

Business Insurance

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Federal appeals court overturns Nevada's auto rate rollback law

SAN FRANCISCO—A federal appellate court ruling striking down a Nevada law requiring sweeping auto insurance rate rollbacks will have no effect on California's controversial insurance "charge" rollback law but could discourage other states from enacting such measures, sources say.

"We do not believe the decision will have any impact whatsoever," said Christopher Maisel, a partner with Rubinstein & Perry in Los Angeles, the California Insurance Department's counsel.

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Stock brokerage devises scheme to block merger of Corroon, Willis

By JUDY GREENWALD

NEW YORK—Corroon & Black Corp. shareholder Bear Stearns & Co. is attempting to rally other C&B shareholders against the broker's planned merger with London-based broker Willis Faber P.L.C.

Under the law in Delaware, where C&B is incorporated, a stockholder of a company planning a merger can ask for a fair market valuation of shares, which the combined C&B and Willis Faber entity would then be required to pay shareholders that wanted to sell.

Though Bear Stearns denies it is attempting to derail the planned merger, it has blasted C&B management for rejecting out-of-hand what it considered a more attractive offer from Aon Corp., which has since withdrawn its bid (BI, Sept. 24).

And, the New York stock broker has sent its clients literature on how they can easily use Delaware law to block the proposed deal with Willis Faber, which has also triggered lawsuits by other shareholders.

C&B tentatively settled one of the suits Sept. 23, in part by agreeing to delay its shareholders meeting to Oct. 8 from Oct. 4 and to include in supplemental proxy material the details of the Aon bid.

The vote originally had been scheduled for Sept. 28 but was postponed following the Aon offer.

The plaintiff in the settlement also is taking credit for the special \$2.50 dividend, or a total of about \$51 million, C&B offered to shareholders last week if the Willis Faber merger is approved.

Stock analysts say they can't predict whether C&B shareholders will approve the planned merger

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High courts review punitive damages

Justices to consider award limits

By STACY ADLER

WASHINGTON—Whether there should be specific limits on the amount of punitive damages juries can award is a bitterly contested issue that pits corporate America against consumers.

This conflict can be seen in the 31 "friend of the court" briefs that businesses and consumers have filed with the U.S. Supreme Court, which will hear arguments this week in a case that challenges the constitutionality of punitive damage awards.

More than 80 business organizations argue in 24 briefs that the "unrestrained" awarding of punitive damages by juries violates a defendant's right to due process under the 14th Amendment of the U.S. Constitution.

The organizations—some of which took the opportunity to also advocate their own interests—are asking the U.S. Supreme Court to limit the damages juries can assess so they can better predict their liabilities.

Consumer groups and plaintiffs are asking the high court to leave the current system intact.

Seven groups representing consumers and plaintiffs argue in individual briefs that allowing juries to freely determine punitive damage awards is a fundamental element of U.S. jurisprudence that in no way violates due process rights.

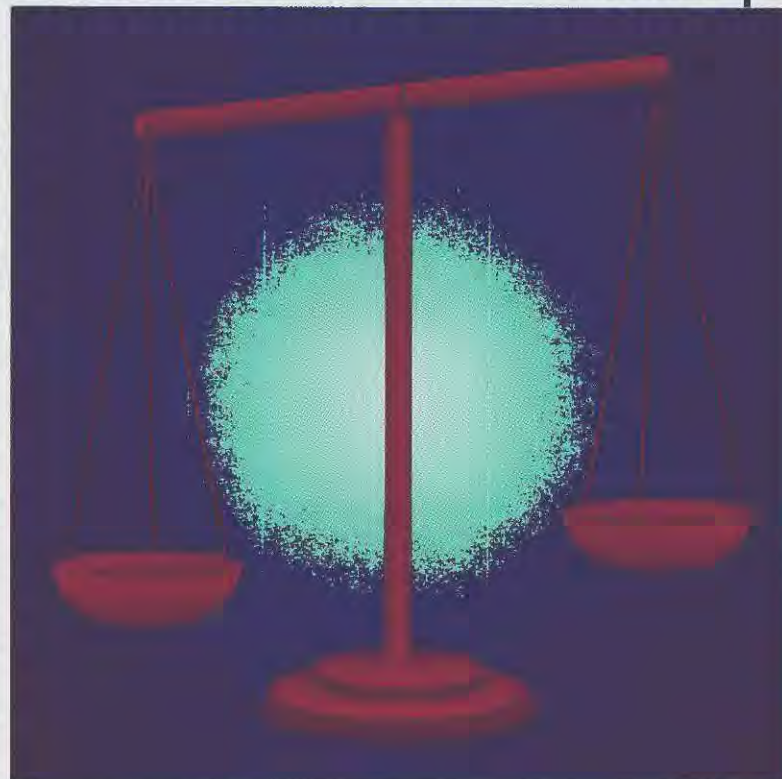
Further, they say, making the awards predictable would defeat the purpose of punitive damages be-

cause defendants would be able to insure or otherwise shield themselves against such awards.

The case before the Supreme Court raises a wide range of issues, including:

- Whether allowing juries to determine the

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BI/JOHN HALL

New efforts to recover Medicare overpayments focus on self-insurers

By MICHAEL SCHACHNER

WASHINGTON—Employers with self-insured health plans likely will bear the brunt of a new federal effort to recover at least \$600 million of Medicare overpayments made since 1982, a government spokesman says.

Under the plan, called for by the 1989 Omnibus Budget Reconciliation Act, the Health Care Financing Administration will trace employment records of Medicare beneficiaries with help from the Internal Revenue Service and the Social Security Administration.

HCFA expects its contractor then will contact about 1 million employers in an effort to identify cases in which Medicare was billed wrongly for health care services.

The agency, an arm of the Department of Health and Human Services, then will attempt to col-

lect the overpayments from self-insured employers and from insurers of employer health plans.

The Self-Insurance Institute of America said the effort could lead to better coordination of Medicare benefits and benefits offered by self-insured plans but opposes efforts to recover Medicare overpayments since the early 1980s.

Health insurers welcome the government plan, contending they were responsible for only a limited amount of Medicare overpayments.

A series of federal laws in the early 1980s established that employer-sponsored health care plans must be the primary payers of health care bills for workers and spouses aged 65 and older.

However, a federal judge in Tennessee recently ruled that the government cannot recover overpayments from an insurer that was

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Illinois sets tough standards

By MEG FLETCHER

SPRINGFIELD, Ill.—An Illinois Supreme Court decision overturning a punitive damage award in a product liability case in which the defendant knew that many injuries resulted from use of its product could influence courts nationwide, many attorneys say.

The high court overturned a jury award of \$1.6 million in punitive damages against shotgun manufacturer Remington Arms Co. Inc. of Pittsburgh, a unit of E. I. du Pont de Nemours & Co.

In a 4-3 ruling on Sept. 19, the court found that a marksman who was injured when his shotgun barrel exploded failed to prove that Remington's conduct justified the damages.

Remington knew of dozens of similar barrel explosions, but a company investigation attributed them to improper handling, such as using inappropriate shells, the court points out.

The decision indicates that when good faith investigations of product defect claims find that no defect exists, there is no basis for punitive damages—even if the company did not do all it could to improve product design, attorneys say.

However, the state supreme court let stand the jury's verdict that Remington was negligent and its award of \$75,000 in compensatory damages.

This "extremely important" decision "sends a clear message that punitive damages are subject to stringent standards and can be awarded only in cases of culpable and outrageous conduct," said Mark I. Levy, an attorney with Mayer, Brown and Platt in Chicago.

Mr. Levy filed an amicus curiae brief in the case on behalf of the Product Liability Advisory Council, a trade group for large manufacturers.

The decision shows that the Illinois Supreme Court "is starting to tighten up on punitive dam-

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Nevada's rollback law stricken

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"Nevada kind of locked itself in" to a definition of inadequate rates that is unconstitutional, Mr. Maisel explained.

Harvey Rosenfield, a director of Voter Revolt and author of Proposition 103, agreed that the decision will have no effect on California's insurance "charge" rollback law.

He also said he hopes the Nevada Legislature will correct what he called a "technical deficiency" in the law and re-enact it.

The Nevada law, passed in June 1989, mandated a rollback of auto liability insurance "charges" to 15% below July 1988 levels for one year and permitted insurers to charge rates above the rollback levels only if they were "substantially threatened with insolvency" (*BI*, July 3, 1989).

Seven insurers had challenged the Nevada law, arguing that unlike California's Proposition 103, the Nevada statute did not contain any provisions for relief from potentially confiscatory rates.

Proposition 103 originally contained the same rate relief standard contained in the Nevada law. But the California Supreme Court struck down the insolvency standard as unconstitutional in May 1989 and amended the voter-mandated law to permit insurers a "fair and reasonable rate of return" on equity (*BI*, May 8, 1989).

California Insurance Commissioner Roxani Gillespie later determined that insurers should be allowed "a target return on equity between 11.2% and 19%" (*BI*, June 18; May 14).

The U.S. District Court in Nevada ruled against the insurers' challenge in August 1989.

But, the 9th U.S. Circuit Court of Appeals in San Francisco ruled last week the Nevada law "violated insurers' constitutional right to due process because no relief was available from the imposed rates unless the commissioner found that an insurer was substantially threatened with insolvency."

States should take the decision as a warning, said a spokesman for the Alliance of American Insurers in San Francisco. "The decision points to the need for closer constitutional scrutiny of initiatives and legislation promising rate rollbacks in other states."

"It reaffirms the constitutional standard that insurers are entitled to earn a fair and reasonable rate of return," said James Ruddy, vp-general counsel for SAFECO Corp. in Seattle.

Senate saves window plans

WASHINGTON—Employers could continue to offer early retirement incentive programs under bipartisan compromise legislation overwhelmingly approved by the Senate that is designed to overturn a controversial Supreme Court ruling on age discrimination.

Benefits experts say the latest version of S. 1511 answers many of the concerns employers raised when the original version of the bill passed the Senate Labor and Human Resources Committee in April (*BI*, April 30). The House is expected to approve the bill early this week, and President Bush is expected to sign it.

Under the bill's earlier version, early retirement incentive programs, or window plans, would have had to "further the purposes" of the Age Discrimination in Employment Act. The goal of the act, though, is to encourage employment of older workers, the opposite of window plans.

However, the compromise bill states that window plans would have to be "consistent with the relevant purpose or purposes of the (Age Discrimination in Employment) Act."

The change essentially allows employers to offer window plans as long as those plans do not require older workers to retire, explained Steve Vernon, a consultant with The Wyatt Co. in Los Angeles.

In addition, the bill would not be applied retroactively. Previous versions would have applied to all legal actions and proceedings involving window plans pending on or after June 23, 1989.

"Compared to previous versions of the legislation, the Senate-passed bill is a major improvement for employers," said Frank McArdle, a consultant with Hewitt Associates in Washington, D.C.

Pepper panel issues final report

WASHINGTON—Small employers would have one less year to offer generous group health care coverage to most of their employees or face a hefty payroll tax under the Pepper Commission's final recommendations.

The 15-member commission recommends requiring employers to fund 80% of the cost of a specific health benefits plan or pay a payroll tax that would be used to provide coverage.

In a preliminary draft, the commission recommended giving employers with fewer than 25 employees five years from the date of enabling legislation to cover 80% of their workforce (*BI*, March 5).

However, the commission's final report, issued last week, does not include that provision. The final draft, though, still contains a provision that would give employers with fewer than 100 employees four years from enactment of enabling legislation to provide coverage to 80% of their workers.

Legislators say they will introduce some of the panel's final recommendations early next session.

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Errors & omissions

• The "Contract Wording Reference Book" to be published next month by businessOne Irwin, formerly Dow-Jones Irwin, on behalf of the Brokers & Reinsurance Markets Assn. will cost \$250. It was incorrectly reported in the Info column last week that the book would be free.

• Several errors occurred in the Sept. 10 directory of safety consultants. Sedgwick James Inc.—Risk Control Services has an additional branch office in Phoenix. EOS Environmental Inc.'s 1989 gross revenues were \$800,000 and its principal officers are Eugene A. Port, president; Bernadine Kolk, vp. Eugene Port or Bruce Broger can be reached at 818-441-7050. Insurance Management Services Inc.'s 1989 gross revenues were \$1.5 million and its principal officer is Dennis K. Jacobs, president. Administrative manager Colleen A. Doyle can be reached at 313-855-8814.

Britamco fined \$500,000 for unlicensed writings

By MEG FLETCHER

NEW YORK—Britamco Underwriters Inc. has agreed to pay a \$500,000 fine in New York for writing malpractice insurance for New York members of a purchasing group without being licensed in the state.

Britamco, an underwriting syndicate on the Illinois Insurance Exchange in Chicago, contends it wrote the coverage on an excess/surplus lines basis.

But, medical malpractice insurance cannot be written in New York on an excess/surplus lines basis, said a spokesman for the New York Insurance Department.

Britamco is not contesting the fine even though there is a difference of opinion in the insurance industry over whether the federal Risk Retention Act pre-empts state licensing requirements in such a

situation.

However, the issues in this dispute were decided on the basis of New York insurance law and not the federal Risk Retention Act, stressed Britamco attorney Neal M. Glazer with D'Amato & Lynch in New York.

"It is still an open question whether Britamco is entitled to write in New York under the Risk Retention Act," he said.

However, Britamco does not plan to pursue the issue, he said.

New York is not bound by the influential 8th U.S. Circuit Court of Appeals decision last year that affirmed the Iowa insurance commissioner's right to require that a purchasing group insurer comply with Iowa licensing requirements, Mr. Glazer noted (*BI*, Aug. 24, 1989).

However, the New York Department can require insurers that

write coverage for members of purchasing groups in the state to follow New York's policy form and rate requirements, the 2nd U.S. Circuit Court of Appeals ruled in June 1988 (*BI*, June 27, 1988).

In this case, though, the New York department did not focus on Britamco's rates or forms.

Britamco has issued about 2,000 professional liability insurance policies annually since 1987 to New York enrollees of the National Society of Dental Practitioners, a Maryland-based purchasing group that bears the same name as the professional dental society that sponsors it.

Britamco is the second-largest IIE syndicate, with \$31.3 million in gross written premium in 1989 (*BI*, Aug. 13). It has \$92.1 million in assets, according to its 1989 annual statement.

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Survey finds alternative risk financing popular

Accountant rates high

By MICHAEL SCHACHNER

More than one-fifth of decision-making accountants surveyed say their firms are financing their professional liability risks through al-

ternative mechanisms because traditional insurers' premiums are too high and unstable.

Only 25% of the 73 "decision-making" accountants responding to a Johnson & Higgins poll said they were satisfied with premium stability in the traditional insurance market from year to year.

And a mere 11% reported that they were satisfied with the price commercial insurers are currently charging for accountants' professional liability coverage.

In addition, less than half of the decision-makers—41%—said they were satisfied with the coverage limits now available.

The survey, "Professional Liability & The Certified Public Accountant," was conducted by Johnson & Higgins Financial Group, a unit of the New York-based brokerage.

J&H surveyed 573 accountants at firms that employ at least 50 accountants but are not among the Big Six accounting firms. However, only 73 of those responding were directly responsible for buying professional liability insurance.

"Interest for alternative forms of insurance has been amazing" among accountants, said Howard Platzman, a vp with Johnson & Higgins in New York.

"Recently, a major law firm with several midsize accounting firms as clients began talking with us about establishing a captive. Ac-

countants seem interested in any information that will get them away from insurance products where the price is too high and the coverage too low," he said.

In response to dissatisfaction with traditional insurance, the survey found that slightly more than 20% of decision-making survey respondents say their firms are seeking alternative ways to cover their professional liability exposures.

Among decision makers, 11% said their firms are covered through a captive, while 6% are involved in an insurance pool composed of several CPA firms. In addition, 2% of the respondents say their firms self-insure their professional liability exposure, while another 2% obtain coverage from an offshore entity.

Approximately 54% said they obtain traditional professional liability coverage through a commercial broker, the poll found. About a quarter said they secure coverage through professional associations.

Respondents point out that a plethora of well-publicized lawsuits against accountants has adversely affected their industry's liability exposure. Because lawsuits against accountants have become more prevalent in recent years, 79% of all respondents reported that their firms have limited the types of services they provide and

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BI directory will list intermediaries

Business Insurance will publish its annual directory of reinsurance intermediaries in the Nov. 12 issue, which will include a spotlight report focusing on reinsurance topics.

The directory includes both U.S. and Bermuda-based reinsurance intermediaries and is a resource subscribers can refer to throughout the year.

There is no charge to be included in the directory; however, companies that wish to be listed must fill out and return a questionnaire provided by *Business Insurance*.

If you have not yet received a questionnaire, please request one by calling Sara Harty at 312-280-3195.

The deadline for returning completed questionnaires to *Business Insurance* is Oct. 18.

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✓ In International Issues, Maura Garych Edgar and Ariel Silva of Johnson & Higgins explore the risks faced by U.S. exporters. **PAGE 23**

✓ Members of the Canadian Auto Workers union will receive upgraded benefits in a new pact with Ford of Canada. **PAGE 31**

✓ The guaranty fund system is making well-managed insurers pay for the indiscretions of the less well-managed, says analyst Myron M. Picoult. **PAGE 39**

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Marine market still adrift

Insurers endure record losses, cheap premiums

By STACY SHAPIRO

LONDON—Marine underwriters are calling for increases in hull insurance rates and tightened terms and conditions beginning with the upcoming Jan. 1 renewal season.

There should be a 25% rate increase "across the board" on all hull insurance coverages during the year-end renewal season, said Tony Nunn, chairman of the International Union of Marine Insurance Ocean Hull committee in an impassioned speech.

"We need (rate increases) in months, not years," he told IUMI delegates at this year's conference in London, held Sept. 16-20.

Staggering losses in the marine market since 1988 are now coming home to roost, "and we are still offering cheap premiums," Mr. Nunn bellowed. Perhaps the name of the association should be changed to "The International Union of Charitable Idiots," Mr. Nunn shouted.

If underwriters used "commercial common sense, clients would consider it more professional," he said.

Rates currently are between 25% and 50% too low, according to Michael Maughan, a Lloyd's of London marine underwriter for syndicate 206, which is managed by Sturge Marine Syndicate Management Ltd.

"The reinsurance market has already increased its rates substantially, and if we don't support their move, then we will go down and not the ships," Mr. Maughan said.

In addition, London underwriters—who have been hurt the most by the slew of marine-related losses that have

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Insurers exclude nuclear accident contamination

By STACY SHAPIRO

LONDON—Many London and Scandinavian underwriters will exclude radioactive contamination caused by a nuclear accident from their marine insurance policies beginning with the Jan. 1 renewal season.

The underwriters plan to add to their marine policies a new nuclear contamination exclusion clause that has been designed by a formal International Union of Marine Insurers study group organized last year to examine a possible nuclear exclusion.

The group drafted the exclusion clause this year after three years of discussions during IUMI conferences about excluding nuclear contamination risks (*BI*, Sept. 25, 1989).

The exclusion clause—formally known as The Institute of London Underwriters Radioactive Contamination Exclusion Clause—can be adopted by any underwriter in the world who would like to exclude the risks caused by nuclear contamination, according to Tony Nunn, chairman of IUMI's Ocean Hull committee and a member of the study group.

"During a frank exchange of views, it has become clear that the London and Scandinavian markets intend to incorporate a nuclear exclusion clause as of Jan. 1, 1991," Mr. Nunn told delegates at the annual IUMI conference earlier this month.

However, IUMI is not suggesting that all underwriters must impose the exclusion, stressed Mr. Nunn, who also is general manager of The Scottish Lion Insurance Co.

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Faster claims paying drains reinsurers' cash

By MICHAEL BRADFORD

HOUSTON—A speedier claims handling system at Lloyd's of London, combined with the impact of Piper Alpha claims and losses from last year's string of disasters, soon will lead to a hardened property/casualty insurance market, a Lloyd's broker predicts.

The streamlined claims handling system first implemented to pay claims stemming from the Piper Alpha North Sea oil rig loss could further hurt the cash flow of reinsurers already feeling pressure because of the series of catastrophic losses over the past two years, warned Chris Martin, director of Lloyd's broker Newman, Martin & Buchan Ltd.

The \$1.4 billion loss of the Piper Alpha oil platform was the largest man-made loss in history, now being rivaled by the 1989 explosion at a Phillips Petroleum Co. plant in Pasadena, Texas, (*BI*, July 11, 1988).

On top of Piper Alpha, the London excess-of-loss reinsurance market could have "major problems coping" with the catastrophic losses resulting in 1989 from Hurricane Hugo, the California earthquake and the Phillips explosion, Mr. Martin said.

In addition, insurers and reinsurers have been battered

by storm losses in recent years.

Insurers have estimated that damages from storms that belted Europe earlier this year total \$8 billion.

"On a weakened market, a much more efficient system of extracting and trading reinsurance losses has now been imposed. And there's no way back from that," Mr. Martin said.



"What we are entering are the first stages of a restriction in the supply of reinsurance for our markets," Mr. Martin said.

"This will have a direct effect on all of us" by causing an increased retention of risk by direct insurers and a compression of reinsurance capacity, he said.

"There will be a great deal of confusion, a great deal of hard choices to be made by buyers and suppliers alike," Mr. Martin predicted at the Houston Marine Insurance Seminar held Sept. 16-18.

Mr. Martin said the impact of the Piper Alpha loss clearly is "really now becoming seriously felt throughout our market" because the spiral nature of the reinsurance market has resulted in paid claims that exceed the original

loss by several times.

The total loss cannot be more than the original loss of \$1.4 billion, but the total reinsurance claims paid can be more because money keeps changing hands in the LMX market for the same claim.

Insurance and reinsurance payouts have hit \$7.5 billion, with another \$2.5 billion outstanding, according to Mr. Martin.

And, there is an estimated \$2 billion of claims in insurance and reinsurance markets outside of London, he said.

"This \$12 billion in total losses has been identified as the full spiral effect of the original \$1.4 billion Piper Alpha claim," Mr. Martin said.

Mr. Martin said insurers and reinsurers have tried to determine how much of the loss was absorbed by insurers that covered the platform owners.

"Back-of-the-envelope calculations came up with a figure of around \$100 million to \$150 million," he said.

Direct insurers have paid 200 claims, and 65 claims remain outstanding, according to Mr. Martin.

The rest of the loss is spiraling its way among reinsurers and retrocessionaires, Mr. Martin said.

On the reinsurance side, there have been 8,500 settle-

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California protects health plan enrollees

By JOANNE WOJCIK

SACRAMENTO, Calif.—All enrollees in health maintenance organizations and insured indemnity health plans in California soon will be protected from insolvencies under separate laws.

S.B. 785, which Gov. George Deukmejian signed into law Sept. 19, provides for redistribution to other health plans groups and individuals left without coverage when an HMO becomes insolvent.

And, S.B. 1979, which Gov. Deukmejian signed last week, will provide up to \$200,000 of coverage per policyholder for claims owed by insolvent health insurers licensed in California.

Both bills were sponsored by Alan Robbins, D-Los Angeles.

Insurers wanted HMO solvency protection as a matter of public policy, noted a spokesman for Pa-

cific Mutual Life Insurance Co. of Newport Beach.

Several of the state's largest HMOs helped draft the legislation, which becomes effective Jan. 1, 1991, pointed out David Meadows, supervising examiner in the Department of Corporations.

"The goal was to protect HMO members," explained Wayne Morris, a counsel for Kaiser Foundation Health Plan Inc. in Oakland, Calif.

"But to call S.B. 785 a guaranty association would be a misnomer," he added.

The bill closely resembles a National Assn. of Insurance Commissioners model act, except that the bill does not provide for assessments, he explained.

Mr. Morris served on the NAIC advisory committee that developed the model act.

A footnote in the model act,

which provides a mechanism for making assessments, says assessments are not recommended for all states and are rather a course of last resort, according to Mr. Morris.

'The goal was to protect HMO members,' says Kaiser counsel Wayne Morris.

Under the California act, if one of several HMOs offered by an employer becomes insolvent, the employer's remaining HMOs and its insured indemnity plan—if it has one—must open enrollment for 30 days to the enrollees of the in-

solvent HMO who are part of the employer's group.

If the insolvent HMO is the only one offered by an employer, the enrollees who are part of the employer's group will be allocated "equitably" among other HMOs in the state by the commissioner of corporations.

This means that enrollees will be distributed by the department of corporations among other HMOs "in accordance with their ability to take care of them so none are overburdened," explained Joy Fisher, senior corporate counsel for the Department of Corporations in Sacramento.

Individual enrollees of an insolvent HMO would be distributed among other HMOs in the state, under the new law.

The law states an HMO is considered insolvent if the commissioner of corporations determines

that it is "not financially able to provide specialized health care services to its enrollees" and has sought intervention from the California Superior Court.

No fees are to be assessed under S.B. 785.

However, each HMO in the state will have to establish a special reserve to pay its own existing liabilities to non-contracting—or out-of-network—providers, as well as estimated incurred-but-not-reported liabilities, plus an additional 20%.

This provision strengthens a state law that requires HMOs to establish reserves to pay liabilities to non-contracting providers, said Mr. Meadows of the Department of Corporations.

HMOs currently can include this reserve in their operating capital. S.B. 785 requires that the reserve

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BankAmerica cuts HMO offerings to 6

BankAmerica Corp. is trying to cut administrative costs by paring down its health maintenance organization offerings to six from 15.

The San Francisco-based bank dropped the HMOs because they had relatively few members and administering the plans had become too expensive, according to Richard Beck, executive vp-human resources.

Among the bank's 56,000 employees, 30,000 are enrolled in HMOs, but only 3,500 of those are enrolled in the nine plans that are being dropped, according to Mr. Beck.

The bank also hopes that increasing the enrollment in the other plans will strengthen its bargaining hand.

BankAmerica officials say they

Benefit beat

will drop the following HMOs as of Jan. 1, 1991:

- CIGNA Health Plan of California Inc., which has facilities throughout the state.
- FHP Health Care of Fountain Valley, Calif.
- HEALS Health Plan of Emeryville, Calif.
- Health Plan of America, which has facilities throughout the state.
- Health Plan of the Redwoods of Santa Rosa, Calif.
- Lifeguard of Milpitas, Calif.
- Pacificare Health Systems of Cypress, Calif.
- PARTNERS National Health Plans of Irving, Texas.
- TakeCare Corp. of Concord,

Calif.

BankAmerica plans to continue contracting with these HMOs:

- Bridgeway Hospital and Bridgeway Network, both of San Francisco.
- Foundation Health Plan Inc. of Sacramento.
- Health Net of Van Nuys.
- Kaiser Foundation Health Plan Inc. of Oakland.
- Maxicare Health Plans Inc. of Los Angeles.

BankAmerica employees also will continue to be offered an indemnity plan underwritten by Blue Shield of California.

The bank used two criteria to determine which plans would re-

main and which would be terminated, according to a company spokesman.

"We looked at which ones were undersubscribed by our employees, and we tried to eliminate those where there were other HMOs in the same geographic area," he explained.

Recognizing that employees enrolled in the discontinued plans will have to shop for new providers, BankAmerica is contracting with Consumer Medical Connections Inc. That company, a Vallejo, Calif.-based health information resource center, provides HMO affiliation information via a toll-free hot line.

Bank employees can call the number after Oct. 1, prior to open enrollment, which begins in late October and continues through

mid-November, according to the spokesman.

BankAmerica and its employees will spend \$48 million in HMO premiums and \$57 million in indemnity premiums in 1990, according to Mr. Beck.

BankAmerica pays 75% of employees' HMO and indemnity plan premiums.

The decision to drop the HMOs follows similar moves by Wells Fargo & Co. and Pacific Telesis Group.

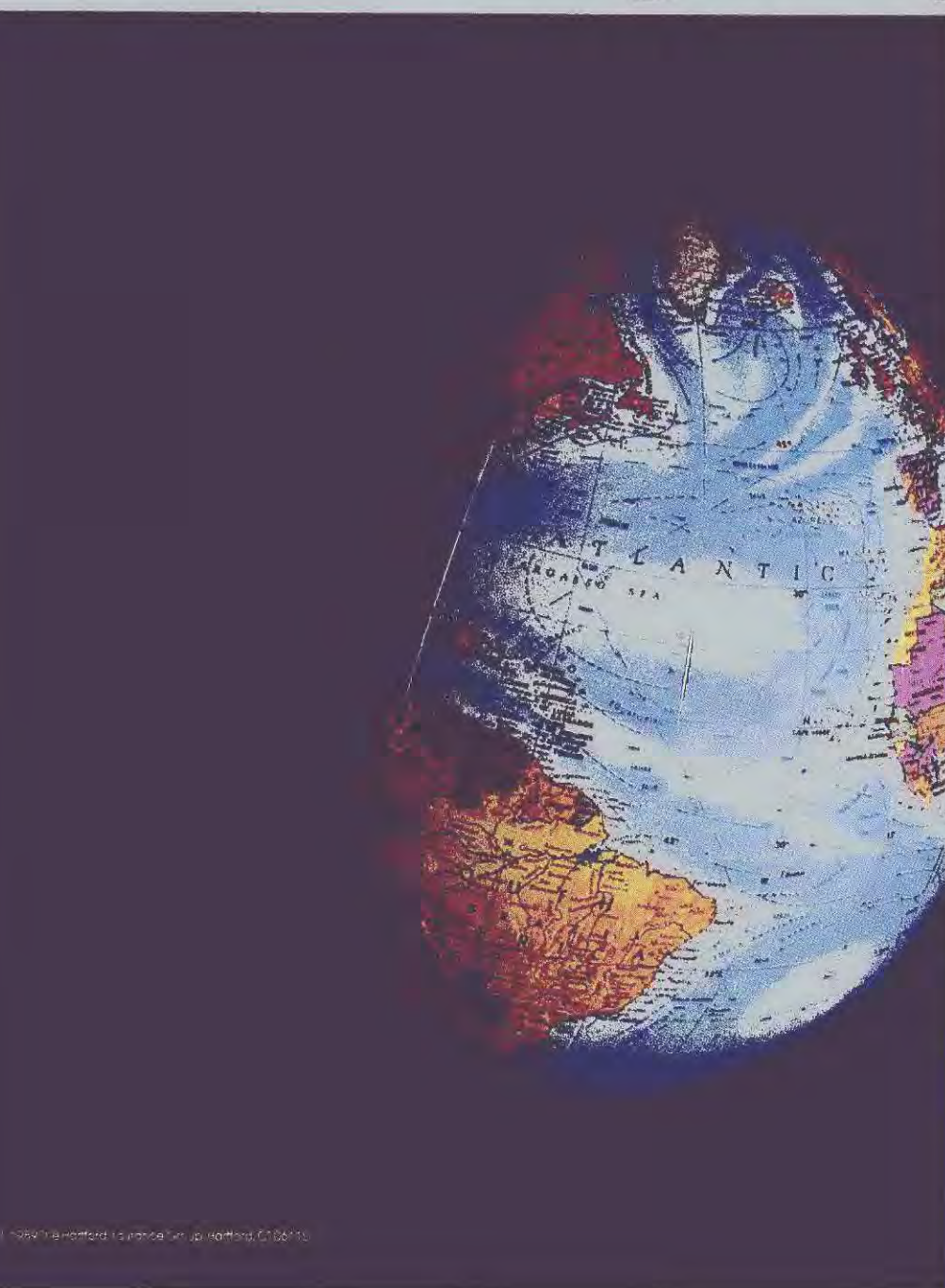
Wells Fargo plans to introduce a self-insured managed care plan Jan. 1 under which employees will pay only minimal copayments for medical care. After the plan is introduced, the company will offer its employees only HMOs operated by Kaiser.

