

OCTOBER 3, 1994

# **Business Insurance**

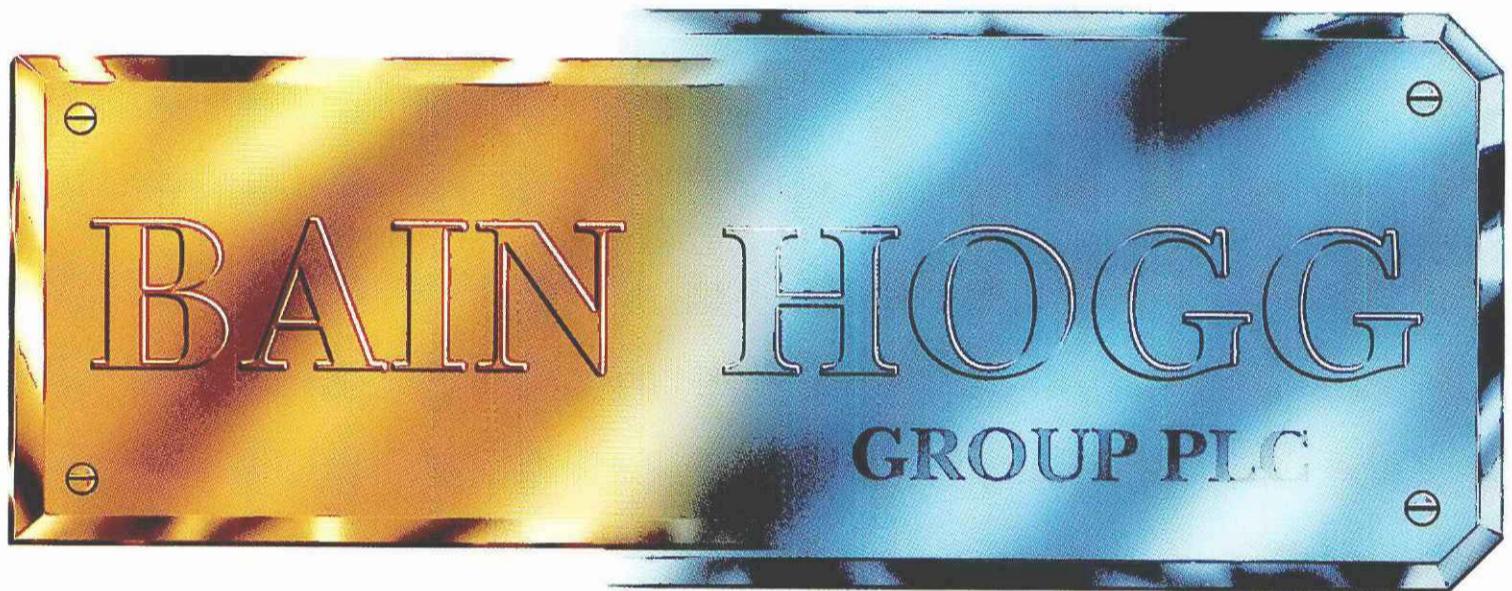
Reporting Weekly For Corporate Risk, Employee Benefit and Financial Executives / \$4

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## **MARINE MARKET REPORT**



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OCTOBER 3, 1994

Updates

# Business Insurance

Reporting Weekly For Corporate Risk, Employee Benefit and Financial Executives / \$4

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## Swiss Reinsurance Co. to sell non-reinsurance operations

ZURICH, Switzerland—Swiss Reinsurance Co. is pulling out of insurance to concentrate on reinsurance operations, a surprise move that will cut the company's global premium volume in half.

Swiss Re has agreed to sell the bulk of its direct insurance interests to Munich, Germany-based Allianz A.G. Holding and Swiss rival Winterthur Insurance Co., which could net as much as 5.7 billion Swiss francs (\$4.44 billion), analysts estimate.

In a statement issued jointly with Winterthur  
*Continued on next page*

## Original RRG aims to restore depleted surplus

By DOUGLAS McLEOD

ARLINGTON, Va.—HOW Insurance Co., the nation's first risk retention group, is trying to raise \$10 million in new capital after a change in state law forced reserve bolstering that has seriously cut into the insurance company's surplus.

HOW, which writes new home warranty coverage for 10,000 builder policyholders, took a \$15 million writedown in July to bolster unearned premium reserves to comply with a recent amendment to the Virginia insurance code.

The writedown cut HOW's surplus from \$17.8 million as of June 30 to about \$4.2 million, barely above the \$4 million statutory minimum.

Further reserve bolstering may also be needed: HOW's consulting actuaries estimated the insurer's reserve deficiency at between \$15 million and \$43.9 million as of year-end 1993.

"I think (further additions) are certainly possible," said Terence Cooke, HOW's senior vp and general counsel. "Our actuaries are continuing to look at the situation."

"That's why we are moving so quickly to raise capital," he explained.

The Virginia Insurance Bureau is examining the company, but  
*Continued on page 38*



AP/Wide World photo

The "Estonia," a German-built roll-on, roll-off ferry, capsized and sank within five minutes, killing more than 900 passengers and crew.

## Hull, liability losses from Baltic ferry disaster could top \$300 million

By MARIA KIELMAS

Insured hull and liability losses from the fatal sinking of a ferry in the Baltic Sea last week could exceed \$300 million, depending on which maritime laws apply.

Compensation for the relatives of the more than 900 who died and the 140 survivors could total \$147,000 per person under Swedish maritime law, bringing the total liability loss to \$152.8 million.

But, the liability limits under Swedish law were increased three days after the disaster on Oct. 1 to \$257,250 per person, which if  
*Continued on page 48*

## House inaction on Superfund may kill measure

Cleanup wage dispute at crux of delay

By MARK A. HOFMANN

WASHINGTON—Superfund reauthorization is "not going to happen" during the final days of the 103rd Congress, according to the Senate's most powerful Republican.

Senate Minority Leader Robert Dole, R-Kan., made that prediction as the Senate Finance Committee began considering the tax portions of S. 1834, the administration's Superfund reauthorization bill.

Although the committee gave its approval to the measure last Wednesday, the chances of getting a bill to the president's desk before Congress adjourns for the November elections grew considerably dimmer last week.

The reason passage looks less and less likely is the House of Representatives' continuing failure to consider its version of the measure, H.R. 4916. The House Rules Committee has not yet is-

sued a rule governing debate and amendments to the measure, which generally must be set at least 24 hours before debate can begin.

At the heart of the delay is a dispute over proposals to apply the Davis-Bacon Act to wages that would be paid at a Superfund cleanup site involving a public-private partnership. Davis-Bacon requires that workers on federal projects be paid the prevailing wage in their area, which usually means the union wage. Republicans have vowed to oppose the Superfund bill if it contains the Davis-Bacon provision. A proposed resolution of the issue more than a week ago failed and left Superfund in limbo.

Even if both the House and Senate passed their respective Superfund reauthorization packages, significant differences in how they levy taxes to pay for the proposed Environmental Insurance  
*Continued on page 45*

## More modest health reform drive in '95

By JERRY GEISEL

WASHINGTON—Congress will resume consideration of health care reform legislation next year, but the proposals will be significantly scaled back from the proposals that consumed so much time and effort this session.

Next year's proposals will likely

cover such areas as easing barriers that now block states from enacting their own reforms, curbing certain insurance underwriting practices—like pre-existing medical condition exclusions—expanding voluntary group purchasing alliances and perhaps boosting federal subsidies to make it easier for lower-income individ-

uals to obtain health insurance.

Serious consideration will not be given to many of the key and highly controversial components of health care reform proposals that had been advanced by both the Clinton administration and Democratic congressional leaders.

Proposals that will drop to the bottom of the congressional

health care reform priority list include an employer mandate, monopolistic state-established health care purchasing alliances and federal health care price controls.

"The kind of massive overhaul proposals that we saw this year will not fly. Legislators learned  
*Continued on page 42*

## States hoping to smoke out tobacco firm dollars

By SARA MARLEY

Several states believe they will succeed where hundreds of plaintiffs over the past 40 years have failed: collecting damages from the tobacco industry.

Two weeks ago, West Virginia became the third state after Minnesota and Mississippi to sue cigarette makers for reimbursement of Medicaid bills paid for smoking-related illnesses.

In addition, the Florida Legislature has passed a law authorizing the state to file a similar action, which currently is being challenged in court (BI, July 11; May 9). Massachusetts' budget also contains a provision allowing the

state to take similar steps.

While tobacco companies claim the states' charges are the same ones the industry has ardently defended since the 1950s, the states say their suits are unique because they are collecting on behalf of taxpayers, not smokers.

Plaintiffs' key arguments in litigation to date have generally been that tobacco companies failed to warn of the potential health risks associated with smoking and that cigarettes are defective products. Tobacco companies have countered that smokers knowingly accepted any health risks or have argued that some plaintiffs' illnesses were caused by other fac-

*Continued on page 22*

### Dragging cigarette makers through the courts

**1954**  
First smoker liability suit filed against a tobacco company.

**1965**  
Federal government first requires health warnings on cigarette packages.

**1988**  
In first-ever courtroom defeat for tobacco companies, federal jury awards \$400,000 to family of deceased smoker Rose Cipollone.

**1992**  
U.S. Supreme Court rules that federal law does not bar certain claims against tobacco companies in Cipollone vs. Liggett Group.

**April 1994**  
New Florida law lets state sue tobacco companies to recoup smoking-related Medicaid costs.

**May 1994**  
Mississippi becomes first state to sue cigarette makers for Medicaid expenses. Minnesota and West Virginia soon follow suit.

**June 1994**  
Food and Drug Administration begins hearings on whether to regulate nicotine as a drug.

## Updates

### Swiss Re to quit insurance

Continued from previous page

thur, Swiss Re said the move is part of a strategy to concentrate on expanding its global reinsurance business. A Swiss Re spokesman would not rule out acquiring other reinsurers as part of this plan.

The lion's share of the deal is with Allianz, which will pay between 5.2 billion and 5.4 billion Swiss francs (\$4.05 billion to \$4.2 billion) for majority shareholdings in Munich, Germany-based Vereinte Versicherung A.G. and Magdeburger Versicherung A.G. of Hannover, Germany. The two insurers, which will merge by year end, had combined 1993 net premiums of 6.8 billion deutsche marks (\$3.92 billion). Allianz will also acquire Swiss Re's majority holdings in ELVIA Group of Zurich and Lloyd Adriatico S.p.A. of Trieste, Italy.

Winterthur will take over Barcelona, Spain-based Schweiz C.A. Espanola de Seguros y Reaseguros, a troubled Swiss Re unit that needed a 480 million Swiss franc (\$373.7 million) capital infusion last year. Winterthur will also take majority stakes in Schweiz Italia S.p.A. of Milan and ELVIA's La Equitativa Group in Madrid.

### High court takes benefit case

WASHINGTON—The myriad changes that employers have made to employee and retiree health plans in recent years will be on the line next year when the U.S. Supreme Court reviews a federal appeals court decision.

The high court last week agreed to review a December 1993 ruling by a panel of the 3rd U.S. Circuit Court of Appeals that Curtiss-Wright Corp. violated the Employee Retirement Income Security Act when it cut retiree benefits in 1993. Although the Lyndhurst, N.J.-based defense contractor reserved its right in plan documents to amend the plan, the 3rd Circuit ruled it violated ERISA because the plan did not specify which company representatives can amend the plan and what procedures they must follow (BI, Jan. 10).

Benefit experts say that up to 75% of employer-sponsored health plans do not contain such language, though most pension plans do. If the decision is affirmed, then plan changes that cut benefits, increased participants' premium contributions or added managed care features could be in jeopardy. Benefit experts agree that employers can make their plans comply with the decision only prospectively, though that could trigger other plan administration problems (BI, March 21).

### AIG invests in 20th Century

LOS ANGELES—American International Group Inc.'s proposed \$200 million bailout of quake-riddled 20th Century Industries will not only rescue the foundering Woodland Hills, Calif.-based insurer, it will help it diversify its risks by expanding out of state, a company spokesman says.

The plan, which is subject to regulatory and shareholder approval, also will enable New York-based AIG to increase its personal lines book of business, which now accounts for 4.7% of its net written premiums.

20th Century, the parent company of 20th Century Insurance Co. and 21st Century Casualty Co., was hit with more than \$815 million in losses from the Jan. 17 Northridge earthquake.

20th Century also faces payment of some \$120 million in Proposition 103 rebates after the California Supreme Court denied the insurer's petition for a rehearing on the court's unanimous decision upholding the department's rollback regulations (BI, Aug. 22). California regulators have offered to allow the insurer to defer payment for several years.

Meanwhile, A.M. Best Co.'s B- (adequate) rating of 20th Century Insurance Group has been placed under review "with positive implications" pending further evaluation of the AIG cash infusion. Best estimates that the insurer currently has approximately \$60 million in statutory surplus—far less than the \$250 million required by California regulators.

Under the proposed deal, AIG could within one year control nearly 40% of 20th Century Industries by investing \$200 million in a new issue of 17.6 million shares of convertible preferred stock at \$11.22 per share and exercising warrants for 16 million additional shares at \$13.50 per share. AIG also would elect two of 20th Century's 11 board members.

The letter of intent also provides for AIG to commit \$70 million in additional capital and quota share reinsurance should 20th Century's Northridge quake-related losses increase.

Updates continued on page 45

### Errors & omissions

• A Markets item in the Sept. 19 issue incorrectly reported that The Mutual Group (U.S.) will acquire the Milwaukee Insurance Group Inc. Mutual Group bought only subsidiary Milwaukee Life Insurance Co.

• The Sept. 26 Surplus Lines Spotlight report contained several errors. A footnote next to New Hampshire in the chart of state surplus lines premiums should have appeared next to Nevada's figures, indicating they were BI estimates. In addition, the profiles of United National Insurance Co. and the Illinois Insurance Exchange contained incorrect rankings for the entities. The correct rankings appeared in the chart on page 3. And, the name of Burns & Wilcox Ltd.'s controller, Gerald Wesolowski, was misspelled.

• Incorrect information was supplied for a study on the surplus lines market that appears on page 34 of this issue: Only eight domestic companies, rather than regulated alien insurers, would not meet the new surplus requirements of the NAIC's new model act. Also, there are 11 stamping offices nationwide, not 10.

# Medicare data bank moved to back burner indefinitely

By JERRY GEISEL

WASHINGTON—Much to their relief, employers almost certainly will have another year—and possibly far longer—before they have to file health care coverage reports required under the federal Medicare data bank law.

The Health Care Financing Administration is drafting a notice that will delay until 1996 both the coverage reports and any penalties for not filing the reports, a government source told *Business Insurance*.

The HCFA delay notice is a direct result of congressional pressure. Last week, Congress gave final approval to an appropriations bill that bars HCFA from using any funds next year for collecting information for the data bank or assessing fines on employers who do not comply with the law.

The one-year delay is only an interim step to give Congress time next year to kill the data bank, said Sen. Joseph Lieberman, D-Conn., who has long sought to eliminate the data bank requirement.

The congressional action and the HCFA decision to draft a notice to delay implementation and enforcement of the data bank filing requirements comes in the nick of time for employers.

Under a law passed in 1993, employers are required to file a report to HCFA by Feb. 28, 1995 with the names and Social Security numbers of employees and dependents, as well as the specific health care plans in which those individuals were enrolled during the year. The first report would

Continued on page 38

### Massive suit names agents in health care scam

## E&O insurers settling claims

By DOUGLAS McLEOD

NEW YORK—Errors and omissions insurers for dozens of agents who produced business for a massive health insurance scam have agreed to cover millions of dollars in unpaid health claims to settle a sprawling class action lawsuit.

A New York federal judge last month certified the class action brought on behalf of about 8,000 people who bought health coverage through an allegedly phony union set up by convicted felon William Loeb.

Though the coverage was initially written by New York-based

Empire Blue Cross & Blue Shield, Empire later terminated the plan. The coverage then was shifted through a series of allegedly fraudulent offshore insurers whose operators—including the late Alan Teale—pocketed premiums and failed to pay claims, the suit charges.

Timothy D. Cohelan, a lawyer for the plaintiffs, estimated unpaid claims from the alleged fraud at \$20 million to \$24 million, though a lawyer for one of the E&O insurers said the number is far lower.

In addition to Empire and the offshore insurers, the lawsuit

named hundreds of retail and wholesale agents and brokers who produced business for the health plans.

Last week, E&O insurers for dozens of the agents agreed to settlements in which they will pay amounts equal to portions of valid

Continued on page 45

## Pan Am makes second filing for rehearing of its appeal

BY STACY SHAPIRO

LONDON—Insurers of Pan American World Airways Inc. refuse to give up fighting for a rehearing to overturn a jury verdict that the airline's willful misconduct caused the 1988 explosion of Flight 103 over Lockerbie, Scotland.

Although the 2nd U.S. Circuit Court of Appeals has upheld the jury's finding—and on Sept. 12 refused a rehearing "en banc" by the entire eight-judge court—Pan Am last week took the unusual step of filing a second petition for the full 2nd Circuit to rehear the case.

Filing a second petition is practically unprecedented in American law.

"We think there's only one other case in history where there's been a refile...and it was rejected in seven days," said Lee S. Kreindler of Kreindler & Kreindler in New York, who represents Pan Am plaintiffs.

Continued on page 47

## New BI venture: RIMS-TV

For the first time ever, attendees of the 1995 RIMS conference in San Francisco will be able to watch television coverage of the conference.

"Business Insurance Presents RIMS-TV" will be available 24 hours a day in the major conference hotels April 24 through April 26. The 1995 Risk & Insurance Management Society Inc. conference begins April 23 and concludes April 28.

Business Insurance will produce three programs, each up to one hour in length, that will be carried on closed-circuit television channels in the major conference hotels and on monitors throughout the exhibit hall.

"We are very excited about launching this new coverage of the RIMS conference," said Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*. "Business Insurance has reported on every RIMS conference since 1968. Our exhaustive print coverage of the 1995 conference will be enhanced by this onsite broadcast medium."

Professional television journalists will report, write and produce all of the shows, under the supervision of top editors at BI. The programs will include coverage of certain sessions of the conference, as well as feature stories and interviews with top industry officials, speakers, attendees and exhibitors. Each program, which will include conference program updates, will run continuously for 24 hours.

Organizations interested in advertising on "Business Insurance Presents RIMS-TV" should contact Martin Ross, Advertising Sales Director, at 212-210-0228.

## Inside

• Health care reform died because of overreaching proposals, this week's editorial says. **PAGE 8**

• California's workers comp reforms are not likely to stop workers from suing their employers. **PAGE 32**

• An A.M. Best Co. study says surplus lines insurers' solvency record is as good as, if not better than, that of standard lines insurers. **PAGE 34**

• Siemens A.G. is transferring its property program to a consortium led by Arkwright Mutual Insurance Co. from German insurers. **PAGE 39**

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## Spotlight report

## MARINE

## MARKET

## REPORT

## Inland marine may be near the bottom of prolonged soft market

By GAVIN SOUTER

Inland marine insurance rates are about as low as they are likely to go.

And, in some areas, increases are beginning to show through.

The poor results of the inland marine market over the past year have already helped push up deductible levels, and premium increases of about 15% are likely to follow, at least one underwriter says.

Policyholders with exposures in catastrophe-prone areas have already suffered large rate increases.

But continued plentiful capacity in the market and the increase in package property products that cover inland marine exposures are likely to challenge attempts to increase prices.

The inland marine insurance market covers a vast array of transportation and construction risks from trucking to television towers and other specialist risks such as computer equipment and jewelry.

Since the mid-1980s, the inland marine insurance market has generally been soft, most underwriters agree.

And prices still are low, said Tom Rogers, product line manager at Commercial Union Insurance Co. in Boston and chairman of the Inland Marine Underwriters Assn.

"It has been soft since 1986 or 1987 and it is still a very soft market," he said.

But, despite falling prices, inland marine accounts were largely profitable until last year, Mr. Rogers said.

In 1993, many inland marine accounts went into the red, he said.

That unprofitability has encouraged some rate and deductible increases, said Emil Kleemann, commercial marine officer at Kemper National Insurance Cos. in Long Grove, Ill.

In some cases, deductibles have more than doubled as policyholders have sought ways to avoid premium increases and underwriters have tried to curb losses,

Continued on page 11

## Leading marine insurance markets

1992 premiums in thousands of dollars

Country/name of association	Global hull	Ocean hull	Coastal/inland	Cargo	Offshore	Total
United Kingdom/Institute of London Underwriters, Lloyd's Underwriters Assn.	1,537,000	—	—	667,000	1,139,000	\$3,343,000
Japan/Marine & Fire Insurance Assn. of Japan	794,000	436,000	358,000	1,514,000	24,000	\$2,332,000
United States/American Institute of Marine Underwriters*	289,792	123,596	166,196	709,040	128,014	\$1,126,846
France/Syndicat Francais de l'Assurance Maritime & Transport	365,976	266,677	99,299	624,039	54,043	\$1,044,058
Germany/Deutscher Transport Versicherungs Verband E.V.	151,953	102,244	49,709	798,297	—	\$950,250
Italy/Associazione Nazionale Fra le Imprese Assicuratrici	242,000	206,000	36,000	448,000	175,000	\$865,000
Norway/Central Union of Marine Underwriters	317,000	250,000	67,000	43,000	194,000	\$554,000
Netherlands/Verbond van Verzekeringen afd. Transport	157,000	83,000	74,000	276,000	—	\$433,000
South Korea/Korea Non-Life Insurance Assn.	135,282	68,881	66,401	201,821	16,800	\$353,903
Sweden/Sjöassuradörernas Förening	116,110	—	—	104,496	—	\$220,606

\*Includes other U.S. marine insurers Source: International Union of Marine Insurers

GRAPHIC BY JERRY PARKS

## International markets cautiously optimistic

By ADRIAN LADBURY and GAVIN SOUTER

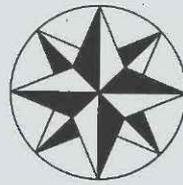
Like a ship that survives a rough journey only to sink in its home port, some international marine underwriters fear they may be doomed to again cut rates and relax terms shortly after returning to profitability.

Over 500 delegates of the International Union of Marine Insurance who gathered at its annual conference in Toronto last month, as well as 1,200 delegates who gathered for the 29th Houston Marine Insurance Seminar, tempered their positive reports on current conditions with less optimistic future forecasts.

Most marine insurance markets reported improved underwriting results and actual, or imminent, profits in 1993. Those results follow stern corrective action taken by underwriters on rates, terms and conditions following a disastrous string of losses suffered by the industry in the late 1980s and early 1990s.

Although those efforts are now paying off, marine underwriters

*Improved underwriting conditions may be short-lived if new capacity leads to renewed competition*



pressure on shipowners who continue to operate substandard vessels manned by poorly trained crews.

Despite this resolve, it is typically more difficult for underwriters to push for further rate increases when they are making a profit. Some underwriters are worried that fresh capacity and competition for business will inevitably drive rates and deductibles down and lead to a relaxation in terms.

New capacity is already having an effect as business is beginning to move from market to market.

That change is especially being felt in the international cargo insurance market (see story, page 21), which most underwriters say never really recovered to the extent of other marine insurance lines.

Hull underwriters are happy with conditions for the moment and, in London at least, are determined not to fall prey to competitive pressure (see story, page 21). But, some in the market are concerned that new capacity is "waiting to enter the fray," in the words of one leading U.S. marine insurer.

International energy capacity is recovering and some marine markets report that it is profitable at the moment. However, some ma-

rine underwriters fear that energy capacity may rebuild too quickly.

Energy companies with wind-storm and earthquake exposures are finding catastrophe coverage scarce and there is talk of the companies being forced to create self-insurance pools for these risks.

Liability insurers have been as successful as their hull colleagues in forcing through rate increases on shipowners and are rebuilding reserves badly depleted by losses in recent years. A recovery in reinsurance capacity and the arrival of new capacity at higher excess levels is reported.

In fact, the International Group of Protection & Indemnity Clubs, which arranges the world's largest annual reinsurance contract for its 15 members, was able to find sufficient global reinsurance capacity for its program for the first time in two years. The group was able to purchase reinsurance protection up to \$1.18 billion above its \$30 million retention for the 1994 year, compared with cover up to \$1.08 billion last year. The

Continued on page 6

## Impasse over U.S. oil spill responsibility

By ADRIAN LADBURY

LONDON—A wide gulf remains between the U.S. Coast Guard and marine liability insurers as the deadline nears for compliance with financial responsibility requirements of the Oil Pollution Act of 1990.

Under the act, which takes effect for some ships at year end, tankers must have evidence of financial responsibility for potential oil pollution costs in the United States. Unless they obtain a Certificate of Financial Responsibility from the Coast Guard, they will not be allowed to bring oil into U.S. waters.

This could have a big impact on U.S. oil imports, which account for approximately 50% of all oil used in this country.

However, protection and indemnity clubs are refusing to support the financial responsibility re-

*P&I clubs clash with U.S. Coast Guard requirements*

quirements for fear that U.S. courts could unreasonably extend their liabilities in the event of an oil spill.

Alternative insurance proposals are hastily being developed by insurers and brokers, but none of these plans has yet been approved by the Coast Guard.

The Coast Guard has, however, approved a scheme by Fairfax, Va.-based Mobil Corp. to set up its own company, Marine Guarantee Corp., capitalized at \$285 mil-

lion, to provide financial guarantees for its own international fleet.

Other major oil companies and big shipowners are expected to follow suit.

However, only the very largest companies have the resources to go this route. The majority must wait and see if the insurers and brokers can win enough support in the industry and sell alternative plans to the Coast Guard in time to meet the deadline. Self-

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# OPA '90

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In fact, only last Thursday, the transportation ministers of Britain, France and Germany joined Japan by agreeing to a new convention that increases the compensation payable to victims of oil pollution for any one incident by up to four times the old convention limits.

Brian Mawhinney, U.K. secretary of state for transport, announced at a meeting hosted by the International Maritime Organization, that the three governments have agreed to a 1992 amendment to the 1969 and 1971 protocols.

Under the 1969 convention, the largest oil tankers are liable for 14 million pounds (\$22.1 million) per incident. The 1992 amendments would increase that limit to 59.7 million pounds (\$94.3 million).

Compensation under the 1971 fund is limited to 60 million pounds (\$94.8 million) per incident but would be increased by the amendments in two stages to 200 million pounds (\$316 million).

Changes to the 1969 protocols need agreement from 10 states, while the 1971 protocol needs eight signatures to be effective. The IMO expects full ratification by early 1995. The U.S. is excluded from the conventions.

In issuing rules for implementation of the U.S. oil pollution guidelines (BI, July 18), the Coast Guard acknowledged the shipping industry's fears.

"OPA '90 potentially exposes owners and operators to far greater liabilities for removal costs and damages from oil spills (than under current rules). OPA '90's philosophy is that, in general, the spiller, not U.S. consumers and taxpayers,

should bear the lion's share of the costs and damages. In addition, under OPA '90, owners and operators remain subject to potential unlimited liabilities under state laws as well," the Coast Guard stated.

The Coast Guard recognizes that the P&I clubs and their reinsurers, led by Lloyd's of London underwriters, fear exposure to unlimited liabilities in U.S. courts. However, the Coast Guard said Congress is "well aware" of the problem and will not allow insurers to be penalized by the new law.

The Coast Guard conceded that owners and operators could find themselves liable for unlimited damages if, for example, they were found guilty of gross negligence, but said there was nothing in the law that would allow that liability to be transferred to the insurers.

The P&I clubs are not convinced, however, and refuse to change their

stance despite the assurances.

"The timetable has put considerable pressure on tanker owners who have naturally turned to their clubs for advice. Many club boards have now had the opportunity to consider the interim final rules and have declined to change their previous decision, which was not to issue (coverage to back) COFRs," stated Richard Youell, underwriter for Lloyd's syndicate 79, managed by Janson Green Ltd. Mr. Youell made the statement in his report to the International Union of Marine Insurance conference in Toronto last month in his role as liaison officer for the P&I clubs' reinsurance buying pool, the International Group of P&I Clubs.

"As a P&I club, we cannot move from our position. We are an insurer, not a guarantor. Naturally, the Coast Guard wants unrestricted guarantees through COFRs, and

that would place the clubs in a direct relationship with the citizen. We do not want that direct contact," said Peter Donnellan, partner with the United Kingdom Mutual Steam Ship Assurance Assn. (Bermuda) Ltd.

The Coast Guard told *Business Insurance* last week that it will not retract its demand for the COFRs or delay implementation of the new rules.

"I expect a few small technical changes, but we will not change any of the big issues. I doubt very much there will be any change to anything such as the P&I issue. There will be no change to the compliance date or methods; they are fixed in stone," a Coast Guard spokesman said.

In its interim final rules, the Coast Guard said it had received sufficient positive comment from interested parties to convince it that, even if the P&I clubs refused to provide the coverage, alternatives sources of coverage and financial guarantees would be found.

"I am confident that between now and the deadline, alternatives will be found. U.S. oil companies like Mobil can self-insure, and it has already registered with us. A major U.S. shipowner has also registered with a self-insurance plan," he said, declining to name the shipowner.

In his report to IUMI, Mr. Youell said "tanker owners remain to be convinced that any concrete proposal (for an alternative to the P&I clubs) has emerged in the succeeding months," adding that a lack of reinsurance capacity is a key "stumbling block."

Since Mr. Youell's report was issued, though, a number of new plans have emerged and gained significant support.

Intertanko—the Oslo, Norway-based International Assn. of Independent Tanker Owners, which represents 55% of world tonnage—and the International Chamber of Shipping have given tacit approval to a proposal by Tindall, Riley & Co., underwriting manager for The Britannia Steam Ship Insurance Assn. Ltd., that would tackle the potential problem of unlimited liability.

Under the plan, a new, probably Bermuda-based mutual insurer called OPAQUE would be set up to provide coverage for all vessels trading with the United States, up to the new OPA '90 limits that apply to ships of more than 300 gross tons. Those limits are:

- Liability of \$1,200 per gross ton, with a cap of \$2 million for oil tankers of 3,000 gross tons or less, and a \$10 million cap for vessels greater than 3,000 tons.
- \$600 per gross ton or \$500,000, whichever is greater, for non-tankers.

This facility would be backed by a supporting trust fund called OPAH, which would be financed by premium surpluses from OPAQUE. The proposals estimate that OPAQUE would earn about \$250 million in premiums a year, generated primarily by dry cargo premiums, tanker premiums, and contributions from the P&I clubs.

After deducting roughly \$50 million a year for estimated claims, this means that OPAH would receive \$200 million a year from OPAQUE in surplus funds. These would be used to build a fund that could provide excess coverage if an oil pollution disaster occurred that broke OPAQUE's limits.

In addition, Tindall, Riley proposes another facility alongside OPAH called OPAL. This entity would provide stop-loss coverage for shipowners above OPAQUE's

Continued on page 6

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As you may know, Rep. Jack Brooks (D-TX) and others in Congress have attached H.R.9 to national health care reform legislation in an attempt to amend the McCarran-Ferguson Act. This legislation, in one swoop, would set the industry back 20 years by wiping out standardized manuals and the timely service we now provide. It also would effectively prohibit pooled trending activities by insurance companies.

To make matters worse, there are some groups within the insurance industry that have "cut a deal" with Rep. Brooks on H.R.9. This deal would handcuff many carriers and their agents and damage their business.

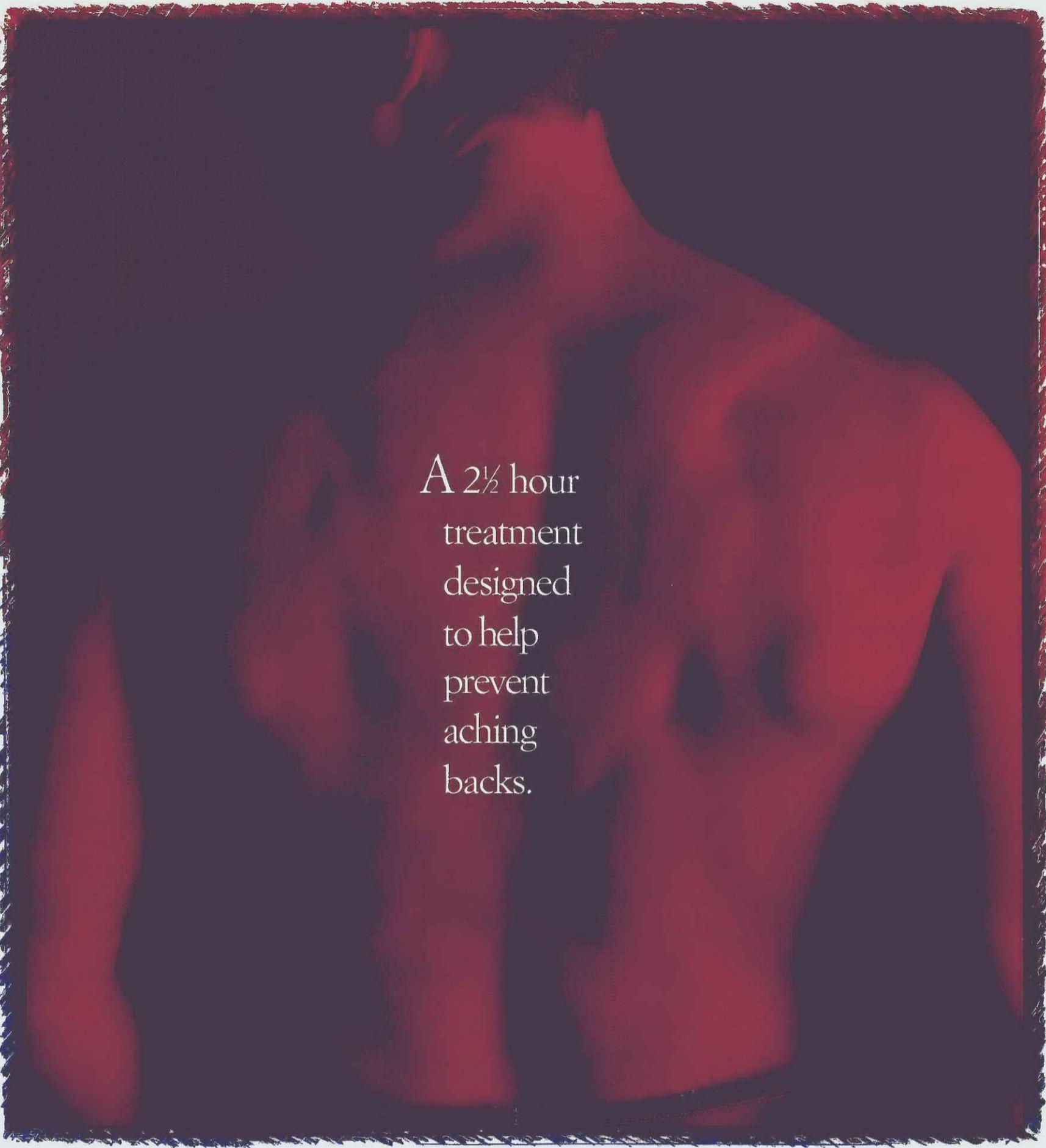
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# OPA '90

Continued from page 4

\$200 million upper limit, and also pitch in when OPAQUE required OPAH funding, up to a maximum limit of \$2 billion.

OPAL would be financed by a levy on U.S. oil shipments and thus financed by importers. If all three funds were exhausted by a catastrophic oil spill, additional liability would revert to the shipowners.

The proposal was sent to a number of shipowners and oil companies for comment by Oct. 1, and initial response has been positive.

Intertanko and other shipowners like the idea because it calls for contributions from the oil companies in addition to shipowners. The tanker owners' association announced last Thursday that it plans talks with the American Petroleum

Institute and the P&I clubs as soon as possible.

Tormod Rafgard, managing director of Intertanko, told *BI* last week that the lack of contribution from cargo owners had been the association's biggest objection under the final rules. But getting the oil companies to agree to contribute probably will prove to be the Tindall, Riley plan's biggest obstacle.

In addition to Mobil's establishment of an entity to guarantee its obligations, Chevron Corp. and Exxon Corp. are rumored to be close on its heels with the creation of their own facilities.

Meanwhile, another alternative emerged last week. Willis Corroon Americas and Sedgwick Marine & Cargo Ltd. have teamed up with leading U.S. surety bond broker C.A. Shea & Co. Inc. to create OPA-CLUB, a proposed solution for shippers not big enough to follow

the example of the big oil companies.

OPACLUB will issue surety bonds underwritten by a panel of U.S. surety insurers. Those bonds will enable shipowners to gain COFRs as long as they also are members of one of the 15 International Group of P&I Clubs, which provide U.S. oil pollution coverage up to \$500 million.

Premiums will range from \$250,000 for small organizations to \$2 million for bigger operators, and members of OPA-CLUB will be required to issue letters of credit 10 times the value of their premium.

Nicholas Taylor, executive director of Willis Faber & Dumas, said the club would be viable only if it received the support of about 50% of world tanker tonnage.

These recent alternatives are not the first and undoubtedly will not be the last to meet the U.S. finan-

cial responsibility requirements.

Shoreline Mutual (Bermuda) Ltd., a new P&I club domiciled in Bermuda, was created earlier this year and offers up to \$300 million to meet OPA '90's limits (*BI*, May 30).

First Line, an insurer created by New York-based Johnson & Higgins and Bankassure, a London unit of Aon Corp., is also prepared to offer coverage but will not release full details until the Coast Guard announces whether it will add any changes to the rules.

The Mandatory Excess Insurance Facility—suggested by the Greek Shipping Cooperation Committee, the Union of Greek Shipowners, the Norwegian Shipowners Assn. and the Swedish Shipowners Assn.—planned to offer \$1.5 billion above OPA limits with oil industry support but has been rejected by the Coast Guard because it would have been a government-run facility

funded by a bond issue and would have required congressional action.

Shipowners and marine insurers do not seem to share the Coast Guard's confidence that adequate alternatives will get off the ground and avert a "train wreck." Although self-insurance is an option under OPA '90, they contend is the answer for only a small majority of owners.

"The (Tindall, Riley) scheme may perhaps proceed but probably will need to be amended. There has to be room for negotiations. We see all these proposals, but it's very difficult. We have to lean on the P&I clubs. So far, I understand they haven't come up with anything registered with the Coast Guard," said Intertanko's Mr. Rafgard.

"The disruption to trade is a real possibility. The bigger shipowners will be able to satisfy the requirements and obtain COFRs, but the majority will not. This will certainly affect freight rates and the price of oil in the U.S.," he predicted.

"Self-insurance is not the answer for many owners, and we are bashing our brokers into a pulp for answers," said Peter Cooney, managing director of Glasgow, Scotland-based Acomarit (U.K.) P.L.C., one of the world's biggest ship management firms.

"We are waiting to see what the international insurance community will come up with for us, but the dispute between the Coast Guard and the shipowners seems to be irreconcilable," said Mr. Cooney.

"The Coast Guard seems convinced that the market will come up with something, but we have seen plans from the P&I clubs, the bond schemes and the two mutual groups, and as yet nothing has been tried and tested or promises to work. And certainly nothing has been approved by the Coast Guard except for the Mobil scheme that I know of," he said. **BI**

## Outlook

Continued from page 3

group also arranged additional cover to protect against overspill claims, bringing total coverage to \$1.53 billion. Individual club retentions were increased to \$4 million from \$3 million.

A more immediate concern for the P&I clubs, though, is finding some way of coping with the impasse over the U.S. Oil Pollution Act of 1990, which takes effect Dec. 28 (see story, page 3).

"Overall it's all a bit cloudy at the moment. The last couple of IUMI conferences have seen strong resolve on rates and conditions and so on, but it's not so clear right now where the market is going," said Thomas Prendergast, chairman and president of the Marine Office of America Corp. in Cranbury, N.J.

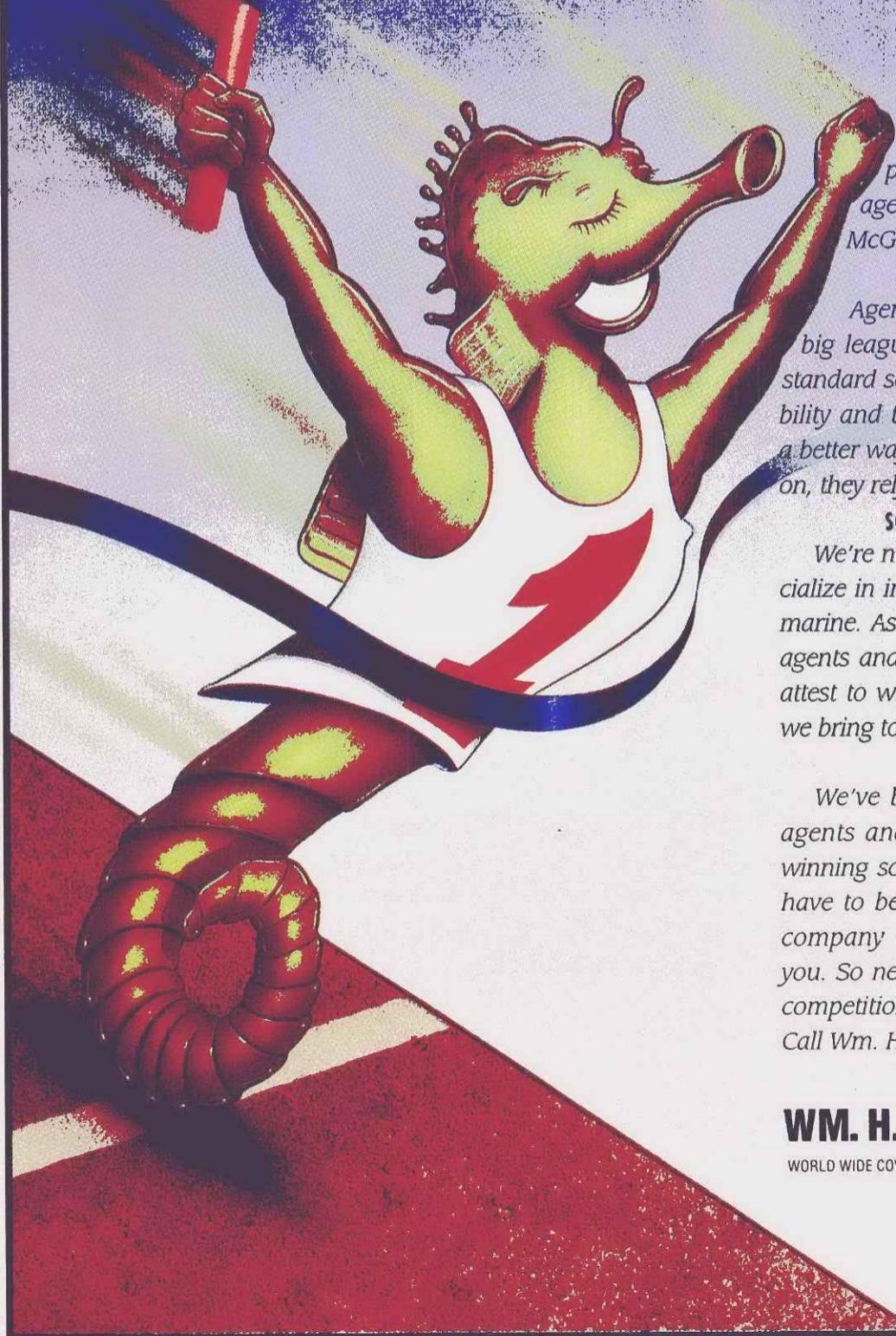
"At long last the market is back on a profitable track. This applies to marine hull and energy business, but less so in the case of cargo insurance. 1993 and 1994 results should start to show an equitable return for the majority of companies," said Len Campbell, chairman of the Institute of London Underwriters.

Mr. Campbell pointed out that the marine market's recent recovery comes on the back of massive losses between 1987 and 1991, and warned insurers they should not weaken their resolve if they are to rebuild adequate loss reserves.

However, the world's major marine insurance markets generally expect increases in capacity to ex-

Continued on page 10

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## Opinions

## Reform plans went too far

WE UNDERSTAND why Senate Majority Leader George Mitchell, D-Maine, abandoned his effort to try to win passage of comprehensive health care reform legislation this year.

Amid the acrimonious atmosphere in Congress, it simply would have been impossible for legislators to agree on a meaningful package in the remaining few days of the session.

There still is a chance for legislators to pass a drastically slimmed-down package that would include such reforms as curbs on pre-existing medical condition exclusions. But we don't hold out much hope for that to happen this year.

Although we recognize its inevitability, we regret that Sen. Mitchell fell into the old Washington blame game.

Republican obstructionism, combined with special interest opposition, killed health care reform this year, Sen. Mitchell said.

No, it was not that simple. To be sure, Republicans were virtually united in their opposition to President Clinton's health care reform proposal, as well as those presented by the Democratic congressional leadership.

But what Sen. Mitchell fails to mention is that none of those proposals enjoyed the support of a majority of Democrats.

As to the role of special interests, there were plenty that gave, at least in the beginning, support to the administration's proposal. Does Sen. Mitchell suggest that only those who supported the administration and its allies in Congress had the right to speak out while those opposed should have kept silent?

If Sen. Mitchell wants to get into the blame game—which we think is useless—he should be reminded that congressional Democrats aren't blameless. In 1992, Democrats blocked passage of a scaled-back but still meaningful reform bill—because they believed passage would aid the re-election chances of George Bush.

They may have been right, but the losers were the millions of Americans who would have been helped by the legislation.

Rather than point fingers, political leaders would be better off learning from their past mistakes when they begin the health care reform process anew next year.



For the administration, one tactical lesson should be that Hillary Rodham Clinton proved to be a terrible choice to lead the administration's reform drive.

Certainly, we couldn't help but be impressed with her eloquence and dedication to health care reform. But that was far outweighed by her political ineptitude. Her slash and burn criticism of anyone who opposed the administration was hardly a way to build a consensus.

