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Update

J&H ordered to pay investor in San Juan Dupont Plaza hotel

SAN JUAN, Puerto Rico—Johnson & Higgins has at least $14 million of errors and omissions coverage to respond to a $16.3 million award to an investor in the San Juan Dupont Plaza hotel.

The investor claimed the New York-based broker failed to place liability insurance that would have covered him against claims from the 1986 fire at the hotel that killed 97 people and injured more than 100 others (*BI*, May 30, 1988; Jan. 12, 1987; Jan. 5, 1987).

Continued on next page

Firms win cleanup cover victory

By STACY ADLER GORDON

SAN FRANCISCO—Policyholder attorneys are touting a 9th U.S. Circuit Court of Appeals ruling as a multi-faceted victory for policyholders facing hazardous waste cleanup costs.

The first and most important victory, they say, lies in the court's ruling that environmental cleanup costs are covered "damages" as defined by the comprehensive general liability policy.

The second most important victory rests in the court's holding that a letter from the U.S. Environmental Protection Agency naming a policyholder as potentially responsible for cleanup costs under the Comprehensive Environmental Response, Compensation & Liability Act triggers an insurer's duty to defend.

Third, the court found that cleanup costs stem from "property damage" as that term is defined under the CGL policy.

And, the court indicated that claims by the EPA for damage to natural resources could be covered by the CGL policy.

Because the court ruled on four separate issues in favor of policyholders, attorneys for both policyholders and insurers predict this decision will be very influential.

The decision is also significant because it marks the first time the 9th Circuit—which includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington and Guam—has addressed these issues, attorneys note.

"This is a very important and monumental decision," said Lawrence Mehl, vp and general counsel for Boston-based Gulf Resources & Chemical Corp., the policyholder in the dispute.

"The 9th Circuit has gone farther now than any other circuit" in ruling in favor of policyholders on all of these coverage issues, Mr. Mehl said.

"It is a far-reaching opinion," agreed insurer attorney R.B. Kading Jr. of Eberle, Berlin, Kading, Turnbow & McKlveen in Boise, Idaho. Mr. Kading represented Aetna Casualty & Surety Co. in this case.

"It will have a lot of impact be-

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Guaranty funds to revamp Executive Life payout plan

By JOANNE WOJCIK

LOS ANGELES—The group representing the nation's life/health guaranty funds is renegotiating its agreement to make payments to policyholders of Executive Life Insurance Co. following a ruling that increased the failed insurer's obligations by almost $2 billion.

Los Angeles Superior Court Judge Kurt Lewin ruled Nov. 15 that municipalities that invested bond issue proceeds in guaranteed investment contracts underwritten by Executive Life should be given the same status for payment as Executive Life's 370,000 other policyholders.

The California Insurance Department had contended that the so-called muni-GIC holders should not be treated as policyholders in Executive Life's conservation proceedings.

The ruling giving $1.85 billion in muni-GIC holders the same status as other policyholders increases guaranty fund liabilities to $1.8 billion from $800 million, according to calculations by the accounting firm of Arthur Andersen & Co.. As a result, the guaranty funds are reconsidering the terms of their so-called enhancement agreement.

Meanwhile, the National Organization of Life & Health Guaranty Assns. also is preparing exhibits to present its own revised Executive Life takeover bid to Judge Lewin, who began hearing testimony last week supporting the offer by Paris-based Altus Finance and Mutuelle Assurance Artisanale de France recommended by Mr. Garamendi.

And, the California Supreme Court last week stayed payment to the muni-GIC holders following a request by the Insurance Department that the high court review Judge Lewin's decision.

The Supreme Court then re-

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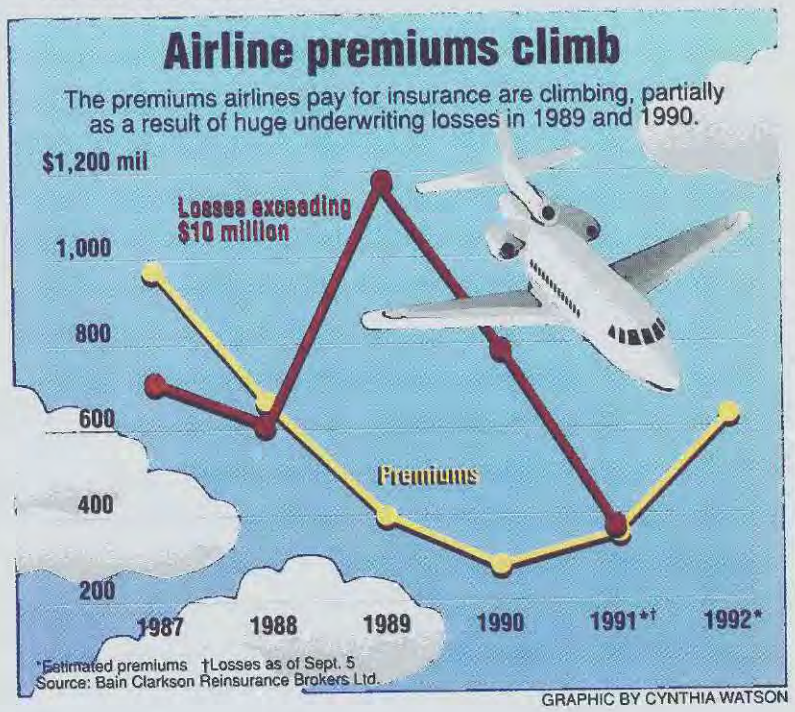

GRAPHIC BY CYNTHIA WATSON

McCarran changes advance

Brooks bill approved by panel but blasted by Justice Department

By JERRY GEISEL

WASHINGTON—Legislation that would strip insurers of most of the exemptions they enjoy from federal antitrust laws is on its way to the House floor.

It's still not clear, though, how much support the proposal will garner when it arrives.

Last week, the House Judiciary Committee approved legislation, H.R. 9, that would overhaul the McCarran-Ferguson Act.

But the 19-14 committee vote may be overshadowed by a Justice Department letter released last week denouncing the measure, which marks the first time the Bush administration has taken a position on the legislation and signals that the legislation could be vetoed if passed in its current form.

In a letter sent to House Judiciary Committee Chairman Jack Brooks, D-Texas, and ranking minority member Rep. Hamilton Fish Jr., R-N.Y., Assistant Attorney General W. Lee Rawls wrote: "The department is concerned that H.R. 9 may, because of its structure and language, have an unwarranted deterrent effect on appropriate collective activity among insurers."

Rep. Brooks, who sponsored the bill and is expected to seek a House vote on the measure in February or March, hailed the bill's passage by the Judiciary Committee as a victory for consumers.

The bill will "ensure a wee bit more competition," Rep. Brooks said.

Insurers "shouldn't have anything to fear," he added. "If they are nervous, it must be because their conscience is so bad."

Some consumer advocates, savoring the victory in the Judiciary Committee, say the committee vote portends the full House's enactment of the McCarran-Ferguson reform legislation.

"I'm glad to see that the bill will go to the House floor in 1992. No one will want to vote for price-fixing in an election year. I think we can win," said Bob Hunter, president of the National Insurance Consumer Organization in Alexandria, Va.

However, insurers, which unanimously oppose the measure, say the bill faces an uphill battle to win House approval.

"I don't sense any kind of consensus among the House leadership or among the members of the House as a whole that they want to do anything on the subject of the McCarran-Ferguson Act," said David Farmer, vp-federal affairs in the Washington, D.C., office of the Alliance of American Insurers.

Other insurance industry lob-

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Aviation rates gaining altitude during renewals

By STACY SHAPIRO

LONDON—Airline hull and liability insurance rates, which have doubled and tripled during renewals during the past few months, are expected to continue to soar into next year.

During negotiations leading up to October, November and December renewals, premiums rose an average of 200% to 300% over 1990 levels for airlines representing 77% of the world's fleet value.

While airline risk managers and brokers were resigned to the rate increases, they were surprised by London underwriters' determination to be paid more quickly.

Some of the recent rate increases weren't as large as expected, however, as competition developed within the London market and from German and North American underwriters, proving that plenty of capacity still is available.

However, if year-end reinsurance renewals are as grueling as expected, overall reinsurance capacity will shrink for many insurers that write coverage for airlines. This will cause insurers to retain more risk and they likely will

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NEWSPAPER

Brokers' nine-month results hammered on several fronts Page 3

Illinois ruling may reduce legal malpractice judgments Page 3

Study finds many employers lack work and family benefits Page 3

Update

J&H hit by Dupont Plaza award

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The case involved the placement of liability coverage with Aetna Life & Casualty Co. for William Eberle, who had several real estate investments, including a share of the Dupont Plaza, said plaintiff's attorney Wendell Gauthier of Gauthier & Murphy in Baton Rouge, La. The Aetna policy provided up to $6 million in coverage, but Aetna denied his fire-related claims, saying it was never informed that he had an interest in the hotel.

A U.S. District Court jury in San Juan last week decided that J&H, among other things, had failed to notify Aetna that Mr. Eberle held an ownership stake in the hotel.

The jury award was based on Mr. Eberle's contributions to settle fire claims and the value of his interest in the hotel, which he signed away as part of a settlement with the hotel's liability insurer.

Under that settlement between American International Group Inc. and corporate and individual owners, operators and alleged affiliates of the hotel, AIG assumed ownership of the hotel. Two AIG units wrote a $1 million occurrence-based liability policy for the hotel. AIG then settled with plaintiffs (*BI*, May 15, 1989).

However, U.S. District Court Judge Raymond L. Acosta had not approved the award against J&H as of late last week and was considering capping it at $6 million, the limits of Mr. Eberle's coverage with Aetna, Mr. Gauthier said.

J&H has at least $14 million of errors and omissions coverage to respond to the award, Mr. Gauthier said. J&H self-insures the first $1 million, and the next $9 million is written by syndicates at Lloyd's of London, he said. A $5 million layer excess of $10 million is written by Insurance Co. of North America, a CIGNA Corp. unit, he said.

A J&H spokesman said the broker is evaluating the decision.

HCCC, OUCH plan to merge

CHICAGO—HealthCare COMPARE Corp., a utilization review firm and preferred provider organization operator, plans to merge with Occupational-Urgent Care Health Systems Inc., a workers comp PPO.

In the merger, each outstanding share of OUCH common stock will be converted into the right to receive 0.93 of a share of HealthCare COMPARE common stock. All outstanding options to purchase OUCH common stock will be assumed by HealthCare COMPARE and converted into options to purchase its common stock, the agreement says.

Following the merger, which is expected to be completed by February or March, holders of OUCH common stock will own about 28% of the outstanding common stock of the combined company. OUCH will become a wholly owned subsidiary of HealthCare COMPARE.

Late last week, HealthCare Compare was trading at $29 on the NASDAQ exchange and OUCH was trading at $25.75.

James C. Smith, president and chief executive officer of Downers Grove, Ill.-based HealthCare COMPARE, will remain in that post for the new company. James W. Cameron Jr., chairman and CEO of West Sacramento, Calif.-based OUCH, and Robert S. Colman, an OUCH director, will both become directors of HealthCare COMPARE.

HealthCare COMPARE, which is the fourth-largest UR firm, also operates The AFFORDABLE Network. AFFORDABLE operates in 31 states and the District of Columbia, with 2.5 million employees and dependents with access to the predominantly group health care PPO as of June 30. OUCH, a predominately workers compensation PPO, had 4.2 million employees with access to the network as of June 30.

The combined strengths of each company will enable clients to coordinate group health and workers comp treatment programs, commonly known as 24-hour coverage, HealthCare COMPARE said.

Vagley may leave top AIA post

WASHINGTON—Robert E. Vagley is considering leaving his post as president of the American Insurance Assn. to become president of the Assn. of American Railroads.

Mr. Vagley said last week he is seriously considering the railroad group's offer, which he described as exceptionally attractive both professionally and financially. "It is a much larger organization and a bigger challenge," he said.

The AAR, which represents the nation's major railroads, has a total budget of about $95 million and a staff of about 750, including 400 in Washington, D.C. The AIA has a budget of $21 million and a staff of about 140, including 125 in Washington.

In evaluating the offer, Mr. Vagley said he will consider whether the position would offer the same kind of intellectual stimulation he now receives from grappling with various insurance issues.

Since joining the AIA in 1986, Mr. Vagley is credited with giving it greater recognition and influence on Capitol Hill.

Mr. Vagley, who currently earns $450,000 per year, said he will make a decision on the offer within the next two weeks.

Smoker loses liability case

PHILADELPHIA—Lorillard Inc. does not have to pay damages to a man who claimed he contracted an asbestos-related disease from smoking Kent cigarettes with Micronite filters, which contained asbestos.

But, an eight-person jury in the U.S. District Court in Philadelphia did not rule on whether the filters could cause mesothelioma, a rare type of lung cancer (*BI*, Nov. 12, 1990). Instead, the jury found on Nov. 18 that plaintiff Peter Ieradi failed to prove he smoked Kent cigarettes from 1952 to 1956, when Kents were marketed with Micronite filters.

About six other similar lawsuits are pending against the company, now a Loews Corp. unit, says a Lorillard spokeswoman.

British soft drink recalled

LONDON—A soft drink producer has malicious product tamper coverage for the recall of 5 million bottles in the United Kingdom of Lucozade, which animal rights activists threatened to contaminate, market sources say.

The scare is likely to cost "several million pounds," said a spokeswoman for SmithKline Beecham P.L.C. in Brentford, England,

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Coverage must follow form filed with state

By DOUGLAS McLEOD

NEW YORK—Insurers that are members of the Insurance Services Office Inc. must follow the policy language ISO files with state regulators even when that language conflicts with the wording of policies actually issued, a federal appeals court says.

The 2nd U.S. Circuit Court of Appeals ruled last month that Universal Underwriters Insurance Co. must cover the pollution cleanup liabilities of a Vermont policyholder under a pollution endorsement ISO filed with Vermont regulators.

Universal must provide the coverage even though the policy it wrote for Gerrish Corp., a Vermont auto dealership and car wash, specifically excluded pollution risks.

The appeals court concluded that ISO acted as an agent for Universal in filing policy forms and that Universal was therefore bound by the ISO language.

Applying Vermont law, the court also found that cleanup costs are damages under the Universal general liability policy and that the policy's owned property exclusion does not bar coverage for the cost of cleaning up a leak from Gerrish's underground gasoline storage tanks.

Universal, a Kansas City, Mo.-based unit of Zurich-American Insurance Cos., has asked the appeals court for a rehearing, according to Karen McAndrew, a lawyer with the Burlington, Vt., firm of Dinse, Erdmann & Clapp, representing the insurer.

Separately, Gerrish has filed a bad-faith lawsuit against Universal in U.S. District Court in Burlington, Vt. The suit charges that Universal should have disclosed the existence of the ISO pollution endorsement and seeks unspecified damages for Universal's denial of coverage, said Robert E. Manchester, a Burlington lawyer representing Gerrish.

The pollution that spawned the litigation dates back to November 1973, when Gerrish's Scrub-a-Dub car wash discovered that about 4,785 gallons of gasoline had leaked from its underground tanks, court papers say.

The tanks were tested and excavated. The tank believed to be

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Despite exclusions, courts often find for claimant

Insuring untried treatment

By JUDY GREENWALD

HOUSTON—Prudential Insurance Co. of America's payment of a $1.2 million jury award in a 10-year-old coverage dispute over experimental medical treatments demonstrates the need for carefully written policy language in group health insurance contracts.

But while policies today are generally more precisely worded than the Prudential policy in this case, it still is difficult for insurers and self-insured employers to win cases in which desperately ill patients litigate over payment for experimental medical treatments.

Prudential paid the $1.2 million award, which includes $500,000 in punitive damages, after the U.S. Supreme Court last month refused to consider the case.

That case, *Prudential Insurance Co. vs. Billy Brown*, involved a plaintiff who was diagnosed with bladder cancer in 1979. After chemotherapy proved ineffective, Mr. Brown began a series of radiation treatments in preparation for surgery to remove his bladder and prostate gland. He was given an 85% chance of dying within five years without the surgery.

However, before the surgery, Mr. Brown learned of Dr. Stanislaw R. Burzynski, who administers drugs called antineoplastons that he developed to fight cancer. Within six weeks of beginning treatment, Mr. Brown was diagnosed as being cancer-free, and the disease has not returned since.

Mr. Brown had medical coverage with Prudential that was purchased through the Independent Garagemen's Assn. Insurance Trust, a multiple employer trust to which his employer belonged, according to court papers.

Prudential, though, refused coverage for Dr. Burzynski's treatment of Mr. Brown on the grounds that its policy stated it would not reimburse treatments that are not "reasonably medically necessary."

Mr. Brown then filed suit against Prudential in 1981.

The case was first tried in 1986 in the 151st District Court for Harris County in Houston, with a jury ruling in Prudential's favor. However, a new trial was ordered after it was learned that jury members had improperly discussed information about Dr. Burzynski not directly associated with the case.

Jury members had discussed a newspaper article that alleged Dr. Burzynski was the subject of a federal grand jury probe and under court order not to ship his medications across state lines. In addition, the lawyer attending the trial who was a friend of the jury's foreman had told the foreman that Dr. Burzynski was a quack, and the foreman shared this opinion with other jurors.

Before the second jury trial began, Prudential sought a separate ruling from the court on the issue of whether Mr. Brown's medical plan was covered under the Employee Retirement Income Security Act of 1974, which preempts state laws that relate to employee benefit plans. District Court Judge Alice O. Trevethan ruled that the MET was not governed by ERISA.

If the judge had ruled otherwise, Prudential essentially would only have been liable for benefits provided under the policy and some

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2 Info sections to be published in January

Business Insurance will publish its annual Information Resource feature in two separate issues. Employee benefits topics will be featured in the Jan. 13 issue, while risk management information will be featured in the Jan. 20 issue.

The issues will contain listings of current educational and informational literature on programs, products and services available to risk management, employee benefit and financial executives. The literature must be available free of charge.

Companies that wish to submit literature for the sections must complete a fact sheet that describes each item to be listed, along with a sample item. The literature must be available to readers at no charge and must be less than 1 year old.

To request a fact sheet, call Karen Armaganian at 312-280-3195. *Business Insurance* must receive a completed fact sheet and sample copy of all items to be listed by Dec. 9.

Inside

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Ruling may reduce legal malpractice awards

By LORI BLOCK

SPRINGFIELD, Ill.—A recent Illinois Supreme Court ruling that states that most legal malpractice lawsuits must be brought under contract law instead of tort law may make it more difficult for aggrieved clients to recover damages from their lawyers.

Clients claiming damages that are purely commercial—not related to fraud, personal injury or property damage—may sue their attorneys only under contract law, where awards are smaller and damages are more narrowly construed, the court ruled.

But the decision in *Collins vs. Reynard* did not make clear how Illinois courts would interpret lawyers' contract obligations to their clients. Legal experts point out that courts could take a restrictive approach, finding no liability unless a lawyer failed to perform a task specifically included in the contract. Or courts could find that in all contracts lawyers have an implied duty to meet professional standards.

Complicating this finding is the fact that many attorneys and clients never draft formal, written contracts.

Experts add that this is the first state supreme court ruling of its kind and it is difficult to predict whether the ruling will affect lawyers' professional liability insurance rates.

In its 5-2 ruling, the Illinois Supreme Court extended the "economic loss" doctrine, which it had previously applied to product liability cases and a malpractice suit against an architect. That doctrine says that claims involving solely disappointed commercial expectations, rather than personal injury or property damage, are properly part of contract law.

Such "economic" damages are usually the primary form of damages sought in legal malpractice actions.

"Contract law provides a superior basis to tort law for the resolution of issues concerning the failed expectations of clients of professionals where only economic loss is sought to be recovered. Contract damages provide recompense for failed commercial expectations and do not expose professionals to unlimited and unforeseen damage for economic loss," wrote Justice Thomas J. Moran for the majority.

In tort suits, plaintiffs can recover for damages, injuries or losses caused by a defendant's negligence. Traditionally, tort proceedings afford the opportunity for more and larger awards because recoveries are allowed for damages like inconvenience, pain and suffering, and injury to reputation.

By contrast, in a breach of contract suit, recoveries generally are limited to requiring the breaching party to make good on his bargain. That contract can be oral, implied or expressed, but the damages incurred must have their roots in the contract.

The Illinois Supreme Court first adopted the "economic loss" doctrine in *Moorman Manufacturing Co. vs. National Tank Co.*, a 1982 product liability case. Lower state courts had split over whether what came to be called the Moorman doctrine would apply in various professional malpractice areas. Not until the Oct. 31 ruling in *Collins* did the state high court extend it to a client's malpractice claim against a lawyer.

In his dissenting opinion, Justice Benjamin K. Miller took exception to this extension.

"Today's decision will perhaps find a warm reception among those who are eager to see the practice of law transformed from a learned profession into a trade, with the respective rights and duties of the parties bartered for in advance of a contract for legal representation," Justice Miller wrote.

Most legal malpractice suits are based on a lawyer's alleged violations of a duty of care to a client rather than violation of the terms

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IRS delays compliance deadline for pension regulations

By JERRY GEISEL

WASHINGTON—The Internal Revenue Service is giving employers more time to comply with its massive pension non-discrimination rules.

The IRS, to the relief of employers, says companies can retroactively amend their pension plans as late as Dec. 31, 1992, and still be in compliance with the non-discrimination rules, which go into effect on Jan. 1.

The 600-page non-discrimination rules, which encompass virtually every area of pension plan design were published Sept. 19.

In announcing relief from the Jan. 1 compliance date, the IRS acknowledged employers' complaints that they need more time to analyze the non-discrimination rules and then make any necessary design changes to their pension plans.

"Recognizing the need of plan sponsors for adequate time to review their plans and select among their design alternatives, this notice provides broad transition relief intended to eliminate situations in which an employer must act by the effective date of the regulations in order to take full advantage of the compliance alternatives," the IRS said in Notice 91-38.

"Thus, under this notice, plan sponsors may retain their plan design options through the last day of the 1992 plan year, thereby permitting them a minimum of 15 months from the date of publication of the final regulations to review those regulations and make their amendment decisions," the IRS said.

Benefit experts welcome the reprieve from the IRS non-discrimination rules, noting that it would have been virtually impossible for employers to comply without more time.

Without the ability to comply retroactively with the non-discrimination rules, "employers really would have been in a jam. Chaos would have been the result," said Kyle Brown, a consultant in The Wyatt Co.'s Research and Information Center in Washington, D.C.

"This buys employers badly

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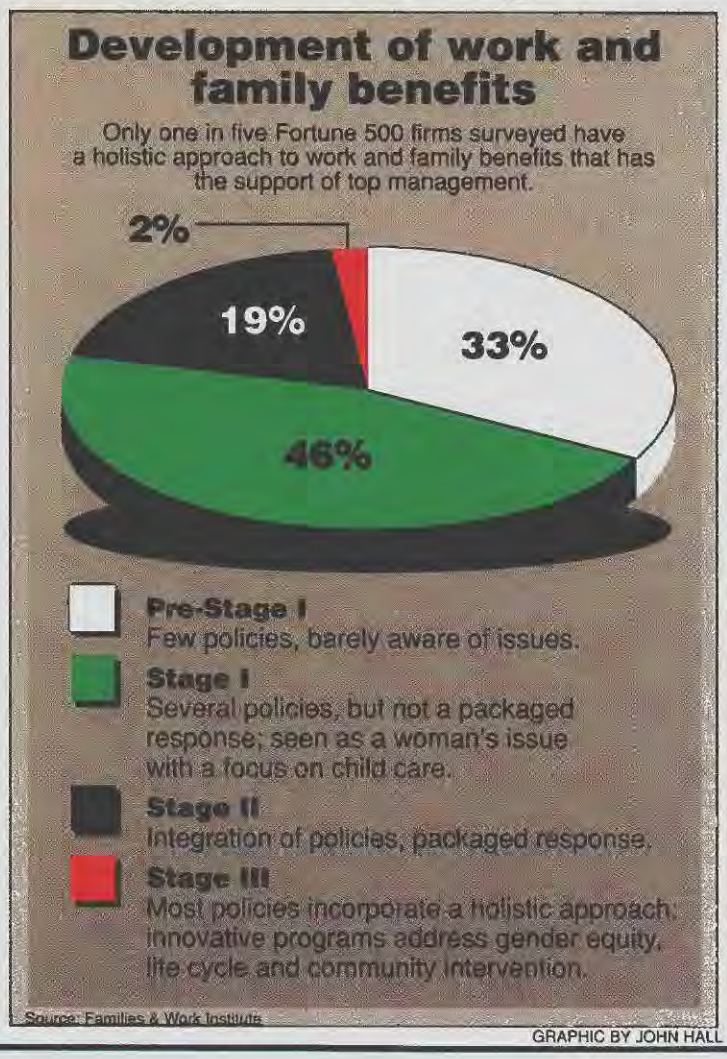
Work/family benefits grow slowly



GRAPHIC BY JOHN HALL

Nearly 80% of firms lack holistic plan; many call it a 'woman's issue': Study

By MICHAEL SCHACHNER

NEW YORK—Nearly 80% of America's largest companies lack an integrated approach to work and family benefits that has the full support of management, though most companies do offer one or two so-called work and family benefits, a new survey shows.

Only 19% of the 188 Fortune 500 U.S. industrial and service companies studied by the New York-based Families & Work Institute have developed a holistic approach to work and family benefit initiatives that includes top management's support for a wide range of flexible policies.

And, the institute's study identified only four companies as having a corporate culture that stresses gender equity, community focus, career development and management's commitment to an employee's ability to balance work and family responsibilities.

Conversely, the study found that 46% of the companies that participated in the three-year study have developed one or two policies, like child care resource and referral networks or flexible spending accounts, but do not have management's full support for a total work and family program.

Management at most of these companies views work and family benefits largely as a woman's issue and are concerned about equity of benefits, according to the study.

And, 33% of responding companies haven't reached the level where work and family initiatives have attracted even modest support of management, the study reports.

However, an author of the 437-page Families & Work Institute study, which was funded by two Ford Foundation grants, points out that most large U.S. companies offer some benefits designed to reduce family-related workplace stress. She says this fact is encouraging and indicates that corporate America is making strides to help employees balance work and family conflicts.

"Companies are responding to changes in family life. Human resources personnel and some managers have realized that families are stretched to the maximum and I hope we have reached a coming of age in terms of corporate response to work-family initiatives," said Ellen Galinsky, co-president of the non-profit research and planning institute.

The study reports that among all respondents, 88% offer part-time

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Broker revenues feel pressure

Falling premiums, interest rates, recession take their toll

By LORI BLOCK

While a soft property/casualty market and moribund economy continue to plague the publicly traded U.S. insurance brokers, revenues now are also being battered by lower interest rates.

"Generally, everyone who reported reported below expectations," said Ira Malis, commenting on the latest quarterly broker results. According to Mr. Malis, a vp with Alex. Brown & Sons Inc. in Baltimore, brokers currently are operating in the worst possible environment.

"Every revenue line is under pressure," Mr. Malis said. That pressure is being exerted by both falling premiums and interest rates, as well as the recession, which has caused clients to cut back on spending for insurance products and services.

And brokerage executives and securities analysts concur that the Federal Reserve Board's policy of lowering interest rates caught up with brokers in the third quarter, though they disagree about its impact on brokers' bottom line.

Revenue gains among the publicly held brokers in the first three quarters of 1991 ranged from 7.8% at Frank B. Hall & Co. Inc. to 1.9% at Arthur J. Gallagher & Co.

Nevertheless, net income was flat to down for most publicly held brokers during for the first nine months. Changes in net income ranged from an 11.6% gain posted by Poe & Associates Inc. to a 28.9% decline at Alexander & Alexander Services Inc. Hall posted a loss.

While the Fed's interest-rate policy might be what the economy needs to shake off its lethargy, in the short-term the lower rates will continue to depress brokers' investment income, some brokers say.

At Marsh & McLennan Cos. Inc., for instance, investments under management rose 8.9% during the nine-month period, but investment income on premiums held in fiduciary accounts fell 20%, according to J. Michael Bischoff, vp of corporate development for M&M.

Looking at interest rates year to year reflects a 24% decline in short-term yields, he added.

"Short-term investment rates really hit us on the chin," said Frank Wieczynski, corporate secretary for Alexander & Alexander in New York. The drop in third-quarter investment income "represents 9 cents a share," he said, explaining that without the plunge, A&A's per-share earnings would have been 27 cents, not 18 cents.

Frank B. Hall's "other income," which the broker says consists primarily of investment income, fell 13.6% during the nine-month period, 9.2% in the third quarter.

However, Michael A. Smith, an analyst and vp at Lehman Brothers in New York, insists that investment income is "really gravy" for brokers.

"Brokers make their money on commission and fees. To blame low interest rates (for the lackluster results) is kind of silly. But it does pour a little salt on the wounds," Mr. Smith said.

Others point to the ongoing soft property/casualty market as the main culprit for lower profits.

"We are still in a very competitive market, particularly on the retail side—that's what's putting

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Executive Life

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manded the question of the muni-GIC holders bondholder compensation to the 2nd District Court of Appeal.

The guaranty funds had agreed to enhance guarantees by Executive Life bidders after the Altus/MAAF offer was first made in August (*BI*, Aug. 12).

The enhancement agreement later was expanded to apply to any takeover bid eventually approved by Judge Lewin, who is supervising Executive Life's conservation.

Under that agreement, individual state funds represented by NOLHGA agreed to make up the difference between the amount guaranteed to policyholders by parties who are seeking to take over Executive Life and the maximum policy limit covered by each guaranty fund. Depending on the state, the policy limits are $100,000 for annuities and $300,000 for life insurance death benefits.

For example, under the original Altus/MAAS agreement, if a bidder for Executive Life guaranteed policyholders 80 cents on the dollar, a guaranty fund would pay 20% of the first $100,000.

If a policyholder had a $500,000 annuity, the annuitant would receive 80% of $500,000—or $400,000—from the successor of Executive Life and 20% of the first $100,000—or $20,000—from his or her state guaranty fund.

The majority of Executive Life annuitants—97% by Insurance Department estimates—hold annuities valued at $100,000 or less. They, therefore, would be made whole under the original agreement.

The addition of the muni-GIC liabilities to other obligations owed by Executive Life will reduce the guaranteed payout to Executive Life policyholders under the Altus/MAAF bid endorsed by California Insurance Commissioner John Garamendi to 72 cents on the dollar from 89 cents, according to Insurance Department estimates (*BI*, Nov. 18).

Since including muni-GICs as Executive Life policyholders would increase the amount guaranty funds would pay to make policyholders whole, the enhancement agreement among NOLHGA, Altus/MAAF and the Insurance Department contained a clause that provided for renegotiation should muni-GIC holders be included among policyholders, an Insurance Department spokeswoman explained.

A revised enhancement agreement would have to be approved by NOLHGA's 47 member guaranty funds before it can be finalized, said the NOLHGA spokeswoman.

In issuing its decision on Wednesday, the California Supreme Court rejected Commissioner Garamendi's petition to overturn the muni-GIC decision. The Insurance Department had maintained that it has never considered muni-GICs to be insurance products since they were first issued by Executive Life in 1986.

In fact, the department actively worked with the California Legislature to craft a 1988 amendment enacted into the state's insurance code that specifically deems muni-GICs not to be insurance products by exempting them from premium tax requirements, according to arguments presented by Insurance Department Attorney Karl Rubinstein during a trial over the muni-GIC issue.

In contrast, the Insurance Department has always regarded GICs used to finance pension plan benefits to be insurance annuity contracts.

However, Judge Lewin agreed with the argument made by attorneys for the muni-GIC holders that there is no substantive difference between the two types of GICs.

"Except for the fact that these pension GICs had been around and had been accepted by the industry and the department as policies and annuities, the pension GICs issued by Executive Life are substantively identical to the muni-GICs," the judge held.

Following Judge Lewin's ruling, muni-GIC holders immediately demanded that the Insurance Department begin interim payments as it has done for other policyholders.

The department, as conservator of Executive Life, has been paying 100% of death benefits and 70% of annuity payments to individual policyholders.

However, with the exception of a few hardship withdrawals requested by individual pension plan participants, no payments are being made to defined contribution plans that purchased Executive Life GICs, according to the Insurance Department.

Likewise, individual employees who chose to invest a portion of their 401(k) plan funds in Executive Life GICs are not receiving any payments, according to Robert R. Evans, chairman of the Group Annuity Participant Protection Assn. and assistant treasurer of Xerox Corp. in Stamford, Conn.

The GAPPA, which was formed in June, represents the interests of between 40 and 50 employers that have invested more than $540 million in Executive Life GICs on behalf of some 250,000 active and retired defined contribution plan participants.

Fortunately, investments in Executive Life GICs usually comprise only a portion of total pension and 401(k) plan investments, Mr. Evans pointed out.

While Commissioner Garamendi was pleased with the state Supreme Court's quick response to his motion for appeal, he was disappointed with its decision to transfer the case to a lower court.

"With $2 billion of people's life savings at stake, no one benefits from a long, drawn-out series of legal decisions and appeals," Mr. Garamendi said in a statement.

"If (Judge Lewin's) decision stands, it is a serious setback for certain Executive Life insurance policyholders who will suffer a loss of about 17 cents on every dollar," Mr. Garamendi said.

However, if the original guaranty fund enhancement agreement stands, those with annuities of $100,000 or less will be made whole.

Meanwhile, as higher courts wrangled last week over the muni-GIC issue, Judge Lewin began hearing testimony supporting the Altus/MAAF bid to take over Executive Life.

However, that testimony, which is expected to continue after a Thanksgiving recess, could eventually include comments from at least two of the eight other parties that submitted bids for Executive Life.

In addition to renegotiating the enhancement agreement, "NOLHGA also is making plans to present its own case in court," a spokeswoman for the state guaranty fund organization confirmed.

Mr. Garamendi had initially endorsed NOLHGA's bid for Executive Life, though he made approval of its offer contingent on the satisfaction of nine legal and financial questions about its bid (*BI*, Oct. 28). While NOLHGA subsequently bolstered its offer, including lining up $1 billion in financial guarantees from 20 major life insurance companies, Mr. Garamendi later rejected the bid, saying it "falls short of guaranteeing policyholders the rock-solid protection they deserve" (*BI*, Nov. 11).

