

# Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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## Chairman, four former officers of Riscorp indicted over donations

SARASOTA, Fla.—A federal grand jury has indicted the chairman and four former officers of workers compensation insurer Riscorp Inc. for allegedly funneling \$383,500 in illegal campaign contributions to more than 20 Florida politicians, including two state insurance commissioners.

Named in a 27-count indictment last week were William D. Griffin, chairman of the Sarasota, Fla.-based insurer; James A. Malone, former Riscorp president; Thomas E. Danson Jr., former executive vp; Richard A.

See Updates on next page

## Aon to buy Jauch

Deal gives broker the global partner it needed

By DON LEWIS KIRK

CHICAGO—Aon Group Inc. will significantly increase its German and Continental European operations with the acquisition of Jauch & Huebener KGaA, Germany's largest broker.

The deal also fulfills Hamburg, Germany-based Jauch & Huebener's need for a global partner to serve its multinational clients and keep revenues aloft.

The Aon offer, for an undisclosed amount, edged out other bidders, including Marsh & McLennan Cos. Inc., which was rumored to be eyeing Jauch & Huebener.

The German, Austrian and Swiss operations of the two companies will be merged into a new

Hamburg-based brokerage unit, Aon Jauch & Huebener.

The combined unit will have 1,800 employees and gross revenues of about 400 million deutsche marks (\$224.8 million), the two companies announced last week.



The new company is expected to have three key divisions—retail brokerage, reinsurance and employee benefits—though final details have yet to be ironed out.

Jauch & Huebener was forced to seek an international partner after Johnson & Higgins, its former partner in the UNISON broker network, was acquired by Marsh & McLennan in March and ended its ties to the network (BI, March 24; March 17).

In addition, Jauch & Huebener has seen revenue growth decline in the soft competitive market, as well as losing ground to brokerage competitors that have been rapidly consolidating (BI, July 21).

Jauch & Huebener Executive Partner Christian Dahms, who will continue to head the new Aon Jauch & Huebener, described Aon as the "perfect fit" for Jauch & Huebener's strategy to expand its international business outside of

See Jauch on page 63



PHOTO: PAUL D. WINSTON

The Casino of Monte Carlo stands at the center of reinsurance activity during the 41st annual Rendez-Vous de Septembre.

## Many reinsurers hedging their bets

By GAVIN SOUTER and PAUL D. WINSTON

MONTE CARLO, Monaco—Reinsurers are eyeing their options and shrinking premium volumes as they face yet another year-end renewal season that promises more reductions in reinsurance rates.

Despite making stellar profits in the first half of 1997, reinsurers say rates are getting dangerously low and that bad underwriting habits are creeping back into the market as more and more reinsurers cut rates to keep premium volumes up.

Buoyant investment markets and a continued absence of significant insured catastrophes are combining to keep reinsurers in the black on the back of sometimes inadequate rating levels, some reinsurance executives say.

Barring a major catastrophe in the remaining months of 1997, the trend will continue into the year-end renewal season, with catastrophe reinsurance rates likely to drop another 15% to 20%, some executives say.

utives say.

Extra capacity entering the market in the form of several new reinsurers will only add to the pressure to cut rates.

Reinsurers are reacting to the increased competition in numerous ways. While a small minority say they will let volume drop rather than rates, most also are searching for new sources of premium.

Some are hedging their bets by diversifying their books of business, others are looking to expand into developing markets, and still others are writing more multiyear contracts or linking up with other financial institutions to offer new products and capacity.

These are a few of the observations from reinsurance industry executives attending the 41st annual Rendez-Vous de Septembre, held Sept. 8-13 in Monte Carlo, Monaco.

The Rendez-Vous meeting marks the beginning of the year-end renewal season. Rather than hammering out specific deals, though, the

See Market on page 44

## Mutual Benefit back from brink and may put itself on the block

By JUDY GREENWALD

NEWARK, N.J.—MBL Life Assurance Corp., formerly Mutual Benefit Life Insurance Co., is likely to be bought relatively quickly by an insurer seeking more market share and additional economies of scale.

Mutual Benefit was the largest life insurer failure on record when it was put in rehabilitation in 1991, largely as a result of soured real estate and mortgage investments and a subsequent cash flow

drain caused by panicky policyholders' withdrawal demands. It has been in rehabilitation since then.

Last week, the company said it has hired New York-based Goldman Sachs & Co. as financial adviser to explore its strategic options, including selling it before its rehabilitation plan is scheduled to end in 1999.

Alan J. Bowers, MBL Life's president and chief executive officer, said in a statement: "MBL has transformed the nature of its in-

vested assets and made great strides in rebuilding its capital base. Our financial position is now very strong, and we continue to build capital."

MBL, which still has 450,000 policyholders although it is not writing any new business, had total consolidated assets of about \$14.3 billion and total adjusted capital of \$474 million as of June 30.

Others also term the rehabilitation an apparent success. Ob-

See Mutual on page 61

## Clinton details his goals for gradual health reform

By JERRY GEISEL

WASHINGTON—With a series of legislative successes behind it, the Clinton administration now is targeting additional areas to expand health care coverage.

President Clinton last week put forth his health care agenda, specifying areas for legislative action and areas where he believes there are problems but where he has not endorsed a specific remedy.

Legislation President Clinton said he wants passed would:

- Ban so-called drive-through mastectomies. President Clinton described as "horrifying" situations in which women are denied coverage for an overnight stay in a hospital after a mastectomy. He said Congress should act just as it enacted legislation last year that requires health plans to offer at least 48 hours of inpatient coverage after a normal birth and 96 hours after a Caesarean section.
- Ban so-called gag rules, in which some managed care plans have barred providers from discussing,

among other things, alternative treatment options and costs to members.

In addition, President Clinton identified two other health care areas of huge potential significance to employers—that may need federal action, though he did not offer or recommend specific remedies. Those areas are:

- Early retiree health care coverage. President Clinton said something needs to be done to assure coverage for employees who retire before 65 and are not yet eligible for Medicare.

"What about all those people who retire at age 55 and lose their employer-based health insurance and can't draw Medicare until they're 65?" President Clinton asked.

• Subsidized health care

See Health on page 1



President Clinton

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## Updates

### Riscorp execs indicted

Continued from previous page

Halley, former chief financial officer; and Edward J. Hammel, former senior vp-finance.

The indictment charges that the five men conspired to circumvent campaign finance laws by arranging for Riscorp employees, family members and friends to make donations that Riscorp reimbursed through fraudulent "bonuses" it paid to employees. The five men, who were hoping to gain political favors, also solicited lawyers and consultants doing business with Riscorp to make contributions that Riscorp then would reimburse, disguising the payments as professional fees, prosecutors charge.

One of the main beneficiaries of Riscorp's money was former Insurance Commissioner Tom Gallagher, who received about \$57,000 in illegal contributions in his 1990 campaign for the commissioner's job and another \$48,900 in his unsuccessful 1994 run for governor, the indictment says.

Current Insurance Commissioner Bill Nelson's campaign received \$62,800 in illegal Riscorp contributions during 1994, the indictment says. The indictment does not accuse the candidates of wrongdoing.

None of the defendants could be reached, and none had entered a plea last week. Each faces a maximum of five years in jail and \$250,000 in fines on each count.

The indictment also names Riscorp and a subsidiary, but the company announced last week that the subsidiary has agreed to plead guilty to one conspiracy count in return for dismissal of the charges against Riscorp. The company said it expects to be fined up to \$300,000.

Riscorp also said Mr. Griffin will resign his positions with the company and its affiliates.

Commissioner Nelson also issued an order barring Mr. Griffin from the insurance business in the state until the federal charges have been resolved.

Riscorp had been a major provider of managed care workers comp insurance and services in Florida, North Carolina and several other states. However, it has drastically scaled back its operations after being battered by a variety of troubles since its 1996 initial public offering, including a pending civil racketeering suit by disgruntled policyholders and the delisting of its stock from the NASDAQ stock exchange (BI, Feb. 3, 1997).

### ACE to buy Westchester

ATLANTA—ACE Ltd. is taking a more direct stake in the U.S. insurance market with its \$333 million purchase of Westchester Specialty Group Inc. from Talegen Holdings Inc.

The move also takes Xerox Corp., parent of Talegen, one step away from its long-held intent to exit the insurance market.

The purchase of Westchester gives ACE "a whole new entry into the U.S. insurance market," said Brian Duperreault, chairman, president and chief executive officer of ACE.

ACE, like some other Bermuda insurers, is restricted in its marketing and other activities in the United States for regulatory and tax reasons. Because Westchester will remain a separate company, those restrictions will not apply.

Westchester has offices in Atlanta, San Francisco and Glendale, Calif., and it writes specialty commercial property and umbrella liability coverages. In 1996, it wrote \$257.8 million in gross premiums (BI, Sept. 15).

Under its new ownership, Westchester will expand its products and its geographic spread, Mr. Duperreault said. New products may include professional liability coverages as well as commercial package policies, he said.

Included in the deal is a \$750 million reinsurance contract with National Indemnity, a subsidiary of Berkshire Hathaway Inc., which Talegen bought for \$65 million.

"We wanted to make sure that there was a reinsurance contract in place for any reasonable worst-case scenario," Mr. Duperreault said.

Like other liability insurers, Westchester faces long-tail liability claims, including pollution claims, Mr. Duperreault said. Westchester already has \$795 million in loss reserves, and policyholder surplus stood at \$343.2 million at year-end 1996.

The sale of Westchester leaves Xerox with just Crum & Forster Holdings Inc. out of the seven insurance operations it previously owned. Xerox sold Resolution Group earlier this month for \$612 million (BI, Sept. 15), and Crum & Forster is expected to be sold by the end of the year.

### Accounting giants to merge

NEW YORK—The proposed merger between Coopers & Lybrand L.L.P. and Price Waterhouse L.L.P. will bring together two accounting and consulting giants whose employee benefit and risk management practices significantly differ in size and scope.

Coopers & Lybrand last year was the world's fifth-largest benefit consultant with an estimated \$363 million in consulting revenues. In January, Coopers & Lybrand expanded this business with its purchase of Kwasha Lipton, a consulting firm with \$79 million in revenues.

Even before the Kwasha acquisition, Coopers & Lybrand had been growing rapidly because of its strength in broad human resources consulting.

By contrast, Price Waterhouse is a much smaller player in the benefits consulting arena. Competitors put Price Waterhouse revenues from benefit consulting at between \$30 million and \$50 million. It has been successful in recent years in luring top employee benefit staffers from the Internal Revenue Service and the congressional Joint Committee on Taxation.

In 1996, Coopers & Lybrand was the nation's largest independent risk management consultant with \$35 million in revenues (BI, March 17). Price Waterhouse has only a small risk management consulting practice, though last year it established a joint risk management consulting venture with broker Sedgwick Group P.L.C.

See Updates on page 62

# Insurers challenge award of cover for known losses

By DAVE LENCKUS

PHILADELPHIA—A large group of liability and marine insurers is asking a federal appeals court to reconsider a ruling that imposes strict limitations on insurers' use of the so-called "known loss" doctrine to deny coverage.

A three-judge panel of the 3rd U.S. Circuit Court of Appeals late last month handed the loss to a

group of several dozen insurers facing indemnity demands from three policyholders that had suffered losses before they purchased their general liability and marine insurance.

In a 3-0 decision Aug. 27, the 3rd Circuit panel ruled that insurers may not impose the "known loss" doctrine and deny coverage if policyholders did not know with certainty before purchasing coverage that they were liable for

those existing losses.

The ruling overturned a New Jersey federal district court's November 1996 ruling that gave insurers far greater latitude to invoke the doctrine. The district court ruled that an insurer could bar coverage under the doctrine even when a policyholder's liability for an earlier loss had not been established at the time coverage was purchased. An insurer could

See Doctrine on page 62

## Return to work plan under fire

### Levi Strauss dispute points to potential risks of programs

By ROBERTO CENICEROS

EL PASO, Texas—A \$10.6 million jury verdict against Levi Strauss & Co. in a Texas workers compensation-related discrimination lawsuit may highlight potential exposures for other employers with return-to-work programs.

Some aspects of the Levi Strauss case, however, may have been unique to the community of El Paso, where the trial was held, attorneys say.

The five plaintiffs in the case before an El Paso jury claimed they were "subjected to ridicule, harass-

ment, and degradation" because they filed workers comp claims and were forced to participate in a return-to-work program that held them out as different from their peers, according to court papers. They also alleged the return-to-work program was poorly documented and implemented.

Levi Strauss denies many of the claims and plans to appeal the jury's verdict, delivered in two parts Sept. 8-9.



The company also is attempting to remove the judge in the case from hearing a succession of related cases for 104 other plaintiffs employed at several El Paso Levi Strauss plants (BI, Sept. 15). Levi Strauss claims the judge "has a personal bias or prejudice concerning the subject matter," according to a motion filed by the San Francisco-based apparel manufacturer.

The motion alleged the judge did not act impartially but rather as an advocate for the employees in the case.

Plaintiffs' attorney Sam Legate See Verdict on page 12

## Administration leaves rules on record privacy to Congress

By JERRY GEISEL

WASHINGTON—The Clinton administration will leave it to Congress to develop new rules governing the privacy of medical records.

An 80-page set of recommendations released earlier this month by the Department of Health and Human Services provides, for the most, only general guidelines on

how individuals' medical records should be kept private.

The privacy issue is important to employers, managed care companies and insurers. Some fear, for example, if privacy rules are too strict it could become extremely costly and cumbersome for insurers and others to obtain the information they need from employees' physicians to review and process claims.

In at least one area—workers compensation—the administration is putting off, at least for another day, trying to balance an employee's right to keep medical information private and the need of insurers and self-funded employers for medical information to evaluate claims.

The administration said it would review the need for privacy See Privacy on page 58

## Preparing for privatization

### GAN sale faces E.U. controversy, lower profit outlook

By MARIA KIELMAS

PARIS—French insurer Groupe des Assurances Nationales still is trying to put its finances in order, prior to its anticipated privatization by the French government.

A number of French and foreign insurance companies have expressed interest in acquiring GAN (BI, Aug. 4).

Didier Pfeiffer, chief executive officer of GAN in Paris, announced last week that in spite of a profitable first half, the company will make several charges against earnings, making its final result for the six-

month period uncertain.

GAN will take a 500 million franc (\$84 million) provision to cover its costs of settling pension sales disputes in Britain and another 500 million franc charge associated with writedowns of the value of its real estate holdings in France.

As a result, the insurer's first- See GAN on page 14



## Inside

• Ohio employers must fight hard to persuade voters to preserve the workers compensation reforms the Legislature passed, this week's editorial says. **PAGE 8**

• Some market executives want Lloyd's to avoid becoming completely a corporate capital market. **PAGE 17**

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The Web site of a Columbia, Mo., jazz club is at the center of a trademark battle.

# Court limits legal reach of Internet

By JUDY GREENWALD

NEW YORK—A federal appellate court has upheld a lower court decision that a business cannot be sued in a state just because it has a World Wide Web site that can be accessed by residents of that state.

The Sept. 10 decision by the 2nd U.S. Circuit Court of Appeals in New York in *Bensusan Restaurant Corp. vs. Richard B. King* agreed with the dismissal of a trademark infringement case brought by New York-based Bensusan Restaurant Corp., the operator of The Blue Note jazz club in New York City against the operator of a Columbia, Mo., jazz club with the same name that had posted a home page on the World Wide Web to promote his club (*BI*, Sept. 30, 1996).

Robert Bourque, an attorney with Simpson Thacher & Bartlett in New York who represents Mr. King, said the case had caused some concern and uncertainty about whether local and regional businesses could be successfully sued outside the areas in which they do business "merely because they happen to establish a Web site that can be viewed anywhere in the world."

In April 1996, Mr. King had posted a home page with the World Wide Web to promote his Missouri club, which he had operated since 1980. The Web site contained a disclaimer that the club "should not be confused" with the New York club. The Missouri club's Web page also initially contained a hypertext link to Bensusan's Web page but was removed after Bensusan objected to the Web site.

The Sept. 9, 1996, decision by the federal district court in Manhattan dismissing the case said there is "no suggestion that King has any presence of any kind in New York other than the Web site that can be accessed worldwide."

In upholding that decision, the three-judge panel said, "Although we realize that attempting to apply established trademark law in the fast-developing world of the Internet is somewhat like trying to board a moving bus, we believe that well-established doctrines of personal jurisdiction law support the result reached by the district court."

Mr. Bourque said previous court decisions on this issue have gone both ways, although they have tended to be based on the facts of each case, with the intended target of the Web site the determining factor.

The attorney for the New York club, Dorothy Weber of Shukat Arrow Hafer & Weber in New York, said she did not plan to appeal the appellate decision to the U.S. Supreme Court.

"This was just a procedural decision. It didn't go to the merits of the case," she said. "We still have a trademark infringement case against these people." The case will be refiled in federal court in Missouri, Ms. Weber said.

*Bensusan Restaurant Corp., plaintiff-appellant, v. Richard B. King, individually and doing business as The Blue Note, defendant-appellee, 2nd U.S. Court of Appeals for the Second Circuit, Docket No. 96-9344.*

# LTC cover may be ripe for self-funding

## Speaker details benefits, including freedom from insurance regulation

By MICHAEL BRADFORD

ATLANTA—Employers can save a bundle and offer workers a nice benefit by self-funding long-term care benefits, according to the head of a management company that designs such plans.

At a time when the population is aging and the costs of long-term care services are rising, the need is growing for a product that will ease workers' financial burden of caring for the elderly and disabled, said Samuel X. Kaplan, founder and chairman of U.S. Care Inc. in Santa Monica, Calif.

"There's a tremendously large market out there," he said. "Every day in this country, 5,500 people turn 65. Once a month, you get a thousand people turning 100," and every eight seconds there is another 50-year-old.

"And don't think long-term care is only

Coverage of the Self-Insurance Institute of America's meeting continues on page 59



for the elderly,"

he noted. "The Social Security Administration will tell you that 42% of people in this country that are functionally disabled are between the ages of 18 and 64."

Mr. Kaplan, speaking at the 17th Annual National Educational Conference & Expo held by the Self-Insurance Institute of

America Inc. in Atlanta, said employers shouldn't automatically turn to an insurance company to fund this benefit.

As of 1995, 1,262 employers offered long-term care insurance plans, with that number growing by about 23% a year, he said. Only two plans were self-funded, the same ones as today.

A self-funded plan generally can be less costly than the individual plans offered by insurers because it can avoid many of the expenses associated with state insurance regulation, Mr. Kaplan explained.

As a self-funded benefit plan, an employer-sponsored LTC program would be free from state regulation under the pre-emption provisions of the federal Employee Retirement Income Security Act.

An employer's self-funded plan wouldn't  
*See SIIA on page 59*

# No escaping federal oversight

## Federal regulation of insurance limited, but significant: Panelists

By MARK A. HOFMANN

WASHINGTON—Like it or not, various forms of federal regulation of insurance are here and unlikely to go away.

That was the message of a panel of experts at the 10th annual insurance information services conference, held in Washington last week and sponsored by A.M. Best Co. of Oldwick, N.J.

Despite the contention of some observers that the Republicans' 1994 sweep of Congress ended the debate over federal vs. state regulation, the federal role remains quite significant, albeit limited, said the panelists.

However, because insurers don't have

an identifiable federal regulator, unlike other industries, they can find themselves at a competitive disadvantage politically when presenting their case in Washington, said one panelist.

"Federal regulation is here. Foreign regulation is here. State regulation is here. Local regulation is here," said John B. Chesson, president of Oversight-Results.Com, a Falls Church, Va.-based consultant. Mr. Chesson was counsel to the House Subcommittee on Oversight and Investigations during the early 1990s and was staff author of the subcommittee's two reports on the insurance industry, "Failed Promises" and "Wishful Thinking," both of which questioned the effec-

tiveness of state insurance regulation.

Mr. Chesson said that federal regulators both regulate and act as advocates for the industries they oversee.

Banks, for example, have a powerful ally in Federal Reserve Board Chairman Alan Greenspan, Mr. Chesson said. Insurers lack such an advocate, though, in such battles as in the current legislative debate over expanding banks' insurance powers, he said.

"The bankers hold all the cards," with at least three well-financed regulators presenting their interests, said Mr. Chesson.

Insurance is "always going to be in the  
*See Best on page 14*

# OSHA proposal called unnecessary

## Reporting rule seen as step to build support for ergonomics standard

By MARK A. HOFMANN

WASHINGTON—Employers fear that a safety reporting proposal designed to cut paperwork could actually increase their compliance burden and make them more vulnerable to litigation.

In addition, the Occupational Safety and Health Administration's proposed record-keeping requirements could be used to push for the promulgation of a national ergonomics standard, warned one witness

testifying last week before the House Small Business Committee.

The Risk & Insurance Management Society Inc. also is concerned about the OSHA reporting proposal, said Lance Ewing, chairman of RIMS' Health and Safety Committee.

"In principle, I guess OSHA is on the right track in attempting to reduce paperwork, but there are some major bridges to cross before it becomes cost-effective to employers. I guess the two biggest concerns

are the records themselves and the proposal for access privileges," said Mr. Ewing, who also serves as loss control administrator for the Philadelphia School District.

"First of all, I think OSHA is asking the employer to do what is already being done through the workers compensation system. It's bad enough for an employer to have to fill out the existing paperwork requirements for an injured employee, then you would have to add OSHA's requirements on  
*See OSHA on next page*

# Business group offers data on doctors

By ROBERT KAZEL

SAN FRANCISCO—A health care purchasing group based in California is issuing a report card of how satisfied consumers are with their physicians.

That in itself would not be unique: Buyers' collectives have frequently tried to exert clout in their communities by exposing the quality of managed care plans. What is unusual about the reports issued last week by the Pacific Business Group on Health in San Francisco is that doctors' groups—their professional corporations, not the HMO or other managed care network to which they belong—are the key groups being judged.

This is significant in that it brings the health quality movement one step closer to analyzing doctor performance on the basis of individual performance—although no one at PBGH is going that far in making predictions.

The new scorecards from PBGH are intended more for consumers' eyes than those of plan sponsors. The data is available to all

via the World Wide Web as well as a toll-free telephone number for universal access, and PBGH hopes employees will take advantage of the scoring during open enrollment later this year.

The scores, named collectively "California Consumer Healthscope," are based on written questionnaires returned by the patients of 49 California physician groups and nine others in the northwest United States, and cover areas including overall satisfaction, quality of care, ease of getting care and referrals, doctors' communication skills, and percent reporting blood pressure and cholesterol under control. Preventive care counseling on such topics as smoking, motor vehicle safety and sexually transmitted diseases also were measured. Roughly 50% of the doctor groups in the state gave the questionnaire to patients.

"Good health is good for employees and good for business," said Tom Davies, a manager of managed care for Stamford, Conn.-based GTE Corp. Mr. Davies, who has worked closely with PBGH to create the new ratings, said the new data will al-

low consumers to be well-armed innocents in the market share battles being waged by physicians of Northern and Southern California. But despite early hesitation, there was little doubt among doctors that a grading project was needed to create standards for care across the state, he said.

"There was a high degree of consensus around this," Mr. Davis said.

The real purpose of the report cards is to drive improvement of doctors statewide, said Cheryl Damberg, PBGH director of quality. "This is the first time they (consumers) have been able to see and evaluate quality," she said.

To get an accurate view of the quality of health care, employees must look both at managed care plan report cards and those for doctor groups, Ms. Damberg said.

"This shows medical groups in certain markets are really of key impact in how health care is provided," said Barbara Decker, benefit manager for Southern California Edison in Rosemead, Calif. "We found a lot. We feel this gives (doctors) a great insight."

# OSHA

Continued from previous page

top of that," Mr. Ewing said. "Risk managers and safety experts don't routinely review OSHA law to determine where accidents occur; they review workers comp records," he said.

"OSHA's proposal is, in my opinion, a plaintiffs attorney's dream. They'd have access to personnel files," said Mr. Ewing.

According to Rep. James Talent, R-Mo., chairman of the House Small Business Committee, the proposal, first published in the Federal Register on Feb. 2, 1996, but not yet implemented, would, among other things:

- Require all businesses that keep records to record a number of minor kinds of injuries, such as minor swellings or skin irritations, that heretofore they have not had

to record.

- Require all businesses to give copies of injury or illness records on all their employees to any other current or former employee who asked for the records.

- Would require general contractors to keep a duplicate set of records for the employees of their subcontractors and to certify the accuracy of records at pain of criminal penalties.

- Maintain the current definition of "work-related," which stipulates in part that an injury or illness that is first detected while working is considered to be work-related.

Employers have criticized this definition as too broad.

- Redefine "injury or illness" as "any sign, symptom or laboratory abnormality which indicates an adverse change in any employee's anatomical, biochemical, physiological, functional or psychological

condition."

This, too, has come under fire for being far too broad. Although the proposal would exempt employers from reporting maladies treated by first aid, the proposal includes a broad range of musculoskeletal

## 'Can you imagine plaintiffs attorneys... demanding to see personnel files?' asks Eamonn McGeady.

disorders in its recording requirements.

OSHA can implement the proposed change without congressional approval. Congress, however, could effectively scuttle any such move by specifying that appropri-

ations could not be used to enforce the change. Congress used that authority a few years ago to block OSHA's proposed ergonomics standard, holding that funds could not even be used to study the matter.

Gregory Watchman, the acting assistant secretary of labor for occupational safety and health, assured committee members that OSHA is making every effort to consult with all of its stakeholders—business, labor and others—as it proceeds with the record-keeping proposal.

Mr. Watchman pointed out that the proposal would exempt many companies with fewer than 20 employees from the reporting requirements as opposed to the current exemption limited to those companies with 10 or fewer employees. The proposal also would exempt employers with exemplary safety records as well as certain types of

industries, he said.

He also told the panel that OSHA estimates that the number of workplaces required to keep the records also would drop significantly from the number of companies that currently have record-keeping requirements. He said OSHA estimates the proposed regulations would affect 620,000 workplaces rather than the 756,000 covered under current regulations.

OSHA also estimates the proposed rule would cost employers \$4.7 million less per year to comply with than the current rule, he added.

Rep. Talent disputed the 620,000 workplace figure, citing a Small Business Administration study that holds that 1.4 million workplaces would be covered by the proposal.

Mr. Watchman said OSHA would have to analyze the SBA data.

Several witnesses told the committee that a greater concern than the number of workplaces covered by the proposed regulations was the nature of the rules themselves.

After testifying that he believed OSHA had "grossly underestimated" the cost of compliance, attorney Lawrence Halprin raised concerns about the proposals' relationship to promulgation of OSHA's stalled ergonomics proposal. Businesses have long opposed such a standard, holding that the scientific evidence to justify such a new regulation simply doesn't exist.

Mr. Halprin, a partner in the Washington law firm Keller & Heckman L.L.P., said the proposal would set a broad definition of musculoskeletal injuries that would in turn have to be recorded. That would mean that a large number of ergonomics injuries would be included in the workplace logs.

Mr. Halprin argued that OSHA could then push for the ergonomics standard because of an alleged "epidemic" of ergonomics cases. The purpose of the proposal should not be to stake out the scope of an ergonomics standard, he said.

The proposal's call for expanding access to safety records to include employees, former employees and designated employee representatives also drew criticism from several witnesses.

"Can you imagine plaintiffs attorneys coming through the doors and demanding to see personnel files?" asked Eamonn McGeady, president of Martin Imbach Inc., a Baltimore-based marine construction company.

Another construction firm executive spoke against the open-records provision on behalf of Associated Builders & Contractors, a Rosslyn, Va.-based construction trade association. The group supports what it calls the "merit shop" policy of awarding construction contracts to the lowest responsible bidder, regardless of labor affiliation, through open and competitive bidding.

"ABC strongly believes that privacy issues are of great concern, and while employees should have access to general information about injuries which occur on their worksite, they have no right to obtain the personal medical information of others contained in the incident report that the proposed regulation would disclose," said Alan McComb, vp of Harold McComb & Son Inc. of Fort Wayne, Ind. "Furthermore, granting former employees' designated representatives access to the OSHA logs is like granting a license to individuals and organizations who seek to exploit and harass merit shop companies," he said. **BI**

## Active Life...



Amelia Jenks Bloomer  
(1813 - 1894)

Abolitionist, temperance activist, crusader for women's rights, suffragist, opponent of unjust marriage laws — Amelia Bloomer tirelessly agitated for social justice. She labored alongside Susan B. Anthony and Elizabeth Cady Stanton to right wrongs against women. She established a temperance journal, the Lily, perhaps the first publication edited entirely by a woman.

Yet, it was Bloomer's leadership in the dress-reform movement that brought her fame. Protesting the restrictive, often injurious garments for women, she demanded clothing "conducive at once to her health comfort and usefulness." In the day of hoop skirts, she sought to popularize practical attire — a skirt over Turkish trousers gathered at the ankles — "bloomers."



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# More workers get flexible hours, survey finds

Employers of all sizes increasingly are offering employees the opportunity to work non-traditional hours, and working mothers are taking note.

In its annual survey of the 100 best employers for working mothers, Working Mother magazine noted that more employees are taking advantage of opportunities to work flexible hours.

For example, some 5,000 of Hewlett-Packard Co. employees work at home, up from 2,900 last year, according to the survey. And 2,300 employees work a compressed work-week—putting in 40 hours in less than five days—up from 1,450 last year. The number of Hewlett-Packard employees who use flex time to begin and end work before or after core business hours remained a staggeringly high 52,000.

## Benefit Beat

Hewlett-Packard is one of 100 companies that Working Mother magazine calls the best employers for working mothers.

Working Mother evaluates companies based on: how well they pay compared with their competitors; opportunities for women to advance; support for child care; flexible work arrangements; and other family-friendly benefits, such as maternity and paternity leave, adoption aid, elder care support and scholarships for employees' children.

The magazine's "100 Best Companies for Working Mothers" report was released last week.

