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Updates

Colorado's work comp reforms survive constitutional challenge

DENVER—A 1991 pro-employer workers compensation law is still standing after the Colorado Supreme Court last week rejected a union-backed lawsuit claiming constitutional violations.

In its Oct. 17 ruling in *Duran vs. Industrial Claim Appeals Office of Colorado*, the court rejected arguments made by workers with less serious injuries that the law's two-tiered benefit system deprived them of the equal protection of the laws afforded by the state and U.S. Constitutions.

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Ice cream company uninsured for recall of tainted products

By DAVE LENCKUS

MARSHALL, Minn.—Ice cream producer Schwan's Sales Enterprises Inc. has no product liability insurance to cover its costs—which could exceed $200 million—of recalling the salmonella-contaminated products that have made scores and possibly thousands ill nationwide.

One possible cause of the outbreak is that batches of pasteurized ice cream mix obtained from Schwan's suppliers were contaminated by tainted raw egg residue in the tanker trucks Schwan's contracted to haul the mix to its plant, state and federal health officials said late last week.

Schwan's immediately announced several measures to prevent a recurrence.

Several attorneys, though, already had filed separate lawsuits in Hennepin County District Court in Minneapolis seeking class-action status on behalf of those who became ill from the ice cream.

A consumer group official said the outbreak underscores the need for the U.S. Food and Drug Administration to require all food processors to comply with a food safety inspection system that the agency is developing.

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No big losses expected from flooding in Texas

By SARA MARLEY and MARK A. HOFMANN

HOUSTON—Claims from last week's flooding in the Houston area are trickling in, but insurers do not anticipate significant losses from the five days of heavy rain.

By Friday morning, the storms had moved north and east, dumping as much as three inches of rain an hour in some areas near the Texas-Louisiana border, raising the possibility of more storm-related losses. And the spectacular explosion of a gasoline pipeline that ran beneath the swollen San Jacinto River sent about 70 people to area hospitals for minor injuries and damaged about a dozen houses.

Colonial Pipeline Co. of Atlanta, which owns the pipeline, is insured but a spokesman could not provide details. No damage estimates were available because Colonial Pipeline could not even get company personnel to the scene late last week.

The pipeline is one of the major conduits of gasoline to the East Coast, and wholesale gasoline prices rose by as much as 4 cents a gallon within hours of the explosion.

Despite the severity of the flooding, insurers are not bracing for huge losses. The Property Claim Services division of the American Insurance Service

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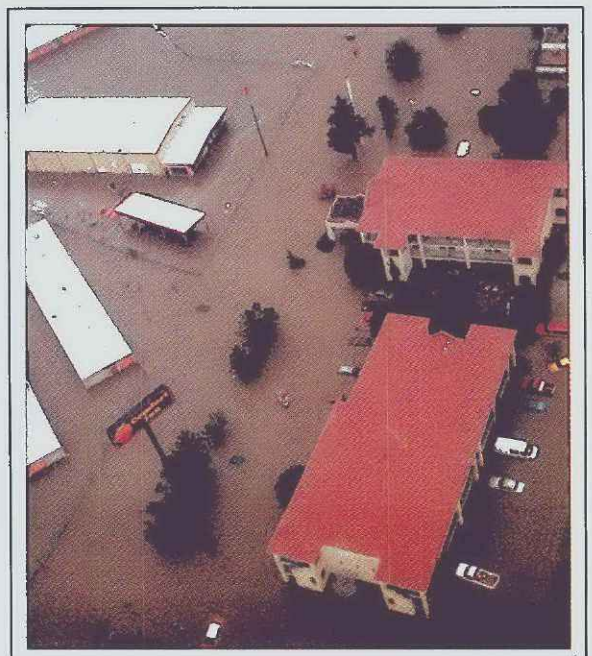

AP/Wide World photo

Floodwaters swamped the area around Houston.

Kodak retouches benefits to slow retirements

By DEBORAH SHALOWITZ COWANS

ROCHESTER, N.Y.—In an apparent about-face from current tactics, Eastman Kodak Co. is seeking to hold onto its older employees by instituting minimum age requirements for full pension and retiree health care benefits.

Benefit experts say Kodak may be making the change because it lost too many experienced workers under a generous early retirement program introduced in 1992.

Beginning Jan. 1, 1996, employees must be at least 60 years old with at least 30 years of service, or 65 years old with any amount of service to be eligible for full pension benefits. Under Kodak's current defined benefit plan formula, employees are eligible for full pension benefits when their age and service period total 85 years, with no specific minimum age or service requirements.

Kodak is restructuring eligibility requirements for future retiree health care coverage and life insurance benefits in a similar way.

Beginning Jan. 1, 1996, workers must be at least 55 years old with at least 10 years of service to be eligible for retiree health care coverage and life insurance benefits.

To be eligible under the current plan, employees may either have an age and years of service total of 75 or must be at least age 55 with at least 10 years of service.

In a related move, Kodak is changing eligibility requirements for early retirement.

Currently, two groups of employees are eligible for an early retirement package: those at least 55 years old with at least 10 years service; and those who have a combined age and years of service of 75 or more.

Beginning Jan. 1, 1996, the second group will no longer be eligible for the benefits.

The early retirement benefit begins at 50% of full pension benefits and increases 5% a year for the next 10 years.

Only benefits accrued after 1995 are affected by the series of changes.

The shift in Kodak's approach can be traced to Kodak President and Chief Executive Officer George M.C. Fisher, according to a spokesman for the company.

Mr. Fisher, who joined Kodak in late 1993, believes strongly in in-

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Alleged partner of Alan Teale sought following fraud indictment

By DOUGLAS McLEOD

MOBILE, Ala.—Federal authorities are trying to track down an Alabama insurance executive who left the country before being charged last month with participating in a vast insurance fraud conspiracy.

Stephen D. Coker, allegedly a secret partner of late insurance con man Alan Teale, was charged in a 35-count racketeering, fraud and tax evasion indictment filed in federal court last month.

The indictment accuses Mr.

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Teams' liability no field of dreams

Athletes may sue if they can't suit up

By RODD ZOLKOS

The possibility of injury lurks in almost every sport, but the risks are obviously greater when an athlete takes the field with a cardiac condition or chronic injury.

Dealing with athletes who have possibly disabling medical conditions holds its own risks for team officials and the schools or programs that sponsor them, as well as doctors who treat those athletes.

On the surface, it can look like a game that can't be won. Athletes may sue if they're barred from playing because of a medical condition, yet at the same time often have a basis for litigation if they do play and suffer a disabling injury.

"It works both ways, actually, which leaves both the school and the physician in a bad place," said Dr. Mark R. Hutchinson, director of sports medicine services and assistant professor of orthopedics at the

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AP/Wide World photo

Liabilities may be greatest in big-ticket sports such as college football.

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Colorado comp reforms intact

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Under the 1991 law, workers with total disabilities receive higher benefits than they had previously and workers with partial disabilities receive lower benefits than they would have under earlier laws.

Conceding that the total/partial distinction is imperfect, the court found that "the legislature could reasonably have concluded that partial injuries. . . .are of a different character and severity than injuries. . . .such as injury to the back." Because it found the 1991 law was rationally related to a legitimate government purpose, the court concluded that the law did not violate the equal protection clauses.

The constitutional question was the latest of many challenges to the law. Next week, Colorado voters will vote on a ballot initiative that would amend the state constitution to ensure injured workers' right to choose their own doctors (*BI*, Sept. 12). Earlier, businesses lobbied successfully against a bill that would have altered the definitions of total and partial disability (*BI*, May 17, 1993).

M&M restructures top ranks

NEW YORK—Marsh & McLennan Inc. is restructuring its senior management, giving John T. Sinnott direct responsibility for all of MMI's global risk management, insurance brokerage and consulting operations.

Mr. Sinnott has been named president and chief executive officer of MMI, the insurance brokerage unit of Marsh & McLennan Cos. Inc. He and David D. Holbrook had been co-CEOs.

Mr. Holbrook has been named chairman of MMI and will focus on "planning, technology, financial, human resources, legal and communications services," according to the company.

Timothy J. Mahoney has been named vice chairman. He was previously executive vp in charge of MMI's risk management division, which handles jumbo corporate accounts.

The changes will be effective Jan. 1.

$750 million settlement nears

HOUSTON—With a court hearing scheduled for today, three corporations that made resins used in polybutylene piping were close late last week to committing at least $750 million to settle a nationwide class-action lawsuit brought on behalf of more than 6 million homeowners that installed the leak-prone piping in the early 1980s.

Shell Oil Co., Hoechst Celanese Corp. and E.I. du Pont de Nemours & Co. were in final negotiations last Friday on an accord that would put $688 million toward installing new pipes, $50 million toward paying for damage caused by the faulty plumbing material and $12 million toward notification expenses.

Neither Shell nor Hoechst would release details on any coverage that might apply. DuPont could not be reached.

"The problem we're having is coming up with a mechanism that reimburses all claimants for all out-of-pocket costs, all real and personal property damage and replumbing in applicable situations. We don't know exactly how much money that would require and neither do the defendants," said Michael Caddell, of Caddell & Conwell of Houston, who represents the homeowners.

Even $750 million will probably not fully reimburse all potential plaintiffs in the suit. If the money is exhausted, said Mr. Caddell, the defendants will either be able to continue contributing or walk away from it and face new lawsuits.

Debra Hayes of Fleming, Hovenkamp & Grayson, a Houston law firm that has been trying polybutylene pipe cases since 1988, said the settlement is a "rip-off" for homeowners and said she will advise her 100,000 clients to opt out if the current terms are approved by the court.

Mobil refinery explosion

TORRANCE, Calif.—Officials at Mobil Oil Corp. are investigating the cause of a gas explosion that ripped through a refinery last Wednesday, injuring at least 20 people.

The blast occurred at 3:15 p.m. when an elevated pipe carrying liquid petroleum gas sprang a leak, releasing flammable vapor into the air and creating a fire that burned for half an hour.

Portions of the refinery, which is southwest of Los Angeles, were shut down after the blast, but most of the plant was operating by 6 p.m. No nearby neighborhoods had to be evacuated.

Mobil officials did not return phone calls.

Wednesday's explosion was the third refinery blast to rock the South Bay area in the last two years. A blast at the Texaco Inc. refinery in Wilmington in October 1992 injured 16 workers and prompted the evacuation of 500 nearby residents. Earlier that year, a blast at Chevron Corp.'s El Segundo refinery injured 10 workers.

Mobil has had accidents at the Torrance facility over the years, including two that triggered a bitter court battle over safety issues. The Fairfax, Va.-based company paid more than $100 million to settle a suit the city filed in 1989 seeking court jurisdiction over refinery operations. The suit charged that accident and safety problems at the refinery caused three deaths and more than a dozen injuries since March 1987. Mobil agreed to state court oversight of its safety measures (*BI*, Oct. 29, 1990).

When that settlement was reached in 1990, Mobil said its worldwide assets were covered under a commercial property program with significant deductibles written by Industrial Risk Insurers of Hartford, Conn. Mobil also said it had commercial liability coverage above a large self-insured retention and had excess coverage through Oil Insurance Ltd., Oil Casualty Insurance Ltd. and ACE Ltd.

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AIDS ruling extends reach of ADA beyond employers

By MARK A. HOFMANN

BOSTON—A federal appeals court ruling could pave the way for multi-employer health plan sponsors, or even commercial insurers, to be held liable for discrimination under the Americans with Disabilities Act if benefits for certain conditions are limited.

A three-judge panel of the 1st U.S. Circuit Court of Appeals ruled that health plans can be sued under the ADA for capping AIDS-related benefits. The decision sends *Carparts Distribution Ctr. vs. Automotive Wholesalers Assn. of New England Inc.* back to U.S. District Court in New Hampshire for trial.

The lower court had dismissed the case on July 19, holding that an insurance plan could not be sued because the ADA provides grounds for action against only "employers" and "public accommodations." On appeal, the 1st Circuit held that the health plan was subject to the employment and public accommodation provisions of the disabilities law.

In a unanimous decision, Judge Juan R. Torruella specifically declined to address the question of whether the cap actually was discriminatory. A note to the opinion said, "For purposes of this appeal, we assume (the plaintiff) is a 'qualified individual with a disability.' We make no determination as to whether defendants' cap on benefits in this present case constitutes 'discrimination' based on a disability."

Nevertheless, sending the case back for trial gives the district court the opportunity "to create new law, assuming the merits are decided," said Perry Papantonis, an attorney with Hewitt Associates in Rowayton, Conn. The court could decide that caps on benefits for AIDS treatment—or caps on any medical ailment—are dis-

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Deadlines near for three annual *BI* directories

Deadlines are approaching for several *Business Insurance* directories.

The **environmental risk management consultants** directory will appear in the Nov. 21 issue. The extended deadline for returning completed questionnaires is Nov. 4. If you would like to be listed and have not yet received a questionnaire, please request one from Assistant Directory Editor Rich Trout at 312-649-5483.

The directory of **global property/casualty insurers** will appear in the Dec. 5 issue. The extended deadline for returning completed questionnaires is Nov. 4. If you are a property/casualty insurer that does business in countries other that in which you are based and have not yet received a questionnaire, please request one from Directory Editor Kathy Welyki at 312-649-5279.

The Dec. 5 issue will also contain a directory of **multinational employee benefit networks**. The extended deadline for returning completed questionnaires is Nov. 4. If your employee benefit network conducts business in countries other than that in which it is based and you would like to participate in this special listing, please call Editorial Assistant Ovie Dent at 312-649-5398.

There is no charge to be listed in these directories.

To be included organizations must complete and return the appropriate questionnaire by the specified deadline.

Lloyd's seeks share of member damages for syndicate debts

By STACY SHAPIRO

LONDON—In order to shore up the solvency of the market, Lloyd's of London is trying to get its hands on the damages that thousands of its disgruntled members might receive when suing members agents and auditors for negligence.

Last week, the Council of Lloyd's proposed changes to members' premiums trust deeds that would effectively force a portion of members' court recoveries to be paid directly to Lloyd's trust funds to cover their unpaid syndicate losses.

The changes must be approved by both the Council and Michael Heseltine, president of the Board of Trade.

Upon joining Lloyd's, each member signs several premiums trust deeds, which allow all premiums, reinsurance recoveries and claims to pass through a trust fund. Lloyd's is the trustee of three funds in the United Kingdom, the United States and Canada.

Lloyd's says the primary purpose of the trust deeds is to create a fund to protect policyholders.

Lloyd's previously has tried but failed to get the existing premiums trust deeds favorably defined in British courts to force litigating members to pay their liabilities with recoveries.

Therefore, the current position is that any recoveries must first be paid to members' stop-loss insur-

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PBGC backs off threat to terminate plan

Western Union bid includes pensions

By DOUGLAS McLEOD

PARAMUS, N.J.—The prospective buyer of Western Union Financial Services Inc. has agreed to assume the liabilities of Western Union's underfunded pension plan, averting a showdown with the Pension Benefit Guaranty Corp. that could have scuttled the bankruptcy reorganization of Western Union's parent.

Atlanta-based First Financial Management Corp. will pay New Valley Corp. $893 million for its Western Union subsidiary and will take over Western Union's pension obligations to 16,000 active and retired employees, New Valley announced.

The bid—submitted last week to the bankruptcy court handling New Valley's reorganization—is a revision of an earlier court-approved deal in which FFM would have paid $1.2 billion for Western Union without assuming the pension liabilities.

That earlier deal prompted the

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If only managers thought like owners

If they did, says John Head, insurers would make more money

By GAVIN SOUTER

HAMILTON, Bermuda—To make money and attract capital, insurance companies need to cut their costs and employ executives that think like owners, said an investment banker who made his reputation taking advantage of insurers' mistakes.

Many top executives do not pay enough attention to basic business concerns, such as returns on equity, the regulation of the industry, investment in technology and the true exposures the companies face compared to their capital, said John C. Head, a leading vulture investor.

Instead, they get bogged down in administration and give too much responsibility to junior officers, said Mr. Head, general partner and founder of New York investment banking firm John Head & Partners L.P. "As a basic rule, this industry does not make enough money."

As a step toward improving profitability, senior executives should always closely watch how their companies' return on equity compares with competitors', Mr. Head suggested at the Eighth International Reinsurance Congress in Bermuda earlier this month.

Comments by executives at British multiline insurers regarding their first-half performance typify management attitudes toward financial results, Mr. Head said.

"Their net worth was down and their return on equity was single digit but they were saying that it was a wonderful first six months," he said.

Senior executives at insurance companies also pay too little attention to regulation, Mr. Head said. "Most people don't even know the name, much less the telephone number, of their chief regulator."

The industry is highly regulated and will become more regulated as the number of insolvencies increase, so insurance executives should have a better understanding of regulatory issues, Mr. Head said.

And they should also pay greater attention to how their budgets are allocated, he said.

"Very few general managers of insurance companies say, 'Why are we spending more money on (travel) than we are on computer software?' " Mr.

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24-hour coverage impossible to attain, consultant argues

By CHRISTINE WOOLSEY

DENVER—Twenty-four-hour coverage—if defined as giving workers the same benefits and the same access to dispute resolution forums regardless of how they are injured—is unobtainable, a consultant contends.

"I am not a believer in 24-hour coverage as being a solution for much of anything," said John H. Lewis, an independent consultant in Boca Raton, Fla., who has 30 years' experience in the field of workers compensation legislation and litigation.

Plagued by workers comp problems, state legislatures increasingly are turning to the idea. "But one problem with 24-hour coverage is no one knows what it really is," Mr. Lewis said during a seminar at an International Society of Certified Employee Benefit Specialists meeting in Denver earlier this month.

True 24-hour coverage "means there is no difference, there is one program—the benefits are the same, the dispute resolution process is the same—regardless of where an injury occurred," Mr. Lewis said. "If you accept that definition, there isn't a single 24-hour coverage product in the country and probably never will be."

There are less literal definitions, however.

Some companies use the term to refer to any coordination between their industrial and non-industrial medical segments—handling billing or other administrative functions in one department, for instance. "But it's not true 24-hour coverage," said Mr. Lewis. "It's just coordination of the two programs in some way."

Other companies have the same health maintenance organization or preferred provider network handle both workers comp and non-workers comp cases and call that program 24-hour coverage.

"We are seeing this happen, particularly in California, where managed care companies are buying large workers comp insurance companies," Mr. Lewis said. "But, the real reason behind it is the hope that at some point the managed care company will be able to

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Duperreault digs in

New chairman of ACE takes a long-term view

By GAVIN SOUTER

HAMILTON, Bermuda—From his new vantage point at ACE Ltd., Brian Duperreault sees a world of risk and opportunity—and he expects to invest his professional future in taking advantage of it.

"I don't think they wanted a caretaker, and I'm certainly no caretaker," he said.

In fact, the ACE board is looking for the new chairman, president and chief executive officer of the company to be around for 20 years, Mr. Duperreault said.

If he is, he expects to preside over a period of change. Diversification is inevitable at the high-layer excess liability company, he said. Broadening horizons—both from a product standpoint and geographic standpoint—is the crux of Mr. Duperreault's agenda for ACE.

And while organic growth will be the main goal, acquisitions are also an option, he said.

Joining ACE after more than 20 years with American International Group Inc. is a bit of a homecoming for the 47-year-old executive. Born in Bermuda, he and his family later moved to Trenton, N.J.

Mr. Duperreault formally took over as ACE's third chairman on Oct. 1. His predecessor, Walter A. Scott, will become a consultant to the company and remain on its board.

Mr. Scott, who has more of a financial and life insurance background than Mr. Duperreault, is widely regarded as having been brought in to take the company public.

Now the ACE board wants a mainstream property/casualty insurance person to expand the company.

"I do think they wanted an insurance man that knew property/casualty," said Mr. Duperreault. "Walter Scott did a very good job, but I think they wanted someone to continue who had a strong P/C background and international experience."

Mr. Duperreault fits that bill. During his AIG career, he headed the casualty operations of American International Underwriters Inc. for two years; spent two years in the domestic brokerage division, where he was responsible for the umbrella unit and the large casualty unit which covered retrorated risks; spent two years in AIG's Japanese operations; then returned to New York in 1991 to become president of AIU.

Despite some obvious differences, AIG and ACE share a similar approach, said Mr. Duperreault.

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Photo by Arthur Bean

Brian Duperreault

Commissioner unveils cleanup proposals

By JUDY GREENWALD

OLYMPIA, Wash.—With an eye toward speeding up the cleanup process, Washington Insurance Commissioner Deborah Senn last week proposed regulations covering environmental disputes.

Policyholder advocates cheered the proposal, but insurers greeted it with considerably less enthusiasm.

It is the first time an insurance commissioner has issued a proposal in this area, an insurance department spokeswoman said.

Among other provisions, insurance companies would be required to: provide accurate copies of forms or insurance contracts within a "reasonable" period of time; begin a claims investigation within 15 working days after receipt of a notice of a claim; provide the policyholder with all facts known to the insurer concerning the claim; and make payment arrangements when two or more insurers are legally required to pay a claim.

Following public hearings on last week's proposal, draft rules will be issued for further public comment, said a department spokesman. It could be January before any rules are actually issued, the spokesman said.

The proposal was criticized by Keith Hopkinson, counsel to the National Assn. of Independent Insurers in Des Plaines, Ill.

This is something that should be dealt with on a federal level, said Mr. Hopkinson. Furthermore, "it appears to be inadequate and certainly heavily favoring the insured, and it obviates many of the rights that insurers should have," he said.

But, the proposal was praised by policyholder attorney Robert Horkovich, a partner with Anderson Kill Olick & Oshinksy in New York, who said Commissioner Senn is trying to convert dollars that now go into litigation to environmental cleanup.

"It's just a wonderful goal. We applaud her. This will really help smaller policyholders out a lot in addition to the larger policyholders," he said. BI

Rates staying in orbit

Satellite insurers balk at pleas to bring launch rates down

By STACY SHAPIRO

LONDON—Satellite launch insurance rates are expected to remain stable for the foreseeable future, in spite of two major disasters this year that have cost underwriters a record $543 million.

Despite those losses, satellite owners and brokers are keeping up pressure on underwriters to reduce launch insurance rates, considering that new capacity has come into the market and launch vehicles generally are highly reliable (*BI*, Jan. 31).

Brokers at the moment are even pressuring satellite insurers to change their underwriting structure to allow for "vertical" placements of coverage, which could effectively lower a satellite owner's premiums.

In addition, competition could return to the satellite insurance market when the Ariane V launch vehicle is ready by the beginning of 1996. With the ability to transport three satellites per flight, the Ariane V could require as much as $600 million in capacity per launch. When not used for these mega-launches, this capacity could compete for other space-related business.

Despite pressure from brokers and owners, though, underwriters are adamant that satellite launch insurance rates and the method of placing coverage will remain as is. There are too many new satellites being launched with new, untried equipment that warrant the high rates, underwriters contend.

"If rates come down, I won't write rates that are inadequate," warned Simon Clapham, underwriter for the Marchant Space Consortium at Lloyd's of London.

Modern satellites are "more vulnerable than the older ones. . .which is why we are forced to increase rates," according to Giovanni Gobbo, head of the space department of Assicurazioni Generali S.p.A. in Trieste, Italy.

Between 1965 and 1986, 13 satellites were lost, costing insurers a total of $976 million, according to statistics from Space Risks International, a joint subsidiary of brokers Rollins Hudig Hall Group Inc., Rollins Hudig Hall Europe, Nicholson Leslie Group in Lon-

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Flooding

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Group in Rahway, N.J., declared the floods a catastrophe, meaning that they had caused at least $5 million in insured property damage. PCS did not have an estimate of total damage late last week.

State Farm Mutual Insurance Co. was estimating that it would receive about 4,000 homeowners claims and 2,500 automobile claims as a result of the flood, totaling $14.5 million. Bloomington, Ill.-based State Farm also anticipates handling about 4,250 claims covered by the National Flood Insurance Program.

San Antonio-based USAA Group had received 178 flood-related homeowners policy claims by Friday morning.

Columbus, Ohio-based Nationwide Mutual Insurance Co. had received 255 flood-related claims by Friday morning. Twenty-nine of the claims stemmed from National Flood Insurance Program homeowners policies, 85 were filed under regular homeowners policies and the rest were filed under auto policies. A Nationwide spokesman said the insurer expects to receive a total of 500 to 600 flood-related claims, though it has not yet estimated its losses.

As of late Friday afternoon, Northbrook, Ill.-based Allstate Insurance Co. had received 825 flood-related auto claims and 900 homeowners claims.

The major reason claims were so low is that most homeowners policies exclude flood damage, and few people buy flood coverage through the National Flood Insurance Program.

For example, John L. Wortham & Son L.L.P., the largest brokerage in Houston, sells about 5,000 homeowners policies a year, fewer than 15% of which carry flood insurance, said Teresa Russell, the broker's personal loss manager.

'Everybody who lives in this part of Texas needs flood insurance,' says Teresa Russell.

She estimates that up to 90% of the current flooding is located outside of known flood plains. Some rivers were up to four miles wider than their banks.

Despite publicity about severe uninsured flood losses suffered during in the Midwest last year and the floods in Georgia earlier this year, most people still don't buy flood insurance.

According to the National Flood Insurance Program, 32,977 policies were in effect in Harris County, 6,923 in Galveston County, 3,370 in Chambers County and 2,259 in Montgomery County.

In all, more than 48,000 flood insurance policies are in effect in 26 of the counties hit hardest by the flood.

Homeowners living in the so-called "100-year flood plain" must buy flood insurance to qualify for mortgages, Ms. Russell noted. Even there, however, many homeowners let their policies lapse once the mortgage is paid off.

"The term '100-year flood plain' is misleading," Ms. Russell said. "It means there is a 1% chance of flooding in any given year. That works out to a 26% chance over a 30-year mortgage."

Mortgage companies may also do some homeowners a disservice by telling them that flood insurance is "not needed" in certain areas, rather than clarifying that is available but not required for the mortgage, Ms. Russell noted.

"Everybody who lives in this part of Texas needs flood insurance," she said.

The impact of flood on the commercial insurance market is likely to be even lighter than in the homeowners' area. As of late last week, only seven commercial claims had been reported to Wortham, according to Managing Partner Fred C. Burns.

Mr. Burns said he expects few commercial property and business interruption claims, although many companies in Houston shut down early on Tuesday or asked employees to stay home.

Losses will be relatively light for the city of Houston, said Paul Clark, manager of the risk management division.

He is waiting for four feet of water to recede to assess the amount of damage at two sewage treatment plants.

"I don't expect (the damage) to be real high," Mr. Clark said. "Those pumps are built to be submerged anyway." Electric panels have been underwater but may be able to be dried out and cleaned.

The system consists of about 20 small plants, so sewage can be diverted easily if one or more are down, Mr. Clark said. One large plant can handle double its capacity for up to 30 days.

No bridges or roads within the city limits were damaged by the flood, he added.

The Houston Independent School District also escaped serious damage at its 260 locations, said Brad Bailey, director of risk management. All the schools were closed for two days, but only one remained closed at the end of last week. That school was surrounded by water but Mr. Bailey believed it had not suffered any damage.

"It's a little island," he observed. The building will be inspected before students and teachers are readmitted, in part to ensure that asbestos tiles did not become loose due to water or humidity.

Mr. Bailey implemented some loss control measures before the flood hit, including removing library books from the first row of shelves, which can save a school $10,000 if a small amount of water enters the building.

He also telephoned restoration companies on contract to make sure the work at the school district would be prioritized. A $100,000 gymnasium floor can be saved with prompt action, he noted.

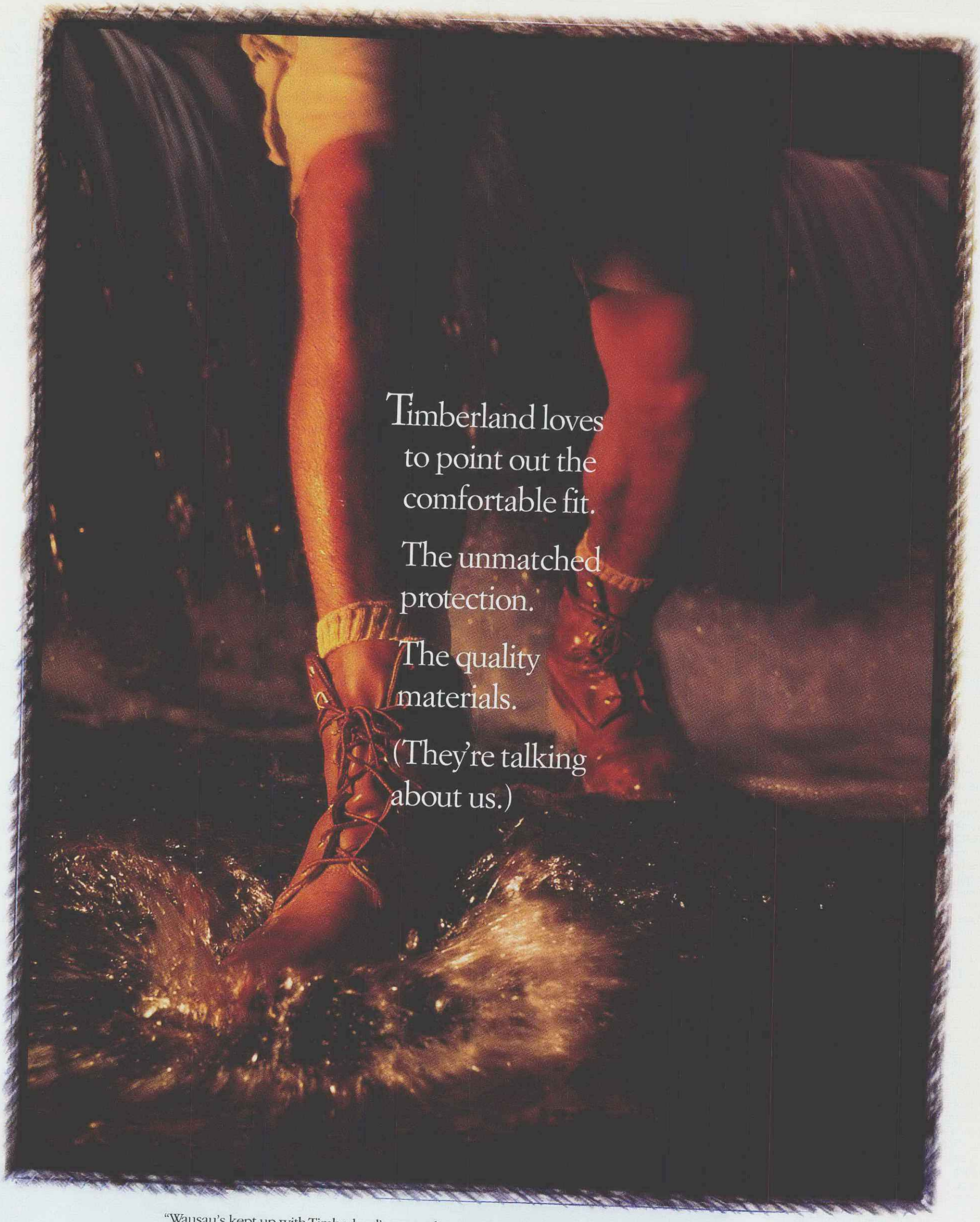
"We were quite lucky that we suffered only minor damage at some branches," said Mary Isbell, risk manager of Bank United of Texas in Houston. Of the bank's two dozen local branches, one reported wet carpeting and a few others suffered roof leaks.

"The water was lapping at the door" of a brand-new branch in Kingwood, one of the areas hardest hit by the flood, but the bank remained dry.

