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# business insurance®

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## update

### Pillsbury suit claims insurers failed to honor integrity policy

MINNEAPOLIS—Pillsbury Co. is suing five of its liability insurers for reimbursement of $50 million and consequential and punitive damages, claiming the insurers wrongfully refused to reimburse Pillsbury under a product integrity policy.

The suit contends the insurers failed to cover losses caused by media and government statements

*Continued on next page*

## Award set aside against AIG unit

**By STEPHEN TARNOFF**

ALEXANDRIA, Va.—An American International Group Inc. unit will not have to pay a $7 million judgment to a law firm it insured for allegedly failing to settle a lawsuit on the firm's behalf, a federal judge has ruled.

U.S. District Judge Claude M. Hilton on Sept. 19 set aside last July's award in favor of the Fairfax, Va., firm of Bettius, Fox & Shumate and against National Union Fire Insurance Co. of Pittsburgh, Pa. (*BI*, Aug. 11). The award, believed to be the largest bad-faith verdict in Virginia history, included $5 million in punitive damages.

Judge Hilton based his opinion, which was delivered from the bench, on an Aug. 15 decision handed down by the 4th U.S. Circuit Court of Appeals in *A&E Supply Co. Inc. v. Nationwide Mutual Fire Insurance Co.*

In that decision, a three-judge panel ruled that Virginia law does not recognize the tort of bad faith refusal to honor a first-party insurance obligation.

Judge Hilton, who also found that the Bettius firm had not proven its $2 million in compensatory damages with sufficient specificity, ordered a new trial in the case, which is scheduled for Dec. 1, lawyers in the case said last week.

"We're delighted the appellate court found punitive damages not in order and dismissed the bad-faith case and returned the contract case to be tried on the merits," said Patrick Foley, National Union senior vp and general counsel.

"I think the judge was correct in what he did," said Paul Krause, National Union's outside counsel with the Washington, D.C., firm of Jordan, Coyne, Savits & Lopata. "The judge ruled the A&E case controlled the Bettius claim."

An attorney for the Bettius firm disagreed with Judge Hilton's decision, saying Virginia law recognizes a cause of action for bad faith and the A&E case does not control the Bettius case.

"I don't think the A&E case controls our case at all," said Thomas Mains Jr., of the Alexandria firm of Mains & Nichols.

"It was the worst of all worlds for us," said Wallace Duncan,

*Continued on page 37*

## California officials fight to save MIG rescue plan

**By STEVE TARAVELLA**

LOS ANGELES—Mission Insurance Group fears that rising losses and uncollectible reinsurance could thwart its long-awaited reorganization and its debt restructuring.

But, California regulators are determined to make both happen.

Eleven days ago, MIG issued a 1½-page statement announcing that the planned reorganizations—one rescuing Mission Insurance Co. from liquidation and another restructuring MIG's corporate debt—"may not be feasible."

The announcement surprised the insurance industry, which had believed for months—and as recently as at the annual Rendez-Vous de Septembre in Monte Carlo—that MIG had just about solved its financial problems.

**'Mission expressed their opinion; they're entitled to that. But it's not our opinion,' says Ms. Gillespie.**



MIG was thought to be nearing completion of its six-month effort to rescue MIC, its former chief underwriting unit. A tentative agreement to that effect had been approved in March by the Los Angeles Superior Court (*BI*, March 17).

Although progress on the reorganization was taking longer than expected—the vacations of agreement drafters and the general complexity of the transactions were two reasons cited for the delay—parties involved have expressed confidence over the past few months that their work wouldn't be for naught.

In late August, for example, MIG's Secretary and General Counsel Lawrence G. Becker told *Business Insurance*, "We have every reason to believe that this whole plan will come to fruition. We've had no stumbling blocks we haven't been able to clear."

But since then, MIC's losses have continued to mount and the amount of reinsurance recovered has "dropped way off," reducing MIG's optimism for the plan's success, according to Mr. Becker.

However, California Insurance Commissioner Roxani M. Gillespie is confident that liquidation still can be averted and is optimistic that the MIC reorganization plan will be ready to submit for court approval sometime this month.

"Mission expressed their opinion; they're entitled to that. But it's not our opinion," says the commissioner, who inherited the MIC problem and proposed solution when she succeeded Bruce Bunner four months ago. "We're going on as we always have. From our standpoint, nothing's changed."

The California Insurance Department, which has supervised MIC since taking control of the insolvent company last October, was not informed of MIG's announcement beforehand, Ms. Gillespie says. MIG, a publicly-traded company, made the announcement to keep its stockholders and investors informed of developments at the company, Mr. Becker says.

Despite its doubt the plan will succeed, MIG continues to cooperate fully with the department, according to Mr. Becker.

"We have no disagreement with the department. We're just saying that our view is that the plan may

*Continued on page 37*

## Reinsurers dispute Beneficial unit claims

**By DOUGLAS McLEOD**

PEAPACK, N.J.—Four reinsurers of American Centennial Insurance Co. are disputing losses on business produced by two of the insurer's managing general agents.

Together, the reinsurers—three of which are involved in arbitration of their contracts—may ultimately account for more than $70 million in reinsurance recoverable by American Centennial, sources say.

As reported, Commonwealth Insurance Co. of Vancouver, British Columbia, a unit of The Home Insurance Co., stopped paying claims in 1984 on business produced for American Centennial by The Underwriters Inc. of Parsippany, N.J., pending an audit of the MGA's records (*BI*, Oct. 29, 1984).

Commonwealth is also refusing to pay claims on business produced by Barrett Treaty Corp. of Huntington, N.Y., another American Centennial MGA, pending an audit of that business, according to a source close to Commonwealth who spoke on condition of anonymity.

Reinsurance claims against Commonwealth on the two books of business—including reserves for incurred-but-not-reported losses—will amount to roughly $60 million and may go higher, the source said.

The three reinsurers that are involved in arbitration against American Centennial include:

- Unione Italiana Reinsurance Co. of America Inc. in New York, which is disputing claims that could reach $10 million, including IBNR loss reserves, on business produced by The Underwriters, according to John Nonna, a lawyer with Werner, Kennedy & French in New York, representing Unione.
- First Horizon Insurance Co. of St. Louis Park, Minn., and Universal Marine Insurance Co. Ltd. of Bermuda.

Elliot Kroll, a lawyer with the New York firm of Kroll, Tract, Harnett, Pomerantz & Cameron, confirmed that the two reinsurers have demanded arbitration on business produced by The Underwriters, but declined to comment further.

At year-end 1985, First Horizon owed American Centennial $1.6 million on paid and unpaid losses. Universal Marine owed $2.4 million in paid and unpaid losses, against which American Centennial held $409,089 including a $241,020 letter of credit, according to American Centennial's annual statement filed with the New York Insurance Department.

Beneficial Corp., American Centennial's parent company, recently announced it would take a $260 million pre-tax charge against 1986 earnings, most of which will be used to strengthen American Centennial's reserves for losses and uncollectible reinsurance (*BI*, Sept. 1).

Frederick M. Dawson, American Centennial's chairman and chief executive officer, declined to discuss the four reinsurers specifically and would not comment for the record on whether American Centennial had established reserves for disputed reinsurance recoverables from the four.

"The position of American Centennial Insurance Co. is currently—and will be in the future—to pursue all business and legal remedies available in the collection of funds due American Centennial on both the assumed and ceded sides of the business," he said.

American Centennial has established a collection unit within the group now handling the run-off of American Centennial's reinsurance business, and that unit is dealing with a number of reinsurers worldwide, Mr. Dawson said.

"The reinsurance unit's responsibility is to go out and to aggressively pursue through all potential avenues and remedies the funds due us. That's what I expect them to do and that's what they're doing," he explained.

Mr. Dawson added that American Centennial's recoverables from Commonwealth and Unione including IBNR loss reserves "do not approach" $70 million, though he would not provide American Centennial's own estimate

*Continued on page 42*

**Pan Atlantic wins arbitration with reinsurer**
**Page 3**

**Two LTV pension plans hit PBGC for $600 million**
**Page 2**

**TWA switches brokers to Frank Crystal from M&M**
**Page 3**

## update

### Pillsbury suing five insurers

*Continued from previous page*

about the presence of the pesticide ethylene dibromide in Pillsbury products. Over a two-year period, the company suffered losses of more than $70 million, the suit alleges.

Named in the suit, filed in June in Hennepin County District Court, are National Union Fire Insurance Co. of Pittsburgh, Pa., Royal Indemnity Co., Employers Mutual Casualty Co., The Home Insurance Co., and Federal Insurance Co.

The insurers, along with Midland Insurance Co., wrote $80 million in Pillsbury's first three layers of coverage above a $20 million self-insured retention, the suit says. Midland was not named as a defendant because it was placed in liquidation last spring.

In its suit, Pillsbury says it purchased a product integrity policy in August 1983 for a premium of $278,851 through broker Johnson & Higgins. According to the suit, Pillsbury's losses began in February 1984 and "said losses and expenses are clearly within the coverage of the policy."

Pillsbury alleges that in August 1984, after advising the insurers of the losses and expenses arising out of the EDB situation, it renewed the policy for another year for a premium of $281,187.

In November 1985, Pillsbury submitted a preliminary proof of losses over a two-year period of more than $70 million, the suit adds. However, the suit says, despite having earlier acknowledged that Pillsbury suffered significant losses and expenses, National, Royal, Employers and Home denied coverage on May 29, 1986, and instead, offered a settlement that was "grossly inadequate."

The suit alleges that the insurers said if Pillsbury did not agree to the settlement, they would sue Pillsbury in New York, would argue that Pillsbury knowingly sold carcinogenic products to the public, conspired to suppress data regarding EDB, made fraudulent representations to the insurers and misled the public.

The insurers also said losses resulting from such adverse publicity would offset any recovery to Pillsbury, the suit adds.

The insurers did file a declaratory judgment suit in New York about the same time as Pillsbury filed its suit, but the insurers' action has been voluntarily discontinued.

Pillsbury says in its suit that National, Royal, Employers and Home told Pillsbury at the May 29 meeting that the amount of Pillsbury's loss does not exceed the company's self-insured retention, that it breached its duty of cooperation and assistance under the policy, and that Pillsbury had made misrepresentations and non-disclosures in procuring the policy.

Federal admits there is coverage, but denies the loss penetrates the second layer of coverage, the suit adds.

An attorney representing National Union, Royal, Employers Mutual and The Home said the insurers had filed a motion to dismiss certain allegations in the complaint but that an answer has not yet been filed. A spokesman for Chubb declined comment.

### Agents convicted of mail fraud

CHICAGO—Two Chicago insurance agents have been convicted of mail fraud in connection with the 1982 collapse of Kenilworth Insurance Co. Last week, U.S. District Judge Marvin Aspen found Robert Patterson and Joseph Cosentino Sr. guilty on eight counts of mail fraud after a bench trial.

The two men were indicted last May along with John V. Goepfert, Willard W. Hayne and Chester Mitchell Jr., former president of Kenilworth (*BI*, May 12). Mr. Hayne pleaded guilty to two fraud counts on June 18 and Mr. Goepfert and Mr. Mitchell each pleaded guilty to two fraud counts Sept. 22. Sentencing of Mr. Patterson and Mr. Cosentino is scheduled for Nov. 20.

Kenilworth was ordered liquidated by a Cook County Circuit Court judge in April 1982.

### Superman award overturned

CORPUS CHRISTI, Texas—An $8.5 million award to a rancher whose bull died after being sprayed with an insecticide has been overturned and a new trial ordered.

The 13th District Court of Appeals in Corpus Christi ordered a new trial in the case involving the death of Superman 1024, a prize Santa Gertrudis breeding bull owned by Dan Wendt of Bay City, Texas (*BI*, Feb. 25, 1985). The bull died in 1981 after being sprayed with Vapona, a chemical manufactured by Dallas-based Diamond Shamrock Corp.

A District Court jury in Matagorda County in 1984 awarded Mr. Wendt $1.5 million in compensatory damages and $7 million in punitive damages in the death of Superman. Diamond Shamrock was ruled responsible for most of the award, and part was to be paid by the Medina Valley Artificial Insemination Lab near San Antonio, where the incident occurred. Superman's semen was being frozen and packaged at the lab for breeding use.

The Austin court ruled that the original verdict should be overturned because of technicalities relating to jury selection in that trial. A new trial date has not been set.

### Briefly noted

Citing a possible competitive disadvantage for U.S. reinsurers, The Reinsurance Assn. of America is urging the Senate to delay ratification of the **Bermuda Tax Treaty**, which would exempt reinsurance premiums paid to Bermuda-based reinsurers from the 1% excise tax. . . . **Insurance-related bills** signed Sept. 29 in California severely restrict conditions under which insurers can cancel commercial property/casualty policies and allow California municipalities to set up a self-insurance pool for liability coverage. . . . President Reagan next week is expected to sign the massive **tax overhaul legislation** approved by the House and Senate that makes sweeping changes in employee benefit programs, limits the tax advantages of some group-owned offshore captive insurers and imposes much higher federal taxes on property/casualty insurers.

# Two LTV pension plans hit PBGC for $600 million

**By JERRY GEISEL**

WASHINGTON—The Pension Benefit Guaranty Corp. is taking over two massively underfunded LTV Corp. pension plans, and more LTV plan terminations loom on the horizon.

The two LTV plans the PBGC is taking over represent about $600 million in unfunded liabilities, and two other plans LTV would like to terminate would dump an additional $1.9 billion in unfunded liabilities on the financially beleaguered federal agency.

"We are in the worst shape ever," commented Kathleen P. Utgoff, PBGC executive director.

The PBGC late last month took the unusual action of filing suit in federal court in New York to force the termination of one of the LTV plans because that plan has run out of money to pay participants promised benefits.

That plan, covering retirees of the former Republic Steel Corp., which LTV acquired in 1984, has about $250 million in unfunded liabilities and just $7,700 in assets, according to the PBGC. The plan has about 9,000 participants.

In addition, Dallas-based LTV Corp., which in July filed for protection from creditors under Chapter 11 of the Bankruptcy Code, says it will terminate a pension plan covering 13,000 people who worked for Jones & Laughlin, another LTV acquisition.

That Jones & Laughlin plan, which LTV intends to terminate in January, has about $350 million in unfunded liabilities.

LTV also says that it no longer can afford the two pension plans covering hourly employees at its LTV Steel unit, and the company will discuss the future of those plans with the United Steelworkers of America as part of an overall renegotiation of labor agreements.

"Termination of these plans is considered essential to the company's ability to successfully reorganize under Chapter 11," LTV says.

The two steel plans together have unfunded liabilities of $1.9 billion, according to LTV.

As a result, if all four plans are terminated, the PBGC could take on $2.5 billion in new liabilities, up from an earlier estimate of $2 billion. That $2.5 billion would add to the $1.7 billion deficit the PBGC has assumed in taking over more than 1,100 underfunded plans since the agency was established in 1974 to guarantee workers' and retirees' basic pension benefits.

A takeover of the LTV plans, coupled with a $498 million debt the agency incurred last year when it took over several underfunded pension plans sponsored by Wheeling-Pittsburgh Steel Corp., would be an enormous burden on an already financially troubled agency, says Ms. Utgoff of the PBGC.

"The LTV and Wheeling-Pittsburgh plans pose huge liabilities for the future and place the PBGC's ability to meet future pension promises at greater risk," Ms. Utgoff says.

In fact, in the event all four LTV plans are terminated, the PBGC in 1987 would pay out more in benefits to LTV beneficiaries than it will collect in insurance premiums, according to the executive director.

Ms. Utgoff estimates that the benefit payout to LTV plan participants next year—assuming all four plans are terminated—could be $355 million. That would exceed the $287 million in payments made to the 80,000 participants in other underfunded plans the agency has taken over and the $276 million in income from the $8.50 per plan participant premium it charges employers with defined benefit plans.

Even with investment income it earns on premiums and on assets it owns, the PBGC still would be paying

*Continued on page 39*

## Illinois governor signs tort bill with reluctance

**By CAROL CAIN**

SPRINGFIELD, Ill.—Gov. James R. Thompson, reluctantly signing omnibus tort and insurance reform legislation, says the measure won't provide enough relief for businesses and is calling a special legislative session to consider further tort reforms.

The legislation signed late last month will not lower the costs of, or significantly affect the availability of, commercial insurance in Illinois, the Republican governor said.

"No business in Illinois, large or small, should anticipate such a conclusion," said Gov. Thompson in a written message to the Illinois General Assembly on Sept. 26, the day he signed S.B. 1200.

In that message he also called a special session of the Legislature to consider further tort reform measures. That session will run concurrently with the Legislature's veto session, which is slated for Nov. 18-20 and Dec. 2-4.

"This bill cannot be deemed to 'reform' the tort system of Illinois in any significant way important to the business cli-

*Continued on page 32*

## ISO drafts wording for pollution cover

**By ROBERT A. FINLAYSON**

NEW YORK—The Insurance Services Office, in a reversal of its earlier position, now says it is drafting an endorsement to its new commercial general liability policy forms that provides coverage for sudden and accidental pollution.

The endorsement will be filed with state insurance departments in early 1987, ISO says. But, it will be up to individual insurers to decide whether to offer the endorsement, and it is not yet known how many will be willing to offer the added coverage to their CGL policyholders.

Still, the move is a victory for agents, brokers and buyers, who have bitterly complained that the pollution exclusion in the new CGL policies is so broad that it leaves policyholders without coverage for a wide range of potential industrial accidents.

ISO's board of directors approved the development of the sudden and accidental pollution endorsement Sept. 18, according to a spokeswoman for the insurer trade group.

That approval was first revealed Sept. 21 by Richard Savage, ISO executive vp, at a meeting of the Independent Insurance Agents of America in Toronto, Canada.

R.C. Riley, a broker with Peel & Holland Inc. in Benton, Ky., and chairman of the IIAA's pollution task force, hailed ISO's action as "the first ray of light in a long dark tunnel."

"In response to a real need, they've reacted very positively," he said.

*Continued on page 41*

## inside

✔ Marine insurance experts, including Lloyd's underwriter Ian R. Posgate, met recently in Houston to probe the state of the marine and property/casualty insurance market. **PAGE 27**

✔ Stricter minimum funding standards for vested benefits are needed to protect the Pension Benefit Guaranty Corp. from more claims that ultimately threaten the defined benefit pension plan system. Editorial. **PAGE 8**

✔ In International Issues, William P. Jasper of Johnson & Higgins describes what makes the "right" political risk insurable in the "wrong" country. **PAGE 25**

✔ In Ask a Benefit Actuary, William J. Miner of The Wyatt Co. points out that despite hurdles there are advantages in funding retiree health benefits through a Voluntary Employees Beneficiary Assn. **PAGE 26**

### departments


Around the states ..... 16
Ask a benefit actuary ..... 26
Benefit beat ..... 14
Classifieds ..... 40
Comings & goings: buyers ..... 12
Comings & goings: industry ..... 34
Datebook ..... 36
Insurance services guide ..... 42
International issues ..... 25
Letters ..... 8
London ..... 20
Markets ..... 10
Opinions ..... 8
Perspectives ..... 25
Ticker ..... 43


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# Pan Atlantic wins round with reinsurer

By DOUGLAS McLEOD

NEW YORK—A West German reinsurer is expected to contest an arbitration award requiring it to pay $1.3 million and provide a $2.8 million letter of credit to Pan Atlantic Group Inc., a reinsurance pool manager.

The award represents a first-round victory for Pan Atlantic of White Plains, N.Y., in a protracted struggle that so far has produced a blizzard of lawsuits in four different New York courts and the possibility of separate arbitrations on each of 14 remaining disputed reinsurance contracts.

An arbitration panel last month ordered Alte Leipziger Ruckversicherung AG, a member of the Pan Atlantic pool, to post the LOC and pay $868,628 in net claims and $420,000 in actual damages sustained by Pan Atlantic since Alte Leipziger suspended claims payments last year.

Alte Leipziger—one of about 15 Pan Atlantic pool members to suspend claims payments—had sought to void its reinsurance contract, claiming that Pan Atlantic misrepresented the pool's loss experience to induce Alte Leipziger to join.

The reinsurer also argued that its liability was not to Pan Atlantic in any case but to the ceding insurers that provided fronting services to the pool.

The arbitration panel determined 2-1 that there was "insufficient evidence" of fraud by Pan Atlantic and found that Alte Leipziger had breached its reinsurance agreement.

Pan Atlantic's arbitrator John M. Culloty and the umpire William C. McIlwain ruled in favor of Pan Atlantic, while Alte Leipziger's arbitrator John S. Butler dissented.

"We won it big. We won it hands down," Lawrence Brandes, Pan Atlantic's lawyer, said of the award.

Mr. Brandes, a member of the law firm of Miller, Singer & Raives in New York, added that he hopes the Alte Leipziger decision will prompt the other 14 reinsurers to resume performing under their reinsurance agreements.

**'We won it big. We won it hands down,' Lawrence Brandes, Pan Atlantic's lawyer, says of the award against Alte Leipziger.**

"It is our hope still that the companies will fall into line," he said.

"But if they do not, we are certainly prepared to arbitrate against them as we did against Alte."

Alte Leipziger, meanwhile, will oppose Pan Atlantic's petition to have the award approved by a judge in the U.S. District Court for the Southern District of New York, according to Elliot Kroll, a lawyer with Kroll, Tract, Harnett, Pomerantz & Cameron, representing the reinsurer.

"Our client is definitely planning to respond," Mr. Kroll said.

Alte Leipziger already has sent a letter to the American Arbitration Assn. claiming that the award is invalid because it was not rendered within 30 days after the close of the hearings, according to Pan Atlantic's lawyer Mr. Brandes.

Since 1971, Pan Atlantic has managed a pool that has included 72 U.S. and foreign reinsurers, each of which has assumed a portion of risks underwritten by fronting insurers in the United States and overseas. Pan Atlantic has written both treaty and facultative reinsurance, the majority of which was property business.

Fronting insurers on U.S. risks included Republic Insurance Co. of Dallas starting in December 1974 and Employers Casualty Co. of Dallas starting in July 1985, court papers show.

Non-U.S. business was fronted by Pan Atlantic Reinsurance Co., a Bermuda-based unit of Pan Atlantic Group, court papers say.

Last year, two reinsurers—Herold Ruckversicherung AG of West Germany and Alte Leipziger—stopped funding losses, and were soon followed by several other European members of the Pan Atlantic pool.

"Pan Atlantic is not the only U.S. company that had problems with European markets," Mr. Brandes added, noting that as market conditions deteriorated many European companies sought to escape liability on U.S. business.

Most European reinsurers have withdrawn in the last two years from writing U.S. business and say they don't intend to return to the U.S. market. "They don't particularly care if their reputation in the U.S. market becomes one of an unworthy business partner," he said.

Pan Atlantic then sent notices to the reinsurers demanding arbitration of the disputes before the American Arbitration Assn. in New York under a clause in each of the reinsurance contracts, court papers say.

Pan Atlantic alleges that the reinsurers owe a total of more than $15 million, according to court papers, though Mr. Brandes said the actual amount may be less.

None of the court actions has disclosed any premium and loss information.

Mr. Brandes added the dispute has not caused cash flow problems for Pan Atlantic, which has retained a percentage of premiums owed to each of the reinsurers—as it is allowed to do under the reinsurance contracts—and is using these retained premiums to cover current claims.

*Continued on page 6*

# Capitol action

## Risk Retention Act nearly certain

By JERRY GEISEL

WASHINGTON—All barriers to an expanded federal Risk Retention Act fell last week, making enactment this month a virtual certainty.

Racing against an adjournment clock, House-Senate negotiators, after several intense meetings, late last week settled the significant differences in risk retention legislation H.R. 5225, which was approved without opposition by the House last month, and S. 2129, passed 96-1 by the Senate in July.

The staff agreement then was approved by the chairmen and ranking minority members of the House Energy and Commerce Committee and the Senate Commerce Committee.

With the major differences resolved, business lobbyists were optimistic that both the House and Senate would give final approval late last week to the legislation, which will make it much easier for employers to establish special captives known as risk retention groups or buy commercial casualty insurance on a group basis.

"We're 99% there," one lobbyist said. "The legislation is ready for a final vote."

The major differences in the House and Senate versions, and the compromise agreements reached, were:

- Commerce Department report on the Risk Retention Act. Under the House bill, the Commerce Department would be required, among other things, to submit a report to Congress on the effect, if any, that the Risk Retention Act has on easing the liability insurance crisis. The Senate bill does not contain such a provision.

Under the compromise, insisted upon by Senate members, the Commerce Department report also would examine the extent, if any, to which states initiated discriminatory actions against risk retention groups.

- Financial responsibility requirements. The House bill makes clear that the Risk Retention Act would not pre-empt state laws that set financial requirements for employers engaging in certain activities. The Senate bill lacks such a provision.

For example, a state may require that companies that operate hazardous waste disposal sites purchase a minimum amount of environmental impairment liability insurance from a licensed, admitted insurer.

Under this House provision, if a risk retention group had not qualified as a licensed, admitted insurer, a state still could say that an employer that had obtained coverage through the risk retention group did not satisfy its financial responsibility requirement.

The House bill also says, though, that a state could not discriminate against the use of risk retention groups as a method of satisfying financial responsibility requirements. For example, a state could not specify that all forms of insurance—except coverage through a risk retention group—would satisfy a financial responsibility requirement.

Under the staff compromise, the Senate accepted

*Continued on next page*

# Product liability bill withdrawn

By JERRY GEISEL

WASHINGTON—Federal product liability reform legislation will not pass Congress this year, and prospects for passage next year are uncertain.

The fate of a comprehensive reform bill, S. 2760, was sealed late last month after Senate Majority Leader Robert Dole, R-Kan., pulled the bill from the Senate floor because opponents were prepared to bottle up the legislation.

While the Senate had agreed on several separate votes to consider the measure, opponents led by Sen. Ernest F. Hollings, D-S.C., still had the power under Senate rules to debate the bill for at least 30 hours.

And with so many other "must" pieces of legislation, such as budget bills, still to consider in the waning days of the session, there simply was not time to consider the product liability measure, said Liberty Mahshigian, co-counsel for The Product Liability Alliance in Washington.

"If I had my druthers, we would pass the bill. But it is fairly obvious. . .that it is not going to happen this year," Sen. Dole said.

A 84-13 vote to kill a filibuster was meaningless as a measure of true support for the proposal, since the majority leader had said before the vote that he was going to withdraw the measure.

Opponents of the measure have argued that the bill would take away consumers' rights and that issues of tort law historically have been decided at the state level.

But backers are encouraged that the measure got this far—until now, a product liability bill never had been debated on the Senate floor—and believe the proposal would have had a good chance of passage if time had not run out.

"We had the votes but they (the opponents) had the clock," said Jim Anderson, director of government affairs for the National Assn. of Wholesaler-Distributors in Washington.

*Continued on page 33*

# TWA leaves M&M for Frank Crystal

By MICHAEL BRADFORD

NEW YORK—Frank Crystal & Co. Inc., the 38th-largest broker in the United States, will broker the U.S. hull and liability coverages for Trans World Airlines Inc., after the airline pulled its account from Marsh & McLennan Cos. Inc., the world's largest broker.

The change will take effect on Nov. 1, when TWA's coverages are due for renewal.

Those connected to the move indicated that the airline's new owner, Carl Icahn, decided to drop M&M as TWA's broker and move the account to Frank Crystal & Co. because the smaller, New York-based brokerage places insurance for Mr. Icahn's other businesses.



Mr. Icahn

Frank Crystal & Co. reported 1985 gross revenues of $11.2 million, compared with $1.4 billion last year for M&M.

James W. Crystal, president of Frank Crystal & Co., is handling the TWA account. Mr. Crystal declined to be quoted about his brokerage's new account.

Robert J. Newhouse, chairman of M&M, declined to discuss his company's loss of the TWA business, saying company policy forbids comment on the brokerage's relationship with its clients.

Frank Crystal & Co. also will handle hull and liability coverages in the United States for St. Louis-based Ozark Air Lines Inc., which was acquired by TWA last month.

M&M also had been the broker for the Ozark account, through its St. Louis office.

According to figures provided by Frank Crystal & Co., TWA and Ozark have a total of $3 billion in limits for their combined hull exposures.

The brokerage would not reveal the limits of the liability coverage carried by the two airlines, but in the past, sources have indicated that TWA alone has $600 million of coverage (*BI*, April 7).

In addition to changing its U.S. broker, TWA also moved its London brokerage account from C.T. Bowring & Co. Ltd. to Stewart Wrightson (Aviation) Ltd. Wrightson will handle the placement of coverages outside the United States.

Mike Fox, TWA's director of insurance in Kansas City, Mo., said Wrightson got the TWA account because it already placed coverage in that market for Ozark.

"Since they already had Ozark, basically, that's it," he said.

Mr. Fox said about 55% of TWA's coverage is placed in the U.S. market. That coverage is led by Associated Aviation Underwriters Inc., a group of insurers that participate on airline risks.

Of the remainder of TWA's coverage, 30% is with various Lloyd's of London syndicates and 15% is insured in Paris by La Reunion Aerienne.

Those percentages are not expected to change, Mr. Fox said.

How much the account will mean in terms of compensation for Frank Crystal & Co. is unclear.

However, Mr. Fox said, "I think we are a major account and pay an appropriate amount for brokerage services. That will continue for Wrightson and Crystal."

Mr. Fox would not comment further on the decision to switch brokers, except to say, "It was something we felt was appropriate at this time. It is really something that is between TWA and its brokers."

Since Mr. Icahn bought TWA, the style of managing the airline's risks has "not changed appreciably," according to Mr. Fox.

The only change in its approach to buying insurance, he added, is TWA's decision to consider lowering its currently high deductibles when coverages are renewed next month.

Mr. Fox said he has heard "rumblings that property/casualty rate shock is settling. I'd like to see that on hull and liability renewals." ■

## Risk Retention bill

*Continued from previous page*

the House financial responsibility provision. However, under this compromise, it was agreed that on the Senate floor, the managers of the bill would explain that states could not impose financial responsibility requirements for the purpose of preventing the establishment of risk retention groups.

Assuming everything goes as planned, the House and Senate late last week were to vote on the compromise legislation hammered out by the committee staffers.

Speedy action was essential since there was a chance that Congress would adjourn last week, though adjournment this week was considered more likely because legislators are far behind in passing several pieces of vital budget legislation.

After congressional action, the legislation would go to President Reagan for his signature. Presidential approval is certain, since the administration has supported the measure.

The effective date of the legislation would be the date of presidential signature.

Once that occurs, the advantages of pooling and group purchase of casualty insurance—except workers compensation—would be opened up to corporations, hospitals, trade associations and municipalities.

Under the legislation, a risk retention group that is chartered or licensed in one state could operate nationwide without having to be licensed in other states.

In addition, the legislation would preempt state laws that prohibit employers from purchasing casualty insurance on a group basis.

This freedom to establish risk retention groups and to establishing purchasing groups now only applies to product liability and completed operations coverage under the 1981 Risk Retention Act.

The legislation to expand the 1981 law would allow such diverse entities as municipalities, day-care centers and nurse-midwives to establish risk retention groups or purchasing groups to obtain liability coverage that may not be available or affordable in the commercial insurance market.

This expansion of the 1981 law could be a major market event and help ease the liability insurance crisis, backers of the legislation say.

