberis, chairman and managing director of Excess, in the company's 1985 annual report.

Another leading London market for U.S. insurers looking for reinsurance is Terra Nova Insurance Co. Ltd., which is owned by a group of American and Canadian companies and investors. About 23.5% of the company is owned by Aetna Life & Casualty Co.; another 23.5% by Travelers Corp.; 22.1% by CIGNA Corp.; 17.3% by Marsh & McLennan Cos. Inc.; and the remainder by Canadian investors and a British pension fund.

"We number ourselves among the leaders in the London market in capacity, size and strength," said John Riddick, managing director of Terra Nova.

Terra Nova was founded in 1970 to retrocede London market business to a captive reinsurer known as Intercontinental Reinsurance Co. Ltd. in Bermuda, which was owned by many of Terra Nova's U.S. investors. However, Terra Nova absorbed Intercontinental Re's business in 1979, and the Bermuda company was liquidated.

Terra Nova reported 1985 gross premiums of 156 million pounds ($226.2 million) and net premiums of 108 million pounds ($156.6 million), about 70% of which was reinsurance assumed.

Year-end capital and surplus totaled about 96.7 million pounds ($140.2 million). Almost 70% of the group's business is U.S. dollar-based and includes marine, non-marine and aviation business.

Another London market leader is CNA Re, owned by CNA Financial Corp. of Chicago.

Continued on facing page

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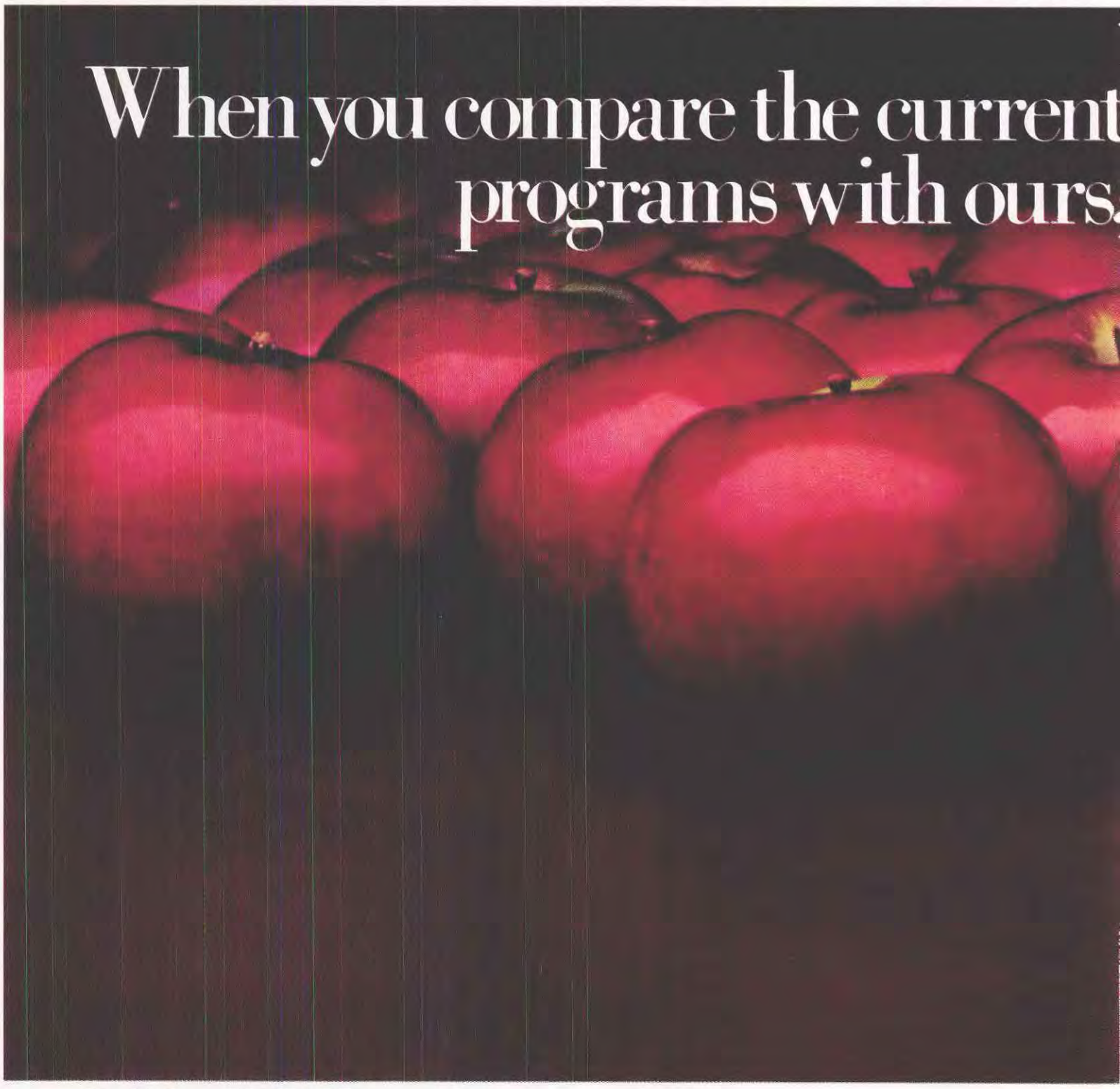

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Continued from facing page

CNA Re was established 10 years years ago with initial capitalization of 2.5 million pounds ($3.6 million) by Mr. Blake, who had previously worked in CNA's Chicago headquarters.

Since then, CNA Re in London has steadily increased its capital, including a September increase to 40 million pounds ($58 million) from 20 million pounds ($29 million), according to Mr. Blake.

Gross premiums this year should total about $200 million and should reach $240 million in 1987, he said. Net premiums in 1985 totaled 73.6 million pounds ($106.7 million).

Originally, as much as 80% of the company's premium volume was generated from U.S.-ceded business, but today it accounts for about 65% of CNA Re's volume, said Mr. Blake. "We have put more emphasis on writing non-U.S. business."

Another major U.S. player in London is Continental Corp., which operates two units in London: Continental Reinsurance Corp. (U.K.) Ltd. and Unionamerica Insurance Co. Ltd., which Continental acquired when it bought Swett & Crawford in 1976.

Both companies are controlled by a management team in London headed by Chairman Philip Marcell, who joined the companies about two months ago after leaving American Re-Insurance Co. (U.K.) Ltd. as chief executive.

According to Mr. Marcell, Continental Re (U.K.), which writes non-U.S. reinsurance, will write about 40 million pounds ($58 million) in gross premiums this year. Unionamerica, which writes almost entirely U.S. business, will write about 80 million pounds ($116 million) in gross premiums, he said. Unionamerica wrote 1985 net premiums of 37.1 million pounds ($53.8 million).

Capital and surplus for Continental Re (U.K.) is 10 million pounds ($14.5 million), while Unionamerica has current surplus of 27 million pounds ($39.2 million).

Other London reinsurers that are owned by U.S. parents but do not write U.S. business include:

- INA Reinsurance Co. (U.K.) Ltd., a subsidiary of CIGNA Corp., which wrote 24.5 million pounds ($35.5 million) in net written premiums last year and will write between 25 million pounds ($36 million) and 30 million pounds ($43.5 million) in 1986, said Peter Morgan, director and marine/non-marine manager for INA Re (U.K.).

The company is currently capitalized at 5 million pounds ($7.3 million), but "we are looking to possibly expand the company in the future because the market is right," Mr. Morgan said.

- Le Rocher U.K. Ltd., a subsidiary of The Prudential Insurance Co. of America.

Le Rocher, French for "The Rock," wrote its first risk on Nov. 22, 1985, according to Chief Executive Derrick A. Bailey.

Le Rocher, which has a sister company in Brussels that is 10 years old, has capital and surplus of 5 million pounds ($7.25 million) and writes only non-U.S. property reinsurance and only on a facultative basis, Mr. Bailey noted.

Mr. Bailey had said he hoped the company will write about 2 million pounds ($2.9 million) in gross and net premiums this year, but the company has written 1.3 million pounds ($1.9 million) so far.

"We have certainly written less than we expected," he said. "But we are trying to write business that is well-rated, and there is less of that kind of business than we thought."

Other U.S. insurance subsidiaries operating in London include Transatlantic Reinsurance Co., a subsidiary of American International Group Inc.; General Reinsurance Ltd., a unit of General Reinsurance Corp.; Kemper Reinsurance London Ltd., a subsidiary of Kemper Reinsurance Co.; American Re-Insurance Co. (U.K.) Ltd., a subsidiary of American Re-Insurance Co.; New York Reinsurance Corp. Ltd., owned by Reinsurance Corp. of New York, which underwrites through London underwriting agent The Copenhagen Reinsurance Co. U.K. Ltd.; Allstate Reinsurance Co. Ltd., ultimately owned by Sears, Roebuck & Co.; and Metropolitan Reinsurance Co. (U.K.) Ltd., owned by Metropolitan Life Insurance Co.

One company still to be approved by the DTI is the Employers Re unit, which is now in the final stages of opening its new underwriting office in London. Employers Re hopes to receive DTI approval by April next year, Mr. Webb said.

The company anticipates an initial capitalization of 30 million pounds ($42.3 million) and expects to employ at least four underwriters to write all classes of non-life reinsurance, Mr. Webb explained.

Employers Re decided earlier this year to move its European headquarters to London from Zurich, Switzerland, where it had maintained a presence for 21 years (*BI*, Sept. 22).

"We have no idea of the amount of premiums we will write at the moment," Mr. Webb said. "As consultants, we are doing nothing at the moment. We are just setting up."

Some of the U.S. companies that are approved by the DTI to write reinsurance in the United Kingdom have stopped writing and are now running off their business. These include Ancon Insurance Co. (U.K.) Ltd., a subsidiary of Ancon Insurance Co. S.A. (Bermuda), which is an Exxon Corp. unit (*BI*, Nov. 11, 1985), and British National Insurance Co. Ltd., an Armco Inc. unit (*BI*, March 19, 1984).

British National failed in London because "it grew too quickly," observed Mr. Bailey, who formerly was director in charge of the North American division of British National. The company, which was established in 1970 as Bellefonte Reinsurance Co., "wrote far too much too quickly," he noted.

Another company running off its business is AFIA Reinsurance in London, now a unit of CIGNA Corp. The company had experienced severe underwriting losses (*BI*, Dec. 26, 1983).

John Mantz, general manager of AFIA Re, said the company was shut down in early 1985 because its operations duplicated those of INA Re, another CIGNA subsidiary. ■

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U.K. reinsurers revising Expona clauses

By STACY SHAFIRO

LONDON—London reinsurers of non-North American casualty insurance programs are backing off from their push to write product liability coverage for North American exports solely on a claims-made basis.

Last year, the reinsurers had planned to enforce a clause in an endorsement to non-North American casualty reinsurance treaties that would have required ceding insurers to write product liability coverage for exports to North America on a claims-made basis beginning Jan. 1, 1987, or coverage for those risks would be excluded from the treaties (*BI*, Dec. 16, 1985).

The reinsurers originally planned to include the clause among several others that they developed to update last year's endorsement that banned coverage of all North American operations—except sales and distribution offices—from non-North American casualty reinsurance programs.

The reinsurers include the leading reinsurers of non-North American ceding companies, but do not include Lloyd's of London underwriters.

The endorsement is known as Expona 1986, which stands for Exposure North America.

However, none of the clauses that were issued recently by the Reinsurance Offices Assn. to London reinsurers specifically states that coverage for exports to North America should be written on a claims-made basis.

The new clauses are known as Liability General Texts 397 to 400 and were written by a technical committee of the ROA.

The clauses are supposed to be worded more succinctly than Expona was and are distributed with four pages of explanatory notes by the ROA.

The ROA's explanatory notes to Clause 400, which deals with the claims-made issue, says that "Expona 86 was widely misunderstood on the question of its claims-made policy provision."

The notes say: "The principle involved was first and foremost not that there should be claims-made policies (although these were and are encouraged), but rather that if there were to be claims-made policies, then (the clause should apply to) all policies incorporating claims-made coverages incepting or renewed on or after Jan. 1, 1987."

If insurers cede claims-made policies, then policies must have a retroactive date that falls after Jan. 1, 1986, and an extended reporting period of less than 24 months, the explanatory notes say.

The push to cover North American casualty risks on a claims-made basis, which was powerful last year, lost its momentum because of several factors, according to Stephen Riley, manager for nonmarine underwriting at Swiss Reinsurance (U.K.) Ltd.

- The effort was not sustained by all underwriters in London and the United States.
- Underwriters decided that claims-made policies were not suitable for all casualty risks, although they are for chemical and pharmaceutical risks.
- Continental European countries cannot enforce claims-made policies until they are approved by their respective governments.

"Everyone has a different view on claims-made now," Mr. Riley observed.

"We amongst the reinsurance fraternity here felt that it was impossible to impose a claims-made position," he said.

But, he added, "We are still in favor of claims-made, but there is not the across-the-board move that was heralded last year."

For example, at least two major insurers in Europe are opposed to claims-made policies, according to Mr. Riley.

"In continental Europe, the move to claims-made will take longer" than in London, Mr. Riley predicted.

Although the reinsurers have backed off from their position on claims-made coverage, the new clauses do reinforce the elements of the Expona endorsement that ban all North American operations from non-North American casualty reinsurance programs, which were enforced by London reinsurers last year, Mr. Riley noted.

Each clause has a U.S. version and a Canadian version, but the two are practically identical.

The first clause, LGT 397, is the North American Operations Exclusion clause, which is similar to Expona 86. The clause excludes legal liability claims arising out of operations located in the United States and Canada.

However, like Expona, the clause exempts sales and distribution offices from the exclusion. The clause also exempts from the exclusion coverage for employees who visit the United States or Canada for extended periods of time but do not establish residence there.

In addition, the clause does not pertain to professional liability exposures, which it notes should be written under separate treaties.

LGT 398, known as the North American Exports Costs Inclusive Clause, says that a reinsurer's maximum liability under a treaty will include defense costs and expenses for public liability and product liability.

However, this exclusion may be waived in countries that require that policies exclude defense costs from policy limits, the ROA points out.

LGT 399, the punitive damages clause, excludes punitive damages and multiple damages from non-North American casualty treaties.

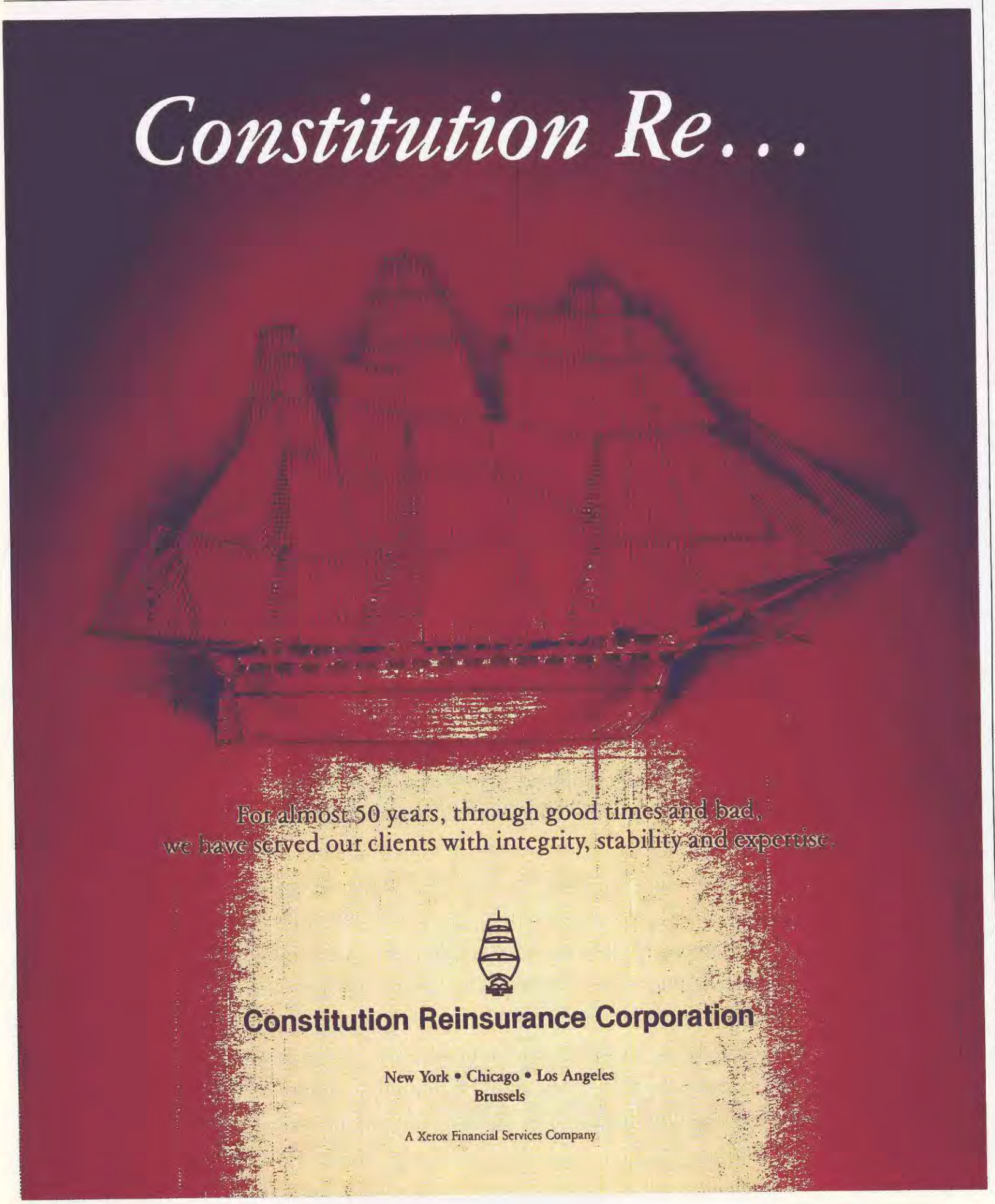
That clause is similar to a clause included in Expona last year, but it clarifies that reinsurers will respond to a punitive damage award if a court determines that the original insurance policy covers punitive damages.

Meanwhile, an ROA committee is drafting pollution exclusion clauses that may be used during this renewal season, Mr. Riley noted.

One of the already-drafted exclusions excludes all North American pollution risks. The clause is worded similarly to the pollution exclusion suggested by the Insurance Services Office, Mr. Riley noted.

This exclusion may be used by reinsurers in London this renewal season.

In addition, London reinsurers still are working on possible pollution exclusions for non-North American exposures, Mr. Riley pointed out. ■



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Proposals could cut availability of LOCs

By JUDY GREENWALD

Reinsurers may find it more difficult to obtain letters of credit from banks to secure their obligations because of proposed federal regulations that would require banks to capitalize LOCs.

"It'll cost (reinsurers) more money to do business," summed up Andrew P. Burger, a senior analyst with the Continental Reinsurance Corp. in New York.

In fact, some observers say banks already are increasing the amount they charge for LOCs in anticipation of the regulations.

If the regulations are approved, it could lead to tighter reinsurance capacity and higher rates as unauthorized reinsurers find it harder to guarantee obligations to ceding companies, observers say. This, in turn, could affect capacity and pricing in the primary market.

But, observers also note reinsurers will be able to tap alternatives to letters of credit to guarantee payment to ceding companies.

Standby letters of credit are widely used to secure reinsurers' obligations to ceding companies and to let ceding companies take credit for reinsurance purchased from unauthorized reinsurers.

According to the Federal Deposit Insurance Corp., $169.6 billion in outstanding standby letters of credit had been issued by U.S. commercial banks as of June 30. The FDIC does not track how much of this was accounted for by the insurance industry, but observers say it is certainly in the billions of dollars.

Until now, banks have been able to treat their "off-balance-sheet" or contingent liability items, such as standby letters of credit, differently from "on-balance-sheet" items, such as loans.

For balance-sheet items, a bank's primary capital must equal 5.5% of total assets, said a spokeswoman for the U.S. Comptroller of the Currency. Primary capital includes equity capital plus the bank's reserve for loan losses, she said.

But banks have not been required to adhere to a capital adequacy ratio for off-balance-sheet items, including LOCs, despite the element of risk involved.

Now, the FDIC, Federal Reserve Board and Comptroller of the Currency, all of which have jurisdiction over U.S. banks, have separately proposed regulations that would require banks to take their entire "risk profile" into account.

The three proposals "are not that far apart," said Richard Spillenkothen, the Fed's deputy associate director. The three agencies are now working to iron out differences and find a joint proposal, said Steve Pfeiffer, an examination specialist with the FDIC.

"We're trying to see if we can at least agree on some kind of a consensus," he said, though he noted that is not necessary since the three agencies all have different jurisdictions. Nevertheless, "I think everyone is going to work to make sure the major things are similar."

The Comptroller of the Currency supervises federally chartered banks, the Federal Reserve Board has primary supervisory authority over state-chartered banks that belong to the Federal Reserve System and the FDIC, while insuring virtually all U.S. banks, has primary supervisory authority over state banks that are not Federal Reserve members, said Mr. Pfeiffer.

Mr. Pfeiffer said he was not sure when the regulations would go into effect. "There haven't been a lot of public statements" on the issue, he said, but "there's definitely a consensus that banks have to look at off-balance-sheet risk."

Such a regulation "obviously is going to raise the cost (of LOCs), that's clear," said Woody Littlefield, a New York-based vp at First National Bank of Chicago.

Banks will be less willing to issue letters of credit because that will drain their reserve capacity and thus limit their ability to make loans, said Donald R. Henderson Jr., a partner in law firm of Kroll, Tract, Pomerantz & Cameron in New York. That means higher costs

Continued on page 34

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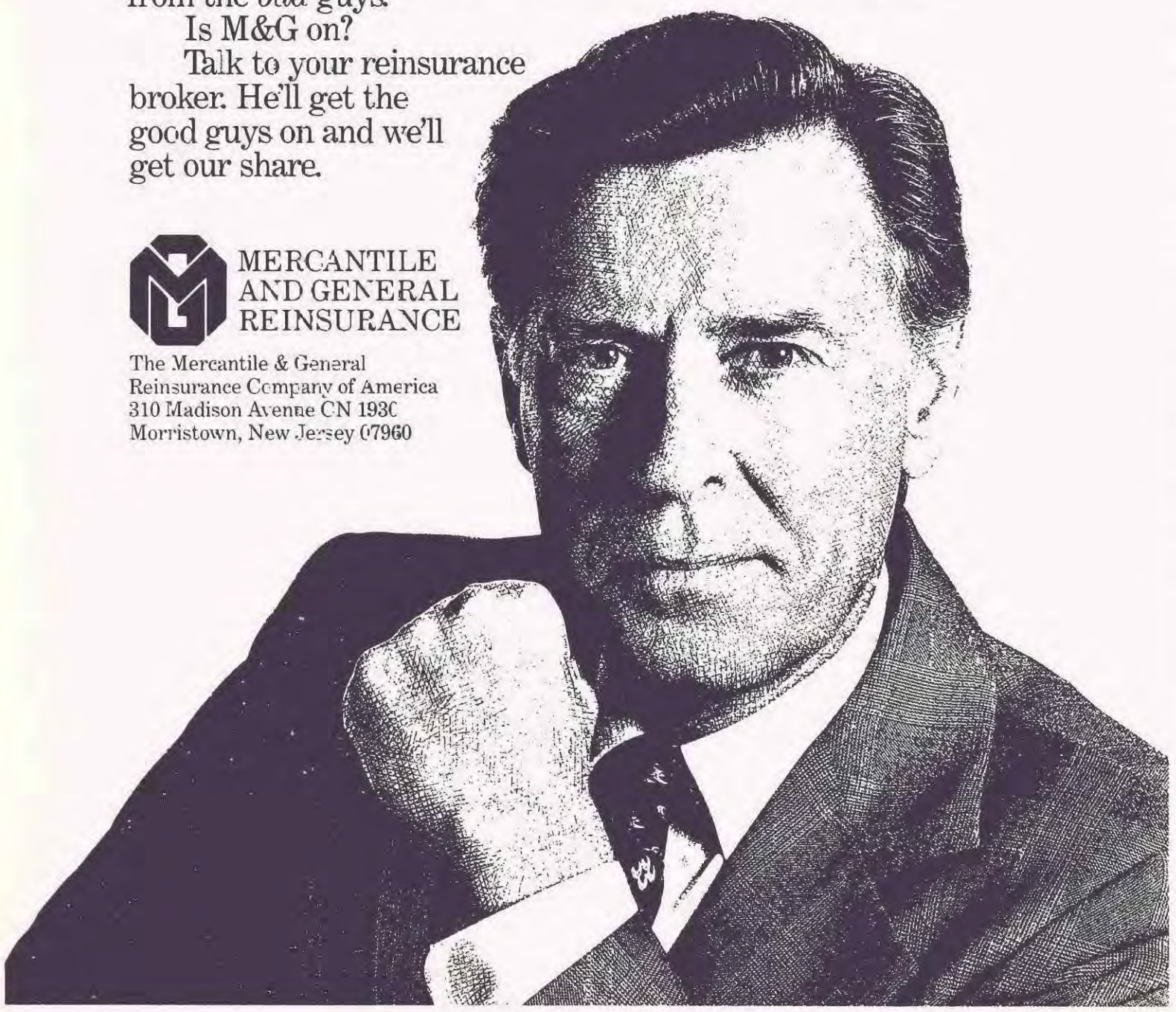

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LOC regulations

Continued from page 32

for LOCs that are issued, he added.

Banks are already cutting back on issuing LOCs and increasing fees, Mr. Littlefield said, partly in anticipation of the regulation and partly because "the banks themselves are beginning to discipline themselves more than they have in the past" and are now taking contingent liabilities into account.

Kirk Roeser, president of Gill & Roeser Inc., a New York-based reinsurance intermediary, noted also banks now are concerned about the question of drawing letters of credit down in response to the maze of litigation surrounding Universal Marine Insurance Co. Ltd., Beacon Insurance Co. and Cherokee Insurance Co. (*BI*, Nov. 12, 1984).

He said where letters of credit had cost 0.25% to 0.375% of their value, they now cost 0.5% or more.

"We've been advised of increases in the rates of letters of credit," said Phil Simpson, vp of administration for Johnson & Higgins Bermuda Ltd., which manages 150 captive insurers.

Rates currently remain 0.25% to 0.375%, including a 0.125% fee charged by U.S. banks when they confirm an LOC originally obtained from a foreign bank, which is required by state regulators.

However, Mr. Simpson says letters of credit could cost from 0.625% to 0.75% soon, though J&H is hoping to find sources willing to hold the letter of credit rates at a range of 0.375% to 0.5%. "Whether that is the reality, we just don't know at this point," he said.

"This has been something we're concerned about," said Jim Stannard, senior vp of F&G Re, a unit of USF&G Corp. While he agreed the proposed rule could raise the cost of LOCs, he said "they still are hovering around the same price they were a year ago"—about 0.25%.

Robert J. Gaffney, USF&G's vp and controller, estimated the cost of letters of credit could go up as high as 1% because of the regulation. Any increased costs will ultimately be passed through to the ceding company, he noted.

Difficulty in obtaining letters of credit could conceivably lead to tightened reinsurance capacity, observers say. Foreign reinsurers may decide the increased cost of letters of credit is "just not worth it" and withdraw from the U.S. market, leading reinsurers that remain to increase rates, said Michael Giordano, assistant secretary and assistant manager of the treaty accounting department at G.L. Hodson & Son Inc., a reinsurance broker in New Hyde Park, N.Y.

The question is: "Do licensed reinsurers have enough capacity to reinsure all the business out there?" noted Donald D. Gabay, a partner with Stroock & Stroock & Lavan, a New York-based law firm. Mr. Gabay added that he believes they don't.

Mr. Gabay noted also if ceding companies could not take credit for reinsurance purchased from nonadmitted reinsurers, it would reduce their statutory surplus and therefore limit the amount of business they could write.

But observers say that even if the cost of LOCs become prohibitively high, there are alternatives.

For instance, reinsurers could deposit cash in escrow accounts with U.S. ceding companies, a common practice before they began buying letters of credit.

But observers say reinsurers are more likely to use reinsurance trusts, into which reinsurers place securities or other assets to secure their obligations to ceding companies. The trusts are then maintained by banks (*BI*, Sept. 22).

The ceding company is named the beneficiary of such a trust and has the same rights to draw down on the trust in the event the reinsurer fails to meet its obligations, as it would be able to draw down on a letter of credit.

Interest in these trusts has increased in light of the proposed regulations. Reinsurance trusts are the "wave of the future," said Stuart H. Grayston, president of Hanna Insurance Management Ltd., a Bermuda captive manager.

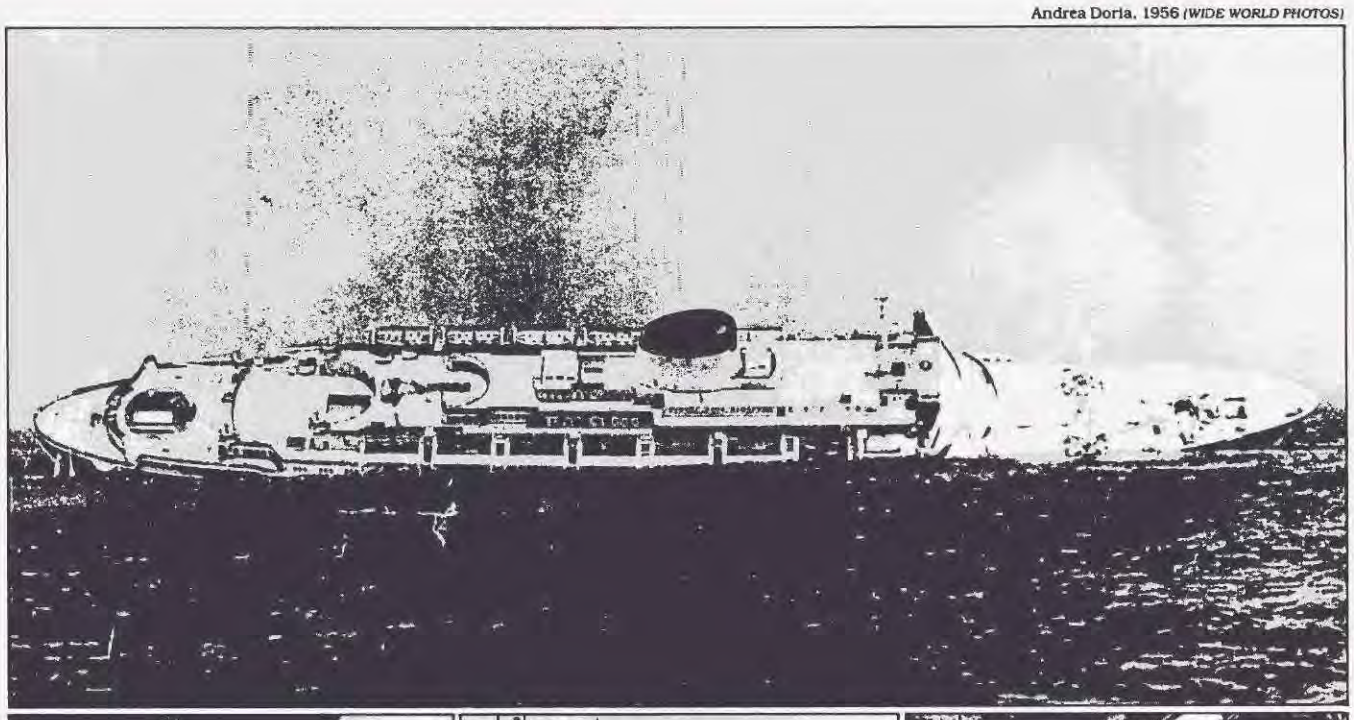
"It looks to me like trust agreements is the way to go," Mr. Grayston said. If enough money is involved, the trusts are "not that much more expensive" than letters of credit are currently, he said.

Because of the increasing cost of letters of credit, Hanna Insurance Management has started to use reinsurance trusts for some of the 87 captives it manages.

Reinsurance trusts can be benefit banks as well, noted Frederick J. Pomerantz, an attorney with Rein,

Continued on page 36

Andrea Doria, 1956 *(WIDE WORLD PHOTOS)*



San Francisco Earthquake, 1906 *(WIDE WORLD PHOTOS)*

Chicago Fire, 1871 *(UPI/BETTMANN NEWSPHOTOS)*

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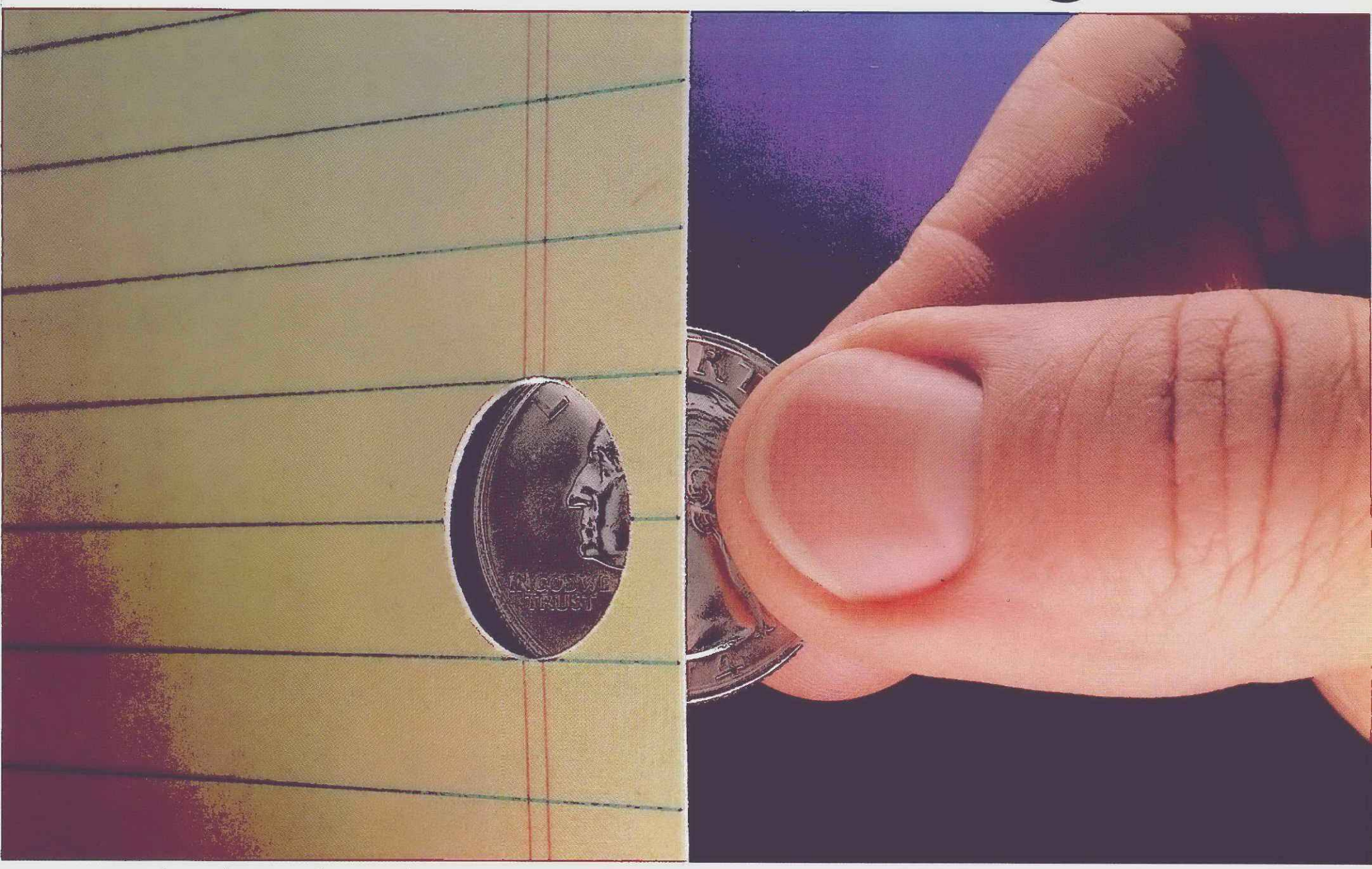

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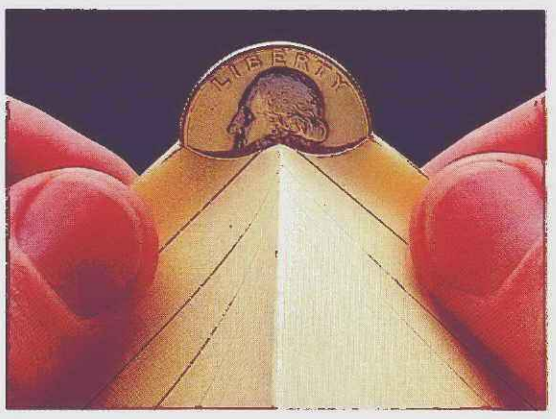

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Letters of credit regulations

Continued from page 34

Mound & Cotton in New York. Because the bank is acting only as a trustee, there is no impact on its balance sheet.

And, the trusts can help reinsurers, because New York insurance law prohibits a company from pledging more than 5% of its assets as collateral to back letters of credit issued on a secured basis, said William Zuk, vp at Marine Midland Bank in New York. But, a reinsurer could pledge unlimited amounts of collateral to a trust, he said.

Reinsurance trusts are "fairly feasible," said Bill Latza, an attorney with Stroock & Stroock & Lavan in New York. "There's a difficulty because you have to physically take the trust assets" and bring them to the bank, he said.

However, Gerard T. Morda, a vp at New York-based Irving Trust Co., which currently administers reinsurance trusts says, "The majority of today's investments are electronic by nature," explaining assets do not have to be literally moved

But Mr. Giordano warned that increased demand for the trusts could cause banks to increase fees for trustee services.

Another option could develop if the National Assn. of Insurance Commissioners moves to permit foreign banks to issue LOCs themselves, instead of having them confirmed by a domestic bank

William Smythe, executive director of the NAIC's Securities Valuation Office, said his office is recommending regulators accept letters of credit from foreign banks if they have a double-A rating from a credit rating agency and from domestic banks with a single-A rating

Mr. Smythe's office will ask the NAIC to adopt this standard at its December meeting, he said. And, as a corollary, it will ask the NAIC's Reinsurance & Anti-Fraud Task Force also to amend the NAIC's model law on credit for reinsurance to let regulators accept LOCs directly from acceptable foreign banks.

The model law now has a "vague" standard that states letters of credit must be issued by banks that are members of the Federal Reserve Board, he said, noting this is why foreign banks must have their letters of credit confirmed.

The NAIC's consideration of these proposals and the impending federal regulations are coincidental, Mr. Smythe said, explaining that foreign banks had asked the NAIC to consider allowing them to directly issue letters of credit.

However, the Reinsurance Assn. of America is opposed to accepting letters of credit from foreign banks because it is concerned about the security of those banks, said James M. Shamberger, RAA senior vp. "What we want is the security," rather than "just the balance-sheet credit," he said.

But Mr. Smythe said, "We don't have any problems with the quality aspect of it."

USF&G's Mr. Gaffney said he would welcome acceptance of letters of credit from foreign banks. "From our standpoint it would be good, because it would drive the cost down."

"The ceding company would still have to accept" the letter, he said. If a ceding company accepted a letter that proved worthless, "It would be their own fault, wouldn't it?" ■

Chicago bank's LOC service slow to take off

CHICAGO—First National Bank of Chicago's letter-of-credit management service is taking longer to get off the ground than the bank expected.

At this time last year, First Chicago was touting the new service to potential insurance company clients concerned about the validity of LOCs that guarantee payment by reinsurers (*BI*, Nov. 11, 1985).

But today, the bank is performing the service for only a handful of clients on a pilot-program basis.

"It's a little more complex to implement than we initially thought," explained Andre Lerman, assistant vp and product manager in Chicago.

"We're finding each situation is somewhat different, but we're adapting and growing with it," he said. "We're going through the learning curve."

As conceived, the service would:

- Review all LOCs issued on behalf of a ceding company's reinsurers to ensure that they meet state regulatory guidelines.
- Examine an issuing bank's LOC exposure relative to its assets.
- Safeguard the LOCs at the bank's Chicago headquarters.
- Monitor the client's LOC portfolio to make sure the documents are current and have not expired.
- Present draw-down documents to the issuing bank.

But as the development of the product progressed, First Chicago recognized that it needed to customize the service more than it had expected, Mr. Lerman said.

For example, each insurer has different internal reporting procedures. So the position responsible for monitoring LOCs at one insurer might not have that responsibility at another, he said.

Insurers' internal accounting procedures also differ, he noted.

For the moment, the bank is keeping the program "in the family," he said: The insurers in the pilot program were already First Chicago customers.

But as development of the product progresses, the bank expects to offer it to non-bank clients.

Citing customer confidentiality, Mr. Lerman would not give details on insurers using the service.

First Chicago is not the first financial institution to explore an LOC management service. Citibank in New York considered—and decided against—offering such a service about 10 years ago.

"It's not a simple product; it's fairly complicated in a custody sense," said William Cushman, vp-insurance industry department at Citibank, referring to the department in a bank that safeguards official documents for clients.

The proper handling of LOCs encompasses numerous issues, like draw-down procedures, with which custody departments are not usually familiar, he explained.

—By Steve Taravella

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Check reinsurers' financial stability: Experts

By ROBERT A. FINLAYSON

Risk managers, who have been paying close attention to their insurers' financial health as insurer insolvencies increase, may have to take their scrutiny a step further.

Risk managers—especially those with large, complex excess insurance programs or captive insurers—also should monitor the condition of the reinsurers that back up their primary and excess insurers, consultants, reinsurance brokers and veteran risk managers agree.

"A lot of people, I think, don't even know what the real financial security is behind some of the paper they're taking," noted P. Richard Hackenburg, staff vp-risk management for Allegheny International Inc. in Pittsburgh and past president of the Risk & Insurance Management Society.

"I think that's probably more prevalent than we'd care to admit."

H. Felix Kloman, a principal in the Darien, Conn., office of Tillinghast, Nelson & Warren Inc., agrees with Mr. Hackenburg. Assessment of reinsurance security should be done not only by risk managers with captive insurance companies, but also by those putting together large excess property or liability insurance programs, he advises.

"We've always argued that you ought to know the quality of your financial support, in terms of not only reinsurers on a captive or trust fund, but reinsurers of the major participants in your property and liability programs," Mr. Kloman said.

"In the past, you could get away with using 'Johnny No-name' up in the stratosphere of an umbrella because the possibility of calling on it to pay for a claim was so remote," pointed out Denis Julien, director of risk management for Florida Progress Corp. in St. Petersburg, Fla.

"But with higher losses and lower overall limits, you're down in an area where you could very easily blow through a primary" layer and file claims with excess insurers.

Since insurers writing excess layers typically cede large portions of the risk, it is important to know the financial condition of the reinsurers, Mr. Julian noted.

"If that reinsurance turns out to be uncollectible, more than likely it would cost the risk manager his job," Mr. Julian said.

Mr. Kloman says a risk manager's best source of information about reinsurers is from its primary or excess insurers. But, he adds, insurers often view their evaluation of reinsurers as confidential and will not give it to the risk manager.

The risk manager could then consult one of the rating services to evaluate an insurer's reinsurance security or do his own evluation, much like insurers do, consultants and reinsurance brokers say.

Generally, the degree to which an insurer evaluates reinsurance security depends to a large extent on how much reinsurance the insurer buys.

For example, Crum & Forster Corp. of Morriston, N.J., which relies extensively on reinsurance because of the many specialty lines it writes, has one of the insurance industry's most sophisticated reinsurance security programs, according to Ian R. Heap, executive vp.

Crum & Forster has a staff of financial analysts who devote their time exclusively to the quantitative analysis of reinsurers' financial results.

"We don't rely on anybody. We do our own inquiry, but we use every piece of useable information, be it from (A.M.) Best, the Department of Trade and Industry in the U.K., wherever, and we maintain active contacts with others who have comparable interests outside the U.S.A.," Mr. Heap noted.

However, other companies, because they do not cede large amounts of risk, do not maintain such elaborate security departments. Instead, they rely on others to gather information about reinsurers.

For instance, Warren, N.J.-based Chubb Group reinsures little risk outside of its intracompany pooling arrangements, according to John (Jack) F. Kirby, a senior vp with Chubb.

"We very much rely on our reinsurance broker to accumulate the data for us," he said. "They don't make the decision, but they do submit the data to us," he added.

New York-based Guy Carpenter & Co. Inc. is Chubb's reinsurance broker.

Most reinsurance brokers maintain some sort of security analysis program for the markets they use, although the depth and sophistication of this program is largely dependent on the size and staff of the broker.

Also, it is important to note that the reinsurance broker, unlike the insurer or risk manager, is not the end user of financial security data, consultants and brokers pointed out.

Reinsurance brokers see themselves as a conduit for the transfer of information and analysis on reinsurance markets to the buyer. It is then up to the reinsurance buyer to take that information and decide whether to use a particular reinsurer, brokers say.

"We don't make a decision on behalf of the client. We don't even recommend," said Robert A. Bailey, senior vp at Minneapolis-based E.W. Blanch Co., the third-largest U.S. reinsurance broker.

Continued on next page

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Reinsurer security

Continued from previous page

"Our role is to obtain for our client sufficient information so they can make an informed decision themselves as to not only whom to place business with, but what kind of business and how much," Mr. Bailey added.

Reinsurance brokers say most of their insurer clients have their own full-time security staffs and committees to collect and analyze financial data on reinsurers.

Those that do not—mostly smaller insurers—rely more heavily on data collected by the reinsurance broker, noted Joseph A. Zaffarese, president of Frank B. Hall Re of New York Inc.

"When dependent on the financial data and analysis provided by the reinsurance broker, it is important to beware of the capabilities and expertise of the staff of that broker," advised one consultant, who asked not to be named.

While most of the larger reinsurance brokers say they constantly update their security information and often do their own analysis of that data, the smaller brokers say they typically update their information only quarterly or annually.

And, smaller brokers appear to rely more heavily on security analysis provided by various reinsurance rating services and by the National Assn. of Insurance Commissioners.

Mr. Hackenburg said that relying on the financial expertise of a reinsurance broker or intermediaries is acceptable when that company has the staff and experience to properly evaluate a market.

"But some brokers and intermediaries are small and don't have the staff to do a complete job, and the pressures of getting a product to market and getting it placed sometimes obviates against the proper job of do diligence," he warned.

Mr. Zaffarese says Frank B. Hall Re uses computers extensively for storing and evaluating financial data on reinsurers. This way, "We can instantly call up that data whenever it's needed," he noted.

Generally collection and quantitative analysis of the financial data are performed by one or more analysts and turned over to a security committee made up of senior-level executives.

The members of the committee not only review the quantitative data but provide "market intelligence" about the reinsurers, such as anticipated changes in management, a major addition to surplus or a pending acquisition.

That information is weighed alongside the financial data, and a decision is made as to the quality and financial strength of a particular reinsurer.

For example, Crum & Forster's security committee is composed of six of the company's top operations and corporate officers. They meet five to six times a year to review the financial data developed by the insurer's analysts and to discuss any recent developments relating to reinsurance markets, Mr. Heap explained.

According to brokers and insurers, sources of financial information for U.S. reinsurance companies include annual statutory filings and reports by state regulators, the 10K report they or their parents file with the Securities and Exchange Commission and auditors' reports.

Many large brokers and insurers also will obtain information directly from reinsurers, through contacts with both management and staff. Such information might include:

- The kind of business the reinsurer is writing.
- The names of the reinsurer's retrocessionaires and the amount retroceded to each.
- The reinsurer's market strategy.
- Its future plans.
- The expertise of the company's management.
- The reinsurer's previous years' results.

Often this kind of information will point out a potential problem or significant financial improvement long before it would show up in the financial data, Blanch's Mr. Bailey said.

"If you wait until market strategies and changes in direction show up in the numbers in the annual statement, it's often too late," he noted.

However, such a strategy is often impossible for the risk manager to employ because of the time involved, risk managers say.

"You may have half-a-dozen reinsurers involved in a big risk. How many people have that kind of time?" Mr. Hackenburg asked.

Obtaining information on international reinsurers is more difficult than obtaining data on U.S. companies, largely because annual statutory filings in many foreign countries are not public documents, experts say.

"If you can't get it from the regulatory circles, you have to get it from the company," Mr. Bailey said. "And in most cases, the companies are really not anxious to make a lot of information available about their situation for good reasons."

Mr. Bailey also pointed out that, in many countries, corporate taxes are deferred until dividends are paid to stockholders. "So, if the companies were to broadcast information about their earnings that would be inconsistent with their published statements, which are very conservative in many cases, it might embarrass the tax authorities and boomerang," he said.

Insurers, especially those that heavily reinsure, are often in a better position to get financial data from reinsurers, both domestic and international, because they have considerable clout with the reinsurers.

Mr. Heap noted that C&F will go directly to the chief financial officer of a reinsurer for information. "If they want to do business with us, they have to respond," he said.

But when it comes to evaluating the data obtained about reinsurers, there appears to be no hard and fast rules about what exactly to look for. Rather, brokers and insurers say they calculate about a half-dozen key ratios to determine how a reinsurer compares with other reinsurers of the same size and with a similar mix of business.

Analyzing these ratios is "more a comparison of each company with its peers, rather than trying to decide what's good and bad," Mr. Bailey observed. "It's more like: 'Is it better or worse than the average?' "

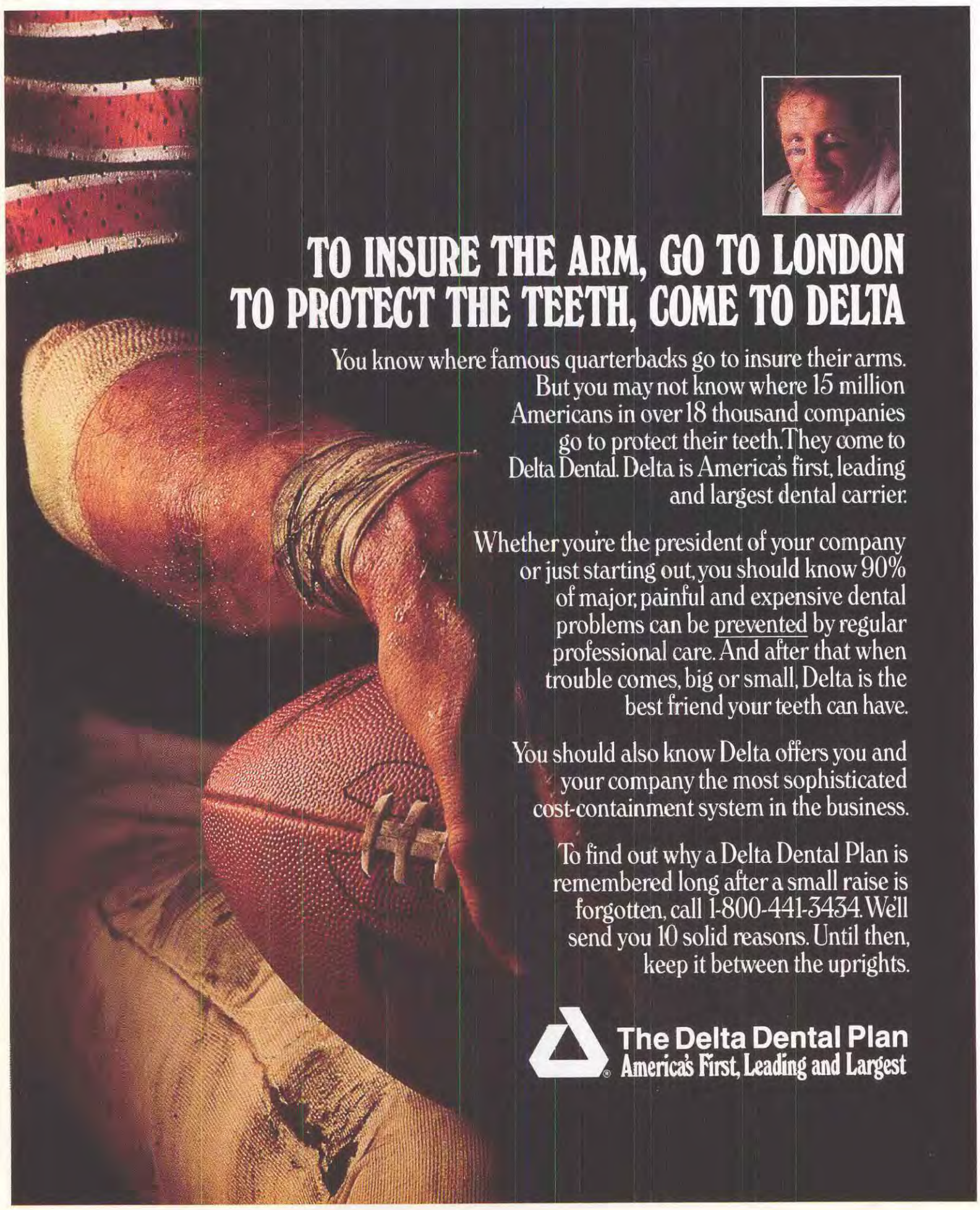
The ratios tracked by brokers and insurers include:

- Premium to surplus.
- Liabilities to surplus.
- The amount of business retroceded by the reinsurer in relation to gross premiums, net business and surplus.
- Profit to gross premiums and net premiums.
- Profit to surplus.

Analysts say they also examine the the adequacy of the reinsurer's loss reserves.

Despite the extensive efforts on the part of both insurers and reinsurance brokers to weed out unsound reinsurance markets, both say some problems are bound to crop up.

"It's an incredible job," Hall Re's Mr. Zaffarese says. "In the last few years, we've seen companies deteriorate so rapidly, it's beyond belief." ■



Variety of rating services evaluate financial security

By ROBERT A. FINLAYSON

Risk managers looking for ways to evaluate the financial strength and security of their reinsurers will find a variety of financial rating services available to them.

In fact, publishers of several of the more sophisticated and costly insurance and reinsurance rating services are looking for ways to market their products to the risk management community.

Up until now, insurers and reinsurance brokers have been almost the exclusive users of those rating services.

Currently, there are four major insurance and reinsurance rating services: A.M. Best Co.; International Insurance Financial Service; Insurance Solvency International Ltd.; and Standard & Poor's Corp.

None of the services offers complete information on both U.S. and international insurers and reinsurers, although all are expanding to increase their coverage.

Insurers and reinsurance brokers say they rely on the services to varying degrees. The rating services are a "good starting point," summed up Robert Bailey, a senior vp with E.W. Blanch Co. and a former senior vp with Best.

But, while small brokers rely heavily on these services, large reinsurance brokers say they perform their own analysis on the data provided by these services.