Five branches were closed on Tuesday, but all but one had reopened within two days. The company will not suffer business interruption because customers were able to go to other branches if one was closed. A skeleton staff at the Houston headquarters kept essential functions—like the wire room—operating.

The extra expense of having some employees stay at a downtown hotel and the cost of drying out or replacing the wet carpet will be under the bank's deductible, Ms. Isbell said.

"I don't anticipate any claims," she said. BI



"Wausau's kept up with Timberland's expanding work force, providing education and safety training. They've created a high deductible workers compensation program continuing the same level of protection but without the initial drain on our working capital. Wausau's become a valuable business partner."

Nancy A. Wels, Director of Finance, The Timberland Company

WAUSAU

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Health care tops women's worries

Benefit Beat

Despite all the attention given to working women's need for flexibility and adequate child care, employed women cite universal health care coverage and improving pay scales as their highest priorities for change in the workplace, according to a new survey conducted by the federal government.

The survey's findings highlight women's continuing concern with basic security issues, benefit experts say.

"Child care and work-life balancing are going to have to fall second to more basic needs for health care," pointed out Steve Clayton, a vp at consultant Work/Family Directions Inc. in Boston.

Nearly two-thirds of the 250,000 women responding to a Labor Department survey said securing health insurance for all citizens is a "high priority" for them. This was second only to improving pay scales for women and surpassed concerns about equal opportunity, on-the-job training and paid leave.

"This focus on pay and benefits echoes the issues women identify as their most serious problems, and reflects their overriding reason for being in the workforce—the economic support of their families," said the survey's authors.

The 44-page report on the survey, titled "Working Women Count," summarizes the responses of more than 250,000 women to a Labor Department questionnaire distributed over a four-month period earlier this year through worksites, organizations, unions, newspapers and magazines. The questionnaire was translated into Braille and five languages in addition to English.

The report also includes the results of a scientific telephone survey of 1,200 working women conducted by the Labor Department's Women's Bureau.

The survey posed four core questions to women about their work life and suggested 10 or 11 possible responses to the first three questions. The fourth question was an open-ended solicitation to tell the president what it is like to be a working woman in the 1990s.

Benefits are quite important to women, the survey found.

When asked what they like best about their jobs, 48% of the popular survey respondents ranked good employee benefits among their top three choices. The next most popular choices were enjoyment of the job and getting paid well.

In the more scientific survey, however, good benefits ranked fifth among the 11 choices, behind such preferences as enjoyment of co-workers, flexible hours and enjoyment of the job.

"Income- and occupation-based differences. . .appear to affect women's feeling about their pay and benefits," the report noted. "Overall, pay and benefits rank higher in the popular sample, where a higher proportion of the women have good pay and benefits."

Some 19% of women working full time rated the health insurance provided by their own jobs as excellent, but a nearly equivalent percentage—18%—said they have no health insurance at all.

Union members and those women with personal income above $25,000 annually or with a household income of more than $50,000 annually were significantly more satisfied with their health insurance.

Some of the concerns cited by working women about health insurance coverage could be related to increasing workplace flexibility, one expert noted.

More and more employers are turning to part-time workers—both to control costs and to allow workers flexibility—who do not receive a full range of health and pension benefits, noted Mary Mattis, vp of research and advisory services for Catalyst, a New York research organization on women in business. Women often fill these part-time positions, she explained.

"There can be a danger in pushing for part-time that we create a whole class of people who are working but have no benefits at all," Ms. Mattis stated.

The survey found that 43% of women who work fewer than 35 hours per week do not have health insurance.

The survey also found that:

- Stress was the most prevalent job-related problem cited by women in both the popular and scientific samples, followed by getting paid what the job is worth and getting better benefits.
- Problems with balancing work and family, including child care, was the most common theme sounded by respondents in the scientific sample to the question about their life as a working woman. The next-most common theme was unequal or unfair pay, followed by lack of equal treatment and equal opportunity.

Single copies of the report are available free by writing to "Working Women Count!," U.S. Department of Labor, Women's Bureau, 200 Constitution Ave. N.W., Washington, D.C. 20210.

—By Deborah Shalowitz Cowans

Non-vested benefits

CEDAR RAPIDS, Iowa—John Morrell & Co., a Cincinnati-based meat packing unit of Chiquita Brands International Inc., can unilaterally modify or eliminate existing medical benefits for retired hourly employees because contract language states that the benefits are not vested lifetime benefits, a federal court recently ruled.

In a 2-1 decision, the 8th U.S. Circuit Court of Appeals upheld a U.S. District Court ruling that the medical benefits for about 3,000 hourly workers who retired before April 1989 are not contractually vested under the master agreement and are not vested under the Employee Retirement Income Security Act of 1974 (*BI*, July 19, 1993).

The United Food & Commercial Workers International Union argued that each retiree has a vested right to the level of retirement health benefits that were in effect in the master agreement when he or she retired.

But, the appellate court found "substantial textual evidence" within the master agreement that reflects Morrell's intent to bestow only non-vested retiree health benefits.

The union also argued that Morrell violated its fiduciary duties under ERISA by unilaterally modify-

Continued on next page

Continued from previous page
ing or terminating the benefits.

"This argument is without merit," the appeals court wrote. "ERISA does not bar an employer that is also a fiduciary from exercising its business judgment to modify non-vested welfare benefits."

John Morrell & Co. vs. United Food, 8th U.S. Circuit Court of Appeals; No. 93-2836.

—By Sally Roberts

Savings rate low

LOS ANGELES—Employers are increasingly offering retirement savings plans for their workers, but employee participation rates in those programs remain relatively low, a survey says.

The weak participation rates underscore the importance of educating employees about the savings opportunities available to them for their retirement income needs, said Roy Oliver, national partner in charge of KPMG Peat Marwick's compensation and benefits practice in Los Angeles.

KPMG sponsored the survey, which polled 993 randomly selected companies with 200 or more workers.

The survey found that 89% of those employers offered retirement plans in 1994, up from 78% in 1993. But, despite the increase in plan offerings, only 62% of eligible employees actually participated in 401(k) plans, the same percentage as last year.

Furthermore, employees are not contributing at very high levels, the survey found. Typically, employees contribute only half of the amount allowed for 401(k) plans, even though 84% of the employers offer a matching contribution.

Participation rates among highly compensated employees, however, are considerably higher than average—79%—but that is a decrease from 85% in 1993.

Employers with defined benefit pension plans reported higher levels of participation. Seventy percent of all employees in the survey are offered defined benefit plans and, of that group, 88% are earning benefits through the plans.

Of course, defined benefit plans automatically cover employees once they become eligible and do not require employees to contribute their own money.

Employers were more than twice as likely to have added—rather than dropped—a retirement plan within the last five years, the survey found. But, even among those employers that did discontinue a plan, 53% said they substituted a different plan or merged or consolidated plans.

Most employers—56%—sponsor 401(k) plans, which cover 57% of all employees in the survey. Thirty-four percent of employers offer defined benefit plans, which cover 70% of the employees in the survey.

Retirement benefits, excluding Social Security taxes, account for 6.75% of payroll for those employers providing such benefits in 1994, the same level as in 1993, the survey found.

Employers that offer retirement benefits do expect retiring employees to provide a substantial portion of their retirement income from personal savings. About 85% of employers agreed that workers should rely on the "three-legged stool" approach to retirement: employer-provided benefits supplemented by Social Security and personal savings. Only 1% said retirement funding should be provided entirely by employer-sponsored savings plans.

Copies of "Retirement Benefits in the 1990s: 1994 Survey Data" are available for $100 each from KPMG Peat Marwick, P.O. Box 23331, Newark, N.J. 07189.

—By Christine Woolsey

ABC's partner coverage

NEW YORK—Capital Cities/ABC Inc. is extending the health care benefits under its indemnity plan to cover same sex domestic partners of employees.

Many of the media company's 19,250 employees, though, receive care through health maintenance organizations and some of the HMOs the company contracts with may not cover domestic partners.

An ABC spokeswoman would not say how many employees are covered by the indemnity plan or how many of the employees in HMOs would be eligible for domestic partner benefits.

—By Gavin Souter

Management of heart care lowering costs

By DEBORAH SHALOWITZ COWANS

BALTIMORE—Efforts to manage the number and cost of several coronary procedures are proving effective, according to a consulting firm's analysis of inpatient hospital records.

The number of coronary artery bypass operations performed at U.S. hospitals in 1993 was virtually the same as the previous year and the average charge for the procedure fell nearly 2% on an inflation-adjusted basis, according to HCIA Inc., a Baltimore-based health care consulting firm.

And, following several years of double-digit growth in the number of angioplasty procedures performed, in 1993 only 5.25% more angioplasties were performed than the previous year, HCIA found. And, the average charge for an angioplasty in 1993 was approximately $16,600, up only 3.43% from the previous year.

"These findings indicate how effective the marketplace has become at limiting both utilization and price for high-cost procedures," stated J.D. Kleinke, a principal with HCIA.

In both 1993 and 1992, there were approximately 330,800 coronary artery bypass operations performed at U.S. hospitals, according to HCIA. The average charge for this surgery in 1993 was $40,800, down 1.89% on an inflation-adjusted basis from the average charge in 1992.

The data is included in the 1993 edition of the "National Inpatient Profile," which analyzes the medical records of more than 8.2 million inpatients treated at nearly 1,400 acute-care hospitals. The book, which HCIA publishes, reports total occurrences of diagnoses and procedures performed in U.S. hospitals by patient age, gender, race and clinical status.

HCIA noted that an increasing use of a new blood-clot reducing drug, Alteplase tPA, also may be responsible for helping to stabilize the volume of both coronary procedures. Alteplase tPA, which is marketed as Activase, is a significantly less expensive therapy for clogged arteries than either type of heart surgery.

Copies of the 1993 "National Inpatient Profile" are available in hardcover book form for $9,950 or on computer disks for $11,950. Contact Dan Heneghan, HCIA Inc., 300 E. Lombard St., Baltimore, Md. 21202; 800-568-3282. BI

Opinions

ADA backlog impairs justice

THE NATION'S COURTROOMS are proving far more accessible to disabled people than jobs and other pursuits.

Attorneys are being quite accommodating in bringing lawsuits on behalf of the disabled for alleged violations of the Americans with Disabilities Act. Many of these cases have merit and represent an attempt to define vague areas of the law and correct inequities in the workplace. Many others, though, appear designed to do little more than exploit the law for monetary gains.

Two situations illustrate both types of cases.

As we report on page 1, the threat of ADA liability has physicians and schools caught between a rock and a hard place.

The disabilities law is being cited by athletes who are prevented from participating in football or other team sports because of possibly disabling medical conditions, such as heart problems. To the athletes, keeping them off the field amounts to discrimination on the basis of a disability.

To school officials, though, keeping them off the field is a reasonable attempt to minimize their exposure to the liability they would face if an otherwise healthy player were to aggravate a condition on the field.

The greatest exposure to this questionable application of the ADA occurs in college and professional sports, where athletes could sue for future professional earnings if they are not allowed to play.

Several years ago, Mark Seay was benched by his football coaches at Long Beach State University after losing a kidney in a shooting incident. They feared he would injure his remaining kidney. Mr. Seay, who now plays for the San Diego Chargers, sued the university and was awaiting a jury trial when the school decided to allow him to play.

In another situation, reported on page 2 this week, a federal appeals court has cleared the way for trial of a suit brought by a man who claimed an association-sponsored health insurance plan with lower limits for AIDS treatment was discriminatory under the ADA.

A lower court had dismissed the lawsuit brought against the plan on the grounds that it was not the plaintiff's employer and therefore the dispute was not governed by the law. The 1st U.S. Circuit Court of Appeals overturned the decision, finding that the association and the plan can be sued under the ADA, and sent the case back to the lower court for trial.

The suit alleges that the association introduced a limit for AIDS-related illnesses after learning the plaintiff was diagnosed with AIDS. That would certainly be discriminatory under the ADA if proved to be true, which makes this case clearly one for the courts to decide.

The Equal Employment Opportunity Commission is facing a tremendous backlog of cases as it struggles to cope with the volume of complaints alleging discrimination under the ADA. Requiring mediation and arbitration of disputes, as has been proposed, would be a start at reducing this backlog.

But until the issue of frivolous claims is addressed forcefully, those disabled citizens who have suffered true discrimination could become victims twice over as their cases are unnecessarily delayed because cases of dubious merit clog the legal system and block their path to the justice they deserve.

Letters

Mediation services available for clergy abuse

To the editor: I read with interest the Aug. 22 article, "Clergy Sex Abuse Suits," particularly the mention of mediation as the best forum for addressing and resolving these tragedies as completely as possible.

Your readers should know that the Institute for Christian Conciliation maintains a national panel of mediators and arbitrators. They are trained and certified to assist in such cases, particularly those situations arising in the Christian context.

Many of the panelists have substantial experience with business insurance, litigation and pastoral counseling, and are familiar with church adjudicatory processes.

The ICC conducts seminars around the country designed to educate church leaders, lay and ordained, about their legal responsibilities and options available to prevent and detect abuse of those under their care.

Since many churches and parishes threaten to fall apart after revelation of such incidents, the ICC also provides consulting services to church leadership boards.

A non-profit organization, the ICC is available to assist all persons desiring conflict management counseling and services. It can be reached at 406-256-1583.

Robbie E. Monsma
Scott, Monsma & Associates
Littleton, Colo.

Keep self- and shared funding clear

To the editor: By their comments in letters to the editor about self-funding, it seems as if many employers, brokers and agents would like to "throw the baby out with the bath water."

True, self-funding for years has been confused with the various permutations of "shared funding." This is an option in which the employer shares in the claims risk with a reputable and accountable reinsurer.

It is also true that because these plans are often sold as a "magic bullet" to rising health insurance costs, false expectations have been created about what they can accomplish.

This further blurs the lines between self- and shared funding, giving the whole concept a tarnished image.

For this reason, I would ask those of us who work in this field to re-examine the original objectives of our shared-funded clients. We need to perform the necessary due diligence on the providers of these plans that is required to set the proper expectations about what these plans can, and in many cases cannot, do for employers.

Like anything else, they can be an excellent and effective tool if designed well and used properly.

Andrew W. German
Group Manager
Home Life Financial
Assurance Corp.
Atlanta

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IS FLEXIBILITY

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Head

Continued from page 3

Head said.

Investment banks spend hundreds of millions of dollars on computer systems. Doing likewise would enable insurers to cut their costs to a reasonable level, Mr. Head said.

"We sell a product that's very expensive," he said. Commissions and expenses add too much to that cost.

Insurance executives also are not aware of what their ultimate potential exposures are compared to their capital, Mr. Head said. In fact, few know what their exposure would be if a natural catastrophe happened tomorrow, and neither do they know what they would lose if another general liability catastrophe happened, Mr. Head said.

"We will have another fiasco in general liability. . .we've just had silicon implants; before that, it was Agent Orange. There will be one every year," he said.

Moreover, most insurers do not know how much they could afford to lose from long-tail claims, said Mr. Head. "Shame on them."

Executives may be encouraged to have better control of their companies if their pay were more closely linked to the profitability of the companies they run, he said.

"I like to see businessmen who think like owners and act like owners," Mr. Head said.

To encourage this, he recommends that executives be paid more in stock and less in pension benefits and perks. This would encourage executives to pay greater attention to the price of company stock.

And senior executives should concentrate their efforts on underwriting rather than administration, he said.

"Why does an assistant vp have the authority to commit large amounts of capital in the ordinary course of business but not the authority to buy a $5,000 personal computer," Mr. Head asked.

That same underwriter who is not deemed responsible enough to make minor purchases could lose the company $1 million in one bad afternoon, he said.

"The industry pushes administration up and financial responsibility down," Mr. Head said.

Instead senior executives should deal with customers and underwriting and let more junior people take care of administration, he said.

Finally, executives should prepare more diligently for their eventual successors by ensuring that they and their boss have a written description of their job and the two versions agree, Mr. Head said.

"We all pass on to something bigger and better and we need to have succession planning," said Mr. Head. BI

Ties that may bind: Stability and profit

By GAVIN SOUTER

HAMILTON, Bermuda—Reinsurers in London and Bermuda must work together to create a stable market for reinsurance, say two leading underwriters from Lloyd's of London and Bermuda.

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A rate cutting battle between the two markets could lead to a repeat of the debacle that Lloyd's has endured in recent years, said Robert Hiscox, chairman of the Hiscox Group and a deputy chairman of Lloyd's.

Instead, both markets should underwrite intelligently and concentrate on providing profits for their investors, he said.

Bermuda and London are partners in a global reinsurance market, agreed Michael A. Butt, president and chief executive officer of Mid-Ocean Reinsurance Co. Ltd. in Bermuda.

And, as partners they should benefit from the huge potential new business opportunities open to reinsurers where ceding insurers have inadequate reinsurance protection, he added.

But to continue to attract new capital into the market, reinsurers in both markets will have to produce much better returns to investors than they have in the past, Mr. Butt said.

Lloyd's is emerging from one of the worst periods in its history, which was brought on by fierce competition, Mr. Hiscox said.

"Are we really going to do it again? Are we going to have a Lloyd's vs. Bermuda battle?" he asked during the Eighth International Reinsurance Congress in Bermuda earlier this month.

The competitive rate cutting at Lloyd's in the 1980s nearly finished the market, Mr. Hiscox observed.

"If you don't underwrite properly, you die. We did not and we very nearly died," he said.

Since then, Lloyd's has employed new management, which has firmer control of the market. In addition, those remaining in the market and those being recruited are brighter than many of the underwriters who worked at Lloyd's in the past, Mr. Hiscox said.

Bermuda reinsurers also have recruited quality people to run the catastrophe reinsurance companies that have been established there during the past two years, Mr. Hiscox said.

"We have got better brains and we are recruiting better people. It's up to us not to destroy (the market) by stupid competition. . .surely we can work together," he said.

Bermuda catastrophe reinsurers and Lloyd's underwriters should all be able to survive in a global reinsurance market, Mr. Butt agreed.

"Bermuda reacted to a vacuum; it did not take business from anybody," he said.

Although the catastrophe reinsurers in Bermuda collectively brought around $4.2 billion in new capital to the reinsurance market, around $10 billion to $12 billion had left the market in the three years prior to establishment of the Bermuda companies, according to Mr. Butt.

Rather than view each other as rivals, reinsurers in London and Bermuda should treat each other as partners in the global reinsurance market, he said.

"It is professionalism that makes us allies. . .the danger is that our enemies will drop their professionalism for market share. Location does not matter when you are talking about professionalism," Mr. Butt said.

The redistribution of capital in the reinsurance market should also lead to better results in the future, he said.

Previously, the capital available to underwrite reinsurance was distributed among many small units. But, since the market has restructured in the wake of the chain of large losses, the capital is now concentrated in much larger underwriting units.

"There are many more pounds of

Continued on page 12

If you've ever talked to an insurance company, you know why we've made some structural changes.

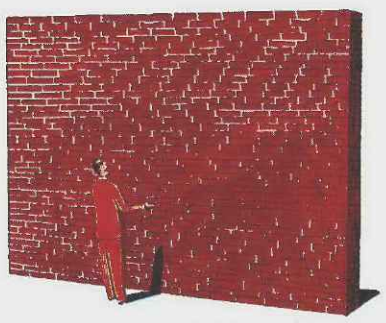

Figure A: a brick wall.

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Continued from page 10

capital per underwriter and this leads to a more stable market," Mr. Butt said.

And, more professional investors are behind the new capital.

To continue to attract new capital, however, insurers and reinsurers will have to provide a good return to investors, he noted.

More and more ventures throughout the world are vying for investors, Mr. Butt said. For example, capital markets are being used to fund industrial and commercial expansion in Eastern Europe and Asia.

"We are looking at a five- to 10-year run when the real cost of capital will increase. We shall have to compete for it against higher and higher demands—demands which we have not satisfied in the past," Mr. Butt said.

For now, however, the outlook for well-run catastrophe reinsurers and their investors is bright, he said.

No insurers in the United States are adequately reinsured, he said.

"The demand is and will remain strong (for catastrophe reinsurance) and the market is today seriously undercapitalized." BI

Reinsurer involvement in liquidation advised

By GAVIN SOUTER

HAMILTON, Bermuda—Reinsurers can avoid problems with ceding companies in liquidation if they take the initiative in dealing with a company's liquidators rather than stand back and wait for problems to arise, an insurance insolvency lawyer says.

EIGHTH INTERNATIONAL REINSURANCE CONGRESS BERMUDA 94

Reinsurers should take a new look at how they deal with insurers in liquidation, said Frank N. Ray, a partner at Peabody & Arnold with offices in Boston and Providence, R.I.

By making quick decisions on whether to pay claims and setting up a good relationship with a liquidator, reinsurers can avoid problems common to many liquidations, Mr. Ray said. In addition, all of the reinsurers of a liquidating insurer can act in concert to gain greater influence over the workings of the liquidator, he said.

Guaranty funds involved in the liquidation also can be recruited by reinsurers as allies, he added.

"Steps can be taken which will, even under the present liquidation system, accelerate the resolution of reinsurance issues and, perhaps, assist the liquidator in the process," Mr. Ray said at the Eighth International Reinsurance Congress in Bermuda earlier this month.

Problems can easily arise due to the sometimes opposing positions of liquidators and reinsurers.

"When a liquidator takes control of a company he usually knows that reinsurance will be his largest asset. The thought of rescission chills his plans and prevents any meaningful cooperation with reinsurers at the outset," Mr. Ray said.

Nevertheless, a reinsurer's first step should be to examine whether it has been defrauded by the cedant and whether there are any grounds for rescinding the contract, he said.

"It is perfectly legitimate for a reinsurer to determine whether it has been treated fairly and honorably, but because of the limitations that can be placed on a liquidator and the barriers that can be created, the reinsurer should make that determination as quickly as possible," Mr. Ray said. To do this, reinsurers need to "get inside" a liquidation.

Several sources for information are available: court pleadings and reports made by the liquidator often contain the reasons for the liquidation; insurance regulators can be contacted formally and informally to learn why the company was placed in liquidation; the liquidator and former employees of the company can be contacted; and guaranty funds involved can be contacted to find out what they have learned about the liquidated company.

"Take the information you have gathered and try to make a decision whether a rescission action flies and is worth pursuit in the circumstances," Mr. Ray said.

Liquidators are also suspicious of reinsurers because of the complexity of reinsurance programs, which often involve reinsurers based in foreign countries, he said.

To overcome this suspicion, reinsurers should link up and form an advisory board to assist liquidators, Mr. Ray said. "Liquidators are becoming accustomed to the assistance of guaranty fund advisory boards and they should welcome the collective expertise of the reinsurers most familiar with their reinsurance programs," he said.

The advisory board can ensure proper claims management, resolve coverage questions and promote commutation.

Reinsurers should also work with the guaranty funds that will be most involved with the liquidation to help resolve any differences with liquidators, Mr. Ray advised. "Because they have the first exposure to the claim files they have the best understanding of the company's claims handling and settlement policy. They, more than anyone, want to make sure that reinsurance recoveries are achieved and maximized."

The guaranty funds can also be an important ally to reinsurers if a liquidator is not interested in commutation, he added.

Commutation should be proposed wherever possible, Mr. Ray said.

"To leave the question open is to continue the exposure and to require continuous monitoring of a claims operation that has no incentive to monitor itself," he said.

Long claim development has for years been a reason to keep estates open but a credible estimation of liabilities combined with proper notice and court approval should protect the liquidator, he said. BI

What a tangled web they wove

Reinsurer insolvencies add to struggling cedants' woes

By GAVIN SOUTER

HAMILTON, Bermuda—The plethora of insurance company insolvencies in the mid- to late 1980s is causing reinsurance collection problems in the 1990s.

EIGHTH INTERNATIONAL REINSURANCE CONGRESS BERMUDA 94

Having one insolvent company reinsured by another insolvent company hampers receivers' attempts to resolve outstanding assets and liabilities.

And, the general unwillingness of reinsurers to pay claims from insolvent insurers makes the task even harder, several liquidation experts say.

As the number of insolvent companies rises, there is a cumulative effect where insolvent insurers find that significant portions of their reinsurance program are placed with reinsurers that are also insolvent, said Walter Lamkin, a partner at McCarthy, Leonard, Kaemmerer, Owen & Lamkin in Los Angeles, who also serves as general counsel to the receiver for Transit Casualty Co.

"Significant amounts of money are owed to Transit by the KWELM companies and so you have a snowball effect. . .and there is nothing we can do but wait," he said.

The KWELM companies were part of the Weavers line slip, a leading source of casualty insurance in London for U.S. risks, which collapsed in 1990.

The difficulty in trying to collect from other insolvent insurers means that companies like Transit will have assets that are left open for a considerable period of time, Mr. Lamkin said at the Eighth International Reinsurance Congress in Bermuda earlier this month.

"And who is to say that there might not be other reinsurance insolvencies up and coming. If that should occur, Transit's life will be extended even further if it has a significant claim against the company that goes down," Mr. Lamkin said.

Transit was declared insolvent in 1985. It has collected about $500 million from its reinsurers so far, but its liabilities far exceed collected assets, he said.

"We are probably staring at a hole of about $4 billion, so everybody will not get paid 100 cents on the dollar," he said.

Another insolvent insurer with a reinsurance program tied up with insolvent reinsurers is Integrity Insurance Co.

Integrity has reinsurance claims against about 50 insurers that are insolvent or in receivership, said Michael Miron, deputy liquidator of Integrity in Paramus, N.J.

For example, Integrity has relationships with both the KWELM companies and Mission Insurance Co. of Los Angeles.

"We are a creditor of KWELM and Integrity may be the largest creditor of the Mission estate, with claims aggregating in the $100 million range," according to Mr. Miron.

But, because policyholder claims must be paid before money is made available to other creditors in California, "we are not very optimistic" about collecting from Mission's estate, he added.

Integrity also has a relationship with Transit Casualty. They often provided coverage to the same policyholders, Mr. Miron said.

"In the heydays of the early 1980s, brokers were using Transit and Integrity to fill the same slip," he said.

One problem that insolvent insurance companies face when trying to collect their reinsurance is that many reinsurers immediately stop paying when a company becomes insolvent, said Chris Hughes, head of the U.K. insolvency practice at Coopers & Lybrand in London and administrator of the KWELM companies' scheme of arrangement.

"Their attitude is that 'I'm likely to get away without paying something,' " he said.

The reinsurers often think that there is no staff at the insolvent insurer so nobody will chase them for the reinsurance collectibles, but they are mistaken, Mr. Hughes said.

The administrators of KWELM are dedicating significant resources to collecting reinsurance, he noted.

"We are getting account information on who owes us money and we are going after it," he said.

Reinsurers often try to avoid meeting the claims of insolvent reinsurers, agreed Melissa Kooistra of Rubinstein & Perry, a Los Angeles law firm that handles Mission's liquidation.

Mission had a complex reinsurance program with hundreds of reinsurance companies and many of the records were with the intermediaries, she said.

Mission's liquidators had to work closely with intermediaries and travel around the world to collect the reinsurance documentation, Ms. Kooistra said.

"Then we billed the reinsurers directly," she said.

The liquidators have collected about $1.2 billion, mainly from reinsurers, Ms. Kooistra said.

Claims filed with Mission, though, total about $32 billion. "We've done a good job of weeding out overstated claims," she said.

So far, the company has paid out $729 million and plans to file a wind up motion within the next two weeks. BI

220 attend reinsurance meeting

HAMILTON, Bermuda—The Eighth International Reinsurance Congress attracted 220 people earlier this month.

The Oct. 12-15 meeting, which was held at the Princess Hotel in Hamilton, was co-sponsored by Coopers & Lybrand and Hawksmere P.L.C., a London-based conference organizer.

The 1995 congress will be held Oct. 4-7 at the Princess.

For more information, contact Hawksmere, 12-18 Grosvenor Gardens, London SW1W 0DH; 71-824-8257; fax: 71-730-4293.

Engen to oversee ITT Hartford

D. Travis Engen, executive vp in charge of the manufactured products group at ITT Corp., will additionally take on responsibility for ITT Hartford Group Inc.

The change will take effect Jan. 16, 1995, which is the expected retirement date of **Dale R. Comey**, the ITT executive vp currently in charge of ITT's insurance operations (*BI*, Sept. 19).

In other insurance changes:

Gary A. Beller, former executive vp and general counsel at American Express Co. will join Metropolitan Life Insurance Co. Nov. 1 as executive vp in New York.

Tom Steidinger named vp-underwriting for highly protected risk/property special risk at Employers Insurance of Wausau, A Mutual Co. in Wausau, Wis.

Edward Titus promoted to chief financial officer at Reliance Surety Co., a Philadelphia-based Reliance Group Holdings Inc. subsidiary.

Comings & Goings: Industry

Monica Weekes named vp-marketing for Transamerica Life Insurance & Annuity Co. in Los Angeles.

Robert Billings named senior vp-general commercial division at Guaranty National Insurance Co. in Englewood, Colo.

James G. Bastian named chief operating officer of North Sea Insurance Co. in Valley Stream, N.Y.

Ed Velasquez named president of Continental Pro, the professional liability insurance unit of Continental Corp. in New York. Also at Continental, **Sarah M. Dore** named president of Continental Insurance HealthCare.

Wallace L. Timmeny named senior vp and general counsel at New York Life Insurance Co.

Anne Dinsmore named vp-long term disability benefits at UNUM Life Insurance Co. of American in Portland, Maine.

Neal King named vp-group sales and marketing for Standard Insurance Co. in Portland, Ore.

Paul D. Berta named executive vp-marketing for The PIE Mutual Insurance Co. in Cleveland.

Douglas E. Crawford named vp-commercial accounts for InterNational Insurance Group in Boston.

John Amore named president of Zurich-American Specialties, a division of the Zurich-American Insurance Group.

Peter McCarthy named chief executive officer of C.E. Heath Compensation & Liability Insurance Co. in San Francisco.

Randolph T. Gore joined Kentucky Medical Insurance Co. as vp in the hospital division in Louisville.

William P. DeMeno, senior vp-business operations is retiring from Nationwide Insurance Co. at the end of the year.

Richard H. Bynum named vp-claims at Associated Electric & Gas Insurance Services in Jersey City, N.J.

Glenn Hilsinger named vp in employee benefits division of Chubb LifeAmerica in Parsippany, N.J.

Gordon E. McCutchan named executive vp-law and corporate services for Nationwide Insurance in Columbus, Ohio. Also at Nationwide, **W. Sidney Druen** named senior vp and general counsel and **W. Craig Zimpher** named vp-government relations.

Pat Campola named partner and executive vp at American Progressive Corp. in Brentwood, Tenn.

Dr. Georgia L. Kent named vp-medical services for the group health care operations of The Prudential Insurance Cos. of America in Newark, N.J.

Reinsurance

Mark Hvidsten named president and chief executive officer of Intere Intermediaries Inc., the New York reinsurance brokerage unit of Minet Group P.L.C.

Kenneth R. Fewell named chief broking officer for the facultative reinsurance business at Intere Intermediaries in Atlanta. **Hartwell Dew**, senior vp, succeeds Mr. Fewell as branch manager for the Atlanta office. Also, **Edward Ranklin**, senior vp, named to head of the newly formed accident and health reinsurance brokerage unit in Atlanta.

Robert S. Bennett joined TIG Reinsurance Co. as vp-chief pricing actuary in Stamford, Conn. Also at TIG, **Carol K. Correia** and **C. Douglas Bennett** named senior vps; and **Phillip C. Cheng** named vp.

Peter F. Malloy named executive vp-treaty department manager at North American Reinsurance Corp. in New York.