NOLHGA's testimony before Judge Lewin will take into account the increased liabilities created by the muni-GIC ruling, the NOLHGA spokeswoman said.

And Hellman & Friedman, which submitted a bid with a payout equal to that of the Altus/MAAF bid, still considers itself in the running as long as the decision rests with Judge Lewin.

"Our bid remains an operative bid," said a spokesman for the San Francisco-based investment banker.

Judge Lewin said last week that he would overrule Mr. Garamendi's choice of the Altus/MAAF bid if a higher bid is submitted. ■

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HIV treatment cost $6 billion in '91: Study

Treating all Americans infected with the human immunodeficiency virus will cost about $5.8 billion in 1991, but by 1994 treating all the infected people will cost more than $10 billion, a recent study projects.

Lifetime treatment costs will total $85,333 for each of the approximately 324,000 people expected to be diagnosed with AIDS between 1991 and 1994, according to the study.

The average cost of treating someone who is HIV-positive but has not yet developed AIDS will be $5,150 annually, according to the study, which appeared in "Inquiry," the quarterly health care journal of the Blue Cross & Blue Shield Assn.

The study was researched by Fred J. Hellinger, director-division of cost and financing at the Center for General Health Services Extramural Research within the Agency for Health Care Policy and Research at the U.S. Department of Health and Human Services in Rockville, Md.

By extrapolating the number of AIDS cases reported to the Centers for Disease Control from January 1984 to September 1990, the study predicts that 62,470 cases of AIDS will be diagnosed in 1991; 74,299 cases in 1992; 87,026 cases in 1993; and 100,648 cases in 1994, for a total of 324,443 new AIDS cases during that four-year period.

The study does not provide specific projections on how many people will be diagnosed with HIV but not AIDS from 1991 through 1994. But, it predicts that during that period, there will be twice as many people who are HIV-positive but do not have AIDS receiving care as there will be people with AIDS.

About 1 million Americans now either have AIDS or are HIV-positive but have not developed the disease, the study says.

The study predicts that treating all HIV-positive people will cost about $5.8 billion in 1991, including $4.4 billion for treating people with full-blown AIDS.

Treating all HIV-positive people in 1992 will cost about $7.2 billion, the study projects, including $5.4 billion for people with AIDS.

Treating all HIV-positive people in 1993 will cost about $8.7 billion, the study projects, including $6.6 billion for people with AIDS.

Treating all HIV-positive people in 1994 will cost about $10.4 billion, the study projects, including $7.9 billion for people with AIDS.

Mr. Hellinger said in the study that the projections for lifetime treatment costs are higher than many previous estimates because infected people are living longer and because costly medicines like aziothymidine, or AZT, and aerosol pentamidine are being used more widely.

However, "the magnitude of economic costs attributable to HIV is underestimated" in the study, since it does not take into account services purchased by people who are HIV-positive who are not covered by insurance and the value of services provided by volunteers, according to Mr. Hellinger.

And treatment costs could be affected by changes in current treatment methods, he noted in the study.

—By Sara J. Harty and Michael Schachner

Yale early retirement

Yale University expects that an early retirement package currently being offered to 325 non-faculty administrative personnel will save the university more than $3 million annually in salaries and benefits over the next few years.

Yale is offering the early retirement plan to employees age 55 or older with at least 10 years of service. The plan adds five years of age and service to a retiree's defined benefit pension calculation formula.

If 40% of the eligible workers opt to retire early, Yale will save approximately $3.1 million annually. Yale is prepared to take a one-time charge of $2.1 million to pay sweetened pension benefits for those who participate.

Also under the Yale plan, the university's contribution toward the cost of retirees' insured health care plan will be calculated based on an additional five years of service. Yale will pick up the total cost for retirees with 30 years or more of service.

Employees must sign up for the plan by Jan. 15, 1992. Those who sign up have the option of being off the university payroll by the first day of February, March, April, May or June.

The program is patterned after a plan offered to about 850 Harvard University employees over the summer. About 350 of those workers took early retirement.

The incentive plan is one of several steps Harvard is taking to streamline operations by the year 2000, said Peter D. Vallone, associate vp-human resources.

—By Michael Schachner

Benefit beat

Retiree health plans

In an effort to contain retiree health care costs and to limit retiree health care liabilities under new accounting rules, most employers have modified their retiree medical programs over the past two years, a recent study says.

Study results are based on information that Lincolnshire, Ill.-based Hewitt Associates culled from its data base on 322 large employers in 1989 and 1991.

The change made by most employers—78%— was to increase retiree contributions toward the cost of coverage.

The Hewitt study found that 64% increased contributions for all retirees; 12% increased contributions for retirees under age 65; and 2% increased contributions for retirees age 65 or older.

Nearly 10% of the employers base their contributions toward retirees' health care coverage on their years of service.

The study also found that 3% of employers have set a fixed dollar amount that they will pay each year toward the cost of retiree health care, leaving the retirees responsible for all costs in excess of that amount.

Another 3% of employers have set a fixed percentage of coverage costs that they will pay.

Future cost increases can then be shared proportionately with retirees, so that the employer would always contribute, for example, 80% of the total cost of coverage and the retiree would always pay 20%.

Only about 1% of companies eliminated coverage for retirees, the study found.

—By Sara J. Harty

Cleanup ruling

Continued from page 1

yond this case," he predicted.

Attorneys for Aetna and Continental Insurance Cos., which wrote primary liability coverage for Gulf Resources from 1967 to 1978, say they will seek a rehearing before the entire 9th Circuit.

At stake in the litigation is about $100 million in costs to clean one of the most polluted waste sites in the nation: the Bunker Hill site in northern Idaho. Soil at the site, which was used by Gulf Resources for lead and silver mining from 1968 to 1982, contains dangerous levels of lead, zinc and other minerals.

In its Nov. 7 opinion, the 9th Circuit panel ruled 3-0 that these pollution cleanup costs are "damages" under the CGL policy.

The CGL policy provides that it will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages."

The insurers argued that when the government seeks cleanup costs from a policyholder under CERCLA, better known as the Superfund Act, it is really seeking restitution and/or mandatory injunctive relief, neither of which is the same as legal damages awarded by a court.

The policyholder argued that from the perspective of an ordinary person, cleanup costs are covered "damages."

The 9th Circuit, in an opinion written by Judge Cecil F. Poole, agreed with the policyholder: "Dictionary definitions indicate that in the lexicon of the ordinary person, the plain meaning of the term 'damages' would include response costs."

"A technical, arcane approach discerning the meaning of damages under the policies must not be taken," Judge Poole wrote.

"The case follows the current trend of authority favoring policyholders on the 'damages' issue," said policyholder attorney Stephen Greiner of Wilkie, Farr & Gallagher in New York.

"This is another in a line of pro-policyholder decisions," agreed policyholder attorney John Skelton of Williams, Kelly, Romanski, Polverari & Skelton in Redwood City, Calif. "Courts will not pay credence to the very technical distinctions that insurers try to make," he said.

To date, four federal appeals courts have found that environmental cleanup costs constitute "damages" under the CGL policy: the 2nd Circuit (*BI*, Oct. 23, 1989); the 3rd Circuit (*BI*, May 6); the District of Columbia Circuit (*BI*, Sept. 23); and now the 9th Circuit.

Only the 8th Circuit and the 4th Circuit have ruled in favor of insurers on this critical issue (*BI*, March 7, 1988; July 27, 1987).

In addition, six state supreme courts have found that pollution cleanup costs constitute "damages" under the CGL policy: California (*BI*, Nov. 26, 1990); Iowa (*BI*, Sept. 23); Massachusetts (*BI*, June 25, 1990); Minnesota (*BI*, June 11, 1990); North Carolina (*BI*, Feb. 19, 1990); and Washington (*BI*, Jan. 15, 1990).

The Maine and New Hampshire Supreme Courts are the only state high court that have ruled in favor of insurers on the "damages" issue (*BI*, April 16, 1990).

The 9th Circuit also held that when the EPA notifies a policyholder that it is a potentially responsible party for pollution cleanup costs, this so-called PRP letter triggers an insurer's duty to defend.

The CGL policy provides that insurers have a "duty to defend any suit against the insured."

The insurers argued that a PRP letter is not the equivalent of a lawsuit.

However, the policyholder argued that the practical effect of a PRP letter is the same as a lawsuit because the policyholder must defend itself.

The court again agreed with the policyholder: "Unlike the garden variety demand letter, which only exposes one to a potential threat of future litigation, a PRP notice carries with it immediate and severe implications. . . .In order to influence the nature and costs of the environmental studies and cleanup measures, the PRP must get involved from the outset."

Thus, the ordinary policyholder "would believe that the receipt of a PRP notice is the effective commencement of a 'suit' necessitating a legal defense," the court concluded.

Mr. Mehl, Gulf Resources' attorney, said this ruling is particularly important because defense costs in this case and many others total millions of dollars.

Policyholder attorney Mr. Greiner agreed. "If insurance companies can argue that a PRP letter is not a suit, they leave PRPs in a very difficult position, because PRPs are compelled to employ counsel and technicians to deal with these problems," he said.

If these costs are imposed on the PRP without coverage, PRPs will be discouraged from cooperating with the EPA and will be forced to wait for the EPA to sue them, he said.

Attorneys note that courts nationwide are split on this issue.

Insurers also argued unsuccessfully that cleanup costs do not stem from property damage but are, among other things, either preventive measures or amounts the EPA seeks to use to replenish the Superfund.

But, the 9th Circuit panel held that from the perspective of an ordinary policyholder, Superfund cleanup costs are sums payable "because of property damage" as that term is used in the CGL policy.

"An ordinary person would find that the environmental contamination alleged by the EPA falls within the plain meaning of 'property damage' as that term is used in the policies," the court said.

The court also addressed whether claims by the EPA for damage to natural resources, like wildlife, would be covered by the CGL policy.

Insurers argued that the release of pollutants and the damage to the natural resources must all occur during the policy period for there to be coverage.

The court disagreed and ruled that the policies cover damage to natural resources that occurs after the policy period, so long as the event that caused the damage occurred during the policy period.

For example, if pollution caused damage to soil and water in 1971 and that pollution caused damage to migratory birds years later, the later injury would be covered by policies in effect in 1971, the court said.

The court remanded this portion of the case to the U.S. District Court in Idaho for factual findings regarding the timing of the damage to natural resources.

The entire ruling could be influential in a dispute between Hartford Accident & Indemnity Corp. of Hartford, Conn., and Intel Corp. of Santa Clara, Calif., which is pending before the 9th Circuit (*BI*, June 27, 1988).

The Intel litigation centers around pollution caused by toxic chemicals contained in cleaning solvents that contaminated the ground and groundwater beneath the semiconductor manufacturer's Mountain View, Calif., production plant.

However, Hartford attorney Stephen Schrey of Crosby, Heafey, Roach & May in San Francisco cautioned that it is difficult to predict what impact the court's recent decision will have on the Intel litigation. He noted that the Intel case involves different issues, a different panel of judges and California law, not Idaho law.

Nonetheless, Intel attorney Mr. Skelton said the Gulf Resources decision "certainly bodes well in an atmospheric sense" for his client. He said the differences cited by Mr. Schrey would not be "outcome determinative."

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Aetna Casualty & Surety Co. vs. Pintlar Corp. and Gulf Resources & Chemical Co., U.S. Court of Appeals for the 9th Circuit; No. 89-35286; No. 89-35287.

Opinions

Give PBGC help it needs

EMPLOYERS SHOULD not be allowed to evade their pension promises. That's why we're glad the Bush administration is taking the lead to see that those promises are kept.

The administration formally unveiled a comprehensive legislative package intended to put an end to pension plan funding abuses. The package would make clear that pension contributions are a priority obligation for employers in Chapter 11 bankruptcy proceedings.

In addition, if an employer in bankruptcy terminated an underfunded pension plan, the Pension Benefit Guaranty Corp.—the federal agency that guarantees workers' and retirees' basic pension benefits—would have a priority status against the employer for a portion of the liabilities the PBGC would have to assume.

The legislation would, in large part, overturn a recent federal court decision that would have disastrous consequences for the PBGC and the defined benefit pension plans it insures.

In that ruling, a federal judge said that companies in bankruptcy do not have an obligation to fund their pension plans and that the PBGC does not have a priority status as a creditor for unpaid pension obligations. Instead, the agency would be considered a general unsecured creditor and could expect to receive a few cents for each dollar—if anything—from the company's estate.

That decision essentially gives the go-ahead to employers to promise more pension benefits than they can deliver and then—when the promises can't be met—to cut off funding and dump those obligations on the PBGC.

The legislative package proposed by the Bush administration is intended to prevent such a scenario from developing. If creditors know that employers can't walk away from pension obligations, they are going to be much more selective when deciding to whom—and on what conditions—to lend funds.

"...I SAID, QUIT PUSHING AND LET THE KID THROUGH!"

Faced with a threat to their credit lines, employers will have a powerful incentive to better fund their pension plans.

We hope Congress acts on the legislation soon. If it does not, billions of additional dollars of pension obligations could be shifted from employers to the PBGC. That could mean a new round of PBGC premium hikes. And, if premiums rise much higher, employers that properly fund their pension plans will tire of subsidizing the unkept promises of other employers and will terminate their defined benefit plans. That will spell the end of a major component of America's retirement income system.

Reasonable reforms

AMENDMENTS TO the McCarran-Ferguson Act that would wipe out many of the insurance industry's exemptions from federal antitrust law may not be the cataclysm that many in the insurance industry are bemoaning.

Yes, the insurance industry needs the ability to engage in some joint activities—like the trending of loss data—that may not be appropriate for other industries. But, no, the industry does not need the blanket exemption from most federal antitrust laws that the McCarran-Ferguson Act provides.

The best news to come out of last week's Judiciary Committee vote on a McCarran-Ferguson reform proposal by committee Chairman Jack Brooks, D-Texas (see story, page 1), is that Rep. Brooks still is willing to discuss changes to his bill. Nearly everyone in the insurance industry has said the Brooks proposal as approved by the committee last week would be unacceptable.

We encourage the American Insurance Assn., which has spearheaded the drive to make reasoned changes to McCarran-Ferguson, to continue its dialogue with Rep. Brooks' staff. We also encourage other insurance groups that have so far refused to budge one inch to join that dialogue to demonstrate that the industry is willing to compromise.

As proponents of the Brooks bill point out, many legislators will find it difficult to vote in favor of "insurance price fixing" during an election year. Insurers must realize that McCarran-Ferguson stands a good chance of being amended. With that in mind, insurers should opt for reasoned, balanced reform, not the proposal approved by the Judiciary Committee last week.

Letters

Constitution doesn't guarantee right to health care

To the editor: Our Constitution promises life, liberty and the pursuit of happiness. It does not promise health care for all.

The Canadian medical system appears to promise equal medical care for all. However, Canadians pay for their medical care in differing ways. They pay by having to wait extended periods of time for surgeries and for hospital beds. They pay by not having the latest diagnostic tools available to them. Sometimes they pay with their lives.

And even in Canada, not everyone receives equal care. Some doctors have more influence than others. Some patients have more influence with their doctors. These patients get preferential care. The currency might not be green but everyone pays in some way.

Let's get off our high horse. Thirty-four million Americans don't have medical insurance, but 260 million do! These 34 million do have access to medical care through community hospitals and community clinics. Why not attack this problem by expanding the network of community clinics and hospitals? Why not incorporate the facilities of the federal government through a federal health plan like CHAMPUS?

Any health care reform proposal that will mandate that employers must provide coverage for medical care will greatly increase the demand for medical services, will greatly increase the price and will leave us with a bigger problem than we have now.

Mark A. Mitchell
President
U.S. Benefit Consultants
Acworth, Ga.

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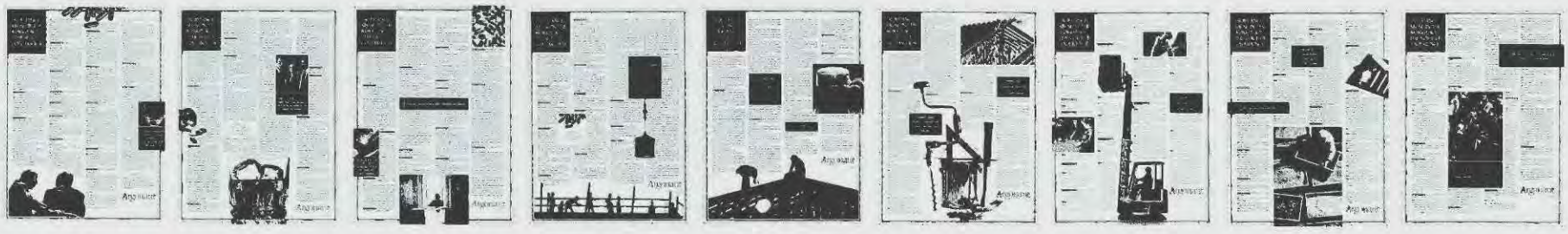

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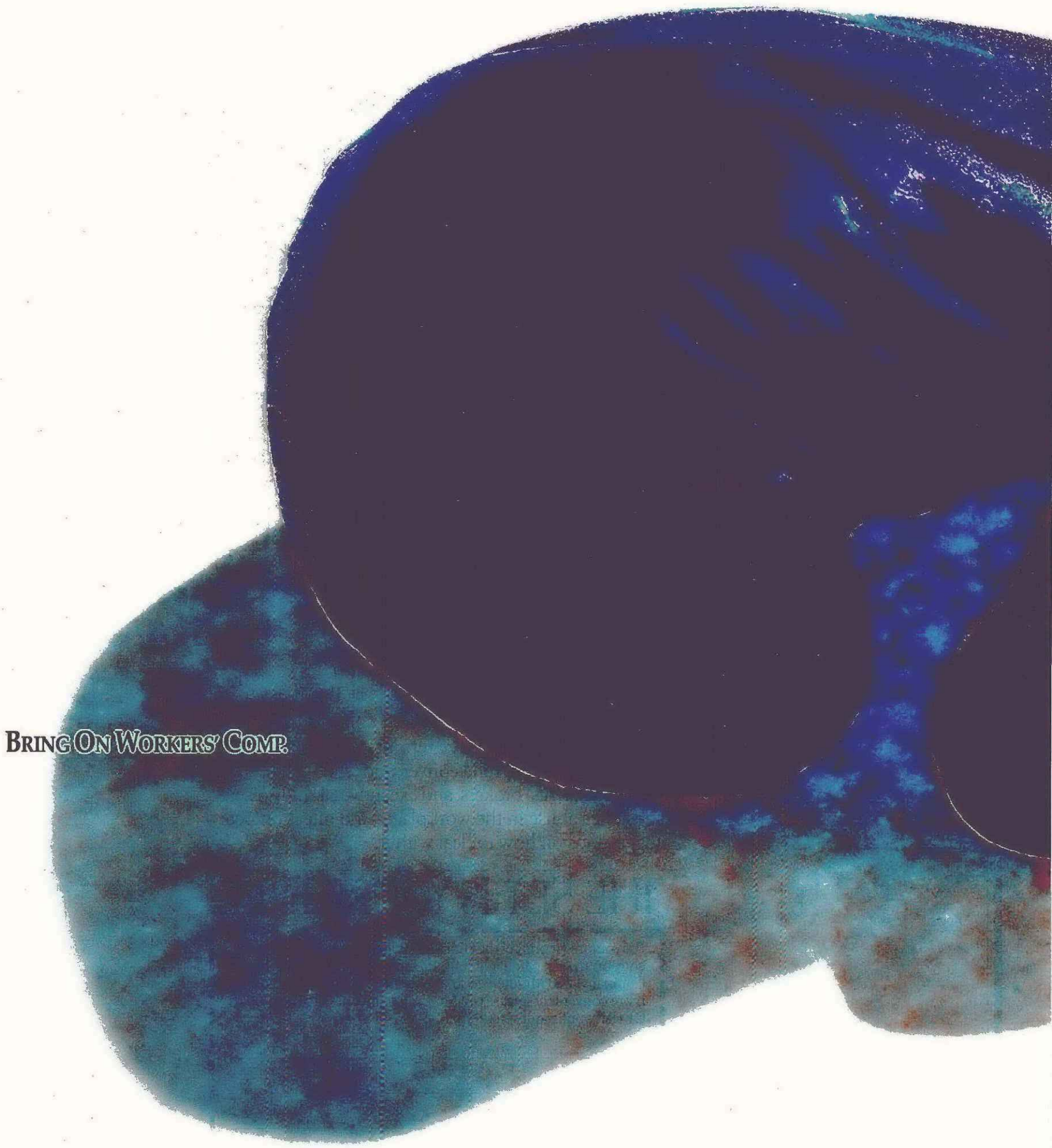

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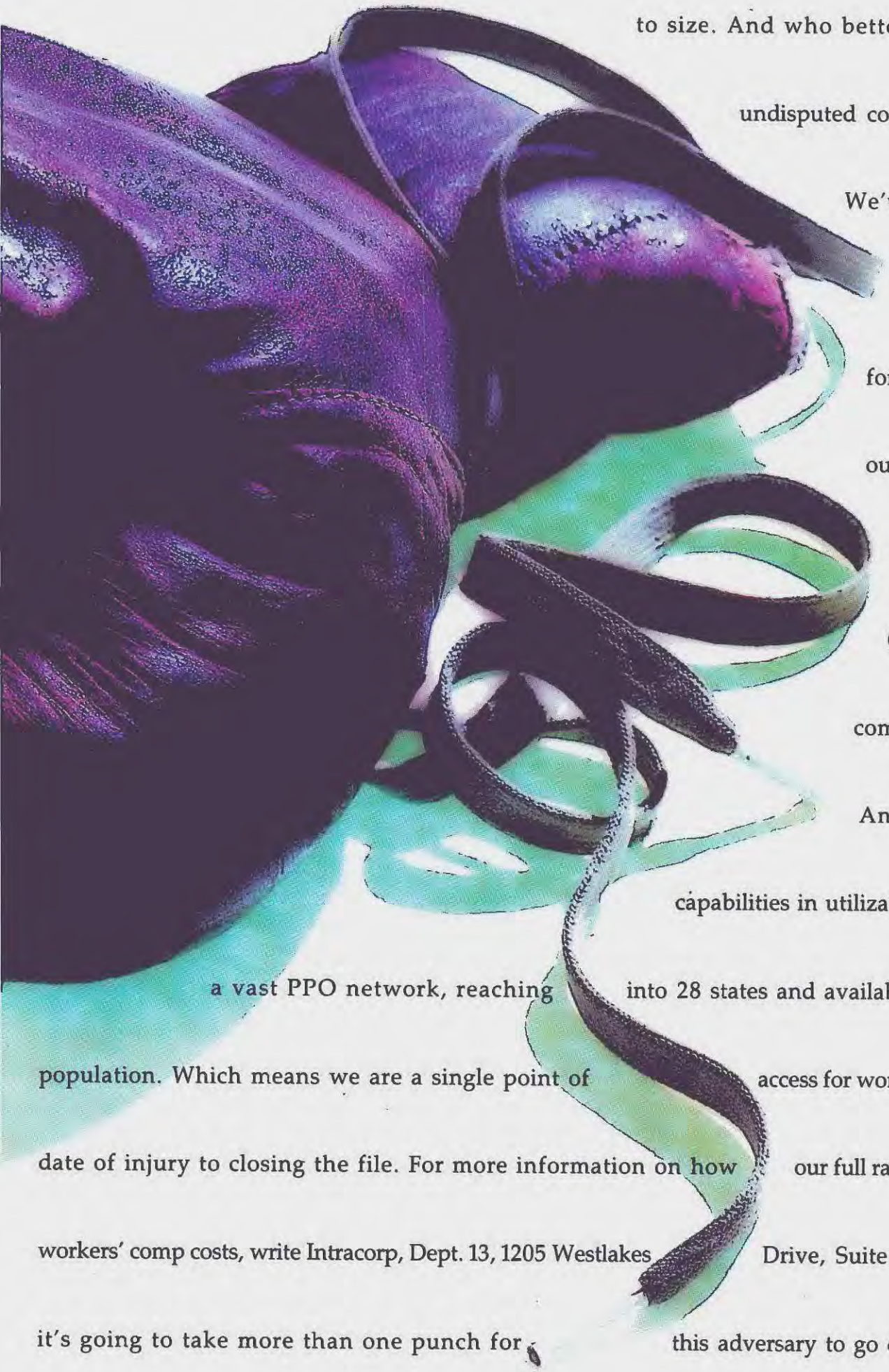

We've been battling rising workers' comp and other health care costs for more than twenty years. Saving our clients in excess of $1.5 billion in claims payments in 1990 alone. (No wonder so many blue chip companies want us in their corner.)

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INTRACORP

Family benefits

Continued from page 3

schedules; 77% offer flexible working hours; 55% offer child care resource and referral services; about 50% provide some form of dependent care assistance; and 35% allow employees to work at home.

These benefits are relatively new, "but we don't believe they're a fad," according to Ms. Galinsky. "Most of the companies we spoke with said they are planning to introduce new programs over the next few years. We don't believe the recession has halted advancement in this field."

Employee benefit consultants specializing in the work and family field agree that most major companies have realized that changing demographics within the U.S. workforce—specifically more working mothers and older employees—makes balancing work and family concerns tougher.

However, they say management's general inability to grasp the value of such benefits has slowed widespread growth of work and family benefits.

"Most of these policies are tough to sell to upper management. Even if human resources people believe in work and family benefits, management usually can't see the business connection," said Carol Sladak, a consultant with Hewitt Associates in Lincolnshire, Ill.

However, Ms. Sladak predicted that this mentality should change when more information is made public about the advantages of a progressive corporate-sponsored work and family agenda.

"It means a lot to a company to be on the cutting edge in its industry. There's only a limited pool of qualified employees in each field, and these are the types of programs that distinguish one company from another," she said.

Eileen Canty, a principal with William M. Mercer Inc. in New York, agreed that while only a few companies thus far have established themselves as leaders in work and family benefits, other corporations will likely follow suit as the value of such programs becomes more evident.

"The proof that these programs improve employee retention and recruiting ability is just beginning to come in. Some firms are interested in these programs, but aren't willing to actually spend the money on them. That will change over the next 10 years," she said.

To determine what work and family benefits major companies offer workers, the institute spent three years ranking 188 corporations based on seven major categories: flexible work arrangements; leaves of absence; financial assistance; corporate giving and community service; dependent care services; management change; and work-family stress management.

Each category had several subcategories including flextime and job sharing, child care discounts and vouchers, funds to community work and family initiatives, child and elder care resource and referral networks, after-school programs and summer camps, work and family management training, wellness and health promotion, relocation services, and on-site or near-site child care centers, among many other things.

Companies were classified into one of four stages of development ranging from "pre-Stage I" to "Stage III" (see chart, page 3).

According to the study, the four Stage III firms—or most "family friendly" companies in the nation—are Aetna Life & Casualty Co., Corning Inc., International Business Machines Corp. and Johnson & Johnson.

New Brunswick, N.J.-based Johnson & Johnson set up a task force in 1987 to develop a wide-ranging approach to work and family issues. It created a one-year family leave policy in 1989, as well as an elder care resource and referral network.

In 1990, the company built and opened an on-site child care center at its headquarters with the capacity for 200 children between the ages of 6 weeks and 6 years. A year later, it built a similar facility at its Raritan, N.J., site. Each center has a full-time registered nurse to care for mildly sick children.

"These types of programs are a statement about how we feel about staying competitive and offering our employees what they need to balance their lives," said Chris Kjeldsen, vp-headquarters human resources with J&J. "Five years ago, work and family issues were just arising. But now, with more than 50% of the workforce being women, companies have to take some response."

Since 1983, IBM has had a number of family-support programs in place, including flexible time policies, an employee assistance program and a relocation program.

It recently began offering employees two-hour windows at the beginning and end of the work days, as well as at the lunch hour, in which they can take care of family-related matters.

"Flexibility leads to satisfaction among employees and eliminates much of the workplace stress that hinders productivity. It's all part of the bigger strategy, which is being the employer of choice and doing what's right for IBM and our employees," said a spokesman for the Armonk, N.Y.-based computer manufacturer.

The institute also lauded IBM for the commitment it made in 1989 to contribute $25 million over five years to various off-site dependent care service providers. To date, IBM has donated $9.2 million to private organizations utilized by IBM employees.

IBM maintains one of the most generous leave policies in the nation. Eligible employees can take up to three years off with full benefits to care for a family member.

"The changing demographics within the workforce require flexibility on the part of an employer. We have a long history of offering leaves of absence with guaranteed benefits and return-to-work status," the spokesman said.

Aetna Life & Casualty believes that progressive work and family benefits help the company recruit and retain the best employees available.

Before implementing a formal six-month family leave policy in 1988, 23% of the women at Hartford, Conn.-based Aetna who took maternity leave did not return to their jobs.

"Most of these women were high-level performers. We would have liked for them to have stayed," said Denise Cichon, a family services consultant in Aetna's corporate headquarters. "It was then that we decided we'd have to change our policy."

After instituting a leave plan that guaranteed one's job upon return as well as benefits during the leave, the number of women who returned to work after six months increased by about 50%, Ms. Cichon said. In 1988, only 12% of those who took maternity leave did not return. In 1989, only 9% terminated, she said.

"Besides the raw numbers, the best thing about it was that most employees said they learned about the policy from their supervisor and a large number came back under an alternate staffing option," said Ms. Cichon, referring to part-time work, job sharing or condensed work weeks.

Corning Inc. decided in 1987 that a 12% turnover ratio among its female and minority workforce was unacceptable and chose to address the situation through a turnabout in corporate culture, said Sonia Werner, an in-house work/family consultant in the company's Corning, N.Y., home office.

Corning in 1988 began a management training course designed to educate supervisors on gender equality and work and family concerns. The course, called "Men and Women as Colleagues," addresses behavior, attitudes and communication among women and men.

In addition, Corning implemented a six-month family leave policy for mothers of newborn children. Fathers and parents of adopted children can take up to 20 weeks of unpaid leave with continued benefits and return-to-work guarantees.

"These programs lowered our turnover rate to 3% among women," said Ms. Werner. "It was simply a matter of being more sensitive to employee needs."

Corning also has been contributing between $30,000 and $100,000 per year to community child care centers, and next year the manufacturer will build an on-site community child care center that will be open to the entire community and will be run by a third-party firm.

While only a handful of companies are at the forefront of the work and family benefit field, a much larger number of companies are now getting their programs in

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order.

For example, White Plains, N.Y.-based NYNEX Corp., which was ...nked as a Stage I company by the ...dy, is now in the process of funding near-site dependent care centers frequently used by employees.

The communications company, ...hich operates throughout the ...rtheast, is currently working with the Communications Workers of America and the International Brotherhood of Electrical Workers to determine which centers will receive $6 million in donations by 1995.

"We're based in a region where affordable day care is a major challenge," said R. Michelle Green, direc...r-work/family initiatives for ...NEX.

"Despite the concern that all benefits must be as cost-effective as possible, we're moving ahead on work and family because we realize that employees cannot be at their best if they're worried about loved ones," he added.

Ms. Green said NYNEX has already made contributions to six different dependent care providers to ...ake the care cheaper for employees.

The Stanley Works, a New Brit...n, Conn.-based tool maker, which was also designated as a Stage I company by the institute, recently began ...ffering employees two-hour win...ws at the start and end of the work day to help care for children.

The company also supports local day care centers through contributions, said Paul Marier, vp-human resources.

"We found that it didn't make sense to run our own center, but we have supported local centers in New Britain and other communities through donations and building expertise," he said.

Stanley also offers women returning from maternity leave flexible hours and part-time employment. ■

McCarran bill

Continued from page 1

byists say the measure—if brought to a House floor vote—will be the target of an unprecedented lobbying effort by insurers and agents that will ensure the bill's defeat.

"The strong grass-roots efforts from insurers and agents will be the kiss of death" for the bill, said Peter Lefkin, vp-federal affairs in the Washington, D.C., office of Fireman's Fund Insurance Co.

But, because the congressional session is likely to extend for another nine months, other industry lobbyists are more cautious. They note that Rep. Brooks has plenty of time to build more support.

"Rep. Brooks has positioned the bill for a vote any time. We don't underestimate his ability to move a bill forward," said David J. Pratt, vp-federal affairs for the American Insurance Assn. in Washington, D.C.

By contrast, when the Judiciary Committee approved a virtually identical bill in 1990, the committee's action came so late in the session that there was not enough time to bring the bill up for a House vote (*BI*, June 25, 1990).

"We now have a lot more time," said Linda Lipsen, Washington counsel for Consumers Union, which supports the Brooks bill.

Like the measure approved by the committee last year, H.R. 9 would, among other things, eliminate insurers' exemptions for:

- Price-fixing, a term not defined in the bill.
- Allocating regions or customers among competitors.
- Monopolizing or attempting to monopolize any part of the insurance business.
- Tying the sale of insurance to the sale of any unrelated insurance product.

The measure would allow insurers to share historical loss data. However, insurers have said that vague wording in the bill throws into doubt whether insurers or advisory organizations could—without fear of triggering antitrust litigation—jointly trend loss data.

To address that concern, the Judiciary Committee approved on a voice vote an amendment that would allow joint loss trending by very small insurers and would not consider such activity an illegal "conspiracy."

According to the amendment, initially offered by Rep. Dan Glickman, D-Kan., and later modified by Rep. Brooks, small insurers could jointly trend among themselves if they meet one of two conditions:

- Each insurer's policyholders surplus is less than $10 million.
- Each insurer's policyholders surplus is less than $100 million and each insurer's direct written insurance premiums for the line of business it wants to trend is less than 2.5% of the total market in every state in which it writes the coverage. For example, if a medical malpractice insurer has 1% of the medical malpractice market in each of 49 states but a 2.6% share of the market one state, it would not qualify for trending under the amendment.

In addition, these small insurers would not qualify for the exemption if, as a group, they held at least 20% of the market in any one state during the previous year.

Insurers say the amendment, while well-intentioned, would be unworkable. As an example, they cite a situation in which hundreds of insurers each have less than 1% of the market in a state but together have more than 20% of the market.

The amendment does not make clear whether the market can be divided into multiple groups of insurers, each of whose members have a total of less than 20% of the market share, or whether there may be only a single group. In either case, it is unclear who would group the insurers.