The lesson that both the administration and Congress should learn is that this year's debacle was the direct result of pushing reform proposals that overreached. Americans want to be assured they have health care coverage, but that does not mean they want to be shunted into purchasing pools, have the government set benefits or determine prices.

If the administration and Congress can master that lesson and work together on putting together a proposal that is in line with what the public wants and is willing to pay for, enactment of legislation will be possible and this year's legislative battle will not have been entirely in vain.

## Letters

## NewCo's planned resources unlikely to 'run dry'

To the editor: It is gratifying that Dewey P. Clark accepts that the way Lloyd's is tackling long-tail liabilities possesses "significant advantages" (*BI*, Sept. 19).

But Mr. Clark's letter to the editor also expresses concerns over the long-term viability of NewCo, the company Lloyd's is planning to set up to reinsure its pre-1986 liabilities.

Lloyd's aim is to create a sustainable U.K. reinsurance company, regulated by the British government's Department of Trade and Industry. The DTI will not authorize NewCo unless it is satisfied that the company will indeed prove sustainable.

The reserving position of Lloyd's syndicates for asbestos and pollution cleanup liabilities already compares favorably with many U.S. insurance companies. The NewCo project at Lloyd's is analyzing these reserves, syndicate by syndicate, be-

fore quoting each syndicate a premium to reinsure their liabilities into NewCo in 1996. If the NewCo premium exceeds existing syndicate reserves, the balance will be sought from Lloyd's names.

By year end, we shall have close to 100 people gathering and interpreting data relevant to NewCo's reserving needs. No external agency possesses either the data or the resources available to the NewCo project, which may explain why their estimates of NewCo's additional reserving requirements vary by more than \$15 billion.

## Clarifying new sublimits in ACE coverage

To the editor: We applaud your front page coverage (*BI*, Sept. 26) of ACE's decisions to reduce the integrated occurrence coverage that it will offer and to increase prices to medical, chemical and energy accounts. Your treatment of difficult technical issues was both balanced and understandable, and was no doubt helpful to a number of audiences.

One point raised in the second paragraph of the article bears clarification.

There it was stated that ACE "will cut its excess liability insurance limits in half for claims from more than one policyholder that arise from a single event..."

While the reduction of integrated occur-

rence coverage will apply in those circumstances, the inference that it will only apply when several policyholders are involved is not correct. Under the sublimit endorsement, any single policyholder who has a "batch" loss will have a maximum of \$100 million of coverage.

If this particular well runs dry, it will be in the context of an insurance drought the likes of which the world has never seen.

**William Pitt**  
Communications Manager  
NewCo Project  
London

rence coverage will apply in those circumstances, the inference that it will only apply when several policyholders are involved is not correct. Under the sublimit endorsement, any single policyholder who has a "batch" loss will have a maximum of \$100 million of coverage.

If several policyholders are involved in the same event, each will have \$100 million of integrated occurrence coverage, but even if the "batch" loss is limited to one policyholder, the sublimit will apply.

**Bradford W. Rich**  
Executive Vp and General Counsel  
ACE Ltd.  
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# Outlook

Continued from page 6

ceed decreases, which means ship-owners could see cheaper coverage and marine insurers could face a short and sweet recovery.

U.S. marine insurers posted significantly improved results in 1992 and 1993, and hope for more of the same from 1994.

The American Institute of Marine Underwriters is the third-largest marine insurance market in the world when ranked by 1992 gross premiums written, according to global premium figures compiled by IUMI (see chart, page 3).

In 1992, AIMU and other U.S. marine insurers accounted for roughly 8.7% of world premiums, with \$1.13 billion out of \$12.897 billion worldwide.

And, AIMU reports that member

insurers wrote 38% more net premiums in 1993 than they did in 1992 on the back of healthy rate increases. More significantly, U.S. marine insurers reported much-improved operating ratios. In 1993, AIMU members' pure loss ratio was 60.9% compared with 78% in 1990. The members' combined ratio, which includes loss adjustment and underwriting expenses, improved to 95.3% in 1993, from 118.3% in 1990.

But U.S. underwriters are certain that capacity is returning and they report increased competition for international hull, cargo and energy business.

"We hope the U.S. market can be tough in the face of competition, but the U.S. market is losing business as a result of softening. Rates are falling in some areas and many underwriters are not yet in a position to follow them down," said William

Mack, chairman of AIMU and president of American International Marine Agency at New York-based American International Group Inc.

"Hull is currently in status quo. Owners are taking better positions with bigger retentions but it is genuinely inconclusive. Our hull predictions have been tempered for 1995 because I get the sense that there is an awful lot of hull capacity waiting to enter the fray," said Mr. Prendergast of MOAC.

Some large marine accounts—especially hull—have returned to the U.S. market from London over the last couple of years as London marine underwriters have imposed stiff hikes in rates and deductibles.

Mr. Prendergast said that he knew of a number of inland barge and offshore supply boat operators that had defected to London a few years ago only to quickly return to the U.S. market this year after a

sharp dose of tough underwriting.

"The return of business to the United States is not always price-driven. It is the value added because of proximity," he said. "What value would I have to offer if I decided to write U.K. coastal business? U.S. underwriters can offer local surveyors and adjusters and similar services, and quick."

The international cargo market has never recovered in the same way as the hull and liability markets, according to Mr. Prendergast, who described it as an "acyclical" market. He said that cargo underwriters are not making money but seem determined to hold on to market share regardless.

"On the one hand, underwriters seem to be toughening up with corrective action on their current portfolio while at the same time being very competitive in attacking business they don't have. This phenome-

non has frustrated any significant improvement in results," said AIMU's cargo report to IUMI.

Predictions also call for an easier renewal for energy companies as London slackens the pace. However, catastrophe coverages for companies in high-risk areas may be harder to come by.

"It will be interesting going into the renewal season. The early signals out of London are that it will not be as tough as 1992 and 1993. But if it's easy for the U.S. market it will be easier for everybody, so in that sense it's not so good," said Mr. Mack of AIG.

Richard Hazell, chairman of Liberty Mutual Insurance Co. (U.K.) Ltd., said in a speech at the Houston Marine Insurance Seminar that it is now "virtually impossible" for oil companies to buy full limits for catastrophe coverage in vulnerable sites.

He suggested that pooling appears to be the only means for energy companies to obtain stable and fair-priced coverage for marine underwriters.

"Fixed limits could be made available within predefined earthquake and hurricane zones and these would be priced accordingly. Reinsurers of the pools would write net lines and would know precisely what their maximum exposure would be," he explained.

"We have to find an answer that will provide our customers with the cover they require at a rate they can afford," said Mr. Hazell.

The London marine insurance market—the world's largest by far—seems the most satisfied with recent improvement in underwriting results. It also perhaps is the most resolute in their determination to resist competitive pressures, even if it means losing business.

"There are a lot of owners who, because of the higher standards imposed over the last couple of years, are not able to find insurance. The fact that they are forced out of business is no bad thing," said Peter Christmas, chairman of the IUMI Ocean Hull committee and underwriter with Lloyd's of London syndicate 735, managed by Wren Syndicates Management Ltd.

In 1992, London underwriters wrote roughly 26%, or \$3.34 billion, of global marine insurance premiums. Of that, the Institute of London Underwriters wrote \$1.48 billion and Lloyd's of London wrote \$1.87 billion.

London marine underwriters report stable capacity and rates after a sustained period of capacity reductions and rate increases, especially at Lloyd's. Both markets operate on a three-year accounting system and predict a break-even year for 1992 and profits in 1993 and 1994.

The ILU reported no change in hull capacity between 1993 and 1994 and foresees little change next year on either capacity or rates.

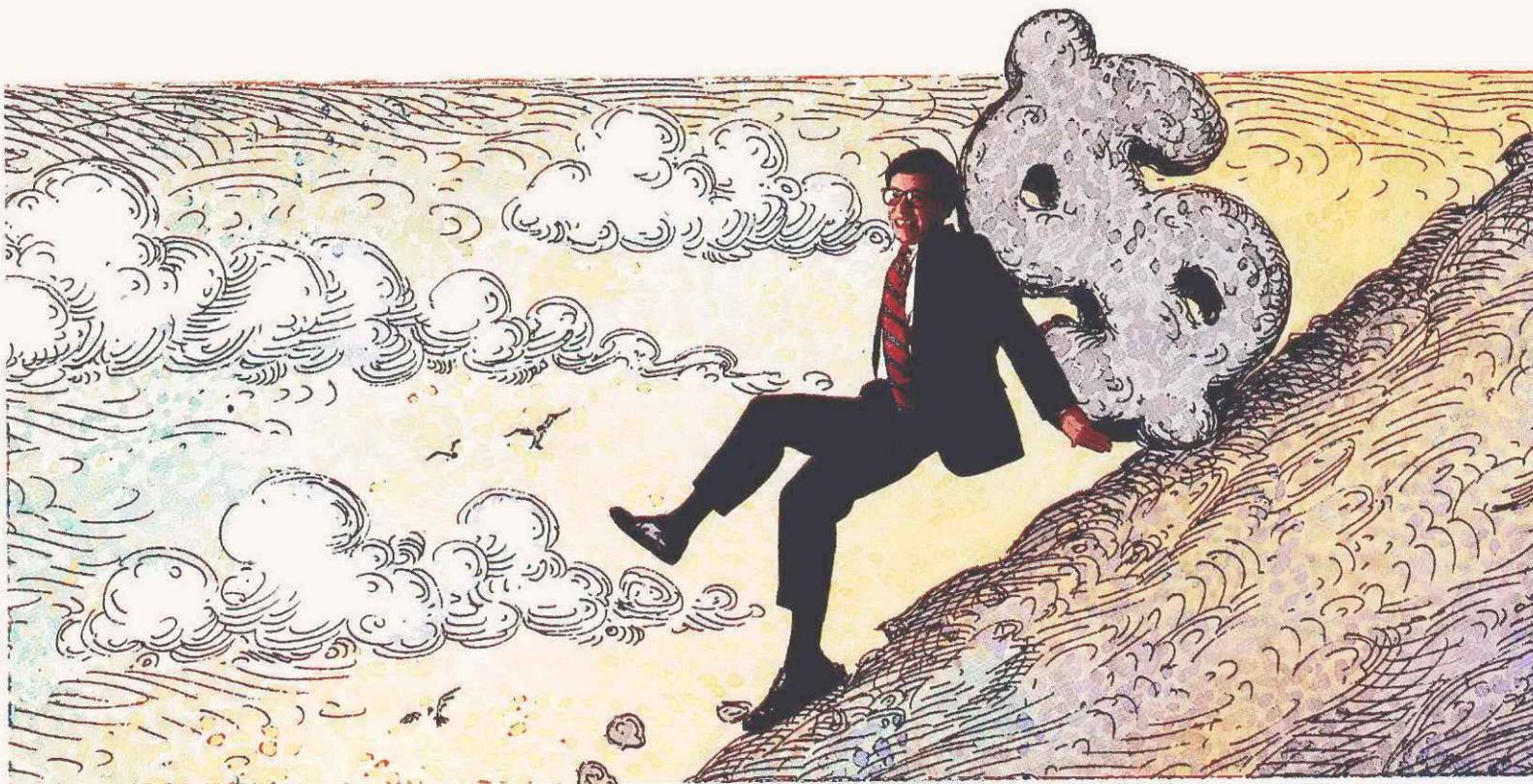
Lloyd's underwriters reported hull capacity increased up to 30% in 1994, but predict a fall of about 20% for next year and hope that this reduction will help rein in any rate cutting by overambitious underwriters.

The incidence of hull losses among London underwriters fell by 35% last year, which underwriters largely attribute to much higher deductibles, a better selection of risks and increased retentions by ship-owners.

Neither the ILU nor Lloyd's underwriters, though, are happy with the cargo market, where overcapacity has persisted in certain areas, especially for global coverages.

"Overcapacity has had an adverse effect on the cargo account and the

Continued on next page



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*Continued from previous page*  
London market is continuing to see its pure cargo market contracting," stated the joint Lloyd's/ILU annual report to IUMI.

London underwriters lay the blame for cargo rate reductions squarely at the door of competition from overseas markets.

"The market is not as hard as 1993. While rate reductions are rare, increases are not as commonplace as in the previous renewal season. Underwriters' efforts are often hampered in that many accounts are placed or completed overseas in those instances where London underwriters insist on improved terms," the Lloyd's/ILU report said.

Georg Mehl, chairman of the German Transport Insurance Assn., or DTV, professed the same resolve in the face of competitive pressures as his British colleagues.

"Competition is the limit of what we do, and if we have enough competition nobody cares. Presently we have burned fingers, and shareholders do not allow underwriters to write the business. In many markets, the companies do not allow the underwriters to act as they did in the past. We fight for our lives in our companies," said Mr. Mehl, who is marine manager and a member of the executive board of Wurrtemberg A.G. Insurance Co. in Stuttgart.

German marine insurers wrote \$950.25 million in gross premiums in 1992, or roughly 7.3% of worldwide premiums. This makes the German marine industry the fifth-largest in the world.

"The catastrophic experience of the last few years led to a subsequent energetic restructuring of the international marine market. In the wake of this, the German market

has also restructured and the positive impact of this was felt in 1993," the DTV's annual report said. German marine underwriters are, however, feeling the pinch and more business is being lost to overseas markets than is returning.

According to the DTV, between February 1993 and January 1994, German marine insurers won back 11.3 million deutsche marks (\$7.3 million) in premiums from overseas markets, compared with 25.5 million deutsche marks (\$16.5 million) returning to the market the year before. But, they lost 19.7 million deutsche marks (\$12.8 million) to overseas markets in 1993, against a loss of only 10.1 million deutsche marks (\$6.5 million) the year before.

Members of Cefor, the Norwegian marine association, wrote \$554 million worth of gross premiums in 1992, or roughly 4.3% of the global total, which ranks as the seventh-biggest marine market. Cefor reported much better results for the 1993 year and is confident that 1994 will be a good year.

The loss ratio for Norwegian hull insurers, which operate through the Norwegian Hull Committee, was a dramatically lower 55.2% in 1993, compared with a massive 303.57% in 1990 and 211.43% in 1989. "The positive figure of 55.2% in 1992 reflects both a harder market and increased focus on standards and quality of shipping in general," stated Cefor's annual report.

Norwegian hull insurers increased deductibles to \$100,000 on average in 1993, from \$23,000 on average in 1992, according to CEFOR's report to the IUMI Hull Committee.

In the energy market, Cefor predicts "1993 should go down in history as a good year. Very few large

losses have been reported during the year. After two rounds of increases, rate levels on most accounts seem adequate. . . on the surface the future looks bright and rosy."

But, despite the rate hikes, the Norwegians are as concerned as the rest of the world market about new capacity and competition. The fact that they see the threat coming from Lloyd's, while Lloyd's underwriters point the finger overseas, merely serves to underline the murkiness currently pervading the market.

"Real headway has been made in re-establishing London as a leading, profit-making insurance market. New capacity has been introduced and the major syndicates in Lloyd's have experienced impressive growth in their underwriting capacity for 1994," Cefor said in its report.

"However, we note with some concern that this capacity is now becoming a factor that may lower future premium standards. It must be obvious to all concerned. . . that the general marine and offshore business must build further on the progress made in recent years in order to maintain an acceptable level of returns in the 1990s."

*Next year's International Union of Marine Insurance conference will be held in Tokyo in September. For more information, contact Alexander von Ziegler, General Secretary, Lowenstrasse 19, P.O. Box 6333, Ch-8023, Zurich, Switzerland; 411-211-6040; fax: 411-211-1165.*

*The 1995 Houston Marine Insurance Seminar will be held Sept. 17-19. For more information contact Brian E. Steege, Steege, Kingston & Associates Inc., 1502 Augusta Drive, Suite 435, Houston, Texas 77057; 713-975-7575; fax: 713-975-7671.*

## Inland marine

*Continued from page 3*  
Mr. Kleemann said.

But some prices have also increased, he said.

"Prices are going up and it seems that the hard market is here," he said.

In particular, hard-hit segments of the inland marine market are leading the rate increases.

For example, trucking risks have suffered increasing losses due to hijackings during the past few years, he said.

"We are losing a lot of non-descript items, such as loads of grapes or nectarines. Traditionally they would take things like computers but now they are going for mundane items as well," he said.

The increase in losses throughout the inland marine account has already pushed some rates up by 10% this year, and rates are likely to increase by around 15% by year end, Mr. Kleemann said.

Increases in hijacking and other violent crime have led to steep increases in inland marine losses, agreed Tom Mitchell, assistant vp of commercial marine at ITT Hartford Group Inc. in Hartford, Conn.

"In the Northeast, especially, we have seen a rise in violent robberies at jewelry stores," he said.

But the efforts of specialized inland marine underwriters to increase rates to reflect those losses are being curtailed by competition from mainstream property underwriters, Mr. Mitchell said.

Consequently, although inland marine risks in general increased

by between 5% and 10% earlier this year, increases halted in the spring, added Walter Mess, marine segment underwriter at ITT Hartford.

Not all underwriters are seeing rate increases, though.

The market remains soft, but it is unlikely to get any softer, said Frank Oleskiewicz, second vp at General Reinsurance Corp. in New York. "There are not a lot of increases, but there are no decreases," he said.

Despite the experience of the past year, inland marine has been a profitable area of business and most insurers are keen to have some share of the market, Mr. Oleskiewicz said.

And competition for risks with good loss experience remains strong.

"If you have good business, you will do whatever you need to do to keep hold of it," he said.

The large catastrophe losses over the past several years have also affected the inland marine market, said Andrew Moretti, vp at Sedgwick of New York Inc.

"The rates for properties in earthquake-, flood- and wind-storm-prone areas have gone up dramatically," he said.

Primary insurers have seen their catastrophe reinsurance premiums increase ninefold over the past two years and they are passing some of that cost increase on to policyholders, according to Mr. Moretti.

"We've seen rates for earthquake risks double or more," he said.

Inland marine construction risks are usually temporary in na-

*Continued on next page*

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# Inland

Continued from previous page  
ture and consequently they have not undergone the same increases for catastrophe risks as the rest of the property market, said ITT Hartford's Mr. Mitchell.

However, construction projects in coastal areas that run through the windstorm season are receiving increases of 20% or more, he said.

And, often the coverage is not available, Mr. Mess said.

"We have a difficult time with constructions in wind-exposed areas, except for our most well-established customers," Mr. Mess said.

Generally, prices remain soft for inland marine risks but rates for risks in some areas of the country are leveling out or increasing, said

Alan Crater, vp at United States Fidelity & Guarantee Insurance Co. in Baltimore.

"There are areas where we have hit bottom, but most rates do not seem to be moving up yet," Mr. Crater said.

In Southeastern wind-exposed properties and in the Midwest, trucking rates have at least stopped falling, according to Mr. Crater.

"The more difficult business is finally flattening out," he said.

There is also potential for increased business for inland marine underwriters, he said.

Inland marine business includes coverages for properties in construction and the U.S. construction industry is climbing out of its slump, Mr. Crater said. "The construction industry growing is not going to push up rates, but it means that there is a lot more

**'There are areas where we have hit bottom, but most rates do not seem to be moving up yet,' says Alan Crater.**

business out there."

The trucking industry is also an area of opportunity for inland marine underwriters, he said.

The industry has undergone a tumultuous transformation since it was deregulated in 1980, but now it is stable, Mr. Crater said. "The consolidation of trucking companies is over and the companies that were going to fold have now folded."

However, underwriters need to be cautious when underwriting

trucking risks because of the increased risk of hijacking, Mr. Crater said.

"There are new technologies available, like satellite tracking systems, which underwriters need to be aware of," he said.

USF&G plans to double its trucking premium volume over the next several years. Currently, trucking business makes up 10% of the company's inland marine premiums, Mr. Crater said.

Generally, competition for inland marine business is increasing, according to Kemper's Mr. Kleemann.

"If one insurance company is making a profit in a certain class of business, everybody will flow there. You cannot remain exclusive for long," he said.

In many cases, inland marine coverages are being covered by property package policies, which

again help increase capacity for inland marine risks, Mr. Kleemann said.

The underwriting of specialist coverages by general underwriters is a common concern of inland marine underwriters.

"They don't have the specialist knowledge you need to underwrite the risks," he said.

For example, a general property underwriter might not be aware that a private telephone system should have equipment to protect against lightning and power surges, he said.

"It is easy to enter the inland marine market because we are mostly freed up on form and rates so it does not take much additional effort to put a program together," said ITT Hartford's Mr. Mitchell.

Consequently, property underwriters are tempted to offer inland marine coverages to expand their product lines.

"That disrupts the whole market until the company learns its lesson," he said.

The merger of inland marine coverages into property departments can give specialist underwriters a competitive advantage because they are more able to assess risks properly and avoid poor risks, but it is a disturbing trend for the industry in general, Mr. Crater said.

Large commercial and industrial risks often cover inland marine exposures under a master property coverage, said Ed Baier, senior vp at Alexander & Alexander Services Inc. in Kansas City, Mo.

Under the master policies, the inland marine risks are given broader coverage and coverage can be obtained at cheaper rates, he said.

"It's not a package policy but a master policy. . . All of the coverages are rolled into one wording," Mr. Baier said. ■

## Lost tonnage declines in 1993: ILU

*Insurers credit better underwriting*

By ADRIAN LADBURY

TORONTO—The oceans were much safer for cargo last year as the total tonnage lost fell sharply for the second straight year and the number of ships lost was level, according to the Institute of London Underwriters' annual hull casualty statistics.

Underwriters were pleased with the figures, which include only ships over 500 gross tons, and believe the improved result is largely attributable to their efforts to pressure substandard shipowners to improve their fleets through higher rates and deductibles and more regular and stringent pre-underwriting surveys.

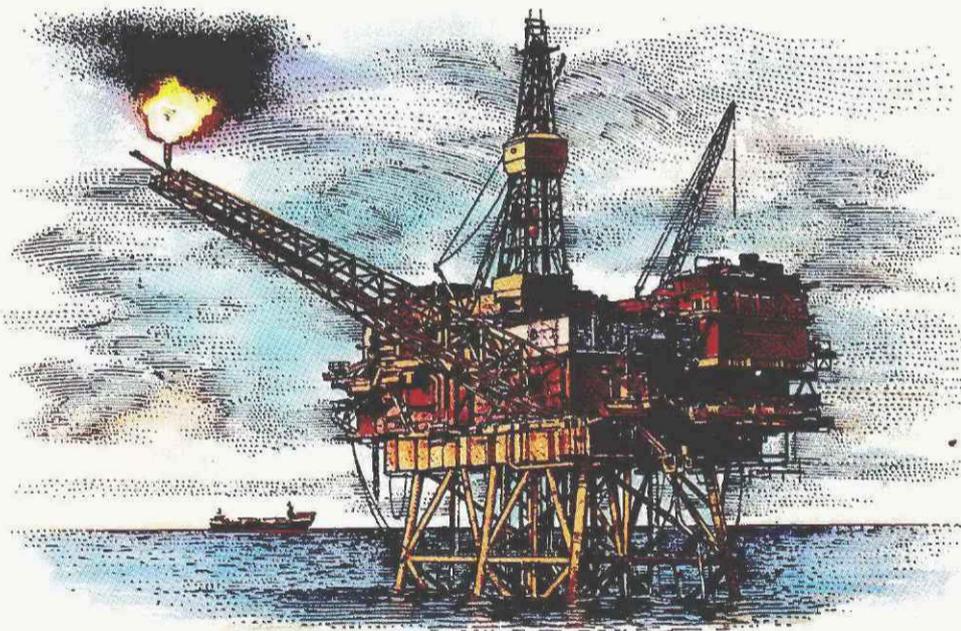
The news was not universally good, however, and there is still much work to be done.

Tonnage lost plummeted and only one more ship was lost in 1993 compared to 1992, but the number of lives lost at sea last year was 59% higher than in 1992.

And, despite underwriters' best efforts to clear the seas of aging ships, the ILU statistics, traditionally unveiled at the IUMI cor-

Continued on page 14

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# Statistics

Continued from page 12

ference, show that losses are still very much concentrated among older vessels, many of which are subsequently found to be unseaworthy.

Tankers and bulk cargo vessels are particularly vulnerable as they become older.

In the short term at least, this situation is unlikely to improve. The number of ships on order and under construction fell significantly in 1993. The number of ships completed last year increased slightly but the number broken up also fell.

For the moment, underwriters are glad for the second year of reduced losses in a row.

The improved tonnage-lost figures are largely attributed to the increased use of pre-risk surveys carried out by the classification societies and underwriters' tougher stance on rates and deductibles over the past two to three years.

Tonnage lost fell because more small ships sank in 1993 than in 1992, and the number of ships lost leveled off last year.

Total losses—a combination of actual total losses and constructive total losses—peaked dramatically in 1991 when they hit a high of 1.76 billion gross tons, compared with 814 million gross tons in 1989.

In 1992, the number plummeted to 1.11 billion tons and fell again last year to 887 million tons.

Total losses as a percentage of ships afloat fell last year to 0.2% from 0.26% in 1992 and 0.41% in 1991.

The number of ships lost in 1993 increased by only one, to 136. The 135 ships lost in 1992 was the lowest number in nine years. This compares with a 1991 high of 173 after five years of steady losses of about 140 ships per year.

Actual total losses jumped to 101 from 84 while constructive total losses fell to 35 this year from 51 last year. By percentage of all ships afloat, the number of total losses was equal to 1992's 0.35%.

Lives lost at sea in 1993 totaled 613. This was 227 higher than the nine-year low of only 386 in 1992. The average number of lives lost per year since 1985 has been 1,244, but this includes the disastrous year of 1987, when 4,058 lives were lost in a year when only 143 total losses were reported.

Between January and June of this year, 274 lives were lost at sea. The ILU pointed out that the figure applies only to ships over 500 gross tons and many more deaths occur on smaller ships.

Last week's sinking of the Estonia in the Baltic Sea will bring the number of lives lost this year to more than 1,000, the worst statistic since 1991 (see story, page 1).

Marine underwriters continue to be preoccupied with the problem of aging ships and constantly harangue operators for simply patching them up and sending them off again for just one more voyage.

The proportion of ships lost that are older than 15 years continues to rise (see chart).

In 1989, ships over the age of 15 accounted for 60.8% of ships lost by tonnage. In 1991, that figure rose to 82.6% and in 1993 to 91.3%. Based on the first six months of the year, the ILU estimates that in 1994 92.2% of tonnage lost will be more than 15 years old.

A staggering 95% of all total losses among tankers in 1993, for example, were among ships age 15

to 24 years, which is double their share of world tonnage.

Many national marine insurance associations reported continued efforts to combat the problem of aging tankers.

The Belgian Marine Assn., for example, introduced much higher deductibles and pre-shipment inspections and will give no warranties for ships older than 20 years.

British cargo underwriters are now examining the classification societies that carry out the surveys on hulls and cargoes to test their effectiveness at weeding out problem vessels.

Factors that caused the major casualties were unchanged.

Fire and explosion remain the major causes of total losses among all tankers, and collision or contact is out in front as the leading cause of partial losses. For bulk and combination cargo vessels,

weather was the chief cause of total losses, with grounding and machinery failure equally responsible for partial losses.

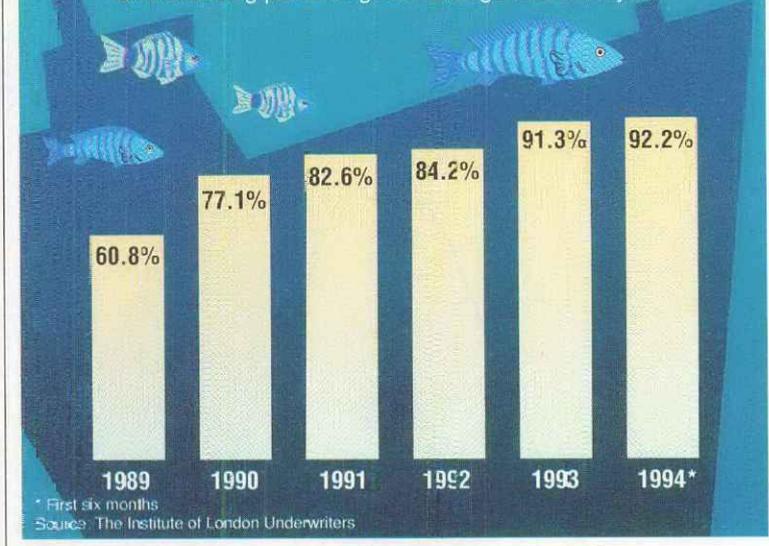
Losses among ferries and "roll on-roll off" vessels were mainly caused by the weather, followed by fire and explosion and machinery as the main cause of partial losses.

The ILU statistics also show which countries suffer greater than average losses.

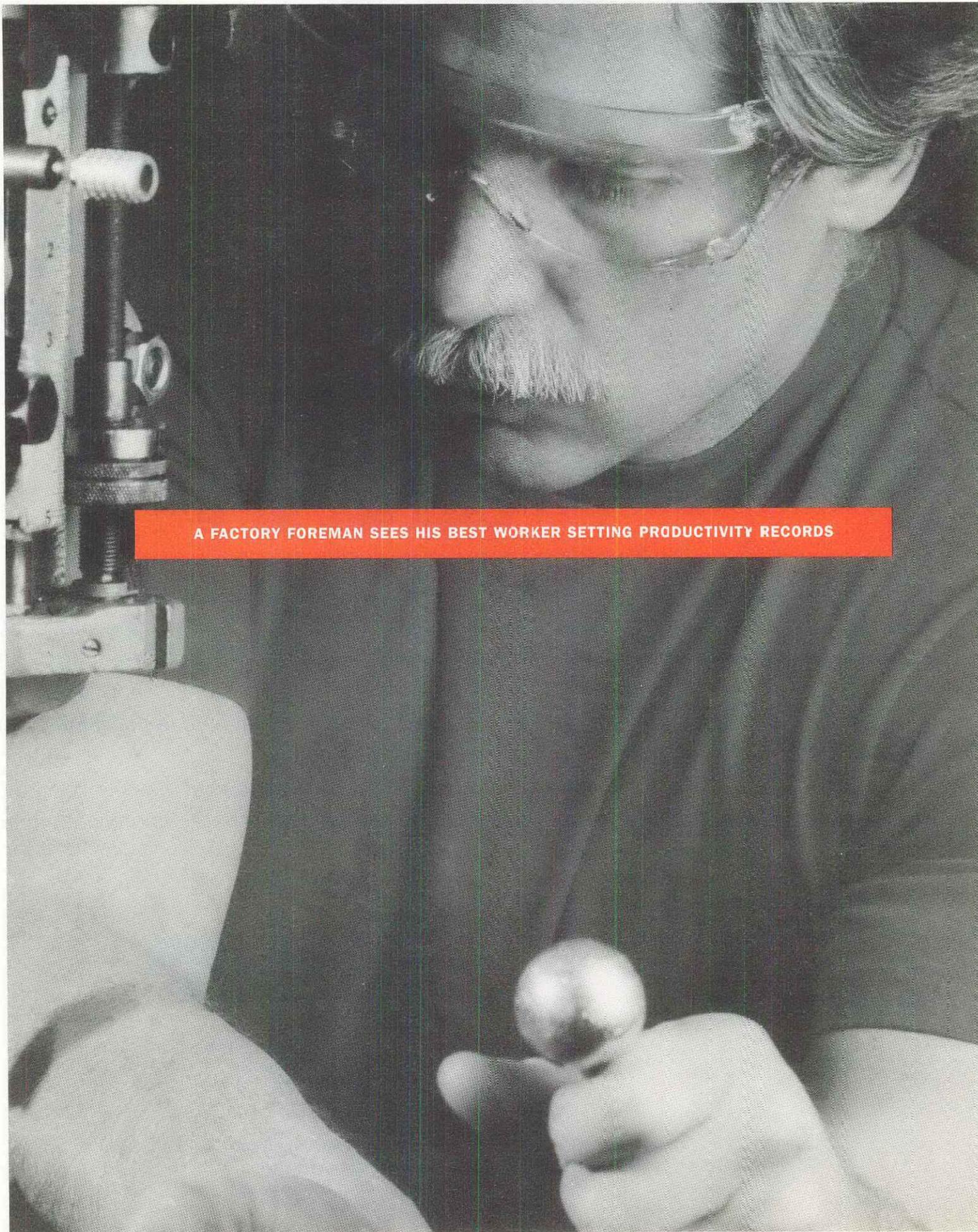
According to this year's figures, during the past five years Honduras posted the worst record, with 1.35% of its total tonnage afloat lost vs. a world average of 0.27%. This means that Honduran ships are five times more likely to sink than the world average. Others with poor records are: the Republic of Ireland, 1.01%; Bangladesh, 0.98%; Thailand, 0.91%; and Malta, 0.86%. **BI**

## Old problem continues

Ships more than 15 years old continue to account for an increasing percentage of tonnage lost each year.



GRAPHIC BY KIM ROME



A FACTORY FOREMAN SEES HIS BEST WORKER SETTING PRODUCTIVITY RECORDS

# Stability returns to London marine market

By GAVIN SOUTER

*Market to undergo additional changes to improve efficiency*

HOUSTON—After a tumultuous few years in the late 1980s and early 1990s, tighter conditions, reduced capacity and higher premiums have helped stabilize the London marine market, according to a London marine underwriter.

But still further changes will reshape the market again in the future, predicted James V. Rossi, director-marine underwriting at Terra Nova Insurance Co. in London.

The changes that have already taken place in the marine market were the direct result of the series of large losses that hit the market in the 1980s, starting with the Eu-

ropean windstorms in October 1987, said Mr. Rossi.

"The London market was in a perilous position in 1991, facing an unprecedented number and quantum of losses that occurred over a relatively short period... Corrective action was required to redress the balance in the underwriters' favor," he said.

Underwriters' first reaction was to increase premiums, Mr. Rossi said at the Houston Marine Insurance Seminar held last month.

Those increases have now slowed down and underwriters are encouraging loss prevention in an effort to improve underwriting profits, he said.

"We are now in a position where quality client selectivity coupled with the application of loss prevention techniques is playing more of a role, in parallel with lower price increases than before," he said.

All branches of the London marine insurance account have undergone increases in premiums and reductions in credit terms, and individual areas of the account have experienced different changes, Mr. Rossi said.

Among other things, the hull portion of the account has higher deductibles, tougher structural surveys and narrower coverage.

Cargo underwriters have largely

eliminated stock throughput coverage, reduced commissions, paid greater attention to policy wordings and reduced the number of master coverages. They are less reliant on binding authorities and are more strictly charging additional premiums for extensions in coverage.

Energy underwriters are also reducing the number of master covers, seeking more loss prevention information and finding that inexpensive facultative reinsurance is becoming less available.

Proportional treaty underwriters have withdrawn some international capacity, reduced commissions and demanded substantially

more information on the risks and companies covered.

The non-proportional treaty market has seen a substantial reduction in retrocessional or excess-of-loss on excess-of-loss coverage, a reduction in capacity and an increase in coverage exclusions.

The changes in available reinsurance capacity have had a significant effect on the marine insurance market, Mr. Rossi explained.

At the same time that policyholders have been facing higher premiums and policy modifications, underwriters themselves have had to contend with turmoil in the reinsurance market, which has less capacity and is increasing the pricing of its products, Mr. Rossi said.

For example, a typical London market marine insurer now spends about 20% of its premium volume on reinsurance for its energy account, compared with 5% in 1989.

Reinsurance for the hull account costs about 5% of premiums compared with less than 1% in 1989, Mr. Rossi said.

At the same time, minimum energy account retentions have increased to about 10% of premiums, up from about 2% of premiums in 1989. Hull account reten-

In 1991, 'corrective action was required to redress the balance in the underwriters' favor,' says James Rossi.

tions have increased to about 7.5% of premiums, compared with less than 1% of premiums five years ago, he said.

"For the first time in years, underwriters were being required to actually retain a materially large portion of the risk they had underwritten," he said.

All of these changes have created a stronger marine insurance market in London, according to Mr. Rossi.

In the future, changes in the entire London market will continue to strengthen the marine market, Mr. Rossi said.

In particular, the introduction of new technology in London will eventually lead to electronic placing of risks.

The policy issuance and claims processing functions for London companies and Lloyd's of London may merge in the future, increasing the efficiency and client service capabilities of London.

There are currently three main underwriting buildings in London: Lloyd's, the Institute of London Underwriters and the London Underwriting Centre.

"If the subscription market is to continue with underwriters in three buildings underwriting the same risks, is it cost-effective?" he asked.

The introduction of global brokering systems that places risks electronically could diminish the role of London as the "hub of the insurance wheel."

One-year accounting will be introduced in London because "investors simply will not accept anything less," he said.

And London underwriters may deal with companies outside London instead of using a London broker, including negotiating reinsurance placements directly with other underwriters, Mr. Rossi said.

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# Brokers may face rough seas unless service enhanced

By GAVIN SOUTER

HOUSTON—Marine insurance brokers will have to carry themselves into the future instead of relying on the current that has carried them along for the past 50 years, a leading brokerage executive says.

"It's been a wonderful and comfortable ride on the gravy train. But the ride is over. Now it's up to each of us to make ourselves germane to the new marketplace," according to Alexander W. Vietor, president and chief executive officer of Willis Corroon Marine & Energy/America Inc. in New York.

Policyholders now are more sophisticated, make more demands

on brokers and are more prepared and able to use the alternative risk financing market if there are deficiencies in service, Mr. Vietor said.

Recent examples show how the traditional insurance market has poorly served clients.

"On a recent proposal, five brokers quoted service fees ranging from \$200,000 to \$700,000. That kind of spread is insane. It makes us look foolish," Mr. Vietor said at the Houston Marine Insurance Seminar held last month.

In another example, he said Willis Corroon was working with marine underwriters on an energy renewal policy for three months, and two days before the renewal was due the underwriters asked

for 47 changes in the policy wording.

"The client went ballistic. And who could blame him?" Mr. Vietor

able, according to the brokerage executive.

For example, during the past three years, insurance rates for

**'On a recent proposal, five brokers quoted service fees ranging from \$200,000 to \$700,000. That kind of spread is insane. It makes us look foolish,' says Alexander W. Vietor, president and CEO of Willis Corroon Marine & Energy/America Inc.**

said.

In addition to individual examples of poor service, there are examples in which the marine market as a whole has been unreason-

North Sea drilling platforms have increased by nearly 50%. But, in spite of the increases, these rates do not reflect the platforms' losses, Mr. Vietor said.

"One underwriter told me that over the last 15 years, the loss ratio in the North Sea is 15%—excluding Piper Alpha. And, even with Piper Alpha, the loss ratio is still under 50%," said Mr. Vietor, referring to the 1988 explosion of the Piper Alpha offshore platform. That disaster has cost insurers more than \$1 billion (BI, July 11, 1988).

High rates for platforms have encouraged many energy companies to seek coverage in alternative markets or to self-insure their risks, Mr. Vietor said.

"One of our clients, a major integrated energy company, used to buy \$600 million of insurance in the commercial market. Now they buy \$100 million. They finance the rest of their risk with self-funded products that protect their balance sheets," he said.

If brokers and underwriters are to retain their importance in the marine insurance market, they must perform better and offer better products and service to clients, Mr. Vietor contended.

For example, marine insurers might consider offering multiyear contracts without expiration dates, he said.

"What would risk managers, brokers and insurers do without last-minute renewals to worry about? Maybe, just maybe, there would be more time for better risk identification and loss prevention programs," according to Mr. Vietor.

Brokers generally need to improve the quality of service they offer to clients and embrace the concept of total quality management, he said.

As part of this effort, brokers should focus on customer satisfaction, improve communications, motivate their employees more and increase efficiency, Mr. Vietor said.

Improvements in quality of service should be measured. And brokers should determine how those changes have benefited policyholders, he said.

"As a broker, I can do a fantastic job for my client. I can know as much about his business as he does. I can give him expert risk management advice. I can access the global marketplace to get the best possible combination of underwriters, coverage and price on his behalf. I can give him excellent service. But, a year later, if he's had no major claims, what value is placed on the protection and peace of mind that we provided?" Mr. Vietor asked.

He added that brokers are going to have to search for new ways to add value for their clients.

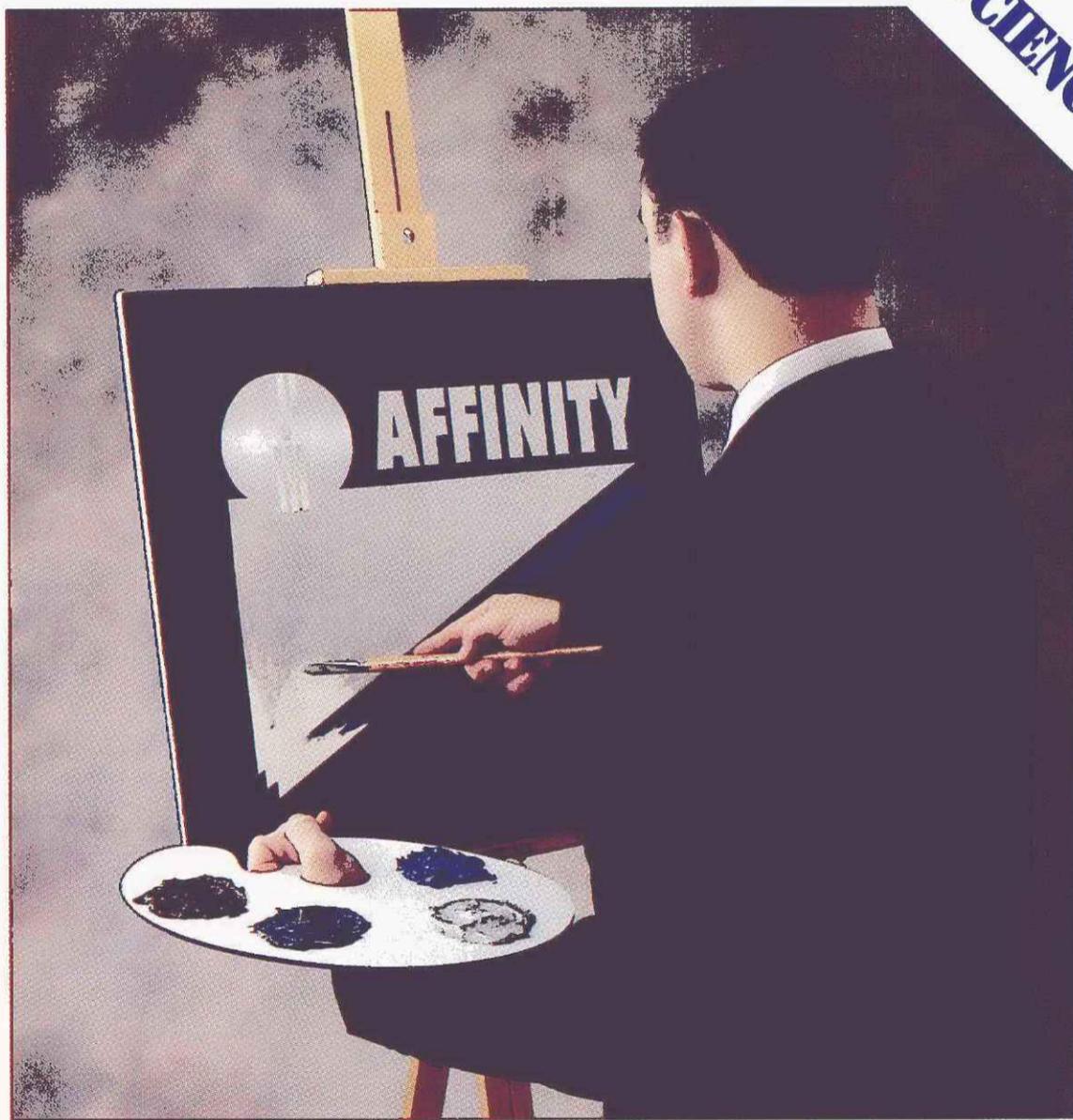
And brokers must develop better methods of quantifying their charges to clients and breaking out the separate costs.

Previously, broker commissions covered everything. Now, fees are becoming more popular and brokers are finding it difficult to allocate their charges, Mr. Vietor explained.

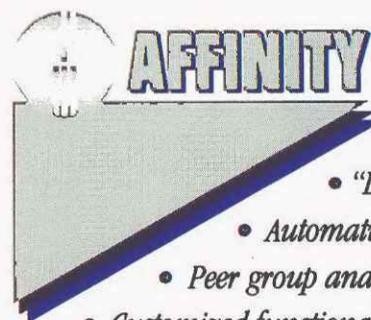
"We don't know how to factor in overhead, hours, paper transmittals and personnel. . . . We must learn how to understand and control our costs if we want to start that growth curve upwards again."

If brokers listen to customers, adapt to the marketplace, learn to understand and control costs and improve their quality of service, they should have a bright and prosperous future, Mr. Vietor said. **BI**

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# Hijackers stealing attention of cargo underwriters

BY ADRIAN LADBURY

TORONTO—Hijackers and armed robbers continue to be hot topics of debate among cargo underwriters, whose attention is primarily focused on the former Soviet republics, Italy and the United States.

Hijackers and armed robbers are reportedly rampant in the Commonwealth of Independent States and, short of resorting to Eliot Ness-style shoot-outs, there appears to be little that cargo carriers can do to fight the criminals, according to underwriters at the International Union of Marine Insurers' recent conference in Toronto.

There is also increasing concern among U.S. underwriters about continued cargo thefts in U.S. ports and especially a rise in the number of incidents in areas bordering Mexico.

If it were not for an upbeat speech at the IUMI meeting on successful crime-fighting efforts in Italy, the news for cargo underwriters on this front would appear to be all bad.

Italian underwriters and the police appear to be winning their battle against hijackers, according to Claudio Campana, chairman of the IUMI cargo committee and marine manager at Assitalia-Le Assicurazioni d'Italia S.p.A.