According to the report, the 10 best

companies, in alphabetical order, are: Allstate Insurance Co., Barnett Banks Inc., Fel-Pro Inc., Glaxo Wellcome Inc., International Business Machines Corp., Johnson & Johnson, Merck & Co. Inc., NationsBank Corp., SAS Institute Inc., and Xerox Corp.

Allstate is new to the top 10 this year. All of the other companies have appeared on the top 10 list at least four times, though not necessarily consecutively, since Working Mother began conducting the survey 12 years ago.

About 500 organizations applied to be considered for the list. The 100 best companies selected span a wide array of industries and are in 26 states and the District of Columbia.

The companies range widely in size. On one end of the spectrum is The Benjamin Group, a 66-employee pub-

lic relations firm in Campbell, Calif. It operates an onsite child care center. The Benjamin Group also offers other child care support programs, flexible scheduling and other family-friendly benefits.

At the other end is Chrysler Corp., with 93,751 employees. Chrysler offers on-site child care, other child care support programs, flexible scheduling and numerous other work/family benefits.

The prevalence of work/family benefits continues to increase. Seventy-nine of the 100 companies have onsite or near-site child care centers, up from 75 last year. Thirty-two companies reported they offer paid paternity leave for new fathers, up from 23 last year.

—By Deborah Shalowitz Cowans

## MSA numbers up

WASHINGTON—The growth of tax-favored medical savings accounts finally is picking up steam, though growth still is far below earlier predictions.

Through June 30, 22,051 MSAs had been established, according to an Internal Revenue Service census. That is more than double the 9,720 MSAs that had been set up from Jan. 1 through April 30.

Those MSAs are authorized under a four-year pilot program Congress approved last year as part of a broader health care portability measure that curbs the use of pre-existing medical condition exclusions in health care plans.

The law's MSA provisions, which took effect Jan. 1, allow the self-employed and employees working at companies with two to 50 employees to set up tax-favored MSAs.

The recent spurt in MSAs had been expected. Insurers, agents and banks said they expected growth to pick up—after a slow initial start—as the public begins to understand how MSAs work and the tax advantages they offer.

But MSA growth will have to increase at a much faster rate before the number of MSAs approaches the limits set by Congress.

Under the 1996 law, up to 750,000 MSAs can be established through Dec. 31, 2000.

At that point, Congress will decide whether to continue the program. If legislators do end the program, however, existing MSAs will be allowed to continue.

The law also set a 375,000 cap on MSAs by April 30, 1997; 525,000 by June 30, 1997, and a 600,000 limit by June 30, 1998.

Under a tax-favored MSA, which must be linked to a high-deductible indemnity plan, contributions earn tax-free or tax-deferred interest, depending on how participants use the contributions.

Money in an MSA can be withdrawn tax-free to pay for uncovered health care-related expenses, such as a medical claim that falls under a plan deductible, or an expense, like eyeglasses, that an employee's health care plan does not cover. Amounts withdrawn for non-health care-related purposes are taxed as ordinary income, with a 15% surcharge.

The 15% surcharge, though, is not assessed on funds withdrawn by people after they turn 65.

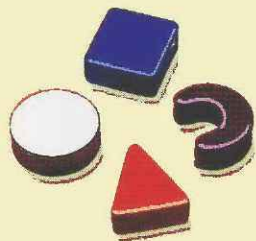
Of the 22,051 MSAs that have been established, 3,670 were for people not previously insured. As part of last year's political compromise giving MSAs tax-favored status, those individuals' MSAs are not counted against the congressionally set MSA caps.

Separately, Merrill Lynch & Co. Inc., the nation's largest full-service stockbrokerage, announced earlier this month that it is offering an MSA product to employees at small companies and to the self-employed.

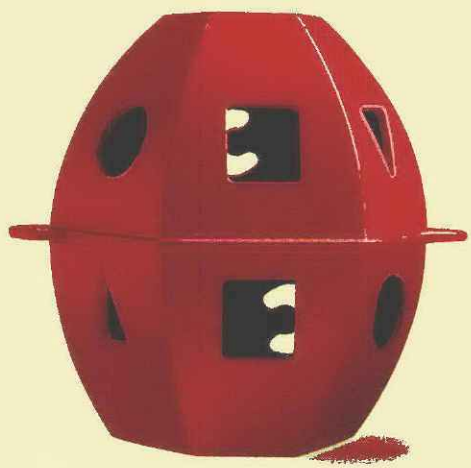
Individuals will be able to select their own insurers from which to purchase a high-deductible medical plan, but Merrill Lynch will manage individuals' MSAs and give account holders numerous investment options for funds contributed to MSAs. Medical expenses could be paid for by using a VISA debit card or a checkbook provided with the account.

The new program "provides choice and flexibility to entrepreneurs, small-business owners and employees whose previous health insurance options were limited," said Allen Jones, a Merrill Lynch senior vp in Princeton, N.J.

—By Jerry Geisel



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## Opinions

## Campaigning for comp reform

OHIO EMPLOYERS face a formidable challenge in November to persuade voters in the state to uphold a broad and significant workers compensation law.

Having already convinced lawmakers of the need for the reforms, which passed the Legislature and were signed into law earlier this year, the state's businesses now must bring their case to the people.

Labor unions and trial attorneys in the state organized a successful petition drive this summer to place an initiative on the Nov. 4 ballot requiring voters' assent before the reforms take effect (*BI*, Sept. 8). Under state law, the filing of the petition signatures halted implementation of the reforms.

Business groups in the state are calling the drive by labor and attorneys a political move rather than a practical one on behalf of workers. We agree. Indeed, the supporters of the initiative are seeking to overturn the entire law, rather than specific provisions—several of which clearly benefit workers. It no doubt rankles the ballot organizers that employers won such gains from lawmakers, but killing the entire law is cutting off one's nose to spite one's face.

The stakes for employers in this ballot battle are extremely high: If the reforms are shot down at the polls, Ohio employers' workers comp costs are likely to remain high, and legislators are unlikely to be willing to revisit the issue of workers comp reform for some time.

That's unfortunate, because a ballot initiative rarely is the indicator of the "voice of the people" it is made out to be. The main reason for this is voter apathy, which often results in a minority of the population casting ballots. And, voters' minds can be swayed easily by personal biases and glitzy advertising campaigns, not by a true understanding of the issues.

We hope employers will not display the same sort of apathy and will defend these reforms. A valid case can be made that the reforms get workers back on the job quicker, eliminate delays in paying claims and pay workers rather than attorneys.

Take provisions in the law that limit the life of most claims to five years, rather than 10 years, and cut to 26 weeks from 200 weeks some wage-loss benefits for injured employees who are capable of working but can't find a job.

## Letters

## Maternity stay study inherently flawed

To the editor: Having been educated with a scientific academic background prior to joining the insurance professional amalgam, I am often surprised at how quickly people accept what "studies" attempt to "prove."

Your Aug. 25 article "Study Finds Short Maternity Stays Not Harmful" and editorial "Speak Up, Managed Care" are two such examples.

One of the first things you learn as you embark on a scientific academic education is that "outcomes" or retrospective studies (studies that look back at already-established data) are inherently flawed. No one has ever completed a retrospective study and compensated for all variables, because you can not know all possible variables at any given time.

The maternity readmission rate for mothers and babies who voluntarily stay 24 hours, by any logical sense, should be lower than those who stay longer. Most mothers would not leave the hospital voluntarily at 24 hours if they were not the type of person to bounce back from the procedure quickly. You already

have deselected those mothers who by personality traits alone need the longer stay. Also, those who fall into the latter category would, by all logical sense, exhibit a higher readmission rate due solely to their personality traits and ability or inability to handle pain and stress.

Now let's consider those who have a difficult delivery with complications. They invariably would stay longer and also exhibit a higher incidence of readmission. The only way to quantify the true impact the shorter stay has on the readmission rates would be to force all maternity stays in a random, double blind, infinite stay control group. The liability issues created by forcing the first group out at 24 hours would prevent this study from ever being performed, yet the managed care companies would like us to believe their data is complete and their study valid.

The statement that "the outcomes study supports our continued contention that our suggested hospital stays for both normal vaginal delivery and Caesarean section represents quality health care treatment"



Those measures will encourage able workers to return to work more quickly or find other employment.

Another provision of the reform law streamlines hearing procedures for disputed claims, reducing the need for attorney involvement.

This will speed up the resolution of disputed claims and payment of benefits to deserving workers while lowering system costs and workers' legal expenses.

Yet another provision limits the compensability of diseases to which the general public is exposed, unless they specifically arise from an occupational exposure.

This ends past abuses, or outright fraud, in which workers comp claims are made for injuries incurred off the job.

Ohio employers have to make the case that approving the workers comp reforms benefits all Ohioans.

Eliminating inefficiencies in the workers comp claims system clearly benefits both the employee and employer. Reducing workers comp costs means more money is available to invest in vital areas, such as job expansion and employee benefits, that help employees and citizens.

A strong workers comp reform law makes the state attractive to businesses, which benefits everyone.

only furthers the old adage that a little knowledge can be a dangerous thing. I think Dr. Frederick W. Spong should review his basic scientific guidelines on valid experimental techniques prior to performing his next "health care study."

My wife delivered our son Seamus on Feb. 18, 1997, and

was lucky enough to have been able to walk out the next day. She had an extremely good outcome and is a tough character. I can tell you that knowing she could stay longer was a definite factor in her leaving early (just another unknown variable).

Patrick O'Doherty  
Old Orchard Beach, Maine

## Scholarship fund in Kuntz's name

To the Editor: The untimely death on Aug. 5 of Robert E. Kuntz—who was active in the risk management and insurance communities of Detroit, Chicago and Southern California—left many in the industry seeking an appropriate way to mark his passing and remember his contributions.

When he wasn't figuring after-tax net cash flows or reviewing captive insurance company reports, Robert was a serious opera buff with an impressive record collection.

When he and his wife, Susan,

decided to switch to compact discs, Robert gave his records to the School of Music of Chapman University. A scholarship has now been established in Robert's name at Chapman's music school.

Friends who would like to contribute to that scholarship fund should send a check, marked "In memory of Robert E. Kuntz," to University Relations/Gift Recording, Chapman University, 333 N. Glassell, Orange, Calif. 92866.

Mary A. Carroll  
Chicago

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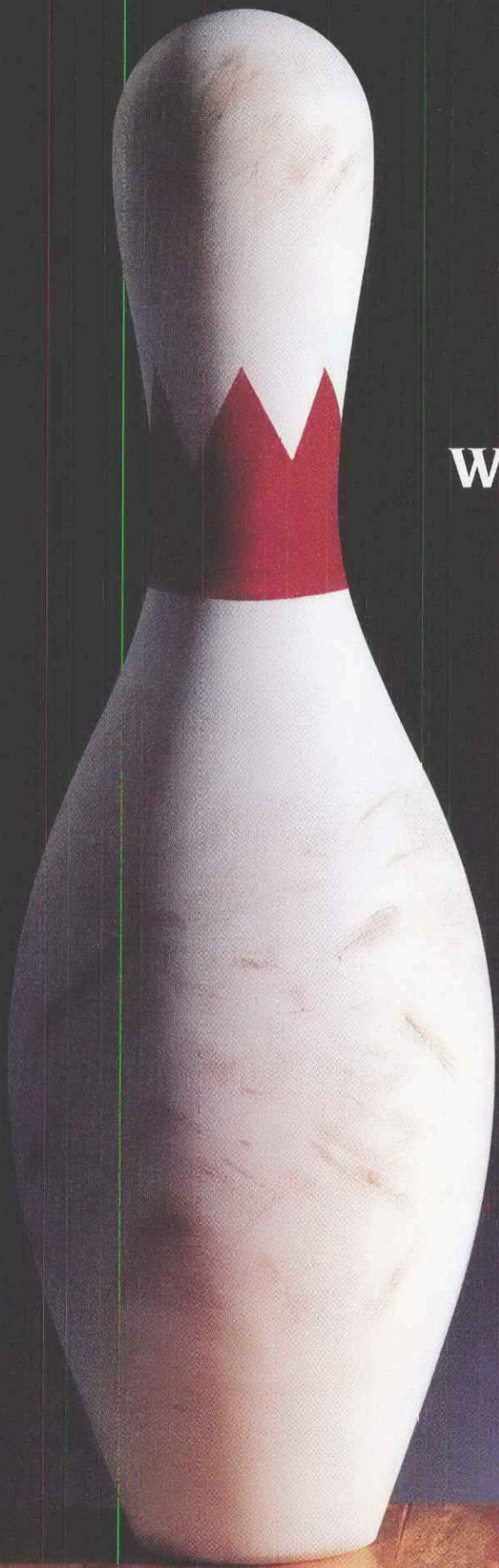
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# Health

*Continued from page 1*

coverage for the unemployed. While the federal COBRA law allows employees who lose their jobs to continue their group health care coverage by paying 102% of the group rate, COBRA premiums may be too expensive for the unemployed to pay.

"What about all the people who have a right to keep their health insurance when they're between jobs, but after they've been without a job for a certain amount of time they ... can't afford it," President Clinton said.

In his speech, delivered before the Service Employees International Union, President Clinton made clear that he has learned a lesson from his disastrous foray in the health care arena in 1993, when his plan to overhaul the nation's health care system went down in flames.

The way to achieve change in the health care field, the president said, is incrementally. "We've got to do it right so we can go on to the next step and the next step and the next step," he said.

That incremental approach has, during the last year, resulted in the passage of several major pieces of health care legislation.

Last year, for example, President Clinton threw his support behind and gave a jump start to legislation—later enacted—that curbs the use of pre-existing medical condition exclusions.

The administration also was an enthusiastic backer of measures also passed in 1996 that mandated minimum inpatient coverage for maternity stays and achieved limited mental health care benefits parity.

Its most recent health care legislative triumph came in late July, when Congress passed the so-called "Kid-Care" measure, in which the federal government will give the states about \$24 billion in block grants for the states to use to establish programs providing health care coverage to children in low-income families who are uninsured.

This incremental approach to expanding health care coverage has served the administration well, experts note.

"One can get a lot done one step at a time," said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

Stuart Brahs, vp-federal government relations at The Principal Financial Group in Washington, said, "What the administration could not achieve in a broad way, it now is trying to achieve bit by bit."

"The administration's overall objective has not changed: expanding health care coverage. What has changed is its realization that it makes more sense to fight one battle at a time rather than an entire war," concurred Sylvester Schieber, director of Watson Wyatt Worldwide's Research and Information Center in Bethesda, Md.

Areas President Clinton identified as potential problems—affordable health care coverage for the unemployed and coverage for early retirees—have their origins in earlier proposals.

Since 1995, President Clinton has said something needs to be done to provide affordable transitional coverage for employees who lose their jobs. He earlier suggested federal subsidies of COBRA premiums for the low-income unemployed. Despite the long period of discussion, the administration never developed a specific legislative proposal.

In 1993, though, the administration did develop as part of its broader health care reform initiative a proposal in which the federal government would have assumed 80%

of the cost of health care coverage for retirees age 55 through 64.

That proposal was widely derided as poor public policy and little more than a political payoff for organized labor's support during the 1992 presidential campaign.

Washington benefit observers speculate, though, that the administration has something very different in mind. Rather than support a government subsidy, the administration might propose legislation that would require employers to expand eligibility for COBRA for early retirees so that retirees could hang onto COBRA until they were entitled to Medicare at 65.

"It looks like a COBRA extension," said Mr. Schieber of Watson Wyatt.

Under the COBRA statute, employees who quit or are laid off—regardless of age—can keep COBRA coverage for 18 months. Employees' spouses who lose coverage because

of the death of the employee or divorce or marital separation can keep COBRA coverage for up to three years.

ployer's health care plan. But that measure died amid stiff employer opposition.

Another possible approach to help

## 'What the administration could not achieve in a broad way, it is now trying to achieve bit by bit,' says Stuart Brahs of The Principal Financial Group.

Legislation introduced in 1990 by a group of Democratic congresswomen would have allowed individuals age 50 or older who lost group health care coverage to purchase COBRA coverage for up to 15 years—when they would have been eligible for Medicare—or until they obtained coverage from a new em-

early retirees obtain health insurance would be to allow them to purchase coverage through the Medicare program and waive the normal age 65 requirement for coverage, Mr. McArdle said.

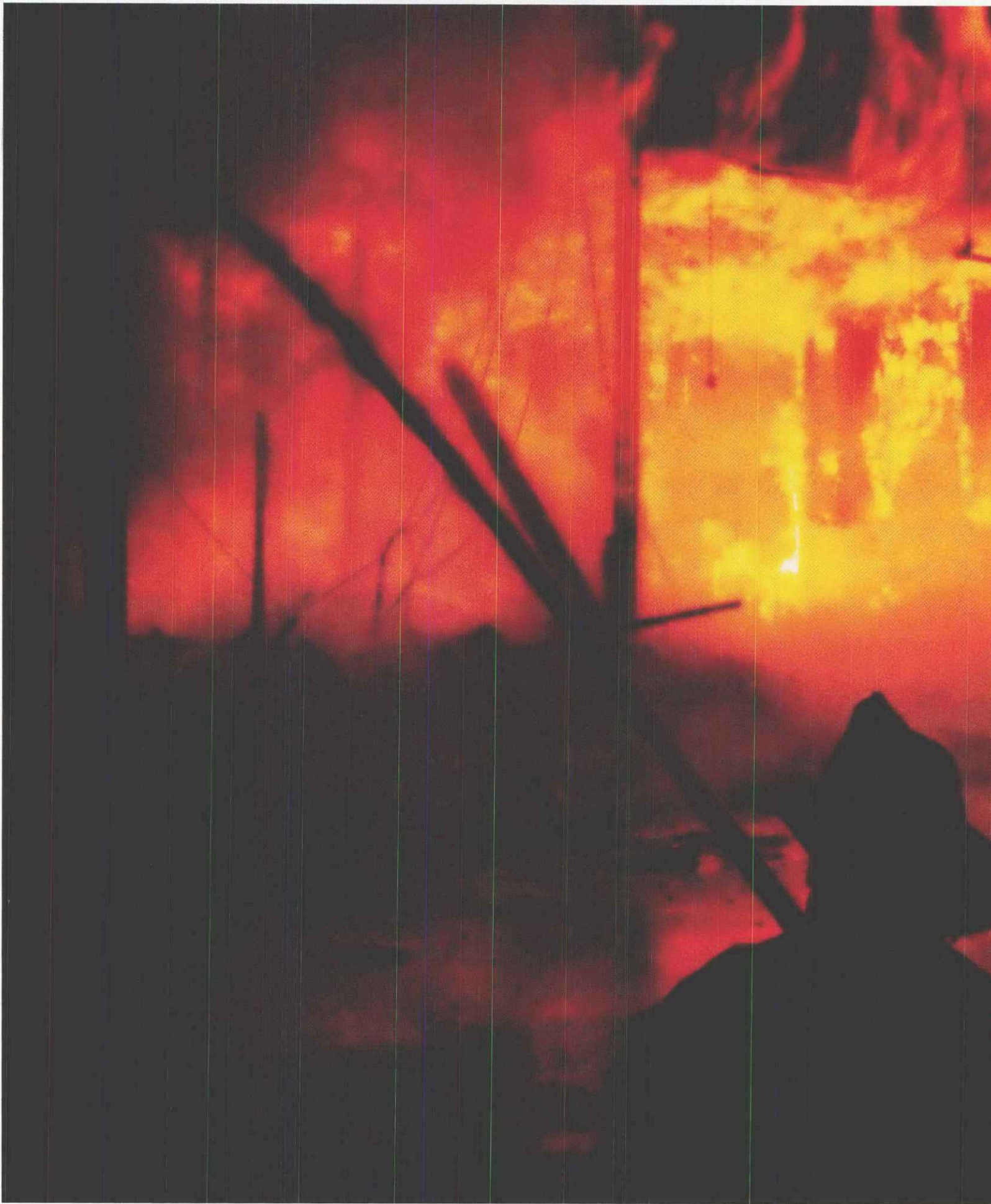
While acknowledging—in hindsight—that his earlier effort to develop and get passed a sweeping

health care reform measure was too much to accomplish at one time, President Clinton said he does not regret he launched such an effort.

"I have to tell you, though, a lot of times in my life I've gotten beat trying to do something I thought was right. And I prefer that than not trying in the first place. I'm glad I tried (on) health care," he said.

Repeating a theme frequently made during his 1993-1994 reform, President Clinton said the failure to achieve universal coverage adds to costs as the uninsured do not receive adequate preventive or primary care and end up receiving too many services in high-cost emergency rooms.

But rather than trying to address all health care problems at once, reform can be best achieved a step at a time, President Clinton said. "Maybe we can do it in another way. That's what we're tried to do, a step at a time until eventually we finish it," he said. **BI**



# Verdict

Continued from page 2

of the El Paso office of Scherr & Legate said Levi Strauss made it easy for his clients to win their case. The company's return-to-work program was implemented on an ad hoc basis at individual El Paso plants, he said. The programs were not mapped out or based on studies or other models that have been shown to work, he said.

Furthermore, he said, Levi Strauss lacked documentation on how those programs were supposed to work. "That was our whole case right there," Mr. Legate said.

Ruben Robles, a partner in the El Paso firm of Robles, Bracken, Coffman & Hughes, which represents Levi Strauss, rebutted those charges and said the return-to-

work programs were well-planned and relied on the advice of several professionals, though the programs did vary from plant to plant.

"This was a program created at each plant using the internal resources they had," Mr. Robles said. "They had human resources, they had nurses, they had coaches and certified trainers. They used all those resources to create the re-entry program."

Levi Strauss also had plenty of documentation, said Mr. Robles, explaining that it disposed of some return-to-work program materials when it ended the programs before March 1994, when the plaintiffs filed their lawsuit.

"The handout materials were not kept because obviously we didn't know we were going to get sued," he said.

Failing to keep documentation on a return-to-work program is

not illegal and does not imply a program may not be a good one, said Richard Kobdich, a defense attorney specializing in employment law for the Dallas office of

The five employees also argued before the El Paso jury that a \$200,000 self-insured retention and escalating workers compensation costs motivated the jeans

**'I think the company was acting within its legal rights, but the jury didn't like that at all,' says Ruben Robles, an attorney who defended Levi Strauss in the case.**

Fullbright & Jaworski L.L.P. But it can leave a company open to allegations that it discriminated and made up the program as it went along, Mr. Kobdich said.

"Some things should be spelled out at least in summary fashion," he said.

maker to retaliate against them.

But defense attorneys point out that many jurisdictions do not allow plaintiffs to use an employer's workers comp costs as a motive for discrimination and retaliation.

"All employers have a cost motive to make sure that their injury

costs are as low as possible," said attorney Laura Franze, who heads the labor and employment section for the Dallas office of Akin, Gump, Strauss, Hauer & Feld L.L.P. "That doesn't mean people discriminate. If that argument is accepted, you really have shifted the burden of proof, and you're guilty until proven innocent. For that reason, that kind of evidence has been excluded by most courts, absent some other showing of bad intent."

Although the Levi Strauss case stems from work-related injuries, it was heard as a tort case in El Paso County Court under a Texas workers compensation law section that prohibits employers from discriminating and retaliating against workers comp claimants. Most states have similar statutes, attorneys say.

The plaintiffs' lawsuit also attacked the quality of Levi Strauss' return-to-work program, alleging it was a "fourth-rate program that never met its stated objectives (of returning employees to work), thus proving it was a mere pretext" to get rid of the employees.

But Levi Strauss attorneys say the jury simply was swayed by deceptive and emotional appeals and not particularly moved by the argument that the deductible and workers comp costs provided a motive for retaliation and discrimination—though plaintiff's attorneys "certainly argued the hell out of it," said Mr. Robles.

"We didn't get a fair trial," Mr. Robles stated.

Texas defense attorneys add that high unemployment and a concentration of "sweat shops" around El Paso have created an atmosphere in which area juries often hand out high awards and side with plaintiffs in employment-related cases. There also is a tendency by the area's lower courts to allow plaintiffs to use workers comp costs as a motive.

Those awards and decisions often get reduced or rejected on appeal, attorneys said. For that reason, some attorneys don't expect the jury's verdict to significantly affect other employers.

"El Paso has been in the forefront of large awards in workers comp worker retaliation," said Ms. Franze, who has handled several cases in El Paso. "It would have more of an effect if it came out of Dallas or Houston. It's much more routine in El Paso."

Mr. Robles does not think technical issues such as documentation of the return-to-work program swayed the jury. Jury members seemed irritated by a policy that required injured workers to either return to work or lose their jobs once doctors gave their approval.

"I think the company was acting within its legal rights, but the jury did not like that at all," Mr. Robles said. "That was a policy that applied not only to workers comp injuries but to other illnesses as well. Once a doctor releases you, you are expected to come back to work. I think the jury felt that should have been a voluntary program."

The jury also was unhappy with a company policy stipulating that anyone away from work for more than a year must work his or her way back up to his or her previous earnings, often starting at minimum wage.

Two of the five plaintiffs were brought back at minimum wage, Mr. Robles said. Three of the five employees still work for Levi Strauss, one has retired, and another left due to a non-

Continued on next page

Ironically, some of the business practices that are designed to save you money can actually put your bottom line at risk. For example, outsourcing can lead you to use vendors that may not be integrated into your loss prevention program. Consolidation has eliminated redundancy, and for those utilizing Just In Time Production, there's no inventory if your manufacturing system shuts down. And where does that leave your product? Off the shelves.



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## Verdict

*Continued from previous page*  
work-related disability.

Plaintiffs also claimed the workers were intentionally humiliated by, among other things, being blindfolded during a team-building exercise at the company not related to the return-to-work program. Mr. Robles said the blindfolding was aimed at helping employees develop trust among their co-workers. The program was voluntary, and numerous employees participated, not just workers claimants, he said.

The plaintiffs also claimed that Levi Strauss allowed them to be subjected to ridicule and harassment from co-workers.

Mr. Robles concedes there was some harassment for a brief period of time. It stemmed from a company policy of rewarding worker sewing teams for production amounts. Before the

injured workers were brought back under the re-entry program, the company talked with co-workers and told them how important it was to be sensitive to these employees as they returned to work, Mr. Robles said. But when the co-workers perceived the returning workers were hurting their production, they did make remarks, he said.

"There were still some harsh things said by co-workers that for the most part went unreported to management," Mr. Robles said. Once the company found out, the program was changed so that re-entry worker production did not penalize the team.

In fact, the contributions of the return workers helped production quotas, and the re-entry workers were viewed positively by other team members.

"But for a period of time, somewhere between two and four weeks, there was some resentment by co-workers," Mr. Robles said. **BI**

## GAN

*Continued from page 2*  
half results are expected to break even, said a spokeswoman for the insurer, who added that GAN's first-half results will be released in late October.

According to GAN, which has about a 5% share of the French life and non-life insurance market, an AGF buyout of GAN would give the combined group an 11.4% share of the French market. That would make the merged entity France's second-largest insurer, behind AXA-UAP, which has a 14.3% market share.

Meanwhile, a looming battle over who will buy GAN is becoming a political issue.

GAN earlier this year received a 23 billion franc (\$3.86 billion) rescue package from the French government (*BI*, March 10), which

first required the assent of the European Commission in Brussels. The bailout was granted with the requirement that the French government privatize the company by 1998, as well as sell off certain GAN holdings.

### AGF objects to the European Union stating a preference for who acquires GAN, an AGF spokesman said.

But internal E.U. documents alleging a preference for a non-French buyer for the insurance company are generating controversy in France.

Part of the internal document was published by the French press

in August. The document alleged that the European Union would prefer a unit of German insurer Allianz A.G. Holding buy GAN rather than the French insurer Assurances Generales de France, which is widely regarded as a likely acquirer of GAN.

AGF has filed an official complaint over the E.U. document with the European Commission. An AGF spokesman in Paris said the company objects to the sentiment in the document as published—it has not seen it in whole—saying the European Union has no right to pronounce any preference for a buyer for GAN.

"This was out of their competence," the spokesman said.

The E.U. document stated that Allianz would be preferable to AGF as a buyer because Allianz is richer and could inject more money into GAN.

Allianz is richer than AGF, acknowledged the AGF spokesman, but she said the remainder of the statement is not correct.

Insurance sources in France say AGF is trying to obtain financing assistance from two banks that are its own major shareholders—Banque Paribas and Societe Generale de Banque—to help AGF take over GAN once the French government issues a privatization decree. **BI**

## Best

*Continued from page 3*  
political arena," he said. "Insurance is a public policy business. Nobody I know buys it because they like it."

"I think there's a big gap between the rhetoric of the insurance industry and the reality," said Joel Wood, vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

Although many in the insurance industry are adamant in their belief that insurance is a state-regulated business, insurance in fact is governed by a mixed regulatory system. Federal regulation is indirect yet significant, said Mr. Wood.

Mr. Wood offered a list of examples of how the federal government regulates insurance. They include the Employee Retirement Income Security Act, the Risk Retention Act, the federal flood and crop insurance programs and other initiatives, he said.

He added that some Republicans now are considering creating a national "auto choice" plan to guarantee that drivers can lower their insurance rates by embracing a no-fault system.

Although Republicans generally prefer keeping regulatory powers at the state level, they can be convinced that there's a federal regulatory role "if you make cases there are business efficiencies involved," said Mr. Wood.

"It is evident to me that the way the business is regulated is going to change," said Linda S. Kaiser, former insurance commissioner of Pennsylvania.

Part of the reason for the change will be continued integration of the financial services industry, said Ms. Kaiser, now senior vp, general counsel and secretary of Reliance Insurance Co. in Philadelphia. The question is when and how the change will come about, she said.

"Change is inevitable, but we need to be deliberate in our analysis and debate," she said.

