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Update

Federal OSHA restricts authority of North Carolina safety agency

WASHINGTON—The federal Occupational Safety and Health Administration is taking control over new workplace safety complaints from the North Carolina Department of Labor, the first time OSHA has unilaterally restricted a state's authority to investigate new complaints.

During an Oct. 23 news conference, U.S. Labor Secretary Lynn Martin said that OSHA's Raleigh, N.C., office no longer will refer workplace safety complaints to the state labor officials. Instead, it will run its

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Cost of Oakland fire mounts

Personal lines insurers to pay brunt of losses of at least $1.2 billion

By LOUISE KERTESZ

OAKLAND, Calif.—The fire storm that roared through an affluent area of Oakland, causing more than $1 billion in insured damages, is not expected to force prices up in the cheap commercial property/casualty insurance market.

Homeowners insurance is a tremendously profitable line for insurers, which have more than ample resources to pay fire losses.

However, the loss is yet another blow to the catastrophe reinsurance market, where capacity has been shrinking due to a series of huge losses in recent years.

The Rahway, N.J.-based Property Claim Services Division of the American Insurance Services Group estimates that insured losses from the fire could reach $1.2 billion and assigned it Catastrophe No. 87. That figure includes the cost of structures, contents and vehicles as well as living expenses for policyholders.

The ASIG division estimates that only about 2% of the losses were commercial losses. Among those was a large apartment complex and some damage to local utilities.

Insurers, though, say they expect that insured losses from the fire—the worst since the 1906 San Francisco fire following an earthquake—will climb.

And the city of Oakland, reporting through the California Office of Emergency Services, estimated total insured and uninsured property damage at $5 billion, tripling its preliminary estimate of $1.5 billion.

"When we were able to get in there and survey the extent of the damage, the scale of the disaster

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AP/Wide World Photo

The fire ravaged 1,900 acres, destroying 2,449 houses and leaving at least 23 dead and 150 injured.

NOLHGA's offer for Executive Life recommended

By JOANNE WOJCIK

LOS ANGELES—California Insurance Commissioner John Garamendi is recommending that the nation's life insurance guaranty funds take control of Executive Life Insurance Co. despite a flurry of objections by policyholders and another state insurance regulator's attempt to intervene in the failed insurer's rehabilitation.

Mr. Garamendi is "conditionally" recommending that California Superior Court Judge Kurt Lewin, who is overseeing the Executive Life conservatorship, select an offer by the National Organization of Life & Health Guaranty Assns. that would pay policyholders at least 89 cents on the dollar for amounts not covered by guaranty funds.

The NOLHGA offer—which is supported by the U.S. life insurance industry—would guarantee a higher return for policyholders than any of the other eight bids submitted, Mr. Garamendi noted.

NOLHGA, which is composed of 48 state life insurance guaranty funds, outlined its proposal in late August and enhanced the bid earlier this month (*BI*, Oct. 21; Oct. 14; Sept. 2).

Meanwhile, attorneys for several policyholder groups were preparing to file motions in Los Angeles Superior Court last Friday objecting to

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Upjohn vows to fight giant punitive award

By MEG FLETCHER

CHICAGO—The Upjohn Co. will fight a Cook County Circuit Court jury's award of $127.7 million in damages in a suit by a man whose left eye was irreparably damaged in 1983 after a doctor accidentally injected it with an Upjohn drug.

The jury awarded Meyer Proctor, 70, of Park Forest, Ill., $3 million in compensatory damages and nearly $124.6 million in punitive damages.

Legal experts are criticizing the award—one of the largest personal injury awards in U.S. history—given the March ruling by the U.S. Supreme Court that called for trial court judges to better instruct juries on the purposes of punitive damages and required sufficient judicial review of punitive damage awards.

The Upjohn verdict may help fuel a backlash among other courts and in state legislatures to limit punitive damage awards, some suggest.

Mr. Proctor sued Upjohn and Dr. Michael Davis, an ophthalmologist in Olympia Fields, Ill., after Dr. Davis in 1983 accidentally injected the anti-inflammation drug Depo-Medrol directly into his eye rather than around the outside of the eye.

Mr. Proctor, a retired press spokesman for the Illinois Department of Mental Health, lost sight in that eye within minutes because of the toxicity of the drug.

Mr. Proctor was in constant pain as the eye shriveled up, and three operations failed to correct the problem.

The eye was removed five months after the injection.

Barry D. Goldberg, the lawyer who represented Mr. Proctor, blamed the loss of the eye on the "callous marketing tactics" of Upjohn, a pharmaceutical manufacturer whose net worth he put at $1.8 billion.

Since 1959, Upjohn "created a market and supported, advertised and promoted" injection of the drug near the eye, though the drug was never approved for this use, said Mr. Goldberg, who is with Goldberg & Goldberg of Chicago.

"The label should have stated that Depo-Medrol was not recommended" for injection near the eye, the suit charged.

In addition, the suit contended that Kalamazoo, Mich.-based Upjohn should have warned physicians about the risks associated with using the drug by:

- Asking the U.S. Food and Drug Administration to include with the product packaging a warning about the risks posed by injecting the drug in or around the eye.
- Mounting an educational cam-

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House approves penalties for cases of insurance fraud
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NEWSPAPER

Update

OSHA limits state's authority

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own investigations. The Raleigh OSHA office also will investigate new complaints of employer sanctions against employees for reporting unsafe conditions. Pending claims still will be handled by the state.

OSHA has never before unilaterally restricted responsibilities granted states under the 1970 OSHA Act, though more than 20 states have their own programs (*BI*, Oct. 7). Revelations that North Carolina officials had never inspected a poultry plant that operated for 11 years before a fire killed 25 workers and injured 55 more raised serious questions about the effectiveness of the state program (*BI*, Sept. 9).

"While we would prefer that these additional inspections be conducted according to state rules and procedures. . .we will welcome whatever assistance is available to better protect North Carolina workers," state Labor Commissioner John Brooks said. "Concurrent federal jurisdiction in this limited circumstance is not a threat to the state and is in no way a takeover of the state OSHA program."

Utility wins pollution coverage

CHICAGO—The first jury trial involving a public utility's claim for coverage for environmental cleanup costs ended last week with a policyholder victory.

A Cook County Circuit Court jury ruled that Central Illinois Public Service Co. did not expect nor intend to pollute the environment and therefore can tap its environmental impairment liability coverage. American Empire Surplus Lines Insurance Co. wrote a $15 million claims-made EIL policy for the gas utility in 1983.

The litigation stems from tar pollution at a site in Taylorville, Ill., where CIPS formerly operated a coal gasification plant.

The Springfield-based utility continues to litigate with about 20 comprehensive general liability insurers over coverage for cleanup costs at the Taylorville site and three other sites in Illinois.

Cleanup costs at the Taylorville site exceed $10 million, said utility attorney Michael Magril of Anderson, Kill, Olick & Oshinsky in New York. There are no estimates for cleanup costs at the other sites.

"Insurers are closely watching this case," said Mr. Magril, noting that there are more than 1,500 former gas manufacturing facilities in the nation. A byproduct of the process that turns coal into gas is tar residue that can contaminate the soil and groundwater.

National Union appeals award

BOSTON—National Union Fire Insurance Co. of Pittsburgh, Pa., which wrote property damage and business interruption coverage for General Dynamics Corp., is appealing a $20.3 million award to the defense contractor related to a 1977 shipyard accident.

A federal judge earlier this month ordered the American International Group Inc. unit to pay General Dynamics $9.2 million in damages and $11.1 million in interest on a claim stemming from an accident at a Quincy, Mass., shipyard. A crane toppled into a basin where tankers were being built, damaging ships and disrupting production.

National Union is appealing the award to the 1st U.S. Circuit Court of Appeals in Boston, contending that the damage claim is overstated, said Marc Temin, a lawyer representing General Dynamics. Lawyers for the insurer would not comment.

The insurer wrote $25 million in property and business interruption coverage for General Dynamics excess of an underlying layer of $1.5 million and a self-insured retention of $250,000, said Mr. Temin, with the Boston firm of Foley, Hoag & Eliot.

Primary insurer Protection Mutual Insurance Co. has paid its portion of the loss, according to Mr. Temin.

MetLife, MONY GIC deal

NEW YORK—Mutual Life Insurance Co. of New York and Metropolitan Life Insurance Co. have an agreement to reduce MONY's exposure to poorly performing commercial mortgages and bolster MetLife's guaranteed investment contract business with pension plans.

Under the agreement reached last week, MetLife will offer all qualified pension plans that have invested in MONY GICs the option of exchanging their GICs for a MetLife contract.

Eighty percent of the book value of the GICs will be backed by up to $1 billion of commercial mortgage and bond investments that MONY will transfer to MetLife. MetLife will hold these funds in a separate account. The interest rate that MetLife will pay on this portion of the contracts will be based on gains or losses from the commercial mortgages and bonds.

The interest rate on the remaining 20% of the contracts' value will be the same as the original MONY contract.

In addition, MetLife will begin coinsuring 20% of the GICs that MONY retains, up to $300 million.

The deal will strengthen MONY's capital ratio—or the ratio of net worth to total assets—to between 5.8% and 6% by year-end from 5.3% as of Sept. 30, a MONY spokesman said. "It allows us to offer options to our customers and it will reduce our exposure to commercial mortgages through the transfer of underlying assets used to fund GICs."

A MetLife spokesman said that while the company is receiving a fee for coinsuring the GICs that MONY retains, it is entering the deal primarily to increase its separate account GIC business.

New hearing in tobacco case

WASHINGTON—The U.S. Supreme Court has ordered a new round of oral arguments in a case that attempts to hold cigarette manufacturers liable for injuries caused by smoking.

The case before the court questions whether the Federal Cigarette Labeling and Advertising Act pre-empts state tort suits charging

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Errors & omissions

• The telephone number for the National Managed Health Care Congress was incorrectly listed in the Sept. 23 issue. The correct number is 617-487-6700.

House passes penalties for insurance fraud cases

By JERRY GEISEL

WASHINGTON—A congressional conference committee soon will begin trying to iron out differences between House- and Senate-approved measures that for the first time would set specific federal criminal penalties for insurance fraud.

Fraud provisions strongly backed by state regulators and insurers are included in a broader anti-crime bill, H.R. 3371, approved last week by the House of Representatives on a 305-118 vote.

Somewhat different insurance fraud provisions were part of anti-crime legislation, S. 1241, that the Senate passed in July (*BI*, July 15).

Both bills would establish federal criminal penalties for several types of insurance fraud, including:

- Knowingly filing a fraudulent financial statement or report with a state insurance regulator.
- Embezzlement or theft of insurance company funds or premiums.
- Falsifying insurance company records with the intent to defraud an insurer or policyholder.
- Criminally obstructing proceedings before state insurance regulators.

Congressional conferees should not have much difficulty working out the differences in the bills, insurance industry lobbyists say.

"We do not foresee that the differences should be that difficult to resolve. Legislators want to work together to enact meaningful legislation to help reduce the problem of insurance fraud," said Melissa Wolford, director of federal affairs for the American Insurance Assn. in Washington, D.C.

"This is an area where legislators can reach agreement," said Peter Lefkin, vp-federal affairs in the Washington, D.C., office of Fireman's Fund Insurance Co.

The two bills differ on, among other things:

- Maximum criminal penalties.

The maximum financial penalty under the House bill would be a $500,000 fine per organization or a $250,000 fine per individual. Insurance fraud also would carry prison sentences of up to 10 years, though a 15-year sentence could be handed down if the fraud jeop-

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Dancers sue over pensions

Ballet stars seek to collect benefits when they quit dancing

By CHRISTINE WOOLSEY

NEW YORK—Does a ballet dancer "retire" when he or she stops dancing professionally?

Yes, say nine of the nation's top ballet dancers, who are suing their labor union and the trustees of the union's pension plan. The dancers want to collect retirement benefits—no matter how small—when they retire from professional dancing rather than when they reach age 65.

The suit, filed in the U.S. District Court in New York, contends that the American Guild of Musical Artists has not fairly represented ballet dancers in negotiating pension benefits.

The plaintiffs include dancers from the American Ballet Theatre, the New York City Ballet, the Joffrey Ballet and the Dance Theatre of Harlem. Among the plaintiffs named in the suit, which seeks class-action status on behalf of more than 1,000 ballet dancers covered by the plan, are such famous ballet stars as Cynthia Gregory, Fernando Bujones, Martine van Hamel and Marianna Tcherkassky.

AP/Wide World Photo

Dancers from the American Ballet Theatre and other troupes are seeking changes in their union-sponsored pension plan.

The suit seeks termination of the pension plan, compensatory damages in excess of $5 million and $15 million in punitive damages.

"The basis of the plaintiffs' claim is that the pension plan's normal retirement age of 65 bears no rational relationship to the age at which dancers are compelled to retire and need income—almost always prior to age 40—and was maintained at 65 arbitrarily and capriciously by the trustees," the complaint states.

"The union and the trustees have actual knowledge that not one single member of the plaintiff class has ever remained an active dancing member of a union collective bargaining unit to the fund's normal retirement age of 65," according to the complaint.

"Despite this knowledge and the demands of the plaintiff class that the union bargain for retirement income that can be made available when dancers actually retire, the union has failed, neglected and refused to bargain for employer contributions to any vehicle other than" the pension fund, the suit charges.

In addition, the complaint says, "the pension plan discriminates against dancers relative to the union's non-dancer members—principally opera performers—be-

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Benefit consultants listed

Business Insurance will publish its annual directory of employee benefit consultants in the Dec. 16 issue, which will also contain a Spotlight Report forecasting trends in the employee benefit market in 1992.

The directory is published as an editorial service; there is no charge to be included. However, consultants must fill out and return a questionnaire provided by *BI*.

If your company provides employee benefit consulting services and you have not yet received a questionnaire, please request one by calling Karen Armaganian at 312-280-3195.

The extended deadline for returning completed questionnaires to *Business Insurance* is Nov. 11.

Inside

✔ Just when businesses thought they finally were seeing some relief from outlandish punitive damage awards, a Chicago jury slaps Upjohn Co. with another, says this week's editorial. **PAGE 8**

✔ A federal appeals court decision that employers can cut severance benefits on a case-by-case basis and without prior notice is expected to have little impact on other benefit programs. **PAGE 30**

✔ A New Orleans councilwoman and a former secretary of state will square off next month in the Louisiana insurance commissioner's race. **PAGE 32**

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Risk management forum

Weather trends, population shift increase risks

By GAVIN SOUTER

MONTE CARLO, Monaco—The severe impact of changes in weather and population patterns are two crucial areas that risk managers will have to address, experts agree.

The huge increase in weather-related losses should be attributed to lasting changes in weather patterns and not to a run of bad luck, said Andrew Dlugolecki, chief manager-operations at General Accident Fire & Life Assurance Corp. P.L.C. in Perth, Scotland.

Industrial emission of gases that harm the earth's atmosphere cannot yet be proved to be causing storms and drought, but if risk managers wait for hard evidence to emerge, it will be too late, he said.

Changes in demographics are more widely accepted as inevitable, but they still will have severe effects on risk management, despite their predictability, two consultants agree.

The three experts participated in a session on "megatrends" affecting risk management at the Risk Management Forum, which was co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

Scientists insist that it is too early to assess whether there is a fundamental change in global weather patterns, said Mr. Dlugolecki.

Still, an examination of weather conditions over the past 30 years shows some alarming trends, he said.

In the 1960s, there were 0.8 major windstorms per year worldwide, which cost insurers $500 million per year; in the 1970s the frequency had increased to 1.3 per year, which cost insurers $800 million; by the 1980s the number increased to 2.9 per year, costing insurers $1.7 billion; and in 1990 alone there were four major windstorms, which cost insurers $9.8 billion. All figures are in 1990 dollars.

Along with more frequent storms, the insurance market has had to face an increase in the value of the goods damaged, Mr. Dlugolecki said.

"For example, in industry you used to have steam equipment, which was easy to replace, but now you have a lot of electronic equipment, which can be difficult and expensive to replace," he said.

Insurers also are providing much wider coverage than they did previously. For example, all-risk property policies are now widely available, Mr. Dlugolecki said.

"Also, there is pressure from governments throughout Europe for insurers to extend coverage on domestic business to include natural perils," he added.

In addition to covering wider risks, insurers also are finding that policyholders are more aware of what losses they can claim and are more likely to inflate their claims than they were before, Mr. Dlugolecki said.

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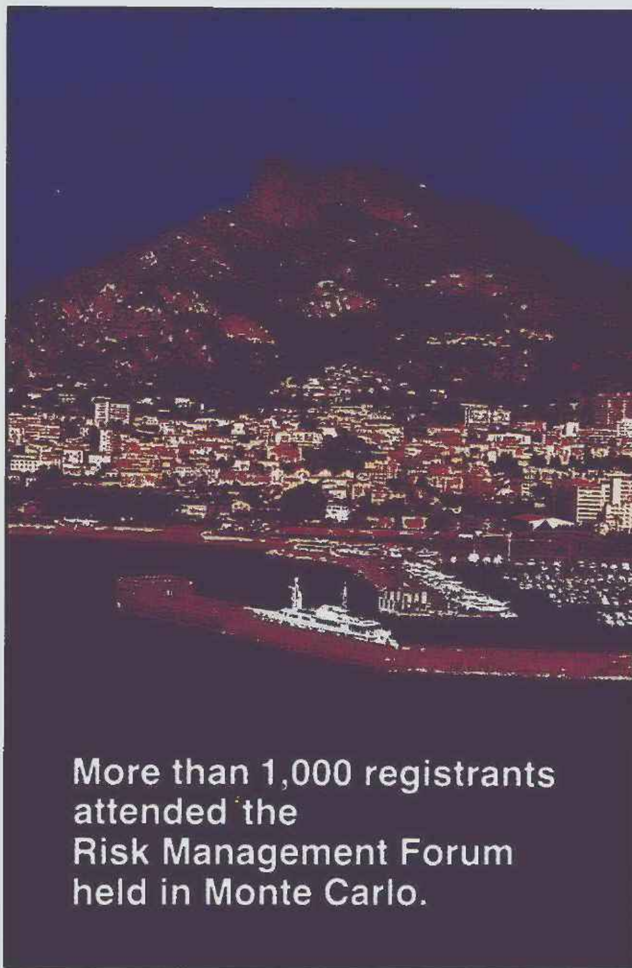

More than 1,000 registrants attended the Risk Management Forum held in Monte Carlo.

Photo by Kathryn McIntyre

Panelists divine different futures for marketplace

By STACY SHAPIRO

MONTE CARLO, Monaco—In an ideal world, there would be only five insurers in Europe and only three international brokers placing multinational risks, a British broker says.

In his fantasy, brokers would be called "intermediaries"—a term that better describes their varied functions as risk advisers, he contends. And, brokers would be the only recognized authority giving independent advice to risk managers.

Under a French insurer's vision of the future, however, risk management services would be available from underwriters as well as brokers. In addition, the insurance market would have less capacity and offer stable premium rates, since good risks would not have to be overcharged to help finance losses from bad ones.

A Swiss reinsurer, meanwhile, foresees better dialogue among all parties involved in the transfer of risk. In the reinsurer's version of insurance utopia, society and government recognize that the insurance/reinsurance industry cannot finance the cleanup of all environmental pollution.

Three leading industry executives outlined their visions of the future at the opening session, titled "The Changing Insurance Market," of the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk &

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Computer-related injuries

Precautions can help prevent worker claims from skyrocketing

By KATHRYN J. McINTYRE

MONTE CARLO, Monaco—Computer-related workplace injuries could explode in the 1990s, a London solicitor warns.

But cumulative trauma injuries and other claims could be prevented with proper protection for employees, he and two other claims experts agree.

"Keyboards dominate office life," observed David Rogers, a solicitor with the firm of Davies Arnold Cooper in London.

Typing five to six hours a day, or perhaps 10 hours daily with overtime, can cause repetitive strain injuries, he said.

Repetitive strain injuries, he noted, affect the upper limbs, usually the forearms and the hands, causing aches and pains.

"Within the office environment, I have rarely come across a routine for regular breaks or for regular exercises to allow the muscles to recover," he reported. "The complaint by an individual that at the end of the day his arms ache or he feels pain along the side of his forearm is often disregarded as simply one of the aches and pains of everyday life."

Ergonomists, however, realize that this activity causes problems, Mr. Rogers emphasized.

And using computer terminals—or visual display units known as VDUs—without breaks is likely to result in a "significant number of claims related to eye strain and disabilities affecting the eyes," he said.

"The risks are already known and cataloged," Mr. Rogers added.

While a directive on the use of VDUs will be implemented throughout the European Community, Mr. Rogers said: "I do not believe those VDU requirements will be enforced. They certainly aren't standard practice at the present time."

As users of asbestos knew in the 1950s and 1960s that the product could be harmful but considered asbestos-related health problems an inevitable risk of employment, the risks

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Health care quality good, but system is poor: Poll

By MICHAEL SCHACHNER

WASHINGTON—While 82% of Americans say the health care they receive is excellent or good, only 33% say the U.S. health care system overall is worthy of a similar rating, a recent survey shows.

Benefits experts say it is not surprising that Americans overwhelmingly ranked their care as better than the overall delivery system. People with insurance generally like the care it affords, but they also have come to realize that costs are soaring and millions of people lack access to health care, they say.

The Employee Benefit Research Institute's annual survey of public attitudes toward health insurance was conducted by The Gallup Organization Inc., which in July polled 1,000 Americans.

Forty-six percent of the respondents rated the care they receive as good; 36% deemed it excellent; 13% rated it fair; and 3% said it was poor. The remainder did not answer.

However, in what EBRI called the "second measure" of an index of Americans' feelings toward health care, the survey found that 24% rated the overall U.S. health care system as poor; 41% felt it was fair; 27% labeled it good; and only 6% rated the system as excellent. The remainder did not answer.

"When people are asked about their own care, they automatically think about their doctor, the plethora of technology that's available to them and the fact that much of their care is paid for by insurance. This, I think, explains the high level of satisfaction with quality," commented Bill Custer, research director with EBRI.

Indeed, researchers found that 90% of those surveyed had some form of health insurance. Sixty-one percent had some type of employer-sponsored plan, while 18% were covered under a government-sponsored plan. About 11% had personal health insurance. Eight percent had no coverage, and the remainder gave some other answer.

Of those who were insured, 69% were covered under a traditional major medical plan, while 29% were covered under some type of managed care plan, and 2% did not know.

In explaining the low level of support for the overall delivery system, Mr. Custer said that most people realize that more than 34 million Americans lack health insurance and that total costs are

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Policyholder suit derailed by court

Ruling bars RICO claim against insurer

By MICHAEL BRADFORD

LOS ANGELES—A construction firm charging that an insurer fraudulently failed to return about $300,000 in premiums is asking an appellate court to reconsider its ruling that the policyholder cannot pursue racketeering claims against the insurer.

The 2nd California District Court of Appeals last month overturned a trial court's refusal to bar the policyholder's claim brought under the federal Racketeer Influenced and Corrupt Organizations Act, under which a plaintiff can receive treble damages.

The appellate ruling calls for the California Superior Court to dismiss the RICO claim because "California law pre-empts the application of RICO in this case."

However, the policyholder can continue to pursue several non-RICO claims against the insurer.

The case involves a lawsuit filed by Brutoco Engineering & Construction Inc. in March 1990. Brutoco alleged that American Home Assurance Co., a unit of New York-based American International Group Inc., failed to refund "in excess of $200,000" in workers compensation premiums that were due under a "premium endorsement agreement" on a 1986 policy.

"Under the terms of the contract," said Paul M. Mahoney, a lawyer representing the construction firm, "within six months after it ends, there is an audit to determine if the policyholder owes additional premiums or is due a refund with a dividend."

AIG refunded $29,285 in premiums along with a dividend of $36,311.

But the insurer actually owed

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NCCI sues over denial of Rhode Island rate hike

By STACY ADLER GORDON

PROVIDENCE, R.I.—The National Council on Compensation Insurance is launching a legal challenge to Rhode Island Gov. Bruce G. Sundlun's move to block a huge increase in workers compensation insurance rates.

The NCCI filed suit last week in state court in Providence seeking to compel Maurice G. Paradis, Rhode Island's insurance commissioner and director of the Department of Business Regulation, to implement rate increases in the voluntary and assigned risk workers compensation markets that were recommended by hearing officers.

Gov. Sundlun, though, contends a workers comp rate hike would cripple businesses in the state, forcing them to close or move elsewhere.

Business groups agree, expressing support for the governor's move.

The insurance commissioner's hearing officers in September had recommended a 54.9% rate increase in the assigned risk pool and up to a 44.5% hike for the voluntary market.

The 44.5% increase in the voluntary market would apply to insurers that write less than 1% of the market. For insurers writing more than 1% of the market, a 28.1% rate increase was recommended.

Two-thirds of the $217 million in workers comp premiums generated last year in Rhode Island was underwritten in the state's assigned risk pool. In addition, 90% of Rhode Island employers buy coverage from the residual market.

The Oct. 21 lawsuit filed by the NCCI does not challenge the legality of the governor's action but, rather, seeks to force Mr. Paradis to approve the workers comp rate increases recommended by his hearing officers.

"We think the director is obligated and compelled to follow the recommendations of his hearing officers," said Peter Burton, director of government, consumer and industry affairs for the NCCI's New England region, based in Windsor, Conn.

After the hearing officers recommended the rate increases, Mr. Paradis indicated he would approve the rates. But before the rate hikes actually were approved, Gov Sundlun sent a letter to Mr. Paradis Oct. 9 asking him to delay the increases.

Gov. Sundlun wrote: "As governor of the state of Rhode Island, I direct you not to sign any order approving the increase in workers compensation insurance rates, as recommended by the hearing officers. . . .

"I am deeply concerned that our economy is too fragile to sustain a blow of this magnitude, and that the insurance pool itself will suffer if abandoned en masse by all employers able to find alternative methods of insurance, and employers who either close their businesses or move out of state as a result of this increase," Gov. Sundlun wrote.

The governor's letter went on to ask Mr. Paradis to hire independent consultants, at insurers' expense, to re-examine the rate filing.

NCCI's Mr. Burton said this may be the first time a governor has directly blocked a workers compensation rate increase.

There are problems with the Rhode Island system, Mr Burton conceded. "But shooting the messenger is not the appropriate remedy."

"It is outrageous," said Joe DiGiovanni, vp-northeastern region of the American Insurance Assn. in Boston, referring to the governor's action.

He added that the governor's power to delay the rate increase was "done under rather dubious legal authority."

"It's been two years (since the initial filing), and the rate filing has been thoroughly looked at," Mr. DiGiovanni said. "This is nothing more than a tactic by the governor to delay a rate increase that is long overdue."

The rate increases "may be unpalatable, but the rates cannot be inadequate," agreed Eric Oxfeld, counsel to the American Insurance Assn. in Washington, D.C.

Furthermore, asking for additional review of the rate filing is a "redundancy," said the NCCI's Mr. Burton. He noted that actuaries from three organizations—the NCCI; the Tillinghast division of Towers, Perrin, Forster & Crosby Inc.; and E. James Stergiou Risk Consultants Inc. of Carlstadt, N.J.—examined the filing before it was sent to the insurance commissioner.

"It is patently unfair that we should bear the costs of any additional consultant," Mr. Burton said.

Employer groups, though, expressed support for the governor.

"We urged the governor to take this action," said Francis J. Holbrook, executive vp of the Rhode Island Chamber of Commerce Federation in Providence. "The proposed rate increases would have been a catastrophic event for the Rhode Island business community."

The Chamber has not yet taken any action in response the NCCI's lawsuit, he noted.

"We might get involved, but we are not now involved," he said.

The most likely opponent of the NCCI lawsuit, the Rhode Island attorney general, could not be reached for comment. The governor and the insurance commissioner also could not be reached.

The NCCI originally had sought a 123.3% increase in the overall level of premiums for both the assigned risk pool and insurers writing less than 1% of the voluntary market, which was one of the largest increases sought by ratemaking organizations this year (*BI*, March 19).

But, the hearing officers on Sept. 30 made the smaller rate increase recommendations to Mr. Paradis.

The hearing officers based their lower rate recommendations on information gathered during hearings in February, May and June. Some 21 witnesses testified and 57 exhibits, comprising thousands of pages, were considered. In addition, the hearing officers read more than 400 letters from business groups.

After receiving the rate recommendation from the hearing officers, Mr. Paradis issued this statement: "This is an extremely large rate increase, and I am very concerned about its economic impact on business. I am also concerned that insurers receive adequate rates so they can continue to pay their claims of injured workers.

"These two concerns have reached the point where they are virtually irreconcilable without the identification of further reforms resulting in an efficient and economical system. But, in the meantime, I may have no choice than to implement the suggested rate relief," he said.

The NCCI has asked that its lawsuit be placed on an accelerated review calendar by the Rhode Island Superior Court. If granted, the suit could be reviewed in four to six weeks, according to Mr. Burton.

Rhode Island workers comp rates were last increased in 1989, including a 32% increase in fully developed rates for the assigned risk plan and a 41% increase in loss cost rates approved for those insurers that write at least 1% of the market.

A wide-ranging reform package that took effect Sept. 1 was designed to reduce costs in the state workers comp system, though insurers warned that it would actually do the opposite (*BI*, July 30, 1990). ■

CHOOSE THE RIGHT PROS FOR YOUR CLUB'S DIRECTORS & OFFICERS INSURANCE.

It takes years of experience and training to become recognized as a pro. That's why the National Golf Foundation endorses the Executive Risk insurance plan from Chubb which is administered by FAI Insurance Counseling, an organization with more than 60 years experience helping golf associations and golf, tennis and dining clubs obtain the directors & officers coverage they need. This superior coverage is underwritten by Chubb who provides D&O insurance for over 25,000 non-profit organizations nationwide. Through Chubb, you get protection for actions taken by your directors, officers and *all* your employees and volunteers.

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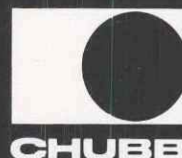

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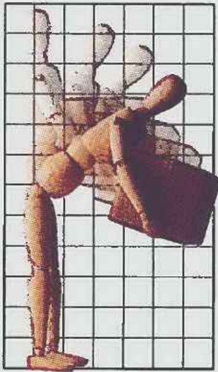
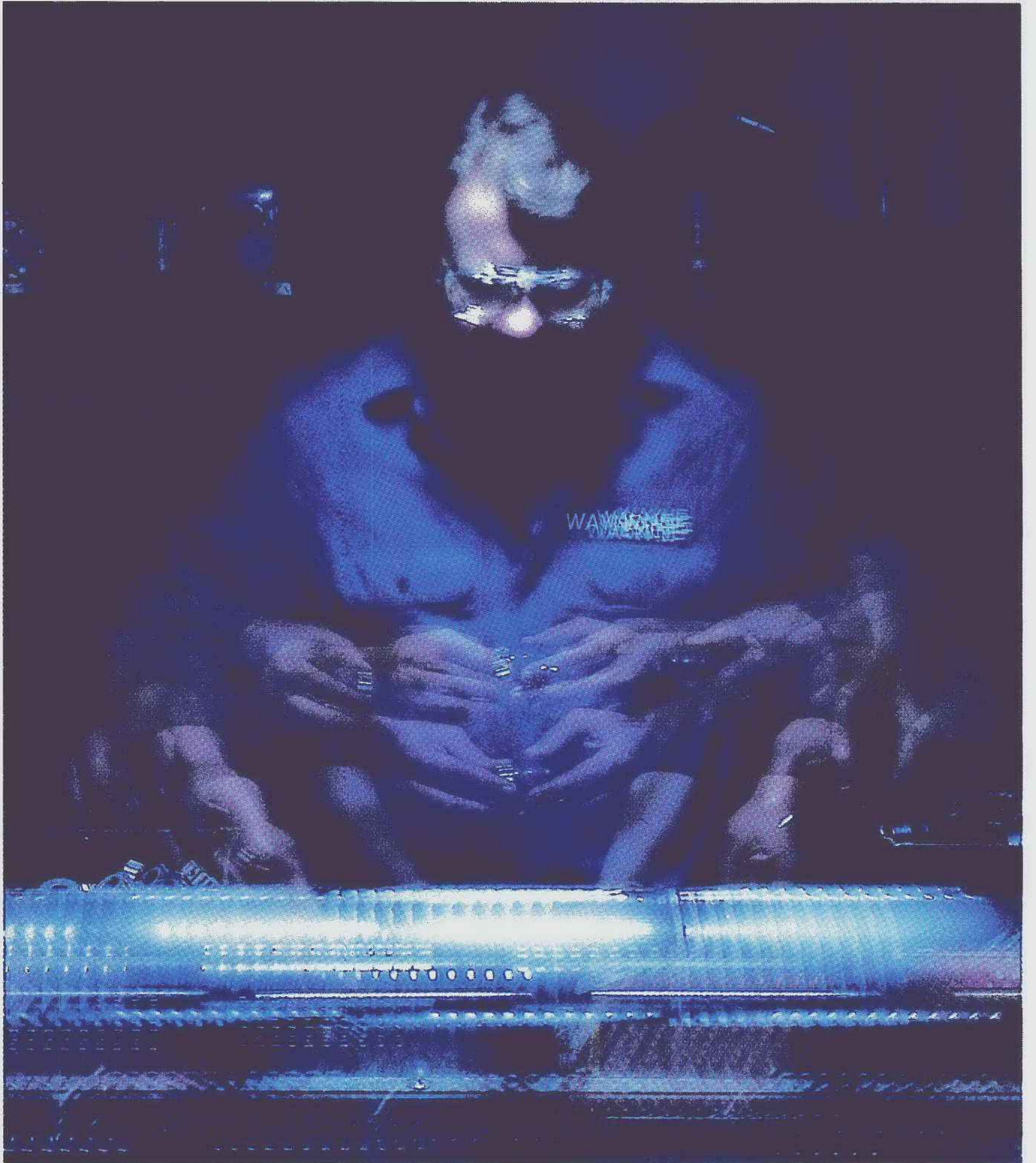


Workers can suffer serious injuries simply by doing their jobs. So, how does a business prevent injuries and control losses like these? One answer is ergonomics, or fitting the task to the worker. That is why Wausau Insurance held a national satellite teleconference for its customers. The seminar, "Controlling Workers Compensation Costs Through Ergonomics," originated from Wausau's Westwood Conference Center, a facility housing, among other things, three of the country's top loss control labs.



The interactive seminar, transmitted via satellite to 160 locations across the country, was conducted by a panel of Wausau professionals in loss control services, occupational health and claims handling. Their discussions focused on helping Wausau customers control cumulative trauma disorders such as carpal tunnel syndrome and back injuries, and helping injured workers become productive again through return-to-work programs.

Wausau loss control and claims professionals spoke with customers in 160 locations via satellite on controlling workers compensation costs through ergonomics and return-to-work programs.

Now, while an insurance teleconference seen by business people across the country is unique, the idea behind this one isn't. It's yet another example of the exceptional service customers have come to expect from Wausau Insurance.

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Study ranks 400 cities' health care costs

By MICHAEL SCHACHNER

Benefit beat

NEW YORK—Small employers in the greater Los Angeles area pay the most for traditional health care indemnity plans, while small employers in rural New York, North Carolina and Wisconsin cities pay the least, a new study finds.