Much of their success is credited as much to common sense loss control efforts as to a wider crackdown on the Mafia and other organized crime elements in Italy, he said.

According to Mr. Campana, armed thefts and robberies of road, rail and barge shipments in Italy, including the theft of trucks without cargo, declined 15% to 20% between 1992 and 1993 after steadily increasing between 1983 and 1992.

Common sense loss control measures and cooperation with the police are responsible for the much improved hijacking rate in Italy, he said.

Italian insurers now void cargo insurance policies if the carrier is not registered with the Italian Official Register of Carriers. This is an important step considering that there are some 40,000 illegal trucks on Italian roads, he said.

Italian insurers are also sharing statistics on the types of goods stolen to help pinpoint the most dangerous cargos and apply higher deductibles to that freight. Not surprisingly drugs, electrical equipment and tobacco products topped the list.

Insurers are also exchanging loss information about their clients to help spot companies making frequent theft claims.

Other practical measures included the increased use of guarded and fenced roadside rest stops for truck drivers, greater use of satellite tracking systems for shipments and wider cooperation with the police.

Mr. Campana said that the problem of hijacking in Italy could be curbed even more if the police were to focus more on shutting down fences of stolen goods in addition to stopping the gangs stealing the cargo in the first place.

Organized criminals in the Commonwealth of Independent States are rapidly establishing a worldwide reputation as some of the biggest and best-organized gangs around and cargo carriers

are a key target.

Cargo insurance experts from Japan, Belgium, Russia and Germany all discussed how cargo transports to and within the CIS could be better protected against theft.

Klaus Roeder, head of the marine insurance department at Cologne Re A.G., said he was aghast to learn recently that some 44,000 railroad cars have "disappeared" in the region since the end of Soviet rule.

This means the problem in the CIS is now already worse than in Italy, he said.

Two experts—Stephen Verplancke, a Belgian loss surveyor with International Loss Adjusters & Surveyors in Antwerp, and Igor

N. Slotvinsky, manager of Russian insurer Ingosstrakh Insurance Co. Ltd. in Moscow—told conference attendees that the best loss prevention technique currently available to shippers in the CIS is to hire tough, ex-Red Army personnel as armed guards and hope they do not steal the cargo themselves.

Mr. Slotvinsky said that rail freight in particular is very difficult to protect and said armed guards are essential. Border points to the west, such as with Poland, are particularly vulnerable due to long delays caused by differences between the rail track gauge in the CIS and in the rest of Europe, he said.

Mr. Verplancke said that armed

guards in the CIS cost between \$5 and \$20 an hour depending on the quality. He warned potential users, though, to thoroughly investigate a CIS security firm's credentials before hiring it to protect cargo shipments.

Anthony Sigwart, underwriter with Lloyd's of London syndicate 735 managed by Wren Syndicates Management Ltd. and a member of the IUMI cargo insurance committee, questioned how many underwriters would be prepared to pay up to \$480 per day, per security guard, especially if they turned out to be unreliable.

"Service is related to the price" said Mr. Verplancke. He said that there is a growing number of joint venture security firms springing

up in Moscow with Russian and Western European partners that are proving much more reliable than domestic operations.

Cologne Re's Mr. Roeder said that "cargo transports to and from the former Soviet Union are problematic, but not uninsurable."

According to his figures, Russia's foreign trade fell 15% between 1992 and 1993. However, the lower volume of trade in 1993 was still worth \$77 billion, composed of: \$43 billion of exports; \$27 billion in imports; and \$7 billion in trade with other CIS states.

At those levels, it is far too valuable to be ignored by cargo underwriters, Mr. Roeder argued.

*Continued on next page*

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# Cargo theft

Continued from previous page

He advised common sense measures such as not sending cargo to Russia in brand new freight trucks covered with advertisements displaying what the trucks are carrying.

"An open invitation to theft?" he quipped.

One delegate asked the panel whether cargo carriers have started using satellite tracking devices to know where valuable cargo is during delivery, a technology that has proved successful when used in the United States and Europe.

"There are Dutch and British companies doing this, and their trucks are fully equipped and it generally works very well," responded Mr. Verplancke.

"Truck drivers can receive messages and orders, and if there are problems they can contact the head office immediately. But, we also say that all trucks need two drivers to use it effectively," he said.

"In one recent case, the satellite system was stolen while the driver was away from the truck," he continued.

While much of the focus of the workshop was hijacking in the CIS states, a U.S. insurance executive reminded delegates that the United States has big problems of its own, especially in the coastal regions of California, Florida, New York and along the Mexican border.

William Mack, chairman of the American Institute of Marine Underwriters and president of American International Marine Agency, a unit of American International

Group Inc. in New York, said that the Los Angeles Police department estimated earlier this year that in California alone roughly \$1 million worth of goods are hijacked every day.

Mr. Mack was particularly worried about increased armed robbery, hijacking and theft along the Mexican border since the signing of the North American Free Trade Agreement in 1993, and warned the problem would only get worse without corrective action.

Mr. Mack said in an interview that AIG is getting involved with the police as much as possible to tackle the problem.

In California, for example, AIG works closely with the Federal Bureau of Investigation and law enforcement agencies to help combat cargo thefts and hijackings.

The West Coast authorities have set up a multijurisdictional unit called "Cargo Cats" composed of FBI experts, the California Highway Patrol, the Los Angeles Police Department and other law enforcement agencies, that is reportedly doing well with recovering stolen cargo, according to Mr. Mack.

He also said that armed guards are being increasingly used in high-risk areas and with high-risk cargos.

The American Institute of Marine Underwriters' annual report to the IUMI cargo loss committee reported hijackings are occurring generally after containers leave port areas. The annual report said that electrical goods, especially computers and clothing, are high-target cargos and that most of the thefts are carried out by organized crime. **BI**

# Human error to blame for most marine losses: Panel

## Industry to raise quality, safety

By ADRIAN LADBURY

TORONTO—Shipping losses are almost always attributable to human error or mismanagement, a panel of marine insurance experts agrees.

"Ships do not sink on their own. Rather, ships sink because the crews that pilot them are tired, stressed, drunk or poorly trained, or because the shipowners are short of money or foresight, the panelists say.

To remain profitable, hull and cargo underwriters must ensure that sailors and captains—and their managers and owners ashore—are properly trained and supervised, and that proper risk management and safety systems are in place to reduce losses.

Underwriters also must continue to make regular use of surveyors and ensure they conduct rigorous evaluations of the seaworthiness of vessels.

And, if shipping companies are serious about safety, they should consider retaining more of their predictable risks and relying on insurers only for catastrophe coverage.

These recommendations and others were aired by a panel of risk surveyors, educators, ship managers and owners during a hull insurance workshop titled "Safer People—Safer Ships" at last month's International Union of Marine Insurance conference in Toronto.

This workshop echoed the overall theme of this year's conference, which was human error and how it can be minimized. Last year's IUMI conference examined the structural causes of marine losses; in particular, aging vessels.

Marine underwriters and shippers have good reason to debate the problem. A huge proportion of marine losses are blamed directly or indirectly on the people who sail, manage or own the ships.

Although figures vary, estimates at this year's IUMI conference indicated that between 40% and 80% of shipping losses are caused by human failure. Regardless of the specifics, human error is clearly the most important single factor in marine losses.

The International Group of Protection & Indemnity Clubs is reinsurer to the world's leading P&I clubs and, as such, is not new to the problem of losses due to human error.

In a report presented at the workshop, the club reckons that 60% of all marine claims can be blamed on human error. It also estimates that 50% of all pollution claims, 33% of all tanker spills and 65% of all personal injury claims at sea can be blamed on human error.

The International Club's figures also seem to underline the increasingly-held view among underwriters and hull surveyors that more casualties can be blamed on "competent error" than simple incompetence.

Competent errors are mistakes that occur when a normally able in-

Continued on page 20

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# Human error

Continued from page 18

dividual reacts poorly to a situation for reasons like fatigue, stress or drug abuse, explained Michael Ellis, chairman of the Salvage Assn. in London, the world's largest marine casualty surveying organization.

The International Club calculates that six out of 10 marine losses occur during "fair" weather, seven out of 10 occur in "slight" weather and a staggering eight out of 10 while the master of the vessel is on the bridge.

The club also reckons that eight out of 10 marine property claims can be blamed on human factors and one in three are due to pilot error.

Eric Johnson, president and chief operating officer of leading U.S. shipping company International Shipbuilding Corp., based in New Orleans, said that shipowners should not shirk responsibility for shipping losses.

"I don't believe that underwriters should pay for me to do business, that's just swapping dollars," Mr. Johnson said. "Traditionally, we had low deductibles. If there was a claim, we'd simply take the attitude that it was an insurance matter and pass it on to the insurance department. This was a big mistake. We carried out a five-year analysis of costs and came to the conclusion that if we train our people correctly, we would cut lower-level losses and be able to restrict coverage required to catastrophe levels."

The company decided to significantly increase its self-insured retention to between \$50,000 and \$100,000 per vessel and manage it in-house with reorganized departments that are responsible for managing their own risks.

The company has made "significant" savings on fewer losses and lower administration costs and has not looked back since, Mr. Johnson explained.

But, not all shipowners are so forward-looking, willing or able to invest in such initiatives and need to be pushed in the right direction.

Progress on this front has been made and owners of substandard ships are feeling the pressure. Hull and cargo underwriters have jacked up rates and deductibles in the past two or three years and made much more use of classification society surveys of hull risk. The classification societies themselves have also done much to improve the service they provide and improve relations with underwriters.

The P&I clubs also got tough with members and many of the leading clubs have jettisoned poor risks from their books during the last two years.

The United Kingdom Mutual Steam Ship Assurance Assn. (Bermuda) Ltd., the world's largest P&I club with about 25% of the world's fleet on its books, terminated the membership of nine fleets with ships totaling about 800,000 gross tons during February renewals. "Quality and standards were in doubt," the P&I club stated.

There has also been a trend toward tougher international safety and quality standards that the various industry organizations and interests hope will also help sort out the shipping companies.

All branches of the marine industry have their own initiatives to raise standards, but the panelists agreed that perhaps the most significant of all will be the mandatory International Maritime Organization's International Safety

Management Code, under which about 40% of world shipping will have to seek accreditation by 1998 and 100% by 2002.

This safety and quality program, based on global standards developed by the International Safety Organization 9000, was introduced in July by the IMO, which is an agency of the United Nations.

Shipowners covered by other existing voluntary programs that are also based on ISO 9000, such as the International Ship Managers Code and a scheme run by the International Assn. of Classification Societies, may gain automatic accreditation if the IMO gives its sanction.

Panelist Peter Cooney, managing director of Acomarit (U.K.) Ltd. in Glasgow, Scotland, one of the world's biggest shipping managers and among the first to gain accreditation under ISO 9000, is a keen advocate of improved management

systems rather than simply laying the blame on inadequate crews.

"People on ships may well be responsible for half of all losses, but the inefficiency of the manager and his inability to produce quality management procedures and systems, the use of substandard methods of staff selection and lack of preventive maintenance programs are all to blame. It's my belief that onshore management does not take enough blame and many supposedly human error losses on board are down to management," he said.

In addition to ISO 9000, which assesses the quality of management on shore, the actual vessels and shipboard management systems are evaluated by a program run by leading classification society Det Norske Veritas, Mr. Cooney said.

Many at the conference, however, were skeptical of the ability of such a global and often dispa-

rate and diffuse industry to enforce these programs.

Many say that most shipping operators are still evading responsibility for improving quality and safety and will do so until global shipping activity increases.

Responsibility for policing the new programs will rest largely with the flag states under which ships sail. But many observers say too many flag states, eager to win the business, are willing to help less scrupulous operators evade proper standards.

Michael Turner, deputy commissioner for the Canadian Coast Guard, said that responsibility for ensuring the new standards are adopted and adhered to lies with: the shipowner itself, first of all; with the flag state, second; with the classification society, third; and, fourth, with the port state authority where the ship docks. All

too often the problem falls into the lap of the port rather than flag state, he added.

Frank J. Iarossi, chairman of the New York-based American Bureau of Shipping, the leading classification society, believes that classification societies can do the police work required.

"I feel there is no better organization in the world than the IACS (International Assn. of Classification Societies) able to carry out the role.

"We can also bring consistency to it," Mr. Iarossi said.

Mr. Cooney agreed that the flag states probably will want to delegate policing to the classification societies.

Rex Palmer, a partner with the U.K. club, also suggested that hull underwriters and P&I clubs could cooperate more to combat marine losses. **BI**

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# Good results buoy hull insurers' spirits

By ADRIAN LADBURY

TORONTO—Hull underwriters were the broadest smiles at this year's International Union of Marine Insurance conference.

The tried and tested techniques of higher deductibles, steep rate increases and tighter conditions have helped push hull insurance results back into the black, and there is no sign this firming will let up soon.

Hull underwriters also report progress with risk management and loss control initiatives in the hull market. While the pressure on rates may slacken as capacity returns to the market, underwriters promise risk management will not.

Pre-entry and condition surveys, used by classification societies to determine the suitability of ships for membership, are becoming more common. London hull underwriters, which write about one-third of global hull premiums, say these inspections are a key tool and have helped produce a more "selected and targeted" approach to underwriting.

The London market has appointed liaison officers for each of the leading classification societies that survey the vessels. And dialogue, often a problem in the past between the two parties, has much improved.

Quality management and quality assessment programs are becoming more popular in London

and other "developed" hull markets, according to the London hull insurance market's response to a questionnaire circulated this year by the IUMI hull committee.

London underwriters expect 95% of all owners and managers to operate such programs within two years.

About 90% of the members of the Norwegian shipowners association are introducing a quality management plan, according to Cefor, the Norwegian marine association.

The German marine association said that quality initiatives are proving an excellent means of reducing machinery losses caused by poorly trained crews.

Many of these initiatives were

introduced to combat losses due to aging fleets, which was a theme of last year's IUMI conference.

Peter Christmas, chairman of the IUMI hull committee and underwriter of Lloyd's of London Syndicate 735, managed by Wren Syndicates Management Ltd., also praised underwriters and classification societies for advances made so far. However, pressure to maintain high standards must be maintained, he noted.

"Underwriters have put pressure on classification societies of late to develop and require a survey of vessels. The classification societies and the International Assn. of Classification Societies have on the whole re-established the standards expected before,"

he said.

"Most markets deny insuring substandard vessels. I have noticed an increasing number of casualties involving significant losses on older tonnage from the Salvage Assn. reports not involving the London market. Surveys help to avoid substandard vessels," said Mr. Christmas.

"It is apparent that much more in-depth information is being requested by underwriters and is being freely offered by brokers and insureds. Underwriters are generally operating a much more selective and targeted approach to underwriters," said Mr. Christmas.

The French marine insurance association, the Syndicat Français de l'Assurance Maritime et Transport, reports that it took a very tough stance last year and rejected taking a line on 7,000 risks because they were "substandard."

The Insurance Federation of Egypt reports that it has decided to form a special rating committee that, starting in January, will set new rates that take into account vessels' age and quality.

"The insurance of aging or substandard vessels is still a matter of concern for Dutch underwriters who are intending to cover these risks under limited conditions only," the Dutch marine insurance association stated. **BI**

## Non-marine losses upset cargo insurers

By ADRIAN LADBURY

TORONTO—Cargo underwriters remain concerned about the persistent inclusion of non-marine risks in marine cargo policies and vow to put an end to the practice.

Underwriters say that onshore risks, such as dockyard property coverage, are added far too often as sweeteners to the cargo policy, but the extra risk is not adequately reflected in the rates.

The guilty insurers are either too eager to win or retain the business in the face of growing competition or simply do not know how to underwrite the cargo business properly, some insurers say.

Deirdre Littlefield, a member of the IUMI cargo loss prevention committee and the first woman to speak at an IUMI conference in its 49-year history, highlighted the problem during a speech on the Northridge earthquake that struck the Los Angeles area in January.

Cargo underwriters need look no further than the Northridge quake to see how dangerous such wide-ranging and inadequately rated policies are, she said.

Marine underwriters estimate that cargo underwriters have lost up to \$70 million—mainly from property exposures—in quake-related losses that should have fallen on their non-marine colleagues, she said.

The American Institute for Marine Underwriters' report to the IUMI cargo committee noted that reinsurers that had been badly hit by the Los Angeles earthquake and winter storms have started to introduce coverage restrictions for so-called location coverages.

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## Cargo risks

*Continued from previous page*

These coverages are provided for cargo that is stored in a stationary building, such as a warehouse. The report also stated that the price of the reinsurance cover was much more expensive in 1993 than 1992.

The AIMU also registered concern over the persistence of "stock throughput policies," another target of underwriters' concern at last year's conference in Stockholm, Sweden. Stock throughput is basically cradle-to-grave coverage of a product that can extend from its manufacture through to retail delivery.

"Though the concept is waning, some stock throughput policies still exist, though underwriters are doing a better job of separating exposures and rating each in-

dividually rather than charging an all-in premium," said the AIMU.

Thomas Prendergast, president of Cranbury, N.J.-based Marine Office of America Corp., said that so-called stock throughput policies have proved remarkably resilient. "They seem to be like Dracula: Eternally dead but at midnight, up comes the coffin lid and out they come to stalk the highways and byways," he said.

Mr. Prendergast and others said that if marine cargo underwriters are determined to continue underwriting such non-marine exposures, they should hand over the job to their non-marine colleagues who understand the business and can rate it properly.

The Insurance Council of Australia Ltd. reported a slight improvement in cargo underwriters' approach to including non-marine exposures but agreed that too of-

ten the risks are not rated appropriately.

"Inclusion of static risks in marine contracts has somewhat reduced. But where they continue to be included, they usually provide broader cover at lower rates than available from more experienced property underwriters," the ICA annual report to the IUMI stated.

Cefor, the Norwegian marine insurance association, said that cargo insurance has now become a non-marine class and the cargo coverage is underwritten only as a part of a package, including coverage for liability, manufacturing, buildings and products in store.

In this reverse situation, Cefor said that cargo underwriters must fight for their position. The Norwegians are also concerned about stock throughput coverage.

"Cargo underwriters must defend the level of the cargo insurance rates as part of the package

premium. Underwriters are also increasingly aware of the stock throughput coverage problem in such packages. If rates are to be held at a traditional cargo insurance level, such risks as storage of stock or products at retail premises must be excluded," warned Cefor in its report to IUMI.

Cefor was pleased to note, however, that energy underwriters have learned their lesson and now leave non-marine risks up to non-marine underwriters.

"The market has firmed up considerably since the end of 1991 and the creative underwriting practices of the late 1980s have gradually disappeared. Marine underwriters have paid dearly for the knowledge that non-marine risks should be left to the non-marine market, and the 'multiperil packages' can now only be placed with a small number of Lloyd's syndicates." **BI**

## Tobacco

*Continued from page 1*  
tors besides smoking.

"Neither the Minnesota nor the Mississippi suit raise any new allegations or issues," said a spokeswoman for R.J. Reynolds Tobacco Co. in Winston-Salem, N.C.

"They're the same arguments that have been heard and rejected by juries consistently over 40 years. Nothing new has surfaced and there is nothing the state can gain by pursuing these issues in the courtroom," she said.

The tobacco industry "has never faced any of these contests before," countered Richard A. Daynard, chairman of the Tobacco Products Liability Project and a law professor at Northeastern University in Boston. "And they are backed by extremely talented and well-funded law firms."

"I think the states have found the key to the kingdom," agreed Laurence H. Tribe, a professor at Harvard Law School in Boston, who is performing pro bono work in these cases for Mississippi and Florida. "In each instance, they apparently avoid all of the problems individual litigants and class actions have confronted. They did not ask to be stuck with these tremendous costs. By federal law, they had to provide Medicaid."

Cigarette manufacturers "only need to lose once, and they're done for. Everybody else will pile on," Mr. Daynard said. "The pressure is already great for states to follow suit. There is going to be at least a trickle if not a flood."

In addition to the states that have filed suit or have authorized such action, the issue is still "under strong consideration" in Maryland, where the attorney general will decide within the next month whether to file suit against tobacco companies, a spokesman said.

"We are trying to get the status of what is going on nationwide so we can brief the governor and the Legislature," said Jim Soper, an assistant attorney general in Utah, who has talked to lawyers in both the Mississippi and Minnesota cases.

While Utah will probably not seek enabling legislation, Mr. Soper said he suspects the Legislature and governor will be interested. The state must then decide whether to await the outcomes in other states to see which strategy is most successful. The attorney general's office has obtained copies of the tobacco companies' 1954 newspaper advertisements that the Minnesota case is based on, which also ran in Utah papers.

Minnesota has charged tobacco companies with failing to follow through on pledges contained in advertisements to conduct independent research into any hazards associated with smoking and disclose those findings to the public (see story, page 24).

"We have no immediate plans to file, but we have no immediate plans not to file, either," Mr. Soper said.

"I think there will be new wrinkles in each case," Mr. Daynard said. "There is a lot of creative thinking going on. All are potentially viable and can inflict grave damage on the industry."

In addition to Philip Morris Cos. Inc., R.J. Reynolds, Brown & Williamson Tobacco Corp., Lorillard Tobacco Co., and Liggett Group Inc., the West Virginia case also names Kimberly-Clark Corp. as a defendant, both as a manufacturer of cigarette paper and as the

*Continued on next page*



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Continued from previous page  
alleged developer of a "tobacco reconstitution process" that allows cigarette makers to control the levels of nicotine in cigarettes.

Kimberly-Clark will ask to be removed from the suit, said a spokeswoman for the Dallas-based company.

The company's New Jersey plant that produces reconstituted tobacco "does not have the technology or equipment to adjust nicotine content," she said.

A Kimberly-Clark plant in France "can increase and decrease nicotine levels within a limited range," but its products are not sold in the United States.

The company processes tobacco by-products like stems, leaf particles and pulp and rolls it into sheets. Cigarette manufacturers shred the sheets and blend it with virgin tobacco.

This is the first time Kimberly-Clark has been named in a tobacco-related lawsuit, the spokeswoman said.

At the least, the actions brought by the states will force the tobacco industry to scatter its resources. In addition to the state litigation, the companies are fighting class action suits brought by smokers in California and Louisiana and secondhand smoke claims in Indiana and Mississippi.

The industry used to be able to present "a wall of flesh," bringing 20 or 30 lawyers to trial and sometimes even to early depositions, according to Mr. Daynard. "They could do it for a while, but now they're being attacked on all sides. Plaintiffs are generally cooperating with each other. They may have finally met their match."

Last week, U.S. District Judge Frederick Heebe rejected a motion by the defendants in *Castano vs. The American Tobacco Co.*, the national tobacco class action in New Orleans, to dismiss the charges on the basis that the statute of limitations had expired, and that plaintiffs' claims were pre-empted by the Federal Cigarette Labeling and Advertising Act.

The federal government also launched a fresh assault on the tobacco companies when Food and Drug Administration Commissioner David A. Kessler testified before Congress that nicotine is addictive and that cigarette companies can control nicotine levels (*BI*, April 4). Mr. Kessler is also considering whether the government should regulate nicotine as a drug.

Ultimately, that may be a greater threat to the tobacco companies than the states' lawsuits.

"It's much more likely that significant economic incursions on the industry will come from the regulatory side," said Victor E. Schwartz, a defense attorney with Crowell & Moring in Washington, and a proponent of product liability reform. "I don't think it's going to come on the tort side," he added.

Many observers believe that Florida's legislative mandate, if held to be constitutional, affords the best chance for success, compared with other efforts that rely on existing case law.

"If the law is upheld in Florida that strips away the defenses, there could be some exposure," Mr. Schwartz said.

However, similar laws may not be possible politically in other states, according to Mr. Tribe.

Critics questioned the tactics the Florida bill's sponsors used to get it passed.

"It was a stealth initiative tucked into a bill," said Walker

Merryman, vp for the Tobacco Institute in Washington.

"No one in the Legislature knew the provision was in the legislation until it already became law. It was very underhanded," he added.

"A law passed almost at midnight, with no hearings, which was not identified as a change of law and that gets rid of 200 years of tort law in the state is a really questionable law," Mr. Schwartz said. "It will be held unconstitutional."

The law does not target tobacco companies by name, but the governor and attorney general say it will only be used against cigarette manufacturers.

While several general business groups, including the Associated Industries of Florida and the National Assn. of Convenience Stores, are opposing the bill, Mr. Merryman concedes that it is un-

likely to be applied to other products.

"Clearly, to hold tobacco companies to an entirely different standard and, by legislation, to strip away all the traditional de-

law has a good chance of being upheld," according to Mr. Daynard.

Few experts believe the strategies states are using against tobacco companies will be applied

**'The tobacco industry has a long tradition of engaging in acts knowing the states will be injured. The costs should be shared by the person responsible for selling a dangerous product,' says Harvard law professor Laurence Tribe.**

fenses is something no one interested in justice and equity could condone," Mr. Merryman said.

"The industry has done a good job of panicking people and spending a huge amount of money to support their coalition partners in their lobbying efforts, but the

to other products.

"Beef and alcohol are not addictive," attorney Ronald Motley of Ness, Motley, Loadholt, Richardson & Poole in Charleston, S.C. said. "You don't die from sitting in a room with someone who is drinking coffee."

"What's unique about cigarettes is that when used as intended, they kill people," said Mr. Tribe. "I wouldn't be shocked to see people try to extend (this theory) to other products, but they are not as likely to be successful. With tobacco, there is a very high probability that it will eventually prevail."

While the Mississippi suit rests on the theory that tobacco companies benefited at the state's expense and the Minnesota suit relies heavily on fraud and consumer protection laws, both have the same ultimate goal.

"The tobacco industry has a long tradition of engaging in acts knowing the states will be injured," Mr. Tribe said.

"The costs should be shared by the person responsible for selling a dangerous product. I believe they are all sound legal claims," he said. **BI**

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# Packing punch in tobacco suits

## States taking tips from past product liability suits, attorneys

By SARA MARLEY

The strategies states are employing to collect smoking-related Medicaid expenditures from the tobacco industry have their roots in previous product liability lawsuits and the lawyers who argued them.

"We are building off of (previous lawsuits) and taking them a step further," said Roberta B. Walburn, an attorney with Robins, Kaplan, Miller & Ciresi in Minneapolis, who is working on the state's case there.

"A lot of evidence has come out in recent months on industry conduct," Ms. Walburn said.

Minnesota's lead attorney,

Michael Ciresi, has led plaintiff's litigation against the manufacturers of the Dalkon Shield and in the *Government of India vs. Union Carbide Corp.*

In the Mississippi lawsuit, attorney Ronald Motley of Ness, Motley, Loadholt, Richardson & Poole in Charleston, S.C., is calling on his expertise in handling thousands of asbestos cases and in drafting the proposed asbestos settlement with the Center for Claims Resolution (*BI*, Jan. 25, 1993).

In particular, Mississippi's suit is relying on a collective cause of action rather than seeking recovery on behalf of individuals or individual cases.

A spokeswoman for R.J. Reynolds Tobacco Co. in Winston-Salem, N.C., says the state will have to prove that smoking truly was the cause of illness in the cases for which it seeks reimbursement.

"Statistical evidence will be sufficient," rebutted Laurence H. Tribe, a professor at Harvard Law School in Boston.

"They will have to show the aggregate effect on the state treasury," Mr. Tribe said.

The Mississippi suit, based on the theory of unjust enrichment, claims that cigarette makers profited by selling their products and injured the state in the process.

"The beauty of this is we believe this suit is entirely different from

suits the tobacco industry has won," said Trey Bobinger, a Mississippi assistant attorney general. "We are an innocent third party. The state had no choice."

In previous litigation, tobacco companies have argued that individual smokers were aware of and knowingly accepted any health risks associated with smoking.

Mississippi spends about \$200 million per year on smoking-related health care for Medicaid recipients, Mr. Bobinger said.

The Minnesota case is based on that state's tradition of strong consumer protection laws.

The Minnesota lawsuit focuses on vows made by tobacco companies in newspaper advertisements in the 1950s in response to the first scientific studies to associate

smoking and health problems. The companies' ads promised to study smoking and health and to share that information with the public. In reality, the Council for Tobacco Research suppressed findings that linked smoking and disease, the Minnesota suit charges.

The lawsuit "alleges that companies either restrained trade or used their monopoly power to repress research on the harmful effects of smoking," said Tom Gilde, associate corporate counsel for Blue Cross & Blue Shield of Minnesota, which is also a plaintiff in the case.

"They failed in their promises to conduct objective research and fraudulently concealed information related to smoking and health," Mr. Gilde said.

The participation of the state's largest health plan, with 1.9 million of the state's 4.5 million population enrolled, is also unique to the Minnesota case. The group has a charter to advance public health and the art and science of medi-

**The states 'have a chance in each case of making hundreds of millions,' says Richard A. Daynard.**

cine in the state, Mr. Gilde said.

Smoking-related illnesses cost the state \$350 million annually, he added.

Cigarette makers "are getting off without acknowledging this cost of doing business," Mr. Gilde said. "We intend to collect it."

Minnesota's lawsuit seeks to require the defendants:

- To disclose all research they have conducted related to smoking and health.
- To pay for a corrective public education campaign.
- To pay for smoking cessation clinics.
- To dissolve the Council for Tobacco Research.
- To return their profits from the sale of cigarettes in Minnesota.

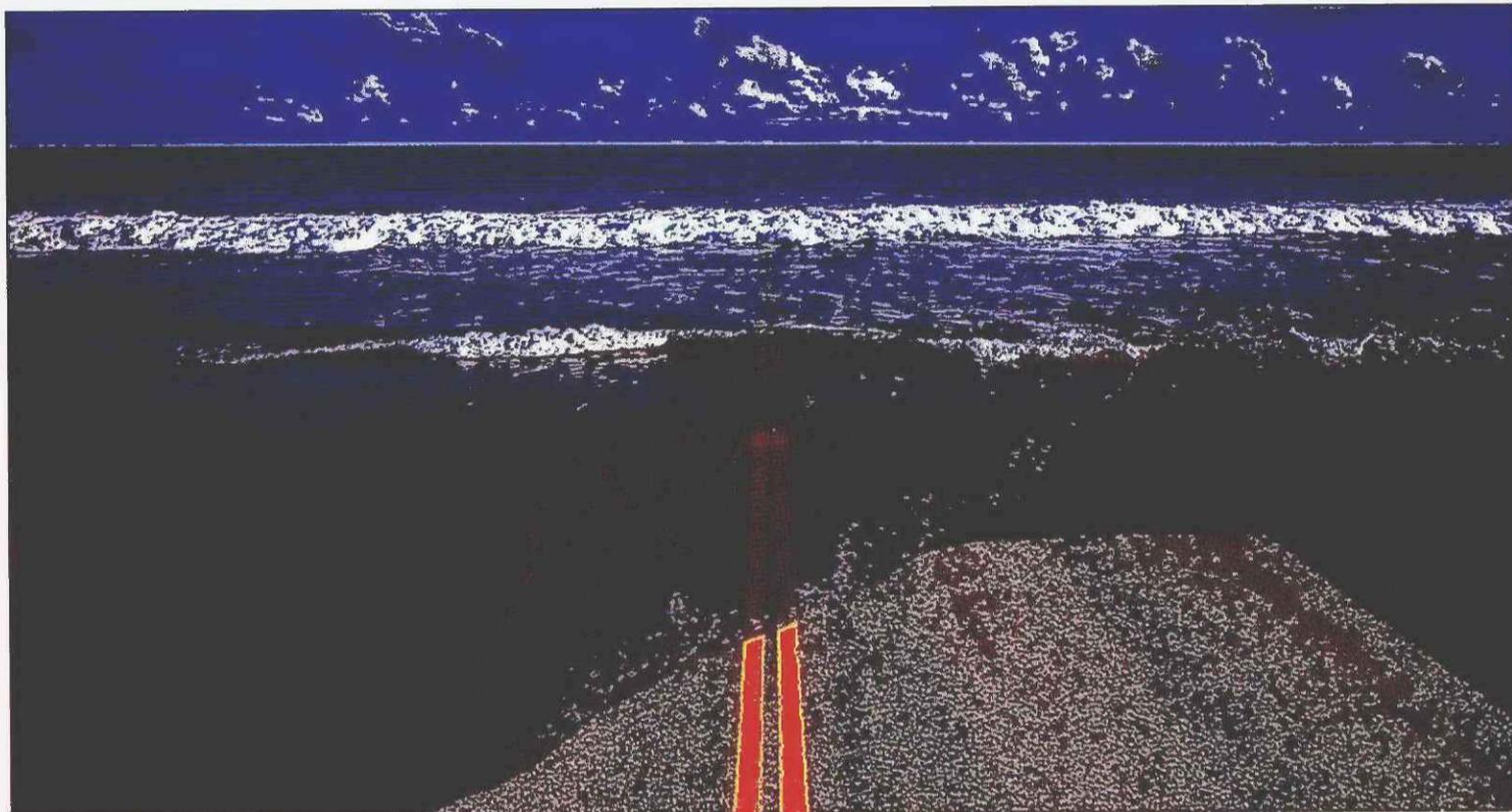
"Minnesota brings in some new theories that are very interesting, but they are so new it's hard to comment on them," said Victor E. Schwartz, a defense attorney and product liability specialist with Crowell & Moring in Washington. However, it will be difficult to prove that smokers would have relied on the tobacco industry's research, had it been published, he said.

"There was a lot of information out there from reliable sources," Mr. Schwartz said. "The Surgeon General was saying smoking was dangerous since 1964. Would a jury say someone smoked because the tobacco industry said it was safe?"

Contrary to a think tank study that claims states could actually lose money by suing tobacco companies, the states say they have nothing to lose.

"We went to great pains not to put taxpayers out," said Mr. Bobinger of Mississippi. "Lawyers and experts have volunteered to help. Private attorneys are funding the litigation. If we win, they will ask the court for the defense to pay their costs."

"The states are close to zero cost to themselves, and they have a chance in each case of making hundreds of millions," said Richard A. Daynard, chairman of the Tobacco Products Liability Project and a law professor at Northeastern University in Boston. **BI**



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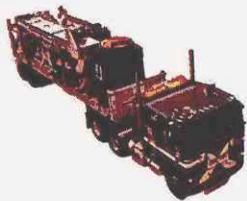
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# Agent/Broker Topics

A monthly editorial section sent exclusively to agents and brokers

## Florida broker and legislator hopes to leap to higher office

Republican

Tim Ireland

thinks he would bring experience, understanding as commissioner

By SARA MARLEY

Agents and brokers in Florida may soon be regulated by one of their own.

Tim Ireland, a broker with Sedgwick James of Florida in Fort Myers, won the Republican primary for the office of insurance commissioner last month.

Mr. Ireland, 36, has handled large business accounts, primarily placing coverage for medical practices, while employed by Sedgwick for the past three years.

In addition, he has served in the state House of Representatives since 1986, representing Fort Myers, and is currently Republican whip.

"I have unique qualifications for the job," he said. "I have real-world experience in the insurance industry. I have seen how the marketplace has been turned topsy-turvy since Hurricane Andrew."

Mr. Ireland is a member of the Legislature's Finance and Taxation Committee.

"I decided to run for insurance commissioner because whoever is the next insurance commissioner of the third-largest state in the country needs a basic understanding, appreciation and knowledge of how the industry works and how it doesn't," Mr. Ireland said. "The people of Florida would not elect an education commissioner who had not been a teacher in a public school, an attorney general without a law degree or a comptroller who

couldn't balance his checkbook."

In the Nov. 8 election, Mr. Ireland will face Democrat Bill Nelson, an attorney, former congressman and ex-astronaut who was a member of a space shuttle crew.

In the Republican primary, Mr. Ireland defeated R.K. "Skip" Hunter, the owner of four Pensacola-based insurance companies (BI, Sept. 12).

The Florida Assn. of Insurance Agents believes that Mr. Ireland's performance in the state Legislature, rather than his profession, make him an attractive candidate.

"I think Tim Ireland would make a very good insurance commissioner, but that's based on what he has done as a public servant, not as a private individual," said Scott Johnson, senior vp of the FAIA.

Mr. Johnson has an equally favorable view of Mr. Nelson, who served in the statehouse before being elected to Congress and worked with the FAIA on insurance issues in the past.

"We know how they approach govern-

*Continued on next page*



Government relations

# Ireland

Continued from previous page  
ment and how they make decisions," Mr. Johnson said. "Their party affiliation or professional background is far less important than their demonstrated methodology. They both believe less government is better."

The FAIA has not endorsed either candidate.

Mr. Ireland said he enjoys working in the insurance industry for the constant challenges it presents and for its flexibility.

"I like working with clients to help them solve their insurance problems," he said. "It also allowed me to manage my time around the demands of the Legislature."

If elected, Mr. Ireland would also serve as state treasurer, fire marshal and as a cabinet member.

In Florida, the executive power is dispersed over a seven-member panel consisting of the governor, treasurer/insurance commissioner, secretary of state, comptroller, attorney general, agricultural commissioner and commissioner of education.

The panel acts as the state board of education and the clemency board, oversees the department of law enforcement and the state catastrophe pool, sets environmental policy and manages the state's \$38 billion pension fund.

While Mr. Ireland acknowledges the posts of treasurer and insurance commissioner could both warrant full-time attention, he doesn't anticipate a split in the

**'I will be the worst nightmare of bad insurance companies and bad agents,' says Tim Ireland.**

foreseeable future.

"Insurance will take up 95% of my energy, time, effort and resources," he declared.

First on his agenda is dealing with the lingering effects of Hurricane Andrew.

"Obviously, the most significant (insurance) problem in Florida is to get the voluntary market working again," Mr. Ireland said. "The residential joint underwriting asso-

ciation was designed to be the insurer of last resort, and now it's the second-largest insurer in Florida. It's a tremendously disturbing trend that must be reversed."

Addressing the rate adequacy of the JUA "should be the top priority of the next insurance commissioner," he added.

"Another year without a Category 5 hurricane will do more good than any commissioner," Mr. Ireland noted. "Time heals wounds and the distancing of Andrew's memory will be highly beneficial."

He praised the performance of Tom Gallagher, current insurance commissioner and fellow Republican. Mr. Gallagher lost to Jeb Bush, son of former President George Bush, in the gubernatorial primary.

Andrew "was a unique event in the history of the world," Mr. Ireland said. "It literally wrote the book; everything changed. No one appreciated what an \$18 billion storm could do. (Mr. Gallagher) did a good job of handling the storm and the post-Andrew legislation.

"A lot of the industry may have been bruised in the process," Mr. Ireland conceded. "But they were trying to abandon 13 million Floridians after they had been doing business with them for years. It was poor public policy, horrible public relations and just plain rotten. It was a shame (Mr. Gallagher) had to impose the emergency moratorium, but I would have done the exact same thing."

In the future, the Department of Insurance must keep a closer eye on insurers' spread of risk, he added.

"We have to improve the regulatory environment, make it more predictable and user-friendly," Mr. Ireland said.

"We have to look at the department's structure, how it is funded and how it operates," he said.

Developing a new mission statement for the Department of Insurance will attract insurers back to Florida, he said.

"Our insurance community needs the power of competition and choice," Mr. Ireland said. "The liberal Democrats say we need more rules and more auditors, but that's the exact opposite direction."

Among other things, Mr. Ireland advocates the use of tax incentives to encourage insurers to domicile in Florida.

The idea of protecting the consumer while courting insurers to return to the state "are not diametrically opposed," according to Mr. Ireland. "You don't have to be Mr. Industry or Mr. Consumer. It's not that simple."

"I want to be a tough but fair insurance commissioner," Mr. Ireland said. "I will be the worst nightmare of bad insurance companies and bad agents. My job is to protect the consumers."

However, Mr. Ireland added, "you don't have to punish 98% of the good people to get the 2% bad apples."

As a legislator, Mr. Ireland helped to pass workers compensation reform in the state in 1993.

"We should stay the course," Mr. Ireland said of those efforts. "We are finally headed in the right direction and we can see the light at the end of the tunnel. I think we will achieve the legislative target of a 20% reduction in workers comp rates across the board."

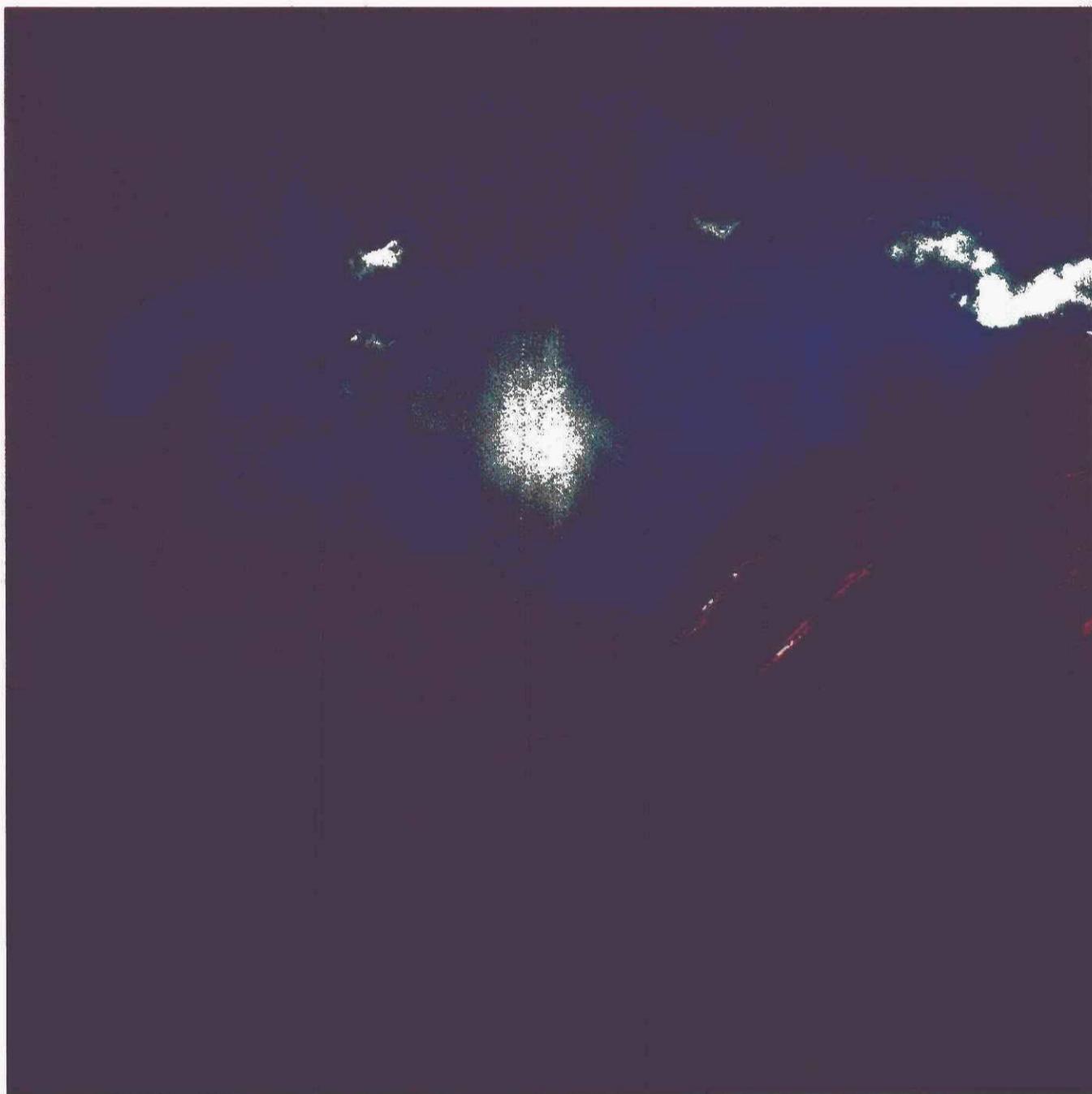
On Florida's health care reform initiative, "I think Bill, Hillary and Lawton Chiles are headed in the wrong direction and I am determined to stop them," Mr. Ireland said.

Florida has implemented a program in which businesses with 50 or fewer employees can join Community Health Purchasing Alliances that collect rate and other data on state-certified health plans.

It also has won a waiver of Medicaid rules so it can impose managed care requirements on Medicaid recipients (BI, Sept. 19).

Mr. Ireland supports the concept of the state's catastrophe reinsurance pool, but he worries about its effect on small domestic insurers. The insurance commissioner should keep a close eye on the reinsurance market to determine if the pool remains a necessity, he said. **BI**

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In this aerial view of King's Canyon National Park, it's easy to see why the Sierra Nevada are also known as the range of light.

# Sometimes it's who you know

Joel Wood says Council's key lobbying weapon is agents' grass-roots power

Joel Wood has been vp-government affairs for the Council of Insurance Agents & Brokers, formerly the National Assn. of Casualty & Surety Agents, since January 1992. Before that, he served as assistant vp-government affairs for the National Assn. of Professional Insurance Agents in Alexandria, Va.

Mr. Wood, 35, came to the CIA in 1988 from Capitol Hill, where he had served as press secretary and legislative aide to Rep. Don Sundquist, R-Tenn., since 1983. Mr. Wood, a graduate of the University of Mississippi, began his career as a newspaper reporter in Jackson, Tenn.

Business Insurance Associate Editor Mark A. Hofmann recently interviewed Mr. Wood in Washington regarding the theory and practice of effective lobbying on behalf of insurance agents.

\*\*\*  
**What issues really strike a nerve with your members?**

Health care, even though by far the largest proportion of our members' business is commercial property/casualty insurance. Collectively, annual premiums of our members total more than \$80 billion, which represents about three-quarters of the commercial marketplace. Their particular interests, of course, are in preservation of workers comp and the self-insurance option for businesses of all sizes.

But honestly, most of our internal discussions among our leadership have been less focused on self-interest than on the public interest. For example, unlike other industry associations, we declined to endorse an employer mandate, even though this would be a big revenue producer in a private marketplace.

