

# Business Insurance

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## Miro arrested; faces charges over Anglo-American's demise

BATON ROUGE, La.—Fugitive insurance executive Carlos I. Miro has been arrested in Spain and is facing extradition to the United States to answer mail fraud and money laundering charges stemming from his operation of the defunct Anglo-American Insurance Co. of Louisiana.

Mr. Miro was arrested in the coastal resort city of Malaga Sept. 20, and extradition proceedings are under way, says Raymond Lamonica, U.S. Attorney for the middle district of Louisiana in Baton Rouge.

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AP/Wide World Photo

## World's fleet too old?

The world's aging shipping fleet is a top concern of marine underwriters, who gathered earlier this month in Boston and Houston (see stories, page 3). The KS Mega Borg II was 15 years old when it spilled oil in 1990.

## Group health claims handling at issue

# Subcommittee approves bill amending ERISA

By JERRY GEISEL

WASHINGTON—Legislation that would expose group health and life insurers to punitive damage awards for improperly denying claims is on its way to its first congressional committee vote with a key backer opening the door to compromise.

The House Labor-Management Relations Subcommittee last week easily approved the legislation, H.R. 1602, by a 15-7 vote, with all Democratic panel members voting in favor of the bill and all Republican members opposed.

The legislation, introduced by Rep. Howard Berman, D-Calif., would overturn a 1987 Supreme Court decision that exempts insurers' group claims handling practices from state penalties, including those in unfair claims practices laws (BI, Sept. 2).

In that Supreme Court decision,

the justices ruled that the pre-emption provisions of the Employee Retirement Income Security Act of 1974 protect insurers from any state sanctions—including punitive damages—for improperly handling a group health, life or disability claim.

The ruling limited recoveries for mishandled claims to the remedies laid out in ERISA, which allows health care plan participants to sue insurers only to recover the claims costs. Courts also have discretion under ERISA to award attorneys' fees to plaintiffs.

Insurers have blasted the Berman legislation and a similar bill, S. 794, introduced in the Senate by Sen. Howard Metzenbaum, D-Ohio. They say the legislation is unnecessary and would lead to a litigation explosion and ultimately higher health insurance costs for

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Subcommittee Chairman Pat Williams will try to develop a compromise proposal before the full Education and Labor Committee considers the bill.

# Executive Life sale may draw new bids

## Altus faces competition as deadline nears

By DOUGLAS McLEOD

LOS ANGELES—A French investor group led by Altus Finance may face competition from several new bidders in its effort to take over troubled Executive Life Insurance Co.

Possible bidders now also include a group representing municipal guaranteed investment contract holders—potentially the biggest losers in the Executive Life debacle—who are proposing a plan that would give them equity ownership of a rehabilitated Executive Life.

Separately, a group that includes Texas investor Richard Rainwater, recording industry mogul David Geffen and San Francisco-based Bechtel Investments, a unit of Bechtel Group Inc., has reportedly prepared a bid of its own.

These proposals join an unprecedented plan by the National Organization of Life & Health Insurance Guaranty Assns., which proposes taking over and liquidating Executive Life rather than paying guaranty fund claims to policyholders (BI, Sept. 23).

A fifth group that includes John J. Byrne, the chairman of Fund American Cos. Inc., had also prepared a bid, but has withdrawn it rather than compete with the guaranty fund proposal, according to Mr. Byrne.

So far, only Altus has filed a formal bid in Los Angeles Superior Court, where Executive Life is in conservatorship. Other groups, though, have had informal discussions with California regulators.

It is unclear how many of the alternative proposals will prove feasible, a situation that will become clearer when details of the plans are submitted with formal filings. The filing deadline is Oct. 11.

"The next couple of weeks will be interesting times," said Karl Rubinstein, a lawyer with Rubinstein & Perry in Los Angeles, which represents the California

Insurance Department.

Mr. Rubinstein said he expects some proposals to be well-conceived and others to be "flaky."

The competitive bidding reflects a widespread belief that the Altus proposal undervalues Executive Life, largely by deeply discounting its vast junk bond holdings, observers suggest.

The French group, however, says it is not considering revising its bid. "At this moment, there are no other formal offers to respond to," a spokesman said.

Meanwhile, a trial is set to begin today on an issue that will affect the structure of any eventual Executive Life deal: Superior Court Judge Kurt Lewin is scheduled to hear arguments on whether municipalities that invested the proceeds of bond issues in Executive Life GICs are policyholders entitled to the same claim priority as annuitants and other GIC holders.

If the "muni-GIC" holders are found to be lower-priority general creditors—as California regulators maintain—they stand to recover little or none of their roughly \$1.85 billion in investments.