And, though the study ranked cities based only on small-group indemnity plan costs, the rankings likely would be similar for large group indemnity plans covering 500 lives or more, benefits experts say.

The leading factors that drive small-group plan costs—demographics and regional managed care penetration—weigh equally on the cost of all indemnity plans, they say.

The study, conducted by Mark Alan Chesner, an actuary in the New York office of Seattle-based consultant Milliman & Robertson Inc., was based on the small-group manual rates of 16 of the nation's largest group health insurers.

The study examined the costs of a traditional indemnity plan covering hospitalization, surgical care, physician office visits, radiology, lab tests and prescription drug costs.

Plan costs were based on a $100 individual deductible and 80% employee coinsurance above the deductible.

Among the nation's 400 largest metropolitan areas, the city of Los Angeles and surrounding cities lead the United States in costs for a comprehensive indemnity plan covering a group of about 45 employees, the study shows. Indemnity costs in the Los Angeles area run from 44% to 73% higher than the national average of $365 per month per person.

Small-group indemnity plans in Glens Falls, N.Y., and several other small towns in New York, Wisconsin and North Carolina were found to be the least expensive plans in the country, with costs ranging from 25% to 27% below the national average.

"The difference in medical costs throughout the country is staggering," Mr. Chesner said.

"The main reason why is quite simplistic: The factors that drive costs differ greatly by area. Liability insurance costs, rent and salaries are just some of the subfactors causing health care costs to go up," Mr. Chesner explained.

Varying practice styles among physicians and social phenomena like crime and the AIDS epidemic also create a disparity in costs among different U.S. cities, he said.

Benefit consultants also point out that areas where much of the population is enrolled in managed care programs tend to experience the highest indemnity costs because healthier employees select the cheaper managed care options, leaving poorer risks to the indemnity plans.

"So much of the population in Southern California is covered by managed care that a study finding high indemnity costs (in the Los Angeles area) isn't surprising," said Bob Pollock, a principal with William M. Mercer Inc. in Los Angeles.

Glen Meister, a consultant with A. Foster Higgins & Co. Inc. in Los Angeles, agreed.

Mr. Meister also noted that there is "an oversupply of providers in the Los Angeles area, which, contrary to normal supply and demand rules, is driving indemnity costs up." Because supply exceeds demand, doctors charge their patients more than the national average to maintain their income levels, he explained.

In addition, doctors compete by offering the most technologically advanced care, which drives up costs.

Both Messrs. Pollock and Meister also agreed with Mr. Chesner's assessment that the survey's results would not have been dramatically different had the study focused on large group indemnity plans rather than small group plans.

Other major cities that ranked above the $365 national average include: Miami, $620.50 per month per person, or 70% higher; New York, $507, or 39% higher; San Francisco, $489, or 34% higher; Houston, $467, or 28% higher; and Chicago, $427, or 17% higher.

Some major cities that came in below the $365 national average include Seattle, $310, or 15% lower; Cincinnati, $318, or 13% lower; Minneapolis, $321, or 12% lower; and Denver, $347, or 5% lower.

The study reported that cities throughout upstate New York, northcentral Wisconsin and all of North Carolina were the least expensive in terms of indemnity costs.

However, several medium-sized Wisconsin employers disagreed with the survey's findings.

"I'd have to say that our experience contradicts the study," said Brian M. Dunnum, director of risk and benefits administration with Wausau Paper Mills Co. in Wausau, Wis. Wausau ranked as the fourth least-expensive city for small group traditional indemnity plans in the United States at $270 per month per person on average.

"We're battling health care costs tooth and nail. We have the bulk of our people in a local HMO, which has every managed care feature available and our costs are still higher than $270 per month per person," Mr. Dunnum said.

And, while the study ranked Green Bay, Wis., as the second-cheapest city for indemnity plans, the state's Health Care Administration office ranks Green Bay somewhere in the middle of Wisconsin cities in terms of overall health care costs, said Bill Dagneau, employee benefits administrator with Wisconsin Public Services in Green Bay.

Wisconsin Public Services' health care costs "are escalating at 20% to 25% per year. To say we have the world up here in terms of health care costs is wrong. Costs in other areas like New York and L.A. may be unconscionable, but they're still unacceptable here," Mr. Dagneau said.

And the $266 per month per person cost of indemnity plans for small groups in Glens Falls, N.Y., the least-expensive city for small group plans in the nation, "is not what I'd call low cost," said James Berg, president of the Adirondack Regional Chamber of Commerce, which includes Glens Falls.

According to Mr. Berg, the average wage in upstate New York is not keeping pace with health care inflation there.

"It's a lot to ask of a small employer to spend $3,200 on health insurance premiums for a secretary making much less than $20,000 per year," Mr. Berg said.

In North Carolina, there is less of an adversarial relationship between providers and payers, according to John Dulske, vp-human resources with Oakwood Homes Corp., a mobile home builder based in Greensboro, which ranked 379th in the survey.

"Our (relative) cost of living isn't any different than it is in Dallas or Atlanta, so health care isn't inherently cheaper. People here are just trying harder," he explained.

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A free copy of this survey is available from Mark A. Chesner, Milliman & Robertson Inc., 2 Pennsylvania Plaza, New York, N.Y. 10001; 212-279-7166.

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At issue

How do you gather employee feedback on benefit plans?

Guy Ames
Insurance Benefits Manager
Peter Kiewit Sons' Inc.,
Omaha, Neb.

As an employee-owned company, we encourage employee suggestions for benefit enhancements. During annual reviews, salaried employees are given the chance to comment on the benefits package. These reactions are reported to top-level executives. Through focus groups and benefits presentations at annual unit meetings, we solicit employee input on specific issues.

Michael R. Talaga
Benefits & Compensation Director
Spiegel Inc.,
Oak Brook, Ill.

We encourage feedback from our employees on a regular basis. We solicit feedback on our benefit plans through focus groups for targeted information. In our annual benefit statement, we ask for specific feedback and encourage employees to send in unsolicited comments. We also hold annual small group meetings to encourage our employees to respond on broad issues.

Joe Vinson
Director of Compensation and Benefits
Baker Hughes Inc.,
Houston

Baker Hughes has a very proactive approach to employee communications that is primarily administered by the benefit departments of our 26 autonomous divisions. This is traditionally done through on-site benefits orientation to both the employee and to his or her spouse. These 26 representatives are then able to communicate employee attitudes back to the corporate office.

Paul I. Newman II
Human Resource Manager
Transit Mix Concrete Co.,
Colorado Springs, Colo.

I have an open door to all employees all of the time. They are told through memos, payroll stuffers, group and individual training sessions that if they have any questions or problems to see me. We have no communication problems whatsoever, as I have a path worn in concrete to my door.

Compiled by Sara Harty

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Insider trading

Aetna Life & Casualty Co.: Charles F. Baird, director, purchased 152 shares of common stock at $32.73 per share on Sept. 16 and now directly holds 1,744 common shares.

Aetna stock was trading at $38.38 on Oct. 18.

Aon Corp.: The Josephine B. Minow Trust, beneficial owner, purchased 8,000 shares of common stock at $36.70 per share on Sept. 6 and now directly holds 10,000 common shares.

The Newton N. Minow Trust, beneficial owner, purchased 2,000 shares of common stock at $36.70 per share on Sept. 6 and now directly hold 5,000 common shares.

Aon stock was trading at $36.50 per share on Oct. 18.

Arthur J. Gallagher & Co.: John D. Stancik, vp, exercised an option for 16,400 shares of common stock at sold 5,000 shares of common stock at between $4.97 and $19.50 per share from Sept. 20 to Sept. 23. He now directly holds 28,032 shares.

Gallagher stock was trading at $19.50 per share on Oct. 21.

Humana Inc.: John H. Morse, officer, sold 1,500 shares of common stock at $31.33 per share on July 2. Mr. Morse also sold 9,000 common shares at between $31.08 and $31.33 per share from July 3 to July 8; another 22,500 shares at between $30.83 and $31.33 from July 8 to July 9; 26,500 shares at $31.33 per share from July 9 to July 10; and 19,000 shares at $31.33 on July 10. He now directly and indirectly holds 22,184 common shares.

Wayne T. Smith, officer, sold 123,000 shares of common stock at between $32.08 and $32.83 per share from July 1 to July 23 and now directly and indirectly holds 51,424 common shares.

A. Neal Westermeyer, officer, exercised an option for 15,002 shares of common stock and sold 15,002 shares at between $15.33 and $30.75 per share on July 5 and now directly and indirectly holds 617 common shares.

William C. Ballard, officer and director, sold 45,000 shares of common stock at between $32 and $33.42 per share from July 1 to July 31 and now directly and indirectly holds 134,881 common shares.

W. Larry Cash, officer, exercised an option for 15,000 shares of common stock and sold 9,000 shares at between $13.63 and $31.33 per share from July 1 to July 12. In addition, Mr. Cash sold 3,000 shares of common stock at $33.42 per share on July 31. He now directly and indirectly holds 9,843 shares.

George G. Schneider, divisional director, exercised an option for 13,249 shares of common stock and sold 14,675 common shares at between $11.42 and $33 per share from July 1 to July 30 and now directly and indirectly holds 4,852 common shares.

Humana stock was trading at $266.30 per share on Oct. 16.

Poe & Associates Inc.: William F. Poe, chairman, purchased 5,429 shares of common stock at between $11.80 and $12 per share on Sept. 19 and now directly and indirectly holds $1.27 million shares.

Poe & Associates stock was trading at $11.50 per share on Oct. 18.

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Insider Trading, compiled by Invest/Net Trading Group Inc. of fort Lauderdale, Fla., from reports filed with the Securities and Exchange Commission, tracks stock sales and purchases by insurance industry directors and officers. The column is distributed by Tribune Media Services Inc.

Opinions

A nightmare for businesses

"JUST WHEN YOU thought it was safe. . . ."

No, this isn't an advertisement for the latest "slasher" movie playing at your neighborhood cinema, though the message is filled with horror for businesses everywhere.

Rather, just when businesses thought they finally were seeing some relief from a long string of outlandish punitive damage awards, a Chicago jury has handed down a verdict far more frightening than the original "Nightmare on Elm Street" or any of its seemingly never-ending sequels.

The nightmare in this case isn't Freddy, but the $124.6 million in punitive damages assessed by the jury earlier this month against The Upjohn Co. Upjohn manufactured an anti-inflammation drug that an ophthalmologist in 1983 mistakenly injected directly into the eye of a patient, rather than around the outside of the eye. The patient, now 70, lost sight in the eye, which eventually had to be removed. Along with the punitive damages, the plaintiff was awarded $3 million in compensatory damages.

Without doubt, the punitive award should be drastically lowered—if not eliminated—on appeal. Upjohn never recommended that the drug be injected directly into an eye or even near the eye in the information sheet that accompanied the drug. In fact, Upjohn says it attempted to introduce evidence during the trial that it recommended in 1980 that the Food and Drug Administration allow Upjohn to change its warnings to physicians to spell out that the drug was not to be used around the eye. However, the court blocked the introduction of that evidence.

Upjohn's biggest offense was that it is a large company with deep pockets that fell prey to a creative plaintiff's attorney.

It is interesting to note that no damages were assessed against the ophthalmologist.

The award against Upjohn is exactly the type of horror story that businesses and others have had in mind over the years when they asked the Supreme Court to review the constitutionality of exorbitant punitive damages.

The Supreme Court finally answered in March when it ruled that the Constitution requires proper jury instructions in cases involving punitive damages and significant judicial review of punitive awards, sending a signal to Congress, state legislatures and judges that unbridled punitive damages is a problem ripe for reform.

Since then, several courts have rejected outlandish punitive awards assessed by juries and affirmed by trial court judges. The appellate courts have ordered the lower courts to reassess the punitive awards or, in at least one case, hold a new trial.

And, earlier this month, a federal appellate court—citing the March Supreme Court decision—ruled that South Carolina's law governing punitive damages is unconstitutional because it gives juries unrestrained discretion to award punitive damages in violation of a defendant's right to a fair trial (*BI*, Oct. 21).

But this series of court victories for business is now interrupted by the outlandish award against Upjohn. While the Supreme Court sent a strong signal that is being heard by appellate courts across the land, the word obviously did not filter down to the trial court judge and, of course, the jury in this case.

Challenges to the constitutionality of excessive punitive damages will continue to come before the Supreme Court. Let's hope the court, moving forward from its March decision, will give further guidance to lower courts so that we do not see a series of frightening sequels to the Upjohn award.

Letters

Federal regulation of MEWAs is necessary

To the editor: We read with interest the Sept. 30 editorial, "MEWA Certification a Must." We could not agree more in that federal regulation of multiple employer welfare arrangements should be a high priority. The use of MEWAs is critical to the ability of the small employer community to provide employee benefit plans.

Without MEWAs, whether insured or self-funded, there would be no market for the small employer.

It is imperative that the industry support H.R. 2773 introduced in June by Rep. Thomas E. Petri, R-Wis. (*BI,* July 22). H.R. 2773 would establish stringent federal standards, including actuarial, accounting, reserves and mandatory stop-loss/excess insurance. In addition, the bill includes strict conflict-of-interest provisions and the exclusion of TPA-directed MEWAs.

Under the Petri bill, MEWAs would be required to register with the Department of Labor and obtain a certificate of operation. To obtain the certificate, they must meet all the federal standards as outlined in H.R. 2773.

Those MEWAs that meet the federal standards and obtain a certificate can operate free of state regulation under ERISA. Those that fail to obtain a federal certificate would be subject to state regulation. This system will once and for all end the jurisdictional debate of who has the right to regulate MEWAs.

Clearly the federal government is in the best position to regulate MEWAs under ERISA. After all, the Department of Labor has the experience as all benefit plans have been subject to ERISA since 1974.

We commend you for your editorial on this important subject and we hope Congress will act promptly so the properly designed MEWAs that are providing a value to the small employer community can continue to do so and the unscrupulous operators can be shut down. H.R. 2773 will help to achieve this goal.

James A. Kinder
Executive Vp
Self-Insurance Institute of America Inc.
Santa Ana, Calif.

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

AIDS education opens eyes

To the editor: I want to applaud your excellent coverage of the AIDS issues facing American business in your Oct. 7 issue. You presented the issues in a comprehensive and illuminating manner. This is a problem that is not going to go away—and one that will only get worse before it gets better. As you so aptly pointed out, we can no longer hide our heads in the sand hoping it will not affect us.

I was especially pleased with the emphasis you put on educating people about the AIDS disease and those who have tested positive for the AIDS virus. I too feel it is only through education we will be able to help those who need us most: the men and women living with the disease.

Please keep up the good work and continue to try to open our eyes to issues such as this. It is deeply appreciated and needed.

R.L. Smith
Overland Park, Kan.

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Megatrends

Continued from page 3

"Moral standards have fallen, and people tend to exaggerate and falsify claims," he said.

But along with market pressures decreasing insurers' profits, climactic pressures also are having an adverse effect, Mr. Dlugolecki said.

For example, an increase of 5 mph in the average speed of windstorms can double the cost of the damage, he said. "Just a small increase in the violence of events leads to an enormous increase in its impact."

In addition, marginal changes in temperature alone can have a big impact on the environment, he said.

For example, over the past 1,000 years, the average temperature in Britain has only varied by one degree Celsius. Yet, in that time, sandstorms produced sand dunes 100 meters high (330 feet); a trade war between Britain and France was waged over wine, when a warming in Britain's climate created a better environment for growing grapes; and Eskimos arrived in Scotland in kayaks after riding down Arctic ice floes, Mr. Dlugolecki said.

Now, fluctuations in temperature are becoming more frequent in Britain, he said.

In the 1960s, there was on average one hot month and 0.7 cold months per year; in the 1970s, there were 1.6 hot months and 0.9 cold months per year; in the 1980s there were 2.1 hot months and 0.8 cold months annually; and so far in the 1990s there have been five hot months and 0.6 cold months, Mr. Dlugolecki said.

"Britain mirrors the global trend, and 1990 was the warmest year ever recorded," he said.

According to Mr. Dlugolecki, the implications of global warming include: African and South American diseases spreading north; conflicts between peoples over water supplies; a greater awareness worldwide of environmental risks; and the opening of new frontiers. For example, melting in the Arctic may lead to the opening of the Northwest passage, he said.

The reasons for changes in weather conditions include an increase in volcanic activity, sunspot cycles and continental drift, he said.

Man-made changes also have had an effect, said Mr. Dlugolecki. "Pollution, changes in the water table due to man's activities and the production of man-made gases like chlorofluorocarbons (or CFCs), have all had an effect."

The emission of gases in particular has enhanced what is known as the Greenhouse Effect, he said.

The reason the climate is conducive to life is because the atmosphere is the correct thickness to retain enough of the sun's rays to remain warm and release enough rays to avoid overheating, Mr. Dlugolecki said.

"However, man's industrial activity has led to the production of carbon dioxide, methane and CFCs, and these gases have a huge capacity to absorb solar radiation—and that is why we need to be worried about producing them," he said.

And although scientists are reluctant to confirm that there is a fundamental change in climate, United Nations forecasts on future world temperatures predict hotter times ahead, Mr. Dlugolecki said.

In 2030, the United Nations predicts, the U.S. prairies will be warmer by three degrees Celsius; India will be 1.5 degrees Celsius warmer; sub-Saharan Africa will be also be 1.5 degrees Celsius warmer; and both the Mediterranean and Australia will be two degrees warmer, he said.

Global warming has wide-ranging implications for insurers, Mr. Dlugolecki said.

The immediate effect will be on property damage. He foresees more flooding as sea levels rise and thunderstorms increase in the winter, as well as more subsidence claims and forest fires as the ground dries up in the summer.

However, these losses may be marginally offset by a reduction in freezing weather, Mr. Dlugolecki added.

Insurers will have to meet many of the higher damages costs, since many governments are unwilling to spend public money on clearing up disasters, yet they at the same time pressure insurers to cover natural perils, he said.

And insurers may find it difficult to increase premiums to pay for the losses, Mr. Dlugolecki said.

"Everyone is reluctant to lose market share, and everyone argues that the storms won't happen again—although I hope I have shown that this is not the case," he said.

Other future worries for insurers and risk managers include demographic changes, said John Kneen, managing director of Towers, Perrin, Forster & Crosby Inc. of New York.

"This is a good year to be examining the effect of demographic changes. We have seen thousands of workers expelled from Kuwait and sent back to their own countries, and in Germany we have seen violence when masses of workers from the East flooded the West," he said.

The future will see even greater changes, Mr. Kneen said.

In 1985, the total world population was 4.8 billion, but by 2020 this will rise to 7.8 billion, according to Mr. Kneen.

"In 1985 we had a high proportion of young people, but by 2020 there will not be such a wide base. There will be more older people and far fewer youngsters," Mr. Kneen said. Fewer young people could mean labor shortages, he said.

However, partially offsetting this trend will be the inclusion of more women in the workforce, he added. This will boost production, but will also bring social changes, he added.

Changing educational patterns also may result in a more global workforce, Mr. Kneen said, as educated workers in countries where there are not enough jobs seek opportunities elsewhere.

In 1970 there were 150 million people in high schools worldwide, but by 1986 the figure had risen to 300 million. The corresponding figures for colleges are 25 million and 60 million, Mr. Kneen said.

And the increase in educational standards is not confined to the West. For example, in South Korea 95% of the population has a high school education. "There is no way that their economy can absorb all of that talent," he said.

Other areas that are overflowing with talented people include: the Philippines, Egypt, Pakistan, Jordan, Mexico, Central America and North Africa.

Countries that are employing relocated workers include: Kuwait, the United States, Germany, France and Canada, Mr. Kneen said.

This increased globalization of the world's workforce has led to industrialization in areas not previously known for their highly developed industries, but have been able to attract investors and educated workers for specific industries, Mr. Kneen said. Some examples include the high-tech industry in Singapore, computer software in India and clothing in China, he said.

Mr. Kneen predicted that in the future, demographic changes worldwide will result in more strikes, since labor will be in short supply; more diversity in property risks as companies change locations; more attention being paid to currency and political risks; changes in liability claims to include more directors and officers liability claims and new claims like compensation for sexual harassment, he said.

Changing weather and population patterns will particularly affect risk managers in several ways, said J. Brady Young, a partner in Boston at Tillinghast, a division of Towers, Perrin, Forster & Crosby Inc.

Typical concerns of risk managers in the future will include: growing catastrophe exposures; insurer insolvency caused by large catastrophe claims; an increase in litigation; a tightening of regulations, especially U.S. health and pension laws as the U.S. workforce changes; unstable budgets when the soft market ends and corporations find that they have to pay double for their insurance; lack of support from senior management; and a lack of information about new risks.

"It is no wonder that some risk managers get ulcers when they look at this list," Mr. Young said.

Risk managers will have to assess and report the potential problems to senior management, he said.

"Senior management might not like it; they may ignore it, but at least they will be able to make an informed decision," Mr. Young said.

The end result for risk managers will be that more reliance will be placed on risk managers who "add value," Mr. Young said.

The added value will come from "those risk managers who can provide strategic input on risk issues, maintain stable risks and be risk control architects," he said.

"Dynamic organizations facing demographic and other fundamental changes, as well as normal insurance concerns, need professional risk managers," Mr. Young said.

The session was moderated by David Ovenden, group risk and insurance manager at The Wellcome Foundation Ltd., a multinational drug company based in London. ■

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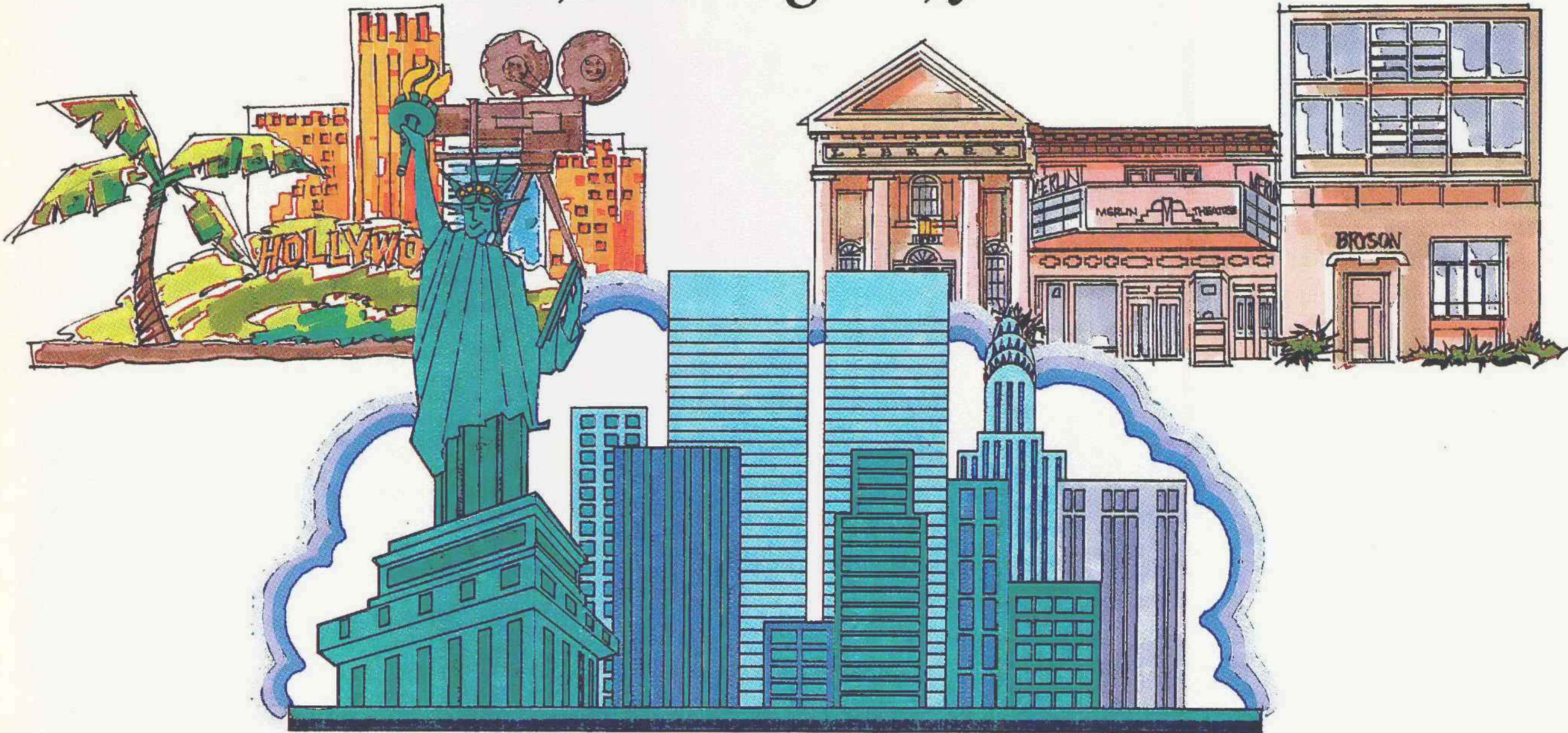

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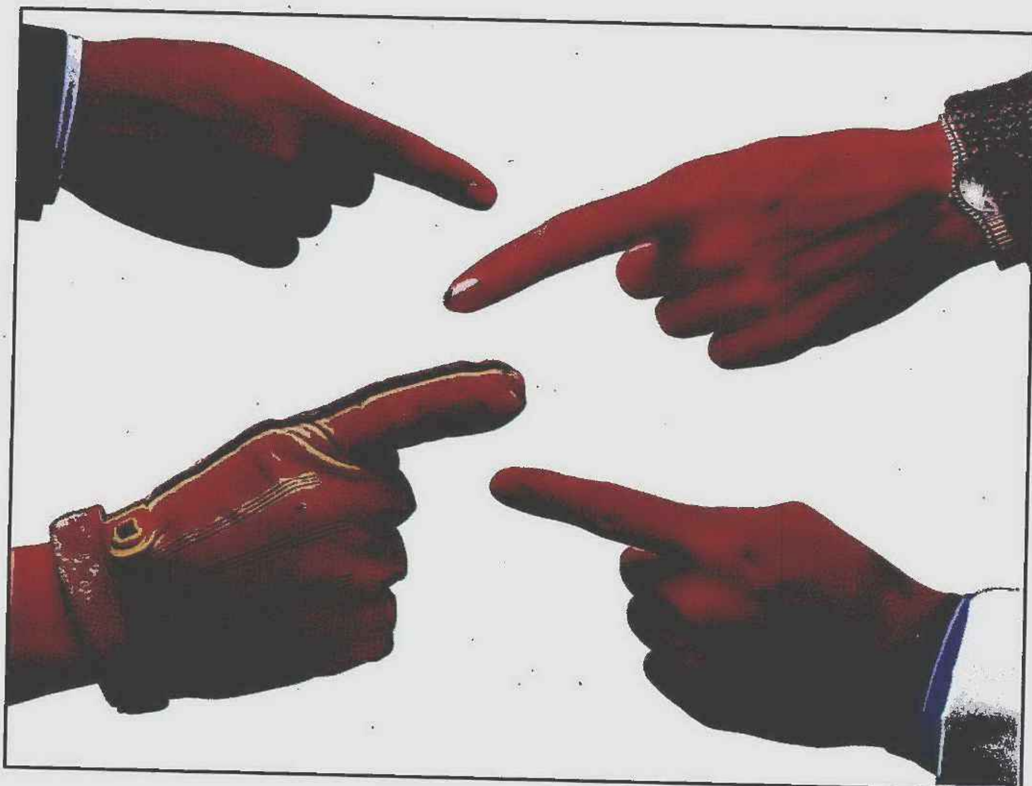

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Ergonomics

Continued from page 3

of using keyboards and VDUs also are known, according to Mr. Rogers. As a result, he predicted that those with related disabilities will have "a very substantial chance of success in pursuing any claims for damages."

Mr. Rogers made his remarks during a seminar at the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

Other speakers agreed that computer use could cause cumulative injuries and that employers need to identify and eliminate these and other workplace hazards.

"Given the growing numbers of workers in the technically advanced office of the '90s, surrounded by word processing units, personal computers, telefaxes and telephones, an influx of claims resulting from repetitive motion syndrome, chronic eye strain and work-related stress is probable," said Maryellen Castro, a casualty claims manager for CIGNA Insurance Co. of Europe S.A.-N.V. of Brussels, Belgium.

Repetitive motion strain injuries are "snowballing," said Ray Churchill, regional claims manager of Iron Trades Employers Insurance Assn. Ltd. in Skelmersade, England.

And, he agreed that there is the potential for new claims relating to the use of VDUs, stress and perhaps passive smoke in the workplace.

Mr. Churchill challenged the audience with the question: "How good a risk manager are you?"

He recalled that employers were aware of noise-induced hearing loss suffered by workers in the United Kingdom in the early 1960s, yet "very little action was taken" to prevent the injury. Large employers did not have "credible policies" on noise in the workplace until the mid-1970s, he said.

Mr. Churchill suggested that "those with knowledge failed to convince those in control of the extent of the problem," not only regarding noise-induced hearing loss, but also the use of asbestos.

Those responsible for controlling exposures in the workplace have to know the risks and their effects on employees and adopt adequate precautions, he advised. To do so, employers should monitor employee health.

Directives being introduced by the European Community increase employers' responsibility to assess risks and prevent workplace injuries, Ms. Castro emphasized.

Two directives, the one on VDUs and another on carcinogens in the workplace, are expected to be adopted by E.C. member states by Dec. 31, 1992.

The directives are "guideposts to risk managers and insurers, showing us where future areas of concern lie," Ms. Castro said.

The directive on the use of VDUs, she said, would require employers to:

- Update work station equipment to guarantee state-of-the-art ergonomics.
- Assess work stations for risks to eyesight, physical problems and mental stress.
- Implement loss prevention measures identified.
- Use work stations meeting minimal requirements when installing new work stations after Dec. 31, 1992, and updating in-service work stations by Dec. 31, 1996.
- Disclose to employees the health and safety risks associated with work stations and what is being done to comply with safety rules.
- Train employees in the proper use of VDUs.
- Provide for periodic work breaks or changes in activity.
- Supply eye tests before and during use of VDUs

In addition, the directive reinforces a worker's right to claim damages for mental stress, she said.

The E.C. directive on worker exposure to carcinogens "is wide-ranging," Ms. Castro said, applying to "any activity in which workers are likely to be exposed to carcinogens."

Among the requirements imposed on employers by this directive are:

- Identification/listing of possible/probable carcinogenic substances.
- Risk assessment before and during activities.
- Reducing the use of carcinogenic products if technically possible.
- Training workers and advising them of potential health risks.
- Health surveillance of workers, prior to exposure and at regular intervals thereafter.
- Reporting any cases of cancer to the appropriate health authorities.

With disabilities 'snowballing,' Ray Churchill asks: 'How good a risk manager are you?'

Ms. Castro noted that "risk assessment and loss prevention" are emphasized under the directives, which could be a double-edged sword for employers. "On one hand, loss prevention efforts will hopefully be more successful. On the other hand the burden of proof will not be as difficult to meet for any prospective claimant," she said.

Ms. Castro encouraged employers to invest "in risk identification procedures provided either by in-house staff or by outside consultants. Once these hazards are identified, action must be taken to minimize them by affording protective equipment to staff and or modifying systems of work."

Mr. Rogers also warned employers that he suspects "that in the course of the next few years a chemical which is widely used in industry will be identified as a particularly vicious carcinogen."

"With the development of medical science, there is a greater possibility that in the future workers will be able to establish that link they need to establish between some feature of their employment and the injury or illness from which they suffer," he said.

Mr. Rogers also advised employers to monitor the condition of the

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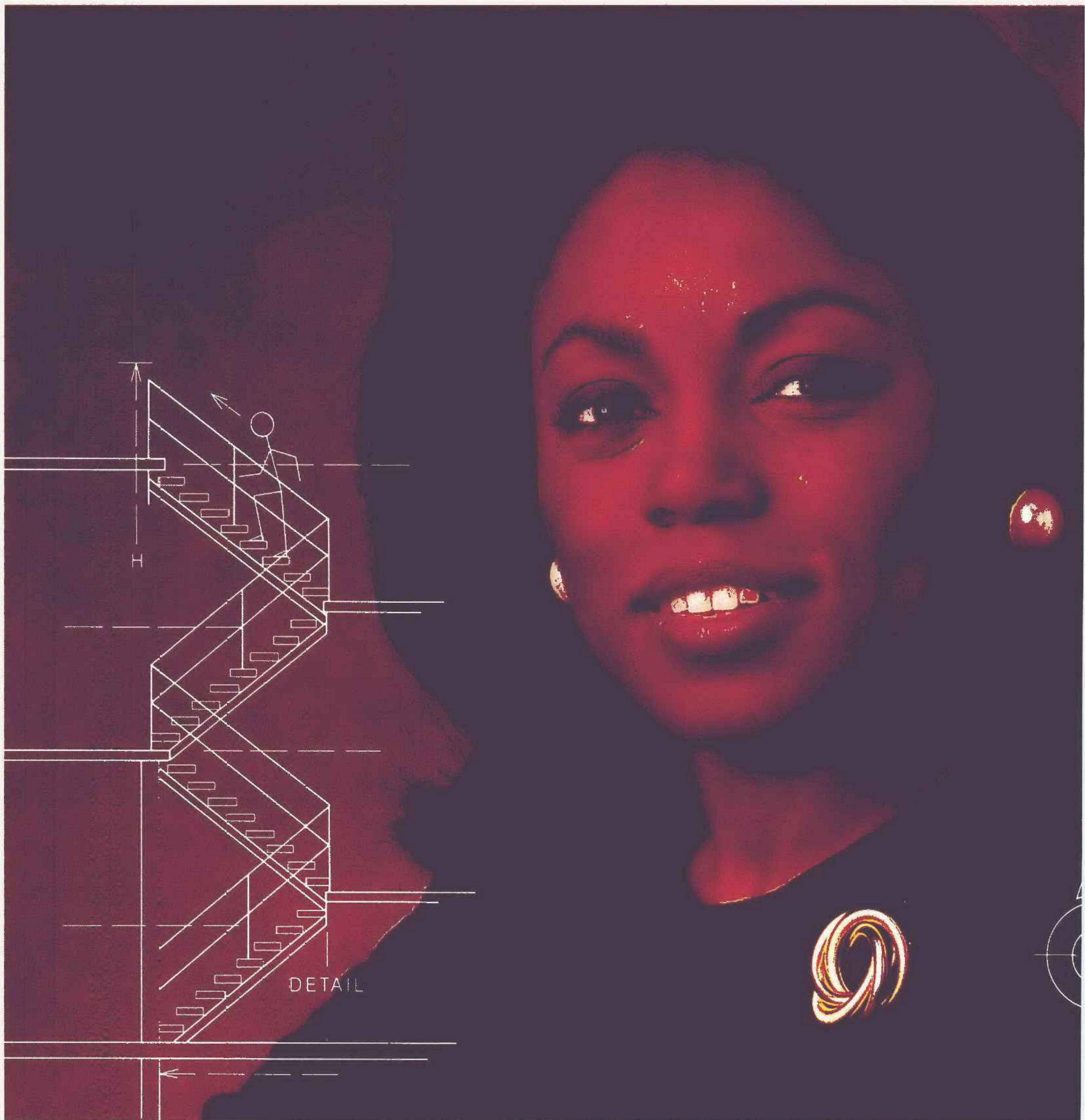

OLD PROS ON

Continued from previous page
air in offices, especially for ozone. "We have too little ozone in the atmosphere where it protects us from the rays of the sun. We have too much ozone in the office environment," where it can damage workers' respiratory systems, Mr. Rogers said.