Superfund is a big priority for our association because of the solvency implications of the industry's underreserving for environmental liabilities. Agents and brokers have an interest in protecting the viability of the companies they represent, as well as ensuring the continued integrity and financial condition of individual insureds and corporations. Our members are caught between their clients and insurers, who are suing one another when sites go uncleaned.

We don't have state affiliates, but our overriding policy concern at the National Assn. of Insurance Commissioners has been the uniformity of agent licensing. Our archives show that the NAIC has been appointing task forces on this issue, and we've been working on this, since 1938. Hardly anything constructive has been accomplished, but District of Columbia Insurance Commissioner Robert Willis and others seem determined. That's a refreshing change, but there are huge obstacles.

**What is the Council doing to exert its influence on these issues?**

We apply our grass-roots power. Almost every member firm of our association has principals or employees who have strong ties with their members of Congress. Our members are opinion leaders in their communities, and they command respect when they call on their members of Congress. They don't have to prove their value. We exploit that grass-roots power sparingly but effectively. We have one of the larger political action committees in the industry, (the PAC expects to disburse \$225,000 in this

two year election cycle, which ends in November) and we put those dollars to work in electing friends of the industry and defeating opponents.

**Is either the state or federal level of government more important?**



Government relations We don't have state affiliates, so our state work is concentrated at the NAIC itself. The traditional line of

We don't have state affiliates, so our

many in the industry is "Preserve state regulation, prevent federal." The problem with that is that the federal government is already in our business, and in a big way. The recent actions by the Department of Housing and Urban Development to regulate against perceived redlining is proof again that the McCarran-Ferguson Act isn't shielding this industry from federal intervention.

The challenge is to fend off punitive federal intervention, or at least to make it as constructive as possible, as in House Energy and Commerce Chairman John D. Dingell's solvency bill.

Our goals in government affairs are simple. Our members want to tend to their affairs with the least intrusive but efficient regulation possible.

**How does lobbying on the federal level differ from doing the same job in the states?**

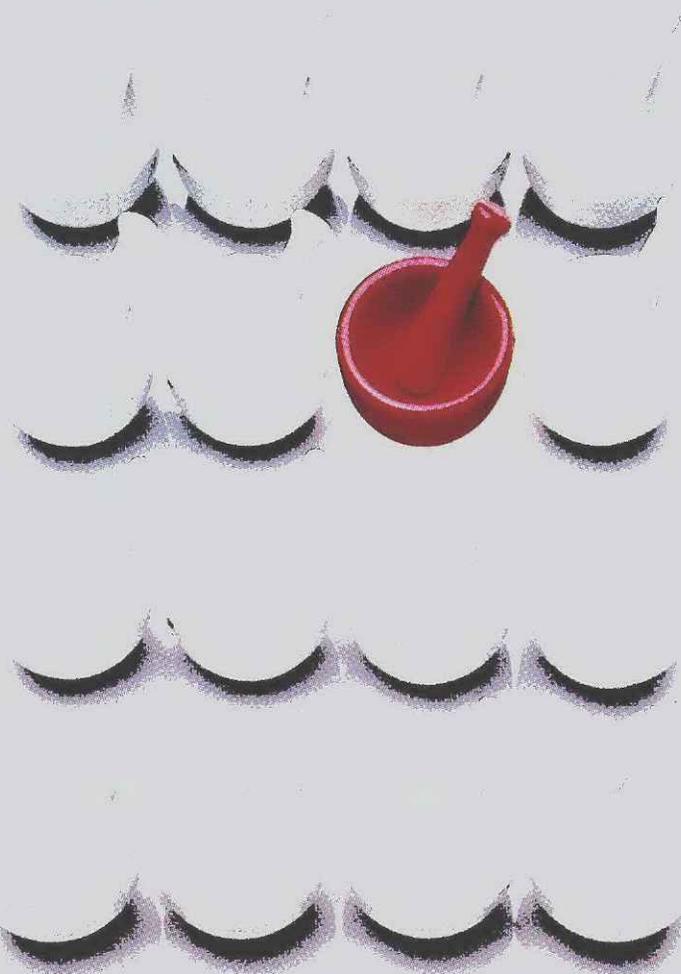
They're not really different. There are more impediments to enacting legislation at the federal level than at the state level—more interest groups and more parliamentary rules that have the effect of preserving the status quo. It's

*Continued on next page*



Joel Wood

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## Agent/Broker Topics

# Lobbying

*Continued from previous page*  
easier to block legislation in Congress than in most of the states. On issues such as comprehensive health insurance reform, that may be a good thing. But on issues like banks in insurance or product liability reform, that works against us.

## Who do you actually talk to—members of Congress, their staff, or both?

Both. Staffers are the policy-making backbone of Congress. Not only do they advise the legislators on how to vote, they usually are far better versed in the nuances of specific legislation as well. I make every effort to get to know them and stay in touch with them. Frankly, there are several

committee staff members who hold more actual power on insurance issues than the members of Congress themselves.

## How has your experience as a staffer influenced your approach to lobbying?

Having been lobbied as a staffer, I think I'm sensitive to their needs. Knowing when to push and when to back off is paramount. It's important to educate them without condescending, support them without intermeddling, create trust without misleading them about our bottom line and take enough time without taking too much time.

## What does a lobbyist bring to the table? What differentiates an effective lobbyist from an ineffective one?

The slickest, best-known, most professional lobbyists in D.C. are worthless if their clients don't have credibility. So, to the extent that we enjoy success in our legislative pursuits, it is largely a reflection on the strength of our membership and the relationships they have with their customers and their members of Congress.

Hopefully, I enhance that effectiveness through knowledge of the process, familiarity with the players and the ability to get in the door to plead our case with honesty and candor.

## The Council represents both agents and brokers. Do they always see eye to eye on major issues? Does this make your job any more challenging?

On federal issues, I've never experienced conflicts between the two classes. Even though brokers techni-

cally represent the customer instead of the underwriter, I've never heard any real claim that agents don't have the same priorities. All of our members are large by independent agency standards. The largest of the national brokerages sometimes exhibit the most frustration with the inefficiencies of the 55-jurisdiction state system. That's understandable.

Among the national trade groups, our association, I think, places the highest premium on comity and cohesiveness. We've never had an acrimonious internal policy debate.

## What is the biggest challenge for a lobbyist in your position?

Developing relationships with as many of the 535 members of Congress and their staffs as possible. Because insurance is primarily state-regulated, there is no one committee to

which we turn for redress. In the House alone, we have business before many committees: Ways and Means, Energy and Commerce, Judiciary, Bank and Education and Labor. The longer the list of federal insurance issues, the higher the risks.

The biggest long-term challenge for our industry is going to be increasing federal attention and intervention in the way our industry invests its assets. The federal social spending trough is dry, and so many in Congress are looking at our industry as an alternative means to their plans for social re-engineering and income redistribution. It is entirely uncertain what direction this will take, but I fear that underwriters won't be alone in this attack.

## Issues such as Superfund and McCarran have led to the creation of coalitions among industry groups. What are the biggest advantages and disadvantages of working through coalitions?

The advantage is that the industry has enormous, almost unbeatable clout when it speaks collectively—when we divide assignments, mobilize the grass roots and get the message out. The disadvantage occasionally is that coalitions encourage laziness, the "let somebody else do it" syndrome.

Unfortunately, there are increasing numbers of issues where there is no unity, such as Superfund, McCarran and federal solvency legislation. It's a good thing that comprehensive health care reform sank of its own weight, because there are substantial internal industry conflicts over turf and the scope of health care reform.

## Is it difficult for groups that might disagree on a major issue to work together effectively?

No. The conflicts between groups are almost always substantive, almost never personal. Those of us who have worked in recent months, for example, against the Environmental Insurance Resolution Fund in Superfund, jokingly refer to ourselves as the "uncoalition coalition" because of the unlikely convergence of trade groups. We'll take friends wherever we can find them—on some issues, even with some of the most radical of the consumer groups.

## Any particular difficulties in representing the insurance industry? Are there prejudices that must be overcome?

Not really. Just as most Americans hate Congress but love their congressman, many on the Hill don't care much for the industry but like their agents. I can't complain about any lack of respect on Capitol Hill for the importance of our industry in the economy. That respect is all I need to do my job.

## What can agents and brokers do to better represent their interests on Capitol Hill?

Getting to know their members of Congress is important, but agents already know that... Frankly, one of the best ways to get involved is to get out the old checkbook and write a check, both to their association's PAC and to the candidates who support their interests. Most political persons respect that involvement more than any other.

## Do you see any trends among the national producer organizations as far as government relations are concerned?

It's nice to see some competitiveness among the associations over the quality of representation in govern-

*Continued on next page*



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# South Carolina pulls agents' licenses

By MARK A. HOFMANN

Agent associations praise enforcement of education requirements

*Continued from previous page*  
mental affairs. We used to lobby on issues that were largely abstract in their impact—tort reform, banks in insurance, McCarran. Those issues still are priorities, but it's difficult to quantify their impact on our members' balance sheets. But on issues such as health care reform, or the agent-licensing provisions in the Dingell solvency bill, there is no doubt about the impact.

So governmental affairs is much less esoteric than it used to be. I don't see our members' eyes glazing over on these issues. They are real and they understand the importance of spending the necessary resources to protect our interests in the halls of Congress.

## Do any legislative victories or failures stand out in your mind?

Unfortunately, we increasingly measure success by what we've been able to block, not what we're able to pass. House passage of a reasonable inner-city redlining bill earlier this year was a triumph of the industry working together with responsible legislators. We were remarkably successful in defeating the onerous and burdensome regulations attempted by the House Banking Committee's redlining bill.

**'Unfortunately, we increasingly measure success by what we've been able to block...,' says Joel Wood.**

The failure to get meaningful Superfund reform with changes to retroactive liability stands out as a failure, but we hopefully can do better next year.

## What's your greatest legislative achievement?

Getting an agent licensing clearinghouse included as part of Chairman Dingell's proposed solvency legislation. This would remove an enormous structural burden from all of our members, and it will be our highest priority when Chairman Dingell begins to move his legislation through the Congress next year.

## What are the biggest mistakes that agent/broker lobbying groups have made over the years? Any lessons learned?

Sometimes associations have seemed too concerned with who gets the credit than who gets the job done. This is an enormously unproductive distraction. I think we've learned that if we don't stick together on some issues—such as on banks in insurance—we'll all suffer the consequences. Hopefully, we've learned who the real enemies are—opponents such as the trial lawyers, not our sister associations.

## Do agents/brokers wield more or less influence on Capitol Hill now than they did a generation ago or 10 years ago?

I think our influence has been constant but with a changing character. Consolidation in the industry has taken its toll on smaller agencies. There are fewer agencies, and that increases the challenges of those who survive. The proliferation of massive coordinated grass-roots appeals to Congress by all sorts of other interest groups has also muddied the waters.

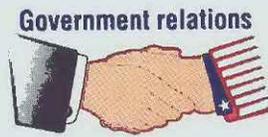
But we maintain our effectiveness because our members still know how to make a sale better than anybody else who petitions government. **BI**

South Carolina regulators are in the midst of a process that could ultimately cut the number of licensed insurance agents in the state by nearly 45%.

But, regulators and agent association executives alike don't think consumers will notice much difference. In fact, South Carolina agent associations are praising the law that has culled their ranks so drastically.

The law in question, a continuing education statute enacted by the South Carolina General Assem-

bly in 1991, requires that all agents licensed in the state complete 24 hours of continuing education every two years or risk losing their licenses unless they are specifically exempt.



According to Chief Insurance Commissioner John G. Richards, agents who had not complied with the requirement were given numerous warnings about what was in store for them.

South Carolina even extended the deadline for complying or proving that a given agent was qualified for an exemption from the law to Aug. 1 from the original deadline of May 1.

Among the agents specifically exempted from the continuing education requirement are those who are at least 55 years old and who have 20 continuous years as licensed agents. Other exemptions are available for agents dealing in credit or mortgage insurance as well as travel and baggage insurance agents, such as rental car employees.

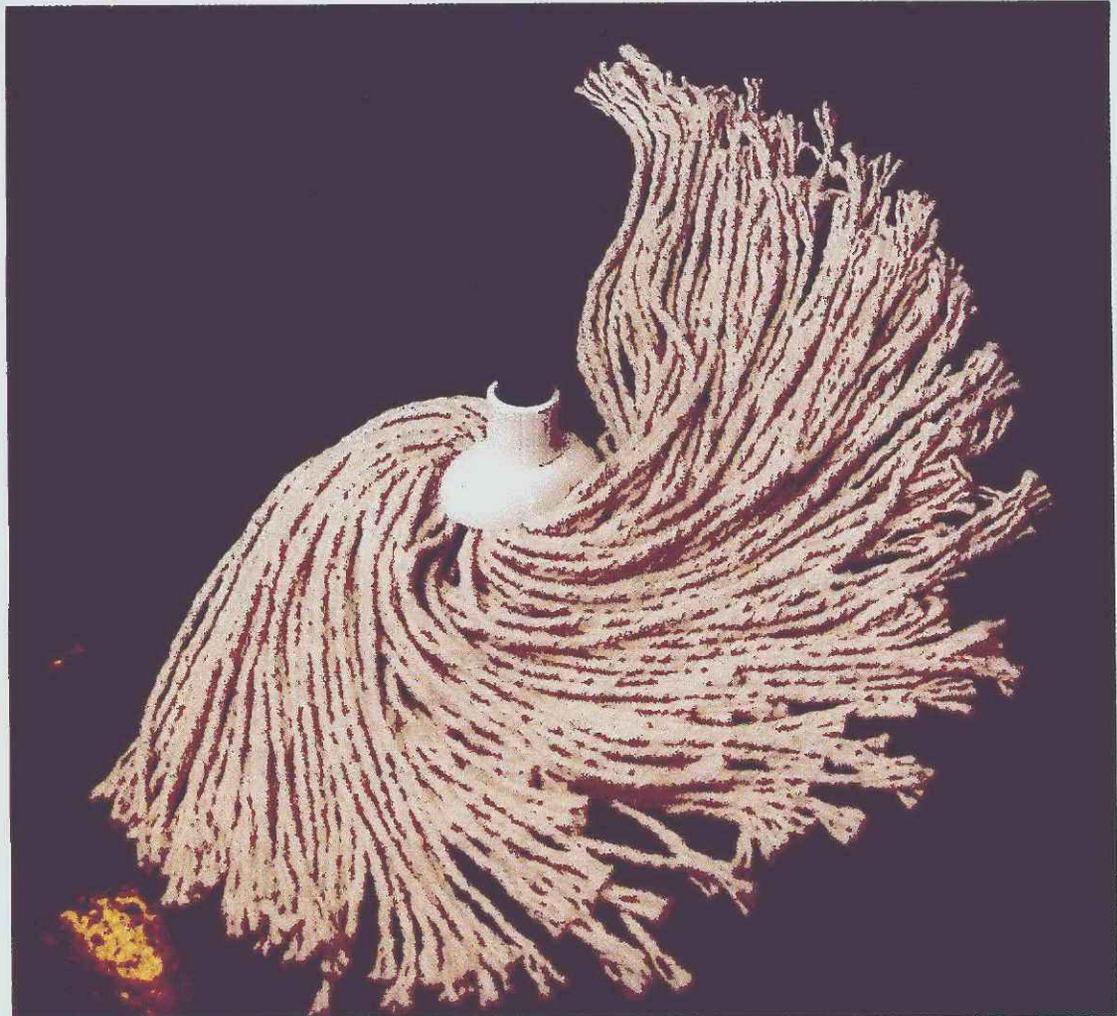
The state is now in the process of notifying agents that their licenses are invalid, which is expected to take several weeks. Agents also can appeal the revocations.

Commissioner Richards had little sympathy for the agents who did not meet the requirements in time.

"It is unfortunate that these folks did not comply with the law. Now they will have to suffer the consequences. Each and every one of them was notified in writing on a number of occasions that this day was coming," he said.

*Continued on next page*

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## Licenses

Continued from previous page

The commissioner noted that 24,397, or 55%, of the state's 43,910 licensed agents had not complied with the law by May 1. There was a last-minute rush to comply or prove the right to an exemption, but Aug. 1 ended with 19,904 agents still out of compliance, he said.

Nearly one-third of those agents—6,578—are residents of other states who have been licensed to do business in South Carolina.

"We really have a very liberal policy in our law relative to non-resident agents," the commissioner said. He said that those agents could have met South Carolina's education requirement by completing the education requirements of their home states. Nearly 40 states have continuing education requirements of one kind or another.

While the Insurance Department hasn't tabulated the reasons for the in-state agents' failure to meet the education requirements, Commissioner Richards said he thinks there are three broad categories.

The first consists of retired agents who have wanted to hold on to their licenses even though they are not actively selling insurance. Many of these retirees probably decided to let their licenses lapse rather than be bothered with the course work, he said.

The second category consists of part-time agents, he said. For them, meeting the requirement

might simply not be worth the effort.

The third category is "the great procrastinators" who just didn't get around to complying with the law in time, he said.

Lee Ruef, executive director of the Independent Insurance Agents of South Carolina, said there is no way to tell exactly which agents will be affected by the change until there's a demographic survey of those who did not comply with the regulations.

Mr. Ruef said he was surprised that the number of agents out of compliance was so high. He said it was also surprising that so many people who had wanted to keep an insurance license would not comply with the new requirements by the deadline.

However, he added, "this association very much supported the idea of continuing education" and had advocated the education requirements before they became law.

Other state agent associations shared support for the continuing education requirement.

"The people who set the standards are insurance people," said imo K. Todd, executive vp of the Professional Insurance Agents of South Carolina. Unlike Mr. Ruef, Ms. Todd said she was not surprised that so many agents remained out of compliance.

"We estimated that there would be about a 50% loss of licenses," she said. "These people who are losing their licenses are not real property/casualty agents."

South Carolina's life insurance agent association views the loss of

agent licenses in the same light.

"The majority of our agents are in compliance. We have not had a problem," said Marcia Pierce, executive director of the South Carolina Assn. of Life Underwriters.

"It hasn't had a negative effect on us and we think it will be advantageous to the industry. We view the (continuing education requirement) as positive," said Ms. Pierce. "We treat this as a profes-

sion and we try to maintain professional standards."

Commissioner Richards said that he expected no market dislocations as a result of the massive loss of licenses. The only consumers who might be put out by the change are out-of-state owners of resort property in South Carolina who had previously bought their coverage from non-resident agents who failed to comply with the re-

quirements, he said.

Nevertheless, he said he does "expect the protests to come" from agents who find themselves out of compliance as the relicensing season progresses. He makes clear that they're not likely to get much sympathy.

"Twenty thousand is certainly a sufficient number of professional insurance agents" for South Carolina, he said. **BI**

## NAIB bid to amend model act rejected

By MEG FLETCHER

**B**rokers are changing tactics after their effort to amend the National Assn. of Insurance Commissioners' surplus lines model law proved unsuccessful.

The National Assn. of Insurance Brokers will now try to singly educate insurance commissioners and state legislatures about what brokers perceive as a problem with the new Non-Admitted Insurance Model Act.

The controversial 36-page model, which the NAIC formally adopted at its fall meeting in Minneapolis last month, would significantly increase financial requirements for surplus lines insurers based outside the United States (*BI*, Sept. 26). In addition, the NAIB says it would make it more difficult for brokers to coordinate layers of excess coverage purchased from non-admitted offshore insurers.

The NAIB unsuccessfully sought to add an exemption to the model that

would have allowed brokers to help large clients obtain all layers of excess insurance, even those purchased from offshore markets like Bermuda.

Specifically, the NAIB's proposal would have exempted from the act "an excess insurance policy for an industrial insured obtained either directly or through the services of a surplus lines licensee."

The NAIB amendments proposed the following three definitions:

- Industrial insured is "a company with a commercial risk policy with a net worth of at least \$15 million, or gross assets exceeding \$50 million and a net worth of at least \$3 million, or one which generates annual gross revenues exceeding \$50 million and has a net worth of at least \$3 million."

- Excess insurance policy is "any commercial property or casualty insurance policy, written over one or more underlying policies that in the aggregate provides primary coverage of at least \$10 million or a liability self-insured retention of at least \$10

million."

- Industrial insurer is any insurer, which is neither an admitted insurer nor an eligible surplus lines insurer, whose shares are publicly traded or which has a policyholder surplus of not less than \$25 million. And, it must be in good standing with the regulatory authorities of its country of domicile and must have written at least \$100 million in premium during its most recent fiscal year.

The NAIC instead adopted a drafting note that says states may need to alter the model "to reflect their decision as to whether they intend to permit citizens to directly purchase coverage within the state from a non-admitted insurer, or if self-procurement of coverage will be permitted only when it occurs outside the state."

Stewart Keir, a regulator who oversaw drafting of the model, said, "We felt a drafting note was sufficient so each commissioner would have the authority to exempt industrial insureds or their brokers." Mr. Keir is an assistant deputy superintendent and chief examiner in the New York Insurance Department.

But, Dee Ann Bernhard, the NAIB's director of state affairs, said, "It needs to be elevated from a drafting note and made a separate exception."

In promoting its proposal, the NAIB told regulators it understood their intent was "to dissuade fly-by-night transactions" and applauded the NAIC's efforts. Unfortunately, the strict requirements of the act "interfere with the service our clients need and expect," the NAIB said.

To demonstrate this, Ms. Bernhard circulated a chart that broke down how a global oil company might use six layers of liability coverage. If the model law were enacted by states, a broker could help a client retain or buy millions of dollars in coverage using U.S.-admitted and surplus lines insurers but could not help the client negotiate any layers placed with Bermuda-based companies, for example. The broker would have to obtain alternate sources of coverage or the client would have to approach the offshore company on its own.

"I think it's very unfortunate that they didn't adopt it," said Charles McCrann, senior vp with broker Marsh & McLennan Cos. Inc. in New York. The drafting note, though, is a start, he added.

This will be "a long-term process of educating regulators," Mr. McCrann said. "They don't understand the way the commercial market operates."

While brokers were unsuccessful in getting the amendment approved, they had better results with another proposal.

The NAIC included in the model act a measure that would exempt brokers and agents who are "engaged solely to offer the insured advice, counsel or opinion" for a fee from any liability for the failure of a surplus lines insurer. However, the exemption states an adviser could not, either directly or indirectly, "participate in the solicitation, negotiation or procurement of insurance on behalf of the insured." **BI**

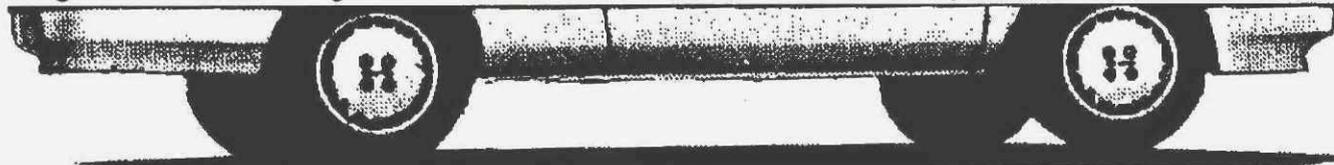
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# Open enrollment sparks dispute

By MICHAEL SCHACHNER

A pair of independent agents in the Seattle area claim they were decertified last month by Principal Mutual Life Insurance Co.'s local wholesale broker because they were submitting too many health insurance applications for clients with AIDS and other serious ailments.

The broker and insurer, though, counter that the agents were let go because they failed to meet its application guidelines.

Both Nina Florenz and Steve Baird had been receiving referrals from the Northwest AIDS Foundation to process health insurance applications for individuals in accordance with Washington's three-month "open enrollment window." The agents say that after processing several dozen applications for people with AIDS, they were unexpectedly and unfairly barred from submitting any more policies to Principal Mutual.

Insisting that their decertification as agents was grossly unfair, the agents are seeking to be recertified by Old Northwest Agents, Principal Mutual's wholesaler. They say they were simply processing and forwarding individual health insurance applications as called for under Insurance Commissioner Deborah Senn's short-term insurance reform mandate, which required insurers from July 1 through Sept. 30 to accept all individuals for health insurance without imposing any exclusions or delays in coverage for pre-existing conditions.

However, Principal's broker, ONA, rebuts the agents' claims of why they were decertified. ONA contends Mr. Baird and Ms. Florenz were decertified for failing to follow long-established application procedures—specifically, conducting a face-to-face meeting with all applicants.

Rod Karsten, a director with Principal Mutual in Grand Island, Neb., defended ONA's actions, saying face-to-face meetings between agents and applicants are important. "It's that meeting that allows people to understand the policy and its payment schedule. We never tried not to be in compliance with the open enrollment window, no matter how challenging it was."

The flap over the agents' processing of health insurance applications went beyond their decertification.

Citing the improper solicitation of business, ONA also returned the applications of about 23 individuals who filed for coverage through Ms. Florenz and Mr. Baird. Ms. Florenz pointed out that of her 18 clients whose applications were returned by ONA, 16 have AIDS or have tested positive for the human immunodeficiency virus that causes the disease.

"There's no doubt in my mind that (Principal and ONA decertified us) to get around accepting these types of risks. ONA actually asked me to give these people to other carriers," said Mr. Baird.

But, Principal and ONA say the rejections were simply due to the agents' failure to follow procedure.

An official with Minneapolis-based ONA stands by the company's decision to return the applications forwarded to them by Ms. Florenz and Mr. Baird. He said a face-to-face meeting has been, and will remain, a required part of the health insurance application process if Principal Mutual is the insurer.

"The condition of the individuals whose applications were returned is irrelevant. Some may have had clean

## Agents claim insurer unfairly dropped them

health records. We didn't even look at the applications. We were appalled by the agents and their lack of

### Government relations



with ONA.

Ms. Florenz, meanwhile, said ONA's displeasure with her failure to conduct personal meetings with all applicants came as news to her. She explained that on at least two occasions during the three-month open

enrollment period she spoke with ONA local representatives to inform them that she would be processing applications by mail. She said at no time did ONA indicate to her that that would be a problem.

Mr. Baird echoed a similar note. "You'd think that if my failure to conduct face-to-face meetings was so egregious, they would have at least called me and said, 'Steve, what about those face-to-face meetings...?' That never happened. I've had ONA representatives make sales for me. They were fully aware that Nina Florenz, Steve Baird and others weren't meeting with everyone."

Both agents said they didn't consciously decide to skirt the meeting requirement but were simply trying to comply with the open enrollment law and accommodate the clients referred to them by the greater Seattle AIDS advocacy group.

"I was doing the applications by mail as a convenience to my clients. For some of them, a face-to-face meeting would have been very difficult due to their health status," Ms. Florenz said.

For its part, the Washington Insurance Department has stepped in to make sure Principal Mutual is complying with the mandate to cover all applicants regardless of pre-existing conditions.

In an agreement with the Insurance Department, Principal Mutual has offered to provide coverage to those people whose applications

weren't originally accepted.

But the Insurance Department has not forced ONA to reappoint Mr. Baird and Ms. Florenz as agents.

Meanwhile, Ms. Florenz and Mr. Baird continue to press ONA for recertification. They say Principal Mutual is one of only three non-HMO companies writing individual health insurance in the state, and of the three, it offers the most complete coverage for their clients. Without Principal Mutual, future clients will lose access to an important health insurance market, Ms. Florenz said.

"I'm not the victim here" added Mr. Baird. "It's really the people trying to get health insurance under Washington law. The insurers may not like the law, but they had ample time since reform last year to get out of the state if they didn't like what was surely coming." E1

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Agent/Broker Topics

# Fledgling Connecticut insurer battles rivals' bad-mouthing

By SALLY ROBERTS

**W**hen Robert S. Weiss stepped away from his role as an independent agent and started his own insurance company in 1990, it wasn't raising capital, obtaining reinsurance or even the competitive marketplace that stood in his way of success. It was the bad-mouthing going on behind his back.

Executives at Meriden, Conn.-based Connecticut Life & Casualty Insurance Co. say professional peers have taken stabs at the insurer's financial viability as well as its youth and service capabilities since its formation.

After failed attempts to rectify the situation by contacting its competitors and agent associations, CL&C in 1991 turned to Connecticut Insurance Commissioner Robert Googins, who issued a bulletin to the chief executives of insurance companies in the state, pointing out that state laws prohibit defamation of an insurance company and reminding them that company principals are liable for their agents' actions.

CL&C also took out ads in Connecticut newspapers to tell its story.

However, the talk has taken its toll. One year ago, CL&C had 150 independent agents representing the company. Today, it has only 10.

According to Mr. Weiss, agents are unhappy with the commissions CL&C offers. Agents receive a 10% commission up front and an 8% commission on renewal, which is low by industry standards in the state.

But, "we write the most competitive homeowner and auto policy in the state," Mr. Weiss said. Other insurers might offer a 15% commission, but the policyholder pays a much higher premium, he said.

"The consumer is the big loser in this," contends Ronald C. Licata, president of CL&C.

As a last resort, about two months ago, CL&C decided to negotiate its commissions to offer independent agents a 15% cut.

"We expected the phones to ring off the hook," Mr. Weiss said. On the contrary, there were no phone calls.

"It's obvious to us (agents) don't want to succeed," he added. All the agents have to do is to sell a product. The book of business is already there and CL&C's service center takes care of the client afterward, he explained.

Nevertheless, CL&C executives contend that some Connecticut agents are continuing to persuade their clients to go to other insurers that charge higher premiums and, thus, generate higher commissions.

John Black, executive vp and director of operations at Waterbury, Conn.-based agency Root & Boyd and president of the Professional Insurance Agents of Connecticut, said he has heard that some "disparaging remarks" have been made about Mr. Weiss and CL&C. Although he said he has not heard the remarks directly, "it is possible that in any situation, individual agents get a little gas in their tum-

mies and vent."

A New Haven, Conn., agent vented to a client via a letter last February about CL&C but later retracted the remarks.

In the letter to the client who had received a quote from CL&C, Douglas Danaher, an agent with Insurance Management Inc. in New Haven, said he lacked confidence in the insurer and questioned its ability to pay claims in a catastrophic situation.

In addition, Mr. Danaher's letter questioned the insurer's youth:

"Connecticut Life & Casualty is a new insurance carrier, started by an agent that had no carriers to write with so he started his own company."

The agent also pointed out that CL&C does not have a rating from A.M. Best Co., but he failed to tell his clients that Best does not give a letter rating to an insurer until the

*Continued on next page*

CL&C founder Robert Weiss speaks at the insurer's 1990 dedication.



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Continued from previous page  
company has been up and running for five years.

Mr. Danaher ended his letter with the following: "Basically they have quoted your account and they have a better price, but with adjustments we can come close. But we also have to consider coverage that is adequate for you—I do not think (CL&C) has."

"All of these comments to the public are grossly unfair and inaccurate, not to mention against state statutes," Mr. Weiss said.

After conferring with an attorney, Mr. Danaher wrote a letter to the client with whom he had discussed Connecticut Life & Casualty and retracted his statements about the insurer.

While the bad-mouthing has been the insurer's biggest chal-

lenge, CL&C isn't planning on going away.

"No way," Mr. Weiss said. "We're still growing the company" as well as "diligently battling" the bad-mouthing. The aim of the company now is to get a letter rating from Best, for which the company will be eligible at the end of the year.

Nearly five years ago, Mr. Weiss was not as optimistic. As an independent agent with his own firm, he was frustrated with the erratic marketplace and unpredictable insurers.

A close friend of his, Filo Smith, who was interested in Mr. Weiss' views about agent and insurer relations, told him that "I was never going to be able to stop complaining about the industry until I start my own company."

"It started to sink in after a while," Mr. Weiss recalled.

In less than one year, CL&C got a charter and \$4 million in initial capital and became the first independent insurer in more than 100 years to sell multiline insurance in a state that is home to such insurance giants as Aetna Life & Casualty Co., Travelers Corp. and ITT Hartford Group Inc.

CL&C has since obtained reinsurance coverage with General Reinsurance Corp., and in 1993 posted \$9 million in gross written premiums. The company expects to write \$11 million by the end of this year.

Mr. Weiss' agency, The Robert S. Weiss Co., sold its commercial lines business in 1990, folded its personal lines business into CL&C and operates today as a third-party

administrator and pension administrator.

Holding company Weiss Financial Group comprises The Robert S. Weiss Co., CL&C and Connecticut HealthPlan, which recently ventured into group health insurance.

In July, CHP launched its Small Employer Medical Plan—a preferred provider organization for employers with up to 100 employees.

In its first month, SEMP generated premiums that would translate into about \$2 million on an annualized basis, said Michael D. Weiss, vp at CHP.

SEMP offers lower costs because the size of CHP's existing network of 3,500 physicians and other health care providers enables the organization to use a negotiated fee schedule that is lower than rea-

sonable and customary charges, said Michael Weiss.

In addition, CHP is sold on a direct-writing basis, so CHP can further contain costs, he said.

The plan is also flexible, he explained. Hospitals don't determine what medical care patients should receive, physicians do. "We want to control the physicians," he said. Therefore, patients have the freedom of choice. If they want to go out of state to a physician, it's a \$250 deductible. Unlike other plans, "it doesn't break the bank."

Like CHP, the future looks bright for CL&C, Bill Weiss said.

"We are going to be a significant factor in the state of Connecticut," he said, adding that there is no question the company is moving in the direction of 100% direct writing. **BI**

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# Female brokerage exec expected to lead by example

By MATT ROUSH

Crain News Service

A management shakeup at the nation's 13th-largest insurance brokerage has brought in the first woman ever to lead a major metropolitan Detroit business insurance agency.

Maureen McIntyre, a 20-year veteran of the insurance industry, is now executive vp and chief operating officer at Southfield, Mich.-based Bain Hogg Robinson of Michigan Inc., a unit of Boston-based insurance broker Bain Hogg Robinson Inc.

She is one of nine new managers installed over the past 18 months at the retail broker's 18 offices nationwide.

Bain Hogg Robinson Inc. is the U.S. retail brokerage subsidiary of London-based Bain Hogg Group, which is the world's seventh largest broker (BI, July 18). Bain Hogg currently is in discussions with Indianapolis-based broker Acordia Inc., the world's eighth-largest broker, that are expected to lead to Acordia acquiring Bain Hogg Robinson (BI, Sept. 26).

In the meantime, Ms. McIntyre's competition might want to watch their backs: Colleagues and competitors say she is a sales dynamo.

"She's going to make Bain Hogg Robinson a much more sales-oriented organization," predicted Nancy Williams, a Farmington Hills, Mich.-based commercial lines account executive for Seattle-based SAFECO Insurance Cos.

"Her personal book of business and her knowledge of the local market are terrific. And I think she's going to be really good at mentoring young salespeople," Ms. Williams said.

Ms. McIntyre, 37, came up through the ranks of the industry. She took a job out of high school as an underwriter for the Southfield office of Zurich Insurance Co.

"I went out and did boiler inspections, and that's where I began to develop my comfort level with manufacturing," Ms. McIntyre said.

Within a few years, she switched to a sales job with an insurance agency, then struck out on her own as an independent insurance sales contractor working strictly for commission.

The move was as much a necessity of the 1970s climate for women in the insurance industry as it was a desire to be her own boss, she said.

"There really were no women on the sales side in the insurance business," Ms. McIntyre said. "Nobody would give me a job with a salary

draw plus commission. A guy could come in and get a salary and a car allowance and all that, but to me they said, 'Yeah, come on in—for straight commission.'"

Ms. McIntyre worked through the 1970s and 1980s as either an independent business insurance salesperson or for a variety of agencies—most recently with Mason McBride Inc. in Troy, Mich.—until she was approached in April by Bain Hogg Robinson after the departure of the company's former Southfield president, Stephen Davis.

Over the years, Ms. McIntyre sold workers compensation coverage, fleet vehicle insurance and property/casualty insurance for offices and factories—the usual business insurance product mix.

Ms. McIntyre said she personally wrote \$2.6 million in premiums last year, a claim her underwriters back.

"We're in the business of selling insurance and it's my job to find people who sell insurance," SAFECO's Ms. Williams said, noting that Ms. McIntyre is known for aggressively seeking new business.

Ms. McIntyre said her approach to selling insurance hasn't changed in 20 years. "You still have to be aggressive and go out and get the interest of the account, bring it in, market it and sell it, and you have to do it better and faster than the competition to take their accounts from them."

"I realized a long time ago I'm not a 'club' agent. After I wrote all

my friends who own major manufacturers—which is none—I decided I had to identify the clients who fit with my skill set and methodically pursue them. I firmly believe being successful in sales is just having a good work ethic and being consistent."

Throughout her career, Ms. McIntyre has specialized in manufacturers and wholesalers in the plastics, metalworking, pharma-

**'Being successful in sales is just having a good work ethic and being consistent,' says Maureen McIntyre.**

ceutical and chemical industries.

Bain Hogg Robinson is Ms. McIntyre's first management position. It is also an insurance office with a decidedly different clientele—heavy on manufactured housing companies and retailers.

Ms. McIntyre said she hopes to preserve the current client base and add more business in manufacturing.

People who have worked with her say that she's up to the task and that the 90-person office should top last year's gross premium volume of about \$50 million.

"She's very high-energy, very sales-motivated," said David

Walker, executive underwriter of workers compensation insurance at the Southfield office of San Francisco-based Fireman's Fund Insurance Co. "She's very straightforward. You don't have to sift through a lot of corporate-speak or sales talk to get to the salient points" of the business, he noted.

Ms. McIntyre's boss, Robert Hogan, president of Bain Hogg Robinson's brokerage services division, said the new leadership at half of the company's U.S. offices is intended to "move us from being an amalgamation of local insurance agencies into being a true national brokerage operation."

Mr. Hogan, who's based in Chicago, said he met Ms. McIntyre in May through a salesperson at the Southfield office.

"Originally I was looking at her as a producer in that office, but after I met her and talked with her I started thinking she had the skills needed to lead that office," Mr. Hogan said. "She's been an entrepreneur, and I like her energy, ability and can-do attitude."

He acknowledged that women hold only a fraction of management positions in the insurance industry: Of the top 20 business insurance agencies in Detroit, only one—Kelter Thorner Inc. in Birmingham, Mich.—is led by a woman, Marilyn Chernoff.

Mr. Hogan said Ms. McIntyre's hiring "gives women in our organization a message that we will hire and promote people based on ability and commitment." **BI**

## Garamendi accepts anti-rebate ruling, despite continued support for concept

By ROBERTO CENICEROS

Allowing insurers to sever ties with agents who rebate life insurance commissions to policyholders will help maintain consumer respect for the brokerage profession, according to several agents, brokers and their representatives.

Their statements follow California Insurance Commissioner John Garamendi's announcement earlier this month that the California Department of Insurance must agree with Administrative Law Judge Stephen E. Hjelt of the California Office of Administrative Hearings.

Judge Hjelt recommended earlier this year that it is not unfair practice for life insurance companies to sever appointments with independent agents who rebate a portion of their commissions to policyholders.

Mr. Garamendi earlier said he would not accept Judge Hjelt's position because rebating brings competition to the marketplace (A/BT, June 6). But further review of the proceedings revealed no legal basis to challenge the judge's position, even though Mr. Garamendi and his office support rebates, said Patricia Staggs, chief of the compliance bureau and a deputy commissioner for the Department of Insurance.

"To my mind (Mr. Garamendi's recent) decision isn't really so much that we believe it's proper for an insurer to can an agent that rebates, but that as a matter of law it couldn't be said to be unfair un-

der the (California) Unfair Practices Act," stressed Ms. Staggs.

Proposition 103 repealed laws forbidding the practice of rebating, opening the door for some agents and brokers to send out mailings offering to rebate commissions.

Michael L. Pinkerton, director of governmental affairs for the California Assn. of Life Underwriters said that only a small percentage of brokers have offered rebates.

But, those making the offers often have done so by stating they would not provide advice or service to policyholders.

That left some agents fearing cutthroat competition and a downward slide in the public's view of their profession if consumers become unhappy with the lack of service accepted under cut-rate deals.

"It was a practice viewed as being unethical and will probably continue to carry that stigma," Mr. Pinkerton said. "Your average agent did not want anything to do with it, and I suspect will continue to not want anything to do with it."

Mr. Pinkerton said his organization opposed rebates in part because of a fear that some consumers would solicit advice and information from full-service agents and then purchase a policy from someone offering rebates.

However, a policy purchased under a rebate agreement could work for sophisticated, large-volume consumers who know their specific needs and do not care for advice, said Dennis Windsor, president of employee benefits for Andreini & Co. in San Mateo, Calif.

But like others who sell life insurance, Mr. Windsor said recent decisions on rebates are not likely to affect his company's business because most clients want service and advice.

"I think it depends on the client and the amount of work that needs to be done," Mr. Windsor said.

"We never ran into it as an issue. We ran into some people in the marketplace who were doing mass mailings, but I don't know to what extent they were taken seriously," he said.

Meanwhile, insurers rejoiced when they heard of Mr. Garamendi's announcement to agree with Judge Hjelt's findings.

"We're not opposed to rebating, we just don't do it and we feel we shouldn't be told we have to do it," said James M. Jackson, vp and deputy general counsel at Transamerica Life Insurance Cos.

The California Department of Insurance had alleged Transamerica, Prudential Insurance Co. of America, Metropolitan Life Insurance Co., and New York Life Insurance Co.'s practices of severing ties with agents that rebated commissions were unfair.

But the insurers may not have heard the last of the California Department of Insurance and its efforts to push for rebating. Ms. Staggs said the Insurance Department will be looking into ways of bolstering rebating, even to perhaps revising existing law.

"We're going to review internally what we can't do and can do so rebating is available to consumers," she said. **BI**

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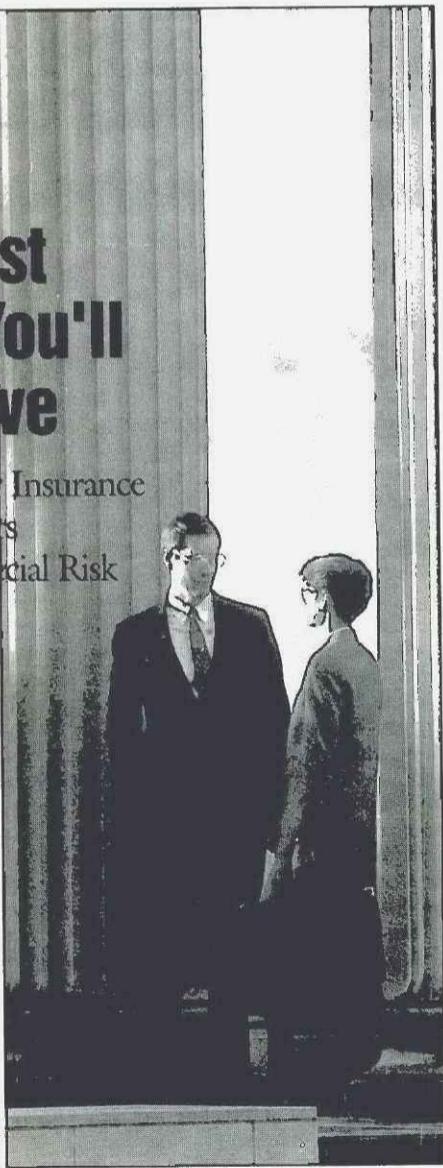
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# TV producer channels energies into insurance shows

By ROBERTO CENICEROS

Unless Jerry Seinfeld can deliver a good property/casualty shtick, don't expect to see the prime-time comedian wisecracking on the Insurance Broadcast System.

Only talent with insurance industry knowledge would make it onto the satellite-delivered programming that producer Dennis N. Richard plans to create if he can muster the sponsors needed to bankroll his idea.

Mr. Richard, 42, is the former producer of the insurance program "The Premium Dollar Today," a widely praised cable television show that provided an in-depth look at consumer insurance issues.

The idea of launching an entire channel with programming for anyone working within the insurance industry came to Mr. Richard in 1991, while he was working on "The Premium Dollar Today." And he has been developing that idea for the past two years.

Supporters say television shows could be a key method of providing information and education for the insurance field in the future.

Mr. Richard said he plans to team up with an educational institution that could provide insurance instructors and speakers for his shows. He has not yet chosen an institution for the job.

"The insurance industry has more of a need for this because they train more, they educate more than other industries," Mr. Richard said in a recent interview.

"If you work in the insurance industry, I want to be relevant to you," he said. "There are so many hot issues in the insurance industry right now more than ever. This is where Insurance Broadcast System comes in."

Mr. Richard has also produced other business programming, including "Lawyers and the Law" and "The Bankers Round Table." Both were 13-episode series made for a ca-

ble television channel.

For the Insurance Broadcast System, or IBS, planned programming would include a morning news show, roundtable discussions and plenty of educational programs split into 15-minute segments, Mr. Richard explained.

Programs would be received via satellite dishes on a subscription basis, allowing busy insurer executives, agents, brokers and other subscribers to watch the material in their offices or conference rooms.

Initially, programming will be broadcast from 9:30 a.m. to 5 p.m. on Tuesdays and repeated on Thursdays. Production of the shows will be done in Los Angeles and New York.

"I don't know what the market would be for that," said Roger Smith, president of the Insurance Educational Assn. in San Francisco.

"But there are so many problems and issues in the insurance industry employers would like their employees to know about. There well may be a need for that," he said.

Agents and brokers have expressed an interest in the Insurance Broadcast System as a training tool for their employees, Mr. Richard said.

Herbert E. Goodfriend, managing director of the global capital group for KPMG Peat Marwick in New York, said agents and brokers could benefit from watching programs on the Insurance Broadcast System. They could learn about new information technology, new claims trends and underwriting techniques.

"There is a whole roster of enlightenment that could be brought to bear here," said Mr. Goodfriend, who is the former moderator of "The Premium Dollar Today."

But, there may be difficulties in appealing to agents.

"The problem is they think they know everything. It's hard to tutor them. But I think it would be a good medium to bring in experts," Mr. Goodfriend said.