"The amendment appears unworkable and impractical," said the Alliance's Mr. Farmer.

The Judiciary Committee did reject two other amendments by Rep. Fish. Those amendments, which also were rejected by the Economic and Commercial Law Subcommittee (*BI*, Nov. 18), would have:

- Spelled out that states are primarily responsible for the regulation of insurance.
- Allowed incurred-but-not-reported losses to be considered as a loss development factor in determining historical loss data.

A spirited two-hour debate preceded passage of the Brooks bill in the committee.

"A vote against H.R. 9 is a vote against any reform," declared Rep. Edward Feighan, D-Ohio.

But Rep. Fish warned that enactment of the legislation would cut down on the amount of actuarial information available to insurers, which ultimately could impair pricing decisions and the solvency of companies.

"I would suggest to my colleagues that before voting on H.R. 9, they ought to think about its potential impact on the financial solvency of small and regional insurance companies," Rep. Fish said. "If it remains unchanged, this bill will dramatically reduce the actuarial information that is now available to these companies. Simply put, they will have less information on which to judge the risks they insure. . . .When we reduce that data and information, we are affecting the accuracy of the decisions they make."

Rep. Brooks, whose staff has been meeting for months with AIA representatives to discuss possible changes to H.R. 9, said his door continues to be open for negotiations—even as the bill is now poised to move to the House floor.

The AIA is encouraged that Rep. Brooks will continue to discuss possible changes to the bill. "Rep. Brooks again has voiced his continued support for negotiations with us to develop an alternative to H.R. 9," said the AIA's Mr. Pratt.

The Judiciary Committee staff "reports to me that considerable progress has been made in these talks. I think it would be to everyone's advantage to complete this effort. There will certainly be opportunities and time to do so if the will and goodwill are present," Rep. Brooks said.

In its letter, the Justice Department notes that the Brooks bill's "language and structure" could discourage activity among insurers —for fear of antitrust litigation— that might actually be pro-competition.

"Agreements among participants in a joint underwriting pool regarding the pool's rates might be described literally as 'price-fixing' but might in certain instances be entirely appropriate," the department's letter said. "Private parties could well be deterred from engaging in such conduct for fear that courts would treat the conduct as illegal."

Insurers point to the Justice Department letter as a clear sign of strong Bush administration opposition to the Brooks' bill.

"The Justice Department letter setting forth the administration's position on H.R. 9 confirms all of the concerns we have had," said AIA General Counsel Craig Berrington. ■

Industry captive follows key steps for success: Exec

By DOUGLAS McLEOD

NEW YORK—A construction industry group captive is prospering because it has focused on several operational "cornerstones," an official of the insurer says.

American Risk Transfer Insurance Co. Ltd. of Bermuda was formed in 1981. It has since evolved into a sophisticated insurance group that comprises units in Bermuda and the United States, including a risk retention group and risk purchasing group formed under the federal Risk Retention Act, according to Frank Miller, executive vp with American Contractors Insurance Group, an ARTIC unit in Dallas.

ARTIC, owned by 23 large U.S. construction companies, is expected to generate earned premiums of $36 million and net income of $10 million this year, and will finish 1991 with shareholders equity of $32 million, Mr. Miller told an audience at the Second World Captive Forum.

The forum, held Nov. 10-13 in New York, was co-sponsored by the Tillinghast division of Towers, Perrin, Forster & Crosby Inc.; Skandia America Group; and Scandinavian Insurance Services Ltd.

ARTIC participants have made the captive a success by learning several pivotal lessons about how to structure and operate the facility, Mr. Miller said. Some of these lessons came the hard way.

According to Mr. Miller, operating "cornerstones" that have made ARTIC successful include:

• Focusing on a homogenous group of large risks.

"You must have a commonality of risk," he advised, explaining that this allows the captive to focus, and grow familiar with, writing a particular type of business. "You must do one thing really well rather than being a generalist."

ARTIC hasn't always followed this rule: In 1984 and 1985, its shareholders decided to expand into writing long-haul trucking risks "and we almost had the wheels come off our captive" when the losses came rolling in, Mr. Miller recalled.

ARTIC now writes only construction-related risks, and intends to keep it that way, he said.

"Dance only with who brung you to the party," he advised.

The average annual premium of ARTIC participants is about $2 million, he added, explaining that concentrating on a few large risks has also helped keep the captive's operating expenses down.

• Allocating the majority of each participant's premium to a retrospectively rated "risk" layer of the program.

Because construction industry losses tend to be of high frequency and moderate severity, ARTIC allocates roughly 85% of premiums to the first $250,000 layer of each participant's program, with the remaining 15% of premiums going into an excess layer providing coverage up to $1 million, he said.

The heavy allocation of premium to the risk layer also serves to focus participants' attention on losses in that layer and to encourage loss control efforts, he said.

• Calculating the growth of each shareholder's equity on the basis of the profit it contributes to the captive operation rather than on the premium volume the shareholder generates.

Earlier in its history, ARTIC did this the other way around and found that three of its 10 original participants were "bad apples" that generated large premium volumes but also produced large losses and still received a large share of profits, Mr. Miller said.

The operation has run much more smoothly since it started rewarding participants who generate profitable business, he said.

• Taking steps to deal with the possible loss of a fronting insurer.

This is especially important, he

Continued on page 18

Is there a risk so complex we can't design a coverage for it? Probably not.

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Industry captive

Continued from page 16

suggested, given the National Assn. of Insurance Commissioners' proposed model law to restrict fronting arrangements (*BI*, Oct. 14). Licensed insurers also face other financial stresses that could affect their ability to continue as fronting companies, including the escalating burden of residual market charges, he said.

ARTIC had what it believed to be a steady relationship with a U.S.-licensed fronting insurer until 1986, when the insurer unexpectedly canceled ARTIC's contract, Mr. Miller said.

"We still smart from the rug being pulled out from under us," he observed.

In response, ARTIC converted a Texas-based affiliate, American Contractors Insurance Co., into a risk retention group, and activated American Risk Funding Insurance Co., another Texas-domiciled insurer that ARTIC members are now trying to have licensed in all 50 states.

Both of the Texas insurers are units of American Contractors Insurance Group, a Delaware holding company that in turn is a subsidiary of Bermuda-based ARTIC.

Forming a risk retention group or an affiliate insurance company are ways of "building a parachute" to protect against the loss of a fronting insurer, Mr. Miller said.

Risk retention groups have the advantage of cutting the amount of regulatory red tape insurers would otherwise have to deal with, since the groups only need to be licensed in one state to write business nationally, he added.

• Educating shareholders on the mission of the captive so that all participants can focus on the captive's needs and face the problems that confront it. With a group captive, all owners must be involved in the insurer's operations to make it a success, Mr. Miller said.

• Fostering a "religious commitment" to safety and loss control.

ARTIC at one point faced a rising tide of losses as accident frequency among its members grew, Mr. Miller said. In response, the captive's managers held a meeting with the chief executives of 14 ARTIC shareholders, stressing the importance of loss control.

The meeting and subsequent efforts of member executives worked, he said: Losses fell dramatically the next year.

Group captives are facing a number of other problems, Mr. Miller pointed out.

One question mature captives must grapple with is whether they should maximize shareholder value by making a public offering of the captive's stock, he said.

ARTIC considered this and decided against it, Mr. Miller noted.

"Going public would destroy our company," he said, explaining that such a move would damage the "group feeling" and member commitment to the captive.

Captive owners should also be concerned about the possibility of federal involvement in insurance regulation and the impact on their operations of proposals put forward by Rep. John D. Dingell, D-Mich., and Sen. Howard Metzenbaum, D-Ohio.

The possibility of federal involvement "scares the dickens out of us," Mr. Miller observed. ■

Captives cannot solve all problems: Hawkins

By DOUGLAS McLEOD

NEW YORK—Risk managers shouldn't jump at forming a captive insurance company without a clear idea of a captive's benefits and pitfalls, a Fortune 500 risk manager says.

"One of the reasons users of captives are sometimes disappointed is because of the way (captives) are packaged," said Cheri J. Hawkins, assistant treasurer and director of insurance for Tacoma, Wash.-based Weyerhaeuser Co. and a past president of the Risk & Insurance Management Society Inc.

Captives have been touted as the answer to all of a company's risk management needs and, while they have performed as advertised in many areas, they have also fallen short in some ways, Ms. Hawkins said.

"Don't climb the mountain just because it's there," she advised an audience at the Second World Captive Forum in New York earlier this month. The forum was co-sponsored by the Tillinghast division of Towers, Perrin, Forster & Crosby Inc.; Skandia America Group; and Scandinavian Insurance Services Ltd.

Ms. Hawkins traced Weyerhaeuser's own involvement with captive insurance back to 1956.

At that time, she joked, "we were already assuming a very large $25,000 deductible," and management decided it wasn't interested in forming a captive.

By 1976, as a hard property/casualty market was in full swing, Weyerhaeuser formed a Bermuda captive, named de Bes' Insurance Ltd., to cover the lumber and wood products company's high-value property in the United States and Canada.

The captive later expanded to underwrite marine cargo risks, construction wrap-up coverages and workers compensation in states where Weyerhaeuser didn't qualify as a self-insurer, Ms. Hawkins noted.

A well-managed captive program can also convince commercial insurers to participate on the parent's insurance program since they can see the parent is comfortable enough with its own risks to retain them in the captive, Ms. Hawkins says.

The captive insurer also joined various risk-sharing pools, including International Risk Management Ltd.'s United Insurance Co., Hopewell International Insurance Ltd. and Tortuga Casualty Co.; Forest Insurance Ltd., a lumber industry excess liability facility; and Bermuda's Risk Exchange Assn.

In 1983, Weyerhaeuser also formed a Vermont captive insurance company, ver Bes' Insurance Co., which assumed the U.S. property, workers comp, wrap-up and contractors' equipment risks previously written by de Bes' in Bermuda, Ms. Hawkins said.

Weyerhaeuser's experience has been good: Profits from the captive operations have reduced by 4.3% the company's overall cost of risk, which includes insurance premiums, unreimbursed losses and expenses, Ms. Hawkins said.

From their creation to date, the captives have produced an after-tax internal rate of return—including dividends and increases in the captives' after-tax net book value—of 36.4%, well above the target rate of return of 18%, Ms. Hawkins said.

Asset-to-liability ratios for de Bes' and ver Bes' are 1.62-to-1 and 2.69-to-1, respectively, well above the industry minimum standard of 1.25-to-1.

Liabilities-to-equity ratios for the two captives are 1.61-to-1 and 0.59-to-1, respectively, well below the industry standard of 3-to-1, Ms. Hawkins said.

Weyerhaeuser's captives have not only performed well when measured against other insurers, but have also produced several of the benefits touted by captive boosters, according to Ms. Hawkins.

These benefits include:

• Lower and more stable premiums. These costs are naturally lower because captives—unlike commercial insurers—are not intended primarily as profit-making ventures and rates needn't reflect a desire to produce an underwriting profit, she said.

At the same time, she added, price should not be the sole criterion in a company's decision to use a captive rather than commercial insurance: While a soft market may produce low commercial insurance rates, a stable relationship between the captive and its parent is important for both.

"The key is to place greater emphasis on stability than on pricing, because in the long run that will pay off," she said.

• Greater availability of insurance. During the hard market of 1984-85, Weyerhaeuser's entire casualty program was placed with its captives and with other "alternative" markets, according to Ms. Hawkins, who said there was not even $1 million of occurrence-based liability coverage available from commercial insurers for the company's risks.

• Better loss control. Captive insurance helps focus a company's attention on loss prevention and control, she suggested, noting that companies with captive coverage should behave in loss control matters with the same care as if they were uninsured.

A well-managed captive program can also convince commercial insurers to participate on the parent's insurance program since they can see the parent is comfortable enough with its own risks to retain them in the captive, Ms. Hawkins added.

• Better cash flow, with the investment earnings on premiums and reserves going to the captive and ultimately its parent, rather than to a commercial insurer.

While captives have performed as advertised in these respects, other advantages claimed for captives have not panned out, Ms. Hawkins said. These include:

• Reduced regulatory constraints on insurance programs. Captive insurers have increasingly been the target of "potshots" by regulators and others, but are in fact strictly regulated in their various domiciles, she said.

Ms. Hawkins also criticized the National Assn. of Insurance Commissioners' proposed model regulation to restrict fronting arrangements as an unnecessary regulatory intrusion on captive operations.

Having to answer to senior management about captive problems is a more effective motivating force for risk managers than restrictive regulations, she suggested.

"Give us a break," she said. "We have to answer to management long before we have to answer to regulators."

• Tax advantages, which she described as the "cellophane" on the captive package.

While parent companies over the years have sought deductibility of premiums paid to captives and other tax advantages, these breaks have been denied in many cases and produced lengthy tax court battles.

"Do not expect the tax laws to be fair or consistent," she advised.

Ms. Hawkins also gave a mixed review to another supposed benefit of captives: improved access to reinsurers.

While captives can give their parents less costly access to reinsurance coverage for their own risks, captives can also become reinsurance markets themselves, assuming third-party business unrelated to their parent's risks, she said, noting that this activity has created large losses for many captives. ■

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Broker results

Continued from page 3

pressure on all brokers," said Patrick G. Ryan, chairman, president and chief executive officer of Chicago-based Aon Corp., the parent company of Rollins Burdick Hunter Group Inc.

"We're still having to contend with a soft market with continuing decreases in rates, although the rate decrease is much less than it has been in the last few years," said William F. Poe, chairman of Poe & Associates.

"We all are being hit by the deterioration in pricing," said Michael J. Cloherty, Gallagher's vp of finance.

Some observers have seen evidence of price firming, particularly in the marine and aviation lines, but, as Mr. Cloherty explained, "it's certainly not enough to move a company forward, that's for sure."

And Lehman's Mr. Smith argues that underwriters won't "regain their discipline" until some really poor underwriting results are realized. "Part of the difficulty is not enough (insurer) CEOs have been fired yet."

Still, the news isn't entirely bad.

As a group, the brokers have diligently trimmed expenses.

Mr. Smith said that the brokers' depressed third-quarter and nine-month profits are purely a function of the lack of revenue growth. "It's not a matter of expense control. Expenses came in where we expected."

This diligence may bode well for the future. With reduced expenses, "a good percentage of additional revenue could drop down to the bottom line" Mr. Poe explained.

But brokers may also have reached their limits in cutting costs. "After being four years in a down cycle, it's hard to control expenses," Mr. Malis observed.

Individual results for the third quarter and the first nine months for publicly held brokers follow:

Marsh & McLennan

Gross revenues at the world's largest insurance broker dropped 0.4% in the third quarter, slowing revenue growth to 2.9% in the first nine months of 1991.

Revenues for the first three quarters of 1991 were $2.11 billion, compared with $2.05 billion in 1990, while third-quarter revenues slipped to $679 million in 1991 from $681.5 million in 1990.

Breaking down its third-quarter and nine-month results into major business segments, New York-based M&M reported:

- Insurance services revenues rose a scant 0.6% during the third quarter and 3.5% for the nine months to $381.4 million and $1.21 billion, respectively.
- Revenues from consulting tumbled 6.5% during the third quarter and fell 0.2% over the nine months to settle at $216.8 million and $673.9 million, respectively.
- Revenues generated by investment management rose 14.3% during the third quarter and 8.9% during the nine-month period, to $80.8 million and $225.4 million, respectively.

"The operating environment in insurance brokering was almost identical" to that experienced during the first and second quarters, in which M&M posted revenue gains of 7% and 1.9%, respectively, Mr. Bischoff said.

What is a little different in the third quarter is the strengthening of the dollar, which reduces total revenues when foreign revenues are converted into dollars, he said.

At M&M, this factor can be substantial, since roughly one-third of its insurance services and consulting revenues are generated abroad, Mr. Bischoff said.

However, the changes "impact our expenses by roughly the same amount," because the firm keeps its revenues and expenses "closely matched geographically," he added.

"The big disappointment with M&M was on its consulting revenue line," said Lehman's Mr. Smith. "This was a number that had been growing 15% to 20% a few years ago."

M&M's decline in consulting revenues is due to the recession, according to Mr. Malis of Alex. Brown.

Both analysts applauded M&M's efforts to keep expenses in check. During the third quarter, expenses fell to $545 6 million from $547.8 million in 1990.

M&M's net income grew only 0.7% during the first nine months of the year to $251.3 million from $249.6 million in 1990. Net income fell 0.8% to $74 million in the third quarter, from $74.6 million in 1990.

Given the five years of soft market conditions, it's a strong statement to be able to say that margins have been essentially flat, Mr. Bischoff commented.

"The way that we manage is to lag our hiring and expenses behind growth. That has held us in good stead," he said. "Our basic strategy (for 1992) is to continue what we've done throughout this soft market."

During the third quarter, the broker repurchased roughly 800,000 to 900,000 shares of its common stock, Mr. Malis noted. He suggested that M&M thinks "the cycle is going to turn in about a year" and its stock won't likely sell at this low a price in the future. M&M's stock closed at $73.50 on Nov. 15; its 52-week high and low were $87.25 and $69.13.

Alexander & Alexander

The poor economy, lower interest rates and the soft property/casualty market were simply "too much to overcome," said A&A's Mr. Wieczynski in explaining a significant decline in net income.

1991 nine-month broker results

In thousands of dollars

Broker	Gross revenues	% change	Net income	% change
Marsh & McLennan	$2,113,300	2.9%	$251,300	0.7%
Alexander & Alexander	1,009,100	2.6	24,800	-28.9
Frank B. Hall	343,994	7.8	-5,875	NM
Rollins Burdick Hunter	301,200	2.9	33,000[1]	1.9
Arthur J. Gallagher	169,061	1.9	12,979	-17.6
Hilb, Rogal & Hamilton	87,493	5.0	5,369	-6.2
Poe & Associates	35,839	4.0	3,575	11.6

[1] Pretax NM-Not meaningful

Source: Company reports

Despite a 2.6% rise in gross revenues during the first three quarters to $1.01 billion, compared with $983 million in 1990, net nine-month income for the New York-based broker fell 28.9% to $24.8 million from $34.9 million in 1990.

Revenues fell 1.2% during the third quarter to $332.7 million from $336.6 million during the same period of 1990, while third-quarter net income plummeted 40% to $7.2 million from $12 million during the same period.

Mr. Wieczynski said if the impact of foreign exchange rates is eliminated, there would be a 2% rise in third-quarter revenues, instead of a 1.2% decline.

However, "after adjusting for foreign exchange, (expenses) would have gone up 4%. And, if revenues go up 2% and expenses go up 4%, profits are going to erode," he added.

Still, he insisted that the expense side of the equation isn't where the problem lies. "Don't blame expenses. I think expenses are OK."

A&A's third-quarter expenses rose just 1.79%.

Lehman's Mr. Smith said, "the good news is they did contain expenses very well (during the third quarter). There are just no revenues coming in at the top line."

"It's hard to control expenses this far into a down cycle," said Mr. Malis of Alex. Brown. "But they've done a good job with it."

Mr. Wieczynski said that "about the best you can do" in this type of operating environment is to produce new business, retain existing business and control expenses.

"I don't see a lot of (external improvement) on the horizon. We're working on January renewals, and it looks like more of the same. We don't see this market turning as far as rates are concerned. I don't see the economy turning overnight, and investment rates seem to be dropping further, rather than stabilizing," he said.

"What you have here is an economy that was worse than anyone thought," Mr. Wieczynski said. And, for that reason, he said he supports

Continued on next page

Continued from previous page
the Fed's policy of lowering interest rates, even though "it sure hasn't helped us."

In addition to containing expenses, Mr. Wieczynski said A&A's Alexsis Inc. unit, which handles self-insured programs, is gaining new business.

Mr. Malis noted that because of A&A's heavy concentration on commissions, it is particularly hard hit by a soft cycle. However, for that reason, it also stands to gain the most when rates do rise, he said.

Frank B. Hall

Gross revenues for Hall increased 7.8% in the first three quarters of 1991—the largest increase among the publicly held brokers—to $344 million, compared with $319 million in the comparable period of 1990.

Third-quarter gross revenues rose 4.8% to $107.4 million from $102.5 million in 1990.

However, the broker posted a net loss of $5.9 million in the first three quarters, compared with a gain of $1.7 million in 1990. Hall posted a net loss of $8.9 million during the third quarter, up from a $2 million loss in the third quarter of 1990.

Contributing to the loss was a 10.6% increase in operating and other expenses during the nine-month period.

Donald R. Bell, Hall's chairman and chief executive officer, says the increase in expenses is closely linked to the firm's 9.7% increase in net commissions and fees.

"We have been making some investments in income-generating talent for the last couple of years and it has paid off for us on revenues extremely well," Mr. Bell said.

"When you do that at a time the industry is booming, it's a hiccup, something you don't even see" on financial reports, he said. But, when you make those kind of investments during a down time—particularly if the income to generated be generated by the investments lags behind the time the expenses are incurred—it does show up, Mr. Bell noted.

Despite Hall's net loss during the first nine months of 1991, Walter Fitzgerald, a money manager for Baird, Patrick & Co. Inc. of New York, said the broker's results were about what he expected.

"Until the market turns. . .this company is not going to do particularly well," Mr. Fitzgerald said. "But these folks have much more to gain from an upturn" than other brokers, he added.

Mr. Bell said that Hall will implement a cost-reduction program to better respond to the ongoing soft market and economic conditions. "We are rerationalizing all of the operations and other expenditures to see if they still justify themselves, regardless of whether they justified themselves 12 months ago," he said. He added that the company plans to temper its aggressive posture, "separating the things that would be 'nice to do' from those things that we 'must' do."

Any restructuring charges the company may incur as a result of its cost-cutting efforts may lead to further losses in the fourth quarter, noted Baird Patrick's Mr. Fitzgerald.

Rollins Burdick Hunter

Rollins Burdick Hunter Group Inc. posted $301.2 million in gross revenues in the first nine months of 1991, up 2.9% from $292.6 million in 1990. In the third quarter, revenues rose 8.2% to $99.8 million from $92.2 million in 1990.

Those numbers helped RBH post a 1.9% gain in pretax income during the first nine months of the year to $33 million compared with $32.4 million in the comparable period of 1990, reversing a 5% decline in income in the first half. Pretax income jumped 30.6% to $8.1 million in the third quarter, up from $6.2 million a year earlier.

RBH's pretax income figures are broken out from the rest of Aon Corp; however, Aon Corp. does not give specific net income figures for the brokerage unit.

"A lot of (our improvement) has to do with marketing programs we installed late last year," programs that have resulted in some noteworthy internal growth coupled with some acquisition-based growth, said Aon's Mr. Ryan.

In addition, Mr. Ryan singled out the performance so far this year of Aon Reinsurance Agency Inc. as playing a key part in the results.

"We've recruited some very talented people here, and it's beginning to pay off," he said.

However, Mr. Ryan noted that, like the other brokers, RBH must contend with the competitive market and, most recently, the damage being caused by lower interest rates.

The latter is exerting "real net income' pressure," Mr. Ryan said, adding that "it's probably impacting everyone about the same."

Arthur J. Gallagher

Gross revenues rose 1.9% to $169.1 million in the first three quarters from a restated $165.9 million in the same period of 1990.

Net income fell 17.6% over the same period to $13 million from a restated $15.8 million in 1990.

For the quarter, revenues and net income fell 2.7% and 17.6%, respectively. Gallagher, which is based in Itasca, Ill., reported third-quarter gross revenues of $59.2 million, down from a restated $60.8 million during the third quarter of 1990. Net income fell to $7 million from a restated $8.5 million in 1990.

1990 figures were restated to reflect a pooling of interests from acquisitions.

In addition, the company announced that, because of the economy, it has established a $4 million reserve "to cover market declines in its investment portfolio and possible impairment in the residual values of its leveraged leases." The leveraged leases involved computer equipment that may have a lower value at the end of the lease period than anticipated.

"Though the timing of this hit was bad, we just think that it's the prudent and conservative thing to do," explained Mr. Cloherty.

He also noted the broker is continuing to enforce a wage freeze on some of its high-level employees, while others will receive only cost-of-living adjustments.

For the nine-month period and the third quarter, expenses rose 5.8% and 3.1%, respectively.

Furthermore, when losses in investment income are taken out of the revenue picture, the broker boosted its revenues by 5.7%, Mr. Cloherty said.

To offset the fall in premium rates and commissions, as well as the effects of the recession, Gallagher is "continuing to search for new business and develop new products," Mr. Cloherty said.

The broker continues to emphasize its risk management products and finds that, even with the soft market, the demand is still there, he said. As a result, Gallagher "is putting new business on the books," Mr. Cloherty observed.

Still, the company is preparing for another rough year. "I think next year will be a clone of 1991," Mr. Cloherty predicted. "We don't see a turn in the market. Of course, I've been wrong before, and I would like to be wrong here."

Hilb, Rogal & Hamilton

Gross revenues rose 5% to $87.5 million for the first three quarters of 1991, compared with restated revenues of $83.3 million during the same period in 1990.

However, a 6.2% decline in net income pushed HRH's profits down to $5.4 million from a restated $5.7 million in 1990.

For the quarter, revenues rose to $28.2 million, up 2.4% from a restated $27.6 million in the third quarter of 1990. Net income fell 16.4% to $1.5 million during the quarter from a restated $1.8 million last year.

1990 figures were restated to reflect a pooling of interests from mergers.

"Expenses continue to follow an inflationary increase pattern and we're not able to keep up with it in the revenues. It caught us," said Robert H. Hilb, president of the Glen Allen, Va.-based broker.

And commissions on premiums that are based on clients' payrolls or sales levels are down because of the economy, he said.

Similarly, lower interest rates have lowered HRH's short-term investment yields to 7% from 9%.

Thus far, Mr. Hilb has not seen any evidence of premium rate increases as the first of the year-end renewals begin to take shape. "I'm not predicting anything other than (a turn) is needed. We're holding out a slim hope that we'll see a firming in 1992."

Alex. Brown's Mr. Malis said that HRH's earnings were disappointing, though "not disastrous."

Like A&A, HRH derives a sub-

Continued on next page

Profits fall at British-based brokers

By GAVIN SOUTER

LONDON—Nine-month profits are down for Britain's two largest insurance brokers.

Both Sedgwick Group P.L.C. and Willis Corroon P.L.C. posted lower profits as of Sept. 30 compared with the year-earlier period, though the Willis Corroon figures are not directly comparable to 1990 results due to the Willis Faber/Corroon & Black merger last October.

Both companies reported that some rates are hardening in the London market but that the soft market in the United States is continuing.

Nine-month pretax profits at Sedgwick fell 5.7% to 74 million pounds ($129 million), compared with 78.5 million pounds ($147.2 million) in the same period of 1990.

Sedgwick blames a weaker British pound for 5.6 million pounds ($9.8 million) of the lost profits. If overseas profits are calculated at constant exchange rates, nine-month 1991 profits would have increased by 2% over the previous year, the broker says.

And, Sedgwick notes that expenses were cut 2.2% during the nine-month period to 435.5 million pounds ($759.3 million), compared with 445.4 million pounds ($835.1 million) in 1990.

Firm cost controls will be maintained as difficult market conditions continue, said Chairman David Rowland.

"Our emphasis on strong cost control is based on our belief that market conditions are likely to remain difficult for some time to come. Weak conditions in many insurance markets, particularly in the United States, have continued in the third quarter," he said.

Sedgwick's gross revenues fell 3.1% to 516.1 million pounds ($899.8 million at Sept. 30, 1991, exchange rates) in the first three quarters of 1991 from 532.4 million pounds ($993.3 million at Sept. 30, 1990, exchange rates) in the corresponding period of 1990.

However, rates in the London market have increased sharply in the marine, aviation, energy and excess-of-loss markets, Mr. Rowland said.

Earnings at Willis Corroon also fell.

Pretax profits for Willis Corroon stood at 89 million pounds ($155.2 million) for the nine-month period, compared with Willis Faber P.L.C. profits of 72.2 million pounds ($135.4 million) in the first nine months of 1990.

However, according to Willis Corroon estimates, combined Willis Faber and Corroon & Black profits totaled 96.6 million pounds ($181.1 million) in the first nine months of 1990, compared with the 89 million pounds reported by the combined brokers so far this year.

Expenses increased by 5% to 388.5 million pounds ($677.4 million) when compared with last year's Willis Faber figure plus an estimate for Corroon & Black, the company says.

Gross revenues for Willis Corroon in the first nine months were 504.8 million pounds ($880.1 million). Of that, 46.9 million pounds ($81.8 million) was from underwriting.

Willis Faber revenues for the first nine months of 1990 were 301.6 million pounds ($565.5 million), of which 61 million pounds ($114.4 million) was from underwriting activities.

The brokerage did not estimate what combined Willis Faber/Corroon & Black revenues would have been in the first three quarters of 1990.

Insurance rates are increasing in some areas of business, said Robin Elliott, Willis Corroon's executive chairman.

"Premium rates in the U.S. continue to fall in most classes, and there is no indication that this trend will not continue. In the United Kingdom, the severe losses incurred by direct insurers have led to a less harsh operating environment than in the U.S.," he said.

The company has continued its withdrawal from underwriting in Britain through the sale of the marine and aviation account of Sovereign Marine & General Insurance Co. Ltd. to Zurich Re (U.K.) Ltd., Mr. Elliott said. ■

Broker results

Continued from previous page

stantial portion of its revenues from commissions, he observed, so "it's hard for them to show good earnings" when rates are down.

Mr. Malis remarked that the numerous acquisitions HRH has made will reap dividends when the market turns. "I think investors are going to make a lot of money off them when the cycle turns."

Poe & Associates

Gross revenues at Poe & Associates rose 4% to $35.8 million in the first nine months of 1991, up from $34.5 million during the same period last year. Net income during the same period shot up 11.6%—the largest gain among the publicly held brokers—to $3.6 million in the nine-month period, compared with $3.2 million in 1990.

During the third quarter, gross revenues rose to $12.4 million, a 6.8% increase over $11.6 million in 1990. Net income rose 24.8%, reaching $1.4 million in the third quarter compared with $1.1 million in the same period of 1990.

If it wanted to, Tampa, Fla.-based Poe & Associates could boast about the increases in net income and revenues, but Mr. Poe is not so inclined.

"On our top line, we're doing about the same as the others. Our increase in revenues is basically a result of acquisitions being in the pipeline," he said. Take out the acquisitions—there were six in 1990 and two thus far in 1991—and revenues would have been flat, he explained.

As for the gains in net income, "it's just from managing the expenses reasonably well," Mr. Poe said. "We've had some ups and downs over the last few years with extraordinary costs. But we've had a normal expense pattern (this year)."

In addition, "when your bottom line is not large, then anything that changes it can appear substantial," Mr. Poe said, noting that net income had been down 14.7% in the first three quarters of 1990.

In addition, the company posted a "substantial" increase in investment income in the first three months of this year, due to a loss in this category last year, he said.

Mr. Poe expects further improvements in 1992 as the firm continues to manage expenses and benefit from its recent acquisitions. "I don't think the industry, or ourselves, are going to do anything substantial," he said. The broker predicts "more of the same in 1992, as far as we can see, but we think we can get a better bottom line."

"This is the market we're in; this is the way it is," concluded Donald E. Howery, Poe's vp and treasurer. "Sometimes, we don't even talk about a soft or hard market anymore." ■

Vermont policy

Continued from page 2

leaking was replaced, though Gerrish made no attempt to clean up the spilled fuel.

Twelve years later, in May 1985, the Vermont Agency of Environmental Conservation notified Gerrish that petroleum pollution from the site was migrating onto neighboring property and into a stream that emptied into the Ottauquechee River.

Vermont authorities told Gerrish it would have to clean up the pollution or reimburse the state for its own cleanup efforts. Gerrish notified Universal in June 1985 and demanded that the insurer cover the costs of cleaning up and monitoring the site.

Universal had written general liability and auto dealers coverage for Gerrish from Sept. 1, 1984, to Sept. 1, 1985. The coverage—under Universal's "Unicover III" policy—included a $300,000 primary liability limit and a $1 million umbrella limit, Mr. Manchester said.

The policy specifically excluded coverage for damages caused by the release of "any petroleum substance," regardless of whether the release was accidental or not, the appeals decision notes.

However, Universal was a member of ISO and in 1982 had signed a form authorizing ISO to file "rates, rules (and) forms" with state regulators on its behalf, the appeals decision notes.

ISO had notified all of its members in June 1984 that the Vermont Department of Banking and Insurance had approved a new ISO pollution endorsement providing claims-made coverage for all pollution incidents—regardless of whether they were sudden and accidental—subject to an aggregate limit.

The endorsement was to be included in all ISO members' general liability policies issued after July 1, 1984. ISO members would be automatically deemed to have accepted the endorsement unless they contacted Vermont regulators before July 1, 1984, the appeals decision notes.

Universal never contacted the Vermont department—though interoffice memos show that insurer officials were aware of the ISO endorsement—and the endorsement was in effect at the time the Gerrish policy was issued, the court noted.

'ISO clearly acted on behalf of Universal with Universal's knowledge,' the court says.

Gerrish sued Universal in federal court in Burlington, seeking a declaratory judgment that it had coverage for the cleanup.

Universal argued that the policy excluded coverage for the cleanup and that that exclusion was not affected by either the ISO filing or by a modification of the ISO endorsement that Universal itself submitted to Vermont regulators in April and May of 1985.

A federal judge granted a declaratory judgment in Gerrish's favor, and a 2nd Circuit appeals panel affirmed the ruling 3-0 in an Oct. 30 decision.

The appeals panel agreed with the lower court that the Universal policy as issued to Gerrish would have excluded coverage of cleanup costs.

However, applying agency law, the appeals court also agreed that ISO acted as Universal's agent in filing the claims-made pollution endorsement and that the endorsement automatically became part of Gerrish's policy when Universal failed to object to Vermont regulators.

"ISO clearly acted on behalf of Universal with Universal's knowledge and with the authority conferred by Universal," the court found.

The court also rejected Universal's argument that it should not be held liable because Gerrish did not even know of the ISO pollution coverage endorsement at the time it bought its policy and therefore did not rely on the coverage.

Absent fraud or misrepresentation, the court noted, a policyholder is bound by the terms of a policy and cannot complain after a loss that it did not read or understand those terms.