Workplace air quality also needs to be monitored for "sick building syndrome," which occurs when stale air is re-circulated and can cause respiratory ailments, he noted.

Ms. Castro suggested that employers go beyond providing a safer workplace to adopting "wellness programs" for employees. These programs can include physical exercise breaks during working hours and courses on nutrition, weight control, tobacco addiction and stress reduction, Ms. Castro said.

"You may consider wellness far beyond the scope of your risk management responsibilities," Ms. Castro observed. "Yet, if staff are healthier to begin with, the contributing factors to disease such as stress, obesity and coronary and respiratory problems will be less likely to undermine your loss prevention efforts," according to Ms. Castro.

Insurance companies also have a role to play in protecting workers' health, Mr. Churchill suggested. Premiums should reflect exposures so that there is an economic benefit to employers to reduce risks, he said.

One member of the audience agreed, suggesting that risk managers need to show that loss prevention will reduce premiums to obtain management support for the programs.

Mr. Churchill also suggested that insurers should "air knowledge" to policyholders about how to protect workers and that protecting them will ultimately cost less than failing to do so.

"We have to market the message that an ounce of prevention is worth a pound of cure," agreed Ms. Castro.

Mr. Rogers said the most effective way to enforce safety regulations may be to "tell an individual that he can be brought before the courts and punished personally" for failure to do so.

Health and safety authorities in the United Kingdom, he noted, "have made it clear that they intend not to prosecute companies but individuals—company directors and site foremen—where they believe there has been a blatant disregard for the safety rules and injury has followed."

David Ovenden, group risk and insurance manager of The Wellcome Foundation Ltd., a London-based multinational pharmaceutical company, moderated the session. ■

Cumulative trauma cost covered by E.C. nations

MONTE CARLO, Monaco—Workers suffering cumulative trauma injuries in European Community countries do not face the same system hurdles to obtain compensation as U.S. workers do, an insurance company executive says.

"The medical costs incurred will be covered somewhere within the system," according to Maryellen Castro, casualty claims manager for CIGNA Insurance Co. of Europe S.A.-N.V. of Brussels, Belgium.

In the United States, workers may find it difficult to prove that their injuries are work-related and therefore covered by workers compensation systems. Or, their injuries may surface too long after employment to qualify for benefits.

Ms. Castro outlined the compensation systems in the European Community at a seminar in Monte Carlo earlier this month held during the Risk Management Forum, co-sponsored by The European Assn. of Risk Managers and the Risk & Insurance Management Society Inc.

All 12 E.C. countries have national health insurance plans subsidized by taxes on the employer and the employee, according to Ms. Castro.

In addition, seven of the countries have state-run workers compensation plans that are also jointly subsidized, she said. They are: Spain, Greece, Denmark, France, the Netherlands, Italy and Germany.

Belgium, England and Ireland do not maintain state-run workers compensation systems.

In Belgium, workers compensation insurance is available from commercial insurers.

In England and Ireland, national health insurance plans provide medical treatment for injured workers.

All the E.C. countries permit injured workers to sue their employers for negligence for work-related disease or injury, she noted. The damages sought represent those not reimbursed by the state-run programs.

Some of the state monopolies also may assert a lien for benefits paid if employer negligence is proved, Ms. Castro added.

"The state monopolies in Italy and France exercise this right," she noted.

"However, France requires that the concept of inexcusable fault be satisfied before damages are awarded, and Germany requires that the employee prove that the employer caused the injury intentionally," Ms. Castro said.

As a result, if a worker wins a suit against an employer in Germany, insurance would not cover the employer.

Worker suits against employers are most common in Ireland and the United Kingdom, Ms. Castro said.

"The remaining E.C. countries do not share the same frequency of employers liability litigation and the levels of general damages awarded are lower," Ms. Castro said.

—*By Kathryn J. McIntyre*

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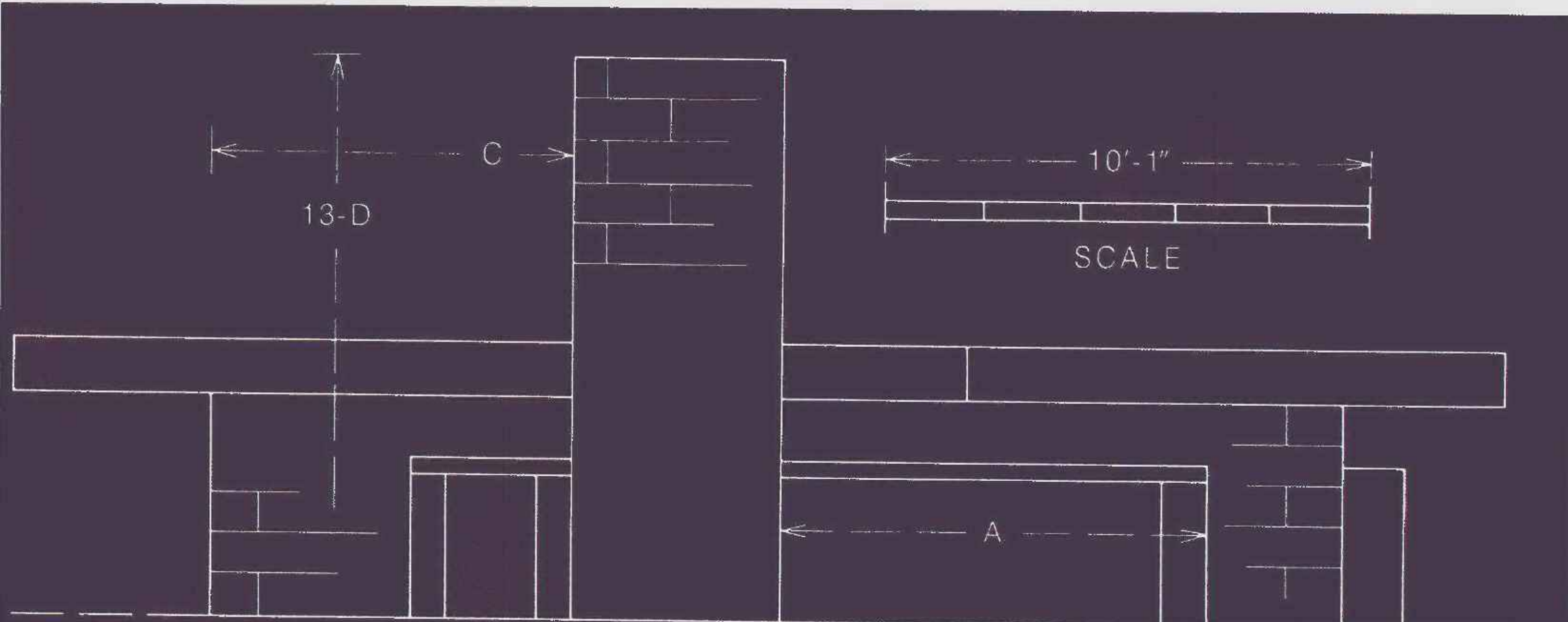

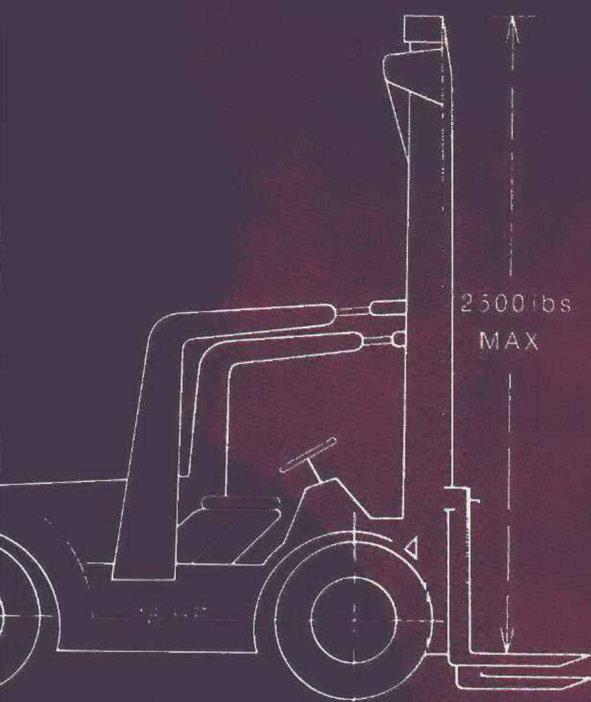

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Speed, planning keys to surviving a loss

By KATHRYN J. McINTYRE

MONTE CARLO, Monaco—Insurance recoveries alone will not fully restore a business after a major loss, a loss control expert advises.

"Survival depends on rapid recovery" of a business's operations, according to John Woodcock, director of operations for the Risk Services Division of Sedgwick James (London), a unit of Sedgwick Group P.L.C.

A company that is not back in business quickly after a major loss can lose its share of the market in which it operates, as well as the value of its stock, if it is publicly traded, he noted.

For business operations to be rapidly returned to normal after a major loss requires a contingency plan that is systematic, methodical, effective and reliable, Mr. Woodcock said during a session at the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. in Monte Carlo earlier this month.

Others speaking at the session discussed the role of the loss adjuster before and after a major loss occurs.

Mr. Woodcock advised a company developing a contingency plan to:

- Evaluate the risk of a major loss.
- Assess the impact on the business from a major loss.
- Develop realistic scenarios for responding to various losses.

"The more precise the scenario, the more effective the plan" can be, he explained.

- Develop recovery strategies and options, including identification of what parts, if any, would be needed to restore the business operations and how quickly the business must be back in operation to survive.

Mr. Woodcock suggested that the team that develops the contingency plan be coordinated by the risk manager and include people from operations, the legal department, communications, the finance department and senior management.

Marcel Van Reeth, corporate insurance manager at British Petroleum P.L.C. in Antwerp, Belgium, who moderated the session, noted that the risk manager is especially qualified to coordinate the team because he or she "is impartial."

Others on the team cannot be impartial, because as part of developing a contingency plan, they must admit that their areas could fail to meet their responsibilities after a major loss, he explained.

The cost of properly developing a contingency plan is "low compared with the crisis cost savings," Mr. Woodcock emphasized.

Panelist Mortimer J. Terry, senior consultant with RDI Consultants in London, suggested that companies involve their loss adjuster in evaluating the threat of a major loss, valuing property, determining how the company would respond to a major loss and what it would expect its insurers to do.

RDI Consultants is a branch of Swiss loss adjusters Robins Davies International S.A.

This pre-loss involvement of a loss adjuster "puts the adjuster several steps ahead after a major loss," he explained.

Panelist Andrew J. Lund, senior director of Robins Davies & Little in London, which is the U.K. subsidiary of Robins Davies International, agreed that the loss adjuster should be involved in specialized risk surveys and the development of the contingency plan.

This pre-loss contact will improve the adjuster's performance after the loss in assessing the damage, evaluating the loss and negotiating the claim payment, he explained.

"The contingency plan must refer to the claims adjusting process," Mr. Lund added, with a claims adjuster selected before the loss occurs.

"Good communications are essential so each knows what he must do," he said.

In addition, pre-loss communications between the client and the adjuster gives the adjuster knowledge of the business and the insurance coverage, which will avoid delays in the adjusting process, according to Mr. Lund.

"There are no significant costs" in involving the adjuster in contingency planning, he noted. ■

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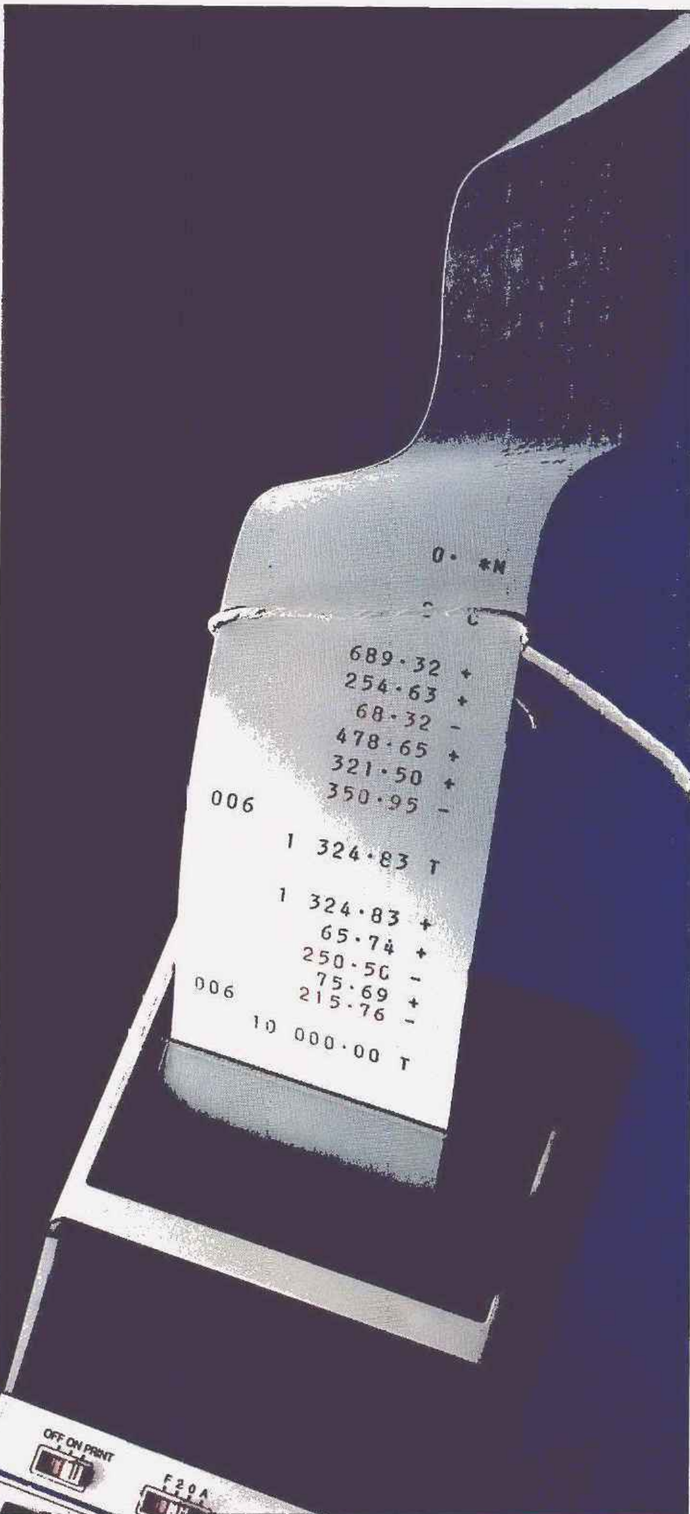

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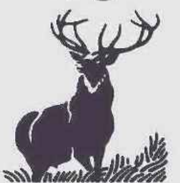

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Changing market

Continued from page 3

Insurance Management Society Inc. in Monte Carlo earlier this month.

Assuming that businesses will continue to transfer their risk to reduce bottom-line losses, "I believe that the insurance market will be the preferred vehicle for transfer of risk, even by the largest industrial concerns," predicted W. Rob White-Cooper, chairman of the operations group coordinating the non-U.S. activities of Sedgwick Group P.L.C.

But in the European Community, the number of insurers that will have the resources to meet future insurance requirements for major industrial companies "will contract significantly," Mr. White-Cooper predicted.

Already, mergers and acquisitions in Europe have left "five major and increasingly dominant insurance groups," he said.

Although Mr. White-Cooper did not identify those insurers for his audience, he said after the session that they are: Allianz AG Holdings of Munich, Germany; Zurich Insurance Co. of Zurich, Switzerland; Union des Assurances de Paris of Paris; Assicurazioni Generali S.p.A of Trieste, Italy; and Prudential Corp. P.L.C. of London. Internationally, Mr. White-Cooper would add American International Group Inc. of New York and CIGNA Corp. of Philadelphia.

"Just as throughout the world there will be dominant economies and within those economies dominant multinational industrial groups, so we can expect dominant companies to emerge within the insurance sector," he told the audience.

In this event, it is likely that multinational clients will need "more than ever before" professional and independent advice to explore, design and implement alternatives to the dominant insurers' offerings, said Mr. White-Cooper. "This becomes more imperative with the likely hardening of some market sectors."

Therefore, it can be "expected" that pan-European and global professional intermediary firms "will gain in strength," he said. Mr. White-Cooper believes that eventually there will be three multinational brokers that can provide the kind of service that multinational clients will need.

And which he again did not name these firms during the session, he said afterward that these brokers would include Marsh & McLennan Cos. Inc. of New York and Sedgwick. "I leave you to decide on the third," he said.

Mr. White-Cooper also looks forward to the day when the term "broker" is eliminated. "We brokers generally deplore the term 'insurance broker,' as it does not really illustrate our function today," he said. "Rather, we should be known and seen as independent risk advisers and insurance intermediaries, the broking function presently being a part of our resources which may or may not be relevant when advising clients."

Meanwhile, although insurers are offering loss control and other risk management services, independence and objectivity are essential when offering this advice, said Mr. White-Cooper.

An insurer "is unlikely to recommend a course of action diametrically opposed" to its interests, Mr. White-Cooper explained. "At the risk of being controversial, the use of insurers' 'in-house' risk control resources is not always in the client's best interests."

In contrast, independent intermediaries can offer a range of impartial services, including: professional counsel, risk strategy alternatives, access to world insurance markets, risk management systems and detailed knowledge of managing risk and insurance programs, he said.

"I would argue that it is not the insurer or, indeed, the reinsurer" that can provide these services, said Mr. White-Cooper. "It is only through the professional intermediary."

Brokers and independent intermediaries in Europe are dominant only in the London market and are not as frequently used in other Continental European markets, he noted. However, the European Commission is recognizing the important role of the intermediary and is considering a recommendation to regulate insurance intermediaries, he said.

According to Mr. White-Cooper, the proposal would establish:

- Minimum qualifications for intermediaries.
- Regulation of intermediaries' business practices.
- Compulsory registration for qualified intermediaries.
- A clear distinction between underwriting agents and independent intermediaries.

"To my mind, only when this has been achieved can the (European) Community really boast that it has established an independent intermediary or adviser service capability throughout Europe," Mr. White-Cooper said.

But UAP President Jean Peyrelevade, another panelists, disagreed with Mr. White-Cooper that brokers should be the only ones to offer risk management services. He said in his native French that Mr. White-Cooper's remarks were "a very British way of looking at things."

Mr. Peyrelevade said that in the future, underwriters won't "be treated just as sellers of capacity."

Insurers are in a better position than brokers to understand the loss trends in a company or location, because the underwriters keep statistics that show these trends, he added. "We won't leave brokers with the monopoly in that sector of the market," said Mr. Peyrelevade.

Banks also are now selling financial advice "and no one thinks this is unusual," he said.

In contrast to Mr. White-Cooper's scenario, he believes that insurers and brokers will work together at times and compete at others.

However, Mr. Peyrelevade noted that insurers and brokers fight hard for the large industrial risks in Europe—"for publicity and prestige"—rather than for the premiums that altogether "don't represent much." There are only a few thousand companies in this category in Europe, probably representing only 5% to 10% of worldwide insurance revenue compared with the bulk of insurance which is written in personal lines and life coverage, he said.

Recently, too, insurers and reinsurers have been losing a lot of money on industrial risks, Mr. Peyrelevade pointed out. "Can insurers and reinsurers carry on insuring industrial risks?" he asked.

Insurers can only survive by continuing to manage premiums correctly, he said. And the way to do this is to investigate the risk and consider loss control techniques, he commented.

"Though there are some rate increases, I haven't seen any action to live up to people's statements" that the hardening market is here, said Mr. Peyrelevade, adding that he thinks it will take a long time for the insurance industry to return to profitability.

In the meantime, Mr. Peyrelevade said, he has told UAP employees to refuse to accept business that is written at a loss. "I hope other companies won't cross-subsidize" policyholders, he said. "UAP won't. If our competitors continue to do so, they will go under. . . . We'll calculate rates more precisely in my group."

Mr. Peyrelevade thinks that the

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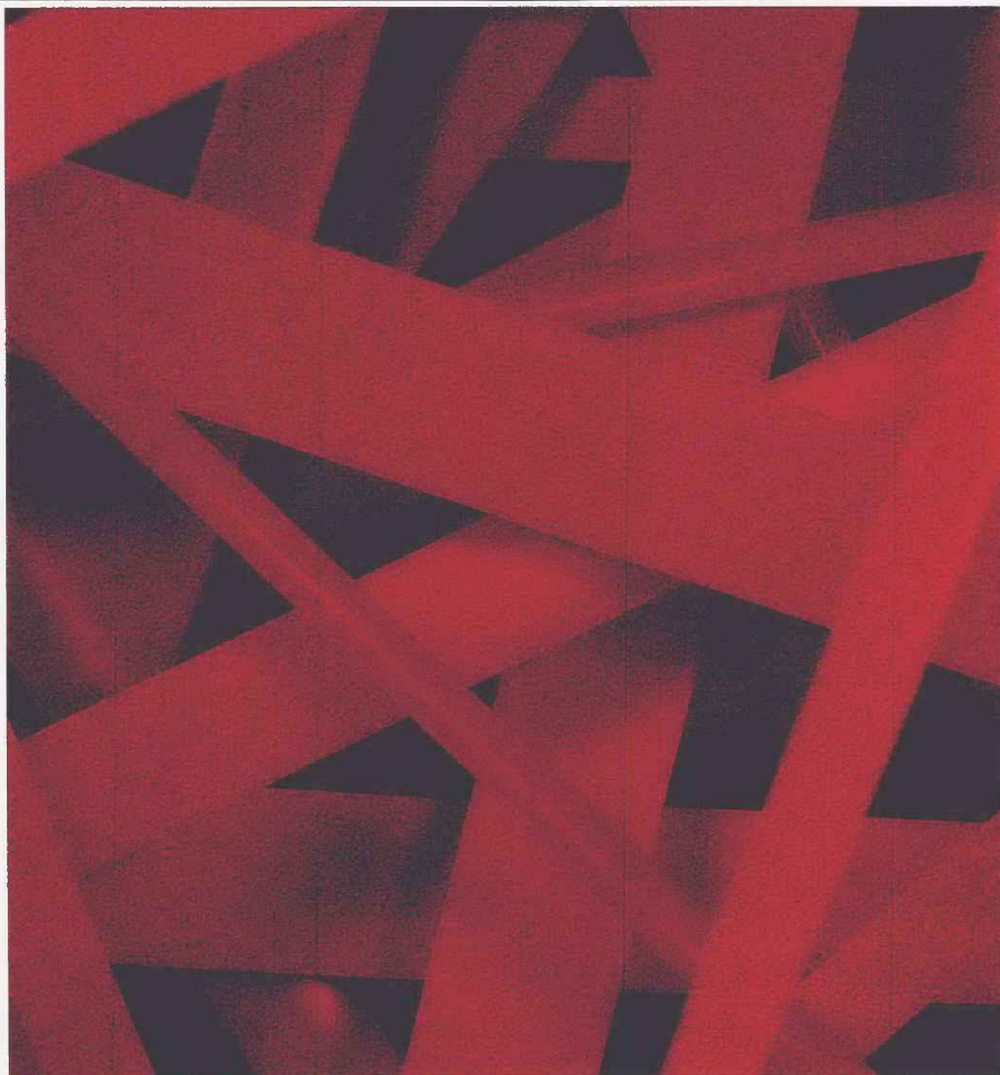

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Global view required of risk managers

By GAVIN SOUTER

MONTE CARLO, Monaco—The risk managers of the future must be highly educated, multilingual strategists who can face major global issues if they want to properly manage the problems their companies—and the world—will encounter, a risk manager says.

Another adds that risk management must embrace a wide range of economic and social skills if the discipline is to succeed in the future.

Risk managers also must face a rapidly changing insurance marketplace and pull senior management into risk financing decisions, an insurance company executive maintains.

The three panelists addressed a session focusing on the risk manager of the future at the Risk Management Forum, co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

In the future, risk managers will be bound even tighter by rules and regulations while the whole of society will live in a world of bureaucratic certainty, said Francois Settembrino, risk manager at Tabacofina/Vander Elst S.A. in Edegem, Belgium, and president of the European Assn. of Risk Managers.

"This is exactly what happened to the Eastern (Bloc) countries, and what has led them to a collective collapse. The enterprise will not be able to survive outside the tracks imposed by the authority," he said.

However, if risk managers can avoid this scenario, the future of risk management could be brighter, Mr. Settembrino said.

"It will become essential to insert risk management into the regeneration of moral principles, admitting that the single rule of profit is not sufficient, but that an enterprise, regardless of the legislation, has a civic role to play on the world scene and has a responsibility toward society," he said.

To be catalysts for such change, risk managers will need several skills, Mr. Settembrino said.

They will have to be good communicators and understand others as well as be understood themselves, he said.

Secondly, risk managers will have to be able to take a global view of complex risks, Mr. Settembrino said.

Thirdly, they will have to be good financial managers and must have inquiring minds, he said.

Lastly, future risk managers should be able to speak at least two languages, Mr. Settembrino said.

The ability to speak several languages not only will help risk managers communicate across frontiers, it will help them solve problems, he said.

"The more languages you speak, the more different routes you can use to understand or solve a problem," Mr. Settembrino said.

To meet these challenges risk managers will have to devote more time to their own general education and their specific risk management training, he said.

Armed with a good education, risk managers should follow "10 commandments" if they are to succeed in the future, said Filomeno Mira, chairman of MAPFRE Industrial S.A. in Madrid, Spain.

The commandments are:

- Risk management should be applied to the consumer world.

"The consumer is concerned about his own health and safety so the concept of risk management should be built into the family," Mr. Mira said.

- Risk managers must not limit themselves to buying insurance. They must also acquire legal and technical expertise to help them address risk management issues.
- Risk management will be an area of independent development.

"The risk manager will manage all of the risk management services including captives, environmental concerns, salvage, and training," he said.

- Service industries will make more use of risk management as society as a whole becomes more service-oriented.
- Risk managers will take more control of the management of un-

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Changing market

Continued from previous page

global insurance industry is in for a "hard readjustment" that will involve bankruptcies and restructuring of insurers. "I regret this, but UAP will survive and continue to offer services," he said.

Meanwhile, Walter Diehl, chairman of the board of Zurich-based Swiss Reinsurance Co., agreed with much of what Mr. Peyrelevade said.

Mr. Diehl told the audience that this was the first time he had heard that loss control functions should be solely in the realm of the broker. "I agree with Mr. Peyrelevade" that loss control does not have to be provided solely by the broker, Mr. Diehl said.

In the future, reinsurers will become more involved in the assessment of risk, Mr. Diehl predicted.

"The growing complexity of the risk situation of major international industrial firms places considerable demands on the know-how of the industrial insurer," he said. "There are relatively few major insurers and reinsurers with the specialized know-how that is called for."

Also in the future, industrial clients will have stronger relationships with industrial insurers, but qualified brokers and reinsurers will be included in discussions, said Mr. Diehl.

The Swiss reinsurer also agreed with Mr. Peyrelevade that if industrial losses cannot be contained by loss control, "it will be necessary to apply higher deductibles and premiums or turn increasingly to alternative methods of dealing with risk."

The insurance industry will be able to comply with policyholders' requirement for higher capacity only if premiums keep pace with rising losses and the increasing potential for losses.

In the meantime, there are numerous loss situations that overtax both insurance and industry, Mr. Diehl said. In particular, "it is neither ethically justified nor economically possible to expect (insurance and industry) to bear past environmental burdens," he said.

Instead, all who profit from the high standard of living that has caused this pollution should contribute to solving the environmental problems, Mr. Diehl said. This includes governments and taxpayers, he said.

The session was moderated by Thierry Van Santen, risk and insurance manager for Groupe Valeo, a Paris-based auto equipment manufacturer. ■

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Global view

Continued from previous page

insurable risks.

- Public authorities are following a trend of privatizing public services and risk managers will have to address these new risks.
- Risk managers will become more involved in politics as politicians try to address risk management problems, like preventing auto accidents.
- Chief executive officers will become risk managers.

"The concept of risk management will become more important so the heads of companies will become more involved," Mr. Mira said.

- Dealing with risks will become more financially complex and risk managers will have to become more financially sophisticated.
- Risk management must become an academic discipline.

"Risk management should become a four-year degree course and form part of a master of business administration degree," Mr. Mira said.

Risk management has already changed significantly in recent years, said Joseph Smetana, president of AIGlobal Inc., a unit of New York-based American International Group Inc., and chairman and chief executive officer of A.I.G. Risk Management Inc.

Risk managers now have to deal with businesses that operate on a global scale; more expertise is available, like engineering loss control, to help risk managers do their job; and exposures are escalating as a result of U.S. court decisions and regulatory changes, Mr. Smetana said.

And the changing world insurance market is complicating risk managers' jobs. He specifically cited captive growth and a growing array of alternative risk funding mechanisms.

There also is turmoil at Lloyd's of London as capacity shrinks and the market considers limiting members' liability, Mr. Smetana said.

In continental Europe, too, insurance markets are changing, he said.

"E.C. 1992 will produce not only sharply higher intra-European trade and investment, but also more international insurers competing for market share with local providers," Mr. Smetana said.

'The concept of risk management will become more important,' Mr. Mira predicts.

Consequently, risk managers will have to change further to respond to their own changing environment, he said.

"In the new environment, corporate management must view risk management in a new light. Risk management must be integrated into management thinking and planning at all levels," Mr. Smetana said.

Management will have to consider the risk management implications of corporate decisions in the same way that they now consider financial, operating, marketing and strategic implications, he asserted.

And senior management will have to become more involved in decisions on the use of alternative risk financing mechanisms, Mr. Smetana said.

"The future financial implications of these decisions are significantly greater than they were in the past," he said.

The session was moderated by Hugh Loader, managing director and group insurance manager at Tetra-Pak Insurance Services Ltd. in Saffron Walden, England. ■

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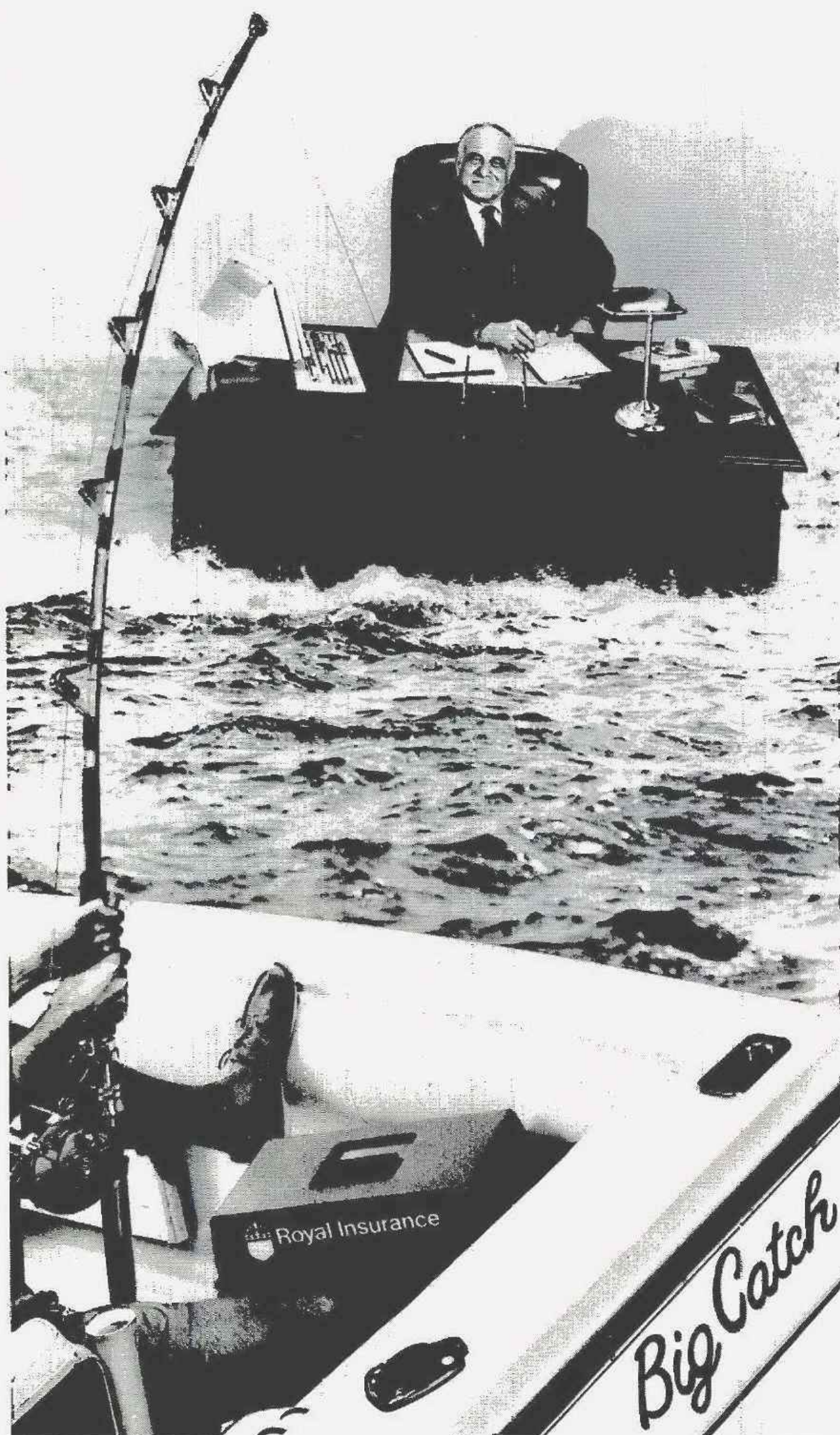

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Insurance markets developing in nations worldwide

By STACY SHAPIRO

MONTE CARLO, Monaco—Insurance markets are enjoying growth in several countries that have embraced free trade, observers say.

The Mexican insurance industry anticipates substantial growth in the wake of vanishing government restrictions on insurers as well as the pending trilateral free trade agreement with Canada and the United States, a consultant says.

And, on the other side of the ocean, insurance markets in Asian/Pacific countries that allow free trade are in various stages of development, a broker reports.

The consultant and broker were part of a panel discussion held during the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

"There is a strong growth potential in Mexico" for the insurance industry, said Alberto Estavillo, president of consultant Estavillo Consultores S.C. in Mexico City.

The Mexican market is going through rapid changes following several years of economic reform, modernization, deregulation and privatization, he said.

Although insurers will have to become more service-oriented and gain access to new expertise, "there are great opportunities" in the Mexican market, Mr. Estavillo said.

The country is now encouraging foreign investment and this year has seen $8.5 billion in new foreign investment on top of the $30 billion in 1990, he said.

In addition, the Mexican government "has rebuilt the foundations for steady economic growth and the containment of inflation" to a rate of 18% this year from 160% in 1987, he said.

The prospect of a North American Free Trade Agreement among Mexico, Canada and the United States also "is boosting business confidence, encouraging investment locally and from abroad and will extend the reform process throughout the economy," Mr. Estavillo said.