Leslie W. Hann, senior associate editor of *Best's Review*, moderated the discussion. **BI**

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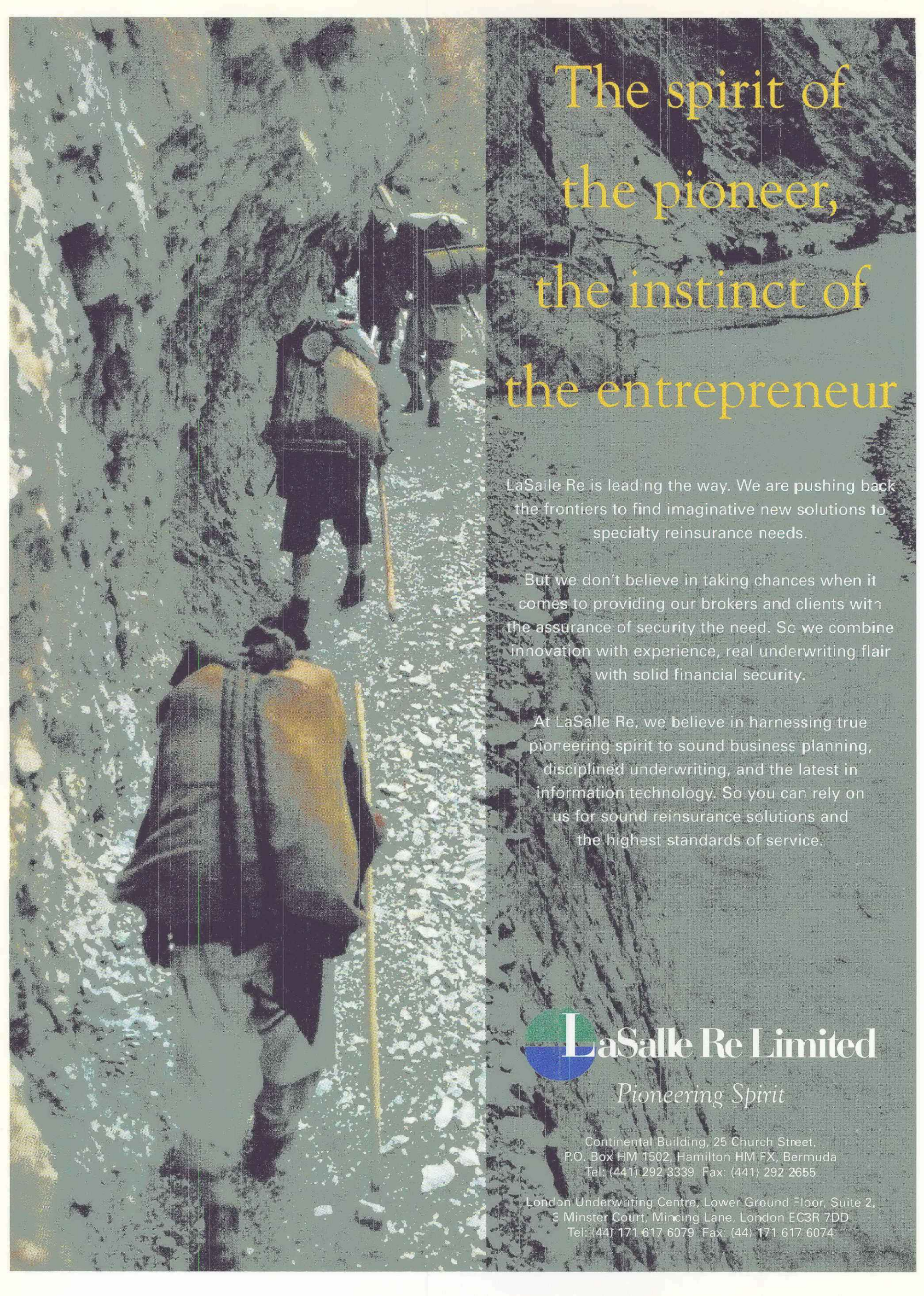


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## Global Briefs

## Names oppose a corporate Lloyd's

By STACY SHAPIRO

LONDON—Lloyd's of London should continue to be a mixed capital market and not turn into a strictly corporate capital structure, some market executives believe.

Lloyd's strength is in its diversity, and that includes its source of capital, generated by a mix of traditional names; members' investment trusts, known as MAPAs; insurance companies; and publicly listed corporate investment trusts.

This year, 44% of the market's capacity of £10.3 billion (\$17.64 billion) is corporate, and traditional names are providing 56%.

Market executives predict that next

year, 60% to 65% of the market's capital will be corporate. But delegates and speakers at the Sept. 11th autumn meeting of the Assn. of Lloyd's Members hope traditional members will remain a source of syndicate capital in the future.

"I am a name at Lloyd's. I have been for a very long time, and I have every intention of continuing to be a name as long as I think it's commercially sensible," said Graham McKean, chairman of London-based broker Ballantyne McKean & Sullivan Group and a Lloyd's Council member.

"I care passionately about Lloyd's of London, and I am unrepentantly one of those who has no enthusiasm

whatsoever for a wholly corporate Lloyd's," Mr. McKean said to a round of applause from 170 ALM delegates.

Christine Dandridge, Lloyd's underwriter for syndicate 609, managed by Atrium Cockell Underwriting Ltd., also is concerned about corporate capital dominating the market.

"We should seriously question whether new units should be sponsored totally by corporate funds," Ms. Dandridge said to another round of applause. There are 17 new applications for corporate-backed Lloyd's entities next year, she said. Lloyd's regulatory board vets the applications for these new entities and Lloyd's Council gives the final approval.

These new units would only in-

crease capacity that doesn't need increasing, according to Ms. Dandridge.

Lloyd's syndicate executives predict an overall increase in premium income capacity next year of 11% at a time when rates are falling, noted Ms. Dandridge. These predictions of growth in some cases are being made in a soft market because "underwriters are telling capital providers what they want to hear," she said.

Nevertheless, Lloyd's is a different animal since corporate capital was introduced in 1993. There are 57 managing agencies at Lloyd's this year, and 22 of them are now owned by insurance companies managing nearly 42% of Lloyd's capacity, according to

See Capital on page 20

## Environment plan integral: Panel

By MICHAEL PRINCE

TORONTO—Environmental management should be an integral part of a business plan rather than an adjunct to one, an expert advises.

Also, every Canadian company should have environmental management and environmental emergency plans in order to protect its bottom line and reputation, panelists said.

A company's goal should be to have the environmental processes "hidden" within the overall business practices, said Paul Farrow, vp with Arthur D. Little of Canada Ltd. in Toronto. Mr. Farrow spoke at the Canadian Risk & Insurance Management Society's conference in Toronto earlier this month.

He said the first step in developing the plan is to assess three factors: Which areas of the company are vulnerable to an environmental incident, what effect an incident would have on the environment, and what the risk to

the company would be.

The risk manager must work with corporate departments representing each step in the production, marketing and sales functions to fully assess the risks, he said.

One critical aspect companies sometimes overlook after implementing the plan is to review the plan and use it not just to fix the problems that occur but to eliminate causes of problems, he said.

Though it sounds like a long, difficult process, it need not be that involved, Mr. Farrow said. Building an elaborate system "is not the complete answer," he said. An independent bureaucracy will not solve the company's environmental concerns, he said.

"You don't have to be certified by ISO to have an effective environmental management program in place," he said. The International Standards Organization is a Swiss-based organization that has published

See Plans on page 22

Workers comp works in Canada  
Widely held myths no longer true

By MICHAEL PRINCE

TORONTO—Canadian risk managers can lower their workers comp costs by taking a more active approach to managing this exposure, a panel of experts says.

Risk managers have the skills to effectively manage workers comp and are well positioned to handle a shift in Canadian comp systems to more of an insurance-style model, in which costs are more closely tied to claims experience, panelists add.

One Ontario employer, in fact, has earned millions of dollars in rebates from the comp system after adopting an emphasis on safety and loss prevention.

"Workers comp is the place to be in the future," said Jason Mand-

lowitz, national manager for workers comp services for claims specialist Crawford-THG in Etobicoke, Ontario.

"The risk managers of today are the workers comp managers of the future," he said.

If managed correctly, workers comp can become a profit-maker rather than a money-loser for a company, he added.

The panel discussed the Canadian workers comp system at the Canadian Risk & Insurance Management Society conference held in Toronto earlier this month.

Mr. Mandlowitz said a number of widely held myths about the workers comp system in Canada no longer are true.

See Comp on page 22



## India refinery will compensate victims

By KAUMUDI MARATHE

VISHAKAPATNAM, India—Damage to an Indian oil refinery from an explosion and fire last week could reach as high as \$27.8 million, investigators say.

The Sept. 14 explosion at the Hindustan Petroleum Corporation Ltd. refinery in the port city of Vishakapatnam killed at least 55 workers and seriously injured at least 10 people.

"Destruction of life, infrastructure, and product was extensive," said Sudeep Ghose, chief general manager of HPCL in Hyderabad, India. The dead only include HPCL employees or employees of contractors working on the premises, including seven security personnel.

Mr. Ghose indicated that, by conservative estimates, HPCL's infrastructure loss at the refinery is an estimated 500 million rupees (\$13.9 million) and product losses at an estimated 200 million rupees (\$5.6 million).

An investigative team, however, said late last week that the losses could be as high as 1 billion rupees (\$27.8 million). The team will investigate the cause of the blast and whether there was any negligence.

Information on HPCL's property and casualty insurance was unavailable last week.

Nine tanks, varying in capacity from 520,000 to 1.3 million gallons and containing assorted fuels, were destroyed. The exact quantity of fuel lost remains undetermined, as the tanks were filled to varying levels.

The blast and resulting fire are being blamed on a leak in an LPG pipeline carrying gas from a tanker in the port to the refinery.

According to Mr. Ghose, HPCL would financially compensate the families of the dead and injured employees for the disaster.

"We will give 200,000 rupees (\$5,555.55) per casualty, plus 10,000 rupees (\$277.77) for cremation expenses. Also, the company will bear the full costs of treatment and hospitalization for those injured," he said. "Furthermore, the state government has appealed that the injured also be paid compensation. The HPCL management is still considering this request."

The Chief Minister of Andhra Pradesh state, Chandrababu Naidu, announced the state's intention to provide interim ex gratia payments of 150,000 rupees (\$4,166.66) to each of the victims' families. He also said compensation would be given for the loss of any private property as a result of the fire.

Compensation also may be available under India's landmark Public Liability Insurance Act, passed in 1991. It was enacted after the Bhopal tragedy heightened public awareness of "the duties of establishments handling hazardous substances towards third parties."

"The act provides for payment of immediate relief to the victims on a 'no fault basis,'" said M.V. Purohit, general manager-technical of General Insurance Corp. of India, which wrote accident insurance for HPCL employees.

According to A.J. Rego, safety engineer and ex-joint director of the National Safety Council of Bombay, the Public Liability Insurance Act "is admirable because it clearly states that it gives interim compensation and does not preclude workers from claiming compensation via a civil suit."

A statement from Mr. Ghose noted HPCL is not covered under this act.

HPCL says it has already formulated a contingency plan to continue distributing fuel, without further disruption.

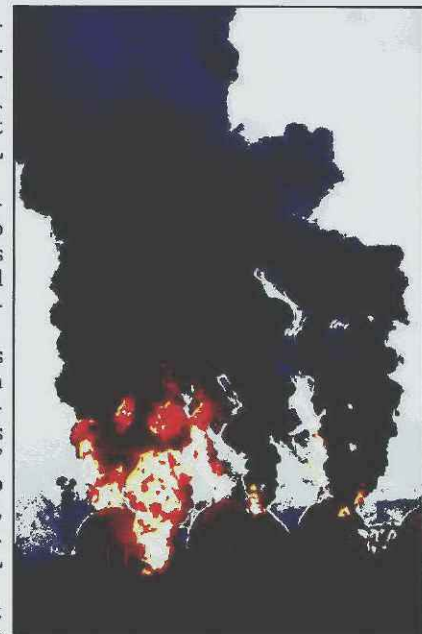


PHOTO: AFP

An explosion at the Hindustan Petroleum Corporation Ltd. refinery in the port city of Vishakapatnam, India killed at least 55 workers and seriously injured at least 10 people. The blast and resulting fire are being blamed on a leak in a pipeline carrying gas from a tanker.

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# Capital

Continued from page 17

Jeff Park, managing director of consultant J.J. Park & Co. Ltd. Of these, 14 are from the United States, five are from Bermuda, one is from the United Kingdom, one is from Continental Europe, and one is from Australia.

Seven other managing agencies representing 14% of this year's capacity are controlled by publicly listed investment trusts and "are good investors and thoughtful," said Mr. Park. Another 16 managing agencies with 33% of market capacity are controlled by "integrated vehicles," where a single entity controlling the agency provides much of the managed syndicates' capital. These vehicles "have an economic imperative to reach critical mass...and they need to

get to a big size...so capital is important to them. In general the investors in these vehicles are pretty good," said Mr. Park. The remaining managing agencies, representing 11% of capacity still are privately owned.

The quality of Lloyd's investors generally is very high because of Lloyd's strict vetting procedures, said Mr. Park.

The insurance companies' share of Lloyd's "will only grow," he said.

But insurers are not hostile to traditional names, Mr. Park said. They "tend to be politically correct" and do not want to offend people already investing in the market. Most of them could "happily" provide all the capacity their syndicates need, "but they don't need to do it tomorrow."

Some insurers envision traditional names continuing in the market and are structuring their syndicates so names won't be pushed off, he said.

"They are here for the same reason you are here," he told traditional members at the ALM conference. "They want to make money and underwrite insurance, and they know a lot about that, and generally they do a pretty good job."

Mr. McKean also said he has a "large amount of respect" and a great deal of business with the insurance entities investing in Lloyd's. But, he said that as a broker, he has dealt with all sorts of entities with different capital bases, each of which work well for their own reasons.

There are tensions between managing agents and traditional members that need to be resolved, said Mr. McKean. Traditional names mistrust managing agents "who they see as trying to unload them," said Mr. McKean. Managing agents don't trust traditional members to stick with them after events of the past few

years, however, which is why they want continuity of capital that corporate investors can provide.

There also is tension between managing agents and traditional members over the annual venture. Under this system, each syndicate's capital is renewed annually so one year's membership is different from the next. To keep each syndicate's business going smoothly, a reinsurance premium is paid from one year to close the syndicate's business into the next year, known as "reinsurance to close."

Managing agents say it is costly to renew capital each year under the annual venture. However, Mr. McKean notes that Lloyd's syndicates earned considerable profits under the annual venture system for many years before losses hit the market.

Other changes possibly could be made besides eliminating the annual venture, noted Simon Caulfield, vp of

Mercer Management Consulting in London. Mercer recommends that Lloyd's look at several alternatives, including allowing syndicates to choose between annual venture and continuous capital status.

Lloyd's is unique, and the source of its strength is its differentiation, said Mr. Caulfield. The last thing Lloyd's should do is try to emulate its competitors, he said.

Mr. Caulfield is concerned with a principle in Lloyd's statement of policy issued last June that states "market forces" will determine the evolution of Lloyd's capital structure. This "concerns me a lot," he said, because strategy is about making tough choices by management and not leaving those decisions up to market forces.

Traditional members need to be active on reform at Lloyd's, Mr. Caulfield added, "otherwise there is a risk that continuous (corporate) capital will dominate the market."

Max Taylor, Lloyd's chairman designate, steered clear of internal wranglings in the market when addressing delegates at the conclusion of the ALM meeting. Focusing on "global growth and opportunities," he noted it may be that there isn't too much insurance capacity worldwide, but that it's concentrated only in certain sectors of business.

Mr. Taylor put the size of Lloyd's and the London market in perspective. Lloyd's and the London market had a 12.5% share of the world's marine market in 1994, but only a 2% share of the world's non-life market.

Overall, Lloyd's market share of global premium dropped from 1.8% in 1985 to 1.3% in 1994.

Mr. Taylor added that Lloyd's brand name is still "held in very high regard worldwide," since corporate capital was introduced in 1993. There are 57 managing agencies at Lloyd's this year, and 22 of them now are owned by insurance companies managing nearly 42% of Lloyd's capacity, according to Jeff Park, managing director of consul. **BI**

## Paraguay stadium collapses

CIUDAD DEL ESTE, Paraguay—Families of victims killed during a sports stadium collapse in Paraguay's second-largest city, Ciudad del Este, are preparing to sue the local company that built it.

Thirty-six people were killed and more than 100 were injured as high winds hit the stadium during a political rally Sept. 4. About 3,000 people were in the stadium at the time.

The stadium belonged to a local sports club called 3 de Febrero but is unlikely to have been insured because of its poor construction, local insurance sources say. The roof of the stadium was made from galvanized steel and was supported by columns.

It had already collapsed twice earlier this year, says Gerardo Torcoda, president of Aseguradora Paraguaya S.A., an Asuncion-based general insurance company.

"Winds of 70 to 80 kilometers per hour (43 to 50 mph) lasting for 10 to 20 to 30 minutes are usual in this area, but the columns could not hold up the roof," said Mr. Torcoda. Ciudad del Este is 185 miles east of Asuncion, near Paraguay's Argentina border.

The Paraguayan government has appointed a judge to investigate the cause of the accident. Information on the construction company that built the stadium and its insurance coverage were not available last week.

—By Maria Kielmas

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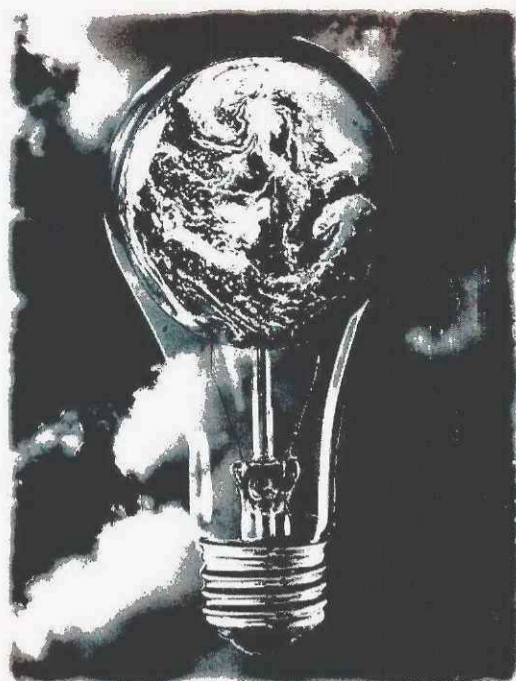
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## INTERNATIONAL

# Insurers shouldn't confuse U.S. risks with Canadian

### Loss data and legal environment need to be considered

By MICHAEL PRINCE

TORONTO—Canada is not the United States. But apparently not all underwriters recognize that fact.

That observation was voiced earlier this month during a session of the Canadian Risk & Insurance Management Society Inc.'s conference

that discussed how Canadian risks differ from those in the United States and how many insurers treat them the same.

Canadian risk managers worry that if their risks are confused with U.S. risks, Canadian companies will pay U.S. rates for insurance. U.S. rates generally are higher than Canadian rates, said Michael Jakeman, vp-special lines for Royal Insurance Co. of Canada in Toronto.

For example, underwriters that know the Canadian market charge lower liability coverage rates there than in the United States, because fewer lawsuits are brought in Canada and high jury awards are less common than in the United States.

One reason insurers treat Canadian risks like those from the United States is the lack of liability loss data available in Canada, Mr. Jakeman said. But this information

is readily available for the U.S. market.

"So if you are an underwriter faced with the lack of information on analyzing the liability tail, you tend to look at the U.S.," he said.

The result for Canadian companies is higher rates.

Companies in Canada also face a very different legal environment than those in the United States, where large verdicts are common.

In Canada, a \$250,000 Canadian (\$180,000) cap exists on non-economic awards, except for sexual abuse cases, Mr. Jakeman said. Juries are used less frequently in Canada than in the United States. When judges render a verdict, it's generally lower than a jury verdict.

Canadian litigation differs from the U.S. system in several other ways, Mr. Jakeman said:

- The national medical insurance system eliminates the medical expense component of many suits.

- Class actions are permitted in only three provinces, thereby reducing the potential for large verdicts.

- Alternative dispute resolution is more common in Canada, and that also contributes to lower amounts companies pay as a result of lawsuits.

But the Canadian system is beginning to change. Recently, some Canadian juries have made large awards. "We are going the way of the States," Mr. Jakeman said.

One prominent example is an Ontario jury verdict for punitive damages of \$1 million Canadian (\$718,300) in January 1996. This

came "completely out of left field," he said.

"The more conservative legal environment will be challenged," he added, due to the greater U.S. influence over the Canadian economy from the North American Free Trade Agreement.

Another reason Canadians are lumped in with the United States is size, said Chris Gudgeon, director, North American property division, Lambert Fenchurch Group P.L.C. in London. Non-Canadian underwriters sometimes view Canada as so small that it does not need to be viewed separately from the United States, so it is just folded into their U.S. underwriting practices.

In Canada, "there is not enough business," Mr. Gudgeon said, describing it as a niche market. Consequently, London underwriters tend to look toward the United States to write large blocks of business. But, underwriters could generate a large amount of business in Canada by building long-term relationships with Canadian clients, he said.

Art Despard, senior vp with Aon Reed Stenhouse Inc. in Toronto, said Canadian companies should seek an underwriter familiar with the Canadian market. "Otherwise, you will get the U.S. rates," he said.

There is a difference between a risk in Texas and one in Canada, "and you have to sell that difference," he said.

Glenn Leroux, assistant vp-risk management at George Weston Ltd. in Toronto, moderated the session. **BI**



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## About 600 'Risk It' in Canada

TORONTO—About 600 people attended the Canadian Risk & Insurance Management Society's conference held Sept. 7-10 at the Royal York hotel in Toronto.


Tina Gardiner, insurance manager at Hertz Canada in Toronto, served as chair for the conference, which featured the slogan "Risk It."

At an awards luncheon held Sept. 9, Barry Shakespeare, manager-risk management for Westcoast Energy Inc. in Vancouver, British Columbia, was awarded the Donald M. Stuart Award for outstanding contributions to the field of risk management in Canada. Mr. Stuart presented the award himself.

Next year's conference will take place Oct. 4-7 in Calgary, Alberta.

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## Datebook

### SEPTEMBER

**SEPT. 28-30. 1997 Annual Conference and FLMI Conferment** in Montreal, sponsored by the Life Office Management Assn.; \$585 for members, \$825 for non-members, \$290 for guests. LOMA, 2300 Windy Ridge Parkway, Suite 600, Atlanta, Ga. 30339-8443; 770-984-3764.

**SEPT. 28-OCT. 1. Chartered Property & Casualty Underwriters Society 1997 annual meeting and seminars** in Dallas, sponsored by the CPCU Society; \$440 for members, \$475 for non-members. CPCU Society, 720 Providence Road, Malvern, Pa. 19355-0709; 800-932-2728.

**SEPT. 28-OCT. 1. Society of Insurance Financial Management annual meeting** in San Diego, sponsored by SIFM; \$125 for members, \$165 for non-members. Bob Bauer, P.O. Box 61, Hollowville, N.Y. 12530-0061; 518-851-9780.

**SEPT. 29-30. 5th Annual Advances in Claims Information Systems and Technologies for Property and Casualty Insurance Companies** in Chicago, sponsored by Global Business Research Ltd.; \$1,295 for conference only, \$1,795 for conference and workshop. GBR Ltd., 775 Sunrise Ave., Suite 260, Roseville, Calif. 95661; 916-773-3236.

**SEPT. 29-30. 401(k) Course** in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$550 for members, \$650 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 888-334-3327, option 2 or 414-786-6710, ext. 8257.

**SEPT. 29-30. Alternative Risk Vehicles conference and workshop** in New York, sponsored by the IBC Group P.L.C.; \$1,295 for the conference only, \$695 for the workshop only, \$1,695 for both. IBC USA Conferences Inc., 225 Turnpike Road, Southborough, Mass. 01772-1749; 508-481-6400.

**SEPT. 29-OCT. 1. The Second Annual Producers' Forum: An Advanced Symposium on Alternative Market Opportunities** in Philadelphia, sponsored by the International Business Forum; \$795. IBF, 7 Penn Plaza, Suite 901, New York, N.Y. 10001; 212-279-2525.

**SEPT. 30. Assn. of Professional Insurance Women Inc.'s Luncheon** in Chicago, sponsored by APIW; \$30 for members, \$35 for non-members. Karen Tucker, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590; 312-649-5319.

**SEPT. 30-OCT. 1. Risk-Based Decision Making Influencing Financial Transactions and Brownfield Redevelopments conference** in Chicago, sponsored by RTM Communications Inc.; \$795; \$495 for RBCA Leadership Council members. RTM Communications Inc., 110 N. Royal St., Suite 301, Alexandria, Va. 22314; 800-966-7175.

### OCTOBER

**OCT. 1. Professional Liability: Exposures and Coverages for Architects & Engineers, Accountants, Agents, and Medical and "Allied Health" Professionals workshop** in Dallas, sponsored by the CPCU Society; \$75 for members registered for annual meeting, \$95 for members not attending annual meeting, \$105 for non-members. CPCU Society, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355-0709; 800-932-2728.

**OCT. 1. Protecting Shippers' Interests seminar** in Atlanta, sponsored by the Transportation Consumer Protection Council Inc.; \$250 for members, \$300 for non-members. **Also Oct. 8** in Berke-

ley, Calif. TCPC, 120 Main St., Huntington, N.Y. 11743-6936.

**OCT. 1-2. ASTM Committee E-51 on Environmental Risk Management meeting** in West Conshohocken, Pa., sponsored by the American Society for Testing and Materials. Susan Canning, ASTM, 100 Barr Harbor Drive, West Conshohocken, Pa. 19428-2959; 610-832-9500.

**OCT. 1-4. Networked for Growth: International Mass Marketing Assn. annual meeting**, sponsored by the IMMA. \$165 for members. Ralph Hann, IMMA, P.O. Box 267, West Simsbury, Conn. 06092; 800-949-4446.

**OCT. 2. Inland Marine Underwriters Assn. Midwest Advisory Committee seminar** in Chicago, sponsored by IMUA. \$80. Ann Boehmcke, IMUA, NAC Reinsurance, 10 S. Wacker Drive, Suite 1915, Chicago, Ill. 60606.

**OCT. 4-8. Insurance Leadership Forum at the Greenbrier** in White Sulphur Springs, W.Va., sponsored by the Council of Insurance Agents & Brokers/National Assn. of Casualty & Surety Executives. Members only. Council of Insurance Agents & Brokers, 701 Pennsylvania Ave. N.W., Suite 750, Washington, D.C. 20004-2608; 202-783-4400.

**OCT. 4-8. National Conference and Keeping Current Clinic** in San Diego, sponsored by the American Society of CLU & ChFC; \$749 for members, \$649 for new CLU/ChFC designees and Society student members, \$999 for non-members. American Society of CLU & ChFC, 270 S. Bryn Mawr Ave., Bryn Mawr, Pa. 19010-2195; 610-526-2500.

**OCT. 5-7. Sixth Annual Liberty Mutual Risk Management Forum** in Seattle, sponsored by the Liberty Mutual Group. No registration fee. Tina

Ziegler, Liberty Mutual Group, 175 Berkeley St., Boston, Mass. 02117-0140; 617-574-5727.

**OCT. 5-8. Risk Management Forum** in Monte Carlo, Monaco, sponsored by the Federation of European Risk Management Assns. and the Risk & Insurance Management Society Inc.; \$1,570 for risk managers, \$2,176 for others. VAT included in fee. SOCFI, 14 rue Mandar 75002, Paris, France; 33-1-44-88-25-25.

**OCT. 6-7. Advanced Reinsurance seminar** in New York, sponsored by The College of Insurance; \$650. The College of Insurance Center for Professional Education, 101 Murray St., Room 426, New York, N.Y. 10007; 212-815-9201.

**OCT. 6-7. Flexible Benefits Course** in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$550 for members, \$650 for non-members. IFEBP, Registrations

Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 888-334-3327, option 2 or 414-786-6710, ext. 8257.

**OCT. 6-7. Liability Insurance Workshop** in London, sponsored by LLP Ltd.; £787.25 (\$1,264); Jane Carling, LLP Ltd., 69-77 Paul St., London EC2A 4LQ; 44-171-553-1392.

**OCT. 6-8. Factory Mutual Property Loss Prevention Conference '97** in Boston, sponsored by Factory Mutual; \$895. Shirley Bryan, Factory Mutual, P.O. Box 9102, Norwood, Mass. 02062; 617-255-4606.

**OCT. 6-10. Commercial Lines School** in Richmond, Va., sponsored by the Professional Insurance Agents of Virginia and the District of Columbia. \$375 for members, \$400 for non-members. PIA of Virginia and D.C., 1508 Parham Road, Richmond, Va., 23228, 804-264-2582.

*Continued on next page*

**YOU SHOULD KNOW US**

Continued from previous page

**OCT. 6-10. Fundamentals of Industrial Hygiene** conference in Seattle, sponsored by American Industrial Hygiene Assn.; \$955 for members, \$1,095 for non-members. AIHA, Continuing Education Department, 2700 Prosperity Ave., Suite 250, Fairfax, Va. 22031; 703-849-8888.

**OCT. 6-24. Agency Development Program** in Wethersfield, Conn., sponsored by the Independent Insurance Agents of Connecticut; \$950 for members, \$1,250 for non-members. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 860-563-1950.

**OCT. 7. Making Managed Care Work** conference in Cleveland, sponsored by the Health Research Institute; \$350. Also Oct. 21 in Nashville, Nov. 4 in New York, Dec. 3 in Chicago. Workshop Coordinator, HRI, 3538 Torino, Concord, Calif. 94518; 510-676-2320.

**OCT. 7. Working With 401(k)s After SBJPA '96** workshop in Boston, sponsored by Corbel; \$305. Also Oct. 9 in Philadelphia, Oct. 13 in New York, Oct. 15 in Atlanta. Corbel Client Services, 1660 Prudential Drive, Jacksonville, Fla. 32207-8197; 800-326-7235.

