

Business Insurance

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NICO's Hunter accepts offer to head Texas department

AUSTIN, Texas—Consumer advocate J. Robert Hunter has accepted Texas Gov. Ann Richards' nomination for state insurance commissioner.

Mr. Hunter, who joined Gov. Richards at a news conference Friday morning, is president of the National Insurance Consumer Organization in Alexandria, Va., and an outspoken critic of the insurance industry. He earlier said he didn't want the position (BI, Aug. 23).

"While Bob Hunter has been an advocate... Continued on next page

Cooper plan touted as viable alternative to Clinton reform

By NANCY P. JOHNSON

WASHINGTON—Employers that find the Clinton health reform plan a bitter pill to swallow may find a new proposal more palatable. The Managed Competition Act of 1993—which Rep. Jim Cooper, D-Tenn., touts as the "only comprehensive and bipartisan health reform plan in the 103rd Congress"—is expected to pave the way for compromise on potential sticking points like requiring companies to offer health coverage and participate in purchasing cooperatives.

The core of the plan would set up regional purchasing cooperatives that would give individuals and small businesses health care purchasing clout.

Rep. Cooper's support among conservative Democrats is also expected to make him a critical player as the administration tries to move its bill through Congress.

As Congress and the White House remain divided on how to reform health care, Rep. Cooper—with about 20... Continued on page 16

Cabinet revising costs, outlays in reform plan

By JERRY GEISEL

WASHINGTON—At least one aspect of the Clinton health care reform proposal that sounded too good to be true—a provision that the government would pick up 80% of early retirees' health care costs—may be just that.

Administration officials last week put out the word that the proposed government subsidy might be cut back to 70%.

At the same time, two Cabinet officials, Secretary of Labor Robert Reich and Secretary of Health and Human Services Donna Shalala, said the administration is "scrubbing" a whole range of revenue and cost estimates contained in its health care reform package.

Hillary Rodham Clinton, who chaired the administration's health care reform task force, put the cost to the government of the early retiree health care subsidy at \$4.5 billion annually, while Senior Domestic Policy Adviser Ira C. Magaziner estimated the cost at \$6 billion.

However, a wide range of benefit experts... Continued on page 15



Superfund proposal wins business praise

By MARK A. HOFMANN

WASHINGTON—A Treasury Department recommendation to eliminate both retroactive and joint and several liability under Superfund is drawing cheers from business and insurance interests.

But the recommendation has drawn an equally loud chorus of jeers from some key congressional leaders. In fact, the chairmen of four panels dealing with Superfund reauthorization urged President Clinton to "quickly reject" the Treasury proposal or face the possibility that Superfund will not be reauthorized next year.

The recommendation was made in an internal memo to the Interagency CERCLA Reauthorization Policy Committee and the General Superfund Work Group, which are crafting the administration's reauthorization legislation.

The Treasury Department proposal will be discussed at an interagency meeting scheduled for Tuesday, where the proposal could either get a green light or be killed.

Washington observers point out that the Treasury Department is not the only government agency interested in reforming the liability provisions in Superfund. They say other agencies with an interest in the economy, like the Office of Management and Budget, and government agencies that often are named as potentially responsible parties under Superfund, like the Defense and Agriculture departments, basically support the Treasury position.

However, the proposal faces stiff opposition from Environmental Protection Agency officials, key congressional leaders and others.

5th Circuit restricts joint/several liability

By JOANNE WOJCIK

NEW ORLEANS—It will be more difficult for the federal government to hold only one company liable for cleaning up a Superfund site if other companies contributed to the pollution, following a recent federal appeals court decision.

The decision by the 5th U.S. Circuit Court of Appeals also severely restricts the Environmental Protection Agency's ability to impose unreasonable cleanup costs on polluters.

The Sept. 28 ruling is significant because in most Superfund cases, the EPA has contended that any company linked to a pollution site is potentially liable for all damages under the legal doctrine of joint and several liability. This doctrine provides for recovery based on a party's ability to pay rather than its degree of negligence.

The ruling is only the third in which a federal appellate court has ruled against the EPA when the agency sought to impose joint and several liability under the Superfund law.

The 5th Circuit case—*Environmental Protection Agency vs. Sequa Corp.*—closely follows earlier decisions by both the 3rd and 2nd Circuit Courts of Appeal, according to Norman W. Bernstein of Arent, Fox, Kinter, Plotkin & Kahn in Washington. Mr. Bernstein argued on behalf of some of the defendants involved in *United States vs. Alcan Aluminum Corp.* in the 3rd Circuit in 1992, and submitted an amicus brief in the 2nd Circuit case with the same name earlier this year.

In both of those cases, the appeals courts ruled that before a potentially responsible party can be held jointly and severally liable... Continued on page 30

Aftermath of uprising

Multinationals in Russia 'cautiously optimistic' of future

By SARA MARLEY and MARIA KIELMAS

MOSCOW—It was business as usual for many multinational companies in Moscow after—and even during—the bloody clashes between the Russian army and dissidents last week.

Yet the uprising and President Boris Yeltsin's powerful show of force in putting it down does raise some concerns for foreign investors, including contractual stability and possible increases in terrorism risks.

And some political risk insur-

ance experts say the uprising is a sharp reminder of continuing differences between Russian and Western politics.

"Cautious optimism should be exerted by American companies regarding the uprising," said Larry Anderson, general practice partner in Coopers & Lybrand's Moscow office. "In the long-term, it should have no major impact."

However, he does recommend that companies considering investment in Russia wait at least 30 days to gauge Mr. Yeltsin's treatment of rebel leaders.

The uprising "definitely did make a lot of clients very ner-

vous," said David D. Avasthi, president of Avasthi & Associates Inc., a Coral Gables, Fla.-based political risk underwriter and broker. "If they are able to delay the signing or commitment of investments, they will."

In addition to concerns about political stability, U.S. companies may find Russian bureaucrats and potential business partners are also focusing on concerns other... Continued on page 20

The violent crackdown on dissident Russian lawmakers is not expected to affect multinationals.



AP/Wide World Photo

Update

Texas taps Hunter for post

Continued from previous page

cate for consumers, he knows the difference between advocacy and fair regulation," said Gov. Richards.

Mr. Hunter is expected to be sworn in by Nov. 1. However, he must be confirmed by two-thirds of the Texas Senate, which is scheduled to convene again in January 1995. He may be confirmed earlier if the governor calls a special session, said a spokesman for the Texas Department of Insurance.

Mr. Hunter's salary will be \$150,000, the maximum allowed by the Texas Legislature for the newly created position. The new commissioner will replace the current three-member board of insurance, which is slated to go out of existence no later than Sept. 1, 1994.

"Mr. Hunter's background at NICO gives us reason for concern as to how he would act as a regulator. We hope he understands the difference between being a consumer advocate and being a regulator," said Don Clesby, senior counsel at the National Assn. of Independent Insurers in Des Plaines, Ill.

Jury probing Pan Am damages

NEW YORK—A federal grand jury is reportedly investigating whether Pan American World Airways Inc. or its insurers suborned perjury to try to avoid paying greater damages to the victims of the bombing of Pan Am Flight 103.

The grand jury has already subpoenaed Robert A. Alpert, the former director of claims at United States Aircraft Insurance Group, Pan Am's lead insurer. He said USAIG is trying to prevent him from testifying, claiming attorney-client privilege. USAIG President John Brennan would say only that no current company employees have been subpoenaed.

The U.S. Attorney's office in New York would not comment on the grand jury but has already indicted Lester Coleman, a witness for Pan Am in the original trial, on charges of perjury. Mr. Coleman allegedly gave false testimony in support of Pan Am's claim that the U.S. government was responsible for the disaster.

The indictment says Mr. Coleman—who is now a fugitive—falsely stated that a Drug Enforcement Administration sting operation allowed terrorists to plant a bomb on board Flight 103.

In July 1992, a federal jury ruled that Pan Am showed willful misconduct in its security procedures and that airline liability limits under international conventions should be waived (*BI*, July 20, 1992). If the decision is not overturned on appeal, the liability payments could total \$500 million, Mr. Alpert predicted.

Ohio Blues verdict overturned

RICHMOND, Va.—A federal appeals court has reversed a \$22.4 million jury verdict against Blue Cross & Blue Shield of Ohio, citing insufficient evidence that the plan was responsible for bills not paid to 13 West Virginia hospitals when a former West Virginia plan became insolvent.

State insurance officials ordered Blue Cross & Blue Shield of West Virginia into liquidation in October 1990, after determining the plan was insolvent by some \$37 million. It was the first BC/BS plan to fail (*BI*, Oct. 29, 1990).

Subsequently, a group of West Virginia hospitals with about \$7.4 million in claims pending sued BC/BS of Ohio, which had agreed to take over the failed plan, for \$40 million (*BI*, Feb. 4, 1991). Among other things, the hospitals alleged the Ohio plan intentionally forced the Charleston, W.Va., plan into liquidation and frustrated the efforts of other insurers to submit solutions to save the plan.

A federal jury in April 1992 awarded \$22.4 million to the 13 hospitals, including \$15 million in punitive damages.

However, a three-judge panel of the 4th U.S. Circuit Court of Appeals unanimously reversed the judgment Oct. 4. In its opinion, the appeals court said the Ohio plan was not to blame "because there is no evidence that any other entity was willing and able to entertain the kind of affiliation that would have enabled the Charleston plan to pay its bills to the hospitals."

Clinton may ease alliance rule

WASHINGTON—The Clinton administration is considering slightly relaxing a provision in its health care reform package on the minimum number of employees a company must have to set up its own health alliance and stay out of public regional alliances, an administration official said last week.

The administration had proposed that employers would need to have at least 5,000 employees to opt out of regional alliances.

But employers have complained they could be well over the 5,000-employee threshold and still be forced into regional alliances. That could happen if an employer had a sizable operation in a state that established a single-payer program. Employees in a state with a single-payer program would not be counted to determine if the employer exceeded the 5,000-worker minimum.

The administration is reviewing whether a lower threshold would be appropriate in cases where an employer falls below the 5,000-employee minimum because it operates in a state with a single-payer system, said Meredith Miller, a deputy assistant secretary with the Labor Department's Pension and Welfare Benefits Administration.

Updates continued on page 30

Errors & Omissions

• Mercantile & General Reinsurance Co. P.L.C. wrote net premiums of 409 million pounds (\$619.6 million) in 1992. The \$100 million premium volume mentioned in a Sept. 20 article referred only to M&G Re of North America.

Garamendi staff shakeup surprises some observers

By LOUISE KERTESZ

LOS ANGELES—Insurance Commissioner John Garamendi's removal last week of two top officials in the Insurance Department's conservation and liquidation division has surprised lawyers who work with troubled or failed insurance companies.

After a department investigation uncovered \$200,000 in unauthorized payments to staff and other wrongdoings, Mr. Garamendi last week announced the reassignment of the division's chief, Ron Rosen, and fired Jan Brookes, its general manager.

Those moves, which came less

than a week after the Sacramento Bee reported on irregularities within the division, surprised several lawyers who have dealt with the officials for years.

Mr. Rosen is a "top expert in the world" in conserving and liquidating insurance companies, said Claude J. Dorais, a principal at Dorais & Wheat in Los Angeles who has dealt with the division for 19 years.

"He is universally respected by those who aren't running for governor and looking for sacrificial lambs," Mr. Dorais said, alluding to Mr. Garamendi's widely discussed political prospects.

"I was surprised at the allega-

tions of impropriety," said James Woods, who is managing partner of the San Francisco office of Le-Boeuf, Lamb, Leiby & MacRae and who has dealt with Mr. Rosen for 15 years. "We have always found him to act in the best interests of the Insurance Department and the State of California."

Another San Francisco lawyer who has dealt with Mr. Rosen for some time—Raul V. Aguilar, a principal with Aguilar & Sebastianelli—added, "He was very trusting, I will say that. He trusted a lot of people—I think that was part of his problem."

Ironically, the new chief of the

Continued on page 29

PBGC reform plan faulted

Panel opposes proposed restrictions on underfunded plans

By JERRY GEISEL

WASHINGTON—Members of a House panel generally agree Congress should shore up the financial base of the Pension Benefit Guaranty Corp. but contend that an administration reform proposal does not go far enough.

Rep. J.J. Pickle, D-Texas, chairman of the House Ways and Means Oversight Subcommittee, said last week that an administration package—which would require employers with underfunded plans to accelerate contributions to their plans and boost the premiums they pay to the

PBGC—is a good first step.

But Rep. Pickle said the administration's plan contains a "fundamental flaw."

That flaw, he contends, is not restricting employers that have underfunded pension plans from increasing benefits.

Congress must close this and various other loopholes in federal law that have exposed the PBGC to potentially big losses, Rep. Pickle said.

There are several ways of doing this, he said. One approach, included in legislation introduced by the Texas Democrat, would bar employers from increasing bene-

fits if their pension plans were less than 90% funded. Another approach, backed last year by the Bush administration, would strip PBGC insurance protection for benefit improvements added by employers with underfunded plans until their plans were fully funded.

But PBGC Executive Director Martin Slate said neither approach would be fair to retirees who are living on fixed income.

The better approach, according to Mr. Slate, is the Clinton administration's proposal to make benefits more secure by boosting fund-

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Benefit consulting directory near

Business Insurance will publish its annual directory of employee benefit consultants in the Dec. 20 issue, which will also contain a Spotlight Report forecasting trends in the employee benefit market in 1994.

The directory is published as an editorial service; there is no charge to be included. However, to be listed, consultants must submit a completed *BI* questionnaire by the Oct. 29 deadline.

If your company provides employee benefit consulting services and you have not yet received a questionnaire, please request one by calling Directory Editor Kathy Welyki at 312-649-5279.

Ernst & Young settles negligence charges in audits of failed ICI

By MICHAEL SCHACHNER

DUBLIN, Ireland—The Irish affiliate of accountant Ernst & Young is paying about \$111 million to settle allegations that shoddy audits contributed to the largest insurance insolvency in Irish history.

Without admitting liability for the 1985 failure of Insurance Corp. of Ireland, then Ireland's second-largest insurer, ICI's former auditors—Ernst & Whinney and Griffin, Lynch & Co., which merged in the early 1980s and now are part of Ernst & Young International—last week agreed to pay 77 million Irish pounds

(\$111.2 million) to settle negligence claims brought by ICI's former parent and government-appointed administrators.

The settlement was reached shortly before a trial was set to begin.

The suit filed against the auditors eight years ago sought 550 million Irish pounds (\$837.4 million), which could have grown to more than 1 billion Irish pounds (\$1.44 billion) with accumulated interest.

Ernst & Young said the settlement will be paid entirely by various insurers that wrote professional liability coverage for Cif-

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Inside

• Congress should adopt the Clinton administration's legislative package to strengthen the Pension Benefit Guaranty Corp., this week's editorial says. **PAGE 8**

• A federal court has ruled that secured lenders that do not actively manage foreclosed property can be exempt from Superfund liability. **PAGE 10**

• Surplus lines professionals must educate regulators about the industry, panelists said during a session of the National Assn. of Professional Surplus Lines Offices meeting. **PAGE 14**

• Beleaguered Leona Helmsley won one recent battle when a court ruled for Helmsley Enterprises Inc. in a coverage dispute with Continental Insurance Co. **PAGE 20**

• U.K. employers are backing recommendations in a landmark report on pension reform. **PAGE 21**

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Lloyd's wins ALM support for crucial vote

By ADRIAN LADBURY

LONDON—Lloyd's of London's bid to win members' support for corporate capital received a big shot in the arm last week as the Assn. of Lloyd's Members advised its ranks to vote in favor of corporate membership.

In a letter to its members last Thursday, the ALM said a report that it had commissioned in conjunction with the Lloyd's Names Assn. Working Party to investigate

the possible negative impact of corporate capital on members found only positives.

The ALM also said it had received written assurances from Lloyd's Chief Executive Peter Middleton last Wednesday that current members would not play second fiddle to corporate members when capacity is allocated next month for the 1994 underwriting year. The ALM also said Mr. Middleton had promised syndicate capacity would somehow be

reserved for names who have not yet determined how much they can invest for 1994 because they are embroiled in litigation over past losses.

But the LNAWP still is threatening to scuttle the Lloyd's rescue plan by using its members' votes en masse against Lloyd's at the vote on corporate capital to be taken at an Oct. 20 extraordinary general meeting if further concessions are not made (BI, Oct. 4).

The LNAWP believes it is still

possible to persuade Lloyd's to provide a big contribution to the proposed out-of-court settlement between members facing huge losses and the errors and omissions underwriters that insured their managing and members agents (BI, Aug. 30).

Meanwhile, new capital interested in joining the market appears to be unperturbed by these events.

Murray Johnstone, a Scottish investment fund manager, late last

month became the first institution to commit funds to Lloyd's, assuming corporate capital is approved. The company has teamed up with Lloyd's members agency Willis Faber & Dumas Ltd. to form an investment trust—similar to a mutual fund—with up to 50 million pounds (\$76.3 million) of capital.

Also, a list Lloyd's compiled last Tuesday showed that at least eight joint ventures, which potentially

Continued on page 4

Texas sues to force coverage of treatment

By DAVE LENCKUS

AUSTIN, Texas—Texas officials are mounting a rare legal challenge against a health insurer as part of an emotionally charged coverage battle between breast cancer patients and their health plans.

Texas Attorney General Dan Mcrales charges Prudential Insurance Co. of America and two of its units with deceptive and unfair practices for claiming that the treatment is experimental and therefore excluded by their policies.

The suit, filed Sept. 23 in state court in Austin, also names health maintenance organization Prudential Health Care Plan Inc. and PRUCO Life Insurance Co. of Texas.

However, Prudential maintains that it covers the treatment, which involves bone marrow transplants and high doses of chemotherapy, for most breast cancer patients who seek coverage.

Self-insured employers as well as health insurers are closely watching the case. The Prudential suit could affect similar litigation against self-insured plans in Texas and possibly nationwide, as well as suits against other health insurers.

"A favorable resolution in this case (for policyholders) may have a rebound effect on other insurance companies" that exclude coverage either for all experimental treatments or this treatment in particular, said Karen L. Illuzzi Gallinari, a partner with Ander-

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Clinics under fire on all fronts

Abortion clinic attacks driving away insurers

By SALLY ROBERTS

Some property insurers are dropping abortion clinics or more than doubling their premiums in the wake of a recent spate of clinic bombings around the country.

While abortion is one of the most contentious issues of the day, the insurers withdrawing from this small market insist that theirs is strictly a business decision.

Clinic directors fear that more frequent attacks will make it more difficult to find coverage in the future. At least for now, clinics that are losing their coverage are finding replacement coverage, albeit with much higher premiums and lower limits.

So far this year, there have been 63 acts of vandalism and eight incidents of arson at clinics around the country, said the National Abortion Federation, a trade association of about 300 abortion clinics. In just 10 days last month, fire damaged or destroyed clinics in Lancaster, Pa.; Peoria, Ill.; and Bakersfield, Calif.

It's not just clinics that perform abortion services that are at risk of losing their insurance. Property coverage is also disappearing for family planning centers that refer women to these clinics, like Planned Parenthood facilities.

For example, the Planned Parenthood clinic in Missoula, Mont., lost its property in-



Arson is suspected in a fire that destroyed a Bakersfield, Calif., abortion clinic. AP/Wide World Photo

urance from Travelers Corp. in July, even though it "never filed a claim and doesn't provide abortion services," said Deborah Frandsen, its executive director.

A Travelers spokesman said the non-renewal was "a business decision based on loss experience and was not politically motivated or a commentary on abortion."

"It has become really impossible to assess and underwrite the business because of the sensitive and unpredictable situations surrounding the (abortion) clinics," the Travelers spokesman added, referring to property damage due to arson and bombing attacks.

Swett Insurance Managers, a division of

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High court to hear fewer business cases

WASHINGTON—The U.S. Supreme Court's 1993-1994 docket contains relatively few business cases, in marked contrast to cases reviewed last year, in which major antitrust, punitive damages and product liability cases were heard.

In one of the few employment-related cases accepted for review, *Harris vs. Forklift Systems*, the court agreed to decide a case that could outline what type of proof is needed to bring a sex-bias suit.

The question facing the court is whether a workplace can be made so hostile through a supervisor's remarks and actions that a female employee can bring a sex-bias suit even if she was not physically touched.

In another employment-related case, the high court declined to accept an appeal from Shenandoah, Ga.-based Wheelabrator Technologies Corp. in *Kenneth P. Bidlack et al. vs. Wheelabrator*. In

that case, the 7th U.S. Circuit Court of Appeals ruled that courts can look at evidence other than a collective bargaining agreement to determine an employer's health care benefit obligations to unionized workers and retirees (BI, June 7).

The justices also let stand a lower court ruling in *Cleveland vs. Piper Aircraft Corp.* that state tort claims alleging defective design are not pre-empted by the

Federal Aviation Act.

In addition, the justices declined to review two decisions involving injectable collagen. In *King vs. Collagen Corp.* and *Stamps vs. Collagen Corp.*, two U.S. appeals courts ruled that the 1976 medical device amendments to the Food, Drug and Cosmetic Act pre-empted state product liability laws in cases involving medical products like collagen.

—By Mark A. Hofmann



Painful 1992 a distant memory

Industry execs now talk of expense control, quality improvement efforts

By JAMES M. BURCKE

WHITE SULPHUR SPRINGS, W.Va.—What a difference a year makes.

Twelve months ago, the pain of Hurricane Andrew was fresh in the minds of top insurer, agency and brokerage leaders as they gathered for their annual retreat at The Greenbrier resort in the hills of West Virginia. The largest catastrophe loss in insurance industry history caused the executives to express the hope that the then-5-year-old soft commercial insurance market would soon be ending.

A year later, the direction of the market seemed to be far from the minds of those attending the annual joint conference of the National Assn. of Casualty & Surety Agents

and the National Assn. of Casualty & Surety Executives.

Despite a \$15 billion catastrophe, a drastic tightening in the property catastrophe reinsurance market and a 116% industrywide

NACSA/NACSE
The Greenbrier
CONFERENCE

combined ratio in 1992, the U.S. commercial insurance market remains soft, with rate hikes virtually limited to some property risks.

While the state of the market was certainly discussed during the private breakfasts and

meetings held by insurers, reinsurers, and agents and brokers during the conference, market conditions and other traditional topics of conversation were largely ignored during formal sessions held during the mornings, informal gatherings on the golf courses or tennis courts in the afternoons, and black-tie receptions and dinners each evening.

Topics ranged from the innocuous, like golf scores and dinner plans, to the substantial, workers compensation and health care reform. The most often-discussed subject was the absence of Hillary Rodham Clinton, who the conference sponsors had hoped would speak at the gathering (see story, page 28).