Jean M. Stalcup named senior vp and health care division manager at Employers Reinsurance Corp. in Overland Park, Kan. Also, **Joseph W. Levin** named senior vp and chief actuary.

Paul C.J. Markey joined Aon Re (Bermuda) Ltd. as executive vp.

Aon Re Inc. announced several new appointments: **James A. Matthias** joined as a vp and chief financial officer of the accounting services department in Chicago; **Robert J. Striffler** joined the Stamford, Conn., office as an executive vp; **John W. Demeusy** joined the New York office as a senior vp-international property, marine, energy and aviation insurance; **Stanley G. Malinowski** joined the Chicago office as vp; **Kevin J. Sullivan** joined the New York office as a vp; and **Sean C. McDowell** joined the Stamford, Conn., office as a vp;

Steve Adams named vp-underwriting for marine and energy excess-of-loss reinsurance account at Mid Ocean Reinsurance Co. Ltd. in Hamilton, Bermuda.

Gerard E. Finley named vp-domestic insurance company operations division at American Re-Insurance Co. in Princeton, N.J.

Agent/Broker

Kenneth T. Sipiora named senior vp at Marsh & McLennan Inc. and will head its Newport Beach, Calif., office.

Geoffrey W. Morris named chairman and CEO of New York-based Minet Global Professional Services, a specialty unit of Minet Group P.L.C.

Carolyn R. Smith named vp at Willis Corroon Corp. of Arizona in Phoenix.

Phillip L. Luecht Jr. named vp-sales and insurance services division and **Stephen M. Hobbs** named vp and casualty manager for the Costa Mesa, Calif. office of Johnson & Higgins.

Also at J&H, **Michael A. Turpin** named senior vp and manager of the insurance services department in the San Francisco office.

Jardine Insurance Brokers Inc. announced several new appointments: **Anthony J. Litwinko** joined the Los Angeles office as a vp; **Joan E. Glick** joined the San Francisco office as vp-specialty risk unit and **Alan F. Shirek** named executive vp in San Francisco; **Thomas E. Arnold** named vice chairman in the New York office; and **James G. DeBoer** rejoined the San Jose, Calif., office as senior vp-commercial insurance operations.

Robin Lamprecht in Chicago and **Mark T. Loughlin** in Boston named senior vps of international business at Bain Hogg Robinson Inc.

Michael Prins named CEO of Rollins Hudig Hall of Minnesota Inc.

Other suppliers

Joel B. Brandt named practice leader for the Risk Management Consulting Group of Coopers & Lybrand in Boston.

Paul K. Makens joined New York-based Alexander & Alexander Consulting Group Inc. as a senior consultant specializing in clinical and operational effectiveness. Also, **Paul Hofmann** joined as a health care provider consultant in San Francisco.

William M. Mercer Inc. announced several new health care provider consultants: **Carol Belmont** and **Michael D. Blaszyk** joined the Cleveland office; **Mark S. Cianciolo** joined the Atlanta office; **Bradley C. Engel** joined the Chicago office; **Dr. Manuel Lowenhaupt** and **Janice Warila Young** joined the Boston office; and **Amy Sherman** joined the New York office.

Also at Mercer, **Arvind P. Kumar** and **Neelesh R. Shah** joined Mercer Management Consulting in New York.

James Norton has joined The Wyatt Co. as a consultant in its Toronto office. In addition, **Jacqueline Frank** joined Wyatt as Western region risk management practice leader in San Francisco.

Gary Floss named vp-quality and business process improvement at MCC Behavioral Care in Minneapolis.

Jeffery P. Jordt joined The Segal Co. as vp in Chicago.

Karen Duke joined Johnson & Higgins' national health group as a vp and health care consultant in Atlanta.

Jeff Folick named president of health plan operations at United HealthCare Corp. in Minneapolis.

John Gillespie joined Washington-based health care consulting firm Lewin-VHI as a vp-health care organizations practice.

Richard L. Antognini joined the Sacramento, Calif., office of Lewis, D'Amato, Brisbois & Bisgaard as a partner specializing in insurance coverage and reinsurance law.

Rick Anderson, Roberta Hollowell, Kathleen Cooper and **Mark Thompson** named vps at OUM & Associates, a Bellevue, Wash.-based Aon Corp. subsidiary that specializes in professional liability and errors and omissions administration for health care and insurance professionals. BI

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24-hour

Continued from page 3

meet all your medical needs—workers comp and non-workers comp medical benefits."

Realistically, 24-hour coverage cannot be achieved because, "at least for now and for the foreseeable future, the benefits will always be different."

Unlike group medical benefits, for example, workers comp benefits lack copayments and deductibles and aggregate caps do not apply.

"You pay in full as an employer for workers comp medical," said Mr. Lewis. "That is not true on the other side—and I'm sure none of you employers want to have 24-hour coverage and say you'll give employees the same type of benefits (for non-workers comp injuries)."

Even if benefits were identical, employers would retain much more control over the medical products offered and how disputes are resolved in non-workers comp cases.

"In workers comp, we have a system for resolving medical disputes: We appoint additional doctors to look at the same patient, do the same tests, then we get attorneys involved and after the tests are done, reports are rendered and depositions taken and years later we all sit in front of an advisory board with no medical expertise and let them decide," Mr. Lewis said. "Is that what you want for your non-workers comp programs? I doubt it. Can we move away from it in workers comp? I doubt it."

Even when managed care programs are used to help control workers comp medical costs, the courts still exist, as does the tribunal of non-medical people who make decisions on care, he said.

In fact, it is questionable whether managed care and other programs, like mandatory vocational rehabilitation for injured workers, actually reduce workers comp medical costs.

"There isn't a single state system that can demonstrate money spent on mandatory vocational rehab is money well spent or that it gets people back to work better than state programs that do not require vocational rehab," Mr. Lewis said. "In California, for example, 15% to 20% of workers comp medical costs are vocational rehab-related. Yet, they can't produce any evidence that the programs provide value."

Similarly, states that have attempted to reform their workers comp systems by reducing benefits have no proven results. "That typically hurts people that don't deserve it. And, if you look at the top 10 most expensive workers comp states, half of them are low-benefit states," he noted. "There is absolutely no correlation between low benefits and reduced costs. Courts and judges have ways of dealing with perceived inequities in the system. What typically happens is, if a person comes before them and deserves more than the system gives, they will try to get them more. The problem is, if you do that for the deserving, you end up doing it for the non-deserving as well."

Another reason 24-hour coverage won't fly is the fact that nationally, workers comp medical costs account for only 2% to 3% of general health care costs, he remarked. "Even if you could save 100% of workers comp medical costs by going to 24-hour coverage, you wouldn't be a blip on the radar screen," he said.

"I don't see much savings coming from 24-hour coverage. You may have some administrative savings, but the administrative process won't be identical" because group medical and workers comp will always be two different programs.

"The downside to 24-hour coverage is there is a real possibility it can increase costs."

Legislators who say they support changes to the system, such as creating 24-hour coverage, don't really mean it, Mr. Lewis charged. "At the end of the day, they'll try to change it back the way it was or they'll regulate it so much it'll make system changes more difficult—and more expensive—to deal with."

Moving a system like workers comp into a new environment is difficult, not only because the systems are different but also because many different players have much invested in keeping the status quo.

"I've heard attorneys say they have a very strong interest in keeping workers comp the way it is today," he said. Similarly, judges, doctors and insurers don't want their jobs jeopardized. "Their mentality is, 'We're all in this together and if they don't need me, then they don't need you.' " BI

Waiving reform goodbye

ERISA waivers could backfire on the states, lawyer says

By CHRISTINE WOOLSEY

DENVER—Many large employers dread the possibility that the federal government might grant ERISA waivers to allow individual states to proceed with their own health care reform programs.

But allowing a few such waivers might solve all employers' problems, one ERISA expert says.

"If you really want to get rid of the waiver, grant it to five or so aggressive states and let them go at it for a couple of years. The resulting chaos will surely kill the urge to waive," suggested Frank Cummings, a partner in the law firm LeBoeuf, Lamb, Greene & MacRae in Washington.

As minority counsel to the Senate Labor Committee from 1965 to 1967, Mr. Cummings was one of the thinkers behind ERISA. At the request of Sen. Jacob K. Javits, Mr. Cummings in 1965 outlined his ideas on new labor laws in a memo that caught the senator's eye and played a crucial role in the development of the Employee Retirement Income Security Act of 1974.

Earlier this month, Mr. Cummings discussed ERISA's history and offered some observations about the law's future at the annual International Society of Certified Employee Benefit Specialists symposium.

"As you sit here today, you are looking at a situation not unlike the situation that existed in 1972-1973, just before ERISA passed, dealing with the potential of national health care legislation," he said. "Those of you who are too young or can't recall what happened then may be doomed to make the horrible mistakes that were almost made then."

Employers should do what they can to prevent Congress from passing monstrously complicated legislation designed to circumvent or replace ERISA, he said.

Mr. Cummings draws several lessons from the history of the landmark legislation. "ERISA worked for the first six years because, for

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the most part, Congress left it alone. ERISA went bad in the next 14 years because, for the most part, Congress could not resist the temptation to change it at least once a year."

A real nightmare will ensue if the federal government were to pass "a federal statute, vastly longer and more complex than ERISA, all brand new, requiring several agencies to implement rules and regulations and then requiring each state to establish administrative agencies which in turn must each promulgate rules and regulations," Mr. Cummings said.

"Think a little about Murphy's law, the most basic of all laws: Whatever can go wrong will go wrong. The need for fine-tuning changes in the law and for implementing regulations will make this a lobbyist's paradise!

"The trouble with a lobbyist's paradise, however, is that the governing law never comes to rest. Your staff never smooths out the compliance problems," he said. "It just gets messier and messier."

Yet, states will continue to clamor for waivers, particularly now that federal health care reform has been shelved. Twenty-four states are now requesting ERISA waivers.

"(Waivers) would be bad for the system in the long run because a fouled-up system causes people to sue everyone in sight. And, (employers) are juicy targets," he warned.

"I don't think there is a way to write a good waiver bill," he said. "But there is a way to write a better one or worse one."

If Congress is to pass a new law giving states some latitude in health benefits, it should at least strive for three things, Mr. Cummings said:

- Try to do it right the first time.
- Try to keep it simple.
- Design it so it won't require an endless series of amendments, implemented by an endless array of regulations.

"Can Congress do that? Perhaps, but they will have to intend it, for it will not happen by accident."

The problem with Congress is many of its members believe "big, multistate employers can comply with anything," he said. "They think you all have giant ERISA departments filled with certified employee benefit specialists and that it doesn't matter how complicated or costly it is—you'll just hire more certified employee benefit specialists and comply with it somehow."

He thinks there is a better way to attack the problem of the uninsured. "I think it's a better course to say not every problem can be fully solved all at once," Mr. Cummings suggested. Rather, Congress should "pick two or three of the most severe distortions in the system and try to solve them." BI

Long-term care programs require communication

By CHRISTINE WOOLSEY

DENVER—Communication may be more critical in introducing a long-term care program than in introducing any other benefit program, two benefit experts say.

If employers do not adequately describe the need for, and the benefits of, long-term care insurance, few employees will participate, they said.

"Advance communication is really necessary," said Harold Fairman Jr., a principal with William M. Mercer Inc. in Baltimore, who has helped the state of Maryland and several private employers implement LTC programs.

"If we had spent six months on talking about long-term care and the need for it when we introduced the Maryland program, we'd have gotten a lot more than 3% participation," he said earlier this month at the annual International Society of Certified Employee Benefit Specialists meeting.

Only 5% to 7% of employees on average participate in long-term care programs, but much higher rates are possible.

At the World Bank in Washington, for instance, about 20% of employees participate, said Richard T. Eddy, an insurance planning specialist in the bank's benefit services division.

The World Bank began offering a long-term care program 2½ years ago because of employee demand, he said. "About 20% to 30% of all employees currently are caring for an older relative—and that takes time away from the office."

Indeed, given U.S. demographic trends, the aging population will put increasing demands on younger workers, who often function as the primary caregiver for sick relatives. And that will make long-term care insurance a more important benefit to employees.

One recent study by Towers Perrin reported that 27% of employers currently sponsor long-term care insurance programs, covering about 3 million people. And 500,000 people have bought policies outside the workplace.

Most long-term care programs are financed solely by employees through payroll deductions or direct billing. Plan sponsors design the plan, conduct employee education and select an appropriate underwriter. They may also handle ongoing activities such as claims administration and monitoring premium level reserves.

Communication is critical to LTC programs. "There are two ways to communicate the benefits of such a program: the hard sell and the very hard sell," Mr. Eddy said. "People just don't want to confront the fact that illness will hit their family."

Employers should determine how the program will be communicated if they plan to use outside vendors—either consultants or an insurance company.

"We created a task force of people from the payroll and benefits departments, systems people and retiree representatives," Mr. Eddy explained. "Many insurers do a video explaining their programs and some do a fantastic job. One video I saw presented case studies of five employees at that particular company with a need for long-term care insurance. That garnered 30% participation."

The video was 15 minutes long, but spent only about 45 seconds on plan design, Mr. Eddy said. Typically, little time is spent explaining plan design because emotional issues are more apt to sell employees on the program.

Face-to-face meetings are the

Continued on next page

LTC

Continued from previous page
best way to answer employees' questions about how the plan works and the benefits it will pay, he said.

Nearly three of four companies that sponsor LTC programs do so to protect the financial security of employees and retirees, said Mr. Fairman, citing a survey by the Washington Business Group on Health.

Yet employees ask why simply saving for long-term care expenses is not just as effective as buying insurance to cover them. So the employee benefit staff at the World Bank explained that even if employees secured impressive returns on their investments, they would not be able to afford anywhere near the number of nursing home days that an insurance policy would cover.

'What you buy today may not be used for 20 or 30 years,' says William M. Mercer's Harold Fairman Jr.

Premiums for long-term care coverage are relatively low because they are based on an employee's age when he or she buys the policy and remain level over time. Dependents or parents of employees who will be covered under the policy may be required to show evidence of good health.

Employers also should be diligent is selecting a reputable insurer.

"Program design isn't difficult," since many of the policies have similar benefits, said Mr. Fairman. "Selecting an insurer is important because not a whole lot of insurers sell it on a group basis right now." He recommended studying the ratings of long-term care insurers.

Employers "must be conscious of the fact that what you buy today may not be used for 20 or 30 years. And, we know insurance companies aren't always around that far down the line."

The World Bank has yet to receive a claim under its long-term care program, but two types of claims are likely to be seen, Mr. Eddy said. Newly implemented LTC policies will likely be used to pay for cancer treatments, strokes and some cognitive disorders, like Alzheimer's disease. More mature plans, however, will likely find 50% or more of claims relating to Alzheimer's and the remainder relating to strokes. BI

More than 500 at ISCEBS meeting

DENVER—The International Society of Certified Employee Benefit Specialists held its largest symposium to date in the Mile High City Oct. 3-5.

A record 514 people attended the 13th annual meeting in Denver, which featured 40 sessions on topics including health and welfare plan strategies, compensation and other human resource subjects. Speakers included employee benefit executives, health plan sponsors, consultants, insurers and representatives from various health care organizations and associations.

The ISCEBS, based in Brookfield, Wis., is an educational organization that promotes the employee benefit profession and awards individuals who complete classes the professional designation of Certified Employee Benefit Specialist.

The organization sponsors 40 local chapters in the United States and Canada and expects membership to total 3,100 by year end.

The 1995 ISCEBS Employee Benefit Symposium will be held Oct. 8-11 in San Francisco; the 1996 symposium is Oct. 6-9 in Atlanta; the 1997 meeting is Nov. 9-12 in New Orleans; and the 1998 meeting is Nov. 1-4 in Seattle.

For more information, contact the International Society of Certified Employee Benefit Specialists, 18700 W. Bluemound Road, P.O. Box 209, Brookfield, Wis. 53008-0209; 414-786-8771.

Health reform changing industry

By CHRISTINE WOOLSEY

DENVER—Health care reform changed the face of the health care industry and led to the current consolidation frenzy in health insurance, a group health insurance executive says.

As a result, employers will focus more than ever on total health plan costs, making massive shifts toward budgetable cost containment products and trying to lock employees into the most cost-effective health plans available.

Those changes will increase pressure on group health insurers and managed care companies to merge or form strategic alliances, said Michael C. Gaffney, vp of managed care and employee benefits operations for The Travelers Insurance Co. in Hartford, Conn.

"It will be amazing to see the number of companies that enter the health care market and exit the health care market in the next few years," said Mr. Gaffney during a panel discussion earlier this month at the annual International Society of Certified Employee Benefit Specialists meeting.

Travelers itself was involved in a big-ticket deal that signaled the further deterioration of fee-for-service plans: the sale of its group life and health operations to Metropolitan Life Insurance Co. (*BI*, June 20).

Not all companies are expected to survive consolidation unscathed.

For example, third-party administrators that are "focused on low-cost administration, but with little managed care expertise, are doomed to fail or become good acquisition candidates," suggested Mr. Gaffney. In the last decade, "employers woke up and realized that total medical costs are the problem, not just administrative expenses."

As a result, he said, employers of all sizes will make more benefit decisions based on total plan costs—and how health insurers and managed care companies can control them—rather than the

Continued on page 20

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Changes

Continued from page 18

amount of administrative savings that TPAs promise.

At the same time, multiline insurance companies will begin to break out the revenues and reserves associated with their various products to ascertain which are profitable and which are not.

"Most insurers just count their total reserves at year end, without breaking out which products make money," Mr. Gaffney explained.

When insurers measure the performance of their health care products separately, however, "you'll see a lot of companies exit the (health care) market because they will see that their life insurance or annuity products were subsidizing their health insurance products."

Mr. Gaffney also predicted that small or regional insurers or health maintenance organizations will become major candidates for acquisition by larger health care players.

"In a local market, unless it's a flagship system, small HMOs are very vulnerable. It's not enough these days to be in one or two sites, even if you are very successful."

The high degree of integration in the health care market will bring about two other trends: an increasing willingness by providers to accept risk and further movement toward capitation.

"The ultimate level of integration will occur when hospitals and physicians are fully at risk under capitated reimbursement," commented Alan D. MacLennan, executive vp of employee benefits for Great-West Life & Annuity Insurance Co. in Englewood, Colo.

"The pace of integration varies considerably from community to community. But, in some cities, doctors are lining up at the door of hospitals, wanting to be bought out," he said.

The integrated health care systems of the future could fall into two categories: procedure-specific, such as networks formed to provide only cardiac surgeries or transplants; and disease-specific, such as systems that focus medical treatment on particular illnesses, like cancer, diabetes, AIDS or asthma.

"It's quite unlikely any one multispecialty hospital will be really good at everything. This (integration) represents an unbundling of the health care system. And that brings rewards of decreased costs and increased quality," he explained.

"Provider risk assumption, through capitation, is related to integration because capitation creates an entity that can accept and manage risk," Mr. MacLennan explained.

And, he said, more providers will accept capitation as the major financing mechanism of the future because they will realize it is the best way to make more money.

"In the old world, if the payer controlled costs, the providers lost money. But with capitation, if health care costs are restrained, the provider is the beneficiary and they experience an increase in profit—not the health plan or the employer. Capitation, therefore, is seen as a way to benefit from, rather than be victimized by, restraining health care costs," Mr. McLennan said.

Fueling the drive toward capitation is the potential to control costs, Mr. MacLennan said, noting that health care reform may have accelerated the trend.

"Provider groups are increasingly accepting and in some places demanding capitation," he said. Among the advantages of financing care through capitated payments is avoidance of premium taxes and lowering capital requirements.

However, he noted, "If providers take risk through capitation, they also will want control over how care is provided." So, the trend in health care delivery will be toward macromanagement by health plans and micromanagement by providers.

For example, health plans will be charged with duties such as provider profiling, network contracting and integration and performance improvement.

Providers, on the other hand, will be focused on prevention and wellness, appropriate care and chronic disease management. BI

Comp fraud prosecution rate low: Study

Although California workers compensation insurers have referred 11,785 cases of potential fraud to prosecutors during a two-year period, only 251 arrests and 110 convictions resulted from that effort statewide, new research shows.

A researcher for the San Francisco-based California Worker's Compensation Institute, which examined workers compensation insurer data from the first quarter of 1992 to the first quarter of 1994, said some insurers are discouraged by the relatively few workers compensation fraud cases prosecutors pursue.

Still, California state and county prosecutors have done a good job of pursuing complex workers compensation fraud cases, which can take at least two years to bring to trial, argued Joseph Markey, chairman of the state's Fraud Assessment Commission.

The commission is charged with monitoring the use of payroll revenues collected by the state to combat workers compensation fraud.

In addition, the number of prosecutions alone does not reflect the pressure that has been placed on fraud mills operated by doctors and attorneys, forcing them out of business, said Mr. Markey.

According to the CWCI, of 36 people arrested for alleged workers comp fraud during the second quarter of 1994, 24 are claimants, two are providers and one is an attorney, while nine are listed as "other."

The CWCI, though, said its data may not be exact. Some of those arrested and prosecuted could have been reported to prosecutors before 1992, while some suspected fraud cases referred after 1992 could still be under investigation and result in eventual convictions, the institute explained.

To compile the information, the CWCI polled 46 insurer groups that write 77% of the workers compensation premiums in California.

Five self-insured employers were also contacted for the research.

Since 1992, California employers have been required to report suspected incidents of workers compensation fraud to state and county authorities.

—By Roberto Ceniceros

Datebook

OCTOBER

OCT. 30-NOV. 2. National Assn. of Independent Insurers' 49th Annual Meeting in Honolulu; $350 for NAII members, $450 for non-members. NAII, c/o Premier Group, P.O. Box 5007, 2550 West Golf Road, Suite 900, Rolling Meadows, Ill. 60008; 708-427-7260.

OCT. 30-NOV. 3. First Latin American Conference of Risk and Insurance Management in Cancun, Mexico, sponsored by the Latin American Assn. of Risk & Insurance Managers; $750 for ALARYS members, $850 for non-members. Instituto Mexicano de Administradores de Riesgos, Queretaro 238 Desp. 201, Col. Roma, C.P. 06700, Mexico, D.F.; 525-264-74-59.

OCT. 31. General Liability Coverage for Construction Exposures seminar in Washington, sponsored by the International Risk Management Institute; $275. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

OCT. 31. Construction Insurance 101 seminar in Washington, sponsored by the International Risk Management Institute; $275. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

OCT. 31. Contractual Risk Transfer seminar in Washington, sponsored by the International Risk Management Institute; $275. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

OCT. 31. Making Money with the Surety Team seminar in Washington, sponsored by the International Risk Management Institute; $275. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

NOVEMBER

NOV. 1. Preventing and Controlling Fire Losses seminar in Pittsburgh, sponsored by Factory Mutual Engineering & Research; $295. **Also Nov. 9** in Baltimore and **Nov. 16** in Norwood, Mass. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

NOV. 1. Outsourcing Employee Benefits seminar in Chicago, sponsored by The Conference Board; $525 for Conference Board associates, $650 for non-associates. **Also Nov. 4** in New York and **Nov. 8** in San Diego. The Conference Board Inc., P.O. Box 4026, Church Street Station, New York, N.Y. 10261-4026; 212-339-0345.

NOV. 1-3. The 14th Annual Construction Insurance Conference in Washington, sponsored by the International Risk Management Institute; $650. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

NOV. 1-3. The Third Annual National Workers Compensation & Disability Conference in Chicago, sponsored by ; $545. National Workers Compensation & Disability Conference, LRP Publications, 1555 King St., Suite 200, Alexandria, Va. 22314; 1-800-727-1227 or 703-684-0510.

NOV. 2-4. Second Annual Mental Health Summit in Atlanta, sponsored by Conference Development Inc.; $1,395. Registrar, Conference Development Inc., 1000 Winter St., Suite 4000, Waltham, Mass. 02154; 1-800-872-0094.

NOV. 3. Tort and Claims into the 21st Century seminar in Chicago, sponsored by the CPCU Society; $128 for CPCU Society members, $168 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 610-251-2728.

NOV. 3-4. Seminar for Non-Insurance Professionals in New York, sponsored by The College of Insurance; $525. The College of Insurance, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9201.

NOV. 4. Economic Issues in Workers Compensation seminar in Philadelphia, sponsored by the National Council on Compensation Insurance; $200 for NCCI members, $275 for non-members. Donna Klamm, National Council on Compensation Insurance Inc., 750 Park of Commerce Drive, Boca Raton, Fla. 33487-3621; 407-997-4739.

NOV. 5-7. Managing Commercial Lines Placements workshop in Dallas, sponsored by the Council of Insurance Agents & Brokers; $650. Council of Insurance Agents & Brokers, 316 Pennsylvania Ave. S.E., Suite 400, Washington, D.C. 20003-1146; 202-547-6616.

NOV. 7-8. Multimedia 1994: Positioning for Profit in an Interactive World conference in San Francisco, sponsored by International Business Forum; $1,095. IBF/International Business Forum, 7 Penn Plaza, Suite 901, New York, N.Y. 10001; 212-279-2525.

NOV. 7-9. Environmental Risk Management seminar in Chicago, sponsored by the Risk & Insurance Management Society; $700 for RIMS members, $800 for non-members. RIMS Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

NOV. 8. Risk Retention Groups and Other Captives seminar in Bethesda, Md., sponsored by the CPCU Society and the Metropolitan Washington Assn. of Independent Insurance Agents; $115 for CPCU Society or MWAIIA members, $125 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

NOV. 8. Surety Bonding seminar in Pittsburgh, sponsored by the CPCU Society; $85 for CPCU Society members, $95 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

NOV. 9-10. Property & Casualty Loss Reserves seminar in Chicago, sponsored by Deloitte & Touche L.L.P.; $675. **Also Dec. 1-2** in New York. Deloitte & Touche L.L.P., Marybeth Popczak, Seminar Coordinator, City Place I, 31st Floor, 185 Asylum St., Hartford, Conn. 06103-3402; 203-543-7368.

NOV. 11. Best Practices for Business Transformation in the Insurance Industry seminar in Boston, sponsored by Amherst Consulting Group; no charge. Amherst Consulting Group, 84 State St., Boston, Mass. 02109; 617-723-9545.

NOV. 12-16. National Council of Insurance Legislators Super Summit in New York; $425 for NCOIL Advisory Committee members, $650 for non-members. NCOIL, 122 S. Swan St., Albany, N.Y. 12210; 518-449-3210.

NOV. 13-16. Bermuda Market Briefing: From Captives to Cats in Hamilton, Bermuda, sponsored by the CPCU Society and the Bermuda Insurance Institute; $525 for CPCU or BII members, $575 for non-members. New York City Chapter, CPCU Society, P.O. Box 9001, Mount Vernon, N.Y. 10552; 914-699-2020; or Bermuda Insurance Institute, Suite 461, 48 Par-La-Ville Road, Hamilton EM 11 Bermuda; 809-295-1596.

NOV. 14-15. Re-Engineering Property & Casualty Claims seminar in New York, sponsored by the Institute for International Research; $1,195. Conference Coordinator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

NOV. 14-15. Integrating Health, Managed Care & Disability Programs conference in Orlando, Fla., sponsored by International Business Communications; $1,195. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772; 508-481-6400.

NOV. 14-16. Fundamentals of Risk Financing course in Scottsdale, Ariz., sponsored by the Risk & Insurance Management Society; $650 for RIMS members, $750 for non-members. Risk & Insurance Management Society Inc., 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

Continued on next page

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Continued from previous page

NOV. 14-16. Fourth Annual Midwest Managed Health Care Congress in Chicago; $1,095. Midwest Managed Health Care Congress, 1000 Winter St., Suite 4000, Waltham, Mass. 02154; 617-487-6700.

NOV. 15. International Insurance Sales and Trade Agreements seminar in Chicago, sponsored by Katie Insurance School, Illinois State University; $125. Illinois State University, Katie Insurance School, Attn: Cathy Kelly, Campus Box 5490, Normal, Ill. 61790-5490; 309-438-3021.

NOV. 15. International Insurance Symposium in New York, sponsored by the International Insurance Council and the National Assn. of Insurance Brokers; $145 for Council or NAIB members, $185 for non-members. International Insurance Council, 1212 New York Ave. N.W., Suite 250, Washington, D.C. 20005; 202-682-2345.

NOV. 16. Business Interruption Coverages seminar in Deerfield Beach, Fla., sponsored by the CPCU Society; $75 for CPCU Society members, $95 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

NOV. 17. Insurance Coverage Litigation 1994 satellite broadcast, sponsored by the Practising Law Institute; $249. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 1-800-260-4754.

NOV. 17-18. Employee Benefits Forum in Washington, sponsored by the American Compensation Assn.; $425 for ACA members, $475 for non-members. American Compensation Assn., Customer Services, 14040 N. Northsight Blvd., Scottsdale, Ariz. 85260; 602-922-2020.

NOV. 18. Current Retirement and Health Plan Issues: A Briefing from the Department of the Treasury, Internal Revenue Service and Department of Labor in Boston, sponsored by the New England Employee Benefits Council; $150 for NEEBC members, $185 for non-members. Linda Viens, 62 Walnut St., Wellesley, Mass. 02181; 617-239-1767.

NOV. 21-22. Sixth Annual Insurance Industry Conference in Washington, sponsored by KPMG Peat Marwick; $895. **Also Nov. 29-30** in Dallas. Contact KPMG Peat Marwick at 201-334-4111.

NOV. 29. Directors & Officers Liability Insurance Conference in London, sponsored by DYP Group and CIGNA International; 346.63 pounds (about $545). DYP Group Ltd., 181 Queen Victoria St., London EC4V 4DD; 071-236-2175.

NOV. 29-30. Increasing Human Resources Effectiveness seminar in Cambridge, Mass., sponsored by the Program on Negotiation at Harvard Law School; $1,950. **Also April 20-21, 1995** in Cambridge, Mass. Amy Philips, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

NOV. 29-DEC. 1. Current Issues in Workers Compensation conference in Arlington, Va., sponsored by UBA Inc.; $325 for members of sponsoring employer associations, $375 for non-members. UBA Inc., 1331 Pennsylvania Ave. N.W., Suite 1500 North Tower, Washington, D.C. 20004-1703; 202-682-1515.

NOV. 30-DEC. 1. Workers Compensation Research Institute Annual Issues & Research Conference in Cambridge, Mass.; $345 for WCRI members, $495 for non-members. Kathleen A. Muedder, Associate Executive Director, WCRI, 101 Main St., Cambridge, Mass. 02142; 617-494-1240.

NOV. 30-DEC. 2. Effective Management and Direction of Malpractice Insurers & Trusts seminar in Atlanta, sponsored by Tillinghast; $750. Mary Tschopp, Tillinghast Seminars, 1 Atlanta Plaza, 950 East Paces Ferry Road, Suite 1100, Atlanta, Ga. 30326-1119; 404-365-1600.

DECEMBER

DEC. 1-2. Creating & Managing International Business Relationships seminar in Cambridge, Mass., sponsored by Harvard Law School; $1,950. **Also May 11-12, 1995**. Nancy Farlow, Center for Management Research, 55 William St., Wellesley, Mass. 02181; 617-239-1111.

DEC. 2. D&O Fiduciary Liability and Employment Practices Liability: Coverage Aspects and Marking Strategy workshop in West Conshohocken, Pa., sponsored by the CPCU Society; $85 for CPCU Society members, $95 for non-members. **Also Dec. 7** in White Plains, N.Y. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

DEC. 2-3. Solvency Concerns with Foreign Insurers and Reinsurers seminar in New Orleans, sponsored by the American Bar Assn.; $490 for ABA members, $515 for non-members. American Bar Assn., Dept. NI783, 541 N. Fairbanks Court, Chicago, Ill. 60611-3314; 1-800-964-4253.