Currently, 70% of Wells Fargo employees are enrolled in several HMOs, but the bank expects many of them to switch to the managed care plan (BI, April 6).

Pacific Telesis Group will trim several HMO options for employees as part of its new managed care network, also set to be launched Jan. 1 (BI, March 26).

—By Joanne Wojcik

Too Many U.S. Firms Are In The Dark About Their Foreign Exposures.



A lot of American businesses have foreign exposures they don't even know about. Consider the many businesses without a single office in a foreign country. But the staff travels. So do the products. International risks—and potential coverage gaps—may result.

The fact is, domestic coverage doesn't travel well, if it travels at all. And insuring certain foreign exposures under a domestic policy can be expensive. Even worse, arranging foreign coverage without the right guidance can lead to bigger—and costlier—surprises.

That's why you should rely on Hartford Fire International—a company that understands both domestic and international markets.

HFI can provide a complete line of primary property/casualty products along with excess and umbrella coverages. All tailored to meet special needs. All from a single source.

And between our wholly owned foreign operations and correspondent companies, our customers get the stability and worldwide service they expect from The Hartford.

If you're in the dark about foreign exposures, let us shed some light on the subject. For the HFI Office nearest you, call James Leber, Senior Vice President, at 1-800-533-STAG (In Connecticut, 547-3030).



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Health care costs

Social forces like an aging population, substance abuse and the AIDS epidemic will continue to drive up health care costs over the next three years, senior executives said in a consultant's recent survey.

Four out of five executives believe health care costs will rise at least 20% next year, and nearly half of the 375 respondents expected costs to increase more than 20% in 1991, reports Noble Lowndes, an employee benefits consulting firm in East Orange, N.J.

In addition, 73% believe health care costs will rise at least 20% annually over the next three years, while almost 50% of respondents predicted that costs will increase by more than 20% in each of the next three years.

Seventy-four percent of the respondents predicted that social forces will have the greatest impact on health care costs in the near future.

Respondents cited, in particular, an aging population that requires more medical attention, widespread substance abuse and the spread of acquired immune deficiency syndrome.

Forty-eight percent of the respondents said malpractice insurance rates and physicians practicing defensive medicine to avoid being sued for malpractice would be one of the three leading factors fueling spiraling health care costs. One-third said the cost of new medical technology will be a major factor.

Executives also listed other factors they felt would contribute to rising health care costs:

- Poor health insurance plan design and general inflation, each cited by 29% of the respondents.
- Excessive medical services because of overinsurance, 22%.
- Government regulation of benefits, 21%.
- Cost-shifting from Medicare and Medicaid, 19%.
- Widespread utilization of health maintenance organizations and preferred provider networks, 18%.
- Too many doctors and hospital beds, 5%.

For a free copy of "Noble Lowndes Spring 1990 Benefit Survey," contact Janet Wagman at Noble Lowndes, 33 Evergreen Place, East Orange, N.J. 07019; 201-675-8900.

—By Michael Schachner

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Marine market

Continued from page 3
 occurred since the Piper Alpha North Sea oil platform blew up in 1988—will insist on more underwriting information during upcoming renewals, which could result in increased rating, IUMI members heard.

The Joint Hull Committee of the Institute of London Underwriters and the Lloyd's Underwriters Assn. recently issued new "joint hull understandings" that call for more information from shippers.

The understandings also suggest that underwriters write only 12-month policies rather than two- or three-year policies.

In addition, the understandings urge underwriters to include warranties with hull insurance policies to ensure stricter compliance with safety standards. The re-drafted warranties unveiled at last year's IUMI conference are designed to boost standards used by

the world's classification societies—the organizations that survey the seaworthiness of ships—and shipowners (BI, Sept. 25, 1989).

And, London and Scandinavian underwriters most likely will impose a new nuclear contamination exclusion clause during year-end renewals (see related story, page 3).

IUMI members heard throughout the conference how monumental hull and energy-related marine losses during the past two years are now catching up with underwriters and causing them to rethink their competitive practices of rate reductions and broad terms and conditions.

The losses in particular are hitting ILU and Lloyd's underwriters in London, who still dominate the world marine insurance industry.

"It's only two years since Piper Alpha, so it's too early for you to forget it," said ILU delegate Peter Evans, marine underwriter for Indemnity Marine Assurance Co.

Ltd. in London.

The loss of the \$1.4 billion oil platform, which exploded in the North Sea in July 1988, only now is being felt severely by the London market, creating underwriting losses for some London marine reinsurers and forcing cash calls on Lloyd's marine syndicates (BI, Sept. 3; July 2; May 28).

In addition, the world's marine insurance markets have been hit with a series of other losses in the past two years, IUMI members were reminded.

Those losses include:

- The October 1989 explosion of the Phillips Petroleum Co. refinery in Pasadena, Texas, which has cost insurers \$1.4 billion, according to the American Institute of Marine Underwriters (BI, Oct. 30, 1989).

- The destruction or damage of 156 vessels last year due to various causes, which has cost underwriters \$850 million, said Mr. Nunn, general manager of The Scottish Lion Insurance Co. Ltd. in

London.

- The explosion and fire of the oil platform "Baker" in the Gulf of Mexico in March 1989, which has cost insurers \$434 million in claims for physical damage and loss of production, according to the AIMU.

- The grounding of the Exxon Valdez in Prince William Sound, Alaska in March 1989 (BI, April 3, 1989), which has cost insurers \$304 million in cleanup claims, according to an IUMI report submitted by the AIMU (see related story, page 16).

- The destruction of the Amerada Hess refinery in St. Croix, Virgin Islands, by Hurricane Hugo a year ago, which has cost insurers \$110 million, according to the AIMU.

But while the losses have been accumulating, marine underwriters have been reducing their rates by 30% on average over the past three years, said Derek Wills, chairman of the Lloyd's Un-

derwriters Assn.

However, this scenario of competitive rating during a time of huge losses is not new to the marine insurance market, noted John A. Hickey, president of the American Hull Insurance Syndicate in New York, during a lively IUMI hull workshop.

In fact, at the 1980 IUMI conference, members were warned that "underwriters are in the position of being short of premium requirements because (competitive) conditions in the market over these past several years have precluded them from obtaining needed rises without total dissolution of their books," Mr. Hickey said.

He also pointed out that IUMI members in 1980 were told: "The time for correction clearly cannot be deferred indefinitely. More than anything else, many underwriters in our market feel two basic words must be reintroduced in the insurance vocabulary—'Increase' and 'No.'"

However, IUMI members who have heard these warnings at past conferences have rarely taken heed of the danger signals, according to Mr. Hickey.

"Why do we meet every year and say the same things? How many times have we discussed the same problems, wrestled with various solutions and then returned home only to play 'ostrich' again and again?" Mr. Hickey asked rhetorically.

"We cannot wring our hands and point in each other's direction and go home and play 'ostrich' again," he stressed.

"Picture the poor ostrich with his head in the sand and think about what he has left exposed for all the world to see," Mr. Hickey quipped.

This year, events in Eastern Europe and the "dramatic improvement" in relations with the Soviet Union "can only enhance world trade, which will obviously help the shipping recovery sustain itself," Mr. Hickey noted.

But, the losses spiraling through world markets already are hardening marine reinsurance, Mr. Hickey said.

"This has meant that rates for underwriters in the original (insurance) market are totally inadequate in relation to the risks they are asked to bear," he said.

"We can no longer afford to give reductions" on rates or discount premiums except to reward those with good loss records, Mr. Hickey warned IUMI members.

Marine underwriters also cannot "ignore poor (experience) records" and "not be concerned" when they are not paid on time, he said.

"We must stop pretending to be leaders if, in fact, our retention is minimal and our reinsurer is the true risk taker," Mr. Hickey said.

Marine underwriters also should stop underwriting two- or three-year policies at a time when underwriters "have some of the lowest rates in history and the potential for some of the largest payouts ever," Mr. Hickey advised.

He added that underwriters also should pay more attention to the management and crew assignment of the vessels they insure.

And, underwriters should encourage their staffs to further their education, Mr. Hickey said. "If we're willing to spend the time and money to educate young future leaders, we will regain control of our pricing, our product and our destiny," Mr. Hickey explained.

After speeches at the hull workshop by Mr. Hickey, Lloyd's marine underwriter Peter Christmas and Hans Terje Anonsen, senior vp of Vesta Insurance Co. in Oslo, Norway, many marine underwriters in the audience added their voices to Mr. Hickey's call for change.

Many IUMI members agreed that rates were far too low at the moment.

Continued on page 10

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Opinions

Investigators shouldn't lie

TELLING THE TRUTH in civil litigation should be more than an attractive proposition; it is a requirement.

That is the essence of a ruling by a Delaware state court judge last month who was appalled by the statement of an attorney who said: Telling the truth in civil litigation "is, of course, a very attractive proposition. But... while that might be nice in a perfect world, it is not the way the system operates in litigation in this country."

At issue: the conduct of investigators acting for insurance companies who failed to properly identify themselves when interviewing former employees of a policyholder that is suing for coverage for pollution losses.

The investigators have been trying to uncover proof that Monsanto Co. knew it was polluting the environment, which insurers could cite as a defense against covering Monsanto's pollution losses (BI, Sept. 24).

Former Monsanto employees said, under oath, that the investigators either did not disclose that they represented insurance companies or did not reveal that Monsanto was suing its insurers. Among the more egregious misrepresentations: One investigator told a former employee that he "worked for the government and was checking on pollution," while another flat-out lied and answered "No," when asked if there were a lawsuit pending.

This repugnant conduct by investigators may be more prevalent than most policyholders realize.

Judge Vincent J. Poppiti, however, has clearly defined how investigators must conduct themselves in coverage disputes: They must, among other things, identify who has employed them and make clear that litigation is pending over insurance coverage for pollu-



tion damage.

While the judge admonished the lawyers for not properly supervising the investigators, we must add that insurance company management ultimately must set the ethical standards by which the company conducts business.

We do not have any evidence of investigators for policyholders misleading people in an effort to gather information, but Judge Poppiti's instructions to the insurers on conducting investigations should serve as a lesson to both sides in coverage litigation.

As Judge Poppiti said so succinctly: "One who is in search of the truth must tell the truth."

Letters

AIA position on guaranty funds questioned

To the editor: In the name of fairness and logic, risk managers must ask the American Insurance Assn. (AIA) to rethink its comments before the U.S. House Oversight & Investigations Subcommittee (BI, Sept. 24) calling for the removal of commercial coverages from guaranty fund protection.

First, the AIA says that by eliminating commercial coverages from guaranty funds, "sophisticated purchasers of commercial and excess levels of insurance would become more concerned about the solvency of their insurers and would not necessarily purchase coverage from the insurer that offered the lowest price."

This argument, which implies that risk managers use guaranty funds as safety nets for coverage placed with carriers the risk manager knows to be of questionable financial soundness, ignores the caps that every state fund puts on payment. A typical fund will pay a maximum of \$300,000 per claim on most coverages, not much of a safety net for so-called large commercial policyholders, for whom a claim can easily run into millions of dollars.

Secondly, the AIA states "that the guaranty funds may in fact be serving as a disincentive for close scrutiny of insurance company solvency, particularly by sophisticated commercial customers who have the ability to evaluate the financial strength of their insurers."

Regulators, who receive and analyze reams of financial information on insur-

ers and whose primary job is to ensure solvency, have their hands full in accomplishing this task. What makes anyone think risk managers "have the ability to evaluate the financial strength of their insurers" when even regulators sometimes do not? Even if a risk manager could perform this Herculean task, a company that writes an occurrence policy in 1990 may look strong at the time business is placed but be insolvent by 1995.

Furthermore, although risk managers should certainly use all reasonable resources and methods to determine, to the degree possible, the financial status of insurers they wish to do business with, charging them with the responsibility "for close scrutiny of insurance company solvency" is misguided. That is the duty of regulators, not the job of policyholders, who are the very victims of insolvencies regulation is designed to pro-

Reinsurers likely to choose arbitration

To the editor: The article, "Courts Draft Different Rules for Reinsurers," in your Sept. 3 issue gives the misleading impression that a result of that apparent trend will be a distancing from arbitration as reinsurers begin to lean toward litigation to settle disputes.

Quite the contrary is likely to occur. Those few reinsurers now excluding arbitration clauses from their treaties will be more inclined to begin to include them because they, and a handful of lawyers, are faced with a new problem. In the past those who were opposed to arbitration held that they felt more secure in the world of law, so they preferred to advise the litigation route. Now, however, the courts have muddied the waters by issuing contradictory and confusing decisions, variously holding that reinsurers should and should not be treated differently from insurers.

The notion that insurers are as sophisticated as reinsurers is, by and large, a myth. Most reinsurance capacity in the

lect.

As for basic fairness, there is not a hint in the AIA statement of a quid pro quo, whereby guaranty fund assessments would no longer be based on the premiums of the proposed newly disenfranchised commercial policyholders. Since the assessments, paid by insurers, are largely passed back to policyholders as a component of their premiums, consumers are, in reality, paying for guaranty fund protection. It is therefore inequitable to argue for the exclusion of commercial policyholders without at the same time calling for an end to assessments based on their premiums.

In short, the AIA testimony is flawed both in practice and in equity.

Howard W. Greene

Director of Governmental Affairs
Risk & Insurance Management Society Inc.
New York

United States is controlled by a small number of companies, many of which are sophisticated in their field. The vast majority of insurers in this market, however, are small companies with little expertise in reinsurance. Insurers seldom find themselves in as helpless a position as individual insureds, but they do often fail to grasp all the implications of reinsurance contracts they sign.

Although there is merit in crafting jurisprudence that distinguishes between insurers and reinsurers, we should all hope that judges going in that direction will clearly understand the different levels of sophistication in the two groups. The arbitration process already provides that. Arbitration panels are eminently capable of judging when an insurer is and is not familiar with the intricacies of reinsurance.

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Marine market

Continued from page 6
 ment to allow underwriters to make a profit, let alone pay for the huge losses still swirling around the market.

"We have an opportunity now" to change, Mr. Christmas commented.

"There are players in this market who are falling by the wayside. As much as 50% of reinsurance (capacity) may not be there next year. We may see increases first in the energy market, then the hull market, although I first see leveling of the market in the next few months, then an increase next year. But if this doesn't happen, then we will see fewer people attending IUMI next year," Mr. Christmas said.

"We can't listen to false competition any more," Mr. Hickey added. "We can't continue bleeding to death. We have to do something, and we have to do it now."

Mr. Hickey does not anticipate that underwriters will make a profit for a while even if they increase rates "because all those losses are out there to be paid, and you better pay them."

But during the bantering in the hull workshop, moderator George Zacharkow, chairman of the Marine Office of America Corp., warned that marine underwriters must be careful not to increase rates too much too quickly because policyholders will be confused by the seesawing of prices.

"I'd be happy to fight for a break-even first before making a profit," he said.

A London-based underwriter for a Danish reinsurer asked: "How can the reinsurance market help install some discipline" in insurance underwriting?"

If reinsurers want to help, they should increase ceding companies' retentions, replied several IUMI members.

But insurers really have to bring about change themselves, Mr. Hickey said.

"We got ourselves into it—we should get ourselves out of it," he said.

If there are reinsurance losses, then reinsurers should expect ceding companies to pay higher prices, added Mr. Christmas of Lloyd's. "Then it's up to us to pass it on to clients," he said.

"The relationship between insurers and reinsurers is a topic that is currently being discussed in the London market," added Mr. Wills of Lloyd's.

"The reinsurance market in London is trying to come up with some retentions to make sure that direct underwriters are monitoring their risks," he said.

If retentions are imposed on ceding companies, "you, the reinsurer, will be substantially rewarded with a better risk," Mr. Wills said.

Mr. Maughan, chairman of the Joint Hull Committee, pointed out that London underwriters are already taking action against low rates and loose policy terms and conditions by introducing the new joint hull understandings.

Mr. Maughan told IUMI members that the understandings in particular will focus on standardizing the information that the brokers will be required to give to London underwriters.

The information will be provided on a "New Standard Form for Submission of Figures," the understandings say.

Brokers, for the first time, will be required to supply all net paid and outstanding claims for each fleet and/or vessel insured with "nothing to be excluded," according to the understandings.

Also for the first time, brokers will be required to show the total net premium for expiring coverage rather than the gross premium for each fleet and/or vessel at the time of renewal.

In addition, the understandings

say London underwriters can reinsure hull coverage of fleets only if insurers in the same country in which the shipowner is based write the underlying coverage.

For example, London underwriters would reinsure a U.S. fleet only if U.S. insurers wrote the underlying coverage.

This would stop the aggregation of too many hull risks in one country coming from various ceding companies around the world into London.

Also, "leaders are strongly advised to reconsider the level of the (line) slip deductibles" and to require a minimum increase in deductibles that is in line with the cost of inflation for current repair

costs, the understandings say.

The understandings also urge London underwriters to include "where appropriate" the new classification clause that incorporates the warranties on safety standards of vessels. The clause automatically terminates policyholders' coverage if ships are found unseaworthy by the classification societies' safety surveys.

"The hull market (in London) is in such a state at the moment that we must start looking at the bottom line," Mr. Maughan told IUMI members.

The London market "has not put down the gauntlet, but we have put our necks on the line." Mr. Maughan commented. ■

Nuclear exclusion

Continued from page 3
 Ltd. in London. "We have made the exclusion available in the U.K. to underwriters and they can use it or not," he said.

"The recommendation (to add the exclusion clause to marine policies) is backed by the Nordic countries," said Norwegian delegate Svein-Erik Svendsen, director of Storebrand International Insurance A/S in Oslo, Norway.

"We can't force our members to include the exclusion, but I understand that they will exclude this catastrophic risk from all marine policies and there won't be much of a buyback" unless competitive

markets offer the coverage for additional premium.

However, several IUMI delegates said they would not use the exclusion, though they might limit coverage for the risk.

"In our market, we cannot and do not act in concert with (others) in regard to rating or clause which might restrict cover," said U.S. delegate Harry Keefe, vp of GRE of America Corp. in New York.

Although the French market is concerned about the aggregation of potential hull and cargo losses as a result of nuclear accidents, "the French consider a total exclusion of nuclear risks should not be recommended," said a French dele-

Continued on next page

THE H O M



OLD PROSON

Continued from previous page
gate to IUMI.

However, French insurers may consider restricting coverage for nuclear contamination risks, he said.

A delegate from West Germany pointed out that European Community authorities do not agree with the imposition of strict exclusion clauses, such as the one being recommended, on all policies.

German underwriters, though, likely will "compromise" by adding the exclusion unless policyholders oppose it, he said.

The Institute Radioactive Contamination Exclusion clause says that "in no case shall this insurance cover loss, damage, liability,

or expense directly or indirectly caused by or contributed to, by or arising from:"

- Ionizing radiations from, or contamination by, radioactivity from any nuclear fuel or from any nuclear waste, or from the combustion of nuclear fuel.

- The radioactive, toxic, explosive, or other hazardous or contaminating properties of any nuclear installation reactor or other nuclear assembly or nuclear component.

- Any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

The radioactive contamination exclusion clause was drafted after

the IUMI study group held several meetings during the year to discuss whether coverage could be offered to policyholders.

'We didn't look to see what we could exclude but what we could offer clients,' says Tony Nunn.

"We didn't look to see what we could exclude but what we could offer clients. We looked at it positively to see if we could offer

cover," Mr. Nunn told the IUMI conference delegates.

"As yet, we have failed to find a satisfactory way to offer cover" except on a risk-by-risk basis, he said.

The study group—consisting of IUMI members from Japan, Germany, France, the United Kingdom and the Nordic countries—first met last December at the Baloise Insurance Co. offices in Basel, Switzerland. The group reviewed technical reports from the French and British markets, which "stressed the unlikelihood of a nuclear accident," Mr. Nunn said.

The technical reports claimed that there was one chance in 1 million of a large nuclear accident oc-

curing per nuclear reactor per year, Mr. Nunn said.

The reports said that other types of disasters that could cause more than 100 deaths are more likely than a nuclear explosion, he said.

For example, the reports say that underwriters can expect that more than 100 people will die:

- In an aircraft crash once every two years.

- In a hurricane once every five years.

- In an earthquake once every 20 years.

- From a meteorite once every 100,000 years.

Nevertheless, the study group drafted questions to ask their individual markets and the answers were discussed at the next meeting in March of this year at the Paris office of the Syndicat des Societes Francaises de l'Assurance Maritimes et Transports, said Mr. Nunn who represented the United Kingdom in the study group.

The questions included:

- Whether underwriters believed that an international agreement for a nuclear contamination exclusion or coverage would be essential or whether individual underwriters would take independent action.

- Whether the aggregation of loss caused by nuclear accidents would be greater than the total losses caused by an earthquake in each individual market.

- Whether nuclear accident coverage could be restricted rather than excluded in coverage for hulls and offshore energy-related equipment and platforms. For example, could there be a one-claim deductible, or could cover be limited to only 25% of the total insured amount for loss, damage or expense including cleanup expenses.

- What total aggregate of business interruption losses would result in the event of a nuclear accident.

- Whether any cargoes or hulls could be salvaged after radioactive contamination.

The study group learned from the responses that it was unlikely that any cargo—particularly food-stuffs—could be salvaged following radioactive contamination, Mr. Nunn noted.

They also learned that the cost of decontaminating non-passenger ships would reach between 50,000 pounds and 1 million pounds (between \$94,000 and \$1.9 million at current exchange rates) per ship.

And, they agreed that passenger ships would have to be scrapped because the ships would not likely be used again ever, he said.

They also discovered that many energy-related land installations and offshore oil platforms "would be exceptionally vulnerable" to contamination following a nuclear accident, Mr. Nunn said.

They also noted that the non-marine market has a standard nuclear exclusion clause that denies coverage for radioactive contamination caused by a nuclear accident.

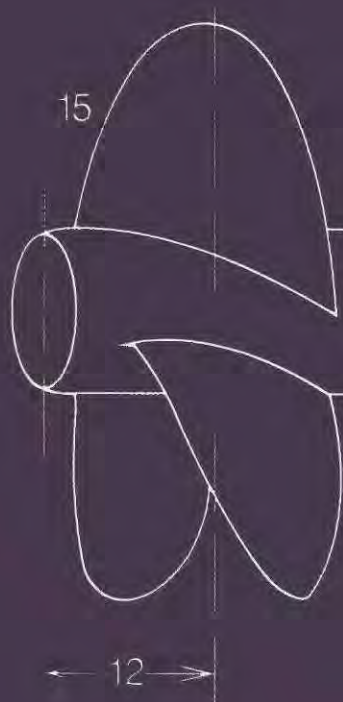
After discussing the responses from the individual markets, the study group "again discussed if cover could be granted and how," Mr. Nunn said.

However, the study group agreed that "after examining the problems of radiation and contamination, there is no way to control the accumulation of risks" or control the total loss caused by a major nuclear incident, Mr. Nunn said.

If, for example, a nuclear accident affected the North Sea and the English Channel, a total of \$7 billion of North Sea oil installations would be affected, as well as 700 vessels, "which would clearly exceed the marine insurance capacity available" to meet the claims, Mr. Nunn said.

At a third meeting in the offices of Baloise in Switzerland in August, the study group ratified the recommendations adopted at the March meeting. ■

E T O D A Y



Underwriter, ahoy!

When Steve Weber graduated from Rutgers he flirted briefly with a career as an oceanographer.

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A N E W T E A M

Wine, eel among Japan's insured imports

By STACY SHAPIRO

LONDON—In many nations, the third Thursday of November marks the race for the first drink of Beaujolais Nouveau.

Many assume it is the French who first sip the wine, the youngest red available from their vineyards.

However, the "Japanese can drink it eight hours earlier than the French because of the time difference," said Tadaaki Hayashi,

general manager of the marine division of Yasuda Fire & Marine Insurance Co. Ltd. in Tokyo.

"Last year, Beaujolais Nouveau arrived at Tokyo's Narita Airport on Nov. 14-15 and was carried out by (several large trucks) through

the gate of the airport on the stroke of midnight Thursday the 16th. The total quantity was two million

bottles."

Ten minutes later, parties billed as the "First Beaujolais Nouveau drinking party in the world" were held in several fully booked hotels just outside the airport complex, Mr. Hayashi said. "In such a manner, 'Beaujolais Nouveau fever' hits Japan every year."

The French wine is just a small part of the insured cargo flown into Japan each year, Mr. Hayashi told an amused audience at the International Union of Marine Insur-

ance conference earlier this month in London.

While Japan is a major exporter—it accounted for nearly 10% of the \$2.695 trillion in total world exports in 1988—it also is a major importer, Mr. Hayashi noted.

In 1988, the country's imports by air and sea accounted for a surprising 6.7%, or \$187.6 billion, of the world's \$2.8 trillion of imports, he said.

And, in 1989, the nation imported \$211 billion worth of goods

by air and sea, including \$45 billion by air, he said.

Among the largest portions of goods flown in are machinery, garments, jewelry and chemical goods.

Japan also imports mainly by air meat, in particular beef on the bone; fruits, such as U.S. cherries; vegetables, such as asparagus; cut flowers; and fish, such as yellowfin tuna, live eel, bigeye tuna and salmon, he added.

Other goods imported by air range "from Beaujolais Nouveau to Formula 1 racing cars to valuable bloodstock for breeding and racing in the Japan Cup, to Rolls Royces, Jaguars, Mercedes Benzes and works of art like van Gogh's 'Sunflowers,'" he said.

In addition, he said, cigarettes produced in Japan are manufactured using English machinery. Japan also imports fruit juice machinery from The Netherlands, spaghetti machinery from Italy, potato-chip machinery from the United States and ham machinery from Germany. "All are imported to Japan by air," Mr. Hayashi said.

Another item on the list of imports is golf clubs.

"As many of you know, golf is one of the Japanese businessman's favorite sports, and you are probably as intrigued as I was by this statistic which shows that 4,000 tons of golf clubs were imported by air in 1989," Mr. Hayashi said.

He figures that means 9 million clubs or 640,000 full sets. "With all this equipment entering Japan, we may hopefully see the day when one of our Japanese sportsmen makes a serious challenger for the U.S. or British Open," he said.

About 80% of Japan's air cargo—or 1.32 million tons last year—enters via Narita Airport, 37 miles from Tokyo. Narita handles more cargo than any other airport in the world, Mr. Hayashi said.

And, the amount of perishable food it handles, like fresh meat and vegetables, accounts for its local nickname: Narita Fisherman's Wharf.

At Narita Airport, all animal, plant, fresh or chilled foods are quarantined and examined by government inspectors, he said.

Dry cargo goes through customs at Tokyo Air Cargo City Terminal between Narita and Tokyo.

At both terminals, customs officials examine insurance documents before clearing goods, Mr. Hayashi said.

Better care and short transit times generally give air cargo better underwriting results than goods shipped by sea, Mr. Hayashi said.

Without offering statistics, he said there had been no "heavy claims" on air cargo shipments.

The same cannot be said of fruits and vegetables shipped by sea. Especially for grapefruit, lemons and oranges, the underwriting results have been "very bad," with the loss ratio near 100%, he said. "This is mainly due to decay and deterioration claims and sometimes rejection claims when rejection risks are also covered."

Though it is not included in a typical cargo policy, a shipper can insure the cargo against rejection by a buyer.

For export/import cargo, Japanese insurers generally issue policies in English that incorporate the Insurance Institute of London cargo clauses, Mr. Hayashi said.

But for chilled or frozen food, cut flowers and other perishable goods, underwriters attach the quarantine clause "to all policies irrespective of exporting countries," he said.

That clause states that "loss, damage or expense due to quarantine or other similar regulations

Continued on page 14



Gerald D. Stephens, CPCU
President & CEO, RLI Corp.

"Why does turnaround for an insurance policy have to take 60-90 days? At RLI, it takes fifteen."

in making that figure fifteen days. Why can't other insurance companies do the same?

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college education isn't enough for me to wade through the confusing verbiage. It's about time we started doing something about consumers' problems. It's time we started to demonstrate our care and compassion through our service. At RLI, that's just what we're doing. And we begin with fast service. There's no reason policy turnaround should be as high as 90 days. Our underwriters consistently succeed

Where does this misperception come from? And more importantly, what can we do to change it?

I think the answer to both of these questions boils down to one word: *service*. It's service, or the lack of it, that causes consumers to be disillusioned and it's service that can change that disillusionment into satisfaction.

When I take off my hat as "insurance company president" and put on my "insurance consumer" hat, I'm appalled by what I see. I buy a commercial policy and it takes three or four months to get it. When I get it, my

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SUBSTANCE ABUSE IN THE WORKPLACE—THE WHITE COLLAR VIEW.

Part two of an ongoing series of conversations between Argonaut Insurance Company, our clients and their brokers, dealing with issues important to their business. The intent is to keep the lines of communications open. We invite your participation.

THE PARTICIPANTS: MICHAEL DUNLOP, VP Risk Management for Countrywide Mortgage Bank, one of the nation's largest. ELISE KAPLAN, Personnel Manager for Countrywide. DON SCHAEFER, with Frank B. Hall Corporation, Countrywide's broker. STEVE LA SHIER, Senior VP Safety Management, Argonaut Insurance Company. LARRY EVANS, Manager of Safety Management, Argonaut Insurance Company.

MODERATOR: We've been talking about how to recognize substance abuse problems in a company. Once you've done that, how do you get employees involved?

MD: We have interviewed several EAP providers and it seems there are two ways you can bring the employee into a program. One is to advertise it. Have the provider come in and give a presentation on what it's about and emphasize it's going to be very confidential and management won't know who is using it, just the number of people who are using it per year. The second way is to make it available to the managers or to the supervisors and have them refer the employee to the employee assistance program. To make that a condition of their performance evaluation. Then we would simply confirm that the employee is using the program. We think that would take the manager out of the adversarial role.

MODERATOR: Is confidentiality important, so there's not a stigma attached to the program?

SL: It's a key to any substance abuse program. In fact I usually challenge most corporate counsels who are often apprehensive about substance abuse programs. When they bring up the subject of lawsuits, I point out that it's almost never the substance abuse program that brings you to a lawsuit. It's the violation of confidentiality. We have the Risk Manager sitting here. He doesn't need to know who's going through the treatment. The vice president of operations doesn't need to know, confidentiality is the key. This is why most people have the wrong impression of substance abuse programs. It is not illegal for any company to institute a program. The Fourth Amendment only guarantees illegal, unreasonable searches by the government. You are a private employer. You have the right to set company policy. How you get sued is when you go and say "Boy, he's snorting cocaine." Confidentiality is the key to a program's success. That is why we're clear to point out that supervisors never accuse an employee of having a substance abuse problem. You provide guidance, that's all.