Other provisions in the legislation would require a risk retention group to:

- Submit an operating plan to every commissioner in states in which it intends to do business before beginning operation. This operating plan would include a rating schedule, coverages to be offered and limits provided.
- Submit to regulators in every state in which it operates a copy of its annual financial statement that it files in its domicile. This statement would have to be certified by an independent accountant with an opinion on its loss reserves by a qualified actuary.
- Exclude coverage for punitive damages or intentional, fraudulent or criminal conduct to the extent such coverage is prohibited by state law.

In addition, federal courts would have the clear authority to issue an injunction to stop a risk retention group from operating in all states if the court finds that a group is operating in a hazardous financial condition. ■


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Q. **How can I measure the effectiveness of risk control?**

A. ...there should be specific criteria established to measure the degree of effectiveness...These criteria must be measurable, quantifiable and relative to an exposure base.

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RISK MANAGEMENT SERVICES


## Maine, NCCI dispute duties for risk plan

**By CAROL CAIN**

AUGUSTA, Maine—Maine's Insurance Superintendent Theodore J. Briggs is taking over assignment duties for the state's workers compensation assigned risk pool from the National Council on Compensation Insurance.

But, the superintendent still wants the NCCI to provide him with data it compiles on insurers.

NCCI, however, says it testified Sept. 26 that it would only provide "housekeeping" chores for the assigned risk plan.

Chapin Clark, NCCI regional vp, said housekeeping means "extremely limited administrative tasks," basically reviewing applications for "fundamental completeness."

But in an order issued Sept. 30, Mr. Briggs defined housekeeping services to include "all services" provided by the NCCI in the past, "except for the actual assignment of servicing carriers."

Mr. Clark said the NCCI has not determined what services Mr. Briggs is ordering them to provide.

Michael Camilleri, NCCI senior vp and general counsel, said that if the superintendent "orders" the NCCI to provide any data about insurers, the NCCI will turn in its license as a ratemaking organization, which it has held since 1947.

The dispute over administrative duties—including determining which insurer in the assigned risk plan will service an employer—is holding up processing applications from employers that cannot find work comp insurance in the voluntary market.

Mr. Briggs said only a small number of applications are pending. However, he noted, "We believe more are coming."

The NCCI, a New York-based workers comp ratemaking organization, announced last month that as of Oct. 1 it would withdraw as the administrator of Maine's assigned risk plan (*BI*, Sept. 22).

"Neither we nor the servicing carriers of the assigned risk plan ever contemplated that most of the businesses in the state would wind up in the plan," said Mr. Clark.

He said plans usually include 5% to 10% of the policies in a state. But, he said, the Maine plan has about 85% of the policies in the state, and the NCCI estimates it produces about $77 million, or 45%, of the premium volume.

The NCCI's move was prompted in part by Mr. Briggs' recent announcement of the creation of a mandatory assigned risk plan, in which all insurers would be required to participate if they had a share of the state's voluntary work comp market that averaged 1% or more from 1983 to 1985.

Mr. Clark said NCCI executives would meet late last week to review the order and the transcript from the hearing. ■

# How Wausau earns its stripes at Rust-Oleum Corporation.



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"Our plant people work with Wausau's safety engineers and field people on everything from fork-lift driving, to proper ways of lifting heavy items, to air sampling.

"We've always had the philosophy that it takes quality people to make quality products. To do that, we need quality insurance programs so we can hire — and keep — quality people.

"An important factor is Wausau's cooperation. When we have questions on our loss-prevention programs, Wausau is right there to help us find the answers."

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# Arbitration award

*Continued from page 3*

In addition to Herold and Alte Leipziger, the reinsurers involved in the dispute include Atlantica Insurance Co. Ltd. of Sweden; Colonia Versicherung AG and Erste Allgemeine Versicherung AG of West Germany; Finnish Marine Insurance Co. of Finland; Generali Ruckversicherung AG of Austria; Helvetia Accident Insurance Co. of Switzerland; Industrial Mutual Insurance Co. of Finland; Landschaftliche Brandkasse of West Germany; New Reinsurance Co. of Switzerland; Pohja Insurance Co. of Finland; Sampo Mutual Insurance Co. of Finland; Wurttembergische Fire Insurance Co. of West Germany; and Zentraleuropaische Versicherung AG of West Germany.

Mr. Brandes says that Pan Atlantic had requested that arbitrations with all of the reinsurers be consolidated into a single proceeding, but he says that the reinsurers insisted on separate hearings.

The Alte arbitration began in December 1985 and concluded with the award that was issued Sept. 8.

Arbitration proceedings with Herold, which started last year, fell apart in April after Herold's attorneys, Lanzone & Kramer, challenged the impartiality of the arbitration panel, which then resigned, according to Mr. Brandes.

A new panel has been chosen and hearings should begin later this month or early November, Mr. Brandes said.

Lawyers with Lanzone & Kramer declined to comment on the case.

Arbitration proceedings haven't yet begun with any of the other reinsurers, though the Arbitration Assn. has given the parties until Oct. 5 to agree on umpires—the third member of the three-person arbitration panels—in all of the remaining cases, according to Mr. Brandes.

The action in the various cases, however, has scarcely been confined to arbitration proceedings: Since the arbitration demands were first served in 1985 and early 1986, Pan Atlantic and the reinsurers have filed numerous lawsuits in several New York courts on issues related to the arbitration.

The reinsurers in several cases have taken the position that their obligations are to the fronting insurers, not to Pan Atlantic, and that the disputes should therefore be settled directly between the reinsurers and ceding companies rather than through arbitration with Pan Atlantic, according to court papers.

Pan Atlantic's lawyer charges that the litigation is an attempt to stall arbitration of the claims.

"These other companies don't want to arbitrate because they think they will get the same result" as Alte Leipziger, said Mr. Brandes.

"That's why we've gotten an awful lot of maneuvering," Mr. Brandes said.

Lawyers representing the reinsurers, however, say that the lawsuits have been necessary in order to protect the interests of their clients.

"Our clients have legitimate legal rights which they are seeking to protect and they are taking steps to protect those rights," said Mr. Kroll.

"None of those steps is what anyone could consider mere stalling techniques."

On June 3, seven of the reinsurers filed a class-action suit in U.S. District Court in Manhattan against Republic and Employers Casualty, which are two of the Pan Atlantic pool's U.S. fronting insurers.

Pan Atlantic's agreements with Republic and Employers Casualty—unlike its agreements with the reinsurers—contain no provisions for arbitration of disputes, court papers say.

'Our clients have legitimate legal rights which they are seeking to protect and they are taking steps to protect those rights,' says attorney Mr. Kroll. 'None of those steps is what anyone could consider mere stalling techniques.'

The class action complaint, filed on behalf of all the Pan Atlantic pool members, seeks to have the members' reinsurance agreements canceled from inception.

The seven plaintiffs in this suit are Wurttembergische, Alte Leipziger, Zentraleuropische, Colonia, Erste Allgemeine, Landschaftliche Brandkasse and Generali.

The reinsurers charge in the complaint that loss reserves established for pool business were "inadequate and unrealistic" and that pool financial results and loss development data—on which reinsurers based their decisions to participate in the pool—were misleading.

The complaint charges that Republic and Employers Casualty failed to properly supervise and evaluate loss reports and to account for premiums and losses.

Neither Republic nor Employers Casualty has yet filed an answer to the complaint.

Employers Casualty, however, filed a motion seeking to stay the lawsuit pending arbitration proceedings.

Alternatively, the motion asks the court to dismiss the lawsuit on the grounds that information about the pool was provided to reinsurers by Pan Atlantic and not by Employers Casualty; and on the grounds that the reinsurers all became participants in the pool before Employers Casualty first became involved as a fronting insurer.

U.S. District Judge Charles S. Haight Jr. has not yet ruled on the motion.

Republic's response to the complaint has been delayed by a motion by the reinsurers to disqualify Miller, Singer & Raives, Republic's attorneys, according to Gerald Greenberger, a lawyer with Miller, Singer.

In a July 2 letter to Judge Haight, Sol Kroll—a partner of Kroll, Tract, representing the reinsurers—argued that Miller, Singer's representation of both Republic in the lawsuit and Pan Atlantic in the arbitration proceedings amounts to a conflict of interest.

Judge Haight refused to disqualify Republic's law firm but is considering another motion by the reinsurers to reargue the issue, Mr. Greenberger said.

The reinsurers also asked Judge Haight on July 8 for an order that would have halted the arbitration proceedings against Alte Leipziger pending a ruling on the disqualification motion.

Judge Haight, however, denied this request the following day.

Another tangle of litigation grew from Pan Atlantic's move to include in the New York arbitration proceedings disputes between the reinsurers and Pan Atlantic Reinsurance Co., the Bermuda-based fronting insurer for the pool's non-U.S. business.

On April 10, roughly three months after being served with

*Continued on next page*



JUDGMEN

*Continued from previous page*

Pan Atlantic's arbitration demands, several of the reinsurers demanded arbitration with PARCO in London on the question of whether they could void their agreements with the Bermuda front company.

Pan Atlantic's agreement with PARCO—unlike the agreements with the two U.S. front companies, Republic and Employers Casualty—provided for arbitration of reinsurance disputes.

The reinsurers took the position that Pan Atlantic acted only as an agent but because of the arbitration agreement between Pan Atlantic and PARCO, argued that this dispute should be arbitrated between PARCO and the reinsurers.

In response, Pan Atlantic and PARCO filed a lawsuit against the reinsurers in New York State Supreme Court in Westchester County seeking to block the reinsurers from pursuing the London arbitration with PARCO. This complaint was later dismissed by the court for failure to properly serve the defendants, according to court papers.

**After filing the complaint, the reinsurers sought a preliminary injunction to block inclusion of PARCO in any arbitration, arguing PARCO's inclusion would 'irreparably confuse the arbitrators as to the respective rights and liabilities' of pool members.**

Meanwhile, Pan Atlantic on June 2 amended its earlier arbitration demands against the reinsurers to include any disputes with PARCO.

In response to this move, 11 of the reinsurers filed suit against Pan Atlantic in U.S. District Court in Manhattan on Aug. 15, seeking a permanent injunction barring Pan Atlantic from amending its demands to include PARCO and barring any Pan Atlantic arbitration that would include PARCO as a claimant.

The 11 plaintiffs include all the reinsurers named above except Herold, Alte Leipziger and Wurttembergische.

After filing the complaint, the reinsurers sought a preliminary injunction to block the inclusion of PARCO in any arbitration proceedings, arguing that PARCO's inclusion would "irreparably confuse the arbitrators as to the respective rights and liabilities" of the pool members.

U.S. District Judge John M. Walker Jr. denied the motion for a preliminary injunction Sept. 12. The reinsuers have asked the court for permission to reargue this issue, and that request is pending. A ruling on the complaint's demand for a permanent injunction has not yet been issued.

Meanwhile, Wurttembergische has launched its own barrage of litigation against Pan Atlantic in an attempt to stay the arbitration proceedings.

On March 3, roughly two months after receiving Pan Atlantic's arbitration demand, Wurttembergische petitioned the New York State Supreme Court in Westchester County to stay the arbitration, arguing that Pan Atlantic was merely an agent for the front companies and could not arbitrate on their behalf.

The court denied the request for a stay on May 29, and ordered arbitration to proceed. Wurttembergische also was denied its request for an interim stay of the arbitration order during an appeal of the Westchester court's ruling to the Appellate Division of the State Supreme Court in Brooklyn.

However, after Pan Atlantic amended its arbitration demand in June to include PARCO, Wurttembergische applied for—and was granted—a temporary restraining order on the arbitration June 26 by Justice David Saxe of the New York State Supreme Court in Manhattan.

After the restraining order was issued, Wurttembergische discovered that Pan Atlantic had not paid required fees to the American Arbitration Assn. at the time the original arbitration demand was filed in January, according to court papers filed by the reinsurers law firm Kroll, Tract.

On Aug. 15, a State Supreme Court judge granted Wurttembergische a second temporary restraining order and an interim stay of the arbitration, after the reinsurer argued that Pan Atlantic's failure to pay the fees according to AAA rules made the arbitration demand invalid. Wurttembergische also argued that AAA had tried to force the reinsurer to violate the first restraining order by requiring it to choose arbitrators and file counter claims in the proceeding.

Both restraining orders are still in effect.

While the legal maneuvering over the arbitrations continues, Pan Atlantic and its president, Lionel J. Goetz, are pressing another lawsuit against Alte Leipziger and its parent company in U.S. District Court in New York.

In a complaint filed last December, Pan Atlantic and Mr. Goetz charge that after Alte first breached its reinsurance agreement in January 1985, it tried to persuade other reinsurers to follow it, suggesting that they could all avoid liability by driving Pan Atlantic out of business or by scaring Pan Atlantic into settling for a fraction of the claims owed.

Because of Alte's tortious interference, 12 other European reinsurers—including most of those named above—later ceased honoring their agreements, the complaint alleges.

Alte Leipziger also engaged in a "concerted effort" to defame Pan Atlantic and Mr. Goetz personally by accusing them—in communications with pool members and other reinsurance contacts—of incompetence and dishonesty in handling the pool's affairs, the complaint charges.

As a result of Alte's allegedly slanderous statements, PARCO has been restricted from doing business with a leading Lloyd's of London broker. In addition, Chiyoda Fire & Marine Insurance Co., a pool member for 12 years, refused to renew its participation, the complaint charges.

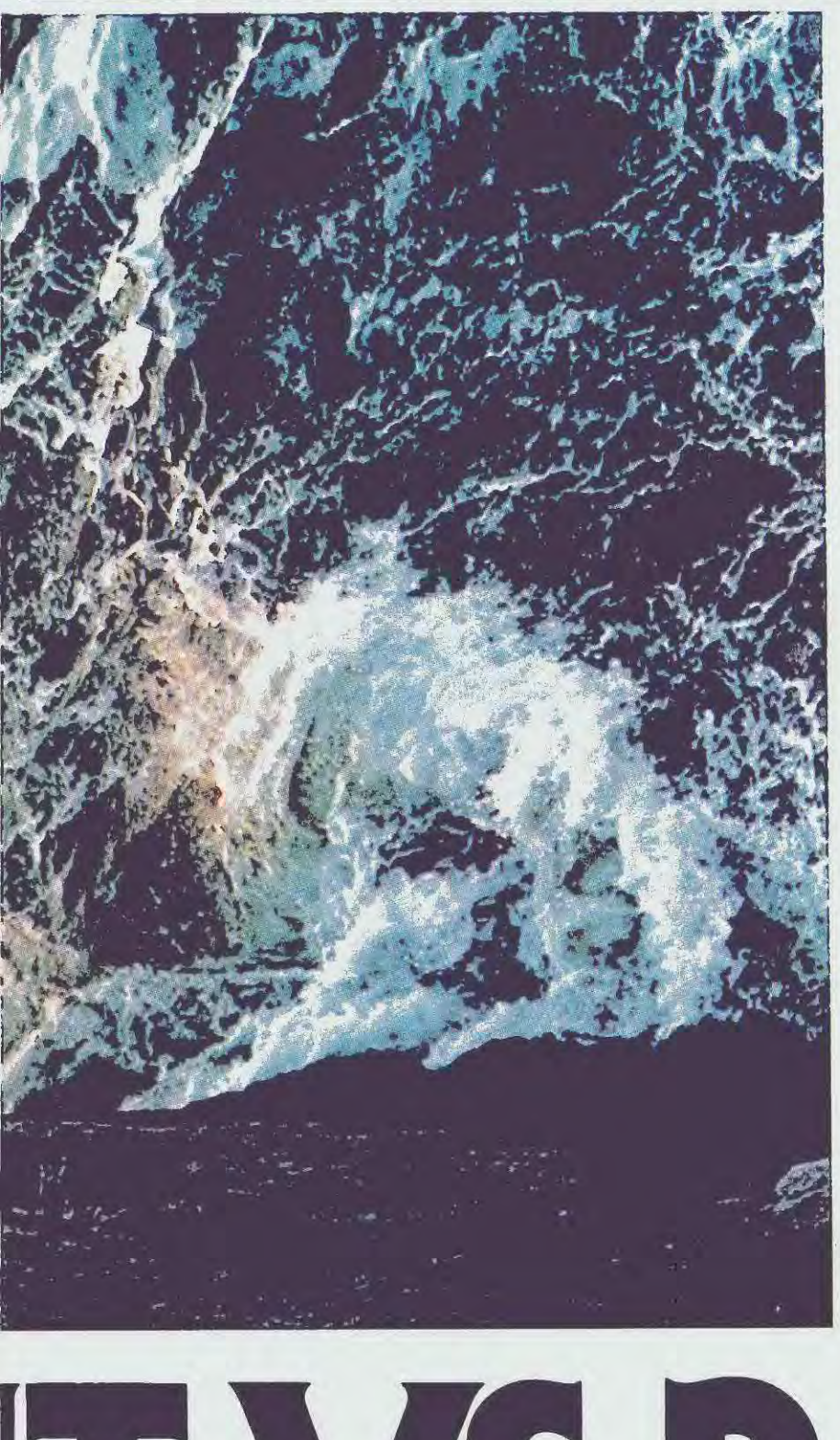
The lawsuit seeks a total of $91 million in compensatory and punitive damages.

In an answer filed last March, Alte Leipziger denied Pan Atlantic's allegations and asserted numerous defenses, including that the allegedly defamatory statements—if they were made—were privileged. Alte Leipziger also claimed that if it made any statements about Pan Atlantic and Mr. Goetz, the statements were truthful.

In a series of counterclaims, Alte Leipziger—asking the court to dismiss the complaint—charged that Pan Atlantic was trying to coerce Alte into settling their contractual dispute and to deliberately inflict financial harm on the reinsurer and damage its business reputation.

Mr. Brandes, Pan Atlantic's lawyer, said that discovery proceedings in the case will go ahead despite the recent arbitration award against Alte Leipziger.

"We have every intention of prosecuting it," he said. ■

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# *opinions*

# It's time to defend the PBGC

HOW MANY MORE bombs have to drop on the Pension Benefit Guaranty Corp. before legislators wake up and construct new defenses to protect the agency from the next hit?

The latest explosion to rock the PBGC is the termination of two enormously underfunded pension plans by financially troubled LTV Corp.

The terminations of those two plans, covering salaried workers and retirees at steel companies LTV earlier acquired, will add about $600 million to the PBGC's current deficit of $1.7 billion.

And, more pension bombs are ticking, ready to go off at any time. LTV says the termination of two more plans covering hourly employees is essential to enable the company to survive. Those plans have unfunded liabilities of $1.9 billion, a debt that also would be passed onto the PBGC.

If these terminations occur, as is likely, the PBGC next year would pay more in guaranteed benefits just to LTV plan participants than it collects in revenue from all employers with defined benefit plans that must pay an annual premium of $8 50 per plan participant.

Certainly, the LTV pension fiasco—the largest by far in the PBGC's 12-year history, easily eclipsing the $498 million termination of several Wheeling-Pittsburgh Steel Corp. pension plans last year—won't be the last.

Just as Wheeling-Pittsburgh substantially cut its benefit costs by transferring its pension plans to the PBGC, LTV will be able to do the same.

That sets the stage for more steel companies, whose benefit costs will be higher than those of LTV and Wheeling-Pittsburgh, to also unload their pension plans and the unfunded liabilities on the PBGC to remain competitive.

This scenario doesn't have to be limited to steel companies. As the steel industry demonstrates, a healthy industry can quickly become a sick one as economic conditions change.

Since a financially troubled company has no financial incentive to do more than merely contribute the legally required minimum to its pension plans, pension plan funding overall will suffer.

**No one knows how much higher the premium will go if the PBGC gets hit with more billion-dollar plus claims. . . .Something has to be done, and it has to be done fast.**

That means by the time the PBGC takes over pension plans, they often are in terrible financial shape. An example: an LTV plan covering retirees of the former Republic Steel Corp., now part of LTV, had just $7,700 in assets and $250 million in unfunded liabilities when the PBGC took the plan over last month.

Ultimately, the price of these terminations is passed onto employers who support the PBGC through a mandatory premium. That premium, now $8.50, could pass the $20 mark if LTV terminates all of its pension plans.

No one knows how much higher the premium will go if the PBGC gets hit with more billion-dollar-plus claims, as is inevitable unless the program is changed.

To prevent the premium from skyrocketing, something has to be done, and it has to be done fast.

So far, Congress has taken two steps, but only small ones, to hold the line. After five years of warning, Congress earlier this year closed one loophole in federal law that allowed healthy employers, in some cases, to dump their pension debts onto the PBGC at little cost. Legislators also increased the obligations financially troubled companies owe the PBGC if they terminate underfunded plans.

But that last remedy, while well-intentioned, really is akin to locking the barn door after the horse is out. How much money can the PBGC recover from a company that has filed for bankruptcy? Precious little, we think.




Rather than waiting for disasters to occur, it would make a lot more sense to require plans to be better funded.

One approach would be to require that plans, at all time, be at least 75% funded for vested benefits. Currently, the minimum funding standard is not based on a fixed percentage of vested benefits.

Establishing a minimum funding for vested benefits would reduce the PBGC's vulnerability to massive claims and control the premium employers must pay. Obviously, this requirement would have to be phased in so some companies wouldn't collapse from the financial burden of shoring up their plans to decent levels. But for most employers, a minimum funding standard for vested benefits wouldn't be a burden. Last year, 887 plans surveyed by The Wyatt Co. were found on average to be 84% funded for vested benefits.

Some might argue that nothing should be done. Congress, it is argued, always can be counted on to bail out the PBGC.

Whoever believes that doesn't know which way the political wind is blowing in Washington. With the Gramm-Rudman balanced budget law on the books, the federal government isn't going to take on billions of dollars in new liabilities. Nor will Congress deny participants their guaranteed benefits.

Legislators, instead, will do what they always do: make employers pick up the costs.

And employers, which already don't like an $8.50 PBGC premium, will like it a lot less when the premium is $100 or $200, which is the direction it is going.

And Congress should be aware that employers have an alternative to paying mounting PBGC premiums. Companies can always shut down their defined benefit plans and set up defined contribution plans, which aren't covered by the PBGC. Surely, that will happen if PBGC premiums go too high.

If Congress wants to preserve the nation's defined benefit plan system, it must act. Other suggestions, such as a risk—related premium, make sense, but we think the best solution is to require better funding of pension plans.

An employer that can't afford to adequately fund a pension plan should not sponsor one.

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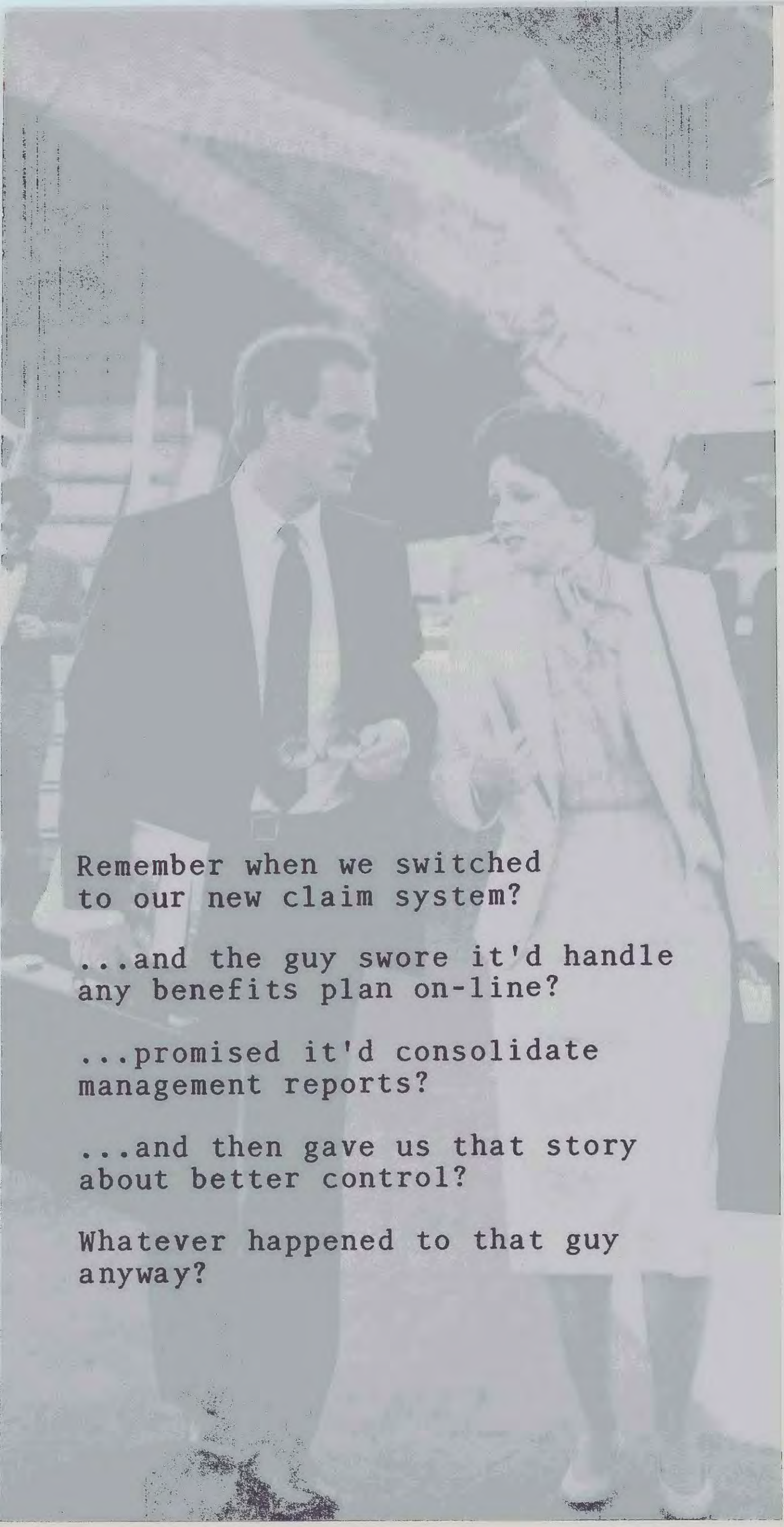
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...promised it'd consolidate management reports?

...and then gave us that story about better control?

Whatever happened to that guy anyway?

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# Patton to direct Hilton risk management

**Michelle Patton**, 35, has been named director of risk management at Hilton Hotels Corp. in Beverly Hills, Calif. In addition to supervising the risk management program for the company's approximately 40 owner-managed locations, she will develop a risk management plan for the company's international operations and about 225 franchise locations. She replaces **Michael E. Murkey**, who left the company, and reports to Walter L. Robinson, assistant treasurer-risk management. She

## *comings & goings: buyers*

was previously corporate insurance manager at Carl Karcher Enterprises Inc. in Anaheim, Calif. For five years before that, Ms. Patton was corporate risk and insurance manager at Max Factor & Co. in Hollywood. She attended Santa Monica City College and the University of California at Los Angeles. In addition, Ms. Patton is a former director of the Los Angeles Chapter of the Risk & Insurance Management Society.

* * *

**Michael E. Murkey** has been named risk manager at MCA Inc. in Universal City, Calif. Mr. Murkey now is responsible for the entertainment and retail conglomerate's day-to-day insurance activities. He replaces **Terry Young**, who left MCA to join United Artists Corp., and reports to John S. Surabian Jr., MCA's corporate director of risk management and insurance. Prior to joining MCA, Mr. Murkey was director of risk management for Hilton Hotels Corp. in Beverly Hills, Calif., and prior to that served as an insurance analyst for City Investing Co. in Beverly Hills. He holds a bachelor of science degree in business administration from California State College at Northridge and a master of business administration degree from Pepperdine College in Los Angeles.

* * *

**Peter P. Fettig**, 44, has been promoted to corporate director of benefits at Lincoln National Corp. in Fort Wayne, Ind. In this newly created position, he will be responsible for the research, design, implementation and administration of non-cash compensation programs for employees and agents of Lincoln National. He reports to Fred Farkas, second vp and director of compensation and benefits. Mr. Fettig joined Lincoln National in 1964, and most recently served as director of benefits for the company's Fort Wayne operations. He received a bachelor of arts degree in mathematics from DePauw University in Greencastle, Ind.

* * *

**Steven P. Wroten** has been named manager-human resources at Beacon Insurance Co. of America and American Select Insurance Co. in Westerville, Ohio. In this newly created position, Mr. Wroten will be responsible for employee benefits, training and development. He reports to Phillip E. Frakes, president. Prior to joining Beacon and American Select, Mr. Wroten served as assistant personnel manager at Ethyl-Capital Products Corp. in Harrisburg, Pa. He holds a bachelor of arts degree in psychology and political science from Baylor University in Waco, Texas, and master of science and doctorate degrees in industrial/organizational psychology from Ohio State University in Columbus.

* * *

**Diane K. Good**, 33, has been named director of risk management and benefits, a newly created position, at Wrather Corp. in Beverly Hills, Calif. Wrather is a property management company whose local holdings include the Disneyland Hotel in Anaheim and tourist attractions like the Queen Mary and Spruce Goose airplane. Ms. Good is responsible for both property and liability insurance programs at Wrather, as well as for employee benefit programs. She reports to Roy M. Rawls, executive vp and chief financial officer. Prior to joining Wrather, Ms. Good was risk and benefit manager at Mitsubishi Electric America Inc. in Cypress, Calif. She holds a bachelor of science degree in business administration from DePaul University in Chicago. Ms. Good is a director of the Los Angeles Chapter of the Risk & Insurance Management Society.

* * *

**R. Vincent Sanguinet** has been appointed executive director and risk manager of the Inland Empire Schools Insurance Authority (EMPIRE) in San Bernardino, Calif. EMPIRE is a self-funding program for 38 school and community college districts in San Bernardino and Riverside counties covering such lines as workers compensation, property, liability, and employee benefits. Prior to this appointment, Mr. Sanguinet was director of risk management at Coast Community College District in Costa Mesa, Calif. He is also a member of the board of directors and chairman of the Joint Powers Authority that provides self-funded liability coverage excess of $1 million for school and community college districts within California.

●

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# Michigan employers can get claims data

**benefit beat**

Michigan employers soon will have the opportunity to receive detailed reports of their own group health claims data as well as aggregate claims data of other employers in the state.

The Business Health Care Data Reporting System is a new service that is provided by the Greater Detroit Area Health Council Inc., which is an employer health care coalition.

The reporting system was developed by a special task force of employers that were interested in collecting data to identify costs and utilization under their health plans.

The system was funded in part by a $50,000 grant from the CIGNA Foundation, a CIGNA Corp. unit, said Robert Tell, the council's deputy executive director.

The coalition has contracted with Health Risk Management Inc., a Minneapolis-based company that provides utilization review and claims data analysis services to employers.

"Under the system, employers will ask their insurers to provide their claims data to Health Risk Management, which will process the data for us so that we can provide reports," Mr. Tell explained.

The reports will help employers not only to identify their own benefit costs, but also to compare their experience with aggregate data produced by other companies, he said.

"There are many possible uses for the data," Mr. Tell pointed out. For example, the data could be used to identify differences in costs for similar procedures among providers, Mr. Tell said.

"If we find this to be the case in Michigan," the data could be used by employers to negotiate preferred provider contracts like those negotiated by employers in a Silicon Valley health data coalition (*BI*, July 14).

The data also can be used to help employers redesign their benefit plans to be more cost-effective, Mr. Tell said.

This would include offering incentives, such as waived deductibles or copayments, for having certain types of surgery performed on an outpatient basis, or by requiring employees to obtain second opinions for certain elective surgeries. Participating employers should receive their first data reports in February, Mr. Tell said. Claims data from more than 1 million Michigan residents will be included in the first data reports, he said.