"Likewise, the insurer is bound by those same terms, regardless of whether the insured is aware of them," the court concluded.

"Despite Gerrish's lack of awareness of its inclusion, the pollution endorsement was part of the Unicover III policy. . .for which Gerrish contracted and on which Gerrish paid premiums.

"Universal failed to opt out of the endorsement prior to issuing the policy to Gerrish. It accepted the premiums tendered by Gerrish for the amended Unicover III policy. Universal was undeniably aware of the endorsement. The contract of insurance formed between Gerrish and Universal, therefore, included the ISO pollution endorsement," the court ruled.

On two other issues, the appeals court also affirmed the lower court ruling that cleanup costs constitute damages under the policy and that the policy's owned property exclusion does not apply to the Gerrish claim.

The appeals panel noted that no previous cases have interpreted Vermont law on the question of whether insured "damages" include environmental response costs.

However, the court cited its own opinion in *Avondale Industries vs. Travelers Indemnity Co.*, in which it applied New York law to find that the term "damages," when given its "natural meaning," could include cleanup costs (*BI*, Oct. 23, 1989).

Vermont, like New York, requires insurance policy language to be given its "plain and ordinary meaning," while any ambiguities must be construed in the policyholder's favor, the court noted.

"In this instance, construing the term 'damages' in favor of Gerrish results in coverage under the policy," the court found.

The appeals panel also affirmed the lower court's ruling that because the gasoline leak damaged property beyond that owned by Gerrish, the owned property exclusion in Universal's policy does not bar coverage.

Mr. Manchester, Gerrish's lawyer, expressed doubts that the ruling that ISO was Universal's agent will have a broad impact.

The facts of the Gerrish case are peculiar, he noted. He explained that Universal policyholders in Vermont had an unusual "window of opportunity" to file claims under the claims-made ISO endorsement between July 1, 1984—when the endorsement became effective—and April 1985, when Universal modified the ISO language for its own policies.

"This is an interesting case, but it doesn't affect a lot of policyholders," he said.

However, the ruling shows that a policyholder should never give up on a claim without checking to see whether the language of its policy squares with ISO language that may be applicable, he pointed out.

"If you have a question about your coverage, do more than read your policy," he advised.

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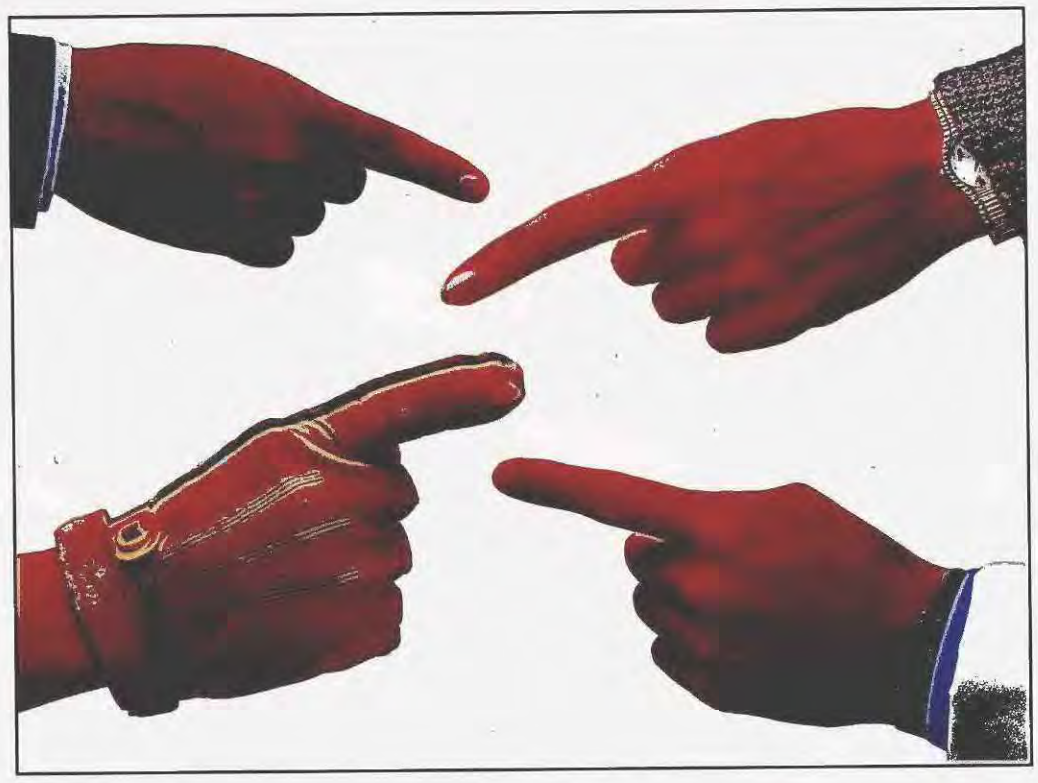
Gerrish Corp. vs. Universal Underwriters Insurance Co., U.S. Court of Appeals for the 2nd Circuit; No. 1480.



Everyone knows exactly who's responsible for the health care crisis.

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It sometimes seems as though many people believe that fixing blame will somehow fix the problem. Meanwhile health care costs continue their upward spiral.

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Structured settlements

How to make sure you don't lose in 'win-win' deals

By John Jefferies

THE RECENT TAKEOVER of the two Executive Life insurance companies by state regulators in California and New York underscores a concern that has been growing for several years. Since the highly publicized failures in the savings and loan business, there has been a lot of speculation about whether the same sort of thing might occur in other financial areas, particularly in insurance.

Since structured settlements often combine lengthy time frames, non-convertibility and serious medical needs, they are an area of weighty concern when we consider the stability of insurance companies. Fortunately, the fears are probably unwarranted on balance.

The issue of balance is important. Nothing, short of the proverbial "death and taxes," is absolute. The tremendous hype generated by the recent problems at Executive Life Insurance Co. of Los Angeles, Executive Life Insurance Co. of New York and First Capital Life Insurance Co. of San Diego simply underscores the premise that life insurance failures are rare. Arguably, it is healthy that one occasionally fails.

The states regulate the industry; they don't unconditionally guarantee it, the existence of carefully hedged state guaranty funds notwithstanding. There is, and should continue to be, a place for thoughtful and prudent care when risk managers select any financing tool. Moreover, if a company cannot fail, then it is unlikely to have the spur to excel. Eastern Europe demonstrates this principle well.

If your company uses annuities to fund structured settlements, there are some signposts for penetrating the thicket as to which products are likely to be secure over the long haul. To begin with, there are no more than about a score of life companies issuing annuities to fund structured settlements in the open market, so the task isn't really all that formidable.

States regulate the industry; they don't unconditionally guarantee it. . . .There is, and should continue to be, a place for thoughtful and prudent care when risk managers select any financing tool.

Alternatively, if the life insurer is simply a subsidiary of the casualty company that negotiated the settlement, the plaintiff might be concerned about whether he or she is getting a decent yield. The decision may not have been made in a competitive environment. However, the safety of the arrangement would be directly related to the size and strength of that insurance group as a whole. Certainly, the casualty company has not increased its exposure, but neither has it put it off on a third party.

If your job is to transfer the future payment obligation to a third party by arranging the purchase of an annuity from an outside life insurance company, there are several things to consider.

Conventional wisdom says to see how A.M. Best Co. of Oldwick, N.J., rated the life company that is going to issue the annuity. There are two potential traps here. The first is whether Best has provided an adequate measure of the life insurer's future longevity. The second is whether you are measuring the right company.

There are almost as many rating services for insurance companies today as there are insurance companies issuing annuities in the structured settlement market, and it would be difficult to fairly treat them all here. However, a few rules of thumb might be useful:

- Don't ever rely on just one ratings service.
- Ratings services that look at a company in the context of its entire corporate group are generally a superior guide to those that look at the individual company in a vacuum. Clearly, a small subsidiary of Prudential Insurance Co. of America in Newark, N.J., has real backing far in excess of its own numbers. To ignore that ignores real life.
- Services that rely mainly on percentages and ratios—instead of professional analysis by seasoned experts—risk being fooled by chief executive officers who know how to manipulate a balance sheet. Some ratings companies merely crunch numbers, while others actually send representatives to the company in order to talk with its managers and discuss their strategic plans.
- The ratings folks who claim to rate a thousand insurance companies may not have the time or resources to look thoughtfully at any.
- Consider whether the ratings service has been around for a while. Is it reputable? Have you ever heard of it before last year? Is it trying to sell you something?

Next, consider which company to evaluate. If your casualty insurer promises future benefits to a claimant and then buys its own annuity from some other life insurer, you would do well to evaluate the life insurer.

Your firm is on the hook to make the future periodic payments, regardless of whether the funding annuity performs. The claimant's attorney also would probably err in failing to evaluate the life insurer, however, because his or her client's promises come from your firm, not from the life company. He or she would look to the strength of your firm and might properly reject the deal if your firm is not obviously strong.

When you assign your future obligations, it is a very different story. The act of transferring those future payments to an outside party absolves your firm—at least in legal theory—of all future responsibility. Your file is complete, and the claimant must look to the security afforded by the assignment, which is certainly not the same as the annuity company.

The assignment company promises to make the future payments to a claimant and then uses your premium money to buy an annuity to fund the obligation. If the annuity fails to deliver, then the assignment company must make up the difference. From the standpoint of security, one should look at the assignment company and its backing.

If the assignment company is either strong in its own right (which is rare), or has solid support from another source (which is frequent), then the arrangement should be secure. The trick is to focus on the assignment company and any backing behind it.

There are a number of "shell" assignment companies currently in use. When evaluating their future ability to deliver, you should ask, "Who guarantees the obligations of the assignee?"

There are four categories of structure providers:

- **The big New York mutual life companies.**

These tend to use insurance subsidiaries (not shells) as assignees, and will sometimes let you use the parent company as assignee, thus issuing the annuity from a subsidiary. Either way, these are usually very strong, but they also tend to be most expensive.

- **The large multiline groups headed by a major stock casualty company.**

These often have mid-sized life companies that issue annuities to shell-type assignees. Frequently, the parent casualty company will provide a bond on the obligation for the shell assignee. This puts the big parent directly on the hook, and thus creates maximum strength approximating that of the entire group. This is typically the only area in which bonding is useful as a security enhancement.

- **Mid-sized or smaller insurance groups, whose largest player is usually the life company that issues the annuity.**

These usually assign to a smaller subsidiary with some form of "guarantee" of the assignee's performance. It is crucial to examine the nature of this guarantee and what entity stands behind it. Some of these groups are owned by major Canadian or other foreign insurance giants. The strong implied support of the foreign owner should not be discounted, because these non-U.S. insurers will carefully guard their American presence.

A number of 'shell' assignment companies are now in use. When evaluating their future ability to deliver, you should ask, 'Who guarantees the obligations of the assignee?'

Several of these providers offer secured creditor status, which may or may not enhance security. The value of secured creditor status, as compared to general creditor status, is that the annuity itself can be subject to attachment by the claimant should the assignee fail.

If both companies are in the same insurance group, the value of secured status is relatively marginal. If the assignee is in a separate insurance group (from that of the annuity issuer), then the secured status quite literally piles the annuity company's strength on top of that of the assignee—a very strong combination.

The issue of secured status vs. general status is worth a further comment. General creditor status is just what it implies. The claimant has a general promise to pay (from the assignee, not the life company), with no hook into the annuity. The annuity is owned and controlled by the assignee and can be considered a general asset of the assignee should that assignee fail.

Secured status simply grants to the claimant the option to be first in line for the annuity if the assignee is impaired. If the annuity is likely to be functional in the event of an assignee failure, then the secured status has value. This is helpful to the defense side in negotiations, because anything that enhances the plaintiff's sense of security can only remove obstacles to settlement.

There are no magic answers. Look through the proposed arrangement and determine where the buck stops. Then look at what several reputable ratings services have to say about that company.

The concept of structured settlements is perfectly valid and is a win-win situation for both sides in personal injury disputes. Moreover, it is a far more secure arrangement than most of the alternatives. Just keep your eye on the ball. ■

John Jefferies is vp of structured settlements for Integrity Life Insurance Co. in New York.

Cigarette case may burn other firms

By Norman L. Greene

SHOULD THE FEDERALLY mandated warnings on cigarette packages shield cigarette manufacturers from claims from injured smokers that they received insufficient warning of the dangers of smoking after the warnings were in place?

That is the question before the U.S. Supreme Court in *Cipollone v. Liggett Group Inc.*, which was argued Oct. 8 and still is expected to be decided this term even though the court has called for new arguments.

The claim is of enormous importance not only to American cigarette manufacturers—which, if they lose, could face a flood of lawsuits—but to other manufacturers of products that bear federally regulated warning labels.

The technical issue is whether the federal cigarette advertising and labeling law pre-empted a case of failure to warn—one of the primary product liability claims—by virtue of the terms of the act.

The theory in the failure to warn context is not that there is something physically wrong with the product—e.g., that the product is defectively designed or manufactured, claims which are not at issue before the Supreme Court in *Cipollone*—but rather that proper warnings were not given of its risks, which were not obvious to consumers.

In typical product warning cases, there are questions of whether a warning is specific enough or whether or not the warning was given to the right person. A jury decides on the adequacy of the product warning and therefore whether there is any basis for liability.

From the standpoint of specificity, there is no question that a defendant in a warning case is far better off if he or she names the precise type of injury that developed. Thus, a warning not to use the product on one's face is not as good as one that specifically mentions "eyes" if the plaintiff in fact used the product on his or her eyes and injured them.

The issue in *Cipollone* is whether a jury may even decide whether the warning was proper or not, or whether the jury's determination is foreclosed by the federal act.

This is not to say that a jury would find the cigarette warning sufficient—although the chances are that in one or more cases a jury might find that it is not.

If the federal government foreclosed (or pre-empted) the claim, the claim would have to be dismissed—and a jury could not be permitted to consider it. The debate is over whether the federal government did foreclose it by the cigarette act.

There is some attraction in sympathizing with the plaintiff in this case and others like her—in light of what occurred to the plaintiff (a cancer victim who had smoked cigarettes for years), the nature of the product (the dangers of which have been known for years) and cigarette advertising (which sought to attract people who smoke with favorable images, despite the warnings).

Since different juries may reach differing results, are we better off with one warning that is uniformly held to be sufficient?

It is self-evident that this is in some sense a David and Goliath matter, with individuals fighting against the combined might of the powerful tobacco companies, who are willing to spend millions of dollars in their defense.

There also is a different concern in this case: Why should the plaintiff recover damages when she continued to smoke despite the warnings on the cigarettes?

But the case also raises some interesting questions of public policy apart from the issue of pre-emption. Once Congress or even the Food and Drug Administration has selected a warning, why should a jury have the chance to second-guess it and then decide whether the warning is good enough?

Indeed, a study of the product liability system commissioned by the prestigious American Law Institute has recommended that under appropriate circumstances compliance with government warning regulations should be sufficient to exonerate the manufacturer (*BI*, April 29).

Should it be assumed that any jury, with limited evidence before it dealing with only one particular case, is better able to determine an appropriate warning than Congress or the Food and Drug Administration?

Since different juries may reach differing results, are we better off with one warning that is uniformly held to be sufficient?

These are some of the questions that will survive even after the Supreme Court decides on the Cipollone case as the federal government continues to legislate—and perhaps requires new warnings—in the products field. ■

Norman L. Greene is a partner in the New York law firm Rosenman & Colin.

Exploring the junk science lotto

Unfounded research used in liability lawsuits has gotten out of hand

"Galileo's Revenge: Junk Science in the Courtroom"
By Peter W. Huber
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By Kevin M. Quinley

A SOOTHSAYER LOSES her psychic powers due to a CAT scan. With the backing of expert testimony from her doctor and local police, she persuades a jury to award her $1 million. Slips and falls cause cancer. Spermicides cause birth defects. Environmental pollutants cause "chemical AIDS." A luxury car accelerates at random, even as frantic drivers stand on their brakes.

Are these scenes from a risk manager's worst nightmare? Hardly.

Risk managers know all too well that lawsuits against chemical manufacturers, automobile manufacturers, hospitals, drug companies and other firms—suits backed by eccentrics from the fringes of the scientific and medical communities—are legion.

Those scientific and medical "experts" are pressed into service and paraded in court under rules of evidence that fail to discriminate between serious science and raw speculation—in other words, "junk science." While outcomes are uncertain, the plaintiffs have little to lose, the fringe "experts" have much lucre to gain and the awards can be astronomical. Jackpots for crackpots, you might say.

Books & ideas

In "Galileo's Revenge: Junk Science in the Courtroom," Peter Huber—a leading expert on liability—shows how this type of "junk science" has invaded courts as liability rights expand, rules of evidence crumble and judges adopt a "let it all in" approach. Mr. Huber analyzes how scientific humbuggery evolves in the laboratory and the clinic, and how even reputable scientists can slip into participating in junk science.

Mr. Huber, author of the widely acclaimed book, "Liability: The Legal Revolution and its Consequences," holds a doctorate in mechanical engineering from the Massachusetts Institute of Technology and was top in his law class at Harvard University. A former clerk to Supreme Court Justice Sandra Day O'Connor, Mr. Huber is currently a senior fellow at the Manhattan Institute, a conservative think tank.

In his book, Mr. Huber recaps front-page risk management case studies of recent decades: the "sudden acceleration" charges against the Audi 5000 automobile; birth defect claims against Merrell Dow Pharmaceuticals Inc. and its Bendectin morning sickness drug; claims alleging cerebral palsy from obstetrical techniques; and "chemically-induced AIDS" acquired from factories, furniture and carpets. Mr. Huber shows how plaintiffs' lawyers orchestrate massive attacks embracing thousands of claims and astronomical demands in order to extort huge settlements from defendant companies.

Another problem, according to Mr. Huber, is that the mass media can create an enormous controversy around a case having no basis in fact. He laments the fact that fear itself, completely unhinged from scientific or objective reality, apparently has become a basis for litigation.

What is the solution?

In court, at least, judges can and should draw lines, Mr. Huber contends.

"We do not hesitate to denounce charlatans and frauds when they peddle snake oil at county fairs or on network television. We need not hesitate to denounce them when they are primped and primed by lawyers and solemnly ushered into court," he says.

Judges must cut off junk science as resolutely and reliably as they can affirm science that spotlights real hazards, Mr. Huber says.

Rules of evidence must be changed to reflect science's definition of cause—arrived at without direction from politicians, philosophers, clergy or attorneys—as the only one that is objectively verifiable.

As Mr. Huber points out, the best test of certainty that we have is good science, "for it is, at least, the best test of certainty so far devised by the mind of man."

This superb book crackles with insights that will resonate with risk professionals. While the book is funny at points, risk managers may find themselves laughing to keep from crying.

Having been on the receiving end of junk science's pronouncements, risk managers will draw much comfort from "Galileo's Revenge: Junk Science in the Courtroom."

Though the book preaches to the choir when it comes to risk and insurance professionals, it is a persuasive thought piece for risk managers wondering how the tort system got itself into its current mess and how to get it back on track. ■

Kevin M. Quinley is vp of risk services for MEDMARC Insurance Co. Risk Retention Group Inc. and subsidiary Hamilton Resources Corp., both of Fairfax, Va. Mr. Quinley holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Aviation market

Continued from page 1

charge more for airline hull and liability insurance next year.

As a result, worldwide premiums paid by airlines could grow from about $350 million this year to $625 million in 1992, several sources say. Worldwide premiums in 1990 totaled only $275 million.

"However much the rates have gone up, they haven't gone up enough yet," summed up Barry Coleman, a leading Lloyd's of London aviation underwriter.

Rates still are only two-thirds of their 1988 levels, Mr. Coleman pointed out. During that year, airline premiums totaled $649.5 million while losses—not including expenses—totaled $602.5 million, according to Bain Clarkson Reinsurance Brokers Ltd.

"Next year premiums will have to double again," said Mr. Coleman.

Following its year-end 1990 "crash," the excess-of-loss reinsurance market probably will supply only a third of the capacity that it did last year, he said.

The aviation insurance market therefore will have "undercapacity" rather than "overcapacity" and will charge higher prices as a result, Mr. Coleman explained.

"During 1992, you will see much bigger rate increases than now. What's happening now is only the start," he said.

Many underwriters next year will be forced to increase their retentions "and it's amazing how that concentrates the mind."

Everyone in the aviation market is talking now about the reinsurance renewal season and how it will affect airline insurance capacity next year, added David Trezies, chairman of Sedgwick Aviation Ltd. of London. Underwriters are expected to pay between three and four times more for their 1992 reinsurance programs, even though capacity will be reduced, he said.

As a result of changes in the market, Mr. Trezies estimates, worldwide airline premium will rise this year to between $800 million and $900 million from $300 million in 1990. And underwriters will try to boost premiums to $1.2 billion to $1.3 billion next year, he added.

But the Bain Clarkson report, along with other London estimates, projects total airline premiums at about $350 million this year and $625 million in 1992.

"The next few months are some of the most crucial in the London market's history," John Chapman, a Bain Clarkson director, wrote in his latest quarterly report on the aviation insurance market. "Every market has its problems and aviation has its share."

The aviation retrocessional excess-of-loss market as was known for the last 10 years "no longer exists," said Mr. Chapman. "The effect this will have on the capacity available to write direct excess-of-loss (reinsurance) will be dramatic" including rate increases of at least 200% to 300%.

"The aviation market, whether it is direct or reinsurance, needs more money," Mr. Chapman said.

What happens after the year-end reinsurance renewal season "is the $64,000 question," added Jonathan Palmer-Brown, chairman of London broker Nicholson Chamberlain Colls Aviation Ltd. "It's too early to say."

Some underwriters who competed for fourth-quarter airline renewals could find they must retain more of their airline risks after Jan. 1 than they anticipated, Mr. Palmer-Brown said.

"There is a lot of gambling going on at the moment," he said. "Some underwriters who have written the risks in October and November may find reinsurance or run the risk on a losses-occurring policy on a net basis."

Despite disagreement over its severity, aviation insurance brokers and underwriters agree, that airline insurance market has hardened dramatically.

During the past year airline hull and liability insurance rates have risen continuously following four consecutive years of falling airline premium which wiped out insurer profits (*BI*, Sept. 9; June 3). The rate hikes follow 1990 airline-related losses of nearly $792 million, compared with premiums of only about $275 million, according to Bain Clarkson.

The first signs of rate increases occurred Feb. 1 when USAir Group Inc.'s hull rates increased 119% and its liability rates increased 135% (*BI*, Feb. 11).

By the spring and early summer aviation brokers and underwriters said that hull rates on average had risen by 46% while liability rates had climbed by 48%.

During renewals that were placed around July 1, rates rose about 100% for some airlines (*BI*, Sept. 2).

However, most major airlines only started to renew their insurance programs in the fourth quarter.

In general, hull rates doubled or tripled for airlines that renewed in the fourth quarter, depending on their loss record and the rate they were charged last year. Liability rates, meanwhile, rose 50% to 100%, brokers and underwriters agree.

Aviation underwriters also increased baggage and cargo deductibles this season in light of $300 million in "attrition" claims, which includes lost baggage. The baggage deductible rose to $1,250 per item from $500; and the cargo deductible to $5,000 from $1,000 per cargo shipment.

Underwriters tended to quote the "premium in full"—rather than quote a specific hull and liability rate—to avoid letting competitors know what the true quoted rate was.

In particular, according to underwriting sources, during fourth-quarter renewals:

- The world's largest single insurance-buying fleet known as the KSSAF group saw its premium double to $22.25 million from $10.79 million during their Nov. 1 renewal.

The group, consisting of 54 airlines headed by major European carriers, has a fleet value totaling $19 billion next year, from $17.2 billion last year, and a liability limit of $1 billion, the same as last year.

The renewal was jointly brokered by Nicholson, Chamberlain, Colls and Bowring Aviation Ltd.

- Singapore Airlines' premium doubled to $6.4 million from $3.3 million last year.

Sources in London also say that the leading underwriter on Singapore Airlines' coverage was changed to Westminster Aviation Insurance Group of London, which has been a following underwriter on the account, from a Lloyd's underwriting lead. Westminster underwrites for three French insurers, including CAMAT.

'Every market has its problems and aviation has its share,' says Mr. Chapman of Bain Clarkson.

Singapore's fleet value rose to $4.9 billion from $4.2 billion last year.

- Premiums for United Airlines of Elk Grove Village, Ill., tripled to $27 million from $9.1 million. Insurers have paid out more than $300 million in hull and liability claims on two United losses in 1989, according to Bain Clarkson.

Mr. Trezies of Sedgwick, which places United's coverage in the London market, would not comment.

United risk management officials could not be reached for comment.

- American Airlines, which is currently renewing its hull and liability insurance program that expires Dec. 1, could pay roughly 275% more than last year. Its premium will rise to $30.3 million from $10.9 million, sources estimate.

However, the premium is based on the number of departures, which have increased since the airline took over other airlines' North Atlantic routes this year.

One underwriter says that Dallas-based American's rate per departure increased 147% to $20.75 from $8.38 last year.

The airline carries $1 billion of liability insurance.

American's London broker, Alexander Howden Ltd., would not comment. American risk management officials also would not comment.

While airlines are being hit with huge rate hikes, underwriters' resolve to increase premiums weakened between October and November renewals, particularly in London.

As Oct. 1 renewals got under way in September, some leading London aviation underwriters imposed substantial increases on airline renewals, in particular on hull rates. They asked for between 8 cents and 10 cents per $100 of insured value for hull coverage, compared with 2 cents to 3 cents last year.

In addition, the leading London underwriters demanded that premium payments by airlines be made more quickly this year, presumably to get the premium into their coffers early to help pay for their reinsurance. The underwriters asked for 50% payment of premium within 60 days of the coverage's inception, 25% within 90 days and the final 25% within 120 days.

Previously, insurers have allowed airlines to pay 25% of their premium every 90 days.

New terms of credit, coming on top of huge rate increases, caused some rebellion among brokers and airline risk managers. One aviation broker heard that Japanese airline owners walked out of a meeting after hearing the terms of their airline's renewal.

Other risk managers were more understanding.

"It was obvious that at some time the (premium income) graph would change," said Peter Lerwill, director of insurance for British Airways in London.

While some airline executives understood the need for higher prices, others argued that the increases shouldn't be so steep because the projection of premium income this year exceeds the existing known claims this year, said Mr. Lerwill. Bain Clarkson puts total losses this year to date at about $365.2 million.

"No one likes paying more for renewals than they have to," said Mr. Lerwill. "And it's a difficult time for airlines following the reduction of income (resulting from) the Gulf war." But underwriters are very responsible people taking into account the financial situation of their clients, he said.

When British Airways came into the market for its Oct. 1 renewal, the first of the major airlines that renew in the fourth quarter, hull rate quotes ranged as high as 7.5 cents to 8.5 cents per $100 of insured value. The airline finally renewed its hull rate at 6.5 cents, about triple the rate last year, confirmed Mr. Lerwill.

"Though we prepared clients before the renewals and told them that Oct. 1 would be a watershed with rate increases, underwriters surprised everybody by imposing new terms of credit," said Mr. Trezies of Sedgwick, which is British Airways' broker. "It was a double hit. Though airlines were prepared for rate increases, they weren't prepared for the money to be paid so quickly. . . .A lot of clients got bent out of shape."

As a result, London orders—which usually total between 25% and 40% of an airline's coverage—were reduced during Oct. 1 renewals, said Mr. Trezies. Brokers found other underwriters outside London to quote—on easier credit terms though at increased prices—which meant that London lost its market share on some Oct. 1 renewals, he said.

Some London market observers agreed that London lost some of its market share. But American and French underwriters doubt that London has lost much of its dominant position during fourth-quarter renewals, though they say that London has lost some of its importance over a number of years.

"They have lost some (market share recently), but not a lot," said Andre Clerc, deputy general manager of La Reunion Aerienne in Paris, which he says writes 15% of the world's airline premium volume. "London's authority has gone down over a number of years, but not (necessarily) during this renewal. From what we know, the competition has come from within London, not outside."

By Nov. 1, middle-market aviation underwriters in London recognized the problems and started to offer reduced rate increases and slightly better credit terms.

As a result, some airlines switched leading underwriters in the London market. In particular, Pakistan Airlines—whose program has been led for 30 years by British Aviation Insurance Co., now part of the British Aviation Insurance Group—changed its lead to leading Lloyd's aviation underwriter Brian Beagley, who writes on behalf of syndicate 960, managed by Sturge Holdings P.L.C.

"Nov. 1 got slightly softer treatment (than Oct. 1) because there was more capacity available," said Mr. Palmer-Brown of NCC. If a hull rate was 8 cents (per $100 of insured value) on Oct. 1, it might have reduced to 7.5 cents on Nov. 1, he said, remarking that would still have been a substantial increase from a rate of about 3 cents per $100 of insurance value last year.

December renewals are expected to continue along the lines of November renewals. Airlines that renew in December include Atlanta-based Delta Airlines on Dec. 18. Details of Delta's coverage were not yet available.

There is, however, "only a marginal reduction in resolve" among aviation underwriters from the terms quoted in October, Mr. Coleman said. Terms of credit have improved dramatically, but underwriters are being more flexible, he said, offering the tighter terms of credit at a lower price or quarterly payments at a higher rate.

"Rates are still (lower) than they were in 1986," said Mr. Clerc in Paris. "We have not reached that level yet. (The recent increases) are only one step." ■

Ruling that workers can sue comp insurer stands

WASHINGTON—The U.S. Supreme Court this month declined to review a Texas appellate court ruling that federal benefits law does not prohibit lawsuits by injured workers against their employers' workers comp insurers.

American Economy Insurance Co., a unit of Lincoln National Corp. of Indianapolis, appealed the case to the high court after the Texas Supreme Court declined to review a ruling by the 2nd District Court of Appeals in Fort Worth earlier this year.

The appeals court, reversing an earlier trial court decision, ruled 3-0 in August that "a case challenging a workers compensation claim is not pre-empted" by the Employee Retirement and Income Security Act of 1974.

The suit arose when an injured employee at Braum's Ice Cream Stores Inc. in Tarrant County, Texas, claimed that the company's workers comp insurer, American Economy, and its claims adjuster, Lindsey & Newsom Insurance Adjusters Inc. of Tyler, Texas, failed to exercise good faith in handling her workers comp claim.

In the case, the employee suffered a back injury during work and consulted with several physicians who were recommended by the adjuster. The physicians said she had a mild back strain. Before seeing an independent physician, she agreed to settle her claim for $12,360.

However, the independent physician found she had suffered a herniated disc, which had to be removed. She was left with a permanent partial disability and continuing medical expenses.

She then sued the insurer and the adjuster, charging that the physicians had "misrepresented" the nature of her workplace injury.

The defendants' case centered on ERISA's pre-emption of state regulation of employee benefit plans, which does not apply to plans maintained to comply with state workers comp law.

The defendants argued that the suit was barred, because Texas does not require employers to purchase workers comp insurance, said defense attorney P. Michael Jung with Strausburger & Price in Dallas.

However, the three-judge appellate court panel said in an opinion written by Judge David Farris: "This argument assumes that because an employer can choose either of two courses of action in order to comply with Texas law, the one which it chooses is not chosen 'solely' to comply with this law.

"This position might persuade us if an employer could purchase workers compensation coverage for its workers on a voluntary basis in order to supplement the employees' remedies against an employer for injuries on the job. However, this is not the law in Texas."

Employers in Texas are confronted with a choice, Judge Farris wrote: "limited liability without fault to any worker injured on the job or unlimited liability only in the event of fault, but with no common-law defenses. Buying workers compensation insurance results in the first option; not doing so results in the second. The choice of an employer to depart from the general common-law tort system has already been made once an employer hires workers in Texas. When that is done, an employer has no choice but to comply with state law."

The defendants also argued that the workers comp claim was part of an employee benefits plan and therefore the employee's suit in state court was pre-empted by ERISA, Mr. Jung said.

However, Mr. Jung noted that Braum's had a separate, self-funded health care plan.

The court again agreed with the plaintiff.

Referring to the defendants' arguments, the court said: "If such an argument had merit, it could be used to pre-empt all lawsuits which involved workers compensation where other employee benefits were also provided. Such a position clearly flies into the face of congressional intent," the decision says.

The suit was remanded for jury trial in the 141st District Court in Tarrant County, Texas, Mr. Jung said.

—By Christine Woolsey

Datebook

DECEMBER

DEC. 2. SARA Title III and OSHA Right to Know seminar in Los Angeles, sponsored by Environmental Resource Center; $379. **Also Dec. 6** in New Orleans; **Dec. 9** in Raleigh, N.C.; **Dec. 10** in Dayton, Ohio; **Dec. 18** in Williamsburg, Va. ERC 3679 Rosehill Road, Fayetteville, N.C. 28311-6634; 800-537-2372; 919-822-0449.

DEC. 2-3. Insurance Claims Adjusters Seminar in Dallas, sponsored by the Defense Research Institute Inc.; $295 for DRI members; $345 for non-members. DRI, 750 N. Lake Shore Drive, Suite 500, Chicago, Ill. 60611; 312-944-0575.

DEC. 2-4. 1991 Corporate Health Care Cost Management Conference in Miami, sponsored by the International Foundation of Employee Benefit Plans; $690 for IFEBP members; $765 for non-members. IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

DEC. 2-4. Fundamentals of Insurance course in Atlanta, sponsored by the Risk & Insurance Management Society Inc.; $540 for RIMS members; $640 for non-members. RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

DEC. 3. Final 401(k) Regulations and a Review of Discrimination Testing seminar in Norwalk and Hartford, Conn., sponsored by the Southern New England Chapter of the International Society of Certified Employee Benefit Specialists; $20 for members; $30 for non-members. Sue Jenson, 203-326-8447.

DEC. 3. Environmental Audits seminar in Los Angeles, sponsored by Environmental Resource Center; $379. **Also Dec. 11** in Dayton, Ohio. ERC, 3679 Rosehill Road, Fayetteville, N.C. 28311-6634; 800-537-2372; 919-822-0449.