And, while sagging industry profits—

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Corporate capital

Continued from page 3

could muster up to 600 million pounds (\$915 million) of capital, already have announced their interest, while six others, with a potential capital base of 750 million pounds (\$1.14 billion) or more, also have expressed interest.

Among the largest of the investment funds proposed are ventures by: J.P. Morgan & Co. Inc. and Marsh & McLennan Cos. Inc.; Sedgwick Group P.L.C.; Samuel Montagu & Co. Ltd. and James Capel & Co. Ltd.; Donaldson, Lufkin & Jenrette Inc., Phoenix Reinsurance Co. and Anton Underwriting Agencies Ltd.; and Johnson & Higgins and Salomon Inc.

Among other proposed ventures with American ties are funds being set up by: Chartwell Reinsurance Co. and S.G. Warburg & Co.

Ltd.; and Grimston Scott Ltd., Conning & Co., J.O. Hambro & Co. Ltd. and Union Bank of Switzerland.

The ALM's decision to back the introduction of corporate capital will come as no great surprise to the market. The ALM has repeatedly supported in principle the concept of corporate capital.

But, the association was still nervous, placing big emphasis on the independent report it and the LNAWP sponsored. It was clearly pleased to have wrested written promises from Mr. Middleton at last Wednesday's meeting.

"Our consultants have given their overall opinion that there is nothing they have found in 'A Guide to Corporate Membership' (the corporate capital rulebook published last month) or in their discussions with Lloyd's and their advisers which would prevent them from endorsing the propos-

als to admit corporate capital, because it will be beneficial to Lloyd's and all its members, and may even be necessary for the future prosperity of the society," ALM Chairman Neil Shaw wrote.

"Mr. Middleton has given the

Mr. Shaw says Lloyd's officials are determined to settle members' litigation before year end.

ALM and the LNAWP a commitment that Lloyd's will establish a new central team whose function will be to advise names about the capacity that exists on individual syndicates for 1994 and that names will not be denied access to

syndicates because of capacity having been reserved for corporate members," Mr. Shaw continued.

"All damaged names currently not underwriting may, in the event of a satisfactory settlement, be entitled to resume underwriting and will be allocated capacity for 1994 either by bespoke (the traditional manner in which individuals invest) or a MAPA (an investment pool similar to a mutual fund)," Mr. Shaw said.

He also said Mr. Middleton had "stated unequivocally" that he and Lloyd's Chairman David Rowland are determined to settle litigation filed by members before the end of this year.

Mr. Shaw said that Mr. Middleton had promised both the ALM and LNAWP the chance to be involved in the current debate over corporate members' voting rights, which will be decided in Decem-

ber. They also will be granted some form of representation in the creation and possibly the operation of NewCo., the reinsurance company Lloyd's proposes to create to reinsure all pre-1986 liabilities to create a "ring fence" around the problem of long-tail liability losses.

But, the LNAWP is not satisfied with this. It says Mr. Middleton's assurances do not go far enough and maintain that it will not decide how to vote on the corporate capital issue until days before the Oct. 20 vote.

"There are further matters of concern to the LNAWP, which means we wish to continue discussion with Lloyd's and will only decide at a much closer time to the vote," said Alan Porter, chairman of two members' action groups and a leading member of the LNAWP.

The main item on the LNAWP's shopping list is its suggestion that Lloyd's raise additional capital to cover an expected gap between members' losses and any amounts members may collect from a settlement with E&O underwriters. This could be done, it suggests, through a bond or levy on the ongoing Lloyd's community, including new corporate investors.

Christopher Stockwell, chairman of the LNAWP, said late last week before the LNAWP announced its intentions that he believes the arrival of corporate capital and a successful settlement between members and E&O underwriters are very much related.

"If we agree to let corporate capital in, we must be very careful to ensure that we are not doing anything which would go against the interests of the current membership. There are specific things which need to be sorted out for the 1994 introduction of corporate capital," said Mr. Stockwell.

"If you are looking at the E&O settlement, especially how much we can expect from the E&O underwriters, it is also a question of how much Lloyd's is prepared to put in centrally. What we are looking for is the largest amount possible," he explained.

The LNAWP feels it has a strong enough hand to continue negotiating with Mr. Middleton right up to the last minute because of its plea to action group members to send blank proxies—potentially 17,000 votes out of a total of 32,000—to action group leaders. This would give the leaders permission to vote as they see fit and the power to use the votes en masse at the negotiating table.

Mr. Porter said that the delegated votes were "coming in by the sackful." While he would not reveal how many votes the LNAWP groups have accumulated so far, he said Thursday that the number was "easily thousands and still growing."

Lloyd's, however, is determined not to allow the action groups to use the proxy votes to bring pressure to bear on the E&O settlement. And, Mr. Rowland wrote to the membership, denouncing the solicitation of proxies by the action groups.

"Some of you will be aware of a request by some action group chairmen that your proxies for the EGM should be lodged with them. This is, of course, a matter for your own individual decision. I should state, however, that any attempt to use this vote as an attempt to interfere with the dispute resolution process will not succeed," Mr. Rowland wrote.

As one source quipped, "It's not much use holding an unloaded gun to someone's head." **BI**

This List is Incomplete.



That's because there are more service businesses than you can think of, let alone list. And nearly every one of them has an errors and omissions exposure, meaning that in their everyday line of work, these companies risk getting sued for making mistakes. They may end up having to pay at least attorney's fees, even if they didn't make a mistake!

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Opinions

Now is time to reform PBGC

IS THE FEDERAL PROGRAM that guarantees workers' and retirees' pension benefits next in line for a bailout?

Certainly, the signs are ominous. The Pension Benefit Guaranty Corp., the small but vital agency that protects pension plan participants when companies fail, is drowning in a sea of red ink.

In just a decade, the size of its deficit has quadrupled to \$2.5 billion as the agency has stepped in to cover huge benefit promises made by companies like Pan American Airways and Eastern Airlines Inc. that found they couldn't come close to meeting their pension obligations.

Even bigger losses may be on the way. In just the last five years, pension plan underfunding has jumped to \$45 billion from \$27 billion.

If more financially troubled companies with grossly underfunded pension plans fail, as is almost inevitable, the liabilities the PBGC would have to take on could swamp its ability to pay benefits.

And that could set the stage for a taxpayer-financed bailout, since Congress wouldn't stand by and let retirees' pension benefits become worthless.

But that doomsday scenario doesn't have to develop, not if Congress adopts a legislative package carefully crafted over the past several months by a Clinton administration task force.

The package, to be sent to Capitol Hill this month, would get at the heart of the PBGC's problems: inadequate funding. The current rules are so loose that some companies with massively underfunded plans don't even contribute enough to cover their annual increase in liabilities, let alone enough to actually reduce their shortfalls.

The administration's package would stiffen funding rules in several ways. First, more employers with underfunded plans would be subject to a rapid funding schedule, in which benefit increases would have to be funded within five years.

If plans are better funded, common sense dictates that the PBGC's potential exposures would be significantly reduced.



At the same time, the administration package would eliminate loopholes—"scams" might be a better word—that allow employers to underfund their pension plans.

Under one scam, employers make totally unrealistic assumptions on when pension plan participants will die. By assuming that participants will die at relatively young ages—meaning that total pension payouts and thus liabilities will be smaller—employers can reduce the minimum contributions they must put into their pension plans each year.

The administration would eliminate this tactic by requiring employers to follow certain uniform mortality tables.

The ball is in Congress' court. It can act now to fix a problem while it is still manageable.

Or it can wait, let the PBGC's problems reach unmanageable proportions and call on the taxpayers to bail out the agency.

The choice seems obvious.

Letters

Current work comp system better than none at all

To the editor: I read the letter from Bruce A. Lepore, "Workers Comp Does Not Fit Today's World," in the Sept. 13 issue with a mixed sense of interest and amazement. As someone who has handled workers compensation claims in multiple states over 16 years, I share Mr. Lepore's concern with state systems and their relevance to today's needs, but I find his proposed solutions ill-conceived.

He rightfully points out the high cost of health care, but suggests that abolishing the workers comp system would generate enough savings to fund universal health care coverage. That's an incredibly naive statement, given most quoted numbers for the cost of system overlap at less than 5%.

He suggests that state disability insurance programs take over payment of temporary disability and wage-loss benefits, community colleges take over vocational rehabilitation programs and payment for permanent disability be abolished.

He makes no mention of the concept of "exclusive remedy," the foundation of the employer-employee workers comp bargain.

Anyone care to estimate the cost of the litigation that would certainly follow abolition of the workers compensation system?

Finally, he suggests all those whose jobs are lost under his plan be re-employed in the personal health insurance mainstream.

Wow! Now we can rid ourselves of all the unneeded overhead in workers comp to find these same folks jobs in government-run health boards and alliances, thereby guaranteeing higher system efficiency.

There are more practical solutions, and most of them are being forged in reform efforts either in place or recently passed in various states around the country.

Dale Weaver
Redmond, Wash.

To the editor: In his letter in the Sept. 13 issue, Bruce Lepore refers to the "900-pound" gorilla of health care as having taken the spotlight and thereby becoming the master of all. For this apparent reason, a recommendation to

simply do away with the "antiquated concept" of workers compensation is given.

Has it ever occurred to Mr. Lepore, or other like-minded individuals, that the reason health care grew to such a degree is the unmanaged concepts employed in a system with few controls?

Clearly, workers compensation has been—and continues to be—the major are of calling for physicians to answer for the treatment of insured workers. The runaway costs associated with this treatment are within the full spectrum of health care delivery. Only in the field of workers compensation do you find control of "disability" a major focal point.

I would never claim the system is working well. On the contrary, I personally invested hundreds of hours with the California Legislature trying to reform the California system.

The recent reforms in California are not perfect, but are better than returning to the system in place in 1911 when workers fought to merely obtain benefits and sued their employers. I can hardly sit by and agree by silence to Mr. Lepore's suggestion and have others suppose it make sense. It just doesn't.

David R. Crane
Manager of Workers Compensation
Southern California Edison Co.
Rosemead, Calif.

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Ruling narrows lenders' liability exposure

By MICHAEL SCHACHNER

4th Circuit decision relieves bank of Superfund liability

WILMINGTON, N.C.—Lending institutions scored another victory in their efforts to avoid Superfund pollution liability when a federal court ruled that secured lenders that do not actively manage foreclosed property before selling it are exempt from cleanup liability.

The decision by the 4th U.S. Circuit Court of Appeals bolstered what observers say is an emerging trend.

In its ruling last month, the 4th Circuit said a North Carolina bank that foreclosed on a 200-acre tract and sold it to developers six months later is protected under the secured creditor exemption in the Comprehensive Environmental Response, Compensation and Liability Act, as Superfund is officially known.

That exemption was indirectly strengthened by the Environmental Protection Agency in April 1992, when the agency issued guidelines for what constitutes permissible behavior by a lender for the purposes of being exempt from pollution liability.

The victory for Wachovia Bank & Trust Co. of Wilmington, N.C., is the fifth ruling to favor lenders at the federal court level, according to lawyers specializing in lenders liability and consultants to financial institutions.

Only one federal case, *United States vs. Fleet Factors Corp.* (BI, June 7), and a state court case in Ohio have gone against lenders since the EPA rule was promulgated.

The regulation contains a clause stating that when a lender forecloses on property to protect its business interests and then attempts to promptly sell the property without profiting from it prior to its sale, the lender is still acting only to secure its interest in the property and does not qualify as an "outright owner" subject to pollution liability. That clause is currently being challenged in federal court in the District of Columbia by the Chemical Manufacturers Assn. and the state of Michigan, which contend foreclosure makes the lender an owner.

Although the 4th Circuit did not rely on the EPA regulation in the Wachovia ruling, the decision is a significant victory for banks, savings and loans and other lenders in what has become one of the biggest issues facing the lending community and trustees of financial institutions.

Prior to the 1992 EPA directive, lending institutions that had foreclosed on property were generally held liable for pollution costs as former landowners if it could be proved that any hazardous substances were emitted during the time of ownership.

"Before the EPA regulation, cases were going the other way. While courts may not be citing the EPA ruling in their recent decisions, it has influenced their reading of the CERCLA statute," said Dell Perelman, senior assistant counsel with the CMA in Washington.

Since the rule was issued, lenders have benefited from the EPA regulation, agreed Jeff Talego, president of Risk Management Technologies Inc. in Alexandria, Va., a consulting firm primarily serving financial institutions.

"It seems now that without participation in management, lenders are well protected. The loan security exemption is being widely

supported by courts now. The group that does have to look out, however, are the trustees of these banks. They're not protected as fiduciaries," he said.

Also important in the Wachovia case, according to Thomas Greco, associate general counsel with the American Bankers Assn. in Washington, is the fact that the three-judge panel in the case chose not to follow a 1986 Maryland district court ruling that held a bank responsible for pollution costs because the bank held the foreclosed property for approximately five years before selling it.

"Wachovia indicates that lenders can foreclose, as long as they're functioning solely to pro-

tect their security interests. Courts appear to be focusing on what banks do with the property after foreclosure as the determining factor," he said.

In the 4th Circuit's Sept. 17 ruling, Judge Francis Murnaghan wrote that the "purpose of the CERCLA exemption... is to shield from liability those owners who are in essence lenders holding title to the property as security for the debt."

In the case at hand, "the record revealed no investment or profit motive for acquiring the property. Wachovia did not engage in a bidding war at the foreclosure sale, and Wachovia almost immediately placed the property on the

market, took no steps to manage the land during ownership and ultimately sold the property to the first available buyer. Such steps support its claim that it held the title primarily, indeed exclusively, to protect its security interest," Judge Murnaghan wrote.

Auley Crouch of Carr, Swails, Huffine & Crouch in Wilmington, which represented the property developers that sued Wachovia, said an appeal of the case is unlikely.

Margaret V. Hathaway, an attorney with Thacher, Proffitt & Wood in Washington, which counsels lenders, said the ruling is consistent with a trend that has favored lenders that don't manage

foreclosed sites. "What's best about this decision is that it doesn't rely on the EPA rule. If the D.C. Circuit happens to overturn the EPA rule, rulings like this give lenders additional ammunition in future cases."

James Vanderberry, Wachovia's general counsel, said the ruling is important to all lending institutions because it "adopts a strict definition of ownership for a lender to be held liable."

"Our hope is that this will send a fairly clear signal that will disincline people from seeking money from lenders. Unfortunately, I believe we'll still be looked to in cases like these," he said.

In the Wachovia case, the bank
Continued on next page

Does it work like
an HMO or like an
indemnity plan?

Continued from previous page in 1980 foreclosed on and acquired a 217-acre wooded area known as Potter's Pits. According to court papers, Wachovia immediately listed the property with real estate agents and six months later sold it to two developers.

In 1989, the EPA sued a number of former landowners to recover cleanup costs on several acres of Potter's Pits. Projected cleanup costs on the Potter's Pits site are about \$13 million.

The developers then sued Wachovia, claiming, among other things, that the bank concealed information about known pollution and that it was not exempt from cleanup responsibility because it owned the land for a period of time.

United States vs. Wilbur McLamb et al., U.S. Court of Appeals for the Fourth Circuit; No. 93-1184.

Abortion clinics

Continued from page 3

wholesaler Swett & Crawford Group in Boise, Idaho, replaced the Missoula Planned Parenthood office's property coverage in July. While the office has the same \$500,000 in limits under the new policy from Lloyd's of London underwriters, the premium has doubled, Ms. Frandsen said.

"I don't blame the insurers too much" for not renewing policies, Ms. Frandsen said. "They're in the business to make money. I resent the hell out of those who set the fires."

Arson is suspected in the March fire that destroyed the Blue Mountain Clinic in Missoula earlier this year.

Although damage to the clinic was well over its \$250,000 in property insurance limits, Western States Insurance Co., a sub-

siary of Hawkeye-Security Insurance Co., has agreed to continue insuring the clinic in its temporary offices as well as when the clinic is servicing out of its new facility, said Jane Snyder, interim executive director of the clinic.

"We fully expected to have our policy canceled, but we were fortunate," Ms. Snyder said. "I think we were in the minority."

The Blue Mountain Clinic's expectation was not unfounded. American West Insurance Co., a Grand Forks, N.D.-based unit of W.R. Berkley Corp., dropped the clinic's property insurance in February 1992.

The insurer "wasn't aware we were an abortion provider" until the local paper printed a front-page story of a pro-life demonstration outside the clinic, Ms. Snyder speculated.

Shortly after the story ran, the

insurer canceled the policy and Western States picked up the business.

John J. Tupa, executive vp at American West, declined to comment on the cancellation of the coverage.

The Blue Mountain Clinic hopes to be back in a permanent facility by the end of the year. While no quotes have been made for property coverage for that facility, Ms. Snyder expects the premium to be "considerably higher" than the \$2,000 premium it paid in 1992 to Western States. In 1991, the clinic paid \$900 for its property policy with American West.

While the Blue Mountain Clinic did not lose its property insurance after the clinic burned down, The Women's Health Care Clinic in Boise, Idaho, was not as lucky.

Arson is suspected in a May fire that did an estimated \$60,000 in damage. "It was not as bad as it

could have been," said Ann Plain the clinic manager.

But it was bad enough to prompt Hawkeye-Security, itself a subsidiary of British insurer General Accident Insurance Corp. P.L.C., to refuse to renew property coverage in June.

Hawkeye will "pay over \$50,000" to repair damage to the Boise clinic, while the premium for the policy was only \$300, said Sanford Miller, vp-underwriting for Hawkeye, which is still adjusting the claim. Because of this loss experience, in addition to the potential risk for more claims, "we felt we did not want to continue underwriting the business," he said.

The clinic currently is searching for property insurance to cover its building when business resumes next month after repairs are completed, Ms. Plain said. While she remains optimistic that she will find coverage, she anticipates having to pay \$5,000 in premium, a far cry from the \$300 premium the Boise clinic was paying prior to May.

Some abortion clinics that are members of the National Abortion Federation could soon find an answer to the growing property insurance crisis.

NAF is in the "rudimentary stages" of talking with an insurer about establishing an association-sponsored property insurance program for its members, said Liz Style, membership director for the Washington-based association.

She would not disclose the name of the insurer.

Tightening property coverage is not the only insurance problem facing abortion clinics. Many clinic doctors are having difficulty finding affordable medical malpractice coverage, according to Gina Shaw, program assistant for NAF.

Recently, NAF began offering member clinics medical malpractice insurance for doctors that perform abortion services. The insurer that writes the malpractice coverage is the same one that is discussing the property program with the NAF.

Contributing to the difficulties in obtaining medical malpractice coverage is the influx of complaints and suits filed against abortion providers. According to Ms. Shaw, pro-life groups have been soliciting women who have just had abortions to sue their doctors.

One group, Legal Action for Women, uses a toll-free hot line—1-800-U-CAN-SUE—and will refer women to attorneys.

The groups approach poorer women saying that they will collect some money if they sue, even if there is no basis for a suit, Ms. Shaw said. "They are filing as many complaints as possible, burying insurers with paperwork."

"These nuisance claims are having an impact on insurance," agreed Ms. Snyder of Blue Mountain Clinic.

However, according to Fran O'Connell, assistant vp at Shand Morahan & Co. in Evanston, Ill., which underwrites professional liability for doctors who work in abortion clinics, the underwriting manager has not seen an increase in malpractice claims nor seen any nuisance claims against its policyholders.

All Planned Parenthood affiliates are self-insured for medical malpractice liability risks, according to Jane Johnson, vp-affiliate services for the Planned Parenthood Federation of America in New York. [31]

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Climatic changes catch insurers' attention

By MICHAEL SCHACHNER

NEW YORK—The insurance industry must do more to respond to changes in the world's climate wrought by man-made and natural forces, according to climatologists and insurer executives.

The insurance industry's current response to perceived changes in weather patterns—curtailing property and catastrophe reinsurance capacity—is only a short-term answer to a bigger problem, contends Jeremy Leggett, scientific director for environmental organization Greenpeace.

While region-specific underwriting and reducing capacity may spare insurers losses now and in the near future, climate

changes and resulting severe weather will continue to pose a threat to the insurance industry well into the next century, Mr. Leggett said.

Speaking last month at the first climate forum for environmentalists and insurers, sponsored by Greenpeace and the College of Insurance, Pier Vellinga, vice chairman of the United Nations Intergovernmental Panel on Climate Change, said his group has determined that pollution is still causing an increase in the level of greenhouse gases in the earth's atmosphere.

This trend should force average temperatures upward by 1.5 to 4.5 degrees Fahrenheit over the next decade and beyond.

In addition, current rain activ-

ity in northwestern Africa is expected to influence more severe weather in the Western Hemisphere over the next 20 years, the scientists said.

astrophic hurricanes is part of a bigger trend," explained Mr. Vellinga.

He noted that there hasn't been a statistical climb in hurricane ac-

'There is no scientific evidence that the frequency of cyclones and hurricanes is increasing just for the short-term. The real question is whether the recent string of catastrophic hurricanes is part of a bigger trend,' says Pier Vellinga.

"There is no scientific evidence that the frequency of cyclones and hurricanes is increasing just for the short-term. The real question is whether the recent string of cat-

tivity over the past 100 years.

But attention to this trend has only been piqued among insurers and the public because of the size of the monetary losses caused by

storms like Andrew, Iniki and Hugo, added Mr. Leggett. "The issue only arose in the late 1980s when losses started to top \$1 billion."

"Is climate an important issue?" asked Russell Mulder, director of risk engineering with Zurich-American Insurance Group in Schaumburg, Ill. "After Iniki, Andrew, Hugo and the European windstorms, climate is one of the most important issues we're facing."

But it's not just climatic changes that are concerning insurers, he said. "We're seeing increased severity in insured losses because we're in the midst of a demographic shift. There are now four times as many people per square mile in the Gulf Coast region than there were in 1940. It's the same story along the Atlantic Coast and in the big cities. We have more people packed together than ever before and these disasters are exceeding local areas' ability to deal with them," Mr. Mulder said.

The immediate future for U.S. hurricane activity does not bode well because rainfall in the Sahel portion of northwest Africa has historically dictated North American tropical storm activity and the Sahel has recently entered into a rainy period, Mr. Mulder observed.

"Hurricanes, unfortunately, are not low-frequency, high-severity events. It's just the opposite. They occur regularly and we should probably expect a series of Andrews," he said.

In response, risk managers and insurers must make extra efforts to protect insured property from devastation.

"Effective pre-hurricane construction and repairs can help mitigate loss. We also need to improve what has become a collapsed infrastructure. A full year after Hurricane Andrew and Florida is not rebuilt. There is no way administrative systems and the contracting community (in Florida) could withstand another Andrew, certainly not a series of hurricanes," Mr. Mulder said.

"What we need is more adept monitoring of exposure," added John Chohnoky, senior vp with General Reinsurance Co. in Stamford, Conn. "When risks are fully analyzed and assessed, we realize that the exposure is usually greater."