Insurance has been written in Mexico since the 19th century and, in 1935, the first Insurance and Mutual Institution law was passed. The law, however, has been completely restructured since 1989, allowing insurance companies to operate more autonomously, according to Mr. Estavillo.

Under that restructuring, each insurer can set its own rates, though those rates must be filed with the National Insurance and Bonds Commission, he said.

The insurance industry was governed by the National Banking and Insurance Commission until 1990, when the National Insurance and Bonds Commission was formed to oversee insurance, reinsurance and bond activities in Mexico.

The Mexican Assn. of Insurance Institutions was formed in the late

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1980s to coordinate insurance company activities and act as a rating bureau for the industry, Mr. Estavillo added.

Workers compensation programs, pension benefits and national health care coverage are written by the state-controlled National Social Security Institute and the Institute of Social and Security Services for State Employees, he said.

But the government is currently considering whether private insurance companies should be allowed to insure pension benefits, said Mr. Estavillo.

There are 28,000 personal lines agents in Mexico, and 80 large agent/broker firms that place commercial and industrial business, he said.

Much of the commercial coverage in Mexico has been written on a fronting basis, with much of the risk passed off to 120 registered reinsurers, said Mr. Estavillo.

However, the restructured insurance regulations require increased capitalization and more risk retention among primary insurers, he said.

Two events have caused a "rapid evolution" of the Mexican insurance market and, in fact, contributed to a 111% loss ratio last year, Mr. Estavillo said.

The first of these was the government's November 1987 decision to allow "jumbo" risks to be written on a non-tariff basis.

That was followed in 1989 by the government allowance of 100% foreign ownership of brokers and 15% foreign ownership of insurance companies, which can be increased to 49% at the discretion of the Ministry of the Treasury, he said.

As a result, last year the international insurance market began competing with Mexican insurers for jumbo accounts, which forced the domestic market to write the business at a loss, Mr. Estavillo said.

Nevertheless, liberalization of the Mexican insurance industry "is likely to continue in the future, allowing the market to become much more dynamic and flexible in the products and services it can provide," he said.

Risk management has also played a part in the reformation of Mexico's insurance industry, he said. Mr. Estavillo pointed to the development of sophisticated risk management programs among Mexican companies that include full-time corporate risk management executives, loss prevention and loss control techniques and self-insured retentions and/or captive insurance programs.

"A strong growth potential exists for the insurance industry in Mexico," he concluded. "For years it has been highly protected and effectively closed to outside competition and investment, allowing it to become undercapitalized, inefficient and technologically weak. New legislation has been passed aimed at revitalizing the market via privatization, foreign investment and increased competition."

Answering a question from the audience, Mr. Estavillo added that there is a "prevailing trend" throughout the Latin American countries to deregulate and liberalize their industries, including insurance.

The first country recently to open its insurance market to foreign investment was Chile, followed by Peru, Mexico and now Colombia, he said.

Meanwhile, insurance markets in the Asia/Pacific region are in various stages of development but hold great potential, according to William Thomas, president of Alexander & Alexander (Asia) Holdings P.L.C. Ltd. in Singapore.

The region accounts for a "huge geographic spread" from Japan and China to Australia and New Zealand to Pakistan and India. Within this region, there is a wide range of distinct cultures, social structures and economic philosophies, he noted.

Populations of nations in the region vary from 1 billion people in China to 2 million people in Singapore. And the size of some nations may be surprising: 192 million people live on the 13,000 islands comprising Indonesia, making it the fifth most populous country in the world, said Mr. Thomas.

There also is "dynamic growth" in the economies of the Asia/Pacific region, although the insurance industry's growth is "lagging" behind technical industries' growth, Mr. Thomas said.

On the one hand, there is the huge economic power of Japan, but on the other there are impoverished countries like Laos and Vietnam, he said.

The Asia/Pacific region features both open and closed insurance markets, according to Mr. Thomas.

"In my opinion, the more open insurance market is in the interest of the buyer," he said.

Liberalization of the Mexican insurance industry 'is likely to continue in the future, allowing the market to become much more dynamic and flexible in the products and services it can provide,' Mr. Estavillo says.

Japan traditionally has been a closed insurance market with regulated rates and a limited number of insurers, Mr. Thomas said.

There is some talk of deregulation, easing of tariffs and the introduction for the first time of insurance brokers, but these changes will take five to 15 years to implement and they "won't be drastic," he said.

The issue in most of the Asia/Pacific region—which has been caught in a soft market for several years—is to develop the insurance markets and "at the same time guarantee security," said Mr. Thomas.

Singapore, for example, has imposed freezes on property insurance rates and is considering minimal capitalization requirements for insurance companies and minimum standards for the chief executives of insurance-related enterprises, said Mr. Thomas.

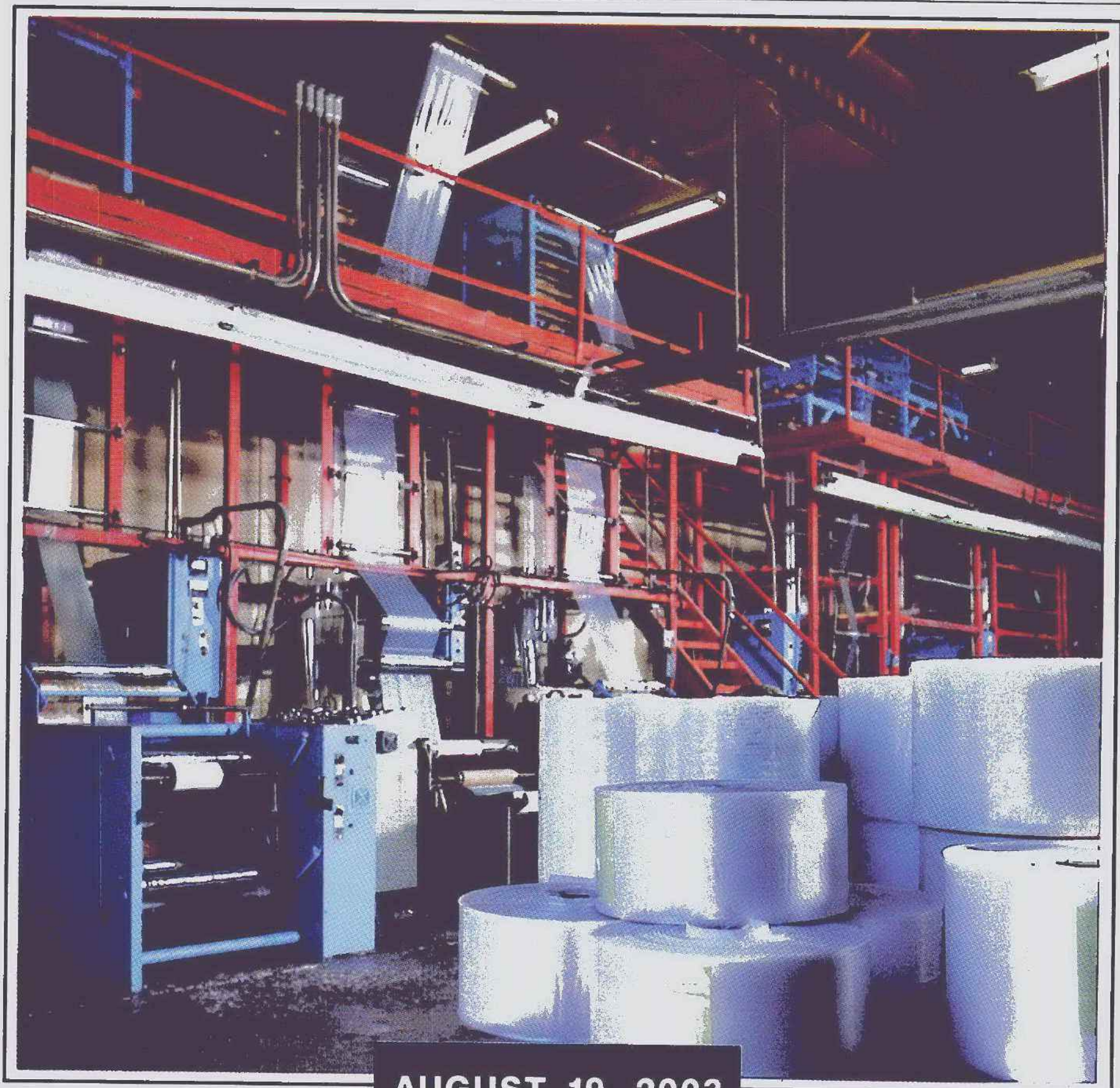
Malaysia is "severely restricting the buyer's choice" by placing the regulation of the insurance industry in the hands of the country's central bank, he said. It is the only country in the Asia/Pacific region "taking a backward step" in insurance regulation, he added.

Indonesia, on the other hand, allows an open insurance market, although the capitalization requirement for foreign-owned joint ventures is four times that of an Indonesian-owned insurance company, Mr. Thomas said.

Mr. Thomas stressed that if companies are interested in investing in the Asia/Pacific region, they must find the right partners in the region with which to do business.

Other speakers at the panel discussion included John M. Jacob, adviser to Saudi Basic Industries Corp., who spoke on the Middle East; and Anders W. Niemann, deputy chairman of the Risk Management Society of the Federation of Danish Industries in Copenhagen, Denmark, who spoke on the Scandinavian market.

Willy Arnouts, risk management and insurance coordinator of Esso Inc. in Breda, Netherlands, moderated the session. ■



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Captives considered for marine, aviation risks

By STACY SHAPIRO

MONTE CARLO, Monaco—Risk managers warn they will use captive insurers to cover their marine and aviation risks if traditional insurance becomes too expensive and capacity becomes scarce next year.

Prices already are rising in the marine hull and cargo, aviation and energy markets, and insurers expect these lines of coverage to harden even further next year (*BI*, July 22).

Several risk managers who participated in a roundtable discussion and fielded questions from the audience addressed the hardening markets at the Risk Management Forum in Monte Carlo earlier this month. The forum was co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc.

A risk manager in the audience asked the roundtable members whether they use their captives for "transportation risks."

Marc Darby, director of risk management/insurance for Bombardier Inc. in Montreal, said the transportation equipment concern has not insured its transportation risks through its captive so far. But, he added, "we might pretty soon, with the market shrinking the way it is. We might be forced to use the captive."

Pierre F. Haesler, senior vp of cement and concrete conglomerate Holderbank Financiere Glaris Ltd. of Leligny, Switzerland, said: "We are looking at (using our) captive for marine programs as the London market hardens."

Insurers currently are quoting Holderbank cheap marine rates, so the company will stay with the traditional market, he said.

But, if marine underwriters quote high rates next year, "I will come in with my cheaper (captive) rates," Mr. Haesler said.

London-based Unilever P.L.C. places three global policies with its captive, said Albert W. van Blitterswijk, international risk and insurance manager for the consumer goods company. Those policies are a global property policy, a liability policy and a smaller marine policy.

However, the rates charged by Unilever captive do not fluctuate with market conditions, Mr. van Blitterswijk said.

"As we have transportation (risks) in many factories worldwide with many risks, we are able to offer stable premium level," he said. "I think it's better to have a stable premium level than the bottom price."

The three risk managers fielded several other questions from the audience in what was one of the forum's most lively sessions. Their discussion and questions focused mainly on relationships with subsidiaries and implementing global risk management and insurance programs.

For example, Mr. Haesler of Holderbank learned how he learned the hard way that he should have tried persuading the company's subsidiaries to accept a new global insurance program rather than arranging the program and merely announcing it to the subsidiaries.

Insuring a cement conglomerate should be simple, he said, because the primary risks are posed by the kilns that manufacture the cement in 70 factories worldwide.

However, in the early 1980s, a new global insurance program for Holderbank was proposed that would involve captives underwriting some of the coverage. Top management liked it, as did brokers, and "we concluded there were savings," he said.

So the new program was set to start in 1986. "That's when the nightmare began," he said.

Since Holderbank is a decentralized company, a friendly letter went out to all the subsidiaries—including those in remote parts of the instructing them to start using the new insurance program at the first of the year.

But, many replies said—in "not so friendly" terms—"we're not interested," Mr. Haesler recalled. Some had ties with local insurers that went back as long as 40 years, as well as strong relationships with their local insurance markets. "It just didn't work," he said.

Because many subsidiaries decided not to participate in the program, premiums totaled only one-tenth of the 10 million Swiss francs the lead insurer had expected the program would generate.

As a result, Holderbank lost that insurer and had to find another. After three years of searching, the program was placed with Zurich Insurance Co., Mr. Haesler said.

"What we learned from this story is that in a decentralized group. . .you have to meet the corporate culture," Mr. Haesler said. Brokers and underwriters must also understand the culture of your company, he said.

He advised other risk managers to "get your in-house show together first. If you don't, you're lost. Try to convince; never impose."

Holderbank now allows subsidiaries to use local insurance companies if they so desire. However, 50% of all premiums must be ceded to the company's global insurance program, he said.

"Does the insurer agree to this?" asked a member of the audience.

"He has to," Mr. Haesler replied.

Mr. Haesler also said he now tries to visit every Holderbank plant to better understand its needs. He tries to meet those needs and at the same time make sure that local insurers take proper steps to avoid losses.

Another audience member asked whether there is good enough communication among the insurers and Holderbank so that Mr. Haesler is aware of what is going on in its insurance program worldwide.

"That's a critical issue," Mr. Haesler said. He said he stays clued in through three networks—insurers, brokers and Holderbank's finance department.

Most of the time there is no problem, he said.

However, in a complete failure of communication recently, he did not hear about a $3 million claim for three months, he noted.

Uniformity is one basic element of success in a worldwide insurance program, said Unilever's Mr. van Blitterswijk. Using standard policy wording, in particular, "makes life much easier," he said.

Unilever also has a global property and liability insurance program written through its captive, although it uses fronting arrangements in some countries, Mr. van Blitterswijk said. It is easier, though, to use one or two global insurance companies that have op-

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O.J. Simpson

Continued from previous page
erations in all nations in which Unilever has subsidiaries to front the global insurance programs, he said.

"We coordinate with insurers to prevent losses," he said. "And we say to our units, 'Be careful, because it's Unilever money at stake.' "

A member of the audience asked how quickly local subsidiaries forward their premiums to the companies' captives.

"As quickly as possible," replied Mr. Darby of Bombardier, whose captive underwrites three policies for the company. Payments could take only a matter of hours, since money today can be wire-transferred. And, "underwriters say it will take a maximum of one month," he said.

In the old days it could take up to two years for money to flow from local markets through brokers to the captive, recalled Unilever's Mr. van Blitterswijk to a round of laughter.

'I am sorry to see Europe going the way of the United States in the product liability field,' Mr. Darby says.

The problem, though, was mainly governments holding onto the money, he said.

On average it takes 30 days, Mr. van Blitterswijk said.

The panel of risk managers also covered a variety of other topics, including:

- Fire protection.

Mr. Darby said that Bombardier's Canadair plant with $850 million in assets in one location is "very well protected from fire."

Aside from sprinklers, there are six people from the plant designated to work with the fire department to smooth out emergency procedures. In case of a fire, though, everyone knows that there is only one person in the plant who is in charge.

Mr. Darby criticized European companies for not having sprinklers in their buildings. "I don't think Europeans know about sprinklers," he said.

Mr. Darby's jibe came only one week after a London warehouse fire that destroyed fine art valued at 30 million to 50 million pounds ($51.3 million to $85.5 million) (*BI*, Oct. 14).

A Belgian risk manager commented that there is no interest in installing sprinklers because there is no resulting premium savings and because water damage caused by the sprinklers would equal fire damage in some cases.

- Product liability.

"I am sorry to see Europe going the way of the United States in the product liability field," Mr. Darby said. ■

Experts detail how planning minimizes loss

By GAVIN SOUTER

MONTE CARLO, Monaco—A well-prepared risk management plan can prevent a crisis from turning into a disaster, a broker says.

Recent examples have shown that the opposite is also true, he adds.

To minimize risk, companies should be aware of potential crises and have the means in place to deal with them should they occur, he advises.

And corporate crisis management plans should be constructed in cooperation with civil authorities if they are to address all possible risks, a government official and a manufacturer agree.

The three discussed effective crisis management during a session at the Risk Management Forum cosponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

Crisis management has recently become a big issue for companies as several organizations have inadvertently given high-profile examples of poor contingency plans in action, said Paul Bruyland, managing director of broker Henrijean Antwerp S.A. of Antwerp, Belgium.

"Companies have faced a multitude of crises ranging from oil pollution to product tampering to earthquakes and toxic releases that took management by surprise. Furthermore, they were often unprepared to respond," he said.

However, companies still are doing little more than discussing the issues, Mr. Bruyland said.

"Crisis response and crisis management. . .are less frequently a part of the normal business planning and strategy process than the flood of words tends to indicate," he said.

Companies without crisis management plans in place are unnecessarily risking their futures, Mr. Bruyland warned.

He defined a crisis as any accidental or intentional event that significantly disrupts normal operations. And, he added, one crisis often can lead to another unless it is quickly isolated and managed.

If there is no crisis plan or a plan fails, company profits can be devastated, Mr. Bruyland said.

"When a trusted product is found to be contaminated, the product line is not the only thing in danger. The corporation's entire public image may be at stake. Lost revenue could total millions of dollars. Hundreds of employees could be put out of work," he said.

Even a small fire could cause the release of toxic materials that can cost millions of dollars to clean up, Mr. Bruyland said.

An effective crisis plan should have six main stages, he said. These include:

- Risk identification.

"The risk identification process can be summed up in four questions: What can happen? What operations will be affected? What will be the overall impact on the company? What can the company do to avoid the effects?" he said.

- Advance preparation.

Companies should establish methods to minimize the extent of disruption and damage and build a core team of people to deal with a crisis, he said.

- Watching out for the warning signs.

"Before the eruption of a crisis, there is often a warning period during which a prudent and alert management has the opportunity to recognize the signals and events that increase the likelihood of disaster," Mr. Bruyland said.

If management spots these warning signs, then it has an opportunity to prevent the crisis or at least prevent it from becoming a

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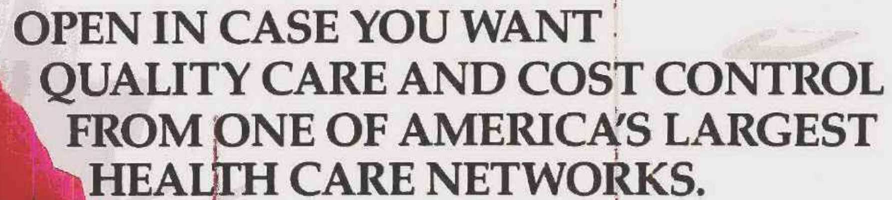

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Pension plan fiduciaries

Life insurers' recent upheaval will have impact on employer plans

By Michael S. Melbinger

PENSION LAN SPONSORS and their employees have traditionally relied on several insurance company products—including guaranteed investment contracts, group annuities, life insurance policies and commingled funds—as investment vehicles for their retirement plans. However, the recent seizure by state insurance regulators of several large insurance companies, as well as the reductions in the claims-paying ability ratings of a number of the top life insurance companies, will have a significant impact on employer-sponsored pension plans and the fiduciaries who manage those plans.

The impact of life insurer insolvency on plan sponsors and participants depends in part on what type of product is held and under what type of plan. For example, companies that invested their pension assets in GICs with Executive Life Insurance Co. can expect to lose part of their principal investment and may be required to make up for this loss over time with tax-deductible contributions.

For defined contribution plans that hold Executive Life GICs, the problem is more immediate and acute. While it is axiomatic that participants bear the risk of loss under a defined contribution plan, in those cases where the plan sponsor (or an investment committee appointed by the plan sponsor) specified the investment choices for participants' accounts, they acted as a fiduciary. Pension plan fiduciaries may be held liable for the participants' losses if they have not properly carried out their responsibilities within the scope of the Employee Retirement Income Security Act of 1974.

Soon after the seizure of Executive Life, plan participants of both Unisys Corp. and Honeywell Inc. filed suit in federal court against benefit committee members and the companies, alleging breach of fiduciary duties in their decision to purchase GICs from Executive Life (*BI*, May 27). Since then other plan sponsors and fiduciaries have been sued by their participants.

The Department of Labor also has taken action with respect to the fiduciary duties of pension plan committees. In lawsuits filed in federal district court against three companies, the department has alleged improper selection of Executive Life as an annuity provider.

In its complaint against Maxxam Inc. of Houston, the department alleges that the company and certain of its executives selected Executive Life as the annuity provider for its terminated pension plan "despite negative findings by a recognized insurance expert as to the insurer's claims-paying abilities."

The complaint against Los Angeles-based MagneTek Inc., members of its board of directors and certain of its executives as fiduciaries, alleges that Executive Life owned more than 10% of the company's stock and therefore was a party-in-interest with respect to the annuity purchase, making that purchase a prohibited transaction (*BI*, June 17).

AFG Industries Inc. of Fort Worth, Texas, and members of its pension committee are alleged to have failed to utilize a meaningful bid process or analyze Executive Life's claims-paying ability (*BI*, July 15).

The Labor Department has said that it is investigating "about 60 similar cases." The department claims to have sent letters to several other employers alleging that the selection of Executive Life as annuity provider was imprudent, and threatening suit if the employer does not restore any losses suffered by retirees or beneficiaries and guarantee the future payment of retirement and death benefits through investment with another insurer.

Based on this increase in both litigation and investigations related to fiduciary duties, pension plan fiduciaries are well advised to re-evaluate their current investments and take steps to protect themselves from future liability for the investment decisions they have made on behalf of plan participants.

ERISA imposes affirmative duties on individuals who are pension plan fiduciaries. ERISA Section 404(a)(1)(A) requires that a plan fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.

In the seminal case on fiduciary duty, *Donovan vs. Bierwirth*, the court held that fiduciaries must discharge their duties "with an eye single to the interests of participants and beneficiaries." The court also for the first time gave voice to the notion that, in situations in which ERISA fiduciaries face a potential conflict between their duties to participants and their role as officers, directors or employees of the plan sponsor, they may have to use independent legal and financial advisers.

Pension plan fiduciaries are well advised to re-evaluate their current investments and take steps to protect themselves from future liability for the investment decisions they have made.

ERISA Section 404(a)(1)(B) requires plan fiduciaries to discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing. The requirements of care, skill, prudence and diligence seem to have evolved into a requirement that the fiduciaries follow a course of procedural prudence in decision making; that is, if the fiduciaries have diligently engaged in (and documented) an investigation and discussion of information and alternatives in regard to any decision, the courts will be loath to challenge that decision.

The court in *Katsaros vs. Cody* described it as "whether the individual trustees, at the time they engaged in the challenged transactions, employed the appropriate methods to investigate the merits of the investment and to structure the investment."

The "prudent man" requirement of Section 404 also has evolved into a "prudent expert" requirement. Courts have held that good faith is not enough in decision making. Where fiduciaries are not sufficiently knowledgeable or experienced, they should utilize an independent expert (*Donovan vs. Bierwirth*). In light of the case law and Department of Labor opinions on the issue of prudence, virtually all plan fiduciaries would be well advised to consult an independent expert when making investment decisions in regard to plan assets.

Finally, Section 404(a)(1)(C) requires that retirement plan fiduciaries diversify the investments of the plan, "so as to minimize the risk of large losses, unless under the circumstances it is clearly not prudent not to do so."

To date, no case has challenged a plan sponsor's decision to operate its retirement plan through one insurance company, as many do. This probably will change soon. However, in light of the recent insurance company insolvencies, fiduciaries would be wise to diversify the insurance product investments of their plans among several insurance companies. Further, they are advised to ascertain, to the best of their ability, what investments underlie the insurance company's products.

Plan fiduciaries responsible for the purchase of insurance products must be able to demonstrate that the decision to purchase any given product was made only after a careful and diligent evaluation of other investment choices and competing insurance companies. The fiduciaries must be able to show that their decision was not based on any collateral benefit to the plan sponsor or other factors. The extent to which an independent expert was utilized in the evaluation process would be very relevant, assuming that the determination of the expert was analyzed and the recommendations of the expert, if sound, were followed.

ERISA fiduciaries should be mindful of the potential loss of the attorney-client privilege if the same attorneys that represent the plan sponsor also represent the fiduciaries. This situation is common when a plan committee, comprised of the plan sponsor's officers, makes investment decisions for a retirement plan.

In this situation, the committee is well advised to hire legal counsel separate from the legal counsel of the plan sponsor in order to shield any communications with counsel under the attorney-client privilege. In each of the lawsuits filed so far by the Department of Labor, individual executives also were named in the complaint in their capacity as plan fiduciaries.

Because of the uncertainties inherent in this rapidly evolving situation, many employers are reluctant to invest additional retirement plan funds with Mutual Benefit Life Insurance Co. or any other insurance company. Employers maintaining plans that currently hold insurance products of a troubled insurer may need to respond quickly to several different aspects of the insurance company insolvency crisis. The employer and plan fiduciaries may need to:

- Establish an alternative retirement or savings plan funding vehicle so that future monies do not flow into an insolvent or suspect insurer.
- Evaluate any fiduciary exposure from the purchase of the insurance product, as well as their fiduciary duties going forward.
- Devise alternatives for compensating employees or retirees whose retirement savings may be impaired.
- Review contracts and other plan documents to make certain that the plan and its participants are protected should further insurer insolvencies occur.
- Monitor or participate in proceedings before the courts and state insurance regulators.
- Investigate coverage under, and represent the employee before, the various state guaranty funds.
- Analyze the contract between the employer or plan and the insurance company to determine their rights (or the rights of employees) under the contract.
- Organize a group of similarly situated companies or associations to achieve economies of scale in pursuing the above objectives. ■

Michael S. Melbinger is a partner in the employee benefits department of the law firm McDermott, Will & Emery in Chicago.

Evaluating property loss

When a pickup is purloined, several parties could suffer

By The Insurance Institute of America

The following question and answer are drawn from the curriculum for the Associate in Risk Management designation awarded by the Insurance Institute of America. They represent the type of question asked—and the possible answers—in one of the three examinations for the A.R.M. designation.

This month's exercise, drawn from a recent national examination in ARM 54—the Risk Management Process—describes how a single event—here a truck theft—can cause losses to a variety of parties and how these losses can be properly valued by a number of distinct valuation standards.

A.R.M. exercises

Q: Owen lent his twin brother, Bob, one of several pickup trucks Owen owns. First Bank holds a secured interest in this truck. Because Bob needed to use the truck for reliable daily transportation to his job, Bob left the truck overnight at Friendly Garage to have a slow leak in a tire repaired. That night, while Friendly Garage was closed, the truck was stolen from its unfenced parking area and never recovered.

- Describe the nature and extent of any property loss, and any other specific type of loss that each of the following parties is likely to have suffered because of this theft: Owen, Bob, First Bank and Friendly Garage.
- Pair or set value is relevant to determining the dollar amount of some personal property losses. Explain whether pair or set value is useful in determining the amount of any property losses described in your answer to the above question.

A: • Specifying the nature and the extent of each party's property losses and any other losses would involve identifying the type of loss involved and the proper standard of value for measuring the extent of that loss.

✔ Owen's major property loss in this case is the full value of the truck he owned, probably measured by its actual cash value or its replacement cost. Owen's only other type of loss is the loss of the use of the truck. This loss of use is best measured by the cost to rent a replacement truck until Owen purchases a new truck.

✔ The question gives no basis for any property loss to Bob, although he may have lost some personal property he happened to leave in the truck. The value of this loss would be the replacement cost or the actual cash value of any such property.

Bob's other losses may include a loss based on liability to Owen for negligently selecting Friendly Garage to repair his brother's truck, a selection that arguably was the cause of the truck being stolen. If Bob is liable to Owen, the measure of Bob's liability loss is the amount paid to Owen as a verdict or in settlement of his claim plus any legal expenses Bob may incur. Bob's only other loss could possibly be loss of transportation to work, which is measured by the cost of temporary substitute transportation until Bob can make more permanent arrangements.

✔ For First Bank, its property loss is the value of its secured interest in the stolen truck.

This value usually is measured as the unpaid balance on the truck loan plus interest that would have been earned. However, if a loan is repaid despite the truck's having been stolen, the bank's secured interest is not damaged and the bank suffers no property loss. The bank's only other potential loss would be any loss of interest earnings on the loan, which may be no loss at all if the loan is repaid on schedule.

✔ The circumstances of the case give no explicit indication of any property loss by Friendly Garage unless, perhaps, some of the garage's tools had been left in the truck before it was stolen. If any such tools were not recovered, the garage's resulting property loss would be their actual cash value or their replacement cost value.

With respect to other losses, the garage may be liable as a bailee to Owen for the theft of his truck. The extent of this possible liability loss would be the amount the garage would pay Owen for the truck, plus any related legal expenses, plus the value of any goodwill (market reputation) that the garage may lose.

• Pair or set value recognizes that the total value of a pair or set of items of personal property usually is greater than the sum of the values of the individual items in the pair or set. If only one item in a pair or set is lost, therefore, the value of the remaining items is lowered more than proportionally.

For example, the value of the one earring remaining after its mate has been stolen is less than half the value of the pair if it were intact.

Nothing in the circumstances of this question suggests that pair or set value is relevant. It is possible, however, that the truck contained some members of a pair or set of items of property that also were stolen. ■

The sample questions and answers used in this column are taken from the Associate in Risk Management designation curriculum of the IIA. For more information on the content of the A.R.M. program, write Dr. G.L. Head, Vp, Insurance Institute of America, P.O. Box 314, Malvern, Pa. 19355.

Coverage denied for expenses

Legal briefs

The U.S. Court of Appeals for the Seventh Circuit ruled that an excess liability insurer's obligations began when the primary insurer paid claims of $3 million, not when the insured's out-of-pocket expenses, including legal fees, reached that amount.

Harbor Insurance Co. issued excess policies to Harnischfeger Corp. that provided that the policies did not attach unless and until the insured or its primary insurer shall have paid the amount of the underlying limits on account of such occurrence.

The underlying limits were $1 million combined single limit for each occurrence and $3 million combined single limit in the aggregate.

Harbor contracted with Employers Insurance of Wausau A Mutual Co. for administration of its obligations. Its contract with Wausau limited that firm to $3 million of outlay including legal fees and costs.

When Wausau paid $3 million including legal fees for each year of coverage years, the insured tendered to Harbor the defense of claims against it.

At issue here was whether Harbor's policy became effective when the insured (through Wausau) spent $3 million out-of-pocket, or only when it had paid $3 million in claims.

Harbor sought reimbursement from the insured. The trial court ruled for Harbor.

On appeal, Harbor argued that in the insurance business, underlying limits are understood to mean sums paid to claimants, and not the policyholders's out-of-pocket expenses. The policyholder did not disagree with this argument as it applied to a standard policy; however, it asserted that Harbor had written a non-standard policy, yielding a non-standard result.

But, the court disagreed, concluding that no sane insurer would give its policyholder an option to count against the $3 million anything that it put in the agreement with Wausau. The court said that clauses of limitation do not obligate insurers to pay. *Harnischfeger Corp. vs. Harbor Insurance Co.*, U.S. Court of Appeals for the Seventh Circuit, March 18, 1991 (*BI*,02/N.-$10)

Reservation of rights

At issue in this case before the Supreme Court of Alabama was whether an insurer, after undertaking to defend a potential policyholder without reserving its rights to deny coverage and without keeping that policyholder apprised of the status of the case, can thereafter successfully deny coverage two years after beginning a defense in the case.

The court concluded that the insurer could not as it had failed to keep the policyholder informed of the status of the case.

Shelby Steel Fabricators was covered under a comprehensive general liability policy issued by USF&G Corp. The policy excluded coverage for product liability injuries or damages arising after the completion and delivery of the product.

In 1983, Shelby contracted to fabricate but not install a steel support structure. The steel structure was delivered to the owner and installed.

In 1984, the structure collapsed causing substantial damage. The owner sued several parties including Shelby. Shelby notified USF&G, which retained a law firm to defend Shelby.

From March 1985 until July 1987, USF&G had exclusive control over Shelby's defense. Although USF&G was kept abreast of the status of the lawsuit, Shelby was never consulted in any way regarding its defense.

Twenty-nine months after undertaking Shelby's defense, USF&G sent Shelby a reservation of rights letter that denied coverage based on the policy exclusions.

Shelby then brought this suit against USF&G seeking to force the latter to continue the defense. The trial court ruled for the insurer.

The appellate court said that an insurer must meet its "enhanced obligation of good faith" in order to deny coverage pursuant to a reservation of rights.

In its ruling, the court said, "This obligation includes. . .keeping the insured apprised of the status of his case." Here the court observed that Shelby was not kept informed as to the status of its case between the initial notice of the reservation of rights and the insurer's denial of coverage 29 months later. Therefore, the court concluded that USF&G must indemnify Shelby for any liability in the underlying suit.

Shelby Steel Fabricators vs. USF&G, Supreme Court of Alabama, May 18, 1990, rehearing denied Sept. 21, 1990 (*BI*/01/Jy.-$10)

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

Crisis planning

Continued from page 21

disaster, he said.

Warnings also can take the form of other disasters, he said. For example, "The Herald of Free Enterprise capsizing alerted the whole shipping industry to safety standards and operational procedures of ships carrying passengers," Mr. Bruyland said, referring to the 1987 ferry disaster (*BI*, March 16, 1987).

- Managing the crisis.

The source of the crisis should be isolated, and the damage should be controlled, he said. "Nothing should take precedence over the company's response to the crisis," he said.

- Recovering from the crisis.

This stage should fall back on plans to change operating modes and sites and maintain critical functions, Mr. Bruyland said.

- The return to normal operations.

"The return to normal operations is an excellent time to assess new risks and exposures, think over the crisis management plan, assess team performance and redefine crisis needs," he said.

Preparing for a crisis in an area the size of Antwerp in Belgium requires input not just from the business community, but from civic authorities as well, said Andries Kinsbergen, governor of the Province of Antwerp.

The Belgian province is the second-largest chemical center in the world; it has a port that trades more than 100 million tons of goods a year; and it is also the world's diamond center, according to Mr. Kinsbergen.

Contingency planning is vital to such an area. And for it to be optimally effective, local industry has to be involved with the government in the planning stage, Mr. Kinsbergen said.

The Assn. of Industrial Companies North of Antwerp, or VIBNA, created files containing specific data on the quantity and danger of all the products stored at the companies.

Among the group's 43 members are chemical, petrochemical, automobile and electronics manufacturers.

The files also included details of measures that needed to be taken if the products were damaged and medical files that detail how to treat injuries sustained from contact with any chemicals that could be released, said Henrijean's Mr. Bruyland.

"Through positive cooperation with the industry, we have set up a system which provides the best help when a disaster occurs," he said.

The concentration of so many industries in one area could obviously pose a significant threat to the environment if a crisis occurred, said Jaques Claeys, a director of chemical manufacturer Solvay S.A. in Antwerp.

Consequently, the safety officers of the VIBNA member companies meet eight to 10 times a year to assess problems. "This means that standard safety procedures can be established, and this can be particularly valuable for smaller companies," he said.

The session was moderated by Willy Arnouts, risk manager and insurance coordinator for Esso Inc., a petroleum refining concern in Breda, Netherlands. ■

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Enhancing loss control efforts

Panel examines global approach to employers' loss prevention procedures

By GAVIN SOUTER

MONTE CARLO, Monaco—International companies should adopt global loss control systems for their health and safety exposures like those they use for property risks, a risk manager advises.