DEC. 3-4. Successful Insurance Fronting in 1992 conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 3-4. The Second Annual California Insurance Regulation Conference in Los Angeles, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 3-4. Property & Casualty Loss Reserves: Understanding, Analyzing and Managing seminar in New York City, sponsored by Deloitte & Touche; $850. **Also Dec. 10-11** in Chicago. Deloitte & Touche National Seminar & Conference Group, 1001 Pennsylvania Ave. N.W., Suite 350N, Washington, D.C. 20004; 800-654-8920; 202-638-7310.

DEC. 3-4. Managing Change in the Property-Casualty Industry conference in New York City, co-sponsored by Coopers & Lybrand and The Conference Group Ltd.; $925; group discounts are available. The Conference Group Ltd., 45 W. 60th St., New York, N.Y. 10023; 212-586-0880.

DEC. 4. Insurance Company Insolvencies: Detections and Cures seminar in Washington, D.C., co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Risk Management Section; $170 for society section members; $190 for society members; $215 for non-members. Mari Stambaugh, sections coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2741.

DEC. 4. Hazardous Waste Management Under RCRA seminar in Los Angeles, sponsored by Environmental Resource Center; $379. **Also Dec. 5** in New Orleans; **Dec. 9** in Dayton, Ohio; **Dec. 17** in Williamsburg, Va. ERC, 3679 Rosehill Road, Fayetteville, N.C. 28311-6634; 800-537-2372; 919-822-0449.

DEC. 4-6. Techniques of Risk Management course in San Francisco, sponsored by the Risk & Insurance Management Society Inc.; $540 for RIMS members; $640 for non-members. Education Dept., RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

DEC. 4-6. Environmental Regulation Course in Charlotte, N.C.; sponsored by Executive Enterprises Inc.; $1,045. **Also Dec. 9-11** in Philadelphia and Indianapolis; **Dec. 10-12** in Honolulu; **Dec. 11-13** in Denver; **Jan. 14-16** in Dallas; **Jan. 15-17** in Orlando, Fla.; **Jan. 21-23** in San Francisco; **Jan. 28-30** in New York City; **Jan. 29-31** in Washington, D.C.; **Feb. 5-7** in Seattle; **Feb. 10-12** in Cleveland and New Orleans; **Feb. 18-20** in Dallas. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 4-6. Council for Accreditation in Occupational Hearing Conservation approved course in Kansas City, Mo., sponsored by Impact Hearing Conservation Inc.; $325. Impact Hearing Conservation Inc., 406 W. 34th St., Suite 400, Kansas City, Mo. 64111; 800-346-2139.

DEC. 4-6. Ohio Manufacturers Assn. Leadership Forum in Cleveland; $345 for each business participant; $245 for each education or government participant; discounts available for individuals from different organizations registering as a team. OMA Leadership Forum, 33 N. High St., Columbus, Ohio 43215-3005; 614-224-1722.

DEC. 5. OSHA's Hazard Communication Standard: Training for Trainers seminar in Los Angeles, sponsored by Environmental Resource Center; $379. **Also Dec. 13** in Raleigh, N.C. ERC, 3679 Rosehill Road, Fayetteville, N.C. 28311-6634; 800-537-2372; 919-822-0449.

DEC. 5-6. 401(k) Plans: A Technical and Practical Analysis seminar in Dallas, sponsored by TPF&C Professional Development Institute; $750. TPF&C, 800-253-8732.

DEC. 5-6. The Secrets of Successful Managed Care Programs workshop in Atlanta, co-sponsored by The Prudential Insurance Co. and Infoline Inc.; $795; group rates available. Infoline, 8 Pleasant St., Building D, South Natick, Mass. 01760; 508-650-4700.

DEC. 5-6. The Business Insurance Law Institute: Resolving Insurer/Insured Business Insurance Disputes in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 6. California Procedural Law seminar in San Diego, co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Insurance Educational Assn.; $75 for society or IEA members; $100 for non-members. IEA, 901 Dove St., Suite 190, Newport Beach, Calif. 92660; 714-833-8784.

DEC. 6. Reviewing Boiler and Machinery Coverages, Forms and Procedures workshop in Atlanta, co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Georgia Chapter; $70 for society members; $80 for non-members. Tricia Hogan, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2773.

DEC. 6. Implementing Outcomes Management seminar in Denver, sponsored by InterStudy; $175. **Also Feb. 7** in San Francisco; **March 6** in Washington, D.C. InterStudy, P.O. Box 458, Excelsior, Minn. 55331-0458; 612-474-1176.

DEC. 6-9. Annual Managed Health Care seminar in Cancun, Mexico, sponsored by USA Healthnet Inc.; charges to be announced. Melissa Luttrell, 800-354-2464.

DEC. 7. State Accreditation: Legal and Regulatory Requirements seminar in Houston, sponsored by the National Assn. of Insurance Commissioners; no charge for insurance regulators; $100 for non-regulators. NAIC, Accounting/Education Programs, 120 W. 12th St., Suite 1100, Kansas City, Mo. 64105-1925; 816-374-7192.

DEC. 9. Pollution Liability—The Law and Available Insurance seminar in Irving, Texas, co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Dallas Chapter; $115 for society members; $125 for non-members; add $15 after Nov. 25. Bonnie Kinsley, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2735.

DEC. 9-10. Finding Insurance Company Markets of Agents' Specialty Progams conference in New York City, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 9-10. How To Audit Your Insurance Program: Getting Your Money's Worth seminar in Los Angeles, sponsored by the American Management Assn.; $850 for AMA members; $980 for non-members. AMA, P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

DEC. 9-10. International Joint Ventures Strategic Alliances & Direct Entry forum in New York City, sponsored by the Institute for International Research Insurance Division; $1,195. Conference Administrator, IIR, 437 Madison Ave., 23rd Floor, New York, N.Y. 10022; 212-826-1260.

DEC. 9-11. Property-Casualty Insurance Accounting and the Statutory Statement conference in Chicago, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 10-11. Health Care Cost Containment workshop in Chicago, sponsored by the Health Research Institute; $595. Also **Jan. 29-30** in Los Angeles; **Feb. 17-18** in Honolulu. Workshop Coordinator, HRI, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 510-676-2320.

DEC. 10-11. Labor Management Health Care Cost Containment workshop in Chicago, sponsored by the Health Research Institute; $595. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

DEC. 10-11. Plant-Level Environmental Compliance Course in San Francisco, sponsored by Executive Enterprises Inc.; $1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

DEC. 11. Advanced Hazardous Waste Management seminar in Raleigh, N.C., sponsored by Environmental Resource Center; $379. ERC, 3679 Rosehill Road, Fayetteville, N.C. 28311-6634; 800-537-2372; 919-822-0449.

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INTERNATIONAL

Witness questions Outhwaite's underwriting

By STACY SHAPIRO

LONDON—The plaintiffs' expert witness in a landmark trial says he is "baffled" by Lloyd's of London underwriter Richard Outhwaite's decision to write 32 runoff reinsurance contracts that have cost members hundreds of millions of dollars in losses.

Heinz Ulrich von Eicken, retired executive manager of Munich Reinsurance Co.'s London office and its U.K. branch in Munich, told the London High Court last week that after listening to Mr. Outhwaite's testimony for three weeks, he still maintains that Mr. Outhwaite's actions were "unanswerable."

Mr. Outhwaite sounded like a very bright, intelligent man, Mr. Von Eicken said, so "I can't understand why he did what he did."

Mr. von Eicken's expert statement has been the backbone of a case brought by 987 members of Mr. Outhwaite's syndicate in 1982 against 81 members agencies over the runoff contracts written by the syndicate. Losses on the contracts, which did not contain limits, have cost members $450 million in losses, primarily from U.S. asbestos claims.

At the end of Mr. Outhwaite's three-week testimony, plaintiffs' attorney Anthony Boswood accused Mr. Outhwaite of the "worst kind of negligence," causing massive losses to his members. But Mr. Outhwaite strongly denied that he acted negligently, maintaining that he wrote the contracts because he thought they could produce a profit for syndicate members.

In his 143-page statement submitted on behalf of the members, Mr. von Eicken concludes: "The heart of the complaint about Mr. Outhwaite's conduct is not simply that he was negligent in any one (respect). It is that each of these errors has combined to produce a series of underwriting decisions of immense folly.

"It is not simply that Mr. Outhwaite did not carry out any research, and/or that he did not make proper inquiries of cedants, and/or that his underwriting assessments were sloppy, and/or that he wrote unlimited cover, and/or that he wrote large lines, and/or that he wrote 32 contracts, and/or that he did not monitor for aggregation.

"The reality of Mr. Outhwaite's conduct is that when asbestos-related exposure was well-known to

Continued on next page

Photo by Kate McIlwaine

The first International Risk Management Symposium in Toyama, Japan, earlier this month attracted speakers from around the world.

Risk managers told to teach colleagues in the Third World

By KATE McILWAINE

TOYAMA, Japan—Risk managers in developed nations have a duty to help their counterparts in developing countries, risk management professionals say.

INTERNATIONAL SYMPOSIUM ON RISK MANAGEMENT

Kevin W. Knight, risk manager for the Queensland operations of Australia Post in Brisbane and president of the International Federation of Risk & Insurance Management Assns., agreed that there is a need for greater international cooperation among risk managers.

Developing countries could learn a great deal from countries in which risk management programs have been implemented, said Marion Gallis-Quednau, officer-in-charge of the United Nations Conference on Trade and Development's insurance program.

And, T. Ramanan, insurance and risk manager for Hindustan Lever Ltd. in Bombay, India, and president of the Indian Institute of Insurance & Risk Management, lamented the slow development of risk management techniques in his nation.

The three risk management experts spoke at a session during Japan's first International Symposium on Risk Management, held in Toyama earlier this month.

Mr. Knight said countries need to understand each others' problems and recognize the need to concentrate on "the things we have in common, not those that divide us."

Mr. Knight said he has spoken

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Names from Lloyd's past arise in market disputes

By STACY SHAPIRO

LONDON—Names from Lloyd's of London's scandalous past are again cropping up in London's High Court.

The names are those of Peter Cameron-Webb, Peter Dixon, Ian Posgate and Kenneth Grob. All were targets of criminal investigations during the 1980s involving money allegedly stolen from syndicates formerly managed by PCW Underwriting Agencies Ltd. and Alexander Howden Underwriting Ltd.

Mr. Cameron-Webb's and Mr. Dixon's names were recalled recently during the trial pitting Lloyd's members against 81 members agencies over the 1982 losses of syndicate 317/661, managed by R.H.M. Outhwaite (Underwriting Agencies) Ltd.

Plaintiffs' attorney Anthony Boswood questioned Lloyd's underwriter Richard Outhwaite about whether he felt that because the Lloyd's syndicates could close their 1979 accounts, the syndicates believed they could properly quantify their asbestos losses.

Yes, said Mr. Outhwaite. The London market in 1982—when syndicates 1979 accounts were being audited—knew there was an asbestos problem, but they thought they could properly reserve for their losses and could thereby close their accounts, explained the underwriter, noting that arbitrators' rulings supported the underwriters' view that the 1979 syndicate accounts could be closed.

But Mr. Boswood discovered that one Lloyd's underwriter kept his syndicate open at the time, stating that he could not quantify his future asbestos losses.

"Do you know who it is?" asked Mr. Boswood.

"No, I don't," said Mr. Outhwaite.

"Mr. Cameron-Webb," said Mr. Boswood, who was stopped by laughter in the court because the underwriter to whom he was referring resigned from Lloyd's around 1982. British authorities in late 1988 issued an arrest warrant for Mr. Cameron-Webb and former PCW director Peter Dixon, but the warrants were issued too late for the two men to be extradited from the United States, where they are

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AP/Wide World Photo

Tropical storm Thelma caused widespread flooding in Ormoc.

Tropical storm lashes Philippines

Insured losses low from devastation

By REYNALDO A. de DIOS

MANILA, Philippines—What was expected to be a relatively weak storm turned out to cause one of the worst disasters ever in the central provinces of the Philippines.

Tropical storm Thelma, which hit the Philippines Nov. 5, left 4,877 dead, 3,094 injured and 1,427 missing as of Nov. 12, according to the Philippine National Disaster Coordinating Council. Particularly hard hit was Ormoc, a coastal city of southern Leyte and northern Negros islands.

However, insured property damage and marine reinsurance losses are expected to be small.

The Insurance & Surety Assn. of the Philippines as of last week had not received any report on losses sustained by its member companies.

"I would be surprised" if insured damages approached 10 million pounds ($17.9 million), a London broker commented.

Most private properties in Ormoc are insured against fire but not storm or flood damage.

The Property Replacement Fund, a self-funded government plan, is expected to cover losses to school buildings and other government-owned property.

Two industrial complexes, the Philippine Phosphate Corp. and the Philippine Associated Smelting & Refining Corp., issued preliminary reports of minimal damage to roofs and inventory with some possible business interruption losses as a result of power failure. Both are insured through the Government Service Insurance System.

The storm caused a record rainfall of 16 inches in Ormoc within four hours.

Those rains, compounded with a high tide and denuded forest area in the mountains near the city, caused flooding in Ormoc. Water stood at 10 feet in the city, drowning many people and sweeping away many homes.

Estimated damage to government infrastructure, private property and public facilities, school buildings, agriculture, poultry and livestock was 572.6 million pesos ($21.8 million).

Expert sees expansion, despite regulatory uncertainty

Financial reinsurance growth

By ROGER SCOTTON

HAMILTON, Bermuda—Financial reinsurance markets will expand steadily for the next 18 months despite uncertainty over accounting and regulatory approval for some types of contracts, predicts a reinsurance executive.

5th INTERNATIONAL REINSURANCE CONGRESS

One reason for the continued growth will be that the lack of capacity in the London catastrophe market is expected to draw "opportunistic short-term players" into the field, said Peter A. Gentile, senior vp of Atrium Corp., a brokerage unit of Swiss Reinsurance Co. unit in New York.

Another "magnet," he said, will be the impact of lower traditional reinsurance volume and the "evaporation" of opportunities to earn attractive margins.

But the "glut" of financial reinsurance players will be short-term, he predicted at the Fifth International Reinsurance Congress here earlier this month. The meeting was co-sponsored by Coopers & Lybrand and Hawksmere Ltd., a British conference and training company.

Within five years, he added, "opportunistic markets will disappear

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Outhwaite trial

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be a major problem and many syndicates were trying to get rid of these unwelcome liabilities, Mr. Outhwaite wrote a whole series of contracts voluntarily assuming such liabilities, in most cases giving unlimited cover, and in over half the cases being the only person on the slip," Mr. von Eicken said.

"He was not a specialist in the business, undertook absolutely no research into the problem and did not even see it as his job to ask pertinent questions of his cedants or to monitor the accumulation of risks to which he was exposing his names.

"I stand by my belief that Mr. Outhwaite would be open to criticism in any one of the respects I have considered. When viewed collectively, however, I would go so far as to say that the case against Mr. Outhwaite is unanswerable," Mr. von Eicken concluded.

Despite Mr. Outhwaite's answers to many of these charges, Mr. von Eicken testified last week that he stands by his statement.

Because of the differences in definitions of words used in the contracts, Mr. von Eicken said Mr. Outhwaite should have had, at a minimum, a system or questionnaire through which cedants could have identified the true impact of asbestos losses on the run-off contracts.

"An underwriter has to be an extremely cautious man," Mr. von Eicken said. "Entrepreneurial, but cautious. . . .The first one without the second one is a very dangerous thing. You have to be very, very cautious."

Mr. von Eicken's testimony last week attracted many new faces in the courtroom, including former Lloyd's Chairman Murray Lawrence, executives of members agencies named as defendants and executives of Munich Re.

In answers that often turned into speeches, Mr. von Eicken explained that he joined Munich Re in 1957 and since 1963 had been the company's chief excess-of-loss "underwriter." He said he wrote the guidelines that Munich Re still uses today to write excess-of-loss business, but he refused to produce these guidelines due to a confidentiality agreement in his retirement contract with the company.

In 1967, Mr. von Eicken set up the "main representation office" of Munich Re in London, which later oversaw Munich Re's life and non-life underwriting in London. He worked in London four days a week, then would fly back to Munich, where he was in charge of the reinsurer's U.K. department.

Mr. von Eicken, a well-known figure in the London market until his retirement in June last year, said final underwriting decisions about London business were made in Munich, but usually on his authority.

'As we say in German, trust is good; control is better,' says Mr. von Eicken.

He said that Munich Re "stayed away" from writing retrocessional business in the early 1980s, which is why Munich Re in 1981 refused to write Mr. Outhwaite's quota-share reinsurance program. Mr. von Eicken said he had been told at the time that Mr. Outhwaite had requested that Mr. von Eicken view the risk, which Mr. von Eicken said was an indication that Mr. Outhwaite knew he was involved in the underwriting decision.

However, Mr. Outhwaite's trial lawyer, Kenneth Rokison, questioned Mr. von Eicken's expertise as an underwriter and his knowledge of Lloyd's. Mr. von Eicken replied that the Munich Re "underwriting is done by committee" and there is no such position as an "underwriter" like there is at Lloyd's.

But Mr. von Eicken agreed, in the narrow sense that Mr. Rokison was using the term, that he personally did not do any "underwriting" in London.

Mr. von Eicken also said that he knew Lloyd's very well, that Munich Re reinsured more than 100 Lloyd's syndicates and that the reinsurer retroceded business back to Lloyd's. He added that he had been to many social events at Lloyd's and personally knew every Lloyd's chairman since 1978 except for Sir Peter Miller and Sir Peter Green. He also said Mr. Lawrence gave him his own complimentary Lloyd's pass to walk in the Underwriting Room whenever he liked.

However, Mr. Rokison said that a defense expert witness, Lloyd's underwriter Richard Hazell, will testify that he knew Mr. von Eicken only as the contact man for Munich Re in London and that he went to Munich to actually negotiate business with Munich Re.

That may be true, said Mr. von Eicken, but Munich Re's way of doing business is "not public." Mr. Hazell would go to Munich to an office "that I ran," Mr. von Eicken said.

Mr. Rokison asked how much business written by Munich Re in the 1970s and 1980s was affected by asbestos claims. Mr. von Eicken responded that it would have been Munich Re's U.S. and Canadian units—which have their own accounts—that would have been hit by asbestos claims, not its U.K. account.

Mr. Rokison also asked whether Munich Re wrote reinsurance for the now-defunct H.S. Weavers (Underwriting) Agencies Ltd., which had been London's largest U.S. casualty underwriter. Mr. von Eicken confirmed that it did, but that he was not involved in the placement.

In addition, Mr. Rokison asked whether Mr. von Eicken believed that underwriters must rely on what they are told by brokers to be true and fair. Mr. von Eicken replied that underwriters must rely on brokers, but to a limited extent.

"As we say in German, trust is good; control is better," Mr. von Eicken said. ■

Posgate

Continued from previous page

believed to be living (*BI*, April 10, 1989; Jan. 2, 1989).

"He (Mr. Cameron-Webb) might have had his mind on other things," said Justice Saville, who is hearing the trial in the Outhwaite dispute.

"Actually, it was Mr. Dixon," said Mr. Boswood to another round of laughter. Mr. Dixon has been labeled by authorities as the mastermind in the theft of PCW members' money.

"Him, too," said Justice Saville.

Later, Mr. Outhwaite's trial lawyer, Kenneth Rokison, asked Mr. Outhwaite whether he thought that Mr. Cameron-Webb's syndicate was a "reliable indicator" for the assessment of asbestos claims.

"I hardly think it was a reliable indicator of anything," answered Mr. Outhwaite.

Meanwhile, at the same time in another courtroom, Mr. Posgate, the former Lloyd's underwriter who was nicknamed "Goldfinger" in the market because of his underwriting success, was representing himself as a third party in a case involving what could turn out to be a replay of some of the evidence offered in a 15-week fraud trial in 1989 involving Mr. Posgate and other former Howden executives.

Mr. Posgate and former Howden Chairman Kenneth Grob were found innocent of charges of stealing millions of dollars in syndicate funds for their own benefit (*BI*, Aug. 24, 1989). Charges against other former Howden officials were dropped.

Sphere Drake Insurance P.L.C. is asking the High Court for a declaratory judgment that an excess-of-loss reinsurance policy that was placed with syndicate 701, managed by Posgate & Denby (Agencies) Ltd., in 1982 is valid. Non-marine syndicate 701, jointly underwritten by defendant Mark Denby and Mr. Posgate, has ceased writing but has kept its 1982 year of account open.

The disputed policy was to protect a quota-share reinsurance policy that Sphere Drake wrote for Mr. Posgate's former syndicate 126, managed by Alexander Howden Underwriting Ltd.

Sphere Drake wrote the syndicate's quota-share reinsurance in 1982 after it was discovered that the reinsurer previously writing the policy, Southern International Re, was bogus. SIR was controlled by former executives at Howden including Mr. Grob.

Sphere Drake alleges that it agreed to write the quota-share reinsurance for Mr. Posgate's syndicate 126 only if syndicate 701 wrote an excess-of-loss reinsurance policy backing the quota-share reinsurance. Mr. Posgate allegedly agreed to that and signed the excess-of-loss contract on behalf of syndicate 701.

Mr. Denby, however, denies that the excess-of-loss policy was validly placed with syndicate 701. Alternatively, if the policy is found to be valid, Mr. Denby claims that Mr. Posgate did not have the authority to write the contract on syndicate 701's behalf.

Mr. Denby's attorneys are hoping to call in other names from the past to testify, including Mr. Grob, even though he is suffering from a kidney ailment, possibly cancer. The defense attorneys also would like to use other evidence that was introduced in Messrs. Posgate's and Grob's fraud trial, but Justice Kershaw must rule on whether it can be introduced.

Sphere Drake's attorneys say the fraud trial evidence should not be allowed because, among other things, the Serious Fraud Office objects to evidence of a criminal action being used in a civil case.

Observers say the trial could go on for six months if all the evidence is admissible.

The original lawsuit was filed by Sphere Drake in 1984, but a series of delays followed, including three changes in defense attorneys.

The case is being heard by Justice Kershaw, who is from the North Circuit in Northern England rather than from the Queen's Bench in London because most qualified judges in London have been somehow involved in the Howden affair over the years. ■

Premium tax to generate French AIDS fund

PARIS—The French government and insurers have come to an agreement on an issue that has proved as politically delicate in France as it has in the United States: compensation for people with AIDS who contracted the disease through blood transfusions.

Under an agreement signed by representatives of the French insurance industry and the government at the end of October, those who contracted AIDS through blood transfusions will be compensated by a fund generated by a levy on non-life insurance premiums.

A spokeswoman for the French insurer trade association, the Federation Francaise des Societes d'Assurances, said that many details of the compensation scheme remain to be settled. The sum to be levied on each insurance policy has yet to be fixed, because the number of people who have contracted acquired immune deficiency syndrome through blood transfusions is not known.

Denis Kessler, president of FFSA, has indicated that the levy is likely to vary between 15 francs and 20 francs ($2.75 and $3.66) per policy, although the association's spokeswoman stressed that this was only an estimate.

Figures between 30 and 40 francs ($5.50 and $7.32) have also been suggested, she pointed out.

However, the spokeswoman confirmed that the insurance policies affected would include both commercial and personal lines coverages, excluding life insurance and personal accident insurance.

The French insurance industry had been considering whether to establish an AIDS compensation program on its own, but later decided that it would join with the government in establishing a program.

Successive French governments have slapped levies of various kinds on insurance premiums. Some of these have been straightforward taxes, while others are so-called "parafiscale" levies—like the one proposed for people who have contracted AIDS through the blood supply—which go toward specially created funds.

Current beneficiaries of such parafiscale levies include victims of accidents caused by uninsured drivers and farmers whose crops have been damaged due to natural catastrophes like hailstorms.

As a rule, French insurers oppose measures that would increase the cost of coverage. The FFSA pointed out that the French government raised 30 billion francs ($5.45 billion) last year through premium taxes and assorted levies, more than any other government in the European Community.

However, the insurers find the proposed AIDS levy far less distasteful because it may reduce insurers' risk of having to compensate, via liability claims, those who contracted the disease from transfusions.

Hospitals that have given contaminated blood transfusions have been successfully sued for malpractice in France, the FFSA spokeswoman noted.

She added that the proposed AIDS levy has yet to be accepted by the AIDS victims, themselves. If it is, the proposal could be submitted to the French Parliament before the end of the year and become effective in early 1992.

—By William Pitt

GLOBAL BRIEFS

UAP eyes Colonia

PARIS—Union des Assurance de Paris, the state-controlled French insurer, is seeking control of Germany's second-largest commercial lines insurer, French reports claim.

UAP hopes to exchange its current 34% stake in French insurance Group Victoire for Victoire's majority stake in Colonia Group, parent of German insurer Colonia Versicherung A.G.

Victoire is majority-owned by French financial and industrial group, Compangie de Suez, which acquired Victoire for $5 billion in late 1989.

A Colonia spokesman has acknowledged talks between Compangie de Suez and UAP aimed at restructuring their respective interests.

Compangie de Suez, which holds 53% of Victoire, has stated repeatedly it would not make changes at Colonia. But rumors that UAP could swap its own 34% share in Victoire for control of Colonia are being taken seriously.

German market analysts believe UAP would like to establish operations in Germany to profit from the new markets in Eastern Germany. While commercial lines remain highly competitive in Germany, the country's industrial strength within the European Community, coupled with potential growth in Eastern Europe, make a UAP presence in Germany a strategic necessity.

Talks between UAP and Victoire focus on strengthening UAP's influence on Victoire, according to a spokesman for Colonia.

"UAP owns a 34% stake in Victoire and wants as much influence on business," the spokesman told *Business Insurance*.

Just what form UAP's influence will take is unclear. But the spokesman said several models are being negotiated. One would divide Colonia between UAP and Victoire.

"Quite frankly, it is the most unlikely model," the spokesman said. "It is just as likely that nothing will change."

Victoire now owns 80% of Colonia-Victoire Nederlanden, a Dutch holding company that in turn owns 55% of Colonia. The other 20% of the holding company belongs to the private German bank, Bankhaus Sal Oppenheim, which originally owned Colonia.

Commercial lines business remains highly competitive in Germany. Colonia blames the soft market for low earnings and admits that current losses in industrial fire insurance are "a problem."

—By Don Lewis Kirk

German forecast

COLOGNE, Germany—German insurance premium volume is expected to rise 13% during 1991, predicts the GDV, which is the Assn. of German Insurers.

A projected increase to 165.1 billion deutsche marks ($102.54 billion) in premiums in 1991 from 146.17 billion deutsche marks ($97.8 billion at year-end 1990 exchange rates) written in 1990 reflects a "boom" in new business for life, homeowners and automobile insurance generated by the unification of Germany last year, the GDV said.

Strongest premium growth came in the automobile and home insurance sector, with premium volume for each line expected to rise 16% this year, the association said. Premiums for fire and transport insurance each increased by 15%.

Projected life insurance premium growth is strong at 12.5% after the collapse of the East German welfare system.

German insurers are also expected to report double-digit premium growth in general liability and accident insurance, each with a 10% increase, the GDV said.

After an extremely bad year in 1990 as a result of winter storm losses throughout Europe (*BI*, Nov. 18), the GDV says it expects German insurers to post improved profits in 1991.

—By Don Lewis Kirk

INTERNATIONAL

Taxes on premiums to cover Mafia acts spark insurer outcry

By GAVIN SOUTER

ROME—The Italian government plans to increase taxes on some insurance premiums to set up a fund to compensate businesses that fall prey to the Mafia.

The decision has provoked an outcry from insurers, which say the compensation fund has no logical link with insurance and could encourage businesses to forego buying coverage if they expect to be compensated by the fund.

If the government decree, now under consideration, is approved by Parliament, the new tax would take effect by year end.

According to the decree, a 1% tax would be imposed on all fire; automobile, excluding third-party liability; theft; and general liability policies.

Insurers argue that the policies already are heavily taxed: Fire policies currently carry a 21.25% tax on premiums; automobile policies are taxed at 18.75%; and both theft and general liability have a 12.5% premium tax.

'I would say we have a 40% chance of having the decree withdrawn,' says Benito Pagnanelli.

Premium taxes would be only one of three revenue sources for the proposed compensation fund. The government would contribute 90 billion lire ($72.8 million), and half of any proceeds from the sale of seized Mafia assets would be placed in the fund.

Proceeds from the premium tax would roughly equal the government's own contribution, said Enrico Orlando, deputy general manager of Riunione Adriatica di Sicurta S.p.A. in Milan.

Payments from the compensation fund would be limited to the lesser of 500 million lire ($404,550) per person or 70% of a claim, Mr. Orlando added.

One reason for establishing the fund is to encourage citizens to report incidents of Mafia intimidation, Mr. Orlando said.

Under the government proposal, payments would be made only if victims reported Mafia intimidation before any damage was done.

For example, if a bar owner has his establishment fire-bombed because he refused to pay Mafia protection money, he could only seek compensation if he had informed the police when he was first approached by the Mafia.

About 85% of Italy's restaurant and bar owners are thought to pay such protection money, according to the Anti-Mafia Commission of the Italian government.

"Insurers do not see what the connection is between compensating Mafia victims and taxes on insurance premiums," Mr. Orlando said.

The measure also may encourage certain businesses to drop some of their coverages, because they may think that it will be cheaper to rely on the compensation fund than to purchase insurance, he said.

Insurers, through the Italian association of insurers or ANIA, are lobbying the government to drop the bill and also are threatening to go to the Italian Supreme Court to have the tax overturned if it is passed by the Parliament, Mr. Orlando said.

Government decrees must be passed by the Parliament within 60 days if they are to become Acts of Parliament.

However, insurers are not sure whether they will win the argument.

"I would say we have a 40% chance of having the decree withdrawn," said Benito Pagnanelli, joint general manager of Assicurazioni Generali S.p.A. ■

Third World

Continued from page 29

with risk managers in India about implementing disaster risk management programs in Third World countries, instead of post-disaster "Band-Aid measures."

"We (the risk management professionals) need to help those countries meet, manage and minimize disasters," he said.

Ms. Gallis-Quednau said the countries that need assistance include parts of India, Nepal, Indonesia, African nations, and what she called "the lesser developed of the developing countries."

Risk management standards considered essential in developed countries are considered luxuries in many developing countries, she noted.

"In countries where many basic necessities are lacking, it is not surprising that one tries first to get production going and only then worries about the accidents that might happen if Murphy's (law)—that everything that can go wrong, will go wrong—operates," she said.

That perception is most obvious where environmental risks are concerned, she added.

"In many cases, risk management is seen as a rich man's gimmick, of which he wants to convince developing countries because he has suddenly become aware that some of the risks may infringe on his own comfort and security if left unattended," Ms. Gallis-Quednau commented.

But she pointed out that the opposite is true: Risk management practices are badly needed in developing countries because losses will have a more serious impact there.

In some developing countries, a realistic assessment of risks has revealed such a potential for doom that many preferred "to keep the fingers crossed and get on with the job," Ms. Gallis-Quednau said.

And in some countries, religious beliefs and custom prevent the adoption of certain loss prevention principles because disasters are considered "God's will," she noted.

Insurance is often viewed as the only viable means of risk financing in developing nations because risk managers are not able to accurately calculate the possible costs of identified risks and a sound system of conducting a cost-benefit analysis is not in place, she said.

"Professionals who can quantify loss exposures reliably are in short supply," Ms. Gallis-Quednau said. And only larger firms can afford to compete for the few experts available in a country or to hire foreign ones, she added.

Another impediment to the implementation of risk management principles in some developed nations is the industrial environment.

Ms. Gallis-Quednau said many enterprises in these countries are loss-making entities that work at 30% to 50% of capacity and are run by civil servants not trained in economically efficient production.

Insurers should encourage the development of risk management techniques by introducing deductibles, for example, to encourage companies to eliminate a number of small claims, she said.

The Indian insurance industry's lack of deductibles in commercial policies has given industry little impetus to adopt risk management techniques, said Mr. Ramanan of Hindustan Lever Ltd.

Deductibles are currently available only for petrochemical and fertilizer plant risks, he noted.

However, Mr. Ramanan noted that the Indian insurance industry had introduced premium discounts for good risk management programs and loss control measures. Good, well-managed risks can attract more than 50% in premium discounts on the tariff rate, he said. Nevertheless, fire insurance rates are higher in India than in Pakistan, Sri Lanka, Singapore, Thailand or Malaysia, he added.

Mr. Ramanan said Indian corporations need to develop a risk management philosophy instead of adopting the attitude that if cover is unavailable it is not required.

The Indian insurance industry has been a state monopoly since 1972, when the General Insurance Business (Nationalization) Act was passed. It merged the 107 foreign and local companies into four bodies controlled by the General Insurance Corp. of India. There is also a Tariff Advisory Committee. The insurance industry's total premium written for fiscal 1989/90 was $1.3 billion, Mr. Ramanan noted.

While intense efforts have been generated at the industrial level to control risks, the real issues of risk management in India are the "mega risks" of poverty, population, floods, droughts and environmental issues, Mr. Ramanan said.

The December 1984 Bhopal disaster, in which 3,000 people were killed after a gas leak at a Union Carbide Corp. plant, forced industry to intensify its risk management focus and led the government to call for stricter safety standards after a review of all hazardous industries in India.

The government also enacted the Mandatory Public Liability Insurance Act, which makes insurance compulsory for corporations handling or producing hazardous substances. The cover must be purchased through the government-owned General Insurance Corp.

Mr. Ramanan said the risk management profession is in its infancy in India. While there are few risk managers, many corporations have insurance managers, he noted.

"I am the only risk manager in the country. It's lonely," he said. "The day will come when we (risk managers) sit in the boardrooms, but not in my lifetime."

"Even where the risk management process is understood, it is rarely followed in an organized and professional manner," Mr. Ramanan said.

But the profession will grow in India, he predicted. He pointed out that India's National Insurance Academy, which will host the Third World Insurance Congress in New Delhi Feb. 17-21, 1992, is now running risk management courses for companies. ■

Clout still eludes risk managers

By KATE McILWAINE

INTERNATIONAL SYMPOSIUM ON RISK MANAGEMENT

TOYAMA, Japan—U.S. companies still do not fully recognize the importance of the risk management function, according to several risk management authorities.

"We have done a far better job of organizing risk managers than we have of informing chief executive officers of the importance of risk management," said Robert W. Esenberg, president of the Risk & Insurance Management Society Inc.