In addition, if the insurance industry must ready itself for more severe storms hitting more populated areas, insurers and local communities must take greater strides to enforce building codes, suggested Sean Mooney, senior vp and chief economist with the Insurance Information Institute in New York.

Mr. Mooney said 25% to 40% of damages caused by heavy storms occur due to a lack of building code enforcement. "Why do 35% of homes get destroyed in Texas in one storm and only 1% to 3% in North Carolina in the next? It's a matter of code enforcement and we have to get local authorities to do better. Adhering to code is one reason why the rebuilding is going so slow in Dade County," he said.

Mr. Mooney acknowledged that code adherence probably wouldn't lead to premium reductions on property. "Code only accounts for about 2% to 4% of premium, but it's better than homeowners taking \$5,000 and \$10,000 deductibles that they can't afford." **BI**

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Educating regulators can aid E&S industry

By DEBORAH SHALOWITZ

ATLANTA—Surplus lines insurers and wholesalers must educate state insurance regulators about the industry to prevent increasing state regulation, experts recommend.

And, those in the surplus lines business should support the accreditation process established by the National Assn. of Insurance Commissioners, which will help prevent federal regulation, the experts said.

However, there are several areas in which federal regulation might be warranted and even welcomed, several panelists noted earlier this month at the annual meeting of the National Assn. of Professional Surplus Lines Offices Ltd.

One of the biggest obstacles surplus lines professionals face is regulators' ignorance of the industry, several experts agreed.

"Many people, when they're appointed or elected insurance commissioner, don't have any idea what the E&S industry is," said David J. Walsh, Alaska's insurance commissioner.

Mr. Walsh advised surplus lines professionals to visit and educate state insurance regulators about the industry.

If the insurance commissioner is difficult to reach, Mr. Walsh suggested working with assistant commissioners, putting information and proposals in writing and publicizing these efforts in the local press.

"The E&S industry has to get the word out on what happens" and how good the industry is, he stated.

Ronnie C. Moore, chairman of The Southern General Agency Inc., in Bowling Green, Ky., agreed that surplus lines professionals should generate more awareness of their market, and

that effort should include visiting and educating regulators.

He said that when he was the insurance commissioner from Kentucky, few of the NAIC commissioners had exposure to the surplus lines industry.

"We as an industry don't do a very good job of trying to promote—all we do is bitch and moan after the fact," Mr. Moore remarked. "We are a large pimple that (regulators) want to get rid of."

In addition to the education

Regulators will always be 'wanting to regulate us,' says Western World's Derek Hughes.

campaign, surplus lines professionals should support the NAIC's accreditation process in an effort to prevent federal regulation, several experts recommended.

The NAIC's financial regulation and accreditation program requires state regulators to have adequate authority, resources and personnel to regulate effectively an insurer's corporate and financial affairs (*BI*, Dec. 7, 1992).

"The NAIC accreditation program has gotten off to a good start," Mr. Moore said.

Twenty-two states have met the NAIC's minimum financial regulation standards and another half dozen are in the process of accreditation, noted Thomas D. Stamm, senior vp of Acceptance Insurance Co. in Scottsdale, Ariz.

"The NAIC accreditation program has brought an upgrading of both laws and resources," Mr. Walsh stated.

Because of the success of the NAIC's program, several of the speakers were confident that federal regulation would remain at

bay—at least for the near future.

"The motivation behind the NAIC program was in part criticism from the federal government," said David J. Brummond, assistant vp and assistant general counsel for the National Assn. of Independent Insurers in Des Plaines, Ill.

"The NAIC accreditation program will continue to be the regulatory body of the insurance industry for the next few years," Mr. Moore predicted.

Regulation is a fact of life, one of the speakers pointed out.

"As a member of the surplus lines industry, I'm not paranoid about regulation," stated Derek Hughes, vice chairman of Western World Insurance Group in Ramsey, N.J. "As well as underwriting cycles, there are regulatory cycles."

"There'll always be the power struggle of the regulators wanting to regulate us... and we'll always be pushing back," Mr. Hughes said, adding that he is optimistic that regulation of the insurance industry will not increase in the near future.

And, there are several areas in which increased regulation would be appropriate, some of the panelists said. For example, several panelists called for the establishment of federal penalties for insurance fraud.

"If we could get the fraud out of the industry, about 80% of the decibel (level) for federal regulation of the industry would be gone," Mr. Walsh said.

There might be a place for federal regulation involving alien insurers, one official suggested.

"I'm not sure that the states can really handle the regulation" of alien insurers, Mr. Hughes said. "Maybe this is best left to the feds."

But, the NAIC's Mr. Brummond disagreed.

"I don't know that it's the level of government that makes the difference," he said. **BI**

Expertise wholly needed

Wholesalers to retain key role in market

By DEBORAH SHALOWITZ

ATLANTA—Despite a growing trend for surplus lines insurers to deal directly with retail brokers, there still is and will continue to be an important place in the industry for wholesale brokers, experts agree.

"One of the unspoken concerns of wholesale brokers" is the possibility of their specialized markets going directly to retailers, observed D. Michael Polizzi, president and chief executive officer of Investors Insurance Group in Red Bank, N.J.

However, he said, it is "almost impossible for us to set up direct writings."

Gerald D. Stephens, president of specialty property/casualty insurer RLI Insurance Co. in Peoria, Ill., agreed.

"We could not handle a multitude of small agents' submissions," Mr. Stephens stated. "We have too few underwriters to cope

with it," he said.

"We are dealing with wholesalers with practically everything we do," Mr. Stephens said late last month at a session during the National Assn. of Professional Surplus Lines Offices Ltd.'s annual convention in Atlanta.

"The wholesale broker adds a lot of value" by gathering all the information necessary to complete complicated and specialized submissions, Mr. Stephens explained.

"It's really an efficiency issue," agreed Mr. Polizzi of Investors Insurance Group.

Warren Stanley, president and CEO of Swett & Crawford Group in Los Angeles, the nation's largest wholesale broker, pointed out that "a wholesaler's value added is not strictly limited to an exclusive relationship."

Wholesalers are more familiar with the surplus lines market than retailers, and they know how the companies work and what they need, Mr. Stanley explained.

Retail broker Sedgwick James Inc. increasingly is placing surplus lines business directly with

insurers, according to Charles L. Ruoff, senior vp of Sedgwick James in New York.

Market conditions have made surplus lines insurers more willing to write the business direct, he said.

Nonetheless, "there is a need and a value that can be filled" with wholesalers, Mr. Ruoff admitted. "We cannot be all things to all people."

"I think the wholesale market still has a lot to offer even to a retail market," he added.

Instead of becoming obsolete, the wholesale market still has many opportunities to grow, several experts suggested.

For example, wholesalers can capitalize on opportunities in both the admitted and the non-admitted market, Mr. Polizzi pointed out.

"It is imperative that the excess and surplus lines market figure out ways to use the alternative market," advised Chester A. Abbey, a reinsurance consultant and arbitrator in Keene, N.H.

"You ought to have an avenue for access to these markets. Otherwise, the commissions are going to others," he said. **BI**

NAPSLO conference attracts 1,700

ATLANTA—Approximately 1,700 surplus lines professionals attended the National Assn. of Professional Surplus Lines Offices Ltd. convention in Atlanta Sept. 29 through Oct. 3.

Panel discussion topics included the role of alternative markets, the future of the surplus lines market and insurance regulation. Sir Peter North Miller also spoke about Lloyd's of London's new business plan.

David R. Hartoch, president and chief operating officer of Sherwood Insurance Services in Woodland Hills, Calif., was elected the new president of the association. He succeeds Robert B. Angle, regional vp of Montgomery & Collins, Inc., in Glastonbury, Conn.

Also announced as new NAPSLO officers were: Eugene J. Eisenmann, president of Heath Insurance Brokers Inc. in Dallas, elected vp; Maureen C. Caviston, branch manager of Bryson Associates Inc. in New York, elected secretary; and Gary D. Westphalen, president of Westphalen, Bradley & James Inc. in Oklahoma City, elected treasurer.

Next year the NAPSLO convention will be held Sept. 28 through Oct. 2 in New Orleans. For information contact Richard M. Bouhan, Executive Director, NAPSLO, 6405 North Cosby, Suite 201, Kansas City, Mo. 64151; 816-741-3910.

—By Deborah Shalowitz



Expect less capacity at Lloyd's in 1994: Miller

By DEBORAH SHALOWITZ

ATLANTA—A former chairman of Lloyd's of London says the future of the market depends on controlling capacity and cutting costs.

Sir Peter Miller, chairman of broker Miller Insurance Group Ltd. in London and a former chairman of Lloyd's, said he envisions a smaller Lloyd's in 1994, despite the introduction of corporate capital. Although Lloyd's current capacity is approximately \$13.4 billion, capacity should shrink to \$11.6 billion next year, he told attendees at the annual National Assn. of Professional Surplus Lines Offices Ltd. earlier this month.

Sir Peter's remarks contrasted with those of Lloyd's current chairman, David Rowland, who recently predicted 1994 capacity of between \$13.95 billion and \$15.5 billion (*BI*, Oct. 4).

The difference between Sir Peter's and Mr. Rowland's capacity estimates seems to be the amount of corporate capital each expects Lloyd's to attract for the coming year.

Sir Peter said in an interview following his speech that he expects limited liability corporate capital to come to Lloyd's slowly, accounting for less than 10% of new capital next year.

Within 10 years, Sir Peter predicted, corporate capital could amount to as much as 50% of total capital.

In contrast, Mr. Rowland said he expects corporate capital to more than make up for the decline in capital next year from individual names.

Sir Peter agreed with Mr. Rowland's view that capacity should be controlled and used wisely. "There is no point in just getting more capacity for the fun of it," Sir Peter stated.

He also noted that improved efficiency and cost-cutting will help Lloyd's in the future.

Lloyd's is "out to streamline business procedures," he said. "One of the things Lloyd's has failed to do... is to take advantage of information technology."

For example, in the past Lloyd's

has not had centralized, computerized administration to facilitate efficient sharing of information, he explained. "It can't go on and it won't go on" operating without this kind of organization, Sir Peter stated.

The dominant theme of Sir Peter's speech was optimism: "What is happening at Lloyd's today is not an expression of weakness but an affirmation of strength."

Sir Peter expressed complete confidence in the ability of NewCo.—a reinsurance company proposed by the market earlier this year to assume syndicates' pre-1986 liabilities—to cover all its liabilities without additional future cash calls from members (*BI*, Aug. 30). "That's got to be avoided at all costs," he stated.

However, Sir Peter declined to explain how this can be accomplished.

NewCo. will fail only in conjunction with an international insurance Armageddon, Sir Peter predicted. If NewCo. fails, "there would be a meltdown of the whole insurance industry," he declared.

Although Lloyd's is attempting to improve its performance through a variety of means, it was primarily bad luck that forced the market into its current predicament, Sir Peter pointed out.

"Wherever you look, there has been financial mayhem in the world of insurance," he commented.

For example, from 1969 through 1986, average insured damage from catastrophes was \$4 billion per year, he said. However, from 1987 through 1992, average insured damage from catastrophes was \$12 billion per year, using constant dollar figures throughout, he said. The increase in costs due to catastrophes in recent years is "absolutely staggering," Sir Peter stated.

Competition also has had a riveting effect on the market.

Sir Peter related that, in 1970, the annual premium to insure a brand-new large crude oil tanker was \$1.2 million.

Twenty years later, however, the annual premium to insure the tanker—now old, battered and corroded—was \$200,000, thanks largely to fierce competition in the marine market. It's "absolutely incredible," Sir Peter remarked. **BI**



Early retirees

Continued from page 1
say both estimates are wildly off and that the true cost to government could be at least twice as much.

"It is hard to understand how the administration has reached its cost estimates. The actual cost of delivering these benefits will far exceed their estimates," said Sylvester Schieber, director of The Wyatt Co.'s Research and Information Center in Washington.

"It is fair to say that the administration has underestimated the cost by at least half," said Bill Custer, research director at the Employee Benefit Research Institute, a Washington-based benefits think tank.

The General Accounting Office estimates that employers alone last year spent \$8.6 billion on health care benefits for retirees between ages 55 and 64.

That cost estimate does not include the billions of dollars individual retirees paid for coverage or incurred in out-of-pocket expenses.

Because the administration hasn't disclosed its assumptions, it is difficult to know exactly how it came up with its cost estimates of the early retiree health subsidy provisions.

Benefit experts assume, though, that administration officials simply multiplied the number of current retirees between the ages of 55 and 64—roughly 3 million to 4 million—by \$1,800, which is what the standard health care package would cost for individual coverage.

But, benefit experts say, if such an assumption was used, it would be faulty for several reasons. They note that health care costs for individuals between 55 and 64 are substantially higher than \$1,800. Benefit consultant A. Foster Higgins & Co. Inc. says health care costs for individuals who retired before age 65 averaged \$4,244 per retiree in 1992.

Even if these early retirees were put in giant regional health alliances and their claims experience was community-rated with others in the alliance, adding so many older individuals to the pool would greatly boost the average cost of coverage.

Responding to a wave of criticisms—especially on how its reform package will be able to finance universal coverage—the administration says it is going back to the drawing board for new cost estimates.

For example, at a White House news briefing last week, Mr. Reich said the administration is scrubbing an estimate that 350,000 to 600,000 workers would retire early because they would be assured the government would pay most, if not all, of their health care costs.

The administration also said last week it will soon decide how much of a one-time surcharge employers would have to pay to dump their early retiree health obligations.

The size of that charge would affect how much the early retiree health care subsidy actually would cost the government.

While the administration may be having second thoughts on the size and cost of the early retiree health care subsidy, benefit experts agree that the subsidy would be a windfall for employers, especially smoke-stack companies, that offer early retiree health benefits programs. At a single stroke, those firms could transfer most of their cost for these benefits to the government.

And, the proposal would be a boon to workers who want to retire early from a company not offering retiree health care coverage. Those individuals would pay at least 20% of the premium—under the original proposal—while the government would pick up the rest.

While the proposal would be a windfall for certain employers and individuals, it could trigger a public

backlash, some benefit experts say.

They note that individuals who could retire early would be those who likely would have lots of retirement income, such as hefty pension benefits and personal savings.

"Taxpayers would question why they should be asked to subsidize the health care costs of those who are well off enough to retire early," said Paul Gewirtz, national actuarial director at Ernst & Young in Cleveland.

Others say if more individuals are encouraged to retire early, it could hurt Social Security revenues because payroll taxes, which are assessed on salary, would be reduced.


"Clearly, there are implications, for other programs, like Social Security, that the administration probably did not fully consider" when it put together its early retiree health subsidy proposal, said Harry Purnell, a Foster Higgins principal in Princeton, N.J. **SI**

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Cooper proposal

Continued from page 1

co-sponsors gathered around him at a press briefing—took the middle road with H.R. 3222, a bill that notably lacks any employer mandate.

"The administration started with managed competition and then went to the left. The Republicans took managed competition and went to the right. Our bill is squarely in the middle, where it should be, and is the only one with significant bipartisan support," said Rep. Cooper, who introduced a similar bill last year (*BI*, Sept. 21, 1992).

Sens. John Breaux, D-La., and David Durenberger, R-Minn., were expected to introduce a companion bill in the Senate shortly.

While praising the Clinton administration's efforts on health care reform, Rep. Cooper said the president's plan "falls short of real managed competition."

Most notably, the two proposals differ on whether employers would be required to join health alliances and pay for employees' coverage.

President Clinton would require all employers with fewer than 5,000 employees to join a regional alliance and would require all employers to pay an average of 80% of workers' health premiums.

Rep. Cooper would require only employers with fewer than 100 employees to join a "health plan purchasing cooperative," while very large employers could form their own HPPC, though no minimum size is specified in the proposal.

No employer would be required to pay for employees' health costs.

Individuals would be able to join an HPPC directly, and could choose among the HPPC's menu of accountable health plans, which insurance companies and health care providers would combine to create. AHPs would have to offer a standard benefits package as well as more comprehensive plans. Also, providers must report the medical outcomes of their patients to AHPs.

Sponsors of the Managed Competition Act, which would set no global budget and would not cap increases in insurance premiums, say their plan would cost about \$25 billion per year in new federal spending. They say the president's plan would cost \$70 billion.

The Cooper proposal would also:

- Guarantee universal access to health insurance and subsidize coverage for the poor.
 - Require health plans to accept all applicants.
 - Allow states to dictate the maximum size of employers purchasing coverage through the HPPC, ranging from 100 to 500 employees, provided that no more than half of all employees in the state belong to a HPPC. Larger employers could not opt into the HPPC. Under the Clinton plan, employers with fewer than 5,000 employees would be required to join a regional alliance.
 - Cap the tax deduction for employers at the cost of the lowest-priced available plan offering the standard benefit package. The Clinton plan would limit an employee's tax exclusion to any amount spent on the standard package, but this provision would not go into effect for 10 years.
 - Cap non-economic damages in medical malpractice suits. President Clinton's plan is silent on non-economic damages.
 - Permit states to retain flexibility "within the context of a nationwide market-based reform." The Clinton plan would allow any state to set up a single-payer health system.
 - Replace Medicaid with a new federal program, which would help low-income persons purchase coverage from AHPs.
- Benefit consultants and business

groups welcomed the more centrist approach and said it could be an important step toward reform.

Rep. Cooper's bill is "a market-driven approach, not a regulatory approach," said Richard Smith, director-health care policy at the Assn. of Private Pension & Welfare Plans in Washington. Bipartisan support for the bill—27 of its co-sponsors are Democrats and 19 are Republicans—may signal the beginning of a compromise on reform.

Rep. Cooper "controls Democratic votes that are badly needed to pass the Clinton administration's health reform bill," said Frank McArdle, a consultant at Hewitt Associates in Washington.

Business groups were heartened about the bill's lack of a requirement that companies offer health care coverage to workers.

"The employer mandate is such a terrible barrier and has so much possibility for damage to the busi-

ness climate," said Pamela Mitroff, director-health and workers compensation policy at the Illinois Chamber of Commerce in Chicago.

The measure's less restrictive stance on purchasing cooperatives is also considered attractive. "The Clinton proposal has made corporate alliances unattractive to large employers, but the Managed Competition Act frees this up and makes it a bona fide option," said Brian Marcotte, director-group insurance policy and administration at Allied Signal Inc. in Morristown, N.J.

Purchasing cooperatives would represent 50% or less of the market under the Cooper plan, which would be less disruptive to the market than 80% of the market as proposed by the president, said Mr. McArdle.

But the formation of purchasing cooperatives in the Cooper bill causes insurers some concern.

The Cooper plan does not flesh out "the manner in which health al-

liances will be structured," said Stuart Brahs, vp-federal government relations at The Principal Financial Group in Washington. There is some talk of "limiting the number of health entities, and we think that is anti-competitive."

"We like the size of the alliances. It is much more manageable," said Sharon Canner, assistant vp-industrial relations for the National Assn. of Manufacturers in Washington.

Rep. Cooper's bill often seems to steer a middle ground between the president's plan and a Senate Republican proposal that would emphasize individuals' responsibility for buying health coverage and would not require employers to offer coverage (*BI*, Sept. 20).

Hewitt's Mr. McArdle cautioned that consensus will be difficult to achieve in two areas: price controls and the tax breaks on benefits.

Still, he urged employers to take the bill seriously. "While a lot of leg-

islation is introduced primarily for political consumption, the Cooper bill is a serious proposal, and employers should treat it as such."

Rep. Cooper's bill was not without its critics. At a White House briefing last week, Treasury Secretary Lloyd Bentsen faulted it for failing to provide universal coverage and for leaving it up to a national board to decide later—rather than spelling out now, as the Clinton proposal does—the basic health care benefits that plans would have to provide.

Mr. Bentsen also contended that limiting corporate tax breaks on health benefits would encourage companies to take away benefits.

And consumer organization Citizen Action criticized the proposal for increasing national health spending while leaving millions uninsured.

Mark Hofmann and Jerry Geisel contributed to this story.

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Texas coverage suit

Continued from page 3

son, Kill, Olick & Oshinsky in New York. Ms. Gallinari represents group health plan participants and medical centers in coverage disputes.

Courts nationwide, interpreting varying policy language, have returned mixed decisions in lawsuits against insurers that have denied coverage for the treatment (BI, Jan 4).

Many doctors recommend the treatment for select patients and say the debate over whether it is experimental is largely a matter of semantics.

The treatment itself—high-dose chemotherapy with autologous bone marrow transplants, or HDC/ABMT—is not new. Indeed, it has been used successfully for decades to treat Hodgkins disease and other forms of cancer.

But only relatively recently has it been used to treat breast cancer. Early clinical tests indicate that it may benefit some patients, but the effectiveness "has not been proven in a rigorous scientific way," explained Dr. C.F. Lemaistre, director of the bone marrow transplant program at the University of Texas Health Science Center at San Antonio.

The center performs the treatment for patients meeting specific criteria.

The National Cancer Institute, from which the insurance industry takes its cue on covering medical procedures, currently is conducting clinical studies comparing HDC/ABMT and more conventional treatments for breast cancer.

"We don't know that this therapy is better than standard therapy," said Dr. Bruce Chessin, who oversees new cancer treatments

for the NCI, in a recent "60 Minutes" report on CBS.

The grueling treatment involves removing a small amount of a breast cancer patient's bone marrow and then plying her with massive doses of chemotherapy for up to 24 hours a day for as many as four straight days. The bone marrow is removed because the chemotherapy—administered in doses 10 to 20 times greater than in conventional treatments—would destroy the marrow along with the cancer, causing death.

After the cancer cells are eradicated, the patient is injected with her own bone marrow, which fights off the effects of the chemotherapy. Between 2% and 15% of patients die from complications resulting from the treatment.

Doctors and insurers say the treatment can cost between \$50,000 and \$150,000, but that

figure is decreasing.

The Texas case centers on Prudential policies that promise to cover medically necessary procedures. That promise is misleading, the suit charges, because Prudential considers HDC/ABMT experimental and often refuses to cover the treatment.

The suit says that HDC/ABMT is "the most effective treatment for advanced breast cancer" except when the patient's disease has entered its late stages and is unresponsive to standard chemotherapy.

"High-dose chemotherapy treatments are not experiments. They are the medically appropriate treatment for advanced breast cancer. They are also the best chance that a number of Texas women have for long-term survival," says the suit, noting that the disease killed 8,000 women in Texas between 1987 and 1990.

Insurers should cover the treatment whenever it is requested by an appropriate specialist or oncologist, the suit says.

The attorney general's office has not estimated how many times coverage was denied inappropriately or how many denials involved group health plans. No damages are specified in the suit.

A Prudential spokeswoman said the insurer covers the treatment for most Texas policyholders who want it.