Generally, price denotes the sophistication and the frequency of the reports provided: The more costly services provide more detailed financial data on individual companies and update the information more often than the less expensive services.

Best's annual report on property/casualty insurers is the least expensive of the four at $375, while the cost of Insurance Solvency International's service can exceed around $10,000.

None of the four approaches rating reinsurers quite the same way:

• A.M. Best Co. of Oldwick, N.J., publishes a report that covers 1,700 insurance and reinsurance companies based almost exclusively on the statutory financial data submitted by these companies to state regulatory agencies.

Best's is the oldest insurance and reinsurance rating report. The 1986 property/casualty report is Best's 87th edition.

In most regards, Best does the same type of analysis and reporting on reinsurers that they perform on insurers, noted Paul E. Wish, a vp with Best.

Best reports five-year historical data on each company that it reviews, along with information about management, operations and reinsurance. The service also evaluates each company's financial strength and assigns each a rating based on several key tests it performs on the statutory data.

Best also publishes Best's Advance Rating Report Service, which provides an updated rating of U.S. insurers and reinsurers based on six- and nine-month statutory reporting data. The service costs between $5 and $30 per company requested, depending on the number of reports purchased.

Neither report covers international insurers and reinsurers based outside the United States because those companies do not submit statutory financial data to U.S. regulatory agencies and thus "cannot be compared on an equal footing with U.S. companies," according to Mr. Wish.

However, Best began publishing an international property/casualty report two years ago because of the demand for financial data on foreign-based insurers and reinsurers.

But, unlike the U.S. edition, the $325 international report does not include ratings for the 500 companies it reviews. It presents only the companies' balance sheets and operating statements.

Mr. Wish noted that Best is attempting to provide information on foreign-based insurers and reinsurers that compares with the information it presents about U.S. companies.

"It's a tough project," he noted. "Foreign companies report at different times of the year and at different intervals. But we do have people working on this with the ultimate intention of providing, if not a rating, some standard basis of comparison, or ratios or tests in the areas of profitability, leverage and liquidity. That would probably be the first step."

The information for the international edition is provided voluntarily by the insurers, he added.

• International Insurance Financial Service in London bases its evaluations on interviews with the management of reinsurers because the services believes that reinsurers cannot be properly analyzed from their statutory financial statements alone.

Continued on next page

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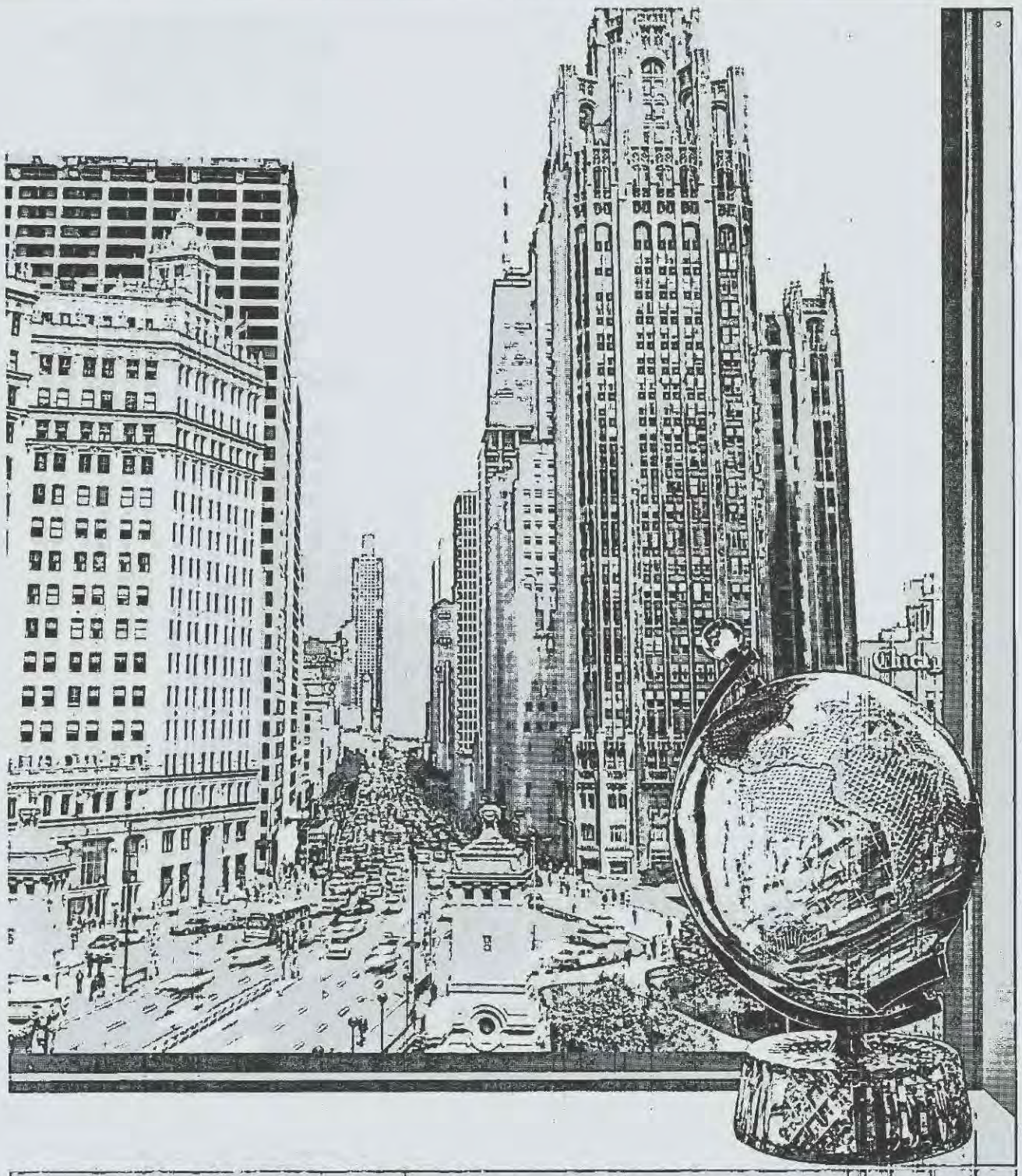

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Rating services

Continued from previous page

IIFS has been collecting financial data and rating international insurers and reinsurers since 1981. It currently reviews 800 insurers and reinsurers.

And, in July, IIFS launched an American Service that includes 100 U.S. reinsurers, noted Michael Miron, editor of the American Service based in Stamford, Conn.

Mr. Miron says the statutory reporting requirements of the National Assn. of Insurance Commissioners are inadequate for evaluating reinsurers. He cites the lack of a separate line-of-business report for reinsurance and reinsurers' "inadequate" reporting of loss reserves.

"It's relatively difficult to understand a reinsurance company from its annual statement—far more difficult than a standard commercial underwriter," he said.

Mr. Miron noted that the IIFS reports include information about the kind of business the reinsurer is writing; regions in which the company writes business; its relationship to any parent company; whether and why contributions were made to surplus; and information about prior losses.

In addition to statutory financial data, each report includes additional data provided by the reinsurer and a rating, based on six factors: relationship of capital funds to underwriting commitments; net reinsurance retentions; balance sheet management; operating performance; domiciliary environment; and sponsorship.

Like its international service, IIFS' American Service is published in a looseleaf format that allows updates whenever there is a significant change in a company's financial position. For example, many reinsurers have had capital infusions during 1986, Mr. Miron noted.

About one-third of the companies included in the American Service are not rated by Best, he said, because they fall under one of two exclusions Best has created: They buy significant amounts of reinsurance from unrated reinsurers or have not been operating for five or more years.

Mr. Miron said IIFS chose to include these companies because the company believes its subscribers do not want to wait five years before having financial data and a rating for newly formed reinsurers.

The International Service costs $2,000 and the American Service costs $595 a year. The reports on companies included in each service are two to seven pages long.

● Insurance Solvency International Ltd. of London collects and analyzes financial data on 1,100 international insurance and reinsurance companies that is available in three separate services.

The basic service, which costs $3,000, includes unanalyzed data for all 1,100 companies and a brief summary of several early warning tests that ISI employs. Information on each company is presented in a two-page looseleaf report.

The early warning tests compare: premium to surplus; changes in net premiums; ceded premium to gross premium; two-year ratio of underwriting earnings to investment income; loss reserves to surplus; loss reserves to surplus after that figure is divided by net premium; and loss reserves to marketable assets.

In addition to the two-page summary reports, a "full set of accounts for each company" is included, explained Steve Dreyer, director of U.S. marketing for ISI.

That information, which includes balance sheet information, is available on computer diskettes, he noted. The diskette service, which costs $4,000, is only available to subscribers of the basic service. Both the diskettes and the binder reports are updated six to seven times a year.

ISI also offers a rating service on about 550 of the companies included in its basic service. The rating is based on the financial data provided in the basic service.

Mr. Dreyer explained that ISI's ratings are different from Best's in that they provide "fairly literal comments on why we think the company is good or bad."

The rating service costs $1,200 for 45 companies and $30 for each additional company.

ISI plans to expand its service to include U.S. insurers and reinsurers, but no date has been set.

ISI also is looking for ways to market the service to risk managers, Mr. Dreyer said.

● Standard & Poor's Corp. in New York, currently rates only 11 international and domestic reinsurers and 30 property and casualty insurers. S&P's service is radically different from the others in that reinsurers must pay a fee for their rating, and they must accept that rating in writing.

S&P's rating is based on a detailed interview with the reinsurer's management and on financial data, both historical and projected, provided by the reinsurer, explained Larry A. Hayes, senior vp with S&P's insurance rating department.

S&P's ratings are based on an analysis of four major areas:

- Leverage, which includes net premium written to statutory surplus, reserves to surplus, total liabilities to surplus, long-term debt to capitalization and total debt to capitalization.
- Accounting practices.
- Cash flow, including historic cash flows from operations, total cash flow, bank lines of credit and dividend to shareholder policy.
- Planning systems, including planned goals and objectives and current three- or five-year plan.

Mr. Hayes says that while S&P rates claims-paying ability instead of solvency, as do the other rating services, the end use of the rating is the same. "I think people are interested in solvency because they're interested in ability to pay claims. And if you're always solvent, by definition you've always been able to pay your claims.

"The process we employ is a lot different, but the outcome in terms of what it's trying to do is the same," Mr. Hayes adds.

The rating is based on the same symbols S&P uses for its well-known debt rating service: AAA through BBB. S&P does not rate companies that do not meet the criteria for its lowest investment-grade rating, Mr. Hayes noted.

S&P does not disclose the companies that failed to meet the investment-grade standard or those that declined to accept a rating.

The annual fee for an S&P rating is $12,000 for U.S. insurers and reinsurers and $18,000 for foreign-based companies.

Mr. Hayes says he's hopeful that as the rating becomes more well known, more companies will ask to be rated.

Information on the insurers and reinsurers S&P examines, including their ratings, is provided to subscribers of the company's weekly "Credit Week" publication. The service costs the subscribers $1,000 a year and includes complete information on all of the companies S&P rates.

Because Credit Week also includes other information about bonds and debt issues that may not interest the risk management and insurance industry, S&P is planning to introduce a separate publication that will report only on insurance and reinsurance companies, he said.

No date has been set for publication of the new service, Mr. Hayes added. ■

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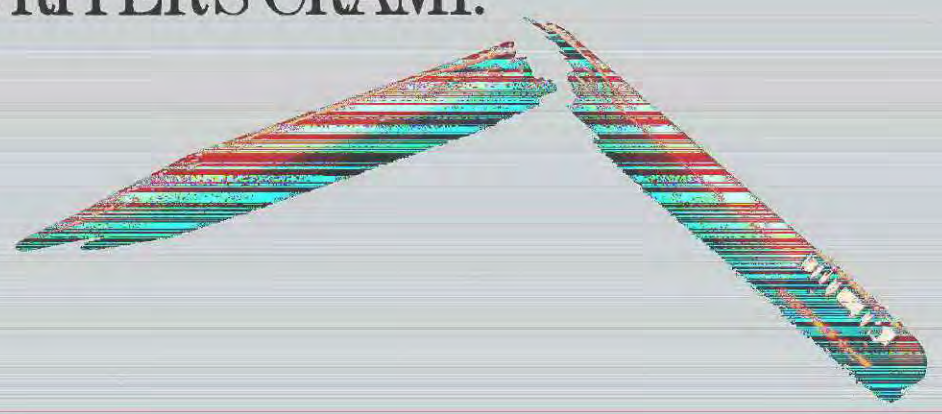

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Casualty treaty capacity rises on NYIE

By DAVE LENCKUS

NEW YORK—Far less capacity for facultative reinsurance is available this year on the New York Insurance Exchange, but capacity for casualty treaties has doubled since a year ago, according to the results of a capacity survey of the New York Syndicate Members Assn.

And, while premium volume generated by primary and excess writings is increasing dramatically on the NYIE, reinsurance business continues to account for the greatest share of gross premiums written by the exchange.

Overall, reinsurance premium volume is expected to total $265 million, or 88.3%, of the exchange's projected $300 million of gross premiums in 1986, while primary and excess premium volume is expected to total $35 million, or 11.7% of gross premiums.

The exchange expects to write $250 million in net premiums this year.

In 1985, reinsurance business accounted for $298.7 million, or 96.5%, of $309.5 million of gross premiums, while primary and excess premium volume totaled $11 million, or 3.5% of gross premiums (*BI*, Sept. 1).

The NYIE wrote $201.1 million in net premiums in 1985.

The survey also indicated that the exchange's policyholders surplus will increase at least 16% this year, to $225 million from $194 million at year-end 1985.

Since 1984, aggregate limits for facultative casualty coverage on the exchange have nearly evaporated, dropping 93.6% to $2.4 million from $37.7 million.

And, aggregate limits for facultative property coverage on the exchange during that same time have fallen 66% to $14.5 million from $42.7 million.

However, "several underwriting managers are now offering net casualty lines which, assuming market conditions remain tight in 1987, will accelerate premium growth and maximize profit margins during the current renewal season," pointed out Roy G. Nelson Jr., president of the NYSMA and of NYIE underwriting manager Johnson & Higgins Willis Faber (USA) Inc., in releasing the study results.

Facultative reinsurance premium volume is expected to plunge by 48.3% this year to $45 million from $87 million last year.

However, Mr. Nelson said he is encouraged by the twofold increase in the aggregate casualty treaty limits to $2.85 million from $1.4 million a year ago.

Treaty reinsurance premium volume is expected to rise by only 4% this year to $220 million from $211.7 million last year. This business will account for 73% of the exchange's projected gross premiums of $300 million in 1986, according to the NYSMA.

Mr. Nelson said he believes it is "significant" that 11 of the 14 active underwriting managers are seeking treaty business, "which allows brokers the opportunity to complete entire or partial placements for their clients on the NYIE trading floor."

And, although only half of the underwriting managers offer casualty treaty limits, "this parallels

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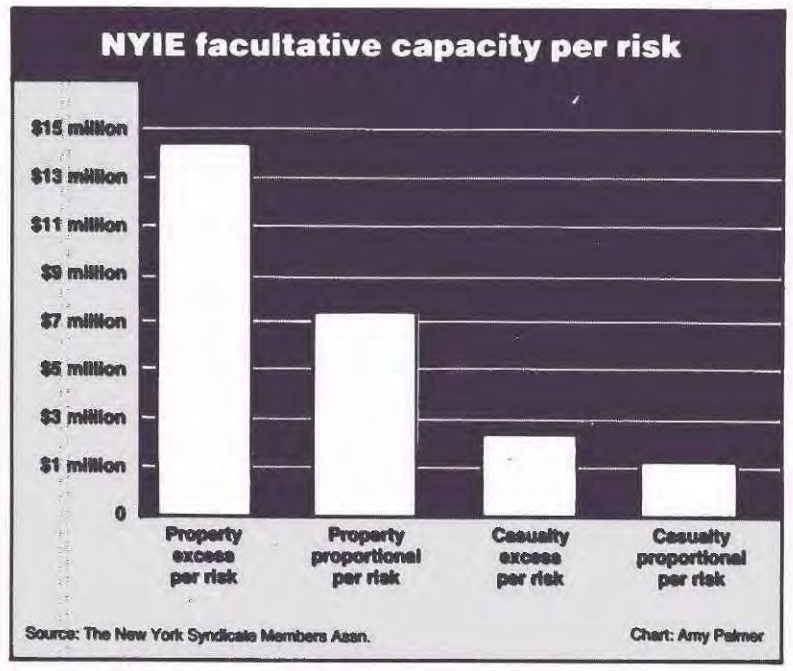

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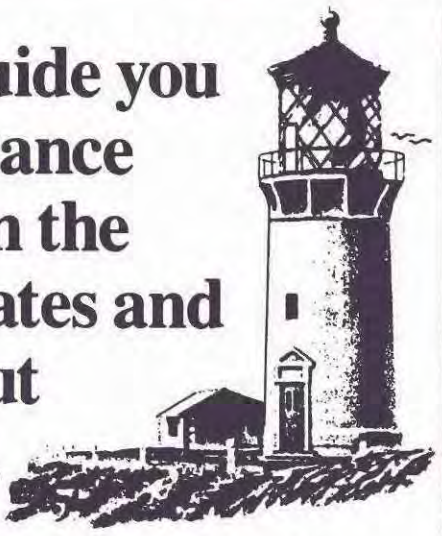

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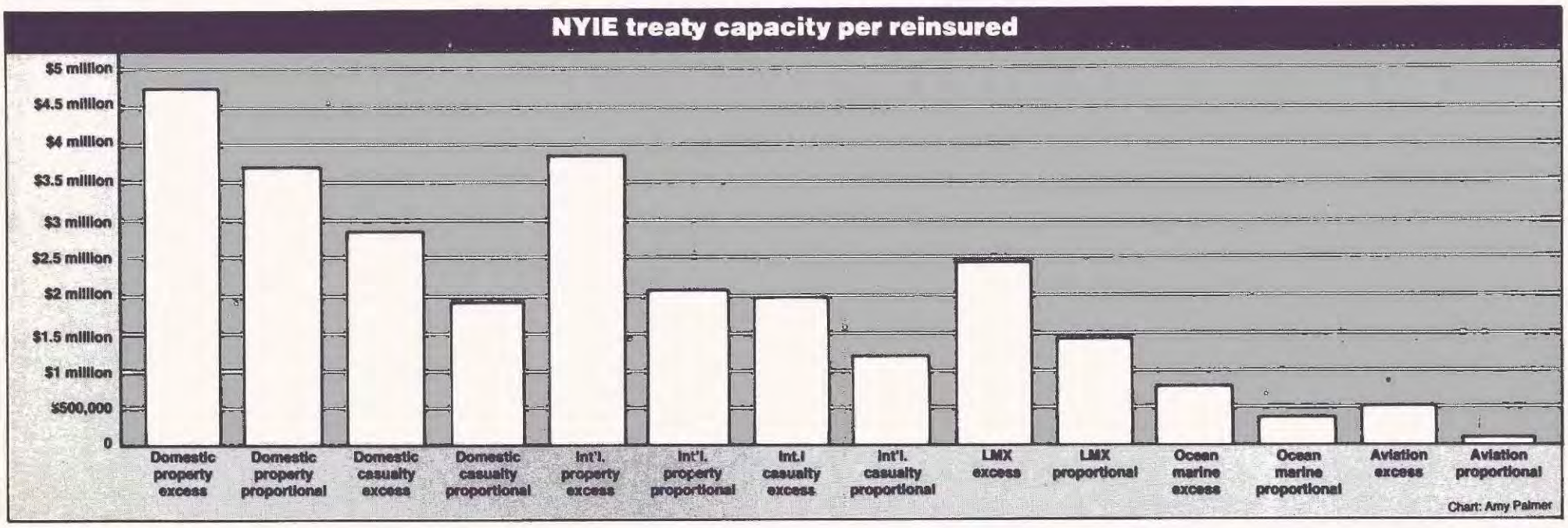

NYIE volume

Continued from page 44

market conditions off the exchange," he said.

Meanwhile, primary and excess premium volume is expected to jump 218.2% to $35 million, or 11.7% of projected gross premiums, from $11 million last year.

Mr. Nelson attributed the jump in primary and excess business to a combination of tightening market conditions and support by the brokerage community.

Regarding annual aggregate limits for facultative reinsurance written by the underwriting managers, the NYSMA survey found that:

- $14.55 million aggregate per risk is available for property coverage written on an excess-of-loss basis.

CIGNA Syndicate Managers will write up to $3 million in limits, larger than any other manager.

But, Allianz Management and City Syndicate Managers are close behind, with each writing up to $2 million in limits.

J&H Willis Faber and Pan Atlantic each will write up to $1.5 million in limits.

AIG Syndicate Managers, Mony Re Management and Trenwick Managers each will write up to $1 million in limits.

Several managers will write smaller limits of coverage: North Atlantic Treaty Managers, $550,000; Constitution State Management, $500,000; and Azimuth Underwriting Managers and NRG Syndicate Managers, $250,000 each.

- $7.35 million aggregate per risk is available for property coverage written on a proportional basis.

City Syndicate offers the largest limits—$2 million.

AIG Syndicate, Allianz and Trenwick each will write up to $1 million in limits.

Pan Atlantic will write up to $750,000 in limits.

Several syndicates will write smaller limits of coverage: North Atlantic, $550,000; Constitution State, $500,000; CIGNA Syndicate, $300,000; and NRG, $250,000.

- $2.4 million aggregate per risk is available for casualty coverage written on an excess-of-loss basis.

The managers that will write the coverage are North Atlantic, $550,000; AIG Syndicate and Allianz, $500,000 each; Azimuth, Delaney Management Co. and NRG, $250,000 each; and Facultative Managers Corp., $100,000.

- $1.3 million aggregate per risk is available for casualty coverage written on a proportional basis.

North Atlantic will write up to $550,000 in limits; AIG Syndicate, $500,000; and Delaney, $250,000.

Regarding annual aggregate limits for treaty reinsurance, the

Continued on next page

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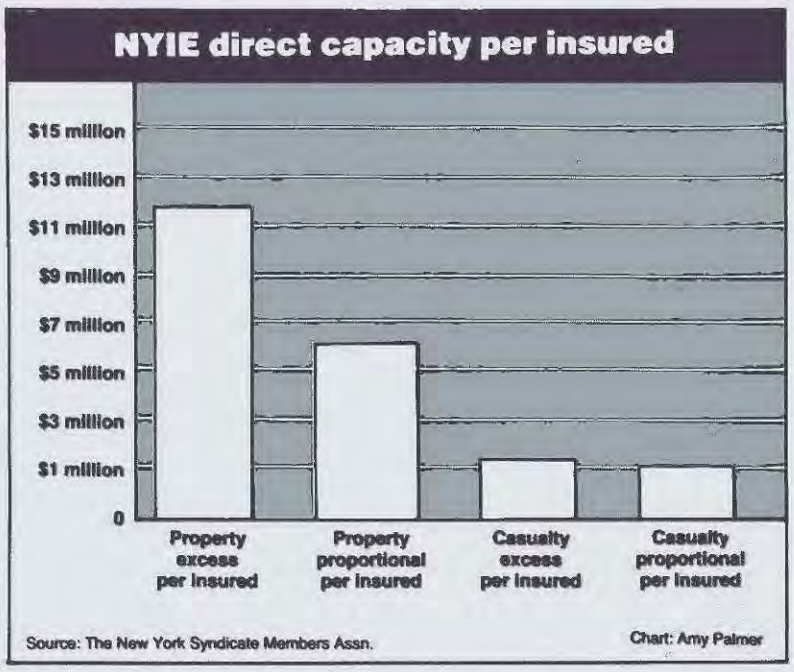

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survey found that:

- $4.75 million aggregate per reinsured is available for domestic property coverage written on an excess-of-loss basis.

AIG Syndicate will write the largest limit—$1.2 million. J&H Willis Faber and Pan Atlantic will write up to $750,000 each, and several managers will write smaller limits.

- $3.7 million aggregate per reinsured is available for domestic property coverage written on a proportional basis.

Again, AIG Syndicate writes the largest limit—$1.2 million, and several managers will write smaller limits of coverage.

- $2.85 million aggregate per reinsured is available for domestic casualty coverage written on an excess-of-loss basis.

AIG Syndicate will write up to $1.2 million in limits, and several managers will write smaller limits.

- $1.9 million aggregate per reinsured is available for domestic casualty coverage written on a proportional basis.

Almost all of the capacity for this coverage—$1.2 million—is available from AIG Syndicate.

In addition, the bulk of the aggregate capacity for all international treaty reinsurance coverage on the exchange is available through AIG Syndicate, which will write up to $1.2 million per reinsured for each international line.

The aggregate capacities for international coverages are $3.8 million for property on an excess-of-loss basis; $2 million for property on a proportional basis; $1.95 million for casualty on an excess-of-loss basis; and $1.2 million for casualty on a proportional basis.

The bulk of aggregate capacity for treaty retrocessional coverage of London market excess business also is available through AIG Syndicate, which will write up to $1.2 million per reinsured for each coverage. Aggregate capacity per reinsured for LMX coverage written on an excess-of-loss basis is $2.44 million. Aggregate capacity per reinsured for LMX coverage on a proportional basis is $1.45 million.

Smaller limits of treaty reinsurance coverage are available on the NYIE for ocean marine and aviation risks:

- $750,000 aggregate capacity for ocean marine coverage written on an excess-of-loss basis. Allianz and Constitution State each will write up to $250,000 in limits per reinsured.
- $300,000 aggregate capacity for ocean marine coverage written on a proportional basis. Constitution State will write up to $250,000 in limits.
- $500,000 aggregate capacity for aviation coverage written on an excess-of-loss basis is available through Azimuth, CIGNA Syndicate and Pan Atlantic.
- $50,000 in limits for aviation coverage written on a proportional basis is available through CIGNA Syndicate.

Regarding primary and excess coverage written, the NYSMA survey found that:

- $12 million aggregate capacity is available per policyholder for excess property coverage.

The largest limits are written by CIGNA Syndicate, $3 million; City Syndicate, $2 million; J&H Willis Faber and Pan Atlantic, $1.5 million; and AIG Syndicate and Trenwick, $1 million.

Several managers will write smaller limits of coverage.

- $6.1 million aggregate capacity is available per policyholder for first-dollar property coverage.

The largest limits are written by City Syndicate, $2 million, and AIG Syndicate and Trenwick, $1 million each.

- $1.65 million aggregate capacity is available per policyholder for excess casualty coverage.

North Atlantic will write up to $550,000 in limits; AIG Syndicate, $500,000; Azimuth and Delaney, $250,000 each; and Facultative Managers, $100,000.

- $1.3 million aggregate capacity is available per policyholder for first-dollar casualty coverage.

North Atlantic will write up to $550,000 in limits; AIG Syndicate, $500,000; and Delaney Management, $250,000. ■

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Liquidators, reinsurers argue right to offset recoverables

By STEPHEN TARNOFF

As more insurers become insolvent, liquidators and reinsurers are coming to loggerheads over a high-stakes issue: Whether reinsurers can offset reinsurance recoverables owed to insolvent insurers with reinsurance premiums owed by those insurers.

State officials in liquidation proceedings are challenging the right of reinsurers to take such offsets.

Reinsurers are fighting back, arguing that without offset rights, the cost of reinsurance would go up and capacity would be even further restricted.

Within the last 1½ years, at least two court decisions have determined such offsets by reinsurers valid.

Earlier this year, a U.S. District Court judge in Oklahoma held that Crown Life Insurance Co., as reinsurer, could offset the proceeds it owed the receiver of United Equity Life Insurance Co. with the amounts due Crown.

That case, *Grimes vs. Crown Life Insurance Co.*, is on appeal to the 10th U.S. Circuit Court of Appeals in Denver (see related story).

And, a 1985 U.S. District Court ruling in Chicago in *O'Connor vs. Insurance Co. of North America* said reinsurers could offset payments of reinsurance proceeds to insolvent Reserve Insurance Co. with debts it was owed by Reserve (*BI*, Nov. 11, 1985). A motion for reconsideration is pending in the District Court.

The issue also is being scrutinized by the National Assn. of Insurance Commissioners' Rehabilitators and Liquidation Task Force.

State liquidators are raising the issue more often as they become more adept at handling reinsurance claims and filing them with reinsurers for all covered losses, explains Jack Traylor, chief operating officer of the special deputy for rehabilitation and liquidation of the Illinois Insurance Department.

"We do a better job of it than we used to," he said. "We're looking a lot harder now, so we are making a lot more claims."

There is no question that the stakes are high.

"It involves enormous amounts of money for liquidators and reinsurance companies," noted David Spector, a partner with the Chicago law firm of Isham, Lincoln & Beale and an attorney in the *O'Connor vs. INA* case.

"We are talking about a good bit of money," Mr. Traylor agreed. "The worse a company's experience, the more significant will be the reinsurance proceeds due it," he added.

The severity of the problem grows in proportion to the size of the ceding companies that become insolvent.

"It's only as the larger companies go under and are in fact reinsurers themselves that the dollar amounts are starting to become important," noted Milton S. Wolke Jr., senior counsel for CIGNA Corp. in Philadelphia.

While in most cases the issue pits reinsurers against liquidators, attorneys point out that the issue arises in other contexts as well, such as the liquidator against ceding insurers.

For example, there is the Delta America Reinsurance Co. liquidation in Kentucky, involving an insolvent reinsurer and ceding companies that are seeking the right to offsets (*BI*, May 27, 1985).

Mr. Traylor said the biggest issue is not whether reinsurers are entitled to offset debits and credits with the insolvent insurer but the degree to which that offset can be taken.

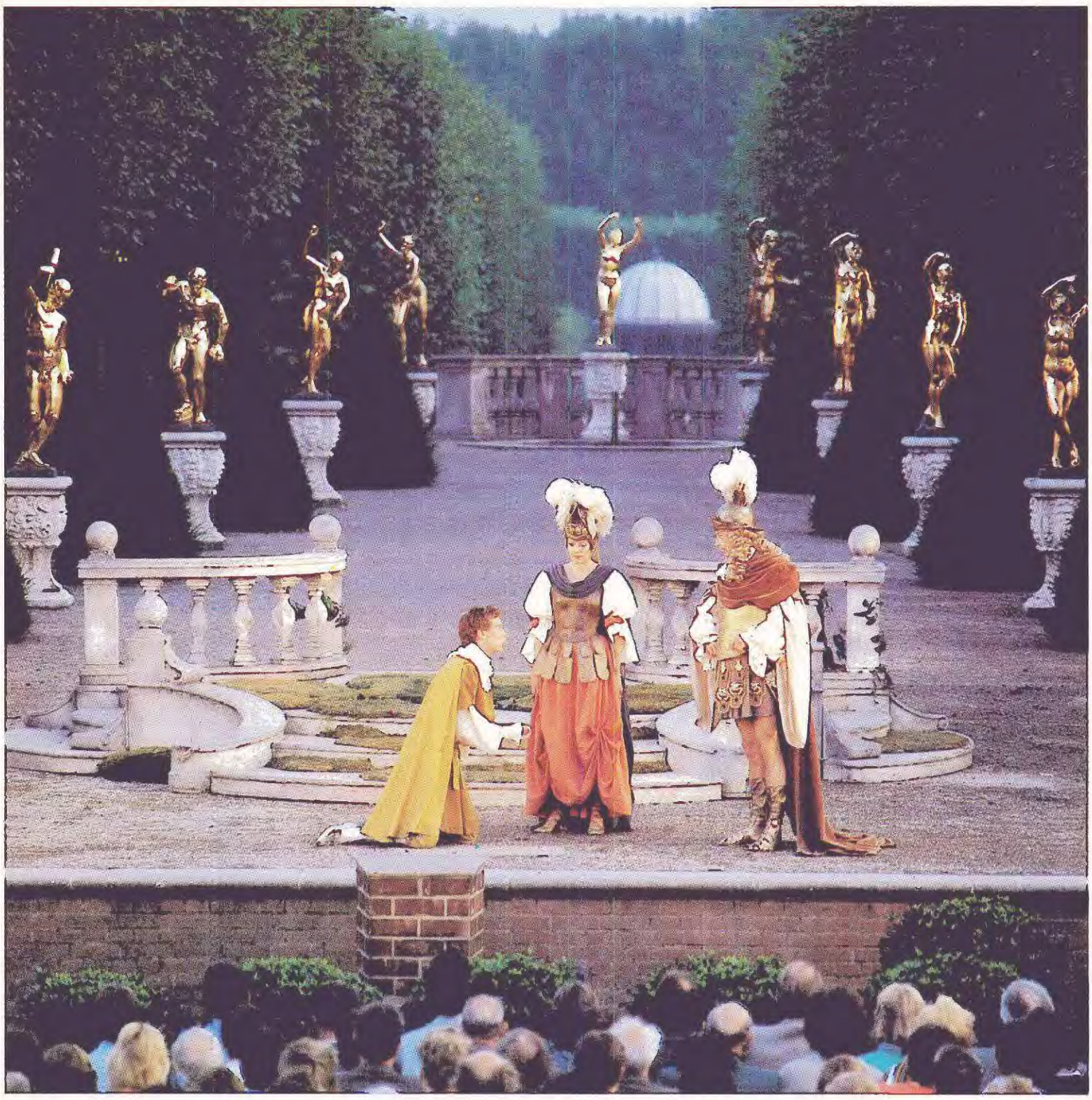
Some liquidators say that reinsurers should be allowed to offset only premiums it is owed under one particular reinsurance contract with the insolvent company.

Where more than one contract or treaty is involved, these liquidators contend that reinsurers should not be able to total all of the debts and credits and then net the amount out.

However, some liquidators also say that an offset should not be permitted under any circumstances, Mr. Traylor noted.

The main reason that state liqui-

Continued on page 50



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Right to offset

Continued from page 48

dators are increasingly seeking to prohibit or severely restrict the right of reinsurers to an offset is because they say it creates a "preference" for reinsurers over the insolvent insurer's policyholders.

State insolvency statutes establish a priority of how creditors of the insolvent insurer are to be paid by the liquidator. Reinsurers are classed as general creditors, below policyholders, attorneys noted.

However, the right of offset allows reinsurers to leap over the policyholders and other creditors that ordinarily have priority and collect the amounts the reinsurers are due.

"It becomes a question of priorities," noted Bert Marshall, the attorney for the Oklahoma liquidator in the *Grimes vs. Crown Life Insurance* case. "Allowing the reinsurers to recover ahead of others gives them a preference."

"If they allowed offsets, it would have to be less money to pay the general creditors," Mr. Traylor noted.

However, attorneys for reinsurers, while acknowledging that a preference might be involved, argue that it is one established by state statutes.

Moreover, they contend that denying the right to an offset would severely hamper the operation of the insurance industry.

"It is a preference the Legislature contemplated by passing the statute," Mr. Spector said.

If liquidators oppose it, they should change the law through the legislative process, rather than attempt to rewrite it in the courts, he added.

"The right of offset has been understood by the courts as inherently equitable," says a statement by the Reinsurance Assn. of America on the issue. "It does not create a preference. It is merely a right to settle mutual debts and credits."

Reinsurers point out that the right of offset goes back hundreds of years and that state statutes follow the Federal Bankruptcy Code of 1898 and also English bankruptcy law.

Mr. Spector says the central issue is whether state insurance laws will be interpreted in the same way as the offset provisions of the federal and English laws that permit offsets in similar situations.

The "real question" is whether states intended the statutes permitting offsets to be interpreted differently, even though they borrowed it from the U.S. and English bankruptcy laws, he pointed out.

For some reason, state liquidators have taken a "radical position" that the identical language in the state code has a different meaning than under the federal code, Mr. Spector said.

In a paper presented to the NAIC, the RAA contended that not permitting offsets would have a very detrimental economic effect on the insurance industry.

The RAA argues that not permitting offsets:

- Would increase the cost of reinsurance and cause the reinsurance market to contract, particularly to the detriment of smaller ceding companies.
- Could have disastrous consequences for ceding companies, especially those with financial problems that need reinsurance support.
- Would be contrary to three centuries of Anglo-American jurisprudence.

Without the right of offset, there would be an increase in risk to reinsurers that would translate into increases into the cost of reinsurance, the RAA argues.

"The marketplace would be artificially distorted. Thus, non-admitted reinsurers would be less willing to risk up-front securities such as trust funds and letters of credit. Indeed, reinsurers might require pre-funding or payment of maximum premiums leading to decreased liquidity on the part of ceding companies," the association says.

In addition, it also would increase the chances for additional insolvencies, the RAA says.

And, with no right of offset, it would be foolish for a reinsurer to take part in the rehabilitation of an ailing company, the RAA adds.

"Indeed, the opposite would occur. Ceding companies that begin to appear to be in financial difficulty would quickly lose their reinsurance, almost guaranteeing their demise," the RAA says.

Reinsurers denied the right of offset would experience shortages of funds needed to pay obligations on losses experienced by ceding companies other than the insolvent insured, increasing the financial difficulties for those companies, the association argues.

"The result would be an intensification of the possibility of chain-reaction insolvencies," the RAA adds.

"Denial of the right of offset would lead to higher reinsurance costs and thus cause restriction in the reinsurance market," the statement sums up.

"Companies most in need of reinsurance would be affected, thus intensifying the financial difficulties faced by the entire industry to the long-term detriment of everyone." ■

Recent ruling on offsets sides with reinsurer

The most recent decision involving a reinsurer seeking to offset reinsurance recoverable to an insolvent insurer with premiums it was owed sides with the reinsurer.

In *Gerald Grimes vs. Crown Life Insurance Co.*, U.S. District Court Judge Wayne E. Alley in Oklahoma ruled that under the "netting provisions" of a reinsurance contract, Crown Life, acting as a reinsurer, could offset the amount it owed to United Equity Life Insurance Co. by the amount of premium it was owed.

Mr. Grimes, the Oklahoma insurance commissioner and the receiver for United Equity, asserted that Crown should be treated as a general creditor for any offsets due it under the reinsurance agreement with United Equity, and that its claims should be decided with all others in the Oklahoma County District Court.

But Crown argued that under the reinsurance contract and Oklahoma law, it had a right to offset mutual debts and/or credits arising under the agreement.

"The netting provision. . .is operative notwithstanding United Equity's insolvency," Judge Alley ruled.

Judge Alley also ruled that United Equity's insolvency did not transform the reinsurance agreement so that Crown's obligations would be calculated on the basis of United Equity's incurred claims as well as paid claims.

As a result of the decision, Crown Life owes United Equity nothing, according to Crown attorney C. Wayne Litchfield of the Oklahoma City firm of Litchfield & Dansby. "We're ecstatic, as is our client and the reinsurance industry," he said.

Both Mr. Grimes and the Oklahoma Life & Health Insurance Guaranty Assn. have appealed the case to the 10th U.S. Circuit Court of Appeals in Denver. ■

Push for claims-made easing: Reinsurers

By DOUGLAS McLEOD

NEW YORK—Although reinsurers continue to encourage use of the claims-made form for general liability risks, it's not with the same urgency as a year ago, reinsurers and brokers report.

With recent astronomical increases in casualty rates, many reinsurers no longer feel the same pressure to push for claims-made coverage, several sources say.

Lack of familiarity with the policy's conditions also has deterred its use, sources note.

While many reinsurers continue to insist on claims-made coverage of certain high-hazard risks—like medical malpractice—most agree that the form's use is not spreading into the less-risky general liability line.

Nevertheless, if some degree of price competition returns to the casualty market—a condition most reinsurers do not expect to see during the coming year-end renewals at least—use of the form will spread, some sources predict.

"I don't think anybody is clamoring for" the claims-made form, observed Ward B. Gordon, chairman and chief executive officer of Intere Intermediaries Inc. in New York. "If anything, claims-made is less of a talking point this year than it was last year."

"It's become the norm in certain lines of business, but I don't think it's gone as far as most people thought it would go by now," added N. David Thompson, president and chief executive officer of North American Reinsurance Corp.

"It's not dead in the water. It certainly isn't around us," said an official of Prudential Reinsurance Co., who requested anonymity. Pru Re, for example, has avoided writing facultative reinsurance for high-hazard, Fortune 500 risks on an occurrence basis, the official said.

"Our general approach is that we do not write occurrence coverage on that business, and that is still our position," he explained.

However, the official acknowledged that claims-made forms have not caught on in other areas over the last year.

"Prices shot up so high that people said, 'With prices this high, we can write on an occurrence form,'" he explained.

"The drive for claims-made is weakening as the results of insurance companies get better," said another reinsurance company executive who requested anonymity. "With results getting better, it's very hard to push for claims-made."

"Obviously, we are continuing to reinsure occurrence forms and we do not reinsure anything that we do not expect to produce underwriting profits," said Edmond F. Rondepierre, senior vp, secretary and general counsel with General Reinsurance Corp.

General Re corporate policy requires use of the claims-made form only for medical malpractice business, Mr. Rondepierre noted. But, the form might be used for individual risks in other lines.

While some reinsurers say that rising rates for traditional occurrence coverage may lead some policyholders to opt for the less-expensive claims-made alternative, other reinsurers disagree, speculating that the opposite may be the case.

"I have a feeling that insureds are willing to pay more for the standard product," said one reinsurance executive who asked not to be identified.

Another roadblock in the advance of the claims-made form, the executive added, is a general lack of familiarity with its terms and conditions.

"There just is not unanimity that claims-made can be sold. There is too much confusion as to policy wording," he observed.

Still other reinsurers are not convinced that the claims-made form—even if widely understood—is an answer to the problems insurers face with long-tail liability risks.

"We don't see it as a long-term solution to anything," said Leonard J. Meredith Jr., president and chief executive officer of NWNL Reinsurance Co., noting that a regularly renewed claims-made policy becomes much like occurrence coverage over a period of several years.

"We are not trying to shove claims-made or occurrence down anybody's throat," Mr. Meredith said.

A further impediment to reinsurers' insistence on the use of claims-made forms is the threat of lawsuits charging antitrust violations or coercion, one reinsurance company official said.

Antitrust investigations, the official said, may focus on whether reinsurers are collectively deciding to demand the use of the claims-made form.

Although the U.S. Justice Department already has concluded that there is no basis for such antitrust charges, state attorneys general may pursue their own investigations, the official said.

"The next question the attorney general will ask is, are reinsurers coercing insurers by saying, 'This is the only form we will reinsure,'" the official said.

"We may see some prosecutions, and that is why companies are being circumspect and (are asking themselves), 'Should we draw the line and say this is the only form our company will reinsure?'" the official said.

The possibility of such charges may play "a significant part in the development of the claims-made form," the official speculated.

Despite these roadblocks, however, several reinsurers predict that over time the claims-made form will gain a broader foothold among U.S. markets. This may be encouraged, in part, by a slackening of the recent dramatic price increases for casualty coverages, some reinsurers say.

"I don't think I would sound the death knell for claims-made yet," the Pru Re official said. "I think there is a pretty good chance that when rates in casualty lines start to level off. . .(insurers) will quickly, easily and just sort of automatically gravitate to the claims-made form."

"We are convinced that an even-handed claims-made product is the future of casualty exposures other than the most mundane risks," said Angus Robinson Jr., president and chief operating officer of Trenwick America Reinsurance Corp.

"It has established a beachhead in the most difficult risks, and we think that will spread as buyers and sellers become more accustomed to it." ■

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Reinsurers await results of tort reform

By DAVE LENCKUS

While reinsurers say tort reform measures enacted by states are a step in the right direction, they say much more reform is needed before there will be any resulting increase in reinsurance capacity.

Although several of the 20 largest U.S reinsurers say they will offer increased capacity next year, they explain that new capital—not a willingness to write more business due to tort reforms—is responsible for the higher limits (see story, page 3).

Reinsurers and other observers contend that it will take the combination of several factors before reinsurers' underwriting predictability increases, leading to a willingness to offer more capacity:

- The reforms that have been enacted must withstand court challenges.
- Additional reforms must be approved, even in states that have already enacted reforms. In fact, measures modifying already-enacted reforms are just as critical in some states as new reforms.
- Reinsurers, especially retrocessionaires, must analyze loss history under the reforms for at least several years before they can determine whether the reforms have reduced losses.

While reinsurers do not expect tort reform to have any immediate impact on capacity, most said they are optimistic that the reforms eventually will achieve the insurance industry's goals of reducing litigation and limiting damages awarded to plaintiffs—which could lead to greater capacity.

Tort reforms "will not have any significant effect on capacity at all in 1987," said Michael G. Fitt, chairman and chief executive officer of Employers Reinsurance Co. in Kansas City, Mo., a unit of General Electric Co. and the second-largest U.S. reinsurer based on first-half 1986 net written premiums.

"I think it will take some considerable time for the action to be digested. It will take quite a few years, I would think," Mr. Fitt said.

However, he added that tort reform "has to do something positive—absolutely. Any positive change in the system has to help. To what degree it will help, I don't think anybody knows at this time."

"Tort reform will not measurably increase reinsurance capacity until the consequences of reform are measurable," agreed James F. Dowd, president and chief executive officer of New York-based Skandia America Group, a unit of Skandia Insurance Co. Ltd. of Stockholm, Sweden. Skandia America is the 11th-largest U.S. reinsurer.

"It is our view that any reform which slows, stops or reverses the erosion of the relationship between fault and economic burden is a positive step," Mr. Dowd said.

"I think it will have some impact, but very slowly, very gradually and very marginally," observed Bard E. Bunaes, chairman, president and chief executive officer of Constitution Reinsurance Corp. of New York, a Crum & Forster unit and the 18th-largest U.S. reinsurer.

"It's obvious it's going to pull in the right direction—and here you're talking direction," Mr. Bunaes pointed out.

If tort reform measures do succeed in reducing litigation and capping damage awards, "then maybe you don't need those high limits," pointed out Thomas J. Rentko, executive vp with St. Paul Reinsurance Management Corp. in St. Paul, Minn., which manages the reinsurance business of St. Paul Fire & Marine Insurance Co.

Some reinsurers noted that reinsurance capacity for Main Street risks currently is not terribly tight.

"In a vast majority of cases, there is no availability problem," Mr. Fitt noted. "What we're talking about is a few highly volatile risks," like errors and omissions, day-care liability, municipal liability, medical malpractice and product liability exposures.

Other observers share reinsurers' view that tort reform will not be a short-term undertaking and probably will not affect capacity in the short term. But they, too, are optimistic that reform can be achieved.

"We've seen a great reversal in 25 years of tort deterioration. It's like turning a big steamship around," noted Morag Fullilove, vp-government affairs for the Alliance of American Insurers in Schaumburg, Ill.

Ms. Fullilove pointed out that approximately 35 states at least attempted reforming tort law this year, compared with four or five states in 1985 and one or two states in 1984.

Despite this activity, James T. Coyne, president of the American Tort Reform Assn. in Washington, estimated that comprehensive reform nationwide will be "a 10- to 15-year battle."

"We're optimistic, but we recognize that the American Trial Lawyers Assn. is spending millions of dollars to oppose this. It will be a tough, uphill battle," Mr. Coyne predicted.

But in a new development, the tort reform movement may be gaining support from an unexpected quarter—the American Bar Assn. (see story, page 56).

Reinsurers admit that some states apparently have enacted far-reaching reform packages. But the reinsurers would not name those states because they did not want to be on record supporting the reforms if courts in those states interpret the reforms differently than the reinsurers.

"You have to see the results of court decisions before you can see whether this thing will help—if it's for real," said Mr. Bunaes of Constitution Re. "I'm not doubting it's for real; the effects are not yet for real.

"It's like everything else in life: It takes time, time, time."

"All currently enacted reform measures, however laudable, will go through a period of challenge," noted Mr. Dowd of Skandia America. "The appeal process will take years."

Others point out that the scope of major tort reform is now limited to only a few states.

Mr. Coyne and Victor Schwartz, a Washington, D.C., attorney and a leader in the drive for federal product liability reform legislation, note the states that have passed by most widespread reforms—Connecticut, Colorado and Washington—are not major commercial jurisdictions.

And reinsurers said that if they

Continued on page 54

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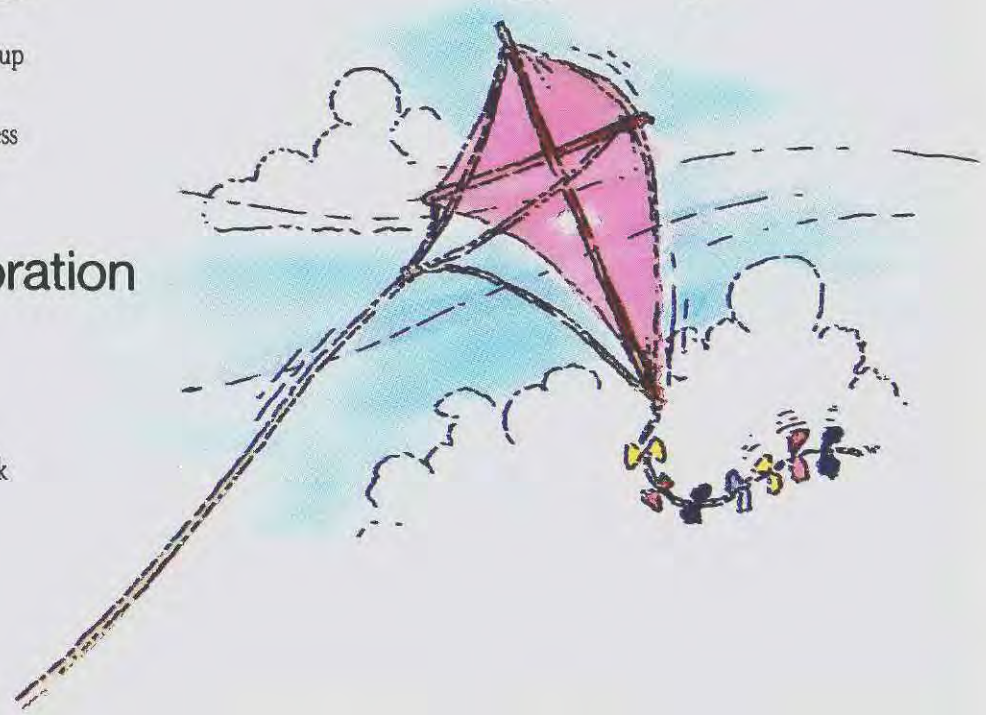

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Tort reform

Continued from page 52

do increase capacity for exposures in those states, it would be done only on a case-by-case basis.

Legal observers generally regard the reforms enacted in Connecticut, Colorado and Washington as the most comprehensive in the nation because all three restrict joint and several liability, shield directors of non-profit organizations from civil liability and cap non-economic damage awards (*BI*, Aug. 18).

In addition, the Connecticut and Colorado laws reduce compensatory awards by collateral sources and impose penalties on parties that file frivolous suits.

Reinsurers and others noted the reforms passed by most states are not comprehensive enough to return underwriting predictability to the reinsurance market.

"It's a mixed bag generally," Ms. Fullilove observed. "There are a few states where reform appears to be comprehensive, and we are somewhat hopeful. But, there are other states where reforms are cosmetic rather than substantive."

Andre Maisonpierre, president of the Washington-based Reinsurance Assn. of America, concurs.

"Yes, we are encouraged and surprised with what states have done," Mr. Maisonpierre observed. "If you're asking if we are satisfied with what states have done, the answer is 'no.' "

"I have not seen anything of any concrete value," asserted Donald R. Smith, president and chief executive officer of Kemper Reinsurance Co., a Kemper Corp. unit in Long Grove, Ill., and the seventh-largest U.S. reinsurer.

"When we say tort reform, we haven't said much," pointed out Mr. Schwartz, with the Washington law firm of Crowell & Moring.

"I don't think the total picture has been addressed in any one state," observed Edward B. Jobe, executive vp of American Re-Insurance Co. of New York, a subsidiary of Aetna Life & Casualty Co. and the third-largest U.S. reinsurer. "What you need is to bring about more predictability in the process."

For example, no state has enacted legislation that exempts a product manufacturer or a service provider, such as a physician, from liability if the product or service that contributed to a plaintiff's injury was the state-of-the-art at the time it was made available to the plaintiff, Mr. Jobe pointed out.

"You can have something today that can be the state-of-the-art but in 20 years you can be held to a higher standard," Mr. Jobe explained.

Another problem is that some states have addressed only one or two tort reform issues, according to reinsurers and other observers.

For example, California's Proposition 51—which repeals joint and several liability for non-economic damages—and Maryland's $350,000 cap on non-economic damages are only "isolated" reforms in those states, the Alliance's Ms. Fullilove said.

"More has to be done in those states, but those are essential building blocks," she noted.

"Proposition 51 was just a drop in the bucket in California," said the RAA's Mr. Maisonpierre.

Other states have enacted insignificant or cosmetic reforms, according to observers.

For example, while several states have established caps on punitive damages, punitive damages are not awarded in the majority of lawsuits and are not insurable in many states, Mr. Schwartz explained. "So, it's not significant" to insurers and reinsurers.

Mr. Schwartz suggested that states enact what he believes is a more useful reform relating to punitive damages, which he said could help reduce other awards: a bifurcated court procedure in which the court determines at one hearing whether a defendant is negligent and sets punitive damage awards at a separate hearing.

Mr. Schwartz explained that under this arrangement, a plaintiff would only be able to demonstrate a defendant's wealth at the latter hearing, after compensatory damages already have been awarded.

Under the present single proceeding system, information about a defendant's wealth often leads juries to find wealthy defendants liable solely because the defendants can afford to pay a damage award, Mr. Schwartz asserted.

Other states have enacted measures that pay lip service to reform rather than substantively changing laws, observers say.

For example, Mr. Coyne pointed to reforms enacted in Minnesota: The state now caps at $400,000 all damages for intangible losses, but damages for pain and suffering, disability and disfigurement are excluded from the cap.

In addition, while joint and several liability was modified by the Minnesota law, a municipality judged to be less than 35% at fault can be held responsible for a proportion of all unpaid awards equal to no more than twice its percentage of fault.

"In fact, groups that were lobbying for tort reform there have disowned" the Minnesota reforms, Mr. Coyne noted.

In several states—including Alaska, Florida New Hampshire, South Dakota, West Virginia and Wisconsin—the caps on non-economic damages are so high—ranging from $400,000 to $1 million—that the reform is ineffective, observers said. "It's like telling an alcoholic he can only have 30 drinks a day," Mr. Coyne noted.

Referring to Maryland's $350,000 cap, Mr. Schwartz said, "I speculate that there are not that many successful claims above that.

"It's locker room tort law reform,' Mr. Schwartz added. "In the locker room, everybody's excited about it. But, in the real world. . ."

Illinois tort reform law also is superficial, according to the Alliance's Ms. Fullilove. She pointed out that under the Illinois law, a plaintiff who is found to be 50% or more at fault in a negligence suit cannot recover damages from the defendant and that the judge must inform the jury of this limitation.