MODERATOR: Was Countrywide's decision to talk to EAP providers triggered by tracking lost work days or productivity drops? Or was it simply an extension of your health program?

MD: We took a look at our stress claims and what they were costing us in lost days. We found that if we can reduce one stress claim a year, we will reduce our comp claims cost by about \$27,000. Over the last five years our stress claims have averaged a little more than \$13,000 apiece. But the way it impacts the premium through the rating form, that one claim actually costs \$27,000 in additional premiums.

MODERATOR: That's for each stress claim. What does it cost to run an EAP program?

MD: EAP providers charge about \$2 per employee per year. For a corporation our size, that comes out to about \$24,000 a year. Even a conservative estimate of being able to prevent two stress claims a year will pay for that EAP program twice over.

MODERATOR: Does the abuser try to blend into the woodwork? Would a serious abuser even want to file a claim?

DS: I've seen situations where filing a claim is a means of gaining additional money to pay for their habit. I've seen situations with workers' comp claims where it was becoming too difficult to take the drugs at work, so they go on disability so they can take them at home.

MD: Or they go out on a medical leave of absence because many of the drugs make them sick. We haven't been able to make that determination, but maybe the drugs make them sick, they go out on a medical leave of absence, they need money, they file a claim.

SL: There is an organization called 1-800 Cocaine with a 24-hour hotline for cocaine users with a physician, a nurse or a trained counselor to answer the phone 7 days a week. And when you look at their statistics, you see that 75% of the people who call use cocaine on the job; 64% say easy access at work increased their habit; 83% used cocaine and other drugs at work; 44% admitted they sell it at work; 39% of them take it with alcohol.

Look at that Northwest pilot. He was an alcoholic for over 30 years. It took someone turning him in after they saw him drinking 19 rum and cokes the night

23% of your workforce x \$7,000 = cost of substance abuse to your company

before he was supposed to fly that plane. If he hadn't been turned in, to this day they wouldn't have caught him.

SL: But substance abusers look for ways to supplement their income, whether it be petty theft, figuring out ways to embezzle or take money, setting up

phony accounts. Mortgage banking is not a safety related industry. You don't have any machinery that cuts off hands, nobody flying airplanes or driving buses, but does your executive management really realize the potential dollar loss to your company due to substance abuse. Do they have a handle on the problem, or do they feel that because everyone is sitting at a desk that it's not a problem?

MD: We tend to have a potential embezzlement problem and we think that we're at the top of our industry for having developed an operational loss prevention program. Looking at all operations and looking at what the potential for embezzlement is and either putting in operational checks and balances or physical controls. The potential for embezzlement is there and has been recognized.

EK: I think maybe the point of this whole conversation is that all those things address the symptoms. These programs we're talking about now get to the heart of the matter and address it before it becomes a problem.

LE: One of the things Argonaut has talked about is pre-employment physicals. For all of our accounts we recommend they try and do some screening of new hires, including drug screening. It's certainly much easier to weed those people out before they come on your payroll than after. To give you an

example, when I worked for a major corporation back in 1979, approximately 50% of the new applicants we tested were dirty from drugs. That was a major manufacturing facility of a nationwide company. We concluded that if 50% of the people that come in to apply for jobs were dirty, and they come from the same socio-economic background as the people that were already working out in the plant, then probably 50% of those people were also using, which turned out to be fairly accurate numbers.

DS: I think in dealing with the question of whether management is aware of what it costs, I would say probably as a general rule, no, they're not aware. The types of numbers you're talking about are not common knowledge in business. The loss in produc-

tivity and the cost of hiring replacement personnel and all of the side issues that occur with any stress-related type situation under which substance abuse would probably qualify, management became aware of a few years ago in terms of stress because there was a big push to work on stress-related issues. I think substance abuse programs today are probably where stress programs were five or ten years ago in terms of management's awareness of it being a bottom line cost of business problem.

SL: The 1989 U.S. Justice Department statistics show that currently 23% of the American workforce has an abuse problem. And the Justice Department statistics show the average cost of the abuse problem to the employer is \$7,000 per year per abuser. At

Countrywide, you have 1,000 plus people. It's simple arithmetic. 230 times \$7,000. That's the cost of substance abuse to your corporation.

MODERATOR: That's a million and a half dollars.

SL: Right off the bottom line.

MODERATOR: Doesn't Countrywide think of your insurance company and your broker as partners in helping you develop a substance abuse program? Or do you see them more as processors and slot machines paying off at the end?

MD: Well, certainly the broker is a partner. I think that's where we came up with the idea of going out and looking at EAP programs. We exchange a lot of information as to what's being developed out there as a result of these problems. So it's just constant interchange of information.

MODERATOR: That's the broker. What about the underwriter?

MD: I work a lot with the safety department at Argonaut and we've developed a written safety program for the office, along with some other operations where we have specific safety programs to protect the employee against accidents.

DS: One of the interesting things that's happened with Countrywide is that they had a major problem in workers' compensation. One of the conditions under which it was placed with Argonaut was that Countrywide be heavily involved with Argonaut's safety department in dealing with stress claims. Not substance abuse, stress claims. Argonaut's safety people have been extremely good at providing assistance in terms of issues that Countrywide needs to address. And Countrywide in return, through their Risk Management department, has been very responsive. So in dealing with the underwriter, it's safety management that's interacting. Argonaut has helped Countrywide a great deal.

MODERATOR: Do you see a trend among comp carriers in particular in working closely and being solution-oriented concerning substance abuse?

DS: There's a wide range. There are a few comp carriers that push it. There are a lot of comp carriers that talk about it. Then there are a lot of insurance companies where it's strictly a price situation.

Continued next week

We'd like to hear what you have to say about substance abuse in the workplace, and about our discussions on topics that concern your business. Send your comments to Mike Crall, President, Argonaut Insurance Company, 250 Middlefield Road, Menlo Park, CA 94025.

Argonaut

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Middle East crisis an issue for IUMI delegates

LONDON—Tensions in the Middle East were reflected at this year's International Union of Marine Insurance conference by the absence of the Iraqi delegate.

Organizers expected 48 countries to be represented meeting in London Sept. 16-20.

The IUMI is a United Nations-type organization for marine insurers.

A country's marine insurance association typically sends up to four IUMI members to the meeting. Only the United Kingdom has eight representatives—four each from the Institute of London Underwriters and Lloyd's of London.

The National Insurance Co. of Iraq is a member. Kuwait is not.

At the beginning of the conference, IUMI President Maurice Jaques said the association was not sure whether the Iraqi representative would attend. "We are waiting to see if he will come," he said.

A chair was reserved for the representative, Michael Sanoian.

He never showed.

However, the conflict between Iraq and the United Nations over the invasion of Kuwait was not a topic of formal presentations during the four-day meeting at the Queen Elizabeth Centre near Parliament.

Although marine hull and cargo war risk rates are fluctuating in the Middle East, the 600 IUMI conference members would not discuss specific war risk rating levels. Each year, in fact, American delegates announce that U.S. antitrust laws prevent them from discussing rates.

Other changes in marine and hull insurance brought on by the Middle East crisis were mentioned in

Japanese imports

Continued from page 12
causing or resulting in rejection, etc." is not covered.

Cargo underwriters also may impose deductibles for the percentage of decay or deterioration that occurs before insurers will start paying claims, Mr. Hayashi said.

"In view of the obvious pitfalls, you should, ladies and gentlemen, make prudent underwriting by gathering all necessary underwriting information in advance to enable you to accurately assess the risk in hand," he said.

Mr. Hayashi noted that 99% of the cherries Japan imports comes from the United States, most from California and some from Washington and Oregon. Those cherries are fumigated with methyl bromide before they are shipped to protect Japan from an invasion of codlin moths.

U.S. cherries, which are quarantined in Japan for government inspection, make it to Japanese supermarkets within four to five days after being picked, Mr. Hayashi said.

Cherries usually are insured under a policy containing a deductible equal to 10% of the goods' value to account for normal deterioration and decay. Typical deterioration is 6% to 7%, Mr. Hayashi said.

He added that the Japanese market suffered heavy claims on U.S. cherries in 1987. "Early ripeness" in Washington and Oregon caused many of the cherries to be shipped on container ships rather than by air, he said.

Claims have not been heavy since.

Cut flowers are enjoying a boom in Japan, with The Netherlands, Thailand, Taiwan and New Zealand accounting for 82% of all imports, Mr. Hayashi said.

There is no standard insurance coverage for cut flowers in the Japanese market, he said. Mr. Hayashi recommended that underwriters include a "fairly high deductible" to cover decay and deterioration risks.

Underwriters also should clarify whether loss due to fumigation will be covered. "Claims under cut flower policies are almost all related to fumigation costs," Mr. Hayashi said. ■

directly, noted Tony Nunn, chairman of the IUMI Ocean Hull Committee and general manager of The Scottish Lion Insurance Co. Ltd. in London.

Rising oil prices increase the insured value of all crude oil cargo, Mr. Nunn said. And, increased activity in oil markets means there are more tankers out of storage this year than last year, and they need insurance, he said.

The Ocean Hull Committee annually updated the number of damaged oil tankers that were attacked in the Persian Gulf during the eight-year Iran/Iraq war. Those losses cost war risk underwriters more than \$1 billion altogether.

"This time last year we talked about the number of (Iraq/Iran war) casualties," Mr. Nunn said. "This year we won't."

IUMI members occasionally informally talked about the Middle East

crisis in the hallways and during lunches, cocktails and dinners.

Francois Drouault, chairman of marine insurance association Syndicat des Societes Francaises d'Assurances Maritimes et de Transports, noted that members of an Arab war risk pool were in Cyprus the week of the IUMI meeting to decide on the pool's future.

French war risk pool GAREX had a 20% share in the Arab war risk pool, which is based in Baghdad and managed by state-owned Iraq Reinsurance Co., said Mr. Drouault, chairman of GAREX.

"But now there is a total disruption of relations," he said. Some of the risks that were written by the Arab pool are now being placed in other markets, "indicating that the pool may have disintegrated," he said.

The Iraqi pool had no claims "as

yet" and had positive underwriting results last year, he said.

GAREX in the meantime has been busy looking at non-French war risks in the Middle East. "We've had a lot of activity since August, such as questions from non-French shipowners," Mr. Drouault said.

The pool is complying with the U.N. trade embargo on Iraq and Iraqi-occupied Kuwait. "But for all other (Middle East) countries, we (accept) substantial additional war risk premiums," he said.

Many other aspects of marine insurance—from hull rates being inadequate to Japanese air cargo imports—were discussed during official meetings (see related stories).

IUMI members also heard that the International Maritime Organization—also meeting in London during the same week—is considering a draft agreement that would require haz-

ardous and noxious cargo to be covered up to a limit of 100 million Special Drawing Rights (\$140 million at current exchange rates).

The IMO proposed that the coverage be structured in two layers. The primary layer of an unspecified limit would be insured by the shipowner and the excess layer for the remaining limit would be covered by a special fund established by cargo owners and shipowners, said N. Colton, the IUMI liaison officer at IMO.

IMO committees next spring are to discuss the fine points of the fund proposal, the legal aspects of the agreement and the final draft of the agreement, Mr. Colton said.

The 1991 IUMI conference is scheduled for Sept. 15-19 in Boston. For more information, contact Emanuel Burckhardt at Baloise Insurance Co. Ltd., P.O. Box 4002, Basel, Switzerland. ■

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Group seeks better marine safety

By STACY SHAPIRO

Shipmasters call for insurers' help

LONDON—Shipmasters are urging marine underwriters to enforce safety at sea by, among other things, refusing to insure unseaworthy vessels and endorsing guidelines on when crews should refuse to sail, according to a British Royal Navy rear admiral.

Captains can be "pressured into cutting corners that never should be cut" by shipowners or cargo owners who are looking to make money, said Rear Adm. D.J. Mackenzie, vp of the Nautical Institute, a professional body of seafarers qualified to command at sea, and chairman of the institute's Ship Operations Standards Working Group.

If captains or crew threaten to leave a ship because it is un-

seaworthy or is run in an unseaworthy manner, then shipowners will just fire them and hire others, he explained.



"Today, there are many good companies who still maintain their standards, but there is the opportunity for others to cut corners and make money out of underfulfilling safety requirements," Rear Adm. Mackenzie told the International Union of Marine Insurance conference in London earlier this month.

"The international shipping system allows this by default, and

part of the problem is the ease by which any operator can obtain insurance," he said.

The rear admiral asked IUMI members why they continued to underwrite insurance for substandard ships.

"I know of all the difficulties of the competitive world in which you work. But surely you could agree throughout your industry on conditions under which you would not insure a ship," he said.

"We would suggest that once a ship has been found to be substandard, that that ship could not be insured (again) before being passed fit by an independent body at the owner's expense," he said.

"We feel most strongly that until the insurance industry takes positive steps to prevent the renewal of cover of ships that have been found deficient, then there is really no incentive to improve," stressed Rear Adm. Mackenzie.

Underwriters also could encourage shipowners to improve the way they operate their vessels by introducing a "no claims bonus scheme for marine insurance," he said, referring to a type of retrospective arrangement in which low claims are rewarded with a premium refund. "I hope you will think carefully about this."

Meanwhile, the Nautical Institute is urging underwriters to en-

dorse the institute's Ship Operational Standards Working Group guidelines on when a shipmaster must refuse to leave port.

Among other things, these guidelines say a shipmaster must refuse to sail when:

- The ship is overstressed, such as overloaded with cargo.
- The cargo cannot be properly secured.
- The ship's hatches cannot be properly secured.
- The bilge pump is not working.
- On an ocean voyage, the watertight doors cannot be closed; the fire pumps do not work; the life-saving equipment is inoperable; the radio equipment is inoperable and/or there are concerns about the condition of other equipment on the ship, such as engines, steering motors and generators.

The guidelines also say that in all cases a certificate of seaworthiness for each vessel should be obtained prior to sailing.

However, even if a ship is seaworthy, it should not sail if crew members are incompetent or need an essential rest period to avoid fatigue.

The Nautical Institute also recommends several positive steps that should be taken by all masters joining the crew of an unknown ship. These steps are:

- Determine whether or not the ship is generally seaworthy.
- Check the voyage planning.
- Ensure positive reporting.
- Undertake a more detailed condition report when there is time.
- Make sure that the owner is made aware of any defects and keep the protection and indemnity club posted.

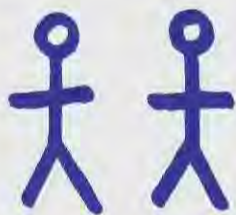
"We would like underwriters to endorse the recommendations by agreeing with owners that vessels will be operated in accordance with these principles," Rear Adm. Mackenzie said. ■

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Adjuster details Valdez cleanup effort

By STACY SHAPIRO

LONDON—The hundreds of millions of dollars of claims by victims of the Exxon Valdez oil spill pale in comparison to the \$2 billion effort to clean up Alaska's pristine Prince William Sound, says a loss adjuster involved in settling spill claims.

Commercial fishermen suffered the biggest business losses because "the surrounding area is one of the richest fishing grounds in North America," generating annual gross revenues of \$215 million, said Albert F. Dugan Jr., vp and director of loss adjusting firm Hull & Cargo Surveyors Inc. in New York. Next to oil, commercial fishing is the largest commercial enterprise in Alaska, he noted.

Exxon Corp. has spent \$2 billion to clean up the 10 million-gallon spill, bringing in thousands of workers and hundreds of vessels during the effort, said Mr. Dugan, whose company is the loss adjuster

for the Trans-Alaska Pipeline Liability Fund.

Under the Trans-Alaska Pipeline Act of 1973, the fund is required to pay \$86 million of oil spill-related covered damages above a \$14 million deductible by the liable party.

The adjusters are responsible for administering claims against the fund as well as a portion of claims that exceed the fund's liability, he said.

"If this were a 'good news/bad news' joke, the third-party claims are the good news," Mr. Dugan said. "The bad news was the cleanup," he said.

"The cleanup operation, the largest in history, required a level of planning which could best be compared to the Normandy invasion," Mr. Dugan said at the International Union of Marine Insurance earlier this month in London.

Many members of Mr. Dugan's audience, listening in eerie silence as he also described the events leading up to the grounding of the Exxon Valdez, likely were reinsurers for protection and indemnity club International Tanker Indemnity Assn., which indemnified Exxon Corp. for \$400 million of the \$2 billion spent on the massive cleanup operation.

Currently, Hull & Cargo Surveyors and subsidiary U.S. P&I Agency are wading through 15,000 third-party claims to determine whether they meet the definition of the damages as outlined by the pipeline act, Mr. Dugan said.

Spill victims have filed claims for hundreds of millions of dollars.

For example, Mr. Dugan said, fisheries that have filed claims contending they lost their 1989 catch because of the oil spill include:

- The Kodiak salmon fishery, which has filed a \$45 million claim.
- The Prince William Sound

salmon fishery, which has filed a \$42 million claim.

• The Upper Cook Inlet salmon fishery, which has filed a \$33 million claim.

• The sound's herring fisheries, which have filed \$9 million of claims.

Meanwhile, "the 1990 season has not experienced any interruptions or cancellations as a result of the oil spill," Mr. Dugan said.

To clean up 1,100 miles of shoreline consisting mostly of rugged rock only accessible by water, Exxon had hired by the peak of the cleanup operation 1,400 vessels, including two Navy assault ships, 200 tugs and 200 barges of all shapes and sizes.

Exxon also had hired as many as 85 aircraft by the peak of the cleanup effort.

The operation involved 11,330 cleanup crew members, who worked up to 19 million hours between March 24 and Sept. 14, 1989, when the cleanup operation stopped for the winter season, Mr. Dugan said.

The size of the cleanup crew far overshadowed the town of Valdez, which has a population of 3,500 people.

Showing some slides of the operations, Mr. Dugan pointed out that there was a completely equipped hospital on one of the barges to support the five task force groups involved in the cleanup operation.

He also showed the original headquarters of Hull & Cargo Surveyors, which was a camper where Mr. Dugan and his staff ate, slept and worked the first four weeks of his 20 weeks in the area. They later moved to office accommodations.

Mr. Dugan also showed slides of workers using bioremediation equipment to clean up beaches.

During the winter of 1989/1990, Exxon employed 800 personnel—who were mainly scientists—to study the shorelines to see how nature handled the spill.

"Nature's power advanced Exxon's cleanup operations" so that by the spring of 1990 the beaches were 50% cleaner than at the end of September last year, Mr. Dugan said.

During the spring and summer of this year, Exxon has focused on bioremediation to clean up the shorelines that still were polluted from the spill, Mr. Dugan said.

Though fewer cleanup personnel were needed this summer, the cleanup operation "still entailed at peak approximately 100 vessels, 25 aircraft and 2,000 personnel," he said.

Mr. Dugan also recounted the series of events that led to the largest oil spill in U.S. waters: It was 9:26 p.m. March 23, 1989, when the last 50,000 barrels of the 1.26 million barrels of heavy crude oil were loaded on the Exxon Valdez tanker at the Alyeska Marine Terminal in Valdez, Alaska.

About two hours later the Exxon Valdez sailed from the terminal. The Coast Guard cleared the tanker through the Valdez Narrows, a narrow stretch of water that opens up into the Prince William Sound.

"Shortly after departing the Valdez Narrows, the Exxon Valdez maneuvered out of the shipping lane to avoid ice," Mr. Dugan said.

The ice the Valdez was attempting to avoid had dropped from the six-story-high Columbia Glacier, Mr. Dugan said.

Two other outbound laden tankers had carried out the same maneuver earlier in the evening, he said.

And, the U.S. Coast Guard agreed with the request by Exxon Valdez Captain Joseph Hazelwood to sail out of the shipping lane to avoid ice.

However, at 11:39 p.m. Captain

Hazelwood left the bridge after instructing Third Mate Gregory Cousins to continue steering out of the shipping lane but to set a course change to head the Valdez back into the shipping lane after the tanker had cleared the ice hazard, Mr. Dugan said.

At 11:55 p.m., the third mate gave an order to the helmsman for 10 degrees right rudder to bring the ship back toward the shipping lane, "but the helm did not respond," Mr. Dugan said. "This reportedly went unnoticed for about eight minutes before Cousins realized the course change had not been made."

The third mate then gave the command for hard right rudder and called Captain Hazelwood to the bridge, Mr. Dugan said.

"By this time it was too late, and at approximately four minutes after midnight the Exxon Valdez ran hard aground and stranded at Bligh Reef, named for the famous Captain Bligh," he said.

Mr. Dugan also presented a videotape called "The Last Voyage of Exxon," narrated by television journalist Connie Chung. In it, Captain Hazelwood was heard telling the Coast Guard in a tired-sounding voice that oil was spilling from the Valdez. "We're gonna be here for awhile," he said.

The cleanup required planning comparable to the Normandy invasion, says Mr. Dugan.

Five cargo tanks that were port, starboard and center on the tanker were ruptured, Mr. Dugan said.

The \$137.5 million vessel—which has since been salvaged—probably was not insured because its value did not exceed Exxon's massive aggregate deductible program in the London market (BI, April 3, 1989).

About one-fifth of the tanker's cargo—242,000 barrels, or 10.2 million gallons, of crude oil—spilled into Prince William Sound within about eight hours, Mr. Dugan said.

Exxon's priority immediately after the grounding was to unload the other 80% of the cargo before it spilled.

The Exxon Baton Rouge tanker—which was nearby and empty of oil—emptied her polluted ballast, or the water in her cargo tanks—into the sound before taking on the remainder of the Exxon Valdez's cargo.

However, because of the swell of the tides into the 6,500 square kilometers of the Prince William Sound, the oil slick dispersed widely across the sound and polluted much of the 5,600 square kilometers of the rugged coastline of the many islands in the sound.

By March 28, the slick was 64 kilometers long and 32 kilometers wide, Mr. Dugan said. The slick was contaminating beaches at high tide, though by March 31 it was exiting Prince William Sound for the open seas.

By April 14, 1989, about 45,000 barrels, or 1.9 million gallons, of crude oil lay on the beaches in Prince William Sound. By April 20, 1989, there was only a slight sheen on the water of the sound, Mr. Dugan said. Exxon had skimmed much of the oil off the water.

The remainder was either on the beaches or heading down the peninsula of Alaska.

On May 1, 1989, oil hit the beaches as far as 1,178 miles south of Prince William Sound, Mr. Dugan said.

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LMX spiral

Continued from page 3
 10,000 claims are outstanding.

Mr. Martin said the handling of Piper Alpha claims is unique in several ways and has to some extent changed the way the London market handles claims.

As soon as the loss occurred, Lloyd's established a committee to coordinate and monitor the progress of claims, Mr. Martin explained. He pointed out that a system was developed to speedily handle claims as they entered the market.

Until this loss, Lloyd's generally settled claims on a monthly basis,

Mr. Martin said. The market had been discussing the feasibility of seven-day settlements but took the appropriate steps only after the Piper Alpha loss, he noted.

"Within four weeks, Lloyd's had established a computer system called the Reinsurance Loss Monitor, which was in effect ready to receive reinsurance claims as soon as the direct claim was paid," he said. That system continues to operate, he pointed out.

But, the speedy claims settlement process likely shortened the spiral effect, Mr. Martin observed. "It has compressed what otherwise would have been estimated as, say, a 10- to 12-year spiral into between four and five years." Those faster payments

significantly hurt cash flow, particularly for reinsurers, he said.

"It also has the second effect of driving through reinsurance programs much more rapidly than might otherwise have been the case, thereby exposing the weaknesses of an under-reinsured operation," Mr. Martin noted.

Those effects are rippling through the London market, he said, offering as proof some activity at Lloyd's. For example, through August, cash calls at 13 syndicates have totaled 90 million pounds (\$169.2 million). "That doesn't sound like a whole lot, but remember, this in effect is the tip of a much larger iceberg."

In addition, there are at least 11

syndicates that will cease operations next year or merge with larger operations, Mr. Martin noted.

While this "does not imply in any way that legitimate claims from these syndicates will not be met in full, what it does mean is that as independent operating entities, they are no longer viable," he explained.

And, such activity is not confined to Lloyd's, Mr. Martin said.

At least two reinsurers, which he did not identify, "have found themselves in such stressful difficulty that they have been obliged to stop underwriting in this particular area or sell themselves in order to enhance and basically rescue their capital base."

Despite the stress on some Lloyd's

syndicates and London underwriters, the handling of the Piper Alpha loss on the surface appears to be an overall success, Mr. Martin said.

"After all, the loss has been paid to the original insureds very swiftly, through the competent and professional action of their brokers," and reinsurance claims have been paid to direct insurers, he pointed out.

"The market itself has operated fairly well. New systems have been tested and found to be sufficiently strong to last for the future," Mr. Martin observed.

However, catastrophic losses during 1989 have put additional stresses on an already strained London market.

Chevron insures only for catastrophes

By MICHAEL BRADFORD

HOUSTON—Chevron Corp.'s risk financing philosophy is to commercially insure all risks only at catastrophic levels, according to Risk Manager Edward J. Kettel.

"Our primary concern is to protect the company against a catastrophic loss that would seriously impact earnings and cash flow. That is our main goal," Mr. Kettel said.

In addition, "we want to stabilize earnings" by buying coverage to take care of any "unknown loss, meaning a fortuitous casualty," he

pointed out. "By purchasing high limits, we accomplish both."

Chevron accepts high deductibles "mainly because it makes economic sense," Mr. Kettel said at the Houston Marine Insurance Seminar held Sept. 16-18. "Otherwise, we would just be swapping dollars with underwriters."

"In reviewing our exposures, we do not pick and choose which to

insure," Mr. Kettel explained.

"We don't guess that this is where the greatest hazards exist and we'll insure this and not anything else. Invariably when you do that, you're wrong. So we cover all of our operations, worldwide, on the same basis."

Chevron accepts a \$10 million deductible for all insured risks, except business interruption, which has a \$35 million deductible, according to Mr. Kettel.

As of June 1, he said, Chevron had:

- \$1.313 billion of marine hull coverage.

- \$600 million of replacement value property coverage.

- \$600 million of well control, re-drill and restoration limits.

- \$600 million of business interruption limits.

- \$1.4 billion of tanker pollution liability limits.

- \$880 million of non-tanker pollution liability limits.

- Unlimited tanker liability insurance, excluding pollution.

- \$770 million of offshore liability limits, excluding pollution.

- \$700 million of onshore liability limits, excluding pollution.

- \$1.4 billion of aviation liability limits.

- \$295 million of directors and officers liability limits.

He would not identify the insurers, but said many of the risks are placed in U.S., London, and Scandinavian markets, and some French and Japanese markets participate.

All coverages except business interruption are subject to a combined single limit, according to Mr. Kettel.

The risk manager also noted that Chevron, like other oil companies, "has developed a greater interest in business interruption" coverage in recent years.

"Previously, many risks sat back rather complacent," with the philosophy that production could be shifted among several refineries after an accident, and would "only insure stand-alone facilities such as chemical plants," Mr. Kettel observed.

But times and attitudes have changed, "particularly if one is operating at full capacity, as most of us are right now," he said.

Mr. Kettel also noted that Chevron likes to maintain the flexibility to change underwriters when necessary. "While we fully subscribe to continuity with underwriters, we must have the ability to change directions if need be."

Chevron does not purchase political risk coverage because the amount of capacity available is not enough "relative to the premium" insurers seek, Mr. Kettel explained.

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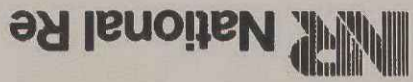
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Oil spill liability risks exceed cover: Expert

By MICHAEL BRADFORD

HOUSTON—Shipowners may be hard-pressed to find enough liability insurance to cover their broadened exposures under the Oil Pollution Act of 1990, says an industry expert.

Under the act, "the shipowner is exposed to unlimited liability for a very broad area of damages resulting from oil spills," said Kenneth H. Volk, president of the Maritime Law Assn. of the United States and a partner with Burlingham, Underwood & Lord in New York.

Mr. Volk, speaking at the 25th Annual Houston Marine Insurance Seminar earlier this month, questioned whether enough oil spill liability coverage capacity is available "to protect the shipowner from such exposure."

Protection and indemnity clubs can offer up to \$500 million of coverage, and an additional \$200 million can be found in London excess insurance markets, Mr. Volk noted.

But, "in light of the enormous expenses resulting from the Exxon Valdez spill, it is questionable whether this is sufficient," he said.

A loss adjuster involved in paying claims to victims of the 10 million-gallon Exxon Valdez spill noted during the International Union of Marine Insurance in London earlier this month that Exxon Corp. has spent \$2 billion cleaning up the spill (see story, page 16).

The 1990 act, which President

Bush signed in August (BI, Aug. 27), "could not be worse" for shipowners, Mr. Volk said. "By definition, in the very first section the shipowner is the 'responsible party.' In other words, he is absolutely liable for all damages resulting from any oil spill, or even a threatened oil spill."

Indeed, shortly after the law was passed, some shipowners have balked at the prospect of entering U.S. ports underinsured, Mr. Volk pointed out.

"The Royal Dutch/Shell Group of Companies has announced that it would no longer send heavy oil to United States ports in vessels it owns or charters" except for shipments to the Louisiana offshore facility, he said (BI, June 18).

Next came an announcement by A.P. Moeller of Denmark "that it would no longer deliver to the United States because of the unbearable potential liabilities," he said.

The law limits shipowners' liability, but the limits are high, Mr. Volk said. "For the owner of a tanker, the limitation is \$1,200 per gross ton (of the tanker's displacement) or \$10 million, whichever is greater."

"For the owner of other types of vessels, the limit is \$600 per gross ton or \$500,000, whichever is greater. This works out to be \$120 million for a 100,000 gross-ton tanker and \$60 million for a 100,000 gross-ton cargo vessel," Mr. Volk said.

Previously, under the Federal Water Pollution Control Act, shipowners' liability was \$150 per gross ton, according to Mr. Volk.

However, while the 1990 act sets liability limits "with one hand, the shipowner has them taken away with the other hand," Mr. Volk said.

The limits do not apply if a spill is caused by gross negligence, willful misconduct or because of actions that violate the applicable federal safety, construction or operating regulations, he said.

Mr. Volk said it would be "well-nigh impossible" to eliminate all the federal regulations "from the causal relationship to the spill."

And, individual states will still be allowed to set higher liability levels.

The law also greatly expands the types of damages for which a shipowner is liable, Mr. Volk said.

Under the law, shipowners responsible for a spill are liable for the destruction or loss of use of natural resources and personal property, as well as loss of taxes, royalties, rents, fees or profits from the destruction of property.

Dollar values are put on all types of sea life and wildlife that could be harmed by a spill, said Capt. Edward Roe of the U.S. Coast Guard in Houston in another session.

In the wake of the Exxon Valdez

spill, monetary values were attributed to shrimp, lobsters, otters, eagles and other animals endangered by the spill.

And, shortly after spills in the Gulf of Mexico, "we've seen shrimpers line up to file their claims." When an oil tank was hit by lightning on the Gulf coast, residents filed claims for the cost of washing oil off their cars, Capt. Roe added.

Shipowners are liable even for damages resulting from the loss of use of property even if a spill does not pollute the property.

For example, a resort owner whose beaches are not soiled by a spill could still recover lost profits if it is determined that a spill in nearby waters discouraged customers from visiting the resort.