Prudential does require doctors to use the drug regimens used by the National Cancer Institute in clinical trials of the treatment. However, it does not require patients to participate in a clinical trial, as the attorney general says, according to a spokeswoman.

Enforcing such a requirement would mean half of the patients would receive only the conventional therapy and not the HDC/ABMT treatment.

"I'm not sure the (attorney general) fully understands our coverage position on this," the spokeswoman said.

Health insurers have no uniform position on coverage for the procedure—some routinely cover the treatment, others routinely deny coverage and still others evaluate each case separately.

Kylanne Green, director of managed care for the Health Insurance Assn. of America in Washington, asserts that the treatment "is in fact an experimental treatment for breast cancer" because the NCI is still determining its benefits.

While acknowledging that the treatment "has shown some promise," Ms. Green said that "insurers' responsibility is to provide coverage for things that are proven."

Insurance companies also are concerned about the treatment becoming part of standard practice without sufficient evidence that the procedure is better than other treatments, she said.

"We may be looking in the wrong places, looking at wrong things, because we didn't take the time to scientifically look at the things we are doing," she said. As a result, "We may move along paths that have dead ends."

Doctors and the lawyers who represent breast cancer patients charge that insurers are motivated by the bottom line.

"I think it's an issue of cost," said Dr. Joseph Fay, director of the bone marrow transplant program at Baylor University Medical Center in Dallas.

Most insurers cover treatments that are in earlier testing stages than HDC/ABMT but are not as expensive, he said.

Insurers "don't really have any basis for playing God, and that's what they're purporting to do. It's up to the physician to judge whether this is an appropriate treatment, not insurers," said Arnold R. Levinson of Pillsbury Levinson & Mills in San Francisco.

"Insurers can't be accused of that any more than providers who withhold treatment because they are not going to be paid," Ms. Green replied.

But, Baylor University's Dr. Fay said that a physician's reimbursement accounts for only about 5% of the treatment cost. Hospital and pharmaceutical costs run up the price tag, he said.

Rather than finger pointing, insurers and health care providers should be cooperating in research projects to identify the patients who can benefit most from the treatment, said Dr. Lemaistre of the University of Texas. **BI**

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PBGC reforms

Continued from page 2
ing requirements.

Other observers note that limiting PBGC benefit guarantees would trigger opposition from organized labor, which could cripple any chances of PBGC reform legislation clearing such pro-labor congressional committees as the Senate Labor and Human Resources Committee and the House Education and Labor Committee.

Last week's subcommittee hearing came as the administration is preparing to formally send its PBGC reform proposal to Capitol Hill. Key provisions in that proposal would:

- Tighten funding requirements. For example, a special rule that now requires employers whose pension plans are less than 35% funded to provide for benefit increases over a five-year period would be extended to plans that are less than 60% funded.

- Require pension plans to maintain at a minimum liquid assets equal to at least three years of benefit payments.

That provision is intended to stop a current problem in which lump-sum payments quickly strip a pension plan of its assets.

- Require more uniformity in

interest and mortality rate assumptions.

Those provisions are intended to stop what Labor Secretary Robert Reich described last month as "wiggle room." Some employers, for example, have been making unrealistic mortality assumptions, such as assuming that plan participants will die at relatively young ages, to reduce the amount of contributions they make to their pension programs.

- Boost the annual premiums that employers with grossly underfunded pension plans pay the PBGC to \$140 on average per plan participant from the current maximum of \$72 per participant.

- Require employers with underfunded plans to disclose to participants the financial condition of their pension plans and the limits of PBGC guarantees.

Some panel members expressed concern that the new funding rules might impose too great a financial hardship on employers.

Rep. Amo Houghton, R-N.Y., said employers facing other federally mandated cost increases, like higher basic tax rates and, if accepted by Congress, a Clinton proposal to require companies to pay 80% of employees' health insurance premiums, might not have enough resources to pay addi-

tional funds into their pension plans.

The PBGC's Mr. Slate said the administration package includes a special transition rule to protect employers with severely underfunded plans from immediate "extraordinary" increases in funding levels over a seven-year period. Under this transition rule, employers initially only would have to make contributions needed to boost their funding levels by three percentage points. For example, a plan that was 50% funded at the end of 1994 only would have to make contributions in 1995 to boost the plan's funding level to 53%.

Rep. Bill Brewster, D-Okla., pressed Mr. Slate on whether sharply raising PBGC premiums for employers with underfunded plans would put too much financial pressure on those firms.

Mr. Slate said he doubted that would be the case, adding that a number of employers with big underfunded plans are paying substantial dividends to their stockholders.

By raising PBGC premiums for underfunded plans, employers also would be given a financial incentive to improve plan funding, Mr. Slate added.

Rep. Houghton also questioned

whether it might be better to wait a few years before addressing the financial problems of the PBGC, which has a deficit of \$2.5 billion.

Mr. Slate said the lesson policymakers have learned from the savings and loan association debacle is that it is better to tackle a problem while it is manageable rather than wait until it is too late.

Rep. John Lewis, D-Ga., said he wanted assurance that the Clinton administration's package is tough

enough so that PBGC officials aren't back in a few years asking for a "bailout."

Mr. Slate replied that the administration believes its reform package will prevent that from happening. It projects that the package, if adopted, would eliminate the agency's \$2.5 billion deficit within 10 years and, over a 15-year period, would boost the funding levels of underfunded plans, which on average are now 55% funded, to 90% funded. **B1**

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re

Petition of Christopher John Hughes and Ian Douglas Barker Bond, as Joint Provisional Liquidators of Kingscroft Insurance Company, Ltd., et al.,

In Petition Under Section 304 Case Nos. 92-B-41974 (PBA) through 92-B-41977 (PBA) and 92-B-44623 (PBA) Jointly Administered

Debtor in Foreign Proceedings

SCHEDULING ORDER

WHEREAS Petitioners, as Joint Provisional Liquidators of Kingscroft Insurance Company Ltd. ("Kingscroft"), El Paso Insurance Company Ltd. ("El Paso"), Lime Street Insurance Company Ltd. ("Lime Street"), Mutual Reinsurance Company Ltd. ("Mutual") (collectively, "KELM") and Walbrook Insurance Company Ltd. ("Walbrook," and collectively with KELM, "KWELM"), commenced these cases by the filing of petitions pursuant to Section 304 of the Bankruptcy code (the "Petitions");

WHEREAS Petitioners have posted to KWELM's creditors a proposed Scheme of Arrangement pursuant to section 425 of the Companies Act 1985 of Great Britain, to be considered and voted upon by KWELM's creditors and, if approved, to be submitted for sanctioning by the High Court of Justice in London, England (the "High Court") and the Supreme Court of Bermuda;

WHEREAS meetings of creditors are scheduled to be held in London on November 17, 1993 to consider and vote upon the Scheme of Arrangement;

WHEREAS Petitioners anticipate that, if the requisite proportion of KWELM's creditors vote to approve the Scheme of Arrangement, hearings will be held shortly thereafter in the High Court and in the Supreme Court of Bermuda on orders sanctioning the Scheme of Arrangement;

WHEREAS this Court has scheduled a hearing in these cases to be held in Room 617 of the Alexander Hamilton House, One Bowling Green, New York, New York on December 14, 1993 at 10:00 a.m. (the "Hearing");

WHEREAS, in advance of the Hearing, Petitioners intend to file an application for relief on the merits of the Petitions, including a permanent injunction order, *inter alia*, enforcing the Scheme of Arrangement in the United States (the "Application");

WHEREAS, pursuant to prior orders of this Court, the time to answer or move with respect to the Petitions in these cases was extended *sine die*;

WHEREAS the Court wishes to hear any and all responses to the Petitioners' Application and any and all answers and motions controverting the Petitions in an orderly and efficient manner, and to coordinate these cases with the foreign proceedings;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

ORDERED that Petitioners' Application, together with all supporting papers, shall be filed with the Court with a copy to Chambers and shall be served by hand delivery, facsimile or United States mail, first class postage prepaid, upon the parties in interest appearing in these cases on the date of such service (the "Service List") on or before October 27, 1993;

ORDERED that any and all objections or responses to Petitioners' Application shall be filed with the Court with a copy to Chambers and served on the Attorneys for Petitioners, in the manner set forth below, on or before November 19, 1993;

ORDERED that all persons wishing to answer or move with respect to the Petitions must do so on or before November 19, 1993, by filing such answer or motion, together with all supporting papers, with the Court with a copy to Chambers and serving such answer or motion, together with all supporting papers, on Attorneys for Petitioners in the manner set forth below;

ORDERED that Petitioners reply to any and all objections or responses to the Application, and Petitioners' response to any and all motions controverting the Petitions, shall be filed with the Court with a copy to Chambers and served by hand delivery, facsimile or expedited delivery upon the Service List and upon the moving or objecting parties on or before December 1, 1993;

ORDERED that any and all replies to Petitioners' response to motions controverting the Petitions shall be filed with the Court with a copy to Chambers and served on the Attorneys for Petitioners, in the manner set forth below, on or before December 10, 1993;

ORDERED that all papers submitted for the purposes of controverting the Petitions or opposing the relief sought in Petitioners' Application shall be served by hand delivery, facsimile or expedited delivery on Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022 (attention: Ronald DeKoven), Attorneys for Petitioners, in accordance with the schedule set forth in this Scheduling Order;

ORDERED that, subject to further order of this Court, Petitioners' Application, and any and all motions controverting the Petitions submitted in accordance with this Scheduling Order, shall be heard at the Hearing;

ORDERED that this Scheduling Order shall be served (A) by hand delivery, facsimile or United States mail, postage prepaid, on or before October 27, 1993 upon the parties in interest appearing in these cases, at the time of such service; and (B) by publication of this Scheduling Order in *Business Insurance Magazine* on or before October 18, 1993; and that service pursuant to this paragraph shall be deemed good and sufficient service and adequate notice.

Dated: New York, New York
September 14, 1993
3:45 p.m.

/S/PRUDENCE BEATTY ABRAM

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The human element at work

Focusing on behavior can lead to a safer workplace

By Lisa Kunz

MARY AND JOAN TALKED in the employee lounge. Mary's ex-husband was threatening to take away her children. She doesn't have money to hire a lawyer, and her parents don't want to be involved.

Jim needed help quickly. He asked Sam for assistance in getting three large orders out by 3 p.m. so they would reach the customer on time. Sam refused to help and told Jim that it was his problem. Unkind words were exchanged and Sam took his third break that afternoon.

Sue was fed up. This was the fifth day in a row she'd worked through lunch. Why didn't anyone ask her how they could better handle this rush of orders? She was constantly out of the products she needed to send. She loaded the next 10 boxes with foam packing material only, and slapped on the mailing labels.

At work that afternoon, Mary let three defective medical products go by, and Sam and Jim had a fist fight. The next day, 10 angry customers received empty boxes.

It wouldn't be unusual to witness scenarios like these in today's workplace. How can these outcomes be prevented?

The human element—our feelings, attitudes and behavior—is at work in each of these scenarios. It is a powerful element that can override our policies, procedures and attempts to create a safe workplace—and impact the bottom line. Despite its importance, we often ignore the human element in our loss control and quality efforts. It begs the question: Are we focusing on the right things to get the job done, to prevent losses and ensure quality?

Most businesses focus on making products and services bigger and better. We achieve speed and quality through technology and automation. Traditionally we have focused on two components:

- **The physical work environment.** We provide safe, high-tech work environments. We mark hazardous areas and chemicals; install sprinkler systems and fire extinguishers; and protect our workers with safety glasses, ear plugs and other safety gear. Advanced machinery and computers help us ensure quality and monitor productivity.

- **Policies and procedures.** We develop and institute quality and loss-control policies and procedures, such as quality-control checks and lock-out/tag-out procedures. We teach employees how to work safely and properly to avoid injury and product defects.

Overall, industry has done a good job of providing physically safe work environments and instituting procedures to adequately train employees. Yet, we fail to maintain consistently high levels of quality and reduce, if not omit, losses. What did we miss?

In our narrow focus on physical and procedural elements, we've overlooked the third and most critical piece—the people who perform the work. This oversight is found only at the management level. Call it management's malady: we've failed to address and manage the human element.

The human element is *who* we are. It's what we bring to work every day—our attitudes, how we feel, our perceptions and expectations.

The human element is critically important today, as we face more demanding situations both at work and home. At work, our job requires more skills and mental work. We're working leaner and meaner with fewer opportunities for advancement. We have more personal responsibility and pressure including: child care and elder care, changing roles of men and women, and adjusting as the nuclear family changes.

Furthermore, we expect things to be bigger, better and faster. We feel we deserve the best at work and at home. Employees want more involvement, responsibility and respect at work, as well as help with child care, health care and financial issues.

Therefore, we need to invest in our human capital. We need to work at retaining our employees by creating healthy work environments and by helping employees manage their issues and needs. Otherwise, we will continue to suffer from negative outcomes that will hit the bottom line: disgruntled employees, high levels of absenteeism and turnover, and even sabotage. We also will undermine our efforts to provide a physically safe work environment and to follow established policies and procedures.

How can your organization affect employees' performance and well-being?

Organizational cultures are a powerful force in influencing employee behavior. An organization's culture shows what it values. Culture is not a mission statement; it's the daily happenings—how people act

Culture Quiz

1. Does your company have a clear mission or goal?
2. Are employees involved in the decision-making process?
3. Does management encourage communication and make an effort to keep employees informed?
4. Do departments and employees work well together?
5. Do several unexplained and preventable accidents and mistakes occur?
6. Are employees recognized and rewarded fairly and equitably for their work?
7. Are energy levels and morale high and positive?
8. Are problems addressed and resolved openly?

and react to one another, the politics, the norm.

Studies have shown the dramatic effect organizational culture can have on employee behavior and loss outcomes. Organizations with participative management styles, profit-sharing/gain sharing programs and employee programs like wellness and safety have been shown to have 10 times fewer claims, lower turnover and happier employees.

As stress levels and poor communication increase, so does the frequency of workers compensation, stress and accident claims.

A recent study by St. Paul Fire & Marine Insurance Co., "American Workers Under Pressure," found that employees with poor supervisors were more likely to experience burnout, think about quitting their jobs, and have productivity problems.

Investigations after several instances involving the U.S. Postal Service have shown how an unhealthy culture, autocratic management, fast-paced work and unfair management practices can lead to disaster. Angered employees return for revenge, often assaulting, even killing supervisors and co-workers.

A healthy organizational culture is easy to identify. In fact, you can feel it. Walk into a healthy company and you can feel the synergy, the motivation and excitement. People converse and work together. A healthy corporate culture fosters respect, trust a sense of belonging, positive morale and open communication.

Take a moment to answer the accompanying culture quiz. More than one "yes" indicates an opportunity to improve your culture.

How does a company create a healthy culture?

- **Leading.** Lead the way in defining your culture. Don't just let it happen. What does your company value and stand for? What kind of work environment do you want? Leadership is a critical component in creating a healthy culture. By creating and sharing the vision, management sets the stage for a healthy

company. Management needs to define the desired culture, develop a business strategy that fosters it and model and reward the desired behaviors.

- **Goal setting.** Set goals at all levels of the organization—for the company, departments and individuals. The goals need to be specific, measurable, ambitious yet realistic. Goals provide direction and incentive. Employees must be held accountable for reaching their goals and rewarded accordingly.

- **Decision making.** Push decisions to the lowest level possible. Empower employees to make decisions that affect their work and their customers' satisfaction. This is necessary to develop buy-in and loyalty to a company's quality mission and healthy culture.

- **Compensating.** Compensate employees fairly and equitably with pay and non-monetary incentives, such as recognition and praise. Reinforce the appropriate behaviors and do it consistently. What management recognizes and compensates sends a strong message about expectations.

- **Training.** Give your employees the tools they need to do their work—not only supplies and materials, but knowledge. Investing in your employees empowers them and develops them to contribute even more to your company. If your employees don't grow, neither will your company.

- **Assessing.** Gather information continuously to learn where you stand and to guide goal setting and decision making. Look for feedback internally (from employees) and externally (from customers). Determine what you do well, where you need to improve and act on this information.

How do you get started?

- **Define your culture and goals.** Management must believe in and support this vision or mission, otherwise employees won't buy it. Paying lip service to something management doesn't truly support will undermine your efforts and your credibility.

- **Recruit followers.** Test your vision with your peers. Share it with upper management. Gain their support. Integrate their ideas and feedback.

- **Improve communications.** Encourage and improve communication throughout your entire organization. Ask for suggestions and act on them. Implement an employee attitude survey. Find out what issues are impeding productivity and employee motivation and change or eliminate them.

- **Build systems, programs and services.** Begin building the systems that promote a healthy culture such as compensation, training and development, performance reviews, and employee services. These systems should incorporate your vision and support your mission. Create and implement programs that show you care and invest in your people. Put in family-friendly policies, implement a wellness program, and offer an employee assistance program.

It is important to remember this is a process. It takes considerable time and effort—and won't be easy. However, a healthy organizational culture pays off over time in better loss control, higher quality products and services and high morale.

Loss control and total quality management in the '90s requires more than the traditional physical and procedural focus. We need to recognize and address the third and most critical piece of loss and quality control, the human element, which so easily overrides our safety precautions and training efforts. **BI**



Lisa Kunz is an account services specialist in the Human Factors Loss Control Unit at St. Paul Fire & Marine Insurance Co. in St. Paul, Minn.

Russian risks

Continued from page 1
than foreign investment until after the new elections.

"Companies will pay much more attention now to how strongly Yeltsin is in his position," Mr. Avasthi said. "Things have gone on hold for a while."

PepsiCo Inc. closed its Moscow office for one day and one Pizza Hut restaurant in Moscow for two days, but the violent uprising has not affected the company's commitment to Russia, said a spokesman in Pepsi's Purchase, N.Y., headquarters.

"We have operated in Russia and 150 international markets for decades," the spokesman said. "We are not unaccustomed to occasional disruptions."

"I don't think it will have any negative effect on the companies that are already there or the companies that are thinking of going," said Helen Teplitskaia, president of the American-Russian Chamber of Commerce in Lake Zurich, Ill. "The crisis was strictly political and I hope it is finished."

In fact, foreign investors may stand to benefit if the conservative, hard-line Parliament is replaced with a more liberal regime.

"Unfortunately there was bloodshed, but it was like surgery that needed to be done," Ms. Teplitskaia said. "The barrier is no longer in place. The government should be stabilized to the extent that it can be in a country in transition."

Many foreign companies expressed concern about the violent uprising but were unwilling to walk away from the vast Russian market.

"Certainly the events of the last few days are alarming," said James Duffy, president of St. Paul Re in New York.

The St. Paul Cos. Inc. and Rosgosstrakh, the Russian state insurance company, last month agreed to cooperate in several insurance and reinsurance activities and to explore joint ventures in Russia

(BI, Oct. 4).

"Our relationship with Rosgosstrakh is intended to be long-term in nature," Mr. Duffy said. "Looking at the events, there is no change in that relationship."

"We desire a politically stable situation there to move on, but we will continue to monitor events," he added. Mr. Duffy noted that he had not been in contact with Rosgosstrakh officials since the violence.

"As far as I can see, the fighting has had remarkably little effect," said Adrian Platt, a director of Sedgwick Group Development Ltd. in London, who helped to establish the broker's Moscow office in 1990. "Business is going on as routine."

In the days after the fighting, Sedgwick was aware of only one client's office that had been damaged out of about 50 multinational clients of its Moscow office.

"I would not expect to see any claims," said Simon Aubrey Jones, executive director of the European reinsurance division of Willis Faber & Dumas in London. "Ninety-five percent of the property in Russia is still uninsured. Until 1990 there was no need to insure state property. Enterprises are now understanding the benefits of insurance."

Besides, property insurance purchased from Russian insurers most likely excludes damage from the events that took place, Mr. Jones noted.

The first exclusion on a typical fire policy, he said, is "military actions of any kind, civil wars and consequences, national disturbances, strikes, lockouts, confiscation, arrests, liquidation or damaged property resulting from actions of military or civil authority."

The tradition of concentrated executive power and the arbitrary exercise of power by Russian governments makes it difficult to quantify political risk and to price it appropriately, insurers and brokers say.

"Underwriters now are looking at investments much more care-

fully," Mr. Avasthi said. "They want to know if (the investments) require the direct support of the current government."

Confiscation and expropriation coverage will continue to be available, although the price began rising and capacity shrinking even before the Russian crisis due to general market conditions, he said.

Because the demand is likely to wane, Mr. Avasthi predicts that confiscation and expropriation insurance for Russian risks may be easier to obtain in coming months.

Export and credit insurance has never been plentiful for Russian risks, although companies expecting finished goods from Russia rather than foreign currency may find coverage somewhat more available.

Political risk capacity from underwriters in Germany, which is Russia's largest European trading partner, has been restricted since earlier this year.

A spokeswoman for Hermes Kreditversicherung, which provides political risk insurance for German companies, said the insurer's total exposure on new business to Russia is 3.6 billion deutsche marks (\$2.22 billion) over the past year. Total exposure for risks to the entire former Soviet Union is about 6 billion deutsche marks (\$3.69 billion), she said.

With the Russian Constitution set aside, many insurers are unclear where they stand in the Russian legal system.

"What is the underwriting position?" asked Paul Davison, director of Willis Faber Political & Financial Risks Ltd. in London. "It's impossible to take a view before the dust settles and we can work out the short-term solution and its longer-term implications."

The issue of legal stability is a "very serious question," but not one that has been dramatically altered by the crisis in Moscow, said Olavi Kauppula, head of the international division of Finnish insurer Pohjola Insurance Co., which has long-standing business in St. Pe-

tersburg and the Baltic states.

"The situation hasn't really changed a lot," he noted. "The uncertainty has always been there."

Mikhail Safronov, managing director of the West Rosso Insurance Co. in Moscow, agreed.

"I would not exaggerate the problem from the legal point of view," said Mr. Safronov, formerly head of the Soviet Union's international insurer, Ingosstrakh. "The whole of the economic mechanism (in Russia) remains the same. There have been no changes to the legal basis for insurance."

Mr. Safronov said he expects new insurance legislation to be introduced and local currency regulations changed. Most likely neither would affect foreign business. "I expect certain restrictions on the local financial markets for holding dollars, and there may be limitations placed on hard currency cash payments within Russia," he said.

Foreign investors must continue to show the same caution as before the uprising, observers say.

Working in Russia "has been difficult and it will be difficult," said Pohjola's Mr. Kauppula. "But you go on in small steps. Do not do anything too big in Russia."

Foreign companies investing in Russia "have to be risk-takers," said Coopers & Lybrand's Mr. Anderson. "If they can't afford to lose \$5 million, they shouldn't get involved."

U.S. companies typically are more cautious than other investors in Russia, he noted.