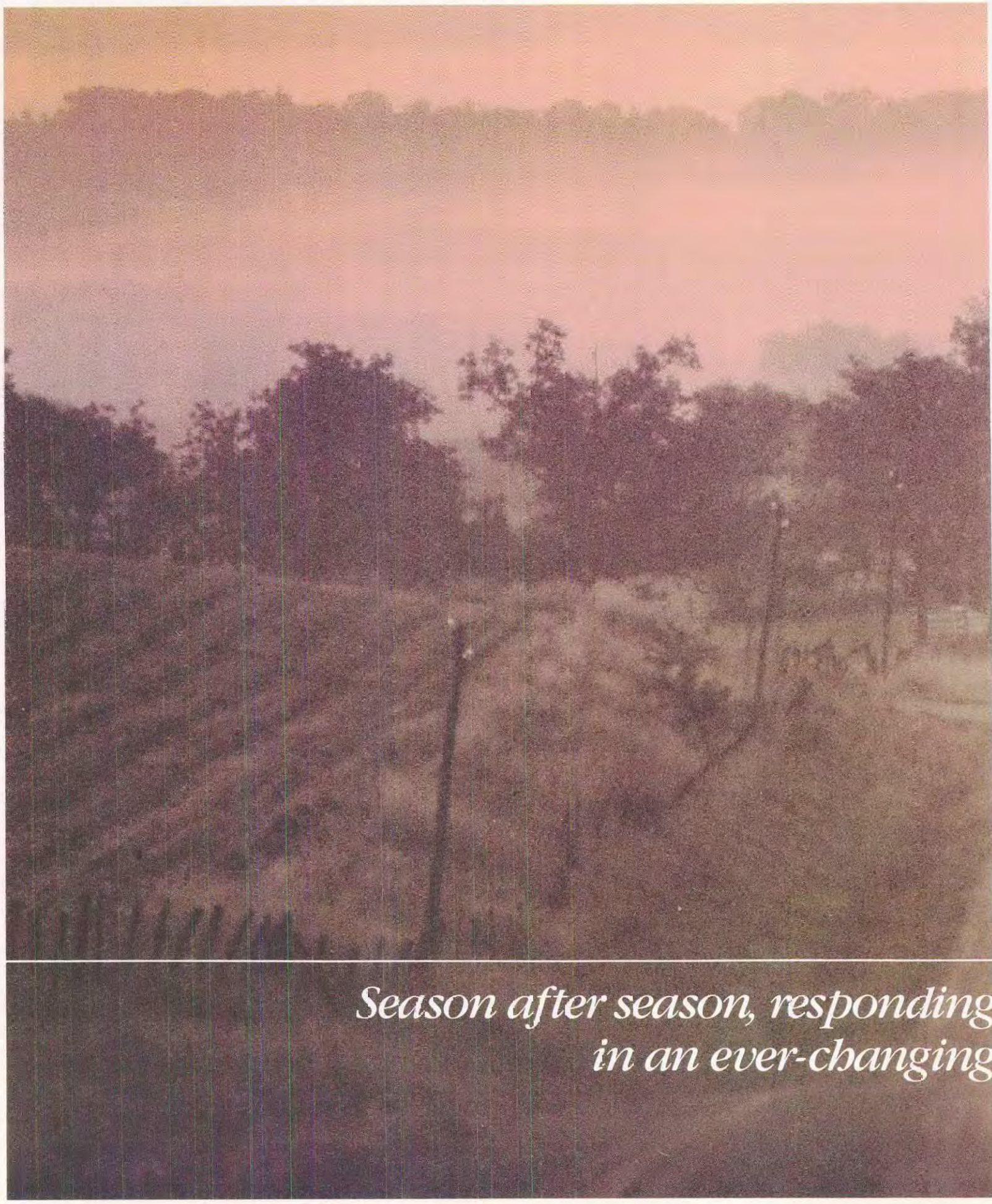
"So the effect may be that juries may find the plaintiff less liable so they can recover," she said. "They took a good reform and put a loophole right in the middle of it."

Ms. Fullilove also criticized the joint and several liability reforms in the Illinois and New York laws.

In Illinois, only defendants who are less than 25% at fault are exempt from joint and several liability for non-medical damages. "It helps, but we believe it shouldn't

Continued on next page

'I don't think the total picture has been addressed in any one state. What you need is to bring about more predictability in the process,' observes Edward B. Jobe, executive vp of American Re-Insurance Co. of New York.



Continued from previous page
be there at all," Ms. Fullilove said.

In New York, only defendants who are at least 51% responsible in a personal injury case can be held jointly and severally liable. But the reform applies only to non-economic damages, and there are several exceptions.

"They tried to address the issue, but they kept pulling back pieces. So, there's not very much of the reform left," Ms. Fullilove pointed out.

States that only limit joint and several liability, rather than eliminate it, are only marginally helping insurers and reinsurers, according to Mr. Schwartz.

"It does some good, but not a tremendous amount of good," he pointed out.

Reforms that deal with reducing awards to plaintiffs by the amount they receive from collateral sources also are typically weak, according to Mr. Schwartz.

'Facultative is more immediately responsive to changes in the environment. However, the long-term impact of the reforms will probably be the same for facultative and treaty business,' Skandia America's Mr. Dowd says.

There are generally two types of collateral source reforms, Mr. Schwartz said, both of which are problematical:

- One type of reform mandates that courts merely inform juries that plaintiffs have received money from collateral sources.

Juries may act on that information as they wish, Mr. Schwartz explained; however, they can decide not to reduce awards by the amount received from collateral sources.

"I don't think those laws are that effective," Mr. Schwartz noted.

- Under the other type of collateral source reform, awards must be reduced by amounts received from collateral sources.

But, in some states, awards are reduced by only public collateral sources, such as Medicare and Medicaid payments, Mr. Schwartz said.

And in some states where awards are reduced by both public and private collateral sources, such as workers compensation insurance and health and accident insurance, awards will not be reduced by the amounts plaintiffs receive from private collateral sources if the sources have the right of subrogation, Mr. Schwartz explained.

Some reinsurers and legal observers are not sure whether states that already have enacted tort reforms will continue to refine tort law.

"It's too early to tell, especially since we're in front of the elections," the Alliance's Ms. Fullilove observed.

"We probably see a better chance of going ahead in some states that haven't addressed it at all," such as Texas and Oregon, she said.

Ms. Fullilove also noted that business groups in several states are pressuring legislatures to further reform tort law. Those states include Indiana, Kansas, Minnesota, South Carolina, Montana and Arizona.

Mr. Coyne of ATRA said there is "no doubt" that every state will consider tort reforms next year. "All 50 states are bringing forward some legislation."

Mr. Coyne also is optimistic that state legislatures are beginning to view tort reform as an ongoing process and not as a one-shot deal.

"It's not something that you fix like a broken highway," Mr. Coyne said.

The challenge is moving reforms through legislatures in which trial lawyers hold many seats, Mr. Coyne noted.

"In some states, the trial lawyers own the state legislatures," Mr. Coyne noted, naming California, Pennsylvania and Alabama in particular. "In California, we got around them with a referendum," he added, referring to Proposition 51.

But even if every state comprehensively reforms tort law and courts uphold those reforms, reinsurers said they will have to see for themselves whether the reforms reduce their losses before they will loosen up capacity.

"We base our pricing on experience, and we don't base it on three weeks' experience," Mr. Fitt of Employers Re explained.

"Until there is a higher comfort level in the retrocessional market, I'm still not going to be able to provide additional capacity for some things," Mr. Jobe of American Re noted.

And, if tort reform eventually expands reinsurance capacity, the result will be more pronounced in treaty than in facultative lines some reinsurers say. And, the number of exposures now excluded from treaties could be cut, they add.

"When the market hardens, you see more facultative," explained Mr. Jobe of American Re. "When the market begins to flatten out, treaties become expanded and some facultative lines are absorbed upon renewal into treaty reinsurance."

But other reinsurers were not so sure.

"Facultative is more immediately responsive to changes in the environment," observed Mr. Dowd of Skandia America. "However, the long-term impact of the reforms will probably be the same for facultative and treaty business."

Reinsurers are likewise split over the possible effects of tort reform on sunset and sunrise provisions that many reinsurers are imposing on primary companies.

A sunset provision cuts off a reinsurer's liability to a ceding company for losses that are covered on an occurrence form after a predetermined number of years. Primary insurers sometimes can purchase a sunrise provision from reinsurers to cover losses beyond the sunset period.

"To me, if you have a very close treaty relationship with a primary company, you're forcing something on this company they can't accept," Mr. Jobe observed, referring to sunset clauses.

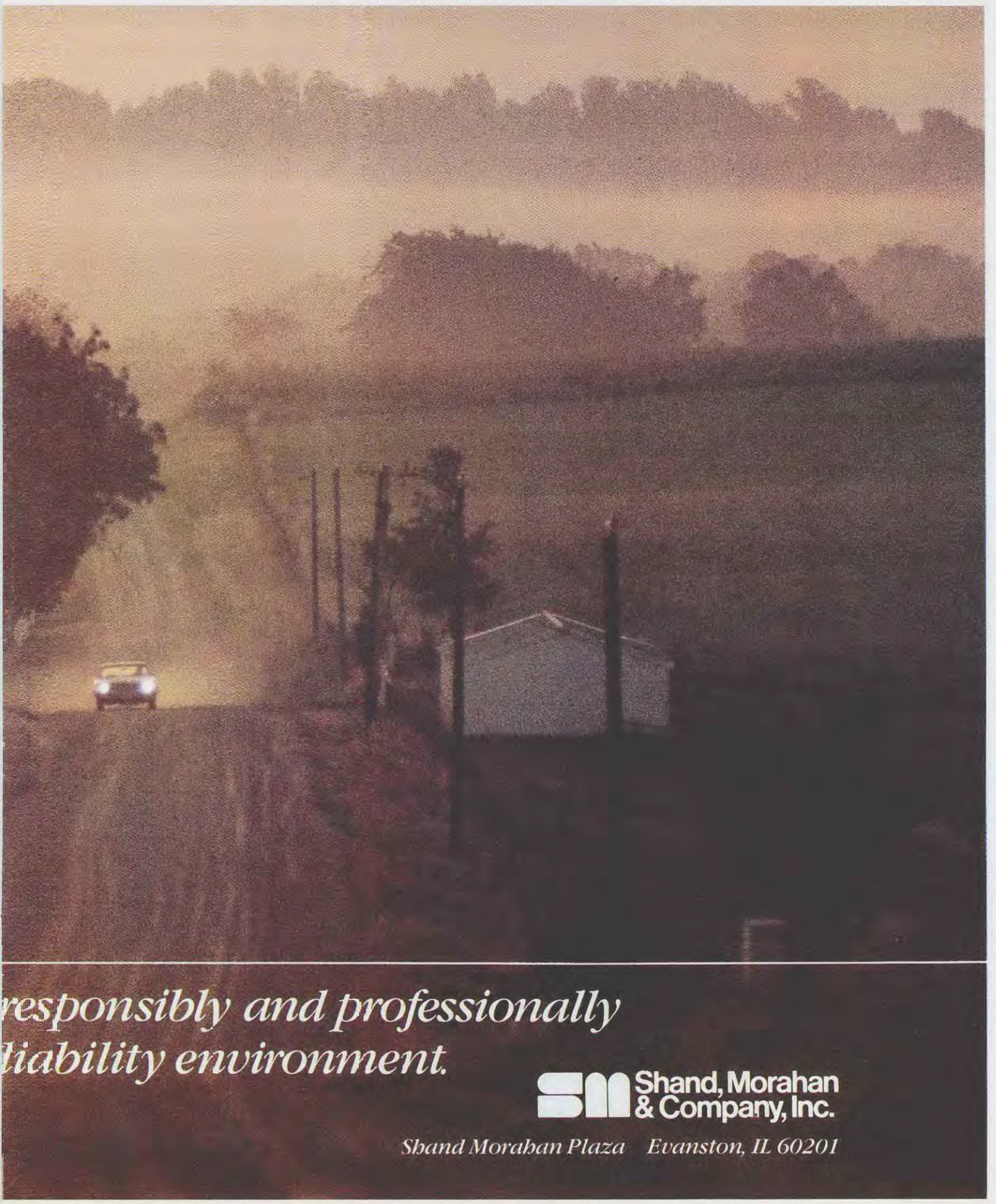
"If it's business that is underwritable, there should be very few sunset clauses."

But Mr. Dowd disagreed. "Since sunset and sunrise provisions are the direct result of the intelligent instinct to avoid open-ended commitment, they will remain in place, and underwriters' ingenuity will refine them further," Mr. Dowd said.

Ironically, however, the short-term effect of the tort reform movement may be increased losses for reinsurers.

Kemper Re is seeing a flurry of lawsuits filed against its ceding companies in states that have enacted reforms, because plaintiffs are trying to beat the effective date of reforms enacted in those states, pointed out Jim Miller, claims manager.

"We've seen an increase in claim counts by our reinsureds now," Mr. Miller said. ■



ABA commission to recommend tort reforms

By DAVE LENCKUS

New Orleans may see fireworks in February that rival those launched during Mardi Gras when the American Bar Assn. meets and considers whether it should support tort reform.

Most of the proposed reforms will be presented by a special 14-member commission at the ABA's midwinter meeting, to be held Feb. 11-18 in New Orleans. The ABA established the commission a year ago to develop a comprehensive report on how to improve the tort liability system.

The ABA's Tort & Insurance Practice Section also will present to the approximately 420 ABA delegates its recommendations for modifying how courts should assess punitive damages in tort cases.

"This will be very hotly contested," predicted T. Richard Kennedy, immediate past chairman of the ABA's tort section and a senior partner in the New York firm of Werner, Kennedy & French.

Mr. Kennedy said he expects that the tort reform recommendations will be highly controversial because thousands of ABA members are trial lawyers, who generally are staunchly opposed to tort reform.

Among the ABA's 327,000 members, at least 21,000 are trial lawyers, according to figures obtained from the membership departments of the ABA and the American Trial Lawyers Assn.

But, perhaps as many as 170,000 ABA members may have handled or will handle tort or insurance-related cases sometime during their careers.

'It should be against public policy to insure against punitive damages,' the ABA tort section says.

The ABA recently found in a survey of 615 attorneys that 52% have handled such cases during their careers.

Mr. Kennedy said the special ABA commission will present recommendations on several key tort reform issues, including joint and several liability, punitive damages and whether damages should be based on fault or awarded solely to compensate an injured party.

Robert McKay, a former dean of the New York University Law School, chairs the commission, which consists of judges, legal scholars and attorneys.

The commission is expected to release its report in December.

The ABA commission's recommendations will come in the midst of a push for tort reform around the nation. At least 35 states have reformed tort law in the past year (*BI*, Aug. 18).

Besides the commission's recommendations, the punitive damage recommendations from the ABA's Tort and Insurance Practice Section will be discussed at the New Orleans conference.

While the 24,000-member section does not favor eliminating punitive damages, it does recommend limiting when they can be assessed.

Moreover, the section recommends: "It should be against public policy to insure against punitive damages."

The section also recommends:

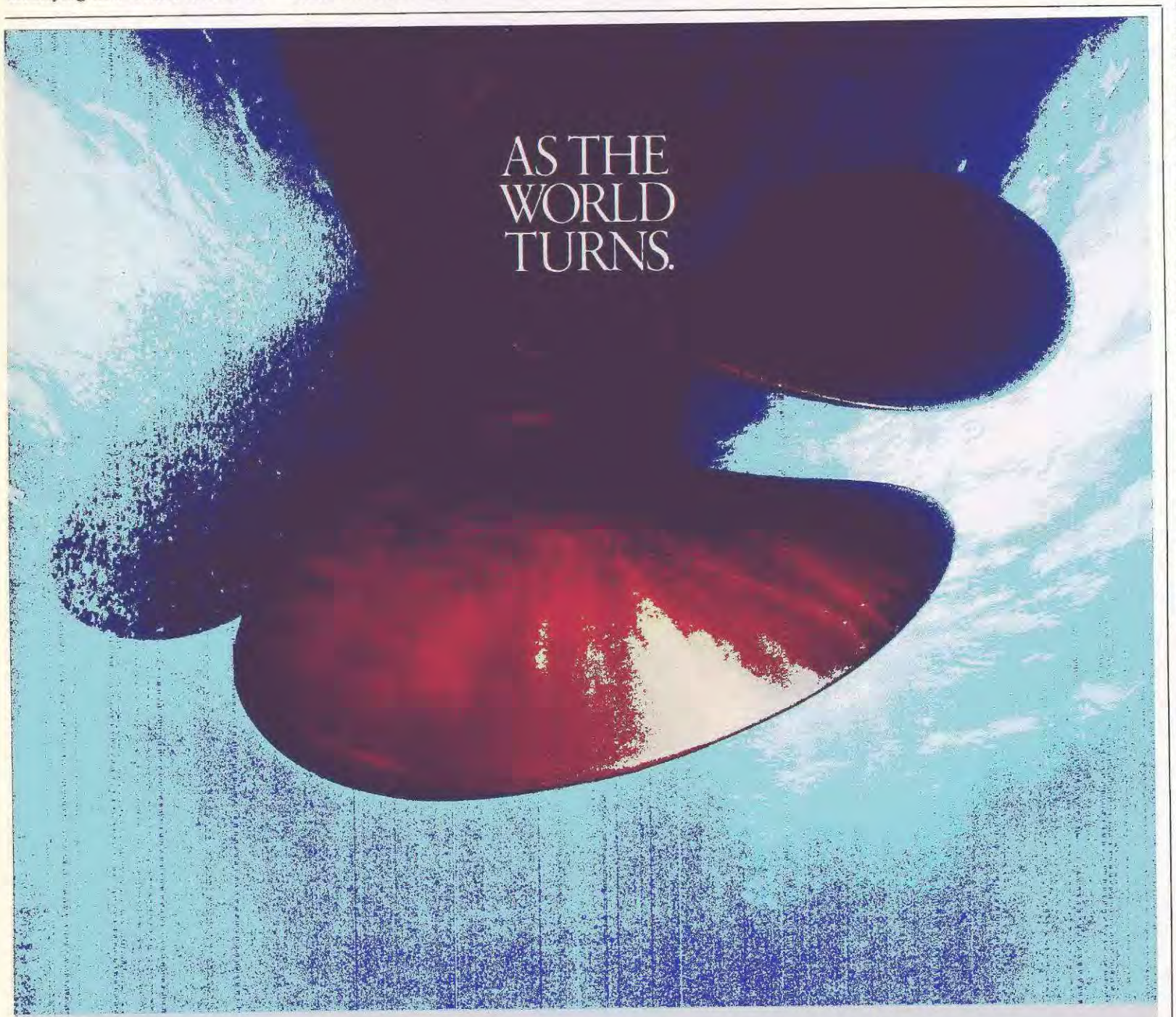
- Eliminating punitive damages for breaches of contract, although punitive damages should be awarded for "independent torts that may arise out of the breach of contract."
- In the event that a defendant may be sued separately by several plaintiffs, holding a defendant liable for punitive damages no more than once for committing a wrongful act or marketing a defective product.

The section agrees with tort reform advocates that a plaintiff should be awarded punitive damages only if there is "clear and convincing" evidence that the defendant deliberately disregarded the plaintiff's safety, as opposed to a finding that the defendant was grossly negligent.

But, the section does not support caps on punitive damages.

"Rather than arbitrary dollar limits on punitive damage awards," the section says, "it is recommended that trial and appellate courts should closely scrutinize punitive damages awards and, subject to constitutional restraints, should have the power to reduce, increase or set aside such awards at both the trial and appellate levels to be sure they are supported by the standards recommended by this report."

And, after deducting court costs and attorneys' fees, courts should determine how much of the punitive damages should be awarded to the plaintiff and remit the balance to the state, the ABA section recommends. ■



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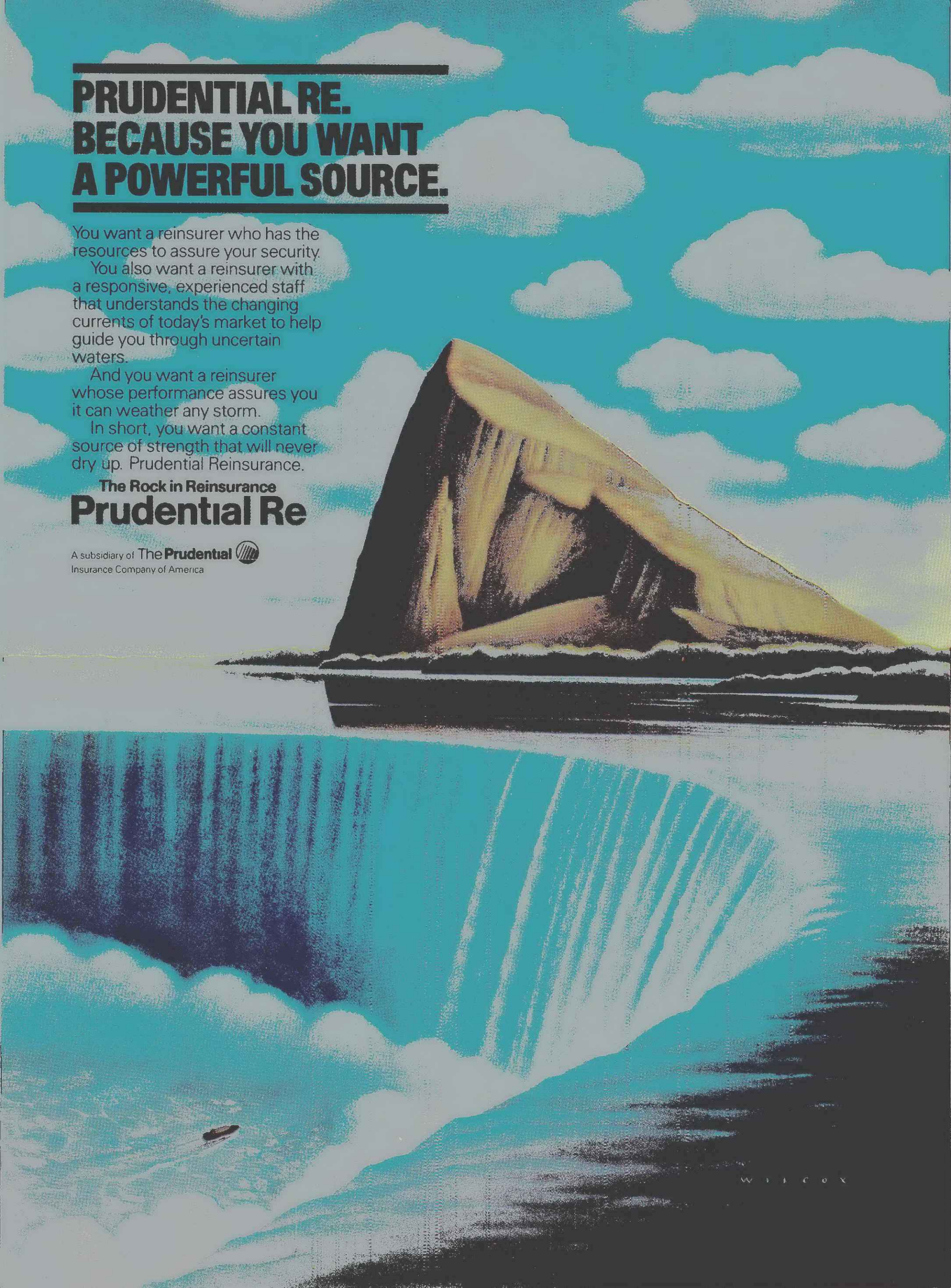

Federal catastrophe plan advances—slowly

By STEVE TARAVELLA

Representatives of insurance trade associations, independent insurance companies and some reinsurers say they are progressing—slowly but surely—on a plan to establish a federally chartered catastrophe reinsurance program.

But disagreements over the two proposals under consideration—one by the Reinsurance Assn. of America and the other by State Farm Insurance Cos.—must be resolved before there is any realistic hope of gaining congressional approval, observers say.

About a dozen insurer representatives have been working as an ad hoc committee for more than a year to combine the two plans.

"We're in the final stages of putting something together," says Kenneth Nails, senior vp at the Alliance of American Insurers in Schaumburg, Ill., and a member of the ad hoc committee. He hopes to have a compromise plan finalized by December.

The committee is chaired by George Ramsdell, second vp at Travelers Insurance Cos. in Hartford, Conn., and includes representatives from the Alliance, the American Insurance Assn. in New York, and the National Assn. of Independent Insurers in Des Plaines, Ill.

Like both the State Farm and the RAA proposals, the compromise plan calls for formation of a federally chartered corporation that would collect premiums and pay claims for member insurers and reinsurers that might not be able to pay the huge volume of claims that would be filed in the wake of a major catastrophe.

And, like both proposals, it would apply only to U.S. insurance and reinsurance companies, and only to a disaster in the United States or its territories.

The plan being developed by the ad hoc committee more closely resembles the State Farm proposal, in that the mechanism would respond to a variety of natural disasters, including earthquake, volcano eruption, hurricane, windstorm or earthquake-related earth movement.

The current plan includes some elements of the original RAA proposal, such as a provision that the federal government would loan the facility money if claims exceeded premiums.

However, it differs significantly from the RAA plan, which calls for the federally chartered reinsurer to cover catastrophic claims related only to earthquakes, and only after the ceding company had lost a certain percentage of its surplus from those claims (*BI*, Feb. 4, 1985).

And, the compromise plan calls for the federally chartered corporation to provide coverage for residential earthquake losses with the federal government acting as the risk-bearing entity.

The Washington-based RAA considers the differences in the compromise plan so significant that it may yet decide to offer its own plan "and let Congress choose," says RAA President Andre Maisonpierre.

The RAA's version called for the government to lend the industry money only after it had "a great hemorrhage" from earthquake losses, while the plan currently being developed would have the government step in "after a little bit of bleeding," Mr. Maisonpierre said.

The RAA, he says, would prefer a "very, very simple government program."

The compromise plan would establish two programs. One program would support primary earthquake coverage to $100,000 that would be added to all residential policies. Any member of the program would be required to offer policyholders the coverage and would charge an appropriate premium for it. The premium would be paid to the federal corporation.

While the premium would be actuarially calculated, if losses exceeded premiums, the federal government would pay the losses.

The second program would provide excess catastrophe coverage for earthquake, volcano eruption, hurricane, windstorm or earthquake-related earth-movement losses.

Participating companies would pay a premium for the coverage, but because it will take time to build up the necessary funds to cover the exposure, the plan calls for the federal government to loan the facility up to $50 billion.

This coverage would respond to losses related to natural catastrophes across all lines of property/casualty insurance except automobile, after claim payments from the disaster exceeded a certain percentage of a participating company's direct written premiums.

The corporation would be federally chartered, but not a U.S. agency. It would be administered by a board of 10 to 12 directors appointed by the president. They would be paid by the corporation from the premium income.

Insurers involved in formulating the proposal say they expect broad participation from both insurers and reinsurers.

"We believe the product will be so attractive that most primary carriers could not afford *not* to purchase it," Mr. Nails speculates.

And, these insurers then probably would urge their reinsurers to buy from the corporation, he says.

In an attempt to work out the differences and build a single plan with united backing, meetings have been held in New York, Washington, Chicago and Boston by the ad hoc group and several technical committees.

The drafters hope to have a definitive position by December, Mr. Nails says. And, he says, they hope to introduce a bill in Congress early next year, although they have not yet found a sponsor.

The insurers say the questions still to be resolved include:

- How much insurers and reinsurers should pay for the coverage. Two actuarial projects are being conducted, one on the price of of earthquake coverage for residential risks and one on the excess catastrophe coverage.
- The point at which the program would begin to respond to claims.
- The amount of time insurers would have to repay loans from the federal government and the interest that would be charged.

The insurers and reinsurers involved realize that, unless they can answer these questions and agree on a single approach, their chances of winning congressional approval are "pretty much close to nil," according to Mr. Nails. And, he said, "It will be difficult even then." ■

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REINSURERS' ROLE

Courts define reinsurers' position in liquidations

By Jonathan F. Bank

MOST STATES have statutes that govern insurance company rehabilitations and liquidations. These statutes provide for the management of a financially troubled insurance company by a conservator, usually the state insurance commissioner, until the company is no longer impaired. At that time, the company is returned to its former management.

However, if the conservator determines that the insurance company is insolvent and cannot be rehabilitated, the company is liquidated.

But, if the insurance department initially determines that the business cannot be rehabilitated, the commissioner may immediately seek a court order for liquidation.

Liquidation is the process of reducing assets to cash, discharging liabilities and dividing the surplus or loss among the company's creditors and owners.

The commissioner generally is appointed liquidator and, as such, gains full control over all assets of the company, including reinsurance proceeds.

However, since in most cases there is not enough cash or other readily available assets to permit the liquidator to pay the losses, he or she first is forced to collect the reinsurance proceeds.

That, however, raises an interesting problem, for it generally is recognized that a reinsurer indemnifies only against actual loss sustained by the ceding company. Thus, unless the reinsurance agreement contains specific exceptions, such as "cash calls" or "special settlements" clauses, the reinsurer is not contractually required to pay a loss prior to the actual payment by the ceding company.

This creates a "Catch-22" situation, since the liquidator cannot pay losses until he or she collects reinsurance proceeds, but the liquidator cannot collect reinsurance proceeds until he or she pays losses.

The ultimate resolution of this dilemma is better understood after considering a brief review of the historical development of the concept of indemnification against actual loss.

Although it has its origins in early English practice, this principle was slow to gain general acceptance in this country in the context of a liquidation. In fact, as early as 1845, U.S. courts had ruled that a liquidator could collect reinsurance proceeds without first paying out any part of the loss.

The courts simply were trying to preclude a reinsurer from avoiding what otherwise would be a valid contractual obligation but for the ceding company's insolvency, and they often accomplished this objective by finding the language of the reinsurance contract ambiguous and then construing it against the reinsurer.

As a result of these court decisions, it became obvious to reinsurers that if payment of reinsurance proceeds was to be conditioned upon actual payment by the liquidator, the reinsurance contract must clearly express that intent.

In 1930, a standard form of reinsurance agreement was introduced that more clearly set forth the concept of indemnity against actual loss. It is this contract that led to the single most important case in the area of reinsurers' liability, *Fidelity & Deposit Co. v. Pink*, 302 U.S. 224, (1937), *reh'g. denied*, 302 U.S. 780 (1938).

In 1932, Southern Surety Co. of New York was declared insolvent, and the New York superintendent of insurance, Louis H. Pink, took possession of the assets and began the process of liquidation.

He subsequently "allowed" or approved a claim for payment but did not actually pay it; nevertheless, he demanded reimbursement from the reinsurer.

However, the reinsurer refused, citing the clear and unambiguous language of the reinsurance contract, which provided that it reinsured only against actual loss. Since there was no actual loss, because no payment had been made by the liquidator, no indemnity was due, according to the reinsurer.

Litigation ensued, and ultimately the U.S. Supreme Court agreed with the reinsurer and permitted it to avoid liability.

It is fair to state that Superintendent Pink was a good sport. He did not get mad—he got even, by introducing into the state legislature what became Section 77 of the New York insurance law.

This statute, which is now Section 1308, prompted the inclusion in most reinsurance contracts of what is often referred to as the "insolvency clause." The clause provides that an insurance company cannot take credit on its financial statement for the amount of reinsurance ceded unless the reinsurance is payable to the liquidator without diminution in the event of the ceding company's insolvency.

Although Section 77 apparently made the inclusion of this insolvency clause optional, the insurer effectively is compelled to include it. Otherwise, the insurer would lose its credit and be required to carry the full amount of the unearned premium and loss reserve with respect to the amount of reinsurance ceded on its books—and the statute effectively would defeat one of the primary reasons for reinsurance.

The National Assn. of Insurance Commissioners adopted a model insolvency clause in 1950, and today many states have enacted insolvency clause statutes.

As a result of the Pink case and the insolvency clause statutes that were included in its wake, American law is clear that a reinsurer must pay proceeds to the liquidator prior to his actual payment to the policyholder or third-party claimant, notwithstanding the fact that the liquidator ultimately may end up actually paying the policyholder or claimant nothing, or at best, only a small portion of that claim.

U.S. case law is also fairly settled that reinsurance is considered to be separate and distinct from the relationship existing between the parties to the original contract. There is no privity of contract between the reinsurer and the original policyholder: See *Excess & Casualty Reinsurance Assn. vs. Insurance Comm'r*, 656 F. 2nd. 491 (9th Cir. 1981); *General Reinsurance Corp. vs. Missouri General Insurance Co.*, 458 F. Supp. 1 (W.D.Mo. 1977), *aff'd.*, 596 F.2d. 330 (8th Cir. 1979); and *Skandia American Reinsurance Corp. vs. Schenck*, 441 F. Supp. 715 (S.D.N.Y. 1977).

'Superintendent Pink was a good sport. He did not get mad—he got even, by introducing into the state legislature what became Section 77 of the New York insurance law. This statute, which is now Section 1308, prompted the inclusion in most reinsurance contracts of what is often referred to as the insolvency clause.'

"Privity" is commonly defined as a relationship between parties. Thus, we are saying that there is no contractual relationship between the reinsurer and the original policyholder.

Although this principle has been well-accepted by the courts, there are still occasional disputes between an original policyholder and the reinsurance company, usually as the result of a ceding company's insolvency.

A good example of how the courts have generally resolved these disputes is reflected in the 1981 case *American Re-Insurance Co. vs. Insurance Comm'n.*, 527 F.Supp. 444 (C.D. Cal. 1981). In that case, a doctor insured by the then-insolvent Signal/Imperial Insurance Cos. was found liable for malpractice in an amount exceeding $2.5 million. The plaintiff patient sought to collect a portion of this amount directly from Signal/Imperial's reinsurer, American Re.

In denying the claim, the court held that neither the original policyholder nor a third-party claimant has an interest in the contract of reinsurance, because it is separate and distinct from the original policy.

Thus, neither party has any right to reinsurance proceeds, which must be paid to the insolvent company or its liquidator.

This principle also has been applied to guaranty associations, which were created during the last decade to provide relief to policyholders if their insurance company becomes insolvent. As these associations grew and became more sophisticated, they began challenging the liquidators for reinsurance proceeds.

The often-cited case of *Skandia American Reinsurance Corp. vs. Schenck, supra*, involved a dispute between the superintendent of insurance of New York and the New Jersey Property-Liability Insurance Guaranty Assn.

Both the superintendent and the guaranty association, in claiming to be the statutory successor of Professional Insurance Co. of New York, an insolvent insurer, attempted to collect the reinsurance proceeds owed to Professional. Skandia, and the other reinsurers involved, interpleaded the funds into court.

The court, in awarding the proceeds to the superintendent, determined that the guaranty association was not the statutory successor of the insolvent insurer. Rather, it stood in the shoes of the policyholders. Since the policyholders were not in privity with the reinsurers, the association had no claim to the reinsurance proceeds.

In a surprising display of consistency, most subsequent court decisions have upheld the concept of privity of contract.

A recent example arose in Louisiana. In this case, a judgment in excess of $1 million was entered against Arrow Trucking Co., stemming from a 1974 automobile accident. Arrow's primary insurer, Continental Insurance Co., paid its policy limits. But, Arrow's excess insurer, Reserve Insurance Co., was placed in liquidation in June 1979, before it paid its share of the loss.

Thus, Arrow was forced to pay more than $500,000—with the balance paid by Continental and the Texas and Louisiana guaranty associations. Reserve had facultatively reinsured the Arrow policy with North American Reinsurance Corp., which paid $660,000 in response to a demand from Reserve's liquidator.

Arrow then filed an action against both North American Re and Reserve's liquidator to recover the amount it had paid. North American Re responded with a motion for summary judgment, contending that its obligation under the facultative reinsurance agreement was satisfied by its payment of $660,000 to Reserve's liquidator. Since North American Re had no contractual obligation (privity) with Arrow, it

Continued on next page

perspective

Courts define reinsurers' position in liquidations

Continued from previous page
further contended that Arrow had no right to reinsurance proceeds.

The trial court agreed and dismissed the case.

Arrow appealed and in its appeal argued that Louisiana's direct action statute applied to both contracts of insurance and reinsurance and, as a result, it could assert a direct claim against North American Re.

And, Arrow further argued that Reserve's facultative reinsurance agreement contained a "stipulation pour autrui."

"Pour autrui" is a French term meaning "for others." Arrow claimed that Reserve and North American Re, by entering into the facultative reinsurance agreement, intended to confer a direct benefit upon Arrow, thereby making Arrow a third-party beneficiary of the reinsurance agreement.

'A cut-through clause in a reinsurance contract requires the reinsurer to pay reinsurance proceeds directly to the policyholder.'

The Louisiana Court of Appeal noted that both of the theories that were raised by Arrow had been raised previously and had been rejected in an earlier Louisiana case, *Fontenot vs. Marquette Casualty Co.*, 247 So.2d 572 (La. 1971).

Although clearly critical of the *Fontenot* decision, the appellate court reluctantly acknowledged that it was bound by the Louisiana Supreme Court's holding that the direct action statute was inapplicable to contracts of reinsurance.

The Court of Appeal then addressed Arrow's "stipulation pour autrui" argument, but distinguished the treaty reinsurance at issue in the *Fontenot* case from the facultative reinsurance at issue in *Arrow*.

The court explained that, on one hand, treaty reinsurance covers numerous risks with no intent to confer a benefit on any particular insured, while, on the other hand, facultative reinsurance is intended to protect a specific risk, and generally identifies the original policyholder by name.

Based on the fact that Arrow was specifically named in the facultative reinsurance agreement, the court concluded that it was a third-party beneficiary of the reinsurance contract and had a right of action against the reinsurer.

North American Re appealed that decision to the Louisiana Supreme Court (*Arrow Trucking Company vs. Continental Insurance Company*, No. 84-C-1453 (La. Sup. Ct. April 1, 1985)).

The Supreme Court noted the difference between facultative and treaty reinsurance but concluded that the agreement before it was simply a "typical contract of facultative reinsurance."

As such, the facultative reinsurer, North American Re, had neither created a direct obligation to the original policyholder, Arrow, nor intended to benefit it, according to the court.

The court then addressed Arrow's argument that Louisiana's direct action statute permitted it to maintain an action against North American Re. However, the court disagreed, concluding that "the direct action statute does not, nor was it ever intended to, apply to reinsurance agreements."

The court also found that North American Re had satisfied its legal and contractual obligations by paying its proceeds directly to Reserve's liquidator.

The court concluded that Arrow's claim belonged in the liquidation proceedings.

However, there are some exceptions to the privity rule.

For example, a statutory exception is illustrated in a 1982 decision that permitted a policyholder a direct right of action against reinsurers.

In *Turner Construction Co. vs. Seaboard Surety Co.*, 447 N.Y.S.2d 930 (1982), Seaboard issued a performance bond for one of Turner's subcontractors and then ceded a portion of the risk to various reinsurers.

When the subcontractor defaulted, Seaboard refused to honor the performance bond, and Turner filed suit against both Seaboard and its reinsurers.

The reinsurers moved for summary judgment, relying on the absence of privity of contract.

In denying the motion, the court stated that Section 315(1)(a) of the New York insurance law denied reinsurance credit for surety and fidelity risks unless the reinsurance agreement specifically permits the obligee or beneficiary to maintain an action against both the ceding company and its reinsurer, and that section was incorporated into the reinsurance agreement.

Although the *Turner* case involved a limited statutory exception to privity, American courts, unlike British courts, have held that there is nothing that specifically prohibits a reinsurer from creating a direct contractual relationship with an original policyholder.

This can be done basically in three ways:

- Clause in a reinsurance contract.

The first is through a clause in a reinsurance contract, be it facultative or treaty, requiring the reinsurer to pay reinsurance proceeds directly to the policyholder. These provisions frequently are called "cut-through" clauses.

Despite the fact that the policyholder is not a party to the reinsurance contract and in all likelihood is not even aware of its existence, courts have enforced the policyholder's rights to reinsurance proceeds, often on the theory that the policyholder is the third-party beneficiary of the agreement entered into between the ceding company and the reinsurer. See *Bruckner-Mitchell v. Sun Indemnity Co. of New York*, 82 F.2d 434 (D.C. Cir. 1936).

This type of clause is not commonly found in reinsurance contracts.

- Novation.

Another way in which a reinsurer can become directly liable to the original policyholder is through a novation, or new contract. This occurs when the reinsurance company substitutes itself for the policy-issuing company by essentially creating a direct obligation to the original policyholder.

Consequently, the reinsurer's undertaking has really become one of direct insurance, not reinsurance. This may occur by way of a portfolio transfer.

Although it can occur without the original policyholder having actual knowledge of the transaction, in order for it to be a true novation the policyholder should be a party to the agreement.

- Reinsurance endorsements.

The third method that is recognized by American courts is a device referred to as a reinsurance or "cut-through" endorsement.

As the name implies, it is an endorsement attached to the original policy that, upon the occurrence of an identified event, such as failure of the policy-issuing company to pay, requires the reinsurer to pay the loss, or a specified portion thereof, directly to the policyholder—thus "cutting through" the usual route of payment and circumventing the policy-issuing company.

Cut-through clauses, referred to above, are distinguished from cut-through endorsements. Clauses are incorporated directly into the reinsurance agreement to which the policyholder is not a party, while endorsements are appended to the original insurance policy to which the policyholder is a party.

'American courts have held that there is nothing that specifically prohibits a reinsurer from creating a direct contractual relationship with an original policyholder.'

The purpose of cut-through endorsements becomes more apparent when viewed from a historical perspective. The endorsements appear to have had their origins in a document called a mortgagee assumption endorsement, which was used when an insurance company's financial rating did not satisfy a policyholder's mortgagee.

In such a case, a financially sound reinsurer might agree to issue an endorsement directly to the lending institution, permitting the insurance company to meet the mortgagee's financial requirements and thus allowing both the insurer, and its reinsurance company, to retain the business.

A reinsurer that agrees to issue a cut-through or mortgagee assumption endorsement should limit its liability under the endorsement to the amount of its liability under the reinsurance agreement that it has with the ceding company.

Additionally, the cut-throughs, at least as they originally were envisioned, were intended to be issued only to mortgagees for property risks.

However, the old guidelines do not always apply, as an insolvency case in Puerto Rico indicates.

In December 1977, the island's largest insurer, Commonwealth Insurance Co., was declared insolvent and placed in liquidation. Cut-through endorsements involving more than a dozen reinsurers were issued to thousands of Commonwealth policyholders, for both first-party property and third-party casualty risks.

In many instances, these endorsements obligated the reinsurers to pay 100% of the loss, rather than just their treaty or facultative participation.

Upon Commonwealth's insolvency, more than 100 lawsuits were filed by Commonwealth policyholders against the reinsurers, who then denied liability.

The litigation became so unwieldy that the Puerto Rico Insurance Guaranty Assn. filed an action for declaratory relief to determine the validity of the endorsements.

Both the reinsurers and the Puerto Rico insurance commissioner, as liquidator, contended that the cut-throughs became inoperable under Commonwealth's insolvency since only the liquidator was entitled to the reinsurance proceeds.

In June 1980, the Puerto Rico Superior Court ruled that the cut-through endorsements were valid and enforceable and that the Guaranty Assn. was not liable to those policyholders with cut-through endorsements.

An appeal was taken to the Puerto Rico Supreme Court, which, in April 1983, after more than two years of deliberation, reversed the lower court's ruling, finding that the cut-through endorsements were against public policy.

Under the court's ruling, the reinsurance companies were released of all liability under the endorsements, while the Guaranty Assn. remained liable for "covered claims" even though the cut-through endorsements were attached to the underlying policies: *Warranty Association of Insurance, Etc. v. Commonwealth Insurance Co.*, Civ. No. R-80-334 (P.R. Sup. Ct., April 13, 1983), rehearing denied.

The court, in reaching its decision, concluded that reinsurance proceeds were an asset of Commonwealth's estate, subject to distribution by its liquidator.

To the extent that the endorsements diverted reinsurance proceeds from the liquidator to a policyholder, a priority or preference was created that prevented a fair and equitable distribution of Commonwealth's assets, according to the court decision.

There have been no subsequently

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reported decisions regarding cut-through endorsements.

As a result, it is difficult to speculate as to whether other courts in the United States would follow the *Commonwealth* decision.

However, it could be argued, for instance, that both the New York and California statutes contemplate cut-through endorsements, thus tacitly approving their use. (See California Insurance Code, Section 922.2, and New York Insurance Law, Section 1308.)

To recapitulate briefly, only the liquidator is entitled to payment of reinsurance proceeds, because the proceeds are considered a general asset of the insolvent estate and are to be used for the benefit of all the creditors.

Hence, since neither policyholders nor third-party claimants are generally deemed to have a contractual relationship (privity) with the reinsurer, they are, accordingly, not entitled to receive direct payment of reinsurance proceeds.

This can be altered either by statute, as in New York, or through agreement by the parties.

Once the contractual agreement has been altered, the reinsurer becomes, in many respects, a primary insurer, with the same rights and the same obligations.

Application of these general principles leads to the conclusion that in the event of a ceding company's insolvency and the liquidator's subsequent approval of a claim, the reinsurance company—subject to possible rights of set-off or other defenses—is obligated to remit the proceeds to the liquidator.

But what if the reinsurer elects to pay proceeds directly to the policyholder? No cut-through, no novation, no obligation. . .a mere volunteer.

Strange as this sounds, it has some appeal for as noted above, although reinsurers pay proceeds based upon the full amount of the approved claim, the liquidator generally ultimately pays the policyholder or third-party claimant less than the full amount of that same approved claim.

'Only the liquidator is entitled to payment of reinsurance proceeds, because the proceeds are considered a general asset of the insolvent estate.'

Thus, a $100 payment by the reinsurer to the liquidator might ultimately result in a $25 payment by the liquidator to the policyholder. However, if a reinsurer agrees to pay $50 directly to the policyholder, it appears that everyone wins. . .with the possible exception of the liquidator and the other creditors of the insolvent company.

This procedure has been called "purchasing" or "buying" claims out of liquidation, and until recently its legality has been something of a gray area.

But no more.

The U.S. Court of Appeals for the 8th Circuit recently affirmed a decision by a lower court in which General Reinsurance Corp. was found liable to the receiver of Medallion Insurance Co. for proceeds that previously had been paid directly to a policyholder: *Ainsworth vs. General Reinsurance Corp.* 751 F.2d 962 (8th Cir., 1985).

In this case, the receiver of Medallion, Donald Ainsworth, asserted a claim against General Re to recover reinsurance proceeds allegedly due the estate of Medallion as a result of two losses that were covered under a reinsurance agreement between General Re and Medallion.

One of the losses involved an affiliate of Medallion, Consolidated Underwriters, that had issued an automobile liability policy to Pittsburgh & New England Trucking Co.

In May 1971, while Medallion and its affiliate were reinsured by General Re, a PNE truck was involved in an accident with a third party. A suit against PNE in late 1974 resulted in a $485,000 judgment.

When Medallion was declared insolvent in September 1975, its share of the judgment—the policy limits of $100,000—remained unsatisfied. Medallion's retention was $25,000, and the balance of $75,000 was reinsured by General Re.

PNE subsequently demanded the reinsurance proceeds from General Re. General Re initially refused.

However, General Re eventually agreed to a make direct payment of $25,000, or $50,000 less than its potential liability to the receiver, in exchange for a release discharging Medallion and its receiver from all liability to PNE.

By means of this release, General Re sought to ensure that no claim by PNE would be presented or approved in the liquidation.

Thus, the receiver would have no right to collect the reinsurance proceeds.

However, it didn't work.

Relying on the insolvency clause in the reinsurance agreement, the receiver filed an action to recover the reinsurance proceeds due Medallion as a result of the judgment in the PNE case.

The lower court, although finding little authority on the subject, nevertheless determined that Missouri's statutory scheme for insolvent insurance companies mandated that the receiver collect reinsurance proceeds, which are then to be distributed for the benefit of all the creditors.

More importantly, the lower court held that the receiver's claim to reinsurance proceeds attached not when a claim was presented in the liquidation, but when Medallion was declared insolvent.

Therefore, General Re was not free to "purchase" a claim and thus reduce the amount of proceeds due under the reinsurance agreement without the receiver's consent: *Ainsworth vs. General Reinsurance Corp.*, Nos. 78-0818-CV-W-7 and 78-0819-CV-W-7 (Consolidated Cases), slip op. at 13 (W.D. Mo. filed May 13, 1983), *aff'd* 751 F.2d 962 (8th Cir. 1985).

The court did not accept General Re's argument that it had no liability to pay reinsurance proceeds until a claim was "allowed" by the receiver, saying that it found language in neither the statutes nor the reinsurance agreement to explain "how the liability of a reinsurer is to be determined."

Had General Re wished to insert such language into the reinsurance agreement, however, the court noted that it would have been able to do so.

General Re also argued that its settlement of the PNE case did not impair the rights of the receiver, since the settlement and release prevented the claim from being filed and as a result the receiver would not have been required to pay out any money on that claim.

'Once the contractual agreement has been altered, the reinsurer becomes, in many respects, a primary insurer, with the same rights and the same obligations.'

General Re further contended that, had there been no settlement, the receiver would have been nothing more than a conduit, merely paying to the claimant the amount that had been received from the reinsurer.

The court disagreed, saying, "General Reinsurance's argument is valid only in a situation where the Receiver is able to pay out the full amount on each claim filed.

"In most cases, however, and presumably in this case, the Receiver cannot pay out the full amount on every claim. When less than full payment of claims is made, the proceeds which the Receiver accumulates but does not pay out on a particular claim can be used to pay the claims of other creditors," the court said.

"Allowing a reinsurer to purchase a claim as General Reinsurance has attempted to do would substantially reduce the amount of reinsurance proceeds due the Receiver and would, as the National Assn. of Insurance Commissioners has stated, nullify the insolvency clause," the court commented.

In affirming the lower court's judgment awarding reinsurance proceeds to the receiver, the Court of Appeals found that General Re's payment to the insured failed to comply with the insolvency clause in the reinsurance agreement. The insolvency clause required reinsurance proceeds to be paid without diminution upon the ceding company's insolvency.

The court held, "It seems very clear that the payment has not been made directly to the Receiver, that the reinsurance has been diminished because of the insolvency, and the obligation of the reinsurer has ceased to be an asset of the insolvent estate" *Ainsworth vs. General Reinsurance Corp.*, 751 F.2d 962, 965 (8th Cir. 1985).

The court, as have many before it, reaffirmed the principle that an ordinary contract of reinsurance, in the absence of provisions to the contrary, operates solely between the reinsurance company and the ceding company and creates no privity between the original insured and the reinsurance company.

The reinsurance agreement at issue contained no such special provisions. As a result, General Re had no liability to the original insured.

The court also reiterated that General Re's liability to the receiver became fixed upon the adjudication of the insolvency, and *not* at the time that the claim was "allowed" by the receiver.

To hold otherwise might encourage reinsurance companies "to make cheap settlements with insureds facing the prospect of low dividends on their allowed claims," according to the court.

On a final note, with reinsurance disputes so prevalent, and with a substantial increase in the number of insurance company insolvencies, it is not at all unusual for a reinsurer to find itself at odds with its insolvent ceding company's liquidator.

When such a situation occurs, arbitration is a common method of resolving the dispute between the parties.

However, liquidators often prefer to address disputed issues in the same forum that has jurisdiction over the insolvent company: that is, the court that is supervising the company's liquidation.

The preference is so strong that liquidators often refuse to arbitrate, even when confronted with a provision in the reinsurance agreement compelling arbitration.

In fact, a few state courts have held that the right to arbitrate is nullified by the intervention of the insolvency proceedings.

A recent federal decision, however—*Ainsworth vs. Allstate*, No. 85-1209-CV-W-6 (W.D. Mo. Dec. 2, 1985)—required the liquidator of Medallion Insurance Co. to arbitrate rather than to litigate a dispute between Medallion and its reinsurance company, Allstate.

The court felt that, on balance, the strong public policy favoring arbitration outweighed whatever interest the liquidation court had in maintaining exclusive jurisdiction over all matter affecting the insolvent company.

This result will surely benefit the members of the reinsurance community, for they will be able to resolve their disputes by arbitration, the forum originally selected by the parties.

Thus, a panel comprised of industry executives, rather than a judge who probably has little experience with reinsurance issues, will be interpreting their respective rights. ■

The Perspective section, which is a forum for readers' opinions, is compiled and edited by Copy Editor Alison Kittrell. She can be reached at 312-649-5262.

Jonathan F. Bank is an attorney with the firm of Buchalter, Nemer, Fields, Chrystie & Younger in Los Angeles.

ASK A BENEFIT MANAGER

Tax Reform Act to limit the lure of 401(k) plans

Q **Over the last few years, there has been a movement in the United States toward defined contribution plans and away from defined benefit pension plans. What effect will the Tax Reform Act of 1986 have on defined contribution plans, particularly those that provide for pretax or 401(k) contributions?**

A Fortunately, the employee benefits community appears to have been successful in convincing Congress and the administration of the social worth of 401(k) savings plans. Unfortunately, we apparently have not convinced them that these programs should be allowed to develop and grow as in the past, and the Tax Reform Act severely limits the attractiveness of these plans, especially for the highly paid employee and for younger employees as well.

Some major changes required by the act are:

- Elective salary deferrals will be limited to $7,000 per year (later indexed).
- A $200,000 limit will be imposed on an employee's "includable compensation" under the plan beginning in 1989 (later indexed).
- The average deferral percentage (ADP) test for 401(k) plans has been changed to limit the spread between the highly compensated and other employees and the act redefines the term "highly compensated."
- A special non-discrimination test, on both employer matching contributions and employee contributions, is imposed by the act. In addition, all (rather than a portion) of an employee's aftertax contributions will be included in determining the maximum annual addition under the plan (i.e., the lesser of $30,000 or 25% of compensation).
- The favorable long-term capital gains treatment on the sale of employee stock after distribution will be eliminated, and five-year averaging will be substituted for 10-year averaging in the taxation of lump-sum distributions and allowed only once for a distribution after age 59½. Employees age 50 on Jan. 1, 1986, will be grandfathered.
- A 10% excise tax will generally be charged on the taxable portion of early distributions made prior to age 59½, death or disability.
- A 15% excise tax on annual payments over $112,500 from all qualified sources will be charged. Lump-sum payments have a one-time exclusion from this excise tax on amounts below $562,000. Accrued benefits as of Aug. 1, 1986, are grandfathered.
- In-service withdrawals of aftertax contributions will be deemed to come partially from taxable funds and will be taxed under pro rata recovery rules. Existing funds, as of the end of 1986, will be grandfathered for tax treatment.
- Interest on plan loans will be subject to the general limits of the Tax Reform Act, and there will be no deductions for interest on loans made on or after Jan. 1, 1987, to the extent that they are borrowed from employee 401(k) contribution accounts. Repayment must be on a level amortized basis and the maximum loss limit has been somewhat further restricted.