Likewise, a restaurant owner whose source of shellfish was cut off by a spill could sue for lost profits.

And, "a yacht marina operator can sue and recover for lost business because yachts could not traverse a polluted area to reach his facility even though it might be hundreds of miles away," Mr. Volk said.

If the act had been in effect when the KS Mega Borg II exploded and caught fire off the Texas coast last June, the ship's owners would have been responsible for damages "even though in fact no oil ever reached the shores of Texas," Mr. Volk noted.

He said the act allows shipowners three possible defenses "to this absolute liability," but the defenses are "defined in such a way and are so restricted in their application as to make them almost meaningless."

Under the law, the defenses against liability are that a spill occurred as a result of an act of war, an act of God or an act or omission of a third party.

However, the shipowner is liable if he is to any degree, no matter how slight, at fault for the spill.

"With respect to an act of God, that defense is expressly not available unless the shipowner can prove that nothing he could have possibly done could have prevented or avoided the spill," Mr. Volk said.

"Again, this is an almost insurmountable burden," he said.

An act or an omission of a third party is defined under the law so that it does not include employees, agents or third-party contractors of the shipowner, Mr. Volk noted.

For example, if a shipowner contracts with an area pilot to guide the vessel through certain waters, the shipowner cannot use the third-party defense in the event of a spill due to pilot error, he said.

And, Mr. Volk warned, shipowners can even lose "these very limited defenses—for what they are worth" if the shipowner does not promptly report an incident, cooperate and assist in a cleanup or comply with orders from the U.S. Coast Guard or other authorized governmental agencies responding to a spill.

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Seminar attendance grows

HOUSTON—The 25th Annual Houston Marine Insurance Seminar continues to attract new members and a roster of notable speakers.

This year's gathering, held in Houston Sept. 16-18, drew more than 950 attendees. "This year, it's larger than it's ever been," said Stanley N. Bayless, seminar chairman.

The annual meeting has grown from the days when it started "in somebody's back yard with about 10 people who liked to talk about insurance," Mr. Bayless added.

Known for its impressive speaker list, the meeting featured such speakers as Alan Lord, deputy chairman and chief executive officer of Lloyd's of London; Chris Martin, director of Lloyd's broker Newman, Martin & Buchan; Kenneth Volk, president of the Maritime Law Assn.; Edward J. Kettel, risk manager for Chevron Corp.; and representatives of the French insurance market.

Next year's conference is scheduled for Sept. 15-17 at the Adam's Mark Hotel in Houston. Registration information for next year's conference is available from Mr. Bayless at 713-651-1900.

Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers

They aim to serve

Pressed by market, agents ask: 'What can we do better?'

By LAURA MAZZUCA

To determine what sort of service is needed in today's highly competitive marketplace, agents are falling back on a tried and true formula: Ask the customer.

Agents have no shortage of ways to ask.

With formal telephone surveys, questionnaires and cozy, coffee-and-doughnuts "focus groups," they are soliciting opinions—which aren't necessarily favorable.

"People are very honest; if they've got a beef, by George, they let it out," said Wes Bailey, president of Bailey Insurance & Financial Services in Waco, Texas.

For several years, Bailey has in-

terviewed departing clients by telephone and has sent service questionnaires to personal lines clients after claims are settled.

The feedback is invaluable, he says. "It enables us to identify our weaknesses, but it also confirms for us when we're doing things right."

A lingering soft market has forced agents to take a closer look at efficiency. The result: streamlined operations and increased professionalism, especially among customer service representatives, said Paige Proctor, president of Eaglemark Consulting Group in Bloomington, Ill. (see related story, page 20B).

Agents also fight against the in-

surance industry's notorious public image, said Todd Muller, technical adviser for the Independent Insurance Agents of America in Alexandria, Va. Direct client contact builds a more positive image, he said.

Client research generally takes one of two forms: statistics culled from surveys and questionnaires; or opinions generated in focus groups and other informal settings.

Agencies do their own research or have it done by a consultant or public relations firm.

In 1984, Rue Insurance chose the latter.

The Trenton, N.J., agency had just shifted specialties from small personal lines business to small

commercial "and it was a good time to look backward and also look ahead," said Vp Donald B. Allen Jr. The project, he adds, coincided with Rue's first five-year business plan.

For \$20,000, a public relations firm set up and ran extensive research on client needs. Included were telephone surveys, demographic studies, focus groups and client surveys as well as random surveys of consumers in the New Jersey area.

"We got all kinds of information on demographics, name recognition, and what causes people to buy insurance," Mr. Allen said.

Commercial clients, the study
Continued on next page

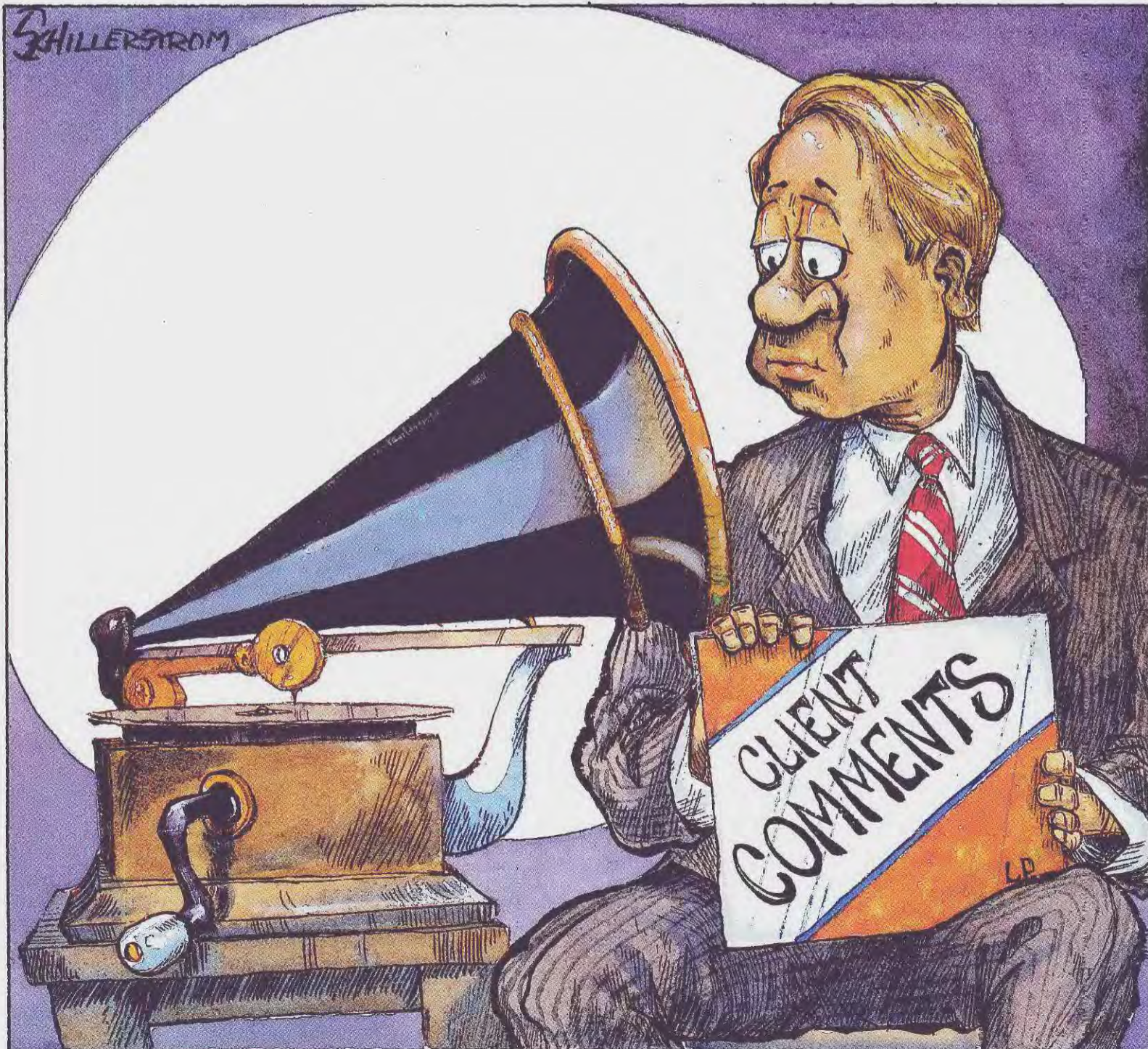


One problem with LUST, according to a panel of experts: Tricky new rules from Washington.
Page 20C

New president of IIAA heralds agents' role. Predecessor seeks conciliation with insurers.
Page 20D

Agents, insurers and regulators blame each other for industry woes. They all blame personal auto.
Page 20G

Merger proposal received warmly at convention. Good will, though, far from unanimous.
Page 20H



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Agent/Broker Topics

Agent service

Continued from previous page
found, perceived "agencies" as representing insurers rather than clients. Customers preferred "brokers" or "larger commercial lines agencies." So Rue took "Agency" out of its name and now emphasizes its ties to large commercial clients and downplays its contracts with insurers.

Success with that program spurred Rue to conduct ongoing surveys. It now produces three different questionnaires and sends them to clients with claims, new clients, and clients renewing their policies.

"We try to stay in touch with our clients constantly," Mr. Allen said.

Most responses are favorable, though some customers complain about a time lag between when they file a claim and when an adjuster gets back to them.

Each client filing a claim is sent notice of when the agency received it and how soon an adjuster should make contact, Mr. Allen said. Rue also manages to settle about 20% of these claims in-house with draft authority to prevent such problems, he added.

Rue's approach to customer service has paid off: Annual premium volume for commercial and personal property/casualty alone reached about \$25 million last year, and client retention rates are now about 90%, Mr. Allen said.

But clients can be helpful even when the agency is losing them. Hence the popularity of "exit interviews," which are used to determine what, if anything, the agency did to cause the client to leave.

Those interviews have several important features, said Mr. Bailey, whose \$8 million annual premium volume agency has been

Top among the "constructive criticisms" offered by commercial clients was a demand for more loss control service, he said.

According to Mr. Brown, they also wanted clearer invoice forms, more general information on current events in the industry, written confirmation of each policy change and information on life, medical

In a 1984 survey, Rue Insurance Agency found that customers preferred dealing with 'brokers' or 'larger commercial lines agencies,' observes Vp Donald B. Allen Jr. So 'Agency' was soon taken out of its name.

doing phone interviews for several years. Since beginning the interviews three years ago, policy retention rates are up about 5 percentage points, he said.

Most customers cite price as their main reason for leaving. Exit interviews give Bailey Insurance & Financial Services an expiration date for the new policy to work with, so that an agent can try to win back the customer near the expiration of that policy.

Like Rue, Bailey sends questionnaires to personal lines clients when a claim is paid. Responses—so far 95% positive, he says—help identify the agency's top performers.

Bailey, though, goes a step further. It tries to keep adjusters on their toes by sending along copies of the questionnaires.

Agencies say customer response rates from service surveys are generally respectable.

Hoffman Brown Co. of Sherman Oaks, Calif., recently got back 500 of 2,200 questionnaires. "It's an indication that our clients really care," said Bernard Brown, president of the \$22 million annual premium volume agency.

A postage and printing bill of \$4,000 was recouped by putting a renewal request on the forms. Clients were extremely forthcoming about their expectations for service, said Mr. Brown.

and other personal lines they didn't know the agency provided.

On-site involvement with commercial clients has since increased. "There's a lot of competition out there, and if we're not doing what they want, somebody else will," he added.

Rue and Hoffman Brown each developed their own forms and questionnaires. But generic forms from a variety of sources—including Insurance Marketing Services of Santa Monica, Calif.—put them within the reach of even the smallest agencies.

Smaller agencies can send forms directly to clients or have customer service representatives use them on "annual reviews" over the phone, said Mary Beth Bolen, president of Successful Office Systems, an agency consulting firm in Flint, Mich.

Ms. Bolen noted, however, that few of her clients were taking advantage of the opportunity to learn from their clients. "A lot of agents still think a personal lines renewal is automatic and today, it is not," she said. Successful agents, Ms. Bolen said, avoid blanket service policies. They know that clients have individual needs and priorities. Determining those needs may mean more time and trouble in the short run, but the effort pays off in retentions and client relationships, she noted. ■

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Experts tout service efforts, but remind agents: 'Be nice'

Customer service can take many different forms, from educating employees to soundproofing your offices, experts say.

Continuing education, especially for customer service representatives, tops the list of ways agencies can improve service.

Enrollment is running high at all three formal CSR programs available to agencies—offered by the Independent Insurance Agents of America, Professional Insurance Agents, and the Society of Certified Insurance Counselors.

A survey by Successful Office Systems of Flint, Mich., found that the three programs combined had graduated more than 12,000 people as of September 1989, said President Mary Beth Bolen. Total participation last year was nearly 100,000, she added.

And principals are keeping a keener eye on who they hire, said Robert E. Kurdziel, president of Kurdziel & Associates, an agency and consultant based in Atlanta. "The other side of errors and omissions is good client service," and by hiring strong candidates, agencies are both serving the client and protecting against E&O exposures, he said.

Kurdziel & Associates carefully structures its agency operations, launched several years ago, to allow employees to achieve their full potential, he said. For example, licensing is required for all CSRs within six to 12 months of being hired, he said.

Selective hiring can also build and sustain an agency's good reputation. "Better employees are attracted to a more professional atmosphere," Mr. Kurdziel said.

Careful management of CSRs also facilitates customer service, said Paige Proctor, president of Eaglemark Consulting Group in Bloomington, Ill.

Mr. Proctor advises agencies to appoint a single person or department to process claims, freeing up CSRs to cross-sell personal lines business to commercial clients.

"You're a fool if you don't ask the client about every other kind of insurance they might need," Mr. Kurdziel added.

Lastly, Mr. Kurdziel suggests that the Golden Rule is the best. "Be nice to people; this is a very difficult business," he said. "We should be solving our clients' problems and looking after their business."

—By Laura Mazzuca

Agents must communicate UST rules: IIAA

By LAURA MAZZUCA

CHICAGO—Underground storage tanks, many of them forgotten for decades, are coming back to haunt property owners—and their insurance agents.

New U.S. Environmental Protection Agency requirements for small and medium-sized tanks are to be phased in next year, and agents must keep owners abreast of the changes and find coverage, said R.C. Riley, senior vp of the Independent Insurance Agents of America.

"Our main responsibility is to manage our clients' risks to protect their assets," he said. "The only way we can do this is if we understand the regulations, why they were written and how they affect our clients."

Mr. Riley moderated a panel on "The Problem with LUST" at the annual IIAA convention last month in Chicago.

Coverage for LUST—Liability for Underground Storage Tanks—remains rather sparse, even as the costs remain high, said Phillip Chisholm, executive vp of Petroleum Marketers Assn. of America, which represents about 12,000 marketers.

The first EPA technical standards and financial responsibility limits, adopted in 1988, affected only large marketers like service station chains, said Gilberto Alvarez, a manager in Wisconsin's storage tank programs.

Technical standards include requirements on piping construction, installation, leak detection, closure and release reporting and remediation, Mr. Alvarez said. Large marketers are required to demonstrate financial responsibility in the amount of \$1 million per incident and \$2 million aggregate.

That standard can be met with insurance, self-insurance and trust funds in about 40 states, he added.

For small marketers—those with 13 to 99 underground tanks—the deadline was moved back to 1991, Mr. Chisholm said.

Small owners and operators will be required to demonstrate financial responsibility in the amount of \$1 million per incident and \$1 million aggregate.

About 500,000 retail service stations, with about 1.5 million underground storage tanks, are not affected by the EPA rules. Those include transportation companies, taxi fleets, farms and other businesses, Mr. Alvarez said.

With the deadline near, small marketers worry that insurance will be unavailable, Mr. Chisholm said.

Some insurers have entered the market, but not enough to bring down costs, he added.

High costs prevented 60% of the Petroleum Marketers Assn. members from securing coverage last year, Mr. Chisholm said. Only half of those required to have the coverage did, he added.

Mr. Chisholm predicts that as tanks are removed or upgraded to comply with the phased-in rules, more insurers will offer the coverage.

At least one insurer—Agricultural Excess & Surplus Insurance Co. in Cincinnati—considers UST coverage a growth area. Federal financial requirements are offering insurers a "window of opportunity," says Richard C. Koscielak, its general manager.

It offers either an occurrence or claims-made policy with limits of \$1 million/\$2 million aggregate. In 1988, when Agricultural began offering the coverage, competition was almost nonexistent and the company thought it could compete

effectively on price, he said.

Initially, the company aimed for a 15% market share; it now has almost 40%, he said. So far the insurer has covered more than 9,000 tanks, at an average cost of about \$700 per tank. This translates to more than \$6.3 million in premiums in 1988, and he estimated that there is at least \$200 million available in the marketplace.

"The marketplace is massive," Mr. Koscielak said. "There are tanks in places you wouldn't dream of."

That prospect makes agents leery. Experts on the panel pointed out that many of their customers may not even know they have storage tanks on their property.

"It's fertile ground for an E&O

claim," Mr. Riley warned.

EPA regulations are complex, and Mr. Riley advised agents to keep current copies and learn them

The market is 'massive,' says Mr. Koscielak. 'There are tanks in places you wouldn't dream of.'

by heart.

Agents must also carefully examine the insurers that offer UST protection. "Many companies say that their policies meet the EPA

regulations. But you can't be absolutely sure unless you know the regulations and what they require from your customers," he said.

Insurers offering some form of this coverage include American International Group in New York; CIGNA Corp. in Philadelphia; and Federated Mutual Insurance Co. in Owatonna, Minn.

Agents should consider a company's surplus, premium volume, number of policies written, number and size of claims and experience of principals in writing USTs before placing any coverages, Mr. Riley said.

Policies differ as well, and not just on limits and deductibles. For example, while some cover only the tanks themselves, others might in-

clude coverage for above-ground tanks, environmental assessment and even business interruption.

A UST form now being developed by the ISO will help standardize these forms, he said.

Mr. Riley told the agents group that reading about real-life losses will help them understand what their customers face.

Finally, he advised, "Don't let the word 'pollution' scare you."

The EPA offers a number of publications, audiovisual programs, and computer software on USTs. For information, contact the U.S. Environmental Protection Agency, Office of Underground Storage Tanks, P.O. Box 6044, Rockville, Md. 20850.

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New IIAA head touts importance of agents

By LAURA MAZZUCA

CHICAGO—Independent agents must never lose sight of their important role in the national economy, says the new president of the Independent Insurance Agents of America.

"Don't ever question for an instant the necessity and desirability of independent insurance agents and the service we provide," A. William Bailey Jr. told the trade group at its annual convention in Chicago last month.

"We bring value to the consumer, and we provide companies immediate market opportunities wherever they wish to sell their products. The independent agent is the most important part of the equation," he said.

Wielding figures from the U.S. Bureau of Economic Analysis, Mr.

Bailey stressed the "magnitude" of the insurance industry.

In 1989, it contributed \$101 billion to the gross national product, the bureau estimates.

Mr. Bailey urged agents to compare that figure to the relevant numbers for the auto and banking industries: \$49.9 billion and \$85 billion, respectively.

The entire industry employs 2.3 million people, with agencies, brokers and service units accounting for about a third of that total, according to Mr. Bailey.

"The efforts of each independent agency and the collective efforts

through this association impact every aspect of our society," Mr. Bailey said. "We meet the basic needs of every citizen: the need for financial security and asset protection."

But Mr. Bailey reiterated the importance of agents and their insurance companies communicating freely.

"Hear me well: Without the fine companies we represent, we're dead, and without us, these same companies are impotent," Mr. Bailey said.

"Ours is a total interdependency," he said.

Common goals and free communication between agents and insurers are particularly important as the marketplace changes, Mr. Bailey said.

"Gone are the days when society will permit us to pick and choose

whom we will serve," he said.

"Society will not tolerate unavailability. People need insurance, and their needs must be satisfied within a framework of underwriting that is fair and reasonable."

The incoming president chastised insurers—and agents—who neglect personal lines coverage as unprofitable.

"Our unrelenting quest for the perfect risk is reminiscent of Ponce de Leon's search for the fountain of youth. It is draining our system of vitality and common sense," he said.

"The decade of the '90s demands that we develop and adopt underwriting philosophies that produce a reasonable profit and provide access to all but the very worst risks," added Mr. Bailey.

He also urged agencies and in-

surers to support state solvency regulation, and to continue to improve communications with the general public.

Mr. Bailey is chairman of Bailey Insurance & Financial Services in Waco, Texas.

He has been executive committee liaison to the communications, finance, commercial lines and membership committees and a member of the ISO Senior Company Forum and the Plus Group Steering Committee.

He has been chairman of the Government Affairs Committee, the Future One Federal/State Legislative Task Force and the Insur-Pac chairman from Texas.

On the state and local levels, Mr. Bailey has been state national director from Texas and president of the Waco Association of Independent Insurance Agents.



Mr. Bailey

Predecessor urges restoring ties with insurers

By LAURA MAZZUCA

CHICAGO—If independent agents and the insurers they represent are to survive the problems currently plaguing the industry, both sides need to re-establish personal relationships, says the past president of the Independent Insurance Agents of America.

"While we might have continuing cause to talk about insurance companies, I believe we should be talking with insurance companies," former president Southgate Jones Jr. said at the trade

group's annual convention last month in Chicago.

"I believe that the personal relationships between agents and companies are more important than the impersonal institutional contacts that have caused considerable strain in recent times," he said.

Mr. Jones urged the agents to take the initiative in talking to the insurers whose actions may threaten their clients.

"Not all companies understand fully the depth of an independent agent's commitment to his clients,

and the strength this brings" to the system, he said.

"The insurance business was built on personal relationships, and that is a fact we must not forget, especially when many of today's company owners and managements grew up outside the system and have missed those traditions that have made our system strong," Mr. Jones observed.

Communications have broken down in recent years, he said.

To restore them, Mr. Jones advised, "set aside the emotions that tend to emerge during times of market crisis and unfavorable financial results" and tell companies what clients—including those who buy personal lines policies—are demanding.

"We must talk with those companies who tell us that they can make more return from short-term

money markets than they can from writing automobile insurance," said Mr. Jones.

Insurers that think like "money movers" rather than "risk takers" need to be convinced that other companies will be willing to write personal lines policies and will snap up the estimated \$100 million of personal lines premiums in the United States.

Mr. Jones described the past year in office as a time of "relocation, restructuring and rededication," beginning with the move to new headquarters in Alexandria, Va.

He cited other highlights of that year:

- The IIAA Board of State National Directors funding an automation study by Perot Systems Corp. of Washington, D.C. The automation study is due to be released this fall.

- Merger talks resuming recently after a "seven-year, self-imposed embargo" by the National Assn. of Professional Insurance Agents.

Representatives of the two groups met Aug. 21 and further talks are scheduled soon. "I can

report to you that the traditional differences between our organizations were discussed in a wholesome way and do not appear to stand in the way of further progress or, in fact, ultimate consolidation," Mr. Jones said. Feasibility reports are to be submitted to both boards by next spring and members could vote on the proposal by fall, he added.

- The adoption of a five-year plan emphasizing public relations and advertising, "growing out of a strong need for IIAA to speak more directly to the general public and to our membership."

- Increased activity in IIAA's education department. A professional designation program for customer service representatives established in 1988, graduated its 2,000th student at the convention and Project InVest, which introduces insurance education to high schools and community colleges, grew from 93 to 123 schools across the country.

The education department also established a speaker database containing more than 150 available instructors.



Mr. Jones



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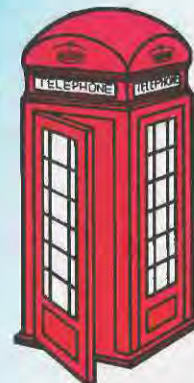
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Quake experts urge disaster readiness for claims handling

By LAURA MAZZUCA

CHICAGO—Record-setting damages from Hurricane Hugo, the California earthquake and other disasters have made agents more aware that they need to plan ahead to handle such incidents, several agents say.

"It is very clear that the claim response cannot be one of 'business as usual, just more of it,'" said Joseph I. Quinn, president of Allan M. Walker & Co. Inc. in Taunton, Mass.

Mr. Quinn, who spoke at the Independent Insurance Agents of America's annual meeting last month in Chicago, is the IIAA representative to the Earthquake Project—a lobbying and research group that supports federal earthquake coverage.

According to the Insurance Services Office Inc., the average annual catastrophic loss from 1970 to 1989 was \$1.8 billion, said Jeff Albright, director of education for the Independent Insurance Agents of Louisiana in Baton Rouge. Mr. Albright moderated the discussion.

Both the frequency and magnitude of catastrophes is expected to increase. For the years covered by the ISO figures, up until 1989, the previous record annual insured loss was \$2.8 billion in 1985. Hurricane Hugo alone eclipsed that figure. Its \$4.2 billion in losses, combined with more than \$1 billion from the California earthquake, comprised most of the unprecedented \$7.6 billion in losses last year, Mr. Albright pointed out.

Mr. Quinn drew a grim picture of what could happen in another severe earthquake.

In a study for the Earthquake Project—which was formed five years ago by a coalition of insurers and associations who cited a lack of affordable insurance—geologists, seismologists and engineers point to a 50% chance of an earthquake "which will bring forth destruction as never before experienced" hitting this country within 20 years, he said.

One potentially devastating target would be the New Madrid Fault in Missouri. Property damage could hit \$25 billion and 2 million claims could be expected, he said. Such a quake could kill 3,000 people, injure another 25,000 and leave a quarter-million homeless, he said.

Insurers, Mr. Quinn said, are ill-prepared for such a disaster. Companies would have to scour the country for adjusters; cash flow to agents and insurers would slow to a trickle; ACORD forms would be exhausted within days; and insurers would be forced to process each others' losses.

Losses on this scale would impair insurer surplus; new business would drop to nothing and renewal rates would fall to a third, Mr. Quinn said.

Severe damage could put power out for up to a month, affecting shipping, transportation and business across the country, he added.

Yet federal law allows insurers to set aside only after-tax dollars in anticipation of such a disaster, he said.

"If we are to have any chance at all of solving these problems, there has to be a public/private partnership between the federal government and the insurance industry," Mr. Quinn said. "The Earthquake Project does this by the establishment of a federal corporation with a primary and excess program for handling a major earthquake loss."

The plan aims to provide all citizens with reasonably priced universal earthquake insurance. A primary program would cover only shake damage and volcanic eruption, with

deductibles ranging from 2% to 10%, depending on the zone.

One- to four-family dwellings, mobile homes, apartments and condominiums would be included.

An excess program would cover shake damage, fire, package policies, workers compensation, general liability, glass, burglary and theft and other risks, he added.

Expenses, including commissions, could be deducted from the premium.

Continued on next page

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Coverage underwritten in Federal Insurance Company.

Disaster plans

Continued from previous page
 ums insurers collect. The remainder would be placed in a primary federal corporation fund solely for an earthquake disaster, Mr. Quinn said.

Several bills to create federal earthquake insurance and reinsurance are before the U.S. House of Representatives (BI, April 9).

Since 1968 a similar federal program has provided flood insurance. But even with coverage readily available, it remains "probably one of the toughest sells of any insurance that we have," said Robert Ross Jr., vp of education for the Florida Assn. of Insurance Agents in Tallahassee.

"One hell of a lot of flood insurance (is) not written on properties that ought to have" it, he added.

About 2.3 million National Flood Insurance policies are now in effect, but that represents only a fraction of

the estimated 10 million to 12 million properties in designated flood areas, Mr. Ross said. Florida has 35% of all federal flood policies, followed by Louisiana, Texas, California and New Jersey. Other states have negligible shares.

Nearly a third of flood losses, however, have occurred in areas not designated special flood areas.

In certain designated hazard areas, flood insurance next year will become a requirement for securing a bank loan or mortgage, Mr. Ross said. Congress made that change because relatively few victims of disasters like Hugo had flood coverage, he said.

In the early 1980s, 200 insurers signed up to write the flood coverage that the federal government had serviced and underwritten. Only about 70 still write the coverage and 10 of those write 90% of the business, Mr. Ross said.

"Companies are doing an adequate

job, but they're not doing a marketing job," he said.

He recommends that agents step up selling efforts even where the coverage requirement will not be part of mortgage lending rules.

Promoting the coverage could protect agents against errors and omissions claims. Mr. Ross suggested that agents secure waivers from customers saying the insurance was offered, even if customers decide against it.

He also credits the federal program with encouraging better flood plain management and mitigation. A recent community rating system, for example, reduces rates for municipalities that use flood preparedness programs and tighten building codes.

The program also has a new condominium master policy and a preferred risk policy, Mr. Ross added.

One panelist with reason to know advised agents to be as prepared as their customers to weather the storm

after a natural disaster.

William C. Thomas, president of Carswell of Carolina, an agency in Hilton Head, S.C., related his personal experiences after Hurricane Hugo hit his area.

Hugo, he said, "was not a normal hurricane," both because of its size and the surrounding circumstances.

Travelers Corp., Aetna Life & Casualty Co. and several other insurers had sustained heavy losses on policies in the Caribbean even before Hugo reached the East Coast, he said.

Hugo was also unique in that it did not stop at the coast. Charlotte, N.C., which is 200 miles inland, sustained major damages and inland areas accounted for as many, if not more, claims as the coastal areas did, Mr. Thomas said.

The island of Hilton Head, where Mr. Thomas' business is located, was evacuated when Hugo was spotted,

but sustained no damage.

Mr. Thomas cited the experiences of Robert C. Heffron, president of the Heffron/Ingle/McDowell/Cooper Insurance Agency in Charleston, S.C.

That \$35 million premium volume agency, which ordinarily gets 300 claims a month, got 8,231 claims from Hugo alone, he said. Phone calls skyrocketed from 770 a day to 2,400 in the weeks following the storm. Heavy claims processing left the agency unable to pursue new business; its new account figures dropped to 11 a month from 45 to 60 before the storm. The dollar value of Hugo claims exceeded \$140 million.

Nearly two months of seven-day workweeks took its toll on personnel. The agency went without power for four days; its computers were out of service for 11 days. When Hugo struck, there were 1,000 ACORD forms on hand, a total that would prove woefully inadequate. And cash flow to the agency virtually stopped.

Mr. Thomas now stresses the importance of developing a preparedness plan for such crises.

Since Hugo, state associations and the IAA have developed "A Guide to Catastrophe Preparedness," which agents can use while setting up plans. It includes a pre-catastrophe agency plan, a post-catastrophe claims handling plan, and a public relations plan to help agents handle calls from the media during a crisis.

Mr. Thomas noted that insurers did "an outstanding job of handling this disaster under unusual circumstances" by quickly sending out adjusters and processing claims.

However, things could have gone better if more insurers had formal disaster plans, he said.

Copies of the IAA "Guide to Catastrophe Preparedness" sell for \$14.75 from IAA Marketing, 127 S. Peyton St., Alexandria, Va. 22314; phone 1-800-221-7917.

October November December

Customer Service IAA Conference Report

Are agents and brokers delivering what their clients are looking for? BI editors will focus on how agents and brokers can improve the service they give to clients and look at customer service representatives, their responsibilities and their compensation. Plus, this section will report on happenings at the annual convention of the Independent Insurance Agents of America.