**OCT. 7-8. Administering An Employer's Workers' Compensation Program** in East Lansing, Mich., sponsored by the Human Resources Education & Training Center, Michigan State University; \$695. Also Oct. 15-16 in St. Louis, Oct. 22-23 in Philadelphia, Nov. 5-6 in Minneapolis, Nov. 12-13 in Chicago. HR Education & Training Center, Michigan State University, 422 S. Kedzie Hall, East Lansing, Mich. 48824-1032; 517-355-9591.

**OCT. 7-8. Labor/Management (Cooperative) Health Care Cost Controls** conference in Cleveland, sponsored by

the Health Research Institute; \$695. Also Oct. 21-22 in Nashville, Nov. 4-5 in New York, Dec. 3-4 in Chicago, Jan. 21-22 in Los Angeles. Workshop Coordinator, HRI, 3538 Torino, Concord, Calif. 94518; 510-676-2320.

**OCT. 7-8. National Employee Benefits Institute Fall Legislative Conference** in Washington, sponsored by the NEBI; No charge for one representative, \$100 for each additional representative, \$395 for non-members. NEBI, 601 Pennsylvania Ave. N.W., Suite 750 N., Washington, D.C. 20004-2601; 800-558-7258, ext. 8426.

**OCT. 8. Buying Tomorrow's Health Care Today** conference in Cleveland, sponsored by the Health Research Institute; \$350. Also Oct. 22 in Nashville, Nov. 5 in New York, Dec. 4 in Chicago. Workshop Coordinator, HRI, 3538 Torino, Concord, Calif. 94518; 510-676-2320.

**OCT. 8. Cafeteria Plan Seminar** in Boston, sponsored by Corbel; \$305. Also Oct. 10 in Philadelphia, Oct. 14 in New York, Oct. 16 in Atlanta. Corbel Client Services, 1660 Prudential Drive, Jacksonville, Fla. 32207-8197; 800-326-7235.

**OCT. 8. Mealey's Daubert and Expert Admissibility Conference** in Boston, sponsored by Mealey Publications Inc.; \$495. Sharon Boothe, Mealey Publications Inc., P.O. Box 446, Wayne, Pa. 19003; 610-688-6566.

**OCT. 9. Freight Claims-Filing and Recovery** seminar in Oakland, Calif., sponsored by the Transportation Consumer Protection Council Inc.; \$200 for members, \$250 for non-members. TCPC, 120 Main St., Huntington, N.Y. 11743-6936.

**OCT. 9. Mealey's Latex Litigation Conference** in Philadelphia, sponsored by Mealey Publications Inc.; \$495. Sharon Boothe, Mealey Publications Inc., P.O. Box 446,

Wayne, Pa. 19003; 610-688-6566.

**OCT. 9. Reinsurance Accounting & Auditing** seminar in New York, sponsored by the College of Insurance; \$325. The College of Insurance Center for Professional Education, 101 Murray St., Room 426, New York, N.Y. 10007; 212-815-9201.

**OCT. 9-10. Reinsurance Technology in Motion** symposium in Chicago, sponsored by the CPCU Society's Reinsurance Section and the Chicago Chapter of the CPCU Society; \$349 for CPCU Society Section members, \$359 for CPCU Society members, \$399 for non-members. John Kelly, CPCU Society, 720 Providence Road, Malvern, Pa. 19355-0709; 800-932-2728, ext. 2773.

**OCT. 9-10. The Second Annual Insurance Law Institute** in Dallas, sponsored by the University of Texas School of Law. Before Oct. 8: \$325; after Oct. 8: \$360. The University of Texas School of Law, Office of Continuing Legal Education, Attn: IN97, 727 E. 26th St., Austin, Texas 78705-3224; 512-475-6700.

**OCT. 9-10. The Seventh Annual Property & Casualty Loss Reserves Workshop** in San Francisco, sponsored by Deloitte & Touche L.L.P.; \$700. Shelly Fowler, Deloitte & Touche L.L.P., 2 Prudential Plaza, 180 N. Stetson Ave., Chicago, Ill. 60601-6710; 312-946-2958.

**OCT. 12-24. Leadership Development for Physicians in Academic Health Centers** seminar in Boston, sponsored by the Harvard School of Public Health Center for Continuing Professional Education; \$4,800. Harvard School of Public Health, Center for Continuing Professional Education, 677 Huntington Ave., LL-23, Dept. B, Boston, Mass. 02115-6096; 617-432-1171.

**OCT. 13-15. Emerging Asian Insurance Markets Summit** in Hong Kong, sponsored by the Institute for International Research; \$2,295. IIR Ltd., 20/F Siu On Centre, 188 Lockhart Road, Wanchai, Hong Kong; 852-2507-5666.

**OCT. 13-17. Beyond the Basics of Health Care Cost Management** course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$1,375 for members, \$1,625 for non-members. IFEBP, Registrations Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 888-334-3327, option 2 or 414-786-6710, ext. 8257.

**OCT. 14. Federal Employment Laws & Regulations** course in Springfield, Ill., sponsored by the Illinois Chamber of Commerce-Center for Business Management; \$125 for members, \$165 for non-members; Center for Business Management, The Illinois Chamber, Department 77-3172, Chicago, Ill. 60678-3172; 800-621-4220.

**OCT. 14. Illinois Employment Laws & Regulations** course in Springfield, Ill., sponsored by the Illinois Chamber of Commerce-Center for Business Management; \$125 for members, \$165 for non-members; Center for Business Management, The Illinois Chamber, Department 77-3172, Chicago, Ill. 60678-3172; 800-621-4220.

The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the cost, if any, to attend the meeting and information on registration for interested readers. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed.

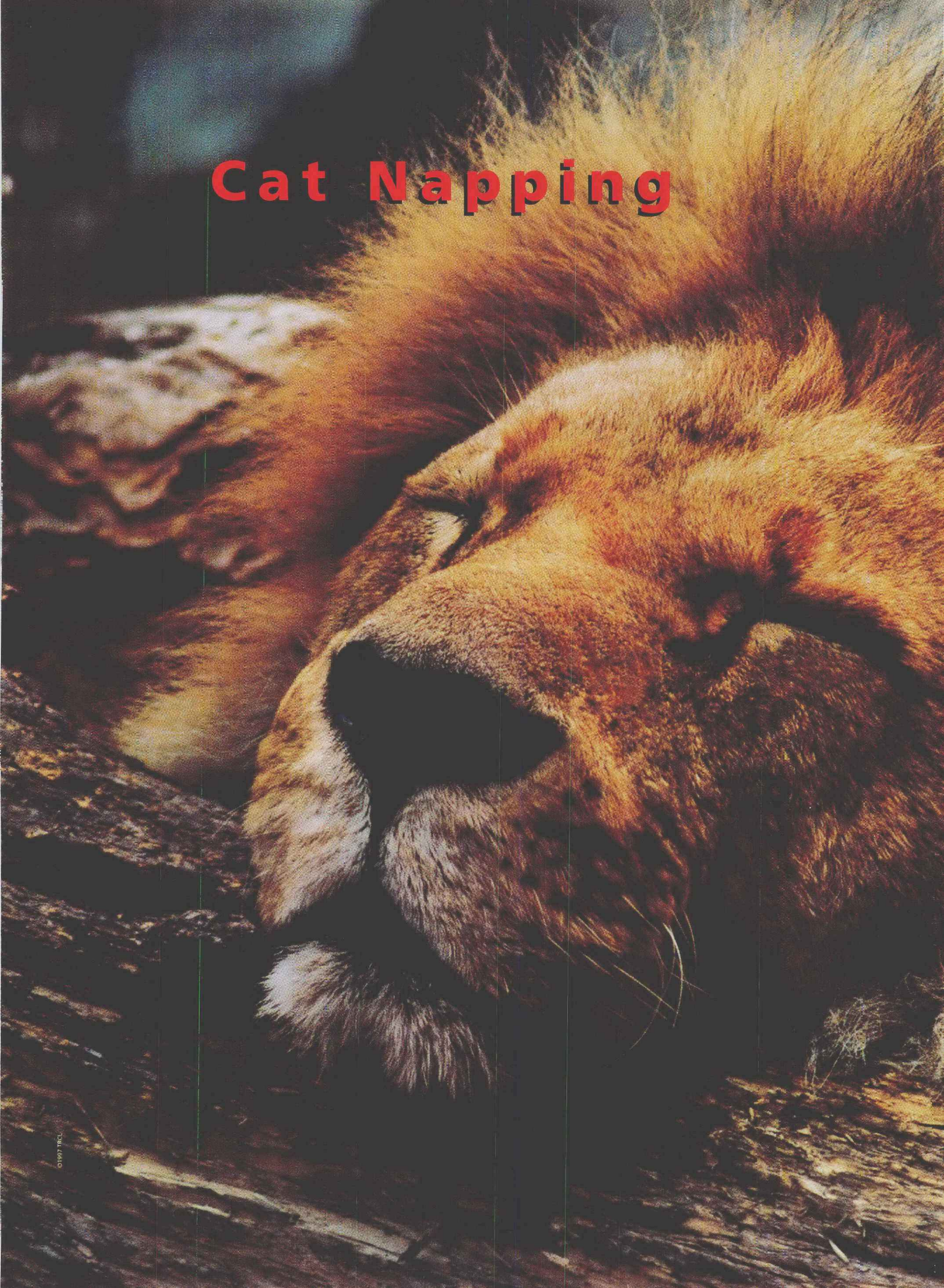
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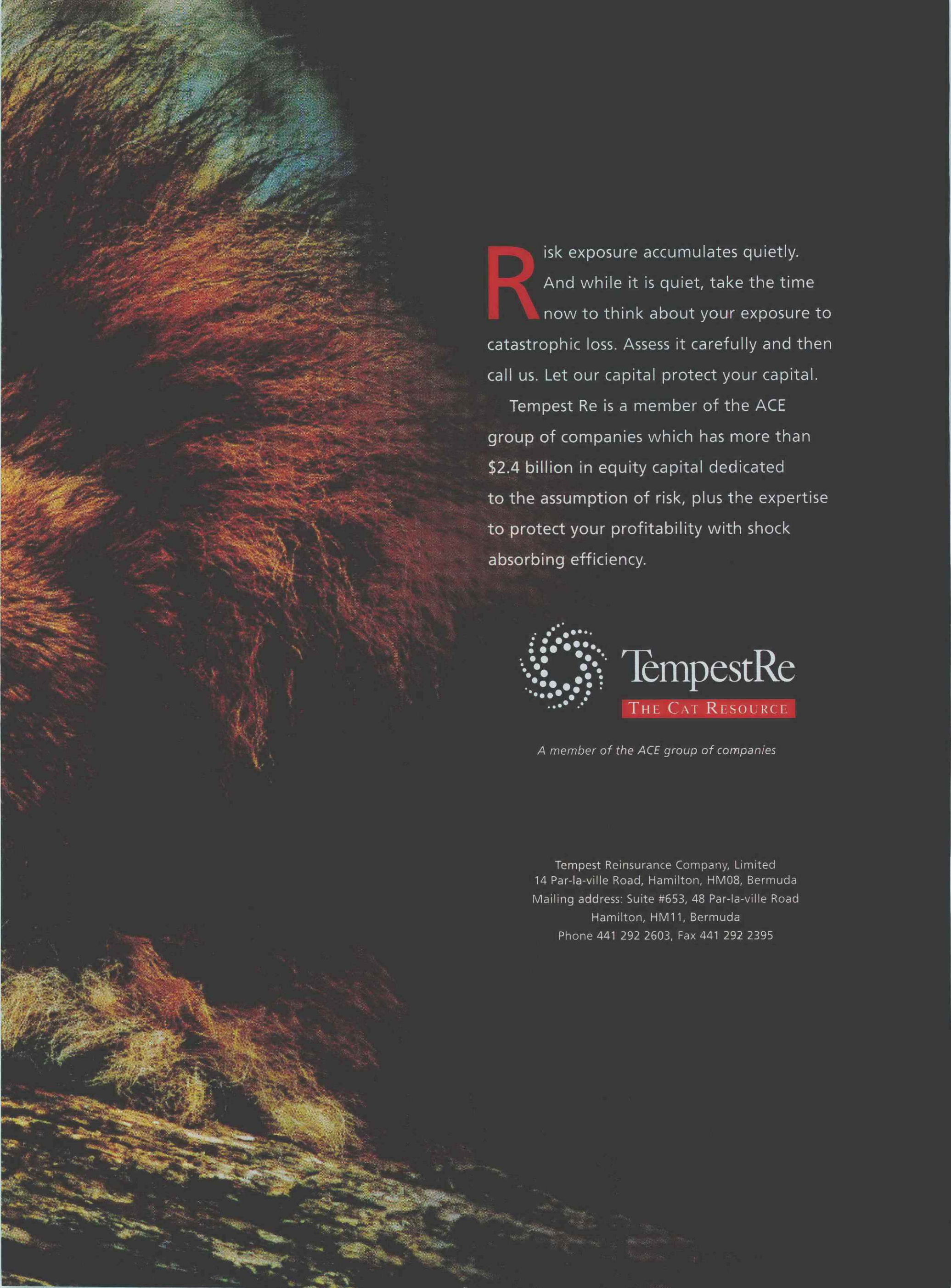
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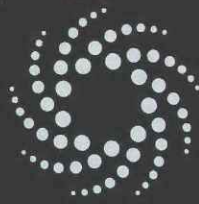
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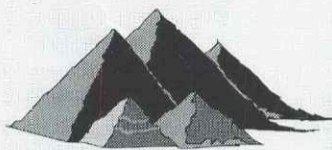
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## Insider Trading

**American International Group Inc.:** Lloyd Bentsen, director, purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 2,486 common.

Pei Yuan Chia, director, purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 2,450 common.

Marshall Cohen, director, purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 2,251 common.

Barber B. Conable, director, purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 5,401 common.

Carla Anderson Hills, director, purchased 113 shares of common at \$136.50 on June 2 and now directly and indirectly holds 3,312 common.

Frank J. Hoenemeyer, director,

purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 13,165 common.

Dean P. Pypers, director, purchased 113 shares of common at \$136.50 each on June 2 and now directly holds 9,595 common shares.

Ernest Edward Stempel, officer, sold 500,000 shares of common between \$143 and \$148.63 each from June 13 to June 16 and now directly and indirectly holds 10,403,173 common shares.

AIG stock closed at \$99.69 each on Sept. 12.

**Aon Corp.:** Daniel T. Cox, vp, sold 6,650 shares of common between \$69.38 and \$69.75 each on May 5. Mr. Cox now directly and indirectly holds 33,888 common shares.

Aon stock closed at \$51.94 a share on Sept. 12.

**Lincoln National Corp.:** George Edward Davis, vp, exercised an option for 6,000 shares of common at \$39.75 each on June 13. To cover expenses of the transaction, Mr. Davis turned in 3,526 of the shares for \$67.63 each on June 13 and disposed of by gift 2,474 shares at an unreported price on June 13. Mr. Davis indirectly acquired by gift 2,474 shares of common at an unreported price that same day and now directly and indirectly holds 12,186 common shares.

Jack Duval Hunter, vp, exercised an option for 9,000 shares of common at \$26.03 each on June 13. To cover expenses of the transaction, Mr. Hunter turned in 1,862 of the shares for \$67.63 each on June 13 and disposed of by gift 7,138 shares at an unreported price on June 13. Mr. Hunter now directly and indirectly holds 58,404 common.

Ian Mackenzie Rolland, chairman, exercised an option for 30,000 shares of common at \$23.50 each on June 13. To cover expenses of the transaction, Mr. Rolland turned in 17,011 of the shares for \$67.63 each on June 13 and now directly and indirectly holds 80,370 common.

Lincoln National stock closed at \$68.81 a share on Sept. 12.

**Marsh & McLennan Cos. Inc.:** Peter Coster, director, exercised an option for 15,000 shares of common at \$73.88 each from June 6 to June 11. To cover expenses of the transaction, Mr. Coster turned in 2,517 of the shares at an unreported price from June 6 to June 11 and sold 15,483 shares in the open market between \$136 and \$136.20 each during that same period. Mr. Coster now directly and indirectly holds 82,244 common shares.

Gregory F. Vangundy, officer, indirectly sold 670 shares of common at \$134.34 each on June 5 and now directly and indirectly holds 67,095 common.

Douglas C. Davis, vp, exercised an option for 5,500 shares of common between \$78.56 and \$93.63 each from June 5 to June 19. Mr. Davis sold the shares between \$134.38 and \$144.25 each during that same period and now directly and indirectly holds 9,763 common shares.

Frank J. Tasco, director, exercised an option for 60,000 shares of common at \$49.38 each June 18-19. To cover expenses of the transaction, Mr. Tasco turned in 14,251 of the shares for \$140.44 each during that same period and sold 25,479 shares in the open market at \$144.67 each June 18-19. He now directly and indirectly holds 261,064 common shares.

M&M stock closed at \$71.94 a share on Sept. 12.

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

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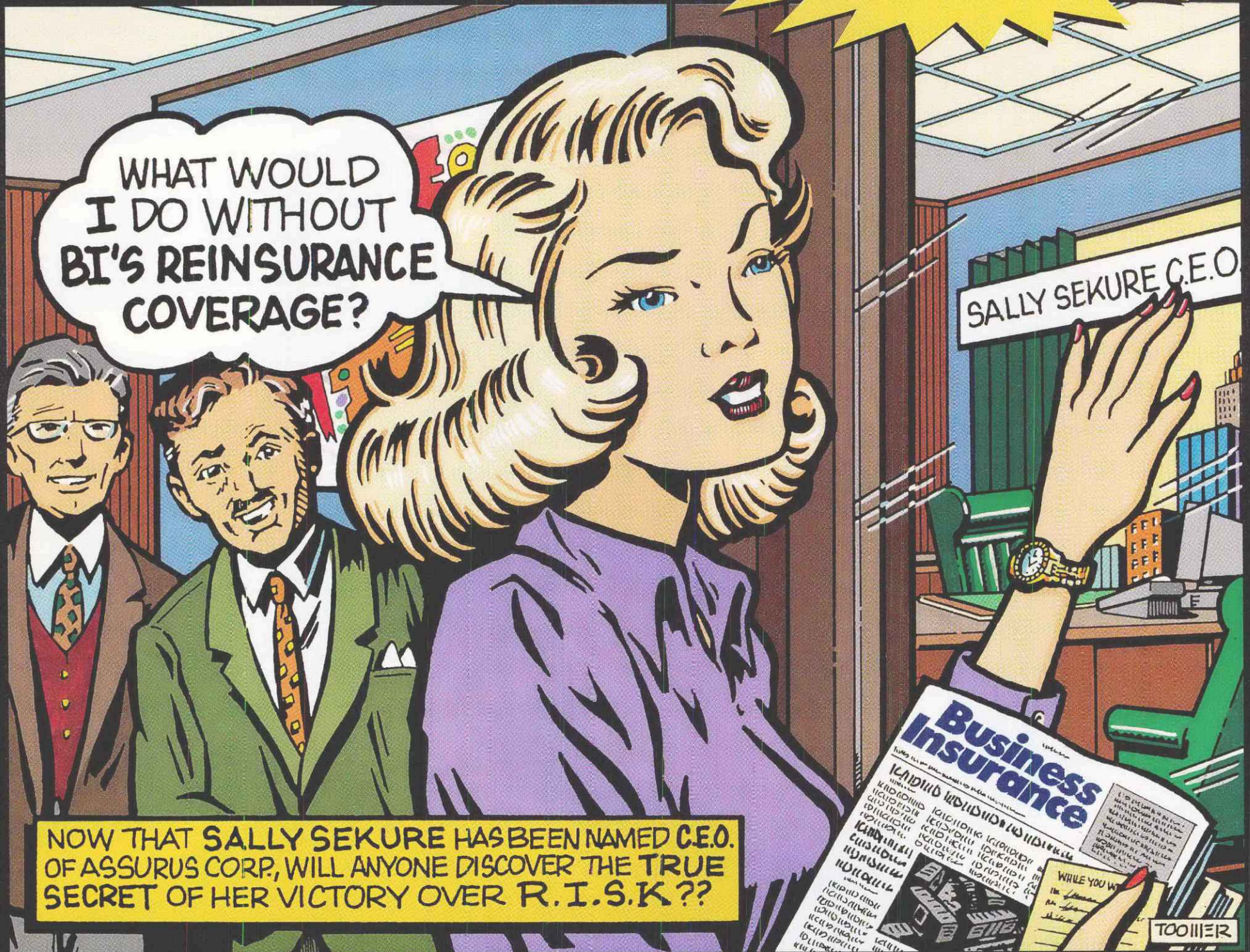
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# ASK A RISK MANAGER

**Q**

**How can a risk manager get ahead of exposures related to the human resource management function?**

**A**

Whether or not a risk manager is in a people-intensive business such as a restaurant, the risk of significant loss from human resource functions that include hiring, firing, promotion, development and the way in which people are managed is substantial.

The order of magnitude of this area of risk is driven by many factors, including the obvious quality of the way in which the functions mentioned are executed. Other drivers include the jurisdictions where the company operates, the expertise of plaintiffs counsel in the related areas of law, the overall quality of the workforce, the various demographics of that workforce and, most importantly, the controls in place to minimize the cost of risk in this area.

Jurisdiction is a critical issue and not something over which a risk manager has much control, as it will be driven primarily by where the company operates. California law, for example, essentially imposes strict liability on the employer in cases of sexual harassment, meaning the burden of proof shifts to the employer to show that an offense did not occur. Of course, in tort law the normal burden is upon plaintiffs to prove the defendant was negligent. This relative statutory anomaly has raised the stakes considerably for employers doing business in California and suggests a loss prevention urgency some would suggest is beyond practicality.

The expertise of plaintiffs counsel in the area of employment law can be the difference between a pre-lawsuit resolution without payment to the plaintiff—and perhaps even to defense counsel—and a seven-figure settlement or jury verdict. While this can hold true in most types of cases, I've seen its repeated application in employment cases, suggesting more urgently that the quicker an employer moves to address the concerns of the aggrieved party, using sensitivity and showing sincere concern for understanding the facts and implementing remedial action, the cheaper and less disruptive the matter will be for the company.

Workforce also is a critical driver of this exposure. There's nothing magical about this. It's the age-old issue of putting the right people in the right jobs and focusing heavily on this "fit." Does the prospective employee's skill set match the job requirements? If not completely, then at least make sure the more critical job requirements are met. Does the person's demeanor and personality fit the culture within which he or she would be working? The employer needs to understand and screen for the baggage the prospect may be bringing to the table, within legal limits.

Is it appropriate to do a criminal background check, run a personality profile assessment or actually test the desired skill set before hiring? Should the employer ensure that education, work experience and accomplishment claims are verified, within reason? Is the employer making sure to check and go deep with references? In sum, do employers effectively screen prospective employees? If not, companies probably shouldn't be in business today. Remember, however, all these processes and many others that affect the human resource management functions often are restricted by federal, state and local laws and should be done only in accordance with those laws.

Workforce demographics is a "gravity" issue. Employers can only work with the population pool from which they have to draw. However, they need to be aware of the nature and characteristics of the workforce from which employers draw their personnel. Why? Because, for example, different ethnic groups have different expectations of the employment relationship. To the extent this comes from cultural differences in ethnic groups, it's important to understand how those differences drive expectations in the workplace and develop human resource policy around those distinctions. In this area, it is particularly important to completely understand the nuances of equal employment opportunity law.

Controls are the most critical element of the risk manager's obligation in managing the employment liability risk. I've touched on some of the controls, e.g. employment screening, that should be employed to minimize this risk, but there are others to consider as well.

They include: thoroughly developed and legally approved employment operating policies; equal employment opportunity-sensitive training programs; comprehensive employment applications and application process including a mandatory dispute arbitration clause, where legal; open communications around promotion and development policies; an effective internal dispute resolution process; a comprehensive process that allows employees to bring complaints and concerns anonymously to the attention of management above the level of immediate supervisor; a comprehensive sexual harassment policy; a comprehensive and consistent process for terminating non-performing employees; a comprehensive equal employment opportunity policy; and an effective and properly staffed complaint investigation and response mechanism that involves the right levels of management at the right times.

Of all the controls employers consider for their programs, none is as important as the anonymous reporting mechanism and an effective fact-gathering investigative process. Without these now-common and thus expected mechanisms and processes, juries will hammer employers every time for putting employees in a no-win position wherein they will complain uniformly that they have no effective way to tell their stories without the risk of reprisal. And no matter what type of

"employee first" culture an employer thinks it might have, the company can never expect that all employees always will feel safe in voicing concerns that often by their very nature are much too sensitive and potentially embarrassing to reveal without these mechanisms. To address these important controls, start by engaging a toll-free third-party reporting service to help anonymously collect employee concerns over toll-free lines. Then construct a thoroughly thought-through investigative policy and execution mechanism and put both in the accountability basket of the company's field human resource professionals.

As important as controls are in this area, don't overlook the need to finance this risk. Of course, that doesn't mean just go buy insurance; it means find the most financially efficient way to ensure that whatever the cost of risk is for employment liability, the company has got it covered. More and broader coverage vehicles are emerging regularly, so look carefully at who offers not only the best rate but the best terms, conditions, expert assistance and recommendations for loss control and prevention programs. Financial efficiency implies a need to figure out what the "working layer" of loss is, enabling the company to set aside the funding to cover retained losses and transfer only that portion of the risk that truly would be unpredictable.

Finally, in ensuring proper coverage of this risk, work with the right functional representatives, such as senior function heads in human resources, finance, operations and control. Approach this exposure as a team with the right functions, and the company will be well on its way toward minimizing the employment liability risk. **BI**

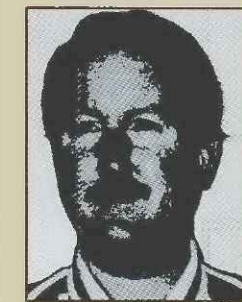
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## A global health care prescription

By Holly J. Jeske

*"Fasten your seat belts; it's gonna be a bumpy ride."  
—Bette Davis, "All About Eve"*

Economists warn that national governments that sacrifice social obligations, especially guaranteed health care, to attract capital run the risk of fraying the threads that enable free trade in the first place. If anything, an open market increases the need for financial security, as the citizenry becomes more vulnerable to change at the same time it becomes wealthier and lives longer.

But the compelling desire of many country leaders to

compete effectively in the global marketplace often means they give short shrift to welfare considerations. Not surprisingly, governments, along with multinational corporations, now have to contend with a growing backlash against globalization and its nasty habit of stripping away local cultures and traditions. In developed countries, the active privatization of social security, an emotive as well as economic issue, can further fuel the backlash.

Protectionism may seem the only way for a people to hold onto its uniqueness and regain financial security. But the relentlessness of globalization suggests this relief not only will be temporary but also may raise the human and economic cost of inevitable integration.

For multinational companies, cutbacks in social obligations, particularly in health care, pose new challenges and spotlight changes that have been astir for some time.

U.S.-based multinational companies have been preoccupied at home, in what historically has been their largest market and employee population, with managed care. International health care has been a low priority. Today, however, many companies earn substantial income from operations outside the United States, employing large numbers of local national staff. They are waking up to find health care no longer is an insignificant cost of doing business.

U.S. multinationals often presume that national health

*Continued on next page*

# Jeske

Continued from previous page

care systems deliver quality care automatically, thereby obliging employers merely to make social security contributions. To the extent that supplementary plans—medical, dental and vision expenses and disability pay—have become competitive practice in some countries, these often are considered, especially for executives, as top-ups or gap fillers to the basic national health plan.

In countries without national health plans, employers typically sponsor primary health care programs but find attempts at creative design and financing constrained by local conditions—for example, collective bargaining agreements and such issues as quality of and access to health care providers. In contrast to the hands-on nature of U.S.-style managed care, health programs in many countries continue to be fully insured. To attempt cost controls, employers can only resort to traditional underwriting tools, maintaining an arm's-length relationship with the insurance industry.

The managed care movement has educated U.S. employers about the universal trends behind the increased cost of health care: an aging population, lives that are longer and healthier, and costly new medical technology. But, outside the United States, in developed and developing countries, the phenomenon of passively privatizing social programs has had a significant impact on health care, and as a consequence, on the employer's role in guaranteeing coverage. This phenomenon is not always perceived by U.S.-based multinationals, which are familiar with a well-developed private health sector and a lack of national health care. They simply aren't used to partnering with government to respond to a changing health care environment.

In passive privatization, the private sector develops independently of governmental policy change to fill the gap between the demand for health care and the ability of the national health system to respond adequately.

Supplemental employer-sponsored plans are likely to transmute into primary sources for benefits when the quality and accessibility of care deteriorate under the social program, or social spending is reallocated to needier population segments. Employers often don't recognize the impact on their bottom line of these incremental cutbacks in social benefits, especially when employer programs are integrated with social security. The upside of attractive company programs can be increased productivity, higher employee retention and new ways of delivering health care, but a lack of oversight can result in skyrocketing costs and programs that are inappropriately designed or financed.

While most large U.S. corporations have established global initiatives for supplementing retirement income, they

have ignored health care. The need for and provision of income in old age is universal, and delivery on promises, particularly defined benefit promises, requires considerable planning and investment by employers. Not only is there a clear financial imperative to manage retirement programs, but U.S. compliance and tax legislation also ensure that employers catalog retirement programs and project their benefit liabilities.

Consequently, U.S. multinationals have a system that acknowledges the privatization—active or passive—of state pensions.

Health care, on the other hand, is a more local and subjective matter. No comparable decrees exist to compel employers to catalog health benefits. As the impact of changes in state-provided health care systems around the world becomes more evident, it will be essential for employers to develop a framework to respond. Active privatization will demand employer response by focusing public attention on the quality, equity and efficiency of health care.