The bottom line of the Tax Reform Act is that it will slow the growth of 401(k) plans, even though the $2,000 Individual Retirement Account deduction will not be available to many qualified plan participants.

With a maximum income tax rate of 28%—the lowest it probably will ever be—and its restrictions on early distributions, the act severely limits the attractiveness of these plans for the highly compensated and younger employees. The act restructures these plans more toward supplements for retirement than savings. It ignores the interest of younger employees to save during employment for their individual needs.

For many companies, compliance with the act and the need to communicate its changes to participants will be very costly. For smaller companies and those that sold their plans completely as savings plans, we probably will see these plans terminated in favor of a compensation program that delivers the cash currently or a deferred compensation program to avoid the considerable charges for administration and compliance.

Overall, however, I believe most major companies will conclude that these plans are retirement plan supplements and they will, in fact, reposition them to be included as part of the total retirement income program.

The new tax law may provide an opportunity for employers to take credit for these pension plan supplements and lessen the need for making improvements for retirees if a retiree was covered both by a defined benefit pension plan and a defined contribution pension at the time of retirement. In addition, companies will consider adopting excess defined contribution plans to provide on a non-qualified basis benefits that no longer could be provided in the qualified plan.

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

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


Mr. Duva

This month's column, on employee benefits issues, is written by Joseph W. Duva, director of employee benefits at Allied-Signal Inc. in Morristown, N.J. Ralph F. Perry Jr., vp and director of risk management at Amfac Inc. in San Francisco, answers risk management questions. And, William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefits issues. Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field. Mr. Duva's and Mr. Perry's columns appear alternately on the second Monday of each month. Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month. Mr. Duva's next column will appear in January.

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.

Montana court declines to apportion loss

Apportioning loss due to a defective product among the manufacturer's liability insurers proportionate to policy limits was not appropriate in a case in which only one policy covered the accident, the Supreme Court of Montana ruled.

In 1976, Willard Jacobson was injured while installing an overhead garage door. He sued the manufacturer, claiming the accident was caused by the negligent and defective design and construction of a spring apparatus in the door.

The defendants filed a complaint against Harsco Co. as manufacturer of a metal plate used in the spring. Seaport Manufacturing Co. had actually manufactured the part but, after the accident and prior to the suit, Harsco acquired Seaport by merger.

Harsco was insured by Travelers Insurance Co. Prior to the merger and at the time of Jacobson's injury, Seaport was insured by Western Fire Insurance Co. Travelers settled the suit with Mr. Jacobson and then began this action against Western.

While Western conceded its policy covered the Jacobson loss, it maintained the trial court had erred in not apportioning the loss between the two insurers.

The appellate court noted that the policies offered by both insurers were "occurrence" policies. Thus, the court said that when Jacobson was injured, Western was the only company insuring Seaport and the only company obligated to pay any claim arising from the accident.

The court said that after the merger, Harsco acquired all of Seaport's rights, including its rights of coverage under the policy. Therefore, the court agreed that Western was obligated to indemnify Travelers. *Travelers Insurance Co. vs. Western Fire Insurance Co.*, Supreme Court of Montana, Nov. 25, 1985. (*BI*/03/S.-$10)

These abstracts were prepared by Cases Unlimited Inc. A copy of an entire decision may be obtained by sending a check for $10 made out to Cases Unlimited to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. List the number for each opinion.

legal briefs

Time limitation upheld

A federal court in Connecticut held that an insurer was not precluded from asserting a 12-month limitation period contained in a multiperil policy for bringing a claim where in each communication the insurer asserted its rights under the policy and informed the policyholder repeatedly that it would not waive its rights.

Hawley Enterprises Inc. purchased a multiperil insurance policy from Reliance Insurance Co. covering its property from June 1981 to June 1982. The policy contained the standard clause requiring suit under the policy to be commenced within 12 months after discovery of an occurrence giving rise to a claim. Hawley's premises were damaged by fire on Feb. 1, 1982. Hawley submitted a proof of claim on June 29, 1982.

After an investigation, Reliance granted Hawley a 90-day extension of time to sue until May 1, 1983. Appraisers were agreed upon. Hawley requested payment. Liability was denied on July 13, 1983, and suit was filed on Aug. 4, 1984. Reliance requested that the suit be dismissed because it had been filed too late.

Hawley argued Reliance was precluded from claiming the defense of the 12-month clause because it did not inform Hawley until July 1983 that it was denying liability. However, the court said this argument was unpersuasive as a matter of law. According to the court, under the applicable Connecticut law, a time limit provision was a valid contractual obligation.

Furthermore, the court noted that the parties had been in monthly contact and that Reliance had consistently asserted its rights under the policy and informed Hawley that it would not waive them. The suit was dismissed. *Hawley Enterprises Inc. vs. Reliance Insurance Co.*, U.S. District Court for the District of Connecticut, Oct. 13, 1985 (*BI*/04/Au.-$10). ■

Regulators' attention turns to reinsurance

By CAROL CAIN

U.S. and foreign insurance regulators will be asking in the coming year: Will reinsurers be around to pay claims?

The security and collectibility of reinsurance will be on the minds of most regulators, predicts Lyndon Olson Jr., chairman of the Texas State Board of Insurance and chairman of the Reinsurance and Anti-Fraud Task Force of the National Assn. of Insurance Commissioners.

For the past 18 months, regulators have been hesitant to impose more-stringent regulations on reinsurers, fearing it would frighten some reinsurers away from an already tight marketplace.

They also have been occupied with the availability of affordable property/casualty insurance in the primary commercial market.

But now, "there's no doubt in my mind that the (property/casualty) market is turning," Mr. Olson said. And, with this turning market, regulators "need to pay close attention" to whether reinsurance is secure and whether claims will be paid in a timely fashion, he added.

The amount of unrecoverable reinsurance from insolvent reinsurers troubles both regulators and reinsurers, said James Shamberger, senior vp of the Reinsurance Assn. of America.

"If this turns out to be really serious, it might increase regulators' concern over collectibles," he said, even though there already are several laws and regulations regarding reinsurance.

Some regulators have "quietly encouraged brother regulators" to begin looking at more-stringent regulations, according to Donald J. Greene, an attorney with LeBoeuf, Lamb, Leiby & MacRae in New York, which represents Lloyd's of London in the United States.

If there are more reinsurer insolvencies, Mr. Greene says there will be "louder cries" for more regulations. And, in their fervor, he expects regulators to re-examine the fundamentals of reinsurance, which may bring more regulations.

Mr. Olson agreed, saying reinsurance is expected to be studied next year by the NAIC's Reinsurance and Anti-fraud Task Force.

Reinsurance only came under closer scrutiny by state regulators about 10 years ago. And, during the past few years, the NAIC task force, with its reinsurance industry advisory committee, began looking at ways to more effectively monitor reinsurance transactions.

The NAIC adopted:

- A 1983 model law that grants immunity from liability to state insurance departments investigating fraudulent insurance activities.
- A 1984 model law that spells out when a ceding company can take credit for reinsurance on its financial statement.
- A 1985 model law that sets uniform guidelines to regulate managing general agents that cede reinsurance or assume it on the part of an insurer.

Most recently, the NAIC drafted a new section in the Examiner's Handbook that deals with internal accounting controls of both ceding and assuming companies. That section is expected to become effective by year-end. The book is used by financial examiners who monitor insurers' financial statements.

With these models and changes in place, instead of looking at more rules, the NAIC task force concentrated this year on educating regulators about reinsurance.

An all-day forum on reinsurance held in June during the summer NAIC meeting was attended by numerous regulators and staffs.

But not only stateside regulators are concerned about reinsurance, Mr. Olson noted. Regulators from around the globe have discussed reinsurance at trade conferences sponsored by the United Nations Conference on Trade and Development.

Now there is an international awareness of the security of reinsurance, Mr. Olson said.

However, even with this increased awareness, many of the developing countries "do not have the sophistication" to adequately deal with the complicated matter of reinsurance, he said. And, many of the industrialized countries don't have regulations, he added.

More regulations in the United States, however, seem likely, according to the chairman of the advisory committee to the NAIC's reinsurance task force.

"Next year, I suspect (reinsurance regulations) will be a matter of concern and interest and possible proposed legislation," said Wesley Kinder, president of Fremont Reinsurance Co. in San Francisco, who serves as chairman of the advisory committee.

However, "it is a tough regulatory problem to deal with," he said, pointing to "two competing philosophies" among regulators.

First, they are concerned about the overall decrease in reinsurance capacity, Mr. Kinder said. But, they also are concerned whether financial requirements for reinsurance transactions are stringent enough, he added.

And, regulators will continue to look at the lack of reinsurance capacity "because that's what their constituents get hit with," said Jonathan F. Bank of the Los Angeles law firm of Buchalter, Nemer, Fields, Chrystie & Younger and a member of the advisory committee.

But regulators also will be looking at security requirements of reinsurers, notably letters of credit, he said. ■

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Directory of reinsurance intermediaries

A

Agnew International Inc.

175 Water St., New York, N.Y. 10038; 212-558-6630

	1985	1984
Premium volume...	$21,000,000	$20,000,000
% Treaty.....	15%	15%
% Facultative.	85%	85%
Gross revenues.....	$1,144,000	$1,000,000
Total employees....	25	23
Treaty.....	5	4
Facultative.....	20	19

Year founded: 1976.

Principal officers: Patrick Agnew, president; Richard DiClemente, Pellegrino Farina and Mona Chrysanthov, vps; W. James Cook, James E. Hair and Latif Shams, assistant vps.

Specialties: Domestic and international major property.

Licensed in: New York.

Amberco

101 Pearl St., Hartford, Conn. 06103; 203-727-1196

	1985	1984
Premium volume...	NA	NA
% Treaty.....	99.6%	99%
% Facultative.	0.4%	1%
Gross revenues.....	NA	NA
Total employees....	27	21

Year founded: 1977.

Branch offices: New York; Miami; Hamilton, Bermuda.

Principal officers: John M. McGarrity, president; Julian M. Griffiths and Robert T. Sargent, executive vps.

Specialties: Captives.

Licensed in: New York.

American Intermediaries Inc.

1800 Century Park East, Suite 450, Los Angeles, Calif. 90067; 213-201-6500

	1985	1984
Premium volume...	$31,500,000	$4,600,000
% Treaty.....	100%	100%
Gross revenues.....	$739,897	$72,002
Total employees....	14	5
Treaty.....	14	5

Year founded: 1984.

Parent company: Iona Inc.

Subsidiaries: American Intermediaries of New York Inc., New York.

Principal officers: Henry M. Krueger, chairman; Wolfgang J. Buettner, president.

Specialties: Property, casualty, accident and health, medical professional liability.

Licensed in: New York.

American Risk Managers

2610 Freewood Drive, Dallas, Texas 75220; 214-956-0176

	1985	1984
Premium volume...	$9,561,000	$12,410,000
% Treaty.....	100%	100%
Gross revenues.....	$1,175,000	$2,097,000
Total employees....	7	9
Treaty.....	7	9

Year founded: 1977.

Branch offices: Houston; Miami; Nassau, Bahamas; Georgetown, Cayman Islands.

Principal officers: M. Hendricks, president; T. Hunt and W. Hemer, vps; J. McKinney, secretary/treasurer.

Specialties: Captives, unrated companies, self-insured risks, products, marine, federal workers compensation.

Licensed in: Texas, Florida.

Andrew Edwards & Co. Inc.

111 John St., New York, N.Y. 10038; 212-227-1300

	1985	1984
Premium volume...	$127,826,000	$107,646,000
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	15	17
Treaty.....	15	17

Year founded: 1977.

Branch offices: Hamilton, Bermuda.

Principal officers: Andrew J. Barile, chairman; Edward J. Mallozzi, president; Philip M. Russo, senior vp-marketing; Carol G. Koenigsberg, vp-electronic data processing/personnel; Jeffrey S. Passis, vp/treasurer; Joseph Pepitone, assistant secretary.

Licensed in: New York.

J&H INFOLINE

INFORMATION AND IDEAS ON RISK MANAGEMENT AND BENEFITS FROM JOHNSON & HIGGINS NO. 20

Coping With The Incomprehensible:

Tax reform muddies benefit nondiscrimination tests.

The Tax Reform Act of 1986 will alter dramatically the design and delivery of employee benefit programs.

The provisions covering defined contribution, defined benefit, and health and welfare programs will push many employers to examine alternatives within each of these program areas.

For example, the Act further restricts access by active employees to defined contribution plan funds. This could make such plans less desirable, suggesting alternatives such as deferred bonus arrangements, non-qualified excess plans, and group universal life insurance programs.

New nondiscrimination tests will govern benefit delivery in all major welfare plans. However, these rules—as written—are incomprehensible. Perhaps even more disturbing is a suspicion in many quarters that they are unworkable.

J&H is convinced the rules must be substantially modified or even repealed. Since they do not become operative until January 1, 1988 at the earliest, employers should urge Congress to bring clarity and sanity to the Act's provisions.

We expect that, in many instances, employers will find it too costly to comply administratively with the thrust of the nondiscrimination rules. In fact, there are several alternatives in dealing with the nondiscrimination provisions that should prove acceptable without making major administrative changes.

For more information, call an Employee Benefits Consultant at your J&H office, or Ed Davey at 212-574-7269.

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Ashford Reinsurance Intermediaries Corp.

345 Kinderkamack Road, P.O. Box 218, Westwood, N.J. 07675; 201-664-6677

	1985	1984
Premium volume...	$9,300,000	NA
% Treaty.....	95%	NA
% Facultative.	5%	NA
Gross revenues.....	$250,000	NA
Total employees....	8	NA
Treaty.....	8	NA

Year founded: 1983.

Parent company: O'Shea, Sharp, Associates Corp.

Branch offices: Worcester, Mass.

Principal officers: Henry J. O'Shea, president/chief executive officer; Donald B. Sharp, executive vp.

Specialties: Property/casualty.

Licensed in: New York.

Continued on facing page

How to use directory

Information for the fourth annual directory of reinsurance intermediaries was gathered from responses to questionnaires sent to companies by *Business Insurance*.

The directory is printed as an editorial service; there is no charge for intermediaries to be included.

Companies were asked to provide information, including premium volume related to reinsurance, percent of treaty and facultative business (based on reinsurance premium volume), gross revenues related to reinsurance, total employees and number of employees assigned to treaty and facultative reinsurance.

Also requested was information on ownership, branch offices and subsidiaries brokering reinsurance, specialties, acquisitions, principal officers and licensing.

When a company has been only recently founded, or refused to provided financial information, it is noted in the listings as NA (not available).

If you wish to locate an intermediary by state, you may refer to the geographic index following the directory. Home offices, branch offices and subsidiaries brokering reinsurance are included.

We have made every effort to obtain complete and accurate information; however, *Business Insurance* is unable to verify all information because public documents are rarely available.

Continued from facing page

Associated Intermediaries Inc./Associated Intermediaries-S.C. Inc.

2 Piedmont Center, Suite 700, Atlanta, Ga. 30305; 404-237-1170

	1985	1984
Premium volume...	$100,000,000	$60,000,000
% Treaty.....	75%	70%
% Facultative.	25%	30%
Gross revenues.....	NA	NA
Total employees....	45	40
Treaty.....	15	12
Facultative.....	30	28

Year founded: 1982.
Parent company: Provident Life & Accident Insurance Co.
Branch offices: Columbia, S.C.
Principal officers: Alph H. Browne, president/chief executive officer; William M. Allen, senior vp/chief operating officer; Robert Sanders, senior vp; Steve Rece, chief financial officer.
Licensed in: New York.

b

B.R.I. International Agency Inc.

156 William St., New York, N.Y. 10038; 212-233-7171

	1985	1984
Premium volume...	$4,921,000	$3,938,000
% Treaty.....	90%	75%
% Facultative.	10%	25%
Gross revenues.....	NA	NA
Total employees....	9	9
Treaty.....	7	6
Facultative.....	2	3

Year founded: 1981.
Parent company: B.R.I. Holding Corp.
Principal officers: Donald P. Ferrarini, president; Joseph Zweig, senior vp/general manager; Fred Ghawi, vp-ocean marine; Howard Miller, vp; Burton Matfus, secretary/treasurer.
Licensed in: New York.

Bailey Townsend Inc.

123 William St., New York, N.Y. 10038; 212-233-9076

	1985	1984
Premium volume...	NA	NA
% Treaty.....	90%	85%
% Facultative.	10%	15%
Gross revenues.....	NA	NA
Total employees....	6	5
Treaty.....	3	3
Facultative.....	2	2

Year founded: 1979.
Parent company: John Townsend & Co. (Holdings) Ltd.
Principal officers: Robert W. Bailey, president; J.R.C. Townsend, chairman; Angelo Caramanica, assistant vp.
Specialties: Marine, aviation, professional liability.
Licensed in: New York.

Bates Turner Inc.

5200 Metcalf, P.O. Box 2959, Overland Park, Kan. 66201; 913-676-5920

	1985	1984
Premium volume...	$109,000,000	$58,000,000
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	12	12
Treaty.....	12	12

Year founded: 1982.
Parent company: Employers Reinsurance Corp.
Branch offices: Morristown, N.J.
Principal officers: Michael G. Fitt, chairman/chief executive officer; Michael E. Fisher, president/chief operating officer; James C. Blanton III and Charles S. Marisca, vps; Robert E. Thiemer Jr., assistant vp.
Licensed in: New York.

Bell Nicholson Henderson (USA) Inc.

123 William St., New York, N.Y. 10038; 212-406-1750

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	14	13
Treaty.....	14	13

Year founded: 1980.
Principal officers: John K. Witherspoon Jr., president; Robert L. Mercer, vp; Arthur Myers, secretary; J.A. Edwards, director.
Licensed in: New York.

E.W. Blanch Co. Limited Partnership

3500 West 80th St., Minneapolis, Minn. 55431; 612-835-3310

	1985	1984
Premium volume...	**	**
% Treaty.....	99%	98%
% Facultative.	1%	2%
Gross revenues.....	**	**
Total employees....	296	232
Treaty.....	279	210
Facultative.....	17	22

**See page 3 for estimates.

Year founded: 1957.
Branch offices: New York; Chicago; San Francisco; Copenhagen, Denmark.
Subsidiaries: E.W. Blanch (U.K.) Ltd., London.
Acquisitions: E.W. Blanch Co. completed the purchase of outstanding equity in Bradstock Blanch Ltd., previously held by Bradstock Group P.L.C. The name was changed to E.W. Blanch (U.K.) Ltd.
Principal officers: E.W. Blanch Jr., chief executive officer/general partner; Michael W. Cashman Sr., president/managing general partner; Frank S. Wilkerson Jr., general partner; Paul S. Mavros, se-

Continued on next page

Mercury Management, Inc.

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Serious inquiries with regard to syndicate formation, investment or management may be addressed to the attention of Larry J. Spilkin, General Counsel.

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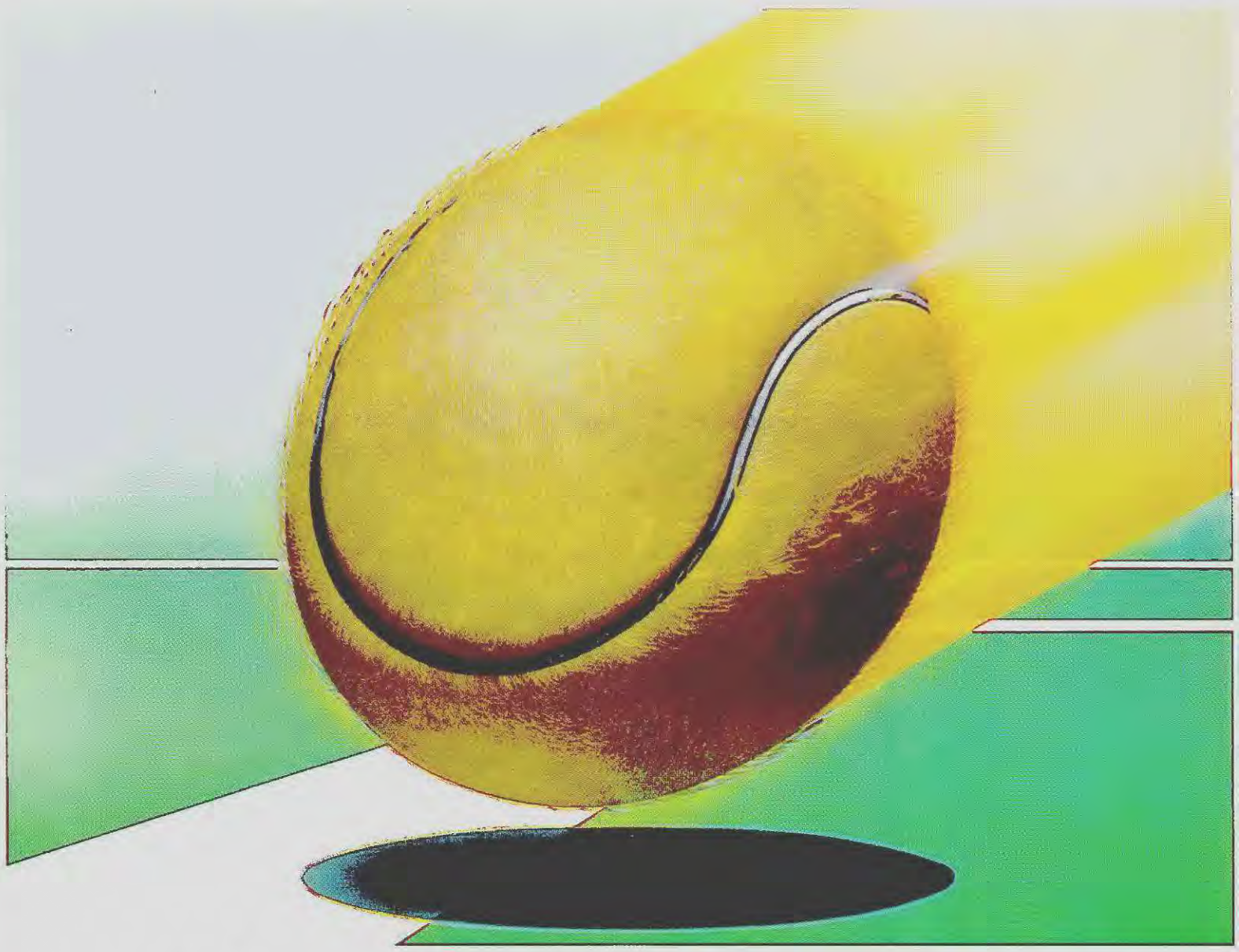

The Mass Mutual Challenge.

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In our comprehensive analysis program, a team of Mass Mutual experts is assigned to each case. This team includes a Medical Economist, Health Care Administrator, Epidemiologist, Biostatistician, Nursing Consultant, Case Manager and Employee Benefits Expert. Offering a range of professional perspectives, our team develops an incisive management report with specific recommendations for cost control.

Once we identify what measures need to be taken, we implement a customized cost control program incorporating such proven approaches as our Pre-Hospital Review, Preferred Plus℠ PPO, Cost Containment Benefit Options and much more.

The Mass Mutual edge is in the way we approach each case. We're in constant motion designing new ways to address our clients' evolving needs.

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MassMutual
GROUP LIFE AND HEALTH
Massachusetts Mutual Life Insurance Co., Springfield, MA 01111

Continued from preceding page
nior vp/general partner.

Specialties: Property, casualty, crop hail, professional liability, life, accident and health.

Licensed in: New York.

Bryant Treaty Brokers Inc.

600 Holiday Plaza Drive, Suite 340, Matteson, Ill. 60443; 312-748-9550

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	NA
Gross revenues.....	NA	NA
Total employees....	8	NA
Treaty.....	8	NA

Year founded: 1985.

Parent company: Derek Bryant Insurance Brokers Ltd.

Principal officers: Edward N. Murray, president/treasurer; Frances P. Murray, secretary.

Specialties: Long-haul trucking, managing general agents, financial institutions.

C

C.B.I. Agencies Ltd.

90 John St., New York, N.Y. 10038; 212-608-6566

	1985	1984
Premium volume...	$250,000	NA
% Facultative.	100%	100%
Gross revenues.....	$35,000	NA
Total employees....	7	4
Facultative.....	7	4

Year founded: 1980; reinsurance business activated in 1985.

Principal officers: James F. Lunny Jr., president/chief executive officer; Frank Carbonara, executive vp/treasurer.

Licensed in: New York.

Guy Carpenter & Co. Inc.

Two World Trade Center, New York, N.Y. 10048; 212-323-1000

	1985	1984
Premium volume...	**	**
% Treaty.....	**	**
% Facultative.	**	**
Gross revenues.....	**	**
Total employees....	1,258	1,200

**See page 3 for estimates.

Year founded: 1923.

Parent company: Marsh & McLennan Cos. Inc.

Branch offices: San Francisco; Los Angeles; Chicago; Hartford, Conn.; Coral Gables, Fla.; Atlanta; Dallas.

Subsidiaries: Guy Carpenter & Co. Inc. of Minnesota, Minneapolis; Balis & Co. Inc., Philadelphia; Guy Carpenter & Co. (Canada) Ltd., Toronto; Guy Carpenter Italia S.r.l., Trieste, Italy; Guy Carpenter & Co. (Asia) Ltd., Hong Kong; Guy Carpenter & Co. ApS, Copenhagen, Denmark; Guy Carpenter & Co. (Stockholm) AB, Stockholm, Sweden; Guy Carpenter & Co. S.A., Brussels, Belgium.

Principal officers: Richard H. Blum, president/chief executive officer/director; Michael J. Cody, Robert S. Constable, Michael S. Cooper, John Kean Jr., Edward G. Maher, A.J.C. Smith, Frank J. Tasco, Gabriele J. Troiano and James D. Weaver, directors.

Licensed in: New York.

Cole, Booth, Potter Inc.

499 Thornall St., Edison, N.J. 08818; 201-549-6300*

	1985	1984
Premium volume...	$175,000,000	$140,000,000
% Treaty.....	95%	75%
% Facultative.	5%	25%
Gross revenues.....	NA	NA
Total employees....	80	72
Treaty.....	66	54
Facultative.....	14	18

*As of Dec. 1, new address and telephone number will be 100 Metro Park S., Old Bridge, N.J. 08857-4099; 201-290-8000

Year founded: Predecessor companies: Booth Potter Seal, 1939; Sten-Re, Cole, 1979.

Parent company: Combined International Corp.

Mergers: Effective July 1985, the principals of Sten-Re, Cole bought out Reed Stenhouse's 50% share and then sold the entire firm to Combined International Corp., which owned Booth Potter Seal. Both reinsurance intermediaries were merged to operate under the new name of Cole, Booth, Potter Inc.

Principal officers: Richard E. Cole, president/chief executive officer; Thomas M. Simone, Demarest S. Newman, Bart L. Frazzitta and John VanFossen, senior vps; John M. Kwaak, Arthur T. Dougherty, Diane M. Larzelere and Robert K. Race, vps.

Licensed in: New York.

Corporate Advisors Inc.

910 Skokie Blvd., Northbrook. Ill. 60062; 312-564-5820

	1985	1984
Premium volume...	NA	NA
Gross revenues.....	NA	NA
Total employees....	NA	NA

Year founded: 1970; inactive until 1986.

Principal officers: Louis W. Biegler, president; Eugene W. Bader, William L. Biegler and Carmina M. Murphy, vps.

Specialties: Association captives.

Cravens & Co. Special Insurance Services

555 California St., Suite 2920, San Francisco, Calif. 94104; 415-433-6161

	1985	1984
Premium volume..	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	22	20
Treaty.....	22	20

Year founded: 1978.

Branch offices: Seattle.

Affiliated companies: Cravens Re Treaty Facilities Inc.; Cravens Re Facultative Facilities Inc.; Cravens, Dargan Enterprises.

Principal officers: Malcolm Cravens, chairman; Hartley D. Cravens, vice chairman; E.L. Stutsman, president; Robert J. Reynolds, executive vp; Leon Button and Edward W. Tuescher Jr., senior vps; Jim M. Rusk, vp/assistant secretary; Jim McLean, Carol C. Cravens and Thomas Kelly, vps; M. Mark Cravens and Sheila Moore, assistant vps.

Crump Re Inc.

241 Main St., Hartford, Conn. 06106; 203-727-9727

	1985	1984
Premium volume...	$56,734,000	$49,578,000
% Treaty.....	21%	30%
% Facultative.	79%	70%
Gross revenues.....	$5,299,000	$4,695,000
Total employees....	47	34
Treaty.....	5	4
Facultative.....	42	30

Year founded: 1978.

Parent company: Sedgwick Group P.L.C.

Subsidiaries: Crump Re Inc.-New York, Hoboken, N.J.; Crump Re Inc.-Atlanta, Marietta, Ga.; Crump Re Inc.-Southwest Division, Dallas.

Principal officers: Salvatore D. Zaffino, president/chief executive

Continued on facing page

Continued from facing page

officer; John L. Brozowski, divisional president-Crump Re Inc. of Atlanta; Robert J. Byrne, divisional president-Crump Re Inc. of New York; L. Douglas Williams, senior vp-finance/accounting.

Licensed in: New York.

Cypress Creek Intermediaries Inc.

110 Brookside Drive, Daytona Beach, Fla. 32014; P.O. Box 261640, Port Orange, Fla. 32029; 904-756-2309

	1985	1984
Premium volume...	$17,000,000	NA
% Treaty.....	96%	NA
% Facultative.	4%	NA
Gross revenues.....	$200,000	NA
Total employees....	3	NA
Treaty.....	2	NA
Facultative.....	1	NA

Year founded: 1984.

Principal officers: Michael T. Pyle, president/treasurer; Peggy B. Pyle, vp/secretary; Laurie P. Langston, assistant secretary; Christine P. Sullivan administrative manager.

Specialties: Agriculture, student medical, accident and health.

Licensed in: New York, Florida.

d

Delaney Intermediaries Inc.

55 John St., New York, N.Y. 10038; 212-267-9339

	1985	1984
Premium volume...	$50,000,000	$70,000,000
% Treaty.....	90%	80%
% Facultative.	10%	20%
Gross revenues.....	$1,800,000	$1,800,000
Total employees....	27	50
Treaty.....	25	42
Facultative.....	2	8

Year founded: 1954; company reorganized in 1984.

Principal officers: Timothy D. Delaney, president; Alistair Lind, treasurer; Peter Arkley, vp; Anne Marie McTiernan, assistant vp; Daniel F. Maher, secretary.

Specialties: Captives, self-insureds, low-layer casualty.

Licensed in: New York.

Delaney Offices Inc.

55 John St., 12th Floor, New York, N.Y. 10038; 212-267-9339

	1985	1984
Premium volume...	$20,000,000	$20,000,000
% Treaty.....	100%	100%
Gross revenues.....	$500,000	$500,000
Total employees....	5	5
Treaty.....	5	5

Year founded: 1954; company reorganized in 1984.

Principal officers: William F. Delaney Jr., president.

Specialties: Casualty, fire, marine, aviation, life, captives.

Licensed in: New York.

e

E & S Intermediaries Inc.

111 John St., New York, N.Y. 10038; 212-732-9855

	1985	1984
Premium volume...	$19,932,985	$17,047,553
% Facultative.	100%	100%
Gross revenues.....	$1,620,890	$1,338,226
Total employees....	13	13
Facultative.....	13	13

Year founded: 1980.

Principal officers: Stephen L. Gandley, president; Randall S. Jensen, executive vp; Robert L. Osborne Jr., senior vp; Nicholas J. Licato, vp; James E. Curran, secretary/treasurer.

Specialties: Hospital malpractice, errors and omissions coverage.

Licensed in: New York.

Enan & Co.

950 Elm Ave., Suite 250, San Bruno, Calif. 94066; 415-873-3626

	1985*	1984*
Premium volume...	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	$1,800,000	$1,200,000
Total employees....	15	13
Treaty.....	15	13

*Fiscal years ending Aug. 31, 1986, and 1985.

Year founded: 1979.

Principal officers: Hussein A. Enan, chief executive officer; Garrett Redmond, chief operating officer; Peter J. Murphy, chief financial officer; Dale N. Hoemke, chief marketing officer.

Licensed in: New York.

f

Fairway Intermediaries Ltd.

73 Front St., P.O. Box HM 2261, Hamilton, Bermuda HM JX; 809-295-8473

	1985	1984
Premium volume...	$17,600,000	$16,000,000
% Treaty.....	80%	85%
% Facultative.	20%	15%
Gross revenues.....	$358,000	$325,000
Total employees....	7	7

Year founded: 1982.

Parent company: Dana Corp.

Principal officers: Carl R. Pingel, president; Wolcott H. Outerbridge, vp; Roderick S. Gilbert, general manager.

Specialties: Captives, surplus relief programs.

Falcon Intermediaries Ltd.

P.O. Box 100, 736 Springdale Drive, Exton, Pa. 19341; 215-363-5540

	1985	1984
Premium volume...	$8,000,000	$9,000,000
% Treaty.....	95%	97%
% Facultative.	5%	3%
Gross revenues.....	NA	NA
Total employees....	5	6
Treaty.....	4	4
Facultative.....	1	2

Year founded: 1980.

Parent company: Roehrs & Co. Inc.

Principal officers: Walter E. Roehrs Jr., chairman; Geoffrey C. Roehrs, vice chairman.

Specialties: Associations, managing general agents, captives.

g

Arthur J. Gallagher & Co. (Bermuda) Ltd.

P.O. Box HM 2000, Perry Building, Church Street, Hamilton, Bermuda HM HX; 809-292-4654

	1985	1984
Premium volume...	$12,500,000	$15,900,000
% Treaty.....	85%	90%
% Facultative.	15%	10%
Gross revenues.....	$2,500,000	$2,800,000
Total employees....	5	5
Treaty.....	2	2
Facultative.....	2	2

Year founded: 1972.

Parent company: Arthur J. Gallagher & Co.

Subsidiaries: Arthur J. Gallagher & Co. (Cayman) Ltd., Georgetown, Grand Cayman.

Principal officers: Christopher J. Noon, director/general manager; Ronald L. Hubbard, chief financial officer.

Specialties: Public entities, fully-funded programs, captives.

Licensed in: Bermuda.

Continued on next page

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Continued from preceding page

Gill & Roeser Inc.

535 Fifth Ave., New York, N.Y. 10017; 212-972-4880

	1985	1984
Premium volume...	NA	NA
% Treaty..... ...	100%	100%
Gross revenues.....	NA	NA
Total employees. ..	8	7
Treaty..... ...	8	7

Year founded: 1982.

Subsidiaries: G&R Intermediaries Inc., New York.

Principal officers: Adrian Gill, chairman; Kirk Roeser, president; James Snedeker and Ronald Martin, senior vps; Kin Gee and Michael Shumrak, vps.

Specialties: Property, casualty, life, surplus relief, loss portfolios and commutations.

Licensed in: New York.

Thomas A. Greene & Co. Inc.

1270 Ave. of the Americas, New York, N.Y. 10020; 212-664-0200

	1985	1984
Premium volume...	$380,000,000	$270,000,000
% Treaty.	90%	84%
% Facultative.	10%	16%
Gross revenues.....	$21,000,000	$16,000,000
Total employees....	190	193

Year founded: 1979.

Parent company: Alexander & Alexander Services Inc.

Branch offices: Chicago, San Francisco.

Principal officers: Thomas A. Greene, president/chief executive officer/chairman; Peter F. Malloy, executive vp/chief operating officer; Michael D. O'Halleran, executive vp; John L. Busi, senior vp/chief financial officer.

Licensed in: New York.

Greig Fester (North America) Inc.

116 John St., Suite 1410, New York, N.Y. 10038; 212-619-0140

	1985	1984
Premium volume...	$21,000,000	$16,500,000
% Treaty.....	98%	98%
% Facultative.	2%	2%
Gross revenues.....	$1,800,000	$1,400,000
Total employees....	26	19
Treaty.....	25	18
Facultative.....	1	1

Year founded: 1981.

Parent company: Greig Fester (Group) Ltd.

Principal officers: Charles B. Penruddocke, vice chairman/chief executive officer; Irving Bloom, president; Leonard Wagner, secretary/treasurer.

Licensed in: New York.

Group Resources Inc.

P.O. Box 1318, Kailua, Hawaii 96734; 808-262-4556

	1985	1984
Premium volume...	$34,000,000	$32,000,000
% Treaty.....	100%	100%
Gross revenues.....	$210,000	$175,000
Total employees....	2	2
Treaty.....	2	2

Year founded: 1980.

Branch offices: San Francisco.

Subsidiaries: Professional Reinsurance Organization, Wilmington, Del.; H.M.O. Resource Group Inc., San Francisco.

Principal officers: Donald K. Anderson, president; Dean C. Anderson, vp.

Specialties: Group accident and health, disability income, group and individual life, financial, surplus relief, acquisitions and mergers.

h

H & H Reinsurance Brokers Ltd.

H&H House, Hurst Holme, Trott Road, P.O. Box 1861, Hamilton, Bermuda HM HX; 809-295-3342

	1985	1984
Premium volume...	$4,000,000	$6,000,000
% Treaty.....	95%	95%
% Facultative.	5%	5%
Gross revenues.....	NA	NA
Total employees....	7	8
Treaty.....	3½	4
Facultative.....	3½	4

Continued on facing page

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THE STRUCTURED SETTLEMENTS™ COMPANY

Continued from facing page

Year founded: 1977.
Parent company: International Advisory Services Ltd.
Principal officers: Simon Everett, president; David Ezekiel and Terrence Power, vps; David Pickering, vp/treasurer; Michael Budge, vp/secretary.
Specialties: Captives.
Licensed in: Bermuda.

Frank B. Hall (Reinsurance) Holdings Inc.

261 Madison Ave., New York, N.Y. 10016; 212-867-4380

	1985	1984
Premium volume...	$600,000,000	$600,000,000
% Treaty.....	60%	65%
% Facultative.	40%	35%
Gross revenues.....	$18,700,000	$18,000,000
Total employees....	325	325

Year founded: 1862.
Parent company: Frank B. Hall & Co. Inc.
Branch offices: Coral Gables, Fla.; Los Angeles; Philadelphia; San Francisco; Copenhagen, Denmark; Milan, Italy.
Subsidiaries: Frank B. Hall Re of New York Inc., New York; Frank B. Hall Re International Inc., New York; Frank B. Hall de Mexico S.A., Mexico City; Frank B. Hall Re, Panama City, Panama; Frank B. Hall Re, Caracas, Venezuela; Frank B. Hall Re, Lima, Peru; Frank B. Hall Re, Bogota, Colombia; Frank B. Hall Re (Afro-Asia), Brussels, Belgium; Frank B. Hall Re France, Paris; Euro-American Re Management Co., Milan, Italy.
Acquisitions: Interocean Agency Inc., Los Angeles.
Principal officers: Henry E. Froebel, chairman; Joseph A. Zaffarese, president-Frank B. Hall Re of New York Inc.; Custavo Cisneros, president-Latin America; John Parker Jr., senior vp-IOA Re; George McMahon, president-Interocean Agency Inc.; Gerald L. Rogers, vp-Interocean Agency Inc.; Francis J. Cullen, president-Frank B. Hall Re-Southeast Inc.
Specialties: Casualty, marine, highly protected risks, property, international risks, accident and health.
Licensed in: New York.

Harrison & Co.

1091 Industrial Road, P.O. Box 579, San Carlos, Calif. 94070; 415-595-1200 or 415-941-4419

	1985	1984
Premium volume...	$7,500,000	$6,500,000
% Treaty.....	99%	99%
% Facultative.	1%	1%
Gross revenues.....	$75,000	$65,000
Total employees....	2	2
Treaty.....	1	1
Facultative.....	1	1

Year founded: 1977.
Principal officers: John P. Harrison, president/treasurer; Ann P. Harrison, secretary.
Licensed in: New York.

W.O. Hart & Co. Inc.

2777 Summer St., Stamford, Conn. 06905; 203-357-1714

	1985	1984
Premium volume...	$28,000,000	$44,000,000
% Treaty.....	99%	99%
% Facultative.	1%	1%
Gross revenues.....	$1,055,000	$990,000
Total employees....	14	12
Treaty.....	14	12

Year founded: 1977.
Subsidiaries: W.O. Hart & Co. Inc. of New York, New York.
Principal officers: Warren O. Hart, president; Thomas J. McQuaid, vp; Sandra B. Hart, secretary; Elizabeth A. Rahm, manager-reinsurance accounting.
Licensed in: New York.

Heddington Brokers Ltd.

F.B. Perry Building, P.O. Box HM 1187, Hamilton 5, Bermuda; 809-295-3063

	1985	1984
Premium volume...	NA	NA
% Treaty.....	60%	60%
% Facultative.	40%	40%
Gross revenues.....	NA	NA
Total employees....	8	8
Treaty.....	5	5
Facultative.....	3	3

Year founded: 1981.
Parent company: Heddington Insurance Ltd./Texaco Inc.; Willis Faber P.L.C.
Subsidiaries: Willis Faber Heddington, London.
Principal officers: Robert C. Golden, president; M. Dobbie, senior vp; Mark Randall, vp.
Specialties: Oil-related risks.

G.L. Hodson & Son Inc.

3333 New Hyde Park Road, New Hyde Park, N.Y. 11042; 516-365-9000

	1985	1984
Premium volume...	$462,000,000	$450,000,000
% Treaty.....	88.5%	85.7%
% Facultative.	11.5%	14.3%
Gross revenues.....	$23,000,000	$22,000,000
Total employees....	192	193
Treaty.....	147	153
Facultative.....	45	40

Continued on next page

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Year founded: 1924.
Parent company: Corroon & Black Corp.
Branch offices: Atlanta, Los Angeles, New York.
Subsidiaries: G.L. Hodson & Son Inc. A Minnesota Corp., St. Paul, Minnesota; G.L. Hodson & Son Inc. A Georgia Corp., Atlanta.
Principal officers: Robert G. Hodson, chairman; Thomas M. Hearn, vice chairman; Ronald J. Taylor, presient/chief executive officer; Duane E. Hitz, executive vp/chief operating officer; Michael E. Rothpletz, Thomas J. Kennedy, Robert M. Hestwood, Burgess R. Wilson, Paul B. Nedza, Terrance K. Russell, Craig R. Hultgren, James L. Trask and Patricia A. Donahue, senior vps.
Licensed in: New York.

Holborn Agency Corp.

90 John St., New York, N.Y. 10038; 212-267-0224

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	30	29
Treaty.....	30	29

Year founded: 1920.
Principal officers: John N. Gilbert Jr., president; James A. Cathcart III, executive vp; Joseph N. Gaffney, senior vp.
Licensed in: New York.

i

IOC Reinsurance Brokers Ltd.

67 Yonge St., Toronto, Ontario M5E 1J8; 416-863-6665

	1985	1984
Premium volume...	NA	NA
% Treaty.....	90%	90%
% Facultative.	10%	10%
Gross revenues.....	NA	NA
Total employees....	14	14
Treaty.....	13	13
Facultative.....	1	1

Year founded: 1980.
Parent company: Pencar Holdings Ltd.; Morgan Reed & Coleman Ltd.
Principal officers: H. Robert Inksater, president; Joseph O'Connell, vp.

Independence Intermediaries Inc.

1 Hollow Lane, Lake Success, N.Y. 11042; 516-627-4390

	1985	1984
Premium volume...	$33,214,000	$35,248,000
% Treaty.....	5%	10%
% Facultative.	95%	90%
Gross revenues.....	$3,201,000	$3,178,000
Total employees....	24	27
Treaty.....	1	2
Facultative.....	23	25

Year founded: 1973.
Parent company: The Charter Group.
Branch offices: Hartford, Conn.
Principal officers: Edmund J. Hanley, president; Sam Hartman, senior vp; Anthony Maltese, vp/comptroller; Carl Bach, Cathy Fabiitti and Phil Lombardo, vps.
Licensed in: New York.

Independent Brokers Ltd.

P.O. Box HM 2070, Williams House, Reid St., Hamilton, Bermuda; 809-295-1646

	1985	1984
Premium volume...	$3,000,000	$1,800,000
% Treaty.....	80%	90%
% Facultative.	20%	10%
Gross revenues.....	$261,000	$146,000
Total employees....	6	6
Treaty.....	2	2
Facultative.....	2	2

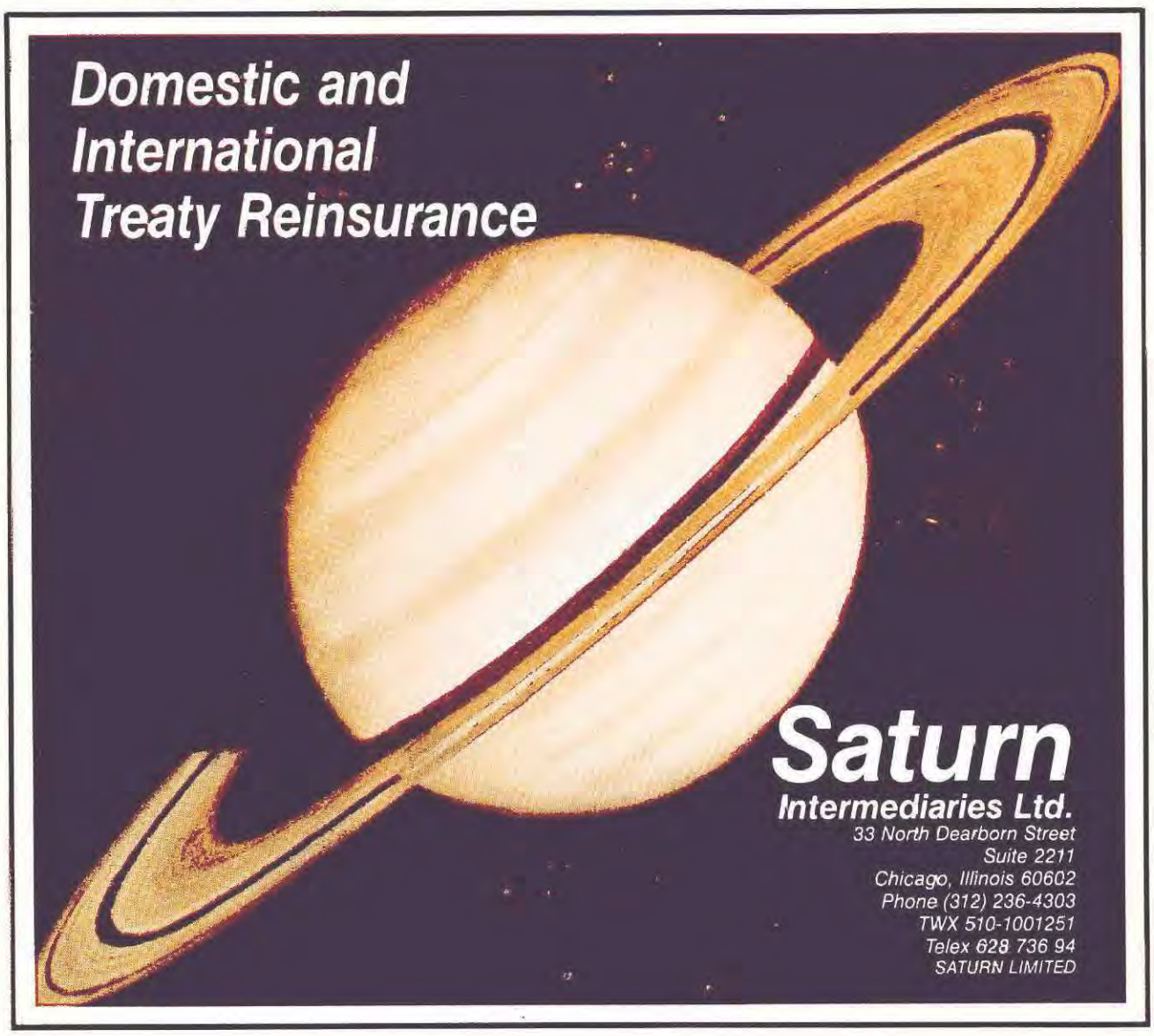
Year founded: 1984.
Principal officers: Peter J.N. Strong, president; John G. Neal, vp.
Specialties: Medical benefits.
Licensed in: Bermuda.

Insurance Risks International Inc.

7373 E. Doubletree Ranch Road, Suite 225, Scottsdale, Ariz. 85258; 602-951-0841

	1985	1984
Premium volume...	$6,750,000	$10,750,000
% Treaty.....	42%	25%
% Facultative.	58%	75%
Gross revenues.....	$345,800	$650,000
Total employees....	8	9
Treaty.....	3	3
Facultative.....	5	6

Year founded: 1983.
Branch offices: Beverly Hills, Calif.
Principal officers: William H. MacFarland, president; Edward Snyder, vp/chief underwriter; David D. Alecksen, vp-Beverly Hills office.
Specialties: Individual and group life, accident and health, stop loss, excess-of-loss and quota-share, multiemployer trusts, professional sports, personal accident, HMOs, PPOs, long-term disability, self-funded workers compensation.



Intere Intermediaries Inc.

199 Water St., New York, N.Y. 10038; 212-809-3900

	1985	1984
Premium volume...	**	**
% Treaty.....	100%	100%
Gross revenues.....	**	**
Total employees....	202	189
Treaty.....	202	189

*See page 3 for estimates.

Year founded: 1919.
Branch offices: Atlanta; Itasca, Ill.; Dallas; Walnut Creek, Calif.; Minneapolis.
Subsidiaries: Intere (Bermuda) Ltd., Hamilton, Bermuda; Intere Far East Ltd., Taipei, Taiwan.
Principal officers: Ward B. Gordon, chairman/chief executive officer; Wallace E. Winter, president; Roland G. Roth, vice chairman; Clifford English Jr., executive vp; George A. Edwards, senior vp/treasurer; Michael G. Woll, Kenneth R. Fewell, Brian S. Keegan, Daniel R. Colello, Ronald C. Anderson and Thomas F. McGrath, senior vps; Ronald C. Fazio, vp/secretary.
Specialties: Property, casualty,

Continued on facing page

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marine, aviation.
Licensed in: New York.

Intermediaries of America Inc.
1 World Trade Center, Suite 8423, New York, N.Y. 10048; 212-775-9010

	1985	1984
Premium volume...	$60,000,000	$40,000,000
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	18	17
Treaty.....	18	17

Year founded: 1975.
Parent company: Le Blanc Eldridge Parizeau Inc.
Branch offices: Boston.
Principal officers: Peter V. Dale, president; Kenneth G. Hague, William L. Healy, William L. MacLachlan, James A. Oliver and John W. Waite, vps.
Licensed in: New York.

International Intermediaries Inc.
131 E. Main St., Elmsford, N.Y. 10523; 914-592-2072

	1985	1984
Premium volume...	$375,000	$290,000
% Treaty.....	90%	90%
% Facultative.	10%	10%
Gross revenues.....	$30,000	$14,000
Total employees....	4	4
Treaty.....	1	1
Facultative.....	1	1

Year founded: 1983.
Principal officers: James K. Wolosoff, chairman; Buddy Richman, president; Marlin Henning, senior vp; John Caltabiano, vp-finance.
Specialties: Casualty, financial guarantee.
Licensed in: New York.

International Reinsurance Services Inc.
200 W. Monroe, Suite 1404, Chicago, Ill. 60606; 312-782-9547

	1985	1984
Premium volume...	$10,400,000	$9,575,000
% Treaty.....	0%	2%
% Facultative.	100%	98%
Gross revenues.....	NA	NA
Total employees....	8	10
Facultative.....	8	10

Year founded: 1978.
Parent company: Cameron General Corp.
Principal officers: Fred H. Pearson, president; Ronald J. Moore, executive vp; William J. Braet, vp/manager; Thomas R. Vinson and William M. Beckemeier, assistant vps.
Licensed in: Illinois, New York.

j

J & H Intermediaries Ltd.
Victoria Hall, Victoria Street, Hamilton, Bermuda; 809-292-1552

	1985	1984
Premium volume...	NA	NA
% Treaty.....	10%	10%
% Facultative.	90%	90%
Gross revenues.....	NA	NA
Total employees....	7	6
Facultative.....	7	6

Year founded: 1978.
Parent company: Johnson & Higgins.
Subsidiaries: J&H Intermediaries (Barbados) Ltd., Bridgetown, Barbados.
Principal officers: Brian Hall, president; Peter McKenzie and Cathy Lord, vps; Richard Reynell, assistant vp; Bruce Jones.
Specialties: Captives, trusts.

Johnson & Higgins-International Reinsurance Department
125 Broad St., New York, N.Y. 10004; 212-574-7000

	1985	1984
Premium volume...	NA	NA
% Treaty.....	80%	85%
% Facultative.	20%	15%
Gross revenues.....	NA	NA
Total employees....	31	24
Treaty.....	15	10
Facultative.....	10	8

Year founded: 1982.
Parent company: Johnson & Higgins.
Principal officers: George D. Benjamin, senior vp/director; Paul D. Hearn, Robert J. Schneider, Richard Davies and Samir F. Hanna, vps.
Licensed in: New York.

l

Le Blanc et De Nicolay U.S. Inc.
140 E. 45th St., New York, N.Y. 10017; 212-972-7090

	1985	1984
Premium volume...	NA	NA
% Treaty.....	NA	NA
% Facultative.	NA	NA
Gross revenues.....	NA	NA
Total employees....	3	NA

Year founded: 1986.
Parent company: Le Blanc De Nicolay Reassurance.
Principal officers: Gilles Lorans, president; William H. Asay, assistant vp.
Specialties: Foreign risks.
Licensed in: New York.

Edward Lloyd Ltd.
55 John St., New York, N.Y. 10038; 212-619-5701

	1985	1984
Premium volume...	$8,000,000	NA
% Treaty.....	35%	NA
% Facultative.	65%	NA
Gross revenues.....	NA	NA
Total employees....	6	NA
Treaty.....	3	NA
Facultative.....	3	NA

Year founded: 1984.
Parent company: Lowndes Lambert Group.
Principal officers: Peter W. Kininmonth, chairman; Ronald H. Molatto, president; Kevin R. Kennedy and John M. Mannix, vps.
Licensed in: New York.