European businesses "are more used to the totality of the world," Mr. Anderson explained. "Europeans have experienced turmoil throughout their societies. They are closer to the situation."

"It's good to be cautious, but you also need to seize opportunities."

A lawyer with a Western law firm in Moscow, who asked not be identified, said that legal and contractual security for foreign investors had not really changed much with the recent crisis.

"You must remember that this is

a pretty corrupt place and there are always powers that can step in. The political system is such that the state can step in to prevent people from exercising what they believe to be their commercial rights under a contract. . . .

"In this country, legal protection is something which is used as a weapon by the authorities, rather than as a defense for the public. In addition, there is a greater tendency to defer to authority," the lawyer said.

The Russian crisis also is raising concerns about terrorist attacks because some rebels are still at large and many citizens are armed.

Some property insurance policies already take terrorism into account, said Willis Faber's Mr. Davison. Political risk coverage placed by Willis Faber for such things as warehouses and depots in Russia includes coverage for war on land, he noted.

"But this is only small beer. The really big-ticket war risks are covered by the U.S. Overseas Private Investment Corp. or the World Bank's Multilateral Investment Guarantee Agency," he said.

A spokesman for OPIC in Washington said the uprising has not affected its practices.

Realizing the political uncertainties of operating in Russia, the Russian government is establishing a political risk insurer to attract foreign investment.

However, some insurers and brokers are wary of the company, European Investment Guarantee Agency, which is based in London and has \$100 million in capital.

"If I am expropriated by the Russian government, I will not feel very comfortable if then I have to go cap in hand back to the Russian government for compensation," said a London-based broker.

Although other developing nations have attempted to establish credit risk insurers without success, the EIGA may be more viable because its Swiss bank reserves are sheltered from the Russian government, Mr. Avasthi said. **BI**

Helmsleys win battle with insurer over incomplete loss experience

By MICHAEL SCHACHNER

NEW YORK—After suffering their share of legal defeats in recent years, chalk one up in the win column for Harry and Leona Helmsley and the large real estate firm they own.

A New York State Supreme Court judge last month ruled that Helmsley Enterprises Inc. does not owe Continental Insurance Co. \$4.3 million in additional premiums for a comprehensive general liability policy the insurer issued to Helmsley in 1988-1989 because Continental accepted and retained premiums while the policy was in dispute.

Although Continental will appeal, case law and a strongly worded opinion by Judge Beverly Cohen appear to favor the Helmsleys, the company's attorney contends.

The case, which was decided Sept. 22, revolved around Continental's attempts to either rescind or amend the policy it wrote for the period from July 1, 1988, through July 1, 1989, based on the fact that Helmsley Enterprises provided Continental with inaccurate loss experience on \$6 billion worth of owned and managed property.

According to court papers, Continental issued Helmsley a quote of \$7.8 million in premium based on loss information that indicated the Helmsley properties at risk generated approximately \$19 million in

losses over 57 months prior to the 1988-1989 policy period.

Based on this information, the two parties agreed to Continental's quoted premium and the coverage was bound. However, several months later, the insurer learned that Helmsley had only provided to

Continental demanded that Helmsley pay an additional \$4.3 million in premium.

Helmsley refused to pay any additional premiums, but continued to pay the remaining \$3.3 million in premium still due on the coverage. Continental, meanwhile, accepted these premiums and then filed suit to rescind or amend the contract.

"The law is well-settled that when an insurer believes that misrepresentation of loss experience has occurred in order to induce it to issue a policy, the insurer must not accept and retain any premiums to be able to rescind or reform the contract. This is very clear and is not new law," said David Tannenbaum of Shea & Gould in New York, which represented Helmsley Enterprises.

Judge Cohen agreed, ruling that Continental "waived its right to rescind the policy on the basis of misrepresentation" when it pocketed Helmsley's premium payments.

John Finnegan of Rosenman & Colin in New York, which represents the insurer, only said the company would appeal the ruling. Claims against Helmsley's broker—the former Corroon & Black Corp., now Willis Corroon Corp.—were dismissed.

Continental Insurance Co. vs. Helmsley Enterprises Inc. et al., New York State Supreme Court, No. 12973/89.



Leona Helmsley

AP/Wide World Photo

Continental loss information on owned property but excluded loss information on managed sites.

The appropriate loss experience on owned as well as managed property should have been \$25 million over the same period, court papers stated. Upon learning that it had received inaccurate information, Con-

Insurance Corp. of Ireland

Continued from page 2

fin Lynch and Ernst & Whinney from 1978 to 1983, the period during which the auditors were responsible for reviewing ICI's books.

The coverage was placed through the Minet Group P.L.C. accountants professional liability line slip in London, with about 20 to 30 different insurers participating in the coverage for the two firms, according to a spokeswoman for Ernst & Whinney in Dublin, who could not give further details.

Minet officials in London could not be reached.

The settlement stems from the collapse of ICI in 1985 under the weight of claims on business written by the insurer's non-marine division (BI, March 25, 1985). Most of its losses it was later determined stemmed from North American risks written by the insurer's London office.

The charges against the two firms reportedly alleged negligence related to certifying the adequacy of ICI's future loss projections. A gag order prevents details of the charges from being disclosed.

To protect policyholders after ICI became insolvent, the Irish government acquired the insurer for a nominal price from Allied Irish Banks P.L.C. and appointed the firm ICAROM P.L.C. to handle the runoff of ICI's liabilities.

At the peak of its insolvency, ICI's liabilities exceeded its assets by about 260 million Irish pounds (\$375.4 million at the current exchange rate). An advance from the Irish government in 1986 reduced the insurer's overall deficit to about 126 million Irish pounds (\$181.4 million).

"We are pleased that this matter, which has been ongoing for eight years, has been settled before entering a further period of years in High Court and possibly Supreme Court. These hearings would have been complex, expensive and time-consuming," said Ernst & Whinney Ireland in a statement, explaining why it agreed to settle.

The proceeds of the settlement will be divided evenly between Allied Irish Banks and ICI.

This settlement marks the second time in less than a year that Ernst & Young has agreed to a multimillion-dollar payoff to settle claims stemming from the audits of companies that later failed.

Last November, Ernst & Young's U.S. partners agreed to pay \$400 million to settle federal charges that it inadequately audited large savings and loans that had to be bailed out (BI, Nov. 30, 1992). **BI**

INTERNATIONAL

U.K. employers back pension proposals

By ADRIAN LADBURY

LONDON—British employers generally welcome the proposals contained in a new report on ways to better protect pension plan benefits from mismanagement and fraud, though the package is not without its critics.

Some in the U.K. pension industry contend certain proposed reforms are too strict, while others say they are not tough enough.

The recommendations are contained in a landmark report on the law, regulation and governance of private pension plans in the United Kingdom, which was commissioned in the wake of the Maxwell pension debacle.

The report, "Pension Law Reform," was drafted by the Pension Law Review Committee headed by Roy Goode, an attorney and Norton Rose Professor of English Law at the University of Oxford. The report was submitted to U.K. government's Department of Social Security.

While the report suggests greater employee involvement in pension plan management and calls for tough new solvency requirements, the key proposals would leave control of pension plans with employers and would not impose any major burdens or additional costs.

In fact, most of the main proposals in the scheme mirror those made by the Confederation of British Industry, which had responded to a preliminary draft of the committee's report published last year.

The committee ignored a number of suggestions made by labor groups that many pension industry observers say would have forced many employers to either stop offering private pensions or to pare their benefit commitments to a bare minimum.

For example, the committee rejected suggestions to: distribute surplus pension plan assets to employees; bar employers from winding up pension plans; and restrict pension plans from investing in the employer's own stock or use the assets



Photo by Nick Liseiko

Roy Goode

as collateral for stock lending.

Despite those omissions, the Trades Union Congress, an umbrella organization for all British labor unions, endorsed the report. It said the tough new regulatory system called for by the report would

be a "welcome step."

The TUC also welcomed a proposal contained in the report for a mechanism, to be funded by employers, that would cover shortfalls in pension funds caused by mismanagement or fraud.

But no one group expressed unanimous support for the report.

In fact, several observers say the committee could have called for even tougher reforms to prevent a recurrence of the Maxwell pension debacle that prompted the committee's appointment.

Publishing mogul Robert Maxwell allegedly stole 426 million pounds (\$660.3 million) from his companies' pension funds before his death (BI, Dec. 16, 1991). Mr. Maxwell's sons were convicted last year on charges related to these allegations.

As of last year, the liabilities of the Maxwell pension funds were estimated to exceed assets by as much as 350 million pounds (\$530.3 million) (BI, June 22, 1992).

The most vociferous critics of the

report are professionals, consultants and actuaries that serve the private pension industry in the United Kingdom. Private pension plans currently hold approximately 450 billion to 500 billion pounds (\$681.75 to \$757.5 billion) in assets and control a major chunk of U.K. equities.

"A major opportunity has been lost to make radical—and much needed—changes to current pension law. We ourselves have scanned the most significant submissions to the committee. Many of these contain proposals that are far more radical than anything appearing in this report. The committee's recommendations have merely tinkered with the existing framework and offer no significant reforms," complained Alan Jenkinson, director of consultant Sedgwick Noble Lowndes in London.

Mr. Jenkinson and others in the pension industry speculate that the committee attempted to tackle too much, lost focus and ended up pro-

Continued on next page

Another round of talks begin over stake in Groupe Victoire

PARIS—France's largest insurance company, the state-owned L'Union des Assurances de Paris, has resumed talks with French financial group Cie. de Suez about the future of their jointly owned subsidiary, Groupe Victoire.

Discussions between the two companies broke down almost a year ago when Suez Chairman Gerard Worms announced in November 1992 that the company could not reach agreement with UAP over the fate of Victoire and Suez's German subsidiary, Colonia Versicherung A.G. The German insurer is controlled by Victoire.

The original talks had aimed to give UAP control of Colonia in exchange for its 34% stake in Victoire and 2 billion French francs (\$352 million). But talks broke down over problems in valuing UAP's stake in Victoire.

UAP purchased its stake in Victoire in 1989 for 14 billion French francs (\$2.46 billion). That stake was valued at 11 billion French francs (\$1.94 billion) in UAP's balance sheet at the end of last year.

UAP Chairman Jean Peyrelevede, whose job may be in jeopardy following recent changes in the French government (BI, Oct. 4), is understood to be anxious to settle

GLOBAL BRIEFS

UAP's problems with Victoire before UAP is privatized next year. Analysts believe that Mr. Peyrelevede pressed Suez management to resume the talks.

"UAP definitely wants to get out of Victoire," said Michael Wheelhouse, European insurance analyst with Nomura International in London. "It also wants to get into the German market and Colonia is well worth buying."

Colonia controls about 6% of the German insurance market, which is the largest market in continental Europe.

—By Aline Sullivan

Stop-loss coverage

BONN—German employers need more options to protect themselves from the potential exposure to accumulated risks and catastrophe risks, according to Axel Heitkamp, consulting director at Jauch & Huebner Consulting GmbH.

"The concurrent death or disability of top employees can threaten middle-sized and smaller companies," Mr. Heitkamp said. "The

German insurance market offers little protection against loss of this kind," he said in a report prepared for a conference of the Assn. of Company Retirement Pensions later this month.

The Federal Office of Insurance Matters in Berlin, which monitors insurer operations, will not approve insurance policies that cover accumulated and catastrophe pension risks. Currently, German employers can obtain stop-loss coverage only from insurers outside of Germany.

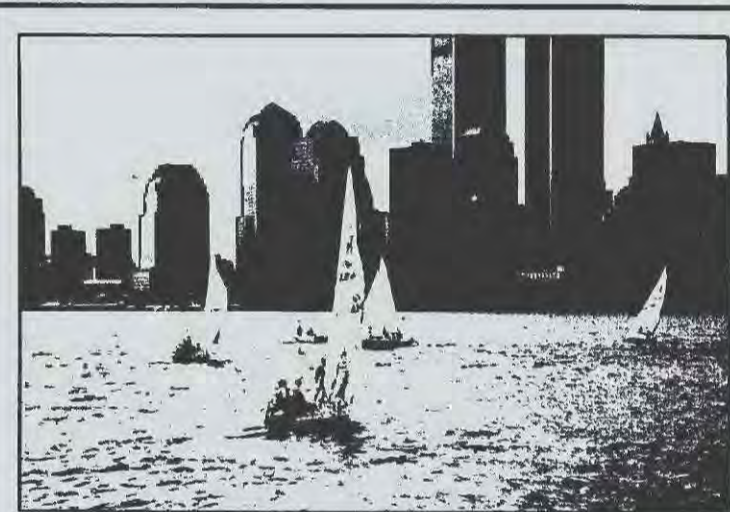
Mr. Heitkamp said regulations must be changed to allow German employers to obtain this coverage from their local insurers.

According to Mr. Heitkamp, new E.C. directives likely will prompt Germany to change its stop-loss regulation next year.

German laws leave companies with direct pension obligations less protected against worst-case risk than companies in other countries, said Mr. Heitkamp.

"Should several executives become disabled or die in a year, German law would force the company to absorb all pension costs within the same year. Unusual or unexpected outlays aren't antici-

Continued on page 23



British sail to victory

The British took the honors in the London vs. New York Insurance Regatta held Sept. 30-Oct. 1 in New York Harbor. Sailors from the insurance and reinsurance business from London and New York raced eight J24s during the two-day regatta. The British dominated the series, winning six out of seven races, the fleet race and the prize presented by the Manhattan Yacht Club for the most consistent performance by an individual yacht. The British have won two out of three regattas, first held in New York in 1989 when the Americans swept the series, also racing J24s. In 1991, the British won the regatta, sailing Beneteau First Class Eight yachts off Southampton, while the Americans won the fleet race and "Man of the Match" award. The 1993 regatta was hosted by Chubb & Son Inc., Continental Insurance Co., Johnson & Higgins, Marsh & McLennan Cos. Inc., Munich American Reinsurance Co. and North American Reinsurance Corp.

Bermuda government wins re-election

By ROGER SCOTTON

HAMILTON, Bermuda—The United Bermuda Party will rule Bermuda for up to another five years as Premier John Swan last week won his fourth consecutive general election.

However, the conservative, business-backed UBP, which has been in power since Bermuda's first open election in 1968, will have a smaller margin in the island's British-style, 40-seat Parliament.

While the UBP captured 22 seats, the same number it controlled prior to the election, the opposition Progressive Labour Party gained

BERMUDA

ground, winning 18 seats, three more than it formerly held. Two independent members of Parliament lost their elections, while the National Liberal Party also lost its single seat.

The UBP's four-vote margin is too slim a majority to govern effectively, according to PLP leader Frederick Wade, who predicted that the UBP will have to call for early elections in search of a larger mandate.

However, Finance Minister David

Saul rejected Mr. Wade's contention as "preposterous nonsense" and said the four-vote margin is a "perfectly comfortable majority for us to work with."

Mr. Saul said the UBP victory would lead to an across-the-board boom in the island's international business sector, which includes the insurance industry.

Bermuda, which this year has welcomed billions of dollars in new capital through the formation of specialist catastrophe reinsurance companies (BI, Sept. 20), will add to its roster of nearly 1,400 insurance and reinsurance companies, including captive insurers, Mr. Saul

said.

"I am always staggered at how creative and entrepreneurial this (insurance) industry is," he said.

He attributed the government's success in attracting insurance and reinsurance companies to the "forward-thinking decision in 1976 to create the Insurance Advisory Committee," a group of insurance industry executives that advises the Ministry of Finance.

"These are not civil servants," Mr. Saul said. "They are the key people who know what is happening in the industry and what the industry needs, and they are responsible for vetting the new insurers

coming here."

Mr. Saul, who noted that the ministry would have to hire three dozen additional people to perform the IAC's functions, said that "no other jurisdiction has such an advisory body in place."

While Mr. Saul expects UBP's victory to stimulate growth in the Bermuda insurance industry, he expects all types of international businesses will expand on the island. "I'm told there are over a hundred international companies that have just been waiting in the wings for this election result before proceeding with incorporation," Mr. Saul said. BI

INTERNATIONAL

Goode report

Continued from previous page
 ducing a weaker document than is needed. While the report's proposals may make it harder for another Maxwell-type scandal to occur, it does not go far enough to prevent such an occurrence from happening, they claim.

There are six key proposals in the Goode report:

- Trust law, which governs the fiduciary responsibilities of those who manage a plan's assets and income, would remain the cornerstone for determining the rights and duties of plan trustees.

But the report recommends that existing law, which has been built up piecemeal over the years, be bolstered by a new Pensions Act that would be passed by Parliament and administered by a new regulatory body. The act would encompass many of the report's recommendations.

- Plan participants would have greater involvement on pension plan boards of trustees. The report calls for active participants to have the right to be represented by least one-third of the trustees—with a minimum of two—for defined benefit plans and at least two-thirds—with a minimum of two—for de-

financed contribution plans.

- Solvency rules would require a solvency band between the minimum solvency standard of 100% of liabilities and a base level of 90%. If the fund's assets falls below 100% of liabilities but remains above the 90% base level, the board must prepare a plan which explains to the new regulator how it intends to boost it back to 100%. Any fund whose assets fell below this 90% level would need an injection of funds within three months of notification by the actuary to bring it up to the base level.

- While surplus plan assets would remain in the hands of the employer, any withdrawal of those funds would be reported to the regulatory agency, which could intervene if it determined the plan's solvency was in jeopardy.

The report also suggests a compensation scheme, financed by employers with private pension plans, that would pay up to 90% of promised benefits if a plan were terminated due to "fraud, theft or other misappropriation."

- An employer would retain the right to close or wind up a private pension plan, as long as promised benefit obligations are met. An employer also could freeze the level of benefits promised by a plan, and could reduce or stop making contributions to a plan as long as minimum solvency requirements were

maintained.

- The quality of information provided to plan participants would be improved and, wherever possible, complex legal jargon in plan documents would be replaced by plain English explanations and definitions.

- Laws and regulations governing plan administration would be simplified and made more flexible to reduce existing burdens on employers and plan administrators.

At a meeting to announce the report, the committee expressed confidence that employers would welcome its proposals.

The Confederation of British Industry praised the report. The CBI had lobbied the committee not to impose excessive costs or regulatory burdens on employers, disrupt current pension plans as little as possible and strive for simplicity and clarity.

"First assessments suggest that the committee has accepted many of these points in seeking to strike the right balance between improving the position of scheme members and the security of benefits on the one hand and the interests of employers—who underwrite most of the obligations—on the other," the CBI said.

Howard Morgan, pension manager at U.K. pharmaceutical company Glaxo Holdings P.L.C., was also pleased with the report but added reservations.

"I think it's fair. There are no major surprises and I feel that if the government takes up the recommendations it will be a positive step forward. There still has to be work done on some areas such as the calculation of the minimum solvency and how it will work and how the compensation is to be applied, but that is largely a matter of detail," Mr. Morgan said.

Mr. Morgan was not alone in raising concern over the solvency issue. The intention of the proposed minimum solvency margin is to prevent plan managers from adopting a risky investment strategy and from raiding plan assets.

But, some observers feel the 90% margin would be too restrictive and contend that encouraging an overly conservative investment policy

could hurt plan participants' long-term interests.

"This is a prime concern," said Paul Haines, investment director at Sedgwick Noble Lowndes. "It does show members that there is enough money in the pot but, depending on market conditions," a pension plan that may be adequately funded at the time an employer decides to wind it up may not be able to cover its long-term benefit obligations, he warned.

He said if the system requires plans to maintain such a high solvency ratio, it would force U.K. fund managers, who currently can invest up to 80% of plan assets in equities, to turn to lower-yielding bond markets.

These lower returns may be enough to support benefits based on current salary levels but they may not be sufficient to also cover inflation in compensation and promised pension benefits, according to Mr. Haines.

"If solvency requirements were stringent, they could have a number of important effects: many companies could discover that their schemes are insolvent and have to inject cash soon after the requirement's establishment; and pension schemes could need to move into less risky and more predictable investments, away from more volatile instruments such as equities, with significant consequences for the stock market," actuarial and management consultant Towers Perrin in London said of the report.

But not all agree that this would be such a bad thing.

"I do not think you will see an increase in the use of conservative investments, but it may force fund managers to pay greater attention to investments. Too few pay attention to risk and concentrate more on returns. If it encourages more attention to risk it is a good thing," said Allan MacDougall, joint managing director of pensions fund investment adviser Pensions Investment Research Consultants Ltd.

Mark Duke, a partner with Towers Perrin, said that a greater problem could be the report's rejection of proposals to require independent, appointed custodians to hold plan

Continued on next page

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INTERNATIONAL

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Many U.K. pension industry observers argue that if there had been an independent custodian looking after the Maxwell pension funds, they would not have been siphoned off for other purposes by the media magnate.

"The report is inadequate in some areas. It does not recommend any change in the way custodians act in relation to scheme's assets. We say they should be subject to a new regulation" or independent oversight, said Mr. Duke.

The National Assn. of Pension Funds, whose members collectively manage plans covering more than 7 million employees and controlling more than 250 billion pounds of pension fund assets (\$378.8 billion), believes a greater omission was the report's failure to make training of

plan trustees compulsory.

Market observers point out that this need for training in pension management issues will become even more important if member representation is increased.

"Appointing member trustees is only the start. We believe compulsory training has a vital role to play," said Ron Amy, chairman of the NAPF.

Peter Lilley, the secretary of state for social security, who requested the report, described it as a "seminal work."

He promised that the government will act on its recommendations as soon as possible, though he added it is unlikely any legislation will reach Parliament until the 1994-1995 session.

As a result, any changes are not likely to be introduced for at least three years. **BI**

GLOBAL BRIEFS

Continued from page 21

pated. As a result, we are telling companies they need stop-loss."

In Germany, pension and disability obligations focus on individual risks, said Mr. Heitkamp. Many companies decided to self-insure and then are not protected by adequate reinsurance.

"Stop-loss insurance could be calculated on the basis of expected normal claims and worst-case claims," he said. First, a company decides how much risk it will retain, either as an absolute figure or as a percentage of the expected loss, he said. Premiums would be calculated based on the company's risk retention and the probability of a claim. "Of course, the higher the self-retention and lower the risk, the lower the premium."

Mr. Heitkamp said the premium calculation should consider the number of insured employees and the range of coverage. A likely ceiling would be 1 million deutsche marks for the death of an employee (\$616,000 at current exchange rate), and 3 million deutsche marks (\$1.8 million) for becoming permanently disabled, as well as 30 million deutsche marks (\$18.5 million) for the aggregate of all insurance payments in a business year.

—By Don Lewis Kirk

Nursing-care plan

BONN—Germany's controversial nursing-care bill has overcome its first parliamentary hurdle.

The German Bundestag, the lower house of Parliament, has passed a proposal to cut employee pay for 10 national holidays by 20% to finance health insurance for long-term care. Under the bill, employees in Germany would get less vacation pay as of Jan. 1, 1994.