"There is a whole group of people in underwriting, investments and

claims who would be apt to benefit from it. Executives could benefit," he said.

Early in the development of the Insurance Broadcast System, Mr. Richard formed a non-management board of advisers composed initially of 12 insurance and entertainment executives. Many are people he met on "The Premium Dollar Today," including Mr. Goodfriend.

Recently, Mr. Richard added several members to the board. "It's been growing in leaps and bounds," he said, noting that interest in the Insurance Broadcast System is growing among members of the life and property/casualty and reinsurance industries.

Mavis A. Walters, executive vp of the New York-based Insurance Services Office Inc., who worked with Mr. Richard on "The Premium Dollar Today," is a member of the advisory board.

Although the advisory board members help evaluate programming ideas, they would not oversee or manage the system's operations, Ms. Walters said. The Insurance Broadcast System is purely Mr. Richard's brainchild, she said.

"He'd like to use the advisory board to bounce ideas off us," she explained. "We're not a board of directors. It's truly an advisory board."

If anyone can succeed in establishing an insurance network, it is Mr. Richard, according to Ms. Walters.

"I'm impressed with Dennis Richard. He's quite knowledgeable in the area of broadcast media, and he's very enthusiastic. He's a quick study," she said.

"What he hopes to do with the programming is very intriguing," Ms. Walters said.

"Sooner or later, there is going to be some kind of television program for the industry," said Joseph Decaminada, executive vp and general counsel for The Atlantic Mutual Cos. and also one of the advisory board members.

"If IBS produces a quality product, everyone in the industry is going to get it," Mr. Decaminada said.

To receive the programs, subscribers would have to pay about \$700 per month, Mr. Richard said. Branch offices would be charged about \$300.

That could be a bargain, several observers said.

"The cost of education seems to keep getting higher and higher when you have to send someone out to a seminar," said James R. Marks, another of Mr. Richard's ad-

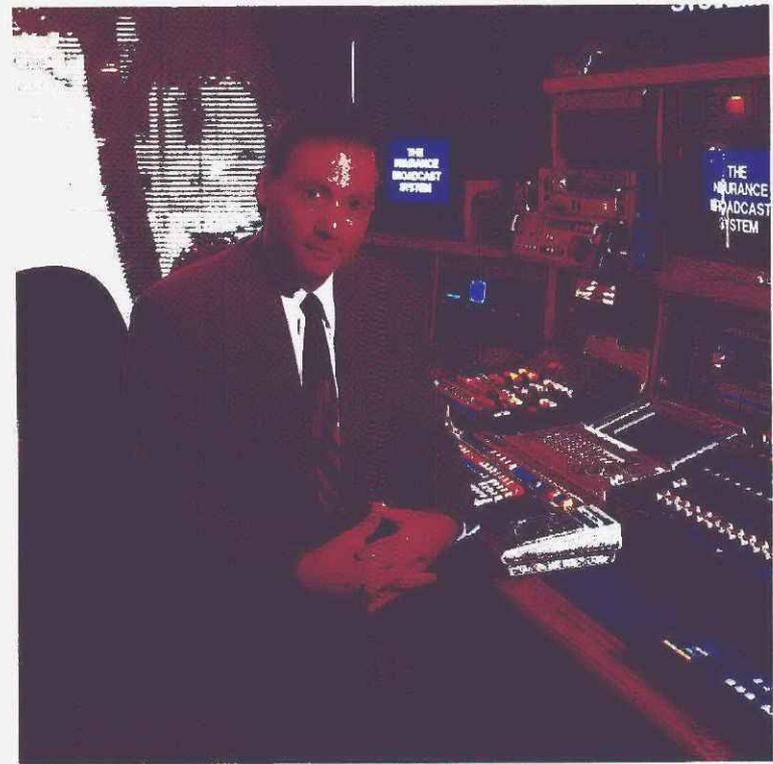


Photo by Tom Petros

Experienced television producer Dennis Richard is hoping to launch the Insurance Broadcast System sometime in 1995.

visers and senior vp of communications and marketing for the CPCU Society in Malvern, Pa.

"This could be the future of how we deliver education to people," Mr. Marks said.

"I think there are still some hurdles," he added. "For example, how comfortable are companies with having their people watch television for half an hour. That could be a perception hurdle."

Mr. Richard said that is one reason why he is planning short, 15-minute shows that would repeat within a week. Each 15-minute segment would be one-half of a full 30-minute program.

But, before Mr. Richard can say "lights, camera, action," he must raise \$3 million to \$5 million to get the Insurance Broadcast System off the ground.

Mr. Richard said he is close to finding sponsors, but he declined to say who they might be.

"I can't mention their names because we are in negotiations right now," he said.

Still, he is confident IBS will happen.

"I'm fairly certain at this point we're looking at the first quarter (of 1995) for me to flick the switch on."

Mr. Richard said.

While he plans to welcome insurance company subscribers, he does not want them as initial investors.

"It could be perceived as bought and paid for by the insurance industry," Mr. Richard said. "We must be able to give the news and give the issues in a fair way."

Rob Bonomolo, ass. stant vp of advertising for Reliance National Insurance Co., said \$700 is inexpensive enough for an insurance company.

"I know the industry is one in which education and continuing education is always in demand because insurance changes everyday," Mr. Bonomolo said. Reliance National was the major sponsor behind "The Premium Dollar Today."

"This whole thing hinges on what the offering is. If the offering is significant, a lot of companies will go for it," he said.

And, if the programming is good enough, it could also prove to be a time saver.

"The question is how much time can you spend reading and how much time can you spend traveling to education programs?" the CPCU Society's Mr. Marks said.

"Those are time-intensive activities." E1

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## Policyholder entitled to misstated cover: Court Letters

By DOUGLAS MCLEOD

A policyholder who relied on an agent's misrepresentations of her health insurance coverage cannot collect damages for mental anguish over a rejected claim, a federal appeals panel has ruled.

However, the policyholder is entitled to the coverage the agent wrongly told her she had, regardless of the policy's actual terms, a panel of the 8th U.S. Circuit Court of Appeals concluded.

The ruling came in a lawsuit Lynnette Karas filed against American Family Insurance Co. after the insurer denied all but \$500 of a \$4,593 hospitalization claim for the June 1988 Caesarean delivery of her second child.

Ms. Karas, whose first child had also been delivered by Caesarean section, bought the American Family coverage after her husband's health insurer notified him that it would no longer provide maternity benefits.

William Frankman, an American Family agent, told Ms. Karas that American Family would cover Caesarean sections as it would any other surgery, paying 80% of the costs and requiring the policyholder to pay 20%, Ms. Karas' suit alleged.

Mr. Frankman, however, said that he had told Ms. Karas that the policy would only pay \$500 for Caesarean procedures but that if her hospitalization exceeded six days, the insurer would cover 80% of the costs for the seventh and succeeding days, court

papers say.

American Family paid \$500 of Ms. Karas' hospitalization claim but denied the \$4,093 balance. Ms. Karas filed suit in a South Dakota state court, but the case was moved to federal court in Rapid City, S.D.

A federal judge dismissed her claims for bad faith and negligent or intentional infliction of emotional distress, but instructed the jury that it may award damages for mental anguish and policy benefits that Mr. Frankman allegedly promised.

The jury awarded \$75,000 to Ms. Karas. American Family appealed the verdict and the 8th Circuit panel overturned the award Aug. 29, throwing out damages for mental anguish but ordering American Family to pay \$3,174, or 80% of the original claim.

The question of American Family's liability for the claim itself is "straightforward," the panel noted.

"Whether plaintiff was entitled to prevail essentially depended upon whether Frankman, the American Family agent, told her that her coverage for Caesarean procedures would be based on the 80%/20% formula.

"The record is adequate to support the jury's finding that a misrepresentation had been made. Therefore, the company was liable for the 80% share of the hospital bill," the panel found.

The mental anguish claim, however, was another matter, the panel added.

In previous tort cases, the South Dakota Supreme Court had limited the ability of plaintiffs to recover

mental distress damages, according to the panel, which interpreted South Dakota law in the Karas case.

"The insistence upon stringent requirements for the recovery of damages for an injury of that nature in other tort cases leads us to conclude that South Dakota would not recognize such damages in circumstances similar to this case," the appeals court found.

The state high court in one earlier case, for example, required "a nearness in the sequence of events and a closeness of cause and effect" between an injurious act and the resulting mental distress.

At trial, Ms. Karas said that "things started to go wrong" five months after American Family denied her claim, the appeals ruling says. She complained to her doctor of financial stress caused by the claim denial eight months after the fact, and at the same time described problems she was having with her 5-year-old son, the court notes.

"The closeness of time and effect...are lacking here," the panel wrote. "Moreover, the alleged misrepresentation was not of the egregious or aggravated nature described in cases where mental anguish damages have been allowed. We thus hold that in this case the submission of the claim for mental anguish to the jury was not supported by law or the facts, and therefore the verdict to that extent cannot stand."

*Karas vs. American Family Insurance Co., 8th U.S. Circuit Court of Appeals, Case #94-1089; 94-1090; 94-1092.*

## Insurance internships build enthusiasm

To the editor: Arthur J. Gallagher & Co.'s intern program (*ABT*, Aug. 1) is similar to the program I am involved with at Temple University.

Temple University's Risk Management, Insurance and Actuarial Science Department and Gamma Iota Sigma, Sigma Chapter, place about 65 interns and 45 graduates each year at insurers and brokers such as Willis Corroon, AIG, CIGNA, Sedgwick and A&A. Gamma Iota Sigma is a national professional honorary fraternity open to risk management and insurance majors.

Although few companies have a formal intern training program such as Gallagher's, many insurers and brokers draw upon the members of Gamma Iota Sigma at Temple and nationwide to build their workforce.

As students, we are exposed to P/C coverage and operations, life/health and employee benefits, pensions, risk management and several other industry-related topics. In addition to classes, we have professional speakers, attend local RIMS meetings, visit insurers and brokers and are encouraged to take professional examinations for which the department reimburses students who pass.

I am currently involved in an internship at Willis Corroon Corp., which has a national intern program and an associate program for college graduates. I have been exposed to many aspects of the brokerage industry, which has given me a practical working knowledge of the industry to complement my formal training.

I have been to renewal meetings with clients, negotiations with underwriters and loss control site inspections. In addition, I have seen the sales process from several different professionals, targeted and gathered information on prospective clients, assisted in sales proposals and much more. By spending a summer at one of the largest brokers in the world, I have gained invaluable experience and a clearer, more distinct idea of the career and the industry that I plan to enter.

Speaking from my own experiences, I have found that more and more industry professionals are realizing that their recruiting efforts are best served if they turn to programs such as Temple's to hire energetic and innovative young people to build upon the future of their company. This is evident in the enormous amount of support the insurance industry gives to Gamma Iota Sigma on a national basis, as well as the support given locally to each chapter and program.

I certainly hope that this trend continues with more companies adopting a formal training program for college students and graduates. The benefits of such a program can be seen at Gallagher, which has six former interns as corporate officers.

**Kevin D. Smith**

President

Gamma Iota Sigma, Sigma Chapter  
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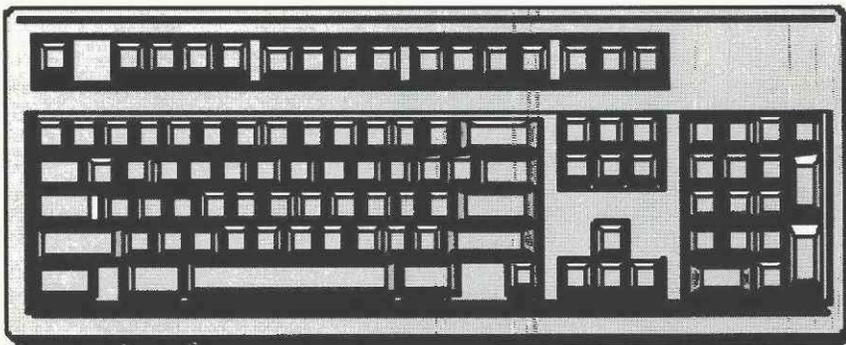
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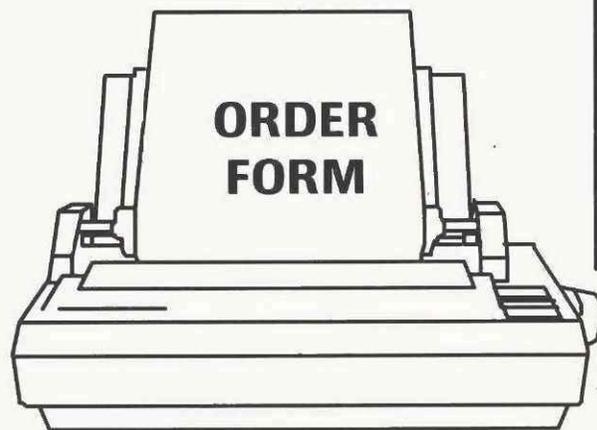
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## A/BT Briefs

### Survey rates brokers

NEW YORK—Sedgwick James Inc., the New York-based brokerage arm of Sedgwick Group P.L.C., was rated first in overall performance in a survey of risk managers.

Behind Sedgwick James were New York-based brokers Johnson & Higgins, in second place, and Marsh & McLennan Cos. Inc., in third place.

Other brokers that risk managers rated highly included: Chicago-based Rollins Hudig Hall Co., which came in fourth; Nashville, Tenn.-based Willis Corroon Corp., in fifth; and New York-based Alexander & Alexander Inc., which was rated sixth.

The survey, conducted by Corporate Finance magazine, asked 1,000 risk managers at the 1,000 largest U.S. non-financial companies to rate the performance of their insurance brokers.

Respondents were asked to rate the brokers on a scale of 1 (excellent) to 4 (poor) on the following categories:

- Cost, meaning how reasonably the broker prices its services.
- Design, or the broker's ability to develop a comprehensive insurance program.
- Capacity, or how well the broker lines up necessary levels of coverage.
- The usefulness of the company's consulting services.
- The company's support services for self-insurance.

• The broker's local market network for placing international insurance programs.

According to the respondents, Sedgwick scored best in the areas of cost, design, capacity and support, and received an average score of 1.72.

J&H was rated best in global resources, tied with Sedgwick on support services and finished just behind Sedgwick with an average score of 1.80.

M&M, with an average score of 1.92, was rated best in capacity and tied with Sedgwick in consulting services but slightly behind J&H in global resources, according to the survey.

For more information or to obtain copies of the survey, contact Corporate Finance, 1328 Broadway, New York, N.Y. 10001.

### CSR program revised

ALEXANDRIA, Va.—The Independent Insurance Agents of America is revising its Accredited Customer Service Representative designation program in an effort to make it stronger, more challenging and more comprehensive.

The IIAA, which recently revised its ACSR training modules on homeowners and personal auto coverages, plans to revise seven technical training modules in all.

The agents association is working with the American Institute for Chartered Property Casualty Underwriters in revising the ACSR program. Participants in the program, which is offered in a self-study format, may earn the ACSR designation in commercial lines or personal lines or both.

For more information, contact Karen Stallings, Director of Education, Independent Insurance Agents of America, 127 S. Peyton St., P.O. Box 1497, Alexandria, Va. 22313-2097.

### Agents E&O program

SIMSBURY, Conn.—A new professional liability program for insurance agents and brokers has been unveiled by underwriting manager Executive Risk Management Associates of Simsbury, Conn.

The professional liability policy, written by Executive Re Indemnity Inc. and Executive Re Specialty Insurance Co., is available to licensed agents and brokers on a claims-made form, with defense expenses included within the policy limits.

Limits of up to \$5 million are available on a primary or excess basis. Minimum premium is \$5,000 and deductibles are offered starting at \$2,500.

For more information about the coverage program, contact Executive Risk, 82 Hopmeadow St., P.O. Box 2002, Simsbury, Conn. 06070-7683; 1-800-432-8168.

### NY Life agent honored

NEW YORK—New York Life Insurance Co. recently named Larry M. Kachler president of the New York Life Council for outstanding sales and service as a New York Life agent.

Mr. Kachler, a Houston-based agent who joined New York Life in 1978, serves more than 300 primarily group life clients.

New York Life, which has 8,183 agents nationwide, gives the presidency of the council each year to the agent who has generated the highest sales figure.

### Banking bill idle

LANSING, Mich.—A bill that would prohibit Michigan banks from selling insurance did not see action before state legislators left to campaign for the November elections.

But, the Michigan Assn. of Insurance Agents, which urged state senators to vote on H.B. 5281 before adjourning for the elections, hopes the legislation will be taken up during the "lame duck" session between the November elections and the December holidays.

A spokesman for the agents association said MAIA is open to compromise but is still committed to getting the bill passed.

### N.Y. prep courses

NEW YORK—Preparatory courses for the New York state licensing examinations for agents and brokers of property/casualty insurance are being offered by Baruch College's Division of Continuing Studies.

Classes are scheduled during the evenings and on Saturdays at classrooms in midtown Manhattan and will include monthly practice exams.

For more information, contact Carol Wood, Manager of Conferences, Seminars and Special Programs, Baruch College, The City University of New York, 17 Lexington Ave., New York, N.Y. 10010; 212-447-3020.

### IIAA hires specialist

ALEXANDRIA, Va.—Alessandra Aubert has been named agency operations specialist at the Independent Insurance Agents of America.

Ms. Aubert is a former senior professional liability underwriter at Monterey, Calif.-based Accountants Professional Liability System, where she was responsible for underwriting and loss prevention, ratemaking and pricing of the book of business, competition analysis and providing input for agency evaluations.

At the IIAA, Ms. Aubert's duties will include coordinating activities and managing projects to improve agency operations and practices. She will also participate on the IIAA's Presidential Commission to Enhance Agency Value and play a key role in the organization's Best Practices study, a report that illustrates what makes the nation's top agencies successful.

### P/C sourcebook

DES PLAINES, Ill.—The National Assn. of Independent Insurers has published an Insurance Organization Sourcebook, a reference vol-

ume that lists information about more than 75 property/casualty organizations and associations.

The book provides descriptions of each organization and includes the names of contacts, addresses, telephone numbers and how to access information available from those organizations.

Information on the following groups is contained in the Sourcebook: national trade associations of insurance companies, national trade associations of insurance producers, research organizations, statistical organizations, professional education organizations, company rating services, loss prevention and loss control organizations and other insurance-related groups.

Free copies are available to NAI members. Non-members may obtain copies for \$50 each by calling Patricia Muffler of the NAI Research and Technical Services Department at 708-297-7800.

### Surety hot line

A national telephone hot line on surety bonding for insurance agencies has been established by American Insurance Agencies Inc., a national managing general agent for surety products, and Frontier Bonding Service Inc., the AIA's Western regional general agent.

Called the "Powerline," the toll-free number provides free advice and information to help large and small agencies and their clients understand bond obligations and underwriting criteria.

The hot line, 800-978-7389, can be accessed from any telephone in the United States from 9 a.m. to 5 p.m. in every time zone. For more information, contact American Insurance Agencies Inc., 1575 Delucchi Lane, Suite 207, Reno, Nev. 89502; 702-826-0191.

### IIAA convention

ALEXANDRIA, Va.—The Independent Insurance Agents of America will hold its 99th annual convention Oct. 22-26 in Orlando, Fla.

Dick Cheney, secretary of defense under President Bush, will deliver an address on domestic and foreign affairs at the convention.

For more information or to register, contact Betty McAuliffe, IIAA Conventions, 127 S. Peyton St., Alexandria, Va. 22314; 800-221-7917.

The IIAA, the largest independent agents organization, represents more than 280,000 agents and employees in property/casualty and life/health insurance.

### Agency self-audit

NEW YORK—Morefar Marketing Inc., a brokerage unit of American International Group Inc., is offering an employment practices self-audit program to help agents and brokers identify employment practices exposures.

"The Employment-Labor Law Audit," available in four booklets authored by human resource and legal experts, is designed to help agency principals understand important employment, workplace and legal issues.

Each agency self-audit provides an analysis of the economic and legal consequences of agencies' employment activities and policies.

Subscriptions to the self-audit program are available for \$49.99 each from Morefar Marketing Inc., 401 City Ave., Suite 210, Bala Cynwyd, Pa. 19004; 215-667-7584.

### III now on Internet

NEW YORK—Agents and brokers as well as insurance companies can now find products and services from the Insurance Information Institute on the Internet, a global web of computer networks.

Consumer publications, brochures and financial results for the property/casualty industry will all be online and updated quarterly. All of these can be accessed through this address: GOPHER.INFOR.COM.

For more information on available services, contact Marjorie  
*Continued on next page*

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## Agent/Broker Topics

### A/BT Briefs

Continued from previous page  
Institute, 110 William St., New York, N.Y. 10038; 212-669-9264.

### Market still soft

SANTA MONICA, Calif.—The commercial lines insurance market remains soft, though the personal lines market is hardening slightly, a recent survey of agents says.

Insurance Marketing & Management Services, a Santa Monica, Calif.-based organization that provides marketing and management services to the insurance industry, surveyed hundreds of agents and brokers throughout North America in compiling its Market Condition Report.

The survey asked insurance producers in 37 states and seven Canadian provinces during the summer to rate the commercial lines market on a scale of 1 (soft) to 10 (hard). Agents and brokers gave the market an average rating of 4.53. An IMMS report conducted in January listed the market rating at 4.61.

The personal lines market was firmer, receiving a 6.51 rating compared with 6.21 in the earlier survey.

Broken out by region, average

commercial lines market ratings ranged from 3.5 on the West Coast of the United States to 6.2 in Canada. Average ratings for the personal lines market varied from 5.96 in the Northeast to 7.05 on the West Coast.

IMMS conducts the market survey among its agent and broker members twice each year.

For information about the latest survey, contact Insurance Marketing & Management Services, 525 Broadway St., Suite 300, P.O. Box 2440, Santa Monica, Calif. 90407-2440; 800-753-4467.

### Life foundation

SAN ANTONIO, Texas—A task force of life/health insurance agent organizations has formed a non-profit foundation to promote life/health insurance.

The Life and Health Insurance Foundation was established recently by the "Industry Reputation Task Force," which consists of members of the Million Dollar Round Table, the National Assn. of Life Underwriters, the American Society of Chartered Life Underwriters & Chartered Financial Consultants, the General Agents & Managers Assn., the Assn. for Advanced Life Underwriting and the Assn. of Health Insurance Agents.

LIFE will conduct research and

analyze industry data to develop a consumer information program that will focus on the importance of life insurance in financial planning and security. The foundation is supported by a three-year, \$3 million grant from the six agent organizations.

### Agent recruiting

FARMINGTON, Conn.—Recruitment of new insurance agents is declining, according to a survey by LIMRA International.

"U.S. Recruiting Trends," a quarterly survey of 83 companies conducted by LIMRA International, an insurance industry marketing research organization, found that recruiting of inexperienced full-time ordinary agents fell 11% in the second quarter compared with the same period in 1993. Recruiting of multiple-line exclusive agents declined 2%, the survey found.

Total recruiting results were mixed, but recruiting of full-time ordinary agents is down 10% for the quarter and down 13% for the year to date. But, recruiting of brokers and subproducers is up 14% for the quarter and up 7% for the year.

Farmington, Conn.-based LIMRA International has 600 member companies and offices in the United Kingdom and Australia. **BI**

## READER REPLY SERVICE

## Agent/Broker Topics

### Issue of October 3

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# Sony unit offers domestic partner benefits

CULVER CITY, Calif.—Sony Pictures Entertainment will provide family health insurance coverage to same-sex domestic partners beginning Jan. 1.

Same-sex domestic partners that have been living together for at least six months can qualify for the coverage, which is identical to family health care coverage offered to married couples.

Eligible employees will be able to choose among three health maintenance organizations, as well as Sony's self-insured indemnity plan coverage, and will pay the same deductibles and copayments as married couples.

However, because the Internal Revenue Service does not recognize same-sex partners for tax purposes, employees who elect the coverage will be taxed on the cost of the coverage, explained Doug Rotatori, executive director of corporate benefits at Sony Pictures Entertainment in Culver City, Calif.

Employees will be able to choose this new option during the company's annual benefits open enrollment in October and November.

Sony Pictures Entertainment is a unit of Sony Inc. and includes Columbia Pictures, Tri-Star Pictures and Loews Theaters. Mr. Rotatori said the company expects 10 to 15 employees out of 3,100 to elect the new coverage.

Sony Chairman and Chief Executive Peter Guber said extending health benefits to same-sex domestic partners "has been an important priority of ours for a long time."

—By Christine Woolsey

## Mother-friendly firms

NEW YORK—Corporations that offer employees notable work and family benefits are beefing up support for child care, flexible work schedules and management opportunities for women, according to a new survey.

The October issue of Working Mother magazine reports that the 100 best companies for mothers excel in pay, opportunities for women to advance, child care support and other family-friendly benefits, such as flextime, job-sharing and elder care resource and referral services.

The 10 best companies, according to the Working Mother survey, in alphabetical order are: AT&T Corp., Barnett Banks Inc., Fel-Pro Inc., Glaxo Inc., John Hancock Mutual Life Insurance Co., International Business Machines Corp., Johnson & Johnson, Lancaster Laboratories Inc., NationsBank Corp., and Xerox Corp.

Many of the companies cited on the list have more than their family-friendly benefits in common: they tend to be clustered in certain industries and regions of the country.

Eleven of the 100 companies listed are in the insurance industry. Six of the firms are in banking, six are in financial services and six are high technology firms. Five hospitals also were represented on the list, as were four pharmaceutical firms.

Six regions of the country claimed nearly half of the 100 companies cited: 12 companies are located in the metropolitan Chicago area, eight are in California, eight are in Massachusetts, eight are in the metropolitan New York City area, seven are in New Jersey and five are in North Carolina.

Although onsite child care cen-

## Benefit Beat

ters remain a rarity among American businesses, 51 of the 100 companies on the list offer onsite child care.

Firms on the list that are about to open or have opened an onsite child care center in the past year include BE&K Engineering & Construction; First Chicago Corp.; Mattel Inc.; MBNA America Bank, N.A.; Motorola; Quad/Graphics Inc. and Wegmans Food Markets Inc.

The size range of companies cited for their work and family benefits varies greatly. The smallest company listed is G.T. Water Products Inc., of Moorpark, Calif.,

which has only 24 employees. General Motors Corp. of Detroit is the largest firm on the list, with 358,500 employees.

—By Deborah Shalowitz Cowans

## IBM creates new plan

ROCHESTER, Minn.—International Business Machines Corp. will offer employees in Rochester, Minn., a new managed care plan during open enrollment this October.

The 15,000 employees and dependents that live and work near Rochester don't have access to the myriad managed care programs available in the Minneapolis/St. Paul area, an IBM spokesman said.

As a result, IBM teamed up with the Mayo Clinic in Rochester to develop a network of providers in nearby communities.

Employees can choose primary care physicians from several Mayo clinic locations, including Rochester, Kasson, Kenyon, Plainview and Wabasha, Minn.; as well as Olmsted Medical Group locations in Rochester, Byron, Elgin, Hatfield, Hayfield, Pine Island, St. Charles, Spring Valley and Stewartville, Minn.

IBM employees can choose to enroll in the new health plan, or continue to receive coverage under an existing fee-for-service plan.

The new health plan, called Mayo Choice, will operate like a point-of-service plan.

Employees who choose to seek care from non-network providers will pay higher deductibles and copayments.

For example, an office visit to a network provider will cost \$15 per visit, while an office visit to a non-network provider will cost \$30 plus 30% of charges.

Employees can enroll in Mayo Choice in October, for a Jan. 1 effective date.

Mayo developed the program specifically for IBM, but will use it as a "model for future collaboration with other companies," said Dr. Richard Tompkins, Mayo's director for managed care systems.

Mayo would not comment on how providers will be reimbursed.

—By Christine Woolsey

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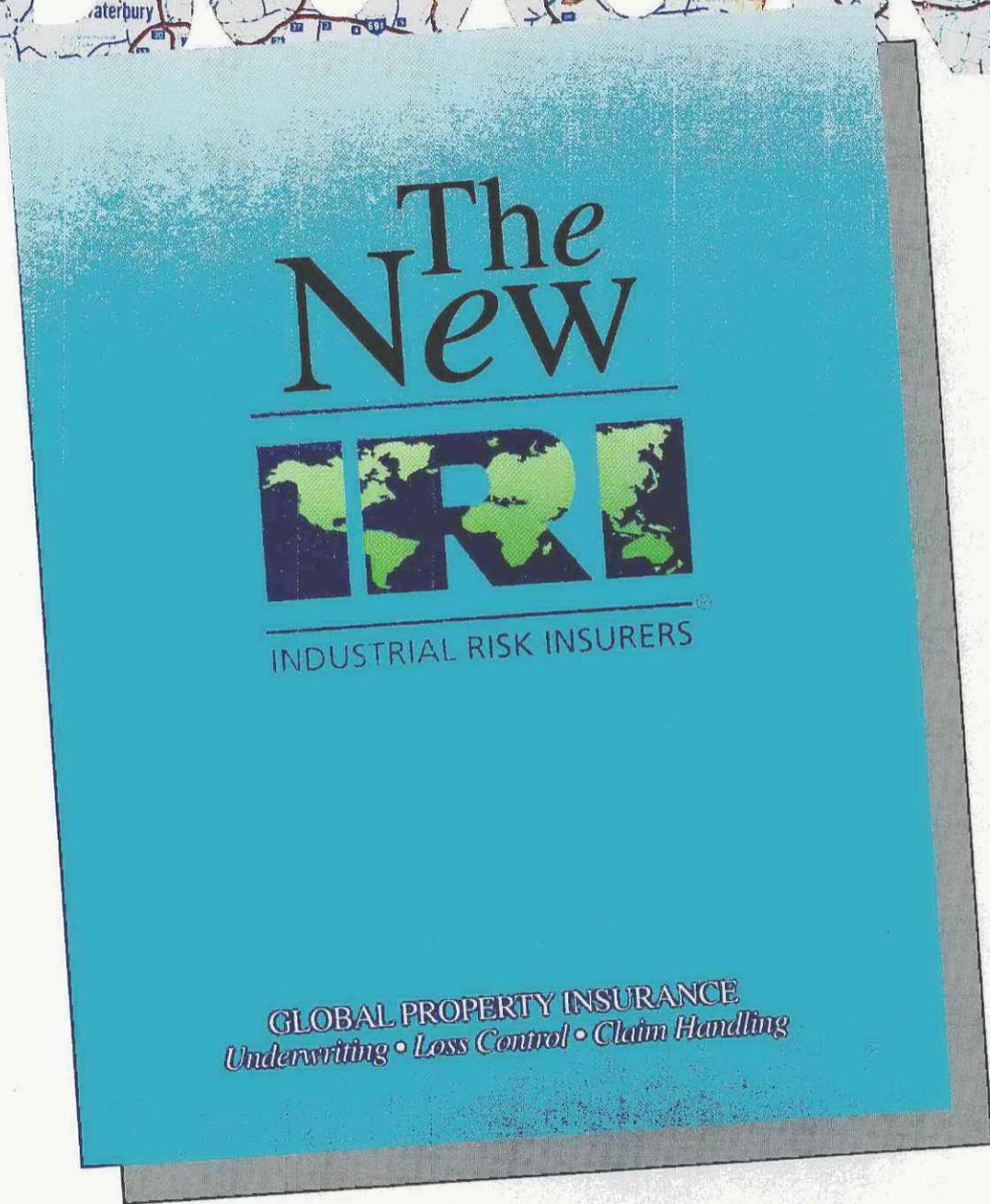
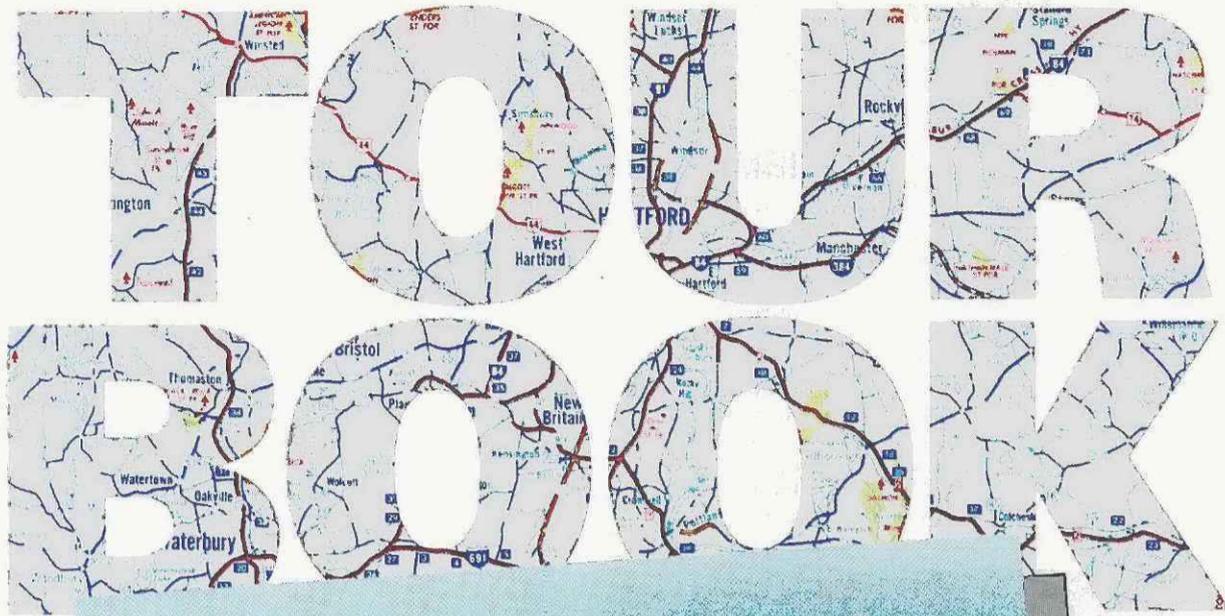
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# ASK A BENEFIT ACTUARY

## PBGC and GATT make strange bedfellows

**A**

Are PBGC and GATT just alphabet soup?

**Q**

No, PBGC and GATT are not just alphabet soup, but I can see how one might think so. The Pension Benefit Guaranty Corp. is the federal agency that insures defined benefit pension benefits against the risk of insolvency of the plan sponsor. The General

Agreement on Tariffs and Trade is a significant treaty designed to promote international trade and reduce tariffs. It is anticipated that many countries will adopt this agreement.

The ability to confuse PBGC and GATT for alphabet soup arises because of legislation expected to be considered by Congress during the week of Oct. 3. This legislation would attach a bill providing for changes in pension law sought by the PBGC to the bill to approve the GATT treaty (BI, Sept. 26).

The attachment of these disparate bills arises mainly for political reasons, rather than sound public policy considerations. GATT will reduce tariffs collected by the federal government. In order to make up for this lost tax revenue, Congress must raise revenues in the same bill.

The PBGC and other pension-related provisions would raise revenues estimated at \$963 million over five years. In addition, some of the principal opponents of the PBGC bill, including large Fortune 500 firms, will also be some of the principal beneficiaries of GATT. The attachment of the PBGC bill to the GATT treaty makes it much more likely that the PBGC bill will pass during this session of Congress.

However, defined benefit plan sponsors should be concerned about this political maneuver because of the onerous changes made by the PBGC bill. Some of these changes include:

- Big increases in the PBGC variable premium for underfunded plans through the repeal of the current \$53 per participant cap. These premium increases are not offset by reductions in premiums for well-funded plans.

- The Internal Revenue Service would get new power over actuarial assumptions. IRS approval would be required for assumption changes which increase unfunded current liability by certain amounts.

- The bill would increase contributions to pension plans through changes in assumptions for current liability. The current liability is the basis for the deficit reduction contribution, which is a part of the minimum funding calculations for qualified plans.

The mortality assumption for calculating current liability would also be the 1983 GAM table, which is a conservative mortality table. This mortality assumption will increase current liability by 10% for many plan sponsors. The maximum interest rate used for calculating current liability would also be reduced from 110% of the four-year weighted average of interest rates on 30-year Treasury bonds to 105%. This reduction would be phased-in over five years.

- The full funding limit will have a "floor" (a minimum amount) equal to 90% of the current liability less plan assets. This change will subject some plan sponsors to a double whammy. The affected plan sponsors will be those who have not been required to make a contribution to a defined benefit pension plan because the plan is fully funded, and which will no longer have a fully funded plan because of the new full funding limit floor. The double whammy will be that the plan sponsor will have both a contribution requirement and a PBGC variable premium due. A variable premium will be due because the plan will no longer qualify for the premium waiver based on the plan's fully funded status.

These changes will generally be effective for 1995. There are some transition rules that will lessen the

immediate impact of these changes.

The attachment of the PBGC bill to the GATT treaty reflects yet another example of retirement income policy gone out of control in the United States. Policy is driven by tax revenue considerations and political horse trading.

Little or no consideration is given to the impact these changes have on the administrative costs of the changes or whether greater benefit security will be achieved through these changes.

Indications inside the Beltway are that the next big policy issue—after health care reform—will be retirement income policy. The nation's experience to date on health care reform does create confidence that Congress is up to tackling complex policy issues in the employee benefits arena. However, an attempt to enact laws after considering retirement income policy issues would be a welcome change from the current state of affairs. **BI**

*Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Four quarterly features in the Perspective section of Business Insurance can give you some answers. Ask A Casualty Actuary, Ask A Benefit Actuary, Ask A Benefit Manager and Ask A Risk Manager answer written questions from readers on risk and benefits management issues and actuarial problems.*

*This month's column on actuarial issues in the benefits field is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. Dennis J. Nirtaut, manager of employee benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans.*

*Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*



Mr. Miner

## CGL policy does not cover late-reported claims

A comprehensive general liability policy did not cover environmental liability claims against a former policyholder where the damage, even if it occurred during the policy periods, was not reported to the insurance company until some 21 years later, according to the Supreme Court of Rhode Island.

Between 1961 and 1966, Textron Inc. purchased from Liberty Mutual Insurance Co. five successive CGL policies, each with identical terms. The policies covered claims for physical damage or personal injuries occurring during the policy periods.

The policies also provided that, if at the time a claim is made against Textron, it was no longer covered by a liability policy issued by the insurance company, then the policy would not apply to any injury or property loss which was not reported by the policyholder to the insurer within one year after the policy period.

In the mid to late 1980's, numerous actions were brought against Textron for environmental contamination. Textron first reported the environmental-based claims to the insurer in August 1987, which was 21

### Legal Briefs

years after the expiration of the last Liberty policy.

Liberty refused to defend against or provide indemnification for the claims, asserting Textron failed to report it within one year after the last policy had expired.

Textron sued Liberty and lost in the trial court.

The appellate court concluded that there was no ambiguity in the policies, which clearly imposed two requirements before coverage was attached:

1. The property damage must occur during the policy period.

2. And, if Textron was no longer insured by Liberty, such damage must be reported within one year of the expiration of the policy.

In this case, the court said, both requirements were clearly not met. The trial court decision was affirmed.

*Textron Inc. vs. Liberty Mutual Insurance Co.*, Supreme Court of Rhode Island, April 8, 1994 (BI/01/Nov. -\$10).

### Criminal activity exclusion

A dependent wife's medical expenses resulting from her participation in criminal activity were not covered under an employee's Employment Retirement Income Security Act medical plan, according to the U.S. 7th Circuit Court of Appeals.

Audrey Chapter swerved her car into oncoming traffic and collided with two cars, killing a passenger in one. Audrey was badly injured herself, sustaining permanently disabling brain damage. She was indicted for reckless homicide because of high levels of alcohol found in her blood.

Because of her brain damage, it was unlikely that she would ever be competent to stand trial. Audrey was a participant in her husband's ERISA medical plan by virtue of her dependent status.

The plan excluded coverage for any charges incurred resulting from participation in criminal acts and/or any illegal activities in which the participant was determined to be the aggressor. Mr. Chapter acknowledged the applicability of this exclusion but argued that, under Illinois law, he had

an obligation to pay for his wife's medical expenses. Since he had not participated in his wife's criminal activity, he argued that he was entitled to have her medical expenses reimbursed. The trial court found in his favor.

The appellate court disagreed and reversed. The court concluded that Ms. Chapter, not her husband, was the plan participant here who incurred the medical expenses for the injuries she sustained in the accident and she, and therefore her husband as well, was barred from reimbursement for those expenses by her participation in criminal activities.

*Chapter vs. Monfort of Colorado Inc.*, U.S. 7th Circuit Court of Appeals, March 28, 1994, *Rehearing and suggestion for rehearing en banc denied*, April 28, 1994 (BI/03/Nov. -\$10). **BI**

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

## Datebook

### OCTOBER

**OCT. 9-11. Alliance of American Insurers Annual Marketing and Communication Management Conference** in Atlanta; \$430 for Alliance members, \$550 for non-members. Sue Christiansen, Alliance of American Insurers, 1501 Woodfield Road, Suite 400 West, Schaumburg, Ill. 60173-4980; 708-330-8595.

**OCT. 11. CPCU Society of New York 49th Annual Conferment Luncheon** for in New York; \$60. For information, contact the CPCU Society of New York, 914-699-2020.

**OCT. 11-12. Analyzing Property/Casualty Insurance Company Financial Statements** seminar in New York, sponsored by The College of Insurance; \$525. The College of Insurance, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9201.

**OCT. 12-13. Analyzing Life/Health Insurance Company Financial Statements** seminar in New York, sponsored by The College of Insurance; \$525. The College of Insurance, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9201.

**OCT. 11-14. Methods and Tools for Quality Improvement** course in Minneapolis, sponsored by the Institute for Healthcare Improvement; \$1,600. Institute for Healthcare Improvement,

1 Exeter Plaza, Ninth Floor, Boston, Mass. 02116; 617-424-4800.

**OCT. 12. Planning Ahead: The Insurance Marketplace 1995-1996** seminar in New York, sponsored by Willis Corroon Corp.; no charge. Debbie Ciaburri, Administrative Assistant, Willis Corroon Corp. of New York, 7 Hanover Square, New York, N.Y. 10004-2594; 212-837-0692.

**OCT. 12. 10th Annual Health Care University & Exposition** in Wheeling, Ill., sponsored by the Chicago & Northeastern Illinois Assn. of Health Underwriters; \$50. Contact Scott Shalek, 708-587-6966.

**OCT. 12-14. Twenty-Fourth International Insurance & Risk Management**

Conference in London, sponsored by Management Centre Europe; 90,000 Belgian francs (\$2,658) for members of the American Management Assn./International, 100,000 Belgian francs (\$2,953) for non-members, 80,000 Belgian francs (\$2,362) for corporate risk managers. The Accounts Department, Management Centre Europe, rue Caroly 15, B-1040 Brussels, Belgium; 32-2-5161911.

**OCT. 12-14. Quality and the Risk Management Process** seminar in Atlanta, sponsored by the Risk & Insurance Management Society; \$700 for RIMS members, \$800 for non-members. Risk & Insurance Management Society Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**OCT. 12-15. Eighth International Reinsurance Congress** in Hamilton, Bermuda, sponsored by Coopers & Lybrand and Hawksmere; \$995. Hawksmere P.L.C., 12-18 Grosvenor Gardens, London SW1W 0DH; 071-824-8257.

**OCT. 13-14. Advanced Healthcare Capitation & Risk Sharing** conference in Boston, sponsored by the Institute for International Research; \$1,295. Also Oct. 24-25 in San Francisco. Conference Administrator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017; 1-800-345-8016 or 212-661-8740.

**OCT. 14-15. American Managed Care & Review Assn. Quality and Utilization Management Conference** in Atlanta; \$575 for AMCRA members, \$675 for non-members. Marhea Perkins, AMCRA, 1200 19th St. N.W., Suite 200, Washington, D.C. 20036; 202-728-0506.

**OCT. 16-19. American Managed Care & Review Assn. 1994 Annual Managed Care Conference** in Atlanta; \$700 for AMCRA members, \$800 non-members. Marhea Perkins, AMCRA, 1200 19th St. N.W., Suite 200, Washington, D.C. 20036; 202-728-0506.

**OCT. 13-14. Disaster Planning and Preparedness Workshop** in Norwood, Mass., sponsored by Factory Mutual Engineering & Research; \$495. Also Dec. 8-9 in Santa Clara, Calif., and Dec. 12-13 in Los Angeles. Factory Mutual Engineering & Research, Training Resource Center, Training Department Enrollments, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

**OCT. 14. Earthquake Probable Maximum Loss** seminar in Atlanta, sponsored by the Inland Marine Underwriters Assn.'s Southeast Advisory Committee; \$55 for IMUA members, \$65 for non-members. Louis D. Talmadge, American Reinsurance Co., 404-231-3628.

**OCT. 14. Philly I-Day** in Philadelphia; \$50. Philly I-Day, An Insurance and Risk Management Experience, P.O. Box 1499, 456 Public Ledger Building, Philadelphia, Pa. 19105-1499; or contact James LaPlante, 610-371-7644.

**OCT. 16-18. Public Risk Management Assn. Eastern Miniconference** in Asheville, N.C.; \$175 for PRIMA members, \$225 for non-members. Lynne Armstrong, PRIMA, 1117 N. 19th St., Suite 900, Arlington, Va. 22209; 703-528-7701.

**OCT. 16-19. Medical Case Management Conference VI** in San Diego, sponsored by the Individual Case Management Assn.; \$385 for ICMA members, \$440 for non-members. ICMA, 10809 Executive Center Drive, Suite 105, Little Rock, Ark. 72211; 501-227-5553.

**OCT. 17. Benchmarking: A Concept for the '90s** seminar in Dallas, sponsored by the Dallas-Fort Worth Chapter of the Risk & Insurance Management Society; \$75 for RIMS members, \$135 for non-members. Ruth Roberson, Rexene Corp., 5005 LBJ Freeway, Dallas, Texas 75244; 214-450-9082.