Employers now participating in the project include General Motors Corp., Chrysler Corp. and Michigan Bell Telephone Co. The cost of the program will be funded by the CIGNA grant and by the dues that the companies pay to the council.

## Medical plan changes

Boise Cascade Corp. is switching to a comprehensive medical benefit plan with utilization review features from a first-dollar coverage medical benefit plan under a new three-year contract with the United Paperworkers International Union.

The contract covers about 1,250 employees at the Boise, Idaho-based company's plant in Rumford, Maine, according to a company spokesman in Portland, Maine.

Under the new plan, employees pay a $200 annual deductible for individual coverage and a $400 deductible for family coverage.

In addition, Boise Cascade employees pay 20% of the first $1,000 of expenses incurred, up to a maximum out-of-pocket expense of $400 for individual coverage and a maximum of $800 for family coverage.

In the second year of the contract, annual deductibles under the plan will increase to $250 for individual coverage and $500 for family coverage. Employees' maximum out-of-pocket expense also will increase to $550 for individual coverage and $1,100 for family coverage.

The new medical benefit plan, which is underwritten by John Hancock Mutual Life Insurance Co., has a maximum annual coverage limit of $300,000.

The utilization review program included in the new plan offers financial incentives for following certain procedures, said the spokesman.

For example, employees' deductibles can be waived if they obtain a second opinion prior to an elective surgical procedure.

Deductibles also are waived when employees undergo preadmission testing before they are hospitalized or when they have certain procedures performed on an outpatient basis.

The new plan also covers treatment in alternative settings such as home health care and hospice care, said the spokesman.

The contract includes a new dental plan, also underwritten by John Hancock. Under the dental plan, employees pay a $25 deductible per individual, up to a maximum of $75 per family.

They also pay copayments on certain procedures according to a schedule of benefits, said the spokesman.

There is an annual maximum of $1,000 of coverage under the plan, the spokesman said. And, there is a six-month waiting period for new employees to be covered under the plan.

The spokesman could not provide details of the company's previous dental plan but said that the new program "is a much better plan than the old one."

The contract also calls for an improvement in employees' defined benefit pension plan.

Under the improvement, employees will be credited with $20 per year of service with the company to determine their monthly pension benefits. Previously, employees were credited with $1 per year of service.

In the second year of the contract, the credit will increase to $21 per year of service.

The vote on the new contract, which ended an 11-week strike, was not available, according to the spokesman.

•

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## *around the states*

# Pennsylvania's MAP adds product liability

PHILADELPHIA—Two recent changes are expected to make the Pennsylvania Market Assistance Program more effective in helping to find commercial insurance coverage for hard-to-place risks.

Since mid-September, the MAP has helped companies find product liability or completed operations coverage. The MAP, which was established in January, previously dealt with only municipal, day-care and liquor liability coverage and general liability coverage on a limited basis.

And now, each of the 31 participating insurers is required to quote on at least one in every five applications it receives.

"This should speed the review of applications and ensure that all of the participating companies share the burden of finding coverage," said Henry G. Hager, chairman of the MAP's executive committee and president of the Insurance Federation of Pennsylvania, an insurer group.

The MAP has received 114 applications for coverage, with 69 from municipalities, 28 from liquor establishments and 17 from day-care operations, according to a federation spokesman.

"One percent or less of the eligible risks in each of the categories have had the need to apply," Mr. Hager said, adding that he concludes that coverage availability problems are "either not as severe as it was once thought or that the market is correcting itself."

About 90% of all applicants have received quotes for coverage, the federation spokesman said.

## Liability waiver

TALLAHASSEE, Fla.—The Florida Supreme Court will not rehear a case in which it held that a political subdivision that purchases liability insurance waives sovereign immunity up to the amount of the policy limits.

The court decided Sept. 26 not to rehear the case and reconsider its original decision, made July 10, in which it quashed a state district court's ruling that the county could not be sued under the state's doctrine of sovereign immunity.

In *Avallone vs. Board of County Commissioners of Citrus County*, Gloria Jean Avallone sued county officials because she was injured at an unsupervised county-owned park and swimming facility, according to her attorney, Arnold R. Ginsberg, with Horton, Perse & Ginsberg in Miami.

The county argued that the decision not to supervise the swimming facilities was a planning-level or discretionary decision, to which the state's sovereign immunity doctrine applies.

The district court accepted the county's argument, but the state Supreme Court rejected it.

The high court said in its opinion: "A government unit has the discretionary authority to operate or not operate swimming facilities and is immune from suit on that discretionary question. However, once the unit decides to operate the swimming facility, it assumes the common-law duty to operate the facility safely."

In addition, the Supreme Court upheld the ruling of the original trial court that the county's purchase of liability insurance constituted a waiver of sovereign immunity up to the policy limits.

However, the trial court also granted summary judgment in favor of the county, ruling the action of another swimmer was an intervening cause of the plaintiff's injuries. The Supreme Court rejected this conclusion.

## ISO proposal

HARRISBURG, Pa.—Pennsylvania Insurance Commissioner George F. Grode has rejected a proposal by the Insurance Services Office to include within the maximum dollar limits of a liability policy any interest added by the court as a penalty for unreasonable delay in settling a lawsuit.

*Continued on page 18*


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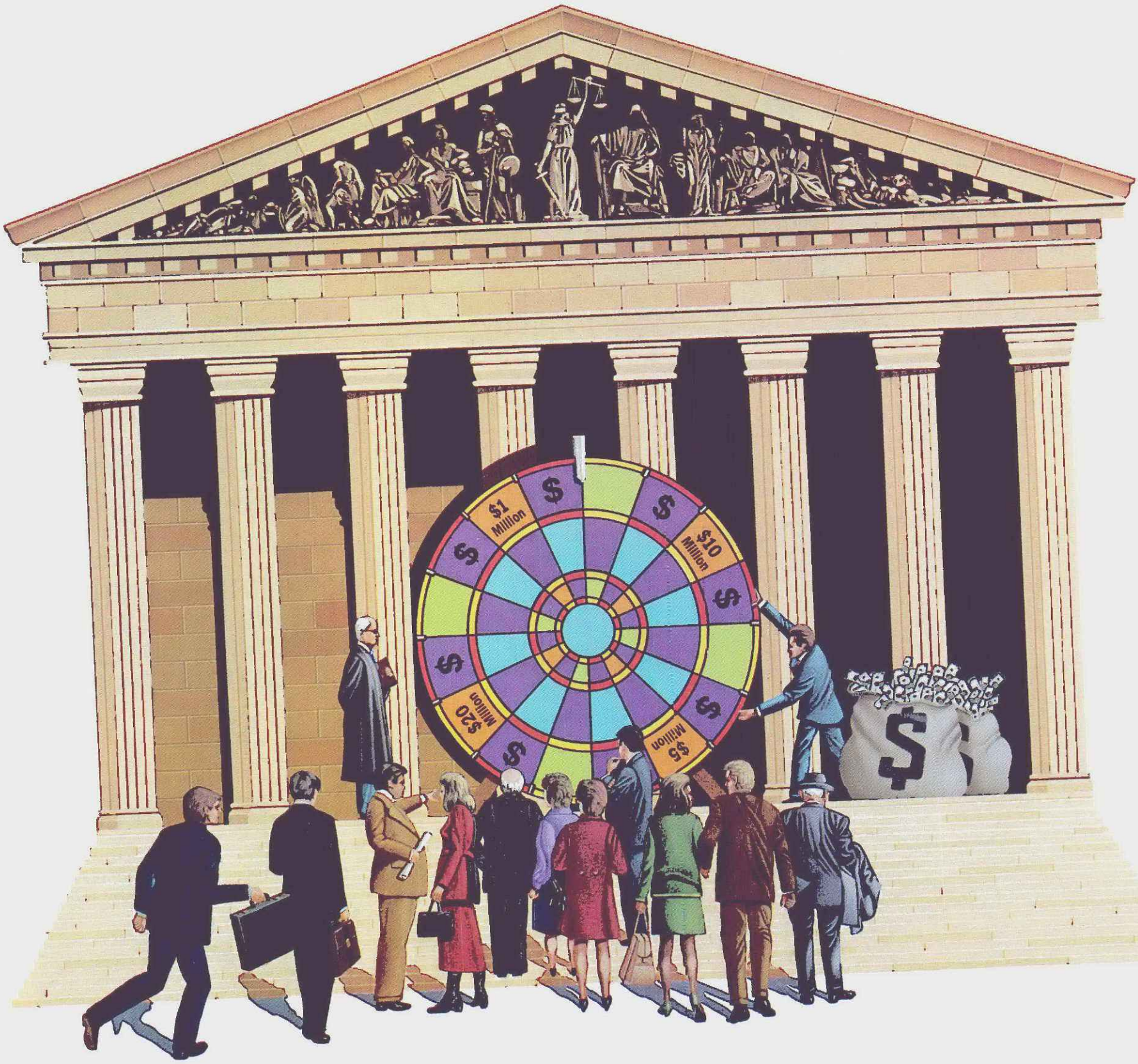
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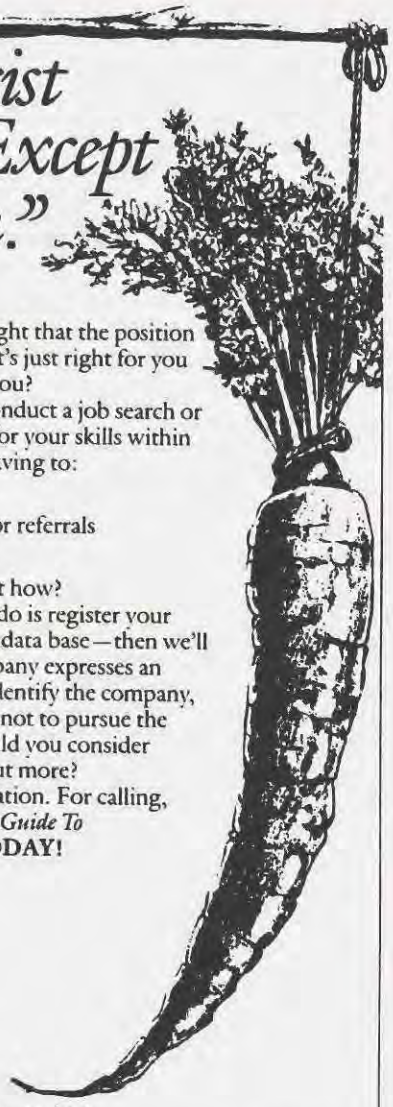
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# around the states

*Continued from page 16*

Under current Pennsylvania law, such interest is added to the policy limits. For example, if an insured defendant has a policy with $100,000 in limits and a plaintiff wins a $100,000 judgment plus a $20,000 penalty for unreasonable delays, the defendant's insurer is liable for the entire $120,000.

ISO wanted to change this rule so that insurers would have to pay out only $80,000 toward the judgment, plus the penalty, for a total of $100,000. Under this proposal, the policyholder would be directly liable for the remaining $20,000.

An ISO spokesman said that proposal would have applied only in liability cases filed under homeowners, private passenger automobile and inland marine insurance policies.

The Pennsylvania Supreme Court rule that authorizes courts to add interest for delay was intended to encourage defendants to make prompt, reasonable offers of settlement, to help clear the courts' congested dockets and to compensate plaintiffs for the time value of the money eventually awarded, Mr. Grode said in a guideline mailed to insurers last month.

"An insurance company could have less incentive to settle promptly if the additional monetary penalty of delay damages could be passed along to the policyholder-defendant," he said.

## Louisiana regulator

BATON ROUGE, La.—Insurance Commissioner Sherman A. Bernard, who recently lost his bid for the U.S. Senate, is preparing to stump again, this time for a fifth term as Louisiana's insurance regulator.

"I'm going to run again for insurance commissioner," Mr. Bernard said last week, a few days after Louisiana's Sept. 17 primary election, in which he lost a bid for the U.S. Senate seat being vacated by Democrat Russell Long.

Mr. Bernard, also a Democrat, was fourth among 14 candidates.

His term as commissioner expires in March 1988, and he will begin his campaign next year for a fifth four-year term, he said.

Louisiana is among the 11 states where insurance commissioners are elected. In most states, insurance commissioners are appointed.

## Municipal liability

DENVER—Fireman's Fund Insurance Co. is increasing its participation in the municipal liability insurance market in Colorado in response to tort reform legislation enacted earlier this year.

"Colorado is taking a leadership role in returning predictability to our tort system," said William M. McCormick, chairman and chief executive officer of Fireman's Fund, based in Novato, Calif.

The insurer reduced its underwriting of municipal liability insurance in the state during the past two years.

"Today, Colorado has become a fair and attractive place for insurers to do business," Mr. McCormick said, giving credit for the reform measures to the Legislature and Gov. Richard Lamm.

Several tort reform laws were signed by the governor in April and May and took effect July 1.

Among other things, those laws:

- Repeal the concept of joint and several liability in negligence suits as applied to all damages.
- Limit punitive damages to the amount of actual loss sustained by the plaintiff.
- Limit the liability of government agencies and their employees to their percentage of fault.
- Cap awards for non-economic damages at $250,000 in all negligence suits, though judicial discretion is allowed in extreme cases.

"The liberalization of tort laws over the last 25 years has raised liability costs and made certain types of insurance, such as municipal insurance, very difficult to write," Mr. McCormick said. "Colorado's new tort laws take a huge step in returning common sense to common law, which worked so well in America until the 1960s."

Fireman's Fund does not consider that it ever has been a major underwriter of municipal liability coverage, and it is not planning to become one, Mr. McCormick said. But, it will step up its participation in the market in response to "the important progress Colorado has made in restoring justice to the tort system."

Fireman's Fund also will provide a greater liquor liability insurance market for restaurants, hotels and motels in Colorado, Mr. McCormick said.

The Fireman's Fund announcement came late last month, after a review of the new laws by its underwriters.

Other insurers "should begin to factor the new Colorado tort laws into their underwriting practices," Mr. McCormick said. However, he added, "it will take time to confirm that any savings will result."

"The bottom line is what impact this tort reform will have on actual awards and settlements in the future," Mr. McCormick said. ■





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# PCW members extend lawsuit deadline

By STACY SHAPIRO

LONDON—Lloyd's of London and members of syndicates formerly managed by PCW Underwriting Agencies Ltd. are extending their legal standoff indefinitely in hopes of reaching a settlement in which Lloyd's and other parties will pay more than 235 million pounds ($341 million) in losses now owed by the members.

Members of the PCW syndicates had agreed not to file suit against Lloyd's and 37 other defendants until Sept. 30 so they could negotiate a settlement.

Earlier this year, the members drafted a lawsuit that alleges Lloyd's and the defendants caused the losses by acting negligently or fraudulently.

Last week, PCW members and Lloyd's agreed that no legal action would be taken at this time, a Lloyd's spokesman confirmed. Lloyd's and the members, however, have reserved the right to file legal action within 21 days of notifying the parties involved in the negotiations, he said.

Although Lloyd's is acting as a negotiator to settle the dispute, Lloyd's maintains that the members will have to pay a substantial proportion of the losses.

Lloyd's set aside 235 million pounds ($352.5 million) in its Central Fund until June next year to pay for PCW losses and hopes a settlement will be reached by then (*BI*, Sept. 1).

## Sports car stalled

**london**

A British sports car manufacturer is being forced to postpone the introduction of a new model in the United States until it can find product liability insurance and a distributor for the vehicle.

Reliant Motor P.L.C. in Tamworth has been unable to locate insurers that will write product liability insurance for U.S. exposures caused by the introduction of the new Reliant Scimitar sports car in the United States, said Michael Bennett, Reliant's marketing director.

"We have no coverage (for the United States) at this time," he said. "We will need to get product liability insurance before we launch the car in the U.S."

The United States "is a new market for us," Mr. Bennett said, noting that Reliant also cannot sell the car in the United States until it has set up a distribution network, he added.

The 51-year-old company has sold about 1,000 of the sports cars in Europe since the model was launched earlier this year, added Mr. Bennett. The cars sell for between 7,500 pounds ($10,875) and 10,300 pounds ($14,935).

The company has product liability insurance for its European exposures, he noted.

Reliant is just one of many European manufacturers that have found it difficult to obtain product liability insurance for U.S. exports since European reinsurers introduced a series of restrictions last year. Coverage now written by the reinsurers excludes North American subsidiaries of non-U.S. manufacturers, and the coverage may also exclude products exported to North America if the underlying coverage is not written on a claims-made form (*BI*, Dec. 16, 1985).

Mr. Bennett will not say how much coverage Reliant is looking for, though he says it is continuing its search.

## Royal opening

Lloyd's of London's new $250 million building will be officially opened by Queen Elizabeth II on Nov. 18.

The new Lloyd's building, designed by Italian-born architect Richard Rogers, has sparked controversy since the market moved into the modernistic structure from its 1958 building across Lime Street (*BI*, June 2; Sept. 1).

In fact, reports had circulated in the market that the queen would refuse to open the building because she didn't like it.

However, Lloyd's has always been confident that a member of the royal family would officially open the new building once all construction was completed.

In the meantime, British actress Susan Hampshire last month opened the first gift shop in a Lloyd's building. The shop, on the lower ground floor of the new building, will sell Lloyd's stationery, glassware, china, books, quality souvenirs, diaries and other items. Many will bear Lloyd's coat of arms.

The shop, according to Lloyd's, will serve the 80,000 people in the Lloyd's community, plus the large number of visitors expected at the new building.

## Miller address

Casualty insurers' improved results in the first half of 1986 should not be seen as conclusive proof of a financial turnaround for liability underwriters, says Lloyd's of London Chairman Peter Miller.

North American liability business is still creating underwriting problems that will take more than six months of good results to resolve, he said.

While Mr. Miller says he welcomes moves in the United States toward tort reform, increased rates and changes in policy wordings, "it is a matter of disappointment not only that more has not been achieved, but also that the early results of the 1986 account give what I believe is a wholly misleading impression that this is a battle won."

"Two quarters' results are being hailed by some as proof of a conclusive financial turnaround, without pause for reflection of how on earth on a liability account one can possibly have any idea whatsoever of eventual outturn after only six months," Mr. Miller explained.

"I hope that I am right in my refusal to listen to suggestions that some companies are seeking artificially to improve ratios in order to raise fresh capital," he said.

Mr. Miller made his remarks last month at the Canadian Council of Superintendants' of Insurance 69th annual conference in Halifax, Nova Scotia.

The chairman pointed out that Lloyd's 1983 general liability account showed an overall loss of 286 million pounds ($414.7 million) after investment income (*BI*, Sept. 8).

"Can anybody doubt the reality of the problems which face the world insurance industry in this area?" asked Mr. Miller. "What prudent underwriter dares risk over commitment in this class?"


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*Continued from previous page*

While U.S. liability risks, in particular, are difficult for insurers to underwrite because of the huge liability awards granted by the U.S. court system, Mr. Miller noted that large liability awards are also "becoming a problem elsewhere."

For example, Canadian courts are expanding their interpretation of liability so that they are similar to those in the United States, he explained, even though Canada's legal system is different than the U.S. system in that judges award damages rather than juries and punitive damages are rarely awarded.

"We are seeing likewise in England and indeed throughout Europe a vastly increased scale of awards in liability cases," Mr. Miller said.

"The problem may be at its most acute in the United States, but it is severe also in Canada, the U.K. and elsewhere.

"The fundamental question which society—or government on its behalf—has got to settle is what is the right scale of award when one of its citizens unhappily suffers personal injury?"

Mr. Miller added that "it is a complete fallacy" that insurers have a duty to provide insurance capacity for casualty risks.

"We insurers are in the business of risk and unpredictability. If all events were predictable, we would hardly be needed. But, if one adds to the unpredictability of occurrence, unpredictability of judicial interpretation of policy form. . . then, eventually, the class of business becomes uninsurable," he explained.

"What right has an underwriter to expose the resources of his names to such double or triple jeopardy? What validity can the deep-pocket theory possibly have, when it is eventually realized that the deep pocket actually belongs to John Doe, to the general public?" Mr. Miller asked.

In the meantime, the Lloyd's chairman welcomed Canada's move to establish its own insurance exchange (*BI*, June 23).

The Canadian exchange will provide "fresh capacity with fresh capital," he told his Canadian audience.

"May I wish you well and I look forward not only to friendly rivalry but also to a business relationship. If there is anything we can do to help by advice we will."

## Lloyd's elections

Lloyd's of London members will vote on Nov. 5 for four working members and two external members to fill six seats on the Council of Lloyd's.

The five candidates nominated to fill four working member seats on the council are:

- Stephen Merrett, chairman of Merrett Holdings P.L.C.
- David Rowland, chairman of Lloyd's broker Stewart Wrightson Holdings P.L.C.
- Frank Barber, a past deputy chairman of Lloyd's with Lloyd's underwriting agency Morgan Fentiman & Barber.
- Anthony G. Hines of Lloyd's underwriting agency Crowe Underwriting Agencies Ltd.
- Alan F. Jackson of Alan Jackson Underwriting Agencies Ltd.

The four men elected will replace David Coleridge, Norman Evennet, Colin Murray and Robin Warrender, who are retiring from the council.

Two external members, Alcon Copisarow and Lord Kimball, are seeking re-election to the council. Four other candidates are running for the two external member seats: Arthur Mark Farrar, John Vanderhagen, Sir Phillip DeZulutta and Phil C. Gallagher, the only American and a principal with Gallagher-Cole-Boon & Associates.

Mr. Gallagher, who is not related to the Gallaghers of broker Arthur J. Gallagher & Co., unsuccessfully sought a council seat last year.

## Jardine sees growth

Lloyd's of London broker Jardine Glanvill wants to build its North American team in London following the acquisition earlier this year by parent Jardine Insurance Brokers of Emett & Chandler Cos. Inc., which had been the 13th-largest U.S. broker.

"Jardine Glanvill is entering a challenging and a very exciting period," said newly appointed Jardine Glanvill Managing Director Michael Gribbin in a prepared statement.

"A foremost challenge arises out of the recent merger of Emett & Chandler into the JIB Group, a merger which not only doubles the group's presence within the U.S.A. but also presents Jardine Glanvill with a very good opportunity for prospective growth," he said.

"Whilst intercompany trading within Jardines does not occur as of right, should all things being equal, we expect to have the edge. However, in order to ensure that we have the edge, we have to be properly equipped," he said.

"Heretofore, one of my first tasks is to lead the initiative of building up a new team whose objective will be to increase substantially our share of the North American market."

Mr. Gribbin, who has been with Jardine for 17 years in Hong Kong, the United States and London, replaced David Knechtli as Jardine Glanvill's managing director on Oct. 1. David Knechtli remains executive chairman of Jardine Glanvill.

Mr. Knechtli pointed out that for years Jardine Glanvill has only served U.S. excess/surplus lines brokers and managing general agents that want to place business in London through its North American division.

Now, "we need an important presence in retail broking," he said, adding that in three or four years there will be 40 or 50 people working in Jardine Glanvill's North American division "producing profits."

## Comings & goings

**Morris S.J. McEwan** appointed managing director of Lloyd's of London broker Bain Dawes (Scotland) Ltd.

**A.D. (Tony) Ashby** appointed chairman and chief executive of the aviation and aerospace division of Alexander Stenhouse Ltd. to replace **David Trezies**, who resigned last month to join Sedgwick Group P.L.C. Mr. Ashby was an executive director of the aviation division of Lloyd's broker Willis Faber P.L.C. ■




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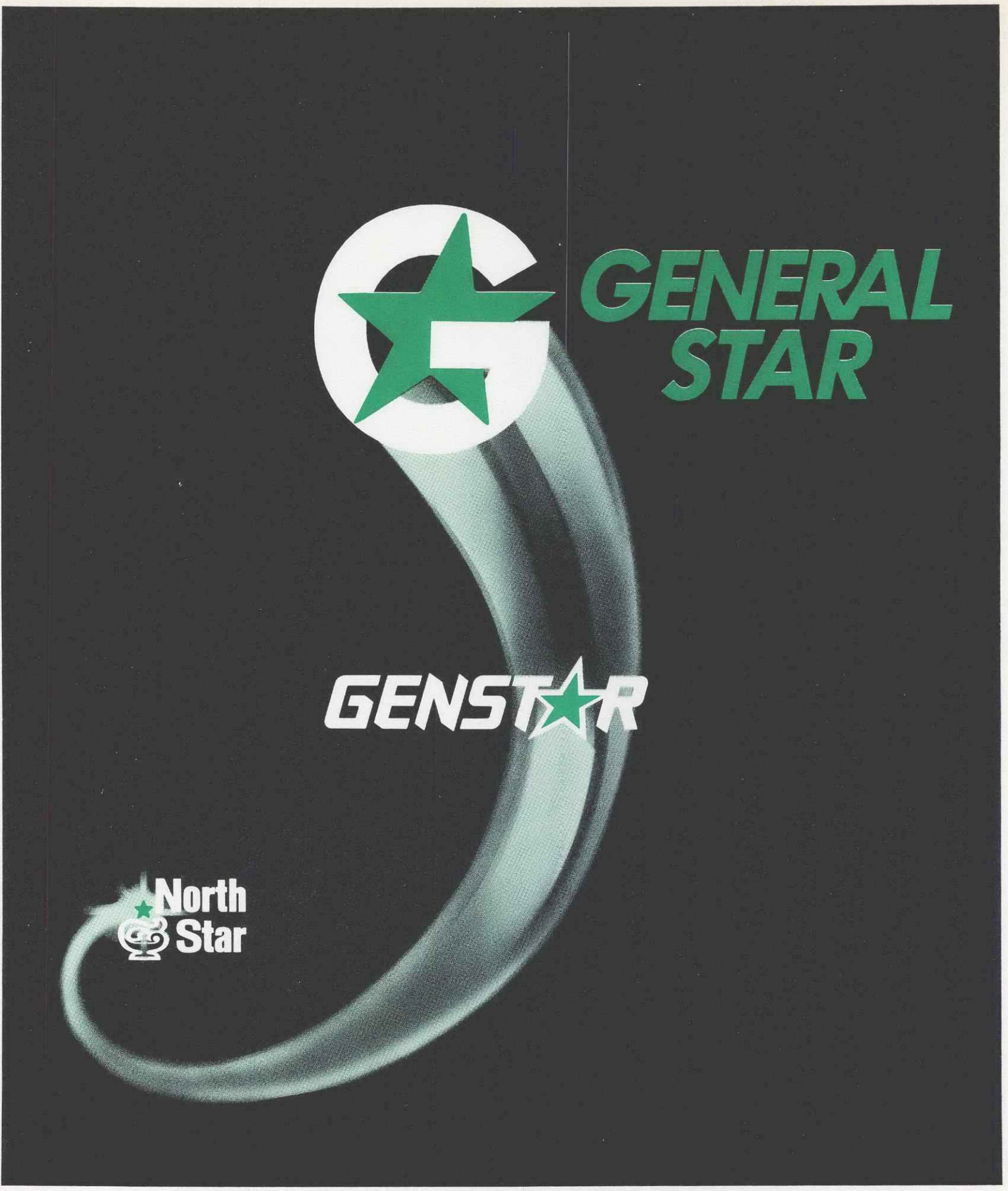
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# POLITICAL RISK

## How to get the 'right' risk insured in the 'wrong' country

**By William P. Jasper**

A LONDON political risk underwriter is known to have remarked: "There is always a market, at least at Lloyd's, for the right deal even if it's in the wrong country."

Sound boastful? Witness the very limited, volatile and, I might add, highly selective capacity in the private market for certain political risk exposures in Iraq and Iran. Risks are high, premium rates are at unheard of levels, yet the "right" deals are completed.

It's very hard for brokers and/or underwriters to be specific about political risk placements. The political risk insurance community is secretive about its business; a strict code of confidentiality prevails.

Still, despite the secrecy, it is possible to generalize about what makes the "right" deal possible in the "wrong" country.

The "wrong" country is easy to define since it is normally the only kind of submission that political risk underwriters ever see. Inevitably it's an Iran after the ayatollah, a Mexico after a massive peso devaluation, a Soviet Union after the grain embargo, an OPEC nation after oil revenues "go south," etc.

The "wrong" country to a political risk underwriter is literally what the burning building is to a fire underwriter. The fire may just be smoldering or fully ignited. It may be your building or your neighbor's that's on fire. What is unknown is where the fire will spread and how extensive any damage to your property will be.

Political risk perils, as they affect international contracts, generally fall into certain broad categories:

- Embargo/trade restrictions.
- War/terrorism.
- Confiscation/expropriation.
- Contract repudiation.
- Non-payment/currency inconvertibility.
- Wrongful calling of guarantees.

Almost the only detailed public information on political risk losses is found in periodic summaries put out by the U.S. State Department's Bureau of Intelligence and Research. The most recent issue is "Disputes Involving U.S. Private Direct Foreign Investment: Oct. 1, 1982—Dec. 31, 1984," published March 6, 1985.

This summary focuses on 117 disputes in 49 countries. Its scope includes formal expropriation or nationalization, forced sale of assets, forced contract/concession renegotiation and other losses, such as blocked bank accounts, tax disputes or miscellaneous sales disputes.

However, the summary is hopelessly incomplete and out-of-date. It includes only those claims brought to the attention of the State Department and excludes all claims against Cuba, eastern European countries, Iran, Nicaragua, Syria, Turkey/Cyprus, the Soviet Union and Vietnam.

Also there is no reference to losses caused by actions of the U.S. government, such as the trade sanctions in recent years against the Soviet Union, Libya and South Africa, or losses resulting from force majeur contract terminations due to war.

While most of the disputes in the summary are with Third World government, not all are: one settlement reported in June 1984 involved a dispute between a U.S. corporation and the Australian government that originated in 1976 after the government's revocation of an export permit.

A description of the "right" political risk deal is much more difficult to pin down. What makes it "right" for the buyer tends to not make it "right" for the underwriter.

Some political risk insurers estimate that fewer than 5% of submissions are actually bound.

Many reasons are given: "The seller doesn't get the business," 'Insurance is deemed to be too expensive," "It went to the competition," etc. However, the most frequent reason is simply the insurer perceived the risk to be a "no-win" deal. The building was already in flames, so to speak.

### international issues

To get a better picture of what may be the "right" deal, let's review some general ingredients from the perspective of both the buyer and the underwriter:

- **Policyholder's perspective of the "right" deal.**

✔ Potential for catastrophic loss.

What is it about Murphy's Law that makes us think that politically inspired disaster could not befall an international contract?

Just like an earthquake or flood, political disasters can and frequently do occur. Political, economic and social forces are at work all over the globe. The pressures for change clearly are discernable—in Haiti, the Philippines, South Korea and Chile, for example—yet the timing of change, its form and its impact on a contract are subjective "guesstimates" at best.

To protect against political disaster, it is imperative that someone review a contract's prospective cash flow, guarantee requirements, termination liabilities to vendors and subcontractors and potential salvage opportunities.

A few words of advice: Always allow for payment delays when computing a contract's projected cash flow. Think about how long you would continue to work or ship without getting paid.

If that seems improbable, just talk to anyone doing business in even a country as stable as Saudi Arabia. In some cases, those who are experiencing payment delays, difficulties in getting invoices approved or trouble obtaining final tax clearance are the rule rather than the exception.

Yet, most keep on performing under their contracts reasoning that the problems will eventually be resolved. In the meantime, interest costs alone on cash-flow deficits are seriously eroding the basic profitability of the contracts.

Watch out, too, for the false sense of security provided by an irrevocable letter of credit, confirmed or otherwise. Its mere existence does not necessarily mean payments will be prompt.