For many U.S. multinationals, the key to a successful health care policy is managed care. This uniquely American invention is popularly viewed as a cure-all for all types of inefficiency, despite the controversy in the United States about its effect on quality and access to care. Unfortunately, the focus on efficiency presumes sufficient resources to be reallocated when, in fact, a common problem—especially in countries moving to private from state economies—is an insufficiency of quality providers. Consequently, in developing a global framework for managing change in health care delivery systems, it is important to avoid being trapped by the managed care imperative into oversimplifying complex and unique situations.

No guidebooks or hard-and-fast rules exist on how to respond to the changing global health care environment, but a few prescriptions seem in order:

- A company should develop a global corporate philosophy on health care that conforms to its compensation and benefits policies and supports its business objectives. How much choice should employees have, and how much should they be expected to contribute toward the cost of benefits in general and health care in particular? What is the company's approach to managed care in the United States, and is it successful?
- Catalog employee benefit programs and track the factors that determine costs. If costs rise more than expected, the company will understand why.
- Concentrate on the countries or business units key to the company's growth strategy and analyze how change in the market, including privatization, is likely to affect the company and local staff. Active privatization may compel employers to take action by specific dates.
- Consider opportunities to opt out of core national health care programs through a rebate of contributions or a tax

break. Pay less consideration to privatized fringe elements of the social system that may not be essential or cost-effective to address. Before taking out a calculator to compare rebates or tax savings with the cost of replacement, look first at the options in the private sector and the quality of providers.

Opting out should enable employers to provide their staffs more choice to better care-givers and eliminate the waiting time under government-run programs. The objectives are improved employee relationships, higher productivity and lower absenteeism. So, be prepared to accept that opting out may be a good deal in the long term but not necessarily an immediate financial windfall.

• Before making changes or developing new programs overseas, study how health care is delivered, determine what the local perception of quality is and evaluate the cultural receptivity to managed care ideas. In the development of the private health care market, government, labor and employers all have decision-making roles. Consider what other companies of similar size, business or location are doing.

• Devise a long-term strategy for each operation that is in keeping with the company's philosophy, but move ahead cautiously and incrementally. Don't make long-term commitments the company may not be able to keep or that impose radical change on unreceptive employees. As a foreign employer, it is especially important to cooperate constructively with unions and collective bargaining units and develop consensus for change.

• Finally, communicate change to employees using culturally acceptable channels, thereby demonstrating consideration for local customs and tradition.

We've entered a brave new world of health care. Yes, there will be bumps ahead. The multinational employer needs to fasten not only his or her own seat belt but also must diligently monitor health care costs and trends. Where corporate policy warrants change, it should be enacted cautiously on a country-by-country basis, with careful evaluation of the social and economic factors—all the while keeping an eye on the emotional issues globalization stirs up. **BI**



Holly J. Jeske is an associate in New York with benefit consultant William M. Mercer Inc.

## Pension calculation not arbitrary, capricious: Court

An ERISA plan administrator's denial of participants' claim for their earnings calculation to include pay in the lieu of vacation for calculating pension benefits was not arbitrary and capricious, according to the 7th U.S. Circuit Court of Appeals.

Amoco Corp. administers a defined benefit retirement plan for its employees governed by ERISA. The annual retirement benefits of plan participants are computed according to three alternative formulas; whichever formula yields the highest benefits to the particular participant is the one used to determine his or her benefits. Under the Annuity Benefit Formula, the participant's average earnings in his highest three years of earnings during employment by Amoco are used as the basis to compute benefits. The issue here was whether Amoco must include "pay in lieu of vacation" in determining earnings in the three base years under this formula. For as long as anyone could remember, Amoco has not treated payments in lieu of vacation as earnings under the formula. But this policy was stated nowhere. In 1993, Matthew J. Gallo raised the issue and was told they were excluded. He and other participants brought this action against Amoco to force calculation of their pensions to include as earnings pay in lieu of vacation. The trial court ruled in their favor.

The appellate court said the plan documents were

### Legal Briefs

silent on the issue and such treatment was consistent with administration of the plan since its inception. The court also noted that the plan administrator had discretion to interpret the plan. Although the plan administrator's interpretation may be right or wrong, the court said, it was not unreasonable. Thus, the court concluded that the administrator's denial of the claim was not arbitrary and capricious. The trial court decision was reversed.

*Gallo vs. Amoco Corp.*, 7th U.S. Circuit Court of Appeals, Dec. 17, 1996. (BI/04/Jy.- \$10).

### Taking compensation with your coffee

An employee injured when struck by an automobile when she left her employer's office building during an authorized coffee break to walk one and one-half blocks to a gift shop to buy a gift for a co-worker was entitled to workers compensation benefits, according to the Supreme Court of Montana.

Carol Ann Carrillo, an employee of Blue Cross & Blue Shield, left work during a coffee break to walk to a museum one and one-half blocks away. She had planned to buy a gift for a co-worker who was leaving

and for whom Carrillo and other co-workers were planning a party. While enroute to the museum, Carrillo was injured when she was struck by an automobile while crossing an intersection. Carrillo filed for but was denied workers compensation by the insurer. The workers compensation court also denied benefits.

The appellate court concluded that an injury occurring during a coffee break, as opposed to a lunch break, was compensable because the controls of employment can justifiably be said to not be in suspension during this short interval. Furthermore, the court noted there was a right to a break here and that such breaks served the employer's interests and were not a departure from work. Thus, the court concluded that Carrillo was acting within the course and scope of her employment when injured and was entitled to compensation benefits.

*Carrillo vs. Liberty Northwest Inc.*, Supreme Court of Montana, Sept. 3, 1996. (BI/02/My.-\$10) **BI**

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



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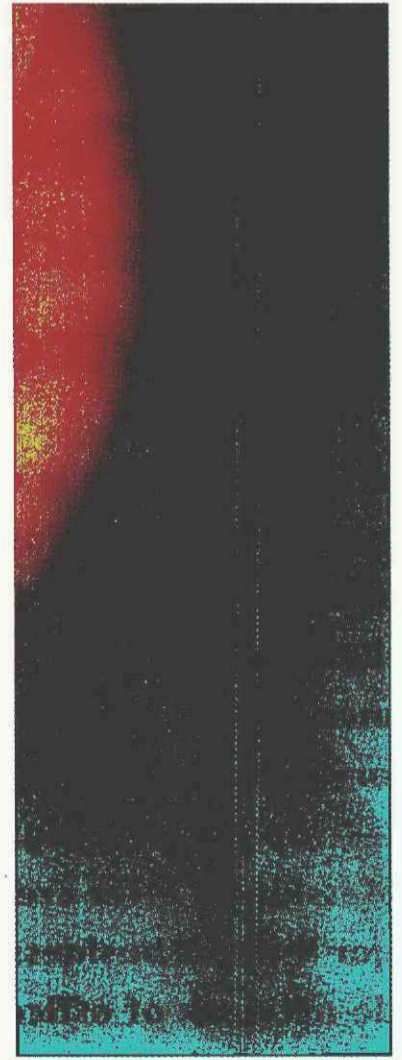
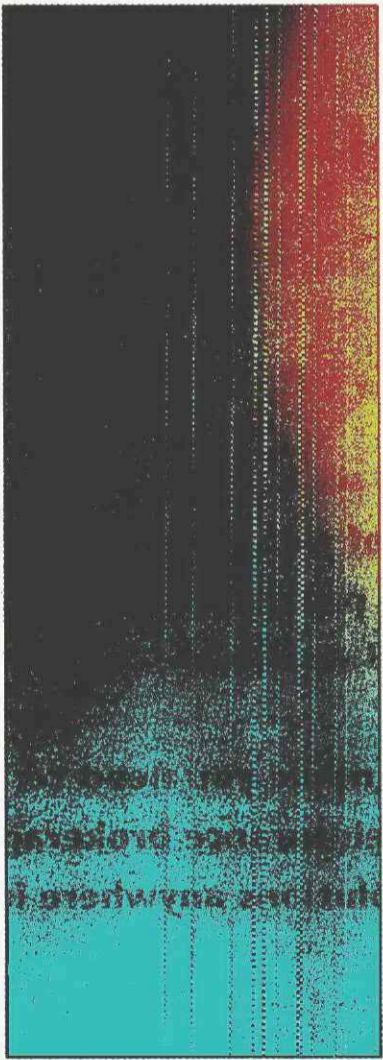
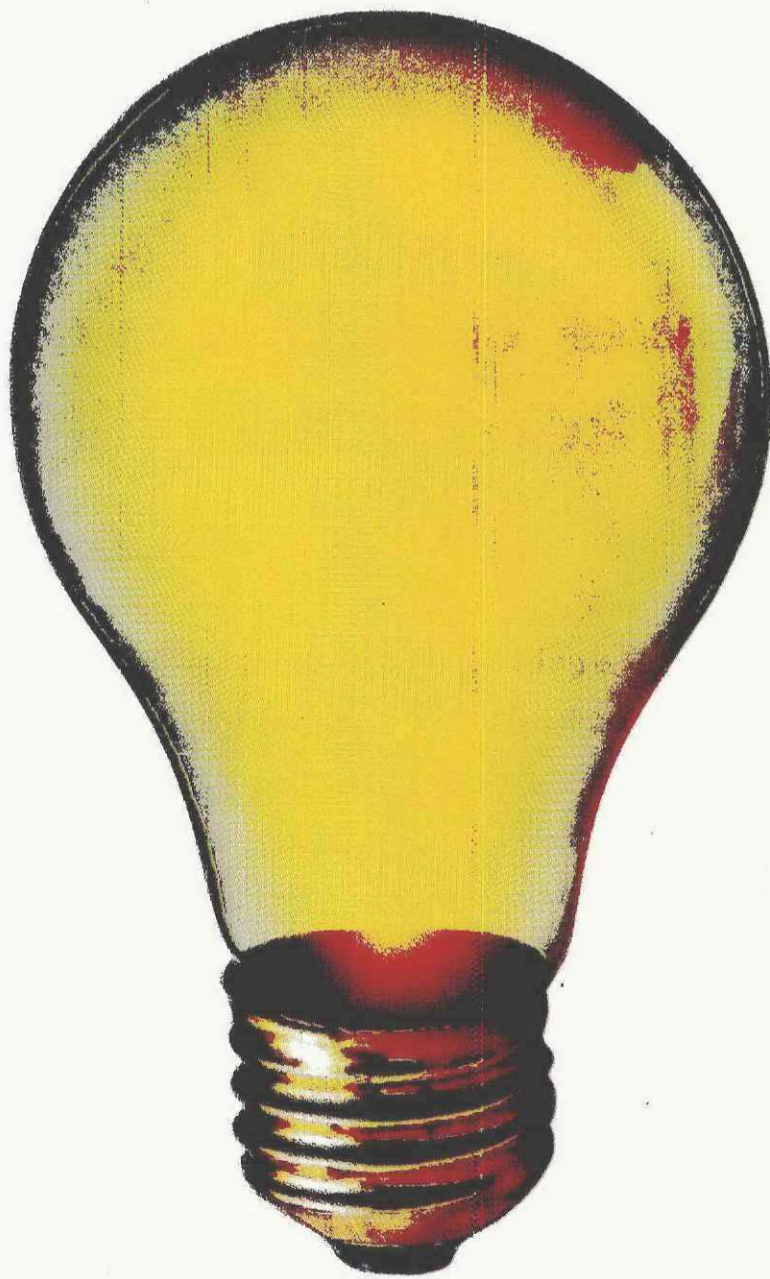
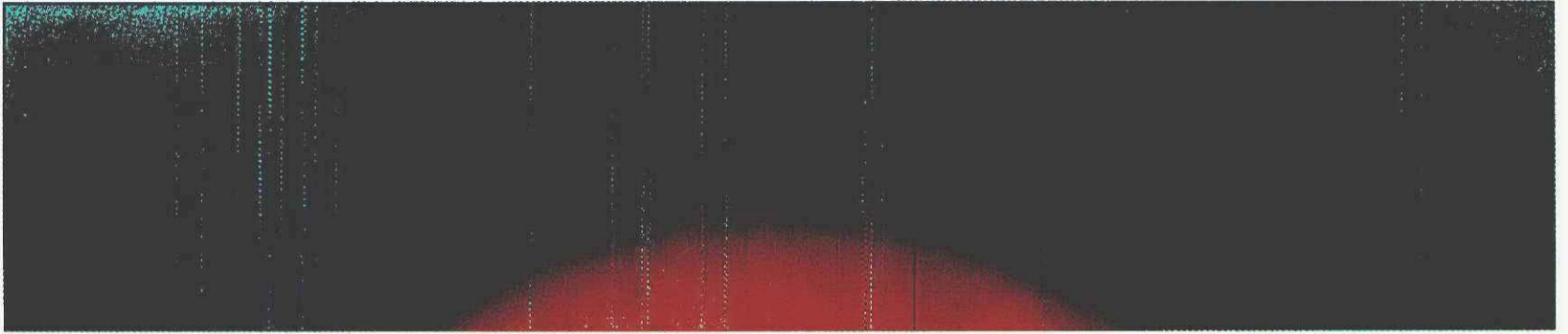
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## Mass tort case seeks legal fee forfeiture

AUSTIN, Texas—Plaintiffs in a Texas mass tort case are trying to force their lawyers to forfeit legal fees because the plaintiffs think the settlement they negotiated was too small.

Under a 1991 settlement reached with the Phillips Petroleum Co. over a chemical plant explosion, the group of 126 plaintiffs received \$190 million, while out of that amount, their attorneys were paid \$65 million for handling the case, leaving \$125 million for the plaintiffs.

But 46 of the plaintiffs charge that their lawyers, working as a group called Umphrey, Burrow, Reaud, Williams & Bailey, negotiated the settlement without their knowledge or consent. The group filed suit after learning that plaintiffs represented by

other lawyers received larger amounts.

The plaintiffs against the lawyers are seeking to have the \$65 million in fees paid to them. The \$65 million amount was paid to all the lawyers involved in the mass tort; of that, \$11 million went to the Umphrey, Burrow lawyers. The plaintiffs, however, want all \$65 million of the fees returned.

The case, *Arce vs. Burrow*, had been dismissed by Judge Mark Davidson of Texas District Court in Houston. He said there was no evidence the attorneys had harmed their clients by negotiating a lump-sum settlement and then apportioning the amount among them.

But the suit against Umphrey, Burrow now will be retried after an April appellate court ruling upholding fee forfeiture as a viable remedy for breaches of fiduciary duty.

A three-judge panel of the Texas Court of Appeals in Houston found "the trial court erred in holding that a claim for fee forfeiture requires proof of damage."

"While we have found no Texas cases specifically involving fee forfeiture for a breach of the fiduciary duty in the attorney/client relationship, we discern no reason to carve out an exception for breaches of fiduciary duty in the attorney/client relationship," the panel wrote.

"Thus, we hold that fee forfeiture is a recognized remedy when an attorney breaches a fiduciary duty to his or her client."

The legal malpractice lawsuit stems from the 1989 chemical plant explosion in Pasadena, Texas, that killed 23 people and injured hundreds more.

—By Joanne Wojcik

## NYNEX seeks to settle

NEW YORK—NYNEX Corp. wants to settle a lawsuit brought by the Equal Employment Opportunity Commission this month on behalf of women that NYNEX allegedly short-changed when calculating pensions.

The commission, which filed suit this month in U.S. District Court in New York, claims NYNEX, a subsidiary of Philadelphia-based Bell Atlantic Corp., is unfairly undercounting the women's past pregnancy leaves when figuring seniority when compared with other kinds of leaves calculated for pension purposes.

The number of women involved is undetermined, though the EEOC claims it is at least 2,000, said Dale Jurgens, lead counsel for the EEOC.

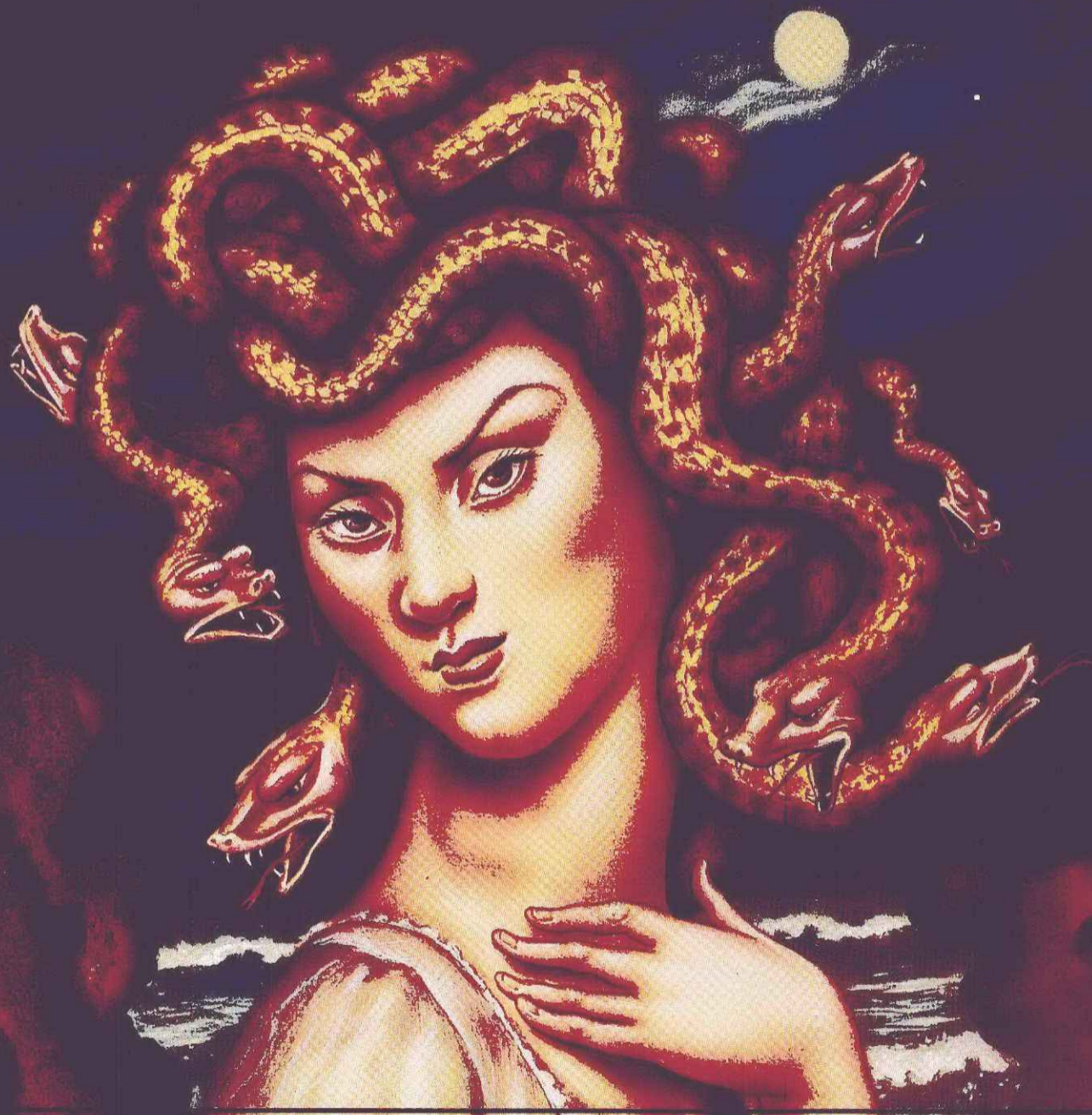
The suit alleges that since April 1994, when the company began offering an early retirement package, NYNEX has discriminated against women in counting time off due to pregnancies occurring before 1979.

Such pregnancy leaves occurred before enactment of the Pregnancy Discrimination Act of 1978, which gave full service credit to pregnancy-related leaves.

The suit asks for back benefits and wages and interest on back wages along with compensatory and punitive damages, Mr. Jurgens said.

Bell Atlantic released a statement saying NYNEX fully complied with laws covering pregnancy leaves taken before 1979 and that the early retirement package was legal. The company also said it hopes to settle the case with the EEOC without a trial.

—By Robert Kazel



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## Market

Continued from page 1  
meeting is usually the scene of general industry discussions as underwriters, brokers, and ceds gauge each other in preparation for actual dealmaking in December.

As has been the case for the past two years, consolidation among reinsurers and brokers was a major theme at the Rendez-Vous.

Some reinsurers expressed growing concern over the clout now wielded by the two largest reinsurance brokers: Guy Carpenter & Co. and Aon Re Worldwide Inc. Other reinsurers are looking for opportunities to take business from the four big direct reinsurers, Munich Reinsurance Co., Swiss Reinsurance Co., General Re/Cologne Re Group and Employers Reinsurance Group.

Whatever fortunes favor individual reinsurers, few executives are expecting anything but rate declines at year-end.

### Soft pricing

"Everybody says that rates are soft and, on average, this is certainly true," said Jacques Blondeau, chairman and chief executive officer of SCOR S.A. in Paris.

In particular, rates for catastrophe excess-of-loss business will likely fall by 15% to 20%, while large industrial accounts probably will fall by about 15%, Mr. Blondeau said.

In the current market, "there's

only debate on how much rates will come down," said Martyn Hooper, managing director of Kinmonth Lambert Ltd. of London, the reinsurance brokerage unit of Lambert Fenchurch Group P.L.C. There's another 10% to 15% to go on rate reductions for U.K. catastrophe reinsurance risks, he said.

Reinsurers are aggressively defending their existing market shares by reducing rates for their existing business and also pushing rates down in other areas as they try to win new business, said Norbert Strohschen, chairman of Gerling-Konzern Globale Reinsurance Co. in Cologne.

"They are defending market shares and trying to buy into other markets," he said.

"Everybody is spouting the same story: Results are good and prospects are bad," said John R. Berger, president of F&G Re Inc. in Morristown, N.J.

While most reinsurers produced large profits in the first half of 1997, rates are generally declining, and sharply in some cases, he said.

"Sometimes, people are not losing business by 5% and 10%; they are losing" business to competitors who are cutting rates 30% to 40%, Mr. Berger said.

"Softness is to be expected after three years of good results," said Bruno Porro, a member of the executive board of Swiss Reinsurance Co. of Zurich, Switzerland. There is enough capital in the market to put at risk, and there have been relatively light catastrophe losses, said Mr. Porro, pointing

only to losses from the flooding in Poland, Germany and the Czech Republic.

"There is a continued decline in pricing, but operating performance is not declining. Part of that is luck—no huge catastrophes or big new casualty losses," said Donald S. Watson, director of reinsurance ratings for Standard & Poor's Corp. in New York.

"The client is in the driving seat," summed up Ronald A. Iles, chairman of Aon Re in London.

Reinsurers are struggling to maintain or grow their market share as more capacity continues to enter the market, and most of them are following the market down, he said.

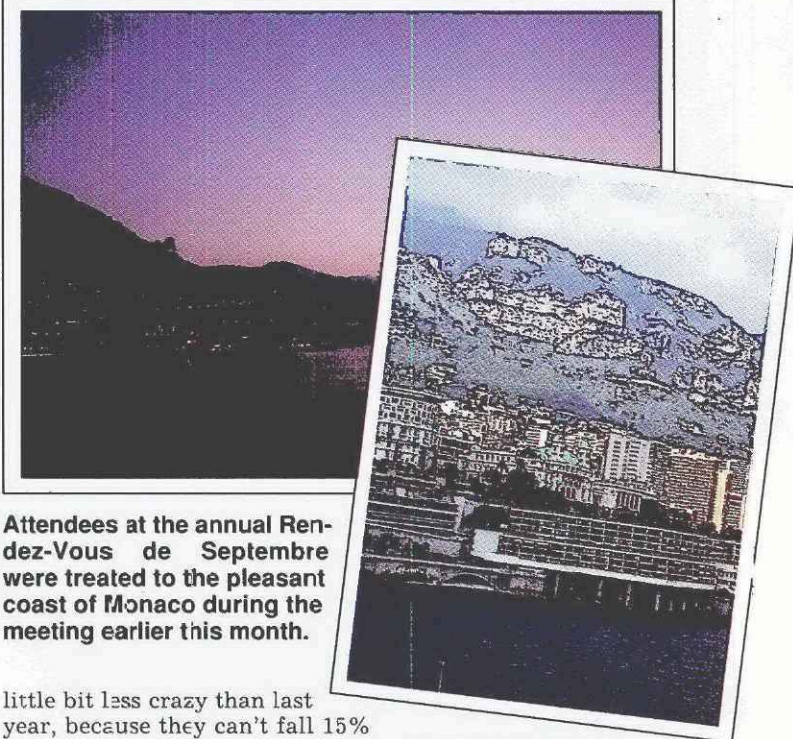
"Some companies say that they are not going to actively seek growth, but not many," Mr. Iles said.

Unless there is a significant insured catastrophe of more than \$20 billion, reinsurance rates are likely to remain soft, said Herve Cachin, chairman and general manager of Societe Anonyme Francaise de Reassurances in Paris.

While rate reductions will vary in different territories of the world, there is little prospect of general increases anywhere, he said.

However, the chain of sizable rate reductions for catastrophe business over the past few years has to come to an end soon, said Herbert Haag, president and CEO of Partner Re Ltd. in Bermuda.

"I think the reductions will be a



Attendees at the annual Rendez-Vous de Septembre were treated to the pleasant coast of Monaco during the meeting earlier this month.

little bit less crazy than last year, because they can't fall 15% to 20% every year," he said.

In Europe, in particular, catastrophe rates have fallen to inadequate levels, Mr. Haag said.

The continued soft pricing could spell problems ahead for some companies.

"There's going to be a tidal wave of holes in industry balance sheets with the prices being paid today," said Steven J. Bensinger, president of Chartwell Re Corp. of Stamford, Conn. "Ten years of low general liability pricing in the U.S., for example, has to hurt," he said. "We're seeing signs of negative

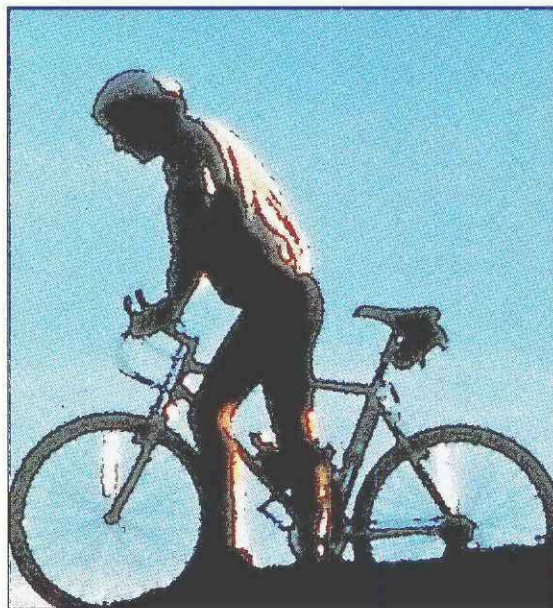
PHOTOS: PAUL D. WINSTON

cash flows in some companies. Even without a stock market correction or a major loss, the industry's fundamentals are deteriorating. Those fundamentals are going to catch up sooner rather than later," Mr. Bensinger said.

Like a rubber band, the market is being stretched further and further, he said. "When it snaps, the correction is going to be as severe as the '80s hard market," he predicted.

Continued on next page

## GET THE BROADER VIEW.



Continued from previous page

"Most people never thought it would get this bad," Mr. Bensinger added.

Rates may be reaching the bottom, said James F. Dowd, chairman and CEO of Odyssey Reinsurance Corp. in New York.

"There is no reason to expect that things are going to get better. . .but we might be beginning to reach the bottom," he said.

Once rates have reached the bottom of the cycle, they will likely remain low for some time before rising again, Mr. Dowd said. But, unless there is a dramatic event, when rates will begin to rise again, they will probably not rise rapidly, and capacity will not be drastically reduced, he said.

### Loss control

Insurers and reinsurers, in recent years, have become much better educated about their exposures, Mr. Dowd said.

"There has been an enormous amount of money spent by insurance and reinsurance companies on understanding their exposures," he said.

By using sophisticated modeling systems, the companies can allocate their capital more scientifically and, hopefully, avoid being wiped out by single catastrophes, Mr. Dowd said.

Risk management at the policyholder level also has improved, and this has helped improve the results of insurers and reinsurers, said Brandon Sweitzer, CEO of Guy Carpenter in New York.

"In commerce and industry there is a more professional awareness of risk management. . .and people are taking a little bit more care," he said.

Improved risk management is reducing losses for policyholders, agreed Mr. Cachin of SAFR.

"The big accounts have invested a lot in risk control," he said.

This risk management focus is not a factor only in the United States. In Europe, many industrial plants are now protected to highly protected risk standards, Mr. Cachin said.

"But, all the same, the competition on that business at the primary level is increasing, and with normal loss experience pro rata reinsurance for commercial lines will probably lose money in 1998," he said.

### More capacity

The eagerness of some reinsurers to write more business is leading to a less disciplined market, said Hady Wakefield, chairman of Guy Carpenter in New York.

"Last year there was an increase in capacity, but it was responsible capacity. Now there is even more capacity, and I'm not entirely certain that all of it is as well researched or professionally underwritten as it has been," he said.

In recent weeks, several new reinsurers have been launched or proposed (see story, page 47).

Although premium volume is not increasing, capacity in the reinsurance market has increased, agreed Benito Pagnanelli, deputy general

manager of Assicurazioni Generali S.p.A. of Trieste, Italy. Assicurazioni in 1996 surpassed Employers Re as the fourth-largest reinsurer based on premium volume (BI, Sept. 1).

The capacity may be adequate given the risk of a large catastrophe, but it is generating a reduction in rates, he said. For now, because of few catastrophe losses, the lower rates have not yet had an adverse effect on reinsurers' profits, he added.

The philosophy of Generali is to look at the underwriting profitability of the business it writes, Mr. Pagnanelli said.

"If rates get too low, we'll stop writing a risk, such as space business," he said.

Generali, long a leader in the space insurance market, in the past year has faced new competition from reinsurers in Bermuda and elsewhere that are seeking to diversify their books by entering the space market.