Published: October 1

Automation: Interface With Insurers

BI editors examine state-of-the-art automation equipment and software that agents use to communicate with their insurance companies. Plus — inside views — agents talk about hardware and software, what systems and programs they're currently using, what works best for them with insurers, and what doesn't.

Issue: November 5
Ad Closing: October 24

PIA Conference Report

The National Association of Professional Insurance Agents Conference is one of the year's most important gatherings of insurance producers. BI editors will report on sessions, providing readers with up-to-the-minute news and information on industry trends, developments and market forecasts.

Issue: December 3
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Agent/Broker Topics

Agent meeting attracts 2,500

CHICAGO—More than 2,500 agents and guests from across the country enjoyed balmy autumn weather along the lakefront here at the 95th annual convention of the Independent Insurance Agents of America.

The convention, which was held concurrently with the Independent Insurance Agents of Illinois, was particularly well attended by the Illinois contingent.

Visitors to Chicago sampled the local flavor—from haute cuisine at some of the world's most famous restaurants to the burgers and "cheeps" at the famous Billy Goat Tavern. Others found fun at the old ballpark, as they enjoyed performances by the Chicago Cubs and White Sox.

The convention's scheduled speakers included political satirist Mark Russell, business leader H. Ross Perot, and author and editor Gloria Steinem.

For the second consecutive year, Lloyd's of London was represented at the IAA convention, with guest speaker Murray Lawrence, Lloyd's current chairman.

The convention's exhibit area was teeming with about 100 vendors, including firms offering agency automation systems, insurance companies, and others.

Agents wandering the exhibit hall could enter a drawing to win a bowl of money from Hull & Co. Inc.; have their picture taken with a boa constrictor, parrot or toucan at the Mutual of Omaha booth; get free golf balls at the Transamerica booth; and munch Swiss chocolates from Zurich-American Insurance Group.

—By Laura Mazzuca

Panel finds industry facing stiff challenges

By LAURA MAZZUCA

CHICAGO—A panel of agents, insurers and regulators, brought together to discuss the "challenges of the '90s," ended up sharply divided and agreeing on only one thing: Those challenges are daunting.

Topping the group's list of industry problems was personal lines auto insurance, in both its potency as a political rallying point and its continued drag on insurer profits.

Workers compensation and solvency regulation also figured prominently in the discussion last month at the Independent Insurance Agents of America convention in Chicago.

But personal lines auto coverage occupied center stage.

The industry as a whole has not made money on the policies for seven years, even including investment income, said Gerald L. Maatman, president and chief executive officer of the national property/casualty insurers of Kemper Group in Long Grove, Ill.

He said the only major exception is direct writers, whose sales costs—including commissions and contingencies—are 7% to 9% lower than agency insurers'. Direct writers, he added, will be writing even more of the coverage as more insurers stop writing personal lines.

Peter Lardner, chairman of Bituminous Insurance Co. in Rock Island, Ill., said insurers paid out 96 cents for every dollar they took in on private auto liability coverage in the first quarter. A.M. Best Co. puts the mid-year combined ratio for the line at 118%.

IAA President A. William Bailey Jr. countered that maintaining access to these coverages is vitally important to independent agents.

"The simple fact, as far as independent agents are concerned, is that we must have personal lines automobile for our customers," said Mr. Bailey, chairman of a Waco, Texas, agency. "We can't walk away from it, not if we intend to stay in business."

And James E. Long, North Carolina insurance commissioner, noted that regulators are in office to protect consumers. To do so, he said, they will require admitted companies to issue personal lines policies.

Kemper's Mr. Maatman tried to turn the tables, saying states that bar insurers from raising rates—and thus from turning or increasing profits—discourage participation. He called New Jersey and Massachusetts two particularly egregious examples.

That argument did not sit well with the commissioner. Mr. Long said that if companies do not prove their cases and "their data stinks," regulators are right in denying rate hikes.

All sides considered no-fault the best possible response to auto insurance problems. Mr. Long, though, pointed out that no-fault would not affect rising auto repair costs.

Several experts said they feared workers compensation coverage, a growing problem for insurers and agents, would follow the same course as personal auto insurance.

"Workers compensation coverage is rapidly becoming unaffordable for the small employer," said Bituminous' Mr. Lardner.

Agents and insurers agreed on the importance of getting insurers, other businesses and labor groups together to study the problem.

Mr. Bailey praised a business-insurance coalition in his home state of Texas. "This is ultimately what has to happen everywhere," he noted.

But Mr. Long was incensed that such coalitions were proceeding without input from regulators.

"Don't just call on your regulators when you want us," he said. "Let us get involved with these debates early on, not long after you've come up with a great coalition."

Insurer insolvency is another prob-

lem, all sides conceded, that will stay with the industry for years to come.

They also agreed that, at least generally, states ought to retain regulatory authority over insurers.

"Solvency regulation should be the preeminent issue among state regulators," said Robert E. Vagley, president of the American Insurance Assn.

He and several other industry spokesmen conceded to a congressional panel that a "federal role" in regulation may be necessary (BI, Sept. 24).

During the IIAA discussion, Mr. Vagley complained that good insurers get burned twice: first by price competition with reckless companies and then by guaranty fund assessments.

Spectacular frauds—like the failures chronicled in a recent critical

congressional report (BI, March 5)—are still possible and states are best equipped to spot them, he added.

Insolvencies will continue to become more frequent and more complex, agreed Mr. Maatman. Kemper, one of the largest U.S. insurers, now pays more than \$1 million a month to guaranty funds, he said.

Mr. Long, the president-elect of the National Assn. of Insurance Commissioners, says states are better-equipped than federal agencies would be to spot problems. He pointed to improvements in North Carolina, like the adoption of an audit mechanism to determine if insurers meet NAIC financial guidelines.

His office also increased insurer

examinations to once every three years, enhanced the Insurance Regulatory Information System; and added two reinsurance specialists.

He and others on the panel said agents, insurers and regulators must work together to improve the system.

Agents, in particular, must continue strong lobbying on behalf of the McCarran-Ferguson Act, auto and workers comp reforms, and against allowing banks to underwrite or sell insurance, said Mr. Bailey.

"The key word is involvement, both nationally and back in your own communities," said Edward W. Bowman, president of Stewart Keator, Kessberger Lederer Inc. in Burr Ridge, Ill. He advised agents to get involved in local politics to improve the industry's dismal image.

"You are the best voice to represent your customers, who might not be as organized as you are," agreed Mr. Long. "I do not want to encounter any local banks selling insurance any time in the future."

Mr. Long also emphasized the importance of agents and insurers "making peace" to face the challenges ahead.

And Mr. Lardner added that the challenges will create a "huge opportunity" for agents creative enough to sell to more savvy clients. "We have to become more sophisticated as they become more sophisticated," he said. "Being generalists just won't cut it anymore."

Jeffrey M. Yates, executive vp and general counsel for the IIAA, moderated the discussion. ■

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As momentum builds, agents hail merger talks

By LAURA MAZZUCA

CHICAGO—In a crowded convention exhibit hall last month, agents said they were optimistic, some more cautiously so than others, about ongoing merger talks between the two rival national agent trade groups.

"It's about time!" D.R. Herrling said at the 95th annual meeting of the Independent Insurance Agents of America in Chicago. "If we're all in the insurance business, PIA problems are the same as IIAA problems," added the president of Herrling and Schmitt Inc. in Freeport, Ill.

Other agents remain openly hostile toward merging with the National Assn. of Professional Insurance Agents.

"We don't need the PIA," said Francis A. Herzog, president of Stouffer-Herzog Insurance Agency Inc. in Ashtabula, Ohio. He and other IIAA members would not benefit from the move since "we have the best education and other programs in the country," he said.

Yet proof of movement toward consolidation came quickly at the Chicago meeting.

The two groups "need to focus our collective priorities and jointly address negative change within our companies to seek solutions to these problems," PIA President Richard Yingling said in his address to the opening session.

"As we all know, the insurance market is going through some major changes and adjustments, which are causing some agents concern and pain in terms of company withdrawals from markets, commission cuts and agency contract terminations," he said.

Mr. Yingling remarked that initial merger discussions were "open, honest and friendly." Those talks, he added, created an environment "in which everything is on the table for examination with no sacred cows."

He rejected some agents' desire for "us to act today, and work out the details later." The two groups, he said, are proceeding prudently and deliberately to protect the interests of all members.

"We would not do it (act hastily) in our own businesses, and we should not give anything less in our members' interest in these discussions," said Mr. Yingling, who was attending the meeting with PIA Executive Vp Donald K. Gardner.

Leaders of both groups are to meet again this month.

states, mergers were not universally endorsed at the IIAA meeting. Several agents said they were concerned the mergers would fail if they weren't carefully planned and executed.

One veteran of a failed merger proposal cautioned that states should delay action until the national associations move.

Robert J. Dennis—president of Bucova Insurance Agency Inc. in Grundy, Va., and president of the IIAV in 1984-1985—says executive level "interference" scuttled merger talks with the PIA of Vir-

'It's about time!' says D.R. Herrling, an Illinois agent. 'If we're all in the insurance business, PIA problems are the same as IIAA problems.' But Francis Herzog, an Ohio agent who sees no gains from a merger, says 'We don't need the PIA.'

"Maybe people in there (the PIA) are thinking a little more progressively," said Roger D. Kephart, of Fall & Fall Insurance Agency in Fulton, Ky., after hearing Mr. Yingling's address. "But who knows if it will ever even happen?"

On the state level, it's happening now. Minnesota chapters of both groups made it official at their separate annual meetings last month. Both voted overwhelmingly to consolidate as of Jan. 1, 1991.

That vote, after two years of negotiations, signals the first merger between the two organizations. With nearly 3,000 members, the combined group will be the largest state independent agent association in the country.

In Michigan and other states, the two groups are studying merger possibilities. Also, the two Missouri associations have agreed to hold the first-ever joint state convention in 1991.

Despite their support in some

ginia in those years.

And Earl Hill Jr., of Kuhn Robertson Hill Insurance Inc. in Milwaukee, said PIA of Wisconsin has contacted the IIAA to consolidate. The idea, he adds, makes a certain amount of sense: The associations jointly fund a political action committee and hire the same lobbyists.

But Wisconsin chapters should wait to see what the national groups do before beginning "a very expensive amalgamation" that might have to be redone, he added.

Most agents at the IIAA meeting said they considered a national consolidation beneficial.

"There is so much talent in both organizations," said Shirley B. Murray, vp of Murray Insurance Services Inc. in Palm City, Fla., which belongs to both groups. "But maybe we won't spend so much time opposing each other if they consolidate."

Herman H. Murray, her husband and president of Murray Insurance, commented that a national consolidation "wouldn't make any difference" because their agency uses the services of both organizations.

Both Murrays praise the IIAA continuing education program—even though their son is enrolled in the PIA program at Drake University, "which is great," added Mrs. Murray.

However, she noted, a merger might improve lobbying efforts.

"It might look better if we were united, otherwise to the public it looks like we're divided on the issues," she said.

Many other agents cited lobbying as a major factor in their support for a consolidation.

"The banks are outspending us," said Daniel C. Pancake, vice chairman of Affiliated Insurance Consultants Inc. in Burr Ridge, Ill. "Consolidation will give us a bigger lobbying voice. (IIAA Vp of government affairs) Paul Equale needs help."

"The clout from operating as a single unit will be stronger," agreed James H. White, president of American Insurance Agency of Augusta, Ga.

Even on lobbying strength, the acclaim was not universal. A few agents favored action by two separate associations.

Although the two occasionally have split in the past, often over consumer issues, legislators are more impressed by multiple lobbying efforts, said John H. Alberts Jr., senior vp of William H.

An on again, off again merger

Here is a chronology of the events leading up to the proposed IIAA/PIA consolidation:

Nov. 15, 1983: After several abortive attempts at consolidation on both state and national levels, PIA directors expressly forbid talk of a merger.

September 1986: The Indiana chapters of the two groups begin merger talks. Discussions fall through without a decision.

April 1988: The Independent Insurance Agents and Brokers of California and the PIA of California and Nevada abandon merger discussions when the PIA affiliate says dues will rise for its members.

June 1988: Minnesota affiliates of both organizations form a joint committee to study consolidation.

April 1990: Michigan affiliates announce the formation of a similar task force.

June: Minnesota affiliates announce they intend to consolidate. The National IIAA says it approves and an official urges PIA National to discuss possible initiatives.

July: PIA National Board rescinds a 1983 directive against merger talks with IIAA.

Aug. 21: IIAA and PIA agree to pursue national merger plans at a high-level meeting.

Sept. 7: In Missouri, affiliates of the two groups agree to hold their first joint state convention in 1991.

Sept. 12-13: At their separate annual meetings, both groups in Minnesota vote overwhelmingly for a merger as of Jan. 1, 1991. They would be the first state affiliates to merge successfully.

Thompson & Co. of Chicago.

Most agents said a consolidation would eliminate a lot of duplication and make the single resulting entity stronger.

"There is probably no need for two organizations, because the old stock versus mutual separation is meaningless today," said Mr. Hill of Kuhn Robertson. But years of tradition and independent operations could make a transition difficult, he added.

James A. Mulhall, an account executive at H.D. Segue Insurance in Waterbury, Conn., used to belong to both groups but dropped out of the PIA when he took his current position. Overlap between pro-

grams and benefits makes a single organization desirable, he said.

Other agents cite philosophical differences that could keep the groups separate.

"The PIA is an old mutual insurance association, and they've never changed their philosophy," said Mr. Herzog. "The Big I does all the political things that the PIA only says it does, but doesn't."

Mr. Alberts of William H. Thompson in Chicago observed that an IIAA consolidation with PIA "doesn't carry a lot of baggage in Chicago" because the PIA has less of a presence in Chicago and is more important to smaller and rural agencies.



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Business Insurance

Lloyd's responds to client needs: Lord

By MICHAEL BRADFORD

HOUSTON—Allowing Lloyd's of London syndicates to write many types of coverages will make the market more attractive to large insurance buyers, predicts the market's chief executive.

Insurance buyers consider the current system "more than somewhat parochial," said Alan Lord, chief executive and deputy chairman of Lloyd's.

Currently, syndicates can write only one of four lines of coverage: marine; non-marine; aviation or auto.

Beginning next year, each syndicate will be allowed to write all types of business on a single policy.

The current arrangement complicates risk placement and claims settlement for both brokers and policyholders, Mr. Lord conceded.

"Because we recognize that in the Lloyd's market, as in any other business, the customer is king and that in our case the broker is our proximate customer, we have been addressing ourselves to both of these problems," Mr. Lord said at the Houston Marine Insurance Seminar sponsored by the Houston Mariners Club earlier this month.

Some large customers, especially energy companies, "are looking for a single comprehensive policy which covers all their risks from employers' liability at the one end to freight and physical damage to installations at the other," Mr. Lord said.

"If we do not offer the kind of single policy cover for which they are looking, it is likely they will turn elsewhere," he said.

"I have every reason to believe that the move to a single market will make Lloyd's a more attractive insurer."

Among the changes Lloyd's officials expect as a result of the mar-

ket dropping its traditional structure are mergers of "syndicates that wish to acquire additional expertise or simply to increase in size so that they can write a bigger line on individual risks," Mr. Lord said.

Syndicates must satisfy a few conditions before venturing outside of their areas of expertise, he noted.

A syndicate's managing agent will have to be sure "the underwriting team which acts for the syndicate has sufficient and necessary expertise to assess properly the new kinds of risks," Mr. Lord said.

Failing to do so could prompt regulatory action, he noted.

Syndicates writing different types of risks will be responsible for making sure their underwriters are members of each relevant market association, he said. That "reinforces the expertise" underwriters should have

because an association acts as "a distribution point for information about current legal decisions, changes in regulatory requirements and the like," Mr. Lord said.

And members of a syndicate entering a new field must be given the chance to resign. "This will take time, which is why it is not possible to introduce the change before the end of the year," Mr. Lord explained.

However, "I do not expect 1991 to produce revolutionary changes," he emphasized.

Rather, Mr. Lord predicts evolutionary developments "in response to the needs of the policyholder."

And, Lloyd's always will have room for specialists, he said.

The best example is in the blood-stock market, where "highly specialized knowledge has been a great attraction to our customers over the

years," Mr. Lord said.

Lloyd's also is trying to improve relationships with brokers.

Mr. Lord pointed out that the market is working closely with brokers to develop computerized procedures to facilitate placing risks.

"Clearly we must work in close collaboration if we are to standardize the way information is presented and reap the economies of scale that information technology can offer."

Improved technology will allow for "the storage of vast quantities of information, with instant access and retrieval at a later stage," which will make claims handling, renewals and adjustments to policies simpler, cheaper and quicker, Mr. Lord said.

But, he cautioned against overreliance on technology.

"Let me hasten to say that we do not see efficient electronic handling

of information taking the place of skilled, face-to-face negotiation. That bargaining process is at the very core of what a healthy marketplace is all about. And, we believe it will always produce a better deal for our customers than the more monolithic approach of some of our competitors."

In addition, a recent publicity push by Lloyd's is "designed to help the brokers by creating a stronger demand for a Lloyd's policy," Mr. Lord noted.

Marketing efforts are helped by Lloyd's signature building, according to Mr. Lord. The 4-year-old facility has become a leading tourist attraction, he said.

"You can think what you like about the architecture of the building—and most people do—but it makes a very fine full-color advertisement," Mr. Lord said. ■



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Managing risks for exporters

By Maura Garych Edgar and Ariel Silva

GLOBALIZATION. For U.S. exporters, mere mention of the word brings forth visions of new business opportunities and new markets. Too often, however, exporters leap into new ventures without adequately addressing the ever-present risks of international trade and developing strategies for controlling them.

As a general business practice, the concept of risk management encompasses the identification and analysis of potential risks, with an eye toward limiting the firm's potential losses.

For exporters, the key to managing risks is an educated assessment of all possible exposures to loss. This assessment, combined with a sound knowledge of how to eliminate or lessen the chance of loss, is vital to ensuring safe, profitable export ventures over the long term.

As a group, exporters face six broad categories of risk, including:

- **Property Risks**—Loss or damage to buildings, equipment or goods due to fire, flood, civil commotion, vandalism, criminal action or other perils, and the resulting interruption of business.
- **Marine Risks**—Loss or damage to cargo in transit and transportation vehicles themselves.
- **Liability Risks**—Injuries, either physical or economic, sustained by third parties due to the use of an exported product or some action of the exporter.
- **Political and Credit Risks**—Losses due to trade embargoes, confiscation, expropriation or nationalization of an exporter's assets by a foreign government, currency inconvertibility, contract frustration, non-payment of foreign receivables, ethnic strife and similar dangers.
- **Personnel Risks**—Expenses resulting from on-the-job injuries sustained by employees.
- **Crime**—Losses resulting from theft of goods, money, financial instruments or business records.

Let's look at these risks in detail:

Generally speaking, domestic exporters have a high concentration of assets—factories, equipment and merchandise—here in the United States, and possibly some assets overseas such as owned warehouses and goods on consignment. The total exposure to property loss is easily quantified by adding the value of all goods and facilities.

Foreign property exposure is typically protected through the purchase of a property insurance policy issued by a U.S. insurer. It's important to note, however, that non-admitted insurance policies (that is, policies issued outside the country where the risk is located), while perfectly legal in the United States, are illegal in countries such as Mexico, Saudi Arabia, Belgium and Italy. Penalties for violation of these non-admitted insurance laws can range from fines to imprisonment.

Exporters also must consider the possibility that an unforeseen event such as a fire or industrial accident might bring production or export activities to a grinding halt. Should the exporter be

International issues

unable to find alternate means of producing or shipping goods quickly, customers may turn to other suppliers.

Potential losses due to business interruption and the extra expenses involved in restarting production are a bit more difficult to quantify, since the analysis must take into account such costs as labor, production and the value of future contracts and ongoing business relationships. However, business interruption insurance is available through endorsements to the basic property insurance policy. In basic terms, this coverage endorsement provides funding for alternate means of production and also helps pay any continuing business expenses during the period of interruption.

The fact is, goods spend most of their time being transported, making marine risks a major area of concern for exporters.

The key to assessing exposure to marine loss is a careful reading of all terms of sale documents, which specify who is responsible for goods when.

The four most common terms of sale are:

- Free on Board, or FOB.
- Free Alongside Ship, or FAS.
- Cost and Freight, or C&F.
- Cost, Insurance and Freight, or CIF.

Basically, the exporter's responsibility for the goods ends at the dock with FOB, FAS and C&F terms. With CIF, however, the exporter bears responsibility for the goods until final delivery to the customer.

Under FOB, FAS and C&F terms, the exporter's total exposure to loss is simply the sales value of the goods while they are being transported, usually by train or truck, to the point of departure. Among the types of insurance available to cover this exposure are inland transit coverages provided through a property policy, extensions to Open Cargo insurance policies, and inland marine insurance contracts.

Exporters doing business under CIF terms usually choose the Open Cargo policy, which provides automatic coverage for all shipments provided they are declared to the insurer. Depending on the volume of exports, Open Cargo policies can be arranged on a monthly declaration basis or, for high-volume exporters, a deposit premium can be paid at the beginning of the year. In this case, the insurer refunds any excess premiums or collects any additional premiums that are due at year-end.

Traditional marine insurance policies are tailor-made to meet the specific needs of each insured. In general, they insure against "all risks" of physical damage or loss due to external causes, plus losses due to strikes, riots, civil commotion and war. It should be noted, however, that the war risk coverage applies on a warehouse-to-warehouse basis, excluding losses that occur during transportation on land.

One caveat: While rates for war risk coverage are fairly stable in times of peace, they fluctuate daily the instant world conditions become tense. Exporters are well advised to keep this in mind when quoting prices to

customers. A simple way to handle this detail is to inform buyers that the stated price of goods is quoted "ex-war risk insurance" and that the expense of coverage must be borne by the customer at the premium quoted by the insurer on the day the goods are shipped.

A final word on marine insurance. Whenever possible, exporters should purchase their own coverage, rather than allowing a customer or freight forwarder to do so. If the responsibility is delegated to a third party who fails to obtain the required coverage, the exporter runs the risk of not getting paid for the goods in the event of a loss. By controlling the purchase of insurance, the exporter is assured of receiving all claim payments.

Liability to third parties is a risk exposure not to be taken lightly. While exporters are not physically located overseas, their products are, making the threat of lawsuit very real indeed.

Liability risk is quite difficult to quantify, since it involves answering the question, How much could I be sued for? Damage awards continue to spiral as the U.S. legal system becomes more and more generous with plaintiffs. Therefore, most U.S. companies purchase high limits of liability insurance ranging from \$1 million to \$100 million or higher.

Most liability insurance policies issued in the United States provide coverage for foreign incidents only if a product is made or sold in the United States and the lawsuit is filed in a U.S. court. Since individuals suffering injuries overseas from an exported product will most likely bring suit in the United States because of this country's notoriously deep pockets, most U.S. liability forms will respond.

However, many countries' local regulations prohibit non-admitted insurance. So, if injured parties bring suit in their own countries, exporters may find themselves without coverage.

In countries where non-admitted policies are permitted, exporters are well advised to obtain a non-admitted foreign liability policy from a U.S. insurer to fill any gaps in their domestic liability insurance programs. In countries where non-admitted policies are specifically prohibited, coverage should be obtained locally.

Typically, export involves the movement of tangible goods from seller to buyer. But it also can involve contracts to provide services, leased equipment—from machinery to aircraft—or the warehousing of goods on consignment. As soon as an exporter enters into a contract to deliver goods or services to a foreign buyer, there is instant exposure to a wide variety of often obscure hazards.

These dangers include:

- **Trade Embargoes/Cancellation of Export Licenses**—Embargoes and license cancellations, whether initiated by the United States or a foreign government, bring an immediate halt to export activities. The risk is especially high if the export involves custom-made goods that cannot easily be sold to buyers in other countries.
- **Contract Frustration**—Frustration can include cancellation, default,

non-payment or any other act that negates the contractual terms agreed to by the buyer and seller of goods or services, whether it results from intervention by a host government or direct action by the customer.

- **Confiscation, Expropriation and Nationalization**—Shifting political climates make it entirely possible for a local government to seize goods, equipment or entire factories from their legitimate owners or operators. Should this occur after goods are shipped but prior to the date payment is due, the exporter may be at risk for as little as the cost of the most recent shipment or as much as the total of all outstanding receivables. Exporters maintaining goods on consignment are especially vulnerable, since they retain title to the goods until they are sold.

- **War Risks**—War, rebellion, civil commotion, insurrection, riots and similar disturbances all can lead to cancellation of contracts and default on payments by local buyers.

- **Commercial Default/Insolvency**—In each country, the exporter must consider the buyer's financial strength—or lack thereof—in determining the risk of doing business. So-called "balance sheet" risk varies depending on whether the buyer is a private or government entity (by definition, governments are not supposed to become insolvent) and can also be affected by the overall economic strength of the host nation.

- **Currency Inconvertibility/Transfer Risk**—The risk that the exporter will not be able to exchange payments made in local currency for U.S. dollars or will be prohibited from transferring funds out of a foreign country.

- **Unfair Calling of Guarantees**—In negotiating large contracts, exporters may be required to post standby letters of credit, such as bid, advance payment or performance guarantees. Since these guarantees often include provisions for immediate drawdown by the buyer, there is the chance that the value could be drawn down without cause. Also, the exporter may be unable to conform to the terms of a contract due to a political action such as cancellation of an export license or a trade embargo, which would result in the "rightful" call of a guarantee. This is still considered a political risk, since the event leading to the call is beyond the exporter's control.

All exporters carefully review the financial strength of each customer and evaluate their previous trade experiences to determine the probability of default or insolvency. Political and trade risks are far more difficult to predict, since the political or economic climate in a given country can shift virtually overnight. As a case in point, few American exporters dealing in China viewed political risk as a serious hazard before the Tiananmen crisis. The business climate flipped 180 degrees in one day.

Among the factors to be considered in determining an exporter's exposure to political risks are: the total dollar value of business transacted in each country; the nature of the buyers and the amount of business to be conducted with each; payment terms (the longer the term, the higher the risk); credit policies

Continued on next page

Exporters' risks

Continued from previous page
and monitoring procedures; prior loss experience in each country; and whether or not what is being exported is vitally needed in the buyer's country.

Depending on individual needs, political risk and export credit programs can be designed on a per contract, per country, regional or worldwide basis. A worldwide program is often favored by exporters and underwriters because it gives exporters the security of knowing that they will not be caught by surprise and assures that the underwriter is not receiving only the worst risks.

Political risk programs may include deductibles, waiting periods and self-insured retentions, whereby the exporter pays losses up to a certain amount, with the insurer responsible for additional losses up to the limit of the policy. In structuring such a program, the exporter must carefully consider the countries involved, local business practices and, most importantly, the level of risk that can be safely retained without endangering the company's financial stability.

U.S. workers compensation policies often provide temporary coverage for exporters and employees traveling overseas. However, should an employee be injured and need to return to the

United States for treatment, the additional transportation costs may not be covered. This would include the cost of air ambulance services, which can range from \$20,000 to \$100,000 per trip.

Foreign voluntary workers compensation policies, often available as an add-on to the foreign liability policy, cover these added "repatriation" expenses. They may also provide workers compensation coverage on a 24-hour basis for employees abroad.

U.S. executives and workers traveling overseas must also consider the risk of kidnapping, particularly in the Middle East and parts of South and Central America. Kidnap and ransom insurance, which is available with limits as high as \$50 million, covers ransom demands, as well as extortion threats. Many policies also provide life insurance benefits in the event the kidnapping results in the death of the covered individual.

Exporters usually face only minor crime exposures overseas. Theft of goods may be covered by the foreign property insurance policy. And unless a significant amount of cash is changing hands overseas, exposure to loss is often so low that insurance is unnecessary.

Should the exporter still prefer to insure against all possible crime losses, policies are available to protect against dishonesty by employees and disappearance and destruction of

merchandise and money. These "3-D" policies provide broad coverage of goods, cash and cash equivalents and valuable business records.

The first alternative to traditional insurance protection is for the exporter to self-insure the exposure to loss. However, this option is only viable when the financial impact of a major loss would not deal a crippling blow to the company. When a large exposure makes self-insurance impractical, a combination of insurance and sound loss control procedures can be used to provide the appropriate level of protection.

Loss control aims to reduce and/or eliminate the chance of loss and the resulting financial impact to the exporter. Some techniques available to the exporter are:

- **Avoidance**—Obviously, avoiding the source of risk in the first place eliminates the exposure to loss entirely. Of course, this is not always a viable alternative. However, if repeated losses are experienced in a certain country, the exporter may opt to cease doing business there.

- **Transfer of Risk**—The most obvious form of risk transfer is insurance, which effectively shifts the exposure to loss from the exporter to an insurer.

Another useful risk transfer tool is the hold harmless agreement, which

contractually transfers liability for loss from the exporter to another party. Unfortunately, hold harmless agreements are not foolproof; in cases of strict liability, such an agreement may be null and void.

- **Separation**—This tactic involves separating assets to minimize the potential size of a loss. For example, goods can be separated into two or three shipments. If one shipment suffers a loss, the remaining goods will still be intact.

It's clear that exporters face a wide range of risks created in the normal course of business. Exporters should evaluate their exposures and read all of their contracts carefully. Development of a sound risk management program can help exporters minimize the chance of loss.

And while insurance is not the answer to all problems, a carefully constructed insurance portfolio can bring peace of mind by reducing or eliminating the possibility that a catastrophic event might hamper further business dealings or jeopardize the exporter's long-term financial well-being. ■

Maura Garych Edgar is a political risk consultant for Johnson & Higgins and Ariel Silva is a member of the international department at J&H's New York headquarters.

ASK A BENEFIT ACTUARY

Using 401(k) plans to pay retiree medical benefits



Can a 401(k) plan fund retiree medical benefits?



This question comes from a vice president of human resources who has been presented with a proposal to fund retiree medical benefits using a profit-sharing plan with a 401(k) feature. This proposal seems very attractive because it would provide for pretax salary reduction contributions from employees, tax-deductible contributions from the employer to the profit-sharing plan, tax-free accumulation of funds held in the plan and a tax-free distribution of funds to pay retiree medical benefits.

The proposal calls for a separate account to be established under the plan to hold amounts contributed and designated for retiree medical benefits. The amounts contributed for retiree medical benefits would be limited to comply with the Internal Revenue Code's incidental benefit rules. These rules allow qualified retirement plans to provide benefits other than retirement benefits. For example, accident and health or life insurance benefits can be provided by the qualified plan. However, the Internal Revenue Code requires that no more than 25% of the funds allocated to a participant's account can be used to purchase life or accident and health insurance.

A 401(k) plan might be structured to provide certain retiree medical benefits, but the plan sponsor should review several issues before adopting this type of program. First, it would be prudent to limit the retiree medical benefits provided by the plan to premiums paid for retiree health insurance. The Internal Revenue Code regulations limit retirement plans to providing "insurance" as opposed to a reimbursement of medical

expenses incurred.

The prospective plan sponsor should also be certain that amounts paid from the plan to purchase retiree medical insurance do not result in taxable income to the retiree.