Anyone experienced in preparing the requisite documentation specified in a letter of credit can tell horror stories about so-called "discrepancies"—often seemingly innocuous wording variances between the documents and the terms of credit that result in payment delays while documents are being redone or the credit is being amended.

Sometimes the problem with the documents are never resolved, particularly if one of the parties has some misgivings about going forward and simply wants an excuse to get out of the contract.

Particular problems are also posed by guarantees used to secure bids, advance progress payments, warranty retentions and so forth. The trouble is that these guarantees are often available "on demand," without any requirement by the beneficiary to justify the amount of the drawing. It's also common to have an "extend-or-pay" provision, meaning the guarantee could run almost indefinitely.

What irony it is to have performed in a satisfactory manner, on or under budget, and still lose money on a contract because of the unjustified, totally capricious drawing of the guarantee.

The problem with termination liabilities is much more subtle. For example, what happens if an event of force majeur under your contract with a foreign buyer (for example, a civil war in Lebanon) is not deemed to be an event of force majeur under your contract with a vendor/subcontractor who is safely out of harm's way?

Lastly, there is the issue of salvage. An off-the-shelf product is usually resalable to someone else. Granted, there may be an "opportunity cost" arising from a displaced sale, but probably not much actual cost since the goods were produced for inventory in the first place.

For a specially fabricated item, however, the resale potential is far less certain and more cost may be incurred to modify it to someone else's specifications.

✔ Cost of political risk insurance built into the contract price.

On the face of it, political risk insurance is generally perceived to be expensive. There is adverse selection against underwriters and much reduced capacity in the private market compared to a few years ago.

In reality, on closer examination, the true cost may prove to be quite reasonable.

The key to understanding this is the quantitative analysis mentioned above. If an exposure calculation is computed monthly over the life of the contract, limits of liability under a policy can then be selected to match actual need. The premium rate is then applied to the limits requested, not to the contract price.

For example, when a Libyan contract was insured several years ago, the nominal rate for contract frustration (embargo, war, non-payment, etc.) coverage was 14% per annum; for coverage for wrongful calling of guarantees it was 7% per annum.

However, when the rates were applied to the projected contract exposure, the total premium for a three-year term worked out to be roughly 2% of the contract price.

For a Libyan contract, that rate proved very acceptable to the policyholder.

Like other insurance costs, the cost for political risk insurance can be anticipated and built in to the correct price.

It just takes advance planning and an understanding of how the cost is to be computed.

✔ Specific contract exposures stand out.

The export market for U.S. goods and services remains very soft. Often contract terms are weighed against the seller.

In Saudi Arabia, for example, contracts with the government still call for resolution of disputes at the Saudi Grievance Council.

Bank of China letters of credit often require the bank's prior approval of all documentation before the advising bank can honor drawings under the credit, a process that can take weeks after the physical possession of the goods is relinquished.

There are several questions you should ask in evaluating a contract. What does it say about termination, either for convenience or due to force majeur? Must you continue to incur expenses? How are you compensated? For how long? Are all your costs reimbursed? What about profit? Does your letter of credit cover the final settlement? How do the guarantees get canceled? What specific information is required of the buyer that enables you to perform? What happens if the buyer refuses to comply with the contract requirements for the resolution of disputes? What documents are required for payment under the letter of credit? Can certain political

*Continued on next page*



*William B. Jasper is the national political risk coordinator for Johnson & Higgins. Mr. Jasper, a vp in J&H's Los Angeles office, previously worked with lending, guarantees and export credit insurance at the Ex-Im Bank in Washington, D.C.*

# ASK A BENEFIT ACTUARY

## VEBA for retiree benefits has some advantages

**Q** **What are the advantages to funding retiree health benefits through a Voluntary Employee Beneficiary Assn.?**

**A** This question comes from several individuals, in response to the last Ask a Benefits Actuary column (*BI*, Aug. 18). That column dealt with some of the problems in funding retiree health benefits through a VEBA, also known as a 501(C)(9) trust:

- No projection of future increases in medical costs (due to inflation) for determining the tax-deductible contribution.
- Unrelated business income taxes on assets accumulated in a VEBA.
- Separate accounting requirements for key employees who have retiree medical benefits funded through VEBA.

Despite these problems, there are advantages in funding retiree medical benefits through a VEBA. One such advantage is the current tax deduction for the contribution to a VEBA. This advantage may be significant for some employers, especially since tax reform legislation will reduce corporate tax rates in years after 1986. Because a tax deduction will be worth more to an employer in 1986 than in later years, some employers are considering making tax-deductible contributions to a VEBA in 1986 for retiree health benefits.

If an employer is interested in making a 1986 contribution to a VEBA, the employer should still address the problems outlined in the last column.

For example, will the tax-deductible contribution to the VEBA be significant if the actuary cannot project future inflationary increases in medical costs? The answer to this question will vary with employers, but it seems likely that some employers with large employee and retiree groups and generous retiree health benefits might still be able to make a significant tax-deductible contribution, even with no projection of future inflation in medical costs.

An actuary might also be able to lessen the impact of the mandated inflation by carefully establishing his other assumptions to value retiree health liabilities:

- An actuary might consider using an aftertax investment return assumption to reflect the fact that VEBA investment earnings on contributions made for retiree health benefits (in excess of the incurred-but-unpaid claim reserve) are subject to unrelated business income taxes.
- An actuary should consider projecting an increase in medical costs due to the aging of the employee and retiree groups. As individuals grow older, the medical cost per covered retiree should increase, even if there are no increases in the prices of medical goods and services. The reason for these per capita increases is that older individuals generally use more medical goods and services than do younger individuals. Actuaries often refer to this assumption as the "morbidity assumption."

A second problem to be addressed by the employer interested in making a VEBA contribution for retiree health benefits is the unrelated business income tax on VEBA investment earnings. For a corporation that has the cash available for a contribution and currently invested in other taxable securities, the tax in investment earnings may not be a major concern: The corporation is currently paying a tax on the investment earnings.

The final problem area to be addressed is the separate accounting requirement for key employees:

- Contributions made to a VEBA for retiree health benefits must be allocated to a separate account maintained for each key employee.
- Allocations to the account reduce the maximum contributions that could be made on behalf of a key employee to qualified defined contribution plans.
- All retiree health benefits paid to a key employee must be paid into his separate account (subject to a 100% excise tax on any benefits not paid from the separate account), creating the possibility that a key employee's account might be exhausted the event of a catastrophic illness.

These "separate accounting" problems result principally from two broadly drafted portions of the Internal Revenue Code, Subsection 419A(d) and Section 4976. At first glance, it might appear that these portions of the code prescribe the payment of any retiree medical benefits to a key employee, except from the separate account (if an employer maintains a VEBA).

However, the Deficit Reduction Act of 1984's "Blue Book"—in clarifying the congressional intent of enacting these sections of the code—may provide a basis for interpreting the code to impose the separate accounting requirements on a key employee only when the key employee is included in the group of employees for whom retiree medical benefits are funded. If an employer does not fund a key employee's retiree medical benefits through a VEBA, it may be that no separate accounting requirement is imposed on the key employee.

Even if an employer concludes that VEBA funding of retiree health benefits is not appropriate or feasible, it should consider funding other welfare benefits through a VEBA in 1986. The tax advantage resulting from reduced corporate taxes in 1986, which may lead one employer to consider funding retiree health benefits, may lead another employer to consider funding incurred-but-unpaid claim reserves for employee health and long-term disability benefits and reserve accumulations for post-retirement death benefits. Employers not currently funding welfare benefits with a VEBA should not overlook either possibility.

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Mr. Miner

*This month's column, on actuarial issues in the benefits field, is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field. Ralph F. Perry Jr., vp and director of risk management at Amfac Inc. in San Francisco answers risk management questions. And, Joseph W. Duva, director of employee benefits at Allied-Signal Inc. in Morristown, N.J., answers benefits management questions.*

*Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month. Mr. Duva's and Mr. Perry's columns appear alternately on the second Monday of each month. Mr. Miner's next Ask a Benefits Actuary column will appear in December.*

*Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*

## Political risk coverage

*Continued from previous page*
events impede your ability to satisfy the documentary requirements?

Just as each contract should be analyzed to know the possible extent of financial loss, it should be reviewed for its potential sources of loss arising out of specific contract provisions.

- **Underwriter's perspective of the "right" deal.**

✔ Preference for a known quantity.

Underwriters place heavy reliance on policyholders to work their way out of trouble. Ideally, the policyholder will have had experience of a similar nature in the same country and a history of dealing with difficult problems.

✔ Policyholders who are looking for a partnership.

Most underwriters respect the knowledgeable policyholder who willingly assumes a large share of the risk. They are not keen on the policyholder who simply wants to transfer all of his problems to someone else. In fact, one underwriter confided that he would be very hard pressed to say "no" to any deal in which the policyholder volunteered to take 50% or more of the risk.

✔ Leverage.

A buyer that enjoys a substantial degree of control in terms of technology, marketing, the on-going supply of spare parts, etc., is much preferred to one that is only one of many suppliers. The "irrational" act of a particular government against a supplier of vital goods can still occur, but the price is very steep.

✔ Quick in-and-out.

The shorter the term of the exposure, the better. Insurers are constrained to issue policies of three years' duration or less. Placements involving very difficult countries may be rationed out by insurers to contracts with an exposure covering a shorter period.

✔ Close scrutiny of projects/service contracts.

Underwriters generally do not like "megacontracts" with long construction periods and/or with repayment terms extending beyond their three-year policy term.

Underwriters are also wary of service contracts that are highly prone to performance disputes. The more discreet and finite the work, the better.

✔ Long waiting periods.

Again, it should be remembered that political risk insurance is designed for the "big bang." Mere operating inconvenience, delays, minor disagreements, etc., are to be expected in international business.

For a country with a history of payment delays, factional problems, frequent changes of governments, etc., it would not be uncommon for an underwriter to impose a relatively long waiting period (perhaps as long as a year or more) before a loss is recognized as having occurred.

Indeed, one insurance market has established its own niche in the business by quoting waiting periods of up to five years in return for lower premium rates and a willingness to write certain business that others would not even consider.

✔ Loyalty to existing clients.

In a limited marketplace, particularly involving relatively large contract exposures, mutual loyalty by both the policyholder and the underwriter counts for a lot.

✔ Spread of risk.

Although adverse selection is the name of the game, underwriters still look for some rationale behind the policyholder's desire to seek insurance in some cases and not in others. Whatever decision criteria, this means that over time they will see at least some variety of business.

In the end, there must be a balance, an equilibrium of sorts in which both the underwriter and the policyholder feel it is a "win-win" situation.

Perhaps the most important ingredient is trust. Without it, "wrong" country reasoning wins out every time.

# agent/broker topics

A monthly editorial section sent exclusively to agents and brokers

# Measuring up

## Determining agency value is complicated process

By LINDA J. COLLINS

Measuring the value of an insurance agency is one of the most complicated steps in designing an agency perpetuation plan.

To protect his or her livelihood and estate, an agency principal should establish a perpetuation plan long before deciding to retire, experts advise. The plan should be tailored to meet the agency's needs and simplify ownership transition when the principal is ready to—or is forced to—turn the agency over to someone else, experts say (*A/BT*, Sept. 1).

But, before an agency principal can design a perpetuation plan, he or she first must determine the agency's value. And, the agency principal should regularly review and update the agency's valuation and the perpetuation plan after it is developed, experts agree.

"You need to update a perpetuation agreement, on the basis of value, every year," said E.J. Leverett Jr., professor of risk management and insurance for the University of Georgia in Athens. Otherwise "the parties don't know what they are buying or selling."

The value of an agency to a prospective buyer depends on several factors, including:

- Profitability.
- Client mix.
- The insurers through which it writes business, and the relationship, premium volume and loss ratios with those insurers.
- Market penetration.
- Location.
- Expertise of key employees.
- The relationship with clients and potential for retaining those clients under new management.
- Clients' premium payment experience.
- Added pluses, such as a sophisticated telemarketing/marketing campaign, special areas of expertise or specialized package programs.

"You need to consider a lot of things" when determining the value of an agency, said George B. Snelten, vp with Henrich-Snelten Insurance, an agency in Rolling Meadows, Ill. He frequently acquires single-principal agencies that do not have perpetuation plans.

For example, the selling principal could be ready to give up his or her ownership and management responsibilities but want to remain with the agency as a producer, Mr. Snelten explained.

If the seller has developed good relationships with clients, his or her continued presence may help the new owner retain those clients, thus increasing the sale price, Mr. Snelten pointed out.

In fact, since the agency's success after the sale relies so heavily on the new owner's ability to retain accounts, buyers usually are better off if the seller bases the sale price on how much business the agency retains during a predetermined period the agency is controlled by the buyer, Mr. Snelten stressed.

This is especially true if the agency has many large commercial lines accounts, according to Mr. Snelten.

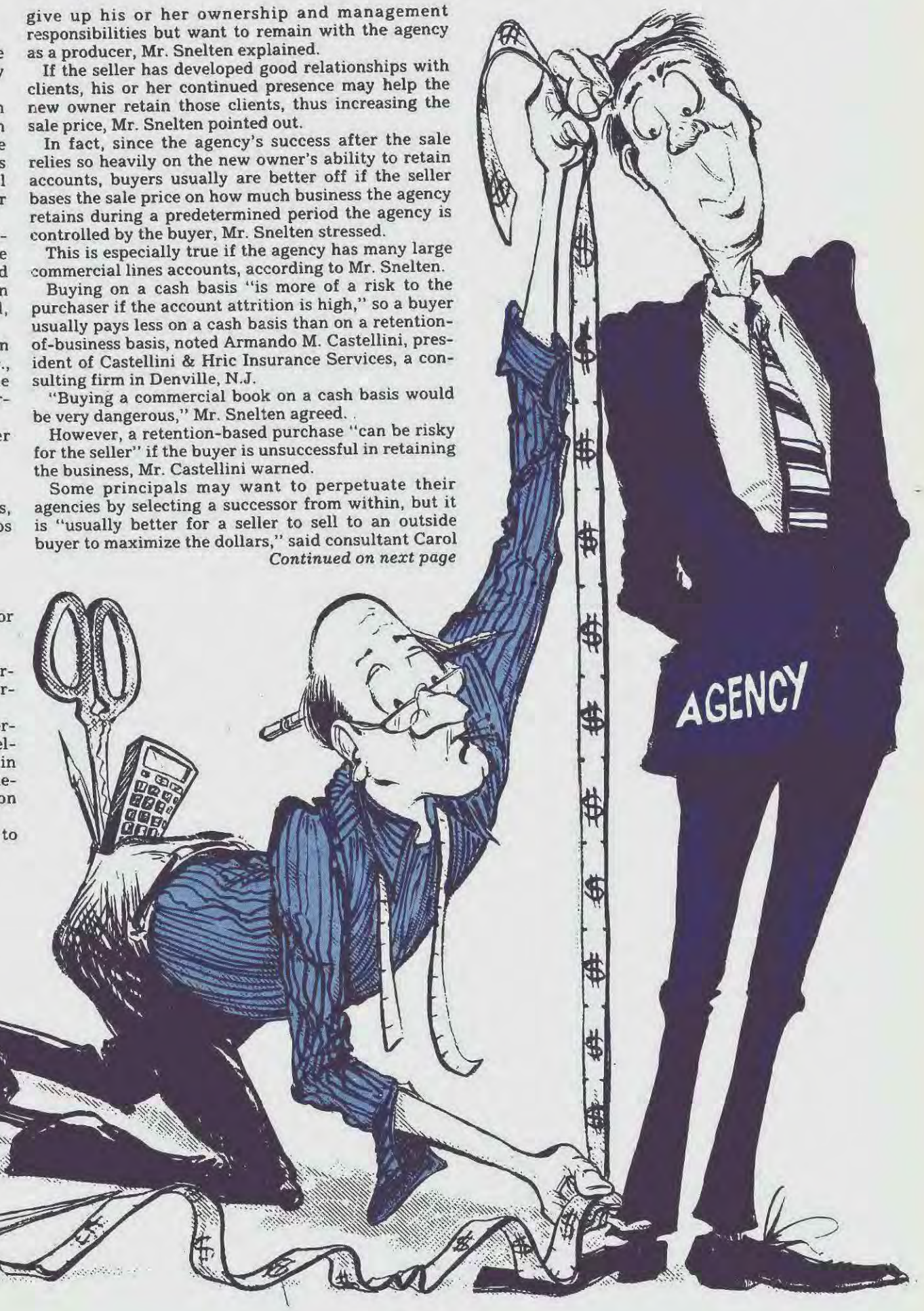
Buying on a cash basis "is more of a risk to the purchaser if the account attrition is high," so a buyer usually pays less on a cash basis than on a retention-of-business basis, noted Armando M. Castellini, president of Castellini & Hric Insurance Services, a consulting firm in Denville, N.J.

"Buying a commercial book on a cash basis would be very dangerous," Mr. Snelten agreed.

However, a retention-based purchase "can be risky for the seller" if the buyer is unsuccessful in retaining the business, Mr. Castellini warned.

Some principals may want to perpetuate their agencies by selecting a successor from within, but it is "usually better for a seller to sell to an outside buyer to maximize the dollars," said consultant Carol

*Continued on next page*



# Agency valuation

*Continued from previous page*

A. Hammes, president of The Middleton Group in Naperville, Ill.

Ms. Hammes explained that an agency acquiring another often consolidates the two operations.

Because the combined operations help the buyer gain market volume—and clout—the external buyer generally will pay more.

An agency should negotiate discretely with potential outside buyers, advised John H. Jaques, assistant vp of agency development services for Fireman's Fund Insurance Cos. in Novato, Calif.

"You do not want to pit two potential buyers against each other in a bidding war," because such competition is useful only if an agency generates less than $1 million in annual premium volume, he said.

There are enough potential purchasers for a smaller agency that the seller can play the "greater fool" theory successfully, he explained.

However, if a larger agency engages in this activity "and the deal falls through, you won't have a buyer to fall back on," Mr. Jaques noted.

Since an agency's value depends on so many factors, an agent should not rely on industry valuation formulas that have been around for decades to price his or her business, experts advised.

Those formulas, or industry multiples, usually value an agency at somewhere between 150% and 200% of its annual gross commissions, without considering other variables that could add or subtract from that value.

While some agency values fall within this range, experts agree that this approach is too simplistic.

The "rule of thumb" that any agency is worth 150% of its annual gross commissions "is erroneous," said Mr. Jaques. He pointed out that an agency's earnings, assets and risks—not commissions—determine its value.

Thomas K. MacDonald, vp with San Francisco consultant Russell Miller Inc., concurred.

"The old formulas don't work out." Instead, they only help to attract buyers when a sale price that was determined by using those formulas is less than the agency's actual value, he explained.

To establish a fair price for both the seller and the buyer, agencies must use a more scientific approach, according to experts.

Four elements that should be considered include:

- The agency's physical assets.
- The agency's policy expirations, or client records.
- The agency's reputation, or goodwill, in the community.
- A covenant not to compete, or a non-piracy agreement in which the seller agrees to refrain from setting up another agency in the area and competing for his or her old accounts.

Because an agency's value depends on so many factors, experts recommend that the buyer and seller enlist the assistance of an independent third party during price negotiations—unless both parties already are familiar with the process.

Agents will "save themselves a lot of heartache and money if they get some professional help beforehand," Professor Leverett said.

Any agency generating $2 million or more in annual premium volume should "bring in professional help. Any decision should be bounced off a consultant from the first," agreed Lou VonVille, president of the House of Fament, an agency consulting firm in Columbus, Ohio.

Some insurance companies will provide this service for agencies that represent them, Mr. VonVille added.

However, while insurers are "very good" at valuating agencies, they usually do so in return for a premium volume commitment, which "could be an additional weight on the agent," Mr. VonVille warned.

While an agent can hire a professional consultant to lead the seller and the buyer through the perpetuation negotiations, another agent who already has been through the process can be just as helpful, according to Mr. Jaques.

The agent should be "someone who has been in the insurance industry for a long time and whom both parties respect," Mr. Jaques said.

*Continued on next page*




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# IIAA names Dwight Dillon new president

TORONTO—The Independent Insurance Agents of America recorded its largest convention attendance of the 1980s—3,800 people—at its 90th annual meeting in Toronto on Sept. 21-25.

At the meeting, Dwight L. Dillon, president of the Dillon Insurance Agency Inc. in Bassett, Va., was named president of the association, replacing Richard G. Taylor, president of Grant-Hatch & Associates Inc. in Salt Lake City.

The conference was opened with an address by broadcast journalist Howard K. Smith, who informed and entertained agents with a discussion of U.S. economic problems and other national issues.



Mr. Dillon

Panel discussions held during the convention addressed a wide range of topics, including:

- The pollution liability crisis.
- "Winning strategies" in a changing insurance market.
- The market potential for agents in selling flood insurance.
- A discussion of agency cluster arrangements.
- An examination of the American judicial system by a company chief executive officer, representatives from the Association of Trial Lawyers of America, the U.S. Chamber of Commerce's Civil Justice Action Group and the counsel for the Product Liability Alliance.

Convention workshops addressed agency automation, sales and market planning, stress management, sustaining sales excellence and hiring good producers.

An evening of entertainment featuring pop/blues singer Lou Rawls and the comedy team of Skiles & Henderson was jointly-sponsored by the IIAA and CIGNA Corp.

The IIAA's national advertising spokesman, actor Raymond Burr, and members of the IIAA's executive committee amused attendants with a mock trial between an independent agent and a direct writer agent.

Attendants also had the opportunity to visit the booths of 70 exhibitors, including automation hardware and software vendors, insurers, consultants and agency service providers.

Coverage of specific workshops and sessions held during the IIAA convention will appear in the Nov. 3 issue of *Agent/Broker Topics*. ■

*Continued from previous page*

At least initially, the agent should find "someone intimately knowledgeable of the insurance business" to serve as the third-party adviser, rather than an attorney or accountant who is unfamiliar with agency operations, advised another consultant.

A "good insurance technician should help put the agreement together in insurance-understandable terminology. . .factoring in any possible occurrence in the future. After the terms of the agreement are drafted, then a lawyer and an accountant can be brought in for their input," Mr. Castellini said.

But, since these arrangements can be structured in several different ways, each with its own tax implications for both the buyer and the seller, "it would be extremely inadvisable to finalize a deal without obtaining advice," said David A. Bakst, a partner with the law firm of Morrison, Mahoney & Miller in Boston.

However, Ms. Hammes feels that if both parties have been through the process previously and "feel comfortable with structuring and valuing" the agreement, they should be able to handle the negotiations without bringing in a third party, since sometimes "intermediaries can screw up a deal."

One way to avoid future disagreements or legal battles is for both parties to draft, during negotiations, "a second written document that interprets, in plain English, how their perpetuation plan will be handled," said David Hales, president of Hales & Associates Inc. in Oak Brook, Ill.

An understandable translation of the complex legal document is a good reference that both parties can use to ensure they are interpreting the agreement similarly, Mr. Hales explained. ■


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# Books focus on agency perpetuation

The two largest independent agent trade associations can provide some tools useful in developing agency perpetuation plans.

The Independent Insurance Agents of America will conduct a series of workshops across the country this year that deal specifically with agency perpetuation and building an agency's value, according to Kevin O'Brien, the IIAA's director of marketing.

In addition, the IIAA will publish a two-volume workbook and textbook covering agency perpetuation plans.

The National Assn. of Professional Insurance Agents also publishes a book that includes sections on agency perpetuation.

While the schedule for the IIAA workshops has not yet been finalized, they will be offered in at least six cities, Mr. O'Brien said.

Both IIAA publications will be authored by John H. Jaques, assistant vp of agency development services for Fireman's Fund Insurance Cos. in Novato, Calif.

The workbook will be published in two volumes: "Building an Agency's Marketing Plan," which will be available after Nov. 15 for $39.95 plus postage, and "Agency Business Plans," which will be out in the first quarter of next year, also for $39.95 plus postage.

The textbook, "Acquiring Agency Profits—A Guide to Merger, Acquisition and Perpetuation," $49.95 plus postage, will be released by year-end.

The text will "walk the agent through everything from the reasons behind perpetuation to how to analyze the agency," Mr. O'Brien said.

The hardbound book will contain approximately 350 pages and include sample purchase and buy/sell agreements, producer contracts and agency evaluation worksheets, he explained.

All three IIAA publications can be purchased together for a price of $99.95 plus postage.

For additional information on the workshops, workbook or text, contact the IIAA, 100 Church St., New York N.Y. 10007; 212-285-4250.

The PIA's 62-page "Tax Problems Affecting the Operations of Insurance Agencies," which currently is in its ninth edition, costs $8.50, with quantity prices available. It is authored by Gerald I. Lenrow, Charles L. Meyer and Donald K. Steffen.

For more information, contact the PIA's Marketing Department, 400 N. Washington St., Alexandria, Va. 22314; 703-836-9340. ■


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# Finance deal to fit both buyer and seller needs

By LINDA J. COLLINS

Financing arrangements for the sale of an agency should custom-fit the agency's perpetuation plan, experts say.

For instance, if an agency principal wants no further contact with the agency after the sale, the perpetuation plan should provide for an immediate buyout upon retirement.

However, if the principal intends to remain with the agency to assist the new owner during a transition period, the perpetuation agreement can be structured so that the buyer pays the seller on a retention-of-business basis over several years.

And, because the buyer and seller receive different tax treatment depending on the financing mechanism used, they should structure an agreement that gives both parties the most favorable tax treatment possible, experts say (see story, page 26F).

Agency perpetuation can be partially or fully financed with a variety of funding methods, including:

- A bank loan.
- An insurance company loan, or an insurer guarantee of a bank loan.
- The seller acting as a "banker" and accepting payments from the buyer over an agreed upon length of time, in which case the agency's profits are used to pay for the agency.
- An employee stock ownership plan.
- An agency cluster arrangement, if it is structured so that the cluster corporation guarantees the buyout of member agencies.
- Life insurance.

Possibly one of the easiest perpetuation financing devices is a buy/sell agreement through which two agency principals agree to purchase each other's agency in the event of either party's death or disability.

They can arrange to finance all or a portion of the cost of acquisition by taking out a life insurance policy on the other agency's principal.

Because buy/sell agreements "usually require a cash down payment on the agency within 90 days of the principal's death," agents should purchase a life insurance policy on each other "that is at least enough to make the down payment," explained consultant John R. Riley, president of Agency Management Services Corp. in Bedford, Mass.

Such a buy/sell agreement should be voided only by agreement between both parties, otherwise either party can walk away from the agreement at any time, Mr. Riley cautioned.

At least one insurer, General American Life Insurance Co. in St. Louis, has developed a life insurance policy designed specifically to insure business buy/sell agreements. The Business Value Life policy is an interest-sensitive life insurance policy that provides a minimum of $100,000 to a maximum of $10 million in coverage.

The value of the policy rises or falls based on the value of the business, a General American spokeswoman noted.

An acquiring principal may find that purchasing an agency through a bank financing arrangement is far more difficult, unless he or she provides the bank more collateral than the agency itself, according to experts.

"The banking industry is generally not willing to lend money based on the value of the agency," said consultant Lou VonVille, president of the House of Fament in Columbus, Ohio.

"Banks do not understand the agency business, and it is difficult to get a banker to take the time to understand" the value of such things as an agency expiration list, said E.J. Leverett Jr., professor of risk management and insurance at the University of Georgia in Athens.

But, banks are not the only potential financing source for buying agents. The insurance companies through which the agency places its business may be willing to provide a loan to finance the acquisition.

Although many of the added services insurers offer to their agency representatives were shelved during the tight market, some insurers once again are offering loans to agencies if the insurer has a strong enough relationship with the buyer or the agency being purchased, experts say.

Company financing "is beginning to pick up again, especially for those agents designated 'survivor' agents by the insurers," said Carol A. Hammes, president of The Middleton Group in Naperville, Ill.

Even if the insurer is "not willing to put money on the table," the agency sometimes can persuade the company to co-sign the agency's bank loan, noted John H. Jacques, assistant vp-agency development for Fireman's Fund Insurance Cos. in Novato, Calif.

David A. Bakst, a partner in the law firm of Morrison, Mahoney & Miller in Boston, agreed that sometimes "insurance companies will execute a guarantee to the bank. . .while other companies will strike deals for cash."

Insurers generally offer these deals only to their "key agents—agents they feel will continue to grow," he added.

And, while it may be more difficult for agencies to get insurer financing than it was during the soft market, "most companies, announced or unannounced, have financing plans available for agencies," said consultant Armando M. Castellini, president of Castellini & Hric Insurance Services in Denville, N.J.

However, such insurer financing plans usually have strings attached, and agents should examine the advantages and disadvantages before entering into an agreement with an insurer, experts caution.

Mr. Riley said that he never has "seen these arrangements without a premium volume commitment from the agency attached."

Insurer financing "has its pluses and minuses," agreed consultant David Hales, president of Hales & Associates Inc. in Oak Brook, Ill. Since so many insurers have experienced financial troubles in the last couple of years, agents always should examine the financial health of the insurer before agreeing to a premium volume commitment in exchange for a loan, he said.

These agreements "could cause the agency to place a disproportionate amount of business in one market," Mr. Hales said. Then, if the insurer withdraws from that market, the agency will be left scrambling for insurers to write the business.

If the selling agent is not in a hurry to get his money from the agency, he may want to set up a payout schedule with the buyer over a several-year period. The acquiring agent then can repay a loan out of agency profits, experts say.

In this situation, the seller "takes back a long-term note receivable on the transaction. Because of this large note receivable, the seller wants to make sure before going into the transaction" that the agency will be able to generate a positive cash flow under the new owner, Mr. Jaques said.

"The seller also must have trust and faith in the buyer," he said.

According to Mr. Bakst, "the best method of payout is for the buyer to arrange a deal with the seller to pay for the agency based on a percentage of commission or net profits over a period of time, with the seller financing the purchase."

He explained that these arrangements can be structured with low payments over the first couple of years, while the new owner is getting established, and balloon payments "down the line."

To determine the term of the loan, the "buyer has to do a cash-flow analysis. This is done by estimating the commission income to the agency and the expenses over that same period of time and determine the agency's projected pre-tax net profit. Agents also should factor in an attrition and growth percentage," Mr. Bakst said.

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To make sure that the buyer will have a vested interest in maintaining agency profitability, Mr. Jaques suggested that the seller require "some out-of-pocket commitment—a down payment from the buyer representing 10% to 25% of the total payment" for the agency.

He also suggests that these arrangements be structured so the buyer can make an accelerated payout with no interest penalty if the agency experiences rapid growth under the new owner.

The purchasing agent needs to recognize that while the seller probably drew much of his or her compensation out of the agency's profits, the purchasing agent will be drawing from the agency's profits to make loan payments. Because of this, the buyer will not be able to take as much compensation out of the agency as the seller received until the loan is paid off.

"Agencies can only squeeze out about 20% to 25% profit each year," so the two parties need to structure this type of a payout over a long enough term to enable the agency to maintain a sufficient cash flow, Ms. Hammes said. Most of the agreements she has helped structure have had payout periods ranging from five to 10 years in length, she noted.

Consultant Thomas K. MacDonald, vp of Russell Miller Inc. in San Francisco, said that in an acquisition, "there is no way to finance out of the agency's cash flow in under seven years."

The "average agency, barring growth, will take a minimum of eight years to pay out on a loan based on profits. They are usually scheduled between eight and 12 years," Mr. Jaques said. "The loan can be paid off quicker if the agency experiences growth," he added.