Using a global approach will enable a company to better identify its health and safety exposures while reducing duplication of effort at various sites, he says.

Although a global approach is common for property risk management, impending legislation in Europe will likely produce changes in those loss control procedures, an insurer adds.

Existing and future legislation also will lead to huge changes in environmental loss control techniques, a broker says.

The three panelists participated in a session on global loss control standards at the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

In the past, corporations have been reluctant to implement a global health and safety loss control system because it has been regarded as a low-risk area, and employers liability and workers compensation insurance premiums were predictable, said Bob Mudge, European safety coordinator for Pedigree Petfoods, a division of Mars G.B. Ltd. based in Melton Mowbray, England.

But, without a global loss control program, there can be wide variations in health and safety programs among the different sites owned by a corporation, he said.

To set up a global health and safety loss control program, risk managers should follow the same steps involved in their property loss control program, Mr. Mudge said. Those steps include:

- Risk identification.
- Quantification and analysis of risk.
- Development and implementation of controls.
- Monitoring and reviewing the program.

Risk identification should cover all of a corporation's health and safety exposures, he said. For example, these could include transport and automation risks, chemical and respiratory exposures, and risks associated with electrical, maintenance and installation work, Mr. Mudge said.

"In the last category, contractors present an additional risk factor," he said.

When quantifying and analyzing health and safety risks in the workplace, the risk manager should study past incidents to establish their basic causes, Mr. Mudge said.

"The global or corporate approach provides a wide base of data and has helped us to decide on those aspects of our business which are the highest priorities for developing (loss control) standards," he said.

The identified health and safety risks can be controlled by using several strategies, Mr. Mudge said.

For example, risks can be avoided by substituting non-hazardous materials for hazardous ones; a risk can be transferred by contracting with specialists to carry out dangerous work or by insurance. The risk can be retained, as long as the risk does not involve the chance of serious injury. And, the risk can be reduced through measures like training employees in safety procedures, he said.

"The global standards we have developed to date are mainly involved with risk avoidance and risk reduction strategies," Mr. Mudge said.

Performance is monitored by management inspections, external audits and the investigation of near misses and actual losses, he said.

By adopting a global health and safety loss control program, Pedigree Petfoods has reaped many benefits, Mr. Mudge said.

"A great deal of knowledge and experience exists across the corporation. This includes accident data and information which assists in identification and quantification of risk," he said.

"Solutions to problems can be shared so that we do not all have to invent the same solution. We can share the knowledge and expertise of managers and safety professionals," he said.

Developing a global health and safety loss control program also gives the company the reputation for being a caring employer, which helps motivate employees, Mr. Mudge said.

Global property loss control standards are equally important, and they are likely to be affected by impending government legislation, said Stephen Simpson, chairman and managing director of Factory Mutual International Ltd. in London.

For example, he said, the removal of trade barriers in Europe after 1992 will pave the way for single European fire protection standards.

Currently, the Comite European de Normalisation, an organization responsible for harmonizing safety standards, has more than 200 technical committees studying safety standards, Mr. Simpson said.

"When a CEN standard is in place, it will take precedence above all other national standards," he said.

However, because the development of new Europewide standards is a long process, the CEN has accepted the "Unique Acceptance Procedure" to try and speed up the process, Mr. Simpson said.

Under this procedure, if an existing standard has wide acceptance throughout Europe, it can be submitted to the CEN for adoption in the place of a new standard, he explained.

The European safety standards should be in place by the end of the 1990s, he said.

When this happens, the growth of multinational companies should lead to a convergence between North American and European standards and, ultimately, worldwide safety standards will develop, Mr. Simpson predicted.

Another area of concern for risk managers surrounds environmental loss control issues, said Andrew Hicks, deputy chief executive of Bowring London Ltd.

"Managing environmental risks is one of the most complex tasks facing managers in industry today. Not only do they have to grapple with the physical, scientific and engineering aspects of risk, but they must deal sensitively with an increasingly intolerant public," he said.

Risk managers also have to control financial losses stemming from an environmental loss, Mr. Hicks said.

Financial losses may include: loss of production if a factory is shut down by regulators for environmental reasons; loss of sales if the public deems a company environmentally irresponsible; negative land values if the cost of cleaning up a site is more than the land is worth; and the high cost of cleaning up the polluted site itself, he said.

Unlike property, health and safety risks, environmental risks cannot be restricted to a single site, Mr. Hicks said.

"Environmental risks, by definition, relate to the location and surroundings," he said. Therefore, environmental loss control standards need to take into account the surroundings of a company's specific locations, Mr. Hicks said.

The main environmental concerns of corporations are: air quality, industrial hygiene, groundwater and surface water, waste management, contaminated land, noise pollution, major accidents and transport of materials, he said.

Any environmental risk should be properly evaluated before a program is imposed, Mr. Hicks said.

"There is no point in imposing very tough and costly standards of protection at a facility where loss of containment or an atmospheric emission would create no risk, because there is no population likely to be exposed," he said.

And, to ensure that suitable standards are effective, regular audits of the loss control program should be held, Mr. Hicks said.

Despite variances among the environmental risks of different sites, some fundamental principles of an environmental loss control program can be established, he said. These principles are that:

- There should be physical protections—like spill containment equipment—to contain environmental risks.
- Operating procedures should ensure that plants are operated safely within their design criteria.
- The maintenance program should include frequent preventative and repair procedures and an examination of the history of the plant.
- There should be an emergency plan to deal with major incidents.

"The general standards can form the basis of fundamental global standards, but they must allow for local interpretation or modification to cater for specific local exposures," Mr. Hicks said.

To ensure that a sound corporate loss control philosophy is propagated throughout a corporation, the impetus for environmental risk management should come from senior executives within a company, Mr. Hicks said.

"Exactly how this is done, and to what extent it is a truly global program, will depend on the management structure and style of the organization," he said.

The session was moderated by Candace Clark, international risk manager for Apple Computer Inc. of Cupertino, Calif. ■

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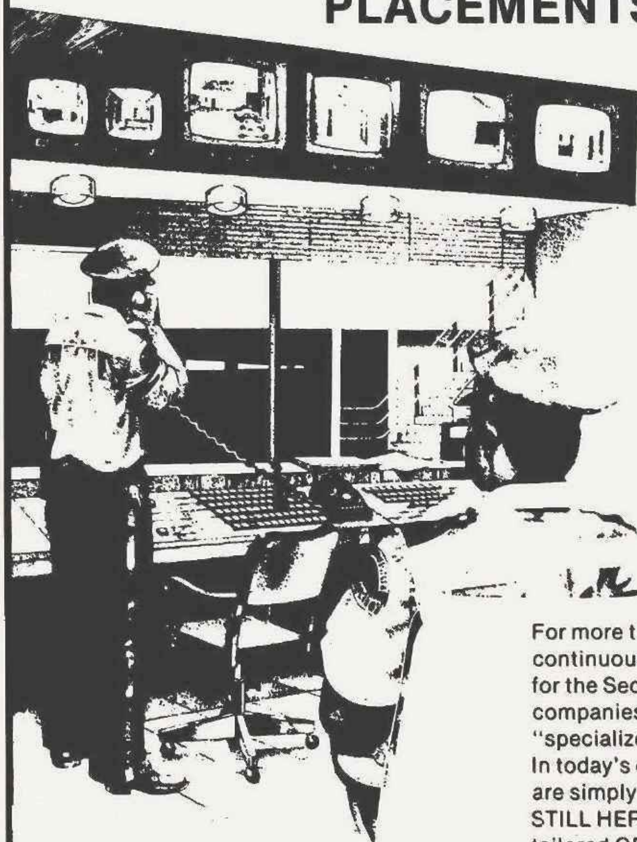

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Corporate security risks rising: Experts

By GAVIN SOUTER

MONTE CARLO, Monaco—The end of the Cold War, the spread of Islamic fundamentalism and declining moral standards are increasing the security risks of corporations, security experts warn.

RISK MANAGEMENT FORUM

And as some areas of the world become more volatile and more competitive those risks will only be heightened, they say.

Consequently, corporations should bolster their security plans, some of which were found to be deficient during the Persian Gulf War, according to speakers who addressed corporate responses to security and war risks during the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

Security-related threats facing industry during both war and in peacetime include terrorism, industrial espionage, product theft and computer fraud, said Gilbert Liebaert, a senior security adviser with Exxon Co. International, a Florham Park, N.J.-based unit of Exxon Corp.

Terrorism could become particularly difficult to guard against in Europe after 1992, he said.

"In the new Europe, without significant border controls, somebody can drive a truck full of arms from southern Italy up to Denmark without being stopped once," Mr. Liebaert explained.

Risks of industrial espionage also will increase as the new democracies emerge in Eastern Europe, he said.

Industries in the East lag well behind their competitors in the West. So the Eastern European industries will want access to information that their new competitors may not want to share, Mr. Liebaert said.

"Whatever your neighbor has that is better than what you have, you go after it," he said.

Industrial organizations may take up where the political espionage experts in the Soviet Union's KGB left off, Mr. Liebaert warned.

The changes in Eastern Europe will also lead to more product theft, he said.

"People east of Berlin are in short supply of goods which we take for granted. For example, in some of those countries, the plastic bags which our stores give away are sold on the black market," Mr. Liebaert said.

More expensive products that are in short supply in the East and may tempt thieves include televisions, videocassette recorders, telephones and clothing, he added.

Computer fraud is only just beginning to emerge as a major industrial threat in all countries, but it is sure to increase, Mr. Liebaert said.

Other security threats are still developing, he said.

One emerging threat is illegal actions by environmental activists, Mr. Liebaert said.

Some organizations have been infiltrated by people with "a wonderful naiveness" who try to physically harm organizations they believe are harming the environment, he said.

Industry will soon be hit with other security concerns, Mr. Liebaert said.

First, the globalization of companies will lead to an increase in crime, he said.

"1992 is a wonderful thing for companies but it will also lead to a great time for criminals... Organized crime is looking at 1992 as a bonanza," Mr. Liebaert said.

Organized criminals, like legitimate companies, will be able to cross borders much more easily, he said.

Changing moral values will also lead to more crime, he warned.

"What was theft yesterday is accepted today. For example, people are more likely to buy stolen goods today," he said.

There will also be more international conflicts, Mr. Liebaert said.

"Africa is already an area of turmoil and the spread of Islamic fundamentalism will lead to even more violence, because there are thousands of people who are willing to die for their cause," he said.

The risks associated with war also are a major concern for corporations, and this year, during the Persian Gulf War, corporate contingency plans for war were violently tested, according to Dominic Baland, managing director of security consultant Safeway International S.A. of Erps-Kwerps, Belgium.

During any war there are three risk zones, Mr. Baland said: the combat zone, the threatened zone, and the terrorist zone.

"The combat zone is a very violent area and no industrial activity takes place there, he explained, adding that the combat zone "has grown with the development of far-reaching modern weapons."

Threatened zones are not violent, but could become so, he said. In the Persian Gulf War, for example, he said threatened zones included Iran, Jordan, Israel and Syria.

Terrorist zones are less easy to determine, Mr. Baland said. In the Persian Gulf War, for example, Iraq declared that it would organize terrorist acts outside of the combat zone, and these acts could have taken place anywhere in the world, he said.

"The Gulf War showed how difficult it was for companies to assess the dangers in the different zones and there was a lack of rational action plans," he said.

For example, many U.S. companies with operations in Europe reacted with security measures that were out of proportion to the threat, Mr. Baland said.

In particular, travel restrictions imposed on employees were unnecessarily onerous, he said.

Better planning could have helped companies react rationally, he said.

For potential combat and threatened zones, companies should have evacuation plans, Mr. Baland said.

"You need to get your staff out quickly and some of them may have psychological and bodily injuries. Also, you may have to house them when they return to their home country," he said.

Companies should prepare for an overseas office's evacuation by preparing passports and visas and make plans to transport and reunite families, Mr. Baland said. Test runs should be carried out regularly.

Companies should also have plans for destroying confidential documents and any secret prototypes being developed in the combat and threatened zones, Mr. Baland advised.

In potential terrorist zones, companies should make sure that anti-terrorist measures are in place, he said. This includes putting confidential information on microfilm and placing documents in a safe place.

The session was moderated by Paul York, vp-corporate staff, risk management and insurance, for ABB Asea Brown Boveri Ltd. of Zurich, Switzerland. ■

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Kuwait seeks assistance to file war damage claims

By STACY SHAPIRO

MONTE CARLO, Monaco—Three separate groups are vying to win a risk management consulting contract with the Kuwaiti government to help it assess and file up to $100 billion in war-related claims against Iraq.

A consortium of London loss adjusters, attorneys and accountants; Peat Marwick Main & Co. in London; and Alexander & Alexander Services Inc. of New York; each have submitted proposals to the Kuwaiti government on how to process the claims and submit them to the United Nations for approval.

The decision on which bidder will win the contract is "imminent," said William C. Thomas, chairman and chief executive officer of Alexander & Alexander's Asia/Middle East operations.

The contract could be worth between $5 million and $10 million in consulting fees, Mr. Thomas said in an interview at the Risk Management Forum co-sponsored by the European Assn. of Risk Managers and the Risk & Insurance Management Society Inc. earlier this month in Monte Carlo.

The most complex claim to be evaluated will be the claim for damage done to the Kuwaiti oil reservoirs, Mr. Thomas said.

"There's obviously some damage to the reservoirs, which will cause more than likely a (reduction in) the oil output over an extended period of time," he said. "And it will take a team of people years to evaluate that. So you're talking open claims of maybe 15 to 20 years."

However, claims for physical damage and lost property from the civilians and residents of Kuwait must be processed first, Mr. Thomas said. "Our operation, as well as the United Nations' dictate, responds to the individual first—and we think that's important."

A&A became involved in this rebuilding immediately after Kuwait was liberated from Iraqi control by allied forces in early March.

Mr. Thomas—who spent eight years working in Saudi Arabia for A&A before moving to Singapore last year—flew into Kuwait on a Saudi Air Force transporter plane March 28 to learn what assistance was needed to rebuild the country. Altogether, he's been to Kuwait eight times since March.

It was obvious from the beginning "that part of the redevelopment of Kuwait would involve insurance and risk management. . . . We went to look at the business potential and to see what, if anything, we as a company could offer," he explained.

Mr. Thomas noticed when he first arrived in Kuwait that "surprisingly" there had not been much damage to the infrastructure. However, there had been tremendous looting by the Iraqis, he said.

"Everything that was movable—whether it was tied down or not—was gone—cars, furniture, things off the wall, bathroom fixtures," he said.

"But there wasn't much structural damage to buildings. There were several buildings" like those "owned by Kuwait Airways (Corp.) and the Sheraton (Hotel) that were damaged. But they don't have to be torn down and rebuilt. Most of them are reparable, even the ones that had some structural damage."

Mr. Thomas speculated that there was less structural damage than first thought, because the Iraqis expected to live in Kuwait. "They weren't going to ruin everything," he said.

After seeing the country, A&A examined what business opportunities there were. Since A&A had worked with Arab governments in the Middle East in 1979, Mr. Thomas decided to talk to the Kuwaiti government officials.

"We started talking to the Kuwaiti government from the finance minister to the minister of municipalities, coordinating our activities with the U.S. Embassy in Kuwait, which is playing a very key and important role in that redevelopment," he said.

From these discussions, it became clear that the United Nations was going to require Iraq to pay war reparations to Kuwait, he said. The reparations would be paid from a 30% levy on Iraq's oil export revenues, he explained.

This amount is supposed to equal the amount that Iraq used to fund its "war machine," so that there should not be any economic impact on the Iraqi population, Mr. Thomas said.

A&A saw an opportunity to consult with the Kuwaiti government on how to assess and file claims for war reparations, he said.

"You've got 2.5 million people who are going to put claims in, (plus) all these different government agencies that are going to write claims and submit them; and these have to go into a format that would meet with U.N. requirements and would also meet with credibility requirements, because they're going to be reviewed by the Iraqi government," he said.

"So we put up a proposal to develop that consultancy to the (Kuwaiti) government," said Mr. Thomas.

Although A&A developed its proposal in May and June, it was not until July that the United Nations passed resolutions about war reparations. Following the U.N. resolutions, Kuwait set up a government agency to coordinate the war-related claims against Iraq.

Mr. Thomas said that A&A's proposed risk management consulting program will consist of several functions, including:

- A procedure for all Kuwaiti citizens and other residents—"which are two vastly different numbers in Kuwait"—as well as public sector operations to submit damage claims incurred during the invasion and occupation.
- Setting a value on those damages and translating the claims into a computerized format that would be acceptable to the United Nations.
- Public relations work to inform the Kuwaiti population about how to file claims.
- Checking the claims for accuracy.
- Setting some standards for evaluating the claims.

"You have nothing to evaluate from when all the goods are gone," said Mr. Thomas. "You have nothing to go in and evaluate the claims from. The five cars they had are gone; the wall hangings they had are gone; the clothes they had are gone. And all the documentation for all this stuff is gone. So you have to develop some techniques of values that would be equitable.

"That's a hard thing to do in

Continued on next page

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Continued from previous page
any society and will be even more difficult in an Arab country that has just had itself almost eliminated from the face of the Earth."

• Processing the claims, which Mr. Thomas estimates will total between $30 billion and $100 billion.

"The reason for the variance in number is that the United Nations has not solidified all the damages that will be payable," said Mr. Thomas.

"For instance, all physical damage will probably be paid," he said. "But (the United Nations) is contemplating damages for pain and suffering and business interruption losses. And these businesses have been out of operation for 18 months already and probably will be for another year. So it depends on what is thrown in on this definition of damages as to how that number will vary."

If A&A wins the contract, it will send about 40 to 60 people to Kuwait, said Mr. Thomas.

Even if it doesn't get the contract, though, the exercise has been worthwhile, he said. Over the past few months, A&A has picked up some other Kuwait-related business, like the placement of some energy-related reinsurance treaties for some of the national Kuwaiti insurance companies, a contractors all-risk reinsurance program and some employee benefits programs for Kuwaiti conglomerates whose expatriate employees are returning to Kuwait, Mr. Thomas said.

A&A's Kuwaiti effort has been working out of its Saudi Arabian office and will continue to do so for the foreseeable future.

However, "we are looking at setting up a risk management operation in Kuwait," said Mr. Thomas. "We think there is a lot of consulting potential there. The war gave us an entry into the country that we probably would not have had had the war not occurred."

Already, A&A has talked to Kuwait Airways, the nation's oil industry and private contractors that are looking into rebuilding their companies but have not purchased much insurance coverage in the past.

"After speaking with a lot of them, they are responding positively to what insurance does," said Mr. Thomas. ■

New ventures 'blanket' Monte Carlo conference

By STACY SHAPIRO

MONTE CARLO, Monaco—The biennial Risk Management Forum held Oct. 13-16 in Monte Carlo was a time to work, a time to promote—and a time to party.

While in the meeting rooms conference delegates were busy learning about topics relating to multinational risk management, others in the hallways and hotel suites were being entertained and told of new insurance-related projects.

In the evenings, delegates enjoyed numerous cocktail parties and dinners hosted by insurance companies and brokers on yachts and in hotels.

The largest international meeting on risk management topics—jointly sponsored by the Brussels, Belgium-based European Assn. of Risk Managers and the New York-based Risk & Insurance Management Society Inc.—drew 1,009 registrants from 35 countries. This was only one more than the record 1,008 registrants in 1989, but substantially more than the 617 who attended in 1987.

France, with more than 260 delegates in attendance, was best represented, followed by the United Kingdom, with 137, and the United States, with 126.

More than 80 speakers and moderators participated in 32 sessions translated into English, French and German. The sessions were held at the Loews Hotel and the two principality-owned conference centers nearby.

But attendance at the formal sessions was sometimes sparse, partially due to the cold, stormy weather that stopped people from making the journey from hotels.

Poor attendance also was due to the informal gatherings being held while the sessions were taking place. Some of these conversations took place in the exhibit hall, where a record 28 companies—including insurers, brokers, consultants and claims investigators—staffed booths.

Other informal meetings were held elsewhere as insurers and brokers took advantage of a major international gathering to introduce themselves and promote new products.

For example, CIGNA Worldwide Inc. President H. Edward Hanway hosted a press conference at the Loews Hotel to formally launch CIGNA Corp.'s new Pan-European property and business interruption policy, known as "European Advantage" (*BI*, Oct. 7).

For CIGNA, which has 51 offices in Europe, "this is an important day," Mr. Hanway said. "Increasing economic globalization as represented in Europe by the emergence of a single market in the European Community poses a challenge for world-class insurers like ourselves. Simply put, a company like CIGNA Worldwide must respond to the dynamics of the European market by providing coverages and services that address the needs of our customers who are doing business here."

The European Advantage property policy does just that, according to Mr. Hanway. The policy offers "blanket" property and business interruption coverage across eight of the 12 E.C. nations that so far have adopted the freedom of insurance services directive. The policy will be valid for the other four countries after 1995, when they are expected to adopt the directive.

The European Advantage policy can be issued in one E.C. country in a language chosen by the policyholder and cover the policyholder's exposures in any or all of the other seven E.C. countries that have adopted the directive, said Gerhard Hornig, senior vp of Austria/Switzerland/Germany for CIGNA Insurance Co. of Europe S.A.-N.V. in Frankfurt, Germany. A single premium can be paid in one country in one currency or in several countries in several currencies, he said.

CIGNA will pay claims in the currency of the policyholder's choice.

The policy is designed for multinational companies with large European exposures as defined by the second non-life insurance directive, Mr. Hornig said. CIGNA Worldwide believes that there are 10,000 companies in Germany alone that fit this category and between 30,000 and 35,000 in all of Europe, he said.

Mr. Mascotte sees Europe's economy as 'quite strong. . .over the next decade, perhaps longer.'

Although the European Advantage policy so far covers only property risks, CIGNA is preparing a similar type of casualty policy, Mr. Hornig said.

Mr. Hornig admitted that the European Advantage policy is "in direct competition" with other insurers that are offering Europolicies, particularly Zurich Insurance Co., which offered the first Pan-European policy and coined the term "Europolicy" (*BI*, July 23, 1990).

In honor of the launch of the "blanket" property coverage, CIGNA Worldwide passed out woolen blankets with the company's logo and the shapes of the 12 E.C. countries knitted into the material.

Meanwhile, Continental Corp. used the forum to formally launch a partnership with Assicurazioni Generali S.p.A. of Trieste, Italy, to write multinational risks (*BI*, Sept. 9).

Under a formal written agreement, New York-based Continental will underwrite and service the North American exposures of Generali's multinational accounts, and Generali will underwrite and service the E.C. exposures of Continental's U.S.-based policyholders.

The agreement applies only to multinational property/casualty insurance programs and does not apply outside of North America or Europe, or to reinsurance, London market business or surplus lines business written by Generali in the United States.

Eleven Continental executives arrived in Monte Carlo to spread the word about the new relationship, including Continental Chairman and Chief Executive Officer John P. Mascotte, who had never attended a RIMS event before.

Also hosting a cocktail party in honor of the event with Mr. Mascotte was Benito Pagnanelli, joint general manager for Generali.

"We think that Europe is going to enjoy quite a strong economy over the next decade, perhaps longer," Mr. Mascotte said in an interview.

European countries "will enhance that economic activity because of their willingness to set aside old national rules. Participating in that economic growth in an appropriate way, we think, is pretty sound strategy for a company like ours."

For example, the E.C. countries are moving "very quickly" to a much easier regulatory climate than the United States, Mr. Mascotte observed. Europe is quickly adopting directives that will mean "a lot less paperwork" for insurers, since the same rules will apply to all E.C. nations. In the United States, underwriters must cope with a labyrinth of state regulations and file rates and policies with a "patchwork" of state insurance departments, he said.

"In time, and maybe in a short time, American companies may come to envy the European model," Mr. Mascotte said.

But although Europe appears to be an attractive regulatory environment, Continental became frustrated by the costs of setting up its own operations in continental Europe, Mr. Mascotte said.

"As we looked at an increasingly attractive regulatory environment to do business, we were nevertheless frustrated by what we perceived as a great challenge by the entry costs," he said.

"Our difficulty in doing that in a reasonable time and with a reasonable level of investment is what led us to seek a partner with whom we could arrange a reciprocal capability," he said. "And that's what we have done in our arrangement with Generali."

There is no intention at the moment for any cross-ownership between Generali and Continental, "although that's not been ruled out" in the future, Mr. Mascotte said.

However, the more successful the partnership is, the less likely that a formal merger of the two companies becomes, he added.

Continental has had a similar relationship with Tokio Marine & Fire Insurance Co. Ltd. of Japan for several years, Mr. Mascotte noted.

Among other announcements made at the forum:

• Sedgwick Group P.L.C. announced that it had added to its central and eastern European network by appointing Gabriel Mancas as its correspondent representative in Romania. Mr. Mancas, a lawyer, is managing director of Bucharest-based consultant Interservices S.A.

Sedgwick also has offices in Hungary and Poland.

• The Scandinavian owners of The Home Insurance Co. spread the word at the conference that they have set up a new insurance operation in the European Community.

Stockholm-based Trygg-Hansa SPP and Helsinki-based Industrial Mutual have established Hansa Industrial Insurance. Hansa Industrial, based in Rotterdam, is 60% owned by Trygg-Hansa and 40% owned by Industrial Mutual, said Goran Svenang, managing director of Hansa Industrial.

The new company, which started writing business July 1 and currently has a staff of 20 people, hopes to be writing around $80 million in premium volume within five years, Mr. Svenang said. Hansa Industrial will form an insurance network in Europe which will be available to U.S. policyholders of The Home, he added. ■

Around the states

Pension trustees win funding fight with Philadelphia

PHILADELPHIA—The trustees of Philadelphia's pension and retirement fund have won a court order forcing the city to make an $87 million contribution to the fund that it missed making earlier this month.

The board of trustees voted unanimously to take the city to court after it missed the Oct. 1 payment to the pension fund, which provides retirement benefits to retired city workers. The $87 million represented the final payment of a plan hammered out after the city missed a $130 million contribution to the fund on June 1.

The Court of Common Pleas for Philadelphia County on Oct. 8 ordered the city to make two $30 million payments to the fund, due on or before Nov. 1 and Dec. 2, and to pay the remaining $27 million plus any accrued interest on or before Jan. 2.

Under the court order, if the city fails to make the scheduled payments, the balance becomes immediately due and payable to the fund.

The city had proposed to meet the $87 million obligation by making two $25 million installments on Nov. 1 and Dec. 2, followed by the balance plus interest on Jan. 2, according to Susan Shinkman, Philadelphia's chief deputy city solicitor and the attorney representing the city.

"The trustees did not want to settle on that basis," said Ian D. Lanoff, a partner with Bredhoff & Kaiser in Washington, D.C., who represents the fund's trustees.

"The main concern the trustees had, and still have, is that by the time the third payment is due, projections of city cash flow indicate that the city may not have any money left," Mr. Lanoff said.

However, the city has indicated that it expects to be able to meet the payments as outlined by the court, said David W. Brenner, city finance director and chairman of the board of trustees.

A board "meeting took place subsequent to the court order and agreed there would be no appeal," as long as the payments are met, Mr. Brenner said.

The case is unique in that it was filed by the trustees of the plan, most of whom work for the city, said Mr. Lanoff, the board's attorney. In other cities, unions representing city workers have sued, but never the actual board of trustees, he said.

Two other lawsuits were filed against Philadelphia by the local police union and the local district council of the American Federation of State, County & Municipal Employees. Those suits were combined with the trustees' suit, Mr. Lanoff said.

After this payment schedule is met, the city's next $190 million contribution is scheduled June 30, 1992.

—By Sara J. Harty

New insurance adviser

SACRAMENTO, Calif.—California Gov. Pete Wilson has named Marjorie Berte director of the newly created Office of the Insurance Advisor.

The office, which is a division of the State and Consumer Services Agency, will provide the governor with policy recommendations and information on insurance-related issues.

"Marjorie Berte has a specialized background in auto insurance reform and will be a well-informed and effective head of the Office of the Insurance Advisor," Gov. Wilson said.

Ms. Berte, an independent media relations consultant based in San Francisco, served as the deputy campaign director and grassroots coordinator for the insurance industry-supported no-fault auto insurance campaign, Proposition 104, in 1988.

She also has served as executive vp of the Professional Insurance Agents of California & Nevada.

A Republican, Ms. Berte is a 1974 graduate of Stanford University in Palo Alto, Calif. She will receive a salary of $83,868 per year.

The post does not require confirmation by the state Senate.

—By Joanne Wojcik

RICO dismissal

Continued from page 3

about $300,000, contends Mr. Mahoney, who is with Jones, Mahoney & Brayton in Claremont, Calif.

A lawyer representing AIG said the suit "reflects another example of one of the criticisms of RICO."

People will "take any transaction, throw in accusations of fraud" and, by claiming the mails were used, file claim under the statute, contended William S. Davis, of Arter, Hadden, Lawler, Felix & Hall of Los Angeles.

The suit charged that, among other things, the insurer did not properly conduct the audit and had no intention of paying a refund. Brutoco alleged that AIG's actions were "part of a fraudulent scheme perpetrated on Brutoco and on other insureds and that mail and wire fraud were used as instrumentalities to communicate or further false representations regarding the intent to pay premium refunds."

AIG attempted to have the RICO charge dismissed at the trial court level, arguing that the allegation was barred under provisions of the McCarran-Ferguson Act that allow state laws to pre-empt federal laws in the regulation of the "business of insurance."

The trial court refused to bar the RICO claim, saying there were sufficient facts alleged to assert the claim and that no published case has held that McCarran-Ferguson bars a RICO claim.

However, the appellate court sided with AIG in a 3-0 decision.

Judge Stephen O'Neil wrote that the "application of RICO would clearly invalidate, impair and supersede California's statutory and decisional law regulating the business of insurance."

"Brutoco's remedies. . .must be limited to those administrative proceedings authorized under the Unfair Trade Practices Act or to its remaining common law actions," the judge concluded.

In a petition for a rehearing filed with the appellate court earlier this month, attorneys for Brutoco argue that the application of the RICO statute would not impair or supersede state laws. They further contend that California law could not apply to mail and wire fraud that occurred out of state.

Brutoco's attorneys also argue in the petition that policyholders "must have the right to avail themselves of all remedies provided by federal and state law to protect themselves. RICO is, by far, the most effective remedy available to consumers and the remedy most likely to deter reprehensible and criminal conduct."

Mr. Mahoney said if the petition for rehearing is denied, he will petition the California Supreme Court to review the case.

The petition for rehearing includes a letter from G. Robert Blakey, a University of Notre Dame law professor, who backs the assertion that the appellate court was in error in overturning the trial court's decision.

Mr. Blakey points out in his letter that he was the "principal draftsman" of RICO during his tenure from 1969 to 1973 as chief counsel of the Criminal Laws and Procedures Subcommittee of the U.S. Senate Judiciary Committee.

In his letter, the professor says RICO does not "invalidate, impair or supersede state law." In fact, he wrote, such a notion is "squarely inconsistent with RICO's express text."

Mr. Blakey also agreed with Brutoco attorneys that McCarran-Ferguson pre-emptions of insurance regulation under federal law cannot apply to the RICO claim because mail and wire fraud do not constitute the "business of insurance."

"Fraud is not, of course, risk management, integral to an insurer-insured relation or limited to the insurance industry," Mr. Blakey wrote.

Mr. Mahoney said that regardless of the outcome of the RICO action, other allegations against AIG still are pending at the lower court level. Those charges include breach of contract, allegations of conspiracy, misrepresentation and professional malpractice.

However, the lower court dismissed charges of breach of duty of good faith and fair dealing, breach of fiduciary duty and bad faith breach of contract.

Mr. Mahoney said he will appeal the bad faith charge dismissal.

Also named as a defendant in the malpractice and conspiracy charges is Corroon & Black Corp. The Pasadena, Calif., office of the Willis Corroon P.L.C. unit had been an intermediary in the transaction, said Mr. Davis, the lawyer for AIG.

Besides the premiums that allegedly were not returned, Mr. Mahoney said Brutoco also is seeking from AIG about $1.3 million in lost profits from a job Brutoco failed to win because its bid was too high.

The modification factor on which Brutoco's workers comp insurance rates are based was too high because AIG mishandled the audit and did not file proper figures with the state, Mr. Mahoney alleged. Therefore, Brutoco's provision for workers comp premiums that was built into its bid was falsely inflated, he said.

"We had $21,000 in increased workers comp premiums in the bid," said Mr. Mahoney, explaining that Brutoco lost the bid by $5,000.

•

American International Group Inc. and American Home Assurance Co. vs. Superior Court of the State of California for the County of Los Angeles. Brutoco Engineering & Construction Inc., real party in interest. Case No. B058371, Second District Court of Appeals.

Impact of benefit ruling minimal

By JERRY GEISEL

PHILADELPHIA—A federal appeals court decision that employers can cut severance benefits on a case-by-case basis and without prior notice will have little or no impact on other benefit programs, benefit consultants say.

The Employee Retirement Income Security Act of 1974 specifically bars employers from cutting vested pension benefits, and most health care programs would lose their favorable tax status if they provided benefits on a case-by-case basis rather than as part of established policy, benefit experts note.

"The impact of this decision will be very narrow," asserted Norm Fowlkes, a consultant in the Chicago office of The Wyatt Co.

The Sept. 30 decision by the 3rd U.S. Circuit Court of Appeals in Philadelphia involved severance benefits provided to Robert Hamilton, a former account executive in the Philadelphia office of Air Jamaica Ltd.

Air Jamaica's severance plan, as described in its employee handbook, provided that a terminated employee would receive four of weeks severance pay for each year of work with no cap on the total amount an employee could receive.

The employee handbook also contained a so-called reservation clause that said the company had the right "whether in any individual case or more generally to alter any practice, or policy or benefit, in whole or in part, without notice."

In a letter dated May 25, 1989, Air Jamaica notified Mr. Hamilton that his employment would be terminated effective May 31, 1989, as part of a corporate reorganization.

The letter also outlined the severance benefits he was to receive. Those benefits—two weeks pay for each year of service, capped at a maximum of three months of pay—were substantially less than what was outlined in the employee handbook Mr. Hamilton received in March 1989.

According to Air Jamaica, the benefits provided to Mr. Hamilton, as outlined in its termination letter, reflected the company's actual severance policy, which had been in practice for several years.

A printer's error accounted for the different version in the handbook, Air Jamaica said. In fact, the error was corrected on May 30, one day before Mr. Hamilton's actual termination, in a memo to all employees.

After termination, Mr. Hamilton, an employee since 1976, sued Air Jamaica in U.S. District Court seeking severance benefits in accordance with the policy in the handbook.

The trial court sided with Mr. Hamilton. Although the court said the reservation provision in the booklet did allow the company to amend its plan, it concluded that amending the plan—in the form of a memo circulated one day before Mr. Hamilton stopped working—would frustrate ERISA's policy of protecting employees' legitimate expectations.

The lower court said the Air Jamaica reservation of rights clause, if read literally, could be taken to mean that companies are under no obligation to award benefits in accordance with their written promises.

But the appeals court overturned that ruling, saying that ERISA does not bar such case-by-case reductions as long as there is a reservation provision in benefit materials provided to employees.