DEC. 4-7. Sixth Annual National Forum on Quality Improvement in Health Care in San Diego, sponsored by the Institute for Healthcare Improvement; $750. Institute for Healthcare Improvement, 1 Exeter Plaza, Ninth Floor, Boston, Mass. 02116; 617-424-4800.

DEC. 5. Advanced Risk Management Financing Techniques workshop in Harrisburg, Pa., sponsored by the CPCU Society; $75 for CPCU Society members, $85 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 610-251-2728.

DEC. 5-6. New Derivative Instruments: Exploiting the Opportunities, Avoiding the Pitfalls conference in New York, sponsored by International Business Forum; $695 for pension plan sponsors, $1,295 for others. IBF/International Business Forum, 7 Penn Plaza, Suite 901, New York, N.Y. 10001; 212-279-2525.

DEC. 5-7. Techniques of Risk Management course in New York, sponsored by the Risk & Insurance Management Society; $650 for RIMS members, $750 for non-members. RIMS Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

DEC. 6. Solving the Additional Insured Issues workshop in Woodbridge, N.J., sponsored by the CPCU Society; $85 for CPCU Society members, $95 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 610-251-2728.

DEC. 7-9. Outcomes and Disease Management conference in San Francisco, sponsored by Conference Development Inc.; $1,195. Registrar, Conference Development Inc., 1000 Winter St., Suite 4000, Waltham, Mass. 02154; 800-872-0094 or 617-487-6700.

DEC. 7-9. Outcomes & Disease Management forum in San Francisco, sponsored by Conference Development Inc.; $1,195. Registrar, Conference Development Inc., 1000 Winter St., Suite 4000, Waltham, Mass. 02154; 800-872-0094.

DEC. 8-9. Disaster Planning and Preparedness Workshop in Santa Clara, Calif., sponsored by Factory Mutual Engineering & Research; $495. **Also Dec. 12-13** in Los Angeles. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

DEC. 12-14. Fundamentals of Insurance course in Denver, sponsored by the Risk & Insurance Management Society; $650 for RIMS members, $750 for non-members. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

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Employment suits abound

EPL steps in where standard policies fail

By Jonathan S. Reed

AS THE BUSINESS COMMUNITY knows all too well, we are in the midst of an explosion of litigation concerning the rights of employees to obtain, keep and advance in their employment free of impermissible conduct on the part of their employers. The Americans with Disabilities Act of 1990, which became fully effective only recently, has bestowed upon no fewer than 43 million citizens a potential cause of action against their employers.

In fiscal 1993, the Equal Employment Opportunity Commission received a record 87,942 administrative discrimination complaints and it expects to receive between 93,000 and 94,000 complaints in fiscal 1994. A recent Harris Poll found that almost one-third of all working women and 7% of male workers claim to have been sexually harassed on the job. This enormous pool of potential complainants is likely to cause an avalanche of sexual harassment claims against employers.

While the shock waves of contemporary employment litigation rumble across the country with increasing frequency and severity, insurance coverage for these disputes under traditional general liability, umbrella, workers compensation and directors and officers liability policies has proved to be either non-existent or quite problematic at best. Although coverage has occasionally been found for employment-related disputes under these policies, such claims are commonly contested vigorously by insurers. Consequently, policyholders have been compelled to incur substantial litigation costs to reach judicial determinations that in the end may or may not force insurers to provide coverage.

In any event, victories for policyholders in coverage litigation are bound to be fewer and fewer in the future as new business insurance policies are typically written with specific exclusions for employment practices liability.

What then is a prudent employer to do in the face of the rising tide of employment litigation and the diminishing availability of coverage under traditional business insurance policies? The answer, at least in part, appears to lie with a new insurance product that has been specifically designed to fill the growing "employment-related liability" gap in standard insurance policies: employment practices liability insurance.

There is no standard EPL policy form. Thus, not only do policy terms and conditions vary from insurer to insurer, but even the name given to the various policies is not uniform. For the sake of clarity, the term "EPL" is used in this article to refer generally to the insurance policies issued since 1992 that were specifically designed to respond to employment-related claims. Although policy language varies, the most significant provisions are common to virtually all EPL policies, at least in some form. Finally, though a form of EPL insurance can be purchased as an endorsement to certain D&O policies, this article is concerned only with the more comprehensive stand-alone EPL policy.

Although most EPL policies provide coverage for the three basic employment-related actions that can result in liability—wrongful termination, discrimination and sexual harassment—some policies only cover one or two of these acts. Even in policies that provide coverage for all three acts, the definition of key terms can and do vary significantly from policy to policy.

For instance, certain policies include sexual orientation or preference in their definition of "discrimination" while others do not. Some policies appear to cover non-discriminatory breaches of express employment contracts as "wrongful termination" while others exclude some breaches. Employment-related defamation may be specifically covered under one policy but not mentioned in another's definition of "wrongful termination."

A few EPL policies are written to provide coverage for defense costs only. Most, however, cover defense and indemnity obligations of the policyholder within the overall policy limits of liability. The limits of liability under EPL policies generally range from $50,000 to $5 million with deductibles anywhere from $2,500 and up. The liability limits and deductibles apply to both indemnity and defense costs. Most EPL policies include provisions for copayment of up to 10% in addition to the deductible. EPL policies are written to provide primary insurance. Where another policy may coincidentally apply to a covered claim, EPL policies generally provide for an equitable sharing formula. Thus, there should be virtually no dispute as to which insurance policy responds, even if general liability coverage is also available in connection with a particular claim.

One of the most intriguing aspects of employment practices liability insurance is that it frequently includes a provision for mandatory binding arbitration for any dispute regarding the interpretation of the policy. In an attempt to eliminate much of the cost associated with coverage litigation, certain insurance companies issuing EPL policies have chosen private arbitration over the traditional judicial forum. It remains to be seen, of course, whether binding arbitration will in fact result in quicker and less costly coverage determinations.

As for policy exclusions, a number are common to virtually all EPL insurance policies. Employer obligations under workers compensation, disability benefits or unemployment compensation laws are not covered. Liability imposed under the Employment Retirement Income Security Act of 1974 is also not covered under EPL policies. Neither are disputes arising under the Workers Adjustment Retraining Notification Act. Generally speaking, no traditional organized labor matters such as strikes, lockouts, layoffs, collective bargaining or grievances are covered by these policies.

Whereas back pay, front pay and pre- and post-judgment interest are usually covered, most EPL policies exclude punitive damage awards and any loss arising out of fines, penalties, sanctions or multiple damages. Moreover, claims for injunctive or non-monetary relief are usually excluded. The cost of modifying a building or property to comply with the reasonable accommodation provisions of the ADA is likewise excluded as are losses associated with class-action suits.

Naturally, coverage is excluded where the

Continued on next page

The guide to making an offer they can't refuse

"Everything's Negotiable. . .When You Know How to Play the Game"
By Eric W. Skopec and Laree S. Kiely
Published by AMACOM, 135 W. 50th St., New York, N.Y., 10020; 800-262-9699
$21.95

Books & Ideas

By Kevin M. Quinley

AND MORE, MUCH MORE than this—I did it my way!

Frank Sinatra could have learned a thing or two from authors Laree Kiely and Eric Skopec. Add risk managers to the line, right behind Ol' Blue Eyes. There's more to getting what you want than simply demanding that it be done "my way." The state-of-the-art risk manager is not only a superb technician but also a savvy negotiator.

Negotiating acumen is not only a life skill but a key career asset to any upwardly mobile risk and insurance professional. This is true no matter what the objective: getting a premium reduction from a high-end insurance quote, negotiating a fee-based compensation arrangement with your insurance broker or persuading a belt-tightening boss that you need another support person for your strapped risk management department.

"Every time you deal with another person, you have the opportunity to make things better—through negotiation," the authors write.

The authors of "Everything's Negotiable" make a dynamic duo. Mr. Skopec is a senior partner at Strategic Visions Consulting Group in Long Beach, Calif. Ms. Kiely is a professor of business communication at the University of Southern California Graduate School of Business.

We've all heard that "in business as in life, you don't get what you deserve, you get what you negotiate." The same is true in risk management. "Everything's Negotiable" is a player's manual for winning at this high-stakes endeavor. It's jam-packed with skills, strategies, insights, guidelines and step-by-step instructions for negotiating—whether at home or at work.

Mr. Skopec and Ms. Kiely show readers—including risk managers—how to figure out what they want and identify their own strengths and weaknesses. They show how to undo deadlocked negotiations and how to walk away from exchanges that simply can't be won. They supply ample instructions on how readers can protect themselves from so-called "dirty tricks," avoid common blunders, control anxiety, mediate a situation and—when necessary—refuse to mediate. Risk managers will also mine this 194-page book for pithy quotes from famous and skilled negotiators, along with summaries of the best current research on negotiating and case studies to test their negotiating mettle.

Books by academics and consultants often tend to be heavily theoretical and thinly practical. Happily, however, this is very much a practice-oriented, highly readable book designed for busy businesspeople. After reading it, you're bound to be a more effective negotiator than you were before.

Who can profit from this kind of practical advice? Job hunters, supervisors faced with handling difficult people, employees seeking a raise, risk managers negotiating insurance cost and coverage, brokers submitting proposals and reaching agreement—in short, any risk and insurance professionals who want the best for themselves and their organizations.

Invest a few hours in reading "Everything's Negotiable." Ask your department to order an extra copy or two. If the folks in the accounting department balk at ordering multiple copies, use this as your first negotiating session! BI

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

EPL insurance

Continued from previous page
policyholder had knowledge prior to the policy's inception of the events that gave rise to a claim during the policy period. Such information should have been provided to the insurer in response to the detailed application for EPL coverage. Furthermore, EPL insurance does not afford coverage for harm that resulted from criminal, fraudulent or intentional wrongdoing. Presumably, the exclusion as to "intentional wrongdoing" does not encroach upon the coverage EPL insurance was designed to provide with respect to the "intentional" aspects of wrongful termination, sexual harassment and discrimination.

Although employment practices liability insurance promises to substantially augment an employer's defense against costly and unforeseen employment-related litigation, some important questions about this new coverage are as yet unresolved. Foremost among these questions is the fundamental issue of the coverage's ultimate enforceability. It has been argued in the context of general liability insurance that public policy prohibits a policyholder from being indemnified for a loss resulting from an intentional act of discrimination. In denying coverage for intentional discrimination, courts have reasoned that to do otherwise would encourage discrimination.

As we have seen, employment practices liability coverage is premised, at least in part, upon the coverage of intentional discrimination. Consequently, there is a brewing controversy over the validity of EPL policies to the extent they purport to afford coverage for intentional wrongdoing.

Employers should look closely at this new coverage and, in conjunction with counsel, determine whether it belongs in their insurance program.

The fact that no standard form has been used by the issuers of EPL policies has resulted in significant variations in policy language. Consequently, the coverage provided under certain policies is much broader than others. No risk manager should buy EPL insurance without appreciating the advantages and disadvantages of a given policy. With the aid of counsel experienced in the nuances of employment and insurance law, a prospective policyholder will be able to intelligently choose among the variety of EPL polices available. BI

Jonathan S. Reed is a partner in the Newark, N.J. law firm of DeMaria, Ellis, Hunt, Salsberg & Friedman. He concentrates his practice in the areas of employment law and insurance coverage litigation.

'Actively at work' defined for welfare plan

An employee who died on his eligibility date for a group welfare benefit plan after an accident at home was not "actively at work," according to the 7th U.S. Circuit Court of Appeals.

Thomas Edwards was employed by Quad Graphics beginning Jan. 3, 1990. Under the employee welfare plan maintained by the employer, Mr. Edwards was eligible to participate upon satisfying the eligibility requirements of the plan.

The plan provided general death and accidental death benefits upon the death of the covered employee. The employer purchased group insurance policies from The Great-West Life Assurance Co. The policies issued provided that coverage started after completion of 60 days of continuous service and that the insurance of any employee who was not "actively at work" on the date his insurance would otherwise become effective shall not be effective until the date of his return to work.

On Feb. 27, 1990, Mr. Edwards went home from work and accidentally fell down the basement stairs of his residence. He was hospitalized in a coma and died on March 1, 1990. Mr. Edwards' widow and designated beneficiary filed claims for specified death benefits and accidental death benefits under the plan. The insurer denied her claims on the grounds that Mr. Edwards was not "actively at work" on March 1, 1990, as required by the policies. She sued and won in the trial court.

The appellate court said that Mr. Edwards' coverage could not possibly become effective because on the effective date he was in a coma and died that night. According to the court, "actively at work" requires that the employee must be at work of be capable of performing his job on the day the insurance is to commence. The trial court decision was reversed.

Edwards vs. Great-West Life Assurance Co., 7th U.S. Circuit Court of Appeals; April 1, 1994 (*BI*/05/0-$10).

Abuse of process

A general liability insurance policy that promised to defend a policyholder against "malicious prosecution" included a duty to defend against an "abuse of process" claim, according to the 9th U.S. Circuit Court of Appeals.

Bay Vista Enterprises Inc., James B. Lunsford and Regina T. Charboneau were covered under a comprehensive general liability policy issued by American Guarantee & Liability Insurance Co.

The policy covered personal injury resulting from malicious prosecution by the policyholder and included the duty to defend any suit seeking damages based on malicious prosecution. The plaintiffs contended that the "malicious prosecution" clause included the duty to defend them against a claim that alleged abuse of process. The trial court ruled against the plaintiffs.

The appellate court said that "malicious prosecution," as used in the policy, was ambiguous because it was not defined in the policy and because a lay person's understanding would differ from the legal definition of the term. According to the court, the distinction between malicious prosecution and abuse of process was "at best unclear." Since the term, as used in the policy, was ambiguous, the court resolved the issue in favor of coverage. The trial court decision was reversed.

Lunsford vs. American Guarantee & Liability Insurance Co., 9th U.S. Circuit Court of Appeals; March 17, 1994 (*BI*/05/Au.-$10).

Excess insurer drop-down

An excess insurer's coverage drops down to "dollar one" in advance of any payment by the Louisiana Insurance Guaranty Assn. due to the insolvency of the primary insurer, according to the Court of Appeal of Louisiana.

Century Indemnity Co. issued an excess policy to Thompson Trucking Co.

Western Preferred Casualty Co. was the primary insurer. John Scordill sued Thompson as a result of an accident involving Thompson's employee. While the suit was pending, Western became insolvent. Mr. Scordill then also named LIGA and Century as additional defendants.

Prior to the trial, Century funded a settlement paying $112,500 to Mr. Scordill. The issue of drop-down was then submitted to the trial court. The trial court ruled in favor of LIGA, concluding that Century's coverage dropped down to the first dollar for this accident.

On appeal, Century argued that, in the event of a primary insurer's insolvency, it should only drop down to LIGA's statutory maximum, which was $49,000 at that time. The appellate court ruled that, where other insurance is available to a claimant, LIGA does not assume the obligations of an insolvent insurer.

"LIGA's purpose is to provide a mechanism for the payment of covered claims," the court said, "and to avoid financial loss to claimants or policyholders because of the insolvency of the insurer." Thus, the court said it can be reasonably concluded that LIGA's purpose is not to assist solvent insurers but to protect a claimant from loss because of an insolvent insurer. The trial court decision was affirmed.

Scordill vs. Smith, Louisiana Court of Appeal; March 29, 1994 (*BI*/04/0.-$10).

CGL coverage trigger

Damages did not have to manifest themselves for coverage to be triggered under various comprehensive general liability insurance policies, according to the Court of Appeals of Oregon.

McCormick & Baxter Creosoting Co. has operated wood treatment plants continuously since 1942 in California and Oregon. During most of that period, M&B purchased standard form comprehensive general liability policies from a series of insurance companies. M&B's operations caused chemicals to leach into the soil and to contaminate the soil and ground water. There was evidence that damage had occurred in every year from 1942 to 1986. The contamination led to consent decree in both California and Oregon whereby M&B agreed to clean up the contamination.

The insurers that had issued policies to M&B brought this action seeking to have the court declare that there was no coverage under the policies for costs incurred by M&B in investigating and correcting the environmental contamination. The trial court ruled that M&B had no coverage on the grounds that the damage had not manifested itself until after the period of coverage.

On appeal, the insurers argued there was no property damage unless it was known. But the court said no language in the policies indicated damage comes into existence at the time that it becomes known. According to the court, under the plain language of the policies, all that was required to trigger coverage was damage *during* the policy period. The trial court decision was reversed.

St. Paul Fire vs. McCormick & Baxter, Court of Appeals of Oregon; March 19, 1994 (*BI*/01/S.-$10).

Severance pay entitlement

Are employees whose employment had been terminated due to the employer's sale of its assets entitled to severance pay under the Employee Retirement Income Security Act, even though they were all immediately re-employed by the buyer of the assets? The 11th U.S. Circuit Court of Appeals ruled that they were.

This was a class-action brought by the former employees of Modern Graphic Arts Inc. The company was a subsidiary of Times Publishing Co. In 1989, the Times sold substantially all the assets of MGA to a new owner who retained the former employees of MGA in their same jobs at the same salary levels.

But, the new owner did not credit the former MGA employees for their years of service at MGA for purposes of accruing and calculating severance pay benefits. When benefits were denied, the employees sued to recover the benefits allegedly due them. The trial court ruled that the employees were not entitled to severance pay benefits because they were never unemployed.

The appellate court pointed out that the severance pay policy at issue here provided that an employee who is "discharged as a full-time staffer for reasons other than cause" will receive severance pay. According to the court, that clause meant discharged as a full-time employee of the Times or one of its affiliates, in this case MGA. Thus, the court said that applying the plain and natural meaning of the provision, the employees were entitled to severance pay when their employment with MGA was terminated, regardless of whether they were employed by the entity that purchased MGA's assets. the trial court decision was reversed.

Bedinghaus vs. Modern Graphic Arts, 11th U.S. Circuit Court of Appeals; March 9, 1994 (*BI*/03/S. $10). BI

Legal Briefs

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available by sending a $10 check payable to Mayo H. Stiegler, to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.

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Markets

New fine arts MGA

CHICAGO—Belle Meade Group, a Chicago-based brokerage development firm, has formed a new managing general agent—Henderson Phillips Fine Arts—to underwrite and broker fine arts coverage for museums and large collections.

William B. Allen, formerly of Allen Insurance Associates, the Los Angeles specialty unit of Minet Group P.L.C., and Patricia J. Hayes, formerly of Huntington T. Block, the Chicago fine arts unit of Rollins Hudig Hall Group Inc., are the managing directors of the new firm.

Henderson Phillips Fine Arts and Allen Insurance Associates recently signed agreements with American International Entertainment Inc., an American International Group Inc. unit, to serve as the primary brokers for its new all-risk fine arts policy. AI Entertainment's policy for museums and collectors is underwritten on behalf of AIG's Commerce & Industry Insurance Co. and is AIG's first foray into fine arts insurance. The policy covers loss or damage to artwork such as paintings, antiques and sculptures either owned by or on loan to the policyholder.

Henderson Phillips Fine Arts' offices include: 4525 Wilshire Blvd., Los Angeles, Calif. 90010, 800-871-9991; 2300 Clarendon Blvd., Suite 301, Arlington, Va. 22201, 800-871-9991; and 6 W. Hubbard St., Chicago, Ill. 60610, 312-923-9095.

Kemper, UAP venture

LONG GROVE, Ill.—Kemper International Corp. plans to join PanEuroRisk, an alliance led by UAP Group, on Jan. 1, 1995.

Kemper International, a division of Kemper National Insurance Cos., will become the only Pan-EuroRisk member that is not a UAP subsidiary or otherwise tied to UAP through shareholdings.

PanEuroRisk is a formal operating alliance of UAP IARD in France; Royale Belge in Belgium; UAP International Allgemeine in Germany; UAP Nederland B.V. in the Netherlands; UAP Iberica in Spain; Irish National; UAP Italiana and UAP Portugal.

Paris-based PanEuroRisk provides property and casualty insurance and has an expected premium volume of $540 million in 1994, its first year of operation.

It operates as a management company and issues underwriting standards which member companies apply to PanEuroRisk business.

The business is then pooled and reinsurance is purchased for the combined business.

In most cases, companies with at least 250 employees qualify as Pan-EuroRisk business.

Underwriters in a risk's home country underwrite the risk according to the PanEuroRisk guidelines. Member companies provide service to policyholder's operations in the various countries.

Kemper International will provide service to PanEuroRisk clients' U.S. operations and will also contribute some European business to the pool, said Theodore J. Hoeh, president of Kemper International Corp. in Long Grove, Ill.

However, Kemper will not pool the European operations of its U.S.-based multinational clients with PanEuroRisk business.

In anticipation of membership, Kemper International has moved its London and Paris operations onto UAP premises and has streamlined and relocated its Brussels, Belgium, operation to a standalone site in suburban Louvain la Neuve.

The PanEuroRisk agreement would be the latest step in cooperation between Kemper International and UAP.

The companies already have a joint venture engineering company to service highly protected risks, The UAP Kemper HPR Co.

Network forms

SANTA ANA, Calif.—Admar Corp. has been selected by Pan-American Life Insurance Co. to develop a managed health care network in Louisiana. New Orleans-based Pan-American Life provides health insurance coverage for more than 80,000 lives.

Pan-American will begin marketing its new products in Louisiana by the end of this year. The managed care network will be developed as an alternative to an HMO for health insurers and will facilitate a partnership arrangement with medical care providers and insurers.

The partnership sets performance goals that give providers incentives to work with health insurers to manage medical program costs.

National Insurance Services, a wholly owned subsidiary of Pan-American, has already begun developing and marketing HMO alternative and exclusive provider networks with Santa Ana, Calif.-based Admar in Arizona, California and Florida.

EPA purchase

WOODLAND HILLS, Calif.—WellPoint Health Networks Inc., an affiliate of Blue Cross of California based in Woodland Hills, has acquired National Resource Consultants Inc., a firm specializing in the development and management of employee assistance and managed behavioral health programs for business and industry.

San Diego-based NRC has implemented more than 100 employee assistance and managed behavioral health programs for various businesses throughout the United States and Canada.

NRC will continue to operate from San Diego and will assume additional responsibilities for providing comprehensive behavioral health services through other WellPoint products.

With its additional capabilities, NRC now will be able to provide administrative services, at-risk products and a 24-hour product integrating workers compensation, disability, health care and employee assistance services.

Terms of the acquisition were not disclosed.

AIG-Kroll accord

NEW YORK—American International Group Inc. and Kroll Associates have agreed to expand their cooperation in providing crisis management services to clients.

As part of the expanded relationship, Kroll will bolster its worldwide crisis response and consulting force and will dedicate two executives full time to working with the crisis management unit of the Special Services Group of AIG's American International Underwriters.

Richard G. McCormick, head of Kroll's Corporate Security Group, will become Kroll's senior executive responsible for the now 6-year-old Kroll-AIG relationship. Worldwide marketing of the strengthened partnership will be led by David A. Samuel, who will join Kroll as senior director after having served for three years as vp of AIU's Special Services Division.

In June 1993, AIG and Kroll announced that AIG had acquired a minority interest in Kroll, which was founded in 1972 and is based in New York.

Brokerage formed

TORRANCE, Calif.—Frederick J. Fisher has established a new brokerage in Torrance, Calif.

Frederick John Fisher Insurance Brokers will specialize in placing and managing professional liability programs and commercial special risks in both admitted and non-admitted markets.

Among the professional liability programs under development are those for real estate agents, insurance agents and brokers, lawyers, architects and engineers and environmental liability. Special commercial risk programs include employers liability and product liability.

Mr. Fisher, an author and lecturer on professional liability loss control, has designed a program to conduct onsite pre-underwriting risk management assessments of professional liability exposures for insurance producers, real estate professionals and lawyers.

He is a member of the Professional Liability Underwriting Society board of trustees and is senior technical adviser for The Professional Liability Manual, published by the International Risk Management Institute.

For more information about the brokerage, contact Frederick J. Fisher, 1611 Crenshaw Blvd., Suite E, Torrance, Calif. 90501; 310-320-8291.

HRH buys agency

GLEN ALLEN, Va.—Hilb, Rogal & Hamilton Insurance Services of Orange County Inc. in Placentia, Calif., a unit of broker Hilb, Rogal & Hamilton Co., has completed a merger with Anaheim, Calif.-based Granger Hanna Insurance Associates. Terms of the deal were not disclosed.

"The addition of the Granger Hanna agency and its personnel to our existing office will prove to be a nice fit of business and people," said Robert H. Hilb, president of Glen Allen, Va.-based HRH.

"We anticipate combining the offices physically within the year and should achieve even greater profitability then," Mr. Hilb said.

HRH provides insurance agency services to a variety of clients through a network of wholly owned subsidiaries, which operate 47 agencies in 16 states and the District of Columbia.

Insurer to be sold

MILWAUKEE—Northwestern National Holding Co. Inc. will be acquired by Raleigh, N.C.-based Vik Brothers Insurance Inc., a privately held property/casualty insurance holding company

Northwestern National's parent, Armco Inc., signed a definitive agreement with Vik Brothers earlier this year. The sale is expected to be completed by the end of the year.

Milwaukee-based Northwestern National Holding Co. owns Northwestern National Insurance Group and its affiliated companies, of which the major companies are Northwestern National Casualty Co., Pacific National Insurance Co. and Statesman Insurance Co. Pittsburgh-based Armco acquired Northwestern National in 1980.

Under terms of the agreement, the cash transaction is valued at about $85 million. Proceeds will support Armco's runoff insurance subsidiaries.

Northwestern National Insurance Group posted $230.9 million in direct written premiums in 1993. Vik Brothers had $285.8 million in direct written premiums last year.

The acquisition is subject to approval by regulators in California, Indiana, Texas and Wisconsin.

Medical insurer

NAPA, Calif.—The Doctors Co., a physician-owned medical malpractice insurer based in Napa, Calif., now is offering malpractice coverage to doctors in all specialties in Georgia.

Charles Malmquist, Jim Haywood and Paul Tuggle of Potter Holden & Co., an Atlanta insurance agency, will represent The Doctors Co. in Georgia.

The Doctors Co. now has local agency representation in 22 states and is licensed and offers insurance in 22 other states and the District of Columbia.

Altogether, the company insures more than 17,500 physicians across the country.

Wholesaler sold

MINNEAPOLIS—E.W. Blanch Holdings Inc. of Minneapolis has purchased all of the outstanding common shares of the Elton George Cos., an insurance wholesaler and manager of program business based in San Antonio.

E.W. Blanch bought the common stock for $32 million in cash. In addition, the company will make contingent payments of up to $10.5 million over five years to selling shareholders based on Elton George's financial performance.

The Elton George Cos. will continue to operate under that name as wholly owned subsidiaries of E.W. Blanch Holdings.

The transaction was completed last month. BI

Satellite

Continued from page 3

don and C.E.C.A.R. in Paris.

In the past seven years, however, there have been 18 total insured satellite losses costing $1.72 billion, based on SRI statistics.

There also have been 20 partial losses, each costing less than $5 million, Mr. Gobbo added. Such a record shows that the modern satellites are more vulnerable than the older ones, he argued.

Launch rates now range between 15% and 20% of the insured value of a satellite, depending on its sophistication, size and the launch vehicle used, attendees heard during the DYP Group Space Insurance Conference, held Sept. 27-28 in London.

The conference, which from now on will be held every two years, was sponsored by London law firm Barlow Lyde & Gilbert and the Marchant Space Consortium.

These launch rates, which have remained relatively stable for the past few years, reflect an average annual loss rate of 14% of all satellites launched over the past 10 years, according to statistics provided by John Howes, chairman of London-based broker Crawley Warren Aerospace.

Space insurers were having a run of good luck prior to 1994, noted Frederick M. Bartlett, former vp-finance/administration and treasurer of Telesat Canada in Gloucester, Ontario, who chaired the conference. 1993 marked the third consecutive year that satellite underwriters earned profits on this line, he said.

Prior to 1994, the European Space Agency's Ariane rocket had enjoyed 26 consecutive successful launches; the Atlas rocket now produced by Martin Marietta Corp. had flown four spacecraft at the end of 1993 without incident; and McDonnell Douglas Corp.'s Delta rocket continued its "unparalleled" run of successful launches, according to Mr. Bartlett.

"The optimism, of course, did not last very long as you know," he said.

On Jan. 21, Telesat lost two Anik E satellites that were already in orbit, possibly due to solar flares, but later was able to bring them back into service (see story, page 32). Although the two satellites were uninsured at the time of their problems, they have $160 million in coverage against any other problems while in orbit.

Three days later, Arianespace Flight 63 failed when its third-stage engine prematurely shut down. The two satellites on board—Eutelsat II-F5 and Turksat 1—were insured for a record $356 million. This was "by far the largest loss known in our history," said Mr. Bartlett (*BI*, Jan. 31).

On Aug. 30, the National Space Development Agency of Japan lost its uninsured Kiku No. 6 (ETS-VI) engineering test satellite during an aborted launch.

On Sept. 9, the AT&T Corp. Telstar 402 failed to reach proper orbit after it separated from the Ariane IV rocket, costing insurers $187 million (*BI*, Sept. 19).

Despite this run of bad luck in 1994, "all is not lost for some of us and the year end could bring us a healthy profit," said Mr. Clapham. The Marchant Space Consortium's pure loss ratio stands at 103%.

There are still seven or eight launches to go in 1994 involving nine or 10 satellites, said Mr. Clapham. Each launch is valued in excess of $200 million and some are insured for up to $300 million, so more premium income will be available to pay for this year's losses to date.

Over the past 10 years, the underwriting results for the space insurance market are in the black, according to Mr. Clapham. Since 1984, satellite underwriters have made an overall profit of $113 million excluding general expenses.

In addition, satellite launch insurance capacity is still readily available.

Capacity for satellite launch insurance was about $365 million per launch last year, but it's grown 33% to $485 million this year, said Mr. Bartlett.

Ben Poole, director of aerospace for Sedgwick Aviation, a unit of Sedgwick Group P.L.C., agreed that capacity has grown to about $480 million per launch this year from only $260 million in 1990. Despite this increase in capacity, rating levels have remained stable, he added.

'We sometimes wonder whether we are funding the commercial research and development of previously military projects,' says Simon Clapham, underwriter for the Marchant Space Consortium at Lloyd's of London.

Mr. Poole said there are several sources for the new capacity. ACE Ltd. in Bermuda earlier this year began providing $25 million in limits, he noted.

In addition, he said, capacity has increased from existing markets like London, which now provides $109 million in capacity, triple the $35 million available in 1990.

The London market includes the Marchant Space Consortium, which provides a maximum $60 million in limits per launch. The consortium is underwritten by Mr. Clapham on Lloyd's syndicate 282, and consists of 20 Lloyd's syndicates with total underwriting capacity of 1.73 billion pounds ($2.74 billion) this year. Syndicate 282's lead underwriter is Andrew Elliott, who succeeded Michael Marchant upon his retirement earlier this month.

Coinciding with the change in leadership, Mr. Clapham recently moved to syndicate 800, whose main underwriter is John Westcott, which will lead the space consortium next year. Mr. Clapham will become the senior underwriter on the syndicate when Mr. Westcott retires in 1996.

Even greater increases in capac-

Continued on next page

Satellites

Continued from previous page
ity may be needed in the future, though, as technology advances and an increasing number of satellites are launched into orbit.

Technological advances spurring such demand include strides in communications, such as cellular telephones, satellite television and development of telephones with video capability.