To fund a buyout when the selling principal plans to retire, larger agencies sometimes set up employee stock ownership plans. However, the ESOP is not a tool for smaller agencies, experts say.

"I don't recommend ESOPs to anyone with less than 12 to 15 employees, because the expense of running it becomes too much for the benefits. If the agency has over 12 to 15 employees, the expense is justified," Mr. MacDonald said.

For the larger agency, "an ESOP permits you to do with pretax dollars what you could normally only do with aftertax dollars. It's the last tax shelter," said Robert Nein, president of Scott Insurance Agency in Lynchburg, Va. His agency, which employs 60 people, set up an ESOP in 1974.

An ESOP permits agency owners to sell their firm to their employees at a tax advantage to the owners, because the ESOP eliminates capital gains and ordinary income tax on the sale, he explained.

Before an agency can establish an ESOP, it must be making money, "and it must have people who are capable of taking over and running the organization," Mr. Nein noted.

While a straight ESOP may have use as an employee benefit, a leveraged ESOP—where the ESOP borrows money from a bank or insurer—is much more beneficial as a perpetuation tool, Mr. MacDonald said.

"To the corporation, both the interest and payments are tax-deductible as an employee benefit when the ESOP borrows money from a bank. The only thing the corporation is doing is making contributions to the ESOP. The ESOP makes the loan payment," he said.

And, banks and insurers are more willing to lend money to an ESOP than to an agency, Mr. MacDonald added.

"The bank or insurance company only has to declare 50% of the interest it receives from the ESOP loan as taxable revenue. This provides a great tax incentive for a bank or insurer to make the loan," he said.

In fact, some banks have been making ESOP loans at 15% to 20% below the prime lending rate because of the tax incentive, Mr. MacDonald pointed out.

Mr. Nein said that his agency leveraged its ESOP in 1985 when it borrowed money to buy out two principals. "The ESOP could have bought out the principals without borrowing the money, but it was more advantageous to us to borrow the money," he said.

"We borrowed the money at 80% of prime and the corporation pays the interest, not the ESOP. The ESOP is earning about 10% on investment income," Mr. Nein noted.

Employees now own about 50% of the agency's stock through the

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# Perpetuation financing

*Continued from previous page*

ESOP and eventually will own about 99%. Employees fully vest in the ESOP three years after they are hired, he said.

Scott Insurance Agency contributes 25% of each employee's annual remuneration into a personal account within the ESOP. When employees retire, they sell their shares to the ESOP for the current value.

Mr. MacDonald said that ESOPs also are beneficial for a retiring owner, because tax laws permit them to make a tax-deferred rollover, or stock-for-stock exchange. While the proposed federal tax law would eliminate the distinction between capital gains and ordinary income, that will not affect ESOPs.

"Congress is clearly behind ESOPs," he said.

An ESOP can be useful if the owner wants to get out of the agency right away, Ms. Hammes said. "It offers good tax advantages to major owners" because they can turn their stock over to another form.

"At some point, the ESOP can become a pyramid," Mr. Jaques warned. It works well for the first retirees, but "when a new set of principals retires, there might not be funds left" in the ESOP to buy them out. "It could eventually force the sale of the agency because the cash is not there."

Agency clusters, which have increased in popularity in recent years, also can be used as a perpetuation vehicle. Through a cluster arrangement, a group of agencies pool their premium volume with insurers for market volume, and they often combine support services through a central service center to save on those costs. However, the agencies retain ownership of their respective books of business.

"While clusters don't reduce agency expenses as much as some proponents give them credit for, they are a good tool for perpetuation," Dr. Leverett said. "A cluster needs a buy/sell agreement, so the agencies have solved their perpetuation problem. In fact, perpetuation is a cluster's greatest attribute," he added.

While Mr. Hales said that he's basically opposed to the concept of a cluster, he concedes that if the cluster has a buy/sell agreement, "it's better than nothing."

Mr. Bakst, who has been involved in the formation of several clusters that were designed specifically as perpetuation tools, said that they "can be absolutely successful" if they involve the right personalities.

For example, one of the clusters Mr. Bakst helped form was designed to target smaller, one-principal agencies who were not yet ready to sell out. It was structured so that the agencies had a guaranteed buyout provided they continued to abide by the rules of the cluster.

Ms. Hammes said that given the current market conditions, in which agencies are faced with minimum volume commitments from most insurance companies, clusters can be a "very positive" perpetuation mechanism. "I've seen a number of them working and working well," she said.

"A cluster does not work well unless it has a final purpose. They can work with commitment and a final purpose, because everyone has a reason for making it work," Ms. Hammes added. "I'm pretty high on them for smaller agents. A larger agency has a lot more options." ■

# Tax bill affects agency financing

By LINDA J. COLLINS

Some financing arrangements for agency perpetuation plans will be taxed differently under the new tax law.

"Every perpetuation and buy/sell agreement should be examined closely" because of tax reform "and many will have to be revised," says consultant David Hales, president of Hales & Associates Inc. in Oak Brook, Ill.

The biggest change to perpetuation agreements under the new tax bill would be elimination of the capital gains tax rate, explained David A. Bakst, a partner in the Boston law firm of Morrison, Mahoney & Miller.

Under current capital gains tax regulations, agency principals who structure their perpetuation agreements carefully "can be assured of paying no more than 20%" of the financial gains from the sale of their agencies in federal taxes, he said.

However, "if capital gains is eliminated, the agency could have a maximum tax rate of 27%, or possibly higher," said Mr. Bakst.

If the federal tax bill is adopted, selling agents who depreciate the expirations on their books of business no longer will be able to receive capital gains treatment. This is one current advantage of an asset sale.

Under the new tax bill, "capital gains will be taxed at the same rate as ordinary and earned income," so there will be no difference to the seller whether the value was attributed to a covenant not-to-compete, an employment contract, expirations or goodwill, said consultant Carol A. Hammes, president of The Middleton Group in Naperville, Ill.

"Under the new tax laws, the only advantage of capital gains to the seller would be to offset any capital losses that the seller may have sustained from other transactions he or she was involved in," added John H. Jaques, assistant vp-agency development services for the Fireman's Fund Insurance Cos. in Novato, Calif.

"Otherwise the seller will be paying up to the 27% maximum tax rate," Mr. Jaques pointed out.

Currently, experts say that most agency buyers are purchasing an agency's assets rather than the agency itself.

"You need to purchase the assets of the agency. If you don't, the buyer will suffer from a tax standpoint," said E.J. Leverett Jr., professor of risk management and insurance for the University of Georgia in Athens. "If the buyer buys the agency's stock, he buys it with aftertax dollars," he said, adding that under Internal Revenue Ruling 74-456, an agency's assets can be depreciated.

"If the agency can calculate the value of its expirations and their useful life, it can depreciate the expirations over their calculated useful life and pay for them with before-tax dollars," Professor Leverett explained. "This makes a dramatic difference in the tax treatment."

Experts emphasize that although depreciation of expirations is time-consuming and must be properly documented, it can be advantageous to the seller under current tax laws.

To qualify for this tax treatment, the agency needs to separate the value of its expirations from that of its goodwill. Agents then can attempt to establish the life of the expirations by studying the past performance of the agency's book of business and projecting those figures over the future.

When the agency follows the proper procedures, the seller can treat the expirations, goodwill and tangible assets of the agency as capital gains, and only the value of the selling agent's non-compete or non-piracy agreement would be taxed as ordinary income. In addition, the buyer can write off the purchase price of all but the agency's goodwill.

Because of these tax changes, "many people are rushing to complete their transactions in 1986," Mr. Bakst said, adding that "buyers with cash are now in an excellent position."

"If the tax bill goes through, it has totally reduced (the tax) options," Ms. Hammes said. Since depreciating expirations is such a time-consuming and technical procedure, she predicted that under the new tax law agents would allot more of the agency's value to covenants not to compete and employment contracts.

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• The 1986 edition of the Alliance of American Insurers' **Policy Kit for Students of Insurance** is now available from the trade association. The kit includes sample policies, endorsements and forms used in the casualty, fire, marine and life insurance industries. It is designed as a resource for college students, agency and insurance company personnel. The cost of the kit is $9.50, including postage and handling. To order, request publication number E-Sup-03-0786 from the Alliance of American Insurers, Publications Order Department, 1501 Woodfield Road, Suite 400 West, Schaumburg, Ill. 60173-4980; 312-490-8500.

• The "Inland Marine Handbook" is an underwriting and marketing tool for agents and insurers that contains sales, coverage, underwriting and rating information on **inland marine insurance.** The handbook includes the complete Nationwide Inland Marine Definition, state-by-state variations and answers to unusual inland marine problems submitted by subscribers. Updates published two to three times a year keep subscribers posted on changes. The handbook, complete with a year's update service, costs $30. The subscription update service is available beyond the first year at a cost of $21 per year. For more information, contact Inland Marine Handbook Inc., P.O. Box 312, Bensenville, Ill.; 312-595-3225.

• A six-page booklet detailing the **tax benefits agents can gain by amortizing insurance expirations** when they acquire an insurance agency is available from agency consultants Russell Miller Inc. The booklet, "Amortization of Insurance Expirations: A 1986 Update," gives the background of amortizing expirations, outlines the steps involved in the process and discusses Internal Revenue Service regulations. Copies of the booklet are available for $10 from Russell Miller's Publications Department, 300 Montgomery St., San Francisco, Calif. 94104; 415-956-7474.

• The Independent Insurance Agents of America is now publishing a new "Farm-Agri Business Newsletter" to provide additional information to agents involved in **insuring farm and agri-business risks.** The newsletter is written by IIAA staff members and will be published at least six times a year. It is available free upon request to both IIAA members and non-members. For additional information on the newsletter, contact Chris Phelan, Public Relations Department, IIAA, 100 Church St., New York, N.Y. 10007; 212-285-4275.

• The first edition of DIGEST, a quarterly review of **workers compensation issues** published by the National Council on Compensation Insurance, discusses such topics as workers compensation in the age of Gramm-Rudman, video display terminals and workers health and safety. The book is distributed, without charge, to insurance professionals, regulators, legislators, academics and libraries. A copy may be obtained from the National Council on Compensation Insurance, Kathy Spicer, Public Affairs, 1 Penn Plaza, New York, N.Y. 10119; 212-560-1014.

•

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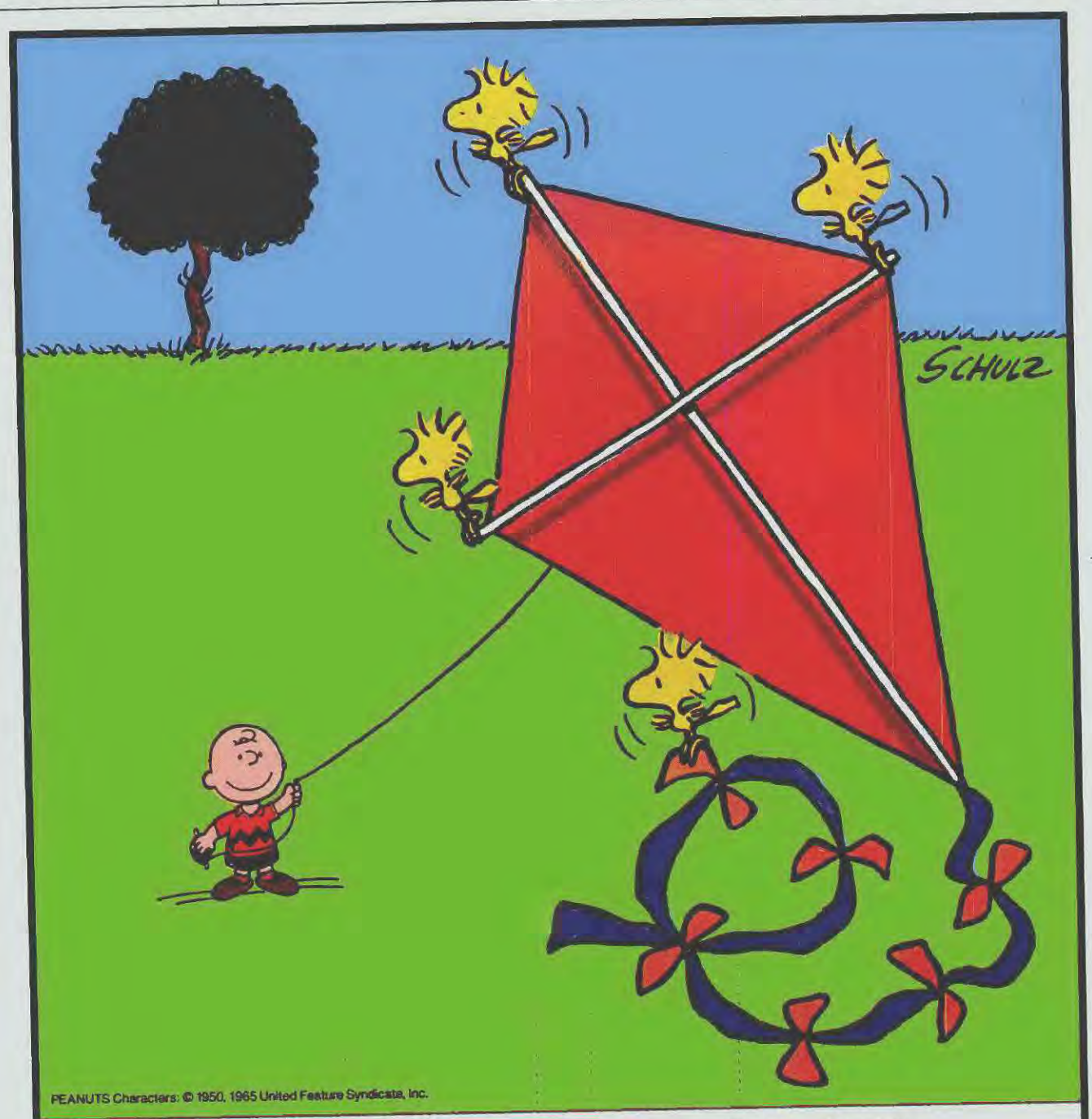
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# Agency system insurers' market share rises

NEW YORK—Insurers that distribute coverage through independent agents increased their share of the property/casualty insurance market to 62.2% last year, up from 61% in 1984, according to the Independent Insurance Agents of America.

The IIAA report is based on information from A.M. Best Co.'s Executive Data Service.

The IIAA noted, however, that the market share increases resulted almost solely from substantial premium rate increases for commercial lines of coverage.

Because independent agency companies write a larger share of commercial lines business than their direct-writer competitors, those rate increases artificially inflated their overall market share, the IIAA points out.

On a line-by-line basis, independent agency companies actually lost market share for nearly every type of coverage, according to the IIAA.

Losses were primarily attributable to regional insurers who were hit hard by the capacity crunch in 1985.

## a/bt briefs

### Anti-rebate laws

SACRAMENTO, Calif.—California Assembly Bill 1487, which was written to clarify the intent of that state's insurance anti-rebate statutes, was enacted last month (*A/BT*, Aug. 4, 1986).

The bill, which prompted a lobbying battle between Consumers Union, the San Francisco-based non-profit publisher of Consumer Reports, and representatives of the insurance industry, will most likely make it more difficult for courts to dispute the constitutionality of California's anti-rebating laws.

Consumers Union is currently suing the California Insurance Department and commissioner over the constitutionality of anti-rebating laws, charging that the laws unfairly limit consumer bargaining powers.

### Computerization effort

ALEXANDRIA, Va.—The National Assn. of Professional Insurance Agents is urging insurers, agents and automation vendors to join in developing a working prototype for full agency/company computerization.

The PIA has set a target date of Jan. 1, 1988, to complete the prototype.

Once the prototype is finished, the PIA says it will encourage industry representatives to participate in making that system operational and available to all independent agencies by 1991.

Agent trade associations have nearly completely developed agency automation standards, but, insurers, spurred by competition, have been focusing their efforts on developing their own automation systems, according to the PIA.

The association is urging insurers to commit to supporting agents' efforts to develop a prototype system.

### Advertising program

NEW YORK—The Independent Insurance Agents of America has expanded its Joint Agency Company Marketing (JAM) advertising program to include a series of two-minute "Insurance Briefs" designed for consumers and covering a variety of insurance subjects.

The briefs, which emphasize the role independent agents play in preventing losses, are hosted by IIAA spokesman Raymond Burr and will air on Cable News Network this fall.

Some of the subjects discussed are teen-age drivers, loss prevention, workers compensation and ways to reduce the costs of auto insurance.

### Marketpac moves

MANCHESTER, N.H.—Marketpac International Inc. has relocated its operations from Bala Cynwyd, Pa., to Manchester N.H., the home of the company's sister corporation, AINetwork, with which it was merged earlier this year.

Both are subsidiaries of The New Hampshire Insurance Group, an affiliate of American International Group Inc.

AINetwork provides marketing, financial management, consulting, data processing and other support services to independent agents licensed with the New Hampshire. Marketpac markets business insurance programs to trade associations on behalf of the insurer.

The move will consolidate several functions of the two corporations and will simplify joint marketing efforts.

### Liability crisis

GLENMONT, N.Y.—The Professional Insurance Agents of New York, New Jersey and Connecticut are informing consumers about the liability insurance crisis through a brochure and a series of newspaper and magazine advertisements.

The six-page brochure, "We All Pay for the Higher Cost of Liability Insurance," discusses some of the causes of current commercial liability insurance difficulties, the effects of a number of court decisions on liability coverage and several recommendations for solving the problems.

In addition to the brochure, the associations have designed and produced four advertisements, suitable for both magazines and newspapers, that describe efforts made by PIA member agents to deal with the liability insurance crisis.

For information on the program, contact the association at P.O. Box 98, Glenmont, N.Y. 12077; 518-434-3111.

### IIAA appointments

NEW YORK—The Independent Insurance Agents of America has hired Cecil L. Pearce, former director of government affairs for the Independent Insurance Agents of Illinois, to fill a newly created position as director of state government affairs.

He will work with the National Assn. of Insurance Commissioners on state legislative proposals, and with the IIAA's various state associations to coordinate state legisla-


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*Ideas worth quoting.*

# 'Bold experiments' needed to aid industry: J&H chief

**By MICHAEL BRADFORD**

HOUSTON—The property/casualty insurance industry has been in a virtual state of depression, but it's "now on a slow road to recovery," the chairman of the nation's third-largest insurance brokerage says.

But, for progress to continue, the industry will have to devise "bold experiments in risk management and risk transfer"—and the government will have to give those experiments the green light, according to Robert V. Hatcher, chairman and chief executive officer of Johnson & Higgins in New York.

Mr. Hatcher told his audience at the 21st Annual Houston Marine Insurance Seminar last week that the "breakdown in the risk transfer process" parallels the economic collapse of the 1930s.

But fortunately, Mr. Hatcher remarked, "There may be some good news. Our Black Tuesday is behind us.

"Capacity that was going to disappear has disappeared. Although problems will persist, we're now on a slow road to recovery," Mr. Hatcher said.



Mr. Hatcher

And, just as the U.S. economy was altered permanently by the solutions that brought the country out of the Great Depression, the insurance industry will be changed by the way its current problems are solved, said Mr. Hatcher.

"For insurance buyers and sellers it seems likely, too, that things will never quite be the same," he observed.

A "New Deal" of solutions that involve compromise between insurance buyers and insurers is needed to bring the industry out of its depression, Mr. Hatcher suggested.

And, he said, those solutions must be structured so that they don't do further damage to the industry.

"Once again, some voices have spoken out for government intervention. God forbid," Mr. Hatcher said.

Government action aimed at resolving the insurance crisis can take four paths, Mr. Hatcher suggested:

- Direct intervention by the government into the insurance market, forcing insurers to write business on a mandatory or controlled basis. Examples include measures already implemented in some areas, like policy form mandates, price rollbacks and forced participation in joint underwriting associations.
- Establishment of government emergency programs that would make the taxpayer the ultimate payer of claims. "Taxpayers are already the ultimate underwriters of flood and earthquake damage not covered by private insurance," said Mr. Hatcher. Now, he said, there are proposals that would make the taxpayers the ultimate payer of claims through government emergency programs.
- Changing the liability laws that govern liability awards. Mr. Hatcher said the tort reform moves already enacted in more than 30 states are not expected to "yield any broad benefits to insurers or their customers."
- Changing the rules for the entry of new capital into the insurance marketplace. "Existing laws that permit captive insurance companies are an early example," said Mr. Hatcher.

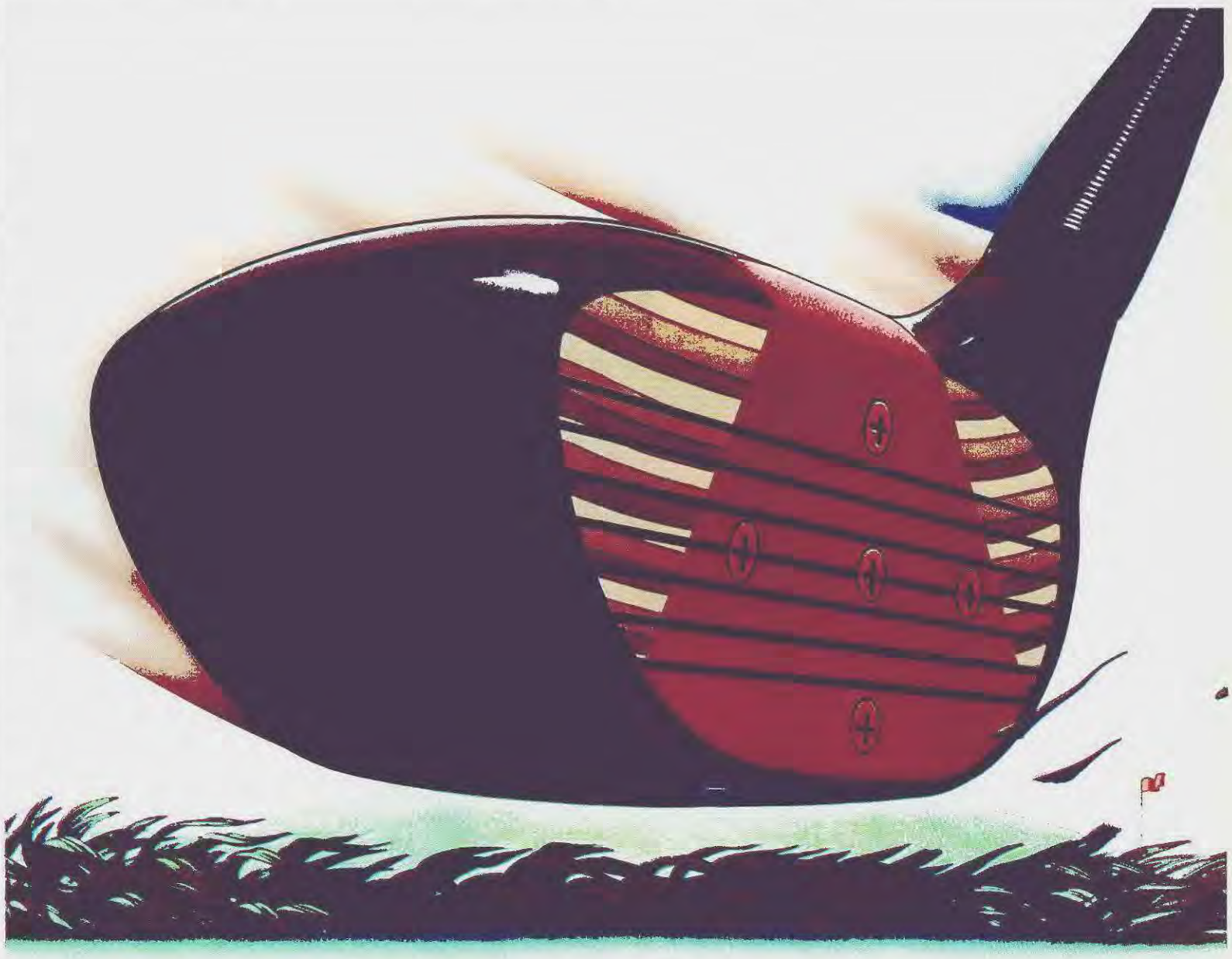
"More recent is the Risk Retention Act of 1981 and its proposed extension," which subsequently has been approved by Congress (*BI*, Sept. 29). "These measures relax the regulations governing risk capital."

Such programs that enable new capital to enter the marketplace are supported by Johnson & Higgins, Mr. Hatcher said, because it would allow brokers "to help lead America out of the insurance depression."

*Continued on next page*

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# Posgate address

*Continued from previous page*

was an underwriter at Lloyd's, "I had no one to ask whether I should underwrite the war risks of American vessels going to the Mekong Delta in Vietnam," while at the same time writing coverage for Polish ships in North Vietnam. A company underwriter "should be allowed the same freedom that I had, to underwrite whatever venture he feels will make a profit. . . .And that should be his only consideration."

The company underwriter, said Mr. Posgate, "would be so much better if he were allowed complete and autonomous flexibility to write whatever risk he chooses, providing that at the end of the day he has underwritten risks which meant profit for his shareholders and a profit commission for him.

"If the reward is right, you will eventually attract people of the right caliber who are prepared and able to surmount the inherent risks involved, to make a success of underwriting," he said. At Lloyd's, Mr. Posgate said, underwriters "may look a little different, but fundamentally, underwriters in London are similar people given a similar education."

Therefore, there is no need for so many innovative coverages, like those for satellites, directors and officers and oil drilling rigs, usually to be developed and underwritten first at Lloyd's, he suggested.

**A U.S. insurance company underwriter 'should be allowed the same freedom that I had, to underwrite whatever venture he feels will make a profit,' Mr. Posgate says.**

Meanwhile, Mr. Posgate feels Lloyd's is facing a rather serious problem of its own.

"It seems to me, in the Lloyd's market at the moment, that Lloyd's biggest problem is a growing imbalance between its marine and non-marine business," he said.

The world marine market, with so much energy-related risk, is not growing as fast as the rapidly expanding non-marine market, according to Mr. Posgate. Traditionally, he explained, the marine business written at Lloyd's has been so substantial that it has made twice the profits that non-marine business has generated.

"It is going to make it difficult to attract new names, and therefore new capital, if Lloyd's only area of potential expansion is the one that offers lower returns," said Mr. Posgate. ■

# Risk manager forecasts future of insurance market

**By MICHAEL BRADFORD**

HOUSTON—The insurance marketplace of the future will be marked by more government intervention that will temper market fluctuations but stifle the growth of capital, predicts a Midwestern risk manager.

The way insurance is bought and sold may undergo great change within the next decade because of changes made by the government and the insurance industry in response to the current hard market, according to Arthur P. Bostwick, risk manager at Stone Container Corp. in Chicago and first vp of the Risk & Insurance Management Society.

The present tight commercial insurance market is unprecedented in its severity, Mr. Bostwick remarked at the Houston Mariners Club's Marine Insurance Seminar, while survivors of the last soft market are enjoying record premium increases.

"Rave earnings followed the announcement of unheard-of losses," Mr. Bostwick remarked. "The stocks of property/casualty insurance companies were being touted as good investments. Ad hoc organizations that offered alternative risk financing had no problem raising hundreds of millions in capital subscriptions."

The U.S. government may seize the opportunity afforded by today's tight market to insert itself as a major insurance regulator, explained Mr. Bostwick.



Mr. Bostwick

"This is the gorilla," he remarked.

Inconsistencies among state regulators will prompt the federal government to take such a step, he added.

Mr. Bostwick sees the possibility of a federal regulatory agency established under the Treasury Department to regionally regulate the industry. State regulators will be phased out as unnecessary and property/casualty guaranty funds will be consolidated under federal control, he predicts.

The general public will support such changes, Mr. Bostwick predicted. "Prices are maintained at reasonable levels. Covers are available," he explained. But, ultimately, these movements have stifled capital growth, he said.

"It has moderated the volatility of the cycles," Mr. Bostwick noted, "but the price was higher than we thought."

As government officials and insurers react to lessen future market fluctuations, buyers can look for other changes in the 1990s, Mr. Bostwick predicted. These include:

- The claims-made form will become the accepted policy form of most buyers. However, proposals to set aggregate limits that exclude defense costs will be modified. Instead, defense costs will be apportioned among all insurers using the form.

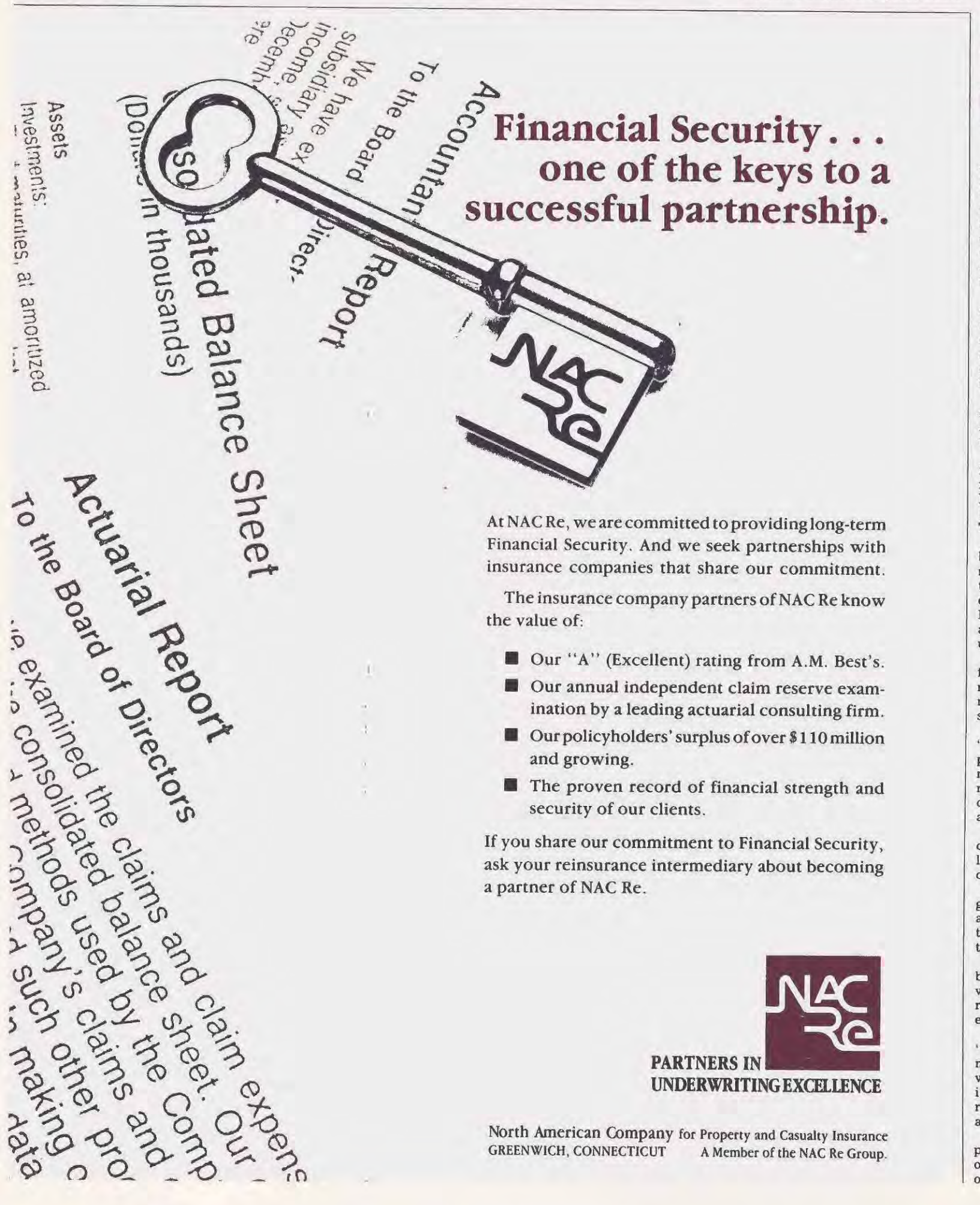
In addition, much of the confusing terminology in the claims-made form will be replaced by more understandable language, he said.