"While we agree that an employee is entitled to rely on the employer's current writing until it is duly amended, we nevertheless conclude that nothing in ERISA prevents Air Jamaica from providing its employees with benefits on a case-by-case basis as long as that limitation is explicitly stated as part of the plan," the appeals court ruled.

Benefit experts note that reservation clauses often are included in employee benefit handbooks and other benefit information, like summary plan descriptions.

In fact, in a series of decisions since the mid-1980s, federal courts have upheld the validity of such provisions in cases in which retirees sued after their companies reduced or eliminated retiree health programs.

What made the Air Jamaica reservation provision so unusual is that the phrasing "whether in any individual case" allowed the company to make case-by-case severance benefit decisions. The breadth of that provision would not have passed muster if it had involved other employee benefits that are protected by specific federal laws and regulations, benefit experts said.

For example, under ERISA, once pension benefits are earned, they cannot be taken away.

In addition, Internal Revenue Service rules say pension benefits and contributions must be "definitely determinable."

"Benefits can't be conditioned on employer discretion," explained Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

"In the pension arena, employer discretion is inpermissible. Objectivity is the key," said Seth Tievsky, a principal with Ernst & Young in Washington, D.C.

In addition, IRS non-discrimination rules that apply to self-insured medical plans say that a plan must be "a separate, written plan" for the benefit of employees.

"If the employer is paying claims willy-nilly rather than based on a specific arrangement, there could be a challenge from the IRS that the employer is offering a compensation arrangement rather than a benefit plan," Mr. Saveth said.

If that were to happen and the plan lost its tax-favored status, the benefits would be considered taxable income to employees.

That would not be an issue in severance plans, though, since the payments already are taxable income to employees.

Others note that ERISA requires plans to be maintained pursuant to a written instrument. If benefits can be changed on a case-by-case basis, there is a question about whether the employer is really offering an ERISA plan, noted John Hoos, a consultant with Hewitt Associates in Lincolnshire, Ill.

If an arrangement were found not to be an ERISA plan, it could be subject to a wide array of state laws, something that employers want to avoid, benefit experts say.

Others experts say that the equities of the Air Jamaica case rested with the employer.

"The court accepted the uniqueness of the facts. The employee was put on notice that there was an error and the court felt the employee was trying to take advantage of the mistake," Mr. Hoos said.

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Hamilton, Robert L. vs. Air Jamaica Ltd., 3rd U.S. Circuit Court of Appeals; Sept. 30, No. 90-1933.

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Health care poll

Continued from page 3

skyrocketing. "They know that while there are good physicians and quality is high for those who can get it, there's still a major problem with access and cost."

Employee benefit consultants agree with Mr. Custer's assessment.

"Individuals usually define health care quality based on how a doctor treats them. Bedside manner and personal experience is what counts," said Suzanne Kenney, director of Hewitt Associates' employee listening group in Lincolnshire, Ill.

"But when evaluating the entire system, people think about everything they have read about malpractice, high costs and a host of other bad experiences that others have had," she said.

Dr. Roger Taylor, the national leader of The Wyatt Co.'s health care consulting practice in Washington, D.C., agreed that assessments of quality are based on an individual's one-on-one relationships with physicians, most of which are favorable.

"But cost, the high number of uninsured and the anxiety of some day being uninsured themselves have people feeling less satisfied with the system. With the economy in the state it's in, many people feel they themselves could be needing a better system soon," said Dr. Taylor.

To improve the system, most people surveyed advocated nationalized health insurance.

Sixty percent said the federal government should provide health insurance to all Americans. Of those, 81% said the insurance should be provided even if it meant an increase in taxes, while 18% said it should be provided only if it meant no increase in taxes and 1% did not know.

Meanwhile, 37% said the federal government should not provide health insurance to all Americans, while 3% said they didn't know or did not answer.

Among those who favored government-provided coverage even if it meant higher taxes, the median amount they would pay for nationalized health care was only $200. In other words, half said they would only be willing to pay $200 or less in taxes.

The average tax respondents would be willing to pay was $560.

Asked to assume that taxes would be hiked to pay for nationalized health insurance, all survey respondents then were polled on what type of taxes they would most favor being raised.

Twenty percent said income tax, while 10% said sales tax and 9% favored alcohol and tobacco taxes. Various other taxes accounted for 14%, although each garnered less than 4% in support. Eleven percent favored some other, unidentified tax; 15% favored no tax; 18% did not know; and 3% did not answer.

"People want a safety net for the uninsured but, at the same time, they're reluctant to give up what they expressed satisfaction over. The fact that half the people would only pay $200 in additional taxes for government-sponsored health care is not much of a mandate," said EBRI's Mr. Custer.

"Many people still believe that a government-funded program should be free, which isn't realistic," added Wyatt's Dr. Taylor.

More than four-fifths of all those surveyed—83%—said employers should be required to provide health care benefits, as long as employees cover a portion of those costs. Sixteen percent said that employers should not be required to do so, and 1% said they did not know.

Only 57% of those surveyed favored requiring employers to provide health care benefits without any contribution from workers, 41% felt they should not, and 2% did not know.

Of respondents earning $20,000 or less per year, 90% said an employer should provide health insurance if an employee is willing to pick up a portion of the costs. In addition, 64% also felt an employer should still provide health care benefits, even if there is no employee contribution.

Of respondents earning $75,000 or more per year, 73% said employers should offer health benefits if employees pay a portion of the cost, while 47% said employers should provide health benefits even if employees did not contribute anything.

Asked to assume that their employer provided health insurance and they were required to contribute, the median annual amount respondents would be willing to contribute was $500, while the average contribution was $725.

"These findings show that there's a greater understanding of the whole system. Years ago, most people would have laid the burden almost entirely on the employer," said EBRI's Mr. Custer.

For individual cases, 'bedside manner and personal experience is what counts,' says Suzanne Kenney. 'But when evaluating the entire system, people think about everything they have read about malpractice, high costs. . . .'

"People have become resigned to the reality of cost sharing," added Ms. Kenney of Hewitt Associates.

"Costs are continuing to go up and people know it," she said. "Also, employers have taken more pains to clearly explain the problems surrounding health care. When employees are asked to put themselves in their employer's shoes, they admit that they'd shift costs, too."

When asked to place a maximum value on the amount they would be willing to pay for health insurance, the average was $1,297, while the median was $1,000.

Those surveyed tended to be willing to pay more on average if they were older and earned more money, the survey found. For example, those age 35-54 said they'd pay an average of $1,512, while those earning more than $75,000 said they would pay an average of $2,029.

"If people are willing to pay nearly $1,300 for their own coverage, which is just about what a large-group indemnity plan premiums costs, it suggests that people are more aware of what things cost," said Wyatt's Dr. Taylor.

Researchers also asked people how often a member of their family received health care during the prior year.

Fifty percent said at least one person in their family received care one to five times; 19% said six to 10 times; 12% said 11 to 20 times; and 7% received care 21 or more times. The remaining 12% said nobody in their family sought medical care in 1990.

The average number of family medical visits was eight.

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Copies of "Public Attitudes on Health Insurance, 1991" as well as the 1990 and 1989 surveys are available from Kim Thorpe at EBRI, 2121 K St. N.W., Suite 600, Washington, D.C. 20037; 202-775-6315. Survey summaries cost $75, while the full survey cost is $275 each. EBRI members pay $25 for summaries and $75 for copies.

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Dancers' suit

Continued from page 2

cause of the dancers' significantly shorter career expectations, high disability rates and a high incidence of early death due to AIDS and other causes.

"Both dancers and other fund participants receive benefits determined in accordance with the same formula," according to the dancers' suit.

"The effect of this arrangement is that the contributions made on behalf of the plaintiff class are used to subsidize the benefits of the other non-dancer plan participants" who have much longer career expectations, according to the suit.

The plaintiffs—who constitute a minority of the plan's participants—are seeking termination of the plan and are asking that its "assets be distributed to all participants in accordance with requirements under the Employee Retirement Income Security Act of 1974."

Alternatively, the plaintiffs are asking "that the fund be reformed to provide for a fair and equitable retirement benefit for dancers at the time of the dancers' actual retirement."

"I would not be happy or satisfied if they were to change the plan to allow benefits at age 40, because there are dancers that retire at age 35 and even 25," according to plaintiffs' attorney Hilary Miller, a New York lawyer with his own practice.

"I think the right answer is to terminate this plan and invest the proceeds of that termination in (individual plans for different classes of union members) that would allow members to tap their pension benefits whenever they retire from dancing," he said.

"If you are a 35-year-old dancer and you are no longer able to work as a dancer, you don't need a benefit for life—you need a benefit that will enable you to retrain yourself for another career to pay for education," Mr. Miller said.

"Despite the desperate need of dancers for career-transition benefits, the trustees have arbitrarily and in breach of their fiduciary duties accumulated more than $12 million of surplus assets" from employer contributions "which are not required to fund benefits under the plan," according to the complaint.

The pension plan trustees "have control of that surplus, and there is no provision in the plan that" earmarks the pension funds for retirement benefits, according to Mr. Miller.

While the AGMA's pension plan assets as of May had a fair market value of $22.2 million, "according to the fund's most recent annual tax return, total liability for the benefits granted by Trustees was approximately $9.3 million," the complaint states.

That $9.3 million, however, was calculated by the fund's actuary using "erroneously conservative assumptions" and bears "no rational relationship to the actual experience of the plaintiff class," the complaint alleges.

"The Fund assumes that 21% of all dancers who commence employment at age 19 will still be dancing at age 40," but actually fewer than 3% are still performing at that age, according to the complaint. As a result, "the actual liability for benefits is millions of dollars less," according to the suit.

The union, however, strongly denies the allegations in the dancers' suit.

"I think the charges are groundless," said Sanford I. Wolff, national executive secretary of AGMA. "There obviously is a philosophical difference of opinion as to what retirement means."

The dancers who stop working at age 40 or younger "don't retire. They might stop dancing, but they aren't retired in the usual sense of the word," he said.

"Typically an employer's pension plan defines 'normal retirement' pursuant to that particular plan," explained Jim Klein, deputy executive director of the Assn. of Private Pension & Welfare Plans in Washington, D.C. "It may define retirement as age 65 or it may indicate an earlier retirement age. It's a flexible standard which does, in fact, try to take into account the realities of the retirement history of the workforce."

"There may be a legitimate argument on the behalf of the ballet dancers," Mr. Klein said. "From their point of view, they are no longer engaged in the work that is the reason they are contributing to the pension plan.

"It's not necessarily beyond the scope of logic to think that someone whose dancing career is over at age 40 should be entitled to get a lump-sum benefit that they could invest or use to start another career that would ultimately fund their retirement," according to Mr. Klein.

However, Mr. Klein said, "seeking an actual termination of the plan is overly harsh and may have adverse consequences for the other workers in the plan."

Each plaintiff in the suit has met the plan's five-year vesting requirement. As a result, Mr. Klein pointed out, the ballet dancers may not be considered retirees but terminated vested workers. "The question then becomes whether or not terminated vested workers are eligible for retirement benefits," he said.

Terminated vested employees are typically treated differently from retirees in most pension plans, pointed out Henry Saveth, a principal with A. Foster Higgins & Co. Inc. in New York.

Rather than asking that pension benefits be released to them early, the dancers "might be better off changing their bargaining thrust to ask for severance benefits or retraining benefits or some type of profit sharing," he suggested. "It seems like they need a severance benefit more than a retirement benefit, because they are merely changing jobs, not leaving the workforce," he explained.

"I think the plaintiffs' chance for success is low," said Baruch Fellner, an attorney with Gibson, Dunn & Crutcher in Washington, D.C. However, he noted, "there are certain professions—especially sports—where individuals lose the key to performing their profession at an earlier age. The larger question in all of this is how should those individuals be compensated?"

"The debate does rage in other contexts," said Mr. Klein, referring to the current debate in Congress over whether employees should be restricted from collecting lump-sum payments from pension plans (*BI*, July 1).

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Cynthia Gregory, et al. vs. American Guild of Musical Artists et al., U.S. District Court of the Southern District of New York; Civil File No. 91-6751.

Legal Notice

DOCKET NO. CV-88-352383-S
CARRIER CORPORATION,
Plaintiff,
v.
THE HOME INSURANCE COMPANY, et al.,
Defendants.

SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN AT HARTFORD

NOTICE TO ALL INTERESTED PARTIES RELATING TO INSURANCE COVERAGE FOR ENVIRONMENTAL LIABILITIES OF CARRIER CORPORATION

Carrier Corporation, a subsidiary of United Technologies Corporation, has filed a lawsuit in the Superior Court for the state of Connecticut against many of its comprehensive general liability insurers, for the period 1955 to the present, seeking insurance coverage for actual or potential liabilities of Carrier arising out of the environmental claims and hazardous waste sites listed below.

If you believe that you may have an interest in the subject matter or outcome of this lawsuit and you desire to participate in the action, you must seek to participate by December 1, 1991, or you may be foreclosed from so participating. If you would like to receive a copy of the most recent Complaint in this action, please contact Plaintiff's counsel, John M. Sylvester, Esq., of Kirkpatrick & Lockhart, 1500 Oliver Building, Pittsburgh, Pennsylvania, 15222-5379, (412) 355-6500. Other papers filed in this action are available for your review at the office of the Clerk of the Superior Court of Connecticut, at Hartford, 95 Washington Street, Hartford, Connecticut, 06106, (203) 566-3170.

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Tri-Cities Barrel Site — Port Crane, New York
York Oil Site — Moira, Pennsylvania

Brown, Wilson win commissioner primary

2 to face off in Louisiana

By MICHAEL BRADFORD

BATON ROUGE, La.—A New Orleans councilwoman and a former secretary of state will square off next month in the Louisiana insurance commissioner's race.

Democrat Jim Brown, who served as Louisiana secretary of state and was a candidate for governor in 1987, attracted almost 40% of the vote in the Oct. 19 primary election.

Peggy Wilson, a Republican and a member of the New Orleans City Council, finished with about 31% of the vote in the commissioner's race.

In Louisiana, the two top finishers in the primary, regardless of party affiliation, face off in the Nov. 16 general election if no candidate receives a majority of the vote.

Louisiana voters also approved a constitutional amendment that calls for creation of a competitive state workers compensation fund. The new fund will replace the Louisiana Worker's Compensation Assigned Risk Plan, a pool administered by the National Council on Compensation Insurance and financed by workers comp insurers.

In the commissioner's race, Mr. Brown and Ms. Wilson outpaced five other contenders, including former Insurance Commissioner Sherman Bernard, who finished third with about 18% of the vote. Mr. Bernard, who vowed not to run again if he lost in the primary, was making a run at the office he held for 16 years before losing it to Doug Green in 1987 (*BI*, Sept. 23).

Mr. Green is serving a 25-year prison term on bribery money laundering, mail fraud and conspiracy charges stemming from his regulation of now-insolvent Champion Insurance Co. (*BI*, July 1).

Neal J. Burke, president of the Lafayette Parish Council, finished fourth in the race, followed by Flo Robinson, a New Orleans real estate broker, and Baton Rouge insurance agents Eddie Fletcher and Gene Guffey.

Apart from Mr. Bernard, Mr. Brown and Ms. Wilson were the best-known candidates in the race.

Mr. Brown is a Baton Rouge attorney who hosts a cable television show. He is campaigning as an experienced and efficient administrator.

Ms. Wilson is best known in New Orleans, where she is an outspoken member of the City Council. Her campaign focuses on her intention to "clean up" the state Insurance Department.

Meanwhile, 52% of the voters approved the amendment to the state's constitution that allows creation of the non-profit Louisiana Workers' Compensation Corp.

Creation of the fund, which will begin writing business in October 1992, was called for in a law passed by the state Legislature earlier this year (*BI*, July 15). However, voter approval was necessary before the fund could be established.

The fund will operate as a competitive insurer, writing coverage for "preferred risks"—or employers with good loss history—at rates competitive with other underwriters.

As a residual market, the fund will write coverage for employers that do not qualify as preferred risks and are unable to obtain insurance from the voluntary market. Rates for these employers will be higher, but the fund intends to "rehabilitate" these risks through loss control and claims management consultations and eventually insure them as preferred risks.

Employers are hoping the new fund, which will eliminate residual market assessments for insurers, will attract insurers to the Louisiana workers compensation insurance market. Several insurers have withdrawn from the market in the past several years.

Clark Cosse, general counsel at the Louisiana Assn. of Business & Industry and one of the drafters of the legislation, said that while he doesn't believe there will be a "stampede of insurers to run in and write business," eventually the voluntary insurance market will grow in the state.

Mr. Cosse explained that the fund, although not controlled by the state, will be backed by the full faith and credit of the state. The backing of the state is necessary for the fund to gain U.S. Department of Labor approval to insure longshore and harbor workers' compensation coverages.

Mr. Cosse pointed out that the law establishing the fund will give commercial insurers incentives to write coverage in the voluntary market as the current residual market runs off its business. A 10% premium tax credit will be granted on business written in the voluntary market until the new fund begins writing coverage.

"It isn't much, but it's money in your pocket," Mr. Cosse said of the tax credit.

The legislation that created the state fund also allows workers comp insurers to file and use rates, instead of requiring prior approval of rates, as long as increases do not exceed 20% annually in the voluntary market or 25% in the residual market. ■

NOVEMBER CLOSINGS

SET YOUR DATES

issue: November 18 — Reader Service   Bonus Distribution: PIA
closing: **November 5**
editorial feature: Benefits: Pension/Retirement Plans & EBC Award Profiles
Directory: 401(k) Plan Administrators
demographic section: Insurer Topics: Reinsurance Issues/Relations with Intermediaries
CPCU Conference Report

issue: November 25
closing: **November 13**

issue: December 1991 — Reader Service
closing: **November 11**
editorial feature: 1991/92 Managed Care Market Report — Directory: HMOs & PPOs

issue: December 2
closing: **November 18**
demographic section: Agent/Broker Topics: PIA Conference Report

issue: December 9   Bonus Distribution: NAIC
closing: **November 26**
editorial feature: Insurance Regulation & Trends

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Business Insurance
a publication of Crain Communications Inc

INTERNATIONAL

U.S. members file lawsuit against Lloyd's

By MICHAEL SCHACHNER

NEW YORK—After months of preparation, a group of U.S. members of Lloyd's of London has filed suit against the Council of Lloyd's, its chairman and hundreds of syndicates, members agents and managing agents, charging violations of federal securities laws and racketeering statutes.

The lawsuit, filed Oct. 21 in the U.S. District Court for the Southern District of New York by 64 U.S. members, alleges, among other things, that annual investments in Lloyd's syndicates are "securities" under the Securities Act of 1933, therefore requiring registration with the Securities and Exchange Commission (*BI*, Oct. 7).

Had Lloyd's properly registered with the SEC, the U.S. members allege, their investment would have been better regulated and more information would have been disclosed to them about developing losses.

In addition, the complaint charges the defendants violated anti-fraud provisions of the securities law. Plaintiffs also allege that members agents and other defendants downplayed the magnitude of unlimited liability as well as misrepresented or failed to disclose other serious risks when recruiting the plaintiffs.

And, the plaintiffs contend that Lloyd's purposely steered U.S. members to troubled syndicates and mismanaged their investment.

The 64 members say their personal losses stemming from membership in more than 250 Lloyd's syndicates between 1988 and 1990 already collectively exceed $9 million and could rise much higher. Several say that they have been threatened with the loss of their homes, businesses and retirement funds as a result of the defendants' lack of full disclosure.

The lawsuit, the largest of three similar actions brought this year against Lloyd's in the United States, seeks unspecified treble damages under several sections of the Securities Act and the Racke-

Continued on page 35

Transit seeks windup of Aneco in U.K. court

By ROGER SCOTTON

BERMUDA

HAMILTON, Bermuda—The receiver of Transit Casualty Co. is petitioning the London High Court to wind up Aneco Reinsurance Underwriting Ltd. of Bermuda.

Transit Casualty, which is in receivership in Missouri, claims that Aneco is "hopelessly insolvent" and currently owes Transit almost $2.7 million for paid losses arising under reinsurance contracts written between Jan. 1, 1980 and Jan. 12, 1984. And, it estimates that Aneco's future liabilities to Transit are likely to be "at least $1.6 million and could be very much higher," according to court papers.

The petition also argues that Aneco's only "substantial assets" are in the form of reinsurance recoverables from the London market and that those assets should fall within the jurisdiction of the London High Court.

Those assets should be available for all creditors, "not only those in the London market whom the company (Aneco) appears to wish to favor, to the disadvantage of the company's (Aneco's) non-English creditors," the petition says.

And, the petition asserts that a liquidator appointed by the London High Court would "be in the best position to protect those assets from being dissipated unfairly."

Aneco's chief executive, Mark Hardy, called the Transit Casualty petition "nonsense" and vowed to challenge it.

Transit Casualty's general counsel, Walter R. Lamkin, in an affidavit accompanying the petition, said that evidence from Aneco and from Bermuda's regulatory authorities concerning the recent conduct of Aneco's management "leads me to believe that there is a substantial risk that the assets of the company (Aneco) will diminish to the prejudice of the general body of its creditors."

Based on the same evidence, Mr. Lamkin alleges that "arrangements" are being effected in the London market, "whereby reinsurances due to the company (Aneco) are being collected and applied by (London-based broker) Denis M. Clayton & Co. . .in payment of amounts due to London market insureds under policies written by the company (Aneco)."

The Transit Casualty petition

Continued on page 35

Asbestos ruling debated

Judge Brown defends decision, while underwriter faults logic

By GAVIN SOUTER

LONDON—Judge Ira A. Brown Jr.'s landmark rulings on what triggers insurance policies covering asbestos bodily injury and property damage claims contained some bizarre logic that has rocked the insurance industry, says a leading London casualty underwriter.

Although insurers were relieved that the controversy over which policies cover asbestos claims were largely resolved by Judge Brown's decisions, they were stunned by some portions of the rulings, the underwriter says.

For example, Judge Brown's interpretation of some policy terms and his order that all non-privileged documents be produced during the trial baffled underwriters, said Robin Jackson, a director of Merrett Holdings P.L.C. and chairman of the London Market Asbestos Working Party.

However, Judge Brown dismisses Mr. Jackson's criticisms, explaining that his decisions follow the language of the policies and reflects California law.

Mr. Jackson and Judge Brown made their remarks in London earlier this month during an Asbestos Risks Seminar sponsored by Turner Kenneth Brown, a London law firm; Thelen Marrin Johnson & Bridges, a law firm based in San Francisco; and Lloyd's of London Press.

Judge Brown in December 1980 was appointed coordinating judge of litigation pitting policyholders against their liability insurers over whether liability insurance policies covered asbestos personal injury and property damage claims.

In what is considered the broadest coverage interpretation applying to asbestos bodily injury claims, Judge Brown ruled in May 1987 that insurance policies are triggered by asbestos bodily injury claims from the time a person is exposed to asbestos until the person dies (*BI*, June 1, 1987).

Judge Brown's decision that the insurer of a corporation that purchases another corporation has to cover the acquired firm's past asbestosis claims was 'bizarre by any rational standards,' says Robin Jackson of Merrett Holdings P.L.C.

Insurers had argued that either the insurer that is on the risk at the time of the claimant's exposure to asbestos or at the time the disease was manifested should have to cover the claim.

The ruling still is under appeal.

Although many London insurers are glad that a decision has been made on the asbestos coverage trigger issue, the judge's decision had some curious aspects, according to Mr. Jackson.

Judge Brown's decision that the insurer of a corporation that purchases another corporation has to cover the acquired firm's past asbestosis claims was "bizarre by any rational standards," Mr. Jackson said.

"One would agree with the judge that a successor corporation is liable for the acquired corporation, but one can't agree with him that the successor corporation's insurer should pay for past claims instead of the acquired corporation's insurer," he said.

The decision ignores commercial reality, Mr. Jackson said.

And, if the decision is upheld, it could jeopardize the future of the insurance industry, he asserted.

"I have never heard even the most outrageous broker suggest that a policy should be interpreted in this way," Mr. Jackson said.

Judge Brown, however, pointed out that it was not his job to assess the commercial implications of his decisions.

"If you mean to say that I should ignore the policy language and interpret the policy in terms of dollars and cents, then that is not my job as a judge," Judge Brown said.

The judge noted that the policies involved stated that they covered the liabilities assumed by the

Continued on next page

Coverage would meet new requirements

New EIL policy for German risks

By DON LEWIS KIRK

BONN, Germany—German liability insurers have introduced a model environmental impairment liability insurance policy to meet new requirements by the German government.

The model, developed by HUK-Verband, the national association of liability insurers, is designed to meet the terms of Germany's new Environmental Liability Act, arguably the most far-reaching piece of environmental legislation introduced in Europe to date.

The Environmental Liability Act, which went into effect Jan. 1., provides for civil damages for wrongful death, personal injury or property damage caused by pollution of water, soil and air. The act imposes strict liability on polluting companies (*BI*, Oct. 21; Oct. 7; May 20; Nov. 19, 1990).

The act only governs certain named industrial processes, like mining, pharmaceutical, chemical and paper processing, that have potentially "dangerous facilities."

Those companies are required by the law to purchase insurance or provide financial guarantees that they can meet their liabilities.

However, insurers had balked at insuring the wider pollution liabilities created by the act.

Not all parties are satisfied with the model coverage unveiled by the insurance association. A representative of an insurance consumer protection group says the model allows insurers to free themselves from future liability simply by canceling the policy. And, a broker contends that one of the model's provisions would make it difficult

Continued on next page

S&P questions size of Lloyd's Central Fund

By GAVIN SOUTER and STACY SHAPIRO

LONDON

LONDON—Lloyd's of London's Central Fund, which acts as the market's payer of last resort, needs to be closely examined in light of recent losses at Lloyd's, according to Standard & Poor's Corp.

The market's liabilities have grown significantly in recent years and the Central Fund may not be large enough to act as a guarantee, said the New York-based security analyst.

Lloyd's reported losses of 509.7 million pounds ($983.7 million at appropriate exchange rates) for the 1988 underwriting year and is expected to post a loss in excess of 1 billion pounds ($1.61 billion at appropriate exchange rates) for the 1989 account, which will close at year-end under the market's three-year accounting system (*BI*, July 1).

"Given the performance of Lloyd's and its impact on many names, it is unclear if the guarantee fund, which stood at roughly 375 million pounds ($723.8 million at appropriate exchange rates) at the end of 1990, is adequate in light of the overall liabilities of Lloyd's. Those liabilities totaled roughly 11 billion pounds ($21.23 billion) in 1990," S&P said.

Additionally, poor results from Lloyd's syndicates could lead to a significant reduction in underwriting capacity at Lloyd's, S&P said.

"In particular, the losses posted at Lloyd's have prompted a number of names. . .to pull out of their Lloyd's membership," S&P said.

However, Lloyd's projects that the Central Fund should more than double by the mid-1990s.

The fund currently stands at more than 400 million pounds ($684.4 million at current exchange rates), Lloyd's said. And, Lloyd's expects that the fund by the mid-1990s will increase to 1 billion pounds ($1.71 billion).

"This increase will be achieved not only by members' annual contributions to the fund, revised last year from 35 million pounds ($67.6 million at year-end 1990 exchange rates) to 60 million pounds ($115.8 million) a year, but also by the substantial income and capital growth that can be projected over the period," according to Lloyd's.

S&P's comments were made as its London office launches its new reports on the financial strength of

Continued on page 35

INTERNATIONAL

Asbestos ruling

Continued from previous page

policyholder under contract and agreement. Consequently, the policies did cover the past liabilities of acquired corporations, he ruled.

Mr. Jackson said that Judge Brown also erred in ruling in December 1989 (*BI*, Dec. 25, 1989) that insurers must cover the cost of removing asbestos from buildings. "Why should insurers pay for a product which was doing the job it was intended to do?" he said.

Before the discovery of asbestos-related diseases, the installation of asbestos in buildings added value to a building, he pointed out.

But Judge Brown replied that in ruling insurers must cover asbestos property damage claims, he was following precedent. He explained that a court earlier had found that insurers must cover the cost of replacing ill-fitting doors. Consequently, insurers also should have to cover the costs of stripping buildings of asbestos, he said.

"I am required by law to follow all of the decisions of all of the higher courts of California," Judge Brown said.

In addition, Mr. Jackson criticized Judge Brown's decision at the start of the litigation that all relevant non-privileged documents should be produced for the court.

Both sides in the case had very capable lawyers who knew which documents they wanted to have access to, so the production of all of the documents wasted time and money, he said.

"The London market had to produce over 1 million documents, but less than 100 were used in the trial," Mr. Jackson said.

"The judge's order was an order for profits for Xerox," he quipped.

But, Judge Brown said his order to produce all relevant non-privileged documents was made to preempt attempts by either side's lawyers to conceal material that may harm their own case, he explained.

"Documents may be hidden in some file which the other side does not think to look in unless he has to go through all of the files. After all, if you have a smoking gun document, you don't get up and show it—you hide it and hope that the other side's lawyer will get tired before he finds it," Judge Brown said.

Judge Brown also dismissed charges that his decisions in the asbestos case were "typically Californian or unfair." He added, "Asbestosis has not been fair to anyone involved—the courts, the insurers and most of all the injured parties. But of all those involved, only the insurers are in the business of spreading the risk." ■

Pollution cover

Continued from previous page

for policyholders to change insurers.

The model provides insurance coverage of strict liability for soil, water and air pollution. It also provides coverage for environmental damage caused by "normal operations," among other things.

A key feature of the model policy is a new definition of the claims trigger. Under the model, coverage is triggered at the moment the pollution is manifested rather than at the moment the pollution occurs, as was the case under previous pollution policies. Therefore, under the new definition, a claim is triggered at the moment damage is perceived.

"Anything else is unworkable considering the long-term aftereffects damage to the environmental can have," said a spokesman for HUK in Hamburg.

Despite HUK's assertions of "close cooperation with industry" in developing the model policy, the new model has been criticized by the Assn. of German Industry and Deutsche Versicherungs-Schutzverband, an insurance consumer protection group. "It takes away a great deal for what it is giving," says Georg Kupper, a DVS director in Cologne.

For example, the model policy does not provide first-party coverage for a policyholder's own property damage. And, costs of maintaining and cleaning up the policyholder's facilities, property or material are not insured.

One feature of the new environmental law to which insurers objected was the extension of insurance coverage for environmental damage that is caused by "normal operations." Under the model policy, the policyholder must prove he "could not recognize any possibility of loss using the best standards of technology" in order to obtain coverage for a loss. This proof is necessary, particularly for product development risks, insurers say.

The model policy also creates problems for companies seeking to switch insurers, since damage that is not manifested but has occurred before the applicable retroactive date of the policy is excluded from the coverage, according to Germany's largest insurance broker, Mulheim-based Jauch & Huebener.

"This places considerable risk on the policyholder," said Mr. Kupper of DVS. "Insurers can free themselves from any future liability by simply canceling the policy."

The general exclusion of coverage for damages occurring but not manifested before the inception of a policy is a weak point in the model, according to Rheinhold Riehemann, general manager of Jauch & Huebener. "Companies are cut off when they change insurers."

The model does allow for three-year tail coverage for completed operations hazards. The amount insured is only equivalent to the unused amount of insurance limits in the last year of the policy.

While the insurance model meets the requirements of the Environmental Liability Act, Mr. Riehemann sees a lot of room for negotiations between insurers and industry.

It is clear German insurers will continue to balk at any risk for "Altlasten," or past damage to the environment, said Walter Breining, an EIL specialist with Munich-based Allianz A.G. Holding.

New policies are expected to be available after the German government issues an implementing order, which sets the lowest amount of coverage required to satisfy the law.

Mr. Breining told *Business Insurance* that such a limit will probably be about 30 million deutsche marks ($17.7 million at current exchange rates).

The environmental liability law caps claims against a polluter for personal injury and property damage at 160 million deutsche marks ($94.3 million).

After the implementing order goes into effect, the government will enforce the clause in the act requiring "dangerous facilities" to obtain the coverage. ■

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NOTICES

NOTICE OF MEETING OF CREDITORS
IN THE SUPREME COURT OF BERMUDA CIVIL JURISDICTION 1985 : NO. 228
IN THE MATTER OF MENTOR INSURANCE LIMITED - in liquidation AND IN THE MATTER OF SECTIONS 33 AND 35 OF THE INSURANCE ACT 1978 AND IN THE MATTER OF THE COMPANIES ACT 1981
NOTICE IS HEREBY GIVEN TO ALL CREDITORS OF MENTOR INSURANCE LIMITED THAT THE 6TH ANNUAL MEETING OF CREDITORS IS TO BE HELD AT THE HAMILTON PRINCESS HOTEL, HAMILTON, BERMUDA ON THE 14TH DAY OF NOVEMBER, 1991 AT 8:30 O'CLOCK IN THE FORENOON.
DATED THIS 15TH DAY OF OCTOBER, 1991.
CHARLES W. KEMPE, JR. AND NIGEL J. HAMILTON
JOINT LIQUIDATORS

INTERNATIONAL

BERMUDA

Continued from page 33

was filed Oct. 17 in the Companies Court of the London High Court's Chancery Division. It follows two earlier winding-up petitions brought in Bermuda against Aneco, which once was one of Bermuda's largest reinsurers of captives. Aneco has been running off its business since September 1990, when then-president Jonathan Crawley left to form a rival insurer, Sphere Drake Underwriting Management (Bermuda) Ltd. (*BI*, Sept. 10, 1990).

The first petition was filed in June from Bermuda-based Mutual Indemnity Ltd., one of three insurers participating in the Insurance Profit Centre, a rent-a-captive facility (*BI*, June 10). A month later, Bermuda Registrar of Companies Malcolm Butterfield also filed winding up proceedings against Aneco (*BI*, Aug. 5). Both petitions followed a March 25 order by the Minister of Finance forbidding Aneco to write any more contracts of insurance and requesting specific financial information and details of its business plans.

The affidavit filed by Mr. Lamkin argues that "the existence of the two winding-up petitions currently pending before the Supreme Court of Bermuda should not preclude the exercise by this honorable court of its own power to make a winding-up order in respect of the company. The petition of the Registrar of Companies in Bermuda presently stands adjourned sine die (postponed indefinitely), awaiting the availability of the chief justice of Bermuda to hear it.

"The petition presented by Mutual Indemnity Ltd. is currently the subject of an interlocutory appeal by the company (Aneco) to the Court of Appeal in Bermuda. Even if the company's (Aneco's) pending appeal fails, I believe it is unlikely that the Mutual Indemnity Ltd. petition will be heard before December 1991," Mr. Lamkin said in the affidavit.

Transit Casualty also argues that the London High Court is a proper jurisdiction to order Aneco's winding up.

Aneco has "a real and substantial connection" with the jurisdiction of the High Court and only a "minimal" connection with Bermuda, the affidavit says. And, the affidavit asserts, "notwithstanding that it is incorporated in Bermuda, I believe that the company (Aneco) has little or no other genuine connection with Bermuda and has few, if any, substantial assets located there. I believe, however, that the company does have substantial assets located within the jurisdiction of this honorable court in the form of recoverables due from its reinsurers in the London market."

Pointing to details of assets shown in Aneco's 1989 annual report, which are the latest accounts publicly available, Mr. Lamkin notes in the affidavit that a debenture or bond payable by Aneco parent Forum Reinsurance Co. Ltd. is shown as a balance sheet item with a value of $8.6 million. But, because the Bermuda Supreme Court ordered Forum Re wound up in March, Mr. Lamkin said, "I believe there to be little or no possibility of the company (Aneco) recovering this amount in full, certainly not in the short term."