The claim of non-taxable distribution for payment of retiree medical insurance premiums is based on Section 106 of the Internal Revenue Code. This section provides that the gross income of an employee does not include contributions which an employer makes to an accident and health plan. The benefits from the accident and health plan can be provided through insurance or otherwise.

However, it appears that officials at the IRS might not accept the position that amounts paid from the plan for retiree medical insurance are a non-taxable distribution.

A recent interview with Michael A. Thrasher, deputy assistant chief counsel (employee benefits and exempt organizations), draws into question whether funds distributed from a qualified plan to purchase health insurance are entitled to favorable tax treatment under Section 106. Mr. Thrasher's argument is relatively simple. When the funds in a qualified plan vest, they are no longer employer money, but are employee money.

As a consequence, distributions from the plan to purchase medical insurance cannot be claimed to be non-taxable under Section 106, which requires the use of employer funds to purchase medical insurance.

A prospective plan sponsor should also consider the impact of this separate account for retiree medical insurance on lump sum distributions from the plan. In order for a distribution from a qualified plan to be eligible for lump sum distribution treatment, a distribution must generally be paid to the participant within one taxable year and it must include the entire balance to the credit of the employee upon the occurrence of one of several specified distributable events. Employees want to have lump sum distribution treatment because the distributions receive favorable tax treatment under the 5-year or 10-year averaging rules. However, if the plan maintains this separate account to reimburse retiree medical insurance premiums, a participant will not be able to receive a lump sum distribution from the plan, since the plan will retain the account to pay retiree medical benefits.

Finally, a prospective plan sponsor should consider the interaction of this retiree medical benefit account with the minimum distribution rules under Section 401(a)(9) of the Internal Revenue Code. In general, these regulations require that a periodic distribution of the account balance must commence by April 1 of the calendar year following the calendar year in which a participant attains age 70½. Presumably, the amount of the distribution will be based on the total account balance of a participant, including the retiree medical account balance. There may be situations where the minimum distribution rules could require a distribution of funds from the retiree medical account in order to comply with the rules under Section 401(a)(9).

In summary, there are many tax issues that a plan sponsor should carefully examine. Before adopting this type of program, a prospective plan sponsor would be well served by consulting legal counsel on these issues. ■

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

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



Mr. Miner

This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions.

Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month. Ms. Werner's column appears alternately on the second Monday of each month. Mr. Miner's next column will appear in December.

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

WIC

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Two of the most respected publishers in the insurance industry, *Business Insurance* and *Lloyd's of London Press Ltd.*, have joined forces to produce an exceptional event to fill an important need in the insurance/reinsurance calendar worldwide.

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For details on the World Insurance Congress, speakers, a full registration package, the exhibition, and hotel accommodations, contact:

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Medicare

Continued from page 1
only administering a self-insured employer group health plan that acted as the secondary payer to Medicare for older workers and their spouses (BI, July 2; April 17, 1989).

That decision closely mirrors a January pre-trial ruling in a similar case involving Blue Cross & Blue Shield of Michigan. A federal judge there ruled that the Blues did not have to reimburse the government for Medicare overpayments made on behalf of beneficiaries covered by self-insured plans. That judge, though, found the Blues liable for not paying benefits due under plans it insured (BI, Jan. 15).

HCFA officials believe Medicare overpayments since 1982 actually exceed \$600 million, but a spokesman acknowledged that the agency "can't get back everything."

He could not break down the amounts that will be sought from self-insurers and insurers. But he did say that the bulk of overpayments likely were made for care received by the working aged employed by self-insured employers.

Self-insurers, he explained, often use outside claims administrators and do not follow up to ensure that employer health benefits and Medicare benefits are coordinated properly.

"Coordination of benefits and subrogation is good," said James A. Kinder, executive vp of the Self-Insurance Institute of America in Santa Ana, Calif.

"My problem here is with the timeliness. Rather than going back four or five years in time, the government could be better off going ahead with aggressive, accurate claims payment," Mr. Kinder said.

He suggests that recovery efforts not be limited to insurers and self-insured employers.

"Shouldn't the government also be seeking reimbursement from

providers?" he asked. Hospitals and doctors often "double-dipped and accepted duplicate payments from Medicare and insurers," he said.

HCFA, according to its spokesman, is not looking to place blame on any party.

Health insurers say the program could lead to more accurate claims adjudication and payment.

Referring to OBRA of 1989, Alan Richards, assistant counsel for the Health Insurance Assn. of America, a trade group in Washington, D.C., said: "We supported this legisla-

Since the early 1980s, 'Medicare's secondary payer plan has been a mess,' Mr. Richards says. 'There have been too many lawsuits and too much finger pointing. This may be a way of finally getting a handle on it all.'

"The intent of this project is to identify cases of Medicare overpayment and to make recoveries," he said. "We're not trying to identify and show fault. You could always say that something more could have been done to prevent the situation."

tion when it passed."

Since the early 1980s, when federal law established Medicare as a secondary payer to employer-sponsored plans, "Medicare's secondary payer plan has been a mess," Mr. Richards asserted. "There have been too many law-

suits and too much finger pointing. This may be a way of finally getting a handle on it all."

"I'm not sure at this point how successful and reliable the plan will be," Mr. Richards said.

"But it will be a vast improvement over what has been in place up to now. There's really no perfect way to reconcile what took place in 1984 or 1985. Government wanted to be the secondary payer, but at the same time it didn't want to disrupt the flow of payment to providers. So, what they got stuck with instead was a pay and chase policy," Mr. Richards said.

"The problem with Medicare functioning as a secondary payer has always been the identification of the proper claims payer," said Alissa Fox, senior Washington representative with Blue Cross & Blue Shield Assn. of Chicago. "We support this legislation. We are hopeful that it will work and we won't contest it."

And, Robert Miller, vp-claims and administration at Prudential Insurance Co. of America, said that the plan is "the sort of thing that needs to be done. It will make things better for the future."

Newark, N.J.-based Prudential always has done its best to comply with its primary payer responsibilities and will pay what the law requires, he said.

"We pay 30 million total claims each year. Therefore, there'll be some mistakes, and not just on Medicare claims. But these are legitimate mistakes, not systematic or intentional ways to get around the law," Mr. Miller said.

He said he could not speculate about how much Prudential might ultimately owe. He also would not say whether group health premiums would be raised to cover the reimbursements.

BCBS's Ms. Fox also declined to say whether Medicare reimbursements will be passed on to employers.

A key component of Medicare's overpayment recovery plan is called Data Match. HCFA, which administers Medicare, will trace the employment of Medicare beneficiaries and their spouses by comparing information in its claims data base with employment information from the IRS and Social Security.

By studying tax returns and Social Security records, the agency will attempt to identify beneficiaries and spouses who have been employed at any time since Medicare became a secondary payer.

When beneficiaries have been employed, Group Health Inc. of New York, a non-profit firm with which HCFA has contracted, will provide employers with information from the data match, including the names and Social Security numbers of the Medicare beneficiaries it employed.

Group Health then will ask the employer whether the employees in question or their spouses were covered by an insured or self-insured group health care plan.

Employers will have 30 days to answer Group Health's questionnaire. Those not responding in that time or giving inaccurate information will be fined \$1,000 for each worker under inquiry.

The HCFA spokesman estimated that 1 million employers likely will be contacted through the remainder of this year and in 1991.

The agency expects to collect the Medicare overpayments from self-insured employers and insurers beginning late this year through 1992.

HCFA's contract with Group Health's Medicare Division, which will be administering Data Match is an administrative cost-based contract, under which all costs are reimbursed by HCFA, according to Gary Calabrese, an assistant vp with Group Health.

Estimates on the cost of the program were not available.

1990 | 1991

Business Insurance

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Accountants

Continued from page 2

56% said that their companies have quit doing business with certain industries and organizations, particularly financial institutions.

"Accountants are finding themselves to be very vulnerable in executing even their core duties," said J&H's Mr. Platzman. "The rules have changed in midstream, and it's not isolated to the accounting industry. It's clearly part of all professional liability. Doctors and lawyers have seen it, too. Injured parties are looking for compensation and there aren't enough guilty parties out there to pay, so they look for the proverbial deep pocket."

Blackman, Kallick & Bartelstein quit offering services to savings and loans and other financial institutions about two years ago, according to Alan Berger, a partner with the Chicago firm.

"Even though we have never been sued for malpractice, our raw cost for insurance has gone up 50% in recent years and we're being offered half the coverage. For every hour of work we sell, \$2 goes to insurance. Therefore, we stopped doing S&Ls and banks a couple years ago and we really look closely at other high-risk work," said Mr. Berger.

He said Blackman Kallick purchases \$5 million in accountants professional liability in the commercial market for about \$250,000 per year. He said the policy carries a \$100,000 deductible.

"For the amount of money we spend and the coverage we get we have thought about going naked,

aren't accounting problems," Mr. Futter said.

Both decision makers and non-decision makers responding to the J&H survey report that accounting firms' susceptibility to lawsuits has made them feel "personally vulnerable" to being sued.

Eighty-eight percent of the 500 non-decision makers said they felt personally vulnerable to a lawsuit, compared with 78% of those involved in buying insurance for their firm. Seventy-five percent of the non-decision makers estimated that the need for greater protection will increase in the future, while only 59% of the decision makers said the need for liability protection will increase.

For a free copy of "Professional Liability & The Certified Public Accountant," contact Judith Cromwell, Johnson & Higgins Industry Group, 125 Broad St., New York, N.Y. 10004; 212-574-7447.

SET YOUR DATES

issue: October 22
closing: October 9
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conference report: NACSA-NACSE; CEB

Bonus Distribution: Baden-Baden; RIMS Singapore

issue: October 29
closing: October 17
conference report: SIIA

issue: November 5
closing: October 24
demographic section: Agent/Broker Topics: Automation: Interface with Insurers

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Business Insurance

'Accountants are finding themselves to be very vulnerable,' says Howard Platzman of J&H.

but we haven't yet," he added.

In addition to refusing to work for financial institutions, many accountants are safeguarding themselves from liability in other ways.

Ninety-eight percent of all respondents said their firms use engagement letters specifying the scope and use of their work, and 87% said their firm includes disclaimers specifying the appropriate use of their work. Most respondents said both practices are used to forestall lawsuits.

While 92% of respondents accept responsibility for their work and 77% say they have a duty to provide an independent evaluation of their client's financial condition, only 19% of respondents say they should be held responsible for conclusions that a client may draw from their work. And 89% strongly oppose being held responsible for conclusions that others—particularly investors or shareholders—might draw.

"Things will get worse," said Ned Futter, managing partner of Wiss & Co., an accounting firm in Livingston, N.J. "With the nation's economy performing as negatively as it is, companies will continue to go out of business and the shareholders left behind will come after us because we're the ones standing there with our chins sticking out."

Mr. Futter said his firm has used the same commercial insurer for 21 years, and premiums have leveled since the liability crisis of the mid-1980s. However, he said the litigious environment in the United States has made accountants leery of doing high risk work.

"I feel that the public at large is going after accountants because they perceive us as having deep pockets because we have insurance. Most CPAs do a good job and the problems that exist today

"What did the boss say when you told him health care costs were going up again?"

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Striffler named president of Carvill unit

Robert J. Striffler has been promoted to president and chief operating officer of Carvill America, a reinsurance intermediary based in Chicago. He succeeds **Donald Koziol**, who has assumed the position of chairman for the U.S. subsidiary of R.K. Carvill & Co. Ltd. of London.

Previously Mr. Striffler was executive vp, responsible for U.S. treaty production.

Agents/brokers

Frederic R. Holbrook appointed senior vp in public entity services division of Andreini & Co. in San Mateo, Calif.

James E. Finn promoted to senior vp in Columbus, Ohio, with Marsh & McLennan Cos. Inc.

Rollins Burdick Hunter Co. of Chicago announced these changes:

Comings & goings: industry

A. Hunter Long promoted to senior vp from vp in the major account support area; **Richard P. Nowell** named vp of Bankers Insurance Service Corp., an RBH unit; **Gilman L. Miller** promoted to vp at RBH of Minnesota Inc. in Minneapolis; and **Charles F. Small** and **Louis J. Franco** named senior vps with RBH Direct Group, a division of the company's specialty operations.

Gerald A. Lister appointed vp of pension department at Donald F. Smith & Associates, a brokerage and employee benefits consulting firm in Lawrenceville, N.J. He was previously deputy director of the international pension division with American International Group Inc.

Karel H. Mosebrook appointed vp-employee benefits with Holmes, Murphy & Associates of Texas Inc. in Dallas. He had been account executive with the brokerage in Des Moines, Iowa.

Michael A. Sullivan appointed president of Almours-Carswell, a joint venture brokerage subsidiary of Palmer & Cay/Carswell and St. Joe Paper Co. in Jacksonville, Fla. He had previously been a vp-client services with Marsh & McLennan Cos. Inc. in Jacksonville.

Insurers

Douglas J. Coats elected executive vp of Ranger Insurance Co., a Houston-based unit of Chase In-

urance Holdings Corp. He had been senior vp and senior underwriting officer with the New Hampshire Insurance Group.

William A. Bowers appointed senior vp-regional operations for Republic Insurance Co. in Dallas, a subsidiary of Winterthur Swiss Insurance Co. Mr. Bowers had been president and chief operating officer of Crum & Forster Corp.'s personal insurance division.

William K. Lowry Jr. named chief financial officer for SCOR U.S. Corp., the New York parent of Scor Reinsurance Co. Mr. Lowry had been chief financial officer at Phoenix Reinsurance Co.

John E. Johnston promoted to president of European operations for Combined Insurance Co. of America, an Aon Corp. unit.

At Massachusetts Casualty Insurance Co., a Sun Life Assurance

Co. of Canada subsidiary in Boston, **John Dansereau** named vp and director of underwriting; **Gerard Doherty** named vp and director of claims; and **Lynda Ferguson** named vp and director of customer service.

Excess/surplus lines

R.L. Jarrett Inc., a wholesale brokerage unit of U.S. Risk Insurance Group Inc. in Dallas, named **Gerald W. Browning** president of the brokerage services division and **Richard J. Barrett** senior vp of the casualty brokerage division. Mr. Browning had been executive vp and branch manager of Crump Re in Dallas.

David L. Hadler joined Crump E&S of Illinois in Chicago as executive vp. He had been managing director of Euings Ltd.

Markets

Insurer to realign operations

Over the next 18 months, Transamerica Insurance Co. will realign its commercial property/casualty operations to focus on three distinct market segments.

A large risks unit will emphasize customized risk management techniques and pricing flexibility, risk-by-risk underwriting and support services like loss control, claims and premium audits. It also will focus on specialized coverage programs using self-insured retentions, major casualty deductibles and higher property capacity and flood and earthquake coverages. Annual premiums for this segment are generally \$250,000 and above per account.

Transamerica's package property/liability unit will serve small- to middle-market customers and use primarily multiple-line underwriters.

And the Woodland Hills, Calif.-based insurer's commercial mass marketing programs will concentrate on coverage for group, association and target program business it receives from producers and risk retention groups primarily on a regional and state basis.

Wyatt buys RMIS firm

Wyatt Software Services Inc., a Wyatt Co. subsidiary, has acquired DAVID Corp., a risk management software company based in San Francisco.

Wyatt Software, based in Lake Oswego, Ore., was formed in August 1989 in response to Wyatt's decision to become more involved in risk management information systems.

"Software has become a very important tool in risk management," said Sylvain Dion, chairman of Wyatt's risk management practice committee. Mr. Dion said DAVID Corp.'s software will help risk managers control and monitor workers compensation and liability claims costs, among other things.

DAVID Corp. will operate as a Wyatt Co. subsidiary.

New offices

Preferred Reinsurance Intermediaries Inc., based in Columbia, S.C., opened an office at 5 Channel Drive, P.O. Box 751, Port Washington, N.Y. 11050; 516-883-3658.

MANAGED CARE

MARKET REPORT

1991 Directory of HMOs & PPOs

Business Insurance newsmagazine will publish its Managed Care Market Report feature — including the 4th annual Directory of HMOs and PPOs — as an extra issue this December.

This special issue will provide articles assessing the managed care market — including HMOs and PPOs. In addition, editors will track trends and opinions from benefit managers on these alternative systems and will rank the 10 largest general service HMOs and PPOs.

BI's Directory of HMOs and PPOs will provide readers with a ready reference to over 1,000 HMOs and PPOs across the country.

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Business Insurance
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Illinois ruling

Continued from page 1

ages," said Martha Churchill, general counsel for the Mid-America Legal Foundation in Chicago, a non-profit group concerned about the negative economic impact that court decisions have on businesses and consumers.

"Over the years, punitive damages have increased and become more common," she said. "Up until now, a plaintiff could say that if the manufacturer could have foreseen a serious injury from the use of its product, that alone would be enough to go to the jury on the issue" of punitive damages, she said.

"I am glad to see the pendulum swing back," Ms. Churchill said.

She added that the "meaty" 21-page decision considers the economic consequences of punitive damage awards in product liability cases on both manufacturers and consumers by citing law review articles as well as case law.

Defense attorneys say the decision is likely to be cited nationwide as precedent because Illinois is a large state with many manufacturers.

"It's good for argumentative value," said Quentin Riegel, deputy general counsel of the National Assn. of Manufacturers in Washington, D.C. He noted that the ruling is not binding on courts in other states.

And, while the decision helps manufacturers, it did not address some important constitutional issues like those now before the U.S. Supreme Court, said Richard Hoffman, an attorney with Querrey & Harrow in Chicago, who filed an amicus curiae brief on behalf of the Illinois Assn. of Defense Trial Counsel.

The U.S. Supreme Court has agreed to hear a case in which it could rule on whether some punitive damages violate the 14th Amendment guarantee of due process (see related story, page 1).

"The fact that it had to go to the Illinois Supreme Court is evidence that standards need to be available to juries during the trials," said NAM's Mr. Riegel. NAM wants state courts nationwide to develop such standards, he said.

Plaintiffs' attorneys downplayed the significance of the decision.

It is very "fact-specific," and thus may be applicable to few other cases, observed Robert Wadington of Cooney & Conway in Chicago.

Mr. Wadington filed an amicus curiae brief in the case for the Illinois Trial Lawyers Assn.

The decision stems from Robert Loitz's suit against Remington. During a 1983 trapshooting contest in Newman, Ill., the barrel of his semi-automatic shotgun exploded, injuring his left hand and thumb.

Mr. Loitz, an experienced marksman, underwent reconstructive surgery and has virtually completely recovered, according to the Illinois Supreme Court decision.

In a suit filed in Douglas County Circuit Court, he sought compensatory and punitive damages. Mr. Loitz contended Remington was negligent and engaged in willful and wanton misconduct by continuing to sell the model gun model that exploded in his hands even though it knew of prior similar claims. The court dismissed Mr. Loitz's request to hold the manufacturer strictly liable because the statute of limitations on such a claim had run out.

Remington has sold more than 3 million of the Model 1100 12-gauge shotgun it introduced in 1963.

Mr. Loitz's gun was manufactured in 1972. He purchased it second-hand later that year and used it without incident until 1983.

"The central issue at trial was the safety and suitability of the metal used in the plaintiff's Model 1100 shotgun barrel," the Illinois Supreme Court said.

Mr. Loitz blamed metal fatigue for the explosion and said barrels had been strengthened after 1972. Remington denied this claim.

He also claimed that Remington

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4COU9

Illinois ruling

Continued from previous page
 should have known the shotgun was dangerous and at least warned users. By the time Mr. Loitz was injured, Remington had received notice of 94 other barrel explosions and resulting injuries, he noted.

And in 1979 the company received reports of more than 100 barrel explosions occurring that year that did not cause injuries, court papers say.

Witnesses for Remington testified at trial that company investigations attributed all 94 explosions that resulted in injuries to use of overloaded shells, which generate excessive pressure.

Records of those inquiries had been destroyed, they said.

Mr. Loitz denied using improper shells or otherwise mishandling his shotgun. He conceded using homemade shells, which he said is common for competitive shooters, court papers say.

He was awarded \$75,000 in com-

pensatory damages and \$1.6 million in punitive damages. Remington appealed unsuccessfully to the 4th Illinois Appellate Court.

"The appellate court acknowledged that the amount of punitive damages awarded by the jury was large but concluded nonetheless that the case was an appropriate one for imposition of such damages and that the award was not excessive," the Illinois Supreme Court noted in its decision.

Remington had challenged the punitive damages award on factual and constitutional grounds. But the ruling is based only on the facts.

"We conclude that there was no sufficient proof that Remington had the requisite degree of culpability that would warrant imposition of a sanction that is intended to punish and deter," the majority said.

"Although the evidence in the case at bar was sufficient to sustain a finding of negligence on Remington's part...we do not believe that there was sufficient evidence of misconduct on Remington's part to warrant submission of the plaintiff's claim for punitive damages to the jury," the decision said.

Remington attorney William E. Kelly of Pope Ballard Shepard & Fowle Ltd. in Chicago said he was "disappointed" that the compensatory damages were upheld.

He and a Remington spokesman declined to say whether the company would seek U.S. Supreme Court review of the decision.

Other attorneys note that further legal action is unlikely because the ruling is based on factual, rather than constitutional, grounds.

"The court's opinion on its face shows that the court viewed Remington's claims favorably, and it gave the evidence presented by Mr. Loitz no weight on the issue of punitive damages. This is especially ironic since the court found sufficient evidence that Remington was negligent in making the barrel and/or in failing to warn," said plaintiff's attorney John D. Robinson with Hull, Campbell & Robinson in Decatur, Ill.

In a "strong" dissenting opinion, three justices contend that "the majority improperly substituted their view of the evidence for the judge and jury, and they reached a conclusion that is not reasonable given the circumstances," Mr. Robinson said.

The opinion "also implies that it is permissible for a manufacturer to produce and sell a few dangerous products that have caused harm to consumers, so long as the ratio of prior failures to total products is relatively small," Mr. Robinson said.

The 94 prior shotgun explosions that caused injuries represent about 0.003% of the 3 million units produced, the court said in its decision.

"Here the court's opinion completely fails to consider that large manufacturers often make business decisions where consumer safety is but one factor in product design. Manufacturers of mass-produced goods can and do decide based only on profit motive whether to warn of prior failures. In doing so, the manufacturer makes a calculated risk as to whether it will be caught and punished by an assessment of punitive damages," Mr. Robinson said.

In a separate case, the Alabama Supreme Court ruled 8-1 last month not to hear a product liability suit challenging the constitutionality of a 1987 state law capping punitive damages at \$250,000.

The plaintiffs originally were awarded \$1 million in punitive damages. But the case was dismissed following an out-of-court settlement.

The case was unique because although Alabama does not record legislative histories of its statutes, the federal magistrate who first heard the case held an evidentiary hearing to determine why the legislature had enacted the statute, sources said. The record of the hearing was forwarded to the state supreme court.

Robert Loitz vs. Remington Arms Co. Inc.; Illinois Supreme Court, No. 68367.

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INTERNATIONAL

CAW, Ford pact ends 9-day strike

Job security, benefits improved

By ADRIENNE C. LOCKE

TORONTO—Members of the Canadian Auto Workers union will receive upgraded early retirement and unemployment benefits under an agreement that ended a nine-day strike at nine Ford Motor Co. plants in Ontario.

Ford's Canadian division has committed \$100 million under the three-year contract, reached Sept. 23, to finance those plans.

The Dearborn, Mich.-based auto giant would not say how much it had spent previously on such measures.

The new contract also calls for improved dental, child care services, education and legal services benefits for the 12,000 union workers.

Ford is pleased with the contract, a spokesman for the automaker said. "We believe the agreement is in the mutual best interest of the company and employees and can help us handle any restructuring possibilities that might be forced upon us in the next several years."

Union officials say they needed the Ford contract to protect workers from corporate restructurings. They charge that Canadian officials failed to legislate such protections to offset the effects of the recently signed Canada-U.S. Free Trade Agreement.

"This is what we should have gotten with legislation, but we had to bargain for this with Ford," said a spokeswoman for the Canadian Auto Workers.

"This was an extremely difficult climate in which to defend working people and continue to build on the gains we have made since the recession of the early 1980s," said CAW President Robert White.

Rank-and-file workers should be proud of the pact, he added.

The new agreement requires Ford to give six months' notice of any changes—in areas including product design, technology and the use of outside contractors—that could result in any permanent loss of jobs.

The company also promised to give one year notice of a plant closing.

If layoffs are planned, employees will be offered incentives to retire early before their jobs are eliminated.

Generally, any employee with 30 years of service regardless of age can retire from the company with full pension benefits.

However, under the new contract, employees who are at least age 60 or older and who have 28 years of service would receive a two-year supplemental unemployment benefit of 95% of pay and afterward will receive full pension benefits if they retire early or if a plant closes.

Employees who are 60 to 65 and have between nine and 10 years of service would receive a two-year supplemental unemployment benefit of 95% pay and afterward will



Ford Motor Co. of Canada hourly workers pick up their paychecks in Essex, Ontario.

receive reduced pension benefits if they retire early or if a plant closes.

Employees who are 55 to 62 with 10 years or more of service will receive their full pensions benefits if they retire early when the company plans layoffs at a plant but the plant remains open.

If the company decides to close a plant, then employees who are 50 to 62 with 10 years or more of service will receive the full pension benefits.

Employees who are ineligible for

early retirement but have at least 10 years of service will receive unemployment benefits of 95% of take-home pay for two years.

Employees who are ineligible for early retirement but have five to nine years of service will receive unemployment benefits of 95% of take-home pay for one year.

Payments to workers with at least five years of service are guaranteed regardless of the amount in Ford's supplemental benefit fund.

Continued on next page

Lloyd's of London wants to write more U.S. risks, Lawrence says

By MEG FLETCHER

CHICAGO—Lloyd's of London wants to write more business—including small and medium-sized risks—in the United States.

To assess customer needs and its own weaknesses, the market is seeking comments and complaints from U.S. brokers and buyers, officials say.

An operational revolution already under way at Lloyd's aims to improve its oft-criticized record on providing current policy documents and paying routine claims (*BI*, Sept. 3).

"We want to write more U.S. business" and expand globally, Chairman Murray Lawrence said at a recent Assn. of Lloyd's Brokers seminar in Chicago.

Forty percent of the market's business now comes from the United States, with 35% from the United Kingdom, 10% from elsewhere in Europe and 15% from other countries, said Andrew Duguid, head of marketing services.

Mr. Lawrence challenged the "considerable" perception that Lloyd's handles only large risks. Underwriters already write some small and medium-sized industrial, commercial and personal

lines risks and want to write more, he said. "Lloyd's needs a more balanced diet of business," said Paul Barnes, managing director of Guest Barnes (Underwriting Agencies) Ltd., a Lloyd's syndicate. Underwriters would like to see more coverage requests for lines such as personal accident and homeowners protection, medical expenses and office renters protection, he said.

Officials solicited comments and complaints from U.S. buyers and their representatives at several stops during a recent visit (*BI*, Sept. 24).

Complaints at the Chicago seminar focused on delays in issuing current policy documents and in paying routine claims. Mr. Lawrence pointed out that the market has a reputation for paying large and prestigious claims promptly.

A few brokers also said buyers were concerned about solvency in the wake of huge losses at some Lloyd's syndicates and other underwriting entities.

Lloyd's officials contend the concern is unwarranted because internal rules have protected all Lloyd's policyholders.

Continued on next page



Mr. Lawrence

LONDON

Exodus of Lloyd's members forces syndicate to close

By CAROLYN ALDRED

LONDON—Another syndicate at Lloyd's of London is set to close its doors because of a defection of members following heavy underwriting losses.

Non-marine syndicate 660, managed by Birrell Smith Underwriting Agencies Ltd., will close this year. But, its entire staff, including underwriter John Dodson, will move to non-marine syndicate 190, managed by Three Quays Underwriting Management Ltd.

Syndicate 660 faced a 50% reduction in members for 1991 following a 3.6 million-pound (\$6.8 million at current exchange rates) cash call it is making for losses incurred in the 1989 underwriting year, which is not due to be closed until 1992 under Lloyd's three-year accounting system.

The drop in members would reduce the syndicate's premium capacity to about 10 million pounds (\$18.8 million) from 20 million pounds (\$37.7 million), said Mr. Dodson.

About 60% of syndicate 660's account was North American property insurance and reinsurance, Mr. Dodson said. The syndicate also wrote about 14% of its account as London market excess-of-loss reinsurance.

The cash call is being made because the syndicate is facing a cash flow shortage following a spate of catastrophes in 1989, including Hurricane Hugo and the San Francisco earthquake, according to Mr. Dodson.

Syndicate 660, which was formed in 1920, is one of the first non-marine syndicates to make a

cash call before the 1989 underwriting year is closed but it will not be the last, warned Mr. Dodson.

Earlier this year several marine syndicates were forced to make cash calls for the 1988 year, due to close next year, because of huge losses stemming from the \$1.4 billion Piper Alpha oil platform loss. Many of these same syndicates have since been forced to merge or close (*BI*, Sept. 3; May 28).

"The 1989 underwriting year will produce underwriting losses for the entire industry not just my syndicate," said Mr. Dodson.

Underwriting agency Birrell Smith will continue to manage syndicate 660's 1988 and 1989 underwriting years although the 1990 underwriting year probably will be reinsured to syndicate 190, said Mr. Dodson.

Lloyd's Council ballots

Ballot forms for Lloyd's of London council elections will be issued Oct. 12.

A total of 15 members have put their names forward for election to the five vacancies that were created by the retirement in rotation of two external and three working members of the council on Dec. 31, 1990.

Six candidates are running for the three working members positions currently held by Lloyd's underwriter Alan Jackson, who is eligible for immediate re-election; underwriter Stephen Merrett; and David Rowland, chairman of Lloyd's broker Sedgwick Group P.L.C.

The six candidates are:

- Simon Arnold, chairman and chief executive of Lloyd's broker Bain Clarkson Ltd.

- Jonathon Balbon, director of underwriting agency C.I. de Rougement Ltd.

- Richard Hazell, underwriter of syndicate 193, managed by Three Quays Underwriting Management Ltd.

- Alan Jackson, deputy chairman of Wrer. Underwriting Agencies Ltd.

- Robert Keville, chairman of Lloyd's broker Willis Faber & Dumas Ltd.

- Derek Wills, senior partner of underwriting agency Barder & Marsh.

Meanwhile, nine external members are vying for the two external membership positions currently held by Sir Alan Copisarow and Lord Kimball.

Although Lloyd's has not yet released any further data on the nine external candidates, they are:

- Lady Rona Delves Broughton.

- British financial and property consultant George Hirst.

- British accountant Keith Lester.

- Peter Nutting, chairman of the 1982 Outhwaite Names' Committee.

- Former English rugby player Andrew Ripley.

- Valerie Robinson.

- Colin Stroyan, a lawyer in Edinburgh, Scotland.

- Belgian banker and financial consultant John Van der Hagen.

- U.S. investment adviser Richard West.

The ballot will close on Nov. 14

Continued on next page

INTERNATIONAL

Lloyd's changes

Continued from previous page
Major modernizations at the London headquarters also should speed up policy issuance and routine claims payments, officials say.

"We are undertaking a huge change," Mr. Lawrence said.