In addition to lowering rates, other companies are competing for space risks by "extending policy periods or giving launch cover for free," he noted.

"Too much of the new capacity is innocent capacity," Mr. Pagnanelli said.

### Profitability

The question of whether 1997 would be a profitable year if reinsurers had suffered a normal level of catastrophe losses produced varying answers. While most reinsurers felt their books still would

be profitable because catastrophe reinsurance rates in the United States are still relatively high, the margins are becoming slimmer.

"The industry doesn't appear to be looking at what sort of returns they should be getting on a product line over a business cycle," said William J. Adamson, chief executive officer of CNA Re in Chicago. He advocates a risk-adjusted return strategy, which takes into account the volatility of individual lines in a multiline book of business. "While a company may make a profit with a multiproduct book, they can later find out that wasn't enough to cover their exposure in the lines they write," he explained.

### Retrocessions

While some reinsurers may have slim profit margins on their gross writings, they can unload some of their exposures to other reinsurers through the purchase of cheap retrocessional coverage.

"There is a much larger retro market now," said Mr. Berger of F&G Re.

The retrocessional reinsurance market shrank drastically after Hurricane Andrew in 1992.

But now reinsurers are again able to gain greater leverage through the purchase of retrocessional reinsurance, Mr. Berger said.

The retrocessional reinsurance market is growing in particular in London, Mr. Iles said.

"It's growing, but it's not silly growth, and in the non-marine market, its being written by people

who know what they are doing," he said.

LaSalle Re Ltd. in Bermuda is one of the reinsurers buying retrocessional coverage, said Graham A. Waite, vp and underwriter.

LaSalle also increased its coverage by buying the CATPUT product marketed by Aon; CATPUT injects new capital into an insurer or reinsurer if a catastrophe depletes the insurer's or reinsurer's capital.

The extra coverage will enable LaSalle to keep similar capacity for clients in the event of a large catastrophe, Mr. Waite said.

"So often in the past, the reinsurance market has reacted to catastrophes by reducing their exposure to the market. . .we see it as an opportunity to expand in a hard market," he said.

"Companies are more willing to purchase retrocessional coverage, because they don't like underlying prices, and it's cheap," said one U.S. reinsurance executive who asked not to be named.

Some reinsurance executives see the possible re-emergence of a retrocessional spiral in the marine market.

The so-called LMX spiral in the 1980s led to massive losses by many Lloyd's of London syndicates that wound up assuming risks they thought they had ceded.

There is a spiral in the marine market, said Michael J. Caley, chief executive officer of Kininmonth Lambert Ltd. of London. "I don't think it ever came out of it," he said of the marine market.

Continued on next page

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*Continued from previous page*

"I don't know if the market has a short memory or not. I hear the spiral market is opening again, and not just in marine," said Mr. Porro of Swiss Re. "We will only be able to judge in a few years' time" whether this spiral is more disciplined than previous ones, he said.

However, the current spiral may be different from earlier ones, said Mr. Adamson of CNA Re. "In the '70s, everyone knew rates were inadequate and bought more coverage. Companies that didn't cover their aggregates got burned," Mr. Adamson said. "Today, we see retrocessional pricing that's low enough it is seen as a good buy. Unlike the past LMX spiral, they are not trying to arbitrage their risk," he said.

### Primary retentions

In addition to providing cheaper retrocessional coverage, the soft reinsurance market also provides an opportunity for some ceding companies to reduce their retentions and buy more reinsurance.

The phenomenon is most prevalent in London, where the one-year nature of Lloyd's underwriting encourages syndicates to purchase reinsurance to obtain maximum leverage each year, said Mr. Wakefield of Guy Carpenter. "It is much more difficult for them to take the long-term view," he said.

In the United States, most insurers are maintaining or increasing their retentions, said James Duffy, president of St. Paul Re in New York. "There is a continuation of increased retentions as there is pressure on the primary companies to grow," he said.

As the extended period of low catastrophe losses continues, more primary insurers are becoming more comfortable with large retentions, Mr. Duffy said.

"When you have a long time when you don't have a lot of significant catastrophes, you can be tempted to think that it will go on forever," he said.

"Primary companies are retaining more of their risks," said Donald S. Watson, director of reinsurance ratings for Standard & Poor's Corp. in New York. "With property risks, in particular, the availability of cat models has given companies a better picture of their exposure, and they are only going to sell off the highly exposed risks of their books. You're paying more rate on line because of the higher exposure," but the companies are retaining the better risks, he said.

"There's always the risk of uncertainty, but the primaries are emboldened to retain more," he said.

"A lot of companies, even AIG, are taking less reinsurance, even though some should be buying down retentions in this market," said Richard E. Cole, chairman and CEO of Chartwell Re.

Many ceding companies in the United States are increasing their retentions in an effort to grow, but some other large companies in the U.S. and European markets are buying more reinsurance coverage, said Dirk Lohmann, the new chief executive officer of Zurich Re, a subsidiary of Zurich Insurance Co. in Zurich.

"They don't care if they collect 100%; they are more worried about their bottom line, and if they can leverage their net earnings using other peoples' capital, they'll do it," he said.

### New frontiers

Rather than simply increasing their capacity in their existing

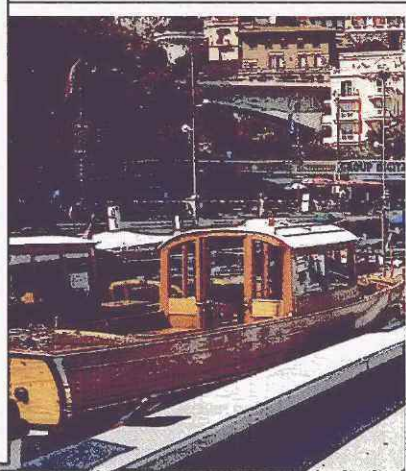
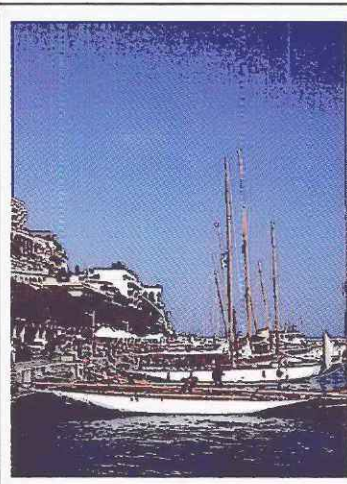
markets, other reinsurers are looking for new areas and methods to increase their business.

St. Paul Re, for example, has entered the aviation and satellite market in London and has opened an office in Australia to write reinsurance for the alternative risk transfer market there, said Mr. Duffy.

The new business will offset a 10% reduction in revenues on St. Paul Re's existing business, Mr. Duffy said.

Reinsurers can increase their business in some areas without cutting rates drastically, said Mr. Blondeau of SCOR.

"In the U.S., medium-sized regional insurers are expanding, and that is true in Europe, too. And the very large companies are losing ground," he said.



PHOTOS: PAUL D. WINSTON

Monte Carlo, host of the reinsurance industry's annual *Rendez-Vous de Septembre*, also attracts some of the world's largest yachts as well as beautifully restored entries for an antique boat show.

And the rating levels for the mid-size companies generally are flat, Mr. Blondeau said.

Claims ratios for certain businesses in Europe are improving, according to Mr. Blondeau, who cited as an example automobile liability in Germany and the United Kingdom.

Rating levels in some emerging markets also are improving. For example, the catastrophic flooding in Central Europe could lead to higher rates in those markets, Mr. Blondeau said.

"The key to success will be to be selective and to be very careful with what you do with your capacity," he said.

Reinsurers willing to cover multi-year deals are attracting more business, as cedents are looking for

*Continued on next page*

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Continued from previous page  
the stability long-term coverage provides, Mr. Blondeau said.

"They want to save on administration and expenses. . . and instead of shopping around, they want a long-term relationship," Mr. Blondeau said.

Cedents are willing to forgo the opportunity of shopping around for cheaper coverage for the certainty the multiyear deals offer, said Mr. Iles of Aon.

The deals most often are for three years, and often the premium increases only slightly for each year of the contract, Mr. Iles said. So, if the market suddenly turns hard, cedents with multiyear contracts are not faced with massive increases.

"They want to know that if they are paying £1 million (\$1.6 million)

this year, in 1999 they are going to be paying £1.2 million (\$1.9 million), not £3 million (\$4.8 million)," Mr. Iles said.

Reinsurers also are expanding their books of business by offering coverage that has not normally been seen as part of reinsurers' array of products, such as interest rate hedging devices, said Mr. Strohschen of Gerling.

Gerling itself does not have the expertise to cover the risks, but can access it through its link with Deutsche Bank A.G. Deutsche Bank owns 30% of Gerling and together the companies work together to offer an extended range of products, he said.

"We would say that we can't do hedging, but we can work with Deutsche Bank to help you out," Mr. Strohschen said. **BI**

# Reinsurance capacity to increase

By GAVIN SOUTER

MONTE CARLO, Monaco—Those reinsurers that came to the Rendez-Vous de Septembre hoping to hear about a decrease in competition in the market were sorely disappointed.

Instead, market capacity is set to significantly increase over the next few months: Plans for two new reinsurers were announced at the Rendez-Vous, another was formed just before the meeting, another previously announced reinsurer is expected to begin underwriting in November, and several existing reinsurers plan to expand their capacity.

Resource Underwriters Ltd. in Bermuda plans to be a multiline reinsurer with \$300 million in capital. Executives from the company were at the Rendez-Vous while awaiting approval by Bermuda regulators. The regulators' decision was expected by the end of last week.

David Thirkill will be chairman and chief executive officer of Resource, which is backed by 18 investors. Mr. Thirkill underwrote financial reinsurance for Forum Reinsurance Co. Ltd. in Bermuda before leaving the company in 1990. A Forum unit, Focus Insurance Co., collapsed in December 1990, and Mr. Thirkill and other

company officers were named in a \$20 million negligence suit, but the action was dismissed in November 1992.

Robin Spencer-Arscott, the former chairman of Aon's Bermuda operations, will be president and chief operating officer of Resource.

The formation of ESG Re Ltd. by reinsurance underwriting managers European Specialty Group also was announced at the Rendez-Vous. The company will be capitalized at 380 million deutsche marks (\$214.5 million) and will offer coverage for accident, health, life, credit life and disability, and non-appearance risks in sport and entertainment.

ESG will be backed by U.S. and European institutional investors and Head & Co. L.L.C. in New York, the company formed by John C. Head that specializes in taking over troubled insurers. Mr. Head also helped launch Bermuda-based catastrophe reinsurer Partner Re Ltd. in 1993. The company will have offices in Hamburg, Germany; London; Miami; Moscow; Hong Kong; Dublin, Ireland; and Toronto.

Mr. Head will be non-executive chairman of ESG Re, and the chief executive officer will be Steven Debrovner, the former chief marketing officer for non-life business at CIGNA International.

Just before the Rendez-Vous, backers X.L. Insurance Co. Ltd. and Risk Capital Reinsurance Co. announced the formation of Latin American Reinsurance Co. Ltd. (*BI*, Sept. 8). The reinsurer will be capitalized at \$100 million and will provide mainly short-tail, multiperil property reinsurance in Latin America. Richard Meyer, formerly an executive vp of Johnson & Higgins, will be chairman and chief executive officer.

Liberty Re Ltd., the proposed London subsidiary of Liberty Mutual Group in Boston, is expected to begin operations in November. The company will be capitalized at £250 million (\$400.4 million) and will write property, casualty, life and health reinsurance. The company aims to work more closely with clients than traditional reinsurers do and offer extra services, such as claims management and product design.

Liberty Re's chief executive is John Engstrom, the former head of Mercantile & General Reinsurance Co. P.L.C., which was bought by Swiss Reinsurance Co. in 1996.

As reinsurers enter the market, several existing reinsurers are increasing their capacity.

For example, SAFR Group, the Paris-based multiline reinsurer purchased by Partner Re earlier this year, will increase its net per risk capacity to \$10 million from \$5 million.

Gerling-Konzern Globale Reinsurance Co. in Cologne, Germany, also expects to increase its capacity by the end of the year by forming a new unit that will allow industrial risk clients to access the joint capacity of the reinsurer and its insurance company parent, the Gerling Group, said Norbert Strohschen, chairman of the reinsurer.

The insurer and reinsurer also will work with Deutsche Bank A.G. to provide multiyear, multiline and securitized products for clients, he said.

Deutsche Bank owns 30% of Gerling **BI**



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RENDEZ-VOUS DE SEPTEMBRE

## Consolidation felt throughout industry

By GAVIN SOUTER  
and PAUL D. WINSTON

MONTE CARLO, Monaco—Consolidation in the reinsurance and brokerage industries is likely to continue, though not without ramifications for those that remain, reinsurance executives say.

The benefits of consolidation most often cited are a reduction in costs, diversification and instant global reach. At the same time, some reinsurers warn of the risks of concentrating market share in the hands of fewer brokers or reinsurers.

Others see consolidation as an opportunity to win business from their gigantic rivals and a chance for swift, specialized brokers to sparkle.

Those were some of the views of reinsurance executives attending the annual Rendez-Vous de Septembre meeting in Monte Carlo, Sept. 8-13.

"Among lower-capitalized reinsurers, history indicates there will be more consolidation," said Bruno Porro, a member of the executive board of Swiss Reinsurance Co. of Zurich, Switzerland. "Among large companies, SAFR was the last really attractive big company. In Europe, consolida-

tion has progressed very far," he noted.

One possible remaining acquisition target in Europe will be Groupe des Assurances Nationales, which is due to be privatized by the French government, said Mr. Porro.

Assurances Generales de France, Allianz A.G. Holding, Fortis A.G. and at least two consortiums have been cited as possible bidders for GAN (see related story, page 2).

During the week of the Rendez-Vous, another French reinsurer, Cie. de Reassurance d'Ile de France, or Corifrance, was bought by Terra Nova (Bermuda) Holdings for an undisclosed sum. Corifrance's 1996 premium volume was 153 million French francs (\$30 million).

Consolidation likely will continue as the intense competition in the reinsurance market continues, said James Duffy, president of St. Paul Re in New York.

"When you have so much capacity in the market, there are certain players that underperform others and the ones that underperform will have to do something different," he said.

That scenario would only be changed by a significant event  
*See Deals on next page*

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# Deals

Continued from previous page that drains the capital of the market, Mr. Duffy said.

"Consolidation is justified by the need to reduce costs and perhaps to offer better service," said Benito Pagnanelli, deputy general manager of Assicurazioni Generali S.p.A. of Trieste, Italy. "You can become a global company by 20 years of work or by an acquisition," he noted.

The concentration of risks with just a few mega-reinsurers also may create opportunities for other reinsurers, said Norbert Strohschen, chairman of Gerling-Konzern Globale Reinsurance Co. in Cologne, Germany. "So many companies have merged, and a lot of clients have changed their reinsurance programs as a result. They are happy to place a certain amount of business with Swiss Re or Employers Re but not everything," he said.

Companies such as Gerling can put themselves forward as an alternative to the biggest reinsurers, said Mr. Strohschen, who estimated its premiums would gain 8% to 10% as a result of such defections.

Strong reinsurers also will be able to win business from small competitors, said James Dowd, chairman and chief executive officer of Odyssey Re Corp. in New York.

Odyssey Re is a product of consolidation through its parent company's purchase of several reinsurers. Fairfax Financial Holdings Ltd. purchased Cie. Transcontinentale de Reassurance of Paris last year, and its purchase of Sphere Drake Holdings Ltd. is pending. CTR will continue to trade under its existing name in France, but Sphere Drake likely will become Odyssey Re U.K., he said.

Increasingly, cedents are looking for large, secure reinsurers and the strength of the larger reinsurers will give them a benefit over smaller com-

petitors, Mr. Dowd said.

"Rapid-fire consolidation among direct writers you've heard of. Most deals are considered a success for buyers and selling organizations," said David Jarvis, global head of financial institutions for Salomon Brothers Inc. in New York. "The spillover to the broker market, though, did not occur as expected."

One reason, he said, is there is less opportunity for expense reduction in mergers of broker-market reinsurers, compared with direct writers. Broker-market companies have relatively lower general and administrative expenses, with an external distribution system for their products, he explained.

There also are questions about the value of the "broker-market franchise" and their ability to control their book of business, Mr. Jarvis said.

Today, there are fewer reinsurers on most treaties, so there is less of a need for multiple brokers, he noted. Bigger reinsurers also increasingly will demand a bigger slice of profitable treaties, he added.

"The more the reinsurance market consolidates, the less you need brokers," agreed Mr. Pagnanelli.

Broker consolidation is not without its benefits, though, some reinsurance executives say.

"We see a lot of benefits of broker consolidation," said Steven J. Bensinger, president of Chartwell Re Corp. of Stamford, Conn. "It allows us to become closer to a small number of brokers."

At the same time, broker consolidation can create a business risk in that a greater percentage of an underwriter's business is coming from a few megabrokers, said Richard E. Cole, chairman and CEO of Chartwell Re.

That is why it's important for reinsurers to increase in size themselves, he said. "In a way, broker consolidation is a factor that drives reinsurer consolidation."

"One also mitigates the business risks of this concentration by building stronger relationships with fewer intermediaries," noted Mr. Bensinger. In turn, the brokers will become a more efficient distribution system, he said, by knowing their markets better.

Consolidation also is making the brokers more efficient, according to Mr. Bensinger. "There's too much cost in the current distribution system."

The large brokers will be able to offer more resources and better services to their clients, said Hady Wakefield, chairman of Guy Carpenter & Co. Inc. in New York.

"Clients look for and expect far more sophisticated financial advice than reinsurance brokers have previously given," he said.

Guy Carpenter, the reinsurance arm of Marsh & McLennan Cos. Inc., grew significantly bigger through its merger earlier this year with Willcox Inc., the reinsurance arm of Johnson & Higgins.

During the week of the Rendez-Vous, it was rumored that Guy Carpenter would become even bigger through M&M's purchase of both Jauch & Huebener KGaA in Hamburg, Germany, and G.J. Sullivan Co. in Los Angeles.

However, late last week Aon emerged as the apparent winner in the bidding for the German broker.

The consolidation among reinsurance brokers will give more clout to the brokers that remain, Mr. Wakefield said. "In a soft market like this, clout is very helpful, but it would be wrong to take irresponsible advantage of that," he said.

The large reinsurance brokers will have greater influence in the market, agreed Ronald A. Iles, chairman of Aon Re Worldwide Inc. Aon also grew over the past year through the purchase of Alexander & Alexander Services Inc. and Minet Group.

"It gives us a good entry to clients and it gives us a certain leverage po-

tential," Mr. Iles said.

Aon has become stronger and the companies it has bought now have more resources available as a result of the mergers, Mr. Iles said.

Additional broker consolidation likely will continue, he added. "We are still looking at consolidations in a small way," Mr. Iles said.

Small brokers that remain independent may prosper, but they will have to be sharp and efficient, said Mr. Duffy of St. Paul Re. "The small brokers will have to specialize and they will have to understand what they bring to the market. They will have to be small and swift," he said.

Significant future broker consolidation would be detrimental for reinsurers, said John Berger, president of F&G Re Inc. in Morristown, N.J.

The remaining few brokers would control so much business that their negotiating position would be greatly enhanced, he said.

"The company consolidation, I think, will continue, but on the broker side, I hope not," Mr. Berger said.

Currently the relationships between individual brokers and underwriters will help prevent a serious imbalance of negotiating power, said Mr. Dowd of Odyssey Re.

"In the reinsurance world there is some direction from head office but the day-to-day decisions are made by the individual brokers and they are based on their relationships with underwriters," he said.

Small broker-market reinsurers may be affected by the broker consolidation as the large brokers will "turn the tap," said Dirk Lohmann, chief executive officer of Zurich Re, a unit of Swiss-based Zurich Insurance Co.

"But it won't have a great impact on the large reinsurers because those reinsurers have a relationship with the client even if it's through a broker channel," he said.

Consolidation among reinsurers also may have its downside, some ex-

ecutives say.

The concentration of the market in the hands of a few companies was likened to an oligopoly by Mr. Pagnanelli of Generali.

"Maybe 60% to 70% of the market is in the hands of four or five reinsurance groups. This presents a concern for buyers," he said. With so few companies controlling so much business, there may be a risk that they could dictate terms that the rest of the market must follow, he said.

The planned merger of Credit Suisse Group with Winterthur Group also may have negative implications for the market, Mr. Pagnanelli said. "It is the first, but there will be others," he said of bank/insurer mergers.

"Finance and life insurance have some similarities, but finance and the P/C business does not make sense—it's perplexing," he said.

Such a merger raises questions about the influence of the banking side on the insurance operations, said Mr. Pagnanelli. "Who would take responsibility to decide where to invest capital—by buying shares or taking more risk?" he questioned.

A bank/insurer combination also risks exposure to losses on two fronts, he said, pointing to a commercial business that borrows from the bank/insurer and is insured by it.

Industry consolidation may create concern "about displacement that takes place and disruption of relationships," said William J. Adamson, chief executive officer of CNA Re in Chicago. "When change happens, it's either an opportunity or you're under fire, because clients like stable support."

"Lots of good people are on the street due to consolidation. So many people and a lot of talent," observed Michael J. Caley, chief executive officer of reinsurance broker Kininmonth Lambert Ltd. of London. The silver lining from this situation, though, is that "it's fertile" for recruiting new people and teams, he added. **BI**

## Mission veterans fête end of reinsurance battle

By PAUL D. WINSTON

MONTE CARLO, Monaco—Ten years after Mission Insurance Co. entered liquidation, a group of 19 European reinsurers, their attorneys and auditor gathered in France recently to celebrate the end of their battle to avoid liability for claims from Mission's liquidator.

After years of costly and contentious legal wrangling with Mission's liquidator, the reinsurers last year won a California Court of Appeals order compelling a trial court judge to uphold an arbitration panel's 1995 ruling that found the reinsurers owed nothing to the Mission estate (*BI*, Sept. 23, 1996).

The celebration was held at Le Grand Hotel in St. Jean Cap Ferrat, France, on Sept. 10, during the annual Rendez-Vous de Septembre in nearby Monte Carlo.

"The sad case is that some reinsurers were bullied into paying 100 cents on the dollar early on," observed R. Gaylord Smith, a partner with Lewis, D'Amato, Brisbois & Bisgaard L.L.P. of San Diego. Mr. Smith and Ernest Slome, also a partner with Lewis, D'Amato, were the trial attorneys for the 19 reinsurers.

Lead counsel for the reinsurers were Luke Lynch Sr. and John Higgins, both partners with D'Amato & Lynch in New York.

The California Insurance Department in December 1986 sued 145 reinsurers of Mission and its subsidiaries for more than \$1.2 billion in unpaid recoverables and punitive

damages, alleging with bad faith.

The department argued that Mission's difficulty in collecting payments from reinsurers was a major factor holding up a financial bailout plan designed to prevent a liquidation of the insurer. Mission ultimately entered liquidation in March 1987.

Among those reinsurers that had balked at paying claims, the group of 19—all of which were participants in a treaty reinsurance pool managed by Pacific Reinsurance Management Corp., a unit of Mission—had denied liability on numerous grounds, including that PRMC had defrauded them, misrepresenting the types of business written by the pool, among other charges.

Their challenge was prompted by an audit conducted in 1984 by Benedicte Dollfus of Paris-based Corifrance, or Cie. de Reassurances d'Ile de France.

"Mademoiselle Dollfus' audit uncovered significant irregularities," said Mr. Slome.

Her audit prompted a liaison committee for the group to hire Norman Reitman & Co. of New York to conduct a more in-depth audit of the PRMC pool, according to Mr. Slome.

The Reitman audit found evidence of unauthorized treaties, among other things.

"Everything, underwriting information, right from the beginning, was wrong," said Norman Reitman, president of the firm.

He said the Mission case demonstrates the importance of preventive auditing by pool members, rather

than waiting until a problem blows up.

"Pool members never want to do preventive auditing, because they don't like lawyers and accountants," he observed. "But if they had..."

Despite the legal costs and challenges, the 19 reinsurers hung together throughout the 10-year battle.

Communication was a critical factor in keeping the group together, said Mr. Slome. The attorneys communicated with the liaison committee on a weekly basis, and almost daily with the committee chairman. In addition, the 19 met annually.

What galvanized the 19 companies' resolve to fight, according to Mr. Smith, were efforts by the liquidators and Karl L. Rubinstein, a partner with Rubinstein & Perry who represented the liquidators, to "bully them" into paying full amounts in spite of the reinsurers' charges of fraud and misrepresentation.

Through it all, however, the reinsurers' attorneys gained a grudging respect for the tenacity of their opponent, Mr. Rubinstein.

"He collected over \$1 billion. It was an effective strategy" for Mission's policyholders, said Mr. Smith.

However, he added, if the reinsurers proved their allegations of fraud, "was it right that he got all that money for the policyholders from the other

reinsurers?"

The reinsurers are: Alphega Insurance Ltd.; Caisse Mutuelle d'Assurances et de Prevoyance; Caja Reaseguradora de Chile S.A.; Corifrance; Copenhagen Reinsurance Co. Ltd.; Deutsche Ruckversicherung A.G.; Gjensidige Norsk Skadeforsikring; Lansforsakringsbulagene A.B., parent of Stockholm Re; Legal & General Assurance Society Ltd.; Monsure Ltd., a Bermuda captive of Monsan-

to Co.; Omsesidiga Sjöforsakringsbolaget Sjöassurancesforeningen and Ursa Jalleenvakuutusosakeyhtio, both now part of Sampo Insurance Co. Ltd.; Pan Korea Insurance Co. Ltd.; Pohjola Insurance Co. Ltd.; La Providence Compagnie; Royale Belge S.A.; Security Insurance Co.; SAI Industrial Insurance Co. Inc.; and Svenska Veritas Insurance Co., now part of WASA International Insurance Co. **BI**



The celebrants included, in the first row, from left to right: P. Lundstedt of Copenhagen Re; B. Dollfus of Corifrance; J. Higgins of D'Amato & Lynch; A.C. Nilsson of WASA; D. Cagnina of SAI; Mrs. Crickx; Mrs. Vernes and E. Vernes of Corifrance. Second row (l-r): R.G. Smith of Lewis, D'Amato; S. Greenfield of Norman Reitman & Co.; J. Haraldstad of Gjensidige Skade; Mrs. Reitman; Mrs. Lynch; and Mrs. Lundstedt. Third row (l-r): J. Crickx of Deutsche Re; T. Olsson of Stockholm Re; Mrs. Bergman; R. Greenfield of Norman Reitman & Co.; B. Lundstedt; and N. Reitman of Norman Reitman & Co.; rear row (l-r): R. Briffod of Alphega; F. Molden of WASA; E. Slome of Lewis, D'Amato; B. Bergman of Sampo; L. Lynch of D'Amato & Lynch; and S. Duner of Stockholm Re.

# Reinsurers watching changes at Lloyd's

By PAUL D. WINSTON  
and GAVIN SOUTER

MONTE CARLO, Monaco—The influx of insurance and reinsurance company capital into Lloyd's of London is raising questions about whether the market will lose its unique qualities.

Some market observers have said Lloyd's will become less a collection of entrepreneurial syndicates and more a collection of insurance companies.

Reinsurance executives attending the annual Rendez-Vous de Septembre, however, generally view the changes in Lloyd's capital base as a positive move that will retain the best

of the old alongside the benefits of the new.

"There is a reaction against change. What makes Lloyd's entrepreneurial is the people. There is a big influx of corporate capital, but they aren't replacing people in the market," said Donald S. Watson, director of reinsurance ratings for Standard & Poor's Corp. in New York.

"Inside that building are 50 to 60 (people who are) real underwriting talents, which the old system encouraged and developed. It's going to take a long time for that talent to dissipate," agreed Michael J. Caley, chief executive of Kininmonth Lambert Ltd., a reinsurance brokerage subsidiary of Lambert Fenchurch Group

P.L.C. in London.

"Munich, Zurich, New York, Chicago would die for that talent," he said of other reinsurance centers around the world.

Corporate capital coming into Lloyd's in the long term theoretically provides a more stable capital base, said William J. Adamson, chief executive officer of CNA Reinsurance Co. in Chicago. Although there is pressure for change in the market, such as moving to annual accounting and ongoing rather than annual syndicates, "Lloyd's still has a great franchise," he said.

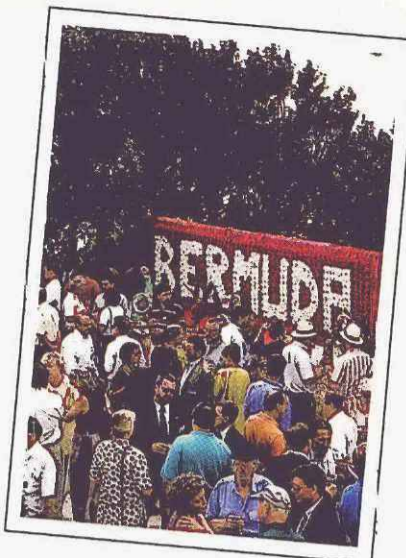
"There's going to be a hybrid of various permutations for some time," Steven Bensinger, president of

Chartwell Re Corp. of Stamford, Conn., said of changes wrought by corporate capital.

"You already see some organizations that are actively replacing the traditional sources of capital and seeking to buy additional capacity at auctions," said Mr. Bensinger. "Those companies are leading the way in creating insurance companies under the Lloyd's umbrella," he said.

On the other hand, there are still managing agencies conducting business "the old-fashioned way," though their numbers are declining, he said.

"We still have 10 syndicates under management and have no plans to combine them," said Mr. Bensinger, referring to Chartwell's 1996 acquisi-



A party hosted by Bermuda's insurance industry was among the many receptions at the Rendez-Vous.

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tion of managing agency Archer Group Holdings P.L.C.

"In today's market, we're not rushing to put our own capacity at risk," Mr. Bensinger said. "We're encouraging traditional sources of capacity to remain in our syndicates."