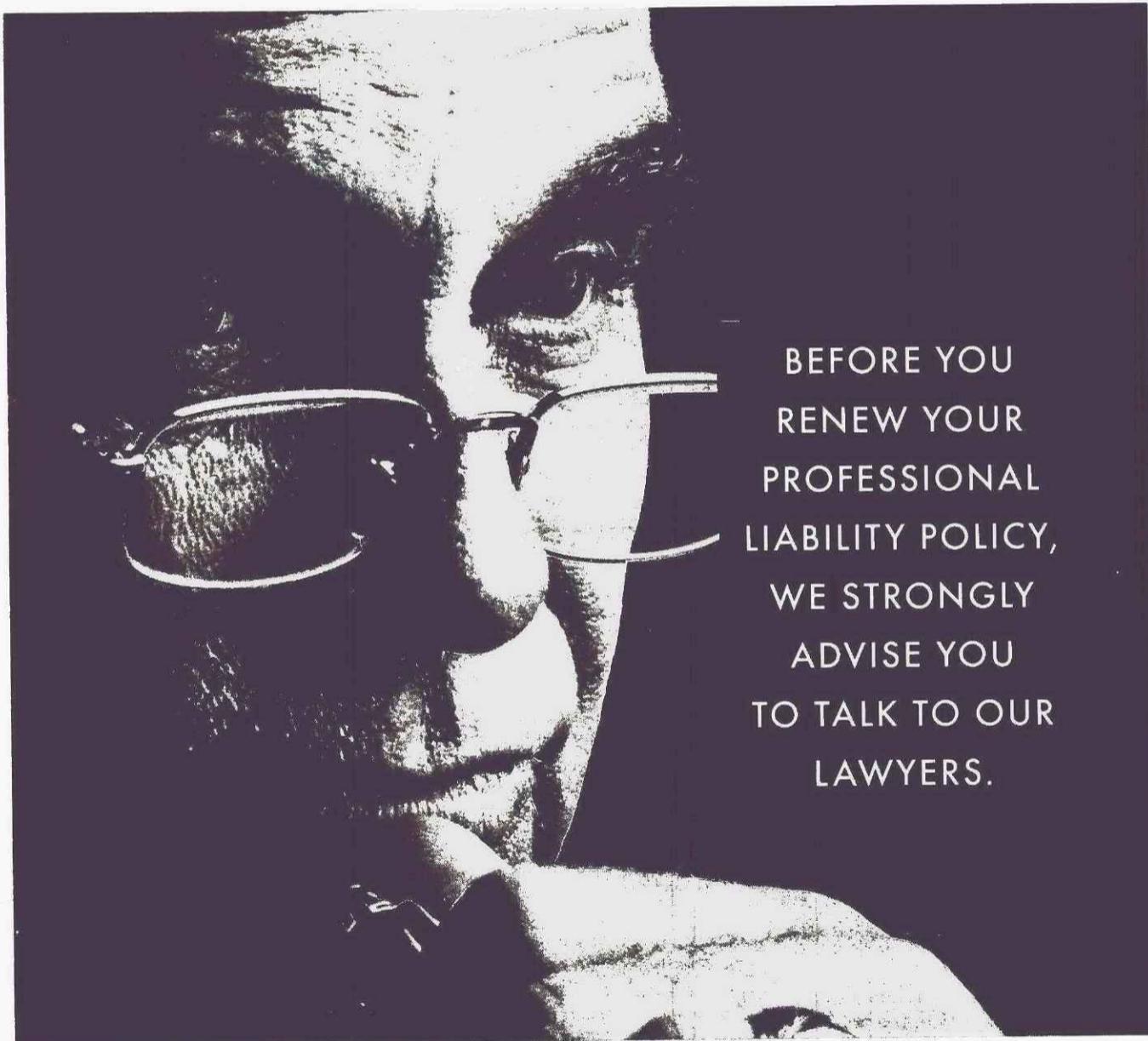
**OCT. 17-19. Fundamentals of Insurance** course in Charlotte, N.C., sponsored by the Risk & Insurance Management Society; \$650 for RIMS members, \$750 for non-members. Also Dec. 12-14 in Denver. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**OCT. 17-21. The Essentials of Multi-employer Trust Fund Administration** seminar in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$1,125 for IFEBP members, \$1,250 for non-members. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

**OCT. 18. Doing Business in the Pacific Rim: Emerging Markets** seminar in San Francisco, sponsored by the International Foundation of Employee Benefit Plans; \$145. Also Oct. 20 in New York. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6710, ext. 257.

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Continued from previous page

**OCT. 18-22. Understanding Property-Liability Contracts** seminar in New York, sponsored by The College of Insurance; \$900. Also **Dec. 13-17** in New York. The College of Insurance, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9201.

**OCT. 19. Motor Truck Cargo** seminar in New York, sponsored by the Inland Marine Underwriters Assn.; \$125. Tracey O'Donnell, Inland Marine Underwriters Assn., 111 Broadway, New York, N.Y. 10006; 212-732-3451.

**OCT. 19-21. Second Annual Business Insurance Workers Compensation Conference** in San Diego; \$595 for risk, benefit or safety managers; \$795 for service providers. IBF/International Business Forum, 7 Penn Plaza, Suite 901, New York, N.Y. 10001; 212-279-2525.

**OCT. 19-21. International Risk and Insurance Strategies** course in Nashville, Tenn., sponsored by the Risk & Insurance Management Society; \$800 for RIMS members, \$900 for non-members. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**OCT. 19-21. Capitation Rate Setting: An Actuarial and Financial Workshop** in Chicago, sponsored by Global Business Research; \$1,195. Conference Administrator, Global Business Research, 151 W. 19th St., Eighth Floor, New York, N.Y. 10011; 212-645-4226.

**OCT. 20. FMLA, ADA and CRA: How to Avoid Making These and Other Initials the Focus of Your Next Lawsuit** seminar in Atlanta, sponsored by the Society for Human Resource Management; \$310 for SHRM members, \$375 for non-members. SHRM Seminars, P.O. Box 1334, Merrifield, Va. 22116-9905; 800-283-7476.

**OCT. 20-21. Payer-Provider Systems Integration** conference in Reston, Va., sponsored by the Institute for International Research; \$1,195. Conference Administrator, Institute for International Research, 708 Third Ave., Fourth Floor, New York, N.Y. 10017-4103; 1-800-345-8016 or 212-661-8740.

**OCT. 24-25. Emerging Markets** conference in New York, sponsored by the Financial Advisory Council; \$1,195. Financial Advisory Council, 1-800-882-8624.

**OCT. 24-25. Securities Litigation** conference in San Francisco, sponsored by the Practising Law Institute; \$695. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5710.

**OCT. 24-26. National Human Resources Information Technology Exposition & Conference** in San Jose, sponsored by Blenheim NDN Inc.; \$825. HMRS/EXPO 94, Registration Department, 444 Castro St., Suite 1101, Mount View, Calif. 94041; 1-800-232-3976 or 415-966-8440.

**OCT. 26-28. Techniques of Risk Control** course in Scottsdale, Ariz., sponsored by the Risk & Insurance Management Society; \$650 for RIMS members, \$750 for non-members. Risk & Insurance Management Society Inc., Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**OCT. 26-29. Seventh Annual National Forum on Health Care Quality** in Chicago, sponsored by the Joint Commission on Accreditation of Healthcare Organizations; \$625. Joint Commission on Accreditation of Healthcare Organizations, P.O. Box 92295, Chicago, Ill. 60675-2295; 708-916-5070.

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

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

**OCT. 31. General Liability Coverage**

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

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

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

**OCT. 31. Making Money with the Surety Team** seminar in Washington, sponsored by the International Risk Management Institute; \$275. International Risk Management Institute Inc., 12222 Merit Drive, Suite 1660, Dallas,

Texas 75251-2217; 800-827-4242.

#### NOVEMBER

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

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

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

4242.

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

The Datebook is compiled from notices

sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the cost, if any, to attend the meeting and information on registration. Business Insurance reserves the right to select meetings of interest to its readers and cannot guarantee that notices will be printed.

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# NAIC passes open meeting policy

## Critics say new policy could go further

By MEG FLETCHER

MINNEAPOLIS—The National Assn. of Insurance Commissioners now has a new, formal policy that requires lower-level working groups to openly conduct their business, though it exempts high-level regulatory sessions and conference call meetings.

The policy is expected to reduce the number of working groups closing their doors for executive sessions, though some critics say it does not go far enough. The NAIC formally adopted the policy late last month during its fall quarterly meeting in Minneapolis. It went into effect after that meeting.

The NAIC "is committed to conducting its business openly, subject to the discretion of the chairpersons of committees, subcommittees, task forces and working groups in those situations in which public discussions would not be appropriate," the policy states.

The policy is a reaction, in part, to criticism from the National Conference of Insurance Legislators and industry representatives, who have complained about the number of closed NAIC meetings, especially since industry advisory groups were disbanded (*BI*, Aug. 1).

The policy essentially states that working group meetings "may be closed to the public for very limited and justifiable reasons only," such as discussions of confidential data about a particular insurer or personnel matters, said NAIC President David Walsh of Alaska, who also lobbied commissioners in a July memo to support open meetings.

The policy lists as guidelines nine examples of topics on which "public discussions would not be appropriate," such as specific litigation, pending investigations and individual states' accreditation reviews.

The policy also gives a working group chairperson the ability "to exercise reasonable judgment" in deciding to close a meeting in other situations, though the chairperson must indicate the reason for the closed meeting at the beginning of any executive session.

That verbal reporting requirement is a watered-down version of a proposal the NAIC's Zone Coordination Committee considered during the fall meeting, which required specific approval from the NAIC president or vice president if the reason for closing the meeting was not among the guidelines.

The final version of the NAIC's policy excludes the NAIC's two highest-level meetings—the group's plenary or formal voting session as well as deliberations of its Executive Committee—though there was reportedly strong support from a minority of Executive Committee members to include them.

Minutes of those meetings are made public, though roll call votes are typically not reported.

In addition, special commissioner-only gatherings or education programs also are excluded.

The NAIC's open meeting policy is "an important safeguard," Mr. Walsh said. He noted the NAIC deserves credit for taking this step, though he admitted that it will not satisfy everyone. In their research, no one found a private, voluntary association like the NAIC that has opened its meetings this far, he added.

"Although the NAIC essentially is not a governmental agency charged by state or federal law to perform

governmental regulatory activities, its members are responsible in their respective states with implementation and enforcement of state laws, regulation and public policy in the best interests of the insurance consumers," the policy states.

The impact of the policy was seen in the fall meeting agenda, which was "much more open" than previous meetings, said Commissioner Jim Long of North Carolina.

At that meeting, 90% of the NAIC's more than 150 sessions were open, Mr. Walsh said, emphasizing that even regulators-only meetings are open to the state legislators.

Despite these improvements, some think the policy does not go far enough. The limited policy does not

completely satisfy NCOIL's original recommendation that the NAIC "open its meeting in their entirety to the public and the news media."

However, "it is a major step forward," said New Hampshire State Sen. Leo W. Fraser Jr., R-Laconia, and president of NCOIL.

Commissioner Bob Hunter of Texas said he initially voted against the draft during the Executive Committee meeting because it contained some technical ambiguities, but voted for it at the plenary session. However, "I would like to have recorded votes published," he said.

Larry Kibbee, vp of public affairs with the Alliance of American Insurers, said he would like to see the NAIC develop a workable policy for conference call meetings among regulators so that there is prompt

distribution of minutes as well as guidelines for public participation.

The issue is important because NAIC regulators are increasingly using conference calls, instead of calling interim meetings, as a way to reduce costs and complexity.

Conference call meetings are excluded from the policy because members decided it was "unworkable and uneconomical" to apply it, the policy states. "A major gripe" is that too often industry representatives don't learn of the outcome of these calls until they get the minutes at the beginning of the working group's next regularly-scheduled quarterly meeting, he said.

Mr. Walsh said he was aware of the problems and the NAIC is looking into earlier distribution of conference call minutes at quarterly

meetings so that interested persons will have more time to review them. In addition, NAIC staff are expected to explore the technological feasibility of allowing interested parties to participate in a conference call, perhaps on a listen-only basis for a fee.

The NAIC is also exploring teleconferencing options.

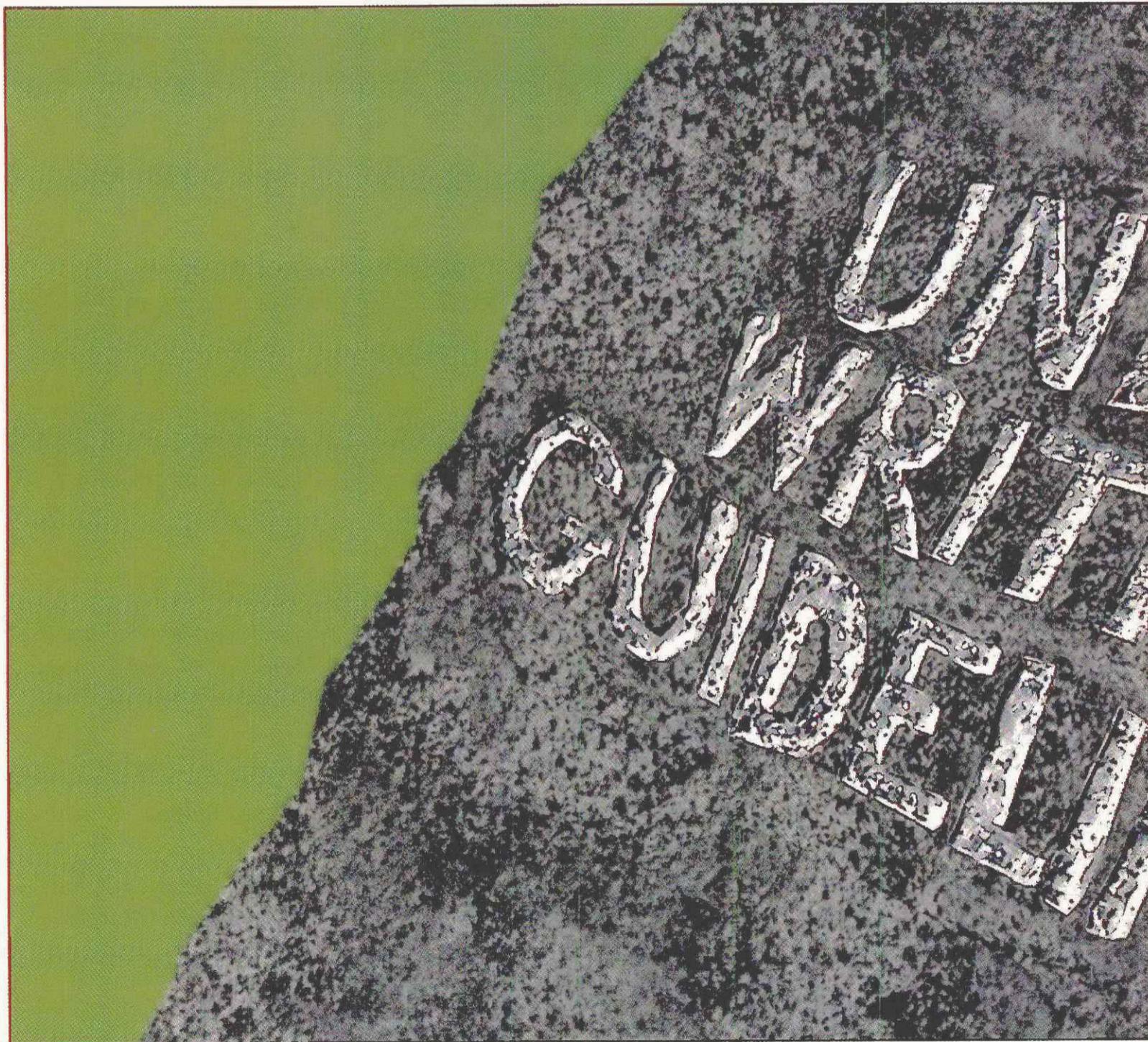
In other business at the meeting, NAIC regulators:

- Decided against changing the risk-based capital requirements to allow the information to be used in rate setting.

- Continued discussions about limiting insurers' use of surplus notes as well as investments in subsidiaries and affiliates.

- Heard testimony about ways to improve its proposed Model Investment Law.

- Decided to schedule a public hearing on the impact of federal proposals to amend the McCarran-Ferguson Act. **[B]**



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# Joint meetings aid search for common ground

By MEG FLETCHER

## Regulators, alternative risk facility advocates try to ease tensions

MINNEAPOLIS—State insurance regulators and representatives of alternative risk transfer entities, or ARTEs, are taking several steps **NAIC** to try and reduce the animosity between the two groups, though problems linger.

That conclusion stems from three events late last month: a public policy conference jointly presented by the National Risk Retention Assn. and the Coalition of Alternative Risk Funding Mechanisms, a National Conference of Insurance Legislators' public hearing and the National Assn. of Insurance Commissioners' fall quar-

terly meeting, all of which were held in Minneapolis.

"I think the first step has been taken with this public policy conference to open the dialogue to give regulators the information they need to understand where we stand," said Judie Harrington, NRRA executive director.

"What I came away with was their willingness to sit down and work toward solutions," said NAIC Vp Lee Douglass of Arkansas, the highest-ranking NAIC panelist. That's an improvement over the "pretty bitter exchanges" that had previously characterized communication between ARTE proponents and regulators, he said.

Essentially, ARTE representatives want state insurance regulators to realize the limits of their authority under the Risk Retention Act of 1986, endorse a "lead" state regulatory approach and adopt more uniform filing requirements.

ARTE representatives and regulators are concerned about the following issues:

- Proceeding with Vermont's effort to become accredited.

ARTE representatives would like the NAIC to recognize the usefulness of what they consider Vermont's enlightened approach to regulating captives and risk retention groups and accredit the state even though its laws are different from those the NAIC currently re-

quires for accreditation.

"We are still working on narrowing the legal issues," Vermont Insurance Commissioner Elizabeth R. Costle said in an interview at the NAIC meeting.

After a preliminary review, "I'm optimistic that if risk retention laws were not an issue, we are in a good position to say our practices in examinations and surveillance as well as budget and staff would be acceptable for accreditation," Ms. Costle said. However, that is not to say that Vermont would receive it, she added.

Vermont hopes to schedule an accreditation review in November, to allow its new staff members time to perform some additional

examinations, she added.

- ARTE's opposition to the NAIC's accreditation program.

This opposition surfaced most strongly at the NCOIL hearing on the NAIC's accreditation process.

Several ARTE proponents urged that the NAIC accreditation program be modified to avoid usurping the prerogatives of state legislators and allow for greater due process.

Jon Harkavy, NRRA vice chairman and vp and general counsel of USA Risk Group in Arlington, Va., also urged that the NAIC drop its accreditation program sanctions that provide for refusing acceptance of an insurer examination done by a non-accredited state unless assistance is obtained from an accredited state.

In addition, he wants to see a separate non-NAIC body handle state accreditations and open up the process more so risk managers and legislators can review it.

- Continuing a discussion group of NAIC regulators interested in ARTEs at quarterly NAIC meetings.

A number of states interested in ARTEs met during the Minneapolis meeting to discuss the feasibility of developing guidelines for regulating captive insurers, including risk retention and purchasing groups, Ms. Costle said. "Our view is that captives need regulation, but we have the type of regulation that's appropriate."

She described the group as "the start of a discussion group," rather than "a caucus," which some had called it.

"I think we'll probably meet in New Orleans," she added, referring to the December NAIC meeting.

- Appointing a special NAIC working group to analyze ARTEs and their role in the insurance industry.

Assuming he is elected NAIC president in December, as expected, the NAIC's Mr. Douglass said he would consider charging a working group with that assignment.

While other regulators also have considered this recently, it is unlikely that anything meaningful can be done between the fall Minneapolis meeting and the end of the NAIC's operational year in December, he said.

In addition, the NAIC has made progress in finalizing its risk retention group handbook, which is expected to be formally adopted at the December NAIC meeting in New Orleans, Mr. Douglass said.

- Emphasizing straightforward communication in discussing issues.

In keeping with the theme of the conference—"Working Together For Improvement"—ARTE industry representatives made a point of trying to keep comments at the public policy forum as positive as possible.

ARTE advocates were disappointed that only a small handful of non-panelist regulators were among the approximately 50 people attending the meeting. They had hoped to encourage their participation by waiving the \$175 registration fee up front.

Mr. Douglass said afterwards that the poor attendance may have been caused by the timing of the meeting, which occurred near the end of an already lengthy NAIC meeting. The NAIC also had a conflict because it was holding a hearing on the Model Investment Law at approximately the same time and at a distant hotel. **BI**

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# Comp reform not likely to end woes

## Employers liability claims may increase

By ROBERTO CENICEROS

LOS ANGELES—While California employers are gaining the upper hand in their battle against frivolous workers compensation stress claims, some pundits predict that plaintiffs attorneys will now exploit the tort system to win damages for disgruntled employees.

And eventually, some say, attorneys will find a way around the tougher standards for claiming a stress-related injury.

"There are a lot of attorneys who have been put out of business by the workers compensation reform and they have to file something," said Beth Schroeder, a

partner with Silver & Freedman in Los Angeles.

And if the inquiries to her office are any indication, that something will likely be wrongful termination, sexual harassment and discrimination suits. Such suits will be even more expensive for employers to defend than workers comp stress claims.

"You can make greater gains in a sexual harassment case. You can get unlimited pain and suffering and you have a jury trial, which is a much more favorable forum," said Paul Grossman, chairman of the employment department for the Los Angeles law firm of Paul Hastings Janofsky & Walker.

Defense costs alone in sexual ha-

## The State of California Workers Comp

rrassment and discrimination cases can reach upwards of \$100,000, said Monica Ballard, president of Parallax Education, a Los Angeles firm that provides sexual harass-

ment awareness training for employers.

But Mr. Grossman rejects speculation that workers comp reform is the reason for the recent surge in sexual harassment filings in California.

More likely, he suggested, was the highly publicized allegations that law professor Anita Hill made against Supreme Court Justice Clarence Thomas during his Senate confirmation hearings in 1991.

Also fueling demand are recent high profile cases like the sexual harassment lawsuit against the world's largest law firm, Chicago-based Baker & McKenzie, in which the plaintiff was awarded \$6.9 million in punitive damages (BI, Sept. 5).

Sexual harassment lawsuits are

easier to file in California since *Kelly-Zurian vs. Wohl Shoe Co.*, in which the 2nd District Court of California this year held that an employer can be strictly liable for supervisors' illegal conduct, said Lawrence M. Kahn, a Beverly Hills, Calif., trial attorney specializing in wrongful termination cases.

Adding fuel to the fire was the U.S. Supreme Court's landmark decision in *Harris vs. Forklift Systems Inc.*, which found that workers don't have to prove psychological injury to win a federal civil rights suit against their employers for sexual harassment that created a "hostile work environment" (BI, Nov. 15, 1993).

Post-termination stress claims under workers comp have declined since legislative reforms enacted last year placed a stiffer burden of proof on employees claiming stress-related injuries (BI, Dec. 27, 1993).

Prior to the new law, California workers had been able to collect damages under workers comp for stress if they could prove that as little as 10% of their condition was triggered by a workplace event.

The average cost of a workers comp stress claim is \$13,200, about 17% higher than other disability claims, and the litigation rate on stress claims has averaged 99% over the last five years, said Michael Dunham, corporate claims manager for Atlantic Richfield Co. in Los Angeles (BI, April 25).

While workers comp stress claims may be harder to file, there is not likely to be a reduction in the number of workers and their attorneys seeking redress. Instead, potential claims may be collecting like water behind a damn missing a release valve, some contend.

"Give attorneys about a year or so to plan and find a weak spot," said Willie Washington, director of workers comp for the California Manufacturers Assn. in Sacramento. "We'll be right back to where we were."

"If you remove the access they have, the cases don't go away. They just have to find a new vehicle," said Frank Floyd, communications and education center manager for State Compensation Insurance Fund in San Francisco. "These cases will remain out there until some wise attorney figures out what venues they need to be in."

Even though wrongful termination, discrimination and sexual harassment suits are filed in civil courts, employers in California can still tap their workers comp insurance policies for defense costs, thanks to a San Diego appellate court decision.

The court in *LaJolla Beach & Tennis Club vs. Industrial Indemnity Co.* found that because an insurer's duty to defend is broader than its duty to indemnify, workers comp insurers must defend any situation in which an employee asserts a job-related tort cause of action against his or her employer (BI, Oct. 18, 1993).

Since the *LaJolla* decision, such claims are being covered under employers liability portions of workers comp policies, according to State Fund's Mr. Floyd. Meanwhile, the insurance industry is appealing the decision to the state Supreme Court, he said.

Insurers have typically charged little or nothing for the employers liability portion of workers comp coverage because claims paid out have been few, Mr. Floyd noted.

"It's potentially a real time bomb ticking away," he said of the increased exposure under the *LaJolla* decision. **BI**



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## For the Record

### RIMS offering courses on quality, environment

NEW YORK—The Risk & Insurance Management Society Inc. is launching two new educational courses in coming weeks.

"Quality and the Risk Management Process" will be held Oct. 12-14 in Atlanta. Instructors for the three-day course are Jay T. Deragon, chief quality officer of Willis Corroon Americas, chairman of the Transportation Industry Division of Willis Corroon and executive director of the Quality Insurance Congress, and Lucien P. Laborde Jr., managing director of risk management services for the Advanced Risk Management Services Division of Willis Corroon Corp.

RIMS also will present "Environmental Risk Management" in Chicago Nov. 7-9. Instructors are Greg M. Barats, an environmental consultant for AIG Consultants Inc. in San Francisco, and Rene McGillicuddy, West Coast manager for AIGC in San Francisco.

For more information on the courses, contact Fran Jordan, Manager of Education, Risk & Insurance Management Society Inc., 212-286-9292.

### New Jersey governor eyes tort reforms

TRENTON, N.J.—New Jersey Gov. Christine Whitman's administration aims to push for several types of tort reform—including capping punitive damages and modifying joint and several liability—during the upcoming legislative year, a new report shows.

At the heart of the 17-page report, prepared for Gov. Whitman by Chief Counsel Peter Verniero and his staff, is the recommendation that New Jersey cap punitive damages in tort liability cases at five times compensatory damages. "We believe a ceiling established at five times the amount of compensatory damages is high enough to serve as a punishment and to deter egregious conduct," he wrote. Currently, New Jersey imposes no caps on punitive damages.

The report also suggested that plaintiffs be permitted to recover from any one defendant only the percentage of a judgment that corresponds to the defendant's degree of fault.

Currently, New Jersey's joint and several liability statute permits a plaintiff in a negligence action to recover the full amount of all economic and non-economic damages from a party found to be at least 60% responsible for damages. A party whose share of fault ranges from 21% to 59% can be held liable for all of an economic loss award and his or her proportional share of a non-economic loss.

Other recommended reforms include letting judges sanction parties that file "frivolous" suits, creating negligence standards for health care providers and retailers, and requiring plaintiffs in medical malpractice actions to file a certificate of merit validating their claims.

### California comp claims rise in second-quarter

SAN FRANCISCO—The frequency of workers compensation claims filed in California shot upward during the second quarter of 1994, the first reported increase in nearly two years, according to the San Francisco-based California Workers' Compensation Institute.

During a 13-week span ending

June 30, insurers received almost 115 new claims for each \$1 million in premiums, the CWCI found after reviewing data from 50 insurer groups that write 85% of the state's premiums.

The number of claims filed during the second quarter represents a 14.9% jump from the previous quarter. However, the CWCI cautioned that researchers must collect and analyze data from one more quarter before determining whether or not a trend is underway.

Indemnity claims jumped 21%, rising to 47.9 claims per \$1 million in premium. Medical-only claims increased 11%, from the first quarter, to 66.8 claims per \$1 million in premium.

Bill Molmen, general counsel for the CWCI, said an economic up-

swing probably accounts for the rise in claims. That follows because new workers and others working longer hours to fill factory orders are most likely to suffer injuries.

"It may be the biggest factor," Mr. Molmen said. "We don't know, but it could be."

### Inter-American settles reinsurance

CHICAGO—Illinois regulators reached a \$17.5 million settlement early last month with a number of European reinsurers stemming from the failed Inter-American Insurance Co. of Illinois.

The Illinois Insurance Department liquidated the life/health insurance company in late 1991 because of a shortfall in required capital and surplus (BI, Jan. 20, 1992).

According to the department, Inter-American, prior to its liquidation, entered into surplus relief reinsur-

ance contracts with Aachener Reinsurance A.G., Gerling Global Reinsurance Group, Gerling Global Life Insurance Co., Hannover Re/Eisen & Stahl Re Group, and Veritas Reinsurance Corp. Ltd., as well as a number of U.S. reinsurers.

Regulators treated the surplus relief contracts as real surplus and argued that since the contracts were recognized prior to liquidation, the reinsurance obligations should be enforceable after the liquidation.

Acting Director of Insurance James W. Schacht is seeking to collect reinsurance from Inter-American's U.S.-based reinsurers.

### Information in brief

The International Assn. of Special Investigation Units is expanding its membership to include full-time insurance fraud investigators that work for self-insured employers. . . . **MetraHealth Cos. Inc.** is the

name of the new health care holding company created by the merger of Metropolitan Life Insurance Co.'s and Travelers Insurance Co.'s group health care operations. . . . The **California Insurance Department** is closing the conservation and liquidation office in Los Angeles by year-end, and will open a reorganized and more streamlined office in San Francisco. The move is part of ongoing actions to improve the management and operations of the office, which was criticized in a report issued last year by state auditors (BI, Aug. 23, 1993). . . . California Gov. Pete Wilson has signed legislation that would establish new guidelines for medical claims reviews and require **health maintenance organizations** to reimburse patients for unauthorized emergency treatment, but he has vetoed a bill that would have required HMOs to disclose to the public information on profits and administrative costs. **BI**



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# Best setting the record straight

By DAVE LENCKUS

## Surplus market solvency on par with standard lines: Report

NEW ORLEANS—Regulated surplus lines insurers have at least as good a solvency track record as the standard lines market, but market and regulatory policing efforts to weed out rogue non-U.S. companies are far too lax, an A.M. Best Co. report concludes.

Regulators' inadequate efforts would not be bolstered much even if the National Assn. of Insurance Commissioners' International Insurance Department adopts a new model act designed to impose tougher financial requirements on regulated alien insurers (BI, Sept. 26), the report says.

Because the model act would affect only a fraction of regulated alien insurers, its value is "questionable," says the report, which the Oldwick, N.J.-based rating agency released last week at the National Assn. of Professional Surplus Lines Offices Ltd.'s annual convention.

NAPSLO officials concur with the report's conclusion calling for improved self-policing in the market. Indeed, in a joint position paper, NAPSLO and the American Assn. of Managing General Agents last week called for all states to create stamping offices to help wholesale brokers identify

unscrupulous alien insurers and discipline brokers that do business with those companies.

The Best study, which focused on surplus lines market insolvencies from 1969 through 1993, was funded with a "nominal" grant from the Derek Hughes/NAPSLO Educational Foundation, according to NAPSLO officials.

The surplus lines solvency study was necessary to set the market's record straight with regulators, legislators and consumers, as well as with some insurance market members, the foundation said.

According to Best, regulated U.S. and non-U.S. surplus lines insurers accounted for 41 of the 573 failures of all insurers writing U.S. property/casualty insurance during the 25-year study period. That figure translates into a 0.8% failure rate for the surplus lines market, compared with a 0.87% failure rate for the standard lines market.

The surplus lines failure rate would have been even lower if Best had classified the 1989 failures of seven London United Investments P.L.C. companies, known as the KWELM companies, as a single insolvency, the report notes.

That approach would have been reasonable because LUI's H.S. Weavers (Underwriting) Agencies Ltd. was the underwriter for all seven companies, explained study author Jack Snyder, senior vp of Best's property/casualty division.

The KWELM companies accounted for seven of the eight insolvencies of regulated alien insurers.

The report also points out that 54% of the 41 surplus lines in-

**We won't really get the biggest bang for the buck from the NAIC model act, says Jack Snyder.**

surer insolvencies occurred among companies with less than \$5 million of surplus, and 17% more occurred among insurers with \$5 million to \$10 million of surplus.

In a soon-to-be-released report, Standard & Poor's Insurance Rating Services found a much higher failure rate: 42 surplus lines in-

surer insolvencies in the past six years (BI, Sept. 26).

But S&P, which still concluded that the non-admitted market is financially strong, defined a surplus lines insurer as a company that wrote any amount of non-admitted business. Best defined the market as those insurers predominantly writing surplus lines business.

The Best report also concludes that the domestic surplus lines industry is in many respects financially stronger than the standard lines market, which is underscored by their generally higher Best ratings:

- The surplus lines industry's combined ratio from 1984 through 1993 was 106.2% on average, compared with 109.8% for the admitted market.

- Its 1989 through 1993 aftertax return on net premiums earned was 15% on average, compared with 3% for the admitted market.

- Its current liquidity ratio was 20 percentage points higher from 1989 through 1993 than the admitted market's.

Best also found that domestic surplus lines insurers were better capitalized than regulated alien insurers. Domestic companies maintained \$1.70 in assets for every dollar of liabilities, compared with the \$1.22 in assets that regulated alien companies had for every dollar of liabilities.

Best had no way to account for the unregulated alien insurers that wrote U.S. business but disappeared when policyholders began filing claims. That data would somewhat depress the surplus lines market's failure rate and its overall financial strength.

The 100 to 200 unregulated alien insurers that probably operate in the market now probably account for less than 2% of the \$8 billion of non-admitted direct premiums, Mr. Snyder said.

But, this segment is largely re-

sponsible for the market's tainted reputation, according to Mr. Snyder. He would like to see that segment either eradicated or at least exposed through heightened market and regulatory efforts.

Regardless of what regulators do, the surplus lines industry immediately should direct 90% of its self-policing efforts to dealing with that elusive group, Mr. Snyder said.

The market should more readily share so-called black lists of unregulated alien insurers that are operating in the country, discipline brokers that place business with unregulated alien companies that do not pay claims and support stamping offices.

Only 10 states have stamping offices. The offices must be legislatively established, but strong market support is a political prerequisite, Mr. Snyder noted.

The report questions the effect of the NAIC model act's capital and surplus provisions because they would affect only eight of the insurers on the IID's 74-company white list of approved alien insurers.

"The NAIC is really tightening the screws just on the legitimate sector of the surplus line marketplace," Mr. Snyder said. "Will it help solvency? Yes. But, will we get the biggest bang for the buck? Not really."

Instead, states that are easy ports of entry into the country for fly-by-night alien surplus lines insurers because of their low surplus requirements should boost their capital and surplus requirements to at least \$5 million, Mr. Snyder said. The report shows that 24 states have lower requirements.

In addition, only one of the 36 states that responded to a Best questionnaire—California—publishes a list of unregulated alien insurers that it knows are writing business within its borders.

*The "Insolvency Study of the Excess & Surplus Lines Industry" is available for \$20 from A.M. Best Co., Customer Service, Ambest Road, Oldwick, N.J. 08858.*

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NORTH AMERICA

## Court allows benefit cutback

By CHRISTINE WOOLSEY

RICHMOND, Va.—A group of retirees cannot prevent their employer from decreasing their medical benefits because the company adequately notified the retirees of its right to alter or terminate the plan, a federal court ruled.

Sweetheart Cup Co. Inc. of Chicago, the parent of Fort Howard Corp./Maryland Cup Corp.—the original sponsor of the employee welfare benefit plan in question—did not violate the Employee Retirement Income Security Act by decreasing its retirees' medical benefits, the 4th U.S. Circuit Court of Appeals ruled.

The group of retirees had been employed by Maryland Cup which was acquired by Fort Howard Co. in 1983. In 1985, Maryland Cup converted its fully insured group medical plan to a self-funded plan.

In 1989, the two companies were acquired by Sweetheart Cup. Faced with rising health care costs, Sweetheart Cup notified all plan participants of its need to reduce benefits, increase deductibles and require each participant to pay a portion of the health plan costs.

In 1990, a group of Maryland Cup retirees sued Sweetheart Cup, claiming, among other things, that their benefits had

vested at the time of their retirement and that the 1989 benefit reduction made by Sweetheart Cup violated ERISA.

A district court granted the defendants summary judgment in January 1994.

In upholding the lower court's decision, a three-judge panel for the 4th Circuit found that all employees of the company had received certificates of insurance and summary plan descriptions that included a modification clause. The clause explained to employees and retirees the company's right to modify, change or terminate the medical coverage for employees, including retirees, at any time in the future without their consent.

In addressing the vesting issue, the court explained that, "although ERISA contains a strict vesting requirement for pension benefits, it expressly exempts employee welfare benefit plans from that requirement."

Accordingly, "a plan participant's interest in welfare benefits is not automatically vested, and employers have a statutory right to amend the terms of the plan or terminate it entirely."

*Robert Gable et al. vs. Sweetheart Cup Co., No. 94-1234, No. 94-1301, 4th U.S. Circuit Court of Appeals.*

# London barriers can be overcome: Expert

By GAVIN SOUTER

NEW YORK—U.S. policyholders control their own destiny when seeking to collect claims from London market insurers, a consultant says.

By forging a strong link with their London underwriters and by instructing—rather than blindly depending on—their intermediaries, policyholders can help ensure future claims are paid promptly and fully, he contends.

Policyholders, brokers, underwriters and lawyers can face numerous problems when dealing with claims in the London market, explained David Vaughan, a principal associate with Coopers & Lybrand in London.

He said such problems can include:

- Policies that may not be actually issued and the policyholder instead only has a slip signed by underwriters as evidence of its coverage.
- Claims payments held by brokers for substantial periods of time.
- Coverage that is so complex that underwriters do not know who is owed what.
- Pressure on brokers' costs, which makes them reduce their levels of service.
- U.S. lawyers acting for the policyholders who do not always understand the intricacies of the London insurance market.

While policyholders are unlikely to face all of these problems at the same time, a combination of some of these difficulties could result in some serious consequences for those policyholders who rely on claims being paid for their own financial well-being, Mr. Vaughan said.

Mr. Vaughan was speaking at a recent conference in New York on insurance solvency and insolvency issues in the London Market, which was co-sponsored by Coopers & Lybrand and Clifford Chance, a London law firm.

To avoid nonpayment of claims, policyholders should follow a series of steps to establish an infrastructure that gives them greater control of their insurance coverage, Mr. Vaughan advised.

First, policyholders should obtain the contractual information relating to their coverage and ensure that the underwriter has seen it also.

"Several times, in litigation, I have found the placing information sent to the broker was unfortunately not the same as the placing information seen by the underwriter," Mr. Vaughan said.

Second, an intermediary clause should be inserted in the policy that states that payment of premiums to the broker is deemed payment to the underwriter, and that payments of claims are not considered settled until the client receives the money.

Third, the policy should define the jurisdiction for disputes relating to the coverage.

Fourth, where agents are used, confirm directly with the underwriter that the agency is within its authority for the type and size of risk placed.

Having established these points to put the insurance documents in order, policyholders should then aim to reduce their reliance on their brokers, according to Mr. Vaughan.

"Be capable of operating independently when necessary," he said.

To do this, policyholders should

## Savvy U.S. policyholders work with London underwriters

ensure that they identify all of the parties involved in placing the coverage, agree to terms of trade with each broker and establish performance targets with them, Mr. Vaughan said.

"If a broker is not performing, intervene and try to resolve the broker's underperformance. After all, it is cheaper for the client if the broker does the work," he said.

If the broker continues to underperform, policyholders should bypass that broker and go directly to the next broker in the chain or the underwriter, Mr. Vaughan said.

When dealing with underwriters, U.S. policyholders should en-

**"If a broker is not performing, intervene and try to resolve the underperformance, says David Vaughan."**

sure that they have a firm understanding of the London market by monitoring press coverage and financial information available on companies and Lloyd's of London syndicates, according to Mr. Vaughan.

But, Mr. Vaughan added that "in order to understand the Lon-

don market you really need to visit it and meet the brokers and underwriters.

"That way, their concerns and needs will be better understood."

If despite these safeguards, litigation is needed to ensure that a claim is paid, policyholders should prevent their lawyers from taking full control of the process, said Mr. Vaughan.

In particular, policyholders should maintain contact with the underwriter or broker with whom they are in dispute.

By directly approaching the other party rather than relying on lawyers to handle negotiations, the dispute might be resolved before the case is tried, he ex-

plained.

Policyholders should also try and understand the motives of the underwriter who is refusing to pay, said Mr. Vaughan.

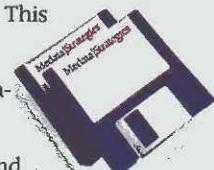
"Is he refusing to pay purely because of a technical problem on coverage? Is it a moral pride issue that cannot be resolved by reasoned negotiation and therefore can only be settled by legal action? Or is it purely financial?" he asked.

If an underwriter does not have the money to pay the claim, a policyholder is only likely to win a Pyrrhic victory by litigating, Mr. Vaughan said.

Therefore, it may be better to get the underwriter to cooperate without taking him to court, he said. **B**

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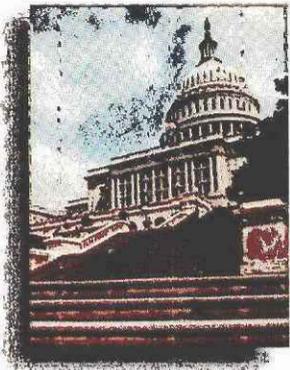
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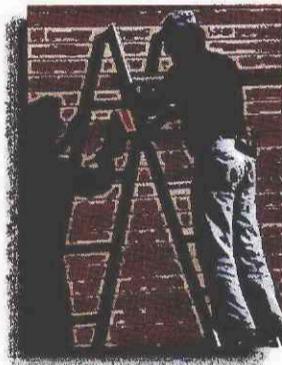
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- EARLY REGISTRATION & WELCOME RECEPTION

### THURSDAY, OCTOBER 20, 1994

- Registration & Continental Breakfast
- NEW INITIATIVES FOR CONTROLLING WORKERS COMPENSATION HEALTH CARE COSTS
- DISABILITY MANAGEMENT
- LUNCHEON SPEAKER - ALLEN IAMPAGLIA RISK MANAGER, CITY OF GLENDALE, ARIZONA
- EMPLOYER CASE STUDIES
  - ▶ IN-HOUSE CASE MANAGEMENT WORKS
  - ▶ CARPAL TUNNEL SYNDROME CASES DON'T HAVE TO COST AN ARM
  - ▶ THE TRUTH AND CONSEQUENCES OF COMBATING FRAUD
- FINANCING ALTERNATIVES FOR WORKERS COMPENSATION: HOW TO EVALUATE AND DECIDE WHICH FINANCING METHOD IS RIGHT FOR YOUR COMPANY
- Reception

### FRIDAY, OCTOBER 21, 1994

- Continental Breakfast
- DEALING WITH CONTESTED CLAIMS
- CUMULATIVE TRAUMA DISORDERS: CONTROLLING THE WORKERS COMPENSATION MONSTER
- ESTABLISHING AND MANAGING THE CLAIMS AUDIT PROCESS
- LUNCHEON SPEAKER - DOUGLAS MCCOY RESIDENT VICE PRESIDENT, COMMERCIAL LINES, THE TRAVELERS CORPORATION
- APPLYING TOTAL QUALITY MANAGEMENT TO WORKERS COMPENSATION: UTILIZING BENCHMARKING TO STREAMLINE THE WORKERS COMPENSATION PROCESS
- Closing Reception

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# HOW

Continued from page 1

has not reached a conclusion about whether the \$15 million addition is adequate, Mr. Cooke said.

Mr. Cooke confirmed that HOW has launched a private debt offering to raise money, though he declined to say on the record how much is being sought or what the terms of the offering are.

Sources familiar with HOW's operations say the amount being sought is \$10 million.

The offering has gone out to builders and affiliated organizations that may or may not be members of HOW's parent company, Home Warranty Corp., Mr. Cooke said.

The company has already received "substantial investments," he said, adding that he expects to reach the offering's goal long before its scheduled June 1995 closing.

HOW is one of the largest risk re-

tention groups in the country, recording gross written premiums of \$26.2 million and net premiums of \$13.1 million in 1993.

It is also the first such group formed under the 1981 Risk Retention Act, and its formation sparked a legal battle with Delaware regulators over whether its home warranty coverage qualified it to act as a risk retention group under the federal law (BI, June 28, 1982).

HOW moved to Virginia in 1988.

The insurer's current problems grew out of a dispute with Virginia regulators over whether state insurance law required it to put up additional reserves for policy obligations and deficiencies in its unearned premium reserves.

While HOW argued that the then-existing law did not require the added reserves for year-end 1993, regulators maintained that it did.

As of July 1, however, the Virginia state legislature amended the insurance code to clearly require the additional reserves.

# Data bank

Continued from page 2

cover enrollment during the 1994 plan year. The information is to be used by HCFA to help the agency spot claims, chiefly those of older workers who stay on the job after 65, that should have been paid by employer plans rather than Medicare.

For many employers, though, gathering all the information has been impossible. The biggest problem has been that some employers never have collected dependents' Social Security numbers. When employers asked for the information, employees in some cases refused to cooperate, often citing privacy concerns.

"We asked for the information and employees didn't respond. What were we supposed to do?" asked Fred Hamacher, vp of compensation and benefits at Dayton Hudson Corp. in Minneapolis.

Under the law, employers could be fined up to \$1,000 for each employee or dependent not included in its data bank report. HCFA, though, earlier agreed to waive penalties for employers that make a "systematic" effort to collect names and Social Security numbers of dependents (BI, May 16).

But that limited relief from penalties did not apply to other problems employers have had.

One problem—to which HCFA has not yet responded—involves employer reporting obligations for plan participants who become COBRA beneficiaries.

Under the law, annual reports must be filed by Feb. 28—in the case of calendar year plans—for coverage during the previous year.