Mr. Esenberg spoke at the International Symposium on Risk Management earlier this month in Toyama, Japan.

Even as risk managers' responsibilities have been increasing, their competence has been questioned, said Douglas A. Barlow, a retired risk manager for Massey-Ferguson Corp. in Toronto, who was inducted into the Insurance Hall of Fame last year (*BI*, July 16, 1990).

In addition, corporate risk managers have been threatened by competition from risk management service firms, which contract to do all or part of the risk management functions, Mr. Barlow said.

Risk managers' responses to these challenges have depended on their skills and their level of authority. The skills are their own; the authority depends on the CEO, he said.

Mr. Barlow, a former head of the American Society of Insurance Management, the predecessor to RIMS, said a risk manager should be a department head who answers directly to the corporation's chief executive.

Placed there, the risk manager would better be able to bring about "risk avoidance, non-insurance transfer contracts, and measures for loss prevention and mitigation," he said. "Only risks perceived can be managed."

Mr. Esenberg, who also is risk management administrator for the City of Virginia Beach, Va., said U.S. risk managers have become more prominent but it still is not always recognized that risk management can profoundly effect profits and losses.

Risk managers have to position themselves to have input on all decisions involving their organization's products and services, how and where they were produced, and their residual effects on customers and society, he suggested.

"Not many years ago, the typical risk manager was almost exclusively a buyer of insurance and needed to know little beyond the state of the market," Mr. Esenberg said.

Today's risk manager needs a keen sense of all aspects of finance and cash flow, as well as an in-depth awareness of health and safety, engineering, environmental sciences, product development and manufacturing and tort liability, he said.

David Warren, an independent risk management consultant based in Orinda, Calif., who also spoke at the Toyama conference, pointed out that a risk manager is an adviser rather than an order-giver.

Therefore, the risk manager must hold a sufficient rank in the organization to engender respect from those he or she is trying to influence, he explained.

Some 75% of risk managers, Mr. Warren said, should report to the CEO or the head of administration, 20% to financial executives and 5% to miscellaneous officers. Only 18% now report to the CEO or head of administration, he said.

Mr. Barlow said risk management will evolve according to the Darwinian rule of survival by adaptation to changing conditions. Chief executives, he said, should be the judge of risk managers' survival value, that is, their value to corporations.

With a few exceptions, Mr. Barlow commented, risk managers do not go beyond the task of minimizing the effect of insurable risks.

However, risk managers are handicapped by their status within corporations, Mr. Barlow said. They need to be consulted during the planning process, rather than once decisions are made, he explained.

Mr. Barlow said dynamic risks, those which result from change itself, are a key challenge facing risk managers. "Such risks elude statistical analysis and may fail to meet the requirements of insurability."

Computers, telecommunications, AIDS, space exploration, new liability standards arising from hazardous waste, medical technology, acid rain, international interdependence and changes in the ozone layer are all examples of dynamic risks, he said.

Mr. Barlow also pointed out that the risk managers of the future must possess more specialized knowledge of law and recommended that risk management courses contain a larger component of legal studies.

Discussing challenges facing U.S. risk managers, Mr. Esenberg said the "liability explosion" has had a dramatic effect. He noted that 18 million new civil lawsuits are filed every year, or one for every 13 Americans.

And the stakes are getting higher. In the past 30 years, U.S. juries have awarded more than $1 million in damages in 4,665 cases, with 84% of those awards coming in the past 10 years alone, said Mr. Esenberg. ■

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Business Insurance

INTERNATIONAL

IFRIMA is not subsidiary of RIMS, Knight asserts

By KATE McILWAINE

INTERNATIONAL SYMPOSIUM ON RISK MANAGEMENT

TOYAMA, Japan—The Risk & Insurance Management Society Inc. has done nothing to discourage the myth that the International Federation of Risk & Insurance Management Assns. is RIMS' foreign arm, IFRIMA President Kevin W. Knight charges.

Mr. Knight, who is risk management adviser to the Queensland office of Australia's postal corporation, the Australia Post, acknowledged the role RIMS and its international cooperation committee had played in the 1984 formation of IFRIMA, which represents risk management associations in nations around the world.

However, the formation of IFRIMA "unfortunately resulted in the strong belief. . .that the federation is at best a wholly controlled subsidiary of RIMS or that its member associations are foreign chapters of RIMS," he said.

Mr. Knight made his remarks at the International Symposium on Risk Management, held earlier this month in Toyama, Japan.

Mr. Knight said an audiovisual presentation shown by RIMS at its 1990 conference in Boston strongly reinforced the myth that IFRIMA is an arm of RIMS. "Such activities have not contributed to enhancing goodwill and understanding within the federation," he said.

However, Robert W. Esenberg, president of the Risk & Insurance Management Society Inc., said last week in an interview that "RIMS has no intention of controlling what IFRIMA and foreign associations do. They must be created in their own image, subject to their own governmental regulations."

RIMS has "assisted foreign risk management associations in whatever way possible—including financially—but we do not wish to control them," said Mr. Esenberg, who also is risk management administrator for the City of Virginia Beach, Va.

He added that representatives of IFRIMA member associations that he has spoken to in recent months do not share Mr. Knight's viewpoint.

Speaking at the Toyama conference, Ron Judd, who retired earlier in 1991 after serving as RIMS' executive director for 24 years, said RIMS had sponsored the formation of IFRIMA to:

- Promote educational programs devoted to development of risk management practices around the world.
- Make known the needs and viewpoints of risk managers in various nations and to promote a free exchange of ideas.
- Aid in establishing and maintaining a competitive insurance market with adequate regulatory controls to ensure long-term viability.

IFRIMA now has 20 members, representing 19 nations, Mr. Judd noted.

Mr. Knight said that IFRIMA member organizations give different weightings to insurance and risk management and it is difficult to reconcile national agendas within the wider global framework.

"Quite often, matters of great importance to a national association can be either anathema or of no interest to another," Mr. Knight said. For the federation to be effective, it must identify and work on issues that unite it and promote its common objectives, he added.

He charged that RIMS had "some difficulty" accepting that "there could be a way forward other than the one created" by RIMS and that impinged on moves by some IFRIMA members to hold regional or world risk management conferences under the IFRIMA name.

"While that attitude persists, it is unlikely we will ever see another world congress on risk and insurance management like that held in Brisbane, Australia, in October, 1988," he said (*BI*, Nov. 7, 1988).

Mr. Knight noted IFRIMA's recent decision to admit the South African Risk & Insurance Management Assn. as a member, saying it illustrated that the federation was prepared to accept change to strongly held views.

He called for greater independence for IFRIMA, saying that it needed its own secretariat. Currently, IFRIMA has no paid staff of its own. ■

Captives ill-used: Professor

By KATE McILWAINE

TOYAMA, Japan—Captives often are established for the wrong reasons and the initial reasons for their formation are later ignored, an American professor says.

M. Moshe Porat, chairman of the department of risk management, insurance and actuarial science at Temple University's School of Business and Management in Philadelphia, said captive managers should concentrate on more in-house risk retention, loss prevention, safety, security and product and service quality instead of focusing on insurance and reinsurance management.

"Captives have to demonstrate to top corporate management that they are not mere insurance schemes nor profit centers," Mr. Porat told an audience at the International Symposium on Risk Management earlier this month in Toyama, Japan.

He said the key to a better future for risk managers and captive managers is to refocus their objectives toward the elimination of corporate uncertainty. "This will require more in-depth knowledge in assessing the environment, loss control, quality assurance and retention. It will require more capitalization and better internal communication."

The growth of captives is cyclical, reacting to the commercial property/casualty insurance cycle and changes in insurance regulation and tax laws, Mr. Porat noted.

While he estimated that there are 3,000 captives worldwide, Mr. Porat said it is difficult to give a precise number because the definition of captive varies. There are now many captive domiciles, he added, and some regulatory authorities do not distinguish between captives and regular insurers and reinsurers when publishing statistics.

Mr. Porat said that alternative risk financing mechanisms, including captives, now comprise one-third of the risk financing market in the United States, adding that the alternative market would control 50% of the overall market in 10 to 15 years (*BI*, Jan. 28).

Despite years of soft property/casualty insurance markets, captives have developed because they are a response to "more fundamental needs," Mr. Porat said.

And, new captives will continue to be formed and captives generally will gain market share from commercial insurers as insurance markets tighten in 1992 and beyond, the professor predicted.

Captives were formed for financial and operational benefits and for social/psychological reasons, Mr. Porat said. Policyholders had stronger incentives for loss control with captives, he noted, though the tax advantages of setting up captives have largely disappeared.

Captives provided solutions to corporate problems by insuring risks for which coverage was not available or too costly in the traditional markets, Mr. Porat said.

However, captives were increasingly willing to write third-party business in the early 1980s, when many captives were promoted as profit centers and some risk managers had engaged in "imprudent underwriting and naive dealings," he said. "This trend got a lot of captives into trouble and diverted captives from what should be their true focus, solving corporate problems."

Mr. Porat warned that captives with limited capitalization and limited operational scope face problems and said many rely too heavily both on outside management and support from the reinsurance market.

He also noted that so-called private insurers, like ACE Ltd. and X.L. Insurance Co. Ltd., and group captives set up for certain industries have provided solutions to corporate risk management problems that traditional insurance markets and single-owner captives could not solve.

"I believe these will be the appropriate vehicles to resolve major risk management and insurance problems in the future," Mr. Porat added. ■

International meeting draws 200 to Japan

TOYAMA, Japan—Participants at the first International Symposium on Risk Management held here earlier this month swapped ideas at one of Japan's newest convention sites.

Toyama, a city of 360,000 on the central west coast of Honshu, the main island of Japan, is establishing itself as a major convention center.

City tourism officials welcomed delegates to the first International Symposium on Risk Management, held Nov. 4-8.

The meeting's organizer, Isao Takei, a professor of risk management in the University of Toyama's Faculty of Economics, received a research project award from Toyama's district government and decided the best use of the funds was to hold a risk management symposium.

Chitaru Ogura, president of the University of Toyama, said it was unusual for such a conference to be held at Toyama, which is "off the beaten convention track."

He said the aim of the conference was to further develop risk management from practical and academic perspectives.

"It is a good opportunity to deepen the understanding of risk management and further its ideas and practice," said Mr. Ogura.

Most of the delegates were from major corporations in Japan, although Japan's risk management industry is still in its formation stages (*BI*, Nov. 18). Speakers also came from the United States, Europe, India, Australia, Israel and Japan. There were about 200 participants, including speakers.

The conference began with a reception for foreign delegates. Three days of presentations by speakers were followed by a half-day "brainstorming" session at the Royal Valley Kurobe Hotel, a resort in the mountains near Toyama.

At the conclusion of the conference, the speakers agreed that the discussions would assist in furthering development of the risk management profession in Japan.

Expanding competition in Japan's insurance market will foster the profession, said M. Moshe Porat, a professor in the department of risk management, insurance and actuarial science at Temple University in Philadelphia.

Before tariff deregulation began recently, underwriters were not interested in risk management, observed T. Ramanan, insurance and risk manager for Hindustan Lever Ltd. in Bombay, India, and president of the Indian Institute of Insurance & Risk Management.

"Without an open-door policy in insurance, risk management is a wild goose chase," he said.

—By Kate McIlwaine

Special coverage for ports created

TOYAMA, Japan—A risk management consultant from California is preparing an insurance program for a group of port operators and stevedoring companies in the Micronesian islands that have been unable to obtain coverage individually.

Michael C. Moody, president of International Risk Management & Insurance Services Ltd. of Palos Verdes, Calif., is preparing a program that will cover ports and stevedoring companies in nine island groups in the Marshall and Caroline Islands, including the North Marianas and Guam.

Mr. Moody began work on the project a year ago on behalf of the Associated Terminal Operators & Stevedoring Cos. of Micronesia.

The program is expected to be in place by the end of 1992 but could be implemented sooner, depending on approval from port authorities, Mr. Moody said in an interview during the International Risk Management Symposium in Toyama, Japan, earlier this month.

Mr. Moody explained that ATOSCM members needed a combined property/casualty policy for their marine exposures. Most of the ports currently have no coverage because they cannot buy it, he said.

"Each port alone was not a big enough account to interest an underwriter, and the port authorities did not have a fix on the type of cover they needed to buy," he explained.

Although the ports were too small as individual risks, underwriters are prepared to consider a combined policy, and initial inquiries have been positive, according to Mr. Moody.

The Micronesian ports range in size from small ports, where cargo is ferried from ships by canoes, to the Port of Guam, which has 1,500 feet of dock front, Mr. Moody said. The port of Guam does have some insurance coverage, he added.

Mr. Moody said he currently is working on phase one of the project —fact finding—and has distributed a questionnaire to all the port authorities and stevedoring companies asking them to describe their operations.

Port authorities have been asked for information on cargo volumes, the number and size of vessels, and all port facilities.

The ports' risks include liability for loss or damage to vessels or cargo and machinery breakdown, Mr. Moody explained.

"Some ports have only one crane, so they would be severely disadvantaged if it broke down," he said.

When the results are collated, IRMIS will prepare a request for proposal for underwriters. "It won't be a bid process. It will be negotiated with underwriters because of the complexity of the program. There's a need for give and take."

He said he has not yet determined coverage levels, deductibles, or premium. Premiums would be allocated once a program is in place. "Equitable assessment of the premium allocation will be a difficult exercise," Mr. Moody said.

Mr. Moody, formerly an insurance broker, specializes in Pacific Rim risk management services.

—By Kate McIlwaine

'Holistic' risk management urged

By KATE McILWAINE

TOYAMA, Japan—The relationship between insurance and risk management is still a subject of disagreement, according to four experts in the field.

It is a myth that risk management is anti-insurance, said Lutgart Van den Berghe, a risk management professor at Erasmus University in Rotterdam, the Netherlands. Insurance techniques are of great importance to risk management, she contended.

Ms. Van den Berghe spoke here earlier this month at a session at the International Symposium on Risk Management.

There is a need for more cooperation between risk managers and insurers to develop "combined and varied risk management policies," which could widen the limits of insurability, she said.

She noted that risk management has traditionally been viewed in terms of insurance solutions. A consequence of this is that risks have been categorized according to available insurance products.

"The modern approach is a holistic one. The risk manager no longer deals only with insurable risks. All risks that may constitute a danger to a firm's profitability and continuity are taken into account," she said.

A number of factors led to the development of the modern approach. Finding coverage for complex risks had grown more difficult, rates were volatile and big international companies were questioning the value added by an intermediary system like insurance, she explained.

The adoption of risk financing alternatives has forced insurers to become risk engineers instead of risk carriers, said Ms. Van den Berghe. Some insurers redefined their core business, particularly in regard to industrial and international risks, she said.

Corporations have been forced to move beyond insurance buying to effectively manage risks in the existing business climate, said Kevin W. Knight, risk manager for the Queensland operations of the Australia Post in Brisbane and president of the International Federation of Risk & Insurance Management Assns. Mr. Knight added that IFRIMA's concentration on risk management recognizes this fact.

"That does not mean insurance is not important and relevant, but only that it is a segment of the risk financing of any effective risk management program, not the dominant feature," he added.

Risk management embraces more techniques for treating risk than simply insurance, said George L. Head, vp of the Insurance Institute of America Inc. in Malvern, Pa. They include a family of loss control techniques to reduce the frequency, severity and unpredictability of accidental losses, as well as risk financing techniques, he said.

Risk identification and loss control procedures need to be independent of what is available through insurance, so an insurance background could be detrimental for a risk manager, said David Warren, an independent risk management consultant based in Orinda, Calif. ■

Risk managers stress education

By KATE McILWAINE

TOYAMA, Japan—Risk management will not become a professional discipline unless education standards are improved, said educators and risk managers at the first International Risk Management Symposium held here earlier this month.

Risk management courses are often confined to dealing with accidental losses, said George L. Head, vp of the Insurance Institute of America in Malvern, Pa. They do not incorporate losses from business reversals—losses caused by poor business judgment, adverse economic conditions or technological obsolescence, he said.

"These losses are the result of strategic business errors, rather than sudden, chance events," he said.

Nevertheless, they should be considered a part of risk management education, Mr. Head argued.

In the United States, the number of accredited business schools offering an insurance or risk management major is dwindling, he noted.

However, the Associate in Risk Management professional designation program offered by the IIA since 1966 has just graduated its 11,000th student, he pointed out.

The program is successful because it is management-centered, not insurance-centered, he said. It also attracts adults, not college-age students.

"Risk management education flourishes more strongly in professional designation programs than on college campuses," he observed.

Risk management education programs should cater to both risk managers and non-risk managers, like business people who require a knowledge of risk management, said John W. Reid, senior lecturer in risk management at Glasgow Polytechnic in Glasgow, Scotland.

Francois Settembrino, risk manager at Tabacofina/Vander Elst S.A. in Edegem, Belgium, and president of the AEAI, the European Assn. of Risk Managers, also stressed the importance of risk management education. He said it should be taught on both a management and an individual level.

Dr. Yehuda Kahane, academic director of the Erhard Insurance Center, Faculty of Management at Tel Aviv University in Israel, noted that "risk management protects the soft underbelly of the organization while it is trying to achieve its true goals." ■

Expansion

Continued from page 29

and convert their efforts to the higher-margin traditional reinsurance marketplace."

What will be left, he stated in a paper on the future of finite risk and financial reinsurance, will be "a few very large players who have directed resources for the long term."

These "players" will be able to demonstrate the financial capability to pay claims under the most adverse circumstances, such as a major catastrophe or after multiple losses over a short period of time, Mr. Gentile said.

"This will require the financial strength which only the largest companies have at this time; i.e., Munich Reinsurance Co., Swiss Re, General Reinsurance Co., Employers Reinsurance Corp. or, alternatively, strategic alliances between the strong players who are not capitalized in the multibillion-dollar range," he said.

Another alternative, he said, could include reinsurers joining forces with "large, healthy commercial banks and large, healthy investment houses."

"In this scenario, I see the two groups providing the elements which each is best able to provide efficiently," said Mr. Gentile. "The reinsurers will provide the marketing, structuring and financial analysis of the ceding entity. The investment bank will provide the financial capacity in the form of access to capital and, perhaps more importantly, access to cash flow."

Alliance between reinsurers and banks are already an important part of the financial reinsurance business, with banks providing the "backbone" of many transactions —securitization using trust funds and letters of credit, he explained. "I believe that these alliances must grow for economic reasons and also for practical reasons."

Mr. Gentile also forecast that the providers of security "will want to become partners in the true sense."

He said that letters of credit transactions will not satisfy the financial appetites of these security providers. And he said that such fees "do not in my view present an adequate return for what they will provide into the future."

Mr. Gentile said the kinds of personnel skills needed for financial reinsurance are highly technical, drawing on the talents of actuaries, reinsurance underwriters, lawyers, accountants, and financial and computer specialists.

"My point is that only the largest and the strongest will survive the flight to quality," he warned.

Mr. Gentile said the future of financial reinsurance is quickly becoming the future of limited risk or finite risk reinsurance.

"The financial engineers are joining forces with the traditional underwriters to create transactions which meet current accounting guidelines and have the flexibility to respond to future authoritative pronouncements both by the National Assn. of Insurance Commissioners and the Financial Accounting Standards Board," he said.

Viable products likely to survive into the future will include:

- Quota-share transactions.

Mr. Gentile said that U.S. insurers will continue to write proportional reinsurance with caps on the ultimate loss of the reinsurer. He described the product as an efficient approach to financing growth and said that typical buyers are strong, expanding insurers that need temporary balance sheet and income statement assistance to achieve further growth.

- Aggregate excess-of-loss contracts written on a prospective basis.

One aim of these transactions is to allow ceding companies to generate income and surplus by using "time value of money" techniques. The mechanics of the product, he said, favor non-U.S. companies that can discount their loss reserves or set up full tax reserves and shelter other income from current taxation.

Other situations appropriate for this product within the United States could be those where "the alternatives are just unacceptable," he said. This could include an insurer that represents significant employment in a state but is suffering severe adverse development from a discontinued book of business.

- Funding covers and other transactions that stabilize results.

Mr. Gentile said the question of whether or not funding covers will pass U.S. accounting and tax scrutiny under current rules is tied to the question of what officially constitutes reinsurance risk transfer.

"Absent clear guidelines, many companies will forgo purchasing (this type of) protection because they just do not feel comfortable that the deal works and that they will get the desired balance sheet and income statement treatment," he said.

"Whether the funding covers are acceptable for tax purposes may be decided by the courts analyzing the traditional and somewhat subjective elements of risk shifting, risk distribution and whether the statutory and Generally Accepted Accounting Principles accounts report the transaction as reinsurance," Mr. Gentile said.

- Mergers and acquisitions.

"The recent limited availability of capital at all levels of financing indicated an opportunity for reinsurance to play a more active role in property and casualty acquisitions," Mr. Gentile said. The life insurance industry in particular had made extensive use of reinsurance products in acquisitions, he said.

But Mr. Gentile went on to warn that both an American Institute of Certified Public Accountants draft on risk transfer and reinsurance and an NAIC draft have, "in fact, changed the types of risks being transferred in all reinsurance contracts" (*BI*, Nov. 4).

"One may view the role of accountants as providing guidance on how particular transactions should be recorded," he said. "In this particular situation, the current draft paper which mandates both the transfer of underwriting and timing risk, has and will continue to change the way reinsurance, as a business, is conducted."

He said the latest AICPA draft analyzes certain types of risks including credit, investment and expense risk and concludes that these are typical of any business transaction and should be ignored in deciding whether a transaction should be accounted for as reinsurance.

The AICPA draft "concludes that the only relevant risks are timing and underwriting and that a transaction must contain elements of both," he said, adding that guidance about what level of risk is considered sufficient generally is not given.

Mr. Gentile said that the focus of the draft is on transactions that are perceived to be an abuse of the lack of existing official guidance and it is clear that transactions which include very small amounts of either type of risk "will get the largest extreme of scrutiny."

But he stressed: "My main concern is that the current draft will be utilized by overzealous and generally uninformed individuals as authority to estop legitimate transactions which should be approved because they comply with industry practice and the accounting literature."

The current draft, he said, "provided for a workable mandate for limited risk transactions" and would probably be adopted with very little change stemming from comment by an industry that he accused of being apathetic on this issue.

General wording of the draft leaves much open for interpretation. This, Mr. Gentile said, could be both its "strongest point and its weakest point."

Gone are the days, he said, when a structured loss portfolio with guaranteed margins would be allowed to produce surplus relief. Gone too, he said, are the days when a pure timing risk cover would receive accountants' approval.

These transactions "do not and will not occur with any frequency among responsible U.S. companies," said Mr. Gentile. ■

Regulators more than fill failed insurers' shoes

By ROGER SCOTTON

HAMILTON, Bermuda—Don't be misled by the "shopworn" maxim that a liquidator stands in the shoes of the insolvent company he is liquidating, an attorney specializing in reinsurance law says.

INTERNATIONAL REINSURANCE CONGRESS

It is "simply not true" that the liquidator stands squarely in the insolvent company's shoes, according to Jonathan Bank, a senior partner with Buchalter Nemer, Field & Younger of Los Angeles.

"As a general matter, the liquidator's shoes are frequently much bigger," Mr. Bank said. "That is, the liquidator is given by both statute and case law far greater power than was originally held by its predecessor, the now-insolvent insurer."

It has been held in some states that liquidation laws are "statutes of enlargement" rather than restriction, Mr. Bank told the Fifth International Reinsurance Congress in Bermuda earlier this month.

Liquidators generally are able to apply for a court order to restrain anyone from commencing or prosecuting any actions against the insolvent insurer or obtaining any preferences, judgments, attachments, liens or other levies against the insurer or its assets, he said.

This protection ensures an orderly, court-supervised proceeding that will resolve the insurer's affairs with the least possible expense, Mr. Bank said.

"This to some extent, makes the liquidator immune from suit, an enviable position," he added.

The right of offsetting an insolvent insurer's mutual debts and credits to produce a net balance is another area in which the liquidator's power exceeds that of the insolvent company.

Normally when the insurance company is an ongoing entity, offsets take place even if debts and credits arise from different contracts or transactions, Mr. Bank said. But statutes in most states now only allow offsets in liquidation "when the debts are mutual."

"The requirement that the debts be mutual has been subsequently interpreted by various courts as having three parts," Mr. Bank said. "First, there must be mutuality of identities; that is, the debts must be owed between the same persons or entities. Second, the debts must be owed contemporaneously. Finally, the persons must owe and be owed the debts in the same legal capacity; e.g., debts owed to a person in his individual capacity may not be offset against debts owed by him in a fiduciary, agency, trustee or partnership capacity."

Another way in which a liquidator's power exceeds that of the insolvent insurer is in the context of a reinsurer's obligation to indemnify a ceding insurer against losses, Mr. Bank explained.

Since reinsurers generally indemnify ceding companies only against "actual loss," they are not contractually required to pay a loss prior to payment by the ceding company. "This creates a Catch-22, since the liquidator cannot pay losses until it collects reinsurance proceeds and reinsurance proceeds cannot be collected until losses are paid."

As a result of case law and amended insolvency clause statutes, "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."

Mr. Bank noted that a liquidator may ultimately pay the policyholder or claimant nothing, or only a small portion of a claim. "To this extent, the liquidator does not stand squarely in the shoes of the insolvent insurer but instead wields a power far greater than the insolvent insurer."

The same cannot be said of reinsurance recoveries by liquidators in Britain.

According to London-based insolvency expert Philip J. Singer, a partner with the accounting firm Cork Gully, "the position in the U.K. is still not clarified to the point of absolute certainty" when it comes to the ability of a liquidator to recover unpaid or partly paid claims in full from reinsurers.

"It has long been established that a liquidator may recover in full from quota-share reinsurers," he said. "However, there is still some residual uncertainty with excess-of-loss contracts where there is an ultimate net loss clause in terms that the term 'ultimate net loss' shall mean the sum actually paid by the reinsured in settlement of losses or liabilities. Some reinsurers have sought to argue that, where this wording appears, they are only obliged to meet a reduced claim."

Mr. Singer said that these reinsurers appear to forget that they have received 100% of the premium to take on 100% of the risk, "and in adopting their view, they seek to unjustly enrich themselves."

"If their argument were ever to succeed, and frankly it appears to have little merit in terms of equity, then the danger must be that the Department of Trade and Industry will amend the U.K. regulations so as to prohibit the allowance of credit for reinsurance in determining liabilities," Mr. Singer said.

Meanwhile, Mr. Bank said that an additional "major weapon in liquidators' not so insubstantial arsenal" in the United States may emerge from a recent California Superior Court ruling that reinsurers could not rescind reinsurance agreements made with Mission Insurance Co. (*BI*, July 8).

"The reinsurers' participation in a pool continued profitably for many years and it was not until Mission approached financial difficulty that the reinsurers repudiated their reinsurance obligations," Mr. Bank said. "Under these circumstances, the court held that the reinsurers may not rely on asserted misrepresentations and claim fraud as a defense to the enforcement of the reinsurance agreements.

"If allowed, that would in effect have given the reinsurers a preference in liquidation proceedings," he said.

But Mr. Bank warned that there are areas in which "a liquidator's shoes appear to shrink" and he or she has fewer powers than the company being liquidated. These areas include:

- Investments.

Some states strictly regulate the manner in which a liquidator may invest funds collected as part of the liquidation process. Instead of being

Continued on next page

INTERNATIONAL

State regulation imperfect, but reparable

By ROGER SCOTTON

HAMILTON, Bermuda—Congressional investigations over the last several years have revealed no significant defects in the state regulatory framework that cannot be remedied by the states, according to a U.S. insurance regulator.

5th INTERNATIONAL REINSURANCE CONGRESS

The current state-based regulatory system is not perfect, but some of the strongest evidence of its soundness can be found in congressional proposals to usurp state authority, said Robin K. Campaniano, Hawaii's commissioner of insurance and secretary of the National Assn. of Insurance Commissioners.

"In both the Senate and the House, the leading proposals to establish a major federal role in insurance regulation both draw heavily from the tried and tested practices and procedure of the NAIC and state regulators," Mr. Campaniano told attendees at the Fifth International Reinsurance Congress in Bermuda.

"In fact, with rare exception, both proposals simply replicate key features of the NAIC's solvency agenda, such as an accreditation program for the states, an insurance fraud proposal, a move to risk-based capital requirements and closer oversight of the operations of non-U.S. insurers," he said (*BI*, June 17; Jan. 14).

In a conference paper on the future of insurance regulation, Mr. Campaniano said that as the discussion of state vs. federal regulation proceeds, the "irrationality" of trading a thoroughly tested, successful system of regulation for any of a number of untried, speculative approaches will become apparent.

Pointing to a two-tiered regulatory system proposed by the Insurance Solvency Coalition, which recommends exempting large commercial liability insurers from federal regulation on the grounds that their customers are sufficiently sophisticated to not need protection (*BI*, May 6), Mr. Campaniano said, "this proposal could be placed in a dictionary under 'special-interest legislation.' "

The regulator argued that dramatic improvements in solvency regulation by the states over the past decade are "testament that the states not only have the authority, but they also have the will to improve the quality of insurance solvency regulation."

The NAIC is considering proposals to set up a "formal mechanism" to coordinate how state regulators would trigger guaranty fund payments, he said.

The NAIC also is developing risk-based capital requirements for insurers, he said.

"Historically, the amount of capital and surplus required to start an insurance company has been a fixed amount that was seldom tied to the risk faced by the company, both on the asset and liability sides of the balance sheet," he said, adding that this approach is no longer appropriate because of the complexity of today's investment environment.

He said two NAIC working groups are developing formulas for basing capital and surplus requirements on an insurer's balance sheet risks. "We expect to see a draft of this proposal in late 1991 or early 1992 and are targeting adoption of the proposal for sometime later next year."

Turning to the problem of unlicensed insurers and reinsurers, Mr. Campaniano described the regulation of offshore entities as potentially "quite stressful."

The point was taken up by Edmond F. Rondepierre, senior vp and general counsel of Stamford, Conn.-based General Reinsurance Corp., when he said: "It is not feasible for each state regulator to assess the laws and regulations of every possible domicile or to assess the financial condition of the unlicensed reinsurer."

Nor is it feasible, he said, for the NAIC or the federal government to make that assessment. "More importantly, it is not feasible for the managements of ceding companies or their brokers to make that assessment, either."

Against this background, should licensed insurers be "prohibited from ceding or retroceding to unlicensed aliens, thereby foreclosing access to a large proportion of world capacity?" Mr. Rondepierre asked rhetorically.

"I think not," he said, adding that the NAIC reached the correct conclusion in 1950: that credit for reinsurance should be based on the actual security and collectibility of reinsurance.

Concern for insurer solvency extends outside the United States, Mr. Campaniano said, noting that he is "often struck by the commonality of interest and issues" he shares with his counterparts overseas.

A proposal to achieve greater and more effective cooperation among the world's insurance authorities is likely to come about next year with the creation of the Assn. of International Insurance Supervisors, he said.

This recommendation came from a working group of the International Conference of Regulatory Officials, comprising regulators from the Bahamas, Singapore, Australia, Belgium and Illinois, he said. "I believe this is a well-timed and much-needed proposal," he said, adding that it has the NAIC's full support.

This international body would promote "liaison and cooperation among insurance supervisory authorities throughout the world to ensure a better regulation of the insurance industries, on the domestic as well as on the international level, in order to maintain fair, efficient and orderly markets," he explained.

The group also would allow for the exchange of information in order to develop domestic markets and protect policyholders, he said.

With the European Community moving toward unification, the United States heading toward uniformity, Japan—the largest jurisdiction in terms of written premium—revising its insurance laws and the Assn. of South East Asian nations stepping up its regulatory collaboration, regulators are increasingly feeling the pressure of globalization.

But for Mr. Rondepierre, the regulatory focus was closer to home.

"As is evident from its present activity, the NAIC will react to every criticism and every perceived shortcoming in the regulatory system by developing a new model law, a new model regulation, a new accounting rule or a new standard," he said.

Regardless of whether Congress finally acts or not, virtually every remedial measure proposed by Washington has produced action within the NAIC, Mr. Rondepierre said.

Yet, Mr. Rondepierre cautioned that the perceived shortcomings of the U.S. regulatory system should not be ignored or left unchallenged when known to be false. Referring to a report by the House Oversight and Investigations Subcommittee, chaired by Rep. John D. Dingell, D-Mich., which described reinsurance as a "black hole," he said: "Lawmakers and rulemakers can only act on their perceptions of a subject. If those perceptions are erroneous, the reforms will be misdirected. . . .It behooves us, as the subject of the exercise, to correct false or erroneous perceptions. The perception that reinsurance companies are unregulated is false."

Federal intervention in insurance regulation has caused more problems than it has solved, Mr. Campaniano said. The Employee Retirement Income Security Act of 1974 has created unfortunate consequences for the states that must now decide whether multiple employer welfare arrangements are exempt from state insurance laws, he said. Also, federal laws authorizing risk retention and purchasing groups have brought about "unfortunate results" for state regulators.

But he observed that, whatever the course of future regulation, those responsible for mapping it out would do well to remember that the role of the insurance regulator is limited.

"We do not govern the operation of the industry," he said. "That is the function of the market. Our role is to ensure that the market operates in such a way that the consumer is served and protected." ■

Liquidators

Continued from previous page

able to select investments that will produce a reasonable rate of return, "the liquidator is generally given no discretion," he said.

Citing New York as an example, Mr. Bank said that funds may only be deposited in state or national banks, savings banks, or trust companies: "institutions that may produce a modest rate of return."

- Letters of credit.

Liquidators in some circumstances may not be able to rely on the wording of a reinsurance agreement to demand the posting of a new letter of credit or seek an increase in the amount of an existing letter of credit, Mr. Bank said. Such a situation may arise when reinsurers claim that financial statement credit is no longer an issue since the company is being liquidated.

"Although the intent is arguably clear—to secure outstanding balances—and the liquidator is in as much need, if not more, of security than his predecessors, the triggering device under the reinsurance agreement may be deemed inapplicable," he said.

However, situations where liquidators' powers are not greater than the insolvent company's "are more the exception than the rule," Mr. Bank said. ■

INTERNATIONAL

European cleanup law mirrors Superfund

By ROGER SCOTTON

HAMILTON, Bermuda—Europe is seeing the beginnings of an environmental liability crisis potentially on a scale equivalent to that now faced in the United States.