The future also will bring launch vehicles capable of carrying five or six satellites at a time, with insured values of up to $600 million per launch, predicted Mr. Howes of Crawley Warren Aerospace.

"In my opinion, the space insurance market should have very little difficulty in coping with these innovations," said Mr. Howes. "In fact, the values of launches and the sizes of satellites are unlikely to come close to values of satellites being launched into geostationary orbit today."

But as capacity increases, competition may increase, too, bringing reduced insurance rates to corporate buyers of satellite coverage.

"Pressure on rates will be significant if the total available capacity (in the market) is required for future launches," noted Mr. Howes. "Despite the possible capacity increase, I would like to think that future rating levels will adequately reflect the risk."

The problem may be that the satellite owner would be overcharged if his probe is on a $600 million launch where capacity is limited rather than on a $200 million launch where capacity is plentiful and rates drop, admitted Mr. Clapham. "We ought to rate each risk on its own merits rather than because of the size of the (insurance) market."

Meanwhile, satellite underwriters are concerned about the reliability of some new launch equipment, noted Mr. Howes.

"While technology in the space environment continues to improve. . .it has done little to improve reliability," he said. "Quite simply, technology advances have not been matched by improvements in quality control or, for that matter, control in the human factor. A further ingredient has been the prototype nature of the launch vehicles and satellite design."

'Brokers shouldn't consider further the idea of vertical placement,' says John Westcott.

"Manufacturers turn increasingly to new technology. Obviously, new technology lacks history and must therefore present a higher risk," added Mr. Clapham. "We sometimes wonder whether we are funding the commercial research and development of previously military projects."

Satellite and launch vehicle manufacturers at the conference tried to assure brokers and underwriters that they were developing new technology to improve performance, not reduce it.

"There is not a single launch vehicle manufacturer (that creates new equipment) to reduce reliability," said one launch manufacturer who refused to be named. Technology must advance in order to compete in today's market. The next four or five years will be the most exciting yet for the space industry.

"If you are not willing to take the risk, then you better leave now," he warned. "We'll be looking to the insurance market for stability."

The Ariane V rocket is designed to have a 98.5% reliability rate, said Brigitte Vienne, head of finance and risk management for Arianespace in Paris.

If hardware and processes never changed, the "sameness would promote human error" because of a lack of motivation, she said. "We are sentenced to evolution. . .who does not go forward, goes backwards."

Technology improves equipment, added Eric J. Novotny, vp-Europe for Hughes Communications International Inc. Advanced technology means an increase in the lifetime of a satellite to 18 to 20 years from the current 12-year average life span, he said.

The improvements and increasing number of satellites means more insurance capacity will be needed. "Satellite insurance will become quite a large sector in non-life insurance business," predicted Mr. Clapham.

In the meantime, brokers are trying hard to improve the rating structure in the space insurance market for their clients.

During the conference, a heated debate developed between brokers and underwriters over "vertical underwriting" which Brian Moore, managing director of Bowring Space Projects, said he would like to introduce to the market.

Vertical underwriting means that each underwriter quotes a rate for the risk and stands by that rate, Mr. Moore explained. The broker then gives the largest percentage of the risk to the underwriter who quoted the lowest rate, and whatever's left goes to the underwriters with higher rates, thus improving the pricing for the insurance buyer. Vertical underwriting currently is used in the aviation insurance market.

However, in the satellite insurance market, all underwriters agree to custom-made policy wording and each underwriter uses the highest rate that is quoted by his counterparts.

Although a vertical market may not necessarily benefit the satellite insurance market, "it would almost certainly benefit our clients with regard to cost, at least in the short term," said Mr. Moore.

The lack of a vertical market in the satellite insurance industry gives Mr. Moore the feeling that "true competitive forces are not being allowed to operate. You sometimes get the feeling that you might be paying too much. . .Why should our customers continue to pay the highest rate?"

In a lively discussion, Mr. Marchant argued that underwriters must be allowed to price the product so they can make a profit.

But Bill Smith, managing director of broker Nicholson Leslie Aviation, countered that not every satellite underwriter has suffered similar levels of losses over the years.

"Why shouldn't (an underwriter without many losses) be prepared to quote his rate that he thinks that business is worth?" Mr. Smith asked rhetorically.

Mr. Gobbo of Generali responded that the same risk should get the same price, regardless of which underwriter is quoting the business.

Lloyd's Mr. Westcott added that the vertical market does not work well in the aviation market, producing "sheer greed" and "crass irresponsibility." Aviation rates are depressed because of the vertical market and, as a result, some aviation underwriters have been forced out of business, he said.

The space insurance market, on the other hand, "has shown responsibility" when pitching rating levels that provide adequate capacity, said Mr. Westcott. "Brokers shouldn't consider further the idea of vertical placement." BI

In-orbit satellite cover out of buyers' reach

By STACY SHAPIRO

LONDON—Satellite users need more insurance capacity for satellites in orbit than the market is providing, a London broker maintains.

Policyholders are looking for coverage that will last the lifetime of the spacecraft at "equitable" rating levels, said Phillip May, executive director of Willis Corroon InSpace.

However, what's available in the market "falls far short of what buyers need," he told delegates to the DYP Group Space Insurance Conference. The conference, held in London Sept. 27-28, was sponsored by London law firm Barlow Lyde & Gilbert and the Marchant Space Consortium.

The space insurance market currently is only offering short-term in-orbit coverage at rates that are too high with restrictive exclusions and sunset clauses, according to Mr. May. In addition, he said that satellite insurance underwriters offer only half the capacity for in-orbit insurance that they offer for satellite launch insurance.

This means that while satellite launch insurance capacity has more than doubled in the last 10 years, in-orbit insurance capacity has declined slightly to $220 million per risk in 1984 from $250 million in 1994, according to Mr. May.

Underwriters refuse to provide more capacity even though the in-orbit loss record is excellent, he added. Net premiums for the past 10 years total $445.9 million, while claims only total $220 million, of which $170 million was for the loss of one satellite, the

Continued on next page

Continued from previous page
Superbird A in December 1990 (*BI*, Jan. 14, 1991).

"The market should examine what they offer," Mr. May suggested. The underwriters should offer more capacity for in-orbit coverage and lower rates to reflect the excellent loss ratio over a 10-year period.

Rates currently are between 1.75% and 2.5% of a satellite's insured value, according to figures he provided.

At the same time, satellite users and manufacturers should provide full disclosure to underwriters about their orbiters and be committed to long-term insurance coverage, Mr. May said.

"I do believe there's a pent-up demand out there (for in-orbit coverage)...the buyers are out there, ready and waiting," Mr. May said.

Underwriters rebutted Mr. May's arguments, saying that in-orbit insurance capacity is available—for a price.

"You say capacity is not available but that's not true," said Giovanni Gobbo, head of the space department of Assicurazioni Generali S.p.A. in Trieste, Italy.

"It is available, but not at the rate that's being offered," said Mr. Gobbo.

But Mr. May countered that the

'You say (in-orbit) capacity is not available but that's not true,' says Giovanni Gobbo.

capacity is not there to cover the hardware of some of the new spacecraft in orbit, let alone the lost revenue if they fail.

If the terms were improved for the underwriter, "I'm sure you can unearth that capacity," said Lloyd's of London underwriter Michael Marchant, whose syndicate 282 leads the Marchant Space Consortium this year.

Meanwhile, Telesat Canada in April was able to buy in-orbit coverage for two satellites after correcting problems with the orbiters that had threatened their operation.

The telecommunications company bought $160 million of in-orbit coverage for each of its Anik E1 and Anik E2 satellites said Len Stass, vp of Telesat in Gloucester, Ontario.

The coverage was placed by Willis Corroon Melling in Canada and Nicholson Leslie Aviation in London, and is led by Lloyd's Ariel syndicate, said Frederick M. Bartlett, former vp-finance/administration and treasurer of Telesat who placed the coverage.

The in-orbit coverage was placed after Telesat in January lost control of the two then-uninsured satellites in orbit, possibly due to a combination of solar flares hitting electronic units that were located in the wrong place on the spacecraft.

To regain control, Telesat built two new ground stations in Canada and was able to restore the commercial service of the satellites by August, said Mr. Stass. The satellites probably only lost about 10% of their life expectancy due to the problems, he added.

Mr. Bartlett added that Telesat would have insured these satellites while they were in orbit, even if there had been no failure.

Although satellites' loss record in orbit has been excellent, there is still a chance that satellites will fail, added John Korda, director of the space programs division for Telesat and a consultant for the Marchant Space Consortium.

The skies are getting crowded and more satellites are being launched, so a collision between two satellites "will happen sooner or later," Mr. Korda warned.

The 11-year solar cycle also is in such a position now that an anticipated increase in solar flares could cause a "major threat" to the performance of satellites, he added.

Human interference also can cause losses, such as high altitude nuclear explosions, which can damage solar arrays on spacecraft.

Even the U.S. space shuttle's radar can produce very high electric fields that can burn out a satellite's circuit if it's in lower earth orbit, said Mr. Korda. BI

Athletes

Continued from page 1

University of Illinois at Chicago.

Dr. Hutchinson noted that there have been well-documented cases of schools denying a student the opportunity to join a team because of a medical condition, then being forced by the courts to allow the student to play.

For example, the National Football League's San Diego Chargers, which are off to a fast start this season, have received considerable press coverage of their wide receiver, Mark Seay, who lost a kidney following a random shooting incident in 1988.

Mr. Seay suffered his injury while a student at Long Beach State University where he played football. After losing the kidney, team officials tried to prevent him from rejoining the team and risking injury to his remaining kidney.

Mr. Seay filed suit and was awaiting a jury trial when the school's football coach and athletic director, George Allen, interceded, persuading school officials to allow him to rejoin the team.

If they are otherwise qualified to participate, athletes barred from teams for medical reasons frequently can sue under the federal Rehabilitation Act of 1973, said Richard T. Ball, a lawyer and sports injury risk management consultant in Phoenix. In some cases, the Americans with Disabilities Act also can be applied.

"In both instances, if the individual is otherwise qualified, they cannot be barred from participation on the grounds of their disability," Mr. Ball said.

On the other hand, if an athlete with a pre-existing medical problem is allowed to participate, the school has exposure to liability if it does not assure that "the athlete and the parents of a minor athlete understand the risk and knowingly accept the risk," he said.

"I'm dealing with an athlete myself who has a bad knee and plays basketball and actually has been refused by two other Division I schools because of that," UIC's Dr. Hutchinson said. "When we evaluated that athlete, we said, 'You have a loose knee, it probably is going to give way, it probably is going to cause more damage.'

"After discussions with the school and the athletic department, we elected to let the student play," the physician said.

"Some of the other schools that elected not to allow the athlete to play basically elected not to give him a scholarship," Dr. Hutchinson said. UIC also elected not to risk offering him a scholarship, but the university made sure the player understood the health risks he faced and made him sign a form acknowledging his understanding of those risks.

Informed consent is key to limiting a program's exposure to litigation, Mr. Ball said. "If a person known to have a disability participates in a sport knowing the risk and has a problem, the program isn't at fault."

But that process tends to represent schools' biggest failing in dealing with athletes who have medical problems.

"What schools have to do is develop an effective risk warning methodology," Mr. Ball said.

Because federal law won't allow schools to discriminate against disabled students by singling them out for the informed consent process, the methodology should explain the risks and possible catastrophic consequences of the sport to all participants.

Then sports administrators should meet with any athlete who has any sort of medical predisposition—from a previously injured and repaired anterior cruciate ligament to a cardiovascular condition—as well as the parents of minor athletes, taking the next step of discussing the athletes' conditions and the specific risks and potential consequences.

Finally, the athlete—and parents of a minor—should sign off on specific documentation of the athlete's condition and the risks it poses.

"It's really not that complicated," Mr. Ball said. "Unfortunately, people in sports administration tend to blow this out of perspective and try to do it in a quick and dirty way and that's where the problem is."

Frequently, the trouble comes in trying to address the school's or sponsor's exposure through forms labeled "releases" or "waivers."

'What schools have to do is develop an effective risk warning methodology,' says Richard T. Ball.

"The reality is parents don't have the legal authority to waive the rights or release the rights of their minor children," Mr. Ball said.

Also, such waivers and releases are fully valid only if the athlete or parent fully understands the nature of the risk and what they're signing away. Typically, it's very easy for them to convince courts that wasn't the case. Proper informed consent procedures can avoid this result.

An example is an adult participant in a local marathon who has signed a waiver, Mr. Ball said. Because those events take great pains to inform participants that they have medical tents and medical personnel "a person thinks, 'Well, if I have a cardiac they're going to be on the spot.' " From the court's perspective, that perception may constitute a lack of understanding of the risk and invalidate any waiver.

From the physician's perspective, the best way to limit exposure to legal action in dealing with athletes is to provide the most accurate opinion possible, said Tom Cameli, a partner at the Williams & Montgomery Ltd. law firm in Chicago.

"I would tell the physicians you should give whatever medical information you think is accurate," he said. "Whatever your opinion is is what your opinion is. Don't let the athlete influence you, don't let the coach influence you, don't let the university influence you."

If the athlete is subsequently injured and sues the doctor, "the issue is probably going to come down to a negligence-type issue"—did the doctor miss medical signs that should have resulted in an opinion that the athlete shouldn't play? Mr. Cameli said.

"If you're just talking about the normal situation of the doctor just giving his opinion that the guy shouldn't play then there shouldn't be too many things that the guy can go back after the doctor for," he said. "When you're going to see the doctor sued is when they do clear somebody to play."

Dr. Hutchinson notes that the doctor's only role is to offer an opinion.

"What I've read and I understand from the medical literature is you can sit back and say, 'Look, athlete, this is my best medical determination of your risk,' " he said. "I don't make the decision of whether they play or not. I tell them what their risks are. The athletic director makes the decision."

And, in offering an opinion, a conservative approach is usually best, Mr. Cameli said. "If you're going to err, err on the side of caution," he said.

Doctors and sports and school officials can be exposed to litigation at every level, Dr. Hutchinson said. But, though there have been prominent suits brought by high school athletes, the largest risks are at the collegiate or professional level, he believes.

At those levels, athletes might sue for future professional earnings they would be denied if not allowed to play, "because they think they're a professional-caliber player, whether they are or not," Dr. Hutchinson said.

Theoretically, the same sort of liability exposures apply to team officials and physicians dealing with professional athletes as at the scholastic level, Mr. Ball said. "The ADA would apply even to professional athletes."

But, because of the employer/employee relationship, in many cases claims against teams stemming from injuries suffered on the field would fall under workers compensation laws, Mr. Ball said. That wouldn't necessarily stop professional athletes from suing their leagues, however, he said.

The San Diego Chargers would not comment on published reports that Mr. Seay signed a waiver freeing the San Diego team from responsibility if he suffered an injury to his remaining kidney on the football field.

Mr. Ball is amazed to see Mr. Seay playing in the NFL. "I was surprised that that young man was allowed to go on and play professional football," he said. "If he loses that other kidney he's going to be on dialysis for life and the NFL is going to pick up the tab."

Typically, though, professional teams avoid the issue altogether by simply not drafting a player with a potentially hazardous chronic condition or through clauses in players' contracts that require players to pass physical examinations. BI

Kodak

Continued from page 1

vesting in the training and development of employees, the spokesman explained. As a result, the company is now interested in keeping these employees aboard for a longer time. Kodak currently employs 57,000 workers in the United States.

"We've designed these benefits changes so that they do not act as an inducement for anyone to retire early," the spokesman stated.

Two years ago, Kodak offered an early retirement plan that was so popular that more than 8,000 employees accepted the offer. Under that plan, employees with 75 years of combined age and service, as well as employees who were between the ages of 55 and 62 and had been with Kodak for at least 10 years, were eligible for full benefits (*BI*, Oct. 19, 1992).

Kodak's moves "may be a function of too successful a window two years ago," observed Dennis Coleman, a partner at Kwasha Lipton in Fort Lee, N.J. "Kodak may have found that they lost too many people, and they lost too many experienced people."

Kodak's attempts to hold onto older workers put it in the minority among American businesses.

"Most of the world still (wants) the early exits," said Brian McDermott, a principal in the New York office of A. Foster Higgins & Co. Inc. "But some employers feel that eventually there will be a shortage of trained employees."

"We must realign compensation and benefits to make Kodak a more competitive, performance-driven organization," commented

'This is an essential step in enabling Kodak to grow and maintain leadership,' says Michael Morley.

Michael P. Morley, senior vp and director of human resources at Kodak. "This is an essential step in enabling Kodak to grow and maintain leadership. It will also help our company in our efforts to offer rewarding and long-term opportunities to employees, to enhance value for shareholders and to meet our long-term commitment to retirees."

Foster Higgins' Mr. McDermott, though, said the changes are "clearly a take-away." While previously an employee could retire at age 55 if he or she had 30 years of service, now that employee must wait until age 60 to retire with full benefits, he explained.

In another pension-related change, Kodak said that any pension benefits earned after Dec. 31, 1995, will be available only in the form of an annuity. Pensions earned before this date will continue to be available either as an annuity or a lump sum.

This change also is not good news for employees because most workers prefer lump-sum payments to annuities, Mr. McDermott noted.

Kodak also announced that it will increase the amount of company-paid life insurance provided to current employees and decrease the amount provided to retirees.

Currently, employees receive company-paid life insurance of one-half of their annual salary. Beginning Jan. 1, 1996, Kodak will provide life insurance equal to an employee's annual salary.

For those who become eligible for retirement after Dec. 31, 1995, the company will reduce retiree life insurance benefits to match annual salary, rather than providing the current double annual salary.

The life insurance changes will slightly reduce Kodak's liability under Financial Accounting Standard 106, said the spokesman.

In an unrelated move, Kodak told retirees earlier this month that it will continue to provide company-paid health care coverage only if retirees select one of the program's managed care options, which include health maintenance organizations and preferred provider organizations, the spokesman said. If retirees opt to remain in the indemnity plan, they must pay the difference between the cost of the premium for the indemnity option vs. the managed care plans, beginning Jan. 1, 1995. BI

ACE

Continued from page 3

"ACE is a specialty writer, but AIG was probably the world's largest specialty writer."

With only 58 employees, ACE is obviously a more intimate place than AIG, where Mr. Duperreault had more than 7,000 people in his division alone.

But it was not smaller size that attracted ACE's new chairman.

"It has a very low expense ratio. The specialties it does, it does well. It has a very strong balance sheet at more than $1 billion, it operates in a very favorable climate here in Bermuda, and there is a tremendous potential to build. So it has all the ingredients one would look for," he said.

And like AIG, ACE has a strong work ethic, a belief in underwriting profit and an international clientele, Mr. Duperreault said.

"So it has all of those aspects—and I get to run it myself," he said.

"I was not looking to leave, but the opportunity came up, and it was too good to pass up," Mr. Duperreault said.

One of the tasks facing him is returning ACE to profitability.

In June, the insurer took a $200 million charge to increase its reserves for silicon breast implant claims (*BI*, July 25). The charge pushed the company $160.6 million into the red for the first nine months of 1994, and a loss is projected for the year.

To combat its exposure to similar claims in the future, the company cut its excess liability limits for multiple claims from one event to $100 million from $200 million (*BI*, Sept. 26). The $100 million sublimit, which applies whether the "batch" loss is limited to one policyholder or multiple policyholders, will be introduced with Dec. 15 renewals.

Mr. Duperreault endorses the move. "We are still putting out $200 million for one event, and we will be putting out $100 million for integrated occurrences. There is no one putting out more than that, so I don't think it weakens the company," he said.

ACE also recently announced "substantial" rate increases for policyholders in the medical, chemical and energy industries. The increases depend on individual loss experience.

One of the keys to strengthening ACE's results in coming years will be diversification, Mr. Duperreault said.

Excess liability will still be the insurer's main focus, but other coverages will be offered to balance the business and avoid situations where a large loss in one area of business will lead to an overall loss for a year.

"I think that because of the kind of business we write, which is volatile in nature, it's good to have a little bit of balance. But we're not going to balance it with high-transaction business. You have to look at other kinds of niches that have different income streams," he said.

Prior to Mr. Duperreault's appointment, ACE had started offering satellite insurance, and it is committed to offering excess property coverage by year end.

'(ACE) has a very low expense ratio. The specialties it does, it does well,' says Brian Duperreault.

Much of the property business will be aimed at areas where ACE's existing clients are having difficulty finding coverage, such as California, he said.

The new areas have similarities to ACE's current business in that they cover low-frequency high-severity losses, Mr. Duperreault said.

"I would like to see us continue with that style and look for businesses that carry the same profile," he said.

He would not give specific examples.

"But we have to be careful with our infrastructure. With 58 people, you can't get into large transactions, because you have to run the claims," Mr. Duperreault said.

ACE could continue to do well remaining within its niche of excess casualty business, but its capital can support more, he said.

The new chairman insists that the diversification drive is not necessarily linked to last year's initial public offering. "Public companies have pressure to use their capital, but I don't know what would have happened if the company had remained private," Mr. Duperreault said.

Such is his interest in diversifying that Mr. Duperreault says it is possible ACE could expand into a new area each year.

But for the rest of the decade, the primary source of income for ACE will remain excess liability business, he said.

And in its diversification, ACE will not aim for premium volume at the cost of poor underwriting results, Mr. Duperreault said.

"If there is one thing I learned at AIG, it's that you don't just go for market share—you make money," he said.

Under Mr. Duperreault, the geographic spread of ACE's business will also grow.

"It's certainly likely that we will develop more business in the European theater, particularly D&O," Mr. Duperreault said.

The directors and officers liability market is well developed in Britain; it is developing in France; and even in Germany, Spain and Italy there is more interest in D&O insurance, he said.

Excess is also a possibility in Europe, but it has a much slower growth rate than D&O, Mr. Duperreault said.

D&O business is also growing in Latin America, as companies there want to enter the capital markets, he said. Japan, too, is starting to take off.

Spreading the business throughout the world should also create more stability for the company and give ACE the opportunity to market its other products to its new D&O customers, he said.

And when it does expand, ACE will be going it alone. Previously, ACE had considered joint ventures with other insurers in Europe, but that is not Mr. Duperreault's style.

"Joint ventures are very difficult to make work in practice, because each partner has its own desires. . .I like to take control of a program, and if you have a good partner, they probably want to as well," he said.

Growth could also come through acquisitions. ACE already has limited experience in buying competitors. In 1993, it bought Corporate Officers & Directors Assurance Ltd., which writes primary and excess D&O coverage.

"I would certainly look at acquisitions, but our strategy will be to grow internally," Mr. Duperreault said.

And future acquisitions or new offices could be outside Bermuda.

"I'm not limiting ACE to only operating in Bermuda. We have recently opened up a representative office in London, and things like that I would expect to continue," he said. "What you look for in a domicile is an interesting combination of access to the producer (and) a favorable regulatory environment."

Mr. Duperreault's apparent willingness to clarify the course he is charting will likely be helpful to industry observers, since he previously kept a low profile, in accord with the AIG tradition.

"It's pretty clear that his goal is to get the company in a position where every segment of the business is self sufficient from a return on capital standpoint," said Norman Rosenthal, managing director of equity research at Morgan Stanley & Co. Inc. in New York.

One option he could look at would be to follow the lead of rival excess liability insurer X.L. Insurance Co. Ltd. and offer more diversified excess liability products that allow policyholders to take more risk, he said.

Products such as X.L.'s managed aggregate with excess liability, or MAXL, policy are a possibility for ACE, but there are currently no plans on the drawing board, Mr. Duperreault said. MAXL is a multiyear excess general liability policy (*BI*, April 26, 1993).

ACE should be careful not to take its eye off its main business as it diversifies, said Mr. Rosenthal.

"They should make sure that they keep paying attention to the products that made the company," he said. BI

PBGC

Continued from page 2

PBGC to threaten to terminate the defined benefit plan, which it says is underfunded by $389 million and is the 10th most underfunded plan in the country.

Termination of the defined benefit plan would have left the PBGC as the largest creditor in the New Valley bankruptcy, putting it in a position to torpedo the sale to FFM.

With the new bid, the PBGC has agreed to put the termination proceedings on hold and to drop them when the sale to FFM is completed.

"Our goal has always been to keep the pension plan ongoing and assumed by a company strong enough to back the pension promises made," PBGC Executive Director Martin Slate said in a statement.

FFM, a financial services company, had originally made two alternative bids to acquire the Western Union money transfer operation, one of them the $1.2 billion bid that excluded the pension obligations and the other a $797 million bid that would have included the liabilities.

FFM was "neutral" about which of the two bids was accepted, and had no objection to assuming the obligations, said Donald Sharp, an FFM senior vp.

The higher bid was ultimately accepted by a federal bankruptcy judge in Newark, N.J., and this led the PBGC to file a lawsuit in U.S. District Court in Newark seeking to terminate the pension plan.

The plan has assets of $262 million and liabilities of $651 million, leaving it only 41% funded, PGBC said.

Under the court-approved $1.2 billion bid, the pension plan would have received a one-time cash contribution of $211 million, of which $53.4 million would be held in escrow. This would have left PBGC exposed to $178 million in unfunded obligations, an amount that likely would have grown over time, the agency maintained.

In addition, the PBGC argued against leaving the pension obligations with a reorganized New Valley, a company divested of its main operating business and with dividend obligations and related businesses that could have drained cash needed to pay pensioners. BI

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INTERNATIONAL

Australian liability form has different trigger

By KATE TILLEY

SYDNEY, Australia—Australian product liability underwriters think they have found a way to steer between the shoals of occurrence-based and claims-made coverages.

In 1987, they were among the first underwriters to modify occurrence-based wording into what they called "claims-occurring" coverage, explained an insurance agency executive.

To make the coverage trigger more definite, and thus avoid coverage litigation, the underwriters defined "bodily injury" as having occurred at the time of the first medical diagnosis, and "property damage" as having occurred at the time of the first notice of the damage.

Once Australian companies adopted the coverage form, similar forms were introduced in most European countries, said Peter O'Shea, joint managing director of Sydney-based Harbour Pacific Holdings Pty. Ltd., an agency that underwrites on behalf of seven insurance companies and specializes in difficult risks.

The claims-made form, which covers only claims filed during the policy period, was originally developed for professional indemnity underwriting rather than products liability.

Australian product liability underwriters had rejected a push, mainly from reinsurers, to change to claims-made forms.

"The concept (of claims-made wording for product liability) failed in the United States and, from recent legislation and court cases in the majority of European countries, it appears that it is not readily accepted in Europe," he said at a recent insurance law

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Growing pains part of independence

Kazakhstan's developing insurance industry struggles to achieve free-market status

By MARIA KIELMAS

ALMATY, Kazakhstan—A fierce public debate is raging among all foreign and local business sectors over plans by the Kazakhstan government to draft insurance legislation and to develop and regulate the nation's nascent insurance market.

The government in April created a state-owned insurer, Kazakhinstrakh, as the exclusive market for all business with a foreign investment element, including imports and exports.

However, foreign insurers and brokers with business interests in the former Soviet republic charge that Kazakhinstrakh violates Kazakh anti-monopoly legislation, as well as a U.S.-Kazakhstan foreign investment accord granting equal access to investment opportunities in the country to all U.S. companies.

In July, the government appointed Alexander Howden Reinsurance Brokers as its insurance consultant. Alexander Howden's chief executive in Kazakhstan, Jerry O'Keeffe, insists there is no monopoly and that Alexander Howden is involved in a "very complex concept" to create what eventually will become a free insurance market.

Kazakhinstrakh has also been criticized by Western oil companies that are either operating in the country or negotiating contracts. Oil executives believe that a monopolization of insurance for projects in Kazakhstan will increase their insurance costs. The oil companies are already facing delays caused by a dispute between Russia and Kazakhstan over access to export markets via oil pipelines running through Russia.

Further complicating the debate is the Oct. 11 resignation of Kazakhstan's prime minister. Other difficulties arise from relations with neighboring Russia and potential long-term political instability caused by ethnic tensions within the country.

The debate about insurance legislation is symptomatic of a transition from a communist government to a free market, says Ben Miller, senior partner at the Almaty, Kazakhstan, office of Ernst & Young. "It is premature to say that (the insurance system) we are seeing now will be what occurs in the future."

Mr. Miller compared the present insurance plans in Kazakhstan to those that created insurance markets in Indonesia and Kuwait, both of which started with a restricted market.

On the other hand, "the very nature of economic reform and the unpredictability of the relationship with Russia means that one has to be very cautious in assuming with any confidence that there will be a smooth path to a bright future," says Peter Ferdinand, director for the Centre for Studies in Democratization at Warwick University in England.

Insurance legislation is just one of the gripes of foreign investors in

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GRAPHIC BY JOHN HALL

A hostile insurance environment

Pollution coverage limits inadequate, European risk managers complain

BY STACY SHAPIRO

LONDON—There is a wide gulf between the amount of pollution coverage that European risk managers want to buy and the limits they can get in the current market.

Major European corporations would like to have as much as 500 million pounds ($805.3 million) of liability coverage for gradual as well as sudden and accidental pollution risks.

However, the reality is that there is only 50 million to 60 million pounds ($80.5 million to $96.6 million) of total environmental liability insurance available to cover gradual pollution exposures, said Tony Lennon, senior underwriting manager for ECS Underwriting in London.

Mr. Lennon's audience at the 24th Management Centre Europe risk management conference held in London earlier this month were not too pleased with the situation he described.

One risk manager in the audience called the environmental liability limits that are available an "insult."

Mr. Lennon explained that environmental risk was still a "large area for concern" in Europe and still one of the top five issues discussed at the board of directors level of companies.

Legislation on environmental liabilities "is expanding all the time" in Europe, said Mr. Lennon (see related story, page 39).

And, in many European countries, the pollution risk is being excluded in general liability policies, he noted. For example:

- In the United Kingdom, there is talk among insurers that there will be a total pollution exclusion adopted within the next 18 months. Since April 1991, general liability policies have excluded coverage for gradual pollution.
- In Germany and Italy, there are total pollution exclusions in general liability policies.
- In France, gradual pollution is excluded and there is a limit for sudden pollution coverage of 10 million French francs ($1.94 million). Additional coverage for sudden pollution, though, can be bought from the French pollution insurance pool Assurpol.

Environmental liability insurance policies are available to cover some of the risks that have been excluded from general liability policies.

The policies, written on a claims-made form, generally cover third-party property and bodily injury, though ECS also offers first-party coverage.

"Known pollution" is excluded, said Mr. Lennon.

ECS Underwriting, the underwriting agent for Reliance National Insurance Co. (U.K.) Ltd., offers up to 10 million pounds ($16.11 million) on a per claim and aggregate basis for third-party pollution liability in the United Kingdom.

The coverage includes gradual and sudden/accidental pollution. This would include liability for a government-ordered cleanup of sites not owned by the policyholder. There is a minimum premium of 10,000 pounds ($16,105) for third-party coverage and a minimum deductible of 15,000 pounds ($24,158) per claim.

The coverage is site-specific and ECS evaluates the site before it offers to underwrite the exposure, noted Mr. Lennon. ECS also looks

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RUSSIAN MARKET

Russian insurer growing with backing from U.S.

By ELENA KUDIMOVA

MOSCOW—Many streets and avenues of Russian cities have changed their look in the past few years and are now papered with bright, multicolored billboards and signs advertising a wide variety of new goods and services.

Among them, Giva Insurance Co.'s sign looks simple, saying only that it is a Russian-American insurance company.

Giva's U.S. partner is rumored to be a leading U.S. insurer, but Giva will not identify the investor. Under Russian law, though, foreign interests are barred from holding a majority stake in any insurance company.