Improvements in market structure and procedures, products and services as well as marketing and publicity will help meet the challenges of the new decade, he and other speakers said at the seminar.

Changes already agreed to by the Council of Lloyd's, include:

- Eliminating market barriers on Jan. 1, which will allow all syndicates to write all classes of business—marine, non-marine, aviation and motor.

- Processing policies through the computerized London Insurance Market Network, which by the end of the year will speed up the issuance of policies by elimin-

ating the use of millions of punch cards.

- Developing a unified claims system next year to let all four markets use the same procedure to process claims. This is designed to reduce the time it takes to pay a claim.

- Allowing some business—mostly personal lines—to be placed in the market without the use of a Lloyd's broker, although a Lloyd's-related company like a syndicate servicing firm must be used.

- Creating Lloyd's first centralized marketing and advertising campaign.

Implementing many of the changes requires "a closer and closer dialogue between brokers, underwriters and producers," said Alan G. Lee, deputy chairman of Sturge Non-Marine Syndicate Management Ltd.

Those ties will be further enhanced by the new computerized

network, said underwriter Terence J. Hayday, chairman of Lloyd's steering group for the network.

LIMNET requires all parties to use common standards, based on United Nations standards for electronic data exchange, said Mr.

he said. "This should save time, money and errors."

With LIMNET, automation also should improve policy processing and documentation, Mr. Hayday said. He added that the exchange hopes to reduce problems by using

'Lloyd's needs a more balanced diet of business,' says Mr. Barnes. Underwriters would like to see more coverage requests for lines such as personal accident, homeowners, medical expenses and office renters protection, he says.

Hayday, who is executive chairman and underwriter of Holmes, Hayday (Underwriting Agencies) Ltd. and T.J. Hayday & Ors. Syndicate 694.

"The aim of the system is to reduce duplication by keying data in once, and thereafter adding to it,"

"an evolutionary approach" rather than adopting the changes immediately.

He conceded, however, that several problems remain and potential users require more training and education about the new system.

Other speakers predicted that

LIMNET will change the way brokers and underwriters operate.

"Expect to find larger special risks continuing to be brokered face-to-face with leading underwriters," said John C. Garner, chairman of Lloyd's Insurance Brokers Committee. He is group market liaison director for Sedgwick Group P.L.C.

Commercial business "requires a subtle blend of ideas, price, coverage and security provided by the interaction of brokers and underwriters," Mr. Barnes said.

However, placements like simple renewals, endorsements and some personal lines coverages may be handled electronically, he said.

Especially in a hard market, the new network will both help and hurt users, Mr. Barnes said.

Those with the most up-to-date systems, which allow them to interact quickly, will have an easier time finding coverage and retaining renewals, Mr. Barnes said. ■

LONDON

Continued from previous page
and the results will be announced the same day.

Letters of credit

A Citibank electronic transaction facility, scheduled to begin this week, offers insurers and brokers a fully-automated instruction, delivery and on-line information retrieval service for letters of credit.

The New York-based banking giant predicts Electronic Letters of Credit Transactions—or ELECT—will be used in conjunction with computer networks now being developed by the London insurance market (LIMNET) and the European reinsurance market (RINET).

It "is expected to generate major savings by improving processing efficiency for brokers, reinsurers and beneficiaries in this operationally intensive market," Citibank said in a statement.

According to Citibank, automating letter of credit authorization will:

- Allow brokers to circulate immediate and simultaneous requests to open or amend an LOC to all participating reinsurers in a contract.

- Allow reinsurers to respond on-line to the brokers' requests and input the necessary authorization directly to the bank.

- Allow greater control, increase accuracy, and reduce processing time for all parties.

The ELECT system was developed by Citibank in conjunction with representatives of Ballantyne, McKean & Sullivan Ltd.; C.T. Bowring (Reinsurance) Ltd.; CNA Reinsurance of London Ltd.; R.K. Carvill & Co. Ltd.; English & American Group P.L.C.; Excess Insurance Co. (U.K.) Ltd.; E.W. Payne Cos. Ltd.; Terra-Nova Insurance Co. Ltd.; Willis Faber & Dumas Ltd.; and Zurich Reinsurance Co.

Broker expands in U.S.

Lloyd's of London broker Special Risk Services Ltd. is forming a new California-based company with the staff of Securities Guaranty Insurance Services of Orange, Calif.

The company, to be called SRS Insurance Services, will provide brokerage services on the West Coast.

SRS Insurance Services will specialize in financial insurance brokerage (BI, Sept. 3).

"The formation of SRS Insurance Services is a natural progression of events," said Stephen Wenman, chairman of Special Risk Services in London.

"SRS had become increasingly active on the West Coast, working in conjunction with SGI, and we decided we wanted to cooperate further," he added.

Jim Brooks, formerly president of SGI, will be president of the new company.

David Parker, formerly Mr. Brooks' partner in SGI, will be executive vp.

Hogg buying broker

Hogg Group P.L.C. is acquiring an Australian retail brokerage for between \$1.3 million and \$2.1 million Australian (between \$1.1 million and \$1.7 million at current exchange rates), although the final price paid will depend on the acquired firm's financial performance.

The London-based broker is buying the entire share capital of IIB Insurance Brokers Pty Ltd., a retail broker formed in 1983 that places risks in Sydney, Melbourne and Brisbane.

IIB's brokerage revenues for the year ended June 30, 1990, were \$1.9 million Australian (\$1.5 million at appropriate exchange rate).

Marc Rawnsley, the broker's managing director, is also the principal shareholder.

The purchase price is payable in cash over two years.

Key IIB directors will join Hogg Robinson Australia under a service contract.

"This continues the group's acquisition strategy of attracting into our business good quality teams which create cost-effective growth and added value to the group," Hogg announced.

Meanwhile, Hogg Insurance Brokers Ltd., a subsidiary of Hogg Group, has restructured its newly-named international professional indemnity and financial institutions division.

At Hogg Professional Risks, Alec Shaw is chairman; Greg Collins is managing director; and Nicola Kohn and Tim Jaggs have been appointed directors.

"Due to rapidly expanding demand in the U.K. (regional) market, a new branch has been opened in Reading. We look forward to further expansion both in the United Kingdom and internationally," Mr. Collins said.

Comings and goings

Hugh Freedberg has been appointed chief executive officer of the insurance and investment services division of TSB Group P.L.C. of London. Mr. Freedberg was chief executive officer of The Mortgage Corp. Group Ltd., which he launched in 1986.

Accident & General Ltd., a travel insurance broker in London, has appointed Derek Lavan as a technical broker responsible for co-ordinating sales efforts. A&G provides insurance for travel service companies. ■

CAW, Ford contract

Continued from previous page

After unemployment benefits are exhausted, employees with five years or more of service and who are not eligible for retirement can choose severance pay or 60% of take-home pay for up to one year.

In the case of plant closings, employees who opt for severance pay will receive between \$25,000 and \$65,000, depending on length of service.

In the case of layoffs in which the plant remains open, employees who opt for severance pay will receive between \$15,000 and \$55,000, depending on length of service.

However, these benefits are not guaranteed if the supplemental benefit fund is exhausted.

Workers who have been with Ford between one and five years will receive 70% to 72% of take-home pay, but only until the fund is exhausted.

The fund contains \$21 million and "is in good shape" to cover these commitments, the CAW spokeswoman said.

Unemployment benefits had been capped at 75% of take-home pay regardless of length of service.

Other benefit improvements include:

- The annual maximum benefit under the dental plan is increased to \$1,300 from \$1,000, with the lifetime maximum benefit on orthodontics increased to \$1,500 from \$1,250.

- A projected doubling—to \$270,000—of the company's contribution toward the child care services fund. Rather than paying a fixed amount, Ford is to pay one cent per hour per worker to the fund.

The child care services fund helps the union provide needed child care services for its members.

For example, the fund financed a child care center for employees in the Windsor areas that is open from 6 a.m. to 2 a.m. to accommodate shift workers.

- An increased contribution—to 12 cents per hour per worker from eight cents—by Ford to the legal services plan. The fund fully pays for such legal services as family law, wills and mortgages.

- An increase in the maximum tuition reimbursement per calendar year to \$1,000 from \$750, and to \$1,500 from \$1,250 for approved classes at an accredited college.

- An additional 32 hours of paid leave, plus a \$500 vacation bonus for each employee who qualifies for vacation time. ■

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BERMUDA

Insolvent SNL Insurance in liquidation

By ROGER SCOTTON

HAMILTON, Bermuda—SNL Insurance Ltd., a Sequa Corp. unit, has put itself into a court-administered liquidation after failing to meet minimum solvency requirements in Bermuda.

According to unaudited figures that provisional liquidator Chris Whittle based on company records as of June 9, SNL is insolvent by less than a million dollars.

But in a report to the first creditors meeting here Sept. 12, Mr. Whittle warned that SNL's ultimate net deficiency is uncertain because it is involved in several third-party treaties being litigated in Bermuda, the United States, England and Canada.

Referring to the seven separate legal actions, Mr. Whittle said: "In certain cases, the company is seeking rescission of the contract on the basis that it was induced to enter into the agreement through fraud and misrepresentation on the part of the insurers. The company has unrecorded liabilities relating to these treaties of \$8.5 million. The ultimate outcome of these cases is uncertain."

Almost all of SNL's \$5 million in share capital, the report says, was held by Casco Investors Corp. in New York, another Sequa Corp. subsidiary. Sequa is the former Sun Chemical Co.

SNL was set up in January 1977 to reinsure Sun Chemical's workers compensation, general and auto liability exposures. SNL also participated in third-party reinsurance treaties.

According to audited financials for 1985, the last year for which audited results were prepared, SNL's net premiums were \$12.6 million compared with \$1.2 million in 1977. But the provision for losses and loss expenses had risen to almost \$20 million. Underwriting profits, which peaked at \$266,000 in 1980, had turned into a \$7.6 million loss in 1985.

Two years after reaching its highest net income—\$1.6 million in 1981—the reinsurer was operating in the red. By 1985, net losses hit \$6.5 million.

In June 1986, SNL ceased writ-

ing all third-party and related business and went into runoff.

The company, says Mr. Whittle's report to creditors, "commuted certain treaties, including all treaties with the insurers of its parent company and affiliates, and pursued the possibility of commuting additional treaties."

Losses on the treaties SNL was unable to commute, the report says, "deteriorated to the point that by Dec. 31, 1989, the company was unable to meet the minimum liquidity ratio."

Bermuda law was tightened in 1989 to require capital and surplus equal to at least 10% of loss reserves at all times.

Arthur Anderson & Co. examined SNL's balance sheet as of Dec. 31, 1989. Its statutory audit found a provision for losses and loss expenses of about \$4.4 million—down from \$22.8 million when it went into runoff in 1986.

With capital of \$5 million and a retained earnings deficit in excess of \$4.8 million, the auditors found, statutory capital and surplus fell short of the requirement by \$300,728.

SNL was managed in Bermuda by BCS Management Ltd. (formerly Robert Bishop International Services Ltd.), which has been retained as a consultant to the liquidation.

According to the liquidator's unaudited statement of the SNL's position as of June 29, SNL assets were valued at just over \$4 million, including \$2.3 million in receivable loans and notes and \$1 million in reinsurance recoveries. Assets available to pay unsecured creditors were put at \$3.4 million.

Total liabilities to unsecured creditors were put at \$4.3 million, which includes almost \$2 million in insurance balances payable and a \$2.8 million provision for losses—a figure which does not take into account any liabilities arising from three of the seven contracts that are the subject of litigation.

Mr. Whittle's report stops short of concluding why SNL failed, but cites several contributing factors:

- The doubtful recoverability of amounts due from certain retrocessionaires.

- Losses suffered and continuing to develop on SNL's book of business underwritten in the late 1970s and early 1980s.

New consultant

David Thirkill, former president of Forum Re Group (Bermuda) Ltd., is forming a reinsurance consulting business in Bermuda.

Mr. Thirkill's resignation from Forum was announced at the same time that Forum said it was closing its Aneco Reinsurance Underwriting subsidiary (BI, Sept. 10).

Mr. Thirkill has applied for permission to incorporate Morley Insurance Consultants Ltd., which, according to published legal notices, will provide consulting and advisory services to insurers and reinsurers, particularly services related "to underwriting, risk management, claims management, commutations, loss adjustment, runoff and winding up."

Mr. Thirkill said this week that he was leaving the group on good terms following an "amicable settlement."

He joined Forum in March 1986 and later became president of its financial reinsurance arm, Forum Reinsurance Co. Ltd. In 1988, premium volume for that unit dropped sharply from a high of \$100 million in 1987 to less than \$60 million.

Mr. Thirkill said last year (BI, April 10) that Forum was starting to look for opportunities to buy captive insurers with reserves for unrelated business of \$10 million. He said Forum would then offer to run off the captives for their owners, in the hope of securing a profit through commutations.

However, Forum Group chairman Mark Hardy said this week that his company's most prominent runoff account, Focus Insurance Co., the former Trenwick Reinsurance Co. Ltd., was being put into voluntary shareholders winding up—a process allowed under Bermuda law in which solvent companies can be wound up by their owners. Forum bought Trenwick at the end of 1987 and has been running it off ever since, securing commutations with reinsurers in 1988 and, last year, beginning ne-

gotiations with ceding companies.

In November 1989, Focus announced that it would be unable to meet Bermuda's amended minimum solvency rules and that its "liabilities far exceed assets" (BI, Nov. 27, 1989).

But Mr. Hardy said this week: "We've commuted with the vast majority of our creditors, and we're in the last throes of a commutation right now, which will leave us with just three or four open treaties. These commutations have helped our financial position enormously and Focus is entirely solvent and meeting Bermuda's solvency requirements. But there comes a point where the company becomes a question of how much more time and effort you can put into it."

Focus still faces a lawsuit from utility industry captive Associated Electric & Gas Insurance Services Ltd., headquartered in Jersey City, N.J., which brought the claim in February (BI, April 2). Mr. Hardy said Focus is still disputing that claim.

That dispute will become the responsibility of the Focus liquidator, he said.

Mr. Hardy added that following Mr. Thirkill's departure, it was "highly unlikely" that Forum would underwrite any new business for "about a year." He said Forum now needed to consolidate and retrench after a turbulent period in which it "simply grew too fast."

New BF&M President

Senior Vp Glenn Titterton will replace Cyril Rance, the retiring president of Bermuda Fire & Marine Insurance Co. Ltd., at year-end, the island's biggest multiline domestic insurer has announced.

Mr. Titterton, 45, has been with BF&M since 1961 and is responsible for business development and domestic insurance operations, which last year produced net premiums of \$24.1 million.

Mr. Rance, 56, is retiring Dec. 31, after more than 40 years with BF&M. He has been president and chief executive officer for five years.

Total net premiums written by BF&M were \$33.2 million in 1989, compared with \$32.2 million in 1988. Profits increased to \$2.2 million from \$1.5 million.

In May, Mr. Titterton was made the founding president of the Motor Insurers' Fund, a non-profit group that compensates those injured in traffic accidents involving uninsured drivers.

He is also chairman of Bermuda's Development Application Board and a founding member of the Bermuda Insurance Institute, an educational organization.

Mr. Rance has not disclosed his plans.

J&H pay raises

Johnson & Higgins (Bermuda) Ltd., the island's largest captive management company, plans to end the senior staff pay freeze it began in April.

Raises will take effect Oct. 1 for J&H's 15 top managers, who agreed to waive increases when the Bermuda government last year decided to extend gradually the 5% payroll on domestic companies to foreign firms (BI, April 2). At the time, J&H said the tax would increase its annual costs \$107,000, but said that increase would not be passed on to its approximately 170 captive clients.

Wayne Morgan, Bermuda branch manager, would not give details of the raises or say how much the salary freeze saved. Higher compensation costs, he said, would not be passed on to customers.

"The raises will vary depending on performance and other factors, but we have no plans to change our fee structure as a result. The main impact of this pay freeze was not a question of how much we've saved so much as how more focused we all are now on productivity and the company's objectives. We're a much stronger company than we were six months ago."

Mr. Morgan said pay will be reviewed for all 150 J&H employees in April. He added: "The decision we reached in April was unprecedented, but we always retain the right to defer salary adjustments."



BENEFITS & RISK MANAGEMENT

As the world's leading weekly newsmagazine for corporate consumers of employee benefits and risk management products and services — Business Insurance will address the current global insurance environment in an upcoming special issue.

News and features will include reports on global property insurance and employee benefits programs. Editors will examine the factors that impact risk and employee benefits management overseas. Also in this issue — BI's Directory of International Insurers & Benefit Networks — will cover both the property/casualty and employee benefits markets with information on suppliers worldwide.

PUBLISHING: October 22
AD CLOSING: October 9

Influential throughout the world, Business Insurance will distribute this International feature issue to attendees of the Baden-Baden Conference, and in Singapore at the Risk & Insurance Management Society Conference. Advertisers will reach over 155,000* readers who are first to get the news they need the most ... at home and abroad.

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Info

• **"Workers Compensation Claim Settlements"** is a booklet from American Re-Insurance Co. that explains how workers comp claims can be resolved without disputes. Among the topics addressed are: the types of workers comp claims that can be resolved with lump-sum settlements, the use of structured settlements and when court approval of a settle-

ment is required. The booklet is free. Contact Mary Ann Ebersold, Corporate Communications and Advertising, American Re-Insurance Co., American Re Plaza, 555 College Road E., Princeton, N.J. 08543.

• The Center for Corporate Health Inc. has revised **"LifePlan: Your Own Master Plan for Maintaining Health and Preventing Illness,"** incorporating up-to-date information on how to reduce health risks. Written by Dr.

Donald M. Vickery, president and founder of TCCH, the 347-page book explains how to assess health risks through a self-scoring risk appraisal and how to reduce health risks, minimize chronic disease and improve longevity. It also provides recommended medical screening schedules appropriate for the reader's age, sex and relative health risks. Single copies of the book cost from \$6.50 to \$8.50 each, depending on the quantity ordered, plus shipping and handling. Contact Judy Harju, TCCH,

1850 Centennial Park Drive, Reston, Va. 22091; 703-391-2416.

• **"Accidents Will Happen—a Small Town Guide to Planning for Hazardous Materials Response,"** published by the National Assoc. of Towns and Townships, examines the regulatory requirements of the Superfund Amendments and Reauthorization Act of 1986, Titles I and III. Through real-life examples, it explains how small communities and their insurance and risk manage-

ment counselors can comply with the regulations and minimize the threat of liability lawsuits. The 60-page guidebook is part of a package including a user's guide, a training guide and a video that focuses on community case studies. Copies are available, prepaid, for \$6 to NATAT members, \$10 for others, plus \$1.50 postage and handling. Volume discounts are available. For \$20, members can rent the video for two weeks; the charge for others is \$40, plus \$5 for postage and handling.

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Ref: Rec-1

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NOTICES

The Mississippi Association of Housing and Redevelopment Officials (MAHRO) on behalf of the Public Housing Authorities (57) located in Mississippi, is issuing an Invitation for Bids (IFB) for a Master Insurance Package which will include Fire and Extended Coverage (total coverage for the State is \$255,570,000) and Fidelity Bond Coverage to be effective for a term of three (3) years, starting on December 1, 1990.

Bids will not be opened until 2:00 P.M. CST, November 1, 1990.

Any insurance companies interested in placing a bid can request a complete copy of the Master Insurance Package from:

Shields Sims Chairman, MAHRO Insurance Committee, 809 3rd Avenue North, P.O. Box 648, Columbus, MS 39703, Phone No. (601) 326-2711

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF LIQUIDATION OF YORKTOWN INDEMNITY COMPANY) NO. 88 CH 9367

NOTICE

PLEASE TAKE NOTICE, that on FEBRUARY 7, 1989 an Order of Liquidation With a Finding of Insolvency was entered against Yorktown Indemnity Company ("Yorktown") by the Honorable Sophia H. Hall, Judge of the Circuit Court of Cook County, Illinois. Zack Stamp, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of Yorktown.

TAKE FURTHER NOTICE, that pursuant to the Order of said Court, all rights and liabilities of Yorktown and of its creditors, policyholders and all other persons interested in its assets are fixed as of February 7, 1989, unless otherwise provided by such other Order of the Court.

TAKE FURTHER NOTICE, that the form of and required content of all Proofs of Claim are described in Illinois Revised Statutes, 1987, Chapter 73, Paragraph 821. Proofs of Claim, together with supporting documents, if any, are to be filed with, and may be secured from, the Special Deputy Liquidator, Yorktown Indemnity Company, In Liquidation, 446 East Ontario Street, Suite 700, Chicago, Illinois 60611. Filing shall occur upon the receipt of Proof of Claim by the Liquidator. The Liquidator reserves the right to require such additional information with respect to any claims as he may deem necessary. The Liquidator Further reserves all rights to any and all defenses of Yorktown concerning such claim. All Proofs of Claim must be duly sworn to before an Officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR AT HIS ABOVE-MENTIONED OFFICE IS DECEMBER 31, 1990 AT 4:30 P.M., CHICAGO TIME. NO PERSON HAVING OR CLAIMING TO HAVE ANY CLAIMS, CONTINGENT OR OTHERWISE, AGAINST YORKTOWN INDEMNITY COMPANY SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE FILED WITH THE LIQUIDATOR ON OR BEFORE DECEMBER 31, 1990 AT 4:30 P.M. C.S.T.; AND IF ANY SUCH CLAIMS ARE CONTINGENT CLAIMS, THEY MUST BE LIQUIDATED PURSUANT TO SECTION 209 OF THE ILLINOIS INSURANCE CODE (ILL. REV. STAT., 1987, CH. 73, PARA.821) ON OR BEFORE DECEMBER 31, 1991 AT 4:30 P.M. C.S.T.

James W. Schacht, Special Deputy Liquidator, Office of the Special Deputy, 446 East Ontario Street, Suite 700, Chicago, Illinois 60611, (312) 915-4700.

\$500,000 sought for memorial fund honoring regulator

By MARK A. HOFMANN

CHICAGO—Organizers of an educational fund honoring the memory of an Illinois insurance regulator hope to raise \$500,000 by the end of 1990.

The Kenneth W. Smith Memorial Fund will finance a program for insurance regulators at Drake University in Des Moines, Iowa, according to Philip R. O'Connor, a former Illinois insurance director who helped organize the fund.

Mr. Smith, who was the head of the Illinois Insurance Department's property and casualty division, died of a heart attack at the age of 42 last year (BI, Aug. 28, 1989).

"For all of us who had the opportunity to work with Ken, the characteristic that was so important was his commitment to professionalism in insurance regulation," said Mr. O'Connor, who served as insurance director from 1979 to 1982.

Organizers of the fund want "to do what we can to cultivate the Ken Smith approach to things—commitment of a lot of intellectual energy as well as moral commitment to insurance regulation," added Mr. O'Connor, who is now chairman and president of the Chicago energy consulting firm Palmer Bellevue Corp.

Mr. O'Connor said that Mr. Smith's "basic theory was that the regulators have to be at least as smart as the companies they regulate."

To promote this approach, the fund will finance "a program for the improvement of state regulation of property and casualty insurer solvency," according to a memorandum of understanding between the fund's organizers and the Drake University Insurance Center.

Under terms of the memorandum, the Drake Insurance Center will "design and conduct a course

of study directed at the effective use of the property and casualty company insurance regulatory information which is currently available to regulators." A board of regulators appointed by the president of the Kansas City, Mo.-based National Assn. of Insurance Commissioners will help the Insurance Center design the course and select faculty.

Although Drake is responsible for setting the length and timing of the course, the organizers suggest that it be a summer course of two to three weeks, consisting of about 45 classroom hours.

Participation will be aimed at insurance regulators with three or more years' experience in solvency evaluation. However, NAIC staff and others might be admitted.

Because a "principal objective of the program is to reach eligible students who are limited in their training opportunities" by budget constraints, the memorandum asks Drake to provide room and board at cost or near cost.

The program should begin next year, Mr. O'Connor said.

Fund-raising letters are being prepared and should be mailed to insurance company executives shortly, Mr. O'Connor said.

In addition, a golf tournament held in August raised between \$13,000 and \$15,000 for the fund, and probably will become an annual event, he said.

Drake will "accept, hold and manage the fund."

Besides Mr. O'Connor, the fund's organizers include former Illinois Insurance Director John E. Washburn; current Director Zack Stamp; and John G. Smith, an attorney with the Chicago law firm Lord, Bissell and Brook.

For more information on making a tax-deductible contribution to the fund, contact the Kenneth W. Smith Memorial Fund, 400 North Michigan Ave., Suite 820, Chicago, Ill. 60611; 312-321-0653. ■

California bills

Continued from page 3

be held in a separate, inviolable account. "They can't touch it for anything else," he said.

HMOs also will have to apply for licenses as health service plans under the Knox-Keene Act, which is administered by the Department of Corporations, rather than as insurers, which are regulated by the Insurance Department. HMOs that are not already operating under the act have until Sept. 30, 1991 to apply. They must be licensed by March 31, 1993.

Some HMOs, such as Blue Cross of California, have been licensed as insurers. Others, such as Kaiser, have come under the Department of Corporations as Knox-Keene plans.

California is among several states with HMO solvency protections similar to those contained in the NAIC model act, said Kaiser's Mr. Morris.

The others are Colorado, Maryland and North Carolina, which enacted laws in 1989, and Connecticut and Washington, which did so this year.

In addition, according to the NAIC, at least seven states have established assessment mechanisms for HMO insolvencies:

- Alabama, where the insurance commissioner is to develop separate regulations for a guaranty fund similar to that for life and health insurers.

- Florida and Illinois, both of which have guaranty associations for HMOs separate from those for health insurers.

- North Dakota and Utah, which include HMOs in guaranty funds for life and health insurers.

- Wisconsin. The state provides coverage for HMO insolvency under the Insurance Security Fund, which also covers life, health and property and casualty insurers.

- Virginia, which has a law similar to California's. However, Virginia also permits regulators to assess all HMOs to pay an insolvent HMO's unfunded liabilities.

The HMO solvency protection bill was prompted by the health insurance guaranty fund bill, Mr. Meadows said.

When S.B. 1979 goes into effect Jan. 1, it will require all health insurers licensed in California or those holding a certificate to write health insurance in the state to join the Robbins-Seastrand California Health

Insurance Assn.

The association is named after its sponsor, Sen. Robbins, and the late Assemblyman Eric Seastrand, who faced \$89,000 in medical bills when his health insurer went bankrupt before he died of cancer in June.

Excluded from coverage under S.B. 1979 are groups and individuals covered by:

- HMOs.
- Non-profit health insurers such as Blue Cross & Blue Shield plans.

- Multiple employer trusts.
- Self-insured health care plans, including those that purchase stop-loss coverage.

- Minimum premium plans, under which an employer pays a portion of its health care insurance premiums over 12 months and deposits funds—up to a predetermined amount—in a special account to cover claims against the plan.

In addition, the guaranty association would not respond to insolvencies of reinsurers and insurers that provide administrative services-only contracts.

Under the bill, when an insurer is declared insolvent, a board of association members approved by the insurance commissioner could assess each health insurer up to 1% of its annual health premiums written in the state.

Insurers also could be assessed up to \$150 a year for ongoing adminis-

trative and legal expenses.

Sen. Robbins introduced the bill in response to increased health insurer failures. "We already have a similar association for automobile, homeowner and property/casualty insurance companies. When one of those companies is declared insolvent, the policyholders have somewhere to go for payment," he said.

But "in some cases of catastrophic illness, insolvency health insurance companies unable to pay health care claims have led to policyholders going bankrupt—even though the policyholder paid the insurance premiums," he said.

California legislators in their last session of 1990 also passed a bill designed to protect policyholders of life insurers that become insolvent.

A.B. 4076, sponsored by Assemblyman Patrick Johnston, D-Stockton, chairman of the Finance and Insurance Committee, would set up a life insurance guaranty association consisting of all admitted life insurers and governed by a nine-member board of directors selected by insurer members, subject to insurance commissioner approval.

The association would pay benefits of up to \$250,000 to each policyholder and assess life insurers up to 1% of their annual premiums generated in California.

The bill is awaiting Gov. Deukmejian's signature. ■

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Comings & goings: buyers

Trinova names pension manager

Judy A. Frye, 46, has been named manager of pension administration at Trinova Corp. in Maumee, Ohio. In this newly created position, she is responsible for retirement benefits administration and planning, plan qualification, government reporting and compliance and benefits record-keeping for the pension plans of Trinova and its operating companies, Aeroquip Corp. and Vickers Inc. Ms. Frye reports to Jeff Rhoads, director of benefits planning and administration. Before joining Trinova, a manufacturer of power and motion control machinery, Ms. Frye was manager of compensation and benefits for Aeroquip's worldwide operations. She holds an associate of arts degree from Jackson Community College in Jackson, Mich. She is a member of the International Foundation of Employee Benefit Plans. ■■■

Wendy Fuess, 35, has been named director of benefits of Sisters of Charity Health Care Systems Inc. in Cincinnati. In this newly created position, she is responsible for directing and coordinating employee benefit plans for SCHCS, a system of 23 hospitals, five long-term care facilities and five retirement communities in

six states. Ms. Fuess reports to Mike Fordyce, vp-human resources. Prior to joining SCHCS, Ms. Fuess was manager of group health programs and strategic planning at Bethesda Hospital in Cincinnati. Before that, she was director of cost management consulting at Community Mutual Insurance Co., also in Cincinnati. Ms. Fuess holds a bachelor of arts degree in psychology from Rutgers University in New Brunswick, N.J. She also holds dual master's degrees in social work and public administration with an emphasis on health care planning from Ohio State University in Columbus. Ms. Fuess holds the Certified Employee Benefit Specialist designation. ■■■

Laura M. Switalski, 24, has been named casualty claims coordinator of Service Merchandise Co. Inc. in Nashville, Tenn. In this newly created position, she is responsible for claims management and litigation management. Ms. Switalski reports to Thomas R. Ainsworth, assistant vp-risk management. Prior to joining Service Merchandise—a showroom and catalog retailer—Ms. Switalski was a multiline casualty adjuster for Crawford & Co. in South Bend, Ind. She holds a bachelor's degree

in criminal justice from Indiana University in Bloomington. In addition, she is pursuing an Associate in Risk Management designation. ■■■

Rodger A. Cochran, 48, has been named director of risk management and insurance of Gate Petroleum Co. in Jacksonville, Fla. In this newly created position, he is responsible for corporate safety, loss control, life and health insurance and property/casualty insurance. Mr. Cochran reports to Jack Lueders, vp-administration. Prior to joining Gate Petroleum—whose operations include convenience stores, gas stations, construction and real estate development—Mr. Cochran was director of risk management at Harbert Corp., a construction, real estate, oil and gas and manufacturing firm in Birmingham, Ala. Mr. Cochran holds the Chartered Property & Casualty Underwriter designation. ■

We'd like to report on staff changes in your company's risk management, safety and employee benefits departments. Just drop a note to Nancy Johnson, Copy Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-7784. Please send a photograph, too.



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Datebook

OCTOBER

OCT. 8-12. Advanced Reinsurance Practice course in London, England, sponsored by Insurance & Reinsurance Research Group Ltd.; 825 pounds (\$1,603) plus 15% VAT. Joy Bambrough, IRRG Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD; 071-236 2175.