Terms of the policies will be "transnational, due to the interdependence of the world's economies," said Mr. Bostwick. An international "tort arbitration" convention will be established and all nations will accept it.

- Accidental pollution will be a covered event and intentional pollution will be treated as a criminal offense.
- A new market for financial guarantee insurance will develop as a result of restrictions placed on the banking community regarding the use of letters of credit.

Banks will enter the insurance business in greater numbers, but will do so primarily as brokers, not risk-takers, Mr. Bostwick explained.

- A new market that provides "a prepaid legal services agreement" will develop. The agreement will guarantee legal representation in court or at hearings held to resolve disputes. A schedule of fees also will be adopted.
- "Difference-in-conditions" policy forms will be created to overcome varying interpretations of liability in different nations. ■

# Marine market needs stability: Broker

**By MICHAEL BRADFORD**

HOUSTON—London marine underwriters are trying to restore stability to the marketplace but need the cooperation of buyers and brokers if they are to succeed, the chairman of Sedgwick Group P.L.C. says.

"Today, insurance buyers, whether they be ship owners, oil companies, drilling contractors or cargo shippers, are facing a difficult economic climate," Carel M. Mosselmans, chairman of the London brokerage, told the 21st Marine Insurance Seminar held here by the Houston Mariners Club late last month.

In such a marketplace, "the tendency toward confrontation between underwriter, broker and, indeed, the buyer of insurance must be reduced and all parties need to strive toward a greater harmony to achieve the best results," he said.

Mr. Mosselmans said London marine underwriters are trying to "ensure stability in the market for both the insured and the insurers" by adhering to traditional underwriting practices.

Ship owners "are increasing their insurance coverage and are recognizing that the most important aspect of insurance coverage is continuity of service and the security that claims will be paid—which is fundamentally the hallmark of the London market," he said.



Mr. Mosselmans

Mr. Mosselmans said London insurers are proving their commitment to providing continuity of coverage by writing war risk insurance in strife-torn areas.

"The Iran-Iraq war is now into its sixth year and, at present, the signs are that things will get worse before they get better," Mr. Mosselmans said.

Still, he pointed out, London underwriters continue to provide coverage for risks in that area.

"Since the beginning of this year, 60 large vessels have been hit compared with 46 during all of 1985," said Mr. Mosselmans. And claims for those incidents in the fight between Iran and Iraq have totaled more than $700 million this year, he added.

"Yet business still goes on and London underwriters are prepared to underwrite the risk," he said.

Mr. Mosselmans also noted that London underwriters have not shied away from providing coverage against ship hijackings, even though last year's seizure of the cruise ship Achille Lauro by terrorists has caused concern "that it might trigger a pattern of similar events in the world's trouble spots."

Lloyd's of London alone now writes about 25% of the world's marine coverages, said Mr. Mosselmans. And underwriters in the United Kingdom currently write "virtually half of the world's marine insurance," he said.

At one time Lloyd's alone wrote about that amount of coverage, Mr. Mosselmans added.

Rates for marine coverages, like other insurance costs, have gone up to compensate for losses suffered during competitive years marked by low rates, Mr. Mosselmans commented.

And underwriters have raised prices because they have experienced some shortages in available reinsurance protection, he noted.

However, he added, "There is still much scope and opportunity for creative and skillful broking, especially when one considers how much less skill was needed when the market was soft." ■

## New home for Lloyd's defended

HOUSTON—A Lloyd's of London brokerage executive disagrees with some of the wags who knock the market's new digs.

"As you know, we have a new building," Carel Mosselmans, chairman of Sedgwick Group P.L.C., remarked at the seminar held last month by the Houston Mariners Club.

"Unlike the old one with its ornate roof, the market is now housed in naked concrete, toughened glass and stainless steel," he commented.

In the new environment, Mr. Mosselmans continued, brokers and underwriters "will struggle to compete in a harshly competitive climate and strive to master the opportunities made available to them by the use of the latest technology."

"You may have heard that some wags have commented that Lloyd's has moved from the coffee house to the coffee percolator. Others have said the new building is the box the old one came in."

But, Mr. Mosselmans remarked, "Whatever your feelings are toward the architecture, few will dispute that the building, which was designed and planned with a great deal of vision eight years ago, will be able to cope with the extraordinary growth that has taken place in the London market."

In 1976, he pointed out, there were 8,565 underwriting members of Lloyd's. Today, there are 28,597, according to Mr. Mosselmans.

"But the real strength and viability of the London market is not in the numbers but in the people themselves," Mr. Mosselmans observed.

"As chairman of a group of companies which is heavily involved at Lloyd's, I can say with a good deal of certainty that the reason that people prefer to go to Lloyd's of London is not only because you can get a quick and intelligent decision, but because the brokers and underwriters are so flexible.

"They must remain so," he said.

*—By Michael Bradford*


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# Illinois bill

*Continued from page 2*

mate," said the governor, who is seeking re-election this year.

However, Gov. Thompson signed the bill, rather than veto it, explaining the measure "contains elements of reform necessary to protect local taxpayers who, through miles and acres of streets, sidewalks, highways, parks, playgrounds, beachfronts and forest preserves, now face almost limitless liability without true fault as the result of years of judicial and jury erosion of proper standards of negligence."

Most of the law's provisions will take effect in November, 60 days after the governor signed the measure.

Business leaders had lobbied the governor to veto the bill and call the General Assembly back into a special session to come up with better legislation (*BI*, July 7).

But, the governor said: "Vetoing this bill would be like asking soldiers who suffered casualties in a pitched battle to retreat from minimal gains without reason before the next battle starts. This is poor military as well as legislative strategy."

**'Vetoing this bill would be like asking soldiers who suffered casualties in a pitched battle to retreat from minimal gains without reason before the next battle starts. This is poor military as well as legislative strategy,' Gov. Thompson says.**

Supporters of the legislation, however, have defended the measure as "significant tort change."

S.B. 1200 contains more than two dozen provisions that change the state's tort and insurance laws. Among these changes:

- Local governments will be given greater immunity from lawsuits.

For example, punitive damage awards against public officials acting in official capacities will be barred.

- Plaintiffs will be prohibited from recovering damages if they are found to be more than 50% at fault in causing their injury. Previously, plaintiffs could make a recovery regardless of their degree of negligence.
- The doctrine of joint and several liability will be amended so that defendants found to be less than 25% at fault will only have to pay an amount equal to their percentage of liability.
- Punitive damages may no longer be requested in an initial complaint, but can be requested once the complaint has been filed. Judges will be given broad jurisdiction in determining the validity of such requests.
- Directors and officers of not-for-profit corporations cannot be sued unless their action involves willful and wanton misconduct.
- All awards automatically will be reduced by the amount of medical benefits already received that are greater than $25,000. Jurors currently are prevented from knowing if a plaintiff has received any type of payment.
- Insurers must give 60 days' notice whenever a policy is to be canceled or not renewed, a warning that also applies to premium increases of more than 30%.
- Insurers must provide a claims history to policyholders upon demand.
- Insurers must give the state insurance director 90 days' notice before an entire line of insurance is to be discontinued.

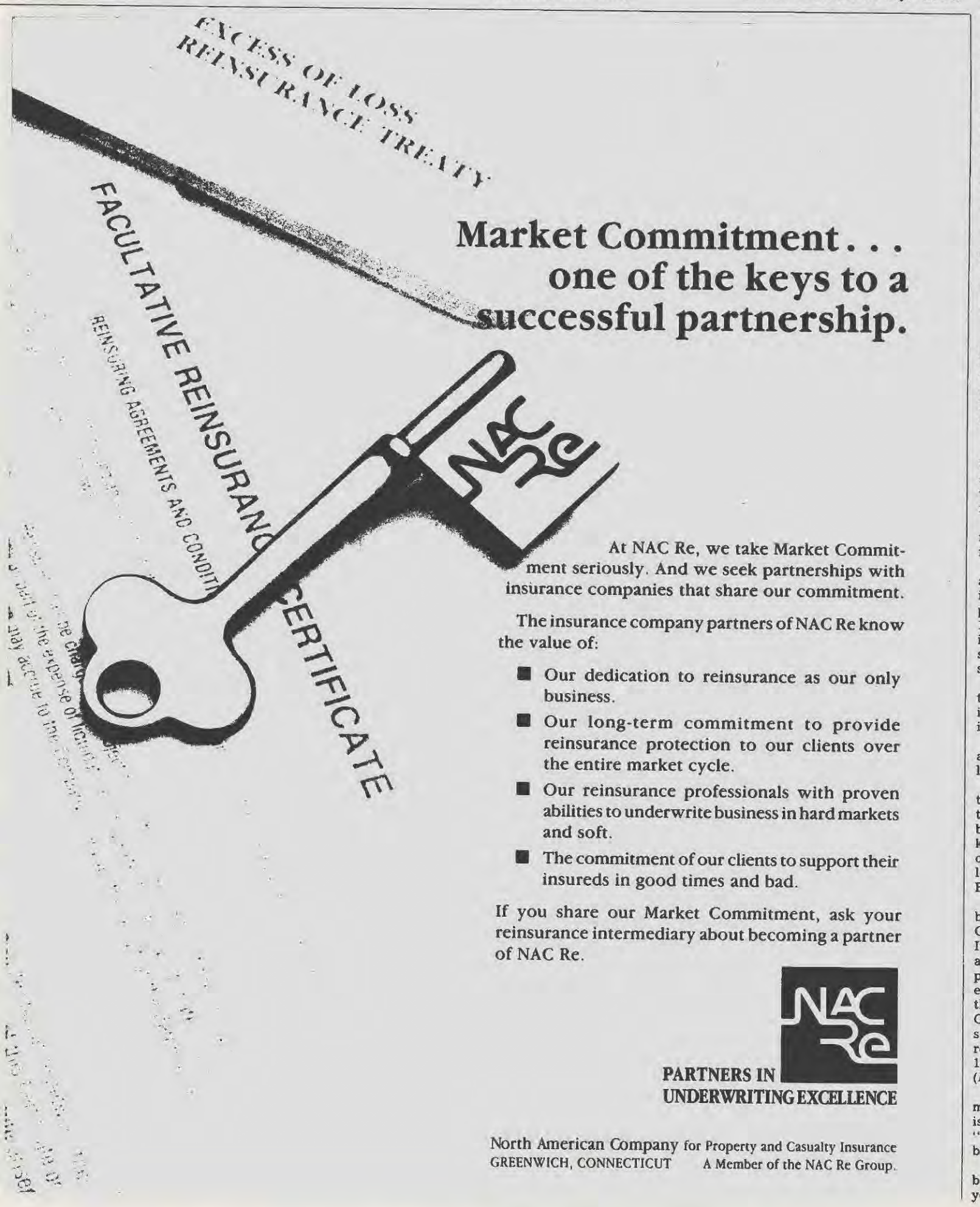
Gov. Thompson agreed with state business leaders who said the bill didn't go far enough. During the special session, the governor will urge the Legislature to consider several additional reforms, such as a cap on non-economic damages and a limitation on attorneys' contingent fees.

Business leaders, who intensely lobbied the General Assembly in support for tort reform earlier this year (*BI*, April 21), plan to keep pushing for tort reform during subsequent legislative sessions. Their agenda also includes outright repeal of joint and several liability, adequate recognition of recoveries from other sources and new protections for hospitals.

"From our own standpoint, we have to keep going at tort reform," said Lester W. Brann Jr., president of the Illinois State Chamber of Commerce. Mr. Brann branded the legislation approved by the Assembly as a "sham."

And, business leaders said they will work to defeat in the Nov. 4 elections those legislators who did not work for true tort reform.

"Our political action committee is heavily involved in the elections," said William E. Dart, vp of government affairs for the Illinois Manufacturers' Assn., which organized a coalition of public and private employers to lobby legislators during the spring session. ■


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# Irish planning to introduce insurance bill

DUBLIN, Ireland—The Irish government hopes to introduce its long-awaited insurance bill into the Irish Parliament this month, confirmed a spokeswoman for the Department of Trade, Commerce and Tourism in Dublin.

She said the bill is designed to:

- Give the Irish minister of trade stronger powers over insurance companies. For example, he will be able to ask for financial information from insurers.
- Allow the minister of trade to regulate commissions paid to insurance intermediaries.

Commissions are not regulated at the moment, although a bill was introduced in 1982 for that purpose, said the spokeswoman. The 1982 bill was dropped because the insurance market believed it could self-regulate commissions, she said.

The minister may use the power to regulate commissions if the insurance industry cannot regulate itself properly, she added.

- Introduce regulation of insurance brokers, which are not regulated at the moment.

Irish brokers currently are registered with two associations, but the bill will make it mandatory for brokers that call themselves brokers to be registered with at least one association. Britain has a similar law known as the Insurance Brokers Registration Act.

The Irish government last year bought for 1 pound the Insurance Corp. of Ireland from parent Allied Irish Banks. The insurer reported a deficit of 225.9 million Irish pounds ($316.3 million at year-end exchange rates) earlier this year, though an advance from the Irish Government's Insurance Compensation Fund of 100 million pounds reduced the group's overall loss to 125.9 million pounds ($175 million) (*BI*, June 23).

The Irish government spokeswoman says that the new legislation is not a result of ICI's problems. "This legislation was prepared before the ICI collapse," she said.

The Irish government hopes the bill will become law by spring next year, she said. ■

# LTV liabilities

*Continued from page 2*

out more than it takes in.

"After all this work, we will be in negative cash-flow. In fact, we are in the worst shape ever," Ms. Utgoff says.

While the PBGC is in no immediate danger of running out of cash to pay benefits—it currently has almost $1.5 billion in assets, chiefly from pension plans it has taken over—its worsening deficit brings closer the day when the premium will have to be raised in order to prevent a collapse of its insurance program, according to PBGC officials.

Ms. Utgoff estimates that a premium in the $20 to $25 range is needed if the agency is to meet all its obligations.

In 1974, the PBGC premium was set at $1 per plan participant; Congress raised the premium to $2.60 in 1978, and legislators in March again boosted the premium to the current $8.50.

Ms. Utgoff said the condition of the Republic Steel plan is another example of the inadequacy of current minimum funding standards.

"This plan was depleted by a provision that allowed large lump-sum payments. These payments should have triggered additional funding. Unfortunately, under current law, they did not," Ms. Utgoff said.

An LTV spokesman agreed that the plan's assets were drained by the lump-sum payments.

But the spokesman also said that the depressed financial condition of LTV prevented the company from putting in more than the minimum amount to satisfy funding standards laid down by the Employee Retirement Income Security Act.

Meanwhile, in another development, the House last week approved legislation to make clear that post-retirement health and life insurance benefits covered under a collective bargaining agreement cannot be unilaterally terminated by companies filing for bankruptcy protection.

**'After all this work, we will be in negative cash-flow. In fact, we are in the worst shape ever,' Ms. Utgoff says.**

The legislation, H.R. 5490, was triggered by LTV's termination of post-retirement health and life insurance coverage to retirees. LTV said that bankruptcy law required such a termination of benefits.

But, LTV later agreed to extend coverage until next January—at a cost of $70 million.

A similar bill, S. 2806, was pending in the Senate late last week and approval of either the House or Senate bill, or something similar, is expected before the current congressional session ends, observers say. ■

## LTV can continue retirees' benefits

NEW YORK—Financially troubled LTV Corp. can continue to pay post-retirement health and life benefits to retired workers, a federal judge says.

U.S. District Court Judge Mary Johnson Lowe in New York last week rejected appeals by 22 LTV creditor banks to overturn a bankruptcy judge's earlier order permitting the Dallas-based steel and aerospace company to continue the post-retirement health and life insurance coverage through January.

This extension of post-retirement health and life insurance coverage is costing LTV about $70 million.

LTV had ceased post-retirement health and life insurance coverage following its July 17 filing for protection from creditors under Chapter 11 of the federal Bankruptcy Act.

At the time, LTV said that the bankruptcy law required a cessation of those post-retirement benefits.

That action triggered a wildcat strike against LTV's Indiana Harbor plant in East Chicago, Ind. However, in July, LTV won permission from Bankruptcy Judge Burton R. Lifland to continue post-retirement benefits to more than 60,000 retirees for six months (*BI*, Aug. 4).


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Some claim handling tips are included in IRI's 12-page PEPlan brochure. See pages 7 and 8 for "Selecting Your Claims Coordinator," "Preparing Your Claim," and "Working with the Claims Adjuster." For a complimentary copy of the PEPlan brochure, contact Mrs. P. A. Sasso, Industrial Risk Insurers, 85 Woodland Street, Hartford, CT 06102 area code (203) 520-7412. A little planning now could help expedite a payment later.

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**Commercial Consumers**

**Administrative:**

CEO's Presidents and Owners .2,803
Vice-presidents, General Managers and Other Administrative Personnel .....2,601

**Financial:**

Chief Financial Officers and Vice-presidents of Finance .....1,890
Secretaries, Treasurers, controllers and other Financial Personnel..6,127

**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....7,471

**Sub-total .....20,892**

Associations .....477
Government, Unions and Educational Institutions .....1,357

**Commercial Consumers**

**Sub-total .....22,726**

Insurance Agents and Brokers 10,795
Insurance Companies.....7,168
Financial Institutions.....897
Actuaries, Attorneys, Adjusters, Appraisers and Consultants.....4,536
Others Allied to the Field.....1,505
**TOTAL.....47,627**

* Source Business/Occupational breakdown of qualified circulation, May 26, 1986 issue, as submitted to BPA for June 1986 BPA Publisher's Statement.

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# National Union

*Continued from page 1*

another Bettius firm attorney, with the Washington firm of Duncan, Weinberg & Miller.

Mr. Duncan added that the Bettius firm and the attorneys representing it had hoped Judge Hilton would at least let stand the $2 million compensatory award.

The Bettius lawsuit alleged that National Union's foot-dragging and failure to contribute to a settlement under a $2 million professional liability policy seriously damaged the firm.

That settlement arose out of a lawsuit in Virginia state court brought in 1982 by owners of 27 condominium units in Alexandria, known as the Sentinel of Landmark.

The owners sued various parties in connection with the sale of the units, including the Bettius firm and two of its members, alleging in part that the attorneys defrauded the condominium owners in connection with registration of condominium documents with state authorities.

In May 1985, Alexandria Circuit Court Judge Donald H. Kent ruled that a Bettius attorney defrauded the condominium owners. He later ruled that the Bettius firm, then known as Bettius, Rosenberger & Carter, was liable for the attorney's fraud although the firm itself had defrauded no one.

Judge Kent also ruled that the condominium owners' deeds should be rescinded, the owners should be released from their mortgage obligations and any incidental damages should be paid by the liable parties.

In its suit against National Union, the Bettius firm alleged that it made several attempts to comply with the terms of Judge Kent's ruling but that each settlement proposal required a financial contribution from the insurer.

However, National Union refused to meaningfully participate in attempts to arrange a settlement and, for the most part, refused to communicate with the firm or its attorneys, the suit charged.

Because National Union did not come up with the money, the firm could not participate in a settlement by a late November deadline set by Judge Kent, the suit added.

National Union, however, denied all of the allegations that it failed to meaningfully participate in the settlement. The company contended that it was not given a specific proposal for its financial contribution toward the settlement until mid-November and that it ultimately came up with the $350,000 required to participate.

Following the failure to settle, Judge Kent last December held the Bettius firm and other defendants in contempt of court and imposed a $5,000-a-day fine that was subsequently increased to $10,000 a day.

The parties eventually settled the case in mid-January, although the settlement was not finalized until early February. Under the settlement, National Union agreed to pay $400,000.

All of the contempt fines were rescinded, and none of the defendants were required to pay any portion of the fines.

However, Bettius alleged that National Union's failure to contribute to the settlement in a timely fashion was a major factor in the firm losing substantial amounts of business and eventually dissolving.

The new trial in the case will focus on whether there was a breach of contract by National Union and whether—if the contract was breached—any consequential damages resulted, according to Mr. Krause, an attorney for National Union.

In addition, the Bettius firm's attorneys will seek to have other counts retried, including fraud, breach of fiduciary duty and Racketeer Influenced and Corrupt Organizations Act claims—in which punitive or treble damages can be sought, Mr. Mains said.

The racketeering count was dismissed at trial.

Mr. Mains said that the Bettius firm does not believe the A&E decision applies to its case because the A&E case dealt with a first-party claim while the Bettius case involved a third-party claim against it. Mr. Mains said Judge Hilton did not make that distinction between the two cases.

"We make a real distinction between those two," he said.

Mr. Mains added that any appeal of Judge Hilton's decision to the 4th Circuit would have to await the outcome of the retrial.

However, National Union argued, and Judge Hilton agreed, that the language in the A&E opinion is broad enough to encompass third-party situations, said David Durbin, a National Union attorney, also with Jordan, Coyne, Savits & Lopata.

And he said that the Bettius firm should not be able to relitigate the already-disposed issues of fraud, breach of fiduciary duty and RICO. "It is our view that having failed to establish fraud or RICO during the first trial, they cannot attempt to relitigate those issues because they were dismissed by the trial judge," Mr. Durbin said.

The A&E case involved a claim by a mining equipment business against Nationwide Mutual Fire Insurance Co. to recover under a policy for the destruction of its building by fire.

A U.S. District Court jury had awarded A&E $32,000 for the value of the building, $189,000 for the value of its inventory and $500,000 in punitive damages on various grounds including that the insurer had acted in bad faith.

Nationwide appealed the punitive damages verdict and the 4th Circuit reversed, holding in part that Virginia does not recognize a remedy in tort for an insurer's bad faith refusal to honor a first-party insurance claim. Nor is there any Virginia authority permitting policyholders to recover punitive damages in a third-party context as well, the court said.

"No Virginia authority indicates that punitive damages are available in the third-party context," the court said.

"Even less should punitive damages be recoverable for bad faith breach in the first-party context where the insured is not 'wholly dependent upon the insurer to see that, in dealing with claims by third parties, the insured's best interests are protected'," the court said.

"The award to A&E on this basis must accordingly be reversed," the court ruled.

The court also said that a claim in tort for bad-faith refusal to settle an insurance claim carries profound consequences for the insurance industry.

Virginia, not the federal courts, should restructure the insurance industry through its courts and legilature, the court noted. ■

# Mission reorganization plan

*Continued from page 1*

not be feasible," Mr. Becker says.

"This is a judgment call," he added. "I certainly hope they're right."

But currently, MIG says, "limited funds" are available to continue the operations of MIC and its five subsidiaries.

In the first six months of this year, MIC's business sustained a $48 million net loss, the company says. These losses are not now included in MIG's results while MIC is under the control of the Insurance Department. If the losses were included, MIG's $12.5 million net loss reported for the first half would have swelled to more than $60 million.

Losses at MIC and its subsidiaries came to $331.2 million last year, according to papers MIG filed with the Securities & Exchange Commission.

"We don't know where the end to this is. Every time we think we're very near the end, we seem to be worsening each quarter," Mr. Becker says of continuing drain on MIC funds.

Last year alone, reserves at MIC and its subsidiaries were increased by about $174 million, on top of a $70 million increase in late 1984.

But MIC's inability to collect on reinsurance appears to be a greater problem than its ability to control policy losses.

Under the control for the last 11 months of Joseph A. Morton, California's chief of conservation and liquidation, MIC had been taking in at least $10 million in collectable reinsurance each month until August, when it slowed to about $2 million, Mr. Becker estimates. Reinsurance recoveries did not pick up in September as Mission had hoped, Mr. Becker says.

MIC is pursuing "many hundreds of millions" in unpaid reinsurance bills, he says. The overdue bills aren't attributable to any one company, but reflect a cumulative problem: Many companies are not paying up for different reasons.

One of the largest sources of unpaid bills is a group of 50-60 primarily non-U.S. reinsurers that are not paying MIC's reinsurance claims pending the results of an audit of Sayre & Toso, an MIG general agent, that began about two months ago, Mr. Becker says. These companies, represented by Wilson, Elser, Moskowitz, Edelman & Dicker in Los Angeles, reinsured MIC on business bound by S&T.

Also among the companies that are not paying MIC's reinsurance claims are the six reinsurers that sued in February 1985 to rescind management and reinsurance contracts with MIC and an affiliate, Pacific Reinsurance Management Corp., according to Elliott Kroll, their lead attorney with Kroll, Tract, Harnett, Pomerantz, & Cameron in New York.

While arbitration of these disputes is pending in Los Angeles, some of these same reinsurers filed suit again last month against MIG, 15 former MIG executives, and accountants Coopers & Lybrand over PRMC's reinsurance pool operations (see story, page 38).

About 20 other companies that reinsured MIC through that pool are not paying claims pending negotiations with MIG. MIG agreed last year not to press these companies for their balances until they were satisfied no wrongdoing took place at PRMC (*BI*, May 20, 1985). The companies in this group, Mr. Becker says, are run by "honorable, professional people sincerely desirous of meeting their obligations."

Other reinsurers with debts to MIC have conducted their own independent audits of MIC. At the conclusion of these reviews, some companies have paid what they owe while others continue to dispute MIC's demands, Mr. Becker says.

In a letter signed by Ms. Gillespie, the Insurance Department recently appealed to numerous reinsurers that owe reinsurance proceeds to MIC, asking them to pay their outstanding balances.

Response from the reinsurers, both domestic and non-U.S. companies, has been "quite disappointing," Ms. Gillespie said. Only a few companies have responded, submitting an as-yet-unknown amount of money.

**'We don't know where the end to this is. Every time we think we're very near the end, we seem to be worsening each quarter,' Mr. Becker says of continuing drain on MIC funds.**

"So far, it's been a difficult process," she said.

California regulators are investigating the explanations offered by each non-paying company on a case-by-case basis, Ms. Gillespie noted.

The agreement that MIG has been developing over the last six months with various parties—mainly insurers that ceded business to MIC, reinsurers that assumed insurance from MIC, and MIG stockholders—would provide for the following:

- Mission American Insurance Co., formed by MIG in March 1985 after it acquired the old Transport Indemnity Co., would reinsure virtually all the business of MIC and its five subsidiaries except reinsurance assumed business.
- Mission American would receive virtually all of the assets of MIC and its subsidiaries—including the all-important reinsurance recoverable collected—to help support the assumption of this additional business.
- Ceding insurers that decide to participate in the plan would receive half the profits of Mission American over a 10-year period as well as a surplus note with interest at 2% on the principal, to be paid out of reinsurance recoveries, to cover their claims.

These ceding companies would also be given a voice in Mission American's management, but would have to agree to waive any rights of offset. Otherwise, Mission American feared the ceding companies, who also reinsured MIC under other treaties, would offset claims payments owed MIC by amounts MIC owed them.

- Ceding insurers that elect not to take part in the plan will receive approximately what they would have been given if Mission were liquidated. Since no state guaranty fund responds to reinsurance claims, these companies have no guarantee of ever getting anything.

This is the plan that was tentatively approved by the Los Angeles Superior Court on March 6. Parties have been hammering out a final version ever since.

"Our feeling is that the core group that was willing to go with the plan is still there," Ms. Gillespie says.

Indeed, that appears to be the case.

"Everyone of our clients continues to want this deal to happen," says Jeff S. Liebmann, a partner in LeBoeuf, Lamb, Leiby & MacRae in New York. "There's not one whit of inclination to walk away from this transaction. They're pushing us to complete our work as soon as possible."

The law firm represents a group of about 56 ceding insurers that have agreed to take part in the reorganization. More than 200 other insurers that ceded business to MIC have also agreed to take part in the plan, MIG's Mr. Becker estimates. But, he adds, "a small percentage" of ceding companies have not agreed to the plan.

Losses on business ceded to MIC created half of MIC's $169.5 million insolvency found by the California department in October 1985 when it seized MIC (*BI*, Nov. 11, 1985). California regulators said at that time that MIC and its subsidiaries were underreserved by $82.5 million for losses on reinsurance assumed business.

The bailout agreement will be composed of six principal documents, three prepared by MIG and three prepared by the lead group of participating ceding insurers, represented by LeBoeuf, Lamb.

MIG is responsible for: the blueprint that establishes the framework for the entire restructuring; the reinsurance agreement permitting Mission American to reinsure virtually all of MIC's assumed book of business; and the administrative services-only agreement that enables Mission American to manage the reinsurance assumed business that would remain in MIC.

The group of about 56 insurers is preparing: a surplus note to be issued to each of the participating ceding insurers by Mission American; the agency agreement naming an individual—as yet unselected—as their representative in dealings with Mission American; and a trust indenture that sets forth how funds will be held and distributed among them.

Both sides are "about two pencil-strokes from being done with the documents," LeBoeuf's Mr. Liebmann said last week. Once the papers are completed, they will be submitted for ceding insurers' approval.

A five-company committee has been selected by the 56 insurers to act on behalf of the group in negotiations and to select their representative. The members of this steering committee, which was approved by the Los Angeles Superior Court, are: CIGNA Corp. in Philadelphia; Hartford Insurance Group in Hartford, Conn.; and Continental Insurance Cos., American International Group Inc. and Eagle Star Insurance Co. of America, all based in New York.

The committee members are not being paid for their work; Mr. Liebmann characterizes them as "good-faith volunteers." Collectively, the 56 companies have so far spent "seven figures easily" in their effort to keep MIC from liquidation with no guarantee of any return, he says.

"The PCIs (participating ceding insurers) deserve a lot of credit. They're being very public-spirited about this," Mr. Liebmann says. He adds that the companies represented by LeBoeuf are not among those reinsurers withholding payments to MIC.

But the MIC/Mission American insurance reorganization is not MIG's only problem right now. If that falls apart, MIG's corporate debt restructuring falls with it.

The debt restructuring is designed to reduce MIG's cash obligations on its debt securities and to infuse capital into Mission American by selling preferred stock in that company.

This restructuring, orchestrated to stave off a federal bankruptcy petition pressed by several MIG debtholders last January, has been treated all along by MIG as a separate transaction from the insurance reorganization. But, debtholders have said they will not accept the restructuring without the bailout of MIC.

MIG did not make interest payments due Dec. 1, 1985 and June 1, 1986 on its 9% debentures and missed payments due Jan. 15 and July 15, 1986 on its 11⅞% notes. It also defaulted on the interest payment due May 1986 on its $37.5 million, 13½% subordinated note to a subsidiary of American Financial Corp., the Cincinnati company that is MIG's largest investor.

MIG is offering to exchange the debt securities for MIG common stock and the rights to purchase Mission American preferred stock. It is also soliciting consents and waivers of default from debt holders and requesting the right to make

*Continued on next page*

## Mission reorganization plan

*Continued from previous page*
interest payments on the debt not exchanged in MIG common stock instead of cash.

Holders of at least 80% of the aggregate amount of MIG's debt securities must select one of two exchange options offered in the SEC filing. If this happens, MIG's debt in principal would be reduced by $65.2 million and its annual interest expense would be reduced by about $7.6 million.

If holders of 80% of MIG's debt participate, AFC and M.J. Whitman & Co. Inc., one of the bankruptcy petitioners, have each agreed to purchase 250,000 shares of Mission American preferred stock for $12.5 million, or $50 per share, according to the SEC filing.