Giva was established two years ago in Moscow, as Russia's insurance market was expanding. For decades, only two state insurers had existed:

- Gosstrakh, now called Rosgosstrakh, which offered life and property insurance to Soviet citizens.
- Ingosstrakh, which wrote multiple lines of insurance for Soviet risks in foreign countries.

"Since all property—plants, farms, transport—belonged to the state, no one cared about accidents and other risks," explained Valery Khaikin, president of Giva Insurance Co. "Now the attitude toward risks has been changing in this country, because more and more people are becoming owners, whether of joint ventures with foreigners or privatized companies. They need reliable insurance to protect their investment."

Giva holds a general license from the Russian Federal Insurance Supervisory Service to write all life and non-life coverage, though its primary lines are commercial property and cargo insurance for risks throughout the Commonwealth of Independent States, of which Russia is the leading member.

Giva started in 1992 by underwriting space-related risks, providing coverage for the launch of a radio satellite. Total premiums written in 1993 reached $700,000, and in the first eight months of 1994 alone it

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Australia

Continued from previous page
conference.

The 1987 Australian wording overcame the problem of defining the date of loss, said Mr. O'Shea, a member of the task force that drafted the wording.

"We needed to find an inarguable trigger with which insurer and insured were happy. The answer we came up with is to define bodily injury as having deemed to have occurred at the date of first medical diagnosis, and property damage as the first date of notice of the damage.

"The new definition resolved a number of problems—it determined date of loss, so there is no litigation over who pays what claim. It avoids limit stacking"—applying more than one policy limit to the same loss or occurrence—"as each claim is specified to a certain period."

Pressure to change to claims-made wording came primarily from U.S. toxic tort litigation, particularly a landmark 1981 ruling that applied a "triple trigger" to liability policies bought by asbestos maker Keene Corp. (*BI*, Oct. 12, 1981).

U.S. litigation showed that the occurrence wording then in use was defective, said Mr. O'Shea.

"The litigation created a problem for insurers. The policy trigger in claims-occurrence wording is the injury or damage and, if it occurs during the period of insurance, you are required to respond to the claim. But litigation showed it was impossible to scientifically identify a date of injury."

Triple-trigger refers to coverage being triggered at: the time of exposure to a harmful condition; the time a disease actually manifests itself; and any time between the time of exposure and the victim's first awareness of the disease.

Under the third scenario, said Mr. O'Shea, there is a lack of scientific evidence about about whether the disease was ongoing after exposure.

"From an insurance point of view, a number of problems arose from the triple-trigger decision," he said.

"Under triple trigger, all insurers were held jointly and severally liable, resulting in a potential aggregation of each year's policy limits. In other words, if an insurer wrote a $1 million policy for 10 years, it has a potential aggregate exposure of $10 million. While this exposure has always existed in theory, it was unheard of in practical terms and the industry was totally unprepared for the financial consequences of this aggregation of limits," he said.

Mr. O'Shea observed that the industry had difficulty determining IBNR claims. Insurers could no longer rely on the statute of limitations on filing product liability suits, because latency period for asbestosis could be up to 40 years.

Claims-made policies, in theory, appeared to solve some of those difficulties, Mr. O'Shea said. "Firstly, the date of trigger was no longer the date of injury/damage, therefore there was no need to define the injury. And the stacking problem was eliminated because each claim was applied to the year it was made, so there could not be forum shopping and aggregation of limits.

"Claims-made seemed to have a panacea effect and there was a great move to adopt it for product liability. But the Australian market rejected it, except for pharmaceuticals, because Australian insurers were colored by the United States' attempts to introduce claims-made wording."

'Policyholders, even insurers, and the U.S. judiciary found (the claims-made form) extremely confusing and some U.S. decisions show the judiciary had a great deal of trouble coming to grips with the intention of the wording,' says Peter O'Shea.

He said the claims-made form developed by the Insurance Services Office Inc. was "an extremely confusing policy and policyholders, even insurers, and the U.S. judiciary found it extremely confusing and some U.S. decisions show the judiciary had a great deal of trouble coming to grips with the intention of the wording."

And Mr. O'Shea said claims-made underwriting usually incorporated a retroactive date of exclusion, to exclude claims prior to the retroactive date. This could leave some policyholders with coverage gaps.

"Insureds could be left with the possibility of funding their own IBNR exposure. Application of the exclusion reintroduced the need to determine the date of injury or damage, and the definition was inadequate. Therefore, we have the same problem the claims-made policy was attempting to address," he said.

And Mr. O'Shea said claims-made policies were a source of litigation on late reporting, and that made them harder to market.

"It wasn't a product that was well accepted in the market," he said. He said brokers were reluctant to transfer policyholders because of the potential gap in coverage and because it would be difficult to transfer back.

"They would need to buy a retroactive cover which, as anyone who has tried to do knows, is very difficult."

Mr. O'Shea said Australian insurers, while avoiding claims-made wording, had put a lot of effort into improving the occurrence wording. He rejected a suggestion from broker Clive Hamlin, assistant general manager of Alexander & Alexander Ltd. in Brisbane, that changing insurers under an occurrence policy could create a gap.

"In fact, there's not a gap. If you change insurers, you still have access to current cover and previous covers," he said, adding, though, that it is preferable for all insurers to use the same wording.

Reg Brown, professional indemnity underwriter from Lloyd's of London's Octavian Syndicate Management Ltd. in London, said the Australian wording is "a claims-made policy in disguise" and argued it is impossible to establish correct IBNR reserves using it.

Mr. O'Shea responded: "There are some advantages (to claims-made policies). I'm not denigrating the product. But, from the insured's perspective, there are a number of drawbacks."

He said claims-made wording for product liability is "treated with open suspicion" by insurance buyers and courts.

"It is considered anti-consumer and is treated harshly by legislators and the judiciary—evidence of this exists in Australia and overseas," Mr. O'Shea said.

Messrs. O'Shea and Brown were speaking at a meeting of the Assn. Internationale de Droit des Assurances product liability working party during the IXth AIDA World Congress in Sydney. BI

Giva

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wrote $4.5 million in premiums, Mr. Khaikin said.

The company has $510,000 in capital, which should meet the requirements for general non-life insurers under changes to Russia's insurance laws expected later this year (*BI*, Sept. 12).

"We are catering to Russian and foreign companies as well as joint ventures based in Russia and CIS countries," said Mr. Khaikin. "We have to educate people here, sometimes they can't resist the attractive promises of newly established insurance companies, which now exceed 3,000 in Russia but may be unable to pay losses when an accident happens."

"We provide two kinds of service: the Russian-style is aimed at Russian clients and the Western-style for foreigners. One day it will be the same service for all our clients," said Mr. Khaikin, who noted that differences arise because of Russia's hastily constructed 1992 insurance law.

"From the very beginning, Giva was founded to provide full, Western-style insurance services for Russian companies, but we underwrite property coverage for foreign companies, too. American chemical company Pfizer Inc., for example, is one of our clients. Now we hope to add a number of Japanese companies based in Moscow to the current list of our policyholders."

Giva boasts reinsurance backing from leading international underwriters.

Lloyd's reinsurance broker Willis Faber & Dumas Ltd. has arranged treaty reinsurance coverage led by Swiss Reinsurance Co. Winterthur Swiss Insurance Co., General Reinsurance Corp. and Hanover Re A.G. are also participants.

Lloyd's syndicate 1028, managed by Wellington Underwriting Agencies Ltd., provides Giva with cargo reinsurance with limits up to $15 million per risk. Willis also secured facultative reinsurance in London for hull coverage written by Giva.

London brokers and underwriters say that these facilities have so far been underutilized. "Demand is picking up but it's slow," said one of syndicate 1028's cargo underwriters.

"Rates are higher in Russia than in the U.S.," said Antonia Bullard, the general manager of Giva, who came to the company from the United States. "But it's inevitable, because risks are usually higher."

High inflation rates for the rouble are not a problem, because Giva sets premiums in U.S. dollar equivalent.

Giva employs 35 people at its Moscow office, but about 1,000 are working for the company around the country, as well as in main CIS ports on the Baltic Sea and in the Far East.

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Associate Editor Adrian Ladbury contributed to this story.

Middleton denies resignation rumors

LONDON—Lloyd's of London Chief Executive Peter Middleton rebuts rumors that he is resigning from the market.

Indeed, Mr. Middleton last week said he couldn't be happier with his job.

He believes the rumor was started by a group of people who would like to harass him enough so that he and Lloyd's Chairman David Rowland would part company, leaving Lloyd's in a dire state.

With Lloyd's on its knees, these people think they wouldn't have to pay their losses, Mr. Middleton surmised.

Mr. Middleton also has had his house broken into recently. He said the only thing disturbed was his desk, and he believes someone was looking for a document that would somehow incriminate him.

Mr. Middleton said he has tightened security on his home.

Pollution

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at the history of the site and analyzes its past uses to see whether it is already contaminated.

Other insurers like Lloyd's of London, American International Group Inc., Swiss Reinsurance Co., and Sun Alliance & London Insurance P.L.C. also offer environmental liability coverage in Europe, noted Mr. Lennon.

In addition, Italy, France and the Netherlands have government-supported pollution insurance pools that offer the coverage, he said.

However, the insurance companies and pools together don't offer more than 50 million to 60 million pounds ($80.5 million to $96.6 million) of sudden and accidental and gradual pollution coverage, Mr. Lennon estimated.

Brokers, captive managers and risk managers were critical of the limited capacity.

One Belgian broker in the audience said that his clients' problem is not pollution that might occur in the future but polluted sites that exist now.

His clients worry that they will be asked by their governments to clean up these sites, but they don't know when they will be asked to do so, if at all.

"The insurance industry must address this," the Belgian broker said. If a client can pay a premium for the coverage, then the premium is tax deductible whereas the expense to clean up the site would not be.

ECS cannot insure pollution that already exists on a site owned by a client, said Mr. Lennon. "That's like insuring a building that's on fire or a building where the rags are starting to smolder," he said.

In the United States, however, ECS offers a finite risk insurance program that a policyholder could use to cover anticipated cleanup costs.

For example, if a client calculated that the cost to clean up a site might be $5 million, ECS would offer finite risk contract with $5 million in limits.

"The problem is not one of cover, but capacity," added a captive manager from Guernsey. "We're talking about 5 million pounds ($8.1 million). That's the deductible for many companies. We need 50 million ($80.5 million), 100 million ($161.1 million), 500 million ($805.3 million)."

How far would 5 million pounds go if a major river like the Rhine was contaminated, the Guernsey manager asked.

There is a tremendous capacity problem, agreed Klaus Schulze-Weslarn, head of insurance and liability for Henkel KGaA in Germany and the discussion's organizer. But some companies in certain industrial fields can find the coverage, he said.

A risk manager for a German energy company confirmed that he can buy $100 million to $200 million in pollution coverage for offshore operations.

"So it's not that capacity is unavailable," said Mr. Schulze-Weslarn, but that insurers do not want to provide coverage for onshore exposures.

"I accept that for a large company 5 million pounds is a drop in the ocean," ECS's Mr. Lennon told delegates.

But in the United Kingdom, that is all the coverage most companies need because third-party damage awards are only running at about 1 million pounds ($1.6 million) to 2 million pounds ($3.2 million), he said. The amount offered is "a very realistic sum of money."

A spokesman for Winterthur Insurance Group in Winterthur, Switzerland, noted that some insurers offer much higher limits for sudden and accidental pollution than they do for gradual pollution.

"We need this separation," he said. Winterthur excludes pollution on most liability policies, though it can be bought under a separate policy.

Winterthur can provide "several hundreds of millions" of dollars of coverage for sudden and accidental pollution and about $10 million for gradual pollution, the spokesman said.

A spokesman for AIG Europe suggested that all insurers should get together "with one voice" and work on a Europe-wide pool that could cover environmental liability above a certain level, below which the policyholder would self-insure or insure its exposure.

EU pollution proposals on back burner

LONDON—Proposals for a tough new environmental liability system in the European Union are on the back burner following European Parliament elections earlier this year.

The European Parliament had planned to push through a draft directive that would have established strict and possibly retroactive liability for environmental pollution by the end of this year (*BI*, April 18).

But now enthusiasm has waned as the composition of the European Parliament changed following the elections.

The European Commission, which would draft a directive, now is conducting two studies on the impact of such a directive. And these studies—one on existing environmental liability systems of E.U. countries, the United States and Japan; and the other on the economic impact of such a directive—will not be completed until the end of next year, said Roland Nussbaum, an official with the insurance division of the European Commission in Brussels.

An environmental liability directive could be written sooner "if there is political pressure" from European commissioners or the European Parliament, Mr. Nussbaum said.

It probably will be early 1996 before such a directive is drafted, added Leonard J. Olsen Jr., corporate counsel and vp of international development of Environmental Compliance Services Inc.

Having recently been to Brussels, Mr. Olsen added, "I don't feel the same urgency for the directive as I did six months ago. Elections changed the composition of (the European) Parliament and the new parliament hasn't reaffirmed that sense of urgency."

—By Stacy Shapiro

To improve future directives, EC seeks opinion on past one

BY STACY SHAPIRO

LONDON—Corporate policyholders, brokers and underwriters are being asked their opinion of the second non-life insurance directive, which allowed cross-border insurance placements for "large" risks four years ago.

Their answers are expected to be published as a survey next month by the European Commission.

Implemented in 1990, the second non-life directive for the first time allowed major non-life risks to be insured under one policy throughout the European Union without having to find fronting insurers in certain countries.

It was the predecessor to a series of 10 directives—part of the so-called third life and non-life insurance directives—that took effect July 1 to allow a single insurance market throughout the EU for all types of coverage.

Roland Nussbaum, an official in the financial services division of the European Commission in Brussels, asked the 180 people at the 24th Management Centre Europe Risk Management conference to fill out questionnaires about the second non-life directive.

Among the information sought is: the structure of a company's insurance portfolio in 1989 and now; whether the company's strategy allows for cross-border coverage; what classes of business are insured across borders and the relevant premium volumes between 1989 and 1993.

By 1996, the EC expects all 12 nations to adopt the third series of rules, says Roland Nussbaum.

The questionnaire also asks whether insurers, brokers and risk managers are aware of changes in the way they conduct business across borders; whether there were key changes to be made to start up cross-border placements; and what the costs were.

The commission also wants to know whether there are any lessons to be learned from the implementation of the second non-life directive that can be used when implementing the third directives.

By the end of next year, the commission expects that all 12 EU nations will have adopted the third series of directives, Mr. Nussbaum said.

Italy and Greece are expected to adopt the third life and non-life directives by the end of next month and Spain will adopt them by February next year. Germany just recently adopted a directive on company accounts, including insurance accounting, which goes into effect Jan. 1; and France has yet to adopt the third non-life insurance directive's special category on mutuals.

Meanwhile, Mr. Nussbaum explained the regulatory infrastructure of the internal market for insurance services, including the Conference of Supervisory Authorities which meets twice a year.

These 12 state insurance supervisors are involved in a project to set up a pan-European computer network to coordinate their rules, procedures and statistics. The network will probably be called EDEN-IS, Mr. Nussbaum said.

The commission also hopes to publish statistics about the European Union's insurance market based on information from the supervisory authorities. BI

Risk managers urged to be guardians

By STACY SHAPIRO

LONDON—A risk manager should be a "guardian" who watches over his or her organization and reports directly to the board of directors, a London risk management consultant contends.

"I believe quite strongly that we're only going to effectively protect (a company from risk) if we can upgrade quite radically the risk management function within our organizations and increase the authority...of what we call the risk management function," said Howard Lovell, partner in the international treasury and risk management department of Coopers & Lybrand in London.

Each company has a number of employees who are responsible for the "risk management function," said Mr. Lovell. These include people involved in finance, insurance, credit, security, health and safety, environmental liability and operational divisions. "Are they properly coordinated?" he asked.

Mr. Lovell said he firmly believes that there has to be a "guardian" to watch over all these various risks and report directly to the board. However, he said he hasn't seen many companies that have such a risk manager.

Mr. Lovell told delegates of the 24th Management Centre Europe International Insurance & Risk Management conference earlier this month that "risk" is defined as any event that causes financial loss or capital leakage.

In every company, risk managers deal with financial risks such as credit and liquidity problems, he noted. But they should also consider "much wider" risks, such as environmental risks, production risks, regulatory risks and risks surrounding the group's infrastructure, he said.

"Many organizations face more than 100 risks in their business," said Mr. Lovell. "Management must look at which of these risks can really hurt them."

There are risks in every aspect of business but, in most cases, "nobody is responsible for risk management across the entire organization," said Mr. Lovell.

People responsible for managing the risk of financial losses are usually in the finance and/or insurance departments, he said. But many losses happen in areas of a company where these departments have no authority, he noted.

For example, one company suffered a 50 million pound ($80.5 million) loss when its marketing department came up with the idea of offering free flights on a British airline if one of its products was bought. No one anticipated the volume of sales that would follow this offer.

When financial losses like this happen, they impact a company's stock price immediately and top management is caught by surprise because the losses could have been avoided with better risk management, said Mr. Lovell.

So the conclusion is reached "that we are not good at managing risk in our business processes," he said.

Mr. Lovell said that a Coopers & Lybrand informal survey of 30 to 40 chief financial officers in the top 250 corporations in the United Kingdom discovered that the officers:

- Had no idea of the impact of risks on their company.
- Did not know who held the responsibility for risk.
- Believed their boards didn'tunderstand the risks for which they are responsible.

Having said that, Mr. Lovell admitted that top management is now asking a number of questions: how much of the company's capital is at risk; what are the company's major exposures; how much risk is the company prepared to take; how can the company allocate its scarce capital in the most commercial way; and how can risks be reduced.

"Risk mapping" is crucial to protecting the capital base of any company, said Mr. Lovell. This is basic risk management: identifying the risks; quantifying them; estimating the amount of capital at risks; deciding if and how these risks should be reduced.

Mr. Lovell's observations piqued some European risk managers at the MCE conference.

"Risk management isn't a function. It's a culture," said one French risk manager in the audience. He said that his company operates nuclear power stations and that it was vital that every person in the company be aware of the risks involved, not just one person.

"We must not confuse 'risk' with 'mistake," said the risk manager.

Mr. Lovell agreed that risk management must function throughout an organization.

Another delegate questioned whether there is a classical definition of "risk manager," adding that believed a risk manager was the person in an organization responsible for identifying and reducing risks.

But Mr. Lovell noted that the term "risk manager" often is synonymous with "insurance manager" and in many companies the risk manager's role doesn't go beyond buying insurance. BI

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the country.

The administration of President Nazarbayev has had a pro-free-market reputation among Western business executives in the capital of Almaty.

And among the former Soviet republics in Central Asia, only the currency of Kazakhstan, the tenge, is backed by the International Monetary Fund.

So when the government began issuing edicts that appeared to restrict private business, foreign investors became concerned.

In April 1993, the government banned all foreign participation in joint ventures with local insurers. Several Russian insurers said this nipped their plans to build joint ventures in Kazakhstan. The government also proposed creating a state-owned insurance company, Kazakhstrakh, to dominate the local insurance market. However, Kazakhstrakh never got off the ground.

Since then, some 110 wholly Kazakh-owned insurers have registered. Capitalization requirements are 2 million tenge ($35,000) for a direct insurer and 20 million tenge ($350,000) for a reinsurer.

The largest direct insurer in Kazakhstan is Nadyezda Insurance Co., which has developed the business lines formerly covered by the Soviet state-owned insurer, Gosstrakh, such as auto insurance and some personal lines.

In addition, the government's creation of Kazakhinstrakh earlier this year created a market for business with a foreign investment element.

A team of Western underwriters is conducting Kazakhinstrakh's business on a day-to-day basis and also is training local underwriters. The Assn. of British Insurers is working with Alexander Howden to implement training programs with British government support. All local personnel will be working to obtain the insurance qualification of the Chartered Insurance Institute of London, Alexander Howden said.

Alexander Howden sees the development of a local insurance market and accompanying professional expertise as a long-term project, says Jerry O'Keeffe. On the road toward a free market, the first five years will be spent in a so-called 'semi-free market.'

Alexander Howden sees the development of a local insurance market and accompanying professional expertise as a long-term project, Mr. O'Keeffe said. On the road toward a free market, he said, the first five years will be spent in a so-called "semi-free market."

One of the first changes will be the creation of a insurance pool, which will be an extension of Kazakhinstrakh, though it will include other Kazakh insurers.

The pool would be open to all brokers, though reinsurance placements will be undertaken by an arrangement between foreign brokers working in the country. Alexander Howden and the other brokers may also provide underwriting expertise to the pool.

Mr. O'Keeffe said the pool aims to have about 10 specialty underwriters, including those from the marine, cargo, oil and non-marine sectors. But Nadyezda, the country's largest insurer, is not a member of the pool, insurance sources in Almaty said.

Other Western insurance brokers are as concerned about Alexander Howden's prominent role in creating the country's insurance mechanisms as they are about the requirement that foreign ventures obtain coverage through Kazakhinstrakh.

These brokers, none of whom would speak for attribution, contend a single broker's dominance of the insurance and reinsurance sectors in Kazakhstan will bring the company into conflict with other brokers' relationships with clients that have invested in Kazakhstan. Most of these clients are involved in capital-intensive—and, hence, high premium-generating—oil developments.

Another competing broker said, "the reinsurance capacity in Kazakhstan is zilch, so there is no point in being a direct broker in Almaty, while no broker other than Howden will be able to have complete access to the reinsurance pool. This pool is not an open pool because a lot of (Kazakh insurance) companies do not meet the criteria which have been stipulated by Howden."

Western brokers trying to do business in Kazakhstan say the debate is becoming a "political hot potato" and that foreign diplomats have joined in lobbying against the new insurance plans.

Lacking experience, the government apparently did not realize how its plans would affect foreign investor confidence, one broker said. Even if other brokers might agree to work with a state monopoly, it is impossible to agree to work with a monopoly controlled by a competing broker. Doing so would create an immense conflict of interest and threaten client confidentiality, he explained.

Western and Kazakh insurance executives also fault the creation of the state-owned insurer Kazakhinstrakh, as a violation of national anti-monopoly laws.

Insurance matters have played only a secondary role over the past six months as the Legislature has been dominated by a battle with President Nazarbayev over allegations of corruption in the government. In what was described by official spokesmen as a "tumultuous scandal," President Nazarbayev fired his economy minister, Mars Urkumbayev, for alleged corruption. The corruption issue will also cloud foreign investors' confidence in the country, Warwick University's Mr. Ferdinand said.

The battle over insurance market development, which started within the insurance sector, has now spread to the oil industry.

Western insurance industry interest in Kazakhstan follows foreign investment in the country's vast natural resources, especially oil, executives say. Oil companies doing business in Kazakhstan claim that the creation of a

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ADA

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criminatory under the ADA, he said.

Mr. Papantonis added that the 1st Circuit's potential definitions of what constitutes an employer are "broad and appear to make the term 'employer' generally applicable to an employer plan."

"It does seem that the court has charted a lot of new ground. They really reached to redefine the concept of employer," agreed Anne Marie O'Keefe, an independent benefits consultant in Bethesda, Md.

The suit was brought by the late Ronald Senter, a New Hampshire wholesale auto parts distributor who found out that he was HIV-positive in 1986.

Mr. Senter filed suit in 1990 against Automotive Wholesalers Assn. of New England Inc., a trade group to which he belonged. The association operated a self-insured medical plan in which he had participated since 1977.

Mr. Senter sued because the plan changed its benefits package to limit the lifetime benefits for AIDS-related illnesses to $25,000 while continuing to provide a $1 million lifetime cap for other illnesses. He charged that the limit had been imposed because the plan's operators knew that he had AIDS.

Mr. Senter died on Jan. 17, 1993, and his heirs continued the case. After the district court dismissed the case, the heirs appealed, claiming the lower court had erred when it found the self-insured plan wasn't subject to the ADA definitions.

In the Oct. 12 ruling, Judge Toruella said, "The question before us is not whether defendants were employers of Senter within the common sense of the word, but whether they can be considered 'employers' for purposes of Title I of the ADA and therefore subject to the liability for discriminatorily denying employment benefits to Senter.

"If under any legal theory defendants could be considered employers for purposes of Title I, then plaintiffs should be given an opportunity to. . .allege the facts establishing the application of that theory to the present case," Judge Toruella wrote.

The judge then spelled out three possible theories under which the self-insured health plan might be considered an employer:

• "Defendants would be 'employers' if they functioned as Senter's 'employer' with respect to his employee health care coverage; that is, if they exercised control over an important aspect of his employment."

If the association and its plan "exist solely for the purpose of enabling entities such as Carparts to delegate their responsibility to provide health insurance for their employees, they are so intertwined with those entities that they must be deemed an "employer' for purposes of Title I of the ADA," the judge wrote.

In contrast, the ruling stated that health insurers could not be "employers" if they merely sold a product to an employer and exercised no control over the level of benefits.

• "Even if the defendants did not have authority to determine the level of benefits, and even if Carparts retained the right to control the manner in which the plan administered these benefits, defendants would still be rendered 'employers' of Senter if defendants were 'agents' of a 'covered entity' who acted on behalf of that entity in. . .providing and administering health benefits."

• Several previous cases in other circuit courts have interpreted the ADA to consider an entity that is not technically the employer of a plaintiff to be subject to suit for discrimination, according to the judge.

"It seems to me that the main importance of the ruling is that (business) owners can be considered to be in an employer/employee relationship with their plans," said Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

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Carparts Distribution Ctr. vs. Automotive Wholesalers Assn. of New England Inc., 1st U.S. Circuit Court of Appeals, No. 93-1954.

INTERNATIONAL

Kazakh

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insurance monopoly could add about 25% to their insurance premiums.

Mr. O'Keeffe, for his part, says he expects premiums to increase but says increases will be insignificant compared with expected returns for oil companies.

But oil executives say that they are re-assessing earlier assumptions of investment returns in Kazakhstan in light of political developments, especially in Kazakhstan's relationship with Russia.

Chevron Corp. of Bakersfield, Calif., says it has invested more than $600 million to develop the Tenghiz oil field in association with the Kazakh government. Brokers for the joint venture, known as TenghizChevroil, are Marsh & McLennan Cos. Inc. and Sedgwick Group P.L.C.'s energy division.

This project has been hailed by the Kazakh government as a foreign investor showpiece and Chevron has said that it intends to invest some $20 billion over the duration of its 40-year contract. But oil production from the venture has been limited, and was even halved over the last year, because the Russian government won't allow oil from the Tenghiz field to run through pipelines in Russian territory. These are the only export routes available for Kazakh oil and gas.

"So much depends on the relationship with Russia," says Warwick's Mr. Ferdinand. "There are many ways in which the oil flow might be stopped."

What coverage would apply to such a stoppage is unclear. Business interruption insurance for an oil production project is triggered by physical damage to the pipeline or other installations.

Stoppages prompted by government action come under confiscation and expropriation cover. Political risk insurance for investors is available through state agencies and the World Bank's Multilateral Investment Guarantee Corp. but not the private sector.

"It is possible to persuade underwriters to provide embargo cover from an external territory to the host government," said Angus McCallum, managing director of political risks at Sedgwick in London.

Other foreign investors include British Gas P.L.C., which is in a joint venture with Italian state oil company Agip S.p.A. to develop the Karaganchak gas field. The partners have invested more than $100 million and have been negotiating for over three years but the talks are still in their initial stages, British Gas executives have said. Alexander Howden is British Gas's broker, a Howden spokesman in London confirmed.

Another project, known as Kaspiy Shelf, involves Agip, British Gas, British Petroleum, Norwegian state oil company Statoil A/S, Mobil Corp., Shell Oil Co. and France's Total S.A. This group plans to invest $500 million over the next three years but is facing similar delays over export routes.

GRAPHIC BY MIKE GARVEY

Another U.S. company, Oryx Energy Co., has just contracted with the Kazakhstan government to develop, along with two Kazakh partners, oil fields on the Buzachi peninsula in the northern Caspian Sea. Willis Corroon Group P.L.C. is broker to Oryx. Other insurance information was unavailable.

"Many foreign oil companies are trying to insure abroad without any contact with the local market," an insurance executive in Almaty said. "We hope that the situation will become clearer this year. There are laws and rules on insurance, but no one is really following them."

Brian Henderson, insurance manager at Dallas-based Oryx, said, "We are adamantly opposed to the monopoly provisions in the insurance decree."

Oil companies publicly criticized the insurance changes at an Oct. 6 conference in Almaty. After then-Prime Minister Sergey Tereshenko explained the future role of Kazakhinstrakh as the sole insurer for foreign joint ventures and told delegates that their investment would receive proper protection, oil executives accused him of wanting to set insurance policy conditions and premiums by government diktat.

Feelings were so strong, said one person at the meeting, that Mr. Tereshenko fled through a side exit to evade a swarm of angry oil men.

Foreign business executives in Kazakhstan were already alarmed at several government moves over the last year, including an increase in income taxes, a new provision to tax worldwide income and the reduction of tax holidays for investors.

Mr. Ferdinand said one contributing factor to Mr. Tereshenko's departure was that he favored slow economic reform. This put him in conflict with President Nazarbayev, who had been pressing the legislature to approve "shock therapy" to bring the economy quickly into a free market system.

In September, 200 deputies in the Legislature censured Mr. Tereshenko, an ethnic Ukrainian, for his handling of the economy.

Kazakhs, who are traditionally nomads, are a minority in Kazakhstan, while Russians dominate the northern oil-producing regions. There are additional significant minorities of Germans, Uzbeks, other Slavs such as Belarussians and Ukrainians, and an increasing number of Chinese moving across the eastern border to trade with Kazakhstan.

Relations between ethnic groups is of paramount long-term importance, business executives and political analysts say.

"The political situation in Kazakhstan is highly unstable because of the minority problems," said a senior manager with an Austrian bank in Vienna who has discontinued business with Kazakhstan. "My personal opinion is that it is more unstable than Russia, the economy is in a crisis and the legal situation is unclear."

The Kazakh government announced two months ago that the economy had contracted by more than 27% over the previous 12 months, largely due to a fall in oil and gas exports to Russia. Tenge inflation in September was more than 100% at an annualized rate. The exchange rate of the tenge against the U.S. dollar was four tenge to $1 in 1993. In mid-October, it was 57 tenge to $1. The decline of the Russian ruble by more than 25% in one day did not have a lasting effect on the tenge performance against the dollar because of efficient currency controls in place, Western executives in Almaty said.

On Oct. 11, President Nazarbayev appointed a new government headed by Prime Minister Akezhan Kazhgeldin, with Aleksandr Pavlov as finance minister. Western executives in Kazakhstan welcomed the appointments, saying they believe the new team will speed up economic reforms. The former government had drafted an anti-crisis program in July but had not implemented it. Prime Minister Kazhgeldin said that the program was "strategically correct" and pledged to continue economic reform.

One of the first acts of the new government was to increase the price of bread by 10 times to eliminate food subsidies and make the agricultural sector more cost-effective. Western executives in Almaty generally welcomed the move as proof that the government wants to make real economic reforms, though one executive noted, "it also means that pensioners will not be able to afford bread and that many people in this country will face starvation in winter."

Meanwhile, insurance executives and western diplomats say they are busy lobbying deputies in the Legislature's working committee on insurance in hopes of persuading them to rethink the insurance legislation. One executive said that Yerkan Mukashev, the head of insurance at the Ministry of Finance, had already begun to look at alternatives to the existing proposals.

Attempts to reach Kazakhstan government officials for comment were unsuccessful.