Given the influx of corporate capital to Lloyd's, "the resilience of the unlimited names is surprising," said David Margrett, CEO of Lambert Fenchurch Group.

Three years after corporate capital first was allowed to enter the market—and one year after the market's reconstruction plan—traditional individual members accounted for 56% of Lloyd's £10.3 billion (\$17.64 billion) in total 1997 capacity.

"I'm amazed at the number of offers I get every week to buy my capacity from managing agents and corporate capacity providers," said Mr. Caley, a Lloyd's name. "I've got something that for some reason other people want."

Mr. Margrett observed that corporate investors have acquired the Lloyd's franchise "rather cheaply, especially considering the value of the worldwide access that is given to corporate buyers."

The good results of recent years have increased the flow of capital in to Lloyd's, said Ronald A. Iles, chairman of Aon Re Worldwide Inc. in London.

"Lloyd's will have a fantastic three years in 1994, 1995 and 1996, so there is no shortage of investor interest," he said.

Lloyd's has added to its stature as a result of its resiliency, Mr. Iles said.

"I don't know of any other market that has survived asbestos, pollution and fraud. It will continue to be a very important market," he said.

Chartwell's Mr. Bensinger said Lloyd's access to global markets was a big factor behind the company's Archer acquisition.

"From a strategic standpoint, we jumped light-years in a single move," he said. "From a shorter-term standpoint, Archer was an opportunity to increase our fee-for-service income."

Not all executives are as sanguine about the changes at Lloyd's.

"Corporate capital may put more pressure on syndicates to bring a return for shareholders," said Bruno Porro, a member of the executive committee of Swiss Reinsurance Co. of Zurich, Switzerland.

"Much progress could be made with better financial management of assets by the old Lloyd's," he said. "Capital and underwriting discipline are a must."

"I've had some clients go to London when they can't get a risk covered on the continent, so there may be an issue of adverse selection," according to Mr. Porro.



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## Lloyd's

Continued from page 50

Conversely, in the past few years, Lloyd's has lost a significant amount of business to continental reinsurers that it will have trouble winning back, said Herve Cachin, chairman and general manager of SAFR Group in Paris.

Cedents have been worried about the security of Lloyd's and moved their business elsewhere, he said.

"They are still in a profitable position for marine, aviation and catastrophe business, but for other business they have to recover their credibility," Mr. Cachin said.

The changes the new corporate capital will bring to Lloyd's are still unknown, said James Duffy, president of St. Paul Re.

"There is new capital and new forms of capital that have not been tested yet," he said.

The new capital finds insurance and reinsurance an attractive investment now, but it is still not known whether the capital will remain in the market if Lloyd's suffers significant losses, Mr. Duffy said.

Lloyd's still is evolving and will have to evolve further as the world market changes, said Kate Sliwiska, director of Eastgate Insurance Services Ltd., a London runoff company.

"It's like the British monarchy: They both have to change, and timing is critical," she said.

The new corporate investors will not be satisfied with losses or very small returns, Ms. Sliwiska said.

"Their expectations are far higher than those of the individual names. They want returns on their money,

and they are not going to stick around if Lloyd's is not going to make a profit," she said.

Rather than the introduction of corporate capital, "A bigger threat to Lloyd's is that they need to reduce costs and efficiency," said Mr. Margrett of Lambert Fenchurch. "Lloyd's needs to lower its costs of capital," he added.

Lloyd's also needs to maintain its entrepreneurial spirit, said John R. Berger, president of F&G Re Inc.

F&G Re has bought a managing agency in Lloyd's, and the U.S. parent is anxious that the Lloyd's entity maintains its distinct underwriting culture, he said.

However, there is a danger that some other corporate-owned syndicates in Lloyd's may lose their unique flavor and that the corporations will impose their own cultures on the syn-

dicates, Mr. Berger said.

"There is a risk that some of the larger syndicates may become average insurance companies," he said.

"A lot of companies are not going to utilize all their capital and ease back on stamp capacity" while market conditions are soft, said CNA Re's Mr. Adamson. "There's not going to be much top-line growth this year," he said.

The issue of whether runoff reinsurer Equitas Ltd. will prove to be adequate to the task of assuming Lloyd's long-tail liabilities also is open to some debate.

"Equitas is not a closed book. They may have merely delayed the day of reckoning," said S&P's Mr. Watson.

However, Swiss Re's Mr. Porro noted, "Equitas has improved its return on investments quite significantly." **BI**

## Capital markets spark talk, not action

By PAUL D. WINSTON and GAVIN SOUTER

MONTE CARLO, Monaco—In a reinsurance market flush with capacity, interest remains high in using capital markets to finance risk.

Reinsurance executives say, however, that the level of interest exceeds the number and size of financial deals actually being done on the insurance side.

What's driving interest in capital market financing is the possibility of inadequate capacity in the market for a serious catastrophic event, though there has not yet been a catastrophe of a size to prove that theorem, noted Steven J. Bensinger, president of Chartwell Re Corp. of Stamford, Conn.

"The market lulls itself into a false sense of capacity," he said.

"There's more insured values worldwide, including development throughout the third world, not just in the U.S.," Mr. Bensinger said. "What's the U.S. industry's capitalization? \$250 billion? You can have a \$100 billion loss event, according to the cat models," he said.

There's a lot of interest in catastrophe bonds, though activity has been modest, said David Jarvis, global head of financial institutions for Salomon Brothers Inc. in New York.

Contrary to some fears, Mr. Jarvis said, the securitization of risk and other capital market innovations will not threaten traditional reinsurers. The savings and loan or building society does not disappear because mortgages are securitized, he noted.

In addition, the expertise of the reinsurer still is needed to price a cat bond, he added.

Capital markets products will likely find a place in the marketplace, but they still are evolving, said James Duffy, president of St. Paul Re in New York.

"It's slow taking off, and the products are specialized, but in the long run they will have a bearing on the marketplace," he said.

Late last year, St. Paul set up a special purpose vehicle called Georgetown Re, which is backed by capital markets investors. Georgetown Re enables St. Paul to increase its capacity for short-term property risks.

The facility allows reinsurance buyers to increase their capacity through the purchase of more reinsurance from a highly rated reinsurer rather than seeking additional reinsurance from less well-rated reinsurers, Mr. Duffy said.

Guy Carpenter & Co. Inc. took a lead in the research of capital markets products more than two years ago, but the products have not yet taken off, said Brandon Sweitzer, president and chief executive officer.

While the demand for capital markets products so far has been limited, the groundwork for future success now is in place, he said.

Guy Carpenter, for example, has established a catastrophe index that the newly established Bermuda Catastrophe Exchange will use.

See **Capital** on page 54

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# Finance

Continued from page 50

"The index has to be seen to work. People have to realize that it is transparent, and they have to learn to include it in their language. That will take a bit of time," said Hady Wakefield, chairman of Guy Carpenter.

The success of a few capital markets products shows that the investment market is beginning to open up to the products, said Dirk Lohmann, chief executive officer of Zurich Re, a unit of Zurich Insurance Co. in Zurich, Switzerland.

Mr. Lohmann was involved in the development of capital markets products at his previous employer, Hannover Re Group.

"There is a greater comfort with the concept," he said.

Zurich Re will seek to develop some capital markets products for clients seeking alternative capacity, Mr. Lohmann said.

A market for catastrophe bonds will take some years to develop, "because investors aren't used to this type of risk yet," said Bruno Porro, a member of the executive board of Swiss Reinsurance Co. of Zurich. "With a choice between a junk bond and a cat bond, they'll likely choose the junk bond," he said.

Nevertheless, the Swiss reinsurer recently made its first foray into transferring catastrophic risk to the capital markets with a bond deal tied to its purchase of \$112.2 million in California earthquake reinsurance coverage (BI, July 28).

For now, the friction costs are high in the capital markets, said one U.S. reinsurance executive who asked not to be identified. Even so, he suggested that capital markets eventually may have the most success in financing high-layer catastrophe risks.



He estimated insurers worldwide retain about \$5 billion for catastrophe risks. Above that, reinsurers are providing capacity for losses in the \$5 billion to \$20 billion range.

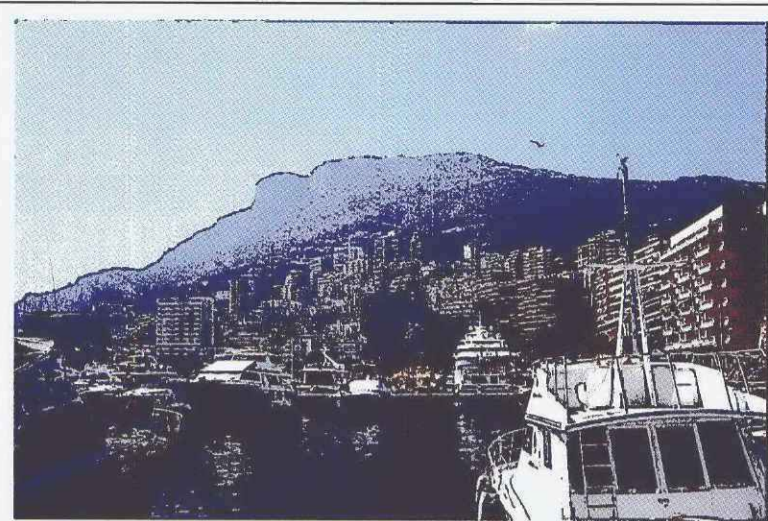
"Capital markets can try to compete in that five-to-20 band, or go for the market excess of \$20 billion," he said. "They'll have a hard time competing with the price and expertise from traditional reinsurers in the five-to-20 band, but above that, it's hard to say," the executive

said. There is little need now for capital markets capacity to supplement traditional reinsurance capacity, said Serge Osouf, president and chief operating officer

of SCOR S.A. in Paris. "There is enough capacity in the market to cover the market's needs. To be able to offer the kinds of returns that investors in the capital markets products are looking for, you need a very hard market," he said.

Also, capital markets products are much more expensive to offer than traditional reinsurance, Mr. Osouf said.

"You need investment bankers, lawyers, you need to redraft the agreement every year and conduct



PHOTOS: PAUL D. WINSTON

Above, the scenery around Monte Carlo, site of the 41st annual Rendez-Vous de Septembre, provides a backdrop for boats at the Port de Monaco, while at left, visitors enter and leave the well-known Cafe de Paris, a site where many attending the meeting gather.

your due diligence," he said.

While traditional reinsurers need to conduct similar work, reinsurance is well-established, and it is an efficient market, Mr. Osouf said.

But for now there has been more talk than action, said James Dowd, chairman and chief executive officer of Odyssey Reinsurance Corp. in New York.

"With the amount of capacity available in the marketplace at the moment, there is not much need for securitized coverage... it will have its place, but it might take five years," he said.

In addition to providing added

protection in the event of a large catastrophe, capital markets risk financing may also help prevent a rapid and dramatic hardening of the market after a loss, one analyst said.

"On the property reinsurance side, the securitization of the risk will have an impact in not permitting the kind of pricing after Andrew and Northridge," said Donald S. Watson, director of reinsurance ratings for Standard & Poor's Corp. in New York.

That benefit justifies the high expenses of the reinsurers currently trying to develop these capital market tools, he said.



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# Improving skills, expertise primary: Panel

Insurers will look to reinsurers with changing needs as they try to provide shareholder value

By GAVIN SOUTER

MONTE CARLO, Monaco—The reinsurance needs of primary insurers are changing.

Rather than simply turning to reinsurers for additional capacity, insurers more frequently are seeking added services from their reinsurers, a panel of insurers and consultants say.

Reinsurers are now expected to provide analytical services, advice on product design, global expertise and tailor-made products, they say.

To meet those expectations, reinsurers must develop their expertise and skills and evolve into high-quality service providers, as well as providing secure capacity, the panelists said at the formal session of the Rendez-Vous de Septembre in Monte Carlo earlier this month.

The reinsurance needs of primary insurance companies are

changing as they are pressed to provide more value to shareholders in an increasingly deregulated environment, said Michael Muth, a director of McKinsey & Co. Inc. in Munich, Germany.

Insurers are growing larger through mergers, facing new risks, a new risk management culture is growing in industry, and insurers are expanding into other markets in search of growth, he said.

"It all comes back to shareholder value," Mr. Muth said.

And insurers are expecting their reinsurers to provide additional skills to help them give their shareholders the extra value, he said.

"A drive for quality and value-added is becoming the critical marketing factor in this market," Mr. Muth said.

In particular, insurers are seeking vastly higher levels of skills from reinsurers that provide non-

proportional, facultative or alternative transfer reinsurance, he said.

"Skills will be more important than capital... capital cannot win the competitive battle; skills can

ers, agreed Bernd Michaels, president of the German Insurance Assn. and head of Provinzial Versicherungsanstalten der Rheinprovinz, an insurance company in Dusseldorf, Germany.

**'In the future, a reinsurer will have to know a good deal more about its cedents' market behavior and sales channels than was previously the case,' says Bernd Michaels.**

because they provide value to customers," he said.

Already, there is nearly twice as much capital available in the worldwide reinsurance industry than is needed to cover the risks to which reinsurers are exposed, Mr. Muth said.

To offer the increased skills that insurers are demanding, reinsurers will have to embrace a new culture of professionalism, he said.

Those that don't eventually will be forced out of the market, and the remaining reinsurers will mainly be large, leading reinsurers and small specialized companies, Mr. Muth said.

"And the large leaders will not be broad-based; they will have the resources to specialize themselves, and they will be multispecialists," he said.

Reinsurers are beginning to follow the path investment banks followed in the late 1980s and early 1990s, when the banks "reinvented themselves" and became a skills-driven industry, Mr. Muth said.

Like the investment banks, reinsurers are consolidating into a handful of large global companies; there is beginning to be a similarly brutal competition for high-class staff; and some reinsurers are beginning to use similarly sophisticated analysis as the investment bankers do, Mr. Muth said.

The only investment banking trend that has not yet hit the reinsurance industry is the trend to share most of the profits among the skill-holders rather than the shareholders, Mr. Muth said.

Primary insurers are seeking improved services from reinsur-

ers, agreed Bernd Michaels, president of the German Insurance Assn. and head of Provinzial Versicherungsanstalten der Rheinprovinz, an insurance company in Dusseldorf, Germany.

"Each unit is obliged to take out reinsurance within the group, and the reinsurance unit optimizes the purchase of group reinsurance, taking full advantage of market conditions," he said.

The reinsurers that AXA looks for to take on the risks are ones with "global vision," Mr. Kessler said.

"They must have global and local expertise," he said.

They also must have leading-edge expertise, imagination and the technical capability to produce tailor-made products at a reasonable cost, Mr. Kessler said.

And they must be prepared to enter to long-term relationships with cedents, he said.

Reinsurers in the future will have to work even harder to show cedents that they provide added value as well as capacity, said John J. Kriz, managing director of Moody's Investors Service Inc. in New York.

"Cedents are looking for solutions and to be made aware of challenges they may have been blissfully unaware of. Reinsurers which can do this, and deliver the means to address the challenges, will find themselves with happy clients seeking them out," Mr. Kriz said.

Successful reinsurers also will have to use technology to speed response times and help cedents fundamentally reduce costs, Mr. Kriz said.

"Simply putting PCs on the desks won't do," he said.

But despite providing added values, successful reinsurers still will have to underwrite successfully in order to prosper, Mr. Kriz said.

"The pre-eminence of underwriting and accumulation management will become more apparent when financial markets weaken and investment returns do not provide the profit support they have in recent years," Mr. Kriz said.

Peter Lutke-Bornefeld, chairman of the board of executive directors of Cologne Re, moderated the session. **BI**

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## Attendance numbers down, but level of drop disputed

MONTE CARLO, Monaco—Official and unofficial observers for once agreed there were fewer people at the Rendez-Vous de Septembre.

But the level of the dropoff from last year was wide open to debate.

According to the official figures, 2,321 people registered for the 41st Rendez-Vous, down 29 from last year.

Attendees came from 83 countries, with the largest contingent coming from the United Kingdom, with 576 people, and then France, with 411. More than 200 traveled from the United States to the meeting.

But despite the official figures,

many attendees, as usual, speculated that the drop in numbers was even larger. Or perhaps fewer people came for the entire week.

Whatever the reason, attendees certainly had less trouble securing tables in the Cafe de Paris or the bar and lobby of the Hotel de Paris, the two main meeting points of the Rendez-Vous.

For information on next year's Rendez-Vous, to be held Sept. 7-11, 1998, contact Rendez-Vous de Septembre, Centre de Congres Auditorium de Monaco, Boulevard Louis II, Monaco, MC 98000; phone: 377-92-16-6050; fax: 377-91-16-6135.



A figure on the Casino of Monte Carlo.



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## Employers more at ease with partner benefits: Expert

By MICHAEL BRADFORD

ATLANTA—Employers are becoming more comfortable offering domestic partner benefits and are realizing it's not as big a financial concern as once feared, according to a legal expert on domestic partner issues.

Employers first "dribbled onto domestic partnership benefits" that first appeared in the early 1980s, then "jumped on the bandwagon, and now it's a train steaming down the line and gathering momentum year after year," said Thomas F. Coleman, an attorney and executive director of the Spectrum Institute, a Los Angeles-based organization that works to overturn laws and business practices that discriminate against unmarried people.

Mr. Coleman, speaking at the Self-Insurance Institute of America Inc.'s annual conference in Atlanta earlier this month, pointed out that three years ago, about 200 public and private employers offered domestic partner benefits. "There are now over 600."

In recent months, several large employers have begun offering the benefits, Mr. Coleman noted. High-technology firms, oil companies and banks are among them.

"Why are large companies doing this?" he asked. "Obviously corporations are not in business to just throw money away."

One reason for offering the benefits is to satisfy workers, Mr. Coleman said. Employers also have to respond to competitors offering the benefits, and there is the threat of lawsuits by workers who feel they are being treated unfairly if they don't get the same benefits as married co-workers.

Companies that decide to offer



domestic partner benefits should not fear being saddled with heavy costs, according to Mr. Coleman.

He referred to a 1994 research paper compiled by Hewitt Associates L.L.C. that indicates that "contrary to warnings and predictions by insurers and others, extending coverage to domestic partners has not resulted in statistically significant differences in cost."

In fact, the research says, "experience indicates the cost of domestic partner benefits is lower than was anticipated. Part of the lower cost can be attributed to the fact that eligible employees tend to be younger and, as a result, healthier."

Costs are lower than expected also because enrollment rates generally are only as high as around

2% to 3%—and in many cases less than 1%, according to the Hewitt research.

Mr. Coleman pointed out that enrollment rates are low partly because domestic partner benefits in most situations are taxable under federal law.

He said employers have worried they would be providing expensive benefits to AIDS victims but have found that risk is not as great as perceived, because "people basically are living a monogamous lifestyle... and there just isn't the problem people anticipated."

The cost of treating AIDS cases has fallen to a total of about \$100,000 per case, he noted, much lower than the cost of care for conditions such as high-risk pregnancies that heterosexual couples can experience.

Employers also are seeing that fears of fraud related to domestic partner benefits are unfounded, Mr. Coleman said.

"There are restrictions that are built in that help prevent fraud and abuse," he noted.

Partners generally are required to sign affidavits, for example, that indicate they are in a committed relationship and are responsible for each other's welfare. Some employers offer the benefits only to couples who live together.

Mr. Coleman said the studies he has seen from consulting firms

See **Benefits** on next page

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# Benefits

*Continued from previous page*  
that have examined companies offering domestic partner benefits have not uncovered any fraud or abuse by employees receiving the benefits.

But not all employers are comfortable with offering the benefits. Employers in Hawaii are challenging a state law that took effect earlier this year and forces them to provide health care benefits to anyone an employee deems a "reciprocal beneficiary."

The beneficiary does not have to have a connection with the employee and is not required to live in Hawaii.

Employers are claiming in a lawsuit that the law creates a legal, financial and administrative nightmare (BI, July 21).

Employers also are waiting on a

ruling by Hawaii's Supreme Court that will determine whether gay couples can marry in the state.

Mr. Coleman also pointed out that the Hawaii Legislature has agreed to put a constitutional amendment on the 1998 ballot that would let voters decide whether to allow same-sex marriages.

That means a court ruling that says the marriages can take place could induce couples throughout the country to travel to Hawaii, where they could be married before the opportunity potentially vanishes if voters reject it on the November 1998 ballot.

Mr. Coleman said such a "window of opportunity" could bring tens of thousands of people to Hawaii to be married.

That could present a dilemma for employers when those couples return home to other states and present a marriage certificate and

a demand for non-taxable benefits that heterosexual married couples receive, he noted.

If that scenario occurs, "everyone is going to be in the middle of the issue," Mr. Coleman predicted. Employers, unions and state governments suddenly will find themselves dealing with how to recognize the marriages and provide benefits, he said.

Employers will be faced with a demand by the federal government, which does not recognize same-sex marriages, to tax the benefits, Mr. Coleman said. "The employee or the union may wind up suing the company and the federal government to have this decided. So there will be litigation going on all around the country for years if this happens in Hawaii."

Rick Lyons, vp-sales at ING Medical Risk Solutions in Atlanta, moderated the session. **BI**

# About 1,900 travel to SIA conference

ATLANTA—The Self-Insurance Institute of America Inc. drew about 1,900 participants to its 17th Annual National Educational Conference & Expo in Atlanta earlier this month.

The expo, held Sept. 9-13 at the Atlanta Hilton & Towers, featured a number of seminars with topics that drew third-party administrators, benefit and risk managers, human resources managers and others to the conference rooms.

The five-day event kicked off with a golf tournament just outside Atlanta and ended with meetings and industry roundtables open only to SIA members.

Next year's conference is scheduled for Sept. 22-26 in San Francisco.

More information is available from the SIA at P.O. Box 15466, Santa Ana, Calif. 92735-0466; 714-261-2553, fax: 714-261-2594.



# Mutual

*Continued from page 1*  
servers say the most likely buyer of MBL is one of the large mutual insurance companies, such as The Prudential Insurance Co of America, Metropolitan Life Insurance Co. or John Hancock Mutual Life Insurance Co.

Other candidates include industry "consolidators," such as Conseco Inc., GE Capital Services Inc. or American General Corp.

The companies mentioned either had no comment or did not return calls.

The block of business is likely to sell for \$750 million to \$1.5 billion, estimated John L. Ward, CEO of Cincinnati-based Ward Financial Group.

Company rehabilitators filed an official plan of rehabilitation for court approval in 1992 (BI, Aug. 10, 1992, Dec. 14, 1992), and an amended court-approved plan went into effect in 1994. The plan transferred the insurer's assets and liabilities to MBL Life Assurance Corp., a new company.

The plan, however, sparked appeals from policyholders and unsecured general creditors over several issues. A settlement was reached in December 1996 and became final in February. Among other provisions, it called for unsecured creditors and policyholders, including pension plan participants, to share on a 70/30 basis any future value of MBL after the company emerges from rehabilitation in 1999 (BI, Dec. 9, 1996).

Not all of the original Mutual Benefit is now left. Shortly after it was put into rehabilitation, Mutual Benefit announced its plan to sell its group health, accident and life business, which had generated more than \$1 billion in revenues in 1990, to AMEV Holdings Inc., a New York-based company owned by Dutch and Belgian insurers.

In 1992, Hartford Life Insurance Co. agreed to assume and reinsure the insurer's corporate-owned life insurance business, which had produced \$1.1 billion in 1990 premiums (BI, May 18, 1992, Nov. 2, 1992).

Mutual Benefit also has about \$2 billion worth of guaranteed investment contract business, but in a separate account, said a spokeswoman. Under the rehabilitation plan, a group of 14 life insurance companies guarantee this business in exchange for managing its assets.

"It's not likely all of it would go in a sale," she said, adding the contracts' disposition would be determined on a contract-by-contract basis, although "it's anticipated

that most of those contracts would be paid out at the end of 1999," when the rehabilitation period is now scheduled to end.

MBL's remaining business includes a little more than \$3 billion in pension liabilities, primarily tax-deferred annuities, and \$2.7 billion in individual liabilities, primarily life insurance, said the spokeswoman.

Among the options MBL considered was a joint venture or emerging as a stand-alone entity after the rehabilitation period ends. "The indications we had, based on our initial analysis, are that a sale would probably be the optimal result for various stakeholders, including policyholders" so Goldman Sachs was engaged "to see whether there's a buyer out there," said the spokeswoman.

MBL "may have more value sold off as a block of business" rather than trying to grow or to regain its status as a major mutual life insurance company by producing a lot of business, said Larry Brossman, executive vp of Duff & Phelps Credit Rating Co. in Chicago.

"The Mutual Benefit name probably isn't very good in the marketplace any more," he said, adding, "There have been very few examples—almost none—of companies that have gone through insolvency and come forward as ongoing enterprises."

The MBL spokeswoman, who refused to say whether any potential buyer has expressed interest so far, said the company expects to have identified a buyer by the first quarter of 1998. Approvals still would be needed to complete the deal, including those of the New Jersey Commissioner of Banking and Insurance, the National Organization of Life and Health Insurance Guaranty Assns., reinsurers, certain creditors, and the New Jersey Superior Court.

A sale could mean the rehabilitation plan ends earlier than originally scheduled, she said. "We're not saying that if we find a buyer that the sale would necessarily mean that the rehabilitation plan would end sooner than that. It might, but it's too soon to tell for sure," the spokeswoman said.

She noted one consideration is that under the rehabilitation plan, there continue to be ongoing restrictions on policyholder access to funds. A policyholder cannot withdraw money without incurring a penalty of a little more than 16% this year and a little more than 10% in 1998. "That would end if the rehabilitation period ends," she said, adding this issue will not be resolved until a buyer

is identified.

She noted these restrictions have enabled Mutual Benefit to rebuild its asset base. "When Mutual Benefit went into rehabilitation, over 50% of our assets were in real estate-related investments. With the ongoing restrictions on

funds to policyholders, they're also getting interest rates less than the market, and that's enabled us to have the time to reduce our real estate assets gradually and reinvest in investment-grade corporate bonds" rather than to sell Mutual Benefit's real estate holdings in a "fire-sale atmosphere."

According to MBL's statutory balance sheet as of Dec. 31, 1996, of MBL's \$14.37 billion in admitted assets, the largest single portion, \$5.62 billion, is in bonds, with only \$5.9 million in mortgage loans on real estate and owned real estate.

A cooperative economy, including a revived real estate market and relatively low interest rates, has helped Mutual Benefit's rehabilitation process, observers say.

The economy has been "very nice" to Mutual Benefit the past few years, said Mark Puccia, managing director at Standard & Poor's Corp. in New York.

There has been a "substantial rebound in the real estate marketplace, which has increased the value of their portfolio as well as provided liquidity, so that they can divest the properties they no longer find viable," said Mr. Puccia. "And so as a result, you've seen their real estate mortgage holdings decline significantly, and they've been able to grow their surplus."

Larry Mayewski, senior vp at A.M. Best Co. in Oldwick, N.J., said the rehabilitation can be considered "successful" from the perspective that the organization has strengthened its solvency.

"That's not to diminish that policyholders received less value than expected and obviously were restricted from taking certain actions they might have wanted to take," Mr. Mayewski said.

The Mutual Benefit spokeswoman said among the insurer's likely attractions to a buyer is "we have 450,000 policyholders, we have capital of almost \$500 million, we have internal expertise in policy administration and customer service (and) asset management, we still have a relationship, although we don't have a field force...with former agents of Mutual Benefit."

Observers say the business should appeal to buyers seeking to boost their market share. "They have the potential to be a very attractive investment play for some acquirer who's looking to consolidate and get economies of scale," said S&P's Mr. Puccia.

Mr. Brossman, who anticipates the company will quickly find a buyer, said, "There are a lot of people who are paying a big premium for size."

There are going to be a "few gorillas" in the business, and there are 30 to 50 insurers in the business who "want to be one of those gorillas, and that means size."

"There's a lot of consolidation activity," said Francis deRegnancourt, an analyst with Moody's Investors Service in New York who also anticipates the company will be sold soon.

"You've seen it all over, so there are plenty of people out there who are full-time looking for properties, looking for blocks (of business), since everything is selling like hot cakes."

S&P's Mr. Puccia said one potential drawback is a statement by New Jersey Commissioner of Banking and Insurance Elizabeth Randall, who must approve a deal, that she would consider the impact of any sale on the Newark business community and the company's employees in the Newark office.

Any purchaser will probably "have to retain some level of employment in Newark, and (yet) the best way to maximize financial value is to cut expenses," said Mr. Puccia, "so that's the balance they're going to have to play." He pointed out, however, that Prudential's corporate headquarters are in Newark.

Another consideration is the lack of a sales force, say observers. "A buyer obviously is buying a book of business, really, without a distribution system, so you would assume it's somebody who already has the distribution system in place," said analyst Gloria Vogel, senior vp at Advest Inc. in New York.

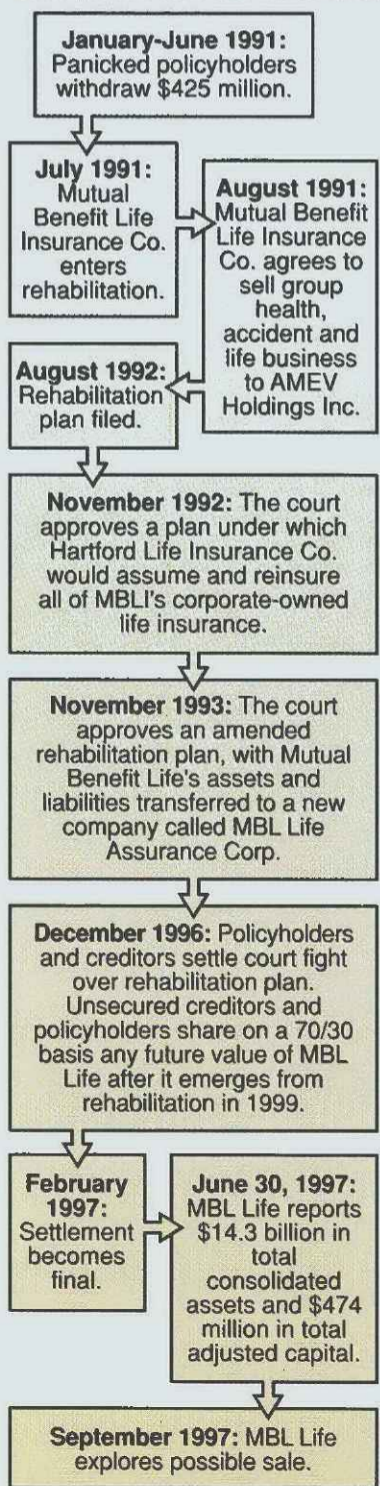
Some of the larger mutual insurers might find an MBL acquisition to be a "seamless" transaction in terms of integration, allowing them to attain some additional scale and improve the dynamics of their own in-force block of business, said A.M. Best's Mr. Mayewski.