The bill aims to compensate companies for their additional premium contribution to Germany's sickness funds to provide citizens with long-term nursing care (BI, Sept. 20; July 26). Employers and industry in Germany support long-term care coverage that is financed through premiums paid by workers to insurers, not to the sickness funds. Adding long-term care to the coverage already offered by the German health care system would increase employers' share of total social security contributions to 40% of payroll.

Parliament will vote this month on a second package of legislation, which represents the bulk of Germany's new nursing-care proposal. The plan would regulate the scope of coverage offered through the sickness funds.

—By Don Lewis Kirk

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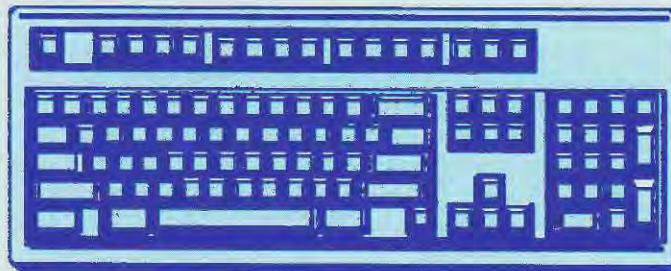


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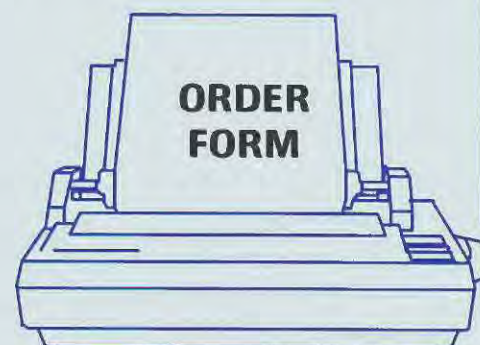
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Business Insurance®

Greenbrier meeting

Continued from page 3

among both insurers and producers—were often discussed, industry leaders' attention seems to have shifted from rate increases to controlling costs and implementing quality-enhancement programs at their companies.

In other words, the insurance industry appears to be focusing more on its expense ratio, which comprises about 30% of its costs, rather than its loss ratio, which makes up the other 85%.

And while bolstering profits was a universal concern among the insurers, agents and brokers at The Greenbrier, the words "underwriting profit" were hardly heard.

Indeed, the industry roundtable that traditionally concludes the conference this year focused on quality improvement and expense reduction, rather than more traditional subjects like pricing trends, pollution claims or the problems with the tort system.

"The industry is not profitable enough—it needs downsizing," noted Fred C. Burns, the roundtable's moderator and managing partner of brokerage John L. Wortham & Son L.L.P. in Houston.

"Expense control has become the issue of the day, perhaps at the expense of quality," Mr. Burns said.

However, another panelist insists that controlling costs and improving quality do not necessarily have to be conflicting goals.

"I disagree with the inference that there is a natural conflict between quality and cost reduction efforts," said Fredric G. Marziano, executive vp of Continental Corp. in New York.

While "we all agree that the expense base is too high" and must be reduced "if we are to survive," the insurance industry also has to focus on the quality of its efforts without putting a price tag on that process, Mr. Marziano said.

"Most people today have gone through gut-wrenching downsizing," he noted, adding: "You have to look ahead."

A brokerage executive—who is adamant on the need for agents and brokers to cut their expenses—agrees that the two goals are not mutually exclusive.

"The only way to improve productivity is to improve quality," said John C. Adams Jr., executive vp and chief operating officer of Hilb, Rogal & Hamilton Co. in Glen Allen, Va.

"Less expensive does not mean less quality," concurred Richard S. Rohde, a partner with Barney & Barney, a San Diego brokerage.

However, while many in the insurance industry are eager to reduce costs, "not as many have analyzed where the costs are higher than they should be," interjected Bernard H. Mizel, chairman of United States Insurance Services, a newly formed company based in San Francisco that plans to build a brokerage network through acquisitions (*BI*, Sept. 27).

"The problem is not necessarily expense control; it is the lack of productivity" in the insurance industry, he said.

Still, most of the panelists concurred that both insurers and their producers—agents and brokers—must reduce their costs in order to survive.

"You cannot sell your way to success," said Mr. Marziano in response to a question posed by Mr. Burns: "Can you sell your way to profitability?"

"Expense control has to be the byword. You can't sell your way out" of your problems," added Mr. Adams.

The campaign to reduce costs will mean a major consolidation among

both insurance companies and agents and brokers, panelists also agreed.

While "we do not have too many insurance companies," consolidation is "inevitable," said Mr. Marziano. Factors currently facing insurers—including low rates, the demand from investors for higher returns, the need for increasing amounts of capital and the introduction of risk-based capital standards—will serve as catalysts for consolidation, he said.

Rupert L. Willis, vp of standard commercial accounts at Aetna Life & Casualty Co. in Hartford, Conn., also agreed that "we do not necessarily have too many companies. In South Florida, every agent and broker would tell you we don't have enough companies."

While the panelists agreed that consolidation is indeed inevitable, big is not necessarily better, warned HRH's Mr. Adams. Large companies

in the insurance industry will fail just as quickly as small companies "without good leadership and management ability," he noted.

But, even with good leadership, "lots of small brokerage firms find it impossible to respond to market changes" because they are undercapitalized and do not have a proper infrastructure, suggested Mr. Mizel, who plans to build a Top 20 broker by acquiring medium-size agents and brokerages that have identified market niches.

"There are too many inefficient agents and brokerages today," Mr. Mizel noted. "Through consolidation they can meet the challenges," he said, though he added that "consolidation does not mean quality; that depends on who is the consolidator."

Mr. Marziano predicted that "based on what I feel, hear and see, I expect another 5,000 independent agencies to disappear in the next

year." However, he noted that does not necessarily mean there will be fewer agency and brokerage employees, but just fewer agencies because of mergers and acquisitions like the deals Mr. Mizel hopes to complete.

While a champion of consolidation, Mr. Mizel noted that the market "is not saturated in a lot of specialty areas, but it's hard finding those areas."

"You have to be quick enough and flexible enough...when the window opens" to take advantage of these opportunities, said Mr. Rohde of Barney & Barney.

"Age-old strategies" used by insurance companies and their agents, like sending the same application for coverage to numerous insurers, creates inefficiency and reduces quality, noted Mr. Marziano. Seventy percent of the transactions performed by insurers and agents "are indeed redundant," he said.

For example, 50% of the coverage applications received by Continental are for types of coverage it does not write, he said. And, 20% of the applications are for accounts that the agent has no chance of obtaining.

"That's a waste of time," he asserted.

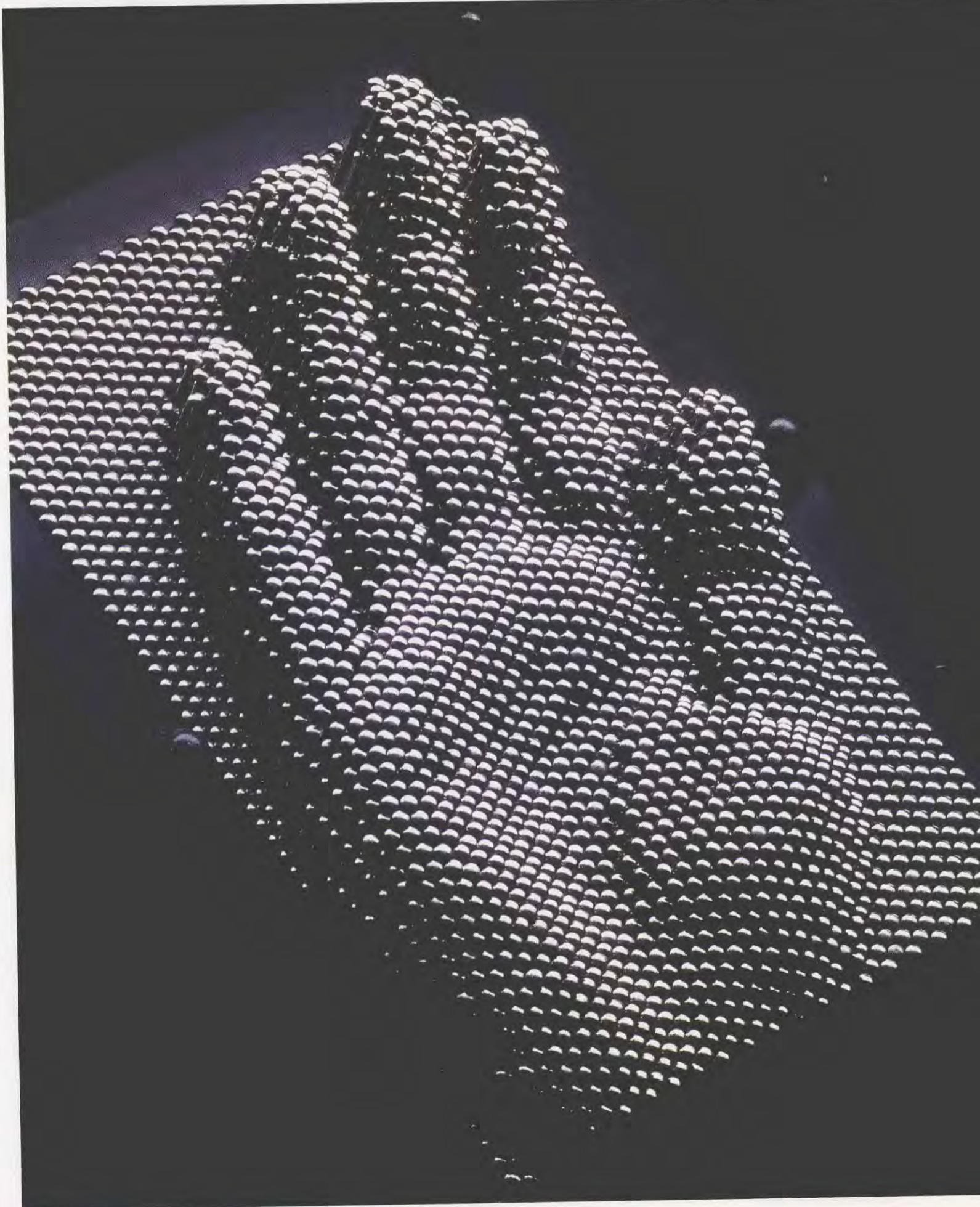
USI's Mr. Mizel agreed that many agencies do not understand today's marketplace. "So many agents and brokers have not taken the time to analyze the market and affiliate with insurers that understand the segmentation of the market."

Insurers will no longer "supply brokers and agents with specialized products" if a broker or an agent hasn't done its "homework," he explained.

Mr. Marziano agreed that "quality programs" will allow insurers and producers to maintain a "saleable competitive advantage."

For instance, in the three years

Continued on next page



Continued from previous page since Continental has begun to stress quality improvement, its personal lines renewal rate has risen to 95% from 83% and its commercial lines retention rate has jumped to 80% from 72%, he noted in an interview.

However, while panelists agreed that agents must improve the quality of service they provide their clients, they disagreed whether generalist or specialist agencies provide the best service.

"The firms that do best are generalists" because they can more easily adapt to the changing needs of the marketplace, Mr. Adams of HRH said. "There is a demand in the market for that kind of agency."

However, studies show profit margins "are higher for niche players than for generalists," Mr. Mizel said. Specialist agents and brokers "way outperform generalist firms."

Whether they are generalists or

specialists, more insurers and brokers are "benchmarking"—comparing their operations with competitors that are regarded as among "the best in the business."

"You must look at companies with higher degrees of efficiency and try to emulate what they are doing," Mr. Mizel explained.

For example, Wortham's Mr. Burns noted that many insurance companies attempt to compare themselves with American International Group Inc., which he dubbed "the Wal-Mart of insurance expense control" because of AIG's low ratio of expenses to premiums.

Aetna has been benchmarking since 1991, noted Mr. Willis.

And Mr. Marziano lightheartedly said that Continental benchmarks against "Dean O'Hare's stock price," referring to the chairman of Chubb Corp., one of Wall Street analysts' favorite insurance stocks.

More seriously, Continental

benchmarks against its competitors by looking at indicators like combined ratios and expense components, Mr. Marziano said, again citing expense control.

One way to improve quality in the industry is to attract higher-quality employees, the panelists agreed.

The industry cannot improve its position "if we don't attract talented young people to our business who can deliver results," Mr. Adams said.

Mr. Marziano noted that when he joined Continental six years ago, he asked why it did not recruit at Harvard, Princeton and other elite universities. The answer, he was told, was "we're not good enough."

Continental has since raised its sights and now regularly attracts students from top colleges and universities, he said. "Our industry, at least our company, has a higher sense of pride and that will attract higher-quality people." ■

Insurers forecasting increased regulation

By JAMES M. BURCKE

WHITE SULPHUR SPRINGS, W.Va.—"Regulatory incursions" in how the property/casualty insurance

**NACSA/NACSE
The Greenbrier
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industry conducts its business represent one of the most formidable challenges facing the industry over the next few years, a top insurer executive says.

"If the first few years of this decade are an accurate barometer, I can predict with confidence that the remaining years will see the greatest period of government involvement in the business of insurance that we

have ever witnessed," said Dean R. O'Hare, chairman and chief executive officer of Chubb Corp. in Warren, N.J., and president of the National Assn. of Casualty & Surety Executives.

"I think we can expect government at all levels to be an increasingly active force" in many issues facing property/casualty insurers, he said last week in a speech at the annual NACSA/NACSE conference at The Greenbrier.

It's natural for insurers to show "righteous indignation" at regulatory interference and "attack the unfairness and folly of government bureaucrats telling us how to run our business," he said. But, that approach "no longer works."

Instead, he called on insurers not to thwart new regulation but to "work in partnership with the public sector" to adopt enlightened regulation when regulation indeed is necessary.

He said five issues "present us with the biggest public policy challenges in 1993 and in the coming years." Those issues are:

- Health care reform.

Because reform is a certainty property/casualty insurers should "cooperate toward rational reform" in the two areas most important to the industry: workers compensation and automobile personal liability.

- Superfund reform. This reform is also a certainty, simply because the law expires next year, he said.

Insurers' past failures "to advance rational, alternative approaches and the result" have been disastrous, he said, noting that 85% of the money spent in connection with Superfund has been spent on transaction costs rather than actual cleanups.

The solution should achieve faster and more economical cleanups; reduce transaction costs; and provide for a "shared responsibility" among all parties, including insurers, he said.

- Solvency regulation. While federal insurance solvency regulation may not be inevitable, "this reform may be desirable," he said.

Federal solvency regulation could free "us from inconsistent, parochial and very expensive state regulatory regimes."

"Make solvency, not politics, the only legitimate criteria for regulators," he said. While the federal solvency legislation introduced by Rep. John Dingell, D-Mich., "needs work... it is a good starting point for making solvency regulation more rational and more effective."

- McCarran-Ferguson reform. "Rational regulation" should also be the basis by which the debate over changes to the McCarran-Ferguson Act should be concluded, Mr. O'Hare said.

While the insurance industry is unanimously opposed to the reform bill introduced by Rep. Jack Brooks, D-Texas, "we should not overlook the opportunity to push for a better solution" so that a balance can be struck between interests of consumers and the industry's "essential interests," Mr. O'Hare stated.

- The North American Free Trade Agreement. The debate over NAFTA represents an example of when government activism actually could benefit insurers, Mr. O'Hare stated.

"It is particularly important that we work for passage of NAFTA," Mr. O'Hare said, noting that the market composed of Canada, Mexico and the United States ranks as the world's largest insurance market.

Continued on next page.

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Regulation

Continued from previous page
ket and that U.S. insurers could eventually control 5% to 10% of a \$50 billion Mexican market.

However, for insurers to successfully lobby in connection with any of these issues, they must make sure that all elements of the industry—agents, underwriters, claims managers, senior executives and other employees—speak with one voice, Mr. O'Hare said.

"We have the numbers, the strength and the influence to play a major role" in determining the future of the industry, he noted, though he added that insurers must also enlist the help of the businesses and consumers that buy insurance coverage. **BI**

Greenbrier meeting sees end of NASCA, beginning of 'the Council'

WHITE SULPHUR SPRINGS, W.Va.—Last week's NACSA/NACSE conference was also the last.



That doesn't mean that agency, brokerage and insurer executives will no longer gather the first week of October at The Greenbrier, the posh West Virginia resort that offers industry leaders and their spouses the opportunity to work—and play—in an incomparable surrounding.

However, next year's meeting will be simply called the "joint conference" because NACSA—the National Assn. of Casualty & Surety Agents—last week began phasing in

its new name: the Council of Insurance Agents & Brokers.

Rather than adopt the acronym COIAB, the organization will simply be known as "the Council," said Ken A. Crerar, the group's executive vp.

It is fitting that the last NACSA meeting was held at The Greenbrier because the group's first meeting was held 80 years ago at the White Hotel in White Sulphur Springs, remarked J. Bransford Wallace, the group's president and also president of the Willis Corroon unit of Willis Corroon Group P.L.C. in Nashville, Tenn.

"We have recognized that our name has not kept pace with the changing nature of our profession," he said.

"We've outgrown it; we're much more than

casualty and surety agents," he stated, noting that NACSA members specialize in a wide range of risk management and insurance services.

While the NACSA moniker "has served our group well for a very long time, we decided it was time to meet the 21st century with a new face," Mr. Wallace said. "The new name is simpler and better describes that association's membership today."

The annual gathering of insurance executives, no matter what it is called, traditionally begins the first weekend of October. Attendance is limited to executives of companies that are members of NACSA—from now on known as the Council—and the National Assn. of Casualty & Surety Executives, as well as invited guests.

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IN THE MATTER OF THE LIQUIDATION
OF NORTH AMERICAN FIRE & CASUALTY COMPANY, INC. AND COMMERCIAL INLAND & MARINE INDEMNITY COMPANY, INC.

NO. 88 CH 02865

NOTICE OF CLAIMS DATE AND PROCEDURES

PLEASE TAKE NOTICE, that on September 23, 1993 an Order of Liquidation was entered against North American Fire & Casualty Company ("North American") and Commercial Inland & Marine Indemnity Company ("Commercial") by the Circuit Court of Cook County, Illinois. Stephen F. Selcke, Director of Insurance of the State of Illinois ("Liquidator") is the statutory and court affirmed Liquidator of North American and Commercial. North American and Commercial are unauthorized insurers and as such, their policyholders are not entitled to guaranty fund protection in the State of Illinois.

TAKE FURTHER NOTICE, that on September 23, 1993, the Circuit Court of Cook County, Illinois, entered an Order Fixing the Final Date for the Filing of Claims ("Fixing Order"). Pursuant to the terms of the Fixing Order, all rights and liabilities of North American and Commercial and their creditors, policyholders and stockholders, and all other persons interested in their assets, are fixed as of September 23, 1993, unless otherwise provided in a subsequent Order of the Court.

TAKE FURTHER NOTICE, that all persons and entities, who have, or may have, claims against North American or Commercial or their property or assets, shall have the right to present and file with the Liquidator, proper proofs of claim on or before 4:30 p.m., C.S.T., on March 9, 1994.

TAKE FURTHER NOTICE, that the form of, and required contents of, all proofs of claim are described in 215 ILCS 5/209, as amended by P.A. 88-297, effective August 11, 1993. Proofs of Claims, together with supporting documents, if any, are to be filed with, and may be secured from, the Liquidator of North American and Commercial, in Liquidation, 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. Filing shall occur upon receipt of Proof of Claim by the Liquidator. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to North American or Commercial upon all filed claims. All Proofs of Claim must be duly sworn to before an Officer authorized to take oaths.

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Sub-total 28,112

Associations 385
Government, unions and Educational Institutions 1,075

Commercial Consumers
Sub-total 29,572

Insurance Agents and Brokers 8,714
Insurance Companies 7,981
Accountants, Actuaries, Attorneys & Consultants 3,532
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers 1,936
Others Allied to the Field 1,081

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* Source Business/Occupational circulation of qualified circulation, May 31, 1993 issue, as submitted to BPA for June 1993 BPA Publisher's Statement.

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Cooper details reform goals to industry leaders

By JAMES M. BURCKE

WHITE SULPHUR SPRINGS, W. Va.—“Health reform is going to happen sometime before next fall,” predicts

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CONFERENCE

the sponsor of a major health care reform bill. However, to pass legislation that will truly reform the health care system without putting an undue burden on any one player in the health care system, Congress, business, insurers and others will have to build a coalition “in the center,” said Rep. Jim Cooper, D-Tenn.

Quoting former House Speaker Sam Rayburn, “Any mule can kick a barn down, but it takes a carpenter to build one,” Rep. Cooper said. “We’ll all be in the carpentry business as we face the most complex issue” with which the nation has ever grappled.

Rep. Cooper says that his own

proposal, introduced in Congress last week, has the best prospects of passage of the several health care reform plans now on the table because it has attracted bipartisan support.

Rep. Cooper was the featured speaker at the opening session of the annual NACSA/NACSE conference. He was a last-minute addition to the program after the White House informed NACSA and NACSE that neither Hillary Rodham Clinton nor another administration official could appear as had been hoped (see story, page 28).

Rep. Cooper courted—and impressed—the mostly conservative audience of insurance industry leaders, calling on the need for market-based reforms and castigating “heavy-handed” government involvement in the health care system.

“We need, in my opinion, to try to unify folks in a bipartisan fashion around market-oriented reform that we can all support,” he

said.

However, Rep. Cooper noted that insurers and others who seek market-based reforms cannot discount those who seek a single-

**‘We need to unify
folks around
market-oriented
reform,’ says
Rep. Jim Cooper.**

payer health care system.

For example, a single-payer plan proposal in the House has 90 co-sponsors, “even though it calls for a \$400 billion a year tax increase and has all the disadvantages of the Canadian system,” Rep. Cooper reported.

“Do not discount their advocacy. They have already shaped the debate,” he warned, noting that President Clinton’s health

care reform proposal now would allow any state to implement a single-payer system.

“I think we are closer to single-payer, closer to a government takeover, than a lot of folks in this room believe,” he said.

Rep. Cooper discounted reform proposals from the “far right,” specifically referring to a proposal by Sen. Phil Gramm, R-Texas, that would establish so called Medi-Saver accounts. While making it easier for people to save to finance health care expenses is a good idea, this proposal “is not a substitute for reform.”

While House and Senate Republicans, along with President Clinton, have tried to stake out the “middle ground” in the health care reform debate with their proposals, Rep. Cooper noted that the Republican proposals have attracted no Democratic sponsors, while President Clinton’s program has so far drawn the support of only one Republican: Sen. James Jeffords of Vermont.

“What you have is a Clinton plan with no Republican support and a Republican plan with no Democratic support,” Rep. Cooper summed up.