COBRA, though, allows beneficiaries up to 105 days to opt for coverage and make the first premium payment. So, if workers become eligible for COBRA in December, an employer might not know until April of the next year whether they opted for coverage and which plan they chose.

While the biggest data bank related problem for most employers has been obtaining dependents' Social Security numbers, not all employers have had difficulty.

For example, several years ago, Bluffton, Ind.-based Franklin Electric Co. Inc. began to collect dependents' Social Security numbers as part of its data base.

"We felt the government, at some point, would require us to provide this information," said James Cole, manager of health programs.

Other employers, responding to

the data bank law, had to make a special effort to obtain the information.

Engineering Research Associates Inc. of Vienna, Va., needed about a month to obtain from employees about 70 dependents' Social Security numbers that the Vienna, Va.-based firm was missing.

"We quoted to employees chapter and verse from the (data bank) law on why we needed the information," said Nina Falci, benefits supervisor. Ms. Falci attributes the company's relative ease in obtaining the information to its small size—about 350 employees.

Many employers, though, have not made a major effort to obtain information to comply with the law, benefit consultants say.

"There has been a wait and see attitude," said Bill Gibson, a senior consultant with Sedgwick Noble Lowndes in Philadelphia. "Some thought the law was so absurd on its face that it would either be repealed" or other relief would be provided, Mr. Gibson said.

In the case of small employers, many were not even aware that the data bank law also applied to them, said Linda Meyer, vp-compliance and quality assurance with Harden & Co., a third-party claims administrator in Concord, Calif.

Regardless of the extent of their compliance problems, benefit managers cite the data bank as an example of government overkill.

They say it makes no sense for employers to file coverage information on all employees when the problem of Medicare overpayments chiefly involves older employees.

"The law is much broader than it needs to be. Why do we need to provide Social Security numbers for 2- and 3-year-olds?" asked Ms. Falci.

The Medicare data bank was included as part of a 1993 budget law by legislators to reap more savings from laws passed in the early 1980s that made employer health plans—not Medicare—the primary payer of health care bills for certain individuals, generally workers who remain on the job after 65.

But not all of the anticipated savings were realized. In some cases, hospitals double-billed Medicare and employer plans. In other cases, older workers' health care claims never were sent to the employer. Instead, they were submitted to and paid by Medicare.

However, because of publicity and other government programs, the problem of Medicare paying bills that are employers' responsibility has been greatly reduced, TPAs and consultants said. **BI**

HOW's home warranty policies have a 10-year tail, and the insurer earns 10% of its premium each year over that period, Mr. Cooke said.

Earlier this year, Ernst & Young LLP in Washington issued an audit opinion on HOW's 1993 results summarizing the reserving dispute and noting that consulting actuaries had found HOW's unearned premium reserves to be deficient by \$15 million to \$43.9 million as of last Dec. 31.

Because of the insurance code amendment, HOW's "capital and surplus could be reduced to a level whereby the Commonwealth of Virginia could limit the company's ability to write new business or subject it to other regulatory actions," the audit letter says.

This, and regulators' questioning of HOW's accounting for certain reinsurance expenses, "raise substantial doubt about the company's ability to continue as a going concern," Ernst & Young said.

In July, HOW added \$15 million to its reserves, cutting its surplus to \$4.2 million. It then launched its debt offering to raise new capital.

The insurer is awaiting the results of the insurance bureau examination, but regulators so far have not specified what they consider the amount of HOW's reserve deficiency, Mr. Cooke said.

If regulators and HOW actuaries disagree on the amount of the deficiency, the two sides will have to reconcile the difference somehow, he said.

Meanwhile, the insurer does not

foresee having to curtail its underwriting, Mr. Cooke said.

"We are certainly hopeful that that will not become a problem for us," he said.

Separately, the Ernst & Young letter also noted that a quota-share reinsurance treaty under which HOW has ceded between 45% and 49.5% of its business in recent years will be terminated at the end of any quarter in which HOW's surplus falls below \$10 million.

The treaty, with American Re-Insurance Co., will be reinstated retroactively if the surplus deficiency is cured within 90 days.

Mr. Cooke said that HOW officials have discussed the insurer's situation with American Re and that "that reinsurance is not in peril." **BI**

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## INTERNATIONAL

## Siemens finds new home for property cover

By DON LEWIS KIRK

MUNICH, Germany—Manufacturer Siemens A.G., one of Germany's largest corporations, is taking a large portion of its property insurance program from the German market and placing it in U.S. and U.K. markets.

Citing "better conditions elsewhere," a spokesman for the Munich-based company said Germany's hardening market has forced the corporation to seek foreign alternatives.

Many other companies are complaining about rising commercial insurance rates in Germany, some of which are turning to captive insurance as an alternative (BI, Sept. 19).

Siemens' 1.2 billion deutsche mark (\$777.5 million) property in-

surance program will now be insured by an international consortium led by Waltham, Mass.-based Arkwright Mutual Insurance Co., a member of the Factory Mutual System.

Four German insurers, including Gerling Group, Colonia Group, Alte Leipziger Mutual Life Insurance Co. and former consortium leader Allianz A.G. Holding had fought to keep Siemens' business in Germany.

Playing down the loss to German insurers, a Siemens spokesman called the move "normal procedure."

German insurers, though, fear the move could prompt similar responses from other German companies.

"It's not our intention to harm the German insurance industry,"

said Wolfram Rohde-Liebenau, director of Siemens' captive insurance brokerage firm. "We simply found better conditions elsewhere."

Burdened by German economic recession, companies like Siemens have complained of "unfair treatment" at the hands of insurers since 1992, when a quasi-cartel of insurers and reinsurers began raising rates for very large risks—in some cases by 300%.

German insurers contend the higher rates were badly needed to offset dismal underwriting results in the commercial property line.

However, some companies like Siemens contend higher rates did not accurately reflect their loss experience.

"Our safety record wasn't even considered," said a Siemens

spokesman. "We have excellent risk management, which keeps losses to a minimum. Our premiums did not reflect that."

The bidding between the U.S./British consortium and German insurers for Siemens' property account was ultimately decided on the basis of premiums. At last tally, German insurers asked for a 35 million deutsche mark (\$22.68 million) premium, while the Arkwright-led group sought about 17 million deutsche marks (\$11 million) in premiums.

Roy Mahlstedt, senior account executive at Arkwright in Frankfurt, said lower premium was a factor, but higher deductibles and risk management were the key to the lower bid.

"We offered a different concept," he said. "After our analysis

of the loss history, occurrence and occupancy, Siemens was convinced it could assume as much risk as possible."

Siemens accepted a 15 million deutsche mark (\$9.7 million) deductible, which may be the largest taken by any German company. The high deductible was set after a highly protected risk global management approach determined a level that would remove high-frequency losses, Mr. Mahlstedt said.

"Since you are only insuring the catastrophe exposures, the premium is much more reasonable," he said. "What they were essentially doing in the past was trading dollars back and forth, which is inefficient."

Arkwright applied a location rating basis, which German insurance

*Continued on next page*

## \$100 million losses possible from eruption

By KATE TILLEY

PORT MORESBY, Papua New Guinea—Insured and uninsured losses from a dual volcanic eruption in the town of Rabaul late last month could exceed \$100 million by some estimates.

However, the scope of damage was still undetermined late last week as a team of loss adjusters was waiting to enter the devastated area. Unconfirmed estimates put the toll at 100 million kina (\$108.5 million).

The eruptions coated the town with thick ash heavy enough to collapse roofs. At least two people have died. As a result of the damage, the Papua New Guinean government is considering not rebuilding the town.

Brokers say earthquake and volcano coverage is excluded from property coverages, but most commercial policyholders buy volcano and earthquake extensions. The current rate for the extension is 2.625% of insured value. Commercial property rates for Rabaul vary from 0.35% to 0.5% of insured value. Brokers say some Papua New Guinea underwriters offered only limited capacity for earthquake insurance cover in Rabaul.

Two volcanoes, one north and the other south of the town, erupted on Sept. 19. The first, called Tavurvur, erupted at 6:15 a.m., followed by the volcano Vulcan two hours later. Rabaul, a harbor town with a population of about 40,000 permanent residents, is on the island of New Britain, off the northeast coast of Papua New Guinea. Rabaul is 350 miles northeast of Papua New Guinea's capital, Port Moresby.

Most of the population began evacuating on Sept. 18, after earthquakes rocked the town. The volcanoes, which sandwich Rabaul's Simpson Harbor, began erupting after a quake that measured 5.1 on the Richter scale.

Papua New Guinean police set up roadblocks to keep looters out of the town, and the government has declared a state of emergency.

Several loss adjusters from the Brisbane, Australia, offices of Wyatt Group and Robins MBS Australia Pty. Ltd. have flown to Port Moresby. Paul Owens, managing director of Robins PNG, also is on standby to enter the town as soon as the police-imposed ban is lifted. Peter A. Wyatt, managing director of the Wyatt Group, who is at the

*Continued on next page*



AP/Wide World photo

Claims adjusters have not yet determined insured losses from volcanic eruptions in Rabaul, Papua New Guinea.

## S&amp;P lowers its ratings for Danish, Swedish insurers

By MARIA KIELMAS

Rising interest rates, uncertainty following management changes and problems in debt refinancing have led Standard & Poor's Corp. to lower its ratings for Sweden's Trygg Hansa Insurance Co. Ltd. and Denmark's Topdanmark A/S.

Recent elections in both Sweden and Denmark and the resultant waiting period for new government policy to be implemented has left the macroeconomic environment clouded in both countries and financial institutions in a kind of limbo.

Trygg Hansa's first-half net loss, combined with the abrupt departure earlier this year of the company's president and chief executive officer, Bjorn Sprangare, were the main factors cited by S&P in downgrading the insurer's ratings. Trygg Hansa posted a net loss of 74 million kroner (\$9.66 million) in the first six months of 1994, compared with net income of 638 million kroner (\$82.43 million) a year earlier.

S&P lowered its senior debt ratings on Trygg Hansa AB to BBB+ from A-. Approximately \$147 million of debt is affected, S&P says.

At the same time, S&P lowered Trygg Hansa Insurance Co. Ltd.'s claims-paying ability rating to A+ from AA+. Although the downgrade removes the company's ratings from S&P's CreditWatch, the rating agency has labeled the outlook for the Swedish insurer "negative" from "stable."

S&P notes that Trygg Hansa's weak results in part relate to the rising interest rate environment in Sweden and consequent unrealized losses under the Swedish accounting convention of writing down each individual, non-strategic investment through the profit and loss account to the lower of cost or market values.

Profitability was also affected

*Continued on page 41*

## Britain rejects E.U. paternity leave

By CAROLYN ALDRED

BRUSSELS, Belgium—British companies will not be subject to proposed E.U. legislation that would require employers to provide fathers with time off after the birth of a child.

Michael Portillo, the British government's employment secretary, vetoed a European Union directive giving fathers the right to claim up to three months of unpaid leave after the birth of a baby.

The move came just days before a British parliamentary committee, composed of members of Parliament from all political parties, recommended the adoption of statutory paternity leave.

As a result of the vote in Brussels on Sept. 22, government ministers from the 11 remaining E.U. states plan to go ahead with enacting the directive's proposals in their national legislation, which

will leave the United Kingdom as the only member state with no statutory paternal leave.

Traditionally most E.U. proposals must be accepted unanimously by all 12 member states, but a special opt-out arrangement negotiated by British Prime Minister John Major in the Maastricht Treaty on Social Policy allows Britain to veto proposed social legislation.

Mr. Portillo argued that the introduction of statutory paternal leave, even on an unpaid basis, would harm small businesses that could lose important male workers after the birth of a child.

"The government is not against paternal leave but believes it is not a matter that should be legislated and rammed down employers' throats. It could adversely affect small businesses," said a spokesman for the Department of Employment.

Statutory paternity benefit cur-

rently varies enormously throughout the European Union with no provision in the United Kingdom, Ireland and Luxembourg but up to three years unpaid leave for either parent in Germany, according to research by employee benefits consultant Sedgwick Noble Lowndes Ltd., a London-based subsidiary of Sedgwick Group P.L.C.

In addition, a German father or mother is entitled to 14 weeks of paid parental leave, according to statistics provided by the European Commission's London office. The German government also provides a flat-rate payment for the next 18 months.

In other E.U. countries:

- Belgium. The 15-week statutory paid maternity leave may be changed to paternity leave in the event of the death of the mother, according to the E.C. Either parent can take a career break of six to 12 months on an unpaid basis,

according to Sedgwick Noble Lowndes.

- Denmark. Up to 28 weeks of paid maternity leave is available, including four weeks to be taken during the pregnancy. Of the 24 weeks of benefit paid after birth, the last 10 weeks may be taken by the father.

- France. Fathers are granted up to three days paid leave, according to Sedgwick Noble Lowndes. In the event of an adoption or mother's death, the father is entitled to the statutory 16-week maternity leave, according to the E.C.

- Greece. Either parent is entitled to three months unpaid leave after a statutory three-month paid maternity leave.

- Italy. A maternity leave of five months at 80% of salary is available, while an additional six month leave at 30% of salary is available to either parent if both

*Continued on next page*

## INTERNATIONAL

## Siemens

Continued from previous page  
ers do not use. "The German market is a consortium market. They don't underwrite locations but prefer to look at the whole risk, apply the tariff and say 'We can give you this credit,'" he said.

He insists that Arkwright is not in Germany to undercut rates. "German insurers are involved in HPR programs like this in the U.S., which have much lower rates and deductibles than in Germany."

In 1992, Siemens faced a 75% increase in its premiums. The same year, it was hit by a government increase of insurance taxes of 20%, which raised the company's costs by more than 2 million deutsche marks (\$1.3 million) a year. Siemens did not look into forming a captive for its fire and business interruption exposures because it wanted to reduce its premium, a

spokesman said.

The company is confident that it can live with the large deductible and the HPR approach.

"Factory Mutual investigated nearly all our German factories. They discovered that we are at least approaching the HPR standards. We probably are an HPR risk. We really wanted them to join our game, because without them we would have difficulties in getting the capacity needed," the Siemens spokesman said.

A last-minute attempt by Allianz to sway Siemens to remain with its current insurers failed. Even a top-level meeting between Siemens Chairman Heinrich von Pierer and Allianz Chairman Hennig Schulte-Noelle did not hinder Siemens from moving its account.

Allianz has been spearheading efforts by the German insurance industry to return to underwriting profitability by pushing for higher rates. But inevitably, this harden-

ing of rates and terms has led companies like Siemens to seek alternatives.

For Allianz it was a matter of principle. "We won't take even a good risk like Siemens at any price," said a spokesman for Allianz. "If others think they can do it better, all the more power to them."

Much is at stake. While German insurers reported an 11.5% increase in premiums from commercial property insurance last year, largely on the strength of rate hikes, underwriting losses reached 210 million deutsche marks (\$120.9 million) in 1993, following 650 million deutsche marks (\$401.5 million) in losses a year earlier.

Nevertheless, German insurance buyers insist the time has come for a change.

"The finance executives of major German corporations are now asking themselves if they can't save costs the same way" that Siemens did, said Fritz-Juergen Cremer, chairman of the insurance division of the Federation of German Industries and risk manager of chemical manufacturer Hoechst A.G.

Mr. Cremer said it's a natural consequence. "Companies are looking closely at their risks," he noted. "It could very well have a mudslide effect."

"As a signal effect, it's a good thing," said a spokesman for the insurance unit of German steel manufacturer Thyssen A.G. in Dusseldorf. "It's time the German insurance industry woke up."

"It's not a solution for everyone. We don't have Siemens' low loss ratio. We also have a very high (possible maximum loss) and therefore no possibility to switch. But it's a good thing for industry in general," the Thyssen spokesman said.

Siemens' decision to switch insurers is a major coup for Marsh & McLennan Cos. Inc. Through its German subsidiary, Gradmann & Holler GmbH, M&M was able to broker the agreement between Arkwright and Siemens.

Siemens sought willing insurers but chose Arkwright because it already works with the insurer in the United States.

"The only amazing thing is that it hasn't happened until now. After all, U.S. companies do get their insurance on the continent. Why shouldn't German companies do the same in the USA? German corporations have global presence, why shouldn't their insurance be global?" he observed.

Mr. Mahlstedt said he expects more German companies will follow in Siemens' footsteps. **BI**

## Eruptions

Continued from previous page  
adjuster's office in Lae, Papua New Guinea, said he expected to be able to enter the town on Saturday.

Jim Wennerbom, general manager of Queensland Insurance (PNG) Ltd., a unit of Sydney-based QBE Insurance Ltd., said it would be several days before underwriters had any idea of the insured losses.

Peter Greenlees, manager of American International Group Inc.'s office in Port Moresby and chairman of the Insurance Underwriters' Assn. of Papua New Guinea Inc., and Robert Anderson, the IUA's executive officer, also say it is too early for damage estimates.

Paul Wilkins, a broker with Marsh & McLennan Cos. Inc.'s Papua New Guinea subsidiary, Kila Bowring Pty. Ltd. in Port Moresby, agrees. But he said he understood damage at the Carpenters Pty. Ltd. coconut products processing factory, owned by MBS Group of Malaysia, was "not too serious." The factory is one of the town's major industries.

Mr. Wilkins confirmed that most commercial policyholders in the town had earthquake/volcano extensions, but "premiums are fairly expensive and some people made a commercial decision" to limit their cover.

He noted that a riot, strikes and civil commotion extension was "freely available" for risks in Rabaul. Policyholders whose properties were looted will file claims under the ex-

tension, brokers confirmed.

Richard Kassman, managing director of Sedgwick Kassman Pty. Ltd. in Port Moresby, said a video of the town taken by underwriters flying over Rabaul showed that one section of the town, chiefly a residential area, was "devastated," but the industrial area was not as affected.

The main business district was "very badly damaged," he said. Volcanic ash on some buildings was three feet deep. "It looks like a town in the Alps with snow all over it. . . . The weight of the ash has flattened roofs," Mr. Kassman said.

He is expecting a claim of about 500,000 kina (\$542,550) from damage to a school in Rabaul, operated by the International Education Agency. Another of his clients, Island Aviation, had damage to a hangar but was able to move planes from the Rabaul Airport before the volcanoes erupted, he said.

He said underwriters will need to develop a consistent policy for Rabaul claims because several issues must be clarified.

Proximate cause would need to be determined for policyholders with earthquake coverage. For more than a decade, underwriters have written indemnity, not replacement, coverage for earthquake and volcano perils in the Rabaul area, he noted.

There also may be questions over the riots, strikes and civil commotion extension because property owners were unable to access their properties to mitigate those losses, Mr. Kassman said. **BI**

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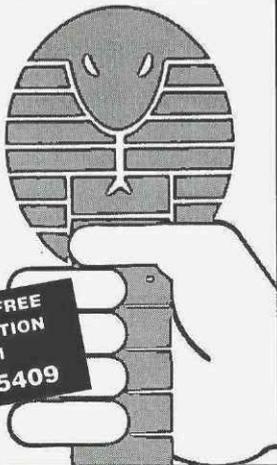
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## Paternity

Continued from previous page  
parents work, according to the E.C.

• The Netherlands. Sixteen weeks of maternity leave are provided, according to the E.C. And up to six months' unpaid part-time leave also is available for parents of children under 4 years old. To qualify, the employee must have at least one year's prior service and continue to work a minimum 20-hour week.

• Portugal. A paid paternity leave of 30 to 60 days is provided in the event of physical or mental incapacity of the mother, the E.C. says.

• Spain. A maternity allowance of 16 weeks is provided. Four weeks of this is available to the father if both parents work, the E.C. says. And either parent with at least one year's service can take unpaid leave of up to three years, according to Sedgwick Noble Lowndes.

In response to the British government's decision to opt out of the statutory paternity provision, the Confederation of British Industry called for a guideline on parental leave.

"U.K. employers are not opposed in principle to the provision of parental leave. Indeed, many already grant it under their terms and conditions of employment," said Howard Davies, director-general of the CBI.

A recent survey of British companies by the Equal Opportunities Review in Britain found that over two-thirds provide paternity leave.

The survey showed that 245 out of 356 private and public companies surveyed provided paternity leave arrangements that was paid in all but two cases. Three-quarters provided for contractual leave with one-quarter offering discretionary leave. In most cases, paternity leave was introduced since 1990.

The median leave was five days, falling to four days if municipal and local authorities and public health authorities are excluded from the sample.

About 16% of organizations have improved paternity benefits since

they were introduced, but two organizations have reduced benefits.

The survey said the cost of paternity leave to employers in terms of lost time is likely to be negligible.

Of those respondents able to provide details, the survey shows that during 1993, 5,899 employees took paternity leave from 126 organizations employing 543,576 workers. On average, the leave entitlement was five days, resulting in a total paternity leave of about 29,495 days. In terms of the total workforce, this equals 0.054 days of holiday per employee per year or, assuming a 35-hour week, 23 minutes per person per year.

Meanwhile, one of the government's cited reasons for its decision to opt out of the provision of paternity leave was the recent enhancement of British maternity benefits.

"The government believes that we have very good maternity benefits which have been enhanced through the 1993 Employment Rights Act," said the Department of Employment spokeswoman.

Indeed, the new rights for women employees came into effect in June and apply to women expecting babies on or after Oct. 16, 1994. Under the Act, all pregnant employees now will have the right to a minimum of 14 weeks maternity leave and full protection against being dismissed because of their pregnancy, the Department of Employment said in a statement.

Women who have completed two years with their current company will continue to be entitled to the longer period of maternity absence of about 40 weeks and receive statutory maternity pay for up to 18 weeks. And under the 1993 Act, all pregnant women who have completed at least 26 weeks' continuous service and whose earnings average at least 57 pounds per week (\$90) will qualify for up to 18 weeks' statutory maternity pay. SMP is payable by the employer at a rate of 90% of earnings for the first six weeks and then at 52.5 pounds per week (\$83) for 12 more weeks. **BI**

## INTERNATIONAL

## Ratings

Continued from page 39

by exceptional events, including protracted winter conditions in Sweden earlier in the year, by an increased incidence of industrial fire claims and by unanticipated losses on its assumed reinsurance portfolio, which was placed in runoff in October 1993.

According to S&P, a further factor underlying the downgrades is a lack of success in two strategic group initiatives:

- A planned alliance between Trygg-Hansa and leading Swedish mutual pension company, SPP, has been abandoned.

- Trygg Hansa has yet to make significant progress in its declared aim of attracting a strategic cooperation partner.

Neither setback threatens the strong capital base and operations of the Trygg Hansa group, S&P noted, but the absence of a cooperation partner leaves the Swedish holding company with an involuntary 64.5% participation in U.S. insurer The Home Holdings Inc.

This investment was originally intended to be shared with the proposed cooperation partner, but at present depresses group performance by providing an inadequate return on the substantial investment of capital and management time made by the group.

S&P says that it expects that new senior management at Trygg Hansa will wish to review the group's accounting of its investment in The Home.

Stock market analysts have also noted that the picture will be clouded further as the new chief executive officer will need time to implement any new strategy during a period of great nervousness in the capital markets about the course of the Swedish economy and the ability of a newly-elected Social Democrat government to implement necessary cuts in state spending.

Sweden's state debt of 1.9 trillion kronor (\$255.7 billion) and its budget deficit of 181 billion kronor (\$24.4 billion) are among the highest in Western Europe.

A Trygg Hansa spokesman in Stockholm said that even after the S&P downgrades, Trygg Hansa is still the highest-rated insurer in Sweden. The company also announced that Lars H. Thunell would become the company's new president and CEO effective Nov. 1.

The spokesman said that Mr. Thunell would most likely require some time to settle into his job before reviewing corporate strategy.

Mr. Thunell was formerly president of Securum, an arm of Nordbanken established by the government as a depository for bad loans when the government took over Nordbanken and other banks in the aftermath of the 1991-93 Swedish banking crisis. Mr. Thunell had earlier worked as executive vp at the Swiss-Swedish engineering group, Asea Brown Boveri Inc., moving from that post to become deputy CEO at Nordbanken in 1991.

Meanwhile, S&P also lowered its ratings of Danish life insurer Topdanmark A/S's senior debt to B from BBB-, and its Eurocommercial paper to B from A-3. The ratings remain on CreditWatch where they were placed July 6 with negative implications, though the implications are revised to "developing," meaning the ratings may be raised or lowered.

About \$129.6 million of debt is affected.

S&P said that the downgrade reflects deterioration in Topdanmark's financial flexibility following its failure to achieve changes to its shareholder voting restrictions.

The company had tried to give larger shareholders a greater voting share than they currently are allowed, but that move was rejected by the same shareholders as insufficient. S&P said that this failure has significantly reduced the likelihood of Topdanmark's ability to achieve a successful equity issue to supplement its increasingly stretched liquidity.

Stock market analysts explain that the fundamental problem with Topdanmark's situation is a change in its strategy of increasing market share through building alliances with regional Danish banks. Topdanmark invested heavily in regional banks, in particular Aktivbank, just before the banks incurred sizable losses from bad loans, poor investments and turbulent interest rates. Although the insurance company has disposed of its banking investments, the losses eroded Topdanmark's capital base, even though the insurance operations of subsidiary Topdanmark Forsikring are still good, analysts said.

S&P said that the majority of the company's debt, about 1.4 billion kronor (\$231 million), is maturing within the next 12 months.

As of June 30, liquidity at the holding company is tight, with cash assets of only 180 million kronor (\$29.7 million) and a further 212 million kronor (\$35 million) of other non-affiliated investments, compared with investments in and exposures to subsidiaries and affiliates totaling 3.4 billion kronor (\$561 million), a sum equivalent to 159% of shareholder funds.

Consequently, the company remains heavily dependent on its subsidiaries for liquidity. And these companies may be constrained to the degree to which they can support their parent without adversely affecting their own financial strength, S&P said.

S&P's move was not unexpected, according to a Topdanmark spokesman. He said that Topdanmark is in the midst of a refinancing with its partners in a European joint venture called Eureka, which include Wasa Insurance Co. of Sweden, Occidental of Portugal, Friends Provident of the United Kingdom and AVCB of the Netherlands. Eureka jointly holds about 30% of Topdanmark's equity.

The downgrade of Topdanmark comes in the wake of concern about the future of another Danish insurer, Baltica Forsikrings, following a Danish Supreme Court ruling on its life insurance and pension subsidiary Danica.

The Supreme Court ruled that while the Danish government was within its rights to privatize the former state-owned life insurer Statsanstalten, which was bought by Baltica and renamed Danica, it left unanswered the question of if and how any dividends would be paid to Baltica by Danica. The ruling has delayed indefinitely plans by Baltica's largest shareholder, Den Danske Bank, to sell its stake in the insurer until this issue is resolved (*BI*, Sept. 13, 1993). Since the issue has political overtones, the fact that a new coalition government has only just been elected in Denmark means the Danica question could remain unresolved for some time. **BI**

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# Reform

Continued from page 1  
this year that would be too much change too fast," said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

This assessment comes in the wake of last week's decision by Senate Majority Leader George Mitchell, D-Maine, to pull the plug on Senate consideration of comprehensive health care reform legislation.

Too little time, combined with Republican "obstructionism," made it impossible for Congress to take action on reform legislation in the remaining few days of the session, Sen. Mitchell said.

However, last week, Senate Finance Committee Chairman Daniel Patrick Moynihan, D-N.Y., was making a last-ditch effort to

win passage of a scaled-back package that includes curbs on pre-existing medical condition exclusions, expanded health insurance tax breaks for the self-employed and health insurance subsidies for poor women and children.

Congressional observers, though, give Sen. Moynihan's effort little chance of success.

Most of the reform speculation now is focused on the type of proposals that Congress will consider next session in the wake of the collapse of the administration's effort to enact sweeping legislation this year.

At the top of the priority list will be legislation to make it easier for the states to pass their own reform proposals. Currently, the pre-emption provisions of the Employee Retirement Income Security Act prevent a state from enacting laws that "relate" to em-

ployee benefit plans unless the state receives a special waiver from Congress.

Without such waivers, states like Oregon and Washington cannot implement previously passed legislation that requires employers to offer and pay for group health care coverage.

And New York and other states that have imposed surcharges on hospital bills—used to partially offset the cost of uncompensated care—incurred by employees covered by employer-provided health care plans—have seen those laws struck down by courts as violating ERISA.

In the wake of the congressional failure to enact federal health care reform legislation, states will expand their efforts to convince Congress to pass legislation to weaken ERISA's pre-emption provision so states have the tools to pass their own reforms, benefit

managers and lobbyists say.

"There will be great sympathy on Capitol Hill to give states more freedom to do their own reforms," said Bob Dankmyer, vp-employee benefits at Marriott Corp. in Bethesda, Md.

"States are going to say: 'Since you (Congress) couldn't enact federal reforms, give us the means to do our own reforms,'" said James Klein, executive director of the Assn. of Private Pension & Welfare Plans in Washington.

Benefit managers fear ERISA waivers almost as much as reviled Clinton administration proposals like mandatory state-established health care purchasing alliances.

They warn that if Congress guts ERISA's pre-emption provisions to automatically permit states to implement health care reform legislation, multistate employers will be bombarded with a maze of different requirements.

"Can you imagine the problems we would face if we had to comply with dozens of different benefit rules?" asked Fred Hamacher, vp of compensation and benefits at Dayton Hudson Corp. in Minneapolis.

Others say states—freed from the constraints of ERISA—would rush to pass laws imposing taxes on self-insured health plans as an alternative to politically riskier general tax increases.

"States are looking for revenue sources," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington-based benefits lobbying group.

So-called insurance reform, which includes curbs on pre-existing medical condition exclusions, is one of the few areas that Republicans and Democrats alike say are necessary. As a result, its consideration as part of a reform

Continued on next page

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Administrative:	
CEO's, Presidents, and Owners,	2,528
Vice Presidents, General Managers and Other Administrative Personnel	4,118
Financial	
Chief Financial Officers and Vice Presidents of Finance	2,171
Secretaries, Treasurers, controllers and other Financial Personnel	3,335
Risk/Employee Benefits:	
Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	16,157
<b>Sub-total</b>	<b>28,309</b>
Associations	369
Government, Unions and Educational Institutions	974
Commercial Consumers	
<b>Sub-total</b>	<b>29,652</b>
Insurance Agents and Brokers	8,408
Insurance Companies	8,181
Accountants, Actuaries, Attorneys & Consultants	3,611
Managers & Health Care Providers	1,903
Others Allied to the Field	849
<b>TOTAL</b>	<b>52,604</b>
★ Source Business/Occupational breakdown of qualified circulation, May 30, 1994 Issue, as submitted to BPA for June 1994 BPA Publisher's Statement.	

Continued from previous page  
package is a given.

Similarly, support for health insurance subsidies for lower-income individuals cuts across party lines and consideration of those subsidies also is unquestionable.

Some other proposals—the staple of the Clinton health care package—will not come back. Legislators this year buried mandatory purchasing alliances and their return in proposals next year appears impossible.

In addition, legislators wanted no part of the administration's proposal to control health care prices through a global health spending budget.

An employer mandate—once the leading idea of both the administration and many congressional Democrats as the best way to expand health care coverage—will face rough sledding, if it even comes up.

Legislators, recognizing the power the small-business lobby wielded this year, will be reluctant to renew the battle for an employer mandate.

"The small-business community demonstrated that it is a very potent force," said Hewitt's Mr. McArdle.

Perhaps the biggest question of all is whether Congress, after this year's almost certain failure to pass health care reform legislation, will be more successful in the next round.

Some benefit managers have their doubts.

"If Congress couldn't pass anything over the last two years despite so much time and effort, it is questionable they can next year," said Helen Darling, manager of health care strategy and programs at Xerox Corp. in Stamford, Conn.

"Added to that, there is so much fear, anxiety and confusion that will have to be overcome," she continued.

Others, though, say the chances of legislation being enacted are better because Congress won't waste time on politically dead issues like mandatory purchasing alliances.

"The most important consequence of this session's developments is that next year we'll start with a more reasonable approach," said Leslie Aubin, senior director of government relations at the National Assn. of Wholesaler-Distributors in Washington.

Meanwhile, benefit consultants say employers—despite earlier predictions to the contrary—did not put health care overhaul projects, like expanding managed care plans, on hold while Congress was knotted in considering legislative proposals.

"Employers continued to move very aggressively. No one held off because of what the government might do," said Kevin Meehan, a consultant with The Wyatt Co. in Washington.

Employers pressed ahead on plan overhaul projects because of both skepticism that Congress would pass substantive reform legislation as well as their own bottom-line orientation not to wait to take action to control costs, according to Wyatt's Mr. Meehan.

"There was a feeling of why wait. Employers thought that what, if anything, Congress does may not happen for two or three years," said Stephen Parahus, a consultant with Kwasha Lipton in Fort Lee, N.J. "In the meantime, an employer could have lost out on substantial savings because the payback from plan redesign can be so quick," he said. **BI**

# Panel has mixed views of reform drive's end

By CHRISTINE WOOLSEY

CHICAGO—It will take a massive economic downturn, in which the bulk of the working middle class fears the loss of health care coverage, to get Congress to pass comprehensive health care reform in the next session, predicts a corporate benefits executive.

Even then, the same bitter quagmire of disagreement over who will pay for health care reform will likely also doom the chances of passing substantial reforms in 1995.

That isn't necessarily bad news for some players in the recently-ended health care reform debate.

"When health reform didn't pass, we were disappointed because there is a fear that if something is not done, we'll be in the same grind as during the 1980s," said Robert W. Batey, manager of benefit planning at Ameritech Inc. in Chicago.

Mr. Batey represented the Assn. of Private Pension & Welfare Plans, a large employer lobbying group, during a town hall meeting on health care reform held last week in Chicago, sponsored by the Chicago chapter of the International Society of Certified Employee Benefit Specialists.

Several other panelists, including representatives of labor, small business, insurance and provider groups, joined Mr. Batey in attempting to predict the future of

health care reform following its untimely death (see story, page 1).

Many large employers were somewhat relieved when none of the proposed health reform bills could gain a consensus during the last few weeks, Mr. Batey said.

"For large employers, the health care debate played out against a background of successful health care plans," he explained. "The majority of our employees are covered, costs have been held down—Ameritech's costs are half of the national average—and we

**'The majority of our employees are covered, costs have been held down,' says Robert Batey.**

didn't want our efforts to be hurt rather than helped by national health care reform."

John Krichbaum, vp of health policy management for the American Medical Assn. in Chicago, said the AMA is "saddened and disappointed" that Congress couldn't manage to pass a bill.

"We had as much concern as other organizations about the bureaucratic overlay in the bills," he said. "But we would have rather seen something happen and come

back and fix it later."

The opportunity to enact dramatic health reform legislation may not come around again for some time, Mr. Krichbaum warned.

"If there is anything to blame for the death of health care reform, it's the huge costs of universal coverage and the sheer complexity of the issues," said Jae L. Wittlich, senior vp and chief operating officer-group benefits of CNA Insurance Cos. in Chicago.

"I think the health care reform debate ran out of the starting gate heading the wrong way," commented Mark Pufundt, executive director of policy and membership services for the U.S. Chamber of Commerce's Midwest Membership Center.

Instead of trying to craft proposals that contained something for everyone, Congress should have been more focused on how to finance health care reform, said Mr. Pufundt.

Indeed, disagreement over how to finance universal coverage occupied much of Congress' time during the summer of 1994.

Disagreement still exists. During the town meeting, the more than 100 attendees were polled for their views on some of the same questions federal policymakers faced this year. The audience was made up of a variety of industry segments: 39.8% represented the insurance industry; 21.2% repre-

sented big business; 13.3 represented the health care industry; 6.2% represented small business; 2.7% represented labor; and the remaining 16.8% represented other industries.

While the majority of attendees—81%—said they support the goal of universal coverage for all Americans, they lacked consensus over how to finance it.

Forty-six percent said the best way to finance benefits, if mandated by Congress, would be through employers, while 30.9% said the best way would be through taxes and 22.3% said individuals should finance their own health care coverage.

The attendees also were asked if the current inaction on health care reform has left them frustrated or relieved. Fifty-six percent said they were relieved, while 44% said they were frustrated.

However, one panelist said "a post mortem" for health care reform isn't appropriate. The pressures that prompted the debate, including increasing costs, inefficiencies and the need for quality standards, will continue, said David Cohen, assistant director of education for the AFL-CIO's Department of Education in Washington.

"Collective bargaining agreements will be negotiated on a massive scale in 1995 and 1996 and health care will be a big issue," he predicted. **BI**

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## Insider Trading

**Aetna Life & Casualty Co.:** Ronald E. Compton, chairman, exercised an option for 200 common shares and disposed of by gift 200 common shares at \$45.63 each on Aug. 24. He now directly and indirectly holds 18,975 common shares.

Aetna Life & Casualty stock closed at \$45.38 a share on Sept. 23.

**Argonaut Group Inc.:** Randall J. Mellin, vp, sold 1,500 shares of common stock at \$29.75 each on Aug. 30. He now directly holds 653 common shares.

Argonaut stock closed at \$29.75 a share on Sept. 23.

**Chubb Corp.:** Donn H. Norton, vp, exercised an option for 2,094 shares of common stock at \$47.75 each from July 26 to July 28 and sold, 2,594 shares between \$73.13

and \$74.25 each from July 26 to July 28. He now directly and indirectly holds 1,235 common shares.

Chubb stock closed at \$69.88 a share on Sept. 23.

**General Re Corp.:** Tom N. Kellogg, officer of subsidiary, sold 600 shares of common stock at \$110.25 each on July 22. On Aug. 9, he exercised an option for 5,742 common shares between \$55.50 and \$55.81 each and sold them between \$110.63 and \$110.88 each on the same day. He now directly and indirectly holds 24,094 common shares.

General Re stock closed at \$107.25 on Sept. 23.

**Hartford Steam Boiler Inspection & Insurance Co.:** Donald M. Carlton, vp, sold 3,000 shares of common stock between \$44.75 and \$45 each on Aug. 8 and now directly and indirectly holds 30,307 common shares.

T. Skipwith Lewis, vp, sold 3,000 shares of common stock at

\$45.75 each on Aug. 4 and now directly and indirectly holds 28,075 common shares.

Keith S. Hynes, retired, sold 1,350 shares of common stock at \$46.13 each on June 13. Mr. Hynes now directly and indirectly holds 16,217 common shares.

Hartford Steam Boiler stock closed at \$43.88 a share on Sept. 23.

**Humana Inc.:** Irwin Lerner, director, bought 2,000 shares of common stock at \$16.50 on July 7 and now directly and indirectly holds 3,000 common shares.

Humana stock closed at \$22 a share on Sept. 23.

**Kemper Corp.:** John W. Burns, officer, exercised an option for 12,700 shares of common stock between \$20.63 and \$38.38 each on Aug. 23 and sold them at \$60.80 each on the same day. Mr. Burns now directly holds 109 common shares.

Alan J. Baltz, vp, exercised an

option for 24,980 shares of common stock at an unreported price from Aug. 5 to Aug. 16. To cover transaction costs, Mr. Baltz turned in 447 of the shares for \$61.38 each from Aug. 5 to Aug. 16 and sold 24,980 shares in the open market at \$61 each during the same period. He now directly holds 5,001 common shares.

Kemper stock closed at \$60.75 on Sept. 23.

**Lincoln National Corp.:** Robert K. Malik, vp, sold 2,000 shares of common stock at \$36.25 each on Aug. 11 and now directly and indirectly holds 5,670 common shares.

Richard Stuart Robertson, vp, sold 500 shares of common stock at \$37.63 each on Aug. 24. He now directly and indirectly holds 21,141 common shares.

Lincoln National stock closed at \$36.13 a share on Sept. 23.

**NAC Re Corp.:** Thomas C. Jones, officer and director, exercised an option for 5,000 shares of common stock at \$13.61 each from Aug. 18 to Aug. 31 and sold 37,375 shares between \$26 and \$26.50 each during the same period. He now directly holds 12,000 common shares.

NAC Re stock closed at \$26.38 a share on Sept. 23.

**Ohio Casualty Corp.:** James A. Metz, retired, indirectly sold 1,000 shares of common stock at \$30.63 on July 29 and no longer holds shares in the company.

Barry Schuyler Porter, officer, exercised an option for 1,500 shares of common stock at \$13.63 each on Aug. 10. To cover transaction costs, he turned in 1,500 of them for \$32.50 each on Aug. 10. He now directly and indirectly holds 24,497 common shares.

Ohio Casualty stock closed at \$31.25 a share on Sept. 23.

**Poe & Brown Inc.:** Charles W. Poe, director, exercised an option

for 939 shares of common stock at \$7.60 each on Aug. 30. He now directly and indirectly holds 468,586 common shares.

Poe & Brown stock closed at \$20.50 a share on Sept. 23.

**SAFECO Corp.:** Dan D. McLean, officer of subsidiary, exercised an option for 2,457 shares of common stock between \$33.75 and \$47.88 each on Aug. 4. Mr. McLean now directly holds 8,295 common shares.

SAFECO stock closed at \$50.88 a share on Sept. 23.

**SCOR U.S. Corp.:** Barry Golub, retired, exercised an option for 1,600 shares of common stock at \$8 each from July 12 to July 14. He sold 2,479 shares at \$11 each from July 12 to July 14 and no longer holds shares in the company.

SCOR U.S. stock closed at \$11.38 a share on Sept. 23.

**Trenwick Group Inc.:** Michael F. Mather, officer of subsidiary, exercised an option for 1,250 shares of common stock at \$19.75 each on June 10. He now directly holds 7,296 common shares.

Trenwick Group stock closed at \$37.50 a share on Sept. 23.

**USF&G Corp.:** Robert J. Hurst, director, indirectly purchased 9,300 shares of common stock at \$13.50 each on Aug. 2 and sold 9,300 shares at \$13.25 each the same day. He now directly and indirectly holds 6,000 common shares.

USF&G stock closed at \$13.38 a share on Sept. 23.

*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.*

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# Superfund

Continued from page 1

Resolution Fund would have to be reauthorized by a conference committee, a time-consuming task at a time when most lawmakers want to go home to campaign for re-election.

Sen. Dole noted the House's lack of action in his obituary for Superfund reauthorization.

"I just heard that the House may leave next Wednesday," he said. Sen. Dole added that the Senate calendar is pretty full through the end of this week. The time to pass a bill has run out, he said.

However, Sen. John D. Rockefeller IV, D-W.Va., scoffed at Sen. Dole's reasoning. Opponents of reauthorization had cited a shrinking legislative calendar a month ago as reason to delay action, he said. In fact, they had offered that argument "indeed, two months ago," said Sen. Rockefeller.

Proponents of the reauthorization package are not ready to give up yet, citing the Finance Committee's approval of S. 1834.

"Our sense of confidence that Con-

gress will act this year on this important legislation was renewed with today's vote in the Senate Finance Committee," Mike McGavick, director of the American Insurance Assn.'s Superfund Improvement Project, said last Wednesday.

"Those who urged delay once again have failed to make their case. The fact the bill has now passed three subcommittees and five committees—or one-third of all members of Congress—stands as solid proof that members of Congress agree this is a good bill for all Americans," Mr. McGavick said.

But some reauthorization bill supporters indicated during a press conference on the eve of the Senate Finance Committee's action that they might have to come back next year to get the bill enacted (see related story).

The Finance Committee's debate centered around the reauthorization plan's EIRF provisions. The EIRF, which is designed to reduce litigation between policyholders and insurers over Superfund coverage, has proved to be the most contentious portion of the bill.

Most of the AIA member compa-

nies supporting the EIRF, while the Reinsurance Assn. of America, the Risk & Insurance Management Society Inc. and most other insurers opposing it.

Insurance opponents object to having to pay a special tax, estimated at \$810 million a year for 10 years, to pay for the settlements offered by the EIRF to policyholders. Policyholders who accepted the settlements, which would represent a portion of their cleanup costs, would have to agree not to sue their insurers for more.

The EIRF taxes would be raised through a system of retrospective and prospective premium taxes levied on most commercial lines.

In an attempt to quell opposition from smaller insurers, the Clinton administration offered to increase the threshold of premiums written by direct insurers subject to the retrospective tax to \$250 million from the previously proposed \$50 million.

Assistant Treasury Secretary Leslie Samuels said that the higher exemption meant that only 91 direct insurers would have to pay the retrospective tax, rather than the more than 600 that would have had to pay

under the lower exemption.

This did not meet the objections of smaller insurers, as Jack Ramirez, executive vp of the National Assn. of Independent Insurers, told the Senate committee after having been invited to give a brief statement. Mr. Ramirez, also speaking on behalf of the Alliance of American Insurers and the National Assn. of Mutual Insurance Cos., said the groups remained "opposed because the amendment does not address the basic inequity of the tax." He said keeping the prospective tax meant that insurers that have little or no Superfund liability would have to "pick up the tab" for larger insurers' past liabilities.

Reinsurers that hoped to get a more favorable tax rate in the most recent rewrite of the bill also oppose the measure. A few weeks ago, the RAA gave its conditional approval to a revised Superfund tax plan, though withholding support for the EIRF, if they received retrospective tax rates similar to those imposed on primary insurers (BI, Sept. 19).

However, the reinsurers' retrospec-

tive rate was set at 0.48% over the EIRF's projected 10-year life span, compared with a retrospective tax rate of 0.22% for direct insurers during the first four years of the EIRF, after which insurers' tax would shift to a prospective premium tax of 0.69%. Domestic reinsurers also objected to how the relative taxes would be split between domestic and foreign reinsurers.

"Let's not kid ourselves, the taxing provisions are unfair," said Sen. Malcolm Wallop, R-Wyo., as he introduced an amendment to strip the EIRF from the Superfund bill. He said the EIRF tax was really "a broad-based tax designed to be borne indirectly by the general public," who would pay for it through higher premiums.

But with little debate, the Wallop amendment died on a 13-to-7 vote.