Whitman and AFC will also each receive 5.55% of MIG outstanding common stock, and have agreed to purchase equally any of the $50 million in Mission American preferred stock not sold.

These commitments are intended to assure that about $75 million of Mission American preferred stock will be sold if the debt restructuring is successful, MIG explains in the SEC papers.

After the debt restructuring, AFC's maximum ownership percentage in MIG will be 61%; currently, AFC could exercise warrants to increase its ownership to about 92% from the 49.9% it owns today. AFC has stated it has no intention of making other or additional investments in MIG or any MIG affiliate, according to the SEC filing.

AFC, controlled by financier Carl H. Lindner, early this year withdrew its December 1985 offer to infuse $125 million into MIG, after some ceding companies refused to take part in the insurance reorganization and after the bankruptcy petition was filed. That petition, which has been put on hold pending these negotiations, would be dismissed as part of this plan.

A year-end deadline has been set for the debt restructuring to be completed. If MIG successfully restructures its debt, Mission American will be able to expand its premium writing and MIG will have "increased flexibility in any future financings," MIG said in its SEC filing.

Mission American is operating as a commercial workers compensation and property/casualty insurer, writing both primary and excess layers. Its target market for primary coverage is mainly in the Northwest, Southwest and Southeast, with a substantial portion of its business generated in California, the filing notes.

# Reinsurers sue MIG, others over pool management unit

**By STEVE TARAVELLA**

**PRMC was 'totally incapable of properly handling the underwriting and claims functions,' the reinsurers charge, adding PRMC maintained 'arbitrary, improper, inadequate and unrealistic' reserves for both known and IBNR casualty losses.**

LOS ANGELES—Mission Insurance Group, 15 former MIG executives and accountant Coopers & Lybrand are being sued by six reinsurers for alleged fraudulent handling of MIG's now-defunct reinsurance pool management unit.

At the center of the litigation is Pacific Reinsurance Management Corp., an MIG subsidiary that ceased writing business in mid-1984. PRMC was the centerpiece of similar suits filed by some of these same plaintiffs less than two years ago (*BI*, May 13, 1985; May 20, 1985).

In the latest round of litigation, the lead plaintiff is Ohio Reinsurance Corp., a Celina Group unit that stopped writing business in 1984 and whose policies are being run off by another Celina unit, First National Indemnity Co.

The five other plaintiffs are: Hamburg International Reinsurance Corp. in Hamburg, West Germany; Abeille-Paix Reassurance Ltd. in Paris; Walton Insurance Ltd. in Bermuda; Hassneh Insurance Co. of Israel Ltd. in Tel Aviv; and Compagnie Transcontinentale de Reassurance in Paris.

The plaintiffs—who allege common law fraud, negligence, breach of fiduciary duty and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), the Securities Act of 1933 and the Securities Exchange Act of 1934—brought their charges in two separate suits filed last month in the U.S. District Court for the Central District of California.

All plaintiffs except Walton had a management agreement enabling PRMC to underwrite reinsurance and set reserves on their behalf. Walton had reinsurance and retrocessional agreements with Mission Insurance Co., which fronted for Walton 100% of the risks written on MIC paper by PRMC.

Lawrence G. Becker, MIG's secretary and general counsel, declined to comment on the suits until he had an opportunity to review them.

An attorney for Coopers & Lybrand said last week he had not yet seen the court papers and therefore could not comment.

The former MIG executives named in the suits are: Ronald C. Bengtson, Robert L. Marsh, E. Richard DeRosa, Louis F. Marioni, Carl H. Lindner, Edward A. Smith, C. William Perry, Michael A. Mulholland, Edward M. Benson Jr., Harold J. Toso, Maarten van Hengel, Joseph M. Klein, William A. Noll, Ronald F. Walker and H. Safford Nye.

All but two were MIG directors at various times between 1974 and 1984. Messrs. Bengtson and Marsh were each a director, officer and "a control person" of PRMC sometime between 1974 and 1983, the suits say. Mr. Bengtson served as PRMC's president and general manager until early 1983.

Both men left PRMC in early 1983 to form a new reinsurance pool manager, Continuity Reinsurance Management Corp. in Pasadena, Calif. They are now searching for a fronting insurer to replace Integrity Insurance Co., which left Continuity's program July 1, according to Mr. Marsh, executive vp.

Mr. Marsh said last week that he and Mr. Bengtson, Continuity's president, were unaware of the suits and therefore could not comment on their allegations.

"It's a complete surprise to me," Mr. Marsh said.

The suits seek compensatory damages to be determined at trial, but ask for treble damages for certain charges under the RICO Act, and for $20 million in punitive damages from each defendant, for a total demand of at least $340 million.

Many of the charges brought against the individuals mirror those pressed less than two years ago in two separate suits that sought rescission of management and reinsurance contracts. These earlier actions named various MIG units but did not allege fraud or name individuals.

One of the suits, brought by Federated Reinsurance Corp. of Piscataway, N.J., was settled by PRMC and MIG late last year (*BI*, Dec. 16, 1985). The other suit was brought by Ohio Re, Hamburg, Hassneh, Abeille-Paix, Walton and another reinsurer that is not party to the latest actions, Seguros America S.A. Filed in the U.S. District Court for the Southern District of New York in February 1985, the case was later ordered into arbitration, which is still pending.

The latest suits liken the reinsurers' agreements with PRMC to investment contracts and, therefore, to securities. Characterizing the brochures and pamphlets PRMC used to woo potential participants as prospectuses with false and misleading information, the reinsurers charge the defendants with violating the RICO laws and securities statutes.

The workforce and manpower at PRMC were "totally incapable of properly handling the underwriting and claims functions," the reinsurers charge. They say PRMC maintained "arbitrary, improper, inadequate and unrealistic" reserves for both known and incurred-but-not-reported casualty losses.

For example, all casualty IBNR reserves established by PRMC were eliminated after a five-year period, despite a far greater long-tail exposure, they claim, while IBNR reserves were not even set up for property losses.

Loss reserving practices were designed to convince participating companies that the pool business was profitable when it was not, and to fraudulently draw additional companies into the pool, the suits charge.

MIG executives allegedly knew or should have known of the deceptive and manipulative practices being engaged in by PRMC's officers, but took no action to prevent them, according to the suit.

MIG executives purposely failed to disclose material facts about PRMC's operations to induce the reinsurers into renewing their participation in the pool, the suits also allege. Oral or written representations by the defendants were untrue, contained only half-truths, or were recklessly made with a wanton disregard for the truth, the reinsurers claim.

The reinsurers charge Coopers & Lybrand, which was MIG's longtime accountant until recently, with negligence in its examination, review, audit, qualification and/or certification of MIG's annual and 10K reports.

By its alleged negligence, the firm aided and abetted PRMC's conspiracy to defraud pool participants, the plaintiffs claim. Representations made by Coopers & Lybrand in MIG's financial statements allegedly did not fairly reflect the financial condition of the company.

The accounting and auditing firm knew or should have known that PRMC's results were not as reported in MIG's consolidated financial statements, the reinsurers maintain. The reinsurers said they relied upon MIG's monthly, quarterly and annual reports when deciding whether to continue taking part in the PRMC pool.

"By failing to use due diligence in discovering and disclosing the irregularities in the books and records of PRMC," Coopers contributed to the scheme, the court papers say. ■

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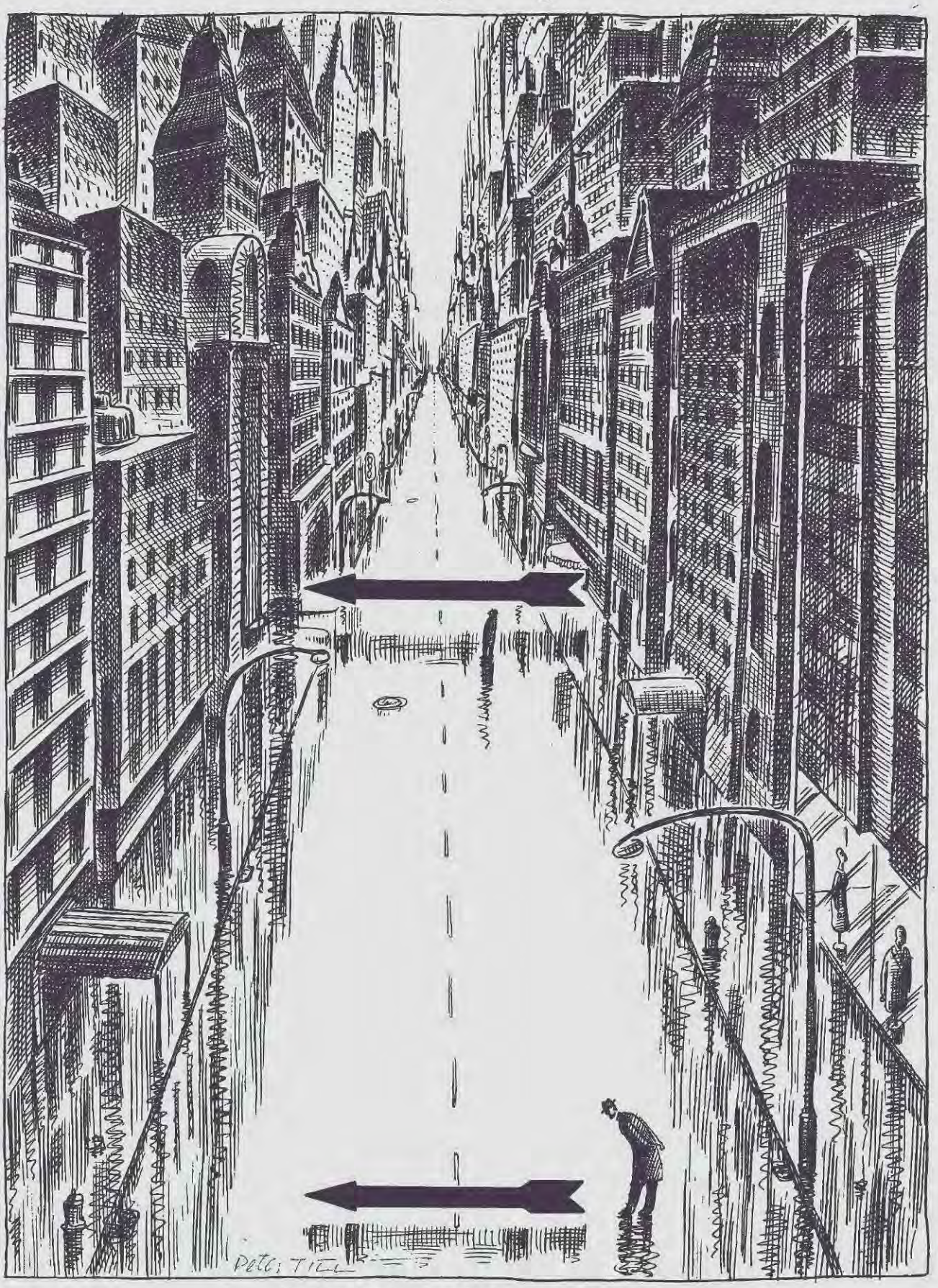
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# AIG unit sued for $1 billion in fee dispute

By STEPHEN TARNOFF

LOS ANGELES—An American International Group Inc. unit is defending a $1 billion demand for punitive damages from a Los Angeles attorney who has not been paid legal fees the insurer disputes.

National Union Fire Insurance Co. of Pittsburgh, Pa., filed suit this summer in federal court in San Diego against attorney Steven J. Stanwyck seeking a declaratory judgment as to the reasonableness of the attorney's billings relating to the defense of a bank director.

Mr. Stanwyck then filed suit several days later in state Superior Court in Los Angeles seeking $1 billion in punitive damages from National Union, alleging that the insurer has failed to fully compensate his law firm for its services.

Mr. Stanwyck charges that National Union has employed a "continuing course of conduct" of not paying attorneys who represent the insurer's policyholders.

In addition to the punitive damages, the suit seeks unspecified compensatory damages.

Commenting on the size of the punitive damage demand, Kenneth E. Chyten, Mr. Stanwyck's attorney with the Los Angeles firm of the same name, said: "It's very important that an example be set for National Union or any insurer who would do this."

In addition to National Union, the lawsuit names the Los Angeles-based law firm of Lewis, D'Amato, Brisbois & Bisgaard; three partners; and a former associate. The firm represents National Union.

"The lawsuit lacks any merit," said Robert E. Noel, a partner with Lewis, D'Amato. Mr. Noel added that the court has dismissed most counts in the Stanwyck suit, but they can be amended and refiled.

A National Union official deferred to Mr. Noel's comments.

The suit arose from litigation against the directors and officers of Heritage Bank in Orange County, Calif., which folded in March 1984.

The state Banking Department rescinded the charter of the bank after the Federal Deposit Insurance Corp. terminated its insurance.

Lawsuits have been filed against the bank's officers and directors by the FDIC, the Securities and Exchange Commission and shareholders.

National Union issued a directors and officers liability insurance policy to the bank's chief executive officer, Douglas E. Patty.

Mr. Stanwyck contends that in March 1985, the Stanwyck firm, Mr. Patty, National Union and its counsel Lewis, D'Amato agreed that the Stanwyck firm would defend Mr. Patty.

The agreement also provided that the firm would be compensated for all services within 15 days after providing a statement with the charges, the suit says.

The Stanwyck suit charges that National Union failed to make timely payments to the firm or to pay the statements in full; demanded binding arbitration to resolve the withholding of payments after the parties had previously rejected the idea; failed to explain why it was refusing to pay; and ignored the firm's offers to review files and approve the bills.

The Stanwyck firm contends it is owed $184,168 for attorneys' fees and costs on behalf of Mr. Patty as of Oct. 31, 1985, "additional substantial sums" since Nov. 1, 1985, and another $5,460 for other services.

According to Mr. Stanwyck, the the firm will eventually be owed defense costs in the high six figures, but he declined to be more specific.

The suit adds that the actions by the defendants have undermined the defense of Mr. Patty and others in the Heritage Bank litigation and that the Stanwyck firm was wrongfully terminated as Mr. Patty's counsel in early 1986.

"In truth, these defendants had no intention of fulfilling their obligations as set forth in the agreement, and the failure of these defendants to so honor this agreement represents another episode in defendants' continuing course of conduct in which they have consistently failed to compensate attorneys who have represented National Union's insureds under policies of insurance, and in litigation similar to that involved herein," the suit says.

The Stanwyck firm contends that it is "especially vulnerable" to National Union's refusal to pay because those revenues were the small firm's predominant source of income.

Mr. Stanwyck said that more than 90% of the office's time was spent on the Heritage Bank matters and that the defendants' actions have had an adverse impact on his personal life and business.

"I am working very hard to rebuild the practice," he says of the firm, which originally had "several" attorneys but is now down to two.

The suit also alleges that the Stanwyck firm was slandered by two defendants who allegedly told others that the Stanwyck firm's billing practices were dishonest and/or improper.

In all, the suit charges the defendants with breach of contract, fraud, negligent misrepresentation, breach of an implied covenant, bad faith breach of the insurance contract, slander, and intentional infliction of emotional distress.

Mr. Stanwyck's attorney, Mr. Chyten, said that his client has never received a clear explanation of why the fees have not been paid, although there have been indications from the insurer it has to do with allegations he committed fraud in billing for hours that were not worked.

Mr. Chyten added that the Stanwyck firm asked National Union to pay money it clearly owed and to only litigate what was disputed, but was turned down.

In addition to the suits between the Stanwyck firm and National Union, Mr. Patty and another director are suing National Union for coverage under the D&O policy.

Earlier this year, National Union filed suit in U.S. District Court in San Diego against the Heritage Bank officers and directors, seeking to rescind the D&O policy for non-disclosure of the bank's financial condition. That suit was recently dismissed, according to Michael G. Dawe, an Irvine, Calif., attorney representing Mr. Patty. ■


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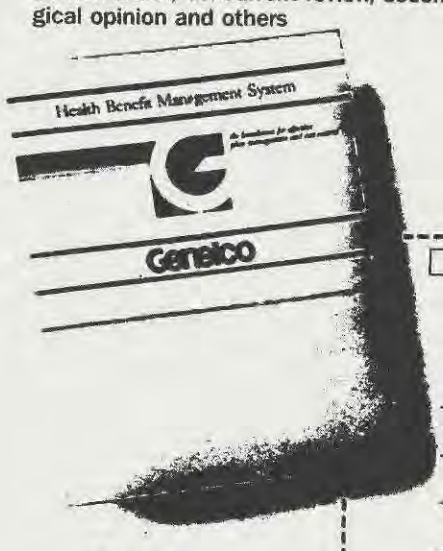
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**OCT. 14. The Risk Bearing Phenomenon—Alternatives to Traditional Insurance** workshop in New Orleans, sponsored by the Society of Chartered Property Casualty Underwriters; $125 for CPCU members; $140 for non-members. **Also Nov. 17** in Washington, D.C.; **Nov. 19** in Los Angeles; **Nov. 21** in Seattle. Mari Jennings, Society of CPCU, Kahler Hall, 720 Providence Road, CB #9, Malvern, Pa. 19355; 215-251-2741.

**OCT. 14. Insurance Industry Day: Civil Justice (Tort) Reform** meeting in Des Moines, Iowa, sponsored by the Iowa Chapter of the Society of Chartered Property Casualty Underwriters; $20. Vernon Goodwin, Hawkeye Security Insurance Co., 1017 Walnut St., Des Moines, Iowa 50307; 515-245-4132.

**OCT. 14. Insurance Industry Day: Tort Reform—Is It the Answer?** seminar in Little Rock, Ark., sponsored by the Arkansas Chapter of Chartered Property Casualty Underwriters; $25. Kevin O'Donnell, Arkansas Chapter of CPCU, Danville Building, Suite 400, 10810 Executive Center Drive, Little Rock, Ark. 72211; 501-223-6700.

**OCT. 14. Automating Risk Management for Profit and Survival** seminar in Chicago, sponsored by SOFTEC Inc.; free. **Also Oct. 16** in Minneapolis; **Oct. 21** Washington, D.C.; **Oct. 23** in Baltimore; **Oct. 28** in New York; **Oct. 30** in Boston; **Nov. 4** Kansas City, Mo.; **Nov. 6** in St. Louis; **Nov. 11** in Cincinnati; **Nov. 13** in Cleveland; **Nov. 18** in Los Angeles; and **Nov. 20** in San Francisco. Jack Bergers, SOFTEC Inc., 33063 Schoolcraft Road, Livonia, Mich. 48150; 313-261-4440.

**OCT. 14-15. The Bermuda Insurance Marketplace** seminar in Hamilton, Bermuda, sponsored by Malcolm Butterfield Associates; $155. **Also Oct. 16-17, Oct. 30-31, Nov. 4-5.** Malcolm Butterfield Associates, P.O. Box HM 2100, Hamilton 5; 809-295-5472.

**OCT. 15. Cost Containment and Quality Assurance: The Impact on Today's Dental Profession** symposium in East Rutherford, N.J., sponsored by Delta Dental Plan of New Jersey Inc.; $60. Delta Dental Plan of New Jersey Inc., 299 Cherry Hill Road, P.O. Box 222, Parsippany, N.J. 07054; 201-334-6300. Ext. 342.

**OCT. 15. Workers Compensation for the Day-to-day User** in Corono-Norco, Calif., sponsored by Xordium; $95. **Also Nov. 5** in San Fernando Valley, Calif. Karen Gillett, Xordium, P.O. Box 8422, Newport Beach, Calif. 92658-8422; 714-759-1707.

**OCT. 15-16. Business Interruption Basics** course in San Francisco, sponsored by Property Claim Services division of American Insurance Services Group Inc.; $95 for PCS subscribers; $145 for non-subscribers. Property Claim Services, Education and Training Department, 700 New Brunswick Ave., Rathway, N.J. 07065; 201-388-5700.

**OCT. 15-17. Fortieth Annual Fall Conference Council on Employee Benefits** in Boston, sponsored by the Council on Employee Benefits; $300 for CEB member company or association (for each individual); $350 for non-members. C.S. Lazaroff, Goodyear Relief Assn., 1144 E. Market St., Akron, Ohio 44316; 216-796-4008.

**OCT. 15-17. Meeting Your Responsibility for Worker Training and Right to Know** course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $400. Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 212-743-6523.

**OCT. 15-17. Retirement Advisors Workshop** in Chicago, sponsored by Retirement Advisors Inc.; $495. **Also Nov. 5-7.** Retirement Advisors Inc., 919 Third Ave., New York, N.Y. 10022; 212-421-2400.

**OCT. 16. Risk Management: Challenges of Changing Times** workshop in Northbrook, Ill., sponsored by Chicago, Wisconsin and Northeastern Illinois chapters of the Risk & Insurance Management Society; $75 for members of RIMS and prospective members. Patricia Benedick, Ameritech Corp., 30 S. Wacker Drive, Chicago, Ill. 60606; 312-750-5196.

**OCT. 16. Nuclear Disaster Preparedness** panel discussion in Chicago, sponsored by the Insurance Distaff Executives Assn. of Chicago; $17 for members; $20 for non-members. Judy Silverman, CNA Plaza, Chicago, Ill. 60685; 312-822-2412.

**OCT. 16. Coping with COBRA** seminar in New York, sponsored by the New York Business Group on Health; members only. $75. New York Business Group on Health Inc., 622 Third Ave., New York, N.Y. 10017; 212-808-0550.

**OCT. 16. The 1986 Tax Act-How it Affects Insurance Companies** seminar in Chicago, sponsored by Ernst & Whinney; $275; $125 for each additional registrant from the same organization. **Also Oct. 23** in Los Angeles. Kathy Stewart, Ernst & Whinney, 18th Floor, 1285 Avenue of the Americas, New York, N.Y. 10019; 212-554-8289.

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# Product liability

*Continued from page 3*

Backers say several developments occurred during the current session that bode well for passage during the next two-year congressional session, which begins in January. Those developments include:

- A consensus has been reached, among senators favoring a bill, on the tort elements of the legislation.

The legislation approved by the Senate Commerce Committee in June included eliminating joint and several liability for non-economic damages in product liability suits, protecting manufacturers from suits involving older products and making it more difficult to sue wholesalers and retailers (*BI*, June 30).

That consensus means the Commerce Committee next year will not have to spend months, as it did during the current session, arguing on the tort aspects of the bill.

"The tort issue has been pretty much settled," says Mr. Anderson.

"The field of discussion has been narrowed. There won't be so many draft bills" which ate up so much time during the current session, added Ms. Mahshigian.

- As a result of extensive Commerce Committee hearings and votes, members understand the product liability issue better than ever.

"The Senate is much more aware of the product liability system and its problems than it was before," Ms. Mahshigian said.

- Congress is more aware of public support for reform of the legal system because of the enactment of state tort bills, the passage of Proposition 51 in California, and the response to the Product Liability Phone-in Day last month (*BI*, Sept. 8). Several thousand calls supporting a federal product liability bill were made to Congressmen.

**'The Senate is much more aware of the product liability system and its problems than it was before,' as a result of the consideration this session of product liability reform, says Liberty Mahshigian, co-counsel for The Product Liability Alliance.**

But observers recognize that there are a number of barriers that could block enactment of a bill next year. Those barriers include:

- The Democrats could gain control of the Senate after the November elections. If that happens, Sen. Hollings, the prime opponent of the legislation, is likely to take over the chairmanship of the Commerce Committee from Sen. John Danforth, R-Mo., a strong supporter of a federal product liability bill.

As chairman, Mr. Hollings would be likely to do everything in his power—which would be considerable—to delay consideration of a product liability bill, observers say.

"The task of passing a bill will become infinitely more difficult if Sen. Hollings" becomes committee chairman, Mr. Anderson said.

For example, a committee chairman can refuse to hold hearings on a bill or to schedule a vote.

- Federal product liability legislation still has not attracted strong bipartisan support.

While a number of Democrats on the Commerce Committee voted for the bill, there was little enthusiasm behind their votes, said Peter A. Lefkin, federal affairs counsel for the American Insurance Assn. in Washington.

Without winning more Democratic support, prospects of success in the House, which didn't take up product liability legislation this year, are slim because the Democrats are almost certain to retain control of the chamber after the November elections.

- A consensus has not emerged on whether and what kind of settlement mechanism should be part of a federal product liability bill.

Mr. Danforth, for example, favored a provision in the bill that would have given manufacturers and plaintiffs certain incentives to settle cases before they go to trial.

Under that provision, if a plaintiff rejected a manufacturer's offer to pay all economic losses and up to $100,000 for a "serious dignitary loss," the manufacturer's maximum liability for non-economic damages would be $250,000.

And, if the plaintiff made a settlement offer and the defendant rejected it, the defendant would be liable for the plaintiff's attorneys' fees, up to $100,000, if the plaintiff won.

But this provision was so unpopular and controversial that a band of senators—Sens. Robert Kasten, R-Wis.; Slade Gorton, R-Wash.; Donald Riegle, D-Mich.; Daniel Inouye, D-Hawaii; and Ted Stevens, R-Alaska—were prepared to attempt to strip it from the bill on the Senate floor.

Observers believe the settlement issue will come up again next year and that unless a consensus is found, debate could drag on as it did this session when various proposals were floated and then rejected.

"The settlement issue will come up. The problem is finding a mechanism acceptable" to all sides, said Ms. Mahshigian. ■

## UNUM files stock plan with SEC

UNUM Corp. has filed an amended registration statement with the Securities and Exchange Commission regarding a proposed initial public offering of common stock pursuant to Union Mutual Life Insurance Co.'s recapitalization and conversion plan (*BI*, Aug. 18; March 4, 1985).

Under that plan, which has been approved by Maine regulators, Union Mutual will convert from a mutual life insurance company to a stock company, to be called UNUM Life Insurance Co., and will become a wholly owned subsidiary of UNUM Corp.

Portland, Ore.-based UNUM Corp. has previously filed with the SEC a 50-million share common stock offering to eligible policyholders and company personnel.

Under the conversion plan, which must be approved by policyholders at an Oct. 30 meeting, eligible policyholders will receive a distribution in stock or cash of more than $652 million, an amount equal to Union Mutual's surplus as of Dec. 31, 1985.

The anticipated initial public offering price will be between $20 and $28 a share. Goldman, Sachs & Co. is the lead manager of the underwriting group. Net proceeds will be used for general corporate purposes, including possible acquisitions.





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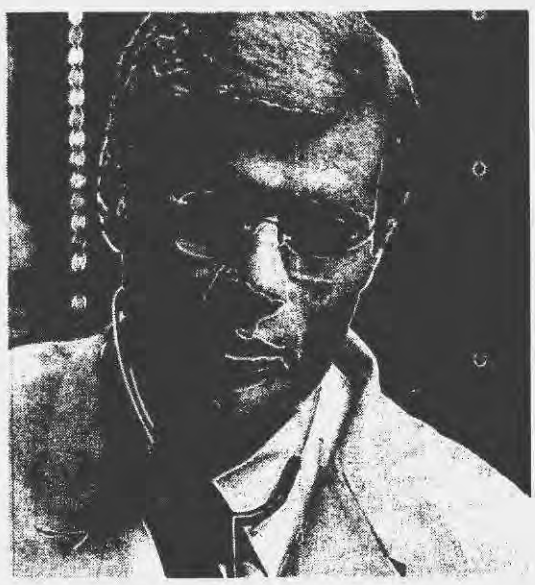
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## comings & goings: industry

# Meenaghan named president of The Home Insurance Co.

**James M. Meenaghan** has been named president of The Home Insurance Co. in New York, a unit of The Home Group Inc. He will assume the post on Oct. 15.



Mr. Meenaghan

Mr. Meenaghan, 48, succeeds **Steven H. Newman,** who resigned from The Home to establish his own consulting firm. Mr. Newman, who was vacationing last week and could not be reached for comment, also will serve as a consultant for The Home, the company said.

Mr. Meenaghan was most recently president and chief executive officer of John F. Sullivan Co., a unit of Sedgwick Group P.L.C. He resigned from that post earlier this year.

Before that, he served as president and chief operating officer of Fireman's Fund Insurance Cos.

**Other insurer changes:**

**Robert M. Huggins** named chairman and chief executive officer of Belvedere Holdings Ltd. and Belvedere Insurance Co. Ltd. He was formerly president of Transatlantic Reinsurance Co.

**John Tait** elected president and chief executive officer of Penn Mutual Life Insurance Co. in Philadelphia. Mr. Tait will succeed **Frank K. Tarbox**, who will remain as Penn Mutual's board chairman. Mr. Tait had been executive vp since 1981.

**Jim Kitchens** and **Jerry Roberts** named vps at Cotton States Life & Health Insurance Co. in Atlanta. Mr. Kitchens had been assistant vp of underwriting and Mr. Roberts was assistant vp of operations.

**Daniel N. Milazzo** appointed vp and manager of the directors and officers liability department for both Harbor Insurance Co. and Pacific Insurance Co. in Los Angeles. Mr. Milazzo previously was assistant vp.

**Richard N. Maiocco** named vp in the Marine Office of America Corp., a unit of Continental Insurance Corp. of New York. Previously, Mr. Maiocco was vp-underwriting at CIGNA Corp.

## Agents/brokers

**Steven P. Hopkins** promoted to senior vp of Rollins Burdick Hunter of Montana Inc. He had been an account executive.

**Clement P. Dickinson, Phillip A. Dunn, Robert W. Greeson, Alwyn L. Hahn** and **James R. Livingston** named partners at John L. Wortham & Son in Houston. All five had been associate partners.

**David A. Jollin** named president and chief executive officer of Corroon & Black/Fairfield & Ellis, a Boston subsidiary of New York-based Corroon & Black Corp. ■


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# Pollution endorsement

*Continued from page 2*

Mr. Riley says the IIAA pollution task force has been working for months to persuade ISO to adopt a sudden and accidental pollution endorsement to the new CGL policy forms.

Haren Kahn, assistant director for governmental affairs with the Risk & Insurance Management Society Inc., says the issue of sudden and accidental pollution coverage is extremely important to RIMS members. But, she adds, RIMS will reserve official comment on the endorsement until it is published.

ISO officials have long held that coverage for only sudden and accidental pollution exposures cannot be written because U.S. courts have blurred the distinction between sudden and non-sudden or gradual pollution.

In the early 1970s, ISO amended the general liability policy form to exclude coverage for gradual pollution incidents, such as a leaking underground storage tank. The exclusion was needed, ISO says, because insurers never intended to provide such coverage under the CGL form.

But coverage was continued for sudden and accidental pollution incidents, such as an explosion or fire that results in the spilling of chemicals or oil.

This strategy did not have the intended effect, ISO says, because in disputes between CGL policyholders and insurers, courts often awarded coverage under the sudden and accidental pollution clause of the CGL policy for the types of events insurers intended to exclude.

**'Just because a mechanism has been put in place to provide coverage for. . ."sudden and accidental" pollution, we mustn't take for granted that it will automatically be available,' Mr. Riley says.**

As a result, ISO decided in 1984 to exclude all pollution coverage in the new CGL claims-made and occurrence forms. As an alternative, ISO offered an optional endorsement that provides both sudden and gradual pollution coverage.

But agents and brokers say the endorsement effectively precludes CGL policyholders from buying sudden and accidental pollution coverage, because insurers are rarely willing to write gradual pollution under any conditions.

The new pollution endorsement, which is still being drafted, will not use the words "sudden and accidental," according to the ISO spokeswoman. Instead, the endorsement will define a covered pollution incident as one that "begins on a clearly identifiable day and lasts no longer than 15 days thereafter," she says.