Lodderhose Inc.
150 S. Wacker Drive, Chicago, Ill. 60606; 312-332-0995

	1985	1984
Premium volume...	$16,300,000	$10,900,000
% Treaty.....	4%	5%
% Facultative.	96%	95%
Gross revenues.....	$1,400,000	$850,000
Total employees....	14	10
Treaty.....	1	1
Facultative.....	13	9

Year founded: 1983.
Branch offices: Miami; Hamilton, Bermuda.
Principal officers: Daniel J. Lodderhose, chairman; C. John Geisbush, president; Julio Villa, senior vp.
Licensed in: New York.

m

MacDuff America Inc.
245 S.E. First St., Suite 201, Miami, Fla. 33131; 305-381-9827

	1985	1984
Premium volume...	$15,000,000	$12,000,000
% Treaty.....	80%	80%
% Facultative.	20%	20%
Gross revenues.....	$500,000	$250,000
Total employees....	7	6
Treaty.....	6	5
Facultative.....	1	1

Year founded: 1982.
Parent company: Brown & Brown Inc.
Branch offices: Daytona Beach, Fla.
Principal officers: J. Hyatt Brown, president; David T. Stewart, vp/general manager; Michael D. Bainbridge, vp; Susan Connor, broker.

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Licensed in: New York.

Magnant Re Intermediaries Inc.

110 Harbor Plaza, P.O. Box 560, Stamford, Conn. 06904; 203-324-1144

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	14	9
Treaty.....	14	9

Year founded: 1981.
Branch offices: Chicago.
Principal officers: Lawrence C. Magnant Jr., president; Byllie Ann Magnant, executive vp; Thomas F. Leonhardt, director; Donna M. Wilson, assistant vp; Joan P. Lupo, treasurer.
Specialties: Workers compensation, casualty, catastrophe, portfolio, surplus relief.
Licensed in: New York.

n

NSEW International Inc.

111 John St., New York, N.Y. 10038; 212-732-0342

	1985	1984
Premium volume...	NA	NA
% Treaty.....	80%	80%
% Facultative.	20%	20%
Gross revenues.....	NA	NA
Total employees....	5	5
Treaty.....	3	3
Facultative.....	2	2

Year founded: 1983.
Branch offices: Athens, Greece.
Principal officers: Paul J. Apostolos, president; James R. Berry, executive vp; Roger Testa, vp; Damian Testa, secretary/treasurer.
Licensed in: New York.

o

O'Connor Associates Ltd.

299 Market St., Saddle Brook, N.J. 07662; 201-587-1600

	1985	1984
Premium volume...	$43,200,000	$60,000,000
% Treaty.....	55%	45%
% Facultative.	45%	55%
Gross revenues.....	$3,900,000	$5,800,000
Total employees....	64	87
Treaty.....	7	11
Facultative.....	57	76

Year founded: 1975.
Branch offices: New York.
Mergers: Los Angeles branch office sold to Frank B. Hall & Co. Inc., Jan. 1, 1986.
Principal officers: Joseph A. O'Connor, president; Michael Nasert, executive vp.
Licensed in: New York.

p

Pearson & Georgi International Inc.

117 Washington St., P.O. Box 1597, Hoboken, N.J. 07030; 201-656-0800

	1985	1984
Premium volume...	$53,000,000	$52,000,000
% Treaty.....	73%	80%
% Facultative.	27%	20%
Gross revenues.....	$1,500,000	$1,400,000
Total employees....	22	20
Treaty.....	16	16
Facultative.....	6	4

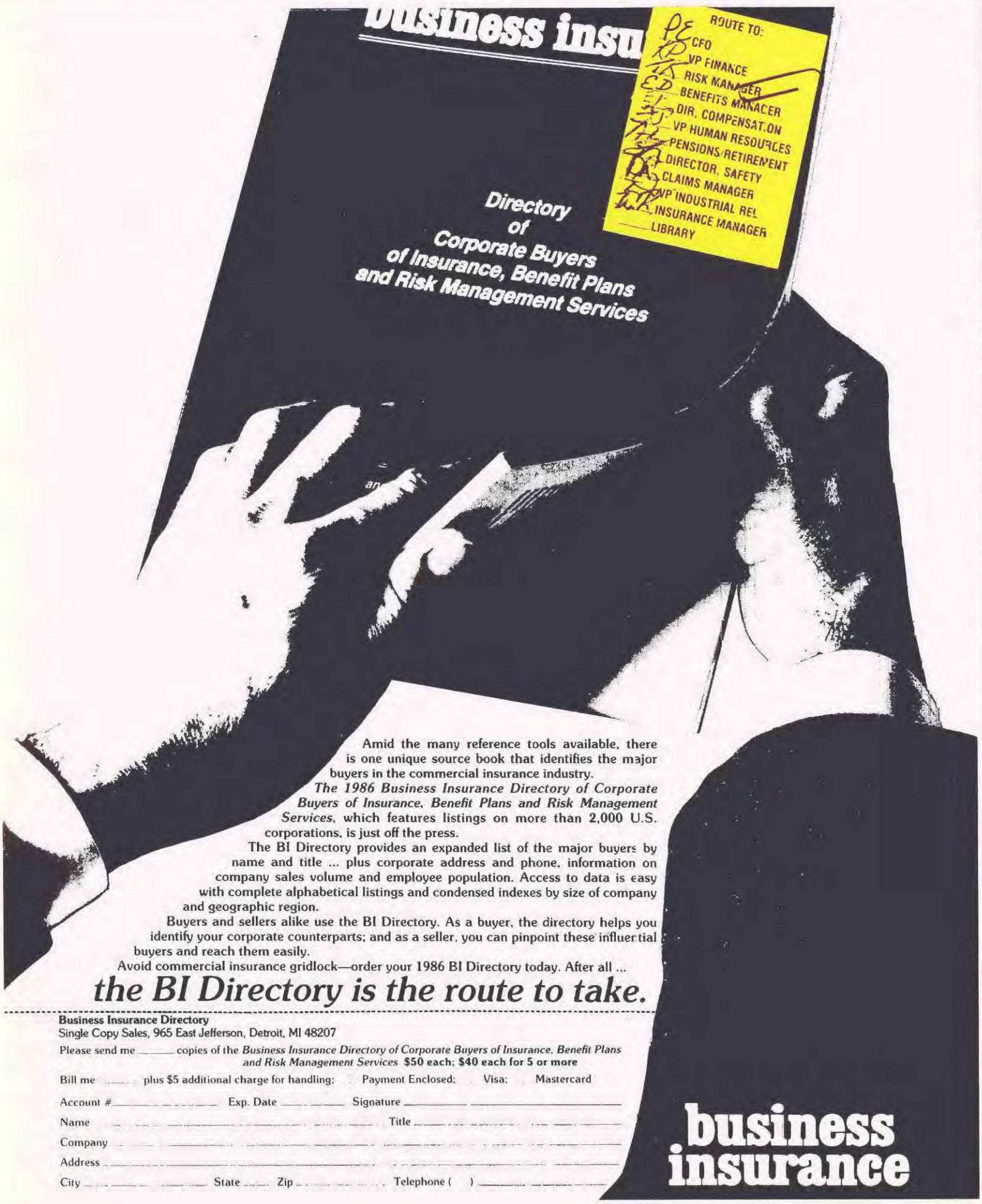
Year founded: 1979.
Subsidiaries: AVRECO Inc., Chicago; Risk Design, New York; Pearson & Georgi (Europe), Athens, Greece.
Principal officers: Fred H. Pearson, chairman; Ernest G. Georgi, president; Rodolfo A Agatep, executive vp; Camilo C. Molano, senior vp; S. Malcolm Menzies, vp; Philip Doronila and Michael Abesamis, assistant vps.
Licensed in: New York, New Jersey.

Peglar & Associates Inc.

100 Prospect St., Century Plaza, Stamford, Conn. 06901; 203-325-0863

	1985	1984
Premium volume...	NA	NA
% Treaty.....	NA	NA
% Facultative.	NA	NA
Gross revenues.....	NA	NA
Total employees....	NA	NA

Year founded: 1986.
Principal officers: Robb K. Peglar, president; Peter B. Scanlan, vp; Chris Haerle and Karen B. Heath, assistant vps.
Specialties: General liability; medical, hospital and lawyers professional liability; property; inland marine.
Licensed in: New York.



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RBI Brokerage Inc.

908-A2 Pompton Ave., P.O. Box 308, Cedar Grove, N.J. 07009; 201-857-1466

	1985	1984
Premium volume...	NA	NA
% Treaty.....	70%	70%
% Facultative.	30%	30%
Gross revenues.....	NA	NA
Total employees....	4	4

Year founded: 1978.
Subsidiaries: RBI Brokerage of Florida, Miami.
Principal officers: Paul Wolf, president.
Specialties: Life, health, stop-loss, HMOs, multiple option programs for HMOs and PPOs.
Licensed in: New York, New Jersey, Florida.

RFC Intermediaries Inc.

1117 Perimeter Center W., Suite N 500, Atlanta, Ga. 30338; 404-392-9541

	1985	1984
Premium volume...	$268,411,762	$255,122,239
% Treaty.....	44.6%	53.9%
% Facultative.	55.4%	46.1%
Gross revenues.....	$17,223,867	$13,516,582
Total employees....	218	234
Treaty.....	33	45
Facultative.....	130	136

Year founded: 1972.
Parent company: The St. Paul Cos. Inc.
Branch offices: Chicago; Dallas; Hartford, Conn.; Los Angeles; New York; Philadelphia; San Francisco; Minneapolis.
Acquisitions: Tailored Awards, Minneapolis, 1985.
Principal officers: David Cargile, president/chief executive officer; Pavittar Safir and Ronald Smith, executive vps.
Licensed in: New York.

R/I Inc.

2855 S. Church St., Burlington, N.C. 27215; 919-584-0166

	1985	1984
Premium volume...	$96,641,836	$57,218,425
% Treaty.....	99.7%	99.6%
% Facultative.	0.3%	0.4%
Gross revenues.....	NA	NA
Total employees....	28	25
Treaty.....	27	23
Facultative.....	1	2

Year founded: 1972.
Branch offices: New York.
Principal officers: Richard W. Edens, chairman; Jay Johnson, president; Robert E. Hykes and Neill A. Currie, senior vps; Bobby W. Bristow, Ted Johnson and Charles G. Edens, vps.
Licensed in: New York.

Continued on facing page

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Rearick & Lenihan Inc.

5339 Alpha Road, Suite 100, P.O. Box 400073, Dallas, Texas 75240; 214-233-0506

	1985	1984
Premium volume...	$1,200,000	$1,100,000
% Treaty.....	80%	80%
% Facultative.	20%	20%
Gross revenues.....	$60,000	$55,000
Total employees....	45	40

Year founded: 1976.
Branch offices: Houston, Los Angeles, New York, Atlanta.
Principal officers: Philip A. Rearick, president; Eileen L. Rearick, secretary/treasurer; Thomas J. Lenihan III, vp; Charles E. Bell, president-Rearick & Lenihan of Georgia Inc.
Specialties: Accidental death and dismemberment.
Licensed in: Texas.

Reinsurance Agency Inc.

111 E. Wacker Drive, Suite 2930, Chicago, Ill. 60601; 312-329-1484

	1985	1984
Premium volume...	NA	NA
% Treaty.....	75%	85%
% Facultative.	25%	15%
Gross revenues.....	NA	NA
Total employees....	60	53
Treaty.....	45	35
Facultative.....	15	18

Year founded: 1945.
Principal officers: Charles A. Pollock, chairman; Paul R. Davies, president; J. Michael Garrity and John Charles, senior vps.
Licensed in: Illinois.

Reinsurance Brokers Co.

2325 Severn Ave., Metairie, La. 70047; 504-837-4646

	1985	1984
Premium volume...	$4,800,000	$4,000,000
% Facultative.	100%	100%
Gross revenues.....	NA	NA
Total employees....	4	5
Facultative.....	4	5

Year founded: 1982.
Parent company: Sherar, Cook & Gardner Inc.
Principal officers: J. William Sherar, Norman C. Cook, James A. Gardner and William G. Sherar.
Specialties: Marine, oil, construction and international risks.
Licensed in: Louisiana.

S

Saturn Intermediaries Ltd.

33 N. Dearborn St., Suite 2211, Chicago, Ill. 60602; 312-236-4303

	1985	1984
Premium volume...	$50,600,000	$43,325,000
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	7	7
Treaty.....	7	7

Year founded: 1985.
Principal officers: John J. Norton, president; R. Charlene Pedersen, executive vp.
Specialties: Domestic and international property, casualty and crop reinsurance.
Licensed in: New York.

John D. Sayer & Co. Inc.

P.O. Box 326, Pennington, N.J. 08534; 609-737-1391

	1985	1984
Premium volume...	$30,000,000	$20,000,000
% Treaty.....	100%	100%
Gross revenues.....	$1,200,000	$1,100,000
Total employees....	10	6
Treaty.....	10	6

Year founded: 1979.
Principal officers: John D. Sayer, president; John S. Yeuroukis, executive vp; Robert F. McGarry and Douglas C. Lawrence, vps.
Specialties: Property, casualty, surety.
Licensed in: New York.

Seibels, Bruce & Co.-Reinsurance Division

1501 Lady St., Columbia, S.C. 29202; 803-748-2000

	1985	1984
Premium volume...	$27,828,378	$850,724
% Treaty.....	100%	100%
Gross revenues.....	$31,445,163	$671,503
Total employees....	11	12
Treaty.....	11	12

Year founded: 1869.
Parent company: South Carolina Insurance Co.
Principal officers: Sterling E. Beale, chairman/chief executive officer/treasurer; Jack S. Hupp, president/chief operating officer.
Specialties: Proportional and non-proportional property.
Licensed in: New York.

Self Insurers Agency

7820 S. Holiday Drive, Suite 210, Sarasota, Fla. 33581; 813-923-1002

	1985	1984
Premium volume...	NA	NA
% Treaty.....	70%	NA
% Facultative.	30%	NA
Gross revenues.....	NA	NA
Total employees....	3	NA
Treaty.....	2	NA
Facultative.....	1	NA

Year founded: 1986.

Continued on next page

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Continued from preceding page

Parent company: Self Insurers Services & Underwriters Inc.

Principal officers: Thomas Palmer, president.

Specialties: Workers compensation.

Licensed in: Florida.

Sellon Associates Inc.

New King St., P.O. Box 800, Purchase, N.Y. 10577; 914-428-3600

	1985	1984
Premium volume...	$220,000,000	$180,000,000
% Treaty.....	96%	95%
% Facultative.	4%	5%
Gross revenues.....	NA	NA
Total employees....	31	28
Treaty.....	30	27
Facultative.....	1	1

Year founded: 1970.

Principal officers: Peter J. Sellon, president; Geoffrey C. Spencer, executive vp; Robert E. Kenyon III and Guy Ward Hill, senior vps; Peter J. Allatt and Peter C. Brown Jr., vps; Barbara J. English, Thomas J. Murphy and Christopher J. Sellon, assistant vps; Robert H. Betz, treasurer; Marie Villardi, secretary.

Specialties: Excess and catastrophe, special casualty, financial guarantee.

Licensed in: New York.

Sentinel Reinsurance Intermediaries Ltd.

1925 Century Park E., 10th Floor, Los Angeles, Calif. 90067; 213-557-1469

	1985	1984
Premium volume...	$35,470,000	$22,675,000
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	7	5
Treaty.....	7	5

Year founded: 1984.

Parent company: The Sentinel Group of Cos.

Subsidiaries: Sentinel Reinsurance Intermediaries International, Le Mans, France.

Principal officers: Ron Gordon, president; Thelma J. Sullock, vp.

Specialties: Credit life, disability, acquisitions by block, annuities.

G.J. Sullivan Co. Reinsurance

800 W. Sixth St., Los Angeles, Calif. 90017; 213-626-1000

	1985	1984
Premium volume...	$140,000,000	$3,750,000
% Treaty.....	100%	100%
Gross revenues.....	$5,500,000	$375,000
Total employees....	22	8
Treaty.....	22	8

Year founded: 1980.

Parent company: Gerald J. Sullivan & Associates Inc.

Branch offices: Seattle.

Principal officers: Gerald J. Sullivan, chairman; John F. Sullivan Jr., president; Briane G. Eovberg, Julius Friedman, Howard Garnett, Dennis Perler and Paul Wayne, vps; R. Daniel DePalma, vp-administration.

Specialties: Medical malpractice.

Licensed in: New York.

Sullivan Payne Co.

1501 Fourth Ave., Suite 1400, Seattle, Wash. 98101; 206-223-1200

	1985	1984
Premium volume...	**	**
% Treaty.....	85%	85%
% Facultative.	15%	15%
Gross revenues.....	**	**
Total employees....	400	338

**See page 3 for estimates.

Year founded: 1928.

Parent company: Sedgwick Group P.L.C.

Branch offices: New York; Philadelphia; Los Angeles; Dallas; Des Moines, Iowa.

Subsidiaries: John F. Sullivan Co. of Canada Ltd., Toronto.

Mergers: E.W. Payne and John F. Sullivan Co. merged July 1 to form Sullivan Payne Co.

Principal officers: Roger Espe, president; D. John Jolly, Edwin C. Tollefson, W. Brian Smith, Emmett J. Henry, Lewis Hale, John H. Burridge and Michael Wybar, senior vps; Barbara Bufkin and James Grieser, vps; Robert C. Holmes, president-John F. Sullivan Co. of Canada Ltd.

Licensed in: New York.

Summit Intermediaries Inc.

354 Eisenhower Parkway, Livingston, N.J. 07039; 201-740-1700

	1985	1984
Premium volume...	NA	NA
% Treaty.....	56%	51%
% Facultative.	44%	49%
Gross revenues.....	NA	NA
Total employees....	15	9
Treaty.....	4	2
Facultative.....	11	7

Year founded: 1984.

Parent company: C. Rowbotham & Sons.

Branch offices: New York, Atlanta.

Principal officers: Robert C. Lonsdale, president; Richard C. Standing, executive vp; James G. Cerreta, Joseph R. Curcio and Richard D. Stary, senior vps.

Specialties: Associations; placements for new companies.

Licensed in: New York.

Taylor Reinsurance Intermediaries Inc.

One Union Square, 600 University St., Suite 3122, Seattle, Wash. 98101; 206-343-5541

	1985	1984
Premium volume...	NA	NA
% Treaty.....	NA	NA
% Facultative.	NA	NA
Gross revenues.....	NA	NA
Total employees....	NA	NA

Year founded: 1986.

Principal officers: W.E. Taylor, chairman; Jeffrey L. Day and George J. Biehl Jr., vps.

Totsch Enterprises Inc.

310 S. Michigan Ave., Suite 2220, Chicago, Ill. 60604; 312-663-1722

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	99%
% Facultative.	0%	1%
Gross revenues.....	NA	NA
Total employees....	7	7
Treaty.....	7	6
Facultative.....	0	1

Year founded: 1978.

Principal officers: Marvin D. Totsch, president; William E. Totsch, vp; James M. Totsch and Robert L. Totsch, assistant vps; Mary Ellen Totsch, secretary/treasurer.

Specialties: Crop hail, property pro-rata, excess treaty.

Towers, Perrin, Forster & Crosby Inc.

11 Penn Center, 1835 Market St., Philadelphia, Pa. 19103-2965; 215-963-7700

	1985	1984
Premium volume...	**	**
% Treaty.....	80%	80%
% Facultative.	20%	20%
Gross revenues.....	**	**
Total employees....	266	235
Treaty.....	191	166
Facultative.....	75	69

**See page 3 for estimates.

Year founded: 1934.

Branch offices: Hartford and Stamford, Conn.; New York; San Francisco.

Principal officers: Bernard D. Berry, vice chairman/chief executive-reinsurance; Mariano Leo, executive vp; Christopher R. Day, vp/marketing manager; Robert F. Jones, vp-facultative operations.

Licensed in: Pennsylvania, New York.

Continued on facing page

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Continued from facing page

Tretis Group Inc.

1 Sansome St., San Francisco, Calif. 94104; 415-421-3555

	1985*	1984
Premium volume...	NA	NA
% Treaty.....	100%	NA
Gross revenues.....	NA	NA
Total employees....	14	NA
Treaty.....	14	NA

*1986 estimates.

Year founded: 1986.
Principal officers: Robert Cohen and Robert N. Tremelling II.
Licensed in: New York.

V

D.W. Van Dyke & Co. Inc.

341 Madison Ave., New York, N.Y. 10017; 212-557-0005

	1985	1984
Premium volume...	NA	NA
% Treaty.....	100%	100%
Gross revenues.....	NA	NA
Total employees....	12	6
Treaty.....	12	6

Year founded: 1978.
Subsidiaries: Medical Risk Managers Inc.
Principal officers: Donald W. Van Dyke II, president; Donald K. Drolich, executive vp/secretary; Edward W. Carney Jr., vp.
Specialties: Life, accident and health.
Licensed in: New York.

W

Richard Whiley Inc.

110 William St., New York, N.Y. 10038; 212-732-1360

	1985	1984
Premium volume...	$85,000,000	$60,000,000
% Treaty.....	70%	80%
% Facultative.	30%	20%
Gross revenues.....	NA	NA
Total employees....	36	31
Treaty.....	25	25
Facultative.....	11	6

Year founded: 1979.

Parent company: Xerox Corp.

Principal officers: D. Jay Carbine, chairman/president/chief executive officer; Drew Beauchamp, senior vp-treaty; William P. Cullen, vp-facultative.

Licensed in: New York.

Willcox Inc. Reinsurance Intermediaries

130 John St., New York, N.Y. 10038; 212-952-0650

	1985	1984
Premium volume...	**	**
% Treaty.....	98%	100%
% Facultative.	2%	0%
Gross revenues.....	**	**
Total employees....	125	115
Treaty.....	123	113
Facultative.....	2	2

**See page 3 for estimates.

Year founded: 1898.

Parent company: Johnson & Higgins and Willis Faber P.L.C.
Branch offices: Boston.

Subsidiaries: Willis Faber & Willcox Ltd., London.

Principal officers: Willis King, chairman; Robert O'Leary, chief operating officer; Richard Stone, president; E. (Barney) Barber and Thomas Hancock, senior vps.

Specialties: International, marine, aviation, property, casualty, financial.

Licensed in: New York.

Z

Zeman Krings Inc.

111 John St., New York, N.Y. 10038; 212-608-7755

	1985	1984
Premium volume...	$26,500,000	$7,800,000
% Treaty.....	95%	95%
% Facultative.	5%	5%
Gross revenues.....	NA	NA
Total employees....	5	3
Treaty.....	5	3

Year founded: 1983.
Affiliated companies: Herbert Watson Insurance Services, Rancho Mirage, Calif.; Herbert Watson Insurance Brokers Ltd., London.

Principal officers: Kenneth C. Krings, president; Roy C. Krings and George Krings, vps; Meenu Bhatia, assistant vp.

Specialties: Credit life, professional liability, marine, underwriting appointment.
Licensed in: New York.

George G. Zimmerman & Co. Inc.

5 Cold Hill Road S., Mendham, N.J. 07945; 201-543-3250

	1985	1984
Premium volume...	$50,000,000	$43,000,000
% Treaty.....	98%	98%
% Facultative.	2%	2%
Gross revenues.....	$1,600,000	$1,700,000
Total employees....	10	8
Treaty.....	10	8

Year founded: 1980.
Branch offices: Upland, Calif.
Subsidiaries: U.S. Cap Insurance Co. Ltd., Tortola, British Virgin Islands.

Principal officers: George G. Zimmerman, president/chairman; Eugene J. Schiller, senior vp; Charles J. Sharkey, vp; James M. Daly, vp/comptroller; Barbara Bertolini, assistant vp.

Specialties: Life, accident and health.
Licensed in: New York. ■

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Sentinel Reinsurance Intermediaries Ltd.
G.J. Sullivan Co. Reinsurance
Sullivan Payne Co.

Rancho Mirage
Herbert Watson Insurance Services (Zeman Krings Inc.)

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Enan & Co.

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Cravens & Co. Special Insurance Services
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Group Resources Inc.
Frank B. Hall (Reinsurance Holdings) Inc.
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Tretis Group Inc.

Upland
George G. Zimmerman & Co. Inc.

Walnut Creek
Intere Intermediaries Inc.

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Amberco
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Crump Re Inc.
Independence Intermediaries Inc.
RFC Intermediaries Inc.
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Stamford
W.O. Hart & Co. Inc.
Magnant Re Intermediaries Inc.
Peglar & Associates Inc.
Towers, Perrin, Forster & Crosby Inc.

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Wilmington
Professional Reinsurance Organization (Group Resources Inc.)

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Guy Carpenter & Co. Inc.
Frank B. Hall (Reinsurance) Holdings Inc.

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MacDuff America Inc.

Miami
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Ambulance firms form coverage vehicle

By STEVE TARAVELLA

PHOENIX, Ariz.—Private ambulance services have joined the list of businesses that are doing for themselves what the commercial market couldn't do for them.

Ambulance companies in California provided the seed money to capitalize TriStar Insurance Co., an investor-owned insurer for ambulance operators and businesses that rent home health care medical supplies.

The ambulance companies use TriStar to insure their general liability, commercial auto liability, auto physical damage and medical technicians' professional liability exposures.

The medical supply firms insure their product liability exposures through TriStar.

Arizona-domiciledTriStar, which opened in June, has capital and surplus of $3 million and writes in Arizona, California, Indiana and Louisiana, according to S. David Ward.

Mr. Ward recently was named the company's president and chief executive officer. He previously was deputy director of the Arizona Insurance Department.

TriStar, which opened up in June, has capital and surplus of $3 million and writes in Arizona, California, Indiana and Louisiana, says S. David Ward.

The company soon may be licensed to do business in Texas, added Mr. Ward.

Not all of TriStar's policyholders are investors. And, not all investors are guaranteed coverage. They first must pass a loss-control investigation, Mr. Ward says.

The insurer offers claims-made coverage with limits of $300,000, $500,000 and $1 million per occurrence and aggregate.

TriStar retains the first $300,000 of risk and reinsures the rest with Buffalo Reinsurance Co. in Woodland Hills, Calif., on a treaty basis and with General Reinsurance Corp. on a facultative basis, Mr. Ward says.

Most of the auto physical damage policies come with a $2,500 deductible.

The insurer so far has issued 75 policies, most of which were package policies written for the ambulance operators, but about 14 of which were product liability policies for the medical supply businesses.

The company was formed after previous commercial insurers writing the coverages withdrew from the market, leaving Phoenix managing general agency Gregg-Miller Insurance Agency without a market for private ambulance companies.

Gregg-Miller now underwrites the policies for TriStar, Mr. Ward says.

TriStar's ambulance operators join businesses in numerous other industries—from banking to railroads and from chemical manufacturing to electric power plants—that have banded together to generate their own insurance capacity in the current tight commercial insurance marketplace. ■

Tax changes alter banks' captive plan

By STEVE TARAVELLA

CHICAGO—Pending changes in U.S. tax law have caused at least one association to abandon plans to set up an offshore captive insurance company in favor of setting up an onshore captive.

The association, the U.S. League of Savings Institutions, is distributing a prospectus for a limited public stock offering in Savings Institutions Insurance Co., an admitted Illinois reinsurer with a Delaware-domiciled holding company.

In mid-August, the League was within 10 days of filing papers to incorporate its venture in Bermuda when proposed changes in U.S. tax laws prompted organizers to reconsider, explained Clark Sutton, president of U.S. League Services, the League's insurance arm.

The League concluded that the project was still feasible but that a stateside captive would fare better under the tax law than an offshore captive would.

"We put on the brakes and reversed direction in remarkably short order," Mr. Sutton said, attributing the quick turn-around to "very intensive staff work."

By establishing the captive onshore, stockholders may avoid paying tax on income produced by the captive if that income is funneled back into the company to build surplus, Mr. Sutton reasons.

A provision in the Tax Reform Act of 1986 that will require shareholders in multi-owner offshore companies to pay taxes on current captive income has caused concern for many association captive owners (*BI*, Aug. 25; July 28).

The new captive plans to raise $30 million in capital through the stock offering and through investments from the League and member banks.

Member banks will be asked to invest $15,000 to $100,000 in the captive. In a survey last March, about 1,500 of the League's 3,400 members expressed interest in taking part in the project (*BI*, April 28).

The League itself will contribute up to $3 million to capitalize the captive.

If the captive is successful in raising the capital, it would offer its members bankers blanket bonds of up to $1 million and primary directors and officers liability coverage with limits of up to $1 million, according to Mr. Sutton.

Once it has raised its capital, the League will seek support from commercial reinsurers, Mr. Sutton noted.

The captive, which was to have been managed by Rollins Burdick Hunter Co. (Bermuda) Ltd., now will be managed by RBH in Chicago, he said.

And, according to the original plans, Virginia Surety Co. will front the policies and Chicago managing general agency Scarborough will handle underwriting. Both are RBH affiliates.

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For more information, write or call Gerard T. Morda, VP, Irving Trust, One Wall Street, New York, NY 10015. Telephone: 212/635-8802; Telex: ITT 420268.

For companies located in the United Kingdom call Richard J. Lewy, VP, in our London office. Telephone: 1-626-3210; Telex: (851) 883265/6.

For companies located in Continental Europe call Yoram Matalon, Assistant VP, in our Frankfurt office. Telephone: 49-69 71410; Telex: (841) 416805.

For companies located in Asia call Mitsuru Takeuchi, Assistant VP, in our Tokyo office. Telephone: 81-3 595-1131; Telex: (781) 2226231.

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NOV. 12-14. Back Injury Prevention course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $275. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 12-14. Society of Insurance Research Annual Conference and Business Meeting: Insurance—Keystone of the Future in Cambridge, Mass.; $275 for SIR members; $375 for non-members. Society of Insurance Research, P.O. Box 933, Appleton, Wis. 54912.

NOV. 13. Self-Insurance and Other Risk Financing Techniques workshop in Tampa, Fla., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. **Also Dec. 12** in Dallas. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

NOV. 13. Defined Contribution Aspects of the Tax Reform Act of 1986 seminar in Atlanta, sponsored by Kwasha Lipton; $100. **Also Nov. 18** in Detroit, **Nov. 20** in Hasbrouck Heights, N.J. Barbara Hupert, Kwasha Lipton, P.O. Box 1400, Fort Lee, N.J. 07024; 201-592-1300, Ext. 754.

NOV. 13. Automating Risk Management for Profit and Survival seminar in Cleveland, sponsored by SOFTEC Inc.; free. **Also Nov. 18** in Los Angeles; and **Nov. 20** in San Francisco. Jack Bergers, SOFTEC Inc., 33063 Schoolcraft Road, Livonia, Mich. 48150; 313-261-4440.

NOV. 13. ISO Commercial General Liability Rating workshop in Philadelphia, sponsored by the Insurance Society of Philadelphia; $65 for ISP members; $75 for non-members. Insurance Society of Philadelphia, Public Ledger Building, Philadelphia, Pa. 19106.

NOV. 13. Workers Compensation in Illinois conference in Springfield, Ill., sponsored by the Illinois State Chamber of Commerce Center for Business Management; $90 for ISCC members; $135 for non-members. **Also Nov. 20** in Chicago. Center for Business Management, 20 N. Wacker Drive, Chicago, Ill. 60606; 312-372-7373.

NOV. 13-14. Waste Industry Insurance Forum: Alternate Approaches for Liability Insurance in Hamilton, Bermuda, sponsored by Ardell Insurance Co. Ltd.; $525; $450 for additional registrant from the same organization. Ardell Insurance Co. Ltd., P.O. Box 507, Buffalo, N.Y. 14205-0507.

NOV. 13-14. How to Audit and Check Insurance Policy Costs and Coverage course in Dallas, sponsored by the American Management Assn.; $675 for AMA members; $775 for non-members. **Also Nov. 17-18** in Bloomington, Minn.; **Nov. 20-21** in Boston; **Nov. 24-25** in Parsippany, N.J. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

NOV. 13-14. Sixth Annual Occupational Health Nursing Principles and Certification Review course in Orlando, Fla., sponsored by the Occupational Health Consulting division of Fireman's Fund Risk Management Services Inc.; $275. **Also Dec. 4-5** in San Rafael, Calif.; **Jan.9-10** in Newark, N.J.; **Feb. 19-20** in Schaumburg, Ill.; **March 5-6** in Dallas; **March 19-20** in Philadelphia; **April 2-3** in Torrance, Calif. Annette B. Haag, Occupational Health Consulting, Fireman's Fund Risk Management Services Inc., P.O. Box 3890, San Rafael, Calif. 94911; 415-492-6646.

NOV. 14. Loss Control & Safety workshop in Tampa, Fla., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

NOV. 14. 1986 Chartered Property & Casualty Underwriters Seminar and Conferment in Chicago, sponsored by the Chicago Chapter of the Society of CPCU; $35. Tim Saunders 312-443-4000.

NOV. 14. 31st Annual All Industry Day and Chartered Property & Casualty Underwriters Luncheon in Denver, sponsored by the CPCU Colorado Chapter; $35. Mary Roth, State Farm Fire & Casualty Co., 3001 Eighth Ave., Greeley, Colo. 80631; 303-351-5836.

NOV. 14-19. Thirty-second Annual Employee Benefits Conference in Las Vegas, Nev., sponsored by the International Foundation of Employee Benefit Plans; $450; $150 for pre-conference institutes. Members only. International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

NOV. 17. The Risk-Bearing Phenomenon—Alternatives to Traditional Insurance workshop in Washington, sponsored by the Society of Chartered Property Casualty Underwriters; $125 for CPCU members; $140 for non-members. **Also Nov. 19** in Los Angeles; **Nov. 21** in Seattle. Mari Jennings, Society of CPCU, Kahler Hall, 720 Providence Road, CB #9, Malvern, Pa. 19355; 215-251-2741.

NOV. 17-18. Making the PPO Choice: A Purchaser's Guide to Assessing and Implementing the PPO Product conference in San Diego, sponsored by the American Assn. of Preferred Provider Organizations; $550 for general registration; $500 each for multiple registrants from same organization; American Assn. of Preferred Provider Organizations, 101½ S. Union St., Alexandria, Va. 22314; 703-683-4918.

NOV. 17-19. Health Care Cost Containment Workshops in Dallas, sponsored by Health Research Institute; $495 for advanced health care cost-containment sessions; $250 for health improvement/wellness sessions. **Also Dec. 8-12** in Chicago. Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

NOV. 18-19. Second Annual Conference and Technical Briefing on Captives and International Insurance Programmes in London, sponsored by the Risk & Insurance Research Group Ltd.; £295 (approx. $424). Risk & Insurance Research Group Ltd., 4 Henrietta St., Covent Garden, London WC2E 8PS; 01-836-0614.

NOV. 18-20. Training Methods and Techniques in Occupational Safety and Health course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $420. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 19. Chicago Chapter of Women in Employee Benefits Breakfast in Chicago; $15 for

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Continued from previous page

WEB members; $20 for non-members. Sophia Chrusciel, McDermott, Will & Emery, 111 W. Monroe St., Chicago, Ill. 60603.

NOV. 19. The HMO/PPO Shoot Out seminar in Chicago, sponsored by the Chicago Chapter of the International Society of Certified Employee Benefit Specialists; $75 for members of the Chicago ISCEBS chapter and members of the Midwest Business Group on Health; $95 for all others. Ted Carlson, Chicago Chapter, International Society of Certified Employee Benefit Specialists, P.O. Box 600, Chicago, Ill. 60690; 312-938-7162.

NOV. 19-20. Pensions, Tax Reform and You, the Provider seminar in Hartford, Conn., sponsored by Life Office Management Assn.; $295 for LOMA members; $445 for non-members. Anne Heape, LOMA, 5770 Powers Ferry Road, Atlanta, Ga. 30327; 404-951-1770.

NOV. 19-22. Southern Pension Conference's Seventeenth Annual Educational Conference in Sea Island, Ga.; $250 for members; $350 for non-members. Southern Pension Conference, P.O. Box 47309, Atlanta, Ga. 30362; 404-458-

NOV. 20-21. Damages, New Settlement Techniques and Tax Consequences conference in New York, sponsored by the American Bar Assn. Division for Professional Education, Section of Litigation; $375 for ABA members; $350 for ABA Litigation Section members; $250 for members of government; $400 for non-members. **Also Dec. 4-5** in San Francisco. American Bar Assn., Division for Professional Education, Dept. 441/442, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-6200.

NOV. 20-21. Letters of Credit in Reinsurance seminar in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrants from the same organization. Executive Enterprises Inc., 22 W. 21st St., New York. N.Y. 10010-6904; 800-223-0787; 800-831-8333 in New York.

NOV. 21. Sixth Annual Economic Issues in Workers Compensation in Philadelphia, sponsored by the National Council on Compensation Insurance; $60 for NCCI members; $85 for non-members. Michelle Smith, National Council on Compensation Insurance, 1 Penn Plaza, New York, N.Y. 10119; 212-560-1026.

NOV. 21. Workers Compensation: Your Safety and Health Balance Sheet course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $150. **Also Nov. 22.** University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 24-25. Second Annual Symposium on Workers Compensation and Occupational Safety and Health in Hartford, Conn., sponsored by the Division of Worker Education of Connecticut Workers Compensation Commission; $34 for Connecticut residents; $65 for out-of-state attendees. State of Connecticut-DWE Symposium, Division of Worker Education, 1890 Dixwell Ave., Hamden, Conn. 06514.

NOV. 24-25. Risk Financing Alternatives: Coping With the Crisis in Coverage course in Chicago, sponsored by the American Management Assn.; $695 for AMA members; $800 for non-members. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

NOV. 30-DEC. 3. Corporate Health Care Cost Management Conference in Hollywood, Fla., sponsored by the International Foundation of Employee Benefit Plans; $530 for members; $605 for non-members. International Foundation of Employee Benefit Plans, Registration department, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

DEC. 1. Commercial Lines Simplification Program seminar in New York, sponsored by the Insurance Services Office Inc.; $350 for members of ISO-member companies; $500 for all others. Maureen Karon, Insurance Services Office Inc., 160 Water St., New York, N.Y. 10038; 212-487-4722.

DEC. 1-5. Loss Control Management course in Atlanta, sponsored by the International Loss Control Institute; $695. International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; 800-554-6001; 404-466-2208.

DEC. 3-4. Basics of Captives and Association Captives: Answer to the Insurance Crisis? seminar in Miami, sponsored by Tillinghast, Nelson & Warren, a division of Towers, Perrin, Forster & Crosby; $50 for Basics of Captives (Dec. 3); $250 for Association Captives (Dec. 4). Conference Director, Tillinghast, a division of TPF&C, 720 Post Road, Darien, Conn. 06820; 203-655-9791.

DEC. 3-4. Computerized Plan Administration institute in Hollywood, Fla., sponsored by the International Foundation of Employee Benefit Plans; $450 for IFEBP members; $525 for non-members. International Foundation of Employee Benefit Plans, Registration department, 18700 Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

DEC. 3-5. Risk Management in Managed Health Care Systems conference in Washington, sponsored by the Group Health Foundation, an educational affiliate of the Group Health Assn. of America Inc.; $345 for GHAA members, $420 for non-members. Group Health Foundation, Risk Management in Managed Health Care Systems, 1129 20th St. N.W., Washington, D.C. 20036.

DEC. 8-9. The Impact of Environmental Regulations on Business Transactions: Real Property Transfers and Mergers and Acquisitions seminar in New York, sponsored by the Practising Law Institute; $390; $40 for course handbook only. **Also Jan. 26-27** in San Francisco. Practising Law Institute, Department 105-6D, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700, ext. 286.

DEC. 9. Forum on the 1986 Tax Reform Act in New York, sponsored by the International Foundation of Employee Benefit Plans; $150 for IFEBP members; $175 for non-members. **Also Dec. 10** in Chicago, **Dec. 11** in San Francisco. International Foundation of Employee Benefit Plans, Registration department, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

DEC. 10. Personal Liability Risk Management workshop in Georgetown, Del., sponsored by the Insurance Society of Philadelphia; $105 for members; $120 for non-members. **Also Dec. 10** in Philadelphia. Insurance Society of Philadelphia, 737 Public Ledger Building, Philadelphia, Pa. 19106; 215-627-5306.

DEC. 10. Assessing Dramshop/Liquor Liability Risk seminar in Waltham, Mass., sponsored by the Responsible Hospitality Institute; $85. Responsible Hospitality Institute, 11 Pearl St., Suite 226, Springfield, Mass. 01105; 413-732-7780.

DEC. 11. Employee Benefits workshop in Dallas, sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

DEC. 11-12. Insurance and Reinsurance Company Disputes: Arbitration vs. Litigation seminar in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrants from the same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 in New York.

DEC. 15-16. Marketing Hard-To-Place Accounts workshop in Chicago, sponsored by Crittenden Research Inc.; $395. Crittenden Research Inc., P.O. Box 1150, Novato, Calif. 94948; 415-382-2440.

DEC. 19. Managing and Controlling Asbestos Contamination/Exposure course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $150. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

JAN. 11-13. Tenth Annual HMO Policy Conference in Washington, sponsored by the Group Health Foundation, an educational affiliate of the Group Health Assn. of America Inc.; before Dec. 11: $295 for GHA members, $350 for non-members; after Dec. 11: $345 for GHAA members, $400 for non-members. Group Health Foundation, Tenth Annual HMO Policy Conference, 1129 20th St. N.W., Washington, D.C. 20036.

JAN. 26-30. Occupational Health Nursing: Basic Theory Update course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $550. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

FEB. 9-10. Developing and Managing a Medical Surveillance Program course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $250. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

FEB. 11-13. Audio-Visual Media for Safety and Health: Developing and Producing Inexpensive Programs course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $420. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

FEB. 14. Promoting Safety and Health in Today's Economy course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $150. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

FEB. 23-27. Hazardous Materials: Handling and Disposal course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $700. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

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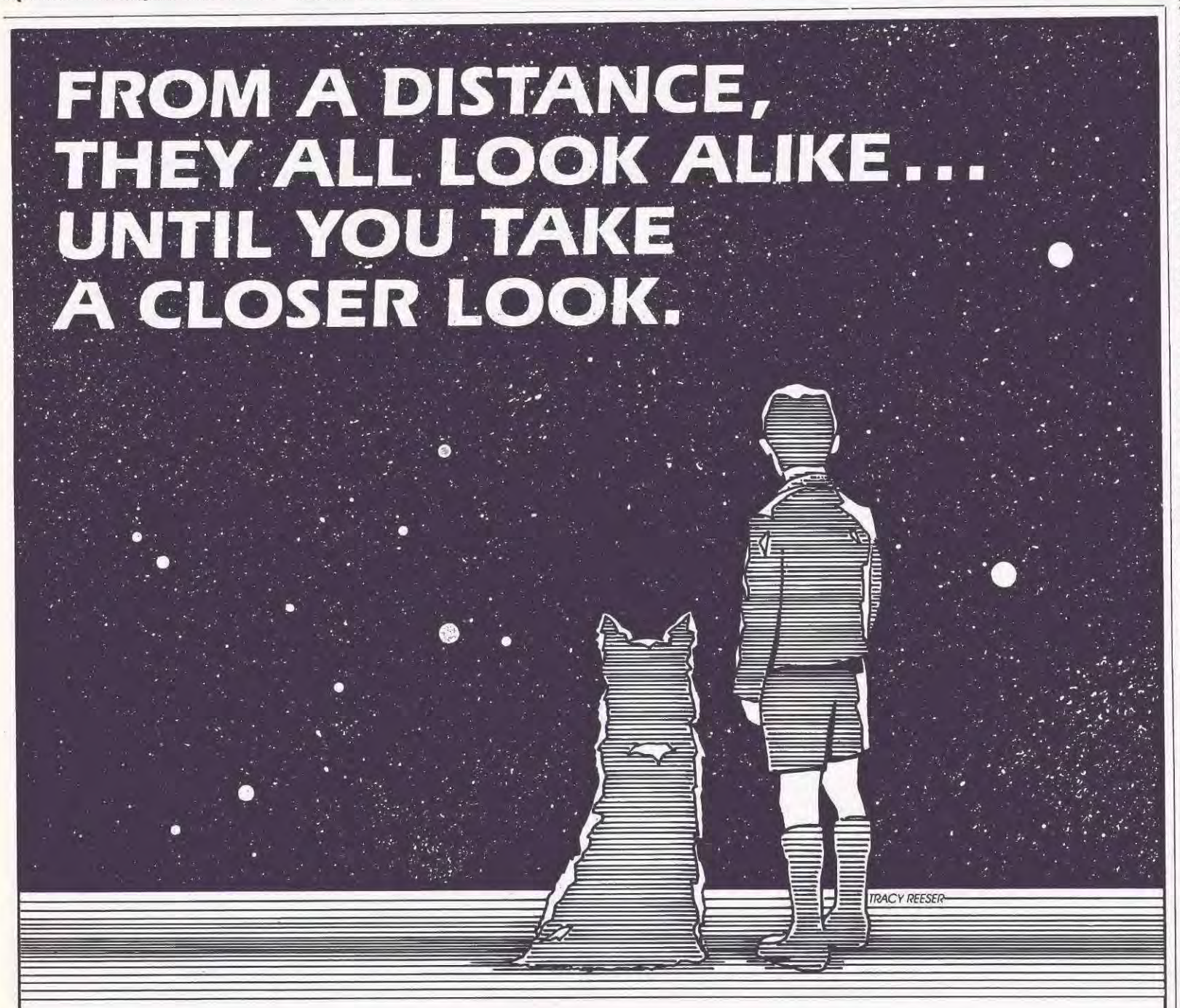
FROM A DISTANCE, THEY ALL LOOK ALIKE... UNTIL YOU TAKE A CLOSER LOOK.



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Urbaine Life...Take A Closer Look At Us.

Home unit offers product liability cover

Primary product liability coverage is now available on a claims-made basis from The Home Insurance Co. of Indiana in Carmel, Ind., a unit of the Home Insurance Co.

Coverage will be offered with standard limits of $500,000 per claim and $500,000 aggregate with a minimum premium of $75,000.

Defense costs are included within the aggregate, and a deductible or self-insured retention will be applied in most circumstances, according to the insurer. The deductibles or SIRs vary according to the risk.

Occurrence policies will be considered for risks meeting certain standards.

"We're considering a wide range of risks in nearly every class—from swimming pool manufacturers to producers of valves," said Charles Abruzzo, vp of The Home.

"What differentiates us from other carriers is that we won't reject a risk simply because of the nature of the business," he said.

"If a company is in good financial condition, with established and effective loss-control programs, we'll give it serious consideration."

The Home Insurance Co., headquartered in New York, writes property/casualty insurance throughout the United States and in certain foreign countries.

For more information, contact Charles Abruzzo, Vp, The Home Insurance Co., 59 Maiden Lane, New York, N.Y. 10038; 212-530-7110.

Small company PPO

A new program that allows small businesses to provide their employees with health care coverage comparable to that of larger employee groups has been introduced by San Diego-based Coordinated HealthCare Systems and the Consolidated Group Trust of Framingham, Mass.

The program, called Anchor Plus, gives California employer groups with fewer than 15 members access to a statewide health care network of 121 multispecialty group sites, about 4,000 physicians and 81 hospitals. Anchor Plus also provides utilization review, managed care services and claims administration, said Douglas Gwilliam, vp-marketing of Coordinated HealthCare Systems.

The program also reduces paperwork, said Raymond E. Hughes, president and chief executive officer of Coordinated HealthCare Systems. "If between one and four employees are enrolled, they need to answer only four simple health-related questions," he explained. "If five or more employees are enrolled in Anchor Plus, they answer no questions at all."

The cost of the program to the employer varies based on a variety of factors, such as the number of participants and the level of coverage, Mr. Gwilliam said.

The health benefits are underwritten by Hartford Life & Accident Insurance Co. The plan pays 100% of the cost of services by providers within the Coordinated HealthCare Systems network after a $100 deductible, with $5 copayments for office visits, while services performed by non-network providers are covered at 80%, Mr. Gwilliam added.

Anchor Plus is the newest member of the Coordinated HealthCare Systems health plan family, which includes preferred provider organizations, exclusive provider and standard indemnity arrangements.

For more information, contact Douglas Gwilliam, vp-marketing, at Coordinated HealthCare Systems, 619-259-9711.

products & services

Municipal risk guide

A.M. Best Co. has published Best's Municipal Underwriting Guide, designed specifically to help municipal administrators and other public officials identify and evaluate their greatest exposures.

The 370-page guide details insurance risks in 58 specific operations and services common to most municipalities.

General categories include emergency services, public works, health and education, public contractors, and others.

The Municipal Underwriting Guide is a series of excerpts from Best's Underwriting Guide, which provides insurance underwriters, agents and brokers in the property/casualty industry with the information necessary to distinguish good insurance risks from less-desirable ones.

By making the same information available to municipal officials and administrators, Best's Municipal Underwriting Guide provides local government leaders with an understanding of the insurance process as it affects their community, enabling them to pinpoint potential hazards, assess the risks in new programs and services and better prepare for insurance negotiations, according to the publisher.

The guide, which comes in a Loose-leaf format, is $65. For further information or to order, contact A.M. Best Co., Ambest Road, Oldwick, N.J. 08858; 201-439-2200.

Group universal life

Mutual of Omaha's group operation has introduced a new group universal life plan for groups of 500 or more.

The plan is issued through life insurance affiliate, United of Omaha.

LifeAdvantage offers employees the flexibility to buy term insurance at low group rates and invest additional contribution amounts, explained a company spokesman.

Under the plan, cash accumulation amounts earn interest at market-sensitive rates, usually based on the current bank mortgage loan and eight-year bond rates.

The interest is guaranteed never to fall below 4%, the spokesman said.

Because employees pay their premiums directly to United of Omaha, they can take their policies with them when they leave their jobs, the spokesman noted. Conversion charges are negotiated on an individual employer contract basis, he added.

Death benefits usually are based on multiples of salary, with the maximum benefit varying by contract. Premiums are rated on a group basis.

Employees have the option of using their tax-deferred accumula-

Continued on next page

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When there's a dollar decision between good health and other influences, **all too often you, the employer, lose.**

Independent studies indicate that proper prescription drug therapy is responsible for:

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tions to either increase their account value or decrease their premium payment, the spokesman explained. At retirement, employees can convert LifeAdvantage to a permanent paid-up life insurance coverage or convert it to an annuity.

Other options include disability waiver, accidental death and dismemberment and dependent coverage, usually written as a term rider.

However, individual policies with their own cash accumulation accounts can be made available to employees' spouses, according to the spokesman.

United of Omaha backs LifeAdvantage with a full portfolio of communication materials to assist in presenting and enrolling employees, which can be customized to fit employers' needs.

Once the LifeAdvantage program is in place, employees can deal directly with program representatives for all of their service needs, including loans, withdrawals and increased or decreased coverage amounts.

United of Omaha also provides personalized annual statements to each person enrolled in the program.

In addition, a toll-free number is provided.

For more information about LifeAdvantage, contact any of United of Omaha's group offices.

HMO blue book

The second annual edition of the Blue Book Digest of HMOs contains more listings of health maintenance organizations nationwide, according to its publisher, the National Assn. of Employers on Health Care Alternatives.

The blue book contains information, as of July 31, 1986, on 683 HMOs, up from 449 in 1985.

Enrollment in these alternative delivery systems also has increased to 21,879,929 as of Jan. 1, 1986, from 17,440,649 on Jan. 1, 1985, the National Assn. of Employers on Health Care Alternatives notes.

Other information culled from the blue book includes:

- Seventy percent of all HMOs are independent practice associations, up from 64% in 1985.
- About two-thirds of all HMOs, or 65%, are now part of a chain, compared with 61% in 1985.
- Sixty percent of the HMOs are for-profit entities, compared with about 50% in 1985.
- California leads all states with 52 HMOs and HMO enrollment of 6,226,961.

The National Assn. of Employers on Health Care Alternatives has published a national directory of HMOs for 13 years.

The Blue Book Digest of HMOs includes selected information on these HMOs.

The blue book is available for $59.50 from the National Assn. of Employers on Health Care Alternatives, 104 Crandon Blvd., 304 Key Executive Building, Key Biscayne, Fla. 33149; 305-361-2810.

Blanket bond book

The American Bar Assn.'s Tort and Insurance Practice Section has published a book for attorneys involved in claims handling and lawsuits under current fidelity policies or bonds dealing with dishonesty claims.

"The Commercial Blanket Bond Annotated" is the product of a national institute on employee dishonesty, according to the ABA.

Commentary and citations are provided that interpret each section of the policy for all cases.

Secondary sources also are listed, and examples of a commercial blanket bond, a blanket crime policy and a comprehensive dishonesty, disappearance and destruction policy-Form A are included.

The Commercial Blanket Bond Annotated is available for $27 to members of the Tort and Insurance Practice Section, or $34 to nonmembers, plus $2.50 for handling, from ABA Order Fulfillment 519, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-6064.

Small group plan

HI CARE, a new health insurance program for small groups, combines the elements of health maintenance organizations, preferred provider organizations and traditional indemnity plans, according to Allied Associates, which is marketing the plan.

The new health care product "places the emphasis where it should be, on health rather than sickness," by including health assessment profiles that identify potential health problems and encouraging preventive health care, explained Miles H. Barber, Allied's chairman.

Employers are provided with a workforce health analysis that lists the number of employees that engage in health-threatening activities, such as smoking and drinking, and offers suggestions that can help reduce medical care costs for both the employer and employee, according to Mr. Barber.

For example, because a smoking employee costs an employer an additional $400 per year in lost productivity and health care costs, Allied will suggest an employer implement a smoking cessation program.

The health analyses are derived from a 10-page health assessment questionnaire that each covered employee and spouse completes annually.

"The profile, with its emphasis on wellness, has proven to be as much as three times more effective at detecting early signs of illness than routine physicals," Mr. Barber claimed.

In addition, while "traditional PPO and HMO plans have restricted their covered employees to a limited list of doctors, clinics or hospitals. . .our new HI CARE UPO (universal provider organization) greatly expands this list to over 400,000 nationwide," Mr. Barber pointed out.

The plan pays $50 per outpatient office visit up to 26 visits per year and a maximum of $25,000, or 30 days, for hospitalization. Employees pay a $10 deductible for each outpatient office visit, plus any amount in excess of the $50 paid by the plan.

For hospitalization, the employee pays an annual deductible of $100.

In addition, prescription drugs are covered at 90%, with the employee paying a $5 deductible plus 10% of the cost of each prescription.

Dental and maternity coverages are optional.

Premiums for the small group plan vary based on number, sex and age of participants and the amount of coverage desired, according to Mr. Barber.

Coverage is underwritten by Union Central Life Insurance Co. in Cincinnati and administered by Commercial & Industrial Administration Co., he said.

The HI CARE plan is being marketed by Allied Associates through independent insurance agents and brokers west of the Mississippi River.