OCT. 9. Labor/Management Workshop in Columbus, Ohio, sponsored by the Health Research Institute; \$595. **Also Nov. 13-14** in Meadowlands, N.J.; and **Dec. 11-12** in Chicago. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

OCT. 9-10. Health Care Cost Containment workshop in Columbus, Ohio, sponsored by the Health Research Institute; \$595. **Also Dec. 11-**

12 in Chicago. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

OCT. 10-11. Natural Resource Damages Claims and Litigation Conference in Washington, D.C., sponsored by Executive Enterprises Inc.; \$1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

OCT. 10-11. Reinsurance for Underwriters Seminar in Rosemont, Ill., sponsored by the National Assn. of Mutual Insurance Cos.; \$349 for NAMIC members; \$379 for non-members. NAMIC Education Dept., P.O. Box 68700, Indianapolis, Ind. 46268-0700; 317-875-5250.

OCT. 10-11. Advanced Risk Management Analysis course in Denver, sponsored by the Risk & Insurance Management Society Inc.; \$545 for RIMS members; \$645 for non-

members. Risk & Insurance Management Society, Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

OCT. 10-12. 44th Annual Council on Employee Benefits Fall Conference in Garden City, N.Y.; \$350 for CEB members; \$400 for non-members. C.S. Lazaroff, Goodyear Relief Assn., 1144 E. Market St., Akron, Ohio 44316; 216-796-4008.

OCT. 11. Loss Control in Public Businesses conference in Hartford, Conn., sponsored by American Insurance Services Group Inc., division of Engineering & Safety Services; \$275 for E&S subscribers; \$325 for non-subscribers. Allan M. Apo, AISG Engineering & Safety Services, 85 John St., New York, N.Y. 10038; 212-669-0482.

OCT. 11. Advanced Cost Containment workshop in Columbus, Ohio, sponsored by the Health Research Institute; \$295. **Also Nov. 15** in Mead-

owlands, N.J.; and **Dec. 13** in Chicago. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

OCT. 11. National Health Proposals Workshop in Columbus, Ohio, sponsored by the Health Research Institute; \$295. **Also Nov. 15** in Meadowlands, N.J.; and **Dec. 12** in Chicago. Workshop Coordinator, Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

OCT. 11. The Electronic Marketplace conference in London, sponsored by the Insurance & Reinsurance Research Group Ltd.; 250 pounds (\$486) plus 15% VAT. Insurance & Reinsurance Research Group Ltd., Bridge House, 181 Queen Victoria St., London, England EC4V 4DD; phone: 01-236-2175; fax: 01-489-1487.

OCT. 14-17. 1990 International

Claims Assn. Annual Meeting in Vancouver, British Columbia; \$200 for employees of ICA-member companies. C. Ernest Beane, Secretary, International Claim Assn., c/o Modern Woodmen of America, 1701 First Ave., Rock Island, Ill. 61201; 309-786-6481, ext. 302.

OCT. 15. Insurance Procurement & Negotiations seminar in San Francisco, sponsored by the American Management Assn.; \$525 for AMA members; \$575 for non-members. **Also Nov. 1** in New York City. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

OCT. 15-16. Insuring Export Credit and Political Risk conference in London, England, co-sponsored by IBC Financial Focus Ltd. and The Institute of Export; 558 pounds (\$1,084). IBC Financial Focus Ltd., IBC House, Canada Road, Byfleet, Surrey, England KT14 7JL; 071-637 4383.

OCT. 15-16. Survival Thinking: The Key to Sustainable Profits in the '90s conference in Dallas, sponsored by Coopers & Lybrand; \$950. Deborah Slott, The Conference Group Ltd., 45 W. 60th St., New York, N.Y. 10023; 212-586-0880.

OCT. 15-16. First Party Property Policy Environmental Claims and Litigation seminar in New York City, sponsored by Executive Enterprises Inc.; \$1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

OCT. 15-16. Changes in Insurer Data-Reporting Requirements conference in Chicago, sponsored by Insurance Services Office Inc.; \$450 for ISO member companies; \$550 for non-members. **Also Oct. 29-30** in New York City. Maureen Karon, Assistant Manager, Insurance Services Office, 160 Water St., New York N.Y. 10038; 212-487-4722.

OCT. 15-17. Environmental Regulation Course in Nashville, Tenn., sponsored by Executive Enterprises Inc.; \$1,045. **Also Oct. 15-17** in Chicago, **Oct. 22-24** in Philadelphia and San Diego, and **Oct. 31-Nov. 2** in Honolulu. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

OCT. 15-17. Insurance Loss Control Assn. Conference in Atlanta, co-sponsored by the National Assn. of Mutual Insurance Cos.; \$139 for ILCA members; \$149 for NAMIC members; \$169 for non-members. Dawne Smith, NAMIC Education Dept., 3707 Woodview Trace, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250.

OCT. 15-18. Insurer Solvency Assessment course in London, England, sponsored by Insurance & Reinsurance Research Group Ltd.; 670 pounds (\$1,302) plus 15% VAT. Joy Bambrough, IRRG Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD; 071-236 2175.

OCT. 16. Flex 2000 Conference in Seattle, sponsored by the Employers Council on Flexible Compensation; \$185 for ECFC members; \$195 for non-members. **Also Oct. 17** in Los Angeles, **Oct. 23** in Houston, and **Oct. 30** in Pittsburgh. ECFC Conference Center, Dept. 5063, Washington D.C. 20061-5063; 202-659-4300.

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Corroon, Willis

Continued from page 1
with Willis Faber.

The fate of the deal now rests with C&B shareholders: Willis Faber shareholders Friday unanimously approved the plan.

Willis Faber Chairman Roger Elliott also announced that Willis Faber shareholders would receive a 9.9 pence per share dividend, totaling 24 million pounds (\$44.9 million at current exchange rates), if the merger is completed.

No questions were asked and no objections were made to the merger plans at an extraordinary general meeting of shareholders at Willis Faber's London headquarters.

Afterward, Mr. Elliott, clearly delighted with the shareholders' wholehearted support, said he had not expected any objections "since the proxy votes were more than 95% in support of the merger."

The terms of the proposed merger involve the exchange of 7.8 Willis Faber ordinary shares for each share of C&B common stock, so the value of the transaction to C&B shareholders depends upon the performance of Willis Faber stock.

But the price of Willis Faber stock has fallen since the announcement of the planned merger. Willis Faber stock, which was trading at 289 pence (\$5.40 at current exchange rates) on May 31, closed at 208 pence (\$3.89) on Thursday, down 28%. The stock closed at 214 pence (\$4) a week earlier.

Aon offered on Sept. 12 to purchase all outstanding shares of C&B for \$40 per share, a bid Aon considered "superior" to the Willis Faber offer.

However, Aon withdrew its \$840 million cash bid Sept. 21 after the C&B board earlier in the week rejected Aon's bid and refused requests to discuss the proposal.

Events last week, though, could help Aon get its offer to C&B shareholders.

Robert Steinberg, a senior managing director of Bear Stearns and one of the directors of its arbitrage operation, said the stock broker will ask the Delaware courts to order an appraisal of C&B shares.

A report distributed by Bear Stearns, noting that the stock broker will vote against the merger with Willis, encourages shareholders to file for appraisal, or dissenters' rights, and explains the procedure.

The report says there is little "downside" in rejecting the merger because C&B shares would likely not fall much below the current low price.

C&B stock closed at \$29.63 Thursday, down 12.2% from \$33.75 on May 31.

"If the Aon bid is resurrected, or Willis is forced to raise its bid, the upside from here is substantial," the Bear Stearns report says.

"Ordinarily, the chances of shareholders defeating a merger in the absence of organized opposition are slim. There are several reasons why it is not so farfetched in this instance," the report says.

The report notes that Willis Faber has reserved the right to terminate the merger if more than 9% of C&B shares seek the appraisal.

And, the report says: "The likelihood of a high number of dissenters is much greater here than in most situations."

Discussing the likelihood of Willis Faber waiving the 9% condition, the report notes that "Willis may not want to run the risk of paying a substantial amount of cash in a dissenters' proceeding. If 3 million shares are awarded \$40 per share, Willis would have to lay out \$120 million."

Mr. Steinberg criticized C&B's board for accepting what he described as a \$30 stock deal over a \$40 cash deal. Bear Stearns estimates that as of Sept. 24, taking into account the special dividend, the Willis package is worth \$30.66.

"They figured out this represents the shareholders' best interests," Mr. Steinberg said, tongue in cheek.

"I think it speaks for itself. I think the C&B board did something wrong. They did not act in my best interests as a shareholder," Mr. Steinberg asserted.

Noting that the C&B board unanimously decided against further consideration of the Aon proposal, he said: "I can't imagine 12 people sitting in a room and making that unanimous conclusion."

Mr. Steinberg would not reveal how much stock Bear Stearns holds, saying it "isn't relevant."

While denying that Bear Stearns is trying to derail the Willis Corroon merger, Mr. Steinberg allowed that "maybe it will and maybe it won't" kill the merger.

The report notes that filing for dissenters' rights is relatively easy and that shareholders can change their minds and withdraw the filing any time within 60 days after the merger becomes effective should, for instance, Willis shares move significantly higher.

"At Bear Stearns, we require a phone call and a two-sentence fax," the report says to those whose C&B shares are held by Bear Stearns.

However, Michael Smith, vp with Lehman Bros. in New York, a divi-

sion of Shearson Lehman Hutton Inc., observed of the dissenters' rights approach: "It's a long, drawn-out process."

And, at the Willis Faber shareholders' meeting Friday, Mr. Elliott said he did not expect many C&B shareholders to pursue the appraisal, calling it a complex and lengthy process.

"It may take shareholders up to two years to obtain reappraisal, during which time they will have to sit on their shares," a Willis Faber spokesman said.

Although calculating the market value of stock is difficult, "that's not the case here because somebody came up and said, 'I'll pay \$40 for the stock,'" noted Walter Fitzgerald, an analyst with Baird, Patrick & Co. Inc. in New York.

However, C&B attorneys could contend that because the Aon offer has been withdrawn, the brokerage should not be obligated to pay shareholders \$40 a share, Mr. Fitzgerald said.

Also at issue is how long the effort could be tied up in the courts, Mr. Fitzgerald said, questioning if Willis Faber might "get spooked."

Meanwhile, a shareholder who sued C&B opposing the planned merger claims credit for the special \$2.50 dividend C&B offered shareholders if the Willis-Corroon deal is cemented.

"I don't think any of this would have happened without this class action," said the plaintiff, Stanley Kleckner, president of New York-based Polar International Brokerage Corp., an insurance brokerage.

Robert Cuthbert, first vp and chief financial officer for C&B, would not comment on whether the special dividend was related to the settlement agreement reached with Mr. Kleckner.

The special dividend is not officially part of the settlement agreement but had it not been offered, reaching a settlement might have been more difficult, *Business Insurance* learned.

Polar originally sued C&B, Willis Faber and the brokerages' officials in New York Supreme Court June 21. The suit was amended Sept. 13 following Aon's purchase offer.

The suit, which sought class-action status, asked for a declaration that the defendants had committed a "gross abuse of mistrust" and that they be directed to open up bidding for C&B by making available to any potential purchasers the same confidential company financial records that the broker provided to Willis Faber.

Polar also asked for a show-cause

order seeking a 40-day postponement of the merger vote from Oct. 4 and a list of C&B shareholders.

However, it withdrew the motion after C&B said it was postponing the shareholders' meeting until Oct. 8 and distributing proxy material containing information on the Aon bid, Mr. Kleckner said.

Mr. Kleckner would not reveal how much stock Polar owns in C&B. "That's not relevant," he said.

The Polar suit also asked for compensatory damages and attorneys' fees.

Despite the settlement, the issue of attorneys' fees remains a "subject of discussion," said plaintiff attorney Samuel Sporn with New York-based Schoengold & Sporn.

In 1984, Polar also filed a shareholder suit against Marsh & McLennan Cos. Inc., charging that the insurance brokerage was not pressing claims related to \$165 million of bond trading losses because directors were afraid of turning up material that could be used against them (*BI*, Oct. 1, 1984). The suit was subsequently settled.

The settlement of the Polar suit is contingent upon the settlement of the two additional suits filed in Delaware and court approval, Mr. Kleckner said.

Two complaints seeking class-action status were filed Sept. 20 and Sept. 21 in Delaware's Court of Chancery, according to Willis Faber proxy materials. The complaints contend the C&B board breached its fiduciary duties to C&B shareholders by rejecting the Aon proposal without any attempt to discuss the proposal with Aon.

The proxy says the complaints seek an order temporarily restraining C&B's shareholder meeting for 10 days until supplemental information is disseminated to the C&B shareholders, an action that has since been taken.

The complaints also seek a preliminary injunction against the completion of the merger before the dissemination of supplemental material, which is also a moot point now.

In addition, the complaints seek unspecified compensatory damages, legal fees and other costs.

Stock analysts aren't certain whether the planned merger will receive C&B shareholder approval.

"I think it's going to be very close," said Mr. Fitzgerald of Baird, Patrick & Co.

A total of 40% to 50% of C&B shareholders are institutional investors who could "go either way," he said.

Mr. Fitzgerald also noted that former agency owners who received C&B stock when their firms were

taken over—who account for about 25% of C&B's outstanding stock—have an incentive to accept the Willis Faber stock rather than \$40 in cash because they could be hit by capital gains taxes.

But this would not be a problem for outside shareholders, said Mr. Fitzgerald, noting that pension funds do not pay taxes.

It is "hard to say" how C&B shareholders will respond, said Mr. Smith of Lehman Bros.

Mr. Smith said the special \$2.50 dividend is "designed to encourage new shareholders to seek out their proxies" and vote in favor of the merger.

"Corroon & Black's difficulty is they need a majority of shareholder units to approve this merger," Mr. Smith said.

However, over the past several days, "almost 25% of the shares outstanding have changed hands," and they are not entitled to vote on the merger.

Those shareholders, though, can obtain proxies from the shareholders from whom they bought the shares and vote on their behalf, he said.

The dividend, though, "doesn't change my view of the relative values of the two offers," said Mr. Smith, who has previously criticized C&B management for not fully considering the Aon offer.

Ira Malis, an analyst with Alex. Brown & Sons in Baltimore, was optimistic C&B management could obtain approval for the merger. With probably 25% to 30% of stock in "friendly hands," management would need only another 20% of outstanding stockholders to agree to win approval of the merger, he said.

A lot of the former agency owners will tend to vote with management, Mr. Malis predicted.

Referring to the special dividend, Mr. Malis said: "It certainly isn't going to hurt, but I don't think it's going to make a difference."

"What might have helped more than the dividend is the fact that Aon took the bid off the table," he said.

Mr. Malis also noted that the \$51 million dividend distribution changes the value of the merger. This income would have become part of the new company, he said. It is now being taken out of the deal, yet the terms of the merger remain the same.

Aon Chairman Patrick G. Ryan was traveling last week and was unavailable for comment.

International Editor Stacy Shapiro and Associate Editor Carolyn Aldred in London contributed to this report.

Britamco

Continued from page 2

The fine—one of the largest ever levied by the New York insurance department—has had no material impact on Britamco's financial condition, Mr. Glazer said.

Britamco had already paid nearly half of the fine—\$204,810—to the state as excess lines premium taxes on 1988 NSDP program placements and had anticipated paying more taxes, according to Mr. Glazer. New York credited those taxes toward Britamco's fine and, following an administrative hearing, Britamco paid the remainder of the fine, he said.

The \$500,000 fine was levied on Britamco, the NSDP and Stephen Weicholz of East Rockaway, N.Y., a Britamco principal and licensed insurance broker in New York, said the Insurance Department spokesman.

Britamco contends that the \$500,000 fine applied only to Britamco.

In addition, Mr. Weicholz was separately fined \$19,000 "because of his control over Britamco's operations through direct and indirect ownership interests in the company and his involvement with the placement of Britamco policies in New York," the department said in a statement.

"It is with the consumer's protection in mind that the department re-

quires insurance companies to meet stringent standards and obtain a license if they want to do business in New York," said Insurance Superintendent Salvatore R. Curiale.

"The department believes that when these requirements are not met, a substantial penalty must be the result," he said.

As part of the settlement agreement, NSDP has arranged for Connecticut Indemnity Co., an authorized insurer, to write the purchasing group's policies in New York.

However, some existing Britamco policies will remain in effect until July 31, 1991, and Britamco has agreed to honor all valid insurance claims that are pending as well as those that will be made under the terms of its policies.

Until those policies expire, Britamco has agreed to file quarterly reports with the department.

Britamco also has agreed not to underwrite any admitted risks in New York without first obtaining a license from the insurance department.

The NSDP purchasing group also provides coverage to about 2,200 additional dentists in 45 other states, Mr. Glazer said. The IIE is authorized to write coverage in nearly all of those states, he said. ■

Ambriano pleads guilty to tax charges

NEW YORK—Joseph F. Ambriano has pleaded guilty to two criminal tax evasion charges stemming from his failure to report commissions on reinsurance placements related to utility captive Associated Electric & Gas Insurance Services Ltd.

The former president of New York broker Davis Dorland & Co. pleaded guilty to filing false federal tax returns in 1983 and 1984. Assistant U.S. Attorney Robert Cramer said Mr. Ambriano did not pay taxes on time on commissions paid through a Swiss bank account he controlled.

Suit tying leukemia to power lines dropped

By MICHAEL BRADFORD

VANCOUVER, Wash.—The first lawsuit trying to link electromagnetic fields with a child's leukemia death has been dropped.

A Washington state Superior Court in Vancouver granted a voluntary dismissal of the suit, filed in June against Clark Public Utilities of Vancouver.

The suit, which Michael Hicks, a Vancouver defense attorney, said was the first of its kind, charged that electromagnetic fields emit-

ted by high-power lines near an elementary school caused leukemia in Ariana Hightower, a sixth-grader who died in 1987.

It sought unspecified damages. Mr. Hicks said the suit was dropped because the girl's mother did not want to spend the time and money needed for "extensive testing" required to prove the case.

Researchers are investigating whether exposure to electromagnetic fields can cause cancer and other illnesses (*BI*, Feb. 1, 1988).

"To a certain extent, the public

has been misled concerning the possible health risks associated with (electromagnetic fields) by a few alarmists who are more concerned with sensationalizing the issue than with accurately and completely reporting the current state of the scientific research," said Michael T. Harp, president and chief executive officer of Federated Rural Electric Insurance Corp., the liability insurer for the utility.

Federated Rural Electric coordinated the defense.

—By Douglas McLeod

Punitive damages

Continued from page 1

amount of punitive damage as a matter of "moral discretion" violates a defendant's right to due process.

- Whether judicial review of punitive damage awards ensures due process.

- Whether assessing punitive damages against an employer vicariously for the acts of its employees violates due process.

The high court has agreed to review a case in which an Alabama jury hit Newport Beach, Calif.-based Pacific Mutual Life Insurance Co. with \$1.1 million in compensatory and punitive damages. A municipality's group health policy was canceled after a company agent pocketed the premiums. The insurer was found legally liable for the fraudulent acts of its agent (BI, April 9).

The jury was told that if it found fraud, it could award punitive damages at its "discretion" in whatever amount it deemed appropriate to punish the wrongdoer and deter future wrongful behavior. Jurors were told to consider the "character and degree of wrong" of the defendant's actions and "the necessity of preventing similar wrongs."

Pacific Mutual appealed to the Alabama Supreme Court, which upheld the verdict. The insurer claims the award violates its right to due process under the 14th Amendment, which states: "No state shall...deprive any person of life, liberty, or property without due process of law."

The Alabama system of awarding punitive damages, Pacific Mutual claims, is arbitrary, vague and discriminatory, and fails to provide defendants with adequate notice that they will be punished or what the penal consequences will be.

Pacific Mutual also argues that this punitive damage award was excessive and, therefore, unconstitutional. The jury did not, however, specify what portion of the total award was punitive damages.

Further, the insurer says that holding an employer liable for punitive damages for the unauthorized acts of its employee violates due process.

Pacific Mutual also contends that allowing judges to review jury verdicts does not sufficiently correct what it calls the problem of excessive punitive damage awards.

Many of the nation's largest and most prestigious business organizations joined Pacific Mutual in its appeal to the Supreme Court.

"If one were to set out to design a system of punishment with the least amount of notice, consistency and predictability, the greatest likelihood of arbitrariness and invidious discrimination," one would design a system that mirrors the Alabama system of awarding punitive damages, says a brief from the U.S. Chamber of Commerce, the National Assn. of Manufacturers, the Chemical Manufacturers Assn. and the American Corporate Counsel Assn.

"Alabama's vague and standardless punitive damage laws create not just a risk, but a virtual certainty, of arbitrary, discriminatory and therefore erroneous deprivations of property," they argue.

The business groups believe juries discriminate against large corporations, saying that juries view them as "deep-pockets."

The Mid-America Legal Foundation, which represents Midwestern business interests, described the current punitive damages system as a "lottery." "The procedure for application of punitive damages in Alabama...has clearly evolved into an oppressive and arbitrary system which effectively turns the courtroom into a gambling casino," it argues.

This group also accused juries of discriminating against businesses,

especially insurers. "The jury was given an opportunity to vent its prejudice against big business and its frustration against insurance companies in general, all of which serves no legal, judicial or social purpose."

The nation's leading insurance trade groups sent briefs to the high court arguing that the increasing number of large punitive damage awards is causing insurance prices to rise. "These decisions drastically and unpredictably enlarge risks facing insurers, which must rely on predictable allocation of risks and costs in providing insurance, and jeopardize their ability to offer affordable insurance," says a brief from the Alliance of American Insurers, the American Council of Life Insurance, the American Insurance Assn., the Health Insurance Assn. of America and the National Assn. of Independent Insurers.

The Liability Insurance Underwriters similarly argues in its brief: "Not only does the presence of punitive damage claims increase the costs of defense under (liability) policies, but punitive damages also make settlements more difficult or impossible."

Aetna Life Insurance Co., Allstate Insurance Co., Bankers Life & Casualty Co., Ohio Casualty Insurance Co. and Reserve Life Insurance Co. joined together to

'The jury was able to vent its prejudice against insurers,' says the Mid-America Legal Foundation.

argue that: "In punitive damage cases, unguided juries, like bolts of lightning, wreak retribution on individual wrongdoers in amounts determined primarily by instinct, passion and the chemistry of a particular, wholly unique case."

Insurance buyers also voice their opposition to the current system of punitive damages in a brief filed by the Risk & Insurance Management Society Inc. along with the National Assn. of Wholesaler-Distributors, the Assn. for Manufacturing Technology and the Product Liability Alliance.

RIMS says it is interested in this case "because imprecise and standardless punitive damages systems make it impossible for risk management professionals to calculate with any certainty when and in what amounts punitive damages may be imposed."

While many briefs filed on behalf of Pacific Mutual addressed broad public policy arguments, many groups used the occasion to advocate their individual interests.

For example, the Big Six accounting firms filed a brief arguing that punitive damages should never be awarded where the liability is vicarious, such as when an entire accounting firm is held liable for a single auditor's mistakes.

Many major media organizations jointly argued that punitive damages should never be awarded in libel cases, in part because free speech is protected by the First Amendment.

Pharmaceutical manufacturers argue that punitive damages should never be awarded when the Federal Drug Administration had approved a drug that later caused injuries. Further, they say, the fear of large punitive damage awards hampers the development of beneficial drugs.

Many of the briefs filed on behalf of Pacific Mutual suggest specific reforms, including:

- Raising the standard of proof necessary to award punitive damages to "clear and convincing evidence" from the current norm of a "preponderance of evidence."

- Limiting punitive damages to a multiple—many suggested three—of compensatory damages.

- Limiting the size of punitive damages to analogous statutory penalties, when possible.

- Requiring juries to measure the size of the punitive damages against the amount of profit the defendant gained through his wrongful conduct.

- Forbidding juries from taking into account the wealth of a defendant.

- Eliminating punitive damages when the defendant's liability is vicarious.

Many states have already adopted those reforms. In fact, many of the briefs ask the Supreme Court to merely rule that the individual state legislatures must set some limit on punitive damages.

Plaintiffs in the Pacific Mutual case argue against limiting the amount of punitive damages juries can award. The current system is fair, they argue, and the Supreme Court limiting punitive damage awards would be an "inappropriate federalization of state law."

Seven of the nation's leading consumer organizations as well as plaintiffs' groups filed "friend of the court" briefs on behalf of the plaintiffs.

"Punitive damages are a fundamental part of our jurisprudence," argues the Consumers Union of the United States. "With the minimum of transaction costs," punitive damages achieve the multiple goals of punishing offenders, deterring future misconduct industrywide and creating an incentive to upgrade the quality of goods and services, it says.

The Assn. of Trial Lawyers of America, which consists mostly of plaintiffs' attorneys, argues in its brief: "The heart of the challenge to punitive damages in this case is an attack on the jury."

ATLA further argues that giving defendants greater ability to predict the awards would defeat the purpose of punitive damages by allowing them to protect themselves against the sting of punitive damages. "Making punitive damage awards predictable eviscerates their effectiveness as a deterrent," the group says.

The use of punitive damages is especially important when an insurance company is the defendant "since state regulation has not provided a significant countervailing force to insurance industry power," the Consumers Union said.

These sentiments were echoed by the National Insurance Consumer Organization, which was founded by consumer advocate J. Robert Hunter: "The insurance industry, free from federal regulation and subject to governmental control only by relatively weak state insurance departments, is only truly regulated by court action in individual tort claims, especially where such state court causes of action carry the threat of punitive damage awards to punish and deter corporate misconduct."

"Punitive damage awards are the only effective manner of punishing and deterring widespread claims abuses by the industry," NICO says. "Punitive damages can help remove an aura of arrogance and insolence that has permeated the industry." Further, it argues that if the Supreme Court were to find there are due process limitations on punitive damage awards, it would be opening the courts to a flood of litigation challenging the due process limitations on awards for pain and suffering and emotional distress as well.

"The adoption of stricter federal standards for assessments of punitive damages would throw the entire tort system into chaos as all assessments for pain and suffering or emotional distress would immediately be appealed under the same theory," NICO asserts. ■

Update

Unlimited oil spill liability law

SACRAMENTO, Calif.—Shipowners and operators responsible for oil spills off the California coast will be held strictly liable for unlimited property and environmental damage under a law signed last week by Gov. George Deukmejian.

Professional cleanup crews will be immune from liability during the first 60 days after an oil spill.

The measure is more stringent than both an earlier proposal by Gov. Deukmejian (BI, May 7) and the federal Oil Pollution Act of 1990, which was signed into law in August (BI, Aug. 27).

Liability under the federal law is \$600 to \$1,200 per gross ton of a ship's displacement (see related story, page 20).

California's S.B. 2040, which took effect immediately, also requires vessel owners and operators to have at least \$500 million in oil spill liability coverage in the form of commercial or self-insurance or a certified letter of credit from a bank.

That standard is to rise to \$750 million in 1995 and to \$1 billion by the year 2000.

Vessel owners and operators also must submit detailed oil spill cleanup and prevention plans to an administrator. The administrator—who will be a deputy director of fish and game—will be appointed by the governor next year and will have until the end of 1992 to approve the plans.

An oil spill response fund created by the law is to be financed by a 25-cent-per-barrel tax on crude oil produced in or transported to the state. The tax will be levied on all owners of the oil after it has been received at the marine terminal.

Tobacco verdict impact unclear

OXFORD, Miss.—Defense and plaintiffs' attorneys are sharply divided over whether a jury verdict holding American Tobacco Co. liable for the cancer death of a long-time smoker could pave the way for similar rulings.

A state court jury in Oxford, Miss., last week found the company liable in the 1987 death of Nathan H. Horton. But jurors did not award any damages after finding that Mr. Horton—who smoked Pall Malls since the 1950s—also was partially responsible.

"The more times jurors say that tobacco companies are wrong, the easier it will be for the next jury to follow suit," said plaintiffs' attorney Marc Z. Edell, with Budd, Lerner, Gross, Picillo, Rosenbaum, Greenberg & Sade in Short Hills, N.J.

But defense attorney Robert E. Northrip of Shook, Hardy & Bacon in Kansas City, Mo., called American Tobacco the victor. "These cases are about money, and none was awarded. I think the impact of this verdict is that plaintiffs and plaintiffs' lawyers will realize that juries don't receive these cases very well."

In the case, the Lafayette County jury ruled 9-3 against American Tobacco, a unit of American Brands Inc. of Greenwich, Conn. An earlier trial ended in a mistrial.

Mr. Horton's initial suit in 1986 charged that the cigarettes were "defective and unreasonably dangerous." His widow and children later continued the suit as a wrongful death action.

One lawyer for the family called the verdict "unusual." It is one step toward "changing public attitudes toward cigarette smoking and who's to blame for the deaths it causes," said Mike Davis of Byrd, Davis & Eisenberg in Austin, Texas.

Lawyers for the family asked Judge Eugene Bogen to award damages for at least "undisputed medical fees and funeral costs," or to declare a new trial, he said.

American Tobacco attorneys would not comment. American Tobacco is asking Judge Bogen to enter judgment for the company because no damages were awarded.

Boeing says court allows cover

SEATTLE—A federal court jury verdict will allow Boeing Co. to recover enough liability coverage to pay its share of an estimated \$100 million pollution cleanup, the aerospace company says.

The dispute centers on the cleanup of two hazardous waste sites in King County, Wash., which Boeing and four other companies used from the 1950s to the late 1970s (BI, Jan. 15).

The jury found on Sept. 21 that Seattle-based Boeing did not expect or intend to pollute at either site in the 1950s and during most of the 1960s.

However, the jury ruled that by 1968 at one site, and by 1971 at the other, the company expected or intended to pollute and therefore is not covered after those years.

Boeing's attorneys say the company has enough coverage in the early years to pay for its estimated \$78 million share of the cleanup. But, insurer attorneys say the policyholder and insurers should split the cleanup costs. Insurers include Hartford Accident & Indemnity Co. and several Lloyd's of London syndicates.

The judge may either resolve the issue or remand it to a jury.

Briefly noted

The Alaska Superior Court last week ruled that Exxon Corp. and its shipping subsidiary are strictly liable for all actual damages caused by the wreck of the **Exxon Valdez** in Alaska's Prince William Sound (BI, April 3, 1989). . . California Gov. George Deukmejian vetoed a bill that would have required companies with 25 or more employees to give workers up to four months of **unpaid leave** every two years to care for family members. . . A federal appeals court, in an unpublished decision, has affirmed that a second-layer excess insurer **does not have to drop down** and pay claims within the first excess layer. As a result, Hudson Insurance Co., a unit of Skandia America Corp., does not have to drop down and pay claims to Gelman Sciences Inc. of Ann Arbor, Mich., which cannot recover claims from the insolvent Mission National Insurance Co. (BI, Feb. 6, 1989). . . The July 13 downtown **Los Angeles subway tunnel fire**, which caused approximately \$2.2 million of insured damages, was accidental and caused by a cutting torch, says a report by Los Angeles County Transportation Commission investigators. However, a Los Angeles City Fire Department investigation continues (BI, July 23).

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