That’s why the Tennessee Democrat has high hopes for his proposal, titled The Managed Competition Act of 1993. It is “the only bipartisan plan,” he said.

Rep. Cooper said the Clinton health care reform proposal has several fatal flaws, not the least of which are provisions that would establish a global health care budget and limit increases in health insurance premiums.

“The Clinton folks don’t think this is a price control; I think it is,” Rep. Cooper said. “We need to apply the golden rule: Price controls don’t work; price controls don’t control prices.”

Price controls eventually will lead to the rationing of medical care, he contends. And, if that occurs, “insurers and providers will have to have blood on their hands, not the politicians.”

NACSA states its position on health reform

WHITE SULPHUR SPRINGS, W. Va.—Employers with as few as 100 workers

NACSA/NACSE
The Greenbrier
CONFERENCE

should be allowed to set up their own health purchasing alliances, the National Assn. of Casualty & Surety Agents contends.

Reducing the benchmark to 100 employees, compared with 5,000 employees as proposed in the Clinton administration’s health care reform proposal, would “enhance and promote competition,” NACSA says in a position paper approved by the group’s board of directors last week.

In addition, while the agent/broker trade group supports the concept of purchasing alliances, “the creation of quasi-governmental bureaucracies to distribute health insurance plans, with no role for the private distribution marketplace, is fraught with danger. Managed competition isn’t competition at all if consumers are ultimately denied choice among health insurance plans.”

NACSA—which is changing its name to the Council of Insurance Agents & Brokers—contends that the imposition of premium caps on health insurers “as a means of controlling costs” is “unwise and unworkable.”

The group supports the coordination of workers compensation and auto insurance with health care reform, but it “strongly opposes” a “merger” of workers comp and auto insurance with a reformed health care system. “Separating the medical and indemnity provisions of workers compensation would undermine the system by removing incentives for employers to improve and maintain safety at their worksites.”

NACSA also is calling for caps on non-economic damages and elimination of joint and several liability in medical malpractice cases.

—By James M. Burcke

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Clients need solutions, service

WHITE SULPHUR SPRINGS, W.Va.—Insurance agents and brokers must better understand their clients' business if they are to be an essential part of the insurance equation, a top brokerage official says.

"Virtually every conversation I have had with customers and prospects points out the need for us to truly understand their business so that we can effectively ad-

vice them," said J. Bransford Wallace, chairman of the Willis Corroon division of Willis Corroon Group P.L.C. in Nashville, Tenn.

Mr. Wallace, the outgoing president of the National Assn. of Casualty & Surety Agents, noted that in the past many agents and brokers had advised risk managers how to "finance their problems rather than reduce or solve them." That no longer can be the case, he said last week at the annual NACSA/NACSE conference at The Greenbrier.

"We need to become partners with our customers," he said. "The perceived value we bring has become much less on the transactional side and more on the consulting side. This represents a significant shift and puts tremendous emphasis on our understanding their business.

"A failure to recognize this will leave our firms in serious future jeopardy," Mr. Wallace stressed.

Besides better understanding their clients' problems, agents and brokers must help improve the in-

urance industry's image by improving the level of service that agents and brokers provide.

"The facts are that we don't do many things as well as we could or should. If you don't believe that, just ask your customers," he said. "Customer satisfaction is going to be the driving force for the foreseeable future."

While errors always will occur in the insurance industry, "we must work together on eliminating these inefficiencies that have a negative effect on our results and our image," Mr. Wallace said.

Clients increasingly will expect a higher level of service and per-

formance from agents and brokers, even though clients "are unwilling to pay more" for those services, he said. "The result can be rapidly eroding profit margins."

However, just as companies in the auto industry and other sectors have faced a similar scenario and survived, agents and brokers, too, can satisfy their clients and still produce "very satisfactory margins" if they adopt the philosophy of Total Quality Management, said Mr. Wallace.

Willis Corroon, hosted the first Quality Insurance Congress in August (BI, Oct. 4; Sept. 6).

—By James M. Burcke

NACSA/NACSE
The Greenbrier
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Meeting abuzz over First Lady

WHITE SULPHUR SPRINGS, W.Va.—The biggest buzz at The Greenbrier last week centered on someone who was not there: Hillary Rodham Clinton.

NACSA/NACSE
The Greenbrier
CONFERENCE

However, she almost was.

The organizers of the annual meeting—the National Assn. of Casualty & Surety Agents and the National Assn. of Casualty & Surety Executives—several months ago invited the First Lady to speak at the conference. While the White House never formally declined, they did not formally decline—until shortly before the conference.

The White House notified the organizers on Wednesday, Sept. 29, that Mrs. Clinton would not be able to appear but that a senior administration official would be able to speak at The Greenbrier the following Monday. That was confirmed on Thursday.

However, on Friday, the White House called again to say that no one from the administration would speak at the conference. No explanation was given.

NACSA and NACSE were forced to scramble to find a replacement with only three days' notice. They actually found two.

NACSA President J. Bransford Wallace called on a longtime friend, Rep. Jim Cooper, D-Tenn., who immediately accepted the invitation, even though he would introduce major health care reform legislation just two days after his speech (see stories, pages 1 and 27).

In addition, the conference organizers also arranged for Margaret Heckler, secretary of health and human services in the Reagan administration, to speak on Monday morning after Rep. Cooper.

As word of Mrs. Clinton's on-again, off-again appearance spread among the insurance company, agency and brokerage executives attending the conference, many said the last-minute refusal by the White House to send anyone to the conference was a calculated gesture meant to embarrass the insurance industry. Some noted that the administration in recent weeks has attempted to pin some of the blame for the health care crisis on the industry.

Several others said Mrs. Clinton's absence may have been for the best. Some of the heavily Republican crowd may have boycotted her remarks.

The White House says there was no misunderstanding as far as it is concerned.

"It was never on our schedule. We may have been invited, but it was never official. As far as I know, we had no commitment there," a spokesman for Mrs. Clinton said.

—By James M. Burcke

The IRI Difference:

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HARTFORD, CT—Industrial Risk Insurers has taken the guesswork out of building fire walls. "Industry has been using



Stanley Couvillon

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To help the marketplace benefit from this information, IRI has publicized it in *IRI Information*, its technical manual; *The Sentinel*, its quarterly loss

prevention magazine; and trade journals such as *Plant Engineering* and *Chemical Engineering*.

To help its insureds benefit, IRI is going one step further: it is making its consultants available to clients when planning and building fire walls. "That advice is just one facet of the loss prevention consulting we offer to clients during renovation and new construction projects," Couvillon said. "This type of loss prevention consulting is just one more example of 'The IRI Difference.'"



Fire leveled the 40,000 square-foot building that stood in the foreground. However, the fire wall to the rear stopped the fire from spreading to an adjacent building.

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Prescription for trouble

Reform plan seriously flawed, insurer executives say

By JAMES M. BURCKE

WHITE SULPHUR SPRINGS, W.Va.—The prescription for health care reform contains heavy doses of managed care and managed competition, not government bureaucracy, one health insurance executive believes.

"The insurance industry must shape reforms or we will be shaped by the reforms," suggests James W. McLane, chief executive officer of Aetna Health Plans Inc. in Hartford, Conn. Insurers must play an active role in the debate "to ensure market-driven reforms rather than government-driven reforms," he said.

"We hope the president will allow market competition between health care providers and health networks to drive down costs and drive up quality," Mr. McLane commented.

State reform experiments based on managed care and managed competition where insurers have played a major role, such as in Florida, are helping to control costs and improve the quality of care, Mr. McLane said during a panel discussion on health care reform at the annual NACSA/NACSE conference last week.

Mr. McLane and other panel members said that the gains insurers and employers have made over the years through the increasing use of managed care techniques should not be abandoned in favor of a government-run health care system.

The best solution that employers have found to their health care cost problems "and the only one with demonstrated ability to contain growth in health care costs is managed care," said William W. Wyman, managing partner of management consultant Oliver, Wyman & Co. in New York and the moderator of the panel discussion.

The winners in the health insurance industry "will be those that understand the market forces at work and position themselves to satisfy those forces," Mr. Wyman said.

The major flaws in President Clinton's health care reform package rest in areas where the plan relies on government intervention rather than market forces, Mr. McLane said.

"We are looking at a potentially massive bureaucracy that will interrupt many of the cost-effective, efficient programs already in place at large and medium-sized companies," he said.

For instance, rather than require that only small employers that cannot now readily find health insurance join regional health purchasing alliances, the Clinton proposal re-

quires all employers with fewer than 5,000 workers join these alliances. That will put "99.9% of all employers and 70% of all Americans into the hands of government-regulated entities," he said.

However, if only employers with 100 or fewer workers were forced to join the purchasing alliances, "only 35% of all Americans" would be covered by the alliances, he said.

If health alliances do end up covering the bulk of the population, "we will be only a short step from turning health care over to the government," Mr. McLane said. "That's not what the American people need and it's not what they want."

He also had harsh words for the proposed caps on health insurance premium increases proposed in the Clinton reform plan.

Mr. McLane noted that his disdain for price controls comes from personal experience: He had "the dubious distinction" of running President Nixon's wage and price control program from 1972 to 1974, "and I can assure you that they do not work and cannot work... They really screw up the economy."

"Just like we had gas lines in the '70s, we will have lines in hospitals and doctors offices," if health care price controls are implemented, he argued.

Price controls also will "choke off the capital that managed care companies need to build their capabilities."

"With premium caps, no shareholders will want to support these investments. There are too many other places to put their money," he said.

However, Mr. McLane said there is merit in President Clinton's proposal to "integrate" workers compensation medical care with employers' managed health care plans.

"Integration can bring some of the benefits of managed care to workers compensation without decoupling the medical portion of workers comp from the wage-loss portion," he noted.

However, Mr. McLane warned the administration not to take its proposal too far. "We cannot support the merging of workers compensation with managed care," he said. "That ignores the unique nature of work-related disability" and could remove incentives for injured workers to return to their jobs quickly.

Integrating workers comp medical care with the overall health care system could complicate disability management, agreed Dennis H. Chookaszian, chairman and chief executive officer of CNA Insurance Cos. in Chicago.

If the responsibility for workers comp medical care is handed over to

group health plans, rather than retained by workers comp insurers, "you will have two people trying to do disability management with very different objectives," Mr. Chookaszian said. "One is looking for early return to work... while the other is trying to cut down on the cost of medical care. These may or may not be compatible objectives."

However, linking workers comp medical care with a reformed health care system may never occur, he said, because of "a very strong sentiment in Congress" opposed to the proposal.

Legislators in Washington will recognize the impact the proposal will have "on individual state laws," which will foster opposition, he said.

Mr. Chookaszian also noted that the Clinton health care reform plan would make fundamental market changes in how risk is transferred in the current health care system.

Now, most of the risk "is transferred to the employer," through the premiums paid to insurers or self-insured claims costs. In addition, health maintenance organizations assume some risk, as do hospitals and doctors.

However, under the Clinton proposal, risk transfer is shifted significantly to insurers operating health plans, "and the employer is taken out of the equation with regard to risk transfer" since the proposal caps the amount that employers must contribute for employee health care coverage.

The increasing focus on managed care, no matter how the health care system is reformed, is causing insurers to change their strategies, noted panelist Harvey B. Weinberg, a partner with Oliver, Wyman in New York.

For instance, insurers writing traditional indemnity coverage did not necessarily need to build "strong positions in local markets" since administrative and claims functions could be handled from remote locations.

However, insurers aggressively pursuing managed care accounts have found that the "key to managed care success is local market share." Since managed care is based on networks of providers in each community, the larger an insurer's market share, the greater the economies of scale.

In most managed care settings, a health care plan's per-subscriber administrative costs will decline by 15% as membership doubles, Mr. Weinberg noted.

Also participating on the panel was Gene A. Poindexter, senior vp of benefit consultant Godwins, Booke & Dickinson in Winston-Salem, N.C. ■

Superfund

Continued from page 1

nate joint and several liability; and abolish retroactive liability prior to Dec. 11, 1980—when Superfund was enacted—or another appropriate date for potentially responsible parties whose actions complied with the applicable laws at the time.

The memo says the Treasury recommendations are based on the principles that Superfund liability should:

- Apply "strict liability predicated on behavior, and not on status."
- Apportion liability "to reflect a liable party's contribution to contamination at a site."
- Not be applied "retroactively to actions that were not unlawful at the time they took place."

According to the memo, the Treasury Department "believes these principles are fully consistent with a proper interpretation of the 'polluter-pays' principle."

The principles also "would be an effective means to expedite cleanups, would improve incentives for environmentally sound behavior by hazardous waste generators and transporters, and would reduce transaction costs as well as the enormous economic costs of the manifold uncertainties created by current law."

"We also believe that this approach to Superfund liability would encourage insurers to again underwrite environmental damages," the memo said.

The Treasury proposal also expresses "serious reservations" about placing a "general limitation" on the liability of municipalities for pollution cleanup. According to the memo, abolishing joint and several liability "should substantially reduce the anxieties of municipal authorities," and taking into account the "special circumstances of municipal involvement" at waste sites should eliminate the need for special treatment of local governments under CERCLA.

However, the memo also recommends that the cleanup of sites polluted before December 1980, or whatever cutoff date is chosen, be paid for by the public. Such cleanup costs "constitute a public good that should be financed by the public, as assessed by the revenue-raising procedures provided by the funding of Superfund," the memo stated.

Members of two insurance industry coalitions—the American Insurance Assn.'s Superfund Improvement Project and the National Environmental Trust Fund Project—met with Treasury Secretary Lloyd Bentsen and other department officials on Wednesday to pledge their support for the proposal.

"We made it clear that this was a good proposal," said Mike McGadick, director of the Superfund Improvement Project.

The insurer representatives also discussed with Treasury officials a proposal drafted earlier in the week by five small business organizations to raise \$1 billion in new revenues for cleanups that would replace the money now raised by holding polluters retroactively liable, Mr. McGadick said.

The insurer representatives told the officials that the insurance industry would be willing to pay roughly \$300 million in new taxes "if the proposal indeed eliminates retroactive liability," he said, adding that \$300 million is approximately the amount that the chemical industry now pays in Superfund taxes.

Business and insurance reaction to the liability changes recommended in the leaked memo was predictably favorable.

"We're very happy to see that the Treasury Department is taking a hard look at Superfund," said Paul

Brown, director-government and public affairs and general counsel for the Risk & Insurance Management Society Inc. in New York.

"We are also very happy they are questioning the idea of joint and several liability, because very often responsible parties are made to pay an unfair share of the liability," he said.

"There are some very good things in the Treasury Department proposal," said Dell Perelman, senior assistant general counsel for the Chemical Manufacturers Assn. in Washington.

Mr. Perelman cited the elimination of joint and several liability and the opposition to wholesale limitation on municipal liability for cleanups as two key pluses in the recommendation.

Mr. Perelman said, however, that the CMA has opposed using Superfund as a public works program and would continue to do so, calling the proposal's chief flaw its call for public financing of pre-1980 site cleanups.

"It's extremely positive, but there's been all types of battles as to whether this (approach to Superfund reform) will hold. Unlike the Environmental Protection Agency, which I think is blinded to the economic realities of Superfund, Treasury has correctly taken a look at its macroeconomic effects and a system of retroactive liability that wastes as much as 90% on transaction costs, doesn't work, and imposes a threat to the continued viability of industrial enterprises and insurance companies across the country," said Peter A. Lefkin, vp-federal affairs in Fireman's Fund Insurance Co.'s Washington office.

"The Treasury proposal recognizes that retroactive liability is at the heart of the problems with Superfund, and I think that the Treasury proposal is a good first step toward beginning the debate on reauthorization," said John Arlington, senior counsel for American Insurance Assn.'s Superfund Improvement Project.

"I think it's being taken very seriously. We understand that the various departments and agencies are engaged in a vigorous debate on that issue right now," said Mr. Arlington.

The CMA's Mr. Perelman agreed. "The administration clearly has to pay attention," he said. He added, however, that criticism from congressional leaders like Rep. John Dingell, D-Mich., "can't be ignored."

A Sept. 30 letter to President Clinton from the chairmen of several House panels calls the Treasury proposal "seriously flawed." The letter bears the signatures of Sen. Frank Lautenberg, D-N.J., chairman of the Superfund, Recycling and Solid Waste Management Subcommittee of the Senate Environment and Public Works Committee; Rep. Dingell, chairman of the House Energy and Commerce Committee; Rep. Norman Y. Mineta, D-Calif., chairman of the House Public Works and Transportation Committee; and Rep. Al Swift, D-Wash., chairman of the Energy and Commerce Committee's Transportation and Hazardous Materials Subcommittee.

The "mere pendency" of the Treasury proposal, even if it is rejected, "has the potential to slow down cleanups," said the chairmen.

"As long as responsible parties believe that they may be able to avoid liability—as suggested by the draft Treasury staff proposal—they may be reluctant to enter into settlements with the EPA," the letter states.

The congressmen also blasted the public works provision of the proposal. ■

Garamendi shakeup

Continued from page 2

lion pounds (\$915 million) of capital, conservation and liquidation division is Fred Buck, former president of failed life insurer First Capital Life Insurance Co.

Mr. Buck takes over a department where investigators recently found improprieties including \$89,808 in severance payments to employees who still work there. Staffers were also allowed to cash about \$110,000 worth of comp time and buy office furniture and other assets of failed insurers before they were auctioned.

Among the failed insurers the division oversees are several offshore companies formerly run by insurance con men Robert R. Campbell and Alan Teale.

Mr. Campbell pleaded guilty in 1991 to federal charges stemming from his operation of offshore insurer Apex Placement Insurance Co. and a dozen other offshore insurers responsible for millions of dollars of unpaid claims (BI, Dec. 16, 1991). He is serving a nearly six-year prison term.

Mr. Teale and his wife pleaded guilty to federal fraud and racketeering charges arising from a massive insurance scam that bilked several thousand policyholders of more than \$50 million (BI, Aug. 9; Jan. 25). Sentencing is scheduled for Dec. 2 and he could face 10 years in prison.

State auditors recently found there was insufficient oversight of the division, which they said could

increase the chances of theft or misappropriation of funds (BI, Aug. 23).

"The division has had problems for years," said Mr. Aguilar. For example, though \$5 million of trust funds from one of his offshore insurer clients was placed with the CLD, claimants were first told the division knew nothing of the funds and then they were told they had to wait a year to collect claims of about \$3,000, he said.

"We are trying to get our arms around problems that have evolved since 1935," when the division was formed, said Gary Hernandez, deputy insurance commissioner and chief of enforcement. "We just don't know what we're going to find." ■

Reich vows to get tough on safety

By MARK A. HOFMANN

The Clinton administration plans to vigorously enforce workplace safety laws, Labor Secretary Robert Reich says.

In an address to the AFL-CIO's annual convention in San Francisco last week, Mr. Reich charged that workplace safety laws had not been enforced for years and vowed to crack down on employers who violated them. "We are now turning the Department of Labor into a law enforcement agency," he said.

Mr. Reich also pledged the administration's support for reform of the Occupational Safety and Health Act, a major goal of organized labor. The Clinton administration has endorsed the creation of joint labor-management committees to monitor workplace conditions in most workplaces. Businesses strenuously oppose the creation of such committees, which has been a key legislative objective of labor unions.

ERISA fiduciaries

The Supreme Court's decision in *Mertens v. Hewitt Associates* could result in a legislative and judicial push to "expand" the definition of a fiduciary of employee benefit plans, predicts an expert on benefits law.

"I would suggest that when you have a right without a remedy, you will see an urge to create a remedy," said Morton Klevan, senior director-policy and legislative analysis for the U.S. Department of Labor's Pension and Welfare Benefits Administration.

Mr. Klevan, who emphasized

5th Circuit ruling

Continued from page 1

for cleanup costs, it has the right to attempt to prove that cleanup costs can be properly apportioned based on fault (*BI*, May 25, 1992).

But the 5th Circuit went a step further, holding that the PRP only needs to prove what percentage of the damage it contributed by a preponderance of the evidence, said Mr. Bernstein.

Such a standard, which is applied in civil cases, requires that a defendant only produce sufficient evidence to show that its position is "more probable" than the opposing position.

"If the expert testimony and other evidence establishes a factual basis for making a reasonable estimate that will fairly apportion liability, joint and several liability should not be imposed in the absence of exceptional circumstances," the 5th Circuit said.

The court also found that the EPA should not be given a "blank check" when it decides what remedial action to take.

In this case, the EPA built an alternate water supply even though the contamination occurred in an industrial park where there were no residential users of drinking water.

"We seriously doubt that Congress intended to give the EPA such unrestrained spending discretion," the court said.

The decision sets two precedents, according to Bob Iulucci, vp of environmental safety and health for defendant Sequa Corp. in Hackensack, N.J.

In addition to determining that joint and several liability cannot be imposed if there is a reasonable way of apportioning damages, "this is the first time a judicial body has told the EPA how to run

Washington

that he spoke for himself and not for the Labor Department, offered his analysis during a session at a recent ERISA Industry Committee meeting.

In *Mertens*, a sharply divided Supreme Court ruled that the Employee Retirement Income Security Act of 1974 bars pension plan beneficiaries from recovering monetary damages from the plan's non-fiduciary advisers even if the advisers knowingly took part in a breach of fiduciary responsibility (*BI*, Aug. 9; June 7).

By ruling that knowing participants to a fiduciary breach can't be sued for monetary damages so long as they aren't fiduciaries, the Supreme Court opened the door to legislative and judicial expansion of the definition of fiduciaries, said Mr. Klevan.

The Clinton administration has already called upon Congress to amend ERISA to overturn the *Mertens* decision. Such amendments are needed to "clarify that participants and beneficiaries who suffer a loss of benefit payments as a result of fiduciary breach should have a meaningful remedy for such breach," Olena Berg, assistant secretary of labor for pension and welfare benefits told the Senate Labor and Human Resources Committee's Labor Subcommittee in August.

The amendments should also "make clear that knowing participants in a fiduciary breach are liable for damages under ERISA, even if they are non-fiduciaries," she added.

its business," he said.

"This is a strong and favorable decision that continues the restoration of the application of common law principles to Superfund litigation," Mr. Bernstein agreed.

Joint and several liability is not mandated under CERCLA, the court found after studying the history of the original 1980 law and its 1986 amendments.

"Congress intended that the federal courts impose joint and several liability only in appropriate cases, applying common law principles," it said in its decision.

In fact, provisions for joint and several liability were deleted from Superfund "in order to avoid its universal application to inappropriate circumstances," the 5th Circuit found.

The case stems from a 1988 suit the EPA filed to recover the cost of cleaning up a discharge of chromium waste that contaminated an Odessa, Texas, water system and the cost of providing an alternate water supply.