For more information about HI CARE, contact Allied Associates at 1265 El Camino, Santa Clara, Calif., or call 800-525-7950 in the Western states; 800-441-0333 in California. ■

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Budget reconciliation act affects benefits programs

Following are excerpts from the House-Senate conference committee report accompanying the 1986 budget reconciliation measure, H.R. 5300.

The measure, passed by Congress last month, contains several sections that will affect employer-provided benefit programs. One section gives retirees of companies that file for bankruptcy the opportunity to buy health care coverage through their former employer, while another mandates that companies recognize years of service after normal retirement age for pension accrual purposes. (BI, Oct. 27).

IV. ACCESS TO HEALTH INSURANCE COVERAGE PROVISIONS

3. Continuation of coverage for retirees in cases of bankruptcies (Section 10253 of House Bill)

Present law

COBRA amended the Internal Revenue Code to prohibit deductions for employer contributions to group health plans maintained by private employers that do not provide continuation coverage to certain specified employees and their spouses as a result of specified qualifying events.

COBRA also made comparable amendments to the Employment Retirement Income Security Act and the Public Health Service Act.

(a) Loss of coverage of retiree through bankruptcy. The reduction of hours of the covered employee's employment; divorce or legal separation of the covered employee from the employee's spouse; the covered employee becoming entitled to Medicare; or dependent child ceasing to be a dependent child under the plan.

(b) Period of continuation coverage. The continuation coverage period must extend from the period beginning on the date of the qualifying event and ending not earlier than 18 months after loss of coverage due to termination or reduction in working hours and 36 months in the case of other qualifying events. Continuation coverage may be terminated on the date on which the qualified beneficiary becomes entitled to Medicare.

(c) Definition of qualified beneficiary in reorganization cases. A qualified beneficiary is defined as the covered employee of a group health plan (in the case when the qualifying event is the termination of employment or reduction in hours of the employee) and any other individual who, on the day before the qualifying event, was a beneficiary under the plan as the spouse or dependent child of the employee.

House bill

(a) Loss of coverage of retiree through bankruptcy.—Amends the Internal Revenue Code to provide that the filing of a Title XI bankruptcy proceeding, commencing on or after July 1, 1986, is considered a qualifying event for continuation coverage with respect to the employer from whose employment the covered employee retired at any time, if such an event resulted in the substantial elimination of coverage for specified qualified beneficiaries within 1 year before or after the filing of the bankruptcy.

(b) Period of continuation coverage.—Amends the Internal Revenue Code to provide that the filing of a Title XI bankruptcy proceeding on or after July 1, 1986, which results in retirees substantially losing health insurance coverage is a qualifying event, in which case, the maximum period of continuation coverage is life for the retiree or the retiree's widow. After the death of the covered retiree, the maximum period of continuation coverage is 36 months for the surviving spouse and dependent children. In the case of a Title XI bankruptcy as a qualifying event, entitlement to Medicare benefits does not terminate the period of entitlement to continuation coverage.

(c) Definition of qualified beneficiary in reorganization cases. Amends the Internal Revenue Code to provide that in the case of a Title XI bankruptcy as a qualifying event, the term qualified beneficiary includes a covered employee who had retired on or before the date of substantial elimination of coverage, and any other individual who, on the day before such a qualifying event, is a beneficiary under the plan as the spouse or dependent child of the employee or as the surviving spouse of the employee.

Effective date. In general, the amendments are effective as if they had been included in Section 10001 of COBRA. Notwithstanding this effective date and Section 10001 of COBRA, the amendments made by this section and Section 10001 of COBRA shall apply in plan years ending during the 12-month period beginning July 1, 1986, but only with respect to a qualifying event of Title XI bankruptcy, and the qualifying event of death of the covered employee occurring after a Title XI bankruptcy. The section defining Title XI bankruptcy as the qualifying event applies to covered employees who retired before, on, or after the date of enactment.

Senate amendment

No provision.

Conference agreement

(a) Loss of Coverage of Retiree Through Bankruptcy.—The conference agreement includes the House provision with an amendment making a conforming amend-

Continued on next page

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Budget act

Continued from previous page

ment to Title I of ERISA. Because the continued access to private health insurance provision contained in COBRA, which this provision expands, amended both the Internal Revenue Code and ERISA, the conferees believe that an ERISA conforming amendment is appropriate. The conferees wish to clarify that upon the filing for Title XI bankruptcy retirees who have had their health benefits terminated or substantially reduced within one year of the filing for bankruptcy by the employer are entitled to buy the health coverage they had prior to the termination or substantial reduction in their health benefits.

(b) Period of Continuation Coverage.—The conference agreement includes the House provision with an amendment to include a Title 1 ERISA conforming amendment.

(c) Definition of Qualified Beneficiary in Reorganization Cases.—The conference agreement includes the House provision with an amendment to include a Title 1 conforming amendment.

V. REVENUE POSITIONS

9. Older Americans pension benefits.

Present law

Age discrimination in Employment Act of 1967. Under present law the Age Discrimination in Employment Act of 1967 (ADEA), as amended, makes it unlawful for employers to fail or refuse to hire or to discharge any individual (who is at least age 40 but less than age 70), or otherwise discriminate against such individual with respect to that individual's compensation, terms, conditions, or privileges of employment because of that individual's age.

Employers subject to ADEA include (1) any person engaged in an industry affecting commerce who has 20 or more employees (including agents of such persons), (2) a state, political subdivision of a state, or an agency of a state or political subdivision, and (3) any interstate agency. The United States, or a corporation wholly owned by the government of the United States, is not considered an employer for purposes of ADEA. The act does not apply to an employer who observes the terms of a bona fide employee benefit plan (such as a retirement, pension or insurance plan) which is not a subterfuge to evade the purposes of the act (sec. 4(f)(2)).

ERISA and the code.

Employment benefit plans. Under present law, benefits provided under employee benefit plans (including employer-maintained pension plans) are subject to certain requirements under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (the Code). ERISA and the Code impose certain minimum standards relating to minimum participation, vesting, and benefit accruals with respect to pension plans established or maintained by an employer engaged in commerce, or in any industry or activity affecting commerce, or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or by both. The minimum participation, vesting, and benefit accrual standards of ERISA and the Code do not apply to certain pension plans, such as governmental plans, certain church plans and certain plans maintained only for executives.

If an employer-maintained pension plan satisfies the requirements of the Code, then contributions to the trust are deductible by the employer when made, trust earnings are not currently taxed and contributions to the trust on behalf of an employee are both includible in the employee's income until distributed from the plan.

Exclusion from participation. Under ERISA and the Code, a pension plan may not exclude an employee from plan participation merely because of the employee's age. However, a defined benefit pension plan and a target benefit plan may exclude an employee who is within five years of normal retirement age under the plan when an employee is first hired. Such employees are taken into account, even though otherwise excludable, in determining whether the plan satisfies certain minimum coverage requirements.

Benefit accruals. Present law specifies certain requirements with respect to the rate at which benefits are accrued (i.e., earned) under a pension plan. These benefit accrual rules generally prevent the backloading of benefit accruals by specifying a minimum rate of benefit accrual for each year of plan participation.

A defined benefit pension plan is not required, under ERISA or the Code, to provide for benefit accruals for individuals who continue to work after the normal retirement age under the plan. In addition, under the suspension of benefit rules, benefits payable under a defined benefit plan are not required to be adjusted if an employee's benefit payments do not commence at normal retirement age. Plans that do not comply with the suspension of benefit rules are required to provide benefits that are actuarially equivalent to the benefit payable at the normal retirement age.

Commencement of benefits.—Under present law, benefit payments are required to commence to an employee not later than the 60th day after the latest of the close of the plan year in which (1) the employee attains the earlier of age 65 or the normal retirement age under the plan, (2) the 10th anniversary of the year in which the employee commenced participation in the plan, or (3) the employee separates from service with the employer. Therefore, present law permits a pension plan to provide that benefits are not payable until an employee separates from service. If a payment is delayed, however, the benefits paid at the time of separation from service are to be actuarially increased to take into account the employee's age at retirement unless the plan has adopted a suspension of benefits provision.

Suspension of benefits. Under present law, a pension plan may provide for the suspension of benefits when a retired employee is reemployed by the same employer or certain affiliated employers in the case of a single-employer plan. In the case of a multiemployer plan, a plan may provide for the suspension of benefit payments when a retired employee is reemployed in the same industry, in the same craft, and in the same geographic area covered by the plan.

Benefits not paid by a plan during a period of re-employment are permanently forfeited, rather than merely suspended. Present law provides that a pension plan (other than a multiemployer plan) may provide for such a forfeiture if (1) the employee has had at least 40 hours of service a month with the employer maintaining the plan, (2) the plan provides proper notice to the employee of the suspension, and (3) certain other requirements are satisfied. Similar requirements apply to multiemployer plans.

If the requirements for suspension of benefits are not met (or if the plan does not provide for a suspension of benefits), the plan may still delay the payment of benefits until the employee who has reached normal retirement age separates from service. However,

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in this case, section 411 of the Code and Revenue Ruling 81-140 require that, if payment is delayed, the benefits paid at the later date (i.e., actual separation from service) must be actuarially increased to take into account the employee's age at retirement. This increase is required to avoid a prohibited forfeiture of benefits.

House bill

No provision.

Senate amendment

The Senate amendment amends ADEA, ERISA and the Code to require a plan to provide for benefit accruals and contributions with respect to an employee's years of plan participation after normal retirement age. Under the Senate amendment, a defined benefit plan may not provide that an employee's benefit accrual or contribution is suspended or the rate of an employee's benefit accrual or contribution is reduced solely because of the employee's age before the employee accrues the maximum normal retirement benefit under the plan.

The provision requiring that benefit accruals may not be suspended or reduced does not apply if a defined benefit pension plan provides that an employee's retirement benefit is actuarially increased to reflect the payment of benefits after the attainment of normal retirement age.

A defined benefit pension plan is not treated as failing to satisfy the benefit accrual requirements merely because the plan (1) excludes an employee from plan participation if the employee is hired within five years before normal retirement age under the plan, or (2) imposes a limit on the benefits that the plan provides or on the number of years of service or plan participation taken into account in calculating an employee's benefit under the plan. In addition, a target benefit plan may exclude an employee from plan participation if the employee is hired within five years before normal retirement age under the plan.

A defined benefit contribution plan satisfies the benefit accrual requirements if the plan provides that employer contributions (or forfeitures) allocated to an employee's account are not suspended or reduced on account of the employee's age. In addition, a defined contribution or target benefit plan may provide a limitation on the amounts allocated to an employee's account or on the number of years for which amounts are allocated to an employee's account.

The Senate amendment provides special rules in the case of a plan that provided (on the date of enactment) for the distribution or commencement of distribution of the entire interest of an employee under the plan on or after the attainment of normal retirement age without regard to whether the employee has separated from service with the employer. Under this special rule, a plan amendment to postpone the date of commencement of benefits under the plan, which is adopted within the 12-month period following the date on which the provisions of the Senate amendment become applicable to the plan, is not to be treated as violating the rule that previously accrued benefits may not be retroactively reduced.

In the case of an integrated plan, the Senate amendment provides that the plan is not to be considered discriminatory merely because, in the case of an employee who has attained normal retirement age under the plan, the plan provides for a rate of benefit accrual or allocations to an employee's account (including retirement benefits created under state or federal law) that does not exceed the rate of benefit accrual or allocations under the plan in the case of an employee who has not attained normal retirement age under the plan.

Effective date. Under the Senate amendment, the provision is effective with respect to employees who are employed after Dec. 31, 1988, with respect to accrual computation periods beginning after Dec. 31, 1986. In the case of employees not employed after Dec. 31, 1988, the provision applies to accrual computation periods beginning after Dec. 31, 1988. A special effective date applies to collectively bargained plans.

Under the Senate amendment, plan amendments required by the provisions are not required to be made before the first plan year beginning on or after Jan. 1, 1989, if (1) during the period after the amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of the Senate amend-

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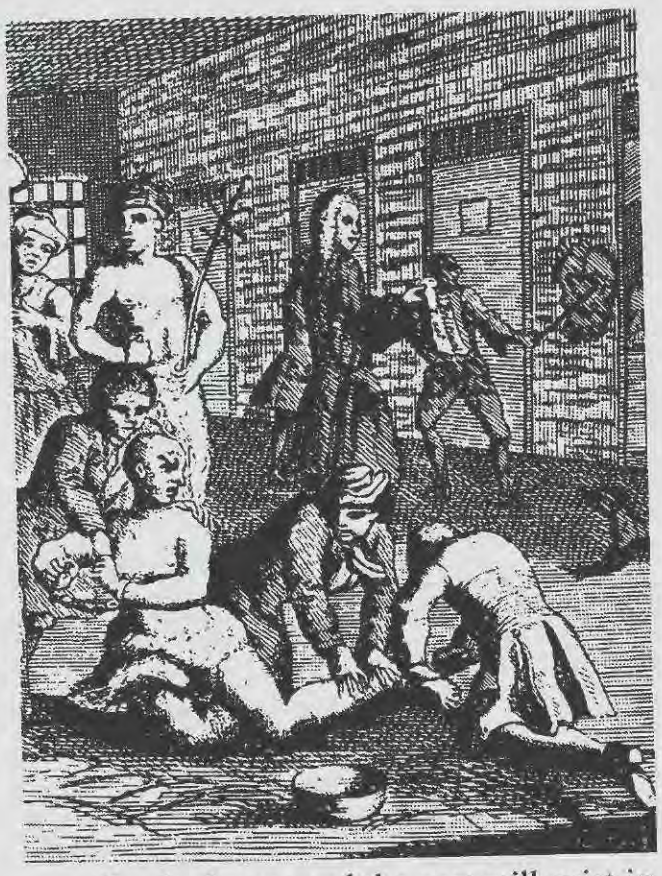

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Budget act

Continued from previous page

ment, and (2) the plan amendment applies retroactively to the period after the amendment takes effect and before the first plan year for which the provision is effective. A pension plan is not treated as failing to provide definitely determinable benefits merely because it operates in accordance with this delayed plan amendment provision. The Senate amendment requires the Secretary of Labor or the Secretary of the Treasury to issue final regulations with respect to the provision by Feb. 1, 1988.

Conference agreement

The conference agreement generally follows the Senate amendment with certain modifications.

Reasons for change. When both the ADEA and ERISA were enacted, authority for the administration and enforcement of both laws was the responsibility of the secretary of labor. Presidential Reorganization Plan No. 1 of 1978 transferred the authority for ADEA from the secretary of labor to the Equal Employment Opportunity Commission (EEOC), effective July 1, 1979.

Prior to that date, the secretary of labor issued an amendment to the Interpretive Bulletin on Employee Benefit Plans, 29 C.F.R. 860.120(f)(2)(ii) (relating to the application of Sec. 4(f)(2) of ADEA to employee benefit plans covered under ERISA), which allowed employers to cease benefit accruals and allocations to an employee's account with respect to employees working beyond the normal retirement age under the plan.

On June 24, 1984, the EEOC announced that it intended to rescind the Department of Labor's interpretation and require employers to continue benefit accruals and allocations. In March 1985, the EEOC unanimously approved proposed regulations requiring such accruals and allocations. That proposed regulation has not been adopted or published in the Federal Register.

Disagreement exists as to whether and to what extent benefit accruals and allocations are required under ADEA, as currently in effect.

In the past three Congresses, bills have been introduced to require employers to continue benefit accruals and allocations. Hearings were held by the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor on Sept. 5, 1984, and by the Subcommittee on Aging of the Senate Committee on Labor and Human Resources on Oct. 17, 1985, on those proposals.

In general. Under the conference agreement, benefit accruals or continued allocations to an employee's account under either a defined benefit plan or a defined contribution plan may not be reduced or discontinued on account of the attainment of a specified age. A plan may impose a limitation on the amount of benefits provided under the plan or a limitation on the number of years of service or plan participation taken into account. The conferees intend that a plan should not be treated as violating the general rule merely because the plan limits benefits to a stated dollar amount or a stated percentage of compensation.

The conferees intend that the provisions of ADEA, ERISA, and the Code that are amended to prevent the reduction or cessation of benefit accruals on account of the attainment of age are to be interpreted in a consistent manner and do not intend any differences in language in the provisions to create an inference that a difference exists among such provisions.

Under the conference agreement, a defined benefit plan may offset any benefit accruals required under the general rule by the amount of any adjustment in the benefits payable with respect to an employee attributable to a delay in the commencement of benefit payments after attainment of normal retirement age. A similar offset is available with respect to plans that provide for the commencement of benefit payments occurring before separation from service, but after the attainment of normal retirement age.

Under the conference agreement, the rules preventing the reduction or cessation of benefit accruals on account of attainment of age are not intended to apply in cases in which a plan satisfies the normal benefit accrual requirements for employees who have not attained normal retirement age. Under the benefit accrual rules, the rate of benefit accrual for an employee may vary depending on the number of years of service an employee may complete between date of hire and the attainment of normal retirement age.

For example, under the fractional benefit accrual rule, an employee may accrue a benefit ratably for each year of service between the employee's date of hire and the employee's attainment of normal retirement age. If a plan has a normal retirement age of 65, under this fractional rule, an employee who is hired at age 45 would accrue the normal retirement benefit between age 45 and age 65 (normal retirement age). Thus the employee would accrue the benefit over 20 years. On the other hand, an employee with the same salary hired at age 55 would accrue the same normal retirement benefit over 10 years (the number of years between the date of hire and normal retirement age). In this example, when both employees have completed five years of service, they will have different accrued benefits because of the different rate of benefit accrual for each year of service. The conferees do not intend that the plan is to be treated as violating the general rule that benefit accruals cannot be reduced or ceased on account of the attainment of age merely because a younger employee has a lower accrued benefit than an older employee with the same number of years of service.

Exclusion from participation. The conference agreement eliminates the provision in current law that permits an employer to exclude from participation under certain plans employees hired within five years of normal retirement age.

The conferees believe that modification of the existing law in this way is consistent with the overall objective of the provisions to assure that employee benefit plans do not discriminate on the basis of age.

The conferees recognize that repeal of this rule may have the effect of increasing an employer's minimum funding requirements significantly for employees hired within five years of normal retirement age. In order to ease this effect, the conference agreement provides that a plan may extend the normal retirement age specified in the plan with respect to individuals who begin employment with the employer after attaining a specified age that is not more than five years before the normal retirement age under the plan. With respect to any such individual hired after the effective date, a plan may provide that normal retirement age may be no later than the fifth anniversary of the time such participant commenced participation in the plan.

Target benefit plans. The treatment of benefit accruals under a target benefit plan for employees who have attained normal retirement age is to be provided under regulations issued by the secretary of the Treasury. The conferees expect that such regulations will provide that a plan is sufficient to provide the target benefit.

Highly compensated employees. The conference agreement requires the Treasury to promulgate regulations that prescribe specific circumstances under which the benefit accrual and allocation requirements imposed by this amendment shall not apply to highly compensated employees. The conferees believe that such regulations are necessary because, in some situations, the requirements for continued benefit accruals or allocations may result in prohibited discrimination in favor of highly compensated employees.

While it is generally the view of the conferees that discrimination problems should be resolved by increasing the accrued benefits or allocations attributable to nonhighly compensated employees, the conferees understand that there may be circumstances under which such increases could (if made) result in violation of other plan qualification requirements specified in

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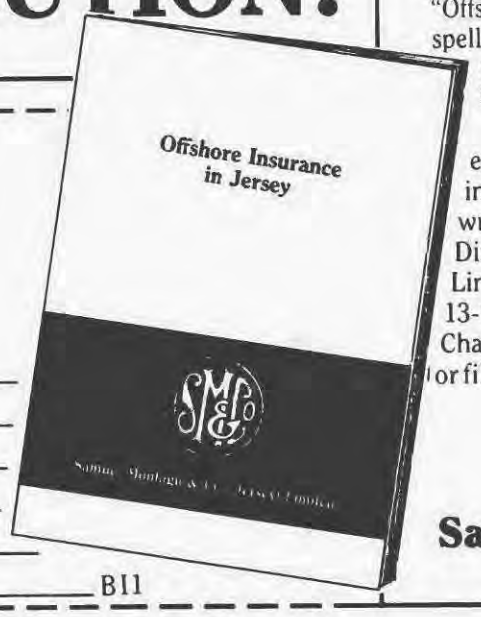

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Continued from previous page

Section 401(a) of the Code (including contributions and benefits), or require employer contributions in excess of the deductible limits specified in Section 404 of the Code. In such cases, the regulations are to provide methods for excluding highly compensated employees from the continued benefit accrual or allocation requirements.

* * *

Integration of benefits. The conference agreement does not follow the Senate amendment with respect to the special rules for integrated plans. The conferees believe that the new integration rules for qualified plans under the Tax Reform Act of 1986 make such special rules unnecessary because a plan is permitted under the Tax Reform Act to modify or reduce benefit accruals after a specific number of years of service. Thus, an integrated plan could avoid violation of the general benefit accrual requirement by ceasing benefit accruals after 35 years of service.

The conferees intend that Treasury regulations with respect to these provisions are to include special rules for periods during which the integration rules adopted in the Tax Reform Act are not effective.

Suspension of benefits. The conference agreement does not alter the rules of existing law concerning the suspension of benefit payments to employees who are re-employed after attaining normal retirement age. Accordingly, a defined benefit plan complying with the suspension of benefit rules is required to provide additional benefit accruals but would not have to recommence payments until the employee actually retires (unless the provisions of Section 401(a)(9) of the Code require the commencement of benefits because the employee has attained age 70½).

For example, if a plan provides a benefit of $10 monthly per year of service and an employee has 10 years of service at the plan's normal retirement age of 65, then the employee is entitled to receive a benefit of $100 a month if he or she retires at age 65. If, however, the retiree is re-employed after age 65 and the plan contains a suspension of benefits provision, the plan is not required to pay any benefits during a period of reemployment, assuming the requirements for suspending benefits under the Code and ERISA are satisfied. Pursuant to the conference agreement, the plan is required to provide an additional benefit of $10 per month for each year of service after age 65 (until the employee has the maximum number of years of service for which credit is provided under the plan).

Thus, at age 66, the retiring employee is entitled to receive a benefit of $110 a month but, if the employee is re-employed, the $110 may be forfeited under the suspension of benefit rules. Similarly, if the employee is to receive a benefit of $120 at age 67 and the employee is re-employed the amount payable may be forfeited for the period of re-employment if the plan contains a suspension of benefits provision.

As under present law (Code Sec.. 411), a defined benefit plan must provide actuarially increased benefits if the suspension of benefit rules did not apply or were not applied. In such a situation, a plan will fail to satisfy the requirements of this amendment unless it provides each participant with additional accruals.

However, the conference agreement provides that benefit adjustments provided under the plan to take account of the delayed commencement of benefits are to be credited to the additional accruals otherwise required.

Thus, the value of benefits upon the actual commencement of benefits would effectively offset the additional accruals that are otherwise required under the plan.

If a plan pays retirement benefits to an employee who continues working after attainment of normal retirement age (and, therefore, neither suspends nor actuarially increases benefits upon later suspension from service), the provision of such benefit payments are in effect equivalent to the provision of an actuarial increase in benefits under a plan that delays the commencement of benefits (without satisfying the suspension of benefit rules). Accordingly, under the conference agreement, such a plan could offset the additional accruals required by this amendment by the value of the effective actuarial increase in benefits. The conferees intend that the Treasury will provide guidelines for computing the offset.

Exception for certain early retirement benefits. Under the conference agreement, an exception is provided to the rules relating to continued benefit accruals with respect to benefit accruals to the extent they are attributable to subsidized early retirement benefits. The conferees intend that similar exceptions generally are to be provided with respect to other types of benefits, such as disability benefits or Social Security supplements, which are payable before normal retirement age or the conditions of eligibility for which are not determined on the basis of age.

Age Discrimination in Employment Act. It is the intention of the conferees, in adopting the amendments to ADEA (new Sec.. 4(i)), that the requirements contained in Section 4(i) related to an employee's right to benefit accruals with respect to an employee benefit plan (as defined in Sec.. 3(2) of ERISA) shall constitute the entire extent to which ADEA affects such benefit accrual and contribution matters with respect to such plans on or after the effective date of such provisions (as described in the provision).

* * *

Effective date.—The conference agreement clarifies that the amendments apply to plan years beginning on or after Jan. 1, 1988. Such amendments do not apply with respect to any employee who does not have an hour of service in any plan year to which the amendments apply. The provisions relating to the repeal of the provision that permits certain employees to be excluded from plan participation are effective for plan years beginning on or after Jan. 1, 1988, with respect to hours of service on or after Jan. 1, 1986. However, hours of service prior to Jan. 1, 1988, shall be taken into account for purposes of Section 410(a)(1)(A)(ii) and Section 202(a)(1)(A)(ii) and Section 202(a)(1)(B) of ERISA.

The conference agreement also limits the special effective date for plans maintained pursuant to a collective bargaining agreement to employees covered by such agreements. The conferees recognize that, as a result of the delayed effective date applicable to employees covered by a collective bargaining agreement, there may be situations in which a plan covering both employees who are covered by the agreement and those who are not so covered will be subject to two different effective dates. To the extent that the two effective dates may cause the plan to be considered discriminatory, the conferees intend that the Treasury will provide special rules ensuring that a plan will not fail to satisfy the non-discrimination requirements applicable to qualified plans, merely on account of the different effective dates.

Interagency coordination.—The secretary of labor, secretary of the Treasury, and the Equal Employment Opportunity Commission are to consult and coordinate with one another in issuing such rulings and regulations. ■

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ASHRM conference

Cooperation required to heal malpractice ills

By MEG FLETCHER

After a decade of work on malpractice issues, 'we are not really a great deal better off,' Dr. Todd says.

WASHINGTON—Doctors and hospitals must work together more closely if their efforts to "heal" the medical malpractice crisis are going to have any real effect, a doctor says.

In spite of 10 years of work to solve the problem, "we are not really a great deal better off," Dr. James S. Todd, a senior deputy executive vp with the Chicago-based American Medical Assn., told the recent annual conference sponsored by the American Society for Healthcare Risk Management.

Dr. Todd

"Negligence, carelessness and malpractice does occur," he added.

In fact, as has been the case during the previous decade, the four most common reasons doctors are sued for malpractice continue to be diagnostic errors, decision errors, wrong procedures and injuries from inadvertently administered drugs, he said.

"I suspect we are not putting the message in the proper terms," Dr. Todd said.

Consequently, the medical liability crisis continues and, despite a few small gains, appears to be getting worse, according to Dr. Todd.

One of every four doctors will be sued this year and 50% of all obstetricians have been sued at some time. And, the amount of money sought in malpractice claims has increased 95% between 1979 and 1983.

"The average jury award has increased from $220,000 in 1974 to over $1 million in 1985," Dr. Todd said. And, the incidence of $1 million awards increased 1,200% in the last decade.

The cost of commercial medical malpractice insurance continues its seemingly never-ending cost spiral, Dr. Todd said. Premiums, which increased 45% in the past two years, are expected to climb 25% to 30% annually in the future, he said.

There is no simple solution to the medical malpractice crisis, Dr. Todd said.

But, he said that before solutions can be considered, it is necessary to replace some myths with truth.

The truth, according to Dr. Todd, includes:

- Bad hospitals and bad doctors are not the only cause of the medical malpractice crisis.

There are bad hospitals and bad doctors who leave patients worse off after treatment, but the problem does not exist to the degree that the amount of litigation and the amount of money paid out would lead people to believe, Dr. Todd said.

A report by doctor-owned insurers claims that only 30% of all medical malpractice cases have merit, he noted.

A Florida study cited by Dr. Todd showed that professional liability costs would be reduced only about 5% if all doctors with two or more malpractice claims were not allowed to practice.

The most typical lawsuit involves a doctor who is treating a very sick patient with new equipment that challenges the frontiers of medical science, Dr. Todd pointed out.

- The insurance industry is not the sole cause of the problem.

"It's not an insurance scam," Dr. Todd said. "The insurance companies are taking a bum rap," he said, adding that for the most part, the losses reported by insurers in malpractice lines are real and significant.

A.M. Best Co., the Oldwick, N.J., insurance statistical and rating organization, says commercial insurers are posting loss ratios of 140% to 150% for professional liability lines, according to Dr. Todd.

Even doctor-owned insurers experienced a $285 million underwriting loss in 1985. And, state-organized joint underwriting programs and patient compensation programs generally have severe financial problems as well, Dr. Todd said.

- There are severe problems that should be corrected in the current U.S. litigation system.

"Many deserving patients who are badly injured and are the victims of negligence get nothing," Dr. Todd said. "Patients with marginal injuries get huge amounts of money.

"Five percent of the claims get 50% of the dollars," he said, adding that 70% of the malpractice cases filed result in no payment to the plaintiff, but represent a significant amount of defense costs for doctors, hospitals and insurers.

Only 20% to 25% of the dollar amounts awarded in malpractice cases winds up in the hands of injured patients, while 75% to 80% is spent for "friction" costs, including attorneys' fees, court costs and the cost of operating an insurance company, Dr. Todd said.

A report by Rand Corp. says 52%

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Continued from previous page
of malpractice premium dollars goes to compensate attorneys on both sides of a case.

"I think that is scandalous," Dr. Todd said.

● The malpractice crisis makes doctors timid.

Being sued can significantly alter the character of both the doctor and the hospital involved, Dr. Todd said. For example, the medical personnel can come to view patients as adversaries, he said.

In response, they practice defensive medicine, which is costing the nation between $13 billion and $17 billion annually, he added.

They become less likely to use new technology or medicines, and doctors often limit their practice or retire early, he explained.

For example, he said, the reluctance of obstetricians to treat patients is partially responsible for the fact that, for the first time in 40 years, more babies are being delivered by midwives in Florida than by licensed doctors.

The liability crisis is also having a chilling effect on manufacturers, who are less likely to introduce new medicines and new equipment.

● The crisis is not only the fault of attorneys who are responding to the public's expectations about health care. Doctors themselves have hyped patient expectations of health care, Dr. Todd said.

However, Dr. Todd said, "The greatest reality—probably the one we can take the most comfort in—is that we (doctors) are no longer alone." All professions, including clergy, are facing liability problems that have been reported nationwide and have led to an increased awareness of liability problems, he said.

In fact, a recent AMA survey shows that awareness has led to a marked change in public opinion to a position favoring legislative changes that would help doctors and hospitals, Dr. Todd said.

In addition, federal agencies, including the Justice Department and General Accounting Office, have been studying the professional liability situation, he noted (*BI*, Sept. 29).

Recent preliminary recommendations from a Justice Department task force include returning to a fault-based liability system; eliminating joint and several liability and payment for non-economic damages; providing for periodic payments of awards; decreasing the amount of a judgment by the amount received from other sources; limiting attorney fees; and using an alternative dispute resolution process.

But Dr. Todd emphasized that while some help may be available from outside sources, "the greatest progress in professional liability will be made by our own actions."

And he said that if the medical profession is unsuccessful in controlling the malpractice crisis, the practice of medicine and the quality of health care in the United States will suffer.

Doctors in 47 specialty societies have contributed about $500,000 to the AMA's National Specialty Coordination Liability Project, which he said is proposing a four-point approach to coping with the malpractice liability crisis:

● Centralized data collection and dissemination.

The AMA has established a clearinghouse to set up a credible data base for information about medical malpractice liability, including a program in cooperation with 35 doctor-owned insurers to obtain reports on open cases to identify loss areas and what can be done about them.

The AMA also is publishing the professional liability information it receives in a newsletter format and an annotated bibliography of important articles.

● Development of a common communication strategy.

Doctors need to educate patients that there are limits to what can be accomplished through the practice of medicine, so their expectations about treatment are not unrealistically high.

● Pursue tort reform.

The AMA is continuing to pursue tort reform on both the federal and state levels. However, while some limited tort reform measures have had tangible results, proposals in many states are merely "window dressing," Dr. Todd said.

The AMA's goal is fair compen-

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'The greatest progress in professional liability will be made by our own actions,' according to Dr. Todd.

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Malpractice crisis

Continued from previous page

sation for negligently injured patients without increasing the cost of medical care.

However, Dr. Todd said he fears that reform of the current tort system may not be sufficient, so the AMA is working on proposal for an alternative system of compensating malpractice victims. Under this system, fault will remain the basis for awards, but fault will be determined through a separate, non-judicial system.

In addition, determination of fault will be separate from the awarding of damages, stringent risk management and doctor disciplinary procedures will be required and there will be legal immunity for some risk management activity, such as reviewing and disciplining doctors.

'Many deserving patients who are badly injured and are the victims of negligence get nothing. Patients with marginal injuries get huge amounts of money' because of inequities in the current U.S. court system, Dr. Todd says.

- Emphasize risk management through behavior modification of hospitals and doctors. "Risk management is indeed having an effect," Dr. Todd said.

And, he said that because doctors in different specialties have different liability problems, malpractice errors should be corrected with specific programs geared to their specific disciplines rather than the broad, general programs already in use. ■

New name highlights ASHRM conference

WASHINGTON—The eighth annual meeting of the American Hospital Assn.'s risk management society included a the approval of a name change for the group and a record attendance for the conference.

Following a vote of members at the meeting, the society changed its name to American Society for Healthcare Risk Management from American Society for Hospital Risk Management. Its acronym, ASHRM, will remain the same.

The society's board of directors proposed the name change to "more accurately reflect the society's membership as a result of the diversification of the health care industry beyond the traditional acute-care hospital setting," according to a memo that accompanied the proposed change.

A record 700 people participated at the ASHRM conference, which was held Oct. 22-25 at the Hyatt Regency Hotel on Capitol Hill in Washington.

The conference was presented with the cooperation of the Maryland Society for Healthcare Risk Management and the Risk Management Division of the Hospital Council of the National Capital Area.

R. Stephen Trosty, director of risk management for Lutheran Hospital and Homes Society in Fargo, N.D., was chosen ASHRM president-elect at the conference. He will serve as president beginning in January 1988.

In addition, two people were elected to two-year terms on ASHRM's board of directors.

The two new members of the group's board of directors are Leilani Kicklighter, who is director/risk management with the Sisters of Charity in Houston; and Roberta Carroll, who is risk manager/trust administration for Premier Hospitals Alliance Inc. in Westchester, Ill.

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Proposed standards worry risk managers

By MEG FLETCHER

WASHINGTON—Proposed risk management standards issued by the Joint Commission on Accreditation of Hospitals are causing hospital risk managers some concern on two major fronts.

In issuing the proposed standards—which, if enacted, would have to be met if hospitals are to be accredited—the JCAH is requesting information on hospital risk management, including liability exposures.

However, hospital risk managers are worried about the lack of specifics in some JCAH requests and about the ability of JCAH staff members to adequately protect the confidentiality of the additional information it is requesting about liability-related incidents involving a hospital or its medical staff.

In addition, hospital risk managers are concerned that hospital officials may interpret the standards as currently worded and ongoing JCAH educational programs as putting risk management under the control of hospitals' quality assurance programs, thus diluting risk management.

The proposed standards require a hospital's officials to support active involvement of medical staff in risk identification, evaluation and correction.

The standards relating to medical staff appointments add a requirement that application forms for doctors include questions about voluntary or involuntary terminations of medical staff membership or voluntary or involuntary limitations on privileges.

Applications for reappointments to medical staff or for privileges at a hospital also must require additional information about professional liability claims, pending challenges to a doctor's license or registration and voluntary or involuntary termination or limitation of medical staff membership or privileges.

Also, the proposals require formal administrative relationships and a sharing of information between a hospital's risk management and quality assurance staffs.

Risk managers' concerns surfaced recently in both informal and formal sessions at the national conference sponsored by the American Society for Healthcare Risk Management in Washington.

Dr. William Jessee, vp for education for the Chicago-based JCAH, tried to allay risk managers' fears at a formal session by describing the proposed standards as "a long fuse with a short bang."

Dr. Jessee

The standards should not require new risk management activities for about 75% of all hospitals, he said.

James F. Holzer, ASHRM president, urged the JCAH to emphasize the distinction between risk management and quality assurance by retitling some educational seminars and featuring a complete definition of risk management in a prominent place in the rules.

Mr. Holzer is vp of loss prevention and underwriting for the Risk Management Foundation of the Harvard Medical Institutions in Cambridge, Mass.

But Dr. Jessee said after the session that only a glossary definition of risk management is planned in keeping with the format of other JCAH regulations.

And, he views as "specious" risk managers' concern that the additional information the JCAH requests will not be adequately protected and could be a source of liability.

The proposed standards issued by the Joint Commission on Accreditation of Hospitals require formal administrative relationships and a sharing of information between a hospital's risk management and quality assurance staffs.

The JCAH says there is a need for risk management requirements in its new proposed standards, which will replace existing ones that have no explicit risk management requirements.

But, Dr. Jessee said, "We tend to paint standards with a broad brush" because the standards must apply to a wide range of hospitals, from small rural ones to large metropolitan complexes.

He also noted that the commission is interested in risk management only from the point of view of its impact on patient care. It is not concerned with other risk management-related functions, including risk management's concern with protecting a hospital's physical plant and property, obtaining general and professional liability coverage and some handling of workers compensation and employee benefits.

Risk managers point out that facets of risk management include incident or event reporting, data collection and analysis, risk discovery and evaluation and recommendations for remedial action. These components overlap into several spheres of operation, which worries risk managers.

However, the JCAH refuses to resolve the "turf warfare" between hospitals' risk management and quality assurance personnel, Dr. Jessee said. The potential conflict results from areas of overlap between the two disciplines, including comprehensive monitoring, information analysis, clinical and managerial expertise and staff education, he said.

The JCAH wants to see that there are structures for risk management and quality assurance staffs to work together and share information, he emphasized.

A lack of such cooperation is a barrier to effective risk management, as are a lack of clinical involvement, inadequate information systems, lack of financial support and lack of trustees' understanding and support.

Too often, trustees hear about risk management only at budget time when the cost of insurance is going up, Dr. Jessee said.

Risk managers should realize trustees can be allies because they understand financial aspects of operating a hospital better than medical staff, he said. ■

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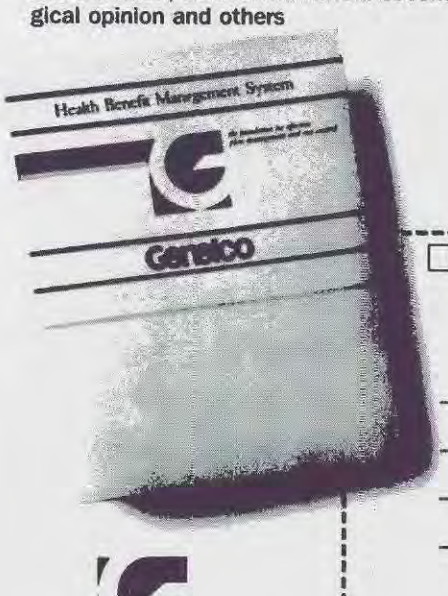

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Hospitals will be helped, hurt by Congress' actions

By MEG FLETCHER

WASHINGTON—Recently passed laws will both help and hurt health care risk managers in their quest to find medical malpractice and directors and officers coverage for their institutions, experts say.

On the plus side, under the recent expansion of the Risk Retention Act, hospitals will be allowed to establish a risk retention group in one state that can provide coverage for similar risks in other states.

This provides a chance to create a mechanism to supply liability coverages for similar institutions, explained William H. Gill, an account executive with broker Gerald J. Sullivan & Associates Inc. in Chicago. Mr. Gill was speaking at the annual meeting of the American Hospital Assn.'s American Society for Healthcare Risk Management, held here recently.

But, he noted that only groups domiciled in one of the 50 U.S. states can be considered risk retention groups, he said.

And Mr. Gill cautioned that federal authorities still have to issue regulations on the details of the Risk Retention Act extension. "It is all so new, we are all feeling our way," he said.

Another major piece of legislation enacted at the close of the congressional session, the Tax Reform Act of 1986, will have a negative effect on insurance costs for hospitals and doctors, he said.

Because the new tax law adds to the tax burden of commercial insurers, those insurers are likely in turn to raise hospitals' premiums an additional 10% to 25%, he said. As a result, hospitals—some of which had premium increases of 200% or more last year but were anticipating increases this year only in the 10% to 25% range——will see premiums climb 20% to 50%. And, about half of that increase can be traced to the impact of the tax bill, he estimated.

In addition, the Tax Reform Act has "an enormous potential impact on the desirability of captives," Mr. Gill said.

For example, under the Tax Reform Act, the income from an offshore captive insurer may be taxable to its U.S. owners.

There are questions about how tax officials will treat non-profit corporations that are captive shareholders, he said. In the worst case, tax officials will have to determine whether income the non-profit institution gets from the captive is related or unrelated business income.

"If it is determined that it is unrelated business income, it would be taxed at the corporate rate, even though you have not received the income," Mr. Gill said.

As a result of these questions, hospitals using captives to obtain liability insurance should take a careful look at their situation, he said.

And, Mr. Gill said, the situation for hospitals and doctors is complicated further by the fact that these federal changes are coming at a time when underwriters increasingly are turning to claims-made forms.

He said the best claims-made forms approximate occurrence-based coverage. The worst ones, which are used by Lloyd's of London underwriters, include reporting stipulations that are "extremely difficult" and require hospitals to have an elaborate internal system of checks and balances to make sure the reporting requirements are met.

Mr. Gill said the proliferation of claims-made forms means that risk managers should be especially careful to make sure there is no gap in coverage caused by the use of non-concurrent forms, especially among different layers of coverage.

"Make sure your broker is carrying a significant amount of errors and omissions insurance," Mr. Gill suggested, adding that many brokers do not.

In addition to the trend toward claims-made coverage, insurers are moving toward including defense costs within limits, although the majority of policies pay defense costs in addition to limits, said Rory K. Carvill, chairman and chief executive officer of R.K. Carvill & Co. Ltd., a London reinsurance brokerage specializing in medical insurance business. His comment was made after another session at the ASHRM conference.

Insurers are changing from occurrence to claims-made policies because of the market's recent "disastrous" experience with third-party liability losses, Mr. Carvill says.

And, he said that even when the current hard market softens, insurers will continue to be wary of liability insurance, especially in light of the inconsistent and often excessive approach taken by U.S. courts toward the issue of third-party liability.

To deal with this problem, he urged tort reform, especially setting limits on awards, which will increase insurers' ability to predict losses.

In an interview, Mr. Carvill said he expects rates to increase 20% to 25% for major medical malpractice insurance programs that are good risks and already are part of an established insurance program. But, he said rates will increase as much as 500% if the risk is not part of an established program.

In addition to the problems with liability insurance, hospitals are having trouble finding liability coverage for their directors and officers.

A typical hospital seeking to replace a three-year D&O insurance contract may find a 50% decrease in available limits, if coverage can be found at all, Mr. Gill said.

"Recently some hospitals have reported an availability of only $1 million over a $1 million self-insured retention when they have attempted to renew their existing coverage," according to an ASHRM report released at the conference. However, significantly higher limits may still be available in some markets, Mr. Gill said.

But, rates will be 700% to 800% higher than they were three years ago, he said.

To get the most out of D&O insurance, risk managers should require that at least once or twice a year each director be required to sign a statement that he or she is not aware of any claims, Mr. Gill said. If the director is aware of a potential claim, he or she would report it at this time, so the risk manager could report it to the hospital's current insurer in the proper policy period.

Mr. Gill also urged that the language of D&O policies be written so that any actions by a single director that would void his or her coverage will not void coverage for all of the remaining directors.

In addition, the ASHRM report urged risk managers to support enactment of state legislation granting immunity to board members of non-profit organizations.

"Recently the legislatures in the states of Tennessee, Illinois and Washington enacted such laws, with similar legislation pending in other states," the report said. ■

'Think like lawyers,' risk managers told

By MEG FLETCHER

'Plaintiffs' attorneys are getting a lot smarter,' Ms. Zimmerman warns risk managers.

WASHINGTON—Hospital risk managers need to think like lawyers to protect their institutions from liability, beginning with the process of screening doctors who apply for practice privileges, a lawyer advises.

Careful screening of doctors is important because "negligent credentialing" will be alleged in every malpractice case within the next five years, Patti G. Zimmerman, a hospital defense attorney, predicted during a workshop at the American Society for Healthcare Risk Management's annual meeting in Washington last month.

"Plaintiffs' attorneys are getting a lot smarter," said Ms. Zimmerman of the firm of Smith, Somerville & Case in Baltimore.

She said plaintiffs' attorneys are expanding their complaints against hospitals because hospitals are perceived as having a "deeper pocket" than doctors, since the liability insurance crisis is causing many doctors to carry lower limits of malpractice insurance.

Plaintiffs' attorneys also are seeking greater access to hospital records, she said.

To shield the hospital from liability related to practitioner screening, risk managers should note that judges in several states have ruled that hospital officials must do more than merely discuss the contents of the application with the doctor who submitted it, Ms. Zimmerman said.

Officials need to establish and enforce "an in-depth, detailed investigation policy" to thoroughly check information submitted by doctors applying for practice privileges.

The hospital should confirm an applicant's medical degrees, licenses and letters of reference, as well as probe the applicant's background for criminal convictions and the status of medical malpractice cases, if any, Ms. Zimmerman said.

"Don't just take his or her word for it," she warned.

And, any hospital that uses a local medical society to screen applicants does not transfer its liability for the applicant review process to that third party, she noted.

In addition, the review process should be just as strict for doctors seeking reappointment to a hospital's medical staff, she said. Hospital officials should not just "rubber-stamp" such applications, but should make the doctors prove they still deserve the privileges, she said.

"It's your insurance that is at risk," she noted.

Hospital risk managers should realize that in most states a plaintiff's attorney can have access to a doctor's application for privileges during the discovery period of a lawsuit, and that any negative information contained in it could be used in the case against the hospital, she said.

"Once they get into the file, they can get most of it," she said.

To protect the hospital in such a situation, Ms. Zimmerman suggested risk managers keep two separate files on doctor applicants: one containing only the application; the other including the results of hospital officials' background investigation.

And, each page of the investigation results should be stamped "confidential medical review," to strengthen a hospital attorney's argument that state statutes allowing for confidentiality of hospital medical review records protect those files from discovery, she said.

Continued on next page

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Avoiding liability

Continued from previous page
cally evaluate performance and document favorable evaluations that support the decisions to keep that employee on staff.

She suggested hospitals review their medical professionals' performance at least annually, and more often if problems arise.

Hospital risk managers also should be familiar with—and have copies of—state statutes promoting quality assurance, she said. These statutes, which many states have, describe which medical professionals are protected and the extent to which medical peer review information is confidential.

Risk managers should make sure that the hospital's bylaws reflect the exact wording of the statute and that those bylaws are adhered to, she said.

For example, she noted that too often hospital officials appoint an ad hoc committee not sanctioned by the hospital's bylaws to investigate an incident that may result in liability. Going outside the established structure in this way makes it more difficult for the hospital's defense attorney to protect the committee's reports.

Minutes of any medical review-related meeting should list the names of those attending and the committee's conclusions, but not "who said what," because if such detailed minutes fall into the hands of a plaintiffs' attorney, critical comments—and the names of the people who made them—make it easy to locate witnesses sympathetic to the plaintiff's position, Ms. Zimmerman said.

Only one file on a medical review should be kept, and copies should not be distributed, Ms. Zimmerman warned.

If a potential liability-causing incident occurs, the confidentiality of hospital incident reports, which are available to the plaintiffs during discovery in some jurisdictions, can be safeguarded by the consistent use of certain procedures, Ms. Zimmerman said.

The reports themselves should be in a checklist format, with no room for employees to write their judgments or opinions. Investigation reports and statements should be attached to the incident report, and no copies should be made of the original file, she said.

The incidents should be handled as much as possible as medical review documents so they will be protected by any state quality assurance statutes.

She recommends that her clients stamp all incident reports as confidential memorandum to an attorney, who is identified by name. Those reports then should be sent to the attorney and stored in the his or her office.

That approach allows the hospital's attorney to argue—with a "straight face"—that the incident reports are medical review documents and therefore protected by the doctrine of attorney-client privilege, she said.

However, during discussion, some risk managers argued that their attorneys either don't want to keep the documents or are concerned that a policy of sending every incident report to the attorney would be hard to protect on the grounds of attorney-client privilege.

Incident reports also can be sent to the hospital's insurer, but Ms. Zimmerman recommended that, in this case, each report be stamped as a confidential memorandum and that the date it is mailed be recorded. ■

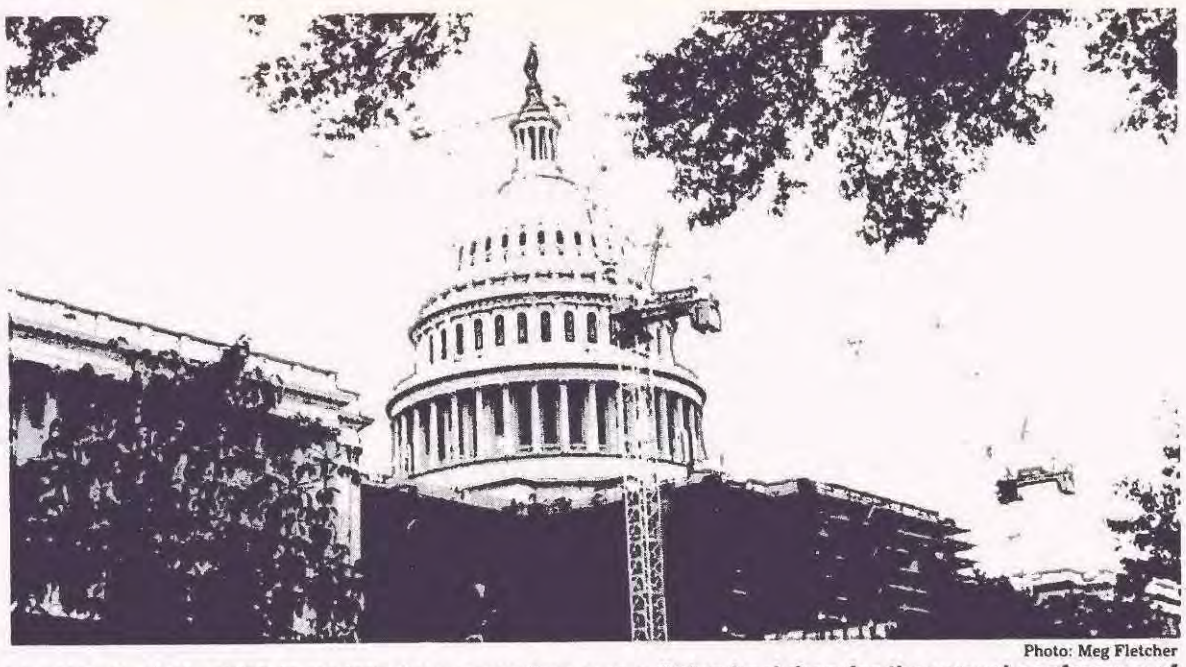

Photo: Meg Fletcher

The U.S. Capitol, which is undergoing renovation, was a fitting backdrop for the annual conference of the American Society for Healthcare Risk Management, held in Washington Oct. 22-25.

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Profit-sharing contributions steady: Survey

Employer contributions to profit-sharing plans averaged 8.7% of payroll in 1985, almost the same as the 8.8% contributed in 1984, according to the 29th annual Profit Sharing Survey.

In fact, employer contributions to profit-sharing plans have remained virtually unchanged for the past four years.

Employer contributions to profit-sharing plans averaged 8.8% in 1983, 8.9% in 1982 and 9.2% in 1981, according to the 1986 survey, conducted by Lincolnshire, Ill.-based Hewitt Associates for the Profit Sharing Council of America in Chicago.

The survey, based on the 1985 experience of 437 companies, includes information on employer contributions, investment performance, asset management, costs, turnover and other features of profit-sharing plans.

Employer contributions to profit-sharing plans varied by industry, the survey showed.

Contributions to profit-sharing plans were highest among finance, insurance and real estate employers, averaging 10.1% of total payroll.

Lowest average contributions were reported in the wholesale and retail trades—7.7% of company payroll.

Contribution levels for other industry groupings showed less variation: 9.4% for durable goods manufacturers; 8.9% for non-durable goods manufacturers; 8.8% for non-manufacturers; and 8.2% for service industry employers.

Smaller companies tended to make higher profit-sharing contributions than larger companies, the survey showed.

This may be because larger companies, in general, also maintain pension plans, according to a spokesman for the association.

Among companies with fewer than 100 employees covered under the profit-sharing plan, contributions averaged 9.2% of payroll, compared with 6.9% of payroll for companies with more than 5,000 plan participants.

A large percentage of surveyed companies—61%—allow employees to contribute to the plan. Of these, 14% allow deposits to be made on a pretax basis only; 51% allow deposits on an aftertax basis only; and 35% allow deposits on a pretax and aftertax basis.

Of these plans, 89% allow deposits on a voluntary basis, 9% require a specific deposit and permit additional voluntary contributions and 2% have mandatory contributions only.

Other highlights of the 1986 Profit Sharing Survey include:

- The larger the profit-sharing fund, the more likely the employer is to offer multiple investment vehicles.

Among plans with more than $10 million in assets, 74% maintain multiple investment vehicles, while only 36% of the smaller plans use more than one fund.

Where multiple funds exist, 76% of employees control investment of their own money contributed to the plan, but only 46% frequently select investments for employer contributions, according to the profit-sharing plan survey.

- 1985 was a good year for profit-sharing investments.

Among investment funds, diversified equity funds posted the strongest gains, returning an average of 24.0%. Balanced fund portfolios produced average returns of 21.0%, bond funds advanced 13.3% and guaranteed interest contracts returned 11.9%.

Assets invested in company stock also rose an average of 12.5%. On the low end, cash equivalents gained 8.8%.

- As in past years, outside investment advisers handled the largest portion of aggregate assets, or 30%, followed by internal management, 18%, bank fund managers, 16%, and insurance company fund managers, 14%, according to the survey.
- Only about one-third, or 35%, of the companies surveyed are in the process of installing, or intend to install, a salary reduction plan under section 401(k) of the Internal Revenue Code.

However, most—69%—of the larger plans with 5,000 or more participants already have installed, or intend to install, 401(k) plans, the survey showed.

Smaller companies tended to make higher profit-sharing contributions than larger companies.

Among smaller plans, with fewer than 500 participants, only 23% already have installed salary reduction plans; 4% are in the process of installing plans; and only 1% intend to install a salary reduction plan.

Overall, 16% of all companies surveyed have not yet considered installing salary reduction plans, and 20% have decided against putting in a plan altogether, according to the survey.

- Overall, company-sponsored Individual Retirement Accounts are relatively rare.

However, company-sponsored IRAs are much more prevalent among companies with 1,000 or more profit-sharing plan participants than among companies with fewer than 1,000 profit-sharing plan participants.