Despite this victory for brokers and buyers, Mr. Riley says the battle for sudden and accidental pollution coverage is only half over.

"Just because a mechanism has been put in place to provide coverage for what has been known as 'sudden and accidental' pollution, we mustn't take for granted that it will automatically be available," he says.

Mr. Riley says brokers must now convince insurers that this type of pollution coverage can be underwritten.

Many insurers, he notes, view pollution risks as uninsurable because of past problems with pollution exclusions and because of the broad liability established under the federal Superfund hazardous waste cleanup law.

But, he says insurers should reexamine pollution risks in light of improved engineering and underwriting expertise.

"I think the insurers have an obligation to look at the risk objectively and not just totally turn their heads and look the other way," Mr. Riley says.

"Let's face it, the insurance industry is in the risk-taking business. If they put their underwriting expertise and their engineering expertise to work, there are certain risks that have pollution exposures that can be insured," he adds.

ISO also plans to offer a CGL endorsement that would exclude the limited pollution coverage now provided under the completed operations section of the new CGL policy forms.

This endorsement is designed to enable some risks with large pollution exposures that might not otherwise be able to buy CGL coverage to obtain this type of policy, according to the ISO spokeswoman.

"It gives insurers flexibility to write risk that they couldn't write before because of the pollution problem," she says. ■


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# Beneficial unit

*Continued from page 1*
of those liabilities.

American Centennial filed a lawsuit in U.S. District Court in Newark, N.J., in 1984, charging The Underwriters; its owner, John A. Kraeutler; and several others with violations of the federal Racketeer Influenced and Corrupt Organizations Act.

Among the charges in the suit, which is still pending, are that The Underwriters and others conspired to divert premiums and conceal losses on a reinsurance program written for Associated Electric & Gas Insurance Services Ltd., a Bermuda-based utility industry captive insurer.

The suit noted that Commonwealth, one of American Centennial's retrocessionaires, had ceased paying claims on the business.

Commonwealth—which reinsured American Centennial from 1978 to 1983 on business produced by The Underwriters—is still investigating The Underwriters book, the source close to Commonwealth said.

In addition, Commonwealth has hired Coopers & Lybrand to audit the business produced by Barrett Treaty, the source said. Commonwealth acted as a retrocessionaire on the Barrett business from 1977 to 1983.

One element of the audit, the source said, is an examination of loss data for each underwriting year from 1977 through 1980. American Centennial boosted its reserves on the Barrett business in the early 1980s, but posted the reserves for underwriting years before 1981 as a lump sum, the source said.

Commonwealth is "unable" to pay losses on the Barrett book because it is "unable to determine the loss experience at each renewal compared with what was reported" by American Centennial, the source explained.

Losses on the AEGIS program produced by The Underwriters account for about $20 million of the estimated $60 million in ultimate reinsurance claims against Commonwealth, while losses on about 400 treaties produced by Barrett account for most of the remaining $40 million in anticipated losses, the source said.

In its 1985 annual statement, American Centennial reported $25.1 million in paid and unpaid losses recoverable from Commonwealth and $3.8 million in deposits and funds withheld from the reinsurer.

American Centennial had drawn down a Commonwealth letter of credit in the amount of about $8 million, of which about $4 million remained in a trust account by year-end 1985, the source said.

Meanwhile, Unione Italiana and American Centennial are in the process of selecting arbitrators in a dispute that involves claims on the AEGIS program and other treaties produced by The Underwriters and ceded to Unione through intermediary J.L. Kelley Inc. of Franklin Lakes, N.J., according to Mr. Nonna.

Unione reinsured American Centennial on The Underwriters business in dispute between 1979 and 1982.

American Centennial demanded arbitration on the disputed claims last December, but Unione's lawyer at the time did not choose an arbitrator. The reinsurer then switched law firms, and the arbitration is going ahead, according to Mr. Nonna.

American Centennial reported $7.7 million in reinsurance recoverable from Unione on paid and unpaid losses at the end of last year.

Separately, another American Centennial reinsurer, Bermuda-based Walton Insurance Co. Ltd., is auditing business produced by Dar Allen Reinsurance Agency Inc. of Freeport, Ill., another American Centennial MGA.

However, Brian Harpster, Walton's president, described the audit as routine and noted that the Phillips Petroleum Co. captive insurer also is auditing Dar Allen business ceded to it through Mead Reinsurance Corp.

"We think there might be a problem with the appropriate amount of reserves and the appropriateness of their reporting to us," Mr. Harpster said of American Centennial.

However, he said that Walton has continued to pay American Centennial's claims out of a trust fund—funded with premiums owed Walton—and that the captive insurer currently sees no ground for refusing to pay claims.

Walton is running off the unrelated reinsurance it wrote from 1974 through 1982.

American Centennial reported $5.4 million in reinsurance recoverable from Walton on paid and unpaid losses at year-end 1985, but was holding $7.6 million in deposits and funds withheld from the captive, including letters of credit.

Mr. Harpster said that the audit was prompted by American Centennial's request for an additional $7 million to $8 million in letters of credit to cover losses on the Dar Allen business. American Centennial has since reduced that request to $2 million, he said.

Mr. Harpster added that the trust fund—out of which current claims are being paid—amounts to $2 million to $3 million in addition to letters of credit already posted. None of the LOCs has been drawn down. ■

# Underwriters sell second rescued satellite

NEW YORK—With the sale of the second wayward satellite rescued two years ago by a space shuttle crew in an effort financed by its excess insurers, underwriters have about tripled their $11 million investment in the rescue mission.

After more than 18 months of negotiations, New York-based Johnson Geneva (USA) Ltd. finalized purchase of the Westar IV for $20 million on Sept. 19, said Michael Johnson, chairman of the 3-year-old satellite communications firm. The probe will be refurbished and used as a telephone communications satellite, he said.

Like the Palapa B2, which also was rescued by the shuttle crew and was sold last month to Sattel Technologies in Van Nuys, Calif., for $18 million, the Westar was insured with Lloyd's of London underwriters led by Stephen Merrett and International Technology Underwriters Inc. of Bethesda, Md. (*BI*, Sept. 22).

The two sales total $38 million. However, Mr. Merrett noted last week that he was still determining how much was spent in legal and storage costs pending the sale of the two probes.

Only the excess insurance underwriters, who financed the rescue, will benefit from the sale of the Westar because the primary insurers and the excess insurers agreed the excess insurers would receive the first $20 million of any salvage profit on the Westar (*BI*, Nov. 19, 1984). ■


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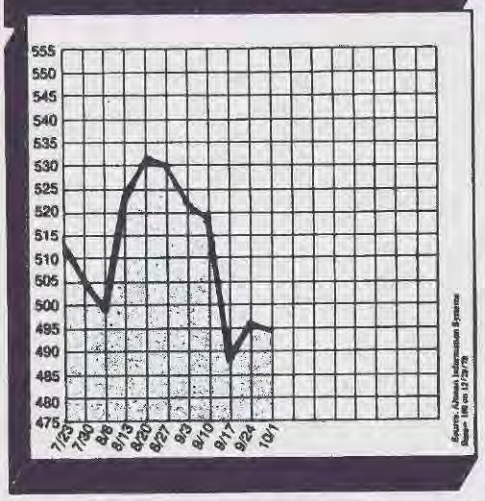
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## BI Insurance Index




**The *Business Insurance* stock index dropped slightly during the most recent trading period, after posting a gain last week. The *Business Insurance* index of insurance industry stocks fell 1.1 points, to 494.7 for the week that ended Oct. 1 from 495.8 for the week that ended Sept. 24. A total of 18 stocks were up, 34 stocks were down, and nine stocks were unchanged. The biggest percentage gains were posted by Nobel Insurance Ltd., up 18.8%; Tokio Marine & Fire Insurance Ltd., up 12.1%; Aneco Reinsurance Ltd., up 5.6%; American Indemnity Financial Corp., up 4.4%; and Corroon & Black Corp., up 3.5%. The largest percentage losses were posted by Great West Life Assurance Co., down 7.9%; W.R. Berkley Corp., down 6.5%; Trenwick Group Inc., down 5.3%; Poe & Associates Inc., also down 5.3%; and Selective Insurance Group Inc., down 4.3%. The *BI* index fell an average of 0.2% for the period ending Oct. 1. However, it still outperformed the other major market indicators: The New York Stock Exchange index fell 1%, the Standard & Poor's 500 index fell 1.1%, and the Dow Jones 30 Industrials also fell 1.1% during the same trading period.**

### British Issues

| Sept. 30 Companies | Price pence | P/E | Div. pence | Yield % | 1 Week High-Low pence | pence |
|---|---|---|---|---|---|---|
| **Commi Union** | 268 | 20.6 | 18.3 | 6.8 | 279 | 265 |
| **Genl Accident** | 792 | 13.9 | 37.7 | 4.7 | 820 | 789 |
| **Gdn Royal Exch** | 769 | 14.8 | 46.5 | 6.0 | 784 | 762 |
| **Royal** | 762 | 10.7 | 42.2 | 5.5 | 817 | 762 |
| **Sun Alliance** | 644 | 18.4 | 29.5 | 4.6 | 679 | 642 |
| **Brokers** | | | | | | |
| **CE Heath** | 437 | 8.2 | 38.0 | 8.7 | 467 | 437 |
| **Hogg Robinson** | 322 | 11.1 | 16.2 | 5.0 | 323 | 319 |
| **JH Minet** | 227 | 8.9 | 13.2 | 5.8 | 235 | 226 |
| **Sedg Grp** | 333 | 13.9 | 16.9 | 5.1 | 342 | 325 |
| **Stew Wrightson** | 447 | 14.4 | 19.0 | 4.3 | 450 | 447 |
| **Willis Faber** | 444 | 15.9 | 15.5 | 3.5 | 453 | 442 |

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

# Correcting the market's ills takes brains, heart, courage

**By MYRON M. PICOULT**

*Special to Business Insurance*

ALMOST Donothing, chairman of Nearly Defunct Fire & Casualty Insurance Co., was riding a moped in Bermuda when he suddenly swerved to avoid what appeared to be some unstable business in the middle of the road. He remembered seeing a wall coming toward him and then everything went blank.

All of a sudden, the Chairman awoke. Standing in front of him was the Good Analyst of the East, who congratulated him on killing the Wicked Witch of the Reinsurance Recoverables. The Chairman hurriedly explained that he was unaware of what had just transpired and he was seeking to return to the State of Stability. However, the Good Analyst of the East explained to the Chairman that he would first have to find the Wizard of Oz. He would help him return home.



Mr. Picoult

It was at this point that the Good Analyst of the East gave the Chairman a very special magic book. The Chairman was instructed to keep the book with him at all times.

The Good Analyst also cautioned the Chairman to be on the watch for the Wicked Witch of Reserve Shortfalls.

As the Chairman embarked on his journey to the Wizard, he stumbled upon the Land of Little Actuarialkins. These little fellows guided the Chairman to a yellow brick road, which was the path to the Wizard.

As the Chairman tepidly journeyed down the path, he encountered a Scarecrow whose build and facial features were very similar to the chief underwriter at Nearly Defunct Fire & Casualty Insurance.

The Scarecrow begged the Chairman to restuff him, for he had been picked apart by losses.

The Chairman, feeling sorry for the Scarecrow, helped to reshape him. The Scarecrow indicated to the Chairman that he wanted a better brain so he could perform better. The Chairman then suggested that the Scarecrow join him on the journey to meet with the Wizard.

Further down the road, this somewhat timid duo heard creaking. Curious, they sought out the sound and came upon a Tin Man who was all rusted out.

As the Chairman looked more closely at this rusted hulk, he thought he was looking at the head marketing officer at Nearly Defunct Fire & Casualty Insurance.

The Tin Man asked if they could help him regain his smooth movements. They obliged by oiling him with the oil can he was unable to reach.

Then they learned the Tin Man had no heart, which he believed he needed to regain his mettle.

Hence, the Chairman and the Scarecrow invited him to join them in their individual quests to meet the Wizard.

As they moved on down the road, they were startled by a loud roar. They stopped dead in their tracks, and they were confronted by a Lion. The Chairman chided the Lion for his tactics.

This frightened the Lion, who in turn conceded that he lacked courage. Ironically, the Lion bore a striking resemblance to Near Defunct Fire & Casualty Insurance's chief actuary.

This unsung hero told a sorrowful tale of how he lacked the courage to correct his past mistakes. The Scarecrow, the Tin Man and the Chairman all felt very sorry for the Lion and invited him along.

In the distance, the forlorn group caught sight of the city of Oz. As they trekked along the yellow brick road they were threatened by the Wicked Witch of Loss Reserves, who tried to get the Magic Book from the Chairman. But, he steadfastly held on to the book and the group hurried on toward the distant castle.

They reached the castle and ultimately met with the Wizard, who fiercely intimidated them. They each explained what they were seeking from the Wizard.

The Wizard, whose appearance mirrored that of a former NAIC chairman, indicated he could only help them if they eliminated the Wicked Witch of Loss Reserves and returned with the broomstick she used to knock down reserves.

With much trepidation, this less-than-confident group sought out their prey. The Witch had the upper hand in a pitched battle until each of the characters publicly acknowledged his shortcomings. And then, with each explanation, the Witch's power disappeared.

Our cast of characters grabbed the broomstick and ran back to the City of Oz to prove to the Wizard that they had completed the task and awaited his help.

The Wizard with much consternation and confusion, sheepishly admitted that he did not really have the power to help this somewhat pathetic group. But he informed them that they had the power within themselves to correct their deficiencies.

He presented a Bachelors of Smarts degree to the Scarecrow and admonished him to make good use of his new-found mental prowess.

To the Tin Man, the Wizard presented a clock in the shape of a heart and told him to trust his own judgment.

Finally, the Lion was given a Certificate of Courage and the Wizard implored him to use the courage to address the deficiencies that he had cowardly avoided heretofore.

For the Chairman, the Wizard had promised a ride home in his balloon. As the Wizard shouted, ". . .up, up and away" the Chairman, who was so emotionally entangled with his new colleagues, realized that he had missed the basket. He was beside himself.

But, all at once, the Good Analyst of the East appeared and stressed to the Chairman that all along he had the power to return to the State of Stability.

All he had to do was open the magic book and follow the reasonable and logical pricing and underwriting standards that were set forth within.

With a start the Chairman awoke to find a crowd of people hovering over him. Crumpled nearby was his moped, which had bounced off the wall.

As the Chairman stood up and regained his balance, he quickly reviewed what he thought was a dream until he noticed a black book clutched in his hand. Surely he had not had this before the accident.

He thought, "perhaps this really is a magic book!" He quickly thumbed through the pages, noting the lists of specific pricing and underwriting standards to be used by *well-run companies*.

What really caught his eye was the section entitled, "Market Share." It stated that, ". . .at the appropriate point in time, shrinkage of a company's book of business might not be a bad thing."

He reflected on this statement for a moment and thought to himself that the old market-share syndrome did not work well in the last underwriting cycle.

As he wandered back to the hotel where his company was holding several days of strategic planning sessions, his chief underwriter, chief marketing man and chief actuary all rushed up to him and cried in unison "We must be careful this time, the old methodologies won't work!"

*Myron M. Picoult is senior vp and senior insurance analyst with Oppenheimer & Co. in New York. He is the past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts.*

## BI Industry Stock Report

October 1, 1986 9/25/86 thru 10/1/86

| Brokers | | Price | % Chg. | P/E | $ Div. | % Yld. | High | Low | Vol.(000) |
|---|---|---|---|---|---|---|---|---|---|
| Alexander & Alexander Svcs | NYSE | 37.00 | 0.3 | 246.7 | 1.00 | 2.7 | 37.00 | 35.75 | 289.6 |
| Baldwin & Lyons Inc | OTC | 24.00 | 0.0 | 30.8 | 0.16 | 0.7 | 27.00 | 24.00 | 1.1 |
| Corroon & Black Corp | NYSE | 37.25 | 3.5 | 18.7 | 0.65 | 1.7 | 37.25 | 35.13 | 497.1 |
| Crump E H Cos Inc | OTC | 32.63 | 0.4 | 31.4 | 0.25 | 0.8 | 32.63 | 32.50 | 454.9 |
| Gallagher Arthur J & Co | OTC | 28.75 | -4.2 | 23.2 | 0.20 | 0.7 | 30.00 | 28.75 | 60.9 |
| Hall Frank B & Co Inc | NYSE | 19.88 | -1.2 | 0.0 | 0.00 | 0.0 | 20.50 | 19.88 | 109.9 |
| Marsh & Mclennan Cos Inc | NYSE | 66.75 | -1.1 | 23.5 | 1.90 | 2.8 | 66.75 | 63.63 | 584.1 |
| Poe & Assoc Inc | OTC | 13.50 | -5.3 | 0.0 | 0.32 | 2.4 | 14.00 | 13.50 | 28.1 |
| AGENTS/BROKERS | AVERAGE | | | -62.4 | | 1.7 | | | |
| **Conglomerates & Holding Cos.** | | | | | | | | | |
| American Express(Fireman's Fd) | NYSE | 57.50 | -0.6 | 10.9 | 1.36 | 2.4 | 57.50 | 54.25 | 5,135.2 |
| Anderson Clayton(Ranger/PanAm) | NYSE | 65.63 | 0.0 | 18.8 | 0.00 | 0.0 | 70.00* | 63.25 | 1,241.9 |
| Areco Inc | NYSE | 8.25 | 20.0 | 0.0 | 0.00 | 0.0 | 8.25 | 6.88 | 1,837.5 |
| Berkley W R Corp | OTC | 28.75 | -6.5 | 21.8 | 0.24 | 0.8 | 31.00 | 28.75 | 585.6 |
| Berkshire Hathaway Inc Del | OTC | 2650.00 | -0.4 | 644.8 | 0.00 | 0.0 | 2670.00 | 2625.00 | 0.8 |
| CIGNA Corp | NYSE | 55.50 | 0.2 | 0.0 | 2.60 | 4.7 | 55.50 | 54.00* | 1,322.4 |
| CNA Finl Corp (CNA) | NYSE | 53.50 | -1.8 | 14.8 | 0.00 | 0.0 | 53.50 | 51.50* | 242.7 |
| General Re Corp | NYSE | 58.00 | 0.4 | 25.2 | 0.88 | 1.5 | 58.00 | 55.75 | 1,024.5 |
| ITT (Hartford Group) | NYSE | 49.13 | 0.3 | 23.3 | 1.00 | 2.0 | 49.13 | 47.88 | 2,640.8 |
| Sears Roebuck & Co. (Allstate) | NYSE | 41.50 | -0.6 | 11.9 | 1.76 | 4.2 | 41.50 | 39.50 | 3,866.3 |
| Teledyne Inc (Argonaut) | NYSE | 316.00 | -1.7 | 11.5 | 0.00 | 0.0 | 318.13 | 315.13 | 86.2 |
| Transamerica Corp (Occidental) | NYSE | 33.13 | -2.6 | 14.5 | 1.76 | 5.3 | 33.63 | 32.75 | 581.6 |
| CONGLOMERATES/HOLDING COS. | AVERAGE | | | 87.5 | | 0.3 | | | |
| **Insurers** | | | | | | | | | |
| Aetna Life & Cas Co | NYSE | 57.63 | -3.2 | 11.5 | 2.64 | 4.6 | 58.25 | 57.13 | 2,025.1 |
| American General Corp | NYSE | 39.00 | -1.6 | 11.6 | 1.12 | 2.9 | 39.25 | 37.75 | 1,684.8 |
| Amern Heritage Life Invt Co | NYSE | 40.38 | 1.9 | 14.6 | 1.32 | 3.3 | 40.38 | 39.38 | 6.5 |
| American Indty Finl Corp | OTC | 17.75 | 4.4 | 0.0 | 1.12 | 6.3 | 17.75 | 17.25 | 13.1 |
| American Intl Group Inc | NYSE | 123.25 | -0.9 | 20.1 | 0.50 | 0.4 | 123.75 | 121.38 | 663.3 |
| Aneco Reins Ltd | OTC | 2.38 | 5.6 | 0.0 | 0.00 | 0.0 | 2.38 | 2.25 | 1.9 |
| Avemco Corp | NYSE | 26.00 | -3.3 | 13.7 | 0.50 | 1.9 | 27.00 | 25.75 | 13.9 |
| Business Mens Assurn Co Amer | OTC | 27.25 | 1.4 | 22.3 | 1.10 | 4.0 | 27.25 | 26.75 | 26.2 |
| Chubb Corp | NYSE | 66.38 | -0.4 | 49.5 | 1.56 | 2.4 | 66.38 | 64.75 | 709.6 |
| Combined Intl Corp | NYSE | 56.00 | 0.7 | 10.9 | 2.24 | 4.0 | 56.00 | 54.25 | 101.6 |
| Continental Corp | NYSE | 43.75 | -1.4 | 0.0 | 2.60 | 5.9 | 43.75 | 43.38 | 708.7 |
| Crown Life Ins Co | OTC | 350.00 | 0.0 | 0.0 | 6.40 | 1.8 | 350.00 | 350.00 | 1.5 |
| Durham Corp | OTC | 42.53 | -1.2 | 11.9 | 1.36 | 3.2 | 43.00 | 42.50 | 3.7 |
| Farmers Group Inc | OTC | 42.75 | -1.2 | 14.8 | 1.00 | 2.3 | 43.00 | 42.00 | 788.1 |
| Fairmont Finl Inc | AMEX | 17.25 | -0.7 | 17.8 | 0.00 | 0.0 | 17.25 | 16.50* | 23.3 |
| Fireman Fd Corp | NYSE | 34.88 | -0.4 | 0.0 | 0.30 | 0.9 | 35.75 | 34.25 | 296.4 |
| Fremont Gen Corp | OTC | 18.88 | 0.0 | 0.0 | 0.48 | 2.5 | 18.88 | 18.75* | 591.3 |
| Great West Life Assurn Co | OTC | 760.00 | -7.9 | 0.0 | 18.00 | 2.4 | 825.00 | 720.00 | 0.4 |
| Home Group Inc | AMEX | 19.50 | 2.0 | 92.9 | 0.00 | 0.0 | 19.88 | 19.00 | 1,075.2 |
| Hanover Ins Co | OTC | 63.75 | 1.6 | 18.4 | 0.56 | 0.9 | 63.75 | 62.25 | 29.9 |
| Hartford Steam Boiler Insptn | OTC | 41.25 | 3.1 | 11.6 | 1.20 | 2.9 | 41.25 | 41.00 | 36.9 |
| Kans City Life Ins | OTC | 28.00 | -0.9 | 11.0 | 0.87 | 3.1 | 28.25 | 27.75 | 5.2 |
| Kemper Corp | OTC | 27.00 | 0.0 | 12.3 | 0.60 | 2.2 | 27.00 | 26.25 | 577.1 |
| Liberty Corp S C | NYSE | 37.75 | -1.3 | 13.9 | 0.72 | 1.9 | 37.75 | 37.00 | 156.9 |
| Lincoln Natl Corp Ind | NYSE | 49.50 | -1.5 | 10.7 | 2.00 | 4.0 | 50.25 | 49.50 | 405.5 |
| Mission Ins Group Inc | PAC | 2.50 | 0.0 | 0.0 | 0.00 | 0.0 | 4.38 | 2.50 | 21.0 |
| Monumental Corp | OTC | 55.63 | 0.0 | 18.8 | 0.00 | 0.0 | 55.63 | 55.63 | 1.1 |
| Mac Re Corp | OTC | 30.50 | -2.4 | 0.0 | 0.00 | 0.0 | 31.00 | 29.75 | 463.4 |
| Nobel Ins Ltd | OTC | 16.63 | 18.8 | 0.0 | 0.37 | 2.2 | 16.63 | 14.25 | 271.0 |
| Northwestern Natl Life Ins | OTC | 28.25 | -1.7 | 10.4 | 0.86 | 3.0 | 29.00 | 28.00 | 192.3 |
| Ohio Cas Corp | OTC | 77.50 | -0.3 | 16.5 | 3.00 | 3.9 | 78.25 | 76.75 | 210.8 |
| Old Rep Intl Corp | OTC | 34.38 | 1.1 | 11.5 | 0.78 | 2.3 | 34.63 | 34.00 | 83.6 |
| Orion Cap Corp | NYSE | 30.63 | -0.8 | 0.0 | 0.76 | 2.5 | 30.63 | 30.13 | 21.5 |
| Protective Corp | OTC | 23.25 | 1.1 | 12.5 | 0.70 | 3.0 | 23.25 | 22.50 | 53.0 |
| Provident Life & Acc Ins Co | OTC | 24.25 | 3.2 | 8.9 | 0.84 | 3.5 | 24.38 | 24.00 | 193.6 |
| St Paul Cos Inc | OTC | 39.00 | -0.3 | 23.2 | 1.50 | 3.8 | 39.00 | 36.75 | 887.0 |
| SAFECO Corp | OTC | 55.25 | -3.5 | 13.2 | 1.68 | 3.0 | 56.00 | 54.63 | 305.4 |
| Seibels Bruce Group Inc | OTC | 15.00 | 1.7 | 0.0 | 0.80 | 5.3 | 15.00 | 14.75 | 161.7 |
| Selective Ins Group Inc | OTC | 22.25 | -4.3 | 0.0 | 0.92 | 4.1 | 23.00 | 21.75 | 222.7 |
| Statesman Group Inc | OTC | 5.13 | 0.0 | 56.9 | 0.05 | 1.0 | 5.13 | 5.00 | 24.2 |
| Tokio Marine & Fire Ins Co | OTC | 582.00 | 12.1 | 109.6 | 1.66 | 0.3 | 610.00* | 537.00 | 25.4 |
| Torchmark Corp | NYSE | 26.63 | -1.8 | 10.7 | 0.60 | 2.3 | 27.75 | 26.63 | 526.2 |
| Travelers Corp | NYSE | 44.25 | 0.0 | 11.0 | 2.16 | 4.9 | 44.25 | 42.75* | 2,596.7 |
| Trenwick Group Inc | OTC | 18.00 | -5.3 | 0.0 | 0.00 | 0.0 | 18.00 | 16.50 | 800.5 |
| United Fire & Cas Co | OTC | 31.25 | -1.6 | 16.4 | 0.80 | 2.6 | 32.00 | 31.25 | 26.6 |
| United States Fid & Gty Co | NYSE | 37.75 | -3.2 | 0.0 | 2.32 | 6.1 | 38.63 | 37.38* | 903.6 |
| Uslife Corp | NYSE | 45.25 | -1.4 | 11.8 | 1.12 | 2.5 | 45.25 | 44.75 | 126.5 |
| Washington Natl Corp | NYSE | 31.88 | -1.2 | 14.4 | 1.08 | 3.4 | 31.88 | 31.25 | 52.6 |
| Zenith Natl Ins Corp | OTC | 23.75 | -1.0 | 40.9 | 0.80 | 3.4 | 23.75 | 22.00* | 215.0 |
| INSURANCE COMPANIES | AVERAGE | | | 47.1 | | 2.1 | | | |

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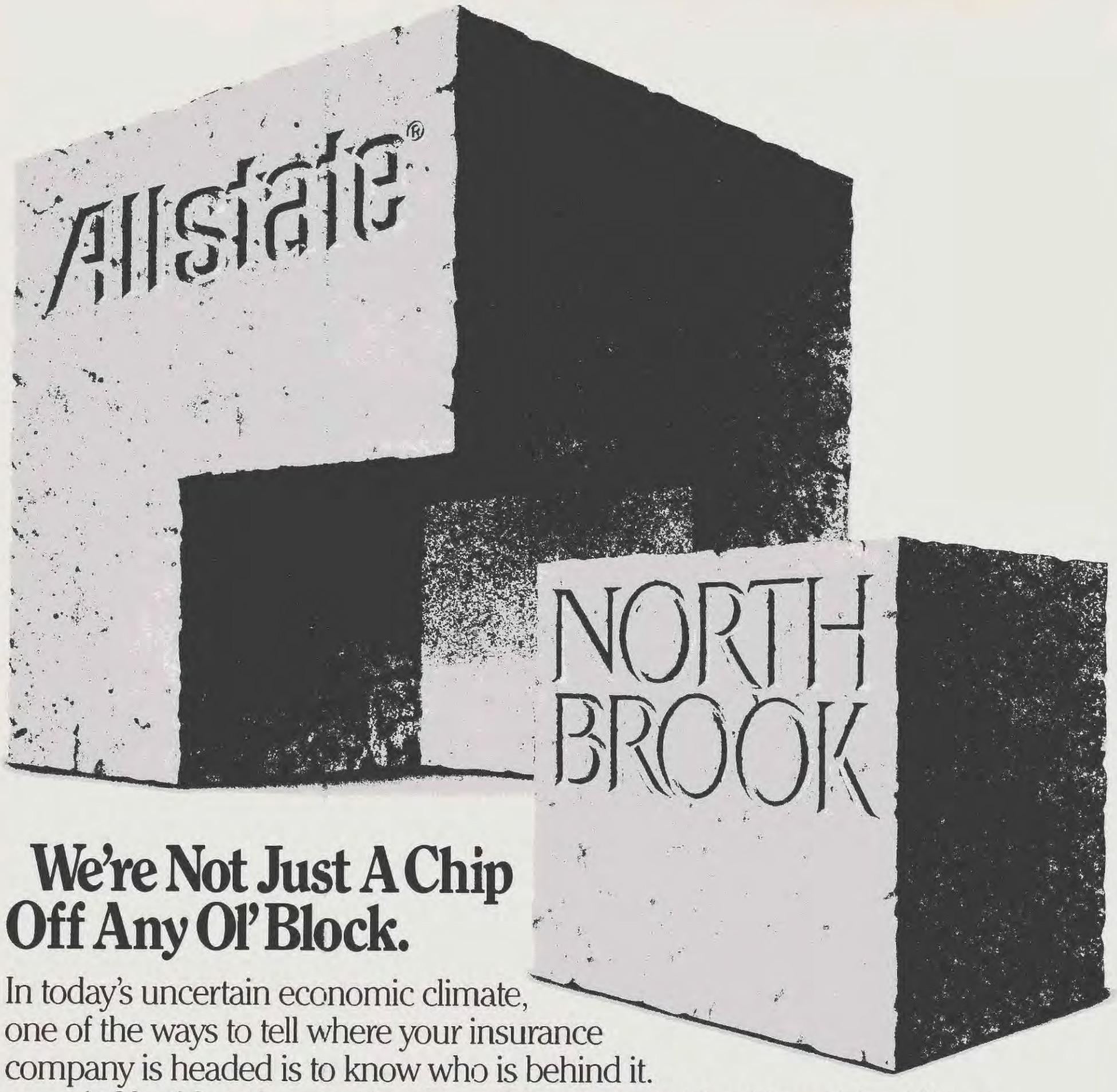
## Chubb Corp.

Moody's Investors Service Inc. has assigned an A2 rating to a $22 million convertible subordinated Eurodebt offering by Chubb Corp. Moody's says the new rating is based on Chubb's improved capitalization and the elimination of exposure to medical malpractice losses by entering into a reinsurance agreement earlier this year.

## Maxicare

Maxicare Health Plans Inc., a health maintenance organization operator, last month offered $125 million of 11.75% Senior Subordinated Notes through Salomon Brothers Inc. and Montgomery Securities.

The notes, which have been rated Ba3 by Moody's Investors Service Inc., will be used to fund a portion of the cost of acquiring Health America Corp., another HMO company. ■




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