The government may have to heed foreign investors' opinions more than any other Central Asian government, Mr. Ferdinand said, because of Western support of its currency and the huge Western interest in the country's natural resources. "The Kazakhs have to pay attention to the views of the international financial community and most of the world is focusing Kazakhstan down a certain path." BI

For the Record

Insurer liquidators to seek wind-up

LOS ANGELES—Liquidators of three Mission Insurance Group units will file to wind up the companies in the Superior Court of California in Los Angeles within the next two weeks.

The wind-up motion comes nine years after the companies were put in conservation following large asbestos and environmental liability claims.

Mission Insurance Co., Mission National Insurance Co. and Enterprise Insurance Co. will likely be wound up in about a year if the final liquidation is successful, said Karl L. Rubinstein, a partner at Rubinstein & Perry in Los Angeles and special deputy insurance commissioner appointed as a liquidator.

"It depends on whether there are a lot of claims that need to be litigated," Mr. Rubenstein said.

The Mission liquidators have collected more than $1.2 billion in assets, but outstanding liabilities are about $2.3 billion, he said.

The companies owe $1.3 billion to policyholders, which are Class 5 creditors. The remaining liabilities are claims of ceding companies, which are Class 6 creditors.

The cedants are unlikely to recover much. "No Class 6 creditors will be paid prior to the Class 5 creditors," Mr. Rubinstein said.

Employers laud veto of California bill

SACRAMENTO, Calif.—Businesses are applauding California Gov. Pete Wilson's recent veto of a bill that would have allowed employees to sue for wrongful termination if their employer engaged in fraud while dismissing them.

"This bill would have meant that employers could face a tremendous increase in exposure to awards for pain and suffering and punitive damage," according to a report published by the California Manufacturers Assn.

S.B. 1682, written by State Sen. Pat Johnston, D-Stockton, aimed to negate a 1993 California Supreme Court ruling, said Ross Sargent, Sen. Johnston's chief of staff. In *Hunter vs. Up-Right Inc.*, the court ruled that dismissed employees could only sue for wrongful termination if their case involved discrimination or a violation of public policy.

In that case, a welding supervisor agreed to resign after he was told his job was being eliminated. The worker later learned he had been replaced by a friend of his foreman.

Market share liability rejected in Oklahoma

DENVER—Victims of defective products cannot use the market share liability theory to press suits in Oklahoma against manufacturers, a federal appellate court has ruled.

Affirming a district court ruling in a case involving the synthetic hormone diethylstilbestrol, or DES, the 10th U.S. Circuit Court of Appeals in Denver concluded that the Oklahoma Supreme Court would not apply either the alternative liability or market share liability theories to the case.

Debbie and Roger Wood had sued 28 drug manufacturers in 1991 after their son was born prematurely with a digestive system injury. They contended that their son's injuries were caused by Ms. Wood's in utero exposure to DES in 1959.

Unable to tell exactly which company made the drug Ms. Wood's mother took, the couple argued that the 28 manufacturers should be held liable in proportion to their share of the DES market.

Wood vs. Eli Lilly & Co. et al., 10th Circuit Court of Appeals; No. 93-6274, Oct. 11, 1994.

University settles lead paint suit

PALO ALTO, Calif.—Stanford University will warn student parents about lead paint in campus housing and provide free semiannual blood tests for children under age 7 in a settlement of a lawsuit filed under Proposition 65, the state's toxic warning law.

The university also agreed to repair damage to painted surfaces as soon as it is reported and pay $166,265 in legal fees on behalf of the plaintiffs, a student couple who sued the university in Santa Clara County Superior Court in 1992.

Court to hear appeal of insurance ruling

SAN FRANCISCO—The California Supreme Court has agreed to hear insurers' appeal of a decision that extended the scope of state antitrust laws to all segments of the insurance industry.

Property/casualty insurers in the state lost their antitrust protection with the 1988 passage of Proposition 103. However, life, health and other types of insurers were immune until last April when an appellate court panel ruled that all types of insurers are subject to civil

Continued on next page

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NOTICES

REQUEST FOR PROPOSAL CLAIMS ADMINISTRATION

The County of Onondaga, New York is preparing a request for proposal for claims administration of its self insured program of employees health and dental benefits. The program currently has an operating claims budget of approximately $24,000,000, servicing 6800 active and retired enrolles. Interested vendors may request a copy of the RFP by contacting Anne Vislosky, Employee Benefits Manager, Department of Management and Budget, Division of Risk Management, 421 Montgomery St., 14th Floor, Syracuse, NY 13202, (315) 435-3346, Fax (315) 435-3439. Proposals are due December 16, 1994

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Centre Re, a global leader in customized reinsurance, insurance and finite risk management products, is looking for an individual with at least three years experience underwriting major corporate accounts (Fortune 1000). This experience should involve the use of captives and other alternative risk financing programs. The individual will execute and oversee all aspects of an insurance program and must have well developed analytical and quantitative skills, as well as excellent oral and written communication skills. The position will require creative thinking about the financial implications of risk management and the integration of traditional risk management techniques and finance. Furthermore, the individual must be motivated and willing to learn and work cooperatively and effectively in a relatively unstructured environment. The position will involve travel primarily in North America and reporting responsibility both in the U.S. and abroad.

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Successful candidate must possess excellent oral and written communication skills and a risk management or property/casualty insurance background. Requires a bachelor's degree and a minimum of seven years of insurance marketing experience, four of the years in a management position, or the equivalent combination of experience and education. Experience with local government, ARM, CPCU desirable.

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HRD-DCS, 900 Chapel Street, 9th Floor, New Haven, CT 06510

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Commercial Consumers

Administrative:
CEO's, Presidents, and Owners, ... 2,528
Vice Presidents, General Managers and Other Administrative Personnel 4,118
Financial
Chief Financial Officers and Vice Presidents of Finance 2,171
Secretaries, Treasurers, controllers and other Financial Personnel . 3,335
Risk/Employee Benefits:
Vice Presidents, Directors, Managers, and other realted department personnel of: insurance, risk employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations 16,157
Sub-total 28,309
Associations 369
Government, Unions and Educational Institutions 974
Commercial Consumers
Sub-total 29,652
Insurance Agents and Brokers 8,408
Insurance Companies 8,181
Accountants, Actuaries, Attorneys & Consultants 3,611
Managers & Health Care Providers 1,903
Others Allied to the Field 849
TOTAL 52,604

★ Source Business/Occupational breakdown of qualified circulation, May 30, 1994 Issue, as submitted to BPA for June 1994 BPA Publisher's Statement.

Continued from previous page
suits for triple damages under the Cartwright Act, California's antitrust law.

In that case, then known as *Manufacturers Life Insurance Co. vs. Superior Court,* the 4th District Court of Appeal found that the state's Unfair Insurance Practices Act does not provide an exclusive remedy for industry misconduct.

Coverage dispute in settlement of suit

DENVER—Coram Healthcare Corp. is suing one of its liability insurers while a second, CIGNA Corp., has agreed to pay $7.8 million of the $25 million in cash that Coram agreed to pay to settle a class-action securities fraud lawsuit against its T2 Medical Inc. unit and T2 officers and directors.

In settling the shareholder suit, filed in 1993 in U.S. District Court in Georgia, Coram also issued warrants to buy 2.5 million shares of its common stock at an initial purchase price of $20.25 per share. A spokesman said Coram, which provides alternative site care, had set aside $17.2 million to settle the suit.

But, Coram is suing Admiral Insurance Co., claiming the insurer should pay at least a portion of the $17.2 million, said Rick Fink, a managing partner at Brobeck Phleger & Harrison in San Francisco, which represents Coram.

Coram purchased general liability and directors and officers liability coverage from both CIGNA and Admiral, Mr. Fink said.

Coram shareholders had accused T2 and certain officers and directors of wrongdoing before the unit merged with Coram. Coram was created in the July merger of Atlanta-based T2 Medical, Health Infusion Inc. of Miami, Medisys Inc. of Edina, Minn., and Curaflex Health Services Inc. of Ontario, Calif.

Michigan utilities settle fish kill suit

LANSING, Mich.—Detroit Edison Co. and Consumers Power Co./CMS Energy have agreed to pay for past and future environmental damages at the jointly owned Ludington Pumped Storage Plant.

The Michigan Department of Natural Resources estimates the settlement is worth $172 million, although the direct cost to the utilities will be about $60 million on a net present value basis spread over 24 years.

Turbines used for pumping water at the plant over a 20-year period have killed hundreds of millions of fish in Lake Michigan, according to the DNR, which estimates the fish loss at $50 million. Under the agreement, the cost of future fish mortality will be included in the cost of producing power.

The utilities will pay $5 million to establish a Great Lakes Fishery Trust and will support it with $2.5 million in annual contributions. The settlement will be funded by a rate increase, a spokesman said.

The companies will also use a 2.5-mile net to keep out 85% of fish more than five inches long, enhance recreational areas and give 75 miles of undeveloped waterfront property to the state for conservation.

Michigan Attorney General Frank J. Kelley first filed suit against the utilities in 1986.

Gradual pollution not excluded by CGL

LOS ANGELES—Gradual, long-term pollution or contamination does not fall within the "sudden and accidental" exception to the pollution exclusion, a California appellate court has ruled.

Insurers have a duty to defend, however, if some measurable portion of the contamination was potentially caused by a "sudden and accidental" event, such as explosion or fire, the court found.

The Sept. 16 decision in *American States Insurance Co. vs. Superior Court* is the latest in a string of pro-insurer decisions in California on the pollution exclusion.

"Quite simply, gradual, long-term dispersal of pollutants and contaminants is the antithesis of the 'sudden' discharge or release necessary for the pollution exception to apply," the 4th District Court of Appeal in San Diego found. The decision reversed a lower court ruling.

Before seeking a declaratory judgment, Indianapolis-based American States had defended the policyholder, Chatham Family Trust, in underlying litigation under a reservation of rights.

While the court found that insurers have a duty to defend if some measurable portion of the release was sudden and accidental, it said there was no evidence in the case to support that argument. Therefore, the exclusion precluded any duty to defend or indemnify.

The policyholder operated a waste oil and solvent recycling company for 40 years.

Information in brief

Confederation Life Insurance Co. and its auditor, Ernst & Young, are seeking a stay of a lawsuit by a couple that holds Confed policies until the liquidation of the Toronto-based company is complete. In their suit, which seeks class-action status and is pending in federal court in New Jersey, the couple say they and others were misled for years about Confed's finances. . . .**Blue Cross & Blue Shield of Ohio** is offering tailored voluntary severance packages to 1,300 executive, administrative and professional employees. The Cleveland-based insurer said it will accept the resignations of at least 200 employees, based on years of service, by Nov. 23. . . .A federal grand jury last week indicted Jerry Weissman, the former chief financial officer at **Empire Blue Cross & Blue Shield**, on charges that he lied to a Senate subcommittee and obstructed the committee's 1993 investigation of bookkeeping irregularities at the New York insurer (*BI*, Sept. 27, 1993; June 21, 1993). . . .Congress failed during the closing moments of the legislative session to extend the tax-favored status of employer-provided **educational assistance benefits**, which expires Dec. 31. But, an effort is expected to be made next year to retroactively extend the benefit, which allows employers to reimburse employees for up to $5,250 in annual tuition expenses without workers being taxed on the reimbursement. . . .Nineteen nominations have been received by **Lloyd's of London** for five available places on next year's council. Deputy Chairman Richard Keeling next year will step down from his post, along with two other working members on the Council. Six candidates are vying for the vacant spots. Also, two external members are stepping down with 13 hopefuls in line for the job, including ex-Gooda Walker Action Group Chairman Alfred Doll-Steinberg. In addition, Jonathan Agnew, chairman of LIMIT, is the sole candidate for the newly created corporate capital seat on the ruling body. . . .**Blue Cross & Blue Shield of Maryland** will cut basic health care premium rates by between 7% and 15% for group policyholders beginning next month. BI

Will to work not disabled: study

By DEBORAH SHALOWITZ COWANS

In spite of the numerous reasons cited as holding them back from employment, the majority of unemployed adult Americans with disabilities say they would prefer to be employed, finds an extensive survey of adults with disabilities.

Only 31% of adults with disabilities are working, reports a 1994 survey conducted by Louis Harris & Associates Inc. on behalf of the National Organization on Disability. However, 79% of unemployed disabled adults say they would prefer to be employed.

Some 81% of disabled adults who are not working attribute their unemployment to the severe limitation of their disabilities or health problems. Fifty-eight percent also cited their need for medical treatment or therapy, and 40% said employers will not recognize that they are capable of doing a full-time job.

Other often-mentioned barriers to employment included an inability to find work; inadequate skills, education or training; and concerns that benefits or insurance payments would cease.

Some 57% of unemployed disabled adults said they would lose income, health care benefits or other benefits that they currently receive from private insurance or the government if they worked full time. This concern "may be a reflection of increased concern among all Americans that they may lose their health insurance," the report noted. However, "this worry may be more acute among adults with disabilities because of increasing limitations and restrictions insurers have placed on coverage for chronic or pre-existing health conditions."

Approximately the same portion of disabled adults are covered by health insurance as the general population: 86% of disabled adults have health insurance while 85% of the general population has health insurance.

Generally, disabled adults are satisfied with the health care services they and their families receive and their satisfaction with the health care system is similar to that of the general population.

For example, 73% of disabled adults said they are satisfied with their health care services, compared with 79% of adults with no disabilities. Similarly, 18% of disabled adults reported there was a time in the past year when they needed medical care but did not get it—only slightly higher than the 14% of the general population who reported the same event. And, 31% of the disabled adult population said they postponed needed health care for financial reasons, compared with 30% of the non-disabled population who reported the same problem.

The survey also found that:

- For 21% of adults with disabilities, their disabilities developed between birth and adolescence. Twenty-six percent said their disabilities developed while they were young adults. One quarter of respondents said their disabilities began in middle age—between 40 and 55 years old—and 28% said their disabilities began after age 55.
- One-quarter of adults with disabilities have less than a high school education; a similar survey eight years ago found that 40% of adults with disabilities had less than a high school education.
- Adults with disabilities are about equally satisfied with their life today as they were eight years ago. However, they are markedly less satisfied than are adults with no disabilities. Nonetheless, 62% believe that in general, things have gotten better for disabled Americans over the past 10 years.

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Copies of the "Americans with Disabilities" survey are available from the National Organization on Disability, 910 16th St. N.W., Washington, D.C.; 202-293-1944; TDD: 202-293-5968. The survey costs $75 for disability groups and $95 for all others. A report summary and commentary is available for $30. BI

Times Mirror names Weigand risk manager

Comings & Goings: Buyers

William D. Wiegand has been named director-risk management for Times Mirror Co. in Los Angeles, replacing **Ralph E. Gentry**.

Mr. Gentry, who served as president of the Risk & Insurance Management Society Inc. in 1976-1977, has retired but will consult through the end of 1994 for Times Mirror, his employer for more than 35 years.

Mr. Wiegand, 35, has served as Times Mirror's casualty claims director for five years. Prior to that, he was a claims manager for Allstate Insurance Co.

In his new position, Mr. Wiegand will administer and purchase insurance policies for a risk management program that includes public liability, workers compensation, libel, aviation products, ocean marine and directors and officers liability.

Times Mirror publishes newspapers, information and educational products, books, magazines and now produces multimedia software for television programming.

Mr. Wiegand has a bachelor of arts degree from the University of California at Los Angeles and is completing a master of business administration degree at the University of Southern California.

* * *

Ellen Wiese has been promoted to director of risk management for Sequa Corp. in New York.

In this new post, she is responsible for planning, negotiating and implementing the company's domestic and international insurance programs, including property, workers compensation and product liability for the aerospace, machinery, metal coatings and chemical company.

Ms. Wiese, 45, joined Sequa in 1987 as insurance analyst and she was promoted to supervisor, risk management in 1990 and manager-risk management in 1993. Before joining Sequa, she held risk management positions at John Blair & Co. and Norton Simon Inc.

She is a deputy member of RIMS and serves on the board of trustees of the Aircraft Builders Council. She attended Baruch College of the City University of New York.

* * *

International Business Machines Corp. has named **J. Thomas Bouchard** senior vp-human resources.

In this position, he will oversee IBM's human resources programs, including employee benefits. Mr. Bouchard replaces **Gerald M. Czarnecki**, who left the company earlier this year.

He reports to IBM Chairman and Chief Executive Officer Louis V. Gerstner Jr. and will be located in IBM's Armonk, N.Y., headquarters.

Mr. Bouchard, 54, previously was senior vp and chief human resources officer for U.S. West Inc.

Prior to joining U.S. West in 1989, Mr. Bouchard spent 15 years with United Technologies Corp. in a variety of executive positions, including senior vp of human resources at the parent company as well as assignments as head of human resources at their Pratt & Whitney and Otis Elevator units. He also has held several executive human resources positions at Litton Industries.

Mr. Bouchard holds a bachelor's degree in business from Loyola Marymount University in Los Angeles.

* * *

Mark Bundy has been named director of risk management at Richfield Hotel Corp. in Englewood, Colo.

In this position, he is responsible for property/casualty insurance programs and risk management for the hotel management company. Richfield provides management services to nearly 200 hotels in North America, representing both franchises and independents.

Mr. Bundy reports to Carol K. Werner, executive vp and general counsel. He replaces **Erwin Mallernee**, who has joined Wegmans Food Markets Inc. in Rochester, N.Y., as director of risk management.

Prior to joining Richfield, Mr. Bundy was director of risk management for Staff Administrators Inc. and prior to that served as director of risk management for PACE Membership Warehouse Inc., both in Denver.

Mr. Bundy, 38, holds a bachelor's degree in business administration from Illinois State University in Normal and a master of business administration degree from the University of Colorado at Boulder.

He is a member of the executive committee of the trades and services division of the National Safety Council, curriculum chairman for the Colorado Assn. of Commerce & Industry leadership program and a deputy member of the Risk & Insurance Management Society Inc. He holds the Chartered Property & Casualty Underwriter designation.

* * *

Richard W. Hallock has been named executive vp-human resources of Occidental Petroleum Corp. in Los Angeles.

His new duties includes all human resources functions, including employee benefits.

Mr. Hallock replaces **Ronald H. Asquith**, who is retiring, and reports to Ray R. Irani, Occidental's chairman, president and chief executive officer.

Mr. Hallock, 49, previously was in charge of total compensation for International Business Machines' worldwide operations in Armonk, N.Y. He joined IBM in 1967 and served in a succession of human resources management positions in the United States and overseas.

He has a bachelor's degree in psychology from Hope College in Holland, Mich., and did graduate work in psychology at the State University of New York at Binghamton.

* * *

Rosa Gatti has been named senior vp-communications and employee relations for ESPN Inc. in Bristol, Conn.

Ms. Gatti, who has served as senior vp-communications since 1988, now also oversees the sports broadcasting company's human resources department and employee benefits administration. She will continue to report to ESPN President and CEO Steve Bornstein.

Ms. Gatti, 44, joined ESPN in 1980 as director-communications. She chairs the company's Diversity Committee.

She has a bachelor's degree in French from Villanova University in Villanova, Pa.

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We'd like to report on staff changes in your company's risk management, safety and employee benefit departments. Contact Sara Marley, Associate Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-5313. Please send a photograph, too.

Schwan's

Continued from page 1

The outbreak of salmonella enteritidis infections—typically characterized by abdominal cramps, diarrhea, fever and headaches—is the first one involving commercially produced ice cream, according to Dr. Larry Slutsker, a medical epidemiologist with the food-borne diseases/epidemiology section of the U.S. Centers for Disease Control and Prevention in Atlanta.

State and federal health officials last week had confirmed that 160 ice cream eaters in 16 states became ill over the last several weeks after consuming Schwan's products contaminated with salmonella enteritidis. But, officials suspect that contaminated Schwan's ice cream may have infected as many as 3,000 individuals in a total of 32 states, Dr. Slutsker said.

And, those numbers are growing daily, health officials say. Schwan's markets its ice cream products in the 48 contiguous states, mostly through home deliveries in rural and suburban areas.

The ice cream-linked salmonella poisonings have been confirmed in Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Maryland, Minnesota, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington, West Virginia and Wisconsin, Dr. Slutsker said.

He and other health officials would not identify the other 16 states in which they suspect that Schwan's ice cream products have caused illnesses because they had not confirmed that the ice cream was to blame.

The investigation of the Schwan's products was triggered early this month after the Minnesota Health Department was notified of 80 confirmed cases of salmonella enteritidis infection from Sept. 19 through Oct. 10. For all of 1993, 96 cases of such infections were reported statewide.

Those who complained of illness reported eating many types and flavors of products that Schwan's manufactured in August and September at its plant in Marshall, Minn., including ice cream, sherbert, frozen yogurt and ice cream sandwiches.

Schwan's stopped production at the plant on Oct. 7 and later recalled the products it made there in August and September, a spokesman said. It also offered to reimburse customers for their cost of being tested for salmonella infection.

The spokesman said the Marshall plant produces most of the company's products, though he did not provide an exact percentage. Schwan's has since contracted with a producer in Iowa to make some of its products, the spokesman said.

The spokesman said Schwan's would not reveal its recall costs. But, he said the company does not purchase recall coverage.

If the Marshall plant accounted for only 51% of the company's production and if the company's combined August and September sales parallel industry averages of 18.3% of annual sales, then the cost of a recall representing only lost sales could total $158.4 million.

That figure is based on a Forbes magazine estimate of $1.7 billion of annual revenues in 1993 for the tight-lipped, privately held company. Forbes ranked Schwan's as the 68th-largest privately held U.S. company last year.

The plant, though, likely accounts for a much larger percentage of the company's revenues. If that share is 75%, the part of the recall representing sales could total $232.9 million.

Product recall insurance in cases of accidental contamination is a relatively expensive coverage, and markets typically do not offer significant limits.

Among the larger programs available are the $25 million to $30 million of limits available from Columbia Casualty Co. of Chicago, a CNA Financial Corp. subsidiary; at least $5 million of limits available from underwriters at Lloyd's of London, led by syndicate 623, managed by Beazley Furlonge Ltd.; and the $3 million of limits available from the Special Services Division of American International Underwriters, a subsidiary of American International Group Inc.

The commingling of pasteurized ice cream mix and raw egg residue in tanker trucks is "a practice which presents an unacceptable risk to the public—and which must be corrected," said FDA Commissioner Dr. David A. Kessler in announcing a possible breakthrough in health officials' investigation into the salmonella outbreak.

"Raw eggs are a known source of salmonella contamination," he said. "In this particular situation, there was no pasteurization of the ice cream mix after delivery by the tanker truck" to Schwan's Marshall plant.

And, more than one truck may have been involved, he said.

Health officials and Schwan's would not identify the trucking firm that Schwan's contracted to haul ice cream mix from its suppliers' facilities to the Marshall plant.

Meanwhile, the investigation into other possible causes of the contamination continues.

State and federal health officials say they have not ruled out any possibilities.

But, clearly, they are concentrating on the Schwan's plant or the company's distribution system rather than its major suppliers' operations. Health officials have not ordered the suppliers to suspend production or dispose of their inventories, officials at those companies said.

After Dr. Kessler's statement, Schwan's immediately announced several steps it was taking to safeguard its products. The company plans to:

- Repasteurize every shipment of ingredients it receives. Schwan's broke ground on a new pasteurization plant last Monday.
- Contract with a hauler that will dedicate a fleet of sealed tanker trucks to haul only ingredients for Schwan's products. The trucks will be resealed after delivery to ensure they are not used for deliveries to other companies. And, trucks will be inspected by an independent laboratory to assure compliance, the spokesman said.
- Test all mix for salmonella when it arrives at the Marshall plant.

Four Minnesota attorneys, though, are moving ahead with their lawsuits against Schwan's that seek to establish a national class action.

The attorneys, who also seek to represent those who purchased but did not consume salmonella-tainted products, are preparing to consolidate their litigation within the next few weeks.

The suits seek unspecified compensatory damages. The attorneys have not decided whether to seek punitive damages.

Schwan's would not reveal its product liability limits.

The outbreak likely would have been prevented if food processors had been required to implement a food safety inspection process known as Hazard Analysis Critical Control Points, said Caroline Smith DeWaal, director of food safety for the Center for Science in the Public Interest, a Washington-based non-profit consumer group.

FDA figures on the human and economic cost of food contaminated with microorganisms highlight the need for those measures, she said. About 9,000 people die and between 24 million and 81 million people become ill annually from such food contamination, resulting in medical and lost productivity costs of between $7.7 billion and $23 billion, the FDA says.

Under the HACCP process, which is found in the Total Quality Management toolbox, managers tap line employees to identify the various points in the entire production process where biological, chemical and physical hazards could occur. Measures are introduced at critical control points to prevent the hazards from occurring, and the producer carefully monitors these steps and keeps diligent records on those steps.

The idea is to anticipate and prevent safety problems rather than to react to problems after they have occurred.

"If Schwan's had tested for a wide variety of problems, it probably would have discovered the salmonella problem before it got out into the market," Ms. Smith DeWaal said.

She would like the FDA, which has developed final HACCP rules for the seafood industry and is seeking comments for HACCP regulations for all other food processors it oversees, to require all food processors to adopt HACCP.

The National Food Processors Assn. in Washington supports the HACCP concept and encourages its 500 members to adopt it, but a mandate may be very costly and only minimally effective for some companies, said Dane Bernard, vp-food safety and strategic programs.

A mandate should be targeted to specific processors, like seafood and canned food processors and the meat and poultry industry, which is regulated by the U.S. Department of Agriculture, he said. Other processors, like those that make juices and frozen juice bars, should be exempt from such a mandate, he said.

He also noted that most states have adopted the FDA's model pasteurized milk act, which include HACCP requirements. Though the act does not pertain to ice cream makers, most of those companies abide by it because they also produce the Grade A dairy products that are covered under their states' version of the act.

Minnesota has adopted the act, but Schwan's does not produce any Grade A dairy products. Health officials and the Schwan's spokesman could not say whether or not the company's food safety process incorporates HACCP principles. BI

GRAPHIC BY MIKE GARVEY

Coker

Continued from page 1

Coker and several co-conspirators of defrauding thousands of policyholders through Alabama management companies and a network of bogus offshore insurers and reinsurers.

One of Mr. Coker's management firms collected more than $30 million in California auto premiums, funneling part of the money to a Belgium-based reinsurer he had set up with Mr. Teale, the indictment alleges.

Some of this money was then shifted to bank accounts Mr. Coker controlled in the Bahamas and Cayman Islands, and he and his co-conspirators made several trips to the islands to carry cash back to the United States illegally, the indictment charges.

Mr. Coker, whose whereabouts are unknown, left the United States for Europe last summer and law enforcement officials consider him a fugitive.

His lawyer could not be reached for comment.

The indictment, filed Sept. 23 in U.S. District Court in Mobile, identifies several alleged co-conspirators who are not named as defendants. They include:

- John R. Lindsey, a bookkeeper and/or part owner of several of Mr. Coker's companies, including Brokerage Management Corp., a Mobile agency that did business as The Insurors.
- Richard Jeffers, an Insurors executive.
- Willard W. Hayne, Mr. Lindsey's uncle and a silent partner in The Insurors and other Coker companies, according to the indictment.

Mr. Hayne pleaded guilty in 1986 to fraud charges related to his involvement with convicted con man John V. Goepfert in the collapse of Kenilworth Insurance Co. He was sentenced to community service and five years' probation, during which time he was barred from working in the insurance industry (*BI*, Dec. 8, 1986).

Mr. Hayne declined to comment on the Mobile indictment but denied any role in the daily operations of Mr. Coker's companies.

"I was never in their offices from 1986 on," Mr. Hayne said. "I was just involved in some (premium) financing and found them some carriers."

Messrs. Lindsey and Jeffers, meanwhile, have reached tentative plea agreements with federal prosecutors in Mobile, according to Assistant U.S. Attorney Richard Moore, who said he could not provide further details.

Donald Briskman, a Mobile lawyer representing Mr. Jeffers, also declined to discuss the agreement but noted that "Mr. Jeffers has been in communication with the authorities for two years and has been cooperating on this investigation and on the Teale investigation."

Mr. Lindsey and his lawyer could not be reached.

The alleged scams outlined in the indictment began in February 1988, when Mr. Coker bought British & American Casualty Co. Ltd. of the British Virgin Islands from Steven Weicholz.

Rather than continue operating the insurer, Mr. Coker looted it, siphoning out $1 million through a sham reinsurance agreement with American Southern Insurance Co. Ltd., a B.V.I. company he controlled, prosecutors charge.

Mr. Coker and co-conspirators split the money, with Messrs. Coker, Lindsey and Jeffers receiving sham "loans" of $135,000, $25,000 and $10,000, respectively. Most of the remaining money went into Cayman Islands bank accounts Mr. Coker opened in the names of British & American and ASIC.

Prosecutors charge that Mr. Coker also:

- Transferred British & American claims funds out of a Mobile bank to Swiss Bank & Trust Co. Ltd. in Cayman and later shifted the insurer's funds to Laurentian Bank & Trust in Nassau, Bahamas, to prevent the money from being traced.
- Smuggled British & American money into the United States on return trips from the Cayman Islands and the Bahamas and paid Mr. Jeffers to do likewise.
- Placed British & American in voluntary liquidation in the British Virgin Islands to avoid paying claims, arranged for another of his companies to act as liquidator to siphon off fees and directed Mr. Lindsey to destroy any records showing the transfer of money to Cayman accounts.

Meanwhile, Mr. Coker formed

Continued on next page

Coker

Continued from previous page
an alliance with Mr. Teale in 1988 to generate income for himself by taking advantage of a network of phony U.S. and offshore insurers Mr. Teale had set up, the indictment alleges.

Mr. Teale died in federal prison earlier this year while serving a 17-year fraud sentence (*BI*, April 18).

Through The Insurors, his Mobile agency, Mr. Coker produced business for several Teale companies, including Victoria Insurance Co. of Atlanta, American Trust Insurance Co. Ltd., Apex Placement Insurance Co. Ltd., Regency Insurance Co. Ltd., Philadelphia Reinsurance Ltd., Northern Commercial Fire & General Insurance Co. Ltd., Wilmington Marine & General Insurance Co. Ltd., United States & Continental Reinsurance Co. S.A. and Adriatic Insurance Co.

In the spring of 1989, prosecutors say, Mr. Coker traveled with Mr. Teale to Belgium to form American & Southern Cie. de Belge, using $30,000 wired from Laurentian Bank in the Bahamas.

The charter for American Southern Belge initially showed Messrs. Coker and Lindsey as the company's owners, but Mr. Coker later transferred ownership to Auburn Co. Ltd., a Bahamas corporation he formed to conceal his involvement, prosecutors say.

In financial statements prepared at Mr. Coker's direction, American Southern Belge reported owning $5 million in "marketable securities." In fact, the indictment charges, the securities were worthless penny stocks that Mr. Coker "rented" through Mr. Teale.

American Southern Belge became the principal reinsurer of Belgium-based U.S. & Continental, a Teale company that wrote tens of millions of dollars in automobile and other coverages, mainly in California.

Between March 1990 and December 1991, the reinsurer received $4.1 million in premiums from US&C and during that period transferred $2.1 million to Auburn, which paid the "rent" for the securities American Southern Belge claimed to own.

Stephen D. Coker is charged with racketeering, fraud and tax evasion.

Between 1990 and 1992, Mr. Coker and co-conspirators also made several trips to the Bahamas, smuggling about $153,000 in cash back to Mobile, the indictment says.

In January 1991, for example, Mr. Lindsey faxed a note to a Laurentian Bank official in Nassau, directing him to "make the $50,000 available in cash to be picked up on the 31st between 3 p.m. and 4 p.m."

Overall, American Southern Underwriting Agency Inc., one of Mr. Coker's companies, received $30.4 million in auto insurance premiums for US&C, the indictment says.