- *The complete 1986 Profit Sharing Survey is available for $25, plus $1.25 postage and handling, from the Profit Sharing Council of America, 20 N. Wacker Drive, Chicago, Ill. 60606; 312-372-3411.*

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Last suits from arena roof collapse settled

By CAROL CAIN

CHICAGO—Insurers are expected to pay $3.64 million in the settlements of the final three injury lawsuits related to the 1979 roof collapse during construction of a Chicago-area entertainment/sports arena.

The settlements will tap into the excess insurance layers of two of the six defendants that settled last month.

Five people were killed and 16 injured in the Aug. 13, 1979, accident at the construction site of the Rosemont Horizon, located in the village of Rosemont west of Chicago.

Pretrial evidence showed that beams supporting the roof were supported laterally with lumber secured by only 100 bolts, but were supposed to be secured by more than 1,000 bolts, plaintiff's attorneys said.

'The risk isn't worth the reward,' said Erich Mees, owner of Mees Engineering in LaGrange, Ill., who is in the process of closing down his business. 'Insurance, lawyers—it's a farce. You're not insuring loss; you're insuring legal defense.'

Cook County Circuit Court Judge Donald O'Connell was expected to formally approve three settlements last week:

- $1.57 million to Herbert Drummond, 61, an electrician who suffered multiple fractures of both legs.
- $1.4 million to the family of John Geib, a 30-year-old worker who was killed in a fall when the structure collapsed.
- $675,000 to Miguel Marin, 33, who suffered a broken hip in the accident

More than a dozen defendants had been named in the 21 lawsuits that stemmed from the construction accident.

Some of those defendants initiated the settlements, and six of the defendants participated in these final three cases, said Charles Cole, a Chicago attorney who represents defendant Lentin Lumber Co., which is based in Franklin Park, Ill.

In addition to Lentin Lumber, the other defendants that settled included the village of Rosemont, Anthony Rossi & Associates, the architect; the project supervisor, CST Construction Co.; and Mees Engineering.

The exact amount that each defendant will contribute toward these settlements still needs to be worked out, according to Mr. Cole.

Michigan Mutual Insurance Co. in Detroit is the primary insurer for Lentin Lumber, Mr. Cole said. But the firm's excess insurer—Fireman's Fund Insurance Co. of Novato, Calif.—will have to pay some portion of these final settlements, he added.

However, Mr. Cole refused to give limits or particulars of the coverage.

And, Birmingham Fire Insurance Co. of Pennsylvania in New York, a subsidiary of American International Group Inc., is the primary insurer on a policy naming the village of Rosemont, the architect and the project supervisor.

Chicago attorney Donald Segal, who represents the village of Rosemont, said the excess insurer is Holland-America Insurance Co., a subsidiary of Mission Insurance Co. in Los Angeles, which is in conservation.

Mr. Segal also would not release limits or other details about the insurance policies.

The financially troubled position of Mission was taken into consideration when the settlements were reached, Mr. Segal said.

The Illinois Guaranty Fund is not expected to be tapped to pay any portion of these settlements primarily for two reasons, Mr. Segal said.

First, the outcome of the conservation effort in California is still "up in the air," Mr. Segal said. And secondly, there is enough money from the other defendants to pay the settlements.

"We have settled within our primary limits. . . .The village will not have to pay any portion," Mr. Segal noted

The excess insurer for CST Construction is Western Indemnity Co. Inc., a subsidiary of Western Fire Insurance Co. in Fort Scott, Kan. The same insurer also was CST Construction's primary insurer for this accident.

CST Construction since has filed for bankruptcy, but the bankruptcy courts have held that insurance policies are not part of a company's assets.

Therefore, Western Indemnity still must pay CST Construction's portion of the settlements, Mr. Segal said.

The last defendant included in these final settlements is Mees Engineering in LaGrange, Ill., which is owned by Erich Mees, an engineer.

Since this is the first group of settlements in which Mees Engineering participated, only its primary insurance policy at the time of the accident was involved, said Maynard Steinberg, an attorney for the company.

That policy was written by Northbrook Insurance Co., which later became Northbrook Excess & Surplus Insurance Co. and no longer is writing new or renewal business.

Mr. Steinberg did not release limits or details of the insurance policy.

In a sense, Mr. Mees sees himself and his company as victims of the 1979 roof collapse.

He currently is in the process of closing down his business and leaving the engineering trade—a trade he has practiced for almost 30 years.

"The risk isn't worth the reward," he said.

"Insurance, lawyers—it's a farce. You're not insuring loss; you're insuring legal defense," Mr. Mees added.

Although the plaintiff's cases have been settled, an "intramural struggle" remains among the defendants, notes Terrence J. Lavin, a Chicago attorney who represented the plaintiffs.

Except for Mees Engineering, the defendants that settled these three final cases also were involved in settling the other 18 cases and are expected to legally proceed against five other defendants that were named in the lawsuits, but did not participate in the settlement efforts, Mr. Segal said.

Those other five defendants include a concrete contractor, a foundation contractor, an engineer, a steel supplier and a wood supplier.

Besides paying the settlements, the six defendants also agreed to reimburse portions of workers compensation awards and medical payments made to the three plaintiffs by two separate work comp insurers, according to plaintiff's attorney Mr. Lavin:

Those insurers are:

- Travelers Insurance Cos. in Hartford, Conn., which paid in Mr. Geib's and Mr. Marin's cases.
- Bituminous Insurance Co. in Rock Island, Ill., which paid about $170,000 over the years in total disability benefits and medical payments in Mr. Drummond's case.

Mr. Lavin also praised the skills of Judge O'Connell, which led to the attorneys "negotiating fairly and in good faith."

However, Mr. Lavin asserted that this group of cases is "probably the best argument" for the Illinois Legislature to pass a "prejudgment interest" law, similar to those in a handful of other states, which require verdict awards to automatically be increased to include interest.

Mr. Lavin believes such laws provide incentive to resolve cases more quickly.

He also said this case is "a perfect example of why the tort system, as it exists now, should not be tampered with."

"These workers were at the mercy of contractors that decided to short-circuit safety," Mr. Lavin said. ■

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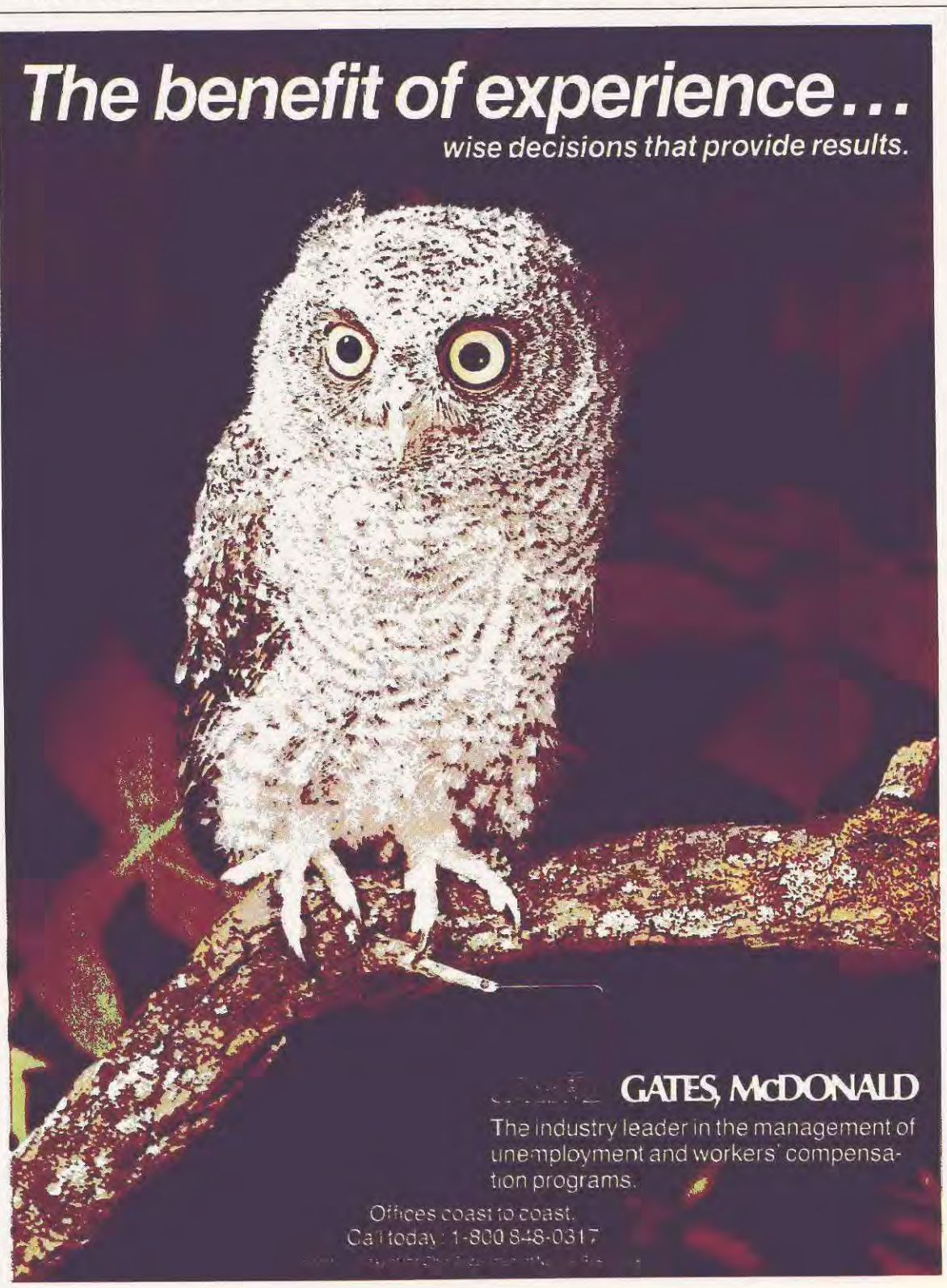

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● **"Explanation of Tax Reform Act of 1986"** is the title of and purpose behind a new publication from Commerce Clearinghouse Inc. The 672-page book provides a complete, authoritative explanation of the many and complex provisions of the sweeping measure enacted by Congress last month. Among the major areas affected by the law and covered in the book are: insurance products and companies, financial institutions, pensions and deferred compensation, other employee benefits, Individual Retirement Accounts and employee stock ownership plans. "Explanation" is available for $13 from Commerce Clearinghouse Inc., Cash Item Department, 4025 W. Peterson Ave., Chicago, Ill. 60646.

● **Corporate benefits management** audiocassettes are now available from the International Foundation of Employee Benefit Plans. Nineteen recordings cover such topics as administration of employee benefit plans, health care cost containment, flexible compensation, 401(k) plans and retirement plan design an funding. Cost of the cassettes is $7 for foundation members and $10 for non-members. Order forms listing these and other cassettes can be obtained by contacting the Audiovisual Services Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

● For the first time, recordings of sessions and addresses made at the National Council on Compensation Insurance's legal seminar is now available. **"Current Trends in the Legal Environment of Workers Compensation"** is the title of the cassette series, recorded at the Sept. 12 NCCI seminar in New York. Cassette 246A-01 contains welcome, introduction and opening remarks by the Hororable Richard Steingut. Cassette 246A-02 covers "Wrongful Discharge Trends in Workers Compensation" and "Punitive Damages and Bad Faith Issues in Workers Compensation and Employers Liability." Cassette 246A-03 contains a panel discussion encompassing "Causation of Issues in Disease Cases," "Cardiovascular Accident Trends in Workers Compensation," "AIDS in the Workplace" and "Cigarette Smoking—Workers Compensation and Liability Issues." Cassette 246A-04 contains "Medical Cost Containment." Cassette 246A-05 presents the luncheon address "Federal Legislative Developments." A mock workers compensation hearing is contained in cassette 246A-06, "Factual Situation—Emotional Stress in the Workplace." The final cassette, 246A-07, contains "Stress—Organizational Perspective" and "State Legislative Developments." Each cassette costs $9.95 plus $2 shipping and handling per tape (maximum shipping costs $10). To order contact Conference Copy Inc., 204 Avenue M, Brooklyn, N.Y. 11230.

● A **health promotion/wellness program** designed to improve employees' health and to lower corporate health costs is introduced in a product summary and sample report from Healthquest. The Healthquest program includes a detailed laboratory analysis, a health risk assessment and a personalized report. For free information on this employee benefit and health care cost-containment program contact Healthquest division, Industrial Health Inc., 543 Bryant St., Palo Alto, Calif. 94301; 415-321-7911.

● Aspen Publications has just released a 90-page publication titled **"Employee Benefits: Cost Containment."** Noting that the latest figures from the U.S. Chamber of Commerce show that employee benefit plan expenses now amount to more than 36% of the average company's total payroll, the book's authors discuss effective management of pension fund assets, pension plan terminations, retiree medical benefits, financial management of death and disability benefits and flexible compensation. To order a copy send $20.75 to: Aspen Publishers Inc., 16792 Oakmont Ave., Gaithersburg, Md. 20877.

● **"Evaluating Dental Capitation Plans"** is the title of a research paper authored by Donald S. Mayes, vp-dental affairs at U.S. Administrators, and Patricia J. Ibbs, principal at PJI Benefits. Designed to give guidance for those who are considering buying such a plan, the paper is written in a question-and-answer format and covers such topics as how dental offices are selected, the minimum number of enrollees and dental offices, the dental experience needed by an administrator and what percentage of dollars should be spent on various services within the plan. For a free copy of the paper, write to PJI Benefits, 1215 Hightower Trail, Suite C-140, Atlanta, Ga. 30338.

● The American Society for Testing & Materials has published **"ASTM Standards on Technical Aspects of Products Liability Litigation."** Contained in this 14-page book, a first edition, are four standards designed to shorten the product liability litigation process, to reduce the cost of litigation and to minimize delay in the process. The book is aimed at the conduct and practice of technical experts. The cost to ASTM members is $9.60, $12 for others. To order, or to learn about other ASTM publications, contact the American Society for Testing & Materials, 1916 Race St., Philadelphia, Pa. 19103; 215-299-5585.

● A new health care cost-containment resource helps employees take an assertive role in the health care system. "Asking Questions for Only the Best Health Care" is the title of a new booklet from Krames Communications that offers **tips for strengthening the communications process between employees and health care providers.** Such topics as second opinions, generic prescriptions, non-medical treatment and surgery are covered in the booklet. A wallet-sized card is included with

Continued on next page

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Continued from previous page
the booklet and contains questions that can help employees become better informed when visiting a health care provider. A free sample copy can be obtained by writing to Krames Communications, Department ASQ-6, 312 90th St., Daly City, Calif. 94015-1898.

• "Private Review: Beyond Cost Containment" is the title of a new publication from the Hospital Research & Educational Trust of the American Hospital Assn. The publication examines **new developments in the field of private review**, including current problems and responses as well as likely future developments. A copy of the publication may be obtained by specifying publication #696212 and sending $7.50 to AHA Services Inc., Order Processing Department, 4444 W. Ferdinand, Chicago, Ill. 60624; 800-242-2626.

• **"The 1986 Employee Benefits Symposium Proceedings"** has been published by the International Society of Certified Employee Benefit Specialists. The book contains edited texts of nine presentations made in May at a meeting of specialists in the employee benefits field in San Diego. Topics covered in the book include benefits in the future, current issues with HMOs and PPOs, court trends affecting retirement plans, legislative/regulatory updates and more. The cost of the book is $10 for ISCEBS members and $18 for non-members. It may be purchased by contacting the ISCEBS, Publications Department, P.O. Box 209, Brookfield, Wis. 53009-0209.

• The 1986 edition of "Workers Compensation: What Those Handling Insurance Need to Know" has been published by Reed Stenhouse Ltd. The updated booklet provides a concise explanation of **workers compensation legislation in Canada.** Since the booklet's first publication in 1981, a number of changes have been implemented, including: changes in status of domestic workers, who now come under workers compensation in Ontario if a certain amount of hours are worked; increases in the base amount used to calculate benefits; and attempts to hold employers liable for negligently causing at-work injuries. The booklet is priced at $4 and may be obtained by writing to the Insurance Institute of Canada, 481 University Ave., Toronto, Ontario M5G 2E9.

• Two new guides on health care information are now available from the Coalition Clearinghouse on Business for Health Action. **"What Employers Should Know About PPOs"** is designed to explain the latest alternative to conventional health insurance—preferred provider organizations—and the fastest growing type of health care plan in the country. This guide explains how PPOs differ from other health care plans, the advantages and disadvantages of PPOs by type of sponsors, how to evaluate PPOs and decide if they are right or your firm and deliver what they promise. In addition, a glossary of selected health care plan terms is included. Ask for Publication No. 6939. In addition, **"A Guide to Sources of Health Care Data"** is the title of another book from the Coalition Clearinghouse. The guide provides sources for information about health care facts and figures. Designed to save time in locating health care data, the guide provides the name, address and phone number of nearly every organization and publication that produces health-related statistics as well as a brief description of specific data available from each source. Sources include federal and state health agencies, research and consulting firms, foundations, health data publications and more. Request Publication No. 6951. Each publication costs $15 and can be ordered by specifying the publication number. Mail your order to Publications Fulfillment, U.S. Chamber of Commerce, 1615 H St. N.W., Washington, D.C. 20062; 301-468-5128. Make checks payable to the Coalition Clearinghouse.

• Industrial Risk Insurers is offering a new four-page folder that encourages **pre-emergency planning for computer facilities.** Recommendations include a review of the facility's electronic data processing operations and written emergency plans for various disruptions in service—tornadoes, floods, fires, arson or actions by militant groups with explosives, to name just a few. Risk managers, computer personnel, insurance managers and plant managers will find the book of particular interest. For a free copy contact Mrs. P.A. Sasso, Industrial Risk Insurers, 85 Woodland St., Hartford, Conn. 06102; 203-520-7412.

• **"Computer Security Services"** is the title of a technical paper prepared by M&M Protection Consultants that describes the company's services in the areas of risk analysis, security programs, data and communications security, disaster recovery planning and training and education. For a free copy of the paper, write to M. Musson, Manager-Computer Security Consulting Services, M&M Protection Consultants, P.O. Box 14459, 515 Olive St., St. Louis, Mo. 63718.

• The American Society of Safety Engineers has published an 80-page book titled, **"Safety Manual for Municipalities."** The booklet provides a general look at loss control procedures, in addition to safety measures for various administrative departments, including: waste treatment/pollution control, police, fire and public works. Single copies are available at the rate of $20 for ASSE members and $25 for non-members. Prepaid orders only will be received by Department F, ASSE 1800 E. Oakton Blvd., Des Plaines Ill. 60018-2127.

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Brokers on IIE, NYIE forming associations

By CAROL CAIN

Brokers for insurance exchanges in Illinois and New York are joining their counterparts in Florida in creating broker associations.

Officers of the Illinois Insurance Exchange Brokers Assn. were elected during an organizational meeting Oct. 29. The IIE's board of directors approved the creation of the association in August (*BI*, Sept. 1).

And, the New York Insurance Exchange Brokers Assn. was formalized Oct. 30 with the election of officers and a board of directors. The group's bylaws also were approved that day.

A seven-member ex-officio committee had been working since late summer to design the NYIE brokers association.

The two new associations now can match efforts with the IEA Brokers Assn., which has been in force for more than three years at the Insurance Exchange of the Americas in Miami.

There are 60 brokers on the Miami exchange.

"We want to advise the underwriters of the exchange what is salable in the field and what is needed in the field," said Thomas S. O'Brien, newly elected president of the IIE Broker Assn. in Chicago. He also is senior vp of Swett & Crawford Group.

The Illinois exchange is "up and running," Mr. O'Brien noted, and brokers want to help it continue "to flourish and grow."

The new association will bring a collective voice of the producing brokers to the exchange, Mr. O'Brien said, "to help make the exchange's products more salable and more viable."

About 100 people, representing 75 of the Illinois exchange's 148 member brokers, attended last month's organizational meeting, Mr. O'Brien said, which illustrated the enthusiasm and support of IIE brokers.

Besides Mr. O'Brien, the other officers of the IIE Broker Assn. are:

- Vp Alison J. Renner, president of A.J. Renner & Associates Inc.
- Secretary Hank Mueller, vp of Avreco Inc.
- Treasurer Lynn M. Lamb, assistant vp of Intere Intermediaries Inc.

Brokers at the New York Insurance Exchange formed the NYIE association for similar reasons. There are 106 brokers on the New York exchange.

"I think this is a big turning point for the exchange," said Stephen L. Gandley, who was elected the association's secretary. Mr. Gandley added that the new group will work toward "the preservation and continuation" of the exchange.

"We feel we should have certain input to help it along," said Mr. Gandley, who also is president of E&S Intermediaries Inc.

Joseph Fahys, president of the NYIE, said brokers are the "backbone and source of business" for the exchange, and creation of the association will improve communication.

The NYIE's board of governors endorsed the broker association earlier this year, Mr. Fahys explained.

Besides Mr. Gandley, other officers of New York Insurance Exchange Brokers Assn. are:

- President Eugene Connell, assistant vp of CedarPine Brokerage Inc.
- Vp Walter L. Harris, president of Tannenbaum-Harber Co. Inc.
- Treasurer David Isenberg, senior vp of David C. White Agency Inc.

The New York brokers' association, in addition to its officers, also has a nine-member board of directors.

To avoid electing well-known people who had little time for the board of directors, members of the ex-officio committee "tried to bring across the point that we wanted drones, not queen bees," Mr. Gandley said.

The association's bylaws stipulate that one of the nine board of directors will be an at-large member. There also will be two directors each to represent facultative brokers, treaty brokers, direct or retail brokers and excess/surplus or wholesale brokers, Mr. Gandley explained. ■

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SIIA conference

New federal legislation favors U.S.-based self-insurers: Expert

By MICHAEL BRADFORD

DENVER—New laws that expand the federal Risk Retention Act and overhaul the tax code will give U.S.-based self-insurers a decided advantage over offshore captive insurers, according to an attorney who specializes in insurance-related law.

Mr. Sarchio

Developments in Washington during the past year have produced "a theme that has emerged that is clear, at least today," said attorney John J. Sarchio of the New York firm of Hughes, Hubbard & Reed.

"And that is: Commercial, legal and tax forces at work are combining to make the domestic self-insurance industry increasingly dominant" over offshore captive insurance companies as a risk financing alternative, he said.

Mr. Sarchio made his remarks at the Self-Insurance Institute of America's annual meeting in Denver last month.

The 1981 Risk Retention Act was 'not taken advantage of to any significant extent,' Mr. Sarchio says.

The trend in Washington is marked by the expansion of the Risk Retention Act and the passage of the Tax Reform Act of 1986, Mr. Sarchio said.

President Reagan on Oct. 27 signed the expansion to the Risk Retention Act, which allows special multiple-owner captives to operate nationwide to provide all casualty coverages except worker compensation to member-owners. The act also pre-empts state laws that prohibit employers from purchasing casualty insurance on a group basis.

The original 1981 law allowed insurance buyers to band together and form these types of captives, called risk retention groups, to purchase only product liability and completed operations coverage.

The president signed the Tax Reform Act of 1986 a week earlier.

Although insurance buyers and insurers are now trying to interpret gray areas in the new Risk Retention Act, the law apparently is going to give domestic self-insurers an edge over offshore captive domiciles, according to Mr. Sarchio.

"It's on everybody's list of trying to figure out what it all means," he said.

In comparison, although the original Risk Retention Act caused "a lot of hoopla for creating capacity for product liability coverage," only a few groups were formed under the act, he said.

The old act was "not taken advantage of to any significant extent," he said.

Mr. Sarchio, who helped draft the Vermont law that allows the formation of captive insurance companies in the state, said an "exciting feature" of the 1986 Risk Retention Act is "that unlike the 1981 act, offshore risk retention groups are not permitted."

As a result, group captive activity under the act will "likely be confined to the U.S. at the expense of the offshore domiciles," he said.

However, he pointed out that offshore groups formed under the 1981 act will likely be allowed to continue operating.

"The offshore jurisdictions are not thrilled," about the ruling that prevents risk retention groups from forming in those domiciles, he said.

Mr. Sarchio also said that another blow to offshore captives are the provisions in the new tax law affecting income paid to many captives' shareholders.

The tax law change will shut down "a lot of hoop-jumping" that occurred in the past, he said, referring to previous tax law provisions that allowed shareholders of offshore captives deemed to be non-controlled foreign corporations to defer their tax payments until income is actually paid to them.

After the 1986 tax year, U.S. shareholders of foreign insurers that are at least 25% percent U.S.-owned will have to immediately pay current taxes on income payable by the captive.

"The bottom line is most, if not all, income will be taxable," to the U.S. shareholders, Mr. Sarchio noted.

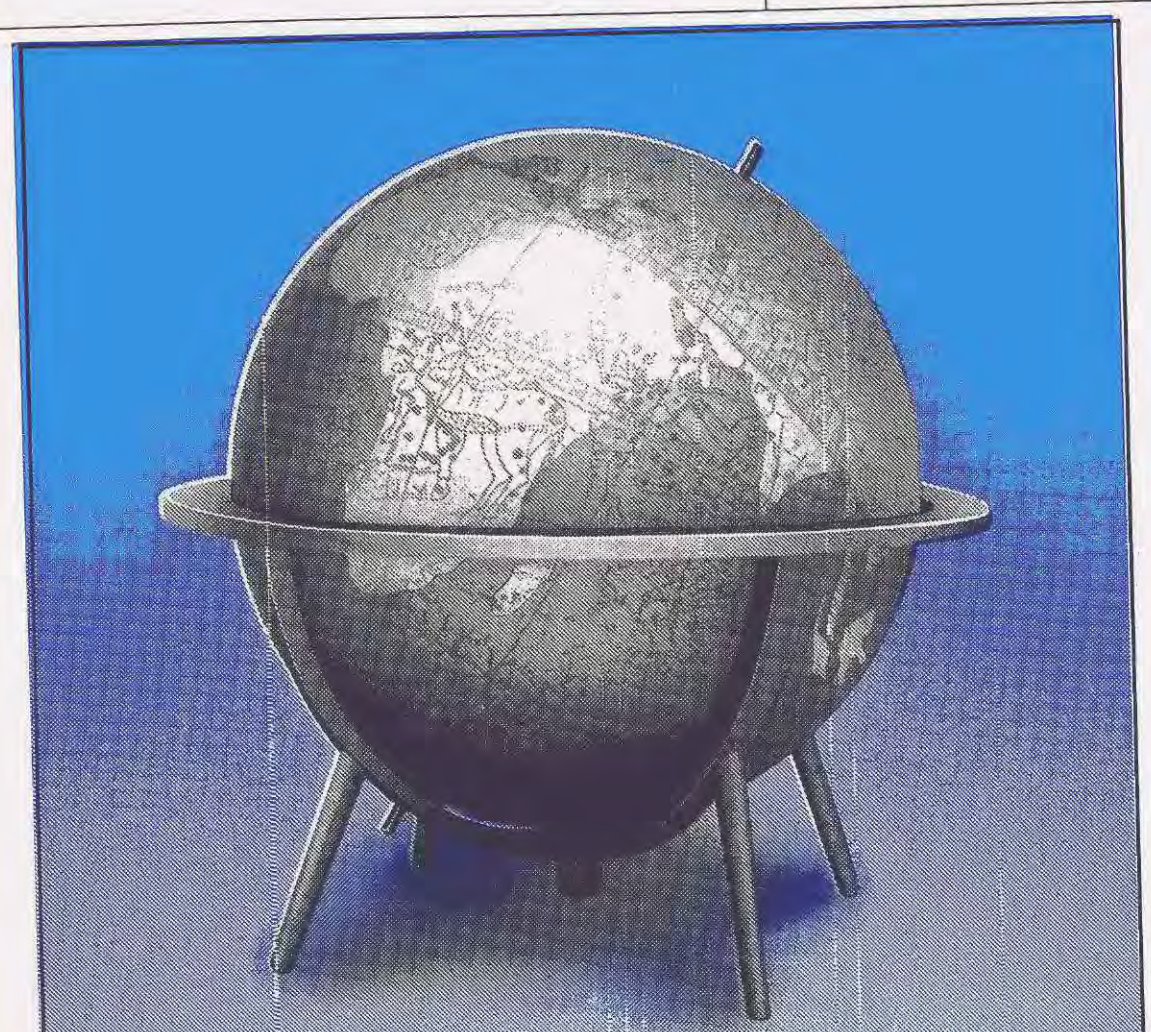
But not all legislative assaults on captives will be allowed to pass quietly, he predicted.

He said he expects a challenge to the "age-old problem of deductibility of premiums."

In the past, U.S. courts generally have not allowed a company to deduct premiums paid to a single-parent captive, he said,

But Mr. Sarchio said he believes that the success of the Risk & Insurance Management Society and other groups in pushing the expanded Risk Retention Act through Congress will spur them to challenge the deductibility of premiums issue.

He said he expects those groups to introduce legislation that would "create a safe harbor for the tax deductibility" of premiums paid to a captive. ■



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Pay attention to plan responsibilities: Expert

By MICHAEL BRADFORD

DENVER—Self-insured employers, third-party administrators and insurance companies providing administrative services for employee benefit plans should be sure to keep a close watch on their legal responsibilities, says one observer.

"I cannot stress more that whether you be employer, TPA or insurance company, you must watch today your legal responsibilities," said George Gale III, president of Vested Benefits Inc., a firm in Grand Rapids, Mich., that works with employers and health care providers in researching and developing cost-containment programs.

Mr. Gale told the Self-Insurance Institute of America's conference last month in Denver that some TPAs feel they do not have fiduciary responsibilities. But, he warned, "I think they are making a grave error."

One reason TPAs and self-insurers have to be more careful is the scarcity of a single document that outlines their legal responsibilities pertaining to a benefit plan, Mr. Gale said.

"Some time ago. . .there was a requirement for what they called the plan document," said Mr. Gale. "And I was sort of sorry they did away with the plan document. The attorneys were, too."

He said the plan document outlined legal rights and responsibilities of all parties. It "truly explained what the plan was all about. Yes, it had all the legalese in it and everything else, but at least it was a bona fide document.

"Basically that has been done away with in many cases and people are relying on the summary plan description," Mr. Gale said. But, he said, the summary plan description is designed to explain the plan to employees and does not do a good job of outlining the role of employers, TPAs and insurers.

Mr. Gale also gave his audience advice on choosing an administrative service for a self-funded plan.

Administration can be done in-house, or by a TPA or insurer, he noted. But, except for "huge organizations, and I mean very large," administering a self-funded plan completely in-house is not practical, he commented.

"What I see happening. . .is a modified in-house. And I think it makes a lot of sense," he said: Insurers and TPAs can work with the employer's in-house staff to complete the administrative program, which can make the entire program more efficient.

Such administrators also get to know their clients better. And, he said, a good relationship between client and administrator is a rare and valuable commodity.

When an employer selected a TPA 10 to 15 years ago, Mr. Gale said, that TPA "was all things to all people." Some employers can remember when a TPA "really was a savior," he remarked.

But, he said, "That's all changed today. The competitive nature of this business is unbelievable. And it has forced serviceability right down the tubes."

Because of the current competition among TPAs, many employers are choosing TPAs on the basis of cost, and "they are making a grave mistake," Mr. Gale warned.

Employers that keep changing TPAs to find lower costs are not sensitive to the fact that such frequent change is upsetting workers, Mr. Gale said. "We're beginning to find reactions by employees who are confused enough" by complex benefits choices, he noted.

Such changes are "doing nothing but causing utter confusion to the employees of this nation by our own desire to get the bottom dollar. So I caution all of you to be very careful as to whom you choose as an administrator.

"And those of you who are administrators, I would hope that you would start to sell or market on the basis of what you were before. And the insurance industry must do the same thing. You have forgotten why you went into the swamp. Now you are up to your you-know-what in alligators."

Mr. Gale also urged TPAs to involve employers more in the administration of their self-funded benefit programs. Sometimes, he acknowledged, the administrator doesn't involve the employer "because the employer doesn't want him to, and that's a shame."

The administrator should work with the employer so that "it is a two-way street and the employer knows what is going on."

The same care needed to choose a TPA should be exercised in choosing an insurer to underwrite stop-loss coverage for a self-funded benefit program, Mr. Gale pointed out.

"I have seen major corporations and top-notch TPAs deal with insurance carriers that I would be very concerned about," he said.

Mr. Gale said too often major corporations "certainly take a lot more time in evaluating the type of materials that they buy in the open market so that the product they turn out will be good," but spend "no time in their decision as to what insurance company to place their stop-loss business with."

Although choosing a TPA or insurer on the basis of cost can be unwise, Mr. Gale said, there are some things employers can do to hold down the cost of a self-insured benefit plan.

For example, he advised employers to consider raising health plan deductibles.

One hundred-dollar deductibles "probably went into effect in 1920. It's worth about $6.40 today. . . . We've all waited too long to adjust the $100 deductible," he said.

Some plans have raised deductibles to as much as $500 or $1,000, he said, adding, "Do you think that doesn't raise a howl?"

But, he emphasized that "that's the equivalent of a $100 deductible when it first went into effect."

But, Mr. Gale said he disagrees with a trend to have employees pay more of the premium.

"I know I'm not in the mainstream when I say that, but I still think the wisest thing is for the employer to pay the premium for the employee and the dependent, but then put provisions in the plan that cover the employer" against excessive plan costs.

For example, he said, employers should be sure their plans have coordination-of-benefits provisions.

In conclusion, Mr. Gale emphasized that he is optimistic about the future of administration of self-funded benefit plans.

"It is cutthroat out there today," Mr. Gale said. "But don't you think for one minute that the administrator is on the way out." ■

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Tort system astray, law professor asserts

By MICHAEL BRADFORD

DENVER—The remarkable thing about the nation's tort system is that it works at all, says a law professor at the University of Minnesota in Minneapolis.

Irving Younger, who also is a former judge, told those attending a panel discussion on civil justice and the U.S. tort system at the Self-Insurance Institute of America's annual meeting in Denver last month that the nation's tort system is "designed by no one in particular."

Rather, it is "miscellaneous, it's incoherent, it's illogical—no one ever sat down to design it," he asserted. "Instead, it has accumulated over the years," since a judicial decision 136 years ago that first held that damages could be awarded only if a defendant was found to be negligent.

Because of the way the U.S. tort system has developed, it is wrought with problems, Mr. Younger summed up.

Another member of the panel agreed that the tort system has strayed far from what its role should be.

Hugh Reynolds, a trial lawyer with the Indianapolis firm of Locke, Reynolds, Boyd & Weisell, called the tort system "an injured victim" that has "served this country very well until a runaway judiciary. . .has sought to, and may indeed well have, killed that system."

Mr. Reynolds, who has 33 years of experience as a trial lawyer, said, "I find it disgusting when I have to practice in a case where an obviously negligent plaintiff can recover from a manufacturer who has done no wrong in the sense that you and I would understand wrong to be."

Mr. Reynolds pointed out that in many such cases, a plaintiff can recover damages after already being compensated from other sources, and a manufacturer, although only as little as 5% responsible for the loss, can be ordered to pay all damages because of joint and several liability.

However, Mr. Reynolds added, "I believe I am operating in a system that can be corrected and should be corrected."

One step toward correcting the system would be to do away with punitive damages, which he said "have no place in our modern society."

Mr. Younger also voiced his displeasure with punitive damages.

The focus of punitive damages is "punishing the defendant in his pocketbook by making him pay money simply because he was bad," he said. "This is designed to see to it in the future that he will not be bad again."

But, there is too little guidance in determining punitive awards, Mr. Younger said. "Do you know what the judge will say to the jury? 'If you think the defendant deserves to be punished, punish him.' They'll dress it up in lawyers' language, but that's what it comes to."

Mr. Younger also noted that punitive damages in some cases may become a thing of the past. Several states are considering legislation that includes limits on punitive damages, he noted.

Mr. Reynolds said another step in correcting the current tort system involves altering the current system of contingent fees.

"I would suggest to you that if our system is worth saving. . .it is absolutely imperative that the contingent fee system provide to those plaintiffs who cannot afford it, a lawyer," Mr. Reynolds remarked.

However, Mr. Reynolds said he agreed with Mr. Younger that in many cases, contingent fees are much too high and lead to unfair compensation for lawyers for the work they actually perform.

He suggested that courts take a greater role in determining lawyers' contingent fees.

However, panelist Stephen A. Cozen, an attorney with the Philadelphia firm of Cozen, Begier & O'Conner, said he believes that tort reform may not do much to solve the insurance availability crisis.

"Where a lot of tort reformers and I disagree is in the assertion that long-term systematic relief will come about from fundamental reform of tort law," Mr. Cozen said. "And my assertion is that it will not."

Despite that, Mr. Cozen named a number of tort reform measures he would like to see adopted.

"I am absolutely in favor of a return to a fault-based standard of liability," he said. In addition, the Mr. Cozen said he favors tort reform measures such as limits on non-economic damages like pain and suffering and structured settlements of some awards.

"All of this should indicate to you that I am indeed in favor of tort reform," he noted. "But I do not agree with the popular illusion that tort reform in and of itself" is the most important factor in quelling the liability insurance crisis.

Mr. Cozen said that several other factors, including one significant external factor and several "internal to the insurance industry," have driven the current insurance crisis.

The external factor "is traceable to the courts of the United States," he claimed. "The single most influential factor in the present-day insurance crisis, I suggest to you, is the continuing unwillingness of the courts of this country to interpret insurance contracts in accordance with the intent of the parties that entered into those contracts as far back as the 1950s and the 1960s."

Internal factors cited by Mr. Cozen that occurred during the past 10 years to help bring about the insurance crisis are:

- Cash-flow underwriting by insurers.
- Insurers' inflexible long-term investments.
- Combined ratios of more than 140%.
- The effect of interest rate fluctuations on insurer investments.
- Changes in availability and price of reinsurance.

"These are the internal factors which are at least as much responsible for the insurance crisis today" as the tort system is, he said.

Mr. Cozen explained that his message "is that tort reform and tort reform alone is neither the driving force behind the insurance crisis nor the solution. Economic factors such as the fluctuation of interest rates, supply and demand and the cost and expense of doing business are significant factors in the present crisis."

But, he agreed that an important factor behind the current crisis is the "failure of the court system to properly and consistently interpret the insurance contract."

Edward P. Holleran, president of ESIS Inc. in Philadelphia and a director of the SIIA, moderated the first part of the panel discussion, and Mr. Younger served as moderator of the second half. ■

New captives will help in next crunch: Agent

By MICHAEL BRADFORD

DENVER—Groups considering forming association captives should realize they will be preparing for the next insurance market crisis, not this one, says an expert in captive formation.

William S. McIntyre, president of Artex Insurance Agency Inc. in Dallas, told a workshop at the Self-Insurance Institute of America's conference "a buyers' market" will begin to develop for property/casualty insurance in the next 12 to 15 months.

"We learned to survive in a soft market," he said. And four years from now, "we'll be back into the tight market," he added.

'You've got to be thinking in terms of not doing something for this crisis, but just saying, 'We've learned our lesson, and we're going to put together something to take care of the next crisis.'"

Mr. McIntyre and other shareholders formed Bermuda-based American Risk Transfer Insurance Co. Ltd. in 1981 to underwrite coverage for construction contractors.

He said a key element of a successful association captive is having members that will stay with the insurer through "thick and thin." But, choosing those members can be difficult, he noted.

For example, particularly sticky issues involve denying coverage for a prospective member or canceling coverage for a member, he said.

"How would you like to be in the position of putting together one of these things and the president of an association has been a big mover. . .and you're going to have to tell this guy" he does not qualify for coverage? Mr. McIntyre asked.

"That happens. And if you don't have somebody who's been a lightning rod and can take the heat. . .and you end up taking some risks that shouldn't be in there in the first place, this thing is going to be doomed."

Mr. McIntyre offered several tips for forming an association captive:

- Monitor claims-handling and reserves. Systems have to be in place to track how claims are settled and administered. And the status of reserves must be monitored closely.
- Stay abreast of industry changes. This is especially critical if the association programs are managed by non-insurance industry personnel, Mr. McIntyre noted.

He also suggested appointing "some outside directors who understand" the insurance industry.

- Track the ability of members to pay premiums. "You may have the best program in the world. . .but if people can't pay their premiums or they are so busy trying to stay in business and survive. . .losses are going to get out of control," Mr. McIntyre noted.
- Avoid offering discounts on premiums. "Dividends are better than discounts," Mr. McIntyre asserted. He advised that captives take in an adequate amount of premium and return dividends to members from earnings on investment income.

Mr. McIntyre also urged developers of association captives to "stick to specific industries." He noted that ARTIC once ventured from its field of expertise—insuring contractors—to take on trucking-related exposures. That foray into an unknown risk cost the insurer $2 million in one year, he said.

Mr. McIntyre emphasized that an association's directors should exercise care in choosing a manager to handle the captive's operations.

"You want somebody that is knowledgeable" about the industry the captive will cover, he said.

"Just because they've been doing a great job in the medical malpractice area," for example, does not mean the candidate can manage product liability risks, he explained.

He emphasized that choosing a manager is critical because many reinsurers will not write coverage for a captive that is poorly run.

A manager also should be well-financed, Mr. McIntyre advised. People in charge of "your financial life or your clients' or members' financial lives" should have a strong financial status themselves, he said.

"Don't be embarrassed to ask financial questions," of potential managers, Mr. McIntyre added. ■

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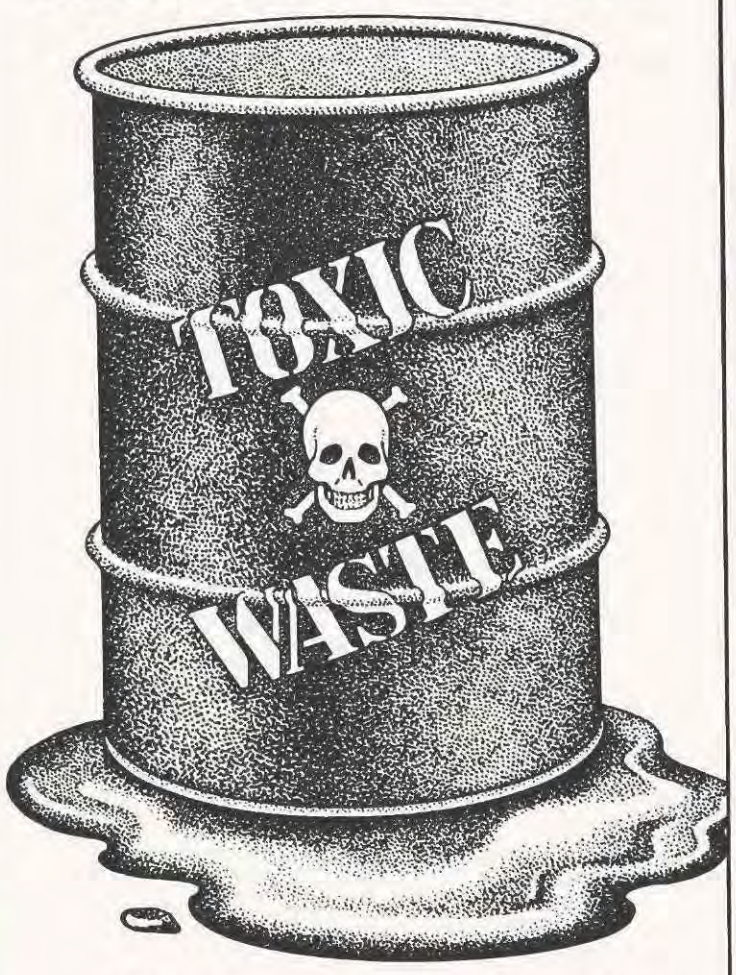

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Three suspended syndicates get green light from Lloyd's

By STACY SHAPIRO

london

LONDON—Lloyd's of London is allowing three syndicates, which it told earlier this fall to stop underwriting most new and renewal business for the rest of the 1986, to begin underwriting again.

In September, Lloyd's directed six syndicates to halt underwriting for the rest of 1986 because they were likely to exceed their premium limits.

But, late last month, Lloyd's rescinded this directive for syndicate 989, managed by Janson Green Ltd.; syndicate 279, managed by Crescent Underwriting Agencies Ltd.; and syndicate 650, managed by Scimitar Underwriting Agencies.

All three syndicates are underwritten by Bill Maitland, deputy chairman of Janson Green.

When Lloyd's ordered the syndicates to stop underwriting, Mr. Maitland argued that his syndicates would not exceed 100% of their capacity. He said the problems between his syndicates and Lloyd's stemmed from an error he made at the beginning of the year.

Lloyd's requires all underwriters to give a monthly forecast of their estimated premium volume over a 36-month period at the beginning of each year. Lloyd's then checks the syndicates' premium limits against the forecasts monthly.

Mr. Maitland explained that he issued a lower estimate than he should have at the beginning of the year, which is why it appeared his syndicates might overwrite their limits (*BI*, Sept. 29).

Of the three syndicates that have not been allowed to resume writing this year, Lloyd's is forcing one—the market's largest non-marine syndicate—to reduce its capacity for 1987. Lloyd's says that syndicate 799, managed by Merrett Underwriting Agency Management Ltd. and underwritten by Robin A.G. Jackson, can write only 85% of its allocated premium capacity in 1987 (*BI*, Oct. 27).

Merrett decided the syndicate would stop underwriting most new and renewal business for the rest of the year before Lloyd's issued its directive.

Lloyd's has not yet decided on the fate of the other two syndicates: non-marine syndicate 1031, managed by Janson Green Ltd., and syndicate 1041, managed by Bolton, Ingham (Agency) Ltd. Both are underwritten by John Wetherell.

"We dispute Lloyd's findings that we have overwritten for 1986," Mr. Wetherell said. "We have appealed the Lloyd's decision. We hope we will be successful."

The two syndicates, as well as syndicate 799, write U.S. casualty risks, including professional liability and directors and officers liability policies, Mr. Wetherell said.

The two syndicates had a total capacity this year of about 39.3 million pounds ($57 million), according to Mr. Wetherell. "We expect to be within that," he said. Mr. Wetherell hopes to have a total combined capacity in 1987 of 50 million pounds ($72.5 million).

Rating agencies

London insurers and brokers, concerned about the financial security of insurance and reinsurance companies in the United States and the United Kingdom, held a private meeting last week with three insurance company rating services.

About 200 people from the London market turned out to listen to representatives of A.M. Best Co. Inc., Standard & Poor's Corp. and Insurance Solvency International Ltd. talk about insurer ratings.

It was the first time Best and Standard & Poor's have met with underwriters in London, although they have met with London underwriters visiting the United States, sources say.

The meeting, which was closed to the public to allow underwriters to talk about specific companies, was organized by the Lloyd's Insurance Brokers Committee.

New syndicate

Lloyd's of London underwriting agency R.H.M. Outhwaite (Underwriting Agencies) Ltd. is launching a new non-marine syndicate to write primarily professional liability coverages.

The syndicate, No. 1047, will be underwritten by Nicholas Colton, who also will continue to write a general liability account for Outhwaite's main marine syndicate 317. Mr. Colton confirmed that 1987 capacity for syndicate 1047 will be about 3.5 million pounds ($5 million).

Mr. Colton said the time was right to open a new syndicate to write professional liability coverage because capacity is tight and there is a demand for the coverage.

Tourist attraction

Lloyd's of London opened its doors to the public last week for the first time in its 300-year history.

Visitors now can enter the new Lime Street headquarters and be transported in external glass elevators to the building's fourth floor to view exhibits tracing the development of Lloyd's from its origins as a 17th-century coffee house.

The exhibit includes a review of Lloyd's headquarters over three centuries, and visitors can sit in a replica of a Lloyd's underwriting box.

From a gallery, visitors will have a bird's-eye view of the Lloyd's underwriting room, where they can see "underwriters and brokers transact business worth more than 25 million pounds in premiums each working day," a Lloyd's spokesman said.

Comings & goings

Jonathan A.D.J. Palmer-Brown, formerly deputy chairman and managing director of Stewart Wrightson Aviation Ltd., has been appointed chairman of Stewart Wrightson Aviation. **Peter L. Butler,** previously deputy chairman, appointed managing director of Stewart Wrightson Aviation. **Alan H. C. Colls**, former chairman of Stewart Wrightson Aviation, has relinquished his position to devote more time to his role as chairman of Stewart Wrightson Ltd., the **brokerage arm** of Stewart Wrightson Holdings P.L.C.

Sax Riley, a director of Sedgwick Group P.L.C., appointed chairman of Price Forbes Ltd., the Lloyd's of London North American insurance brokerage division of Sedgwick Group. He replaces **John J. H. Swinglehurst,** who will remain Sedgwick's corporate director of group developments.

John Gaynor, formerly group financial controller of Imperial Group P.L.C., has been appointed head of finance at Lloyd's. ■

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A&A selects Paulding to head Japan unit

James Y. Paulding has been named president of Alexander & Alexander of Japan Inc. in conjunction with Alexander & Alexander Services Inc.'s expansion in the Far East.

Mr. Paulding, who currently is senior vp of New York-based A&A, will relocate to Tokyo in early 1987. He joined the international insurance brokerage and risk management firm in 1972.

Other agent/broker changes:

John J. Kelly appointed chief operating officer of Corroon & Black Co. of New York Inc., a New York City subsidiary of Corroon & Black Corp. Mr. Kelley formerly was senior vp in charge of marketing for Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y.

Bernard C. Beavais Jr. elected senior vp of Johnson & Higgins of Massachusetts Inc. Mr. Beauvais is a senior account executive in the casualty department of the Boston office of J&H.

Robert G. Laible elected senior vp of Johnson & Higgins of New Jersey Inc. He is a senior account executive and manager of the employee benefits department in the Parsippany office of J&H.

Richard P. Southworth elected senior vp of Johnson & Higgins of Ohio Inc. Mr. Southworth is a senior account executive and sales manager of J&H's Cleveland office.

J. Francis Sinnott elected senior vp of Johnson & Higgins of California. He is a senior account executive in the San Francisco office of J&H.

Robert H. Johnson joined Rollins Burdick Hunter of Northern California Inc. as a vp. Previously, Mr. Johnson was responsible for international employee benefit programs for major corporate clients of the Insurope Multinational Insurance Network.

Also at RBH, **Charles M. Mulle** promoted to executive vp and **James C. Maher** to senior vp at Rollins Wrightson Co. in Chicago. In addition, **H. Scott Fritts** and **Werner Reiners** have joined Rollins Wrightson as vps.

Excess/surplus

Earl R. Lanning, vp of Memphis, Tenn.-based broker The Crump Cos. Inc., was appointed head of the Crump E&S Special Marketing Unit, and **Orville D. Jones** was named to the newly created position of executive vp and national director of the Crump E&S Group. Prior to this appointment, Mr. Jones was vp of Crump-Davis Inc., The Crump Cos.' Dallas-based excess and surplus lines operation.

Peter D. Wood named vp-underwriting in charge of special programs, including directors and officers liability underwritten on behalf of Associated International Insurance Co. and Calvert Insurance Co. in conjunction with Stewart Smith Group.

HMOs

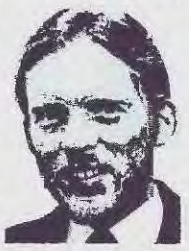
Mr. Brooks

Daniel H. Brooks, M.D., named chairman of the Physicians Health Plan of Western Pennsylvania, a Pittsburgh metropolitan area health maintenance organization sponsored by the Allegheny County Medical Society. Dr. Brooks, a surgeon, was president of the Allegheny County Medical Society from 1985-86 and currently chairs the society's board of directors.

comings & goings: industry

Other suppliers

John Thompson named consulting actuary in the Columbus, Ohio, office of The Wyatt Co. Previously, Mr. Thompson was executive vp and chief actuary with Hay/Huggins Co. Inc. in Philadelphia, Pa., and a partner of the Hay Group.



Mr. Chickering

Thomas G. Van Housen joined the Chicago office of A.S. Hansen Inc. as a consulting principal.

David M. Kieffer named head of the Washington office of William M. Mercer-Meidinger. Mr. Kieffer, a managing director of the firm, previously served as national practice leader for Human Resource Management.

William E. Chickering joined Total Group Services as vp responsible for developing an insured products division for the third-party benefits plan administrator located in Grand Rapids, Mich.

Adrian M. Tocklin and **Joseph P. Roth** appointed executive vps and **William F. Bergs** named vp and manager at Underwriters Adjusting Co. in New York. Since 1984, Ms. Tocklin has served as eastern regional vp and manager. Mr. Roth joined UAC in 1984 as vp and manager of the Southeastern region in Atlanta. Mr. Bergs had been vp of marketing since 1984.

William H. Rauschenberg named senior vp and **John P. Nipps II** named director of risk control at Southeastern Special Risk Services Inc. of Macon, Ga. Mr. Rauschenberg will be located in the company's Atlanta office. Until renovations at Southeastern's Macon office are completed, Mr. Nipps also will be located in Atlanta.

Insurers

Timothy B. Daniel named vp of Continental Underwriters Ltd. in New Orleans, La. Mr. Daniel, who had been a vp at Johnson & Higgins, joined Continental Underwriters in September 1986. He will specialize in marine and oil and gas industry insurance.

Mr. Daniel

John Dyson appointed vp and chief underwriting officer of Continental Insurance Corp.'s Brokerage and Special Operations Group. Previously, Mr. Dyson was vp in charge of underwriting for the New York-based property/casualty insurer's National Brokerage Services unit. ■

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When a Loss Occurs, the Insured Notifies the IRI District Office, or the producer, or both. If the loss is minor the details can often be gathered over the telephone and supplemented with information from the engineer's report. For more serious losses, members of IRI home and regional office adjustment supervisory staff work together with IRI district office adjusters or independent adjustment firms. One of the adjusters' initial tasks is to develop a preliminary estimate of loss. A review of value records is a first step in the initial stages of loss evaluation. These records should be reviewed by all insureds and modified at least twice a year to keep pace with today's changing economic conditions. Up-to-date records will expedite the adjustment process, should a loss occur.

As Questions Occur in Developing and Preparing a Claim, insureds should not hesitate to bring them to the attention of the adjusters. Any number of variables might be affected, including cost estimates, reporting requirements, restoration plans, record keeping, partial payments, expense handling, and the like. One of the adjusters' concerns is to avoid surprises months later. Insureds, insurers, and adjusters are seldom comforted by the unexpected discovery of unobserved damage, underestimated charges, or uninsured items long after the loss occurred. Good communications is not just a "buzz word", it is an essential ingredient for a smooth and timely conclusion of a claim.

Some claim handling tips are included in IRI's 12-page PEPlan brochure. See pages 7 and 8 for "Selecting Your Claims Coordinator," "Preparing Your Claim," and "Working with the Claims Adjuster." For a complimentary copy of the PEPlan brochure, contact Mrs. P. A. Sasso, Industrial Risk Insurers, 85 Woodland Street, Hartford, CT 06102 area code (203) 520-7412. A little planning now could help expedite a payment later.