5 INTERNATIONAL REINSURANCE CONGRESS

European environmental cleanup law is preparing to move "away from a regime of fault liability toward strict liability similar to the American Superfund legislation," says Klaus-Heinz Kunze, general counsel and senior vp for claims with Hannover/Eisen & Stahl Reinsurance Co. in Hannover, Germany.

Environmental issues in Europe have assumed a political importance that would have seemed incredible 20 years ago, Mr. Kunze told the Fifth International Reinsurance Congress in Bermuda earlier this month.

European authorities are increasingly aware of problems associated with leaded gasoline, acid rain, pesticide residues, the Chernobyl nuclear disaster, the ozone layer and the storage of hazardous materials, including radioactive waste, he said.

"This growing political awareness has shown itself in the most tangible way possible: in the sheer amount of legislation which has emerged in Germany and the rest of Europe in recent years," he said.

"Thousands of contaminated sites have already been identified within the European Community, although only a limited number of European states have actually introduced cleanup programs," Mr. Kunze said. "The seeds of liability problems (similar to) those facing the U.S. industry are clearly present."

And he warned that as more studies raise more questions about the safety of products and processes, "the growing body of E.C. law will expose companies to potentially crippling environmental costs."

Environmental protection is by no means a new issue within the European Community; it has adopted more than 100 pieces of environmental legislation since 1973. But the 1992 single European market has pushed environmental concerns to the forefront, Mr. Kunze said. The European Community is committed to integrating "environmental considerations into all areas of E.C. economic policy" while allowing member states to adopt more stringent legislation, he explained.

"Another important development is a proposal for an (E.C.) directive on civil liability for damage caused by waste. This directive is the logical extension of the polluter-pays principle in the field of industrial waste and is set to become law before 1993," Mr. Kunze said.

"It will be introduced into the various E.C. national liability laws, similar in many aspects to those imposed by the E.C. directive on product liability. The draft directive will move E.C. law away from a regime of fault liability toward strict liability similar to the American Superfund legislation. It will make producers of waste strictly liable for damage to the environment."

In reviewing future claims issues posing a serious threat to reinsurers in Europe, Mr. Kunze said that because E.C. cleanup funds are in short supply, "recovery will be sought from the deep pockets of banks, insurance companies and other major lenders."

Estimated costs of cleaning up inactive E.C. waste dump sites alone could reach $750 billion, or 25% of the E.C. gross national product, he said.

Although the speed of change brought by the single European market will vary by country and by line of business, more European insurer mergers are anticipated, leading to increased competition and lower premium rates, he said.

"Larger insurance companies need less reinsurance capacity; they direct their reinsurance needs to only a few professional reinsurers with first-class security," Mr. Kunze said.

"These players are restructuring through mergers and acquisitions and continuously expanding in the new (E.C.) internal market. Consequently, competition will increase and premiums will fall. Hence, reinsurers have to concentrate their efforts on activities with substantial added value."

Recommending a clear understanding of European environmental legislation as essential for all corporations that intend to compete within the single European market, Mr. Kunze said the reinsurers' "survival kit" should also include "in-depth insurance expertise, sophisticated rating instruments, a global network and greater profit orientation." ■

U.K. Club requires earlier ship checkup

LONDON

LONDON—The U.K. Protection & Indemnity Club, the largest insurer of shipowners' liabilities in the world, in now requiring that ships be surveyed at an earlier age based on a study of more than 900 major losses over four years.

The U.K. Club, which insures more than one-fifth of the world's seagoing vessels, concluded that the timing of classification societies' surveys is largely to blame for the failure to detect structural problems in ships that later were involved in losses.

The study shows that ships between 12 and 15 years old years are far more vulnerable than any other group to structural failure. About 38% of the structural failure claims analyzed by the U.K. Club occurred on ships in this age bracket.

A "significant proportion of claims resulting from structural defects could be avoided" if ships' third classification survey took place when they are 12 years old "as originally intended," the study found. Instead, many ships' third surveys are commonly conducted at 15 years.

The U.K. Club also said it would "look closely" at the claims record of ships that had changed ownership or management several times.

As a result of the study, the U.K. Club has decided to undertake its own surveys. These are distinct from the surveys carried out by the classification societies and were formerly carried out only on vessels more than 15 years old that sought to join the club. Now any vessel older than 10 years will be surveyed by the club before it joins.

The U.K. Club's 42-page report examines the reasons for what it calls an "unprecedented increase in the value of claims from the 1987 policy year onwards" through 1990. The study notes that this deteriorating claims experience also has afflicted all major P&I clubs.

In fact, both the U.K. Club and the Standard Steam Ship Owners P&I Assn. (Bermuda) are seeking rate increases for February renewals, due to the rise in claims (*BI*, Nov. 11).

Each of the 918 claims analyzed in the study exceeded $100,000, and the gross claims value was $543 million. The U.K. Club fully paid 90% of the 918 claims without any reinsurance.

The U.K. Club already has increased the number of ship visits performed by its manager's London agents, Thomas Miller P&I. The aim is to visit at least one ship belonging to each member of the U.K. Club over a two-year period.

The program began in March 1990. Five full-time inspectors have now visited more than 400 ships around the world, representing more than half of the U.K. Club's member fleets.

In July, the directors of the club decided to correlate ship visits more closely with the initial findings of its claims study: Vessels revealed by the claims study to be particularly at risk will be visited more often.

The club's study also found that human error was a "material factor" in 58% of the claims analyzed. Poor crew training and undermanning were identified as major causes of these losses. The U.K. Club concluded that "any serious attempt at loss prevention must include a commitment to higher standards of crew training."

It has accordingly been urging its members to appoint senior loss prevention officers, as well as to run safety audits and award bonuses to employees with outstanding safety records.

—*By William Pitt*

Royal in stock talks

Royal Insurance Holdings P.L.C. may receive a 300 million pound ($531.9 million at the current exchange rate) capital injection from two European insurers to bolster its balance sheet after posting its worst nine-month results ever.

Royal said that talks now under way may result in a deal in which the two companies would buy stock that would be convertible "into approximately 15% of Royal Insurance's enlarged share capital." Royal, which already has ties with both companies—AMB Aachener und Munchener Beteiligungs-Aktiengesellschaft of Aachener, Germany, and Fondiaria S.p.A. of Florence, Italy—would not release further details.

But Chris Pountain, an executive director and analyst with Morgan Stanley International in London, said the deal would raise about 300 million pounds ($536.7 million).

Royal earlier this month reported a record 214 million pound ($379.4 million) pretax loss for the first nine months of the year. For all of 1990, Royal reported a 187 million pound ($360.9 million) loss.

Claims on mortgage indemnity policies, which protect lenders against defaults, accounted for 80% of its 1991 losses to date, or 173 million pounds ($306.7 million), according to Royal. Mortgage defaults have risen sharply during the current British recession.

Analysts say Royal wants the capital injection to boost its 35% solvency ratio—the ratio of net assets to non-life premium volume.

AMB already owns 0.61% of Royal, while Royal holds an 18.8% stake in AMB. Rumors are rife among German analysts that Royal is seeking to sell that stake, possibly to Fondiaria, Mr. Pountain said. "AMB is not a core investment for Royal and (Royal) needs the money," he said.

Royal also has links with Fondiaria. Last year Royal purchased 90% of Lloyd Italico Assicurazioni S.p.A. from the Italian holding company, which retained the remainder of the company.

Royal's efforts earlier this year to sell its U.S. reinsurance unit to General Re Corp. fell through when Royal and Gen Re could not agree on a price (*BI*, April 22).

—*By Gavin Souter*

Lloyd's Council election

Valerie Robinson, who operates the Assn. of Lloyd's Members' help line for members facing huge losses, received the highest number of votes in the Council of Lloyd's election earlier this month.

Ms. Robinson, along with member of Parliament Peter Viggers, will join the council next year, replacing Sir Mark Farrer, who is chairman of the ALM, and Sir Nicholas Bonsor, who is a member of Parliament. Both of the seats are reserved for Lloyd's members who do not work in the market.

Working members Philip Wroughton, chairman and chief executive of C.T. Bowring & Co. Ltd., and Lloyd's underwriter Richard Hazell will also join the council, replacing Michael Wade, chairman of broker Holman Wade, Ltd., and former Lloyd's Chairman Murray Lawrence. Lloyd's Chairman David Coleridge, who will remain chairman next year, also was re-elected to the council.

—*By Stacy Shapiro*

Syndicate review

Lloyd's of London has established an independent loss review panel to investigate underwriting losses made on the 1983 year of two stop-loss syndicates.

Syndicates 134 and 184, both in runoff, were managed by Mackinnon, Hayter & Co. Ltd. and are now managed by PSL Services Ltd. The syndicates, which incurred losses in their 1983 accounts, ceased underwriting in 1989.

Syndicate 134 had 1983 capacity of 1.12 million pounds ($2 million at current exchange rates) and incurred a loss of 11.3 million ($20.3 million). Syndicate 184 had 1983 capacity of 1.08 million pounds ($1.9 million) and suffered a loss of 10.2 million ($18.3 million).

Independent loss reviews are triggered under Lloyd's Loss Review Bylaw passed earlier this year. These reviews can be made if a syndicate's losses exceed 100% of its capacity in a given year.

Both syndicates have made calls on members for the 1983 losses. At the end of 1990, members of syndicate 134 had paid 6.6 million pounds ($12.7 million at year-end 1990 exchange rate) while members of syndicate 184 had paid 5.5 million ($10.6 million).

Colin Mackinnon was the underwriter for both syndicates.

The members of the loss review panel are: Michael Lickiss, senior partner of accountant Grant Thornton; Robin Wilshaw, a director of R.J. Kiln & Co. Ltd.; and Frank Guaschi, a partner at Bacon & Woodrow, an actuarial firm.

—*By Gavin Souter*

Legal malpractice

Continued from page 3
of a contract.

"The Supreme Court in this decision is equating legal practice to any other business, which is completely contrary to their own code," said John J. Lowrey, a partner with Lowrey & Smerz in Chicago. He filed an amicus curiae brief supporting the plaintiff on behalf of the Illinois Trial Lawyers Assn.

In its ruling the court said "the practice of law is more akin to going to an architect than to a doctor," said Duane D. Young, the Springfield lawyer who represented the plaintiff.

The Supreme Court ruling is not applicable to most medical malpractice cases because those cases commonly involve personal injury.

The court did leave the door open for some legal malpractice suits to be filed under a tort theory of negligence rather than contract law. A plaintiff can seek tort remedies against an attorney if the "attorney-defendants owed some extracontractual duty to the injured party," like a beneficiary of a will, "who did not have the bargained-for protection of a contractual agreement with the defendant."

In *Collins vs. Reynard*, Dorothy J. Collins sought damages for what she said was the botched handling of the sale of a tavern that had belonged to her dead husband.

According to court documents, Ms. Collins' lawyer, Charles Reynard, and the firm he was with at the time, Reynard & Robb, approved a sales contract that failed to retain a "first and prior security interest" in the assets, as she wanted.

When the purchaser defaulted, Ms. Collins sought to reclaim the business and sell it to another party. However, she was unable to do so because the purchaser had pledged the business' assets to a bank that had obtained a security interest that was superior to Ms. Collins' interest.

As a result, Ms. Collins claimed damages of the amount due her under the sales contract, $47,971.35, as well as interest, the cost of collection and legal fees.

Ms. Collins did not have a written contract with Mr. Reynard.

In affirming a lower court ruling, the Supreme Court dismissed her tort claims. However, two breach of contract claims—alleging breach of employment against Mr. Reynard and his firm—are still pending in Sangamon County Circuit Court in Springfield.

The decision surprised many observers who, regardless on which side of this legal issue they stand, said it is a clear break from tradition.

"From a macro standpoint, the impact of this decision is scary and astonishing. This is going to kill legal malpractice. It insulates lawyers," said Mr. Young, a partner with Heckenkamp, Simhauser & LaBarre.

"It's unconscionable," insisted Mr. Lowrey, who filed the trial lawyers' brief in this case. "Lawyers should be compelled to pay for their mistakes."

Other attorneys say that Ms. Collins has not been denied recompense, though many concede that she—and others in a similar position—must now follow a much narrower path.

"What the court is saying is, where there is no personal injury or damage to property, the tort rules don't apply," said Roy O. Gulley, the defense attorney who argued the case before the Supreme Court. Mr. Gulley is of counsel to Heyl, Royster, Voelker & Allen in Springfield. However, "there's no reason people can't receive 'economic damages' from a lawyer (through) a breach-of-contract (argument)," he said.

"As a general proposition (this ruling) is going to narrow the scope of recoverable damages against an attorney," noted George Spellmire, the Hinshaw & Culbertson partner who heads the Chicago firm's professional liability department. "It did not eliminate her right to recover."

As Donald Hilliker, a partner with Pope & John in Chicago, explained, legal malpractice rulings will become more fact-specific and will be "determined by what the parties had in mind at the time of the contract."

Complicating this is the fact that "most people don't have contracts with their attorneys" that expressly spell out duties for the lawyer, pointed out Michael Kos, a legal loss control consultant for CNA Financial Corp. in Chicago.

After the Collins ruling, Illinois courts could follow either of two paths. They could, Mr. Kos said, find implied contracts—which are based on what lawyers can reasonably be expected to do—and, as a result, may rule in favor of the plaintiff.

Or courts "could be very restrictive," refusing to award damages unless a contract specified tasks to be performed, Ms. Kos said.

According to Mr. Spellmire, a client bringing a breach of contract action against an attorney is likely to argue that the attorney failed to live up to his general professional duties.

"The defense will resist that concept," arguing that the client cannot recover damages unless the lawyer has made a warranty of a specific result or completion of a specific task, Mr. Spellmire noted.

Yet there are "quite a number of important situations where a lawyer enters into a contract to perform certain services," said Robert O'Malley, the vice chairman and loss prevention counsel of the Attorneys Liability Assurance Society, a legal malpractice insurance captive in Illinois that writes coverage for a group of large law firms. When such specific agreements exist, this decision would not restrict clients' right to recover, he said.

Regardless of what type of contract exists, Mr. Lowery is concerned that "if the courts follow the traditional concept of contract law, the most (Ms. Collins) could get back is her fee."

If courts allowed the client to recover just the benefit of the bargain, in this case legal fees, courts "wouldn't hold the lawyer responsible for what happened. . .(Ms. Collins) could never be made whole with this law," he argued. "That's why people apply (the legal argument of) negligence."

Mr. Hilliker of Pope & John disagrees. Depending upon the nature of the contract and the court's interpretation, clients can recover "economic damage," he said. All the Collins ruling appears to eliminate is the potential to recover for property damage or personal injury claims like pain and suffering, he said.

But even that line of reasoning does little to placate those who disagree with this ruling.

In his dissent, Justice Miller wrote "prospective clients would be well-advised after today's decision to obtain counsel before they retain counsel: to seek out independent legal advice to vet the expressed or implied contractual terms that will now exclusively govern, if not all malpractice actions against attorneys, at least those in which the underlying representation relates to what is deemed an economic loss."

While the decision may give lawyers some protection against malpractice suits, it also takes away one argument they can use when trying to reduce damages, some lawyers say.

"As (*Collins vs. Reynard*) was decided, it's an all-or-nothing proposition," Mr. Spellmire said. Either the lawyer breached the contract and is liable for all "economic damages" arising from the contract, or the lawyer did not breach the contract, in which case he is liable for nothing.

Mr. Spellmire's assertion is based on the fact that because the court removed most legal malpractice cases from tort law, lawyers have lost one of their defenses: comparative fault.

"The concept of comparative fault in the classic negligence case is that a jury weighs the fault of the defense against the fault of the plaintiff," Mr. Spellmire said. Then, the jury draws on its assessment of fault to reduce the amount awarded to the plaintiff by an amount commensurate with the plaintiff's own contribution.

Comparative fault "has no application in contract law," Mr. Spellmire said. Thus the defendant has no way to mitigate the damages assessed against him.

In addition, Justice Miller noted in his dissent that other remedies like contribution—the right to demand that another party jointly responsible for an injury contribute to the compensation—will no longer be available to defendants.

As a result of this and other factors, Mr. Spellmire said that, if he were advising legal malpractice insurers, he would inform them that risks have been reduced as a result of this ruling.

"We are reviewing (the decision) and we haven't really come to any conclusions at this time," said David Taylor, executive vp of the Illinois State Bar Assn.'s Insurance Risk Retention Group Inc.

"It's fairly impossible to tell what kind of impact this is going to have. There is certainly a lot of controversy," he added.

Mr. Hilliker said this decision both reduces lawyers' exposure, by barring tort suits for damages like injury to reputation and inconvenience, and enhances it, by limiting their ability to reduce damages.

"I don't think the exposure of attorneys is going to change substantially with this decision," said Michael J. Gill, a partner with Mayer, Brown & Platt of Chicago, adding the sole exception could be in the realm of punitive damages. "I don't think you can have a good claim for punitive damages" in contract law.

But Mr. Gulley, the defense attorney in the case, said the decision "may have some implications on the way writers of E&O policies write those policies," though he would not comment specifically on what changes might be made.

One fact all observers agreed upon is this ruling is an isolated one.

"This is the only state I know of that has this interpretation of the law," Mr. Lowrey said. "I hope other states don't follow it."

Mr. Young, who represented Ms. Collins, remarked that if his petition for a rehearing is denied or is unsuccessful, the issue will have reached its end in the judicial arena. However, the Illinois Legislature could take up the matter.

"I don't see how the public is going to put up with it for long," he said.

Dorothy J. Collins vs. Charles Reynard, et al, Illinois Supreme Court; No. 70325.

Louisiana commissioner pledges overhaul

BATON ROUGE, La.—Newly elected Louisiana Insurance Commissioner Jim Brown, a former secretary of state, plans to overhaul the state's Insurance Department.

Mr. Brown, a Democrat, captured 60% of the vote in the Nov. 16 election against Republican challenger Peggy Wilson, a member of the New Orleans City Council. The two were vying for the post after finishing as the two top vote getters in the state's October primary (*BI*, Oct. 28).

The newly elected commissioner will replace Acting Commissioner Darrell Cobb, who took office after Commissioner Doug Green was sentenced to a 25-year prison term in connection with his regulation of now-insolvent Champion Insurance Co. (*BI*, July 1, March 18).

Mr. Cobb's future with the department has not been determined.

Mr. Brown campaigned as an experienced and efficient administrator. The Baton Rouge attorney, who hosts a cable television talk show, has served as secretary of state. His 1987 gubernatorial bid failed.

Ms. Wilson, an outspoken member of the New Orleans council, focused on her intentions to "clean up" the Insurance Department. In addition, Mr. Brown published a 70-page plan that calls for a reorganization of the department.

The plan promises a stricter regulatory environment to prevent insurance fraud and proposes creation of an insurance fraud division within the Insurance Department. "The creation of such a department would send a strong message: Only legitimate companies will be allowed to operate in Louisiana during the years to come."

Most recently, Carlos Miro has been charged with mail fraud and money laundering in connection with his operation of now-defunct Anglo-American Insurance Co. of Louisiana. He was arrested in Spain this year (*BI*, Sept. 30).

The document also calls for, among other things, abolishing the insurance rating commission, which is staffed by appointees of the governor. Mr. Brown believes the Insurance Department should have that authority.

"Rates should be based on actuarially sound numbers, a complete computer evaluation and the evaluation of a sound professional staff—not the recommendations of political appointees," he wrote.

Mr. Brown also says in the document that he will call for certification of insurers' loss reserves and assemble a team to determine what the department needs to accomplish in order to become accredited by the National Assn. of Insurance Commissioners.

Although elected officials are not scheduled to take office until Jan. 13, there is speculation that Mr. Brown will assume his position before that date, said an Insurance Department spokesman.

Mr. Brown and Mr. Cobb have discussed whether the commissioner-elect will take office early, the spokesman said.

—By Michael Bradford

Around the states

Comp rate hike OK'd

FRANKFORT, Ky.—Kentucky Insurance Commissioner Elizabeth Wright has approved a 26.5% increase in workers compensation rates, effective Nov. 4.

The board of governors for the Kentucky Workers Compensation Insurance Plan, the state's assigned risk plan, originally considered a 43.2% average rate increase based on estimates from outside consultants. The plan initiates the rate requests along with the National Council on Compensation Insurance.

However, the plan decided to seek the 26.5% increase recommended by an actuary hired by the Insurance Department. The actuary said a 25% increase was the "bare-bones minimum" needed to keep the assigned risk plan afloat.

The NCCI, which serves as administrator for the assigned risk plan, maintains that the approved increase will grant "immediate, but only interim relief" for workers compensation insurers.

Kentucky workers comp insurers have been hit by residual market underwriting losses exceeding $300 million over the past five years, said an NCCI spokesman. The most recent assigned risk plan rate increase in Kentucky was 10% in January 1989, he added.

However, if the assigned risk plan experiences large underwriting losses before the next scheduled rate filing, the Board of Governors may request that the Insurance Department reassess rates, the NCCI spokesman said.

—By Laura Mazzuca

Comp rate hike sought

NASHVILLE, Tenn.—The National Council on Compensation Insurance is seeking a 25% increase in workers compensation rates in Tennessee beginning Jan. 1.

Tennessee Gov. Ned McWherter earlier this year signed a 13.1% workers comp rate increase.

The NCCI has asked the Tennessee Department of Insurance for the additional increase because of huge losses sustained by workers comp underwriters in the state, said Ken Kennamer, director of government, consumer and industry affairs for Boca Raton, Fla.-based NCCI.

Insurers sustained $556 million of workers comp losses in Tennessee in 1990, Mr. Kennamer said. "This means that for every dollar of workers compensation premium written in 1990, insurers incurred claims costs and expenses of $1.22," Mr. Kennamer said.

Nationwide, the average combined claim costs and expenses for every dollar of workers comp premium written is $1.18, he said.

According to NCCI statistics, total claim costs in Tennessee have grown substantially faster than premiums in recent years. For example, the average claim was $7,432 in 1988, up 135% from $3,169 in 1983, Mr. Kennamer said. And, average medical claims over the same period increased 130% to $1,328 from $577, he said.

There is no question that Tennessee "is on the brink of a crisis," said Sue Ann Head, director of workers compensation at the Tennessee Insurance Department.

"We are seeing insurance companies leave the voluntary market, which is putting a lot of good risks in the assigned risk plan. The plan was created for use as a last resort, but for many risks, it's becoming a first resort," she said.

Mr. Kennamer concurred that the state's assigned risk plan is under a heavy strain.

The assigned risk plan "is by far the largest provider of workers comp in the state of Tennessee," which is an indicator of a troubled workers comp market, he said.

—By Christine Woolsey

Oklahoma regulator

OKLAHOMA CITY—Oklahoma Insurance Commissioner Cathy Weatherford was sworn in last month.

Ms. Weatherford, 36, is a former assistant insurance commissioner.

She will serve the three years remaining in Gerald Grimes' term. Mr. Grimes resigned Sept. 30 to become general manager of the Oklahoma Farmers Union Mutual Insurance Co. in Oklahoma City.

Gov. David Walters said he appointed Ms. Weatherford because she is an experienced advocate of consumer interests.

She worked as Gov. Walters' executive assistant for the past nine months.

Prior to that, she worked 14 years in the state Insurance Department, including five years as assistant commissioner.

Ms. Weatherford has completed her course work for a bachelor's degree in political science at the University of Central Oklahoma in Edmond, after previously attending both Oklahoma State University in Stillwater and Northeastern Oklahoma A&M College in Miami.

—By Meg Fletcher

Pension rules

Continued from page 3

needed time," said Harry Conaway, a principal in the Washington, D.C., office of benefit consultant William M. Mercer Inc.

With another 15 months to review and analyze the regulations, employers should have enough time to make decisions regarding the design of their pension plans, agreed Heidi Rackley, a managing consultant in the Princeton, N.J., office of A. Foster Higgins & Co. Inc.

Benefit experts say it is no accident that the IRS decided to give employers more time, noting that pressure was building from employers and from Capitol Hill for a delay of the non-discrimination rules.

For example, earlier this month Sens. Lloyd Bentsen, D-Texas, and David Pryor, D-Ark., wrote Treasury Secretary Nicholas Brady urging a delay in the rules, while several benefit and business trade groups pressed IRS Commissioner Fred Goldberg for a delay.

"The IRS notice was a recognition that the service had to do something to placate the delay movement," said Allen Steinberg, a consultant with Hewitt Associates in Lincolnshire, Ill.

Some benefit groups, though, remain unsatisfied.

"What the IRS has done is not enough. We continue to believe that delay is imperative," said Howard Weizmann, executive director of the Assn. of Private Pension & Welfare Plans in Washington, D.C.

Some benefit experts are concerned that the IRS notice is not as far-reaching as it appears.

They say, for example, that it isn't clear whether an employer that already amended its plan before the IRS published its non-discrimination rules, and now wants to amend its plan again, would be able to make a retroactive change.

Under one interpretation, benefit experts say the IRS notice may only be available to employers that adopted an IRS relief procedure—published in late 1988—in which employers essentially could hold off on making permanent changes to their pension plans until the final non-discrimination rules were published (*BI*, Dec. 19, 1988).

"There are ambiguities that scream for clarification," said Seth Tievsky, a principal with Ernst & Young in Washington, D.C.

Other experts expect clarification shortly and that the relief will be available to virtually all employers.

"We expect more clarification shortly. The intent is to extend the relief to include virtually all plans. The IRS and Treasury are committed to a good-faith effort to resolve ambiguities," said Frank McArdle, a consultant in the Washington, D.C., office of Hewitt Associates.

While the IRS notice gives employers more time to decide how to comply with the non-discrimination rules, the rules—and all their complexity in detailing how to run non-discrimination tests—remain.

"The rules are a nightmare. It is like lifting the hood of a sports car and seeing a maze of exposed wires," said the APPWP's Mr. Weizmann.

Employers do have alternatives to mastering the non-discrimination rules and running the various tests. They could design a plan to fit in one of several safe harbors offered by the rules. Such plans automatically would be considered non-discriminatory, according to experts.

But employers choosing to go the safe harbor route may not be able to design a plan that would best meet company and employee needs, says Hewitt Associates' Mr. Steinberg.

"You get administrative simplicity at the loss of creativity," said Wyatt's Mr. Brown. ■

Canadian court rejects Lloyds' members' suit

LONDON—Canadian members of Lloyd's of London are appealing last week's decision by a Canadian court that England is the proper jurisdiction for their litigation seeking to void their membership agreements with Lloyd's.

The 70 Canadian members, who face heavy losses, charge that they joined the market following fraudulent misrepresentations by Lloyd's.

But, Ontario Court Justice McKeown ruled that the Canadian members signed agreements with Lloyd's that say they will recognize English courts and English law in such disputes. "Such clauses are intended to prevent preliminary disputes of the type before me, for there is international unanimity that this fosters certainty in international contract law," he said.

However, the judge enjoined four Canadian banks from paying letters of credit to cover the Lloyd's losses of 44 of the 70 members until their dispute is settled. That decision is expected to be appealed.

The judge said that members must seek injunctions in British courts to stop three other Canadian banks that used British intermediaries from paying their losses.

"We are pleased that the judge in this case has upheld our points on proper jurisdiction for disputes between names and Lloyd's or their agents," said Lloyd's Chairman David Coleridge.

Members' attorney Alan Lenszner, a partner with McCarthy Tetrault in Toronto, said he was happy that the court granted injunctions against at least four of the banks from paying Lloyd's losses.

A similar suit by a U.S. Lloyd's member was dismissed by a federal judge in Denver, who said English courts were the proper jurisdiction for the dispute (*BI*, Sept. 9). The decision is being appealed.

Another suit by a group of U.S. members that makes similar allegations and also charges the Council of Lloyd's, syndicates and members and managing agents with securities and racketeering law violations has been filed in federal court in New York (*BI*, Oct. 28).

—By Stacy Shapiro

Ill study blasts rate suppression

NEW YORK—Recent insurer insolvencies have been caused in part by regulatory actions that suppress insurance rates, says a report commissioned by the insurer-supported Insurance Information Institute.

Regulatory rate suppression—which holds premiums below levels that would exist in a competitive market—cost the insurance industry more than $9.6 billion between 1987 and 1989, says the study by Orin S. Kramer, president of Kramer Associates of Princeton, N.J., a financial services industry consultant.

Several insurers that became insolvent in the late 1980s wrote disproportionately large amounts of business in the private auto and workers compensation lines, where rates are suppressed by regulators, the study points out.

"If the rate regulatory environment does not change, we would expect rate suppression to be implicated more often as a factor contributing to insolvencies in years to come," the report states.

The report singles out workers compensation as the line of coverage for which rates are most often suppressed. Workers compensation accounted for $7.3 billion of the $9.6 billion in earnings lost by property/casualty insurers from 1987 to 1989 because of rate suppression, the study notes.

Citing the decline in the insurance industry's operating profits over the last few years, Mr. Kramer observed that "the greatest losses by far were in rate suppression states, and it was those losses that made the overall economic picture so bleak."

In addition, workers compensation insurers lost 12.6 cents per $1 of premium from 1987 to 1989 in states where rates were suppressed, compared with a gain of 4.3 cents per premium dollar in states where workers comp rates were not suppressed.

—By Lori Block

Legislator pleads guilty

SACRAMENTO—California state Sen. Alan E. Robbins, chairman of the Senate Insurance, Claims and Corporations Committee, resigned from the Senate last week after pleading guilty to federal racketeering, bribery and extortion charges.

In a plea agreement between the federal government, the San Fernando Valley Democrat agreed to plead guilty to the charges and to a sentence of five years in prison without parole, a $250,000 fine and restitution as ordered by the court.

In announcing the agreement, U.S. Attorney George L. O'Connell, of the Eastern District of California, said that Sen. Robbins had been cooperating for several months in an ongoing federal investigation of official corruption in California.

The first count under the federal Racketeer Influenced and Corrupt Organizations Act charges that in March 1985 Sen. Robbins accepted payments totaling approximately $12,200 in exchange for his vote in connection with S.B. 830, a bill altering the state's law that governs credit life insurance, according to court documents.

The documents do not give the details of Senator Robbins' vote. That charge was the only insurance-related malfeasance cited in the federal charges.

Sen. Robbins also was charged with receiving bribes in connection with pending legislation related to the state lottery and the sale of alcoholic beverages. He also was charged with extorting more than $200,000 from a California developer, attempting to obstruct the federal grand jury's investigation into his activities and failing to report approximately $52,800 on his 1988 income tax return.

Sen. Robbins was the sponsor of a great deal of insurance-related legislation in California. Those measures included a bill in the wake of passage of Proposition 103 that would fine auto insurers that canceled policies (*BI*, Jan. 30, 1989) and a law protecting enrollees in health maintenance organizations against insolvencies (*BI*, Oct. 1, 1990), among others.

And last October, Gov. Pete Wilson signed into law S.B. 894, a bill sponsored by Sen. Robbins that will assess insurers to fund antifraud activities (*BI*, Sept. 9).

Not everyone will miss Sen. Robbins' mark on insurance law in California.

"He was not visibly involved in many of the major insurance fights, but I think in every one he was a significant behind-the-scenes player, without leaving fingerprints," said Insurance Commissioner John Garamendi. "I don't think there is any doubt about it; a great deal of consumer legislation died" in Sen. Robbins' committee, he said.

Mr. Garamendi added that Sen. Robbins' departure "heralds a new era for consumer interests to be reflected in the Legislature."

—By Louise Kertesz

AIG unit seeks defense cost aid

SANTA CLARA, Calif.—An American International Group Inc. unit is objecting to a judge's ruling that it cannot seek reimbursement from seven other insurers for $35 million it has spent defending directors and officers of the now-insolvent Technical Equities Corp.

National Union Fire Insurance Co. of Pittsburgh, Pa., which wrote both comprehensive general liability and directors and officers liability insurance for Technical Equities, is seeking to recover defense costs from Technical Equities' other CGL insurers.

The insurers are: Century Indemnity Co.; two CIGNA Corp. units; First State Insurance Co.; Highlands Insurance Co.; Industrial Indemnity Co.; International Insurance Co.; and Motor Vehicle Casualty Co.

About 1,200 Technical Equities investors have charged the investment and real estate firm's directors and officers with fraud, breach of fiduciary duty and negligence in numerous suits. Technical Equities sought coverage both under the D&O policy and the advertising injury portion of the CGL policy.

National Union has been paying Technical Equities' defense costs, while the seven other CGL insurers have settled with the shareholders.

But Santa Clara County Superior Court Judge Conrad Rushing, applying the "unclean hands doctrine," ruled that National Union could not seek to recover defense costs from other insurers because it had been found to have violated "equitable standards of conduct."

A Santa Clara Superior Court jury found last year that National Union acted in bad faith for, among other things, failing to inform Technical Equities that it had coverage under the CGL policy (*BI*, July 30, 1990). Judge Rushing in March ordered National Union to pay $127 million in economic and physical and emotional distress damages to the 1,200 investors. That order is on appeal.

National Union has requested a Dec. 18 hearing on Judge Rushing's ruling that it cannot seek to recover defense costs from the other insurers, said National Union attorney Wayne Jeffries, a partner with Pettit & Martin in San Francisco.

—By Louise Kertesz

Eigsti to be CEO at SAFECO

Roger H. Eigsti, president and chief operating officer at SAFECO Corp., will take the additional position of chief executive officer when **C. Bruce Maines** retires, effective Jan. 1.

Mr. Eigsti, who will become the sixth chief executive officer in SAFECO Corp.'s 68-year history, has been with the Seattle-based insurance company for 19 years, the last two as president. Mr. Maines, who will remain chairman of the board, has been with SAFECO Corp. 41 years, including the past six as CEO.

Other insurer changes:

Ronald E. Foley named chief financial officer of Travelers Corp. in Hartford, Conn. Mr. Foley had been in charge of the insurer's property/casualty personal lines division.

Kenneth S. Wollner appointed senior manager of the directors and officers liability division of CNA Financial Corp. in Chicago.