Mr. Lamkin said the 1989 accounts also show reinsurance recoverable due from Forum Re totaling $13.4 million. He says that, according to an Aneco letter to the Registrar of Companies in August 1990, Forum Re's reinsurance liabilities were novated to Mr. Hardy's Turks and Caicos-based Channel Reinsurance Co. Ltd.

"If, as the company (Aneco) contends to be the case, its reinsurance with Forum Re has been effectively novated to Channel Re, then the company (Aneco) has no substantial assets located in Bermuda," Mr. Lamkin said.

According to the affidavit, "It appears from the evidence contained in the registrar's petition that despite repeated requests, the Registrar of Companies in Bermuda has received no satisfactory response to specific requests for assurances as to the good standing of Channel Re and the validity of certain escrow security arrangements proposed as part of the novation arrangements. The value of this supposed asset is, accordingly, very much in doubt."

Mr. Lamkin said that while Aneco has never disputed that it is "substantially indebted" to Transit, it has "neglected and failed" to pay Transit the sum of $2,681,996, despite Transit's demands. He said "the available evidence demonstrates that the company (Aneco) is insolvent both on the basis that it is unable to pay its debts as they fall due, and on the basis that its liabilities exceed its assets."

He explained that Transit Casualty's calculations of receivables due from reinsurers, including Aneco, are based on "relevant due diligence and appropriate audits in connection with reported paid losses notified by the petitioner's (Transit's) own insureds."

The Transit general counsel argued that a London High Court-appointed liquidator "would be in the best possible position to secure the company's (Aneco's) English assets for the benefit of the general body of the liquidation."

Given the circumstances, a winding up would be "just and equitable," and the High Court should "exercise its discretion" to order Aneco into liquidation, Mr. Lamkin concluded.

However, Aneco's Mr. Hardy angrily said last week that he would be opposing the petitions, which he denounced as being based on "arrant nonsense." He said it is "nonsense" for Transit Casualty to claim that Aneco favored English creditors. And, he said that it is also nonsense for Transit to say that Aneco has no substantial assets in Bermuda.

"There are millions and millions of dollars at the Bank of Bermuda supporting Aneco's letters of credit. And Transit is very well aware of them, because it has already drawn down on one," Mr. Hardy said.

"It's also very clear to all that we are taking every possible step to protect Aneco's assets. No deals have been done with the London market. There are proposals under consideration between Aneco and the London market relating to Aneco's property catastrophe business. These are presently being evaluated in the light of an actuarial study and an auditor's report. But no deals have been done and it's absolute nonsense to suggest that the assets are in danger of being dissipated unfairly," he said.

Mr. Hardy added that, to the best of his knowledge, Aneco is "completely solvent."

He said that Channel Re in the Turks & Caicos had "funded an escrow facility proposed as part of the novation arrangements." And, he stressed, "I have no further comments to make beyond telling you, as I have told you many, many times before, that Channel Re will meet all its obligations as and when they fall due and not before."

The winding up petition was filed in the London High Court just five days before Bermuda's Chief Justice Sir James Astwood approved a request to adjourn a hearing of the Registrar of Companies' winding-up petition, which was due to have been heard Oct. 23. The hearing is now scheduled for some time in December. ■

Lloyd's members' suit

Continued from page 33

teer Influenced Corrupt Organization Act.

However, Lloyd's is challenging the members' selection of forum. Attorneys for Lloyd's say any legal action or dispute brought against Lloyd's by U.S. investors must be heard in British courts, as stipulated in an agreement developed in 1987 and signed by all members as a prerequisite for joining the market.

Taylor Briggs of LeBoeuf, Lamb, Leiby & McRae in New York, which is representing Lloyd's in all three cases, said a motion will be filed to have the case dismissed on these grounds.

But Minna Schrad, an attorney with Proskauer, Rose, Goetz & Mendelsohn in New York, which represents the plaintiffs, said that because Lloyd's has statutory immunity in the United Kingdom, claims brought under the Securities Act of 1933 should be heard in U.S. courts.

"This was not a case between a customer and a broker, but an issuer of securities who did not give proper disclosure. Lloyd's recruits capital in the U.S. and we expect that the court will want to see the laws enforced in the U.S., especially when there's no remedy against Lloyd's in the U.K.," Ms. Schrad said.

Also, the Securities Act of 1933 states that any condition that binds anyone acquiring a security to waive compliance with the Securities Act is void, said Dale Schreiber of Proskauer, Rose, Goetz & Mendelsohn, explaining why the case should be heard in the United States.

Besides alleging the Lloyd's violated securities laws, the plaintiffs charge that the Council of Lloyd's, Lloyd's Chairman David Coleridge, 266 syndicates, 16 members agents and 42 managing agents are parts of a "clique, whose members. . .profit at the expense of the outsiders."

The defendants kept the plaintiffs out of profitable syndicates, placed U.S. members on syndicates with inadequate reinsurance and paid secret and excessive compensation to insiders, the suit charges.

"We have no reason to believe any of these allegations are true," responded Mr. Briggs, Lloyd's attorney.

In addition, Lloyd's Chief Executive Alan Lord last month said that Lloyd's had held "extensive" discussions with the SEC in 1988. "We are perfectly clear that what we've done to recruit members in the United States is within SEC requirements," Mr. Lord said.

Two other suits have been filed against Lloyd's by U.S. members.

In dismissing one, U.S. District Judge Jim Corrigan of Denver ruled in late August that he lacked jurisdiction over a member's claim for damages from Lloyd's (*BI*, Sept. 9). That case is being appealed to the 10th U.S. Circuit Court of Appeals.

Another suit was filed in September in U.S. District Court in Chicago (*BI*, Sept. 16). Lloyd's motion to dismiss the suit is still pending. However, a U.S. magistrate did issue a recommendation last month to the federal court that Lloyd's should be barred from calling down on the letters of credit posted by the plaintiffs in the Chicago suit to meet their obligations until the case is resolved.

Most of the disgruntled U.S. members suing Lloyd's belong to some or all of the syndicates once managed by Feltrim Underwriting Agencies Ltd. and/or Gooda Walker Ltd. Those syndicates face a total of 750 million pounds ($1.28 billion at current exchange rates) in losses from 1988 to 1990 (*BI*, Sept. 2). ■

LONDON

Continued from page 33

Lloyd's syndicates.

The reports analyze five years of financial statements; trends in underwriting performance; syndicates' dependence on reinsurance; the underwriting line of the active underwriter; liquidity; and the level of syndicate reserves.

To subscribe to the reports, which cost 1,200 pounds ($2,050), contact S&P, 18 Finsbury Circus, London EC2M 7BP.

Jewelry claim dropped

A claim against Lloyd's of London underwriters for the theft of $5 million in jewelry collapsed earlier this month after the claimant's expert witness failed to appear in court.

The claim stems from an alleged burglary from a New York jeweler. Underwriters rejected the claim, contending the burglary was staged. The claimant, Cindy Royce Creations Inc. of New York, then filed suit against the underwriters in London High Court in February 1991.

The New York District Attorney's Office, which is investigating the underwriters' allegation of fraud, is submitting information on the alleged burglary to a grand jury.

Cindy Royce Creations said that $5 million of its stock was stolen in August 1989 after its alarm system was cut off and its vault and safe doors burned open.

However, on the advice of loss adjusters Graham Miller Group Ltd., the claim was rejected by the lead underwriters: non-marine syndicate 404, managed by Cuthbert Heath Underwriting Ltd., and marine syndicate 1014, managed by R.M. Pateman Underwriting Agencies Ltd.

The underwriters alleged that the burglary was staged; the defendants had not lost the $5 million worth of property they claimed; and there were policy defenses on the grounds of non-disclosure of material facts.

The underwriters had to establish by circumstantial evidence that the robbery had been staged and that the stock that was allegedly stolen did not exist, said the underwriters' attorney, Clive Boxer, senior partner at the law firm Fishburn Boxer in London. But, the underwriters were impeded in their case by the New York government's bureaucracy, he said.

"For example, finding support for Lloyd's in the New York District Attorney's Office proved difficult, and much of the evidence on which the firm had relied was also stopped from leaving the U.S. by the district attorney's office. The remainder was simply lost," he said.

However, the case collapsed on Oct. 3 before judgment could be made when the jeweler's expert accounting witness failed to appear and Cindy Royce's owner returned to the United States due to ill health.

Merrett closes venture

One of the first Lloyd's of London "satellite syndicates" set up to write personal lines and small commercial accounts outside of the Lloyd's underwriting room has closed due to lack of membership support.

Merrett Holdings P.L.C. in 1988 launched syndicate 1104, underwritten by Eddie Simner and managed by MIS Underwriting Agency Ltd., to gain access to the U.K. provincial property market. The syndicate, underwriter and back-up services group Merrett Insurance Services Ltd. were based in Birmingham.

The syndicate opened its doors with 11.3 million pounds ($20.5 million at appropriate exchange rates) in capacity (*BI*, Aug. 28, 1989). But this year it had only 8.5 million pounds ($16.4 million) in capacity and only 4 million pounds ($6.8 million) was promised by Lloyd's members for 1992, according to Stephen Cane, managing director for MIS Underwriting Agency.

The overall drop in capacity seen for Lloyd's in 1992 "affects a syndicate like this quite a bit," Mr. Cane said. However, other Merrett syndicates plan to continue writing U.K. provincial property business placed through Birmingham-based service company Merrett Insurance Services, Mr. Cane said. Existing clients, therefore, will not be affected by the closure of syndicate 1104, he said.

Meanwhile, Merrett's largest syndicate, number 418, expects a 6% drop in capacity in 1992 to around 200 million pounds ($342.2 million), Mr. Cane confirmed.

Tempest in a teapot

Severe winds, which were expected to cause significant damage in Northern England and Scotland earlier this month on the fourth anniversary of the Oct. 16, 1987, windstorm, turned out to be a tempest in a teapot. The Assn. of British Insurers —which prior to the storm's arrival had published a checklist of things to do to minimize damage—reported that insured damage from the winds was minimal. ■

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Upjohn ruling

Continued from page 1

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- Sending letters to physicians warning that "there is a good chance that the eye or vision will be lost" if Depo-Medrol is injected into the eye.

However, Upjohn said in a statement released after the trial that Depo-Medrol "has proven to be safe and effective when used as recommended." Its approved uses include injection in some muscles, soft tissues and joints.

Injection near the eye is not a use Upjohn recommends in its package insert, which is approved by FDA, the company said.

And, "Upjohn sought to defend itself and its product by presenting evidence regarding the safety of its product labeling, but the court prevented the company from presenting all of its evidence to the jury," the company said in a statement.

For example, Judge Leonard Levin prevented the company from presenting its 1980 recommendation to the FDA that agency-approved information included with the product be changed to warn ophthalmologists not to use the drug around the eye, according to Upjohn.

That recommendation stemmed from reports that three other people had been blinded by the drug, which Upjohn apparently reported to the FDA, Mr. Goldberg said.

The FDA rejected that proposal in 1983, an Upjohn spokeswoman said.

FDA officials would not return phone calls.

The jury reached its verdict Oct. 18 after three hours of deliberation.

The $127.7 million of damages includes $124.6 million of punitive damages, more than $3 million in compensatory damages for Mr. Proctor and $100,000 for Mr. Proctor's wife for the loss of her husband's companionship.

The jury found that Mr. Proctor's ophthalmologist was not negligent.

Upjohn "strongly disagrees" with the award, which is the largest ever against the company, the spokeswoman said. It plans to seek post-trial relief from Judge Levin. If that fails, Upjohn plans to appeal.

The jury's decision "is totally inappropriate," said Theodore Cooper, the company's chairman and chief executive officer, in a statement.

"During the 30 years it's been on the market, Depo-Medrol has proven to be safe and effective" when properly administered, he said.

Upjohn defense attorney Robert A. Downing of Sidley & Austin in Chicago declined to comment.

The verdict is not expected to have a significant affect on Upjohn's product liability coverage or on product liability insurance rates generally because punitive damages are not insurable in Illinois.

The company said it was insured for the compensatory award but would not provide coverage details.

Upjohn's 1983 product liability insurance was placed by the Detroit office of Marsh & McLennan Cos. Inc. and M&M affiliate C.T. Bowring Co. Ltd. in London, both of which currently place coverage for Upjohn.

The coverage was most likely written on an occurrence form and placed in both London and the United States, sources say.

However, sources said large pharmaceutical firms generally have large deductibles or self-insured retentions.

Some legal experts are highly critical of the punitive damage award against Upjohn.

"It seems extremely high to me," said John Elser, an attorney with Wilson, Elser, Moskowitz, Edelman & Dicker in New York.

The award is "outrageous," said Martin Connor, president of the American Tort Reform Assn., a business-funded lobbying group in Washington, D.C.

"I don't think this court has read the Supreme Court" decision on punitive damages in *Pacific Mutual Life Insurance Co. vs. Haslip*, Mr. Connor said. The Upjohn verdict is "exactly the sort of thing that the Supreme Court in *Pacific Mutual* said is over the limit."

'This is the type of case. . .I always hoped would go to the Supreme Court,' says Victor Schwartz.

In that March decision, the Supreme Court found that a 4-to-1 ratio of punitive damage to compensatory damages "close to the line of being unconstitutional," according to Victor Schwartz, a defense attorney with Crowell & Moring in Washington, D.C. (*BI*, March 11).

In the Upjohn case, the ratio of punitive to compensatory damages is about 41-to-1.

That ratio and the fact that the doctor acknowledged he mistakenly injected the drug into the patient's eye sets up an interesting factual situation involving a defendant that was engaged in socially desirable conduct, Mr. Schwartz said.

"This is the type of case on punitive damages I always hoped would go to the U.S. Supreme Court," Mr. Schwartz said.

Other federal and state courts have limited punitive damage awards based on the *Pacific Mutual* ruling.

For example, the 4th U.S. Circuit Court of Appeals earlier this month ruled that the South Carolina law governing punitive damages is unconstitutional because it gives juries unrestrained discretion in awarding punitive damages in violation of a defendant's right to a fair trial (*BI*, Oct. 21).

And, a Maryland appellate court earlier this month vacated a $12.5 million punitive damage award against Alexander & Alexander Inc., calling it unconstitutionally excessive. The Maryland court was the first to vacate an award and order a new trial based on the Supreme Court's guidelines (*BI*, Oct. 14).

Some attorneys predict that the verdict will at least be reduced on appeal, if not overturned, as Upjohn predicts.

The judge was "out of step with the (product liability) mainstream" in not letting Upjohn present all information about its dealings with the FDA, Mr. Schwartz said.

The verdict seems to be "improper," Mr. Elser said. "The chance that it will be set aside is probably pretty good," he added.

Other courts will likely review the facts to determine whether the jury's finding was reasonable, said Jim Dudley, executive director of the Illinois Trial Lawyers Assn. in Springfield, Ill.

However, Mr. Dudley added that the jury's punitive damage award reflects its opinion that Upjohn was guilty of willful, wanton and malicious conduct that showed disregard for the public safety.

In addition, punitive damages must be large enough to attract the "attention" of a large company like Upjohn, Mr. Dudley pointed out.

In any case, the jury award in the Upjohn case may add fuel to the fire to legislatively limit punitive damage awards, Mr. Connor said.

Many observers say the Supreme Court's March decision on punitive damages signaled a need for Congress and state legislatures to reform the current system of awarding punitive damages.

The U.S. solicitor general is expected to release a proposed state model law soon for capping punitive damages at the amount of compensatory damages, Mr. Connor said.

ATRA, however, concedes that that standard may be too low, especially when a compensatory damage award is minimal, Mr. Connor said.

Ironically, Illinois in 1986 adopted courtroom procedural controls designed to contain punitive damages. The Proctor suit, though, pre-dates those controls.

Under those controls, for example, a plaintiff cannot request punitive damages in an initial complaint. The plaintiff first must demonstrate to the court that there is enough evidence for the request to be reasonable, Mr. Dudley said.

Also, judges may give a portion of a punitive award to the state Department of Rehabilitational Services.

ATRA's Mr. Connor said the law has been "very effective" in limiting requests for punitive damages. In addition, it simplifies pre-trial settlement negotiations because requests for punitive damage awards are not a factor at that time.

The Upjohn verdict points out the "terrible dilemma" drug companies face when they are found liable for alleged defects in warnings approved by the FDA, Mr. Connor said.

"It shouldn't be up to a jury to second guess the FDA on labeling," Mr. Elser said.

Mr. Schwartz pointed out that a recent study commissioned by the American Law Institute recommended that courts should not allow a jury to award punitive damages against a drug company that is in compliance with FDA standards, including reporting requirements for consumer problems (*BI*, April 29). ■

Insurance fraud legislation

Continued from page 2

ardized the safety and soundness of an insurance company.

Under the Senate bill, the maximum penalties would be $1 million in fines, 30 years in prison or both.

Lobbyists point out that the Senate penalties are out of line with regular criminal fraud penalties, which typically are capped at five years in prison.

Regulators, like North Carolina Insurance Commissioner James Long, who also is president of the National Assn. of Insurance Commissioners, say either set of penalties would be vast improvement over the current lack of specific federal penalties for insurance fraud.

- The threshold at which an act of embezzlement covered by the legislation would qualify as a federal crime.

The House bill would establish a $5,000 threshold, while the Senate bill would set only a $100 threshold.

An earlier staff memo by Janet Potts, majority counsel to the House Energy and Commerce Committee, notes that the $5,000 threshold is a reasonable starting point because federal prosecutors should focus on significant cases.

"It won't benefit anyone if the federal courts are clogged with minor crimes, as they are now with a multitude of of drug offenses," Ms. Potts wrote.

- Civil penalties that U.S. attorneys may seek.

The House bill would allow U.S. attorneys to seek civil penalties of up to $50,000 for each violation or an amount equal to the amount of compensation that person received or offered for the illegal conduct, whichever is greater.

If the offense contributed to the insolvency of an insurer that had been placed under the control of a state insurance department or official, the civil penalties would be funnelled to the regulatory official in the insurer's domicile. The penalties then would be used for the benefit of claimants and creditors.

The Senate bill lacks a comparable provision.

The House bill's provision would "ensure that those harmed by these fraudulent acts will be made whole to the maximum extent possible," said Rep. John Dingell, D-Mich., in remarks on the House floor. Rep. Dingell and Rep. Jack Brooks, D-Texas, proposed the House insurance fraud provisions.

The civil penalties "have the potential to be very useful" in making victims whole, agreed Richard G. Liskov, deputy superintendent and general counsel with the New York Insurance Department.

State regulators last week welcomed passage of the House bill.

"This is one area where the NAIC needs—indeed—has urged—the federal government's involvement in insurance regulation. The long tradition of effective state regulation, which has been serving consumers for over a century, will be strengthened even more once this law is on the books," Mr. Long said.

While federal criminal penalties for mail and wire fraud can be applied to insurance fraud, they may be of little help to prosecutors because of their relatively short five-years statute of limitations, insurance regulators note.

"Insurance fraud is not the easiest of prosecutions to mount," said the New York department's Mr. Liskov, noting that complex issues often are involved.

Both the House and Senate bills would set 10-year statutes of limitations.

During the House debate, Rep. Dingell noted that most people involved in recent cases of wrongdoing at insolvent insurers "simply walked away" without investigations of their wrongdoings.

"Many of them continue to be active in the insurance business. It is clear that the current criminal statutes and penalties are inadequate to deal with the fraudulent activity," Rep. Dingell said.

"Insurance is truly an interstate and international business, and abuse of insurance companies has also become interstate and, in some cases, international. This new federal insurance fraud prevention bill will be a strong enforcement tool to bring a stop to criminal fraud in the business of insurance," Rep. Dingell said.

Insurance industry lobbyists say conferees could be selected as soon as this week to work out differences in the two bills.

Aside from the insurance fraud provisions, there are many other differences that need to be resolved in the broader anti-crime bills, including differences on the control of certain types of weapons.

It is possible that a final bill could be approved by year end and sent to President Bush, lobbyists say. ■

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Business Insurance

Oakland fire

Continued from page 1

became evident," said Douglas Smith, an employee at the city's emergency operations center. "There is nothing left for vast, vast tracts."

Including the Oakland loss, 1991 U.S. catastrophes so far account for $4 billion in insured losses, the ASIG says.

The conflagration in the hills west of Oakland began after a brush fire that firefighters believed they had contained on Oct. 19 was whipped by winds into a firestorm the following day. Fueled by drought conditions, the fire ravaged 1,900 acres, destroying 2,449 houses, 437 apartments and condominiums as well as damaging about 100 more houses.

By late last week, the human toll had mounted to 24 dead, 150 injured and 23 missing.

President Bush last week declared Alameda County a major disaster area, making federal assistance available to affected residents and local governments.

The Oakland Fire Department, which has classified the fire as "suspicious in nature," is under attack by residents, who claim its initial response to the fire was inadequate. Some plaintiffs' attorneys last week were studying what kind of suits could be brought against the department (see related story).

In fighting the fire, more than 1,000 firefighters, joined by homeowners desperately wielding garden hoses, drained ten 500,000-gallon reservoirs of the East Bay Municipal Utility District. Burst water lines further added to the drain on the reservoirs and hampered firefighting efforts, said Tom Nordin, risk management administrator for the East Bay MUD.

"Even if the reservoirs had remained full, it would not have been enough to fight a fire of that magnitude," Mr. Nordin asserted.

Despite the huge losses, the catastrophe is not expected to turn the property/casualty insurance market.

"We all think the market's going to turn in a year or two, but as an independent event, I don't think the fire is enough to turn the market," said Alan Shirek, senior vp and manager of the risk management department at Alexander & Alexander of California Inc. in San Francisco.

Individual insurers' losses "are big numbers, but those are enormous insurance companies writing in a class of business with good loss ratios," observed Jeffrey McKinley, western regional manager of Jardine Insurance Brokers Inc. in San Francisco.

"Homeowners insurance has been profitable," he said.

Losses probably will not be large enough to stimulate insurance company managements to raise prices on their commercial business, and losses are not concentrated among companies that are "big commercial carriers," said G. Alan Zimmermann, first vp with Prudential/Bache Securities Inc. in New York.

He pointed out that Allstate Insurance Co. and Farmers Group Inc., for example, are among the largest homeowners insurers in California but that their commercial lines volume is more modest.

Ron Frank, vp at Smith Barney, Harris Upham & Co. in New York, said that predicting insurers' reaction to losses from the fire is nearly impossible.

"Will this be the event that makes the industry get up and scream uncle?" he asked.

"It's not that they're not in pain, it's a question of how much they are willing to take," Mr. Frank said of insurers. "My gut feeling is that they will take some more."

Insurers are still flush with capital, so there is not a great impetus to raise prices yet, he explained.

Myron M. Picoult, managing director and senior insurance analyst at Oppenheimer & Co. in New York, agreed that higher rates as a result of the fire would be merely "wishful thinking" on the part of industry observers.

"We're giving them too much credit to think logically," he said of insurers' reaction to the disaster.

Nevertheless, "a loss exceeding $1 billion will start affecting the catastrophic loss reinsurance market," which in turn may have a "ripple effect on the commercial market," Jardine's Mr. McKinley said.

"This event will have more reinsurance participation than a hurricane would because it is concentrated in a small piece of geography," said Michael Smith, first vp at the Lehman Brothers division of Shearson Lehman Brothers Inc. in New York.

"The reality of insurance is that if you look at small areas, you're going to find individual insurance companies with inordinate market share. When that happens, the catastrophe reinsurance cover attaches very quickly," he explained.

"A lot of this will get into the London market," since homeowners insurers have fairly large retentions and "the only place you can get excess over a large retention is the London market," Mr. Smith said.

"It's not going to do anything to cause the London market to turn any faster than it would, but it may convince a few more names in Lloyd's that this is not where they want to be," Mr. Smith said.

Prudential's Mr. Zimmermann agreed that the loss could pose "further woes for London."

Most people expect that the first $1 billion of insured losses will be absorbed by the primary industry, with the remainder paid by the reinsurance industry, said John N. Gilbert Jr., president of the Holborn Agency Corp., a New York-based reinsurance intermediary.

The loss, though, still represents a "reasonably substantial loss," he said. "It's a loss we didn't need."

However, it "adds insult to injury" because the loss is not large enough to galvanize the overall reinsurance market to harden significantly, Mr. Gilbert said.

Andrew Barile, reinsurance consultant with Ambel Consultation Services Inc. in New York, noted that insurers' high retentions in catastrophe loss and property excess-of-loss reinsurance agreements "have given them a much bigger loss" than they would have experienced from a similar catastrophe before 1985, when the tight market forced ceding companies to increase their retentions.

However, George Roberts, president of Reliance Reinsurance Management Inc., a unit of Reliance Group Holdings Inc. in Philadelphia, believes the loss will help tighten the property catastrophe market.

"I don't really think as regards other parts of the market that it would have a significant impact," he added.

Since it is a personal lines insurance loss, its impact on commercial business will be limited, Mr. Roberts said.

One of the few commercial losses was sustained by Pacific Gas & Electric Co. in San Francisco.

PG&E sustained "millions" of dollars in damages to facilities in the disaster area, a spokesman said, though the damage will not be as high as the approximately $80 million in damage the utility sustained in the 1989 earthquake.

PG&E's all-risk property insurance policy, written by Lloyd's syndicates, carries a $25 million deductible for fire losses.

The policy excludes fire damage to poles and lines. With a service area of 94,000 square miles in Northern and Central California, "the premium on lines and poles is prohibitive," the spokesman explained.

But, as in the case of losses caused by the earthquake, PG&E hopes to fully recover whatever losses are not covered by insurance through a reserve financed by rate proceeds, the spokesman said.

Damage to East Bay MUD's facilities was "fairly minimal" considering the extent of the disaster, Mr. Nordin said. He estimated losses would be less than the district's $100,000 fire loss deductible under its all-risk property policy led by Aetna Life & Casualty Co. The policy provides $50 million in limits.

Damage included slits in the concrete in one of the reservoirs, damage to hydrants and main lines, and a burned-out truck, Mr. Nordin said.

Several of California's largest homeowners insurers acknowledge that they will be digging deep into their own pockets before reinsurance responds to claims from last week's catastrophic fire.

As of last Friday, several insurers were reporting losses in excess of $100 million each, before reinsurance.

Several insurers said that their policyholders in the affluent Oakland hills area had purchased "deluxe" homeowners coverage, which guarantees full replacement value.

And, as firefighters contained the fire and insurance adjusters were allowed into the area, insurers raised their preliminary estimates of insured losses dramatically.

For example, State Farm Group of Bloomington, Ill., the largest homeowners insurer in California with more than 20% of the market, reported an estimated loss of $180 million at the beginning of last week.

But, "it's becoming increasingly clear that's on the low side," a spokesman said later in the week.

The $180 million loss represents only structural loss and does not include contents, which could total $200 million more, he said, giving State Farm a $380 million loss.

The insurer had received more than 400 claims for total losses; that is, "a little frame and some chimney" was all that remained, he said.

State Farm also received about $3 million in claims for auto losses.

The Oakland fire is "the worst we've seen in the nation, from our perspective," the spokesman said. State Farm has 200 adjusters combing the area, about half of them from outside the region, he said.

State Farm, with $17.9 billion in capital and surplus at year-end 1990, does not purchase reinsurance. "We quit when our internal capability exceeded what was available out there," the spokesman said.

Allstate, the state's second-largest homeowners insurer with 17.3% of the market, estimated last Monday that it had $50 million in insured losses. But, later in the week, Allstate boosted its estimate to $128 million, including structures, contents, living expenses and vehicles.

So far, Allstate has received 459 claims, of which 227 are total home losses. It has also received 250 claims for auto losses.

Allstate projects it will receive 733 fire loss claims.

Allstate's reinsurance attaches excess of $100 million in losses, said a spokeswoman at the company's Northbrook, Ill., headquarters.

Farmers, the state's third-largest homeowners insurer, estimated last week that its losses will exceed its $100 million retention.

Earlier in the week, the company had estimated that losses would not exceed its retention.

"The numbers have been going up every two hours," a spokesman said.

Of 160 property claims received earlier last week, the average loss was $330,000, including contents, he said.

One large condominium complex that was destroyed represented a multimillion-dollar loss, "maybe up to $10 million," the spokesman said.

Another large condominium complex was heavily damaged and has up to $8 million in coverage, he added.

Though Farmers has an overall market share of more than 13% statewide, its market share in the upscale area is only about 5% to 6%, the spokesman said.

United Services Automobile Assn., which writes about 3% of the state's homeowners insurance, expects that claims from the Oakland fire will exceed $60 million, including contents, but not including living expenses, debris clearing and landscaping, a spokesman said.

USAA had received 211 property loss reports, including claims for 126 destroyed homes, by midweek.

"Fifty percent of the total losses have replacement cost coverage and not just policy limits, so that could run the total up higher," a spokesman said.

USAA also had 75 auto loss claims, including 51 total losses, amounting to $300,000.

California State Automobile Assn., Inter-Insurance Bureau, with 4% of the state's homeowners insurance business, estimated its gross losses will amount to $50 million for homeowners claims, including contents.

But that figure will rise with auto claims and other claims, a spokesman said.

"Well over 100" homes insured by CSAA were destroyed by the fire, he said.

CSAA also expects some extraordinary expenses related to problems with surveying the disaster area in preparation for rebuilding, according to the spokesman.

SAFECO Corp. of Seattle, which writes about 3% of the state's homeowners business, reported that its gross losses will exceed $40 million, including contents and living expenses.

The company had received about 200 property claims last week.

SAFECO retains the first $20 million of a catastrophic loss, a spokeswoman said. After that, reinsurance picks up 95% of the next $80 million.

SAFECO is reinsured by the London market, with 50% of its program written by Lloyd's of syndicates, she said.

Fireman's Fund Insurance Co. of Novato, Calif., with about 5% of the state's overall homeowners business, "is represented probably in a higher proportion than that wherever there are affluent communities," a spokesman said.

Fireman's Fund had no estimates of its fire losses late last week, but its exposure in the devastated Oakland neighborhood "is not inconsiderable," he said. Losses will be "far worse" than in a 1990 fire in Santa Barbara, where the loss for Fireman's Fund was about $15 million before reinsurance, he said.

Fireman's Fund had received more than 204 claims as of late last week.

Hartford Group Inc. reported 24 claims, principally homes, for losses totaling $8 million.

However, "it could go higher," a spokesman said.

Government Employees Insurance Co. reported fire losses of $1 million early last week, representing three houses, four apartment rental policies and one condominium.

Some large insurers say they will not sustain heavy fire losses because they have adequate reinsurance or did not write much homeowners coverage in the area.

For example, Transamerica Corp., which markets "an upscale niche insurance product" for homeowners, estimated a loss of $50 million to $75 million before reinsurance but only a net loss of $4 million to $6 million.

"We're very prudent and a heavily reinsured company," a spokesman said.

Transamerica had received 200 claims late last week. It has 600 customers in the area, but not all of them were in the fire's path, the spokesman said.

Aetna Life & Casualty, with about 3% of the homeowners market in the state, reported about 30 property claims late last week, some of which were total losses.

But, "reinsurance will soften the blow," said a spokesman.

Chubb Corp. writes about 3% of the state's overall homeowners insurance business, but does not have a significant exposure in the Oakland hills, according to the company.

Brokers noted that Chubb targets affluent homeowners, like those in the Oakland hills area.

"Our target market is the high-value personal lines market," agreed Gail Devlin, Chubb's chief financial officer in Warren, N.J.

But, because of other underwriting concerns, including the fact that Oakland is in an earthquake area, one cannot conclude that Chubb had a heavy exposure in the fire, she said, noting that the insurer had not estimated its fire losses.

Allstate and several other insurers said they expect their loss estimates to rise as adjusters and policyholders assess contents lost in the homes and submit claims under special coverages for valuable items like antiques and fine art.

"I know of many collectors who live in the hills, and working artists and important photographers have studios in the hills," said Phil Mumma, associate director of the Oakland Museum.

"The area has long been rich in visual arts and artists. My presumption is that there are substantial losses" of art works, he added.

However, Julie Anderson, curator of the corporate art collection at SAFECO in Seattle, does not expect that much artwork destroyed in the fire was insured.

Too often people "don't add the riders" providing coverage for valuable items, Ms. Anderson said.

At least one large collection of 800 paintings by California artists destroyed in the fire was uninsured, according to local press reports.

The collection was valued at $18 million, Mr. Mumma said.

•

Associate Editors Michael Bradford in Dallas and Judy Greenwald in Campbell, Calif., contributed to this report.

Lawsuit alleging negligent response to fire expected

OAKLAND, Calif.—Lawsuits alleging that the City of Oakland, Alameda County and the Oakland Fire Department were negligent in their response to the Oakland hills fire could be filed this week, says plaintiffs' attorney Melvin Belli.

Mr. Belli, a partner with Belli, Belli, Brown, Monzione, Fabbro & Zakaria in San Francisco, said late last week that he had received about 25 phone calls from people who suffered losses in the deadly fire.

"We signed up about 15 clients so far and one is asking for a class action," he said.

No suits had been filed as of late last week but Mr. Belli expects to file as early as this week.

The fire claimed 24 lives, while another 23 people are missing and 150 were injured. The fire caused an estimated $1.2 billion of insured damages, though insurers expect that figure to climb (see story, page 1).

"There will be some contingent cases against the fire department, the city or the county" alleging negligence or absolute liability, Mr. Belli said.

"We are checking all the ordinances to see whether sovereign immunity applies in this situation," he said. Sovereign immunity prohibits lawsuits against governments.

Among those whose homes were destroyed was Jon M. Ingethron, risk manager for the City of Oakland. He could not be reached for comment about the threat of lawsuits.

Mr. Belli said the number and type of lawsuits will depend on how much of his clients' losses insurers will actually pay.

"The majority of losses are covered by insurance and most insurance companies have been acting decently. My advice to people is to call their brokers and their insurance adjusters to see what they have to say, but don't sign any release or accept any checks without checking with us. And, if an attorney is involved, don't pay him anything" because that should be covered by the insurers.

—By Christine Woolsey

Executive Life

Continued from page 1

the original takeover proposal for Executive Life—submitted in August by French investor group Altus Finance and insurer Mutuelle Assurance Artisanale de France—and bids modeled after it, which includes the NOLHGA bid.

In addition, some of the attorneys also are asking that certain issues—like the true value of the insurer's assets—be resolved before one of the bids is formally selected.

Meanwhile, Washington Insurance Commissioner Dick Marquardt has filed a motion in Superior Court to intervene in the Executive Life rehabilitation to protect the interests of Washington policyholders and the state's guaranty fund.

Mr. Garamendi said Thursday he was recommending the NOLHGA bid to Judge Lewin because it promised the highest return to policyholders. "Getting the most dollars into the pockets of Executive Life's policyholders has always been my top priority."

However, because the NOLHGA bid "needs to clear up some significant uncertainties," Mr. Garamendi reserved his right to select from among two runners-up: the Altus/MAAF proposal, which would pay policyholders 86 cents on the dollar after recoveries from guaranty funds, and an offer by a group led by San Francisco-based investment bank Hellman & Friedman, which would have paid 85 cents.