This "seems to be the more logical path, although it's not unimaginable that another buyer could come in outside the large mutual group" and also find the in-force book of business' profitability attractive, Mr. Mayewski said.

However, Mr. Ward believes one of the "consolidators" is a likely candidate.

"It would be desirable primarily to those companies that are the consolidators in the industry who expand their operation by acquiring blocks of business and administering profitably companies that are not heavily reliant on agents or distribution systems," said Mr. Ward.

## Mutual Benefit Life's journey to the brink and back



GRAPHIC BY JOHN HALL

# Doctrine

Continued from page 2

bar coverage as long as the policyholder knew it potentially could be held liable for the earlier loss, the overturned decision had held.

The insurers involved in the case have asked the full 3rd Circuit on Sept. 10 and 11 to reconsider the panel's decision. Among the insurers from around the world involved in the case are Allianz Insurance Co., a subsidiary of Allianz A.G. Holding; Employers Insurance of Wausau, a subsidiary of Nationwide Group; Insurance Co. of North America, a subsidiary of CIGNA Corp.; Travelers Indemnity Co., a subsidiary of Travelers/Aetna Property Casualty Group; and underwriters at Lloyd's of London.

The 3rd Circuit panel's decision, which relied heavily on a 1995 California Supreme Court decision and two 2nd Circuit rulings, is the most expansive and persuasive decision on the "known loss" issue, policyholder attorneys said. While the ruling sets precedent only for 3rd Circuit federal district courts in cases that require the courts to interpret New Jersey law, policyholder attorneys expect the decision will be influential around the country.

Insurer attorneys disagreed. Even so, one insurer attorney said the decision is more dangerous for insurers than were earlier policyholder victories on this issue. That is because insurers maintain that policyholder liability in the 3rd Circuit case was far less speculative than was policyholder liability in the earlier cases, explained Neal M. Glazer, a partner with D'Amato & Lynch of New York. Mr. Glazer represents several insurers in the case, including Lloyd's underwriters.

Still, policyholder attorneys say the decision is not a total victory for policyholders, because the court still gives credibility to the "known loss" doctrine.

The doctrine, sometimes referred to as the "known risk" and the "loss in progress" doctrines, is meant to ensure insurers' fundamental requirement that losses must be fortuitous. The doctrine is not stated in liability insurance policies, though. Instead, courts have imposed it on insurance contracts as a matter of public policy.

In general, state courts have varied widely in interpreting the doctrine.

Insurers contend they should be able to invoke the doctrine if policyholders are substantially aware of a risk of loss at the time they purchase coverage.

Policyholders contend that if the doctrine were applied so broadly, then policyholders would have little chance of ever recovering insurance for losses.

"It's almost always possible for an insurance company to say you knew there was a risk, just by the virtue of the fact that you decided

to shell out millions for coverage," observed policyholder attorney Robert N. Sayler, who represents Richmond, Va.-based Pittston Co., one of the policyholders involved in the 3rd Circuit's decision.

Pittston purchased an oil storage and transfer facility in New York Harbor in Jersey City, N.J., in 1954. The site likely had been contaminated under previous ownership, court papers say. In addition, three major spills occurred at the site between 1976 and 1983, though Pittston said it cleaned up all three.

A 1979 environmental study Pittston commissioned found that the site, called Tankport, was contaminated.

Pittston purchased comprehensive general liability policies beginning in 1961 and marine liability

**'It's almost always possible for an insurance company to say you knew there was a risk...' says Robert N. Sayler.**

ty package policies from 1978 through 1984.

New Jersey environmental authorities first took action against the facility in 1985, two years after Ultramar America Ltd. and Ultramar Petroleum Inc. purchased Tankport by acquiring a Pittston subsidiary, Pittston Petroleum Co. CASMO P.L.C. of London has since acquired the Ultramar companies.

The regulatory action was triggered by Ultramar's own 1984 environmental study of the site and the company's subsequent decision to close the facility.

Ultramar purchased CGL coverage from June 1982 through June 1984. It purchased marine liability package policies from April 1983 through April 1984.

Attorneys in the case said the cost to clean the site could range from \$2 million to \$30 million. The insurance limits at stake in the case far exceed the companies' potential environmental cleanup liabilities, attorneys agree.

The insurers argue that several factors show the policyholders knew before they purchased coverage that Tankport was contaminated. The policyholders dispute those arguments.

But, even if the policyholders knew about the environmental damage, that damage had not yet resulted in liability or a loss, said Ultramar attorney Steven N. Gersten, a senior associate at Howrey & Simon in Washington.

And, "arguably, the insurers had more knowledge than Ultramar did," said John Heintz, a partner with Howrey & Simon. Ultramar purchased coverage from some of the same insurers that had inspected the site and insured Pittston previously, he said.

Both sides argued that a 1995 New Jersey appellate court decision supported their definitions of the "known loss" doctrine. The federal district court sided with the insurers in a summary judgment.

But, in an opinion written by Justice Timothy K. Lewis, the 3rd Circuit panel sided with policyholders for several reasons.

The underlying basis of the companies' liability, New Jersey's environmental liability statute, was not enacted until 1983. Referring to the California Supreme Court's 1995 decision in *Montrose Chemical Corp. of California vs. Admiral Insurance Co.*, Justice Lewis wrote: "We think the better rule, and the one likely to be adopted by the New Jersey Supreme Court, is that the known loss doctrine will bar coverage only when the legal liability of the insured is a certainty" at the time policyholders purchase coverage.

Referring to the 2nd Circuit's 1995 ruling in *Stonewall Insurance Co. vs. Asbestos Claims Management Corp.*, Justice Lewis explained: "This rule does not undermine the basic concept of fortuity because, in the third-party liability context, the insurable risk is the uncertainty of liability."

Quoting another 2nd Circuit opinion from 1989, Judge Lewis said that applying the "known loss" doctrine more broadly might render moot two other defenses insurers have to deny coverage: policyholder misrepresentation when purchasing coverage, and policyholders' expectations of or intentions to cause a loss.

The 3rd Circuit's decision "basically neuters the doctrine," said Mr. Glazer, the Lloyd's attorney.

But, policyholder attorneys say that the known loss issues at the heart of the 3rd Circuit case are very similar to those underlying the retroactive liability insurance that MGM Grand Hotels Inc. purchased after a deadly fire at MGM's Las Vegas hotel in 1980. After the fire but before liability for the disaster had been determined, MGM purchased liability insurance that retroactively covered the company for its potential liability in the tragedy.

"That's a completely disparate situation," Mr. Glazer asserted. "The MGM insurers knew there already was a loss. Here, my clients sold insurance for unknown losses."

"That's not the point of the comparison," said Mr. Breene, the policyholder attorney not involved in the case.

"Insurers have argued you can't get insurance for a known loss," he explained. That is true if the dollar value of the loss has been established. "If not, it's still something to gamble on, and that's what insurance is all about."

*Ultramar America Ltd. et al. vs. Allianz Insurance Co. et al., 3rd U.S. Circuit Court of Appeals; Nos. 96-5166 and 96-5167.*

## Updates

### Accounting giants to merge

Continued from page 2

Steven P. Norton, a principal with Coopers & Lybrand in London, said no decision has been made on how the two consultants' risk management units will be merged, though he said it would be a "great combination."

The two firms also maintain huge insurance auditing and consulting practices. "This really puts us in a leadership position in life and non-life work," said John Baily, chairman of Coopers & Lybrand's insurance industry practice in Hartford, Conn., noting insurance is Coopers & Lybrand's single-largest industry practice.

### U.K. rail collision insured

LONDON—Losses from the collision of two trains on the outskirts of London last Friday will be the first test of new liability insurance arrangements established by private rail companies following the privatization of British Rail last year.

The packed high-speed passenger train operated by Great Western Railways collided with a freight train as it was heading to London's Paddington station from Swansea, Wales. The collision killed six people and injured scores of others.

The freight train reportedly is owned by the English, Welsh & Scottish Train Co. No coverage information was available for the company as of Friday.

Great Western is one of dozens of passenger rail companies privatized last year. Third-party liability insurance is written by St. Paul International Insurance Co. Ltd., said broker Jardine Lloyd Thompson Group P.L.C. St. Paul offers up to £10 million (\$16.1 million) of coverage to rail companies, but it is not known whether Great Western purchased the full limits.

All privatized rail companies, including Great Western, also buy catastrophe coverage for third-party liability coverage of up to £175 million (\$282 million) through an excess insurance facility created for British Rail in 1994 (BI, Jan. 20).

### EEOC blasts Mitsubishi plant

PEORIA, Ill.—The federal government claims in a new filing that sexual harassment at a Mitsubishi Motor Manufacturing of America Inc. plant was "repeated, routine, generalized, serious, pervasive and known to and supported by management."

In a 68-page memorandum of law filed last week by the Equal Employment Opportunity Commission, the government details what it describes as a "sexually hostile and abusive environment" to which more than 300 women in the company's Normal, Ill., manufacturing plant were subjected over a period of several years.

The EEOC filed the memo in response to Mitsubishi's Aug. 1 motion for partial summary judgment of the government's massive sexual harassment case against the company. In that motion, Mitsubishi said the government should be required to argue each woman's sexual harassment case separately because the company did not allow a "pattern or practice" of sexual harassment.

The EEOC countered, however, that "the environment created by the harassment and the company's role in that environment amounted to Mitsubishi's standard operating procedure." Therefore, "if any sexual harassment case has ever involved a 'pattern or practice' of discrimination under Title VII of the Civil Rights Act of 1964, 'this one does,' the government said.

In the brief, filed in the U.S. District Court for the Central District of Illinois in Peoria, Ill., the EEOC said it already has identified more than 400 male employees against whom allegations of sexual harassment have been made and more than 300 women who appear to have been victims.

Mitsubishi said in a statement that it intends to review the EEOC's filing and look into any new issues raised by the government.

The EEOC filed its sexual harassment case against Mitsubishi in April 1996. It could become the biggest sexual harassment case in the EEOC's history.

### Briefly noted

**EXEL Ltd.** has combined its reinsurance units X.L. Reinsurance Co. Ltd. and the recently acquired Global Capital Reinsurance Co. Ltd. to form one company named X.L. Global Reinsurance Co. Ltd. K. Bruce Connell will be president and chief operating officer. He was formerly executive vp of X.L. Re. . . **American Airlines Inc.** plans to appeal a Miami federal judge's ruling that the airline was guilty of willful misconduct in the December 1995 crash of Flight 965 in mountainous terrain near Cali, Columbia. All but four of 163 people on board were killed. The ruling means the airline is not shielded by the international limits on airline liability. American also said it plans to sue Honeywell Inc. and Jeppesen Sanderson Inc. for their roles in developing and manufacturing the plane's navigation equipment and computer software. . . California's chief regulator of health maintenance organizations, **Commissioner of Corporations Keith Bishop**, announced last week that he will resign from his post for personal reasons just four months after winning a bruising confirmation fight. . . A.B. 594, a measure aiming to reduce costly **construction defect litigation** in California, passed the Legislature last week (BI, Sept. 15). . . A California Assembly bill seeking to allow employees to use employer-provided **sick leave to care for dependents** will be automatically reintroduced next year because certain legislation in the state has a two-year life span (BI, Sept. 1). A.B. 480 passed the Assembly but was not heard by the Senate before legislators adjourned Sept. 12. . . Three officials of defunct broker **Underwriters Financial Group Inc.** have been indicted on federal charges of defrauding clients, two premium finance companies and UFG stockholders. The indictment names Donald Ferrarini, former UFG chairman; Bruno Rumignani, former executive vp; and Everett Vieira, a UFG financial consultant. Also charged is A. Michael Kagan, a former senior vp of one of the premium finance companies, CPF Premium Funding Inc. Two other former UFG employees have already pleaded guilty to charges stemming from a federal investigation (BI, July 24, 1995).

## Florida eyes hurricane cover

TALLAHASSEE, Fla.—Florida insurance regulators are drafting legislation aimed at changing the way hurricane risks are covered in the state.

Florida Insurance Commissioner Bill Nelson has asked Florida Speaker of the House Daniel A. Webster to consider during fall hearings proposed legislation that would require homeowners insurance companies to cover hurricane losses up to a predetermined limit.

Damages above that predetermined amount would be covered by a newly created Florida Hurricane Facility.

Currently, two residual markets in Florida provide windstorm and hurricane coverage on a first-dollar basis.

Creation of the facility would eliminate the need for the Florida Windstorm Underwriting Assn. and the Florida Residential Property & Casualty Joint Underwriting Assn. to provide

hurricane coverage.

The legislation would amend Florida's property insurance law so that computer-model projections of potential hurricane losses could be used only for advisory purposes.

The proposal also calls for repeal of current provisions in Florida law that allow an arbitration panel to overrule the state insurance commissioner on rate decisions.

—By Michael Bradford

# Jauch

Continued from page 1

Continental European stronghold. Synergies between the two brokers will give the merged company a global business advantage, Mr. Dahms said.

The acquisition by Chicago-based Aon also saves Jauch & Huebener from a significant loss of business if it were to remain independent. Mr. Dahms estimates the brokerage would have lost about 20% of its business—including more than 30% of its retail business—without an international partner.

"The new arrangement is not expected to hurt us," said Jochen Scheele, who heads Jauch's retail business. "We've explained the situation to our clients, and they've signaled support."

Jauch's retail earnings come mostly from brokerage services for industrial and service companies in Germany, Austria and Switzerland. Business is conducted through its main office in Hamburg and branches throughout Germany. It also does business in Hungary, the Czech Republic and Slovakia.

The UNISON network was a key source of international business for Jauch & Huebener. Its large industrial clients were served by Johnson & Higgins in foreign countries, including the United States, while it served the clients of its UNISON partners in Germany and other countries.

"As of today, UNISON is dead," Mr. Dahms said. "Any broker interested in international business has to link up with one of the leading players."

In a statement Aon said it shares a "commercial philosophy" with Jauch & Huebener, placing "particular importance on entrepreneurship in all aspects of business and on interdependence, which encourages resource sharing as part of a global teamwork for the benefit of clients."

In the same statement, Patrick G. Ryan, chairman and CEO of Aon Corp., said: "We are very pleased to have been able to bring together our already strong operations in Germany and Central Europe with those of Jauch & Huebener. This new enterprise will provide superb service for all our mutual clients and wider career horizons for executives and staff who have formerly worked with Aon and Jauch & Huebener."

"This combination further advances Aon's long-term strategy in a most significant way," Mr. Ryan continued. "The new joint enterprise positions us ideally as we now plan together for the development of our business in Europe into the next century."

At a press conference at Jauch & Huebener's

operational center in Muehlheim, Germany, Dirk Verbeek, chairman of Aon Risk Services Worldwide, said that the acquisition strengthens Aon in Europe because Jauch's core business in retail, reinsurance and employee benefits complements Aon's strategy to expand business in all of these lines internationally.

Aon's existing German brokerage and consulting subsidiary, Aon GmbH, has a staff of about 450 and had 1996 revenues of more than 85 million deutsche marks (\$47.8 million) (BI, Feb. 10). It ranked as the fourth-largest broker in the German market, according to Aon.

One key area of interest for Aon is Jauch & Huebener's reinsurance business.

Jauch & Huebener is Germany's leading reinsurance broker, commanding a 75% share of that market. Approximately 13% of its gross revenues in 1996 came from reinsurance brokerage services.

Even without this deal, Aon Re Worldwide is

**'As of today, UNISON is dead,' says Christian Dahms. 'Any broker interested in international business has to link up with one of the leading players.'**

already the world's largest reinsurance broker, with an estimated \$396 million in reinsurance brokerage revenues in 1996.

The most recent acquisition makes Aon Jauch & Huebener a dominant reinsurance broker throughout Europe, as well.

Horst Knaut, a Jauch partner who heads the firm's reinsurance division, estimated that Aon and Jauch & Huebener together will have about a 75% share of the European reinsurance brokerage market, whereas Jauch & Huebener alone had only a 30% share.

Plans for the combined firm's reinsurance operations include the expansion of reinsurance business into Italy, Germany, Belgium, the Netherlands and Switzerland.

The union with Aon also creates Europe's second-largest employee benefits broker, though only about 2% of Jauch & Huebener's revenues were derived from benefits business in 1996.

The link with Aon also will provide Jauch & Huebener with added expertise and know-how in several areas, including alternative risk transfer, Mr. Scheele said.

Jay Cohen, an analyst at Merrill Lynch in New York, said, "Strategically, it makes sense." Jauch will greatly enhance Aon's business in Germany and it will also give Aon a platform for business in Eastern Europe as that market

develops, he said.

Given its track record in growing through acquisition Aon will likely successfully absorb Jauch, Mr. Cohen said.

"They have consolidated so many different types of operations...and you make mistakes early on and learn from them," he said.

The purchase will likely seal the end of the UNISON network, Mr. Cohen said.

"I would expect that other members of UNISON will question their own independence," he said.

John F. Roskopf, Aon's director of financial relations, said the acquisition was a cash transaction, but declined to disclose the purchase price, saying the partners of privately held Jauch asked that the information not be released.

Mr. Roskopf confirmed that Aon won out over other bidders for the German intermediary.

A spokesman for J&H Marsh & McLennan's reinsurance arm, Guy Carpenter & Co., had little to say about the latest Aon acquisition.

"We don't comment on other companies' acquisitions," said Nathan J. Sambul, managing director for marketing communications at Guy Carpenter in New York. "We still think that we hold an outstanding franchise in the world of reinsurance."

Meanwhile, in conjunction with the merger announcement, Jauch & Huebener released more detailed financial figures than the private partnership has previously disclosed.

Jauch's total 1996 revenues amounted to 318 million deutsche marks (\$211.5 million), up 2.6% over 1995 revenues.

For 1997, the company projects a slight decline in revenues to 316.4 million deutsche marks (\$177.8 million). Group profits in 1997 are expected to reach 5.2 million deutsche marks (\$2.9 million).

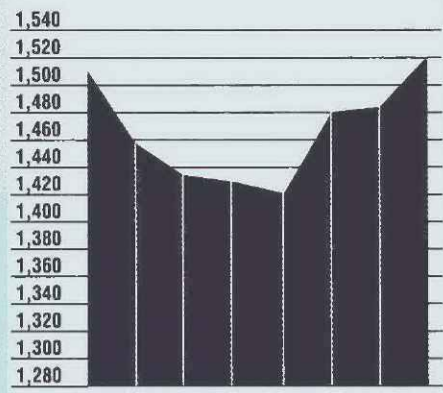
Jauch & Huebener published its revenue break-down for the first time following the merger announcement; BI previous estimated these figures. The company reports that it earns 70% of its revenues from retail, 16% from reinsurance, and 8% from employee benefits. The remainder includes non-brokerage services, such as claims administration and consulting, as well as investment income.

Including Jauch & Huebener's 1996 gross revenues on a pro forma basis, Aon Group Inc. would have \$4.17 billion in gross revenues. Marsh & McLennan had 1996 gross revenues of \$5.46 billion, of which \$1.08 billion was generated by its Putnam Investments Inc. subsidiary.

Aon stock closed at \$53.94 per share on Friday, down from \$54.06 on Thursday before the deal was announced.

Rodd Zolkos contributed to this report.

## BI Insurance Index



Base=100 on Dec. 29, 1978  
Source: Nordby International Inc.

## PCS catastrophe options

As of Sept. 19		Call spread	Price bid/ask	Call spread	Price bid/ask
Eastern September 1997	30/50	-3.5	60/80	5/4.5	National Annual 1997
40/60	-3.0	80/100	4/3.0	Western Annual 1998	
National December 1997	5/25	4.5/6.5	40/60	2.0/2.7	National Annual 1998
10/30	1.0/3.0	40/60	8.0/-	California Annual 1998	
Southeastern September 1997	30/50	-3.0	40/60	1.8/2.4	
40/60	-2.5				
Eastern September 1998	40/60	3.0/4.0			

Total volume: 10 Total open interest: 18,121

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.  
Source: Chicago Board of Trade

## British Issues

Company	Price	P/E	Div.	Yield	1 week
Comm Union	764	11.9	35.8	4.6	772-593
Genl Accident	961	6.6	35.3	4.6	978-673
Gdn Royal Exch	284	4.1	12.2	4.2	311-248
Independent	1151	12.1	14.2	1.6	1150-565
Royal & Sun	546	15.2	19.7	4.5	561-396

Note: Prices are Sept. 19 closings; other numbers from Sept. 18.

Source: Nordby International Inc.

# BI Industry Stock Report

SEPT. 15, 1997, THROUGH SEPT. 19, 1997

BROKERS						INSURERS/REINSURERS						HEALTH MAINTENANCE ORGANIZATIONS											
Company	Price	Weekly % change	Year to date % change	High	Low	Vol.(000)	Company	Price	Weekly % change	Year to date % change	High	Low	Vol.(000)	Company	Price	Weekly % change	Year to date % change	High	Low	Vol.(000)			
Aon Corp.	NYS	53.94	3.85	30.23	56.13	35.00	1062	Everest Reinsurance	NYS	39.25	3.29	36.52	40.38	23.75	570	SCOR	NYS	41.63	0.30	21.09	44.50	34.00	21
E.W. Blanch Holdings Inc.	NYS	29.94	-2.24	46.76	31.13	18.00	120	Executive Risk Inc.	NYS	64.19	5.66	73.48	64.19	33.88	198	SAFECO Corp.	NDO	52.13	1.46	32.17	55.38	34.13	2198
Gallagher Arthur J. & Co.	NYS	36.81	0.00	18.75	37.75	29.13	131	EXEL Ltd.	NYS	60.63	5.21	60.07	62.13	32.68	693	Selbels Bruce Group	NDO	3.50	1.49	3.03	11.25	5.88	92
Hib. Rogal & Hamilton	NYS	16.94	0.37	27.83	17.25	12.13	92	Fremont General Corp.	NYS	45.44	6.13	46.57	47.00	26.38	284	Selective Ins. Group	NDO	53.53	7.06	40.87	54.00	32.75	3
Kaye Group Inc.	NDO	8.38	-6.94	59.52	9.00	4.38	3	Frontier Insurance Group	NYS	37.25	3.29	94.77	37.50	18.13	484	Sphere Drake Holdings	NYS	3.89	0.72	-2.11	10.50	8.50	554
Marsh & McLennan	NYS	77.63	7.91	49.28	78.25	47.50	1884	Gainsco Inc.	NYS	9.63	2.67	0.00	10.88	8.13	303	TIG Holdings	NYS	34.56	6.55	2.03	38.00	26.38	1878
Poe & Brown	NDO	39.50	6.04	49.06	40.25	23.75	10	General RE Corp.	NYS	202.50	1.16	28.37	208.88	140.75	898	Titan Holdings, Inc.	NDO	21.69	2.36	31.44	25.00	13.50	52
Sedgwick Group PLC	NYS	10.06	2.55	-3.01	10.88	9.38	24	Gryphon Holdings	NDO	16.50	3.13	16.81	17.75	12.50	40	Tokio Marine & Fire	NDO	57.25	1.33	22.79	66.00	42.00	115
Willis Corroon Corp.	NYS	10.25	1.23	-10.87	13.50	9.38	626	Guaranty National Corp.	NYS	34.56	15.21	106.34	35.25	15.38	162	Torchmark Corp.	NYS	40.06	1.58	58.66	41.63	22.38	1424
<b>BROKERS</b>	<b>AVERAGE</b>		<b>1.11</b>	<b>29.91</b>				Harleysville Group	NDO	42.88	2.39	40.57	43.00	25.00	112	Transatlantic Holdings	NYS	71.56	0.53	33.35	75.38	44.38	143
<b>INSURERS/REINSURERS</b>								Hartford Steam Boiler	NYS	55.38	0.91	19.41	56.44	42.75	159	Travelers Property	NYS	40.19	-1.98	13.60	43.56	26.63	479
ACE Ltd.	NYS	92.56	7.94	53.95	92.56	46.88	479	HCC Insurance Holdings	NYS	25.63	-0.49	6.77	32.69	21.50	498	Travelers Corp.	NYS	70.69	6.70	55.79	73.63	34.38	8671
Acceptance Insurance Cos.	NYS	24.13	-0.52	22.15	24.75	17.38	140	IPC Holdings Ltd.	NDO	29.53	0.00	31.84	30.50	19.50	307	Trenwick Group Inc.	NDO	31.25	3.11	20.81	39.63	30.75	50
AEGON N.V.	NYS	76.06	2.87	20.26	78.88	49.13	559	ITT Hartford Group	NYS	86.75	6.12	28.52	88.81	56.88	312	Unico American Corp.	NDO	11.50	3.37	5.75	11.50	7.63	46
Aetna Life & Casualty	NYS	104.63	2.57	30.78	118.13	60.13	3176	LaSalle Re Ltd.	NDO	35.25	4.44	20.51	36.13	22.38	93	Unionamerica Holdings	NYS	19.88	-2.45	11.97	22.75	14.75	89
AFLAC Inc.	NYS	55.63	1.25	30.12	57.88	34.00	1025	Life Re Corp.	NYS	50.25	-1.11	30.10	56.00	31.75	101	United Fire & Casualty	NDO	40.25	0.94	14.18	40.50	29.75	12
Allied Group Inc.	NYS	47.50	6.29	45.59	53.63	24.88	69	Lincoln National	NYS	69.94	1.63	33.21	73.00	43.88	852	Unirin	NDO	65.50	3.97	17.49	65.88	47.75	410
Allstate Corp.	NYS	75.63	2.28	30.67	79.94	47.38	5410	MAIC Holdings Inc.	NYS	53.83	2.01	59.04	55.19	30.25	29	UNUM Corp.	NYS	44.38	4.26	22.84	48.44	30.50	1261
AMBAC Indemnity Corp.	NYS	39.81	0.63	19.96	43.00	27.75	866	Market Corp.	NYS	150.03	1.69	66.67	151.00	83.00	13	USF&G Corp.	NYS	23.19	1.92	11.08	25.50	17.00	1121
American Bankers Ins.	NDO	35.75	5.83	39.85	35.75	22.63	265	MBA Insurance Group	NYS	124.94	3.31	23.40	129.06	81.50	674	Vesta Insurance Co.	NYS	57.06	1.82	81.87	58.75	24.50	216
American Financial Group	NYS	46.00	2.22	21.85	49.25	31.25	221	Meadowbrook Insur. Group	NYS	25.03	0.75	19.35	28.00	15.25	43	Washington National	NYS	32.38	1.77	17.73	33.13	27.13	231
American General	NYS	53.19	5.32	30.12	54.75	35.75	3341	Mid Ocean Ltd.	NYS	58.03	0.43	10.48	61.00	39.25	164	Zenith National Ins.	NYS	28.19	-1.31	2.97	26.63	24.63	93
American Heritage Life Ins.	NYS	38.25	2.00	45.71	39.00	19.75	28	MMI Cos. Inc.	NYS	25.03	-2.67	-22.29	32.75	20.75	124	<b>INSURERS/REINSURERS</b>	<b>AVERAGE</b>		<b>2.45</b>	<b>29.45</b>			
American Indemnity/Finl	NDO	13.25	3.92	29.27	14.00	9.50	26	Mutual Risk Mgmt. Ltd.	NYS	51.33	2.11	38.85	52.75	28.25	352	<b>HEALTH MAINTENANCE ORGANIZATIONS</b>							
American International	NYS	104.63	4.95	44.98	107.25	64.63	6053	NAC Re Corp.	NYS	50.00	4.17	47.60	51.06	32.63	184	Humana Inc.	NYS	24.50	-1.51	28.95	25.31	17.38	2536
Argonaut Group	NDO	30.75	-1.60	0.00	36.38	26.75	408	Navigators Group	NDO	19.50	-0.64	6.85	20.63	15.75	38	Oxford Health Plans	NDO	76.50	-1.84	30.63	89.00	41.00	4923
Baldwin & Lyons Inc.	NDO	19.88	0.00	8.16	22.63	17.38	3	Nobel Insurance Ltd.	NDO	14.63	-1.68	16.42	15.38	11.25	14	Pacificare Health Sys.	NDO	69.38	-1.42	-14.62	86.25	55.50	85
Berkley W.R. Corp.	NDO	41.00	7.66	21.18	41.00	28.88	678	NYMagic Inc.	NYS	25.59	0.25	42.01	26.00	17.00	10	Safeguard Health Enter.	NDO	12.03	-1.28	-31.25	20.75	9.63	7
Berkshire Hathaway Inc.	NYS	44500.00	4.71	30.50	48600.00	30000.00	1	Ohio Casualty Corp.	NDO	46.13	-2.64	29.93	48.06	31.75	190	Sierra Health Services	NYS	36.25	0.17	47.21	37.06	22.38	116
Capital RE Corporation	NYS	57.94	4.51	24.26	59.94	36.88</																	

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*Risk manager Theresa Baer was not only impressed by how we reduced her insurance cost by 15%, but by how we gave her the courage to take another risk. A two-week vacation.*



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