Reliance National Risk Specialists, a Reliance Group Holdings Inc. unit in New York, announced these changes: **Thomas Luckstone**, who had been senior vp of special programs, named executive vp of specialty lines and programs; **Eugene Pittelli**, who had been senior vp of the loss control division, named executive vp in charge of the marketing, engineering and advertising division; **David McElroy**, who been vp in the D&O department, named senior vp in the financial products division; **Penny Stroud** appointed senior vp in the accident and health division; **William G. Watson** appointed senior vp in the risk management division; **John Whelan**, who had been vp in the D&O department, named senior vp in the financial products division.

Coming & goings: industry

Agents/brokers

Daniel Oades joins Johnson & Higgins Ltd. of London, a Lloyd's broker, as director of the financial group. He is to establish a new division specializing in political risk and contingency and credit risk insurance.

Neil C. Krauter promoted to executive vp from senior vp at Frank B. Hall & Co. of New York. Also at Hall, **William J. McGreevy** promoted to senior vp of the Fairfield/Westchester, Conn., office.

Jim Frazier and **Dorsey Hensley** promoted to senior vps at Rollins Burdick Hunter of Oregon Inc. in Portland, an Aon Corp. unit.

Robert Brooks named managing vp and chief operating officer with Lockton Insurance Agency of Kansas City, Mo. Previously, Mr. Brooks had been president of The Brooks Group Inc., a management consulting firm.

Reinsurance

Thomas S. Case promoted to president and chief operating officer of Employers Reinsurance Corp. of Overland Park, Kan. Mr. Case had been executive vp in charge of underwriting and marketing. **Michael G. Fitt**, who is giving up the title of president, will remain chairman and CEO.

Joseph P. Brandon appointed senior vp of General Reinsurance Corp. and vp and chief financial officer of its parent, General Re Corp. of Stamford, Conn.

James M. Macfarlane promoted to vp-surety with Prudential Reinsurance Co. of Newark, N.J. ■

Untried treatment

Continued from page 2

attorney's fees at the court's discretion, not punitive damages, explained Mr. Brown's attorney, Millard Johnson, of Calvin, Dylewski, Gibbs, Maddox, Russell & Verner in Houston. In addition, if the plan were subject to ERISA, a trial would have been held before a judge rather than before a jury, he added.

At the second trial, the jury found in Mr. Brown's favor, awarding him $1.2 million, which included $42,000 in actual damages for reimbursement of medical expenses, plus $500,000 in punitive damages as well as awards for mental anguish, compensation for legal fees and prejudgment interest, among other items.

The lower court decision was affirmed in August 1990 by a three-judge panel of the state Court of Appeals for the 14th District in Houston.

While the appellate court acknowledged Prudential's argument that antineoplastons have not been approved by the Food and Drug Administration, the panel observed that "the insurance contract could have precluded payment for illegal drugs or experimental drugs, or provided that all drugs must have been declared safe and effective by the FDA before they would be covered expenses under the contract," but the policy did not.

The appellate opinion, written by Justice Joe L. Draughn, also affirmed that Mr. Brown's medical plan did not fall under aegis of ERISA.

"ERISA does not regulate bare purchases of health insurance where, as here, the purchasing employer neither directly nor indirectly owns, controls, administers or assumes responsibility for the policy or its benefits," the opinion said.

The appellate court's opinion is unpublished, which means it cannot be cited as a precedent in future cases. Subsequently, the Texas Supreme Court and the U.S. Supreme Court refused to review the case.

Prudential had sought review by the U.S. Supreme Court on the ERISA issue, noted attorney William J. Dyer of Houston-based Weil, Gotshal & Manges, who represented Prudential in the case.

Mr. Dyer also said the outcome may have been different if the policy had included a clause specifically excluding coverage for experimental treatments or for drugs not approved by the Food and Drug Administration.

Mr. Dyer said that in talking with jurors after the district court trial, he learned that they had based their decision on the policy language and its breadth, rather than on Mr. Brown's diagnosis.

He noted that expert witnesses called to testify by Prudential had stated their "unanimous firm conclusion" that Mr. Brown had actually been cured by the eight weeks of conventional treatments he had undergone before going to Dr. Burzynski's clinic. Mr. Brown did not undergo another diagnostic procedure between the time he stopped the conventional treatments and went to the clinic, Mr. Dyer pointed out.

"I think almost by definition it's an unusual case," he added, pointing to the two juries' contradictory verdicts.

Observers say most group health policies today have more specific wording about coverage of experimental or medically unnecessary treatments.

This case would not have arisen today, said Richard W. Boone, an attorney with Boone & Associates in Arlington, Va., who specializes in health care. Mr. Boone said that unlike 10 years ago, most plans he now is familiar with have written clauses into their policies that limit medical treatments to those that are either medically accepted or those that have received precertification by the plan.

'Courts are increasingly looking to the lack of specificity in exclusions,' says Ms. Hesse.

Furthermore, many health care plans today have internal appeal procedures when a claim is denied, which avoid the necessity of having to go to court, said Mr. Boone.

However, "things like this do not go unnoticed," he said of the Prudential case's influence.

"Courts are increasingly looking to the lack of specificity in exclusions," said Katherine Hesse, an attorney specializing in health care issues with Murphy, Hesse, Toomey & LeHane in Quincy, Mass.

"The lesson to be learned from this case and others like it is that it's very important to think about these issues and to draft your plan language carefully," said Ms. Hesse.

The best way to avoid future liabilities "is to have really tough language now," agreed Cynthia Combe, an attorney with Rosenman & Colin in New York, who also specializes in health care.

But even when policies specifically exclude coverage for experimental treatment, insurers can have difficulty winning such cases in court.

Courts tend to try to find a way to help the plaintiff, said Mary Lynne Eubanks, a consultant with Lincolnshire Ill.-based Hewitt Associates.

"These are people who are usually very, very sick," and the treatments involved usually represent their last hope. As a result, courts "tend to bend the rules a little" to find a way to help the individual, Ms. Eubanks explained.

Juries tend to assume that if a person receives treatment, that treatment is medically necessary, when in fact quite often people would get better anyway, said Dr. Roger Taylor, national leader-health care consulting for The Wyatt Co. in Washington, D.C.

Furthermore, "courts don't like contracts that are not fairly negotiated," said Richard A. Hinden, a partner and health care attorney with Altheimer & Gray in Chicago, referring to the fact that plan participants have no say in what their group health plans contracts say.

As a result, jurors frequently bend over backwards to see the contract in a light that favors the less powerful negotiator, said Mr. Hinden, noting that this is in line with the philosophy behind general contract law.

"It is highly unlikely in the majority of cases that the court will not support the plaintiff," agreed Dr. Tom Halloran, director of the office of health technology assessment at the federal Agency for Health Care Policy and Research in Rockville, Md.

If insurers believe that almost any kind of language will protect them in the event of a lawsuit, then "they are whistling past the cemetery," said Dr. Halloran.

A related issue in this area, said Dr. Halloran, is that once any insurer pays for any treatment, it is then considered state-of-the art, rather than experimental, which commits other insurers to pay for the same treatment as well, regardless of how effective it is.

For instance, he said, many insurers now pay for pancreas transplants for diabetics, although there is general agreement that the data as to the effectiveness of a transplant—compared with traditional insulin therapy—is "totally inadequate."

An August 1991 study by the National Institutes of Health of 17 cases in which people had sued insurers for non-reimbursement found that insurers lost 14 of them, said Dr. John H. Ferguson, director of the office of medical applications of research at the NIH in Bethesda, Md., and one of the study's authors.

For instance, in one case, the Oklahoma Supreme Court ruled that an insurer had to compensate a woman with cancer for laetrile treatments several years after it had been scientifically established that the treatment was ineffective.

The court based its decision on the grounds that the insurance contract did not preclude payment for non-FDA-approved drugs, said Dr. Ferguson.

In addition to courts tending to favor the "little guy" in contract disputes, courts also do not accept scientific evidence because it is legally considered hearsay, he said. Instead, testimony must be delivered by expert witnesses.

Another problem is that courts rarely hear testimony from unbiased witnesses to help them examine the viability of a particular treatment, Dr. Ferguson said. ■

Oakland homeowners seek damages

OAKLAND, Calif.—Homeowners whose property was destroyed in the Oakland fire last month have notified two public entities that they will seek $4 billion in damages as a prelude to litigation.

The San Francisco law firm Belli, Belli, Brown, Monzione, Fabbro & Zakaria on Nov. 15 notified the City of Oakland and the East Bay Municipal Utilities District that homeowners will seek $2 billion from each of the public entities.

The claims notification is a prerequisite for filing suits against public entities in California, a spokesman for the Belli firm said.

The claim against the City of Oakland charges that the city failed to take precautions against wildfires as recommended by a blue-ribbon panel's report in 1981.

The other claim holds that the utility district neglected to "adequately protect against the dangers to its pumping station and provide a safe supply of water under emergency circumstances."

City of Oakland and utility district officials could not be reached.

Homeowners already have filed a lawsuit seeking unspecified punitive and compensatory damages from Pacific Gas & Electric Co., among others, for alleged negligence related to last month's catastrophic fire.

The suit was filed Oct. 30 by the Belli firm in Alameda County Superior Court.

The suit charges that PG&E was negligent in not having a secondary power generation system in place, which would have allowed pumping stations to continue supplying water to reservoirs used by firefighters when the primary system failed. Firefighting efforts were hampered when several reservoirs ran dry.

A spokesman for San Francisco-based PG&E said its attorneys reviewed the homeowners' complaint and found the allegations without merit. While he said the utility's liability coverage is adequate, he would not identify its insurers.

Estimated insured damage from the fire totaled $1.2 billion (*BI*, Oct. 28).

—By Louise Kertesz

Update

British soft drink recalled

Continued from page 2

which manufactures the soft drink as well as pharmaceutical and other consumer goods. The soft drink was recalled Nov. 13.

At least part of the recall costs, market sources say, will be covered by malicious product tamper insurance up to a limit of 5 million pounds ($9 million) from American International Underwriters (U.K.) Ltd., a unit of American International Group Inc. AIG would not comment on the coverage.

Police informed SmithKline on Nov. 12 that members of the Animal Liberation Front had threatened to contaminate bottles of Lucozade the next day, the spokeswoman said. The threat is thought to be due to the company's testing of pharmaceutical products on animals, she said.

None of the approximately 5 million bottles recovered from retailers and consumers are thought to have been tampered with, she said.

Texaco faces $21 million award

DENVER—Texaco Inc. is insured for part of a $21.5 million award to the widow of a Coast Guard seaman who died of leukemia after exposure to the toxic solvent benzene, which Texaco manufactured, a lawyer for the company says.

The 10th U.S. Circuit Court of Appeals in Denver last week affirmed a Kansas jury's award of $9 million in actual damages to Diana L. Mason, the widow and administrator of the estate of Otis W. Mason. However, the appeals court cut the jury's original award of $25 million in punitive damages against Texaco to $12.5 million, finding the original award excessive.

Texaco has not decided whether to request a rehearing or, if that fails, to ask the U.S. Supreme Court to review the case, said Texaco attorney Eric W. Weichmann of Cummings & Lockwood in Hartford, Conn.

Coverage of the award would involve several Texaco excess insurers in various policy years and layers of the company's excess program, Mr. Weichmann said. Mr. Mason, who was diagnosed with leukemia in 1977, was exposed to benzene between 1974 and 1977, Mr. Weichmann noted.

Texaco's Bermuda-based captive, Heddington Insurance Ltd., would participate in the coverage, he said.

Punitive awards, though, generally are not insurable in Kansas, where the trial court was located, or in New York, where Texaco is based.

The $21.5 million award resulted from a retrial of the Mason lawsuit, originally filed in 1978. The first trial ended in a jury award of $9 million in actual damages and no punitive damages, with Texaco found 35% at fault. This verdict was thrown out on an appeal by Texaco.

Wilson fights contempt charge

LONDON—Peter Wilson, the former chief executive of London United Investments P.L.C., awaits a decision from the Court of Appeal on whether he is in contempt of court for refusing to answer questions from Department of Trade and Industry investigators about the alleged diversion of reinsurance commissions.

The DTI's questions relate to $43 million in commissions on reinsurance ceded to Munich Reinsurance Co. that were improperly diverted from LUI subsidiary H.S. Weavers (Underwriting) Agencies Ltd., court papers say. The money instead was deposited in Liechtenstein trusts, according to a lawsuit filed by LUI's court-appointed administrator (*BI*, Nov. 5, 1990). Mr. Wilson has refused to answer the department's questions because he contests the validity of the inspectors' appointment and because his answers might incriminate him. Since the inspectors are trying to determine the "guilt or innocence" of Mr. Wilson and two other former LUI directors in relation to the commission payments, Mr. Wilson may refuse to answer questions that could be used in criminal or civil procedures, his attorneys argue.

However, in July this year, Justice Scott in London's High Court, Chancery Division, ruled that Mr. Wilson "has no justification for refusing to answer the inspectors' questions."

After hearing arguments in court last week, the Court of Appeal judges are expected to announce soon whether or not they agree.

Briefly noted

Standard & Poor's Insurance Rating Services has increased the claims-paying ability rating of **The Home Insurance Co.** to A− from BBB− because of its improved capital and expectations that operating results will continue to improve. S&P also placed the A− claims-paying ability rating of the Reliance Insurance Co. Intercompany Pool on Creditwatch with negative implications after **Reliance Insurance Co.** posted a third-quarter net loss of $123.5 million, primarily to increase reserves. . . .Florida has joined 19 other states in the recently reinstated **antitrust suit** against 31 insurance industry defendants (*BI*, June 24). . . .U.S. employers reported nearly 6.8 million **job-related injuries and illnesses** last year, up 2.7% from about 6.6 million cases in 1989, says the Bureau of Labor Statistics. The rate of injuries and illnesses per 100 employees in private industry increased 2.3% to 8.8 per 100 in 1990 from 8.6 per 100 a year earlier. . . .The House of Representatives' District of Columbia Committee voted 7-4 against a bill that would have repealed the District's **assault weapon liability law** (*BI*, Nov. 11). The bill was introduced hours before District voters overwhelmingly approved reinstating the rescinded 1990 law, which allows victims of specified assault weapon shootings to sue manufacturers and sellers for damages. . . .Lloyd's of London underwriter Robert Hiscox last week was granted leave to appeal a High Court ruling that effectively limits the **asbestos claims** that must be paid by underwriter Richard Outhwaite and other reinsurers through the Asbestos Claims Facility (*BI*, July 22). . . .More than half of the 459 **Lloyd's of London members** surveyed in a poll published yesterday believe that Lloyd's should abandon its principle of unlimited liability, and 62% say they will consider resigning if Lloyd's is not profitable by the time results for 1991 and 1992 underwriting years are reported. Sixty-four percent said they would not likely recommend joining Lloyd's now, says the poll by research firm Market Opinion Research International. . . .The Bush administration last week formally sent to Congress a comprehensive legislative package clarifying and improving the status of the **Pension Benefit Guaranty Corp.** as a creditor for the unpaid pension obligations of companies in Chapter 11 bankruptcy proceedings (*BI*, Nov. 18).

Listening in, amid the gloom

By LEONARD M. WILSON

Special to Business Insurance

THIRD-QUARTER REPORTS for the publicly owned insurance brokers are now on the table. Not surprisingly, they bear the earmarks of the soft market. By and large, analysts were disappointed in results (see related story, page 3).

From Marsh & McLennan Cos. Inc. at one end of the size spectrum to Hilb, Rogal & Hamilton Co. at the other end, brokers reported a year-over-year drop in earnings for the quarter.

In our view, this was one of the worst quarters for brokerage earnings comparisons since the soft market began in 1987.

On the plus side, quarterly reports afford investors a timely opportunity to tune in on operating progress through management contact.

An enterprising eavesdropper on a recent discussion with a typical brokerage contact might have overhead the following dialogue:

Analyst: Commission growth in the quarter was nothing to write home about.

Contact: That's an understatement. Premium rates are still soft. We've seen price increases on specialties like workers compensation, excess covers, marine and aviation. Mainstream lines are showing no signs of firming. U.S. retail commissions suffered and rose around 1% to 2% in the quarter.

Analyst: From our vantage point, premium rates seem to have gotten even softer. What is your estimate of the third-quarter pricing decline across the full book of business?

Contact: Prices probably slid as much as 5% in the quarter. The tenor of the insurance market doesn't seem to have changed too much for five or six quarters. Your perception of further softening could be correct, but the degree of competition from one quarter to the next is difficult to calibrate.

Analyst: Some brokers have indicated that reductions on renewals might be as much as 20%.

Contact: I guess if you look at a cross-section of renewals, you might find that prices are falling by that amount on some of them. Notwithstanding the comments of a few underwriters, we would agree that it's still quite competitive out there.

Analyst: Let's be right up front on this one. When do you think the market will turn?

Contact: From where we sit, there is nothing on the horizon that gives us any comfort. We're currently negotiating renewals for January and February. Things are fluid. It looks as if most of 1992 could be a year like 1991 in terms of price competition. Maybe there is a catalyst for rate change that will provide an antidote to this unprepossessing outlook. Let me know if you find one.

Analyst: Can you cite other factors that are restraining the growth of commissions?

Contact: The sluggish economy shows up in several areas. Audits are resulting in return premiums. Insurable values subject to economic volatility are falling short of estimates. Offices in regions like New England find themselves facing a very difficult operating environment.

Analyst: What is the current status of reinsurance brokerage?

Contact: Capacity in reinsurance brokerage is still ample. Primary insurers have not reduced their retentions yet. Reinsurance pricing is more or less flat, and terms and conditions are stable. But these aren't the ingredients of strong reinsurance brokerage. Reinstatement premiums were a factor that bolstered commissions in the third quarter of last year. Without reinstatement premiums, reinsurance commissions matched or slightly exceeded last year's level both in the United States and abroad.

Analyst: Investment income declined fairly steeply in the quarter, in contrast to earlier quarters when it helped comparisons.

Contact: Short-term interest rates have fallen significantly. As a result, yields are lower. Investible funds are not rising much either, reflecting the lack of growth in premium throughput.

Analyst: Consulting had been a real countercyclical contributor to revenue growth for the past several years. Growth in consulting seems to have ground to a screeching halt.

Contact: Here again, the economy is the culprit. Benefits are still a source of escalating costs for corporations, but outlays for expert advice can be deferred in a tough economic environment. Consulting revenues increased about 5% in the quarter, still better than insurance brokerage. In addition, headcount growth in consulting has stopped so that profit margins can be maintained.

Analyst: With total revenues advancing only 1% to 2% in the quarter, profit margins continue under pressure.

Contact: We think that our staff has done a great job in containing costs. Total expenses rose only 3% to 4% in the quarter. True, the rise exceeded the increase in revenues. But we are getting more productivity and sustaining our service levels to the client.

Analyst: The company has kept a lid on costs now for several years. Headcount has grown very slowly despite a continuing influx of new business. If the soft market lasts for another eighteen months, will you be able to sustain your very tight cost control?

Contact: First, we don't know that the soft market will continue that long. Second, we believe that we have found the means to secure productivity gains for sometime in the future. Your concerns, though, on this point are understandable.

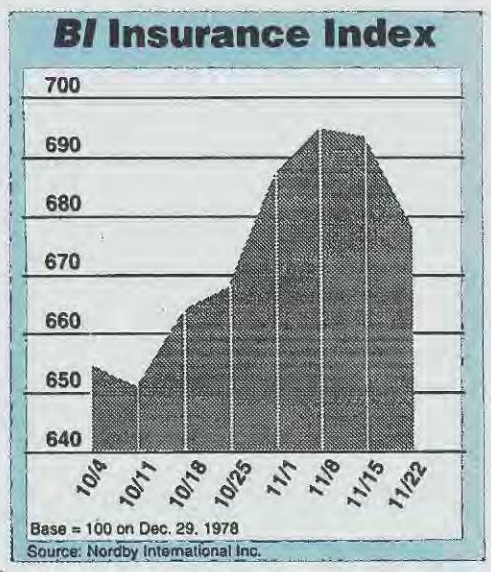
Analyst: We haven't spoken about new business yet. How was production in the quarter?

Contact: New business amounted to about 10% of commissions. Lost business ran at 5% to 6% for a net new business figure of 5%. You have written in some of your columns that new business has slowed. Our new business efforts remain vigorous and intense. Remember that the decline in rates has had an impact on the dollar value of the new business, an adverse impact of 25% to 35%. If rates had stayed at the level of perhaps two years ago, new business in dollars might still be around 12% to 13%.

Analyst: It looks as if earnings comparisons over the next few quarters will be tough, given the outlook for investment income, continued modest gains in brokerage commissions and not much help from consulting. Contingent commissions could be a drag as well in the first half of 1992.

Contact: We avoid making earnings forecasts. Your scenario is plausible, obviously since conditions aren't likely to change materially at least through the first half of next year. We haven't yet put together our profit plan for 1992. But we're likely to have a cautious view of the possibilities. ■

Leonard M. Wilson is a senior vp with Lazard Asset Management Inc. He is a member of the New York Society of Security Analysts.



Insurance industry stocks plunged last week as the *Business Insurance* Index fell 14.5 points to 678.4 on Nov. 22, from 692.9 on Nov. 15. Advancing issues for the week were led by FHP International, up 10.0%; U.S. Healthcare, up 8.3%; and Ohio Casualty Corp., up 6.8%. Declining issues for the week followed Safeguard Health Enterprises, down 14.1%; Nobel Insurance Ltd., down 11.1%; and Seibels Bruce Group, down 1.0%. The most active issue for the week was U.S. Healthcare, with 4.4 million shares traded. The *BI* Index was down 2.1%; the Standard & Poor's 500 dropped 1.7%; the Dow Jones 30 Industrials were down 1.4%; and the New York Stock Exchange Composite fell 1.8%.

British Issues

Nov. 21 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence	pence
Commi Union	459	N/M	30.7	6.7	478—459	
Genl Accident	429	N/M	35.7	8.3	474—429	
Gdn Royal Exch	136	N/M	15.9	11.7	149—136	
Royal	285	N/M	34.7	12.2	291—274	
Sun Alliance	303	N/M	18.7	6.2	324—303	
Brokers						
Bradstock	162	18.4	6.0	3.7	163—162	
CE Heath	495	17.2	34.5	7.0	506—495	
Hogg Group	185	11.0	10.7	5.8	199—185	
Lloyd Thompson	241	24.2	6.0	2.5	245—241	
Lowndes Lmbrt	350	17.4	15.3	4.4	350—348	
PWS Holdings	82	9.6	4.7	5.7	82—82	
Sedgwick Grp	217	20.6	16.0	7.4	234—217	
Steel Brrt Jones	323	17.0	16.3	5.0	325—320	
Willis Corroon	241	12.6	17.6	7.3	270—241	

Source: Philip Olsen, Insurance Industry Analyst, London

BI Industry Stock Report

NOVEMBER 18, 1991 THROUGH NOVEMBER 22, 1991

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	19.88	0.63	-14.05	27.63	18.88	506	1.00	5.03	18	9.77	2.03
Gallagher Arthur J. & Co.	NYS	22.00	-2.76	-5.38	28.38	19.00	29	0.64	2.91	19	5.88	3.74
Frank B. Hall	NYS	3.25	-3.70	-10.34	4.38	2.13	27	0.00	0.00	-5	-5.24	-0.62
Hilb, Rogal & Hamilton	OTC	13.25	-3.64	-10.17	17.50	11.25	96	0.40	3.02	23	3.56	3.72
Marsh & McLennan	NYS	71.00	-3.40	-8.97	87.25	69.13	818	2.60	3.66	17	14.77	4.81
Poe & Associates	OTC	11.63	-2.11	81.64	12.50	6.50	9	0.32	2.75	13	2.52	4.61
BROKERS	AVERAGE		-2.1	4.7					2.5	12		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	28.25	-0.44	-24.67	32.25	22.25	207	0.32	1.13	12	23.89	1.18
Berkshire Hathaway Inc.	NYS	8250.00	-1.49	23.60	9000.00	5875.00	0	0.00	0.00	-35	4612.00	1.79
ITT (Hartford Group)	NYS	52.75	-5.80	9.90	63.00	44.88	2184	1.72	3.26	8	64.01	0.82
Sears (Allstate)	NYS	35.75	0.00	40.89	43.50	24.38	3070	2.00	5.59	13	37.38	0.96
CONGLOMERATES	AVERAGE		-1.9	12.4					2.5	-1		
INSURERS/REINSURERS												
AEGON N.V.	NYS	67.63	4.44	7.77	70.63	54.75	22	2.30	3.40	7	N/A	N/A
Aetna Life & Casualty	NYS	37.00	-3.90	-5.13	49.13	31.88	2129	2.76	7.46	7	64.23	0.58
American General	NYS	40.88	-0.30	32.93	43.63	26.50	924	2.00	4.89	10	37.14	1.10
American Heritage	NYS	29.63	-1.25	41.07	32.25	20.00	3	1.08	3.65	12	19.25	1.54
American Indemnity/Fin'l	OTC	4.88	2.63	50.00	7.75	2.75	2	0.08	1.64	15	12.93	0.38
American International	NYS	83.75	-1.18	8.94	102.00	68.13	1792	0.48	0.57	12	45.34	1.85
Aon Corp.	NYS	36.00	-5.88	3.60	41.75	29.75	268	1.60	4.44	10	18.50	1.95
Argonaut Group	OTC	25.00	-3.85	17.19	33.38	19.00	101	0.68	2.72	7	48.26	0.52
AVEMCO Corp.	NYS	22.50	-5.26	33.66	27.25	15.75	13	0.40	1.78	17	9.55	2.36
Baldwin & Lyons Inc.	OTC	26.25	-0.94	40.00	27.50	17.00	1	0.28	1.07	8	24.29	1.08
Belvedere Corp.	ASE	3.00	-4.00	20.00	3.75	2.00	4	0.04	1.33	12	7.65	0.39
Chandler Insurance	OTC	3.25	0.00	-52.73	7.25	2.13	183	0.00	0.00	-2	5.95	0.55
Chubb Corp.	NYS	64.75	-5.99	19.35	75.25	45.50	1381	1.48	2.29	10	35.19	1.84
CIGNA Corp.	NYS	51.25	-8.07	25.38	58.75	36.00	1051	3.04	5.93	11	73.15	0.70
CNA Financial Corp.	NYS	88.00	-8.33	28.23	99.00	57.38	117	0.00	0.00	13	70.23	1.25
Continental Corp.	NYS	25.50	1.49	2.51	30.63	22.50	841	2.60	10.20	11	37.83	0.67
Durham Corp.	OTC	36.25	0.00	29.46	37.75	24.50	0	1.00	2.76	20	28.04	1.29
Fund American Corp.	NYS	67.00	0.37	29.16	67.75	47.75	45	0.68	1.01	11	36.11	1.86
Fremont General Corp.	OTC	23.75	3.26	63.79	25.50	11.88	214	0.88	3.71	7	19.13	1.24
Frontier Insurance Group	NYS	24.25	1.04	27.63	25.88	16.03	31	0.00	0.00	10	11.20	2.17
Gainsco Inc.	ASE	12.13	3.19	59.02	12.88	4.50	106	0.04	0.33	15	3.37	3.60
General RE Corp.	NYS	89.25	-1.92	-4.03	102.50	83.75	936	1.68	1.88	13	37.50	2.38
Hanover Insurance Co.	OTC	40.00	6.67	50.94	40.00	22.00	232	0.44	1.10	17	37.44	1.07
Harleysville Group	OTC	17.13	-7.43	12.30	21.34	12.16	6	0.64	3.74	8	22.99	0.74
Hartford Steam Boiler	NYS	50.75	0.00	4.10	63.75	43.63	124	2.00	3.94	14	17.05	2.98
Kansas City Life Ins.	OTC	34.50	0.00	11.74	36.00	30.25	37	1.20	3.48	8	39.22	0.88
Kemper Corp.	NYS	36.13	-4.93	52.11	41.00	19.25	264	0.92	2.55	8	34.20	1.06
Lawrence Insurance Group	ASE	9.38	-1.32	33.93	9.75	6.38	4	0.48	5.12	15	4.71	1.99
Liberty Corp.	NYS	44.50	-2.73	8.21	48.00	39.00	27	1.00	2.25	14	23.86	1.87
Lincoln National	NYS	51.88	-0.48	20.64	55.25	37.00	538	2.92	5.63	9	45.16	1.15
Markel Corp.	OTC	18.25	-8.75	55.32	20.75	10.25	124	0.00	0.00	8	3.22	5.67
Mutual Risk Mgmt. Ltd.	NYS	28.75	-4.56	-	33.50	17.00	81	0.20	0.70	25	-	-
NAC Re Corp.	OTC	23.38	-4.59	-29.17	28.34	19.34	295	0.16	0.68	12	18.90	1.24
Navigators Group	OTC	31.50	0.80	44.27	35.00	18.75	35	0.00	0.00	17	13.52	2.33
Nobel Insurance LTD.	OTC	4.00	-11.11	33.33	5.13	2.75	57	0.00	0.00	5	7.76	0.52
NWNL Companies	NYS	28.38	-9.92	68.15	37.25	14.63	270	1.40	4.93	7	42.73	0.66
Ohio Casualty Corp.	OTC	47.00	6.82	14.63	50.25	33.25	156	2.48	5.28	9	36.38	1.29
Old Republic Int'l	NYS	33.75	-1.82	47.54	35.00	19.75	105	0.72	2.13	7	33.09	1.02
Orion Capital Corp.	NYS	32.63	-0.38	86.43	33.50	15.50	63	0.92	2.82	9	20.42	1.60
Phoenix RE Corp.	OTC	9.00	1.41	16.13	10.25	6.75	44	0.20	2.22	13	13.30	0.68
Protective Life Corp.	OTC	18.88	-0.66	26.89	23.00	12.50	137	0.84	4.45	8	16.29	1.16
Provident Life	OTC	19.75	-1.25	12.86	24.50	14.38	838	1.00	5.06	6	25.88	0.76
Re Capital Corp.	ASE	14.25	-1.72	10.68	18.63	11.75	49	0.20	1.40	11	15.05	0.95
Reliance Group Holdings	NYS	4.25	-5.56	-8.11	7.50	4.00	195	0.32	7.53	3	5.61	0.76
RLI Insurance Corp.	NYS	16.00	-1.54	10.34	16.38	11.38	88	0.48	3.00	8	14.41	1.11
St. Paul Companies	NYS	68.00	0.00	8.37	74.25	57.00	194	2.60	3.82	8	52.00	1.31
SAFECO Corp.	OTC	41.75	-0.89	27.00	44.75	28.50	1093	1.48	3.54	10	31.50	1.33
SCOR U.S. Corp.	NYS	15.25	-3.94	23.23	16.50	10.50	16	0.24	1.57	9	11.19	1.36
Seibels Bruce Group	OTC	5.63	-10.00	32.35	8.88	4.25	89	0.36	6.40	-80	7.35	0.77
Selective Ins. Group	OTC	16.63	-0.75	25.47	18.00	12.50	59	1.04	6.26	8	18.91	0.88
Statesman Group Inc.	OTC	5.75	2.22	267.88	6.38	1.25	491	0.00	0.00	17	2.48	2.32
Tokio Marine & Fire	OTC	48.50	-2.02	2.65	56.50	40.50	118	0.00	0.00	-	70.93	0.68
Torchmark Corp.	NYS	52.13	-2.11	6.65	58.50	45.63	205	1.60	3.07	12	16.70	3.12
Transamerica	NYS	38.25	-2.55	17.24	40.00	29.63	1085	2.00	5.23	15	36.56	1.05
Transatlantic Holdings	NYS	34.38	-2.14	25.57	39.38	24.50	174	0.20	0.58	11	18.38	1.87
Travelers Corp.	NYS	18.00	-10.00	8.27	25.38	12.50	2357	1.60	8.89	5	41.44	0.43
Trenwick Group Inc.	OTC	26.25	-1.41	13.51	30.00	20.25	28	0.72	2.74	10	21.71	1.21
United Fire & Casualty	OTC	44.25	-4.84	25.98	58.00	32.50	1	1.32	2.98	9	35.39	1.25
USF&G Corp.	NYS	6.50	-1.89	-13.33	12.50	6.13	1835	0.20	3.08	-1	11.96	0.54
UNUM Corp.	NYS	73.25	-2.50	57.10	78.00	41.50	407	1.04	1.42	12	37.25	1.97
USLIFE Corp.	NYS	44.38	-4.05	58.48	47.00	26.88	142	1.64	3.70	10	60.34	0.74
Unitrin	OTC	33.25	-0.75	8.13	41.50	29.25	566	1.00	3.01	13	30.70	1.08
Washington National	NYS	14.88	-3.25	36.78	16.00	9.38	41	1.08	7.26	-7	26.86	0.55
USLICO Corp.	NYS	17.13	-4.86	7.87	21.00	14.75	25	1.00	5.84	-82	29.44	0.58
Zenith National Ins.	NYS	15.13	-5.47	11.01	18.50	10.38	18	1.00	6.61	126	13.14	1.15
INSURERS/REINSURERS	AVERAGE		-2.6	30.0					3.6	10.2		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	12.38	10.00	-18.85	29.75	9.88	1031	0.00	0.00	10	5.44	2.27
HMO America Inc.	OTC	13.25	3.92	103.85	17.13	5.38	951	0.00	0.00	14	0.61	21.72
Pacificare Health Sys.	OTC	26.00	-3.70	60.00	42.50	14.50	207	0.00	0.00	13	6.55	3.97
Safeguard Health Enter.	OTC	6.88	-14.06	44.74	8.88	4.13	63	0.00	0.00	16	3.53	1.95
Sierra Health Services	ASE	14.13	-2.59	2.73	29.50	9.63	129	0.00	0.00	7	1.78	7.94
United Healthcare Corp.	NYS	60.38	-4.17	159.68	64.75	18.38	1167	0.06	0.10	29	3.76	16.06
United Medical Corp.	ASE	6.63	-7.02	-17.19	10.88	5.88	4	0.20	3.02	11	8.79	0.75
U.S. Healthcare	OTC	36.00	8.27	22.55	38.00	15.25	4377	0.44	1.22	19	3.38	10.65
HMOs	AVERAGE		-1.2	44.7					0.5	15		
ALL COMPANIES	AVERAGE		-2.3	27.6					3.0	10		

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