Mr. Coker used about $605,000 of the diverted US&C premiums to back CHL Ltd., former holding company for Midwest Casualty Insurance Co., a North Dakota insurer formed in 1991, the indictment says.

Herbert Hill, president of Midwest, said he was warned about problems Messrs. Coker and Lindsey were having with US&C and bought out their interest in CHL in October 1991, about six months after the company was formed.

In the summer of 1993, after Mr. Teale was arrested, Messrs. Coker and Lindsey flew to the Bahamas for a meeting with their lawyers—who are not identified in the indictment—to discuss how to remove original Auburn corporate records from Laurentian Bank to keep agents of the FBI and Internal Revenue Service from discovering that Mr. Coker owned American Southern Belge and Auburn, prosecutors charge.

Mr. Coker also filed a sham lawsuit against Mr. Teale to make it appear that he and his companies were victims of Mr. Teale's scams, the indictment says.

In addition to numerous racketeering, conspiracy, mail and wire fraud charges, the indictment accuses Mr. Coker of conspiring to evade federal taxes between 1988 and 1992.

While Mr. Coker and his wife jointly reported $1.5 million in taxable income over the five-year period, his actual taxable income amounted to more than $2.5 million, prosecutors charge.

The indictment's 35 charges carry prison terms of five to 20 years.

Mr. Coker has been living outside the United States "off and on" for some time and last left the country in late July, leaving his family in Mobile, law enforcement sources say.

His family and his Mobile lawyer say they do not know where he is now, officials of the FBI and U.S. Attorney's Office say. BI

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ers and whatever is left over must be paid directly to the member (*BI*, Dec. 14, 1992).

The proposed change is "another sensible step in Lloyd's managing its affairs because we quite clearly have a real concern to see that debts to the Society by people who don't pay them indeed should be paid," Lloyd's Chairman David Rowland said.

Many members who have paid their losses have voiced anger at names who can pay their debts but refuse to do so, he added.

"On moral grounds, clearly it is desirable that people who litigate to recover losses caused by misconduct or negligence to the Society should—if they receive an award—first discharge their debts to the Society before going off to the South of France."

The Assn. of Lloyd's Members said last week that it accepts Lloyd's need to alter the premiums trust deeds to "capture the proceeds of successful litigation."

The ALM noted that 1.2 billion pounds ($1.95 billion) in outstanding debt "threatens Lloyd's solvency and the continuation of the Society."

But, if members will lose the right to receive damages directly, "they deserve some compensation for the loss," the ALM stated. That's why the ALM is strongly urging Lloyd's to come up with another market settlement offer.

A 900 million pound ($1.46 billion) market offer failed earlier this year, prompting thousands of members to continue their litigation. This includes the 3,096 members of the Gooda Walker Action Group who earlier this month won the right to recover an estimated 504 million pounds ($817.74 million) in damages from 71 members agents because the Gooda Walker underwriters were found to be negligent (*BI*, Oct. 10).

Also, last week 1,624 members of the Feltrim Names Assn. began their trial against Feltrim Underwriting Agencies Ltd. and 53 members agents to recover about 530 million pounds ($859.93 million) (see story, page 47).

"The ALM believes the best way forward would be for Lloyd's to make another offer to settle litigation and to include in it a contribution from the Central Fund," the association stated.

"Names are being expected to make a sacrifice," added Valentine Powell, chief executive of the ALM. "They deserve some compensation for what they are going to lose. A new offer is what they want; Lloyd's should launch another attempt to satisfy that desire." "The question of settlement remains something that we are both very anxious to promote," said Mr. Rowland, referring to himself and Lloyd's Chief Executive Peter Middleton. "But we have to have the respective parties also wishing to have a settlement. If we see that situation emerging. . .then we will use all our endeavors to bring that about."

But it's difficult to get members and underwriting agents' errors and omissions insurers together following the publicity and amount of damages that the Gooda Walker members received, Messrs. Rowland and Middleton admitted.

"One of the reasons we remain keen to have a settlement is because we know there are finite funds available to be triggered by such a settlement," added Mr. Middleton. "Our estimate is that those finite sums are less than the (damages for) the whole raft of cases to be judged."

The proposed changes in the premiums trust deeds anger some litigating members, however.

"Some of our members will be surprised and some of them will be distressed," said Richard Platts, membership secretary of the Gooda Walker Action Group.

The changes may mean the action groups have spent a lot of time and money getting compensation only to pay all the money to Lloyd's, he said. "It means the action groups would have done all of Lloyd's work for them."

For Gooda Walker members who are still trading at Lloyd's, it's probably a good thing because it boosts Lloyd's solvency, he said. But for members who are bankrupt and no longer underwriting, "they will wonder why they took all this trouble. . .and they're still bust."

Mr. Platts agreed with Mr. Rowland that the proposed changes probably will go into effect before Gooda Walker members are to receive any money. If the changes to the premiums trust deeds are made, then Lloyd's estimates it could recover 578 million pounds ($937.81 million) from damages paid to both the Gooda Walker

Continued on next page

Updates

Toyota settles van liability suit

TORRANCE, Calif.—Toyota Motor Corp. and Toyota Motor Sales USA Inc. agreed to settle a product liability case for something less than the $46.45 million a Georgia state court jury awarded plaintiffs Oct. 1 after the settlement was reached.

Torrance, Calif.-based Toyota will pay Delia Bibbs and her husband, Tony, an undisclosed amount and will not appeal the verdict, a Toyota spokesman said. "The total amount Toyota paid to the Bibbs was less than the $46.45 million," the spokesman said. "Quite a bit less." An attorney for the defendants confirmed that the settlement was for something less than the jury award.

The Toyota spokesman said some product liability coverage will apply to the settlement but wouldn't provide specific information.

The suit in Georgia state court in Atlanta stemmed from a 1992 accident in which Ms. Bibbs was thrown from the Toyota van she was driving, suffering a severe head injury. She claimed her seat belt and the van's door-latching system failed, causing her injury. Toyota denied any defects.

The jury had ordered Toyota to pay $36.45 million in compensatory damages to Ms. Bibbs and $10 million to her husband and found that punitive damages were in order. Because the settlement was reached before the jury returned its verdict, punitive damages were not set.

Drug price fixing suits rise

HOUSTON—The number of lawsuits by independent pharmacies charging major drug manufacturers, managed care companies and mail-order firms with price discrimination and price fixing grew significantly last week when 1,349 pharmacies filed 15 separate suits seeking injunctive relief and unspecified monetary damages.

In filing the federal lawsuits, the pharmacies continued a trend that began in 1993 when independent pharmacists around the country started banding together in an attempt to stop the heavy price discounts drug makers offer health maintenance organizations, mail-order houses and other managed pharmacy benefit companies. The recent suits, which make allegations similar to those contained in approximately 70 other lawsuits that have already been filed and transferred to federal court in Chicago for consolidation, assert that the discounts drug companies are exclusively offering managed care companies are so great that independent pharmacies cannot compete.

The suits allege violations of federal antitrust laws which prohibit price discrimination and price fixing.

"When you offer discounts to HMOs that you don't offer the retail pharmacies, that's against the law," said Mark Armstrong, an attorney with Calvin, Gibbs & Verner in Houston, which represents numerous Texas pharmacies in the suits. Mr. Armstrong said in some cases, independent pharmacies must pay as much as 1,245% more than managed care firms for the same drugs.

Orion gross loss estimates in

LONDON—Gross losses at two defunct London market insurers, Orion Insurance Co. P.L.C. and its subsidiary, The London & Overseas Insurance Co. P.L.C., could reach $1.5 billion, according to preliminary estimates from recently appointed provisional liquidators Price Waterhouse.

Price Waterhouse said it will discuss with major creditors the possibility of a scheme of arrangement for the runoff of the companies.

The insurers wrote both insurance and reinsurance business in the marine, aviation and liability markets and were based in the Institute of London Underwriters. London & Overseas ceased writing new and renewal business in January 1992, and Orion followed in October 1992, as U.S. long-tail pollution, asbestos and other liabilities and London market losses mounted. Many of their major policyholders, especially big liability claimants, are U.S.-based. Provisional liquidator Paul Evans said he will begin discussing a proposed scheme this week with major U.S. policyholders and policyholder groups.

Companies that bought policies from the insurers after 1970 are likely to be better off because in August of that year, Dutch insurer Nationale-Nederlanden NV bought Orion. Nationale-Nederlanden and the ILU have "arrangements in place" to cover claims for London & Overseas policies written after March 20, 1969, when Orion bought it, and Orion policies written after Nationale-Nederlanden bought it.

Briefly noted

The California Supreme Court has let stand an appellate court decision giving **medical lien holders** in workers comp cases the same due process rights as employers and employees (*BI*, July 18). . . .A Virginia judge has ordered **HOW Insurance Co.**, the nation's first risk retention group, into permanent receivership. Home Warranty Corp., HOW's parent, and a HOW affiliate were also ordered into receivership. . . .**Shorline Mutual (Bermuda) Ltd.**, the new protection and indemnity club formed to cover Oil Pollution Act of 1990 requirements, has completed its reinsurance program. The program, which was approved by the U.S. Coast Guard last week, was placed by Willis Faber North America and has limits of $290 million excess of $10 million. . . .**Arthur F. Ryan**, president and chief operating officer of Chase Manhattan Corp. since 1990, will become chairman and chief executive officer of Prudential Insurance Co. of America, succeeding Robert C. Winters, who is retiring. . . .President Clinton this month signed into law legislation that increases employers' pension and other benefit obligations to employees who return to work after **military service** (*BI*, Oct. 26). . . .**Johnson & Johnson** will appeal an $8.9 million jury award to a former Bush administration official who says he suffered liver damage because he had not been adequately warned about the danger of mixing alcohol and Extra Strength Tylenol.

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nd Feltrim members.

But the changes to the premiums trust deeds ould "run contrary to insolvency law" in the Jnited Kingdom, added Philip Rocher, a partner at London law firm Wilde Sapte, who represents the Gooda Walker Action Group.

The proposed changes show Lloyd's needs to ollect the money to stay solvent, added Tom Benyon, director of the Society of Names. It lso is an attempt by Lloyd's to split up the names who want to continue trading and those who cannot because they are broke, he said.

Lloyd's admits that its main aim in changing he premiums trust deeds is to shore up its solvency.

"If names' recoveries are not brought within their trust funds, and are thus now used for the purposes of discharging their outstanding liabilities, then without other action Lloyd's solvency will be impaired," the consultative document on the premiums trust deed changes states. "The Council believes that payment by names of their underwriting liabilities out of their recoveries is a vital part of the measures necessary to ensure the future of Lloyd's."

The Lloyd's Names Assns.' Working Party also believes there will be "no advantage to the majority of names who will have ceased to trade by the end of this year" to agreeing to the changes. "The LNAWP questions how this initiative shows good faith to the ruined names or how it fits with the statutory duty of the society to protect its members," said Working Party Chairman Christopher Stockwell.

Names have moral and legal obligations elsewhere, he said. "It is unlikely that names will agree to a retrospective amendment to the premiums trust deeds, even if it can be done legally, just when the courts are acknowledging to the legitimacy of their claims."

Last week, Lloyd's mailed to its members the consultative document on the proposed changes to the premiums trust deeds for all members between 1987 and the present. All comments on the document are to be returned by Nov. 18, after which the Council will decide whether to implement these changes.

If the amendment to the trust deeds means that the Council must pass a bylaw, members could find 500 signatures to call for an extraordinary general meeting to thwart the action.

The only recourse angry members have to oppose the changes—aside from challenging Lloyd's in court—is to call an extraordinary general meeting, but they would need 1,500 signatures to call such a meeting. BI

Feltrim trial begins as Gooda Walker E&O insurers appeal

By STACY SHAPIRO

LONDON—There's a sense of deja vu in Court 23 at the High Court of England and Wales.

Justice Phillips, who earlier this month ruled in the Gooda Walker Action Group trial, is now listening to similar allegations of negligence of Lloyd's of London excess-of-loss reinsurance underwriters of the Feltrim Underwriting Agencies Ltd. In fact, as the Feltrim trial opened last week, errors and omissions insurers began to question whether their policies would actually cover all the damages awarded to 3,096 Gooda Walker members.

In the new trial, 1,624 members of the Feltrim Names Assn. are suing Feltrim Underwriting and 53 members agencies to recover about 330 million pounds ($859.93 million). As with the Gooda Walker trial, Justice Phillips is listening to allegations that underwriters purchased inadequate reinsurance because total aggregates were not properly estimated.

But there are major differences between the Feltrim and the Gooda Walker case, in which Justice Phillips ruled that the underwriters were negligent.

In the Gooda Walker trial, barrister Bernard Eder and law firm Elborne Mitchell represented Gooda Walker Ltd. and the other 70 members agency plaintiffs because Gooda Walker was in liquidation and had no E&O insurance of its own.

In the Feltrim trial, there are lawyers for: the Feltrim names; members agents; and defunct Feltrim Underwriting Agencies Ltd., which has E&O cover. The members agents are seeking compensation from Feltrim for their own liabilities if the underwriters are found negligent.

The Feltrim case also will be argued differently because Justice Phillips already has ruled on parallel issues. He ruled the Gooda Walker underwriters were negligent because, among other things, they didn't properly calculate their aggregate exposure and therefore didn't buy adequate reinsurance.

Feltrim Underwriting Agencies alleges that its underwriters did calculate aggregate exposures and consciously decided to run a "gap" in its reinsurance program because the coverage was unavailable. They argue that underwriters did not breach a duty simply because members were exposed to "too great a loss."

Feltrim plaintiffs maintain that they only had inadequate reinsurance because underwriters didn't adequately calculate their aggregates. For example, the underwriters only calculated their wind exposure and not their earthquake aggregates, which resulted in inadequate reinsurance, Jeremy Cooke, the lawyer for members, said in court last week.

Justice Phillips questioned the relevancy of this argument since the syndicates didn't suffer earthquake losses. But Mr. Cooke argued that an adequate estimate of their earthquake exposure would have ensured adequate reinsurance for the windstorm losses. The Feltrim trial is expected to last until Christmas.

Meanwhile, E&O insurers of 71 Lloyd's of London members agencies are questioning whether their policies fully cover the damages that will be awarded to the 3,096 members of Gooda Walker Action Group.

In addition, they plan to appeal Justice Phillips' decision against the agents, particularly in regard to his approach to assessing damages, said Clyde & Co., the London-based law firm representing the underwriters.

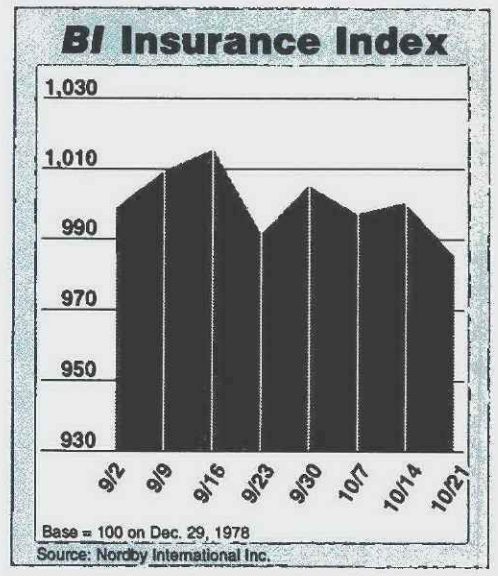
Last week, court hearings began on whether the Gooda Walker members can receive an "interim payment" from the members agents.

Justice Phillips set out a complex formula for deciding the amount of damages members should receive, but the actual amount has yet to be decided by the court (*BI*, Oct. 10). Members would like an interim payment.

The errors and omissions insurers are asking the court to rule on several policy wording items that could restrict coverage, including whether:

- Interim payments are covered by members agents' E&O policies. The E&O underwriters believe that they only indemnify "damages," said Michael Payton of Clyde & Co.
- The Gooda Walker losses constitute more than one "originating cause." If it is only one cause, then the members agents' E&O policy reinstatements would not kick in.

If coverage is restricted, members agents would have to fund the damages from other assets, which may bankrupt many, sources say. Sixteen are already insolvent. BI



Insurance stocks tumbled last week, as the *Business Insurance* Index lost 16.3 points to 984.2 Oct. 21 from 1,000.5 on Oct. 14. Advancing issues for the week were led by: NAC Re Corp., up 12.8%; Acceptance Insurance Cos., up 12.6%; and Titan Holdings Inc., up 10.1%. Declining issues for the week followed: Home Holdings Inc., down 8.3%; Safeguard Health Enterprises, down 7.6%; and Penn-American Group Inc., down 6.9%. The most active issue was U.S. Healthcare, 4.0 million shares traded. The *BI* Index fell 1.6%; the Dow Jones 30 Industrials lost 0.5%; the NYSE Composite fell 0.9%; and the Standard & Poor's 500 fell 0.9%.

British Issues

Oct. 20 Companies	Price pence	P/E*	Div.* pence	Yield %	1 week high—low
Comml Union	532	16.9	31.0	5.6	546—532
Genl Accident	565	11.3	34.4	6.1	575—565
Gdn Royal Exch	19[illegible]	12.4	9.5	5.0	196—191
Independent	254	3.3	10.4	4.1	254—251
Royal	282	12.3	9.4	3.3	291—282
Sun Alliance	334	15.7	18.4	5.5	340—334
Brokers					
Bradstock	94	10.6	6.9	7.3	96—94
Fenchurch	146	11.4	9.0	6.2	148—146
CE Heath	245	8.7	20.0	8.2	256—245
JIB Group	135	11.6	9.4	7.0	135—135
Lloyd Thmpson	174	12.1	9.8	5.6	175—174
Lowndes Lmbrt	170	10.8	9.4	5.5	170—170
Nelson Hurst	174	17.1	7.0	4.0	174—174
PWS Holdings	34	N/M	2.5	7.3	36—34
Sedgwick Grp	155	17.2	7.5	4.8	159—154
Steel Brl Jones	113	N/M	11.3	10.0	114—113
Willis Corroon	156	14.3	8.3	5.3	161—152

Source: Philip Olsen, London * Latest actual year

BI Industry Stock Report OCT. 17, 1994, THROUGH OCT. 21, 1994

BROKERS		Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
Acordia Inc.	NYS	27.50	0.00	11.68	28.75	21.00	24	0.60	2.18	14	13.24	2.08
Alexander & Alexander	NYS	20.63	3.13	3.77	22.75	14.00	655	0.10	0.48	-	6.08	3.39
E.W. Blanch Holdings Inc.	NYS	21.50	-2.27	23.74	23.00	15.75	24	0.32	1.49	23	4.55	4.73
Gallagher Arthur J. & Co.	NYS	31.38	-1.18	-12.24	37.13	28.13	24	0.88	2.80	16	6.48	4.84
Hilb, Rogal & Hamilton	NYS	11.88	-1.04	-9.52	13.63	11.13	127	0.48	4.04	14	4.72	2.52
Marsh & McLennan	NYS	76.75	3.72	-5.68	88.75	73.75	667	2.90	3.78	16	19.40	3.96
Poe & Brown	NDQ	20.88	1.83	15.97	22.75	16.88	17	0.40	1.92	14	4.49	4.65
BROKERS	AVERAGE		0.6	4.0					2.4	14		
INSURERS/REINSURERS												
ACE Ltd.	NYS	23.00	-3.66	-24.59	33.88	22.38	159	0.44	1.91	-31	22.45	1.02
Acceptance Insurance Cos.	NYS	17.88	12.60	53.76	17.88	11.13	452	0.00	0.00	17	9.83	1.82
AEGON N.V.	NYS	61.50	1.65	12.33	62.13	49.00	51	2.94	4.77	11	43.84	1.40
Aetna Life & Casualty	NYS	46.38	-0.27	-23.03	66.25	44.63	1177	2.76	5.95	-7	57.21	0.81
Allied Group Inc.	NDQ	29.38	-2.08	17.50	31.00	22.75	129	0.60	2.04	7	23.43	1.25
Allmerica Prop. & Casualty	NYS	16.00	1.59	-25.73	22.16	14.25	774	0.16	1.00	10	19.45	0.82
Allstate Corp.	NYS	24.00	1.05	-19.33	32.88	22.63	558	0.72	3.00	15	19.60	1.22
American General	NYS	26.25	-2.78	-7.89	30.75	24.88	1288	1.16	4.42	20	20.39	1.29
American Heritage Life Ins.	NYS	18.00	1.41	-3.36	20.13	16.50	12	0.66	3.67	11	12.42	1.45
American Indemnity/Fin'l	NDQ	10.75	0.00	-17.31	15.00	10.00	48	0.24	2.23	4	15.92	0.68
American International	NYS	91.50	1.95	3.83	96.88	81.75	1595	0.46	0.50	14	49.75	1.84
American Re Corp.	NYS	29.25	-1.68	3.54	35.75	23.50	38	0.00	0.00	15	16.85	1.74
Aon Corp.	NYS	32.88	-1.50	2.20	35.75	30.00	346	1.28	3.89	11	21.96	1.50
Argonaut Group	NDQ	28.50	0.88	-6.56	33.75	26.25	28	1.16	4.07	8	29.80	0.96
AVEMCO Corp.	NYS	15.00	-6.25	-20.00	21.00	13.75	109	0.44	2.93	12	6.30	2.38
Baldwin & Lyons Inc.	NDQ	14.88	0.85	0.00	16.25	13.75	28	0.24	1.61	9	13.56	1.10
Berkley W.R. Corp.	NDQ	36.00	1.05	9.92	42.00	32.00	114	0.44	1.22	17	36.47	0.99
Berkshire Hathaway Inc.	NYS	19705.00	2.63	20.70	19750.00	15150.00	1	0.00	0.00	27	9157.79	2.15
Capital RE Corporation	NYS	22.13	-2.21	-14.08	27.50	18.50	5	0.20	0.90	8	21.48	1.03
Capsure Holdings Corp.	NYS	13.00	1.96	-3.70	16.13	12.13	11	0.00	0.00	12	13.72	0.95
Chubb Corp.	NYS	70.25	-0.88	-10.65	83.13	68.63	1081	1.84	2.62	25	48.40	1.45
CIGNA Corp.	NYS	63.75	1.59	0.79	74.00	57.00	926	3.04	4.77	13	80.98	0.79
CNA Financial Corp.	NYS	61.25	-0.41	-22.22	85.00	60.00	80	0.00	0.00	-16	73.83	0.83
Continental Corp.	NYS	14.50	0.87	-47.51	33.00	12.00	2109	0.00	0.00	-63	29.69	0.49
EMC Insurance Group Inc.	NDQ	9.25	-1.66	-2.63	10.25	8.50	381	0.52	5.62	10	10.77	N.A.
Emphesys Financial Gr. Inc.	NYS	36.25	3.57	NA	38.50	21.25	228	0.60	1.66	9	N.A.	N.A.
EXEL Ltd.	NYS	38.63	1.31	-14.17	47.00	36.00	379	1.32	3.42	9	31.62	1.22
Fremont General Corp.	NYS	24.00	-0.52	-0.52	27.13	21.50	96	0.76	3.17	7	22.90	1.05
Frontier Insurance Group	NYS	27.63	-4.33	-37.04	37.50	25.41	87	0.48	1.74	13	14.94	1.85
Gainsco Inc.	ASE	8.88	2.90	-1.39	11.09	7.47	73	0.04	0.45	13	3.79	2.34
General RE Corp.	NYS	109.38	0.34	2.94	125.50	101.75	647	1.92	1.76	15	57.17	1.91
Guaranty National Corp.	NYS	17.25	-1.43	-1.43	23.75	13.75	10	0.50	2.90	11	11.84	1.46
Harleysville Group	NDQ	24.00	1.05	-15.79	30.25	19.75	8	0.68	2.83	17	20.18	1.19
Hartford Steam Boiler	NYS	42.75	-1.72	-3.93	53.38	42.38	86	2.20	5.15	54	14.62	2.92
HCC Insurance Holdings	NDQ	20.63	5.77	2.27	23.84	15.00	70	0.00	0.00	16	10.75	1.92
Home Holdings Inc.	NYS	6.88	-8.33	-60.14	18.50	6.88	35	0.00	0.00	-0	22.36	0.31
ITT (Hartford Group)	NYS	85.63	0.88	-6.68	95.97	78.63	1703	1.98	2.31	11	49.95	1.71
Kemper Corp.	NYS	55.00	-4.76	53.31	65.00	33.13	1785	0.92	1.67	131	28.68	1.92
Lincoln National	NYS	35.50	-2.07	-17.44	47.38	35.13	482	1.64	4.62	9	31.99	1.11
Markel Corp.	NDQ	41.75	1.52	8.44	44.50	37.50	15	0.00	0.00	10	25.15	1.66
Mid Ocean Ltd.	NDQ	24.63	0.51	-12.83	30.50	24.13	98	0.00	0.00	12	20.24	1.22
Mutual Risk Mgmt. Ltd.	NYS	27.00	3.35	-10.00	32.75	21.13	29	0.32	1.19	16	9.11	2.96
NAC Re Corp.	NDQ	27.63	12.76	-5.15	32.00	24.00	407	0.16	0.58	15	19.75	1.40
National Re Corp.	NYS	24.50	-1.01	-20.00	33.75	23.50	116	0.16	0.65	10	17.31	1.42
Navigators Group	NDQ	16.00	8.47	-54.29	39.00	14.25	102	0.00	0.00	-6	10.21	1.57
Nobel Insurance Ltd.	NDQ	8.50	-1.45	11.48	8.75	6.75	89	0.20	2.35	5	6.84	1.24
NWNL Companies	NYS	29.75	2.15	-8.46	34.88	27.00	302	0.90	3.03	10	24.81	1.20
Ohio Casualty Corp.	NDQ	28.88	-4.15	-9.41	33.75	26.50	151	1.46	5.06	12	24.68	1.17
Old Republic Int'l	NYS	21.00	-1.75	-6.67	25.13	20.75	254	0.48	2.29	8	24.60	0.85
Orion Capital Corp.	NYS	29.38	3.07	-4.86	35.19	28.13	106	0.80	2.72	8	25.86	1.14
Partner Re Holdings Ltd.	NDQ	20.00	-0.62	-8.05	23.50	18.50	510	0.40	2.00	17	N.A.	N.A.
Penn-America Group, Inc.	NDQ	6.75	-6.90	-12.20	9.50	6.50	4	0.00	0.00	8	6.21	1.09
Phoenix RE Corp.	NDQ	25.13	-2.43	-8.64	35.50	18.50	100	0.30	1.19	6	22.86	1.10
Provident Life	NYS	25.50	-1.92	-19.37	31.88	24.38	108	1.04	4.08	-10	27.09	0.94
Re Capital Corp.	NDQ	12.75	2.00	-6.42	15.50	12.25	2	0.32	2.51	12	17.63	0.72
Reliance Group Holdings	NYS	6.38	2.00	-17.74	9.75	4.88	208	0.32	5.02	11	3.48	1.83
RLI Corp.	NYS	20.88	-2.34	-21.96	27.75	20.63	21	0.60	2.87	-41	20.51	1.02
St. Paul Companies	NYS	41.63	-3.76	-7.24	49.00	37.69	442	1.50	3.60	8	31.88	1.31
SAFECO Corp.	NDQ	50.38	-1.95	-7.78	61.88	48.50	807	1.96	3.89	9	46.94	1.07
SCOR U.S. Corp.	NYS	11.25	1.12	-10.89	15.50	10.13	7	0.36	3.20	-	13.60	0.83
Seibels Bruce Group	NDQ	2.81	-6.25	60.71	3.50	0.81	214	0.00	0.00	-6	1.05	2.68
Selective Ins. Group	NDQ	25.75	0.00	-14.88	31.00	23.00	7	1.12	4.35	10	23.36	1.10
Sphere Drake Holdings	NYS	13.50	-1.82	-18.18	19.25	13.38	22	0.12	0.89	6	13.15	1.03
TIG Holdings	NYS	19.63	0.64	-13.26	25.75	17.25	837	0.20	1.02	18	17.25	1.14
Titan Holdings, Inc.	NYS	9.50	10.14	-12.64	12.25	7.75	84	0.28	2.95	8	9.31	1.02
Tokio Marine & Fire	NDQ	57.88	0.22	7.18	66.00	49.25	13	0.41	0.70	-	57.72	1.00
Torchmark Corp.	NYS	41.63	-2.92	-6.98	50.25	36.75	375	1.12	2.69	11	17.49	2.38
Transatlantic Holdings	NYS	48.75	-4.18	-8.67	56.38	45.38	25	0.36	0.74	12	32.43	1.50
Transnational Re Corp.	NDQ	19.25	-2.53	-28.70	27.00	0.13	428	0.00	0.00	15	N.A.	N.A.
Travelers Corp.	NYS	33.13	0.76	-14.79	45.13	31.00	2568	0.60	1.81	8	24.26	1.37
Trenwick Group Inc.	NDQ	37.25	-1.97	-3.87	43.75	33.25	98	1.00	2.68	13	29.20	1.28
United Fire & Casualty	NDQ	40.25	-1.23	11.81	44.00	36.00	10	1.08	2.68	9	28.96	1.39
Unitrin	NDQ	46.75	0.00	10.00	51.50	38.50	88	1.60	3.42	22	38.64	1.21
UNUM Corp.	NYS	45.75	0.55	-12.86	58.00	43.00	583	0.96	2.10	11	27.78	1.65
US Facilities Corp.	NDQ	11.13	0.00	-6.32	14.63	8.25	20	0.00	0.00	15	11.07	1.00
USF&G Corp.	NYS	13.38	-1.83	-11.57	16.13	11.69	1369	0.20	1.50	9	10.04	1.33
USLICO Corp.	NYS	20.75	1.84	25.76	24.00	15.75	34	0.24	1.16	8	24.44	0.85
USLIFE Corp.	NYS	31.25	-2.72	-19.35	45.25	31.00	135	1.24	3.97	7	40.82	0.77
Washington National	NYS	21.75	-0.57	-10.31	26.13	20.63	40	1.08	4.97	8	23.61	0.92
Zenith National Ins.	NYS	22.63	-0.55	2.26	27.38	20.63	24	1.00	4.42	10	17.54	1.29
Zurich Reinsurance Centr.	NYS	26.50	0.47	-6.19	31.75	24.25	12	0.00	0.00	-55	22.26	1.19
INSURERS/REINSURERS	AVERAGE			-0.2	-6.6					2.4	10.1	
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	NDQ	28.50	-0.87	9.62	31.00	19.25	1632	0.00	0.00	17	12.22	2.33
Humana Inc.	NYS	22.88	-5.18	24.49	24.50	13.38	2831	0.00	0.00	27	6.04	3.79
Pacificare Health Sys.	NDQ	74.13	-0.84	96.36	79.50	30.75	158	0.00	0.00	26	14.21	5.22
Safeguard Health Enter.	NDQ	9.13	-7.59	-27.00	15.50	9.13	207	0.00	0.00	12	6.16	1.48
Sierra Health Services	NYS	29.75	-0.83	33.71	30.75	15.50	226	0.00	0.00	19	6.04	4.93
United Healthcare Corp.	NYS	50.75	-4.92	35.79	55.38	33.63	1699	0.03	0.06	37	6.57	7.72
U.S. Healthcare	NDQ	45.25	-3.47	18.04	49.00	29.50	3958	0.84	1.86	21	5.04	8.98
Wellpoint Health Networks	NYS	27.13	-2.25	-12.15	37.00	24.25	375	0.00	0.00	13	12.73	2.13
HMOs	AVERAGE		-3.2	22.4					0.2	19		
ALL COMPANIES	AVERAGE		-0.9	6.6					2.5	13		

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