NOLHGA has until Nov. 4 to eliminate nine uncertainties in its bid under a tentative schedule approved Friday by Judge Lewin. Mr. Garamendi then has until Nov. 6 to make a final decision on the NOLHGA bid.

The uncertainties are:

- That the guaranty funds have the legal authority to operate an insurer.
- That NOLHGA members are able to assess insurers as necessary to comply with the terms of the bid and to provide the necessary financial guarantees to ensure payments to policyholders and access to their funds.
- That future life insurer insolvencies would not damage the operations of the company set up by NOLHGA to succeed Executive Life.
- That changes in state laws would not undermine the agreement.
- That lawsuits filed against Executive Life or its successor would not undermine the agreement.
- That, should NOLHGA default, there is a single source of payment or entity capable of responding to a judgment.
- That there be sufficient assets available to enforce compliance with a judgment against Executive Life or its successor.
- That there are no other potential defects in NOLHGA's ability to implement the bid.
- That the structure and identity of the new company's management be solidified.

If these conditions are not met by Nov. 4, the Altus and Hellman & Friedman groups would have until Nov. 11 to submit revised bids under the court-approved schedule. Mr. Garamendi would select one of those two bids by Nov. 14, with a court hearing to be held Nov. 18.

But NOLHGA President Eden Sarfaty said the group will meet soon with Mr. Garamendi to reach an agreement.

"We will immediately begin discussions with Commissioner Garamendi and the court to review the remaining issues and to reach a definitive agreement as soon as as possible," Mr. Sarfaty said in a statement.

"We are certainly pleased that Commissioner Garamendi has obviously recognized that our proposal is the best for the policyholders. We don't see any reason why we can't meet the conditions that he has attached to his approval," added Robert Ewald, executive director of the Illinois Life & Health Guaranty Assn. in Chicago and a member of NOLHGA's Executive Life Task Force.

"We believe we have, based on legal advice, broad authority to do what is necessary to enter into the proposed transactions," he said.

Mr. Ewald also said that a $643 million lien by the Internal Revenue Service against Executive Life for back taxes should not interfere with the NOLHGA proposal (*BI*, April 29).

Several sources say the IRS lien might be settled for between $30 million and $40 million.

An IRS spokesman in Los Angeles would only say the lien remains in effect.

Under the revised NOLHGA proposal, policyholders covered by guaranty funds would receive 100% of their benefits up to the limits set by the states in which they reside. These caps average $100,000 for cash benefits and $300,000 for death benefits.

Policyholders with larger amounts at stake, like pension plans with assets invested in Executive Life GICs, would receive 100% of the first $100,000 and 89% of any amount above that.

The NOLHGA proposal also would give policyholders 25% of any profits earned on the company's investment portfolio. Unlike the Altus group's proposal, the NOLHGA proposal would retain Executive Life's junk bond portfolio. The junk bonds, which had a face value of $6.6 billion, are now valued at about $4.2 billion.

The NOLHGA proposal, however, does not include any provisions for municipalities that invested bond issue proceeds in Executive Life guaranteed investment contracts.

A trial continued last week in Los Angeles to determine whether muni-GIC holders are entitled to the same claim priority as annuitants and other GIC holders. Reply briefs were due Thursday, but final arguments have yet to be scheduled.

If the court rules that muni-GIC holders have the same status as other policyholders, the terms of the NOLHGA bid—as well as most of the other bids—would have to be revised.

The American Council of Life Insurance supports the NOLHGA bid because it permits policyholders to share in any increased value of the insurer's bond portfolio.

"There would be no windfall profits for private investors," a statement from the ACLI states.

The ACLI—whose 600 life insurer members write more than 93% of the life insurance in force in the United States—also is helping NOLHGA identify industry executives to serve on a temporary advisory council that will head the new company until a permanent board has been selected.

"Several well-qualified life insurance companies have already indicated their interest in helping to manage Executive Life's existing assets and liabilities," ACLI said.

While the Hellman group bowed out gracefully following Mr. Garamendi's recommendation of the NOLHGA bid, the Altus group objected to Mr. Garamendi's selection of NOLHGA's offer.

"The NOLHGA bid shares a basic premise with ours—that the bonds should be liquidated over time, taking full advantage of market conditions, for the benefit of policyholders," said F. Warren Hellman in a statement issued Thursday.

However, a statement issued Friday by the Altus group noted that Mr. Garamendi's request that NOLHGA satisfy contingencies before its bid could be approved confirms "that NOLHGA could not legally or financially perform its bid."

The Altus group said it has been informed by insurance industry authorities that "it is not possible for NOLHGA to meet these conditions, for a variety of reasons, including state insurance and tax laws, as well as insurance industry accounting regulations."

The Altus group maintains that its bid, backed by $3.3 billion in cash rather than "promises based on hopes of a further recovery in the junk bond market," remains the best solution for Executive Life policyholders.

The Altus group's bid would guarantee a payout of only 86 cents on the dollar after guaranty funds meet their obligations, compared with 89 cents under the NOLHGA bid, but it would pay $2.7 billion for Executive Life's junk bond portfolio.

Some critics have said the Altus group's "bonds out" proposal severely undervalues the bonds.

But, "Executive Life policyholders have overwhelmingly endorsed the concept of a 'bonds out' structure providing security and liquidity as the only possible solutions to their concerns," said John Hartigan, director of transition planning for the French investor group and a senior partner at Morgan, Lewis & Bockius in Los Angeles.

Attorneys for policyholder groups last week were preparing their own objections to the various bids based on a study by Arthur Andersen & Co. for the Allocated Annuities Committee, a court-established group representing individual annuity holders.

The report shows that if obligations owed to muni-GIC holders and the IRS tax lien are excluded from Executive Life's liabilities, the insurer's assets—including the junk bond portfolio—currently exceed its liabilities.

"In an orderly, managed liquidation, annuitants can ultimately expect to recover 100% of their contract amounts if municipal GICs are not policyholders," the report states.

Some other policyholder attorneys also are filing motions asking that certain issues—such as the value of the company and whether a bonds-in deal would be better than a bonds-out deal—be resolved before Judge Lewin selects a new owner for Executive Life.

"We hope to inject some orderliness into the hearings," said Philip Warden, an attorney with Pillsbury, Madison & Sutro in San Francisco. The firm represents holders of $1.65 billion of Executive Life's estimated $1.9 billion in muni-GICs.

Meanwhile, the state of Washington is seeking to become the third state to be a party to the Executive Life rehabilitation proceedings.

California, Executive Life's domiciliary state, became a party to the case when the California Insurance Department seized the troubled insurer earlier this year (*BI*, April 15). And Judge Lewin gave Texas Insurance Commissioner Phil Barnes intervenor status in August.

Parties with intervenor status can file motions and open discovery. The purpose of intervention is to prevent delay and unnecessary duplication of lawsuits. Intervenor status may be denied, however, if it interferes excessively with the rights of original parties to conduct the rehabilitation on their own terms.

Commissioner Marquardt decided to seek intervenor status to protect the interests of some 16,079 Executive Life policyholders—including two municipal GIC holders—residing in Washington state, explained John Woodall, assistant deputy commissioner.

Washington's liabilities for Executive Life include $188.6 million in insurance products, like life insurance and annuities, as well as $23.5 million in muni-GICs, the motion says.

As a party to the case, the commissioner could question the settlement as it relates to Washington state law and the participation of the state's guaranty fund, Mr. Woodall said.

Washington's life and health guaranty fund pays much higher benefits than those of most other states, according to Mr. Woodall.

"Washington protects life, accident and health and allocated annuity contracts up to $500,000," he said.

In addition, unallocated annuity contracts, such as pension GICs that do not name annuitants individually, are covered up to a maximum value of $5 million, Mr. Woodall said.

On the other hand, California's fund only pays 80% or $250,000 in death benefits on individual contracts, whichever is less, and only up to $100,000 in cash values on individual annuity contracts. However, the California fund will pay up to $5 million on unallocated annuity contracts.

At least one other state—Minnesota—has filed comments about the Executive Life bids with the court, expressing concern that Minnesota policyholders receive the maximum amount possible. However, Minnesota is not seeking intervenor status. ■

Update

New hearing in tobacco case

Continued from page 2

tobacco companies with failure to warn or with misrepresentation of the dangers of smoking (*BI*, Oct. 14).

The court's request for reargument indicates that the justices may be split 4-4 on at least one issue and would like recently confirmed Justice Clarence Thomas to participate in the case.

"The most likely reason they asked for reargument is that they are equally divided on at least one issue," said John Branzhaf, executive director of Action on Smoking & Health, an anti-smoking group.

"We walked into this considered the underdog," said plaintiffs' attorney Marc Edell with Budd, Larner, Gross, Rosenbaum, Greenberg & Sade in Short Hills, N.J. "I look at this at going into overtime."

Cigarette manufacturers' attorney H. Bartow Farr III of Klein, Farr, Smith & Taranto in Washington, D.C., would not comment.

Retiree benefits in bankruptcy

CINCINNATI—Federal bankruptcy law does not give retirees the right to lifelong, unaltered health care benefits, according to a U.S. Bankruptcy Court judge.

Changes that Congress made to the federal Bankruptcy Act several years ago require that retiree health care benefits continue during bankruptcy proceedings, but they do not restrict a company from ever altering those benefits, wrote Judge J. Vincent Aug Jr. last week.

Benefits remain subject to negotiation between the employer and a committee representing retirees, Judge Aug wrote in a decision involving Cincinnati-based Federated Department Stores Inc. and New York-based Allied Stores Corp., which filed for Chapter 11 last year. The firms are units of Campeau Corp. of Toronto.

To interpret bankruptcy law as a "vesting provision would be a windfall to pre-petition retirees," Judge Aug wrote.

The decision confirms that retiree health obligations are determined by the conditions set in the retirement plan and that bankruptcy law does not change those obligations, said Federated and Allied attorney Glen Nager, a partner with Jones, Day, Reavis & Pogue in Washington. Both firms reserved the right to alter benefits, he noted.

Wider European trading zone

LONDON—An agreement on a 19-nation free trade zone signed last week by the 12 European Community nations and the European Free Trade Assn. could expand the E.C. freedom of insurance services directive to the seven EFTA countries by Jan. 1, 1993.

Those nations—Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland—and the E.C. nations still have to approve the agreement through national parliaments or referendums.

The agreement "means that freedom of establishment and freedom of insurance services will be allowed. . .in the larger European economic area," said Edward Hester, a general manager for Zurich International Ltd. in London. "It means that, for example, Swiss and Swedish insurance companies can establish themselves in the European Community along the same lines as the E.C.-based insurance companies."

Court affirms judicial immunity

WASHINGTON—Affirming the broad immunity of judges from tort lawsuits, the U.S. Supreme Court last week ruled that a California judge who had a public defender forcibly dragged into his courtroom from another courtroom cannot be sued for damages.

In an unsigned opinion, the high court ruled 5-3 to reverse a May 1991 decision by the 9th U.S. Circuit Court of Appeals that the judge was not immune.

Attorney Howard Waco alleged in a lawsuit that U.S. District Judge Raymond Mireles in November 1989 ordered court officers "to forcibly and with excessive force seize and bring" Mr. Waco into his courtroom. Judge Mireles dismissed the complaint on the grounds of judicial immunity.

The 9th Circuit reversed Judge Mireles' ruling that he was immune from the suit because his alleged actions were not taken in his judicial capacity. The court reasoned that in authorizing the use of excessive force, the judge exceeded his judicial capacity.

Reversing the 9th Circuit decision, the high court on Oct. 21 ruled that Judge Mireles' actions were within his judicial capacity and therefore he is immune from tort litigation.

Quoting from an earlier ruling, the high court said: "If judicial immunity means anything, it means that a judge 'will not be deprived of immunity because the action he took was in error. . .or was in excess of his authority.' "

Briefly noted

High-layer excess liability insurer ACE Ltd. is buying $50 million worth of newly issued shares in **Centre Reinsurance Holdings Ltd.** Neither company would say what percentage of Centre Re will be held by ACE, but Zurich Insurance Group's current 75% stake will leave it the majority owner. . . .The **Pension Benefit Guaranty Corp.'s** deficit will top $2 billion at year-end 1991, up from $1.8 billion a year earlier, PBGC Executive Director James B. Lockhart said. The PBGC could face an additional $14 billion in losses if several financially ailing companies terminate underfunded pension plans. . . .The California Supreme Court has decertified an appellate court exception to the so-called Moradi rule, which bans most **third-party bad-faith actions** in the state. The 4th District Court of Appeal in San Diego had ruled July 18 in *Weiner vs. Fireman's Fund Insurance Cos.* that insurers that delay payment of valid third-party claims may be guilty of outrageous conduct and liable for tort damages (*BI*, Aug. 5). . . .The 5th U.S. Circuit Court of Appeals has overturned a 1989 **U.S. Environmental Protection Agency** regulation that would have banned the use of asbestos in many products, like automobile brakes and roof shingles. The court ruled the agency had not adequately evaluated the potential danger and cost of substitute products. The EPA has not decided whether to appeal. . . .**Rollins Burdick Hunter Group Inc.** has completed its acquisition of Dutch broker Hudig-Langeveldt Group B.V.

Despite a torrent of red ink, competitive market continues

By LEONARD M. WILSON
Special to Business Insurance

INTEREST RATES AND inflation are riveting subjects for investors these days. Treasury bill rates are approaching their lowest level in six years and are not far from the bottom reached in the recession of 1974. Thirty-year Treasury bonds are now at about 7.9%, a far cry from the 14% yields of 1982.

This should be good news for the publicly owned insurance brokers. Pricing of commercial insurance ought to be firming. Logically, the tolerance of insurers for underwriting losses surely must diminish. But there are currently no signs of a pricing response to lower interest rates.

Forecasters anticipate an aggregate combined ratio of 111% for the property/casualty industry in 1991. Most expectations tack on another two points to 113% for next year. In a nutshell, underwriting has become a torrent of red ink. Cash flow underwriting, market share strategies, too much capacity—whatever the rationale, there seems to be an anomaly here.

For the first time in our memory, analysts who follow the underwriters are beginning to feel apprehension over slackening growth in investment income. As high-yielding bonds roll over, portfolio returns are declining. Incremental cash flow, for many underwriters a trickle in the face of rising paid losses, must also be invested at a lower rate of return. The investment income cushion for reckless underwriting seems to be wearing thin.

Why then is competition in commercial lines still intense?

We can venture several theories. Perhaps the current structure of interest rates is seen as temporary. As the economy gathers recovery steam, interest rates will advance. Under this scenario, any slowing in the growth of underwriters' investment income could be short-lived, and therefore the urgency for price relief is lessened.

Perhaps there is a considerable lag time before prices on commercial lines respond to slowing growth in investment income. If we are just a bit more patient, maybe rationality will prevail and insurance markets will firm.

The balance sheet could be another explanation for the seeming indifference of pricing to weaker trends in investment income. Capital values rise when interest rates fall. As a consequence, underwriters' balance sheets and surplus are bolstered. Some analysts maintain that a turn in premium rates won't occur until insurance industry surplus declines.

> **The brokers for a few quarters could face the worst of both worlds: a soft market and pressure on investment income.**

A steeply rising stock market, driven at least in part by lower interest rates, raises surplus and could effect a continuation of the soft market.

We prudently will not hazard any guesses as to the future level or direction of interest rates. But interest rates are mostly a function of expectations for inflation. Inflation in the United States has certainly abated as compared with the experience of the early- and mid-1980s. Right now, the Consumer Price Index is running at an annual rate of about 3.7%.

Moderating inflation cuts in two directions. On the one hand, it penalizes investment income. On the other hand, it would presumably dampen inflation trend factors. Industry reserves, perceived by many observers as inadequate, might effectively be bolstered in a low-inflation environment.

Paradoxically, stronger or possibly redundant reserves might be a force for extending the period of competitive insurance markets. This is not our forecast. Yet it would be ironic indeed if falling inflation rates, on almost everyone's wish list, were transmuted into just another excuse for continuing price competition.

Insurance brokers, too, are hurt at least modestly by declining interest rates. Investment income for the brokers is a function of short-term interest rates. The next few quarters will inevitably witness shrinking investment income. Using the 90-day Treasury bill rate as a proxy for yields, we expect that brokers' investment income will slip on a year-over-year basis through the middle of 1992.

The brokers for a few quarters could face the worst of both worlds: a soft market and pressure on investment income.

Brokers' own costs, though, could benefit from lower inflation. With the soft market now in its fifth year, expense containment remains a priority for the publicly held brokers. A low-inflation environment facilitates their efforts on the cost front.

Additionally, the valuations of insurance brokerage stocks are, we believe, currently higher than they would be if interest rates had not declined. Stock market valuations over time move in the opposite direction of interest rates. The current stock market advance is driven to a substantial degree by falling interest rates.

The easing in inflation ought to be a portent of a return to sensible pricing for commercial lines. Insurance brokers could then anticipate a resumption of earnings growth, which would be more than welcome after four years of stagnation in operating progress. We are not placing any bets yet. But we think there is a good chance that inflation will be contained as the economy gets back on a recovery track. If so, underwriters will have to reckon on slow growth in investment income and the need for better underwriting results. ■

Leonard M. Wilson is a senior vp with Lazard Asset Management Inc. He is a member of the New York Society of Security Analysts.

BI Insurance Index

700 · 690 · 680 · 670 · 660 · 650 · 640
9/6 · 9/13 · 9/20 · 9/27 · 10/4 · 10/11 · 10/18 · 10/25

Base = 100 on Dec. 29, 1978
Source: Nordby International Inc.

Insurance industry stocks shot up last week as the *Business Insurance* Index rose 6.06 points to 668.58 on Oct. 25 from 662.5 on Oct. 18. Advancing issues for the week were led by Hanover Insurance Co., up 22.22%; Belvedere Corp., up 16%; and Chandler Insurance Co., up 10.53%. Declining insurance issues for the week followed United Medical Corp., down 14.29%; American Indemnity Financial Corp., down 11.54%; and Fremont General Corp., down 10.87%. The most active issue for the period was U.S. Healthcare, with 8.8 million shares traded. The *BI* Index was up 0.91%; the New York Stock Exchange Composite dropped 2%; the Standard & Poor's 500 dropped 2.12%; and the Dow Jones 30 Industrials were down 2.35%.

British Issues

Oct. 24 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	464	N/M	30.7	6.6	480—464
Genl Accident	500	N/M	35.7	7.1	504—500
Gdn Royal Exch	161	N/M	15.9	9.9	170—161
Royal	306	N/M	34.7	11.3	324—306
Sun Alliance	326	N/M	18.7	5.7	342—326
Brokers					
Bradstock	167	19.0	6.0	3.6	167—167
CE Heath	489	17.0	34.5	7.0	496—489
Hogg Group	208	12.4	10.7	5.1	208—208
Lloyd Thompson	460	23.2	12.0	2.6	460—453
Lowndes Lmbrt	339	16.9	15.3	4.5	339—335
PWS Holdings	85	9.9	4.7	5.5	87—85
Sedgwick Grp	242	22.9	16.0	6.6	243—242
Steel Brrl Jones	322	16.9	16.3	5.1	322—322
Willis Corroon	290	15.3	17.6	6.1	297—290

Source: Philip Olsen, Insurance Industry Analyst, London

BI Industry Stock Report

OCTOBER 21, 1991 THROUGH OCTOBER 25, 1991

		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
BROKERS												
Alexander & Alexander	NYS	19.25	-1.91	-16.76	27.63	18.63	292	1.00	5.19	16	9.77	1.97
Gallagher Arthur J. & Co.	NYS	20.00	2.56	-13.98	28.38	19.00	13	0.64	3.20	16	5.88	3.40
Frank B. Hall	NYS	3.50	-3.45	-3.45	4.38	2.00	47	0.00	0.00	-7	-5.24	-0.67
Hilb, Rogal & Hamilton	OTC	12.00	-5.88	-18.64	17.50	12.00	512	0.36	3.00	21	3.56	3.37
Marsh & McLennan	NYS	70.75	-4.71	-9.29	87.25	65.75	973	2.60	3.67	17	14.77	4.79
Poe & Associates	OTC	12.00	4.35	87.50	12.50	6.50	104	0.32	2.67	13	2.29	5.24
BROKERS	AVERAGE		-1.3	3.6					2.5	11		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	26.50	-2.75	-29.33	32.25	21.38	26	0.32	1.21	15	23.89	1.11
Berkshire Hathaway Inc.	NYS	8500.00	0.00	27.34	8500.00	182.03	0	0.00	0.00	-31	4612.00	1.84
ITT (Hartford Group)	NYS	55.50	-4.31	15.63	63.00	42.50	778	1.72	3.10	8	64.01	0.87
Sears (Allstate)	NYS	36.50	-3.31	43.84	43.50	22.88	3282	2.00	5.48	13	37.38	0.98
CONGLOMERATES	AVERAGE		-2.6	14.4					2.4	1		
INSURERS/REINSURERS												
Aetna Life & Casualty	NYS	37.75	-1.63	-3.21	49.13	29.00	2736	2.76	7.31	8	64.23	0.59
American General	NYS	41.63	0.30	35.37	42.25	26.50	863	2.00	4.80	10	37.14	1.12
American Heritage	NYS	30.25	2.54	44.05	32.25	19.63	5	1.08	3.57	13	19.25	1.57
American Indemnity/Fin'l	OTC	5.75	-11.54	76.92	7.75	2.75	31	0.08	1.39	3	12.93	0.44
American International	NYS	82.63	0.76	7.48	102.00	61.63	1370	0.48	0.58	12	45.34	1.82
Aon Corp.	NYS	36.63	0.34	5.40	41.75	29.75	220	1.60	4.37	10	18.50	1.98
Argonaut Group	OTC	26.25	7.14	23.05	33.38	18.75	315	0.68	2.59	8	48.26	0.54
AVEMCO Corp.	NYS	26.00	-1.89	54.46	27.25	14.13	27	0.40	1.54	19	9.55	2.72
Baldwin & Lyons Inc.	OTC	24.13	-1.53	28.67	25.25	17.00	3	0.28	1.16	8	24.29	0.99
Belvedere Corp.	ASE	3.63	16.00	45.00	3.63	1.75	13	0.04	1.10	24	7.65	0.47
Chandler Insurance	OTC	2.63	10.53	-61.82	7.25	2.13	531	0.00	0.00	-2	5.95	0.44
Chubb Corp.	NYS	64.13	-1.35	18.20	75.25	37.13	1320	1.48	2.31	10	35.19	1.82
CIGNA Corp.	NYS	47.88	-1.03	17.13	56.75	33.63	824	3.04	6.35	11	73.15	0.65
CNA Financial Corp.	NYS	87.25	-1.41	27.14	92.50	49.50	114	0.00	0.00	12	70.23	1.24
Continental Corp.	NYS	24.50	-5.31	-1.51	30.63	15.88	709	2.60	10.61	9	37.83	0.65
Durham Corp.	OTC	33.50	0.00	19.64	34.25	24.50	37	1.00	2.99	19	28.04	1.19
Fund American Corp.	NYS	65.50	-0.19	26.27	67.00	43.13	55	0.68	1.04	7	36.11	1.81
Fremont General Corp.	OTC	20.50	-10.87	41.38	25.25	11.63	284	0.88	4.29	6	19.13	1.07
Frontier Insurance Group	NYS	23.75	-1.04	25.00	25.88	15.69	16	0.00	0.00	10	11.20	2.12
Gainsco Inc.	ASE	11.88	-1.04	55.74	12.88	4.38	27	0.04	0.34	15	3.37	3.52
General RE Corp.	NYS	89.25	0.00	-4.03	102.50	75.50	780	1.68	1.88	13	37.50	2.38
Hanover Insurance Co.	OTC	35.75	22.22	34.91	35.75	21.00	114	0.44	1.23	13	37.44	0.95
Harleysville Group	OTC	27.50	-1.79	20.22	32.00	15.75	40	0.64	2.33	8	22.99	1.20
Hartford Steam Boiler	NYS	50.88	-1.93	4.36	63.75	43.63	131	2.00	3.93	13	17.05	2.98
Kansas City Life Ins.	OTC	32.25	0.78	4.45	36.00	30.00	0	1.20	3.72	8	39.22	0.82
Kemper Corp.	NYS	35.50	-4.70	49.47	39.25	17.13	270	0.92	2.59	9	34.20	1.04
Lawrence Insurance Group	ASE	9.13	5.80	30.36	9.50	6.38	9	0.48	5.26	14	4.71	1.94
Liberty Corp.	NYS	41.75	-2.34	1.52	48.00	39.00	5	0.92	2.20	13	23.86	1.75
Lincoln National	NYS	50.00	0.25	16.28	55.25	30.75	312	2.72	5.44	10	45.16	1.11
Markel Corp.	OTC	18.00	-4.00	53.19	19.50	10.25	84	0.00	0.00	9	3.22	5.59
Mutual Risk Mgmt. Ltd.	NYS	23.38	-6.50	-	26.75	17.00	53	0.40	1.71	24	-	-
NAC Re Corp.	OTC	23.25	-6.06	-29.55	28.34	18.84	124	0.16	0.69	13	18.90	1.23
Navigators Group	OTC	32.00	0.00	46.56	35.00	16.50	10	0.00	0.00	19	13.52	2.37
Nobel Insurance LTD.	OTC	3.81	7.02	27.10	4.38	2.50	12	0.00	0.00	5	7.76	0.49
NWNL Companies	NYS	31.75	-1.93	88.15	33.00	13.25	519	1.40	4.41	8	42.73	0.74
Ohio Casualty Corp.	OTC	44.75	0.28	9.15	50.25	29.50	289	2.48	5.54	9	36.38	1.23
Old Republic Int'l	NYS	32.75	-2.24	43.17	33.75	17.38	110	0.72	2.20	8	33.09	0.99
Orion Capital Corp.	NYS	32.00	-0.78	82.86	32.38	13.00	68	0.92	2.88	10	20.42	1.57
Phoenix RE Corp.	OTC	9.00	-5.26	16.13	10.25	6.25	75	0.20	2.22	11	13.30	0.68
Protective Life Corp.	OTC	22.00	0.00	47.90	22.50	12.00	4	0.84	3.82	9	16.29	1.35
Provident Life	OTC	18.50	-2.63	5.71	24.50	12.00	335	1.00	5.41	5	25.88	0.71
Re Capital Corp.	ASE	14.63	0.00	13.59	18.63	11.75	6	0.20	1.37	10	15.05	0.97
Reliance Group Holdings	NYS	5.00	2.56	8.11	7.50	4.25	8	0.32	6.40	3	5.61	0.89
RLI Insurance Corp.	NYS	15.63	0.00	7.76	16.38	10.50	26	0.48	3.07	8	14.41	1.08
St. Paul Companies	OTC	61.50	2.07	-1.99	74.25	50.25	741	2.60	4.23	7	52.00	1.18
SAFECO Corp.	OTC	38.13	-0.33	15.97	44.75	25.13	2764	1.48	3.88	9	31.50	1.21
SCOR U.S. Corp.	NYS	15.50	-1.59	25.25	16.50	8.50	3	0.24	1.55	9	11.19	1.39
Seibels Bruce Group	OTC	6.38	-3.77	50.00	8.88	4.25	874	0.36	5.65	128	7.35	0.87
Selective Ins. Group	OTC	15.75	-1.56	18.87	18.00	12.50	162	1.04	6.60	9	18.91	0.83
Statesman Group Inc.	OTC	5.69	5.82	263.92	5.88	1.25	506	0.00	0.00	-190	2.48	2.29
Tokio Marine & Fire	OTC	50.50	-4.27	6.88	56.50	40.50	1	0.00	0.00	-	70.93	0.71
Torchmark Corp.	NYS	51.88	-2.35	6.14	58.50	38.00	144	1.60	3.08	12	16.70	3.11
Transamerica	NYS	36.38	-2.35	11.49	38.38	25.25	648	2.00	5.50	13	36.56	0.99
Transatlantic Holdings	NYS	32.75	3.97	19.63	39.38	20.50	49	0.20	0.61	11	18.38	1.78
Travelers Corp.	NYS	20.50	-4.65	23.31	25.38	11.50	921	1.60	7.80	-10	41.44	0.49
Trenwick Group Inc.	OTC	25.00	-1.96	8.11	30.00	18.50	84	0.60	2.40	9	21.71	1.15
United Fire & Casualty	OTC	46.75	6.86	33.10	58.00	31.00	0	1.32	2.82	12	35.39	1.32
USF&G Corp.	NYS	7.50	-1.64	0.00	13.63	6.13	1331	0.20	2.67	-1	11.96	0.63
UNUM Corp.	NYS	65.75	-2.41	41.02	70.25	35.63	441	1.04	1.58	11	37.25	1.77
USLIFE Corp.	NYS	42.50	1.49	51.79	42.75	23.25	190	1.64	3.86	12	60.34	0.70
Unitrin	OTC	34.63	1.09	12.60	41.50	26.00	482	1.00	2.89	14	30.70	1.13
Washington National	NYS	14.63	-5.65	34.48	15.75	9.38	11	1.08	7.38	-5	26.86	0.54
USLICO Corp.	NYS	18.00	-0.69	13.39	21.00	14.75	17	1.00	5.56	10	29.44	0.61
Zenith National Ins.	NYS	15.63	-3.85	14.68	18.50	9.88	5	1.00	6.40	-82	13.14	1.19
INSURERS/REINSURERS	AVERAGE		-0.3	30.0					3.5	7.7		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	OTC	11.50	0.00	-24.59	29.75	10.00	5906	0.00	0.00	8	5.44	2.11
HMO America Inc.	OTC	12.75	0.00	96.15	17.13	4.75	624	0.00	0.00	14	0.61	20.90
Pacificare Health Sys.	OTC	21.75	-4.40	33.85	42.50	12.50	656	0.00	0.00	11	6.55	3.32
Safeguard Health Enter.	OTC	7.13	-1.72	50.00	7.75	4.00	423	0.00	0.00	17	3.53	2.02
Sierra Health Services	ASE	14.63	-4.88	6.36	29.50	7.00	537	0.00	0.00	7	1.78	8.22
United Healthcare Corp.	NYS	59.38	0.42	155.38	59.88	15.75	613	0.06	0.10	33	3.76	15.79
United Medical Corp.	ASE	6.00	-14.29	-25.00	10.88	6.00	28	0.00	0.00	10	8.79	0.68
U.S. Healthcare	OTC	30.50	7.49	3.83	38.00	12.75	8786	0.32	1.05	16	3.38	9.02
HMOs	AVERAGE		-2.2	37.0					0.1	14		
ALL COMPANIES	AVERAGE		-0.7	26.8					2.9	8		

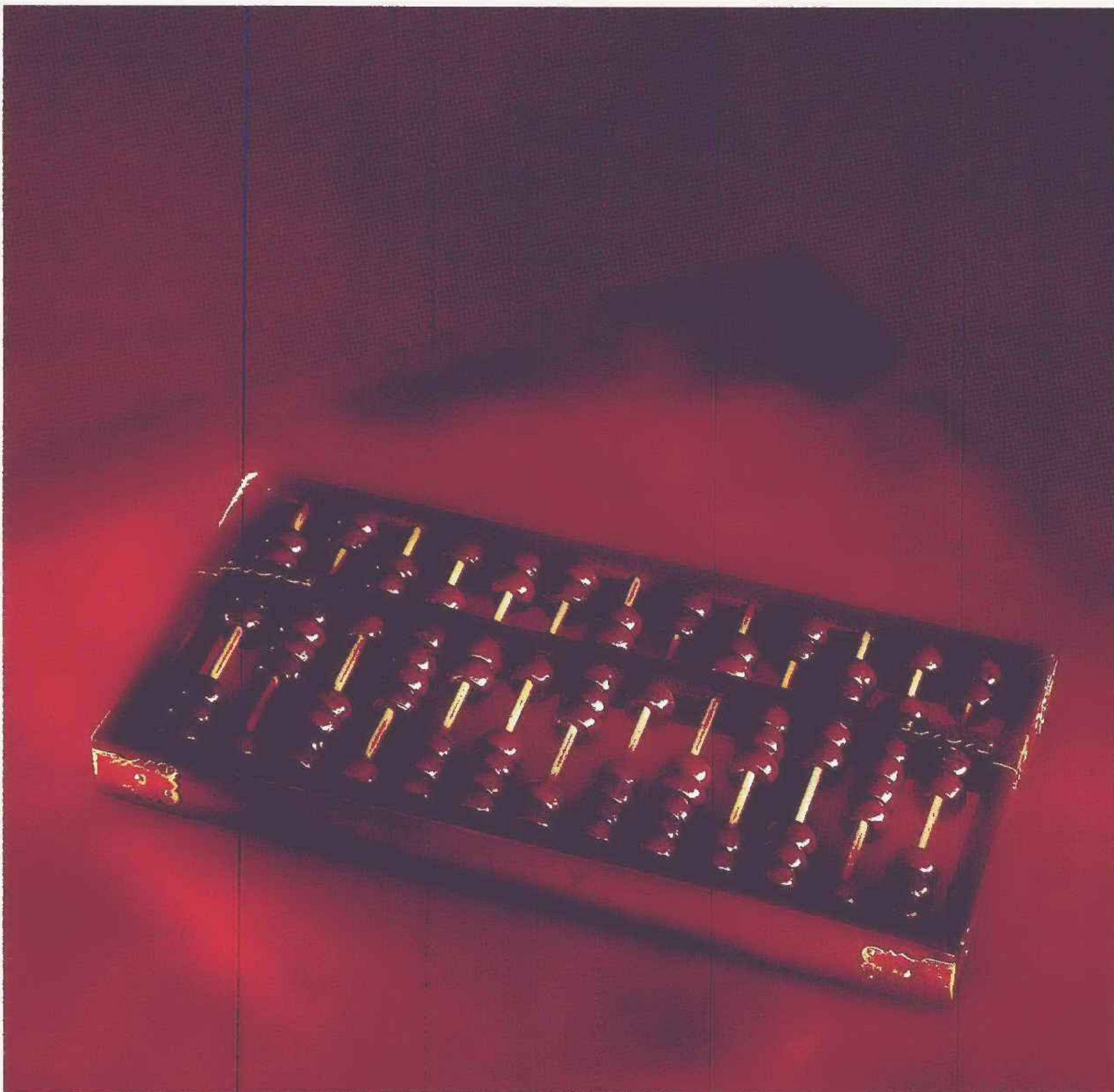
System design: Nordby International Inc.

People or beans?

There's only one possible answer. Both. With traditional medical costs soaring 20% a year, stemming the tide is essential.

But doing it at the expense of human needs is unacceptable; it's also counterproductive. Because the fact is, it simply doesn't work.

We've found that controlling costs while maintaining the quality of care aren't mutually irreconcilable goals, but in fact go hand in hand.



And when they do, everyone stands to gain.

Accordingly, the aim of each and every managed care program we offer is quality.

To that end, we have provider credentialling programs, operate utilization and quality management programs, and continually monitor patient satisfaction.

Recently, for example, 94% of the members enrolled in our healthplan rated their physicians highly. We believe that no company should be forced to choose between human needs and financial needs.

To help you satisfy both, we have created one of the most extensive health care networks in the country. For literature, call CIGNA Employee Benefits Companies, 1-800-782-0782.

And talk to the people who really know how to use their bean.

We get paid for results.® CIGNA