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Comp rate hikes proposed in 3 Southern states

Employers in three Southern states will have to pay an estimated $1.11 billion more in workers compensation insurance premiums next year if proposed rate increases are approved this month by state insurance departments.

Those pending work comp rate filings are:

- An average 20% rate increase in Florida, which would equal about $160 million in additional premium. A Nov. 14 hearing is slated.
- An average 31.3% rate increase in Texas, which would equal about $600 million in additional premium. A Nov. 18 hearing is set.
- An average 71.1% rate increase in Louisiana, which would equal about $350 million in additional premium. A Nov. 19 hearing is scheduled.

around the states

Reasons for the increases differ slightly from state to state, but all are necessary to ensure that insurers have enough money to pay claims in the future as well as make a profit, said Robert L. Hilton, senior vp of the National Council on Compensation Insurance.

The New York-based NCCI files rates on behalf of member insurers in most states.

In Florida, loss experience accounts for about one-third of the pending average 20% workers compensation rate increase, Mr. Hilton said.

The remainder falls under a miscellaneous heading, which includes a trend factor—an actuarial figure that takes future payroll increases and costs into account—and a profit and contingency factor.

Also taken into consideration is an average 2% decrease in the rates due to mandated benefit reductions, Mr. Hilton said.

Florida's most recent rate change was an average 11.8% increase that took effect Jan. 1. In 1985, rates increased an average of 18.7%, effective Jan. 1 of that year.

And in Texas, more than half of the proposed 31.3% rate increase is due to loss experience, Mr. Hilton said. Most of the remainder of the increase is due to the profit and contingency factor, he said.

Besides the NCCI rate filing in Texas, the State Board of Insurance also is expected to consider a filing from its own staff. Those proposed rates will not be ready until just before the hearing, but a department spokesman said the filing definitely will be lower than the one made by the NCCI.

The Texas attorney general's office also believes the NCCI rate filing is excessive and is planning to argue for lower rates at the hearing, a spokesman for the department said.

If the Texas State Board of Insurance approves one of the filings, it will be the first rate change since Sept. 1, 1985, when rates increased an average of 6.6%.

And in Louisiana, the NCCI appealed a Sept. 23 denial of its average 71.1% rate increase by the state's Insurance Rating Commission and will argue its position for higher rates at a formal hearing Nov. 19.

The NCCI says that an average 31.8% increase that took effect earlier this year was not adequate. Neither was an average increase of 17.4% on Sept. 1, 1982, said Robert E. Maxwell Jr., director of government, consumer and industry affairs for the NCCI.

Components of the pending Louisiana rate hike include an average 48.8% increase due to loss experience, an average 13.6% increase as a trend factor, a less than 1% increase due to benefit changes, a slightly more than 1% increase because of taxes and the remainder due to adjusted loss experience, Mr. Maxwell said.

He explained that components of a rate filing are used in an actuarial formula to arrive at the final figure and are not added together.

Employers in Louisiana say that if the rate increase goes through, it will be a severe burden considering Louisiana's lagging economy (*BI*, Sept. 22).

Malpractice rates

The Georgia Insurance Department late last month formally approved St. Paul Fire & Marine Insurance Co.'s 18% rate hike for doctors' medical malpractice insurance.

The action represents a thaw in the yearlong voluntary rate freeze requested of property/casualty insurers since April 3 by state Insurance Commissioner Warren Evans.

St. Paul increased rates for doctors medical malpractice liability insurance July 1 in Georgia, in which rates are regulated under a use-and-file system.

The department approved the increase following a hearing at which St. Paul provided "considerably" more documentation than it did in its original rate filing, according to a release from the department.

As part of the agreement, St. Paul agreed to eliminate an 8.5% surcharge.

Doctors with malpractice claims filed against them were required to pay the surcharge since St. Paul began charging it this spring until Nov. 1, when the insurer discontinued it, said Robert Trunzo, St. Paul's government affairs officer for state relations.

Mr. Evans said he had originally favored the surcharge arrangement because, in theory, it would cause doctors who have had malpractice claims filed against them to pay larger premiums than those who have no claims.

However, St. Paul found that doctors generally opposed it and that it was hard to administer, a St. Paul spokeswoman said.

Commissioner Evans reaffirmed his support for the voluntary rate freeze that applies to property/casualty companies for one year.

"I realize now, as I did then, that there will be exceptional situations where a company's financial circumstances make a rate increase unavoidable. But, rest assured that I expect those exceptions to be few and far between," Commissioner Evans said.

Any proposed rate increase must be supported by a well-documented need, he added.

However, the commissioner said that he has been pleased with the way most insurers have complied with his request for the voluntary rate freeze.

"Since April 3, about 30 companies that had filed for rate increases subsequently withdrew their filings, thus eliminating the need for ordering a public hearing," he noted. ■

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So goes this sodden parade of faulty forecasts the so-called experts have given us over the last 20 years.

James H. Davies

Add to this graveyard a prediction that has made its way through the insurance industry: the agency system is doomed.

In truth, the agency system is very much alive. The number of viable producers continues to grow, and agency companies are increasing marketshare with each new quarter.

The strength of the agency system is underscored by recent reports that several banks and banking joint ventures have abandoned the agency business, realizing they cannot compete with independent producers.

Our future is indeed bright, but as historian John Galsworthy noted, "If you do not think about the future, you cannot have one."

To ensure the future we want, we must invest in it.

Yet, strangely, in struggling with tight budgets and lean profit margins, agencies and companies have cut back on areas important to our future success—such as consumer research, industry automation, sales training, product development and long range planning.

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Greater profits will follow in the long run because insurance consumers will realize the benefits of an efficient industry that offers the best product, along with superior service.

Our future is bright, but it will remain bright only if we believe in each other, and are willing to invest in our future, now.

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President

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Election '86

Continued from page 1

Lobbyists said last week it was too early to tell what effect Democratic leadership in the Senate would have on employee benefit issues.

"It's really going to depend on what the makeups of the individual committees are going to be," says Mark Ugoretz, executive director of the ERISA Industry Committee, better known as ERIC.

Frank McArdle, director of education and communication at the Employee Benefit Research Institute in Washington, agrees, adding that "it's going to be very interesting to watch the committee leadership assignments."

For example, observers were speculating last week whether Sen. Edward Kennedy, D-Mass., would become chairman of the Senate Labor and Human Resources Committee, which has jurisdiction over many employee benefit issues, or the Judiciary Committee, which he headed in the 1970s.

However, Mr. McArdle noted, "We may see the next Congress being more sympathetic to proposals to mandate health and other benefits. Some benefits may end up getting more protection under the Democrats," like retiree health benefits. He added, though, that other benefits especially attractive to higher-paid employees, such as 401(k) salary reduction plans, may come under scrutiny.

"I think generally that under the Democratic control of the Senate, we'll see more social activism in terms of the whole range of employee benefits," predicted Stuart Brahs, executive director of the Assn. of Private Pension & Welfare Plans in Washington.

And, if Sen. Howard M. Metzenbaum, D-Ohio, becomes chairman of the Labor and Human Resources Committee instead of Sen. Kennedy, "It's very clear that the priorities will be retiree health benefits and pension plan asset reversions and terminations," said Mr. Brahs. Mr. Metzenbaum has campaigned heavily against the right of employers to reap profits from the termination of overfunded pension plans.

ERIC's Mr. Ugoretz also predicted that if "Senator Metzenbaum takes the Labor Committee, we're likely to see more action on pensions. But, if Senator Kennedy takes the Labor Committee, we're likely to see more action on health benefits."

"We're definitely going to see some action on post-employment health benefits," added Mr. Ugoretz. "Specifically, we'll see action regarding whether these benefits will be company-provided, as well as how they will be guaranteed and how they will be funded."

The new Senate will not necessarily be anti-business, one observer notes.

Dirk Van Dongen, president of the National Assn. of Wholesalers-Distributors, said newly elected Democrats aren't "1960s wild-eyed liberals." Their campaigns showed a concern for economic issues, including trade issues in which product liability concerns play a role.

"The Democratic Senate will not have an automatic negative kneejerk response in its attitudes toward economic policy issues," he added. He includes product liability among economic policy issues.

On the state level, Arizona voters defeated by a slim 50.9%-to-49.1% margin a constitutional amendment that would have given the state Legislature authority to limit awards for non-economic damages and punitive damages, allow for periodic payment of monetary damages and limit attorneys' contingent fees. The state's constitution currently prohibits statutes that would restrict a plaintiff's right to recovery in personal injury cases (*BI*, Aug. 18).

"We are in the pits of deep depression," said Susan Fuchs, director of communication for the Arizona Medical Assn., which spearheaded the ballot initiative in an attempt to control medical malpractice costs. Other groups supporting the measure represent architects, automobile dealers, building contractors and hotels, she said.

Opposing the measure was a coalition led by trial lawyers that also included consumer and environmental groups, said Howard Fischer, public affairs director for the coalition, dubbed Fairness & Accountability in Insurance Reform (FAIR).

FAIR's main arguments against the proposal were that caps on liability awards would not translate into lower liability insurance costs and that the Legislature already has the authority to enact several of the tort reforms sought.

FAIR spent about $3 million to defeat the proposal, Mr. Fischer said, estimating that the AMA spent about the same amount.

Richard A. Wiebe, director of public affairs for the Alliance of

Continued on next page

Regulators re-elected in 4 states

By STEVE TARAVELLA

Insurance commissioners in Florida, Georgia, Kansas and Oklahoma are being returned to office by voters in their states.

In Florida, Insurance Commissioner Bill Gunter, a former president of the National Assn. of Insurance Commissioners, attracted more than 62% of the vote in defeating B. Poole, a life and disability insurance agent who also owns part of a property/casualty agency, Krieg, Costas & Poole in Fort Lauderdale.

Mr. Gunter, who has assumed a new visibility recently amidst the fray over the Florida tort and insurance law enacted earlier this year, received a greater percentage of votes than any other candidate running for a Florida state office this year, according to Tim Meenan, Mr. Gunter's campaign manager.

The victory, Mr. Gunter's fourth, gives the Democrat a third full term as insurance commissioner. In his first victory, he filled a spot vacated by the incumbent after two years.

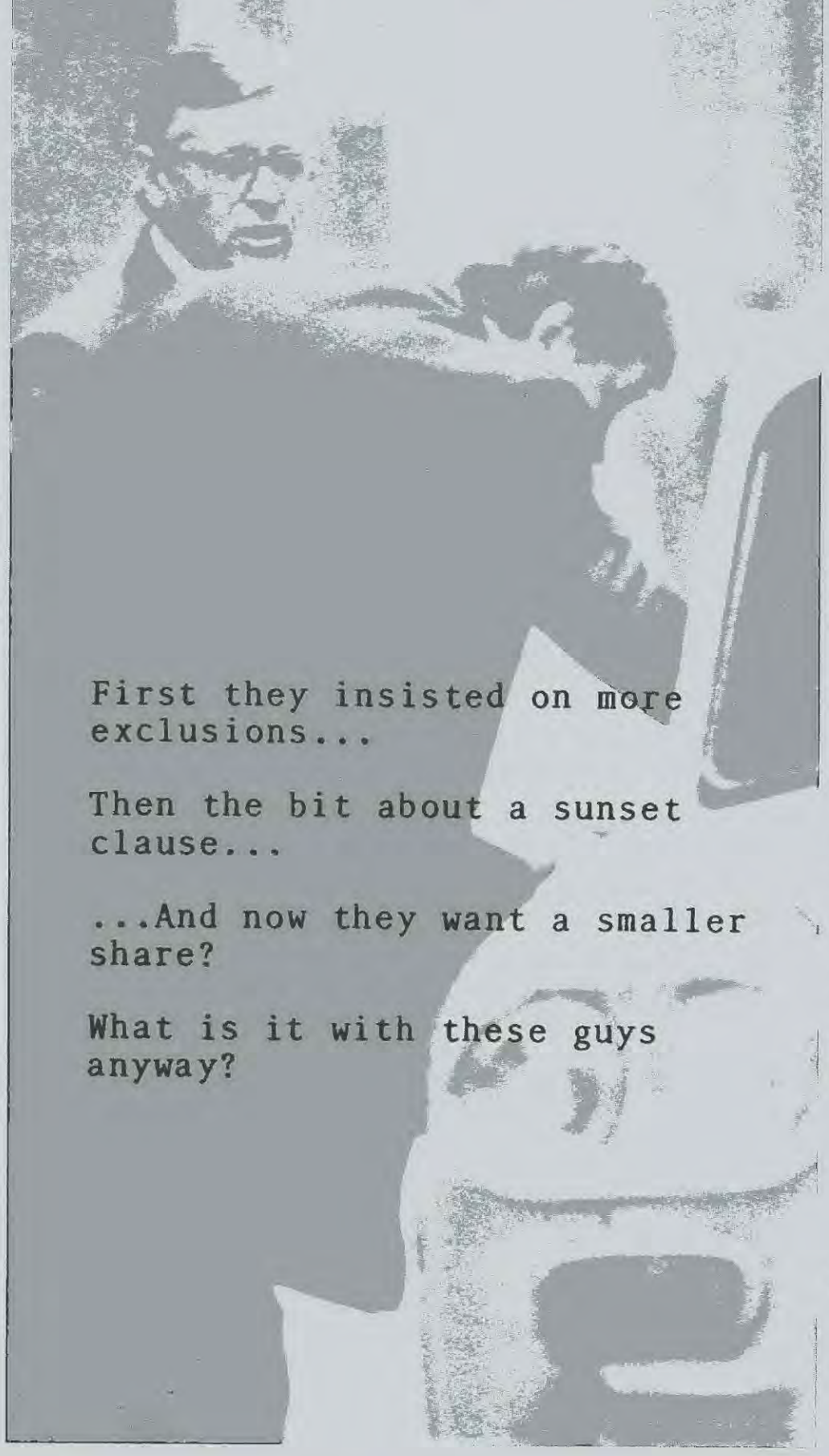
Although he lost the race, Mr. Poole, who was a state representative for eight years and a state senator for four years, says he is "tickled to death" at the number of votes cast in his favor considering he spent only $750,000 on the race. Mr. Gunter raised a total of about $2.5 million for the campaign.

Besides Mr. Gunter, the three other commissioners who were up for re-election last week also won their races: Warren Evans of Georgia, Fletcher Bell of Kansas and Gerald Grimes of Oklahoma.

Mr. Evans, who ran unopposed, was elected to his first four-year term. A Democrat, Mr. Evans had been appointed in October 1985 to fill a vacancy left by Johnnie Caldwell, who retired.

Mr. Bell, a Republican, was elected for a seventh term after collecting more than two-thirds of the votes cast. He was opposed by Democrat Dan Landers, a life and health insurance broker from Wichita.

In Oklahoma, Mr. Grimes, a Democrat, finished first in a three-man race against Republican J.M. Blankenship and independent Bob Malcomb. Mr. Grimes was appointed commissioner in 1975 following the death of Joe B. Hunt and subsequently won election in 1978 and 1982. ■



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Mead Reinsurance sale

Continued from page 1

Mead currently is negotiating a possible sale of the reinsurance unit with "a company able to handle the investment," said Mr. Enouen, who would not name the potential buyer.

He added that Mead expects to hear from other potential investors, and hopes to have a deal before year-end.

The sale of Mead Re is expected to include two of its underwriting subsidiaries: Adena Syndicate Ltd., an underwriting member of the New York Insurance Exchange, and Westbury Reinsurance Ltd., a Bermuda-based captive insurer.

Adena, managed by PFI Syndicate Managers Ltd., stopped underwriting last October (*BI*, Sept. 1).

Westbury is also a shareholder in Wrenford Insurance Co. Ltd. and Hopewell International Insurance Ltd., a reinsurance pool managed by International Risk Management Ltd.

Any buyer of Mead Re may decide either to continue Westbury's participation in Wrenford and Hopewell or to withdraw and receive cash for the shares, Mr. Enouen said.

In 1984, Westbury withdrew from the Risk Exchange Assn., another Bermuda-based risk-sharing entity.

Mead Re also owns Mead Loss Control Consultants Inc., an engineering consultant, and has a 7.5% interest in underwriting manager California Reinsurance Management Corp.

The sale will not include Mead Reassurances S.A., a French reinsurance subsidiary of Mead Corp. that now is running off its business, Mr. Enouen said.

Mead Re reported gross premiums of $89.1 million in 1985—including $14.3 million on direct insurance business written on an admitted basis—down from $131.5 million in 1984. Gross premium volume totaled $57.8 million in 1983 and $58.6 million in 1932.

The volatility of the reinsurer's gross writings since 1984 stemmed in large part from the consolidation of Westbury into Mead Re, among other factors, said a Mead Re official.

Discounting these factors, "the company has written a fairly level premium volume throughout its history," said the official, who requested anonymity.

Net premiums amounted to $62.8 million in 1985, down from $77.6 million in 1984. In 1985 and 1984, net premiums represented a larger percentage of gross writings than in earlier years: net premiums amounted to $10.9 million in 1983 and $13.6 million in 1982.

Mead Re reported an underwriting loss of $19 million last year and, after investment income and other gains and losses, finished the year with an aftertax net loss of $3.4 million.

In 1984, the reinsurer reported an underwriting loss of $20.4 million and an aftertax net loss of $7.9 million.

For the first half of 1986, gross premiums totaled about $29 million and net premiums $19.9 million. Mead Re's underwriting loss for the first half was $9 million and its aftertax net loss was $674,820. It also reported a $3.9 million charge as a change in liability for unauthorized reinsurance.

Policyholder surplus stood at $19.3 million as of June 30, down from $23.4 million at the end of 1985.

Mead Re has written a maximum net line of $500,000 on casualty facultative risks since April, the official said. The reinsurer had earlier offered gross limits—supported by retrocessional coverage—of up to $2 million, with a net retention of up to $400,000. Mead Re has not written property facultative risks, the official said.

The reinsurer's net line on property and casualty treaty business has been about $125,000, the official said.

Of the approximately $40 million in gross writings expected for 1986, roughly half will be produced by Patricia Fleischman Inc., a New York-based underwriting manager, the official confirmed.

Although most of the Fleischman book consists of excess workers compensation, it has included general and auto liability, public transit, school district and umbrella liability.

Mead Re also reinsured books of business produced by two other managing general agencies: Dar Allen Reinsurance Agency Inc. of Freeport, Ill., and Shand Morahan & Co. Inc. of Evanston, Ill. Both of these managing general agency contracts have been terminated, and Mead Re is running off the business, the official said.

Several reinsurance brokers cited Mead Re as the latest casualty among reinsurers set up by non-insurance .

"It's the same damn thing," said one broker who requested anonymity. "Somebody gets into the reinsurance business because it's sexy, gets their head handed to them and gets out. At the end of the day, they and their ilk simply do not represent staying power in the reinsurance business." ■

Democratic-controlled Senate

Continued from previous page

American Insurers' Pacific region, said the battle over the Arizona initiative was more expensive on a per-capita basis than the fight over California's Proposition 51, which was enacted by that state's voters in June.

In Montana, however, voters approved by a 56%-to-44% margin an amendment to that state's constitution that would allow legislators to limit plaintiffs' abilities to recover damage awards.

The Montana constitution, like Arizona's, prohibited any restriction of a plaintiff's ability to recover damages sustained in tort actions.

"It passed by a hefty margin," observed Dee Ann Bernhard, regional manager for the Alliance's South Central region.

The initiative was proposed in response to a Montana Supreme Court ruling late last year that struck down a legislatively imposed $300,000 cap on non-economic damages, said Ms. Bernhard.

Last week's victory "speaks well for tort reform in the next session," said Ms. Bernhard, especially the prospects of again enacting a cap on non-economic damage awards.

In addition, she said tort reform prospects in Montana are improved following last week's legislative elections. Republicans gained control of the state House, which had been split 50-50, while the Senate is now evenly split between Republicans and Democrats, who previously controlled that chamber.

"Insurers are doing quite a bit of celebrating in Montana," she said.

In addition, voters in New Mexico and Texas approved constitutional amendments related to workers compensation and mutual insurance companies, respectively.

New Mexico residents authorized state legislators to establish a statewide industrial accident board that would decide workers compensation cases in an administrative setting rather than in the courts.

Legislators had established such a board earlier this year, but proponents of the measure feared that action could be overturned by the New Mexico Supreme Court.

The state Supreme Court ruled in late October that an administrative board system was a legal means of resolving workers compensation cases, said Frank Dickson, an Albuquerque, N.M., attorney, adding the ruling made the ballot initiative moot.

A high court ruling more than 20 years ago that a similar board was unconstitutional had resulted in workers compensation cases being heard by courts with each party represented by attorneys, which had crowded court dockets and increased employers' and insurers' costs.

Meanwhile, Texas residents approved a measure that permits political entities in the state to buy life, health and accident insurance from mutual insurers as long as the policy excludes the entities from liability for assessments. ■

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CU may be sued for bad faith over product liability award

By STEVE TARAVELLA and ROBERT A. FINLAYSON

CU failed to respond to the $1 million settlement offer within 30 days, says the plaintiffs' attorney.

VAN NUYS, Calif.—A $25.6 million product liability award, if upheld, will lead to a bad-faith action against Commercial Union Insurance Co., according to a plaintiff's attorney.

Prior to trial, the plaintiff offered to settle the suit against CU's policyholder for the $1 million limits of its product liability coverage, explained plaintiff's attorney Larry Grassini of Hurley, Grassini & Wrinkle in North Hollywood, Calif.

However, CU failed to respond to the offer within 30 days, Mr. Grassini says, adding that about nine months later CU offered to settle the case for $25,000.

The lawsuit stems from a November 1981 accident in Northridge, Calif., that left a 3-year-old girl brain-damaged and a paraplegic.

The child, Nichole Fortman, was run over after being thrown from the passenger side of a moving Jeep when the Jeep door flung open, Mr. Grassini said.

The suit, for negligence and strict product liability, was brought against Hemco Inc. of Independence, Mo., which allegedly made the mold from which the defective fiberglass Jeep door was cast, he explained.

Hemco has not admitted that it made the mold.

A CU spokesman said the company has no comment on the award at this time.

But Hemco President Ron Hill claims that CU intends to ask for a new trial, or if that request is denied, file an appeal.

Mr. Hill said that Hemco was not told of the plaintiffs' settlement offer by CU. And, under California law, because CU was offered the opportunity to settle the suit for the limits of Hemco's policy but did not settle, Hemco can press bad-faith charges against CU to recover the entire award.

Mr. Hill noted that, on the advice of its legal counsel, Hemco has assigned its rights to sue CU for bad faith to the plaintiff.

Plaintiffs' attorney Mr. Grassini explained that he must prove two points to win a bad-faith judgment against the insurer: That Hemco clearly was liable, and that when CU did not respond to the $1 million settlement offer, the insurer knew or should have known there was a possibility that a subsequent award could exceed Hemco's policy limits.

Mr. Grassini maintains that the judgment and damages against Hemco satisfy both of those criteria.

Initially, the jury awarded the girl a lump-sum judgment of $23.7 million, consisting of $17.7 million for economic damages and $6 million for pain and suffering.

But, Superior Court Judge G. Keith Wisot ruled that Proposition 51 applied to the case, and he reduced the pain and suffering award to $1.5 million. The award at that point totaled $19.2 million.

Proposition 51 limits non-economic damages in cases involving joint and several liability.

However, Judge Wisot later reversed his decision, ruling that he was bound by an appellate court's decision in another case that Proposition 51 applies only to lawsuits arising from incidents that occurred after the initiative's June 4, 1986, effective date (see story, page 2).

At that time, Judge Wisot also added to the award $3.8 million in interest from the date the action was filed. The award at that point totaled $27.5 million.

The award then was reduced by $1.9 million, the amount the girl has received in settlements with seven other defendants, including a manufacturer and a distributor of Jeep components.

Mr. Grassini expects the $25.6 million award will be further reduced by $2 million from a settlement that was reached with an eighth defendant. ■

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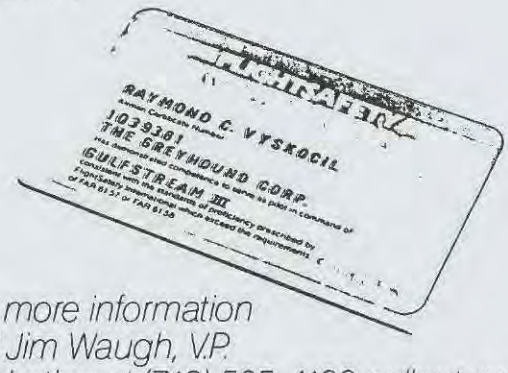

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Proposition 51

Continued from page 2

posure, the substantive effect of Proposition 51 is evident," the appellate court concluded.

Plaintiffs' attorneys immediately hailed the high court's decision and said it would allow about 6,000 asbestos-related cases in San Francisco and Alameda counties, along with thousands of other civil cases pending in California courts, to proceed. Those cases had been held in limbo pending a decision on the issue of Proposition 51's applicability to pending lawsuits.

"It was really the only possible decision that would allow these (asbestos) cases to proceed in a rational fashion," said Bryce Anderson, an attorney representing asbestos plaintiffs in the San Francisco areas.

By not reviewing the Russell cases, the Supreme Court took the fastest route to deciding the issue of Proposition 51's impact on pending cases, Mr. Anderson noted.

And, the high court's decision came "just in the nick of time," since many of these cases are scheduled to proceed to trial in the next few months.

Chief Justice Rose Elizabeth Bird and Justices Stanley Mosk, Allen E. Broussard and Joseph R. Grodin refused to review the appellate decision. Justices Cruz Reynoso, Malcolm M. Lucas and Edward A. Panelli voted to grant review—one short of the required majority.

Chief Justice Bird and Justices Reynoso and Grodin were removed from the court by California voters Nov. 4. Their replacements have not yet been named. ■

Heath acts to thwart takeover by PWS

By STACY SHAPIRO

LONDON—Lloyd's of London broker C.E. Heath P.L.C., the world's 13th-largest broker, is urging shareholders to approve a merger with Fielding Insurance Holdings Ltd. for 71 million pounds ($103 million) and reject an unfriendly takeover attempt by PWS Holdings P.L.C.

However, PWS chief executive Ranaan Ben-Zur warns Heath shareholders that the price for Fielding is too high, running to about 85 million pounds including options, dividends and costs.

The six-month-old PWS holding company last month unveiled a proposed stock swap for Heath worth 180 million pounds ($261 million), which Heath's board described as "unsolicited, opportunistic and inadequate" (*BI*, Oct. 27).

Last week, Heath sent shareholders a 22-page report by Chairman Derek Newton on why they should reject the PWS offer and accept the Fielding offer.

"Fielding Insurance. . .is one of the insurance success stories of the past decade," Mr. Newton told shareholders. "Fielding Insurance has made only minor acquisitions in achieving its present position of high profitability and, unlike PWS, it has management in depth."

Heath has called a shareholders meeting Nov. 21 for a vote on the proposed Fielding acquisition.

Heath and Fielding have held merger talks for the past several months.

Mr. Newton noted Richard Fielding, who would become chief executive of Heath if the merger is completed, was joint managing director of Heath before he left to establish Fielding in 1975, and that all the senior directors of Fielding also worked for Heath. "They are excellently qualified to take key roles in the regeneration of our company," he said.

Also, Fielding is particularly well known for its reinsurance brokerage expertise.

Heath also told shareholders that the merger would create a powerful and independent business that will attract talented and experienced personnel. "The management team at C.E. Heath is wholly committed to the agreed merger with Fielding Insurance and to making it work," Mr. Newton said.

On the other hand, Heath strongly rejects the PWS offer. "The bid is unwelcome to the board of C.E. Heath and to the principal business producers and servicers with our company," Mr. Newton told shareholders.

He said Mr. Ben-Zur first approached Heath in September about a takeover.

"We looked at the PWS business," he said.

Although Mr. Ben-Zur felt that there was considerable compatibility between the two companies especially in relation to North American business, Mr. Newton disagreed.

"PWS was lacking in experience in handling the large-type U.S. brokerage accounts which are an integral part of C.E. Heath's traditional business," Mr. Newton said. "Accordingly, we declined Mr. Ben-Zur's invitation."

Heath also notes that PWS is a small company, only a third of the size of Heath, and that Mr. Ben-Zur is 32 and has worked in the London insurance market for only six years. Also, Mr. Ben-Zur's business has grown through a series of acquisitions "none of which we would ourselves have acquired," said Heath.

Mr. Ben-Zur took over his father's brokerage firm—originally called the Howard Group—in 1980. By 1985, the company owned two Lloyd's brokers, Anthony Popple & Co. Ltd. and C. Howard Ltd. Earlier this year, it acquired PWS International P.L.C., the parent of Lloyd's broker Pearson Webb Springbett Ltd., to form the present company (*BI*, May 5).

Mr. Ben-Zur refutes all of Heath's allegations. "The whole document makes a lot of innuendos. . .that are total nonsense," he told *Business Insurance* last week.

"I am not challenging the quality of Richard Fielding, but each of my people is much superior to him. I have done more in six years than Fielding has done. What does age have to do with it?"

"They are trying in desperation to bring this down to a personal level," Mr. Ben-Zur said.

PWS will give a detailed written reply to Heath's document this week, said Mr. Ben-Zur. But, Heath shareholders "will have to show their colors on Nov. 21," he said. "If they approve the Fielding deal, it is so expensive that we are out of it."

Heath admits that it must stop the slide of business that has been plaguing them since last year. In the six-month period ending Sept. 30, pretax profits dropped 36% to 10.3 million pounds ($14.9 million) from 16.1 million pounds ($23.3 million) at the same time last year. Declines in brokerage revenues were recorded in reinsurance, marine and North American operations, although life insurance and pensions plan brokerage revenues grew by nearly 20%.

Heath also lost three of its top U.S. casualty brokers—including Nigel Chamberlain, chairman of the broker's North American division—in August when they moved to Stewart Wrightson Holdings P.L.C.

"However, temporary problems will not deflect the management of this group from its chosen strategy to build a better base for the medium-to-long-term future," said Mr. Newton.

A merger with Fielding, he said, "provides an opportunity to make a major step forward to restore the profitability of the group; a chance for the group to go forward from a position of relative strength."

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~~Oct 20~~	~~Oct 7~~
~~Oct 27~~	~~Oct 15~~
~~Nov 3~~	~~Oct 22~~
~~Nov 10~~	~~Oct 28~~
Nov 17	~~Nov 5~~
Nov 24	Nov 11
Dec 1	Nov 18
Dec 8	Nov 25
Dec 15	Dec 3
Dec 22	Dec 9
Dec 29	Dec 16
1987	
Jan 5	Dec 23
Jan 12	Dec 30
Jan 19	Jan 7
Jan 26	Jan 13
Feb 2	Jan 21
Feb 9	Jan 26
Feb 16	Feb 3
Feb 23	Feb 11
Mar 2	Feb 18
Mar 9	Feb 25

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Pennsylvania DES ruling

Continued from page 1

The mother ingested the DES during her pregnancy in 1952-1953. The daughter's cancer was diagnosed in 1978.

Both Hartford and Transamerica Insurance Co., Manufacturers' successor company, refused to defend Vale, each contending the other was on the risk. Vale subsequently filed a declaratory judgment suit against the insurers in 1981. Hartford wrote a comprehensive general liability policy for Vale from Dec. 1, 1977 to Dec. 1, 1978 that had per-person and per-occurrence limits of $1 million. Vale paid $8,891 for the policy. Manufacturers' wrote a product liability policy for Vale in 1952 that had annual limits of $50,000 per person and a $200,000 aggregate. Vale paid about $146 for the policy.

In addition, Transamerica-affiliated insurers wrote Vale's liability coverage from 1952 to 1977, and other insurers underwrote Vale's coverage before 1952 and after 1978.

Currently, Hartford and Transamerica are defending and paying DES claims against Vale under an interim agreement, with Transamerica picking up the bulk of the costs.

Vale, one of the smallest defendants in DES litigation, purchased ingredients for DES and compounded it into tablets from the mid-1940s until the mid-1970s. According to court papers, the company has about 40 suits pending against it. Vale sued only Manufacturers' and Hartford because it assumed it was entitled to coverage only at the time the DES was ingested, the baby was delivered, or the injury was manifested.

Hartford argued that coverage was triggered at the time of ingestion, in 1952-1953 when Manufacturers' was on the risk.

However, Manufacturers' contended coverage was triggered when the disease manifested in 1978, when Hartford was on the risk.

The trial court found that both the Manufacturers' and Hartford policies were triggered but that the policies in the interim period were not applicable.

Yet, the Superior Court—the state's appellate court—ruled that the triple-trigger or continuing injury approach was applicable in the Vale case, even though the policyholder did not argue that theory (*BI*, May 20, 1985).

In its decision, however, the Pennsylvania Supreme Court said Vale's suit should be dismissed because the trial court lacked jurisdiction to issue a declaratory judgment.

This issue, which the Supreme Court raised on its own at the parties' oral arguments, was whether under the state Declaratory Judgment Act, the case could be heard if the injured party is not joined in the lawsuit.

The act requires that in a declaratory judgment action, all persons who have an interest affected by that declaration shall be parties and that a declaration should not prejudice the rights of persons who are not parties to the proceedings.

Citing prior case law, the high court said that failing to have the plaintiff as a party in a declaratory judgment action seeking coverage is a "fatal defect" and rejected arguments by both Vale and the insurers that the lower courts' rulings did not prejudice the plaintiff even though she was not a party in either action.

". . . The plaintiff has an interest in seeing that an insurance company pays the judgment against its insured," the court said.

"Because the action sought a declaration about coverage in this case, it is apparent that (the plaintiff) had an interest in this declaratory judgment action when it was filed," the court ruled. The court also rejected arguments that the coverage issue should be decided because it is of great public concern to manufacturers of DES facing numerous DES lawsuits.

If this is the case, and the parties want to determine all of Vale's insurance companies' responsibilities, the suit must be dismissed because not all insurers representing Vale have been joined, and the affected plaintiffs also have been left out, the court added.

"Their rights and those of the plaintiffs in these cases would certainly be prejudiced by the result of this action," the Supreme Court said.

The court summed up: "No adequate reason has been advanced for us to ignore the statutory requirement that all interested parties shall be joined before a declaratory judgment" can be issued.

"While we recognize the importance of the question involved in this matter, importance alone does not confer jurisdiction where it does not otherwise exist."

Last week, insurance company attorneys in the case said that the decision throws into question the trigger of coverage in Pennsylvania in long-latent disease cases and that it could make it even more difficult to resolve coverage issues.

"I guess things are back to square one," said Transamerica and Manufacturers' attorney James J. McCabe, with the Philadelphia law firm of Duane, Morris & Heckscher. "It's as though Vale never happened."

Not only has Vale been undercut, Mr. McCabe said, but because the federal court decision approving the triple-trigger approach in *AC&S vs. Aetna Casualty & Surety Co.* partly relied on Vale, it potentially undermines that case as well.

In the AC&S case, the 3rd U.S. Circuit Court of Appeals in Philadelphia applied the triple-trigger theory in an asbestos case.

"Those cases seem to me to no longer have a foundation," Mr. McCabe added.

Hartford attorney Matthew Sorrentino, with the Philadelphia firm of Holland, Taylor & Sorrentino, also said it was by no means certain that when the court hears the issue again that the triple-trigger theory will be applied, especially in a DES context.

However, policyholder attorneys vigorously disagree with those assessments, pointing out that other Pennsylvania cases in addition to Vale have come down in favor of triple-trigger.

"At this point, there is no reason to believe that Keene still is not good law in Pennsylvania," said Saul B. Goodman, Vale's attorney, with the Washington, D.C., firm of Rogovin, Huge & Lenzer.

"We will just have to wait for another case to hear what the Pennsylvania Supreme Court says," he added.

"Keene is unequivocally the law in Pennsylvania," asserted Robert N. Sayler, whose firm, Covington & Burling, filed an amicus brief in the Vale case on behalf of pharmaceutical manufacturer Upjohn Co.

"I think the decision has no impact on the merits of trigger of coverage for long-latent disease cases," Mr. Sayler said.

However, the decision potentially could have broader implications because it required that the plaintiffs be joined in the coverage action, attorneys say.

The decision potentially could mean that companies facing mass tort claims, such as those involving DES or asbestos, would have to join thousands of plaintiffs in the coverage litigation—potentially causing a costly and administrative nightmare.

Or, if a company cannot join all the plaintiffs suing it in the coverage litigation, then it might have to litigate the coverage issues in more than one state or seek to enforce a Pennsylvania coverage decision elsewhere.

"The practical effect is that coverage litigation of all types—such as asbestos, DES and pollution coverage—may become immensely more complex, expensive, and difficult to manage," said Timothy C. Russell, who represents Lumbermens Mutual Casualty Co., which filed an amicus brief in the Vale case.

"It could result in a lot of parties avoiding the Pennsylvania state courts whenever they can," added Mr. Russell, with the Washington office of the Philadelphia-based firm of Drinker Biddle & Reath.

In all, both policyholders and insurers were not pleased by the decision.

"The decision is neither pro-insured nor pro-insurer," said Gerald V. Weigle, an attorney representing Liberty Mutual Insurance Co., which also filed an amicus brief in the Vale case. Speaking for himself and not his client, Mr. Weigle, with the Cincinnati firm of Dinsmore & Shohl, said the decision was "a setback for everybody concerned."

"We expected to give birth to an elephant and instead gave birth to a mouse," Mr. Weigle said of the decision.

Among those that filed amicus briefs separately or jointly with the high court were pharmaceutical companies Upjohn, Abbot Laboratories, Emons Industries Inc., McNeil Pharmaceutical and William H. Rorer Inc.

Insurers include Travelers Indemnity Co., Lumbermens Mutual, INA and Liberty Mutual.

Also, the Pennsylvania Trial Lawyers Assn. filed an amicus brief siding with Vale and the triple-trigger theory. ■

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BI Insurance Index

The *Business Insurance* stock index fell sharply last week after Morgan Stanley & Co. Inc. changed its recommendations on several issues from "buy" to "hold" (see story, page 2). The *Business Insurance* index closed at 484.5 points on Nov. 5, down 9.1 points from 493.6 points on Oct. 29. Only 15 stocks posted increases, 35 stocks declined and 11 issues were unchanged during the period. The biggest gains were posted by The Home Group Inc., up 7.6%; Aneco Reinsurance Co. Ltd., up 5.9%; Selective Insurance Group Inc., up 5.8%; American Indemnity Financial Corp., up 4.2%; and Combined International Corp., up 2.5%. The biggest losses were posted by Trenwick Group In.., down 12.1%; Alexander & Alexander Services Inc., down 9.4%; Frank B. Hall & Co. Inc., down 8.7%; Chubb Corp., down 8.6%; and W.R. Berkley Corp., down 7.2%. The *Business Insurance* stock index fell an average 1.9% during the period, while the other major market indicators all posted an increase: The New York Stock Exchange composite was up 2.2%, the Standard & Poor's 500 index was up 2.3% and the Dow Jones 30 Industrials rose 2.6%.

British Issues

Nov. 4 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High-Low pence pence
Comml Union	280	21.5	18.3	6.5	289-280
Gen! Accident	844	14.8	37.7	4.4	851-844
Gdn Royal Exch	814	15.7	46.5	5.7	842-814
Royal	815	11.5	42.2	5.2	708-689
Sun Alliance	689	19.7	29.5	4.3	708-689
Brokers					
CE Heath	543	—	34.5	6.3	547-543
Hogg Robinson	354	12.2	16.2	4.6	357-349
JH Minet	251	9.8	13.2	5.3	253-251
Sedg Grp	370	15.4	16.9	4.6	381-370
Stew Wrightson	480	15.5	19.0	4.0	486-479
Wills Faber	468	16.7	15.5	3.3	479-468

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

Brokers' productivity gains cannot be fully sustained

By LEONARD M. WILSON

Special to Business Insurance

PRODUCTIVITY IS a primary mechanism of cost containment, whether for the economy as a whole or for a business enterprise.

The publicly owned insurance brokers soon will face a leveling in premium rates that will necessitate closer attention to the rise in expenses if profit margins are to be maintained.

Mr. Wilson

Improving productivity is generally associated with capital-intensive industries. Labor productivity is bolstered through the addition of capital. Service industries like insurance brokerage typically have not achieved the productivity gains of manufacturing businesses. But, the advent of so-called office automation may be changing this longstanding relationship.

In recent years, publicly owned insurance brokers have committed funds heavily to data processing. The investments have had a twofold objective: To upgrade management information systems and to enhance the clerical staff's productivity.

The impact of data processing outlays are difficult to measure. Any advance in staff productivity is likely to be gradual as new procedures and systems are assimilated. Conversion may require a degree of redundancy in staff until the systems are totally debugged.

We keep track of the public insurance brokers' revenues per employee, an uncertain measure of productivity. We characterize it as uncertain because the nominal or actual revenues per employee are influenced by premium rate changes and the inflation in insurable values. Either policy count or transactions would be a better measure of actual per-capita output.

Since we are not privy to the internal data that would permit precise analysis of physical workload, of necessity we must fall back on the numbers reported in financial statements.

It is possible, however, to compensate for the imprecision of the published information through rough adjustments.

To derive a proxy for physical workload, it is necessary to allow for the rise and fall in premium rates as well as the impact of escalating insurable values and the inflation in insurance awards. At best, our manipulations will leave something to be desired in terms of precision. Nonetheless, they provide a better gauge than the raw figures of revenues per employee.

Since 1979, the average of five brokers' revenues per employee has increased about 45% in current dollars. If we eliminate the estimated effect of premium rate reductions subsequent to 1979 and the increases during last year, adjusted revenues per employee almost doubled from the 1979 base year.

Taking our calculations one step further, we also are compelled to deflate per-capita revenues by some estimate of the increase in insurable values over the period. This second step modifies the expansion in per-capita revenues to 70% from 1979 to 1985.

We admit that this is a fairly rough figure. But it suggests that the average annual rise in per-capita productivity over the period amounted to about 10% to 11%.

This is not, in our view, a sustainable rate of productivity growth. Moreover, it reflects to a considerable degree the austerity imposed upon head-count expansion in the difficult years of 1982 through 1984.

For 1985, we estimate per-capita productivity improvement at 5%, and even that lesser figure probably cannot be maintained over a long period. While we express a degree of caution on extrapolating this lower number into the future, we believe that our exercise does corroborate the potential for a not inconsiderable benefit from productivity gains in insurance brokerage.

For an insurance broker with employment costs at 50% to 55% of revenues, an annual gain of 1% in per capita output adds approximately one-half of a percentage point to pretax profit margins, assuming that the full benefit flows to the bottom line.

If the insurance brokerage industry is heading into another cycle of competition, perhaps beginning in 1988, the cushion to profit margins from a 3% to 5% advance in productivity could be the difference between an earnings advance or a contraction.

The use of data processing to reduce costs is only one side of the equation. A collateral bonus arises from the ability to service the client more effectively in a variety of ways from claims analysis to more rapid response in the day-to-day interaction between brokerage employees and risk managers. At this level, the effectiveness of the data processing installation can become a competitive factor as well.

The growth in commissions and fees for the public insurance brokers and the entire brokerage industry most assuredly will slow down next year and for several years beyond 1987.

In the last competitive cycle, costs were not brought into line with the deceleration in revenue growth, and profit margins suffered accordingly. This occurred despite the observed productivity gains.

In the next cycle, active management of costs will have to accompany a very positive outlook on the productivity front, if an erosion in profit margins is to be forestalled.

Leonard M. Wilson, a principal at L.F. Rothschild, Unterberg, Towbin in New York, specializes in insurance brokerage stocks. He is a member of the New York Society of Security Analysts.

Fireman's Fund

Rebounding from a $67.9 million operating loss in the first nine months of 1985, Fireman's Fund Corp. reported net operating income of $114.4 million for the first nine months of 1986.

Operating earnings in this year's third quarter totaled $44.3 million, up 126% from $19.6 million in the third quarter a year ago.

Net income was $148.0 million for the nine months ended Sept. 30, 1986, compared with a loss of $67.4 million for the same period a year ago. Net income for the third quarter of 1986 was $62.9 million, up 209% from $20.4 million for the same quarter last year.

Net premiums written totaled $2.58 billion for the first nine months of 1986, up 16.9% from $2.2 billion for the comparable 1985 period. For the third quarter of 1986, net premiums amounted to $921.3 million, up 38% from $667.4 million in the third quarter of 1985.

Fireman's Fund's combined underwriting ratio for the first nine months of 1986 was 108.8%, down from 126.4% in the comparable period last year.

For the third quarter, the insurer's combined ratio was 107.2%, down from 114.6% in last year's third quarter.

The St. Paul Cos.

The St. Paul Cos. Inc. reported a nearly sixfold increase in its operating earnings for the first nine months of 1986 from the same period a year ago.

Operating earnings totaled $98.4 million in the first nine months of 1986, a 572% jump from operating income of $1.7 million for the comparable 1985 period.

St. Paul's operating earnings for the third quarter totaled $48.2 million, compared with a loss of $20.6 million during the comparable 1985 period.

Net income for the first nine months of 1986 was $150 million, up 297% from $37.8 million for the same period last year. Third-quarter 1986 net income was $85 million, compared with a net loss of $8.4 million for the 1985 third quarter.

Written premiums for the first nine months of 1986 totaled $1.9 billion, up 18.8% from $1.6 billion for the 1985 period. Third-quarter 1986 written premiums totaled $725.0 million, up 11.7% from $648.8 million for the 1985 third quarter.

The company posted a 110.6% combined ratio for the first nine months of 1986, compared with 120.9% for the same period of 1985. The combined ratio for the third quarter was 104.0%, compared with 122.9 in the third quarter of 1985. St. Paul reported an underwriting loss of $219.1 million for the first nine months of this year, down 31.4% from the $319.6 million loss for the same period last year.

Underwriting losses for the third quarter totaled $45.5 million, a 63.3% drop from a loss of $124.1 million for the 1985 third quarter. ■

BI Industry Stock Report

November 5, 1986 10/30/86 thru 11/5/86

Brokers		Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol.(000)
Alexander & Alexander Svcs	NYSE	32.50	-9.4	216.7	1.00	3.1	35.13	32.25	918.2
Baldwin & Lyons Inc	OTC	24.00	0.0	19.5	0.20	0.8	26.38	24.00	17.3
Corroon & Black Corp	NYSE	38.13	2.3	17.3	0.65	1.7	38.13	36.50	610.7
Crump E H Cos Inc	OTC	32.75	0.0	31.5	0.25	0.8	0.00	0.00	0.0
Gallagher Arthur J & Co	OTC	30.50	2.1	22.3	0.20	0.7	30.50	29.75	205.1
Hall Frank B & Co Inc	NYSE	17.00	-8.7	-1.4	0.00	0.0	18.63	17.00*	210.5
Marsh & Mclennan Cos Inc	NYSE	65.00	-4.4	20.8	1.90	2.9	68.63	65.00	1,051.2
Poe & Assoc Inc	OTC	12.00	-4.0	15.2	0.32	2.7	12.50	12.00	3.4
AGENTS/BROKERS	AVERAGE			23.7		1.9			
Conglomerates & Holding Cos.									
American Express(Fireman's Fd)	NYSE	59.00	2.4	10.7	1.36	2.3	59.25	58.50	2,904.7
Anderson Clayton(Ranger/PanAm)	NYSE	65.63	0.0	47.9	0.00	0.0	0.00	0.00	0.0
Armco Inc	NYSE	6.25	-2.0	-0.9	0.00	0.0	6.63	6.00	465.1
Berkley W R Corp	OTC	25.75	-7.2	14.2	0.24	0.9	28.25	25.50	992.9
Berkshire Hathaway Inc Del	OTC	2910.00	4.3	708.0	0.00	0.0	2910.00	2840.00	1.6
CIGNA Corp	NYSE	54.25	0.0	-5.3	2.60	4.8	55.25	53.75*	2,046.9
CNA Finl Corp (CNA)	NYSE	53.75	-2.5	14.9	0.00	0.0	55.25	53.75	197.5
General Re Corp	NYSE	53.63	-6.5	26.7	0.88	1.6	56.50	53.00	4,975.7
ITT (Hartford Group)	NYSE	52.13	0.0	24.7	1.00	1.9	0.00	0.00	0.0
Sears Roebuck & Co. (Allstate)	NYSE	43.50	-1.1	11.9	1.76	4.0	44.00	43.38	3,038.0
Teledyne Inc (Argonaut)	NYSE	339.63	4.2	13.7	0.00	0.0	341.63	333.00	210.3
Transamerica Corp (Occidental)	NYSE	36.00	1.4	10.3	1.76	4.9	36.25	35.63	716.4
CONGLOMERATES/HOLDING COS.	AVERAGE			69.4		0.2			
Insurers									
Aetna Life & Cas Co	NYSE	55.75	-1.3	9.7	2.64	4.7	57.00	55.75	2,066.6
American General Corp	NYSE	38.25	-2.2	10.5	1.12	2.9	39.63	38.25	1,632.8
Amern Heritage Life Invt Co	NYSE	39.38	0.3	14.1	1.32	3.4	39.38	39.00	5.0
American Indty Finl Corp	OTC	18.50	4.2	-35.6	1.12	6.1	18.75	17.88	21.5
American Intl Group Inc	NYSE	118.75	-6.7	38.7	0.25	0.2	127.50	118.75	1,586.8
Aneco Reins Ltd	OTC	2.25	5.9	-4.4	0.00	0.0	2.25	2.13	7.0
Avemco Corp	NYSE	28.63	0.9	14.0	0.50	1.7	28.75	28.00	8.7
Business Mens Assurn Co Amer	OTC	25.00	-3.8	20.5	1.10	4.4	26.00	24.75*	49.6
Chubb Corp	NYSE	64.00	-8.6	25.7	1.56	2.4	69.88	64.00	1,487.7
Combined Intl Corp	NYSE	57.13	2.5	11.1	2.24	3.9	57.13	55.75	130.2
Continental Corp	NYSE	45.38	-1.1	216.1	2.60	5.7	45.88	44.75	649.0
Crown Life Ins Co	OTC	355.00	0.0	12.3	6.40	1.8	355.00	355.00	5.0
Durham Corp	OTC	43.50	0.0	12.2	1.36	3.1	43.50	43.50	2.0
Farmers Group Inc	OTC	41.50	0.0	13.8	1.00	2.4	42.50	41.25	901.2
Fairmont Finl Inc	AMEX	16.50	-5.0	17.0	0.00	0.0	17.63	16.50	72.3
Fireman Fd Corp	NYSE	36.13	-4.9	0.0	0.30	0.8	37.63	36.00	909.3
Fremont Gen Corp	OTC	17.00	-4.2	-11.0	0.48	2.8	17.63	16.88*	360.5
Great West Life Assurn Co	OTC	740.00	1.4	15.2	18.00	2.4	740.00	740.00	0.0
Home Group Inc	AMEX	21.25	7.6	34.3	0.00	0.0	21.25	19.88	1,690.4
Hanover Ins Co	OTC	64.00	-3.0	18.4	0.56	0.9	66.00	64.00	146.4
Hartford Steam Boiler Inspctn	OTC	42.00	-4.5	10.7	1.20	2.9	44.00	42.00	92.0
Kans City Life Ins	OTC	28.25	-0.9	11.1	0.87	3.1	28.50	28.00	12.8
Kemper Corp	OTC	26.00	-1.9	10.4	0.60	2.3	27.00	26.00	1,239.8
Liberty Corp S C	NYSE	39.50	1.3	12.8	0.72	1.8	39.50	38.63	10.7
Lincoln Natl Corp Ind	NYSE	50.63	-3.8	11.6	2.00	4.0	51.25	49.88	534.8
Mission Ins Group Inc	PAC	1.87	0.0	0.0	0.00	0.0	4.38	1.75	17.8
Monumental Corp	OTC	55.63	0.0	18.8	0.00	0.0	55.63	55.63	1.1
Nac Re Corp	OTC	26.75	-4.5	-26.0	0.00	0.0	27.25	26.50*	83.0
Nobel Ins Ltd	OTC	15.25	-4.7	14.7	0.37	2.4	15.50	15.25	91.1
Northwestern Natl Life Ins	OTC	28.75	1.3	10.6	0.86	3.0	28.75	27.88	236.3
Ohio Cas Corp	OTC	80.50	-1.8	15.2	3.00	3.7	82.50	80.50	160.8
Old Rep Intl Corp	OTC	31.25	-6.0	12.1	0.78	2.5	33.50	31.25*	470.1
Orion Cap Corp	NYSE	31.25	0.8	-6.5	0.76	2.4	31.25	30.75	77.2
Protective Corp	OTC	21.50	0.0	11.6	0.62	2.9	0.00	0.00	0.0
Provident Life & Acc Ins Co	OTC	25.50	-1.4	9.4	0.84	3.3	25.88	25.50	480.6
St Paul Cos Inc	OTC	38.25	-1.9	11.8	1.50	3.9	40.25	38.25	1,817.3
SAFECO Corp	OTC	55.38	-2.9	12.1	1.68	3.0	56.75	55.38	545.8
Seibels Bruce Group Inc	OTC	15.25	0.0	-2.0	0.80	5.2	15.50	14.75	70.3
Selective Ins Group Inc	OTC	22.75	5.8	0.0	0.92	4.0	23.25	21.75	256.5
Statesman Group Inc	OTC	5.00	0.0	55.6	0.05	1.0	5.00	5.00	44.7
Tokio Marine & Fire Ins Co	OTC	433.50	-5.1	48.8	1.66	0.4	496.00	433.50	5.2
Torchmark Corp	NYSE	29.38	-1.3	11.2	0.80	2.7	29.88	29.38	389.4
Travelers Corp	NYSE	43.88	-0.8	10.5	2.16	4.9	44.25	43.75	1,712.8
Trenwick Group Inc	OTC	15.38	-12.1	0.0	0.00	0.0	17.00	15.38*	101.2
United Fire & Cas Co	OTC	26.00	-5.5	13.6	0.80	3.1	27.00	25.00	53.5
United States Fid & Gty Co	NYSE	39.25	0.0	-44.6	2.32	5.9	0.00	0.00	0.0
Uslife Corp	NYSE	46.50	1.4	12.0	1.20	2.6	46.75	46.13	214.0
Washington Natl Corp	NYSE	32.38	1.2	14.7	1.08	3.3	32.38	32.00	37.5
Zenith Natl Ins Corp	OTC	24.75	1.0	42.7	0.80	3.2	25.00	24.50	528.0
INSURANCE COMPANIES	AVERAGE			16.3		2.2			

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