A trio of other amendments, dealing with non-germane matters such as tax breaks for self-employed people who buy health insurance and the taxation of disaster benefits paid to farmers were also defeated before the committee approved S. 1834. ■

# Settlement

Continued from page 2

unpaid claims. The payments from Employers Reinsurance Corp., Fireman's Fund Insurance Co., and units of American International Group Inc. could add up to as much as \$4 million, lawyers say.

Settlements already reached with insurers of other parties in the case—including Empire and Golden Eagle Insurance Co.—amount to more than \$2.5 million, lawyers say.

Insurers for dozens more defendants had not settled late last week, including Transamerica Insurance Group, Continental Casualty Co. and RLI Insurance Co., lawyers in the case say.

U.S. District Judge Milton Pollack had set today as a deadline for settlements. Trial is scheduled for January.

An amended class action complaint was filed earlier this year in U.S. District Court in New York, charging that roughly 8,000 people were defrauded in a nationwide health insurance scam that involved several allegedly phony insurers and their operators—some of whom have criminal convictions—and more than 500 wholesale and retail agents and brokers.

The suit charges that in 1988 Mr. Loeb, then a five-time convicted felon, obtained an Empire group health insurance contract for Consolidated Local 867, a purported labor union he had formed. In fact, Local 867 was a sham Mr. Loeb set up to market the Empire coverage nationwide to anyone who joined the union, the suit alleges.

Mr. Loeb—who went on to form another allegedly phony union, the National Council of Allied Employees—was sentenced to 71 months in prison last year for embezzling funds from Local 867's health plan (BI, Dec. 13, 1993; May 18, 1992).

The solicitation of mainly non-New York policyholders was illegal, and Empire terminated the contract in 1990, the suit says.

About 4,100 of the original 8,631 Empire policyholders were then rolled over into a series of allegedly fraudulent offshore insurers over the next three years. The insurers and several of their operators, named as defendants in the suit, include:

- Winston Hill Assurance Co. Ltd. of the Turks & Caicos Islands, and George Wilson and Norwood Rolle, Bahamian citizens who were allegedly representatives of the insurer.
- Anchorage Fire & Casualty Co.

Ltd. of the Turks & Caicos and Antigua, and Randy Glad, an Anchorage principal. Anchorage is being liquidated by Tennessee regulators (BI, June 1, 1992).

- Promed International Ltd. of the British Virgin Islands.

- Old American Insurance Co. Ltd. of the Turks & Caicos, one of many fraudulent insurers operated by Mr. Teale, who died in April while serving a 17-year fraud sentence (BI, April 18).

- Provident Capital Indemnity Ltd. of Dominica, which reported \$75 million in allegedly bogus assets on its balance sheet; and Robert Roy, a PCI official who pleaded guilty to a felony charge in Florida connected to PCI's operations (BI, May 10, 1993; Nov. 2, 1992).

- First Assurance & Casualty Co. Ltd. of the Turks & Caicos and its president, Jesse Maynard. First Assurance filed for bankruptcy in Oklahoma last year (BI, March 7).

The lawsuit charges these defendants with violations of the federal Racketeer Influenced and Corrupt Organizations law.

It also levels RICO charges against Mr. Loeb and several other individuals allegedly involved with the health plans:

- Harvey I. Glick, accused of helping to organize the scheme's network of agents.

- Arthur Alvin Haney, founder of two groups that marketed the allegedly phony coverage.

- Raymond A. Huelfeld, who allegedly acted as administrator for certain of the offshore insurers and who jumped bail after pleading guilty to fraud charges in Ohio and Kentucky, the lawsuit says.

- Donald K. Anderson, an officer of American Healthcare Underwriting Managers Inc. of San Francisco, who the suit says represented Winston Hill and PCI.

- Ferrell Travis Riley, a consultant with M&M Management Corp. of Kansas City, Mo., who allegedly represented another offshore company involved with the plans (BI, Jan. 31).

The lawsuit also accused Empire of fraud, negligence and bad faith for failing to detect the alleged Local 867 Ponzi scheme.

It also levels negligence charges against more than 500 agents who produced business for the plans in several states.

Empire earlier this year agreed to pay \$1.5 million to settle the suit, and other defendants have agreed to more than \$1 million in payments, including a settlement of roughly

\$700,000 from Golden Eagle, the E&O insurer for about 35 of the agent defendants, said Mr. Cohelan of Cohelan & Khoury in San Diego.

Last week, E&O insurers for dozens of other agent defendants also reached settlement agreements.

Under separate agreements, Employers Re, Fireman's Fund and AIG units will pay amounts equal to roughly 71% to 75% of valid adjusted health claims left unpaid in the alleged scam, lawyers involved in the case say.

AIG insured between 50 and 70 of the agents, confirmed Thomas Manisero, a lawyer with Wilson, Elser, Moskowitz, Edelman & Dicker in New York. Employers Re and Fireman's Fund together insured 60 or 70 agents, said their lawyer, David H. Paige of Lustig & Brown in New York.

Mr. Manisero and Mr. Brown both added that the insurers continue to receive new notices of claims from agents who have been added as defendants in the case.

Robert L. Brace, a lawyer with the Santa Barbara, Calif., firm of Hollister & Brace, representing the plaintiffs, said payments by the three insurers under the settlements could total about \$4 million.

Mr. Paige, however, said the claims will be carefully investigated and that Employers Re and Fireman's Fund may end up paying "well under \$1 million" combined.

"The great majority of the claims cannot be traced to any insured agent," Mr. Paige said. ■

## Superfund bill backers to try again

WASHINGTON—Supporters of the Clinton administration's Superfund reform package will be back next year to push for reforms if lawmakers fail to reauthorize the program during the waning days of the 103rd Congress.

"We would try our best to hold the coalition together," Richard D. Smith told a Washington press conference on the eve of the Senate Finance Committee's vote on its version of the reauthorization package, S.1834.

But Mr. Smith, president of Warren, N.J.-based Chubb Corp., added that "re-evaluation" of the package would be "inevitable" if the measure dies in this Congress.

Other representatives of the pro-reform coalition that includes businesses, municipalities and environmentalists as well as some insurers,

stressed their belief that Superfund must be reauthorized before Congress recesses.

Lack of reauthorization "will cause dire consequences for many communities expecting, praying, for help from the federal government," said William J. Roberts, legislative director of the Environmental Defense Fund.

"Virtually everybody agrees that Superfund is broken," said E.S. Woolard Jr., chairman and chief executive officer of E.I. duPont de Nemours & Co. in Wilmington, Del. "There is time. In the remaining days of Congress, it is imperative that Superfund reform move forward."

"This bill deserves bipartisan support," said Mr. Smith.

"Contamination does not know party labels," added Mr. Roberts.

—By Mark A. Hofmann

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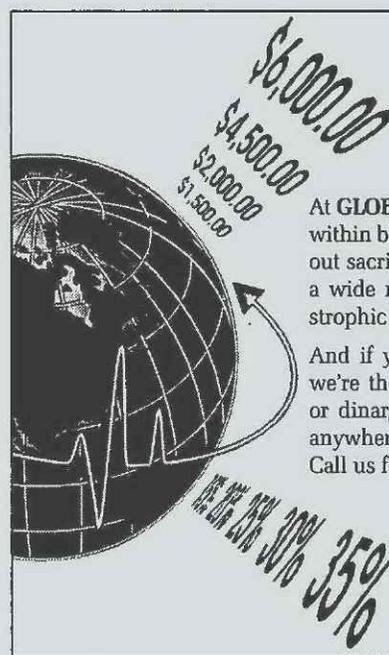
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# Stock analysts give insurance outlook

By RODD ZOLKOS

CHICAGO—It may take decades to play out, but one industry analyst says the first signs of a property/casualty insurance industry "mega-trend" toward higher rates and reduced capacity can already be seen.

Pressure from Wall Street ultimately will leave property/casualty insurers no choice but to write fewer policies and raise rates, said Michael A. Smith, a senior vp with Lehman Brothers in New York.

Mr. Smith participated in a panel examining investors' views of the insurance industry at the annual CPCU Society conference held in Chicago. Leandro S. Galban Jr., managing director of Donaldson, Lufkin & Jenrette Securities Corp. in New York, and Allan W. Fulkerson, president of Century Capital Management and chairman of Century Shares Trust in Boston also spoke at the session.

Based on insurance companies' stock prices, Mr. Smith said his view is that Wall Street is clearly not bullish on the industry. "I think the market is telling us something about how it views the insurance industry these days," he said.

He noted that by some interpretations of the numbers, the property and casualty industry is doing well, its growth outpacing that of the economy as a whole.

But, while over the last 15 years written premiums have grown 1% faster than the gross domestic prod-

uct, over that same period "claims are growing 2% faster (than the GDP) and that says an awful lot about the business," Mr. Smith said.

And, over the last two quarters, the growth rate of written premiums has headed down, he said, falling below that of the economy.

"It gets real difficult to get real enthusiastic about an industry in that circumstance," Mr. Smith said.

But, while the signs have been there to call an industry turn, that change in the cycle hasn't materialized, he noted. "Right now the industry looks like it's at cyclical bottom. We ought to be at the turn. So far, nothing's happening."

While their underwriting performance might not be great in recent years, insurers' results have gotten a boost from investment income. Now, though, a new accounting rule, Financial Accounting Standard 115, is placing additional pressure on their balance sheets.

Until this year, insurers carried those bonds on their books at cost. FAS 115, however, requires them to list at market value any fixed-income securities that might be sold before maturity.

For many insurers, this means even if underwriting earnings are up, their book value can decline and decrease shareholder equity due to this year's deterioration in bond prices that now must be reflected on their books.

"Wall Street pays for high returns on equity, not low," Mr. Smith said.

Finally, an increased level of exposure to single-event risk will force property/casualty insurers to scale

back the number of policies they write and look to reinsure more of the risks they are covering, Mr. Smith believes.

"Risk exposure to single large events right now is far greater in the property/casualty industry than it ever has been," he said.

While exposure of no more than 1% to 2% of statutory capital exposed to single event risk was once the standard, insurers now have 6% to 7% exposure to single large risks, Mr. Smith said. "Well, 7% is last year's earnings," he said. "Wall Street doesn't pay for volatility."

Forced to reduce that exposure, insurers will "write fewer policies and buy more reinsurance," Mr. Smith said. But doing less business will make it even harder to increase capital. What's more, higher interest rates on bond holdings aren't the answer. If interest rates go up, inflation is likely to go up as well, making insurers' loss reserves inadequate.

So "the only way that the insurance industry can respond is to raise rates," Mr. Smith concludes.

The first stages of his "mega-trend" are already occurring, Mr. Smith said, noting that insurers are reducing the coverage they write in Florida while demand for reinsurance has kept reinsurance rates high relative to the rest of the market.

DLJ's Mr. Galban agreed that if the industry is going to improve its earnings, it has to do it through improved underwriting performance.

"I tell our clients to forget the cycle, that they've got to make money at any point in time with what they're given. If they're unable to do

that, they ought to think seriously about doing something else," he said.

Mr. Galban sees merger activity among insurers as one way they're trying to accomplish that. "Everybody's trying to become dominant in fewer areas, whether it be geographically or by product," he said.

He also suggested that the insurance industry has become so segmented that it now responds piecemeal to market changes, and consequently there's no potential for an industrywide turn.

Century's Mr. Fulkerson agreed that a look at insurance stock prices suggests investors aren't bullish on the industry. But he noted there are "enormous differences among companies," and suggested the industry can't be viewed as a single monolithic block. A better question, he noted, would be "why investors should be more bullish on certain insurance businesses."

"I'm a believer in the insurance industry. It's large, indispensable growing and diverse," Mr. Fulkerson said, adding that the insurance industry is "a great business" but one that's "greatly misunderstood."

Mr. Fulkerson said he believes that from an investor's perspective, the question of when the insurance cycle will turn is irrelevant. "The insurance industry is a major growth industry that has grown faster than the U.S. economy over any given period of time," he said, and he sees no reason that shouldn't continue.

But, as they move into the next century, the largest companies will do well only if they are profit-oriented rather than volume-oriented, he said, while smaller niche companies will do well only if they stay focused on their areas of expertise.

Joan E. Steel, vp-financial relations at Aon Corp. in Chicago, moderated the panel. ■

## Barriers to global markets remain after NAFTA, GATT

By SALLY ROBERTS

CHICAGO—Insurers win when nations sign trade agreements, but the jury is still out on just how much, a brokerage executive says.

Trade pacts like the North American Free Trade Agreement and the General Agreement on Tariffs and Trade will make it easier for insurers and brokers to do business internationally. But, in regard to insurance, substantial differences and concerns among the various countries remain, said John D. Richardson, executive vp at Willis Corroon Americas Corp. in Atlanta.

In particular, the legal infrastructure—"the way in which legal systems drive the quantification and qualification of legal liability"—is different in many countries, he said. The United States, Canada and the United Kingdom, for instance, are accustomed to statutes and case law. Spain, France and Belgium use the Napoleonic Code, while Middle Eastern nations rely on a religion-based legal system.

In addition to differing legal systems, there also is a lack of common currency, a lack of consensus on the role of the central banks and differences in corporate taxation, Mr. Richardson told attendees during a session at the CPCU Society annual meeting in Chicago last week.

Another topic that needs to be addressed is the cultural differences that exist in many countries, Mr. Richardson said, referring to language barriers, social customs, values and attitudes toward risk.

While most sophisticated companies, in terms of buying insurance, will agree on a potential risk, "the value placed on the worry factor differs," he said.

The result of all of these differences is that the insurance industry is truly not a global industry but instead is multi-local, he suggested.

Despite trade agreements, practical industry concerns still exist, Mr. Richardson said. For instance, many countries still will not let non-admitted insurers conduct business within their borders and, despite a trend toward the elimination of tariffs, they still exist, he said.

Indeed, in countries where regulations forbid insurance brokers from owning their own operations, brokers conduct limited operations to support their multinational clients, commented Carl A. Modecki, presi-

dent of the Washington-based National Assn. of Insurance Brokers.

"(Brokers) want the opportunity to compete for local business, just as they do in the states," he said.

Mr. Modecki is optimistic that the passage of NAFTA will open more doors for insurance brokers to expand their global capabilities.

"Of larger importance is the fact that the agreement will be a template for an agreement with other Latin and South American countries," he said, adding that Chile, Argentina and Venezuela most likely will be the next countries to be included in NAFTA.

In the future, "most, if not all South and Latin American countries will be in that agreement," he said.

GATT will also open more doors for global trading in the future, Mr. Modecki predicted. While the conclusion of the Uruguay Round did not include particular agreements on financial services, it "is a beginning of a world trade agreement." He believes that GATT will be passed and financial services, including insurance, will be discussed afterward.

Even countries that are not part of the GATT negotiations are potential growth markets for the industry, contends Martin R.D. Reith, deputy underwriter and director of managing agency for The Brockbank Group P.L.C. in London.

Specifically, China has achieved a remarkable growth in investors and trade, demonstrating "that being a member of a free trade agreement, even the most important of the free trade agreements, is not a precondition for growth of foreign investors," said Mr. Reith.

Other non-GATT countries, namely Thailand and Taiwan, are also potential growth markets for the industry, Mr. Modecki added.

However, two countries he does not see as current hot markets for the industry are Japan and the states of the former Soviet Union.

"There is no real room for growth and creativity right now in Japan because the Ministry of Finance strictly regulates the types of commercial insurance policies that can be sold and the premiums that can be charged," Mr. Modecki said.

While insurers and brokers have broken into the former Soviet Union's market, economic and political instabilities remain obstacles to profitability there, he said.

Teresa L. Pahl, executive vp at Rollins Hudig Hall International in Chicago, moderated. ■

## Industry's top challenges

By SALLY ROBERTS

CHICAGO—Insurance executives disagree on what poses the greatest threat to the insurance industry, but they're unanimous in the belief that insurers are under pressure on many fronts.

Six insurance industry executives expressed what they see as the biggest challenges facing the industry in a panel discussion at the CPCU Society annual meeting in Chicago on Sept. 25-28.

"The center of all our ills is the legal system," and it is hindering the industry in providing the products and services consumers need, said Alice B. Fielding, president of Heston Fielding & Associates Inc., an agency in Jacksonville, Fla.

She said that the industry should reform the legal system first, which will in turn help other individual reform efforts, such as insurer solvency, pollution, workers compensation and health care.

"I think the catastrophe problem is our No. 1 problem," contends Gerald D. Stephens, president and chief executive officer of RLI Group in Peoria, Ill. Passage of the National Disaster Protection Partnership Act would be a step in the right direction, he said. But the industry needs to do a better job conveying to the legislators that this bill is about affordable and accessible catastrophe insurance for companies and individuals. It needs to be emphasized "that we're working for the policyholder."

Indeed, one of "the wild cards the industry faces" is natural calamities, agreed Edward B. Rust Jr., president and CEO of State Farm Group in Bloomington, Ill.

Whether it be natural catastrophes or misdirected public policies, they are "issues we find ourselves

## CPCU panel disagrees on top priority

wrestling with."

In addition to catastrophes, "one thing that keeps me awake at night is the need to better manage change," said Edward B. Jobe, chairman and CEO of American Re-Insurance Co. in Princeton, N.J. With emerging technology and the changing needs of clients, the industry needs more specialists and needs to go outside the industry more for solutions, he suggested.

Gerald L. Maatman, chairman and CEO of Long Grove, Ill.-based Kemper National Insurance Cos., says the greatest threat to the industry lies in the "continuous temptation for politicians to use the insurance industry as a tool for social change." Too many people have little or no faith in the industry, he said.

On the other hand, Robert E. Gallagher, chairman and CEO of Itasca, Ill.-based Arthur J. Gallagher & Co., "very clearly" sees the continuing soft property/casualty market as the greatest threat to the industry.

"How can the industry sell its products for less than cost? I don't know," he said.

The executives achieved much more of a consensus on two other pressing concerns—the need for quality improvements and the need to squelch redlining.

Most of the insurers represented have moved forward with quality initiatives to better serve clients.

For example, American Re-Insurance recently reorganized its services so that each client gets a team of specialists who can communicate electronically with each other, Mr. Jobe said. The company recognized that some of its products did not meet the buyer's needs and that people do not buy reinsurance, but solutions, he said.

Mr. Gallagher said that the qual-

ity initiative began at his company more than three years ago with its Gallagher Bassett Services unit. Each top manager attended quality classes and then took a top-down approach with the rest of the risk management services unit.

The retail brokerage side of the business followed suit a couple of years later when clients started asking what the broker's quality initiative was, Mr. Gallagher said.

The brokerage's main focus now is account retention, he said.

At RLI, benchmarking is the best practice in achieving quality, Mr. Stephens said.

However, Kemper's Mr. Maatman remains skeptical about total quality management. "I think the jury is still out on if the total amount of time and resources spent are going to be worth it," he said, noting that Kemper has implemented TQM strategies for the past two years.

Another issue the executives addressed was redlining.

"A lot of accusations of redlining comes from the fact that underwriters have not changed" their attitudes toward society, said Ms. Fielding. "It's no longer 1950 and we no longer live in the Ozzie and Harriet world."

Redlining is "the most critical public relations problem the industry will face in the next decade," Mr. Maatman said.

The industry must make more of an effort to market to the inner cities, he suggested, adding that mid-size insurers need to expand in this area. "We must do a better job and gain greater visibility," he said. "There is good business to write."

J. Wesley Ooms, president of the CPCU Society and assistant vp at State Farm Fire & Casualty Co. in Bloomington, Ill., moderated the session. ■

# Pan Am

Continued from page 2

Pan Am's action means a further delay before relatives of the 259 U.S. citizens killed in the crash receive any compensation for the disaster that occurred almost six years ago.

Insurers of the defunct airline are fighting the prospect of paying more than the \$75,000 per passenger liability limits set by the Warsaw Convention for international flights. But the limitation is lifted if "willful misconduct" is proved.

A federal jury in July 1992 found Pan Am and subsidiary Alert Management Systems Inc. guilty of willful misconduct for their alleged disregard for federal security rules about hand-searching unaccompanied baggage.

U.S. District Judge C.J. Platt subsequently asked the jury to decide on damage awards on three test cases, which the jury awarded a total of more than \$20 million (BI, July 20, 1992).

Pan Am appealed, claiming that it received an unfair trial because Judge Platt did not allow defendants to present evidence showing the airline believed it was abiding by federal security regulations when it X-rayed rather than hand-search the unaccompanied baggage.

A majority opinion by a three-judge panel of the 2nd Circuit found earlier this year that Pan Am's trial was fair, prompting Pan Am's lead underwriter, U.S. Aircraft Insurance Group, to raise liability reserves for this disaster to \$475 million from \$90 million (BI, April 11; Feb. 21; Feb. 7).

Continuing to fight these cases in appeals court "is demoralizing," said Mr. Kreindler.

If the second petition for rehearing is refused, all parties believe Pan Am will try to get the case heard by the Supreme Court. But lawyers and underwriters doubt whether the U.S. high court will hear the case.

Neither Pan Am's attorneys nor USAIG would not comment.

In its second petition for rehearing, Pan Am continues to maintain that it has not received a fair trial and argues that the 2nd Circuit was wrong to refuse a rehearing.

Pan Am claims that U.S. District Judge Platt did not allow the jury to hear testimony of expert witnesses that would have shown that the airline followed Federal Aviation Administration security rules.

Pan Am also maintains that the plaintiffs' scenario of what happened is flawed, but the airline was not allowed to provide evidence

that would punch holes in the plaintiffs' arguments. According to court papers, Pan Am planned to cast a reasonable doubt in the minds of the jurors that a bomb contained in a Toshiba radio in unaccompanied luggage traveling from Malta to Frankfurt to London, then on the ill-fated flight to New York, caused the plane to explode, as plaintiffs' alleged.

Pan Am also contends in its second petition, that its appeal should be re-heard because between its petition to rehear on April 6 and the court's denial of the petition on Sept. 12, the original appellate panel rewrote their original decisions.

The rewritten majority rulings "stray even further from established principles," Pan Am states in its second petition. "That alone warrants rehearing en banc."

The rewritten majority opinion reverses two appellate judges' earlier decisions that Pan Am was liable for loss of society and parental guidance damages for adult children over the age of 18. That brings them in line with a dissenting judge who argued that the three damage cases already decided should be vacated and re-heard in the District Court.

Mr. Kreindler said he believes this will have a minor affect on the damages in one of the three cases.

Despite the reversals of opinion on damages, 2nd Circuit Judges Richard J. Cardamone and Frank X. Altamari said they still believe that Pan Am received a fair trial and, therefore, the jury's finding of willful misconduct stands. Judge Cardamone's rewritten majority opinion reiterates that the District Court did not abuse its discretion in denying admission of the disputed evidence.

In particular, the judges agreed with the lower court judge that Pan Am and Alert Management Systems could not rely on the "mistake of law" defense that claims they thought they were upholding FAA regulations on the screening of unaccompanied baggage.

Pan Am claims it was following the law when it X-rayed the unaccompanied baggage that traveled on board Flight 103—and didn't see a radio cassette player—but plaintiffs proved that FAA regulations required that these bags be hand-searched.

"Our holding is narrow," admitted Judge Cardamone. "We reiterate it to emphasize its limitations: In a case brought under the Warsaw Convention involving violations of FAA regulations that pertain to the safety of those aboard an aircraft, against a defendant air carrier charged with knowing and following those

regulations, that air carrier may not mount a mistake of law defense."

The judges ruled that evidence to support Pan Am's contention that it thought it was within the law would have been "unnecessarily confusing" to the jury and "perhaps prejudicial."

Judge Cardamone concluded: "The record of this trial is not a paradigm of a perfect trial. The critical question, though, is whether the trial was fair. Here we are satisfied that upon examination of the entire record that the defendants received a fair trial."

Dissenting 2nd Circuit Judge Ellsworth A. Van Graafeiland continues to disagree with his colleagues that Pan Am has received a fair trial in his rewritten statement, finding that Pan Am did not.

One thing is clear, said the dissenting judge. "No one knows when, where or how the bomb got on the Pan Am plane except the person who put it there."

If there were no transfers of the baggage, then there could not have been "willfully deficient screening," he pointed out.

The District Court allowed plaintiffs to testify in support of their theory of how the bomb got on board, but Pan Am was not allowed to give evidence rebutting this thesis. Judge Van Graafeiland concluded that had the jury heard this evidence, they would have rejected plaintiffs' theory. The constitutional implications of the lack of a fair trial "are obvious," stated Judge Van Graafeiland.

In the second petition for rehearing filed last week, Pan Am reiterates that "the core of Pan Am's defense to the charge of willful misconduct was excluded by the trial court."

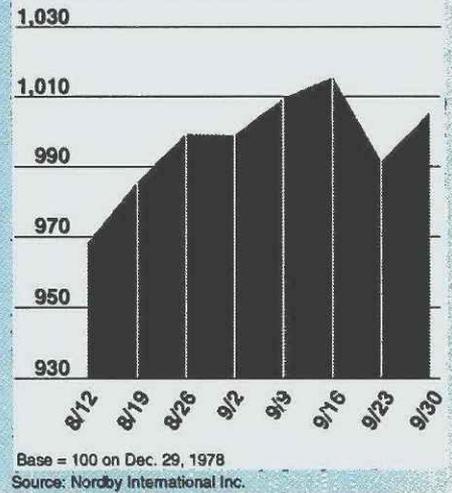
Pan Am also states that six decisions in the 2nd Circuit under the Warsaw Convention held that a finding of willful misconduct required a "subjective belief" of the airline that death or injury was "probably" caused by its actions or omissions.

"These decisions have been silently overruled by the majority and the willful misconduct provision of the Convention has been gutted," Pan Am contends.

Pan Am noted in its petition that the federal jury was deadlocked twice before it came to its decision and contends that admission of its evidence could have swayed the jury's decision.

Pan Am's second petition concludes the majority's appellate ruling should be set aside because, among other things, it deprives Pan Am of its constitutional rights to jury trial and due process. **BI**

## BI Insurance Index



Insurance stocks rose last week, as the Business Insurance Index gained 14.8 points to 1,005.0 Sept. 30 from 991.2 on Sept. 23. Advancing issues were led by: Reliance Group Holdings, up 13.0%; EMPHESYS Financial Group, up 9.3%; and Humana Inc., up 7.4%. Declining issues followed: Seibels Bruce Group, down 17.0%; Home Holdings Inc., down 6.5%; and Mid Ocean Ltd., down 4.0%. The most active issue was U.S. Healthcare, 8.3 million shares traded. The BI Index gained 1.4%; the Dow Jones 30 Industrials rose 0.3%; the NYSE Composite increased 0.7%; and the Standard & Poor's 500 rose 0.7%.

## British Issues

Sept. 29 Companies	Price pence	P/E	Div. pence	Yield %	1 week high-low
Comm Union	496	15.8	31.0	6.3	507-494
Genl Accident	543	10.8	34.4	6.3	554-543
Gdn Royal Exch	181	11.5	9.5	5.2	185-180
Independent	252	8.2	10.4	4.1	261-252
Royal	279	12.1	9.4	3.4	282-272
Sun Alliance	312	14.0	18.4	5.3	322-312

Brokers	Price pence	P/E	Div. pence	Yield %	1 week high-low
Bradstock	94	10.6	6.3	7.3	98-94
Fenchurch	144	11.2	9.7	6.3	150-144
CE Health	264	9.5	20.0	7.5	272-264
JIB Group	132	11.5	9.4	7.1	133-132
Lloyd Thompson	164	11.4	9.3	6.3	165-164
Lowndes Lmbrt	184	11.6	9.4	5.1	197-184
Nelson Hurst	170	16.7	7.3	4.1	170-170
PWS Holdings	39	N/M	2.5	6.4	40-39
Sedgwick Grp	140	N/M	7.5	5.1	150-148
Steel Bri Jones	112	N/M	11.3	10.0	113-113
Willis Corroon	144	13.1	8.3	5.8	150-144

Source: Philip Olsen, London \* Latest estimated year

# BI Industry Stock Report SEPT. 26, 1994, THROUGH SEPT. 30, 1994

BROKERS	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value	Price	Weekly % change	Year to date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt./Bk. value			
				High	Low										High	Low									
Accordia Inc.	NYS	27.25	0.93	10.66	28.75	21.00	7	0.60	2.20	14	10.22	2.67	NAC Re Corp.	NDQ	25.50	-3.32	-12.45	36.50	24.00	164	0.16	0.63	13	-9.24	1.33
Alexander & Alexander	NYS	19.50	0.65	-1.89	22.75	14.00	381	0.10	0.51	-	6.73	2.90	National Re Corp.	NYS	25.38	-2.40	-17.14	34.50	23.50	144	0.16	0.63	10	-7.51	1.45
E.W. Blanch Holdings Inc.	NYS	22.88	5.17	31.65	23.50	15.75	22	0.32	1.40	20	4.10	5.58	Navigators Group	NDQ	16.50	-3.65	-52.86	39.00	16.00	18	0.00	0.00	-6	-6.39	0.97
Gallagher Arthur J. & Co.	NYS	32.88	-1.13	-8.04	37.13	28.13	164	0.88	2.68	17	7.52	4.37	Nobel Insurance Ltd.	NDQ	8.00	0.00	4.92	8.63	6.63	22	0.20	2.50	4	6.34	1.17
Hibb, Rogal & Hamilton	NYS	12.25	2.08	-6.67	13.63	11.13	42	0.48	3.92	17	4.51	2.72	NWNL Companies	NYS	29.88	0.00	-8.08	38.25	27.00	136	0.90	3.01	10	23.37	1.25
Marsh & McLennan	NYS	78.13	0.48	-3.99	88.88	76.00	639	2.90	3.71	16	16.76	4.66	Ohio Casualty Corp.	NDQ	31.25	0.00	-1.96	34.63	26.50	463	1.46	4.67	13	23.34	1.31
Poe & Brown	NDQ	20.50	0.00	13.89	22.75	16.88	27	0.40	1.95	15	3.02	6.79	Old Republic Int'l	NYS	20.88	-2.34	-7.22	26.00	20.75	397	0.48	2.30	8	23.57	0.89
BROKERS AVERAGE			1.2	5.1					2.3	14			Orion Capital Corp.	NYS	30.00	-2.44	-2.83	36.31	28.63	99	0.80	2.67	8	27.43	1.09
													Partner Re Holdings Ltd.	NDQ	21.88	4.17	0.57	23.50	19.50	1716	0.40	1.83	18	N.A.	N.A.
													Penn-America Group Inc.	NDQ	7.25	0.00	-5.69	9.50	6.50	41	0.00	0.00	8	6.21	1.17
													Phoenix Re Corp.	NDQ	29.00	5.45	5.45	37.75	18.50	474	0.30	1.03	7	19.99	1.45
													Provident Life	NYS	27.00	0.47	-14.62	31.88	24.38	75	1.04	3.85	-1	26.38	1.02
													Re Capital Corp.	NDQ	13.25	5.47	-2.75	15.50	12.25	0	0.32	2.42	-2	16.88	0.78
													Reliance Group Holdings	NYS	6.50	13.04	-16.13	10.38	4.88	817	0.32	4.92	-1	4.22	1.54
													RLI Corp.	NYS	21.63	0.00	-19.16	27.75	20.63	65	0.60	2.77	-2	22.91	0.94
													St. Paul Companies	NYS	40.63	0.31	-9.47	49.00	37.69	1069	1.50	3.69	8	31.88	0.70
													SAFECO Corp.	NDQ	51.50	1.23	-5.72	65.75	48.50	1639	1.96	3.81	0	41.59	1.24
													SCOR U.S. Corp.	NYS	11.25	-1.10	-10.89	16.75	10.13	22	0.36	3.20	-	16.08	0.70
													Seibels Bruce Group	NDQ	2.44	-17.02	39.29	3.50	0.44	398	0.00	0.00	-5	1.90	1.28
													Selective Ins. Group	NDQ	25.50	0.00	-15.70	31.00	23.00	112	1.12	4.35	-10	23.11	1.10
													Sphere Drake Holdings	NYS	14.88	-1.65	-9.85	21.63	14.63	6	0.12	0.81	7	12.17	1.22
													Statesman Group Inc.	NYS	15.75	0.00	26.00	15.75	10.25	487	0.10	0.63	6	8.65	1.82
													TIG Holdings	NYS	19.75	-2.47	-12.71	28.00	17.25	673	0.20	1.01	18	18.49	1.07
													Titan Holdings Inc.	NYS	9.13	0.00	-16.09	12.25	7.75	19	0.26	3.07	8	8.93	1.02
													Titan Marine & Fire	NDQ	60.50	-2.81	12.04	66.00	49.25	1	C.4	0.67	-	57.72	1.05
													Torchmark Corp.	NYS	43.88	2.93	-1.96	55.50	36.75	999	1.10	2.55	11	17.35	2.53
													Transatlantic Holdings	NYS	50.38	-0.49	-5.62	56.38	45.38	49	0.36	0.7	13	25.60	1.70
													Transnational Re Corp.	NDQ	21.00	-2.33	-22.22	27.00	0.13	381	0.00	0.00	17	N.A.	N.A.
													Travelers Corp.	NYS	32.88	2.33	-15.43	48.63	31.00	2539	0.60	1.83	8	33.35	0.99
													Trenwick Group Inc.	NDQ	37.00	-1.33	-4.52	46.75	33.25	242	1.00	2.70	13	26.00	1.42
													United Fire & Casualty	NDQ	40.00	0.00	11.11	44.00	38.00	12	1.06	2.70	9	26.96	1.38
													Unitrin	NDQ	48.25	1.05	13.53	51.50	38.50	441	1.60	3.32	34	36.90	1.24
													UNUM Corp.	NYS	46.00	-2.13	-12.38	58.00	43.00	2050	0.96	2.09	11	27.55	1.67
													US Facilities Corp.	NDQ	11.88	2.15	0.00								

# Estonia

Continued from page 1

applied would bring the total liability loss to more than \$267.5 million.

The 14-year old, 15,598-ton passenger ferry "Estonia" is insured for a total of \$60 million. Up to two-thirds of the hull and machinery coverage is reinsured into London.

However, which rules would govern compensation was not clear as of last week, said a spokesman for Oslo-based Assuranceforeningen Skuld, the protection and indemnity club that covers the ferry's third-party liabilities.

"We believe that Swedish maritime law might be irrelevant," the Skuld spokesman said.

Liability losses could be far less if an aggregate limit for multiple losses from the same disaster is applied, which is a feature of the Swedish maritime law, said the Skuld spokesman. Then total damages could be capped at \$37 million, he noted.

Total insured liability losses from Western Europe's worst ferry disaster could exceed Swedish liability limitations, though, if gross negligence is proved or the shipowner voluntarily decides to offer compensation above the Swedish limitations. They also could not apply if Estonian law, which has no limitations, is applied.

The loss of the "Estonia" sent chills down the spines of most Europeans, who recalled a similar disaster seven years ago, when the "Herald of Free Enterprise" passenger sank in the English Channel after its bow doors were left open, killing 193 people (BI, March 16,

or its equipment.

A spokesman for Delta Insurance Services in Stockholm confirmed it served as Estline's broker.

The coverage is "substantially reinsured," said a Trygg Hansa spokesman who would not reveal the details.

A spokesman for Eagle Star Reinsurance Co. Ltd. in London confirmed that it is lead on two of the four placements led in the London market. He said that all the increased value coverage is placed in London and that between \$27.5 million and \$32.5 million of the hull and machinery cover is placed in London. Swedish and other continental reinsurers cover the balance.

Trygg Hansa also expects to receive additional claims under passengers' life insurance policies and on cargo and heavy-goods vehicle policies.

Trygg Hansa has set up a six-person special catastrophe telephone service in its Stockholm office. The insurer also has set up a claims facility in the offices of Estline in Stockholm.

Estline would not answer press questions last week, saying the victims' relatives were its top priority.

Liability for compensation to the relatives and survivors is retained by Skuld, the ferry's P&I club.

Like all P&I clubs, Skuld offers unlimited liability for third-party liability, except for oil pollution, which has a \$500 million limit.

Skuld is one of the 15 members of the International Group of P&I Clubs. All International Group members retain the first \$4 million. The next \$26 million is covered by all International Group members.

Above that, the International Group has reinsurance protection

However, the Skuld spokesman said the question was still open on whether a Swedish maritime global aggregate liability limit of 25 million SDRs (\$36.7 million) would apply. This aggregate liability limitation for death and personal injury is included in the Convention on Limitation of Liability for Maritime Claims of 1976 for losses that include death or personal injury, property damages and losses caused by delay and contractual rights.

The Skuld spokesman said the limit has been adopted into Swedish maritime law.

The aggregate liability limitation can be lifted, however, if gross negligence is proved or the shipowner voluntarily lifts the limit, according to the convention and Swedish maritime law, lawyers add.

The bereaved families will have to file claims for compensation with Skuld, and the shipowners mutual will compensate them for proven monetary loss, said the Skuld spokesman. The claims adjudication will be based on such factors as the prospective loss of earnings of the family members who died and the pensionable age of individuals.

"The point is that we do not put a price on human life as such," the Skuld spokesman said.

The Skuld spokesman said that the legal situation for Estonian citizens is still unclear, but bereaved families are expected to file claims through the Swedish jurisdiction.

Meanwhile, the reason for the ro-ro ferry's sudden capsizing were still being investigated last week.

Questions have arisen over the years about the general stability of ro-ro vessels, and new shipbuilding standards are being introduced in the United Kingdom this year to make them more stable if water seeps into the hull. A total of 111 ro-ros have been total insured losses between 1985 and June of this year.

But the "Estonia" was considered seaworthy.

"Estonia" is the fourth name for the ship, which was built in 1980 by German shipbuilder Meyer Werft of Papenburg and could carry 2,000 passengers and 52 heavy-goods vehicles.

A Meyer Werft spokesman said that the vessel was built under Finnish specifications for the Finnish-Swedish company Effjohn, which owns the Sally Line Ltd. "We do not expect any liability claims, and so far no one knows the reason for the disaster," the Meyer spokesman said.

The ship was insured for hull and machinery by Mariehamn, Finland-based Alandia Shipowners Mutual Insurance Co. until it was sold in January 1993 to Estline.

The "Estonia" was last surveyed for seaworthiness and safety by the French classification society Bureau Veritas in March 1993. A Bureau Veritas spokesman in Paris said that the vessel was "in full class," meaning that it was passed as seaworthy without any difficulty.

The spokesman said that the society expected to participate in the disaster inquiry and that its survey would be scrutinized.

Marine insurers and naval architects have speculated that even though the sea was rough with waves some 30 feet high, bad weather alone could not have caused such a disaster. Further speculation concerned the proper lashing of the heavy-goods vehicles to the deck to prevent them from moving.

Adrian Ladbury contributed to this report.

## Updates

### Pension bill's chances improve

WASHINGTON—The chances that Congress will enact legislation to strengthen pension funding rules and shore up the financial base of the Pension Benefit Guaranty Corp. brightened last week after President Clinton said he would call the Senate back in early December for a lame duck session to consider a broader trade bill to which the pension provisions are attached.

A lame duck session became necessary to save the trade bill after Sen. Ernest Hollings, D-S.C., said he would use his position as Commerce Committee chairman to hold the trade bill in his committee for 45 days—the maximum he is allowed under special rules governing congressional consideration of the trade measure.

With Congress set to adjourn early this month, time would run out before the bill could be brought to the Senate floor for a vote. The lame duck session would be a way to overcome Sen. Hollings' ploy.

The House of Representatives is expected to vote on the trade bill this week, though it is possible that it also might wait until the lame duck session to take action.

Pension provisions in the measure would require employers with underfunded pension plans to accelerate contributions to those programs. In addition, employers also would be required to use a uniform mortality table and interest rate assumptions when valuing plan liabilities (BI, Sept. 26).

### Gooda Walker decision nears

LONDON—London High Court Justice Phillips tomorrow is expected to hand down his decision in the lawsuit brought by members of the Gooda Walker Ltd. syndicates seeking nearly \$1 billion from 71 members agents that placed them on the troubled syndicates.

Many people expect the judge to find that the Gooda Walker underwriters' negligence caused the losses. The big question is what formula the judge would use to calculate damages. The members are seeking 629 million pounds (\$993.5 million) in damages.

The decision will set a precedent for other suits brought by names.

### Firms protest pension rulings

LONDON—Employer groups in the United Kingdom said last week that a series of long-awaited European court rulings on gender equality in employer-funded pensions could cost them billions of dollars.

But pension experts contend that the six judgments, which clarify how the principles of gender equality first outlined in the 1990 *Barber vs. Guardian Royal Exchange* case should be applied, are much less burdensome to employers than expected (BI, Oct. 18, 1993). Prior to that ruling, most European Union countries paid full pensions to women who retired at age 60, but men were not eligible for full pension benefits until age 65. The court ruled in *Barber* that men's and women's pension benefits must be equalized.

The European Court of Justice's rulings in two Dutch cases mean that workers may claim pension rights back to 1976 and that part-time workers in the United Kingdom, most of whom are women, may claim full pension rights.

### Briefly noted

Congress last week gave final approval and sent to President Clinton veterans legislation that would expand employers' benefit obligations to employees who return to work after enlisting or being called up for military service (BI, Sept. 26). . . Brian O'Hara has been named president and chief executive officer of Bermuda-based EXEL Ltd., succeeding Michael J. Kevany who retired from those posts but will continue as chairman. Mr. O'Hara currently is vice chairman of EXEL and president and CEO of subsidiary X.L. Insurance Co. Ltd. . . Frank A. Patalano, has been appointed chief underwriting officer of The Home Insurance Co. in New York in addition to his current job as president of the specialty lines group at Home. Mr. Patalano joined The Home in June from National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc. . . E.I. du Pont de Nemours & Co. last month settled 37 Benlate DF lawsuits filed by Hawaii farmers for an undisclosed amount. The settlement, paid from company reserves, brings DuPont's Benlate-related payments to nearly \$800 million since 1991. The company is currently involved in two other Benlate trials in Hawaii. . . Republican candidates for the House of Representatives have issued a 10-point "contract with America" that includes a pledge to promote tort reform if the GOP wins control of the House in the November elections. . . Washington state's workplace smoking ban will take effect Oct. 8 after a state judge upheld the restriction, the first in the nation. Remaining legal challenges to the ban will be addressed at a later trial. . . A federal judge in San Diego has dismissed a personal injury class action lawsuit against tobacco companies based on the Racketeer Influenced and Corrupt Organizations Act. . . The chairman, president and CEO of Prudential Insurance Co., Robert C. Winters, said last week he plans to step down sometime before he reaches the mandatory retirement age of 65 in December 1996. . . Groupe Axa, the French insurer, is increasing its stake in The Equitable Cos. Inc. to 60.1% from 49%. Axa's move comes less than two weeks after the expiration of standstill agreement that prevented Axa from taking a majority stake in Equitable. . . Northbrook, Ill.-based Allstate Corp. has increased its loss estimate from January's Northridge, Calif., earthquake by 37% to \$1.3 billion. . . Allendale Mutual Insurance Co., its FM Insurance Co. Ltd. unit and various Groupe Bull companies have reached a partial settlement of legal disputes stemming from a 1991 computer warehouse fire in Seclin, France (BI, Sept. 19). . . A judge has approved a settlement under which 27 insurers will pay \$37.2 million to end lawsuits over asbestos claims between the insurers and bankrupt Forty-Eight Insulations Inc. Lloyd's of London and other U.K. insurers, along with North River Insurance Co., contributed the largest portion—\$14.4 million—to the settlement.

**Insurers and lawyers last week said that liability limitations under the Athens Convention of 1974 likely would not apply because neither Sweden nor Estonia were signatories to the international marine liability treaty.**

1987). P&I club insurers paid a total of \$53 million in compensation to the victims, underwriters said last week.

The "Estonia," a German-built roll-on, roll-off ferry, capsized and sank within five minutes in the early hours of Sept. 28 during stormy weather in the Baltic Sea, some 25 miles southwest of the Finnish island of Uto. Early reports from some of the survivors picked up by nearby ferries claim that water was leaking from the bow doors, leading experts to believe that the doors may not have been shut properly before the ferry got under way.

The ship carried more than 1,000 people of whom nearly 60% were Swedish, 25% Estonian and the remainder Norwegian, British and Finnish, according to preliminary reports. No U.S. citizens were thought to be on board. Most of the crew was from Estonia.

The ship also carried 28 heavy-goods vehicles.

The Estonian-flag ferry is owned by Estline, a joint venture of Swedish shipowner Nordstrom & Thulin, which holds 90% of the shares, and Estonian Shipping Co., an Estonian government-owned firm that holds the other 10%.

The ferry is insured for \$60 million by Trygg Hansa Insurance Co. Ltd. in Stockholm.

Of those limits, \$48 million covers hull and machinery and \$12 million is for "increased value" of the claim if Estline incurs additional expenses to replace the ship

up to \$1.18 billion placed mainly with Lloyd's of London and members of the Institute of London Underwriters.

A Skuld spokesman in Oslo said that the company has set up facilities in Stockholm, through its subsidiary ASkuld A.B., and in Tallinn, Estonia, to provide interim payments for relatives and survivors.

What levels of compensation the victims will receive, however, was being debated last week among insurance and legal circles.

Insurers and lawyers last week said that liability limitations under the Athens Convention of 1974 likely would not apply because neither Sweden nor Estonia were signatories to the international marine liability treaty. Estonia used to be a signatory when it was a member of the Soviet Union, which signed the treaty, but the Estonian government is still in the process of reforming its legal system, said a spokesman for the Estonian embassy in London.

The Athens Convention was amended after the ro-ro ferry "Herald of Free Enterprise" sank in 1987. The London Protocol of 1992 raised the limit under the Athens Convention to 175,000 Special Drawing Rights (\$256,882) per person.

On the day of the disaster, Swedish maritime law provided compensation of 100,000 (\$146,790) SDRs per person for death or injury, but this was increased to 175,000 SDRs (\$256,882) on Oct. 1.

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