The culprit was found to be a chrome-plating shop that was operated successively from 1971 through 1977 by three different parties: an individual named John Leigh; Western Pollution Control Corp.; and the Wolley Tool Division of Chromalloy American Corp., which Sequa Corp. acquired through a 1986 merger.

Mr. Leigh and Western Pollution, which filed for bankruptcy protection, subsequently settled for \$100,000 and \$1 million, respectively, leaving only Sequa to stand trial.

After determining that it was not possible to apportion liability because various methods produced different results, the district court held that Sequa was

Reinsurance tax

Insurance trade groups recently urged the U.S. House of Representatives' Committee on Ways and Means Subcommittee on Select Revenue Measures not to increase the federal excise tax on reinsurers in tax havens to 4% from the current 1%.

Speaking for the National Assn. of Independent Insurers, the Alliance of American Insurers and the National Ass. of Mutual Insurance Cos., Robert Jarratt told the subcommittee that foreign reinsurers that currently provide hard-to-place reinsurance currently written by no U.S. reinsurers would simply withdraw from the U.S. market.

Mr. Jarratt, a vp with the Southern Farm Bureau Casualty Insurance Co. of Jackson, Miss., and the Florida Farm Bureau General Insurance Co. of Gainesville, Fla., also predicted that raising the excise tax on reinsurers domiciled in tax havens would be viewed as a protectionist measure that could lead to retaliation. According to Mr. Jarratt, the retaliation could include limiting U.S. property/casualty insurance companies' access to foreign markets and imposing reciprocal excise taxes on U.S. insurers and reinsurers.

In a statement filed with the subcommittee, the Reinsurance Assn. of America called for an increase in the excise tax on those foreign insurers operating out of tax havens.

The RAA statement said the provision would help bring equity to the international insurance marketplace. **BI**

jointly and severally liable for the \$1.9 million cost of studying, designing and constructing the alternate water supply system. It also held Sequa jointly and severally liable for all future costs incurred by the EPA in studying, designing and implementing a permanent remedy. So far those costs have amounted to close to \$7 million, according to Mr. Iulucci.

On appeal, the 5th Circuit ruled that the existence of competing theories on how to divide the blame wasn't enough reason to institute joint and several liability and remanded the case to trial to determine the amount of Sequa's individual liability.

"Even though it is not possible to determine with absolute certainty the exact amount of chromium each defendant introduced into the groundwater, there is sufficient evidence from which a reasonable and rational approximation of each defendant's individual contribution to the contamination can be made," the court said.

"Sequa met its burden of proving that, as a matter of law, there is a reasonable basis for apportionment," the court concluded.

"This decision reflects another implicit recognition by the courts that the liability scheme in Superfund is seriously flawed," said Lawrence A. Salibra II, senior counsel for Alcan Aluminum in Cleveland. "The end result will be the realization that the polluter pays' liability system under Superfund has to be scrapped and reworked from the ground up."

Environmental Protection Agency vs. Sequa Corp., 5th U.S. Circuit Court of Appeals, New Orleans, Sept. 28, 1993, No. 91-8080.

Update

Fraud victim wins \$25 million

LOS ANGELES—Transport Life Insurance Co. has been ordered to pay \$25 million in punitive damages after a Los Angeles County jury found that the insurer defrauded a man stricken with cancer.

Norman Jensen, 52, was misled into believing that a bare-bones policy he bought was actually a major medical policy with a lifetime maximum of \$1 million, jurors found. Actually, the policy, which was marketed by an organization of self-employed people, carried deductibles for each illness and paid only \$20 per doctor visit and only if the patient was hospitalized at the time, not including the four weeks after surgery. The policy covered little of Mr. Jensen's expenses.

Court papers indicate that Transport Life, a unit of Primerica Holdings Corp., dropped any policyholder disabled enough to become eligible for Medicare.

In addition to the punitive damages, the jury awarded Mr. Jensen \$100,000 for emotional distress.

A Transport Life attorney—Tom Herlihy of Kelly, Herlihy & Bane in San Francisco—did not return phone calls.

Anglo-American charges

NEW ORLEANS—A Dallas lawyer pleaded not guilty last week to charges of conspiracy, mail fraud and money laundering in connection with the 1989 collapse of Anglo-American Insurance Co.

J. Albert Kroemer was indicted last month in New Orleans by a federal grand jury on charges that he helped Carlos I. Miro Jr. bilk the insurer of millions of dollars. His case is scheduled for trial Nov. 29. British attorney Melvyn Arnold Stein was indicted on the same charges. Both men were corporate attorneys for Anglo-American.

William Herring Jackson, who was Anglo-American's managing vp, was separately charged with mail fraud, money laundering and conspiracy to commit those crimes. He has pleaded not guilty and is scheduled for trial Oct. 18.

Mr. Jackson faces up to 40 years in prison, while Messrs. Kroemer and Stein face a maximum sentence of 45 years, U.S. Attorney Robert J. Boitmann said. Mr. Miro pleaded guilty last year to 16 wire fraud charges related to Anglo-American (*BI*, Nov. 30, 1992).

European pollution exclusion

PARIS—Several major European reinsurers are leading a drive to remove pollution coverage from the standard liability policies purchased by France's industrial firms.

Amid pressure from reinsurers, at least three of France's direct-writing insurers—L'Union des Assurances de Paris, Assurances Generales de France and Groupe des Assurances Nationales—are informing policyholders that pollution coverage in 1994 may only be available from France's high-risk pollution pool, "Assurpol."

Paris-based risk managers and brokers say SCOR S.A., Munich Reinsurance Co. and Swiss Reinsurance Co. are leading the move to restrict the coverage because of concerns about stricter environmental liability laws in France and increased litigation.

Assurpol, which has capacity of 192 million francs (\$33.9 million), writes coverage for accidental and gradual pollution for high-risk companies but at prices significantly higher than what most French industrial firms have obtained through their CGL policies.

"We do not find this to be acceptable," said Pierre Sonigo, risk manager with chemical giant Saint-Gobain in Paris. If French insurers won't continue to at least cover accidental pollution, "we'll try to find American or Swiss companies willing to write it."

Briefly noted

The 9th U.S. Circuit Court of Appeals has remanded the **insurance industry antitrust case, Hartford Fire Insurance Co. vs. California**, to the trial court in accordance with the U.S. Supreme Court opinion issued June 28. The state attorneys general had asked the 9th Circuit itself to decide the underlying issues (*BI*, July 5). No court date has been set. . . . **Truck Insurance Exchange** has been ordered to pay **\$58 million in damages** to Surgin Surgical Instrumentation Inc., after a California state judge found that the Farmers Group Inc. unit acted in bad faith by failing to properly represent the firm in two patent infringement suits. Truck Insurance said it will appeal. . . . **Executive Vp Alfred K. Kenyon** will succeed **Gerald L. Maatman** as president of Kemper National Insurance Co. in January. Mr. Kenyon will also become chief operating officer; Mr. Maatman will remain chairman and CEO until his scheduled retirement on March 1, 1995. . . . **Gary Weeks** left his post as Oregon's top insurance regulator to oversee all state administrative services. Kerry Barnett, the governor's former legal policy adviser, replaces him. . . . **Moody's Investors Service** assigned an A1 senior debt rating to the planned \$200 million senior note issue of **Zurich Reinsurance Centre Holdings**. . . . Legislation that would make California the 15th state to bar physicians from referring patients to medical facilities they own is awaiting Gov. Pete Wilson's signature. . . . **Tracey A. Carragher** has been named senior vp of Aon Risk Services Inc., a unit of Chicago-based broker Rollins Hudig Hall Group Inc. Previously, she was a divisional president of the RHH office in Briarcliff Manor, N.Y. . . . **Northwestern National Life Cos.** announced a public offering of 1.75 million shares of common stock at \$39.25 per share. It will use the proceeds of the offering in its life insurance operations and for general purposes. . . . **Texans** will vote Nov. 2 in a special election on Proposition 11, which would make trustees of **municipal employee retirement plans** fiduciaries. . . . **Standard & Poor's Corp.** has raised its claims-paying ability rating for **St. Paul Reinsurance Co. Ltd.** to AAA from BBB, based on a guarantee agreement provided by parent St. Paul Fire & Marine Insurance Co. . . . **CIGNA Corp.** has bought Tel-Drug of Sioux Falls, S.D., for an undisclosed sum and will offer the mail-order pharmaceutical company's services as part of its managed pharmacy benefit program.

Third-quarter results likely to hide industry's situation

By MYRON M. PICOULT

Special to Business Insurance

One of the longest running soap operas is about to give another performance. The close of the third quarter is upon us, and in about two weeks we will begin to see the fruits of the industry's labors.

The cast for this latest production has been altered somewhat. Specifically, our infamous chairman, Almost Donothing of Nearly Defunct Fire & Casualty, has now been joined by a vice chairman, I.M. Inept, who has had a stellar career path over the past seven years. He has been with five property-casualty entities. In addition, Virginia ("Always Crying") Wolfe has taken the newly created slot of Director of Investor Relations.

Notwithstanding these casting improvements, we still believe that overall, the fruits being produced are really rotten and the odor is becoming more pungent.

On the surface, second-quarter operating results appeared to be OK.

The problem is that the results were sprayed with a lot of perfume disguised as realized and unrealized gains and minimal and reserve increases or absolute reserve takedowns.

There are numerous formidable hurdles facing the industry and one wonders how much longer the charade can go on. These are:

- In general, premium growth remains sub-par.

This is especially true in the standard commercial area, which most insurers insist they are de-emphasizing. This is clearly becoming a specialty line since few insurers apparently write it!

- Net investment income is going south and current yield and cash flow trends point to a further squeeze for some time to come.

- Except for a handful of insurers, cash flow is down.

On average, the decline approximates 12%-15%.

However, there is a very wide spread between the highs and the lows and 100% declines are not uncommon.

- Paid loss trends on commercial liability lines appear to have reversed at year-end 1992 after declining for several years.

This only serves to raise even more questions about the insurance industry's reserving practices.

- In general, reserving is a joke. Smaller increments and, in too many in-

It is difficult to see how and why there should be much improvement, if any, in the insurance industry's 1994 operating figures.

stances, absolute reserve takedowns have become the standard. The latter is based on the phasing out of various lines and/or geographic areas.

One would think that some seasoning of the book would be more appropriate before reaching such judgments.

- It would be absolutely fallacious to believe that Chubb Corp., CNA Insurance Cos. and Hartford Fire Insurance Co. were the only insurers that have had some reserve shortfalls.

- Catastrophe losses are way down from the 1992 level, which was severely impacted by Hurricanes Andrew and Iniki.

However, the \$4.5 billion loss figure as of the middle of September is a whisker below the \$4.7 billion figure posted in 1991, which was the third worst year on record. Also of note is the increased retention levels of the primary insurers.

- On the capital side of the equation, the battle between real and apparent capital continues.

Over the 1984-92 period, two-thirds of the increase in the industry's capital base

from \$65.4 billion to \$163.1 billion came from realized and unrealized gains. The industry's surplus account actually declined in 1992, if realized and unrealized gains were excluded from the calculations. For history buffs, this is the first time that this has occurred since 1984.

- New accounting rules from the Financial Accounting Standards Board dealing with such subjects as funded catastrophe covers, tighter reins on loose accounting interpretations and the Securities and Exchange Commission nosing around on reserve adequacy and disclosures as it pertains to toxic and environmental exposures seem to have cut the industry's financial flexibility.

We have heard rumblings that some insurance companies are likely to ignore the FASB pronouncements and the prodding by the SEC, at least for the third quarter.

Such an occurrence would be most unfortunate for all involved because of what it does to credibility... or what little is left of it.

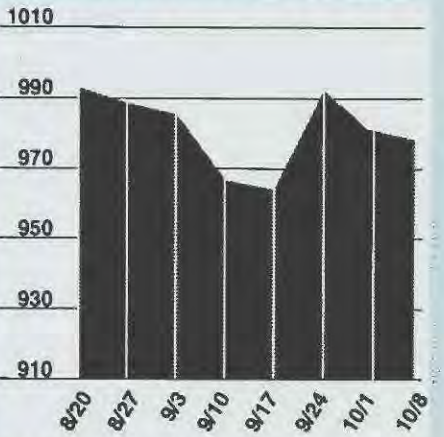
Given all of the above, it is difficult to see how and why there should be much improvement, if any, in the industry's 1994 operating figures.

We could begin to be more optimistic if some of the balance sheet deficiencies, such as reserves and reinsurance recoverables, start to be addressed. In the interim we will watch with others to see how many more rabbits can be pulled out of the proverbial hat.



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BI Insurance Index



Base = 100 on Dec. 29, 1978
Source: Nordby International Inc.

Insurance industry stocks dropped last week, as the Business Insurance Index lost 3.3 points to 978.0 Oct. 8 from 981.3 on Oct. 1. Advancing issues for the week were led by: Seibels Bruce Group, up 42.7%; Reliance Group Holdings, up 10.6%; and Wellpoint Health Networks, up 7.0%. Declining issues for the week followed: Lawrence Insurance Group, down 30.4%; PacifiCare Health Systems, down 11.1%; and Hilb, Rogal & Hamilton, down 10.3%. The most active issue was U.S. Healthcare, 6.7 million shares traded. The BI Index dropped 0.3%; the Dow Jones 30 Industrials gained 0.1%; the NYSE Composite fell 0.2%; and the Standard & Poor's 500 lost 0.2%.

British Issues

1 week						
Oct. 7 Companies	Price pence	P/E	Div. pence	Yield %	High-Low pence	
Comm Union	636	N/M	32.5	5.1	638-635	
Genl Accident	730	N/M	35.7	4.9	738-725	
Gdn Royal Exch	227	N/M	9.3	4.1	227-222	
Royal	324	N/M	6.7	2.1	328-324	
Sun Alliance	393	N/M	19.0	4.8	396-393	
Brokers						
Bradstock	125	14.7	6.8	5.4	125-125	
CE Health	381	18.5	20.5	4.8	390-381	
Hogg Group	163	18.1*	10.2*	6.2	165-163	
JIB Group	173	17.0	10.0	5.8	173-173	
Lloyd Thompson	277	18.7	8.4	3.0	284-277	
Lowndes Lmbt	407	14.9	18.0	4.4	407-402	
PWS Holdings	61	9.1	5.3	8.7	64-61	
Sedgwick Grp	167	20.1	8.0	4.8	178-167	
Steel Bri Jones	154	N/M	11.3*	7.3	158-148	
Willis Corroon	206	19.2	8.8	4.3	219-206	

Source: Philip Olsen, London * Estimated

BI Industry Stock Report

OCTOBER 4, 1993 THROUGH OCTOBER 8, 1993

BROKERS	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk value	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk value	
				High	Low										High	Low							
ACE Ltd	NYS	33.25	0.38	N.A.	36.00	25.50	4.17	0.40	1.20	8	25.37	1.31	44.00	1.15	8.64	46.00	31.75	44	0.40	0.91	23	11.39	3.86
Acceptance Insurance Cos	NYS	15.25	2.02	58.44	15.25	6.00	1.14	0.00	0.00	17	9.11	1.57	33.88	-5.57	-16.36	44.75	33.25	162	0.16	0.47	43	17.23	1.97
AEGON N V	NYS	50.00	7.04	20.12	50.25	40.38	146	1.22	2.44	9	32.78	1.53	33.00	-1.86	11.39	39.63	25.50	145	0.12	0.36	10	14.18	2.33
Aetna Life & Casualty	NYS	61.50	3.14	32.26	61.75	40.88	1675	2.76	4.49	34	65.43	0.84	6.75	-2.71	14.89	8.25	4.50	314	0.00	0.00	3	6.84	0.99
Allied Group Inc	OTC	30.00	-1.64	41.73	32.75	18.16	294	0.52	1.73	9	10.45	2.87	37.38	0.34	46.93	38.75	18.13	540	0.80	2.14	15	21.65	1.73
Allstate Prop & Casualty	NYS	59.50	-0.83	17.82	62.50	45.00	36	0.44	0.74	5	46.94	1.27	68.50	1.11	8.51	72.00	59.25	337	2.84	4.15	12	45.85	1.49
Almista Corp	NYS	33.00	1.93	N.A.	33.38	27.13	1118	0.72	2.18	-58	12.26	2.69	25.25	-0.49	1.51	27.63	21.50	621	0.44	1.74	8	21.06	1.20
American General	NYS	34.00	2.26	19.30	36.50	24.25	1612	1.08	3.18	13	21.31	1.60	44.63	2.00	26.15	46.88	29.81	36	0.88	1.97	9	24.32	1.83
American Heritage Life Ins. _ NYS	19.00	-0.65	-5.79	25.34	18.50	175	0.60	3.16	13	12.44	1.53	35.13	-0.35	123.02	38.25	12.00	378	0.20	0.57	-	11.88	2.96	
American Indemnity/Firm	OTC	14.50	-3.33	141.67	16.25	5.00	25	0.12	0.83	5	16.18	0.90	27.75	-0.89	-2.83	31.50	24.75	143	1.04	3.75	11	30.72	0.90
American International	NYS	94.88	-3.07	22.68	100.25	70.25	2624	0.40	0.42	17	40.25	2.36	15.00	1.69	-9.09	16.63	13.25	4	0.28	1.87	22	14.76	1.02
American RE Corp	NYS	33.25	-4.32	-10.14	41.75	31.38	380	0.00	0.00	27	6.67	4.99	9.13	10.61	48.98	9.50	4.88	1382	0.32	3.51	3	2.99	3.05
Aon Corp	NYS	54.75	-1.35	1.39	58.50	47.75	172	1.80	3.29	18	31.79	1.72	25.00	1.52	1.01	28.63	20.50	140	0.56	2.24	11	18.62	1.34
Argonaut Group	OTC	31.00	-5.34	1.64	35.50	27.00	171	1.00	3.23	10	25.52	1.21	90.88	-0.55	18.02	94.00	67.88	340	2.80	3.08	-13	52.24	1.74
AVEMCO Corp	NYS	19.13	6.25	-18.18	27.00	16.75	163	0.44	2.30	21	7.75	2.47	65.13	-0.76	14.76	66.75	51.88	1151	1.80	2.76	13	38.95	1.67
Baldwin & Lyons Inc	OTC	41.50	-1.48	13.70	45.00	30.00	1	0.60	1.45	10	34.75	1.19	16.63	-0.75	-5.00	20.75	14.88	24	0.32	1.92	416	14.69	1.13
Berkley W R Corp	OTC	40.38	-3.29	-6.10	50.50	36.75	269	0.40	0.99	16	26.31	1.53	0.83	42.69	-66.67	2.88	0.31	105	0.00	0.00	0	1.90	0.33
Berkshire Hathaway Inc	NYS	16950.00	1.50	44.26	17800.00	9250.00	1	0.00	0.00	-	7742.67	2.19	29.75	0.65	35.23	30.75	19.75	157	1.12	3.76	22	22.92	1.30
Chandler Insurance	OTC	4.50	5.88	-5.26	5.25	3.50	18	0.00	0.00	17	8.87	0.51	16.50	7.13	12.50	16.50	7.13	685	0.20	1.48	6	8.65	1.56
Chubb Corp	NYS	82.63	-1.34	-7.03	96.38	79.50	1339	1.72	2.08	11	45.65	1.81	25.75	-1.44	N.A.	28.00	22.88	305	0.20	0.78	-8	17.14	1.50
CIGNA Corp	NYS	65.38	0.38	11.51	66.00	50.38	499	3.04	4.65	11	79.82	0.82	61.13	1.88	27.34	67.00	43.25	3	0.00	0.00	-	57.72	1.06
CNA Financial Corp	NYS	84.63	-1.02	-13.65	102.88	83.75	60	0.00	0.00	-10	75.07	1.13	53.88	-2.49	-5.07	64.75	49.75	501	1.12	2.08	15	15.15	3.56
Continental Corp	NYS	30.25	-1.22	12.56	34.63	24.38	1625	1.00	3.31	16	34.73	0.87	54.75	-2.23	-2.45	61.50	45.00	82	0.28	0.51	17	24.57	2.23
EXEL Ltd	NYS	46.75	0.27	-1.06	52.25	40.00	336	1.20	2.57	7	29.54	1.58	38.88	-2.32	35.32	38.88	22.00	3822	1.60	4.34	-5	31.77	1.16
Fremont General Corp	NYS	26.50	-0.93	-23.19	28.75	16.84	615	0.72	2.72	9	19.81	1.34	44.00	5.38	7.98	49.75	36.50	344	0.88	2.00	16	26.00	1.69
Frontier Insurance Group	NYS	47.13	4.14	8.33	47.63	30.00	39	0.60	1.27	16	14.78	3.19	36.00	0.00	-13.25	43.00	34.75	0	1.00	2.78	-	28.96	1.24
Gaisco Inc	ASE	12.38	0.00	-12.39	17.69	9.66	141	0.04	0.32	16	3.27	3.78	45.25	1.69	5.85	46.75	36.25	253	1.40	3.09	14	37.69	1.20
General RE Corp	NYS	123.00	0.51	6.26	133.38	105.25	848	1.88	1.53	17	49.90	2.46	52.63	-2.32	-0.71	60.13	44.00	1079	0.80	1.52	14	21.25	2.48
Guaranty National Corp	NYS	24.75	6.45	25.32	24.75	16.25	28	0.48	1.94	18	10.44	2.37	11.75	0.00	17.50	13.00	6.50	194	0.00	0.00	14	10.48	1.12
Harleysville Group	OTC	27.38	-3.10	-3.10	32.75	22.63	71	0.64	2.34	16	18.35	1.49	14.00	1.82	13.13	19.63	9.88	3189	0.20	1.43	-	9.63	1.45
Hartford Steam Boiler	NYS	45.63	-6.65	-21.00	59.88	43.75	260	2.12	4.65	22	18.03	2.53	17.50	0.00	-2.78	20.00	15.00	66	0.24	1.37	-5	23.61	0.74
HCC Insurance Holdings	OTC	31.00	-3.13	53.09	32.50	12.25	118	0.00	0.00	27	10.12	3.06	43.38	2.97	19.66	44.00							



Each year, in late October, Canada Geese sense the onset of winter and begin their seasonal migration southward. This journey takes some of the geese over 2,000 miles in search of the warm marshes that will sustain them through the winter.

Knowing That Change Is Coming Is One Thing. Doing Something About It Is Another.

Reacting to change as it happens isn't enough. To survive and flourish, the successful company must be able to see change coming and be ready to deal with it.

At Mutual of Omaha, we recognize that change is inevitable — and rapid. That's why we help benefits managers manage their changing environments with comprehensive reporting and fast, efficient claims processing. Our leadership in managing costs includes the spectrum of managed care products ... available on an experience-rated, minimum premium, or administrative services only basis. Benefits managers can choose the options that best meet their changing needs.

We offer customized, individualized programs and administrative support that help our group clients prepare for and deal with change — not just react to it.

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