Yet, if they are found to be policyholders, rehabilitation plans for Executive Life will have to account for \$1.85 billion in additional liabilities.

Executive Life was seized and placed in court-supervised conservatorship amid mounting concerns over its deteriorating junk bond portfolio (BI, April 15).

In August, the department reached a tentative agreement in which the French group would pay \$3 billion to assume Executive Life assets and liabilities (BI, Aug. 12).

Altus Finance, a division of the Paris-based bank Credit Lyonnais, would pay \$2.7 billion for Executive Life's junk bonds—which would be removed from the insurer—while partner Mutuelle Assurance Artisanale de France, a life insurer, would pump another

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# Jury awards \$46 million

## Workers stripped of welfare benefits win suit

By CHRISTINE WOOLSEY

DES MOINES, Iowa—Varity Corp. will fight a \$45.8 million jury award against it and its Massey-Ferguson Inc. unit for stripping 93 retirees of health, life and disability benefits and laying off 140 workers without severance pay.

Varity asserts that a clause in its summary plan description specifically explained the company's right to amend or terminate any employee benefits.

But the employees and retirees maintain that the information was never communicated to them.

A federal district court jury last

week in Des Moines, Iowa, agreed with the plaintiffs, awarding them \$45.8 million, the brunt of which—\$36 million—is punitive damages.

The award serves as yet another warning to employers that they must clearly communicate to employees the company's right to overhaul benefit plans, consultants say.

Citing other cases in which employees have won reinstatement of benefits, consultants said they were not surprised by the jury's decision.

But, they do question the awarding of punitive damages, since the Employee Retirement Income Se-

curity Act generally precludes such recoveries.

They also question why the case, which centered on ERISA issues, was heard by a jury. Most ERISA cases are decided by judges, they say.

A Varity attorney says the company will ask the trial judge to overturn the jury's decision. If that motion is denied, Varity will appeal.

In the class-action suit, the retirees contended that Varity, a Buffalo, N.Y.-based holding company whose operating units design and manufacture farm machinery,

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## Update

## Carlos Miro arrested in Spain

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A 20-count indictment earlier this year charged that Mr. Miro siphoned Anglo-American premiums out of the United States for his personal benefit; tried to conceal the insurer's true financial condition from regulators; and paid \$25,000 to an elected official in Louisiana to obtain a license for Anglo-American, which is not related to Anglo American Insurance Co. Ltd. of London (BI, June 24).

Mr. Miro faces a maximum of 115 years in jail and \$5.25 million in fines if convicted on all counts.

Anglo-American was declared insolvent by \$19 million and ordered liquidated in 1989. The insurer's collapse and Mr. Miro's activities were the subjects of 1989 hearings before the House Oversight & Investigations Subcommittee (BI, April 10, 1989).

## Ban on D&amp;O exclusions urged

WASHINGTON—Three federal agencies are urging Congress to prohibit both "regulatory" and "insured vs. insured" exclusions in future directors and officers liability policies.

The regulatory exclusion denies coverage for damages awarded in government actions against the policyholders' directors and officers. The insured vs. insured exclusion is designed to prevent a corporation from obtaining a judgment against its own directors and officers and then looking to the D&O insurer for payment. The exclusions have been a target of regulators since the savings and loan crisis began.

In a report to Congress, the Federal Deposit Insurance Corp., the U.S. Justice Department and the U.S. Treasury Department urged Congress to declare that the exclusions violate "public policy and cannot be enforced against federal agencies."

Such a change, the agencies hold, "is unlikely to have a material impact on the availability of D&O insurance for either healthy (where it will be available) or insolvent institutions (where it is unlikely to be available and probably should not be purchased in any event)."

It is "uncertain" whether barring these exclusions would make less coverage available for troubled institutions, the agencies said.

Although some lower courts have agreed with the FDIC that the regulatory exclusion runs counter to public policy, the rulings have been overturned on appeal. Most recently, the 8th U.S. Circuit Court of Appeals in St. Louis upheld the exclusion (see item below).

## D&amp;O exclusion upheld

ST. LOUIS—An 8th U.S. Circuit Court of Appeals ruling that upholds a key exclusion in directors and officers liability policies will help shield insurers from claims stemming from savings and loan failures.

The 8th Circuit upheld portions of a lower court ruling finding the "regulatory" exclusion in D&O policies is neither ambiguous nor against public policy.

The decision marks the highest federal court ruling to date on the regulatory exclusion. Earlier, the Maryland Court of Appeals, that state's highest court, also upheld the exclusion (BI, Aug. 26).

"The trend of the recent cases has gone in favor of insurers," said attorney David Gische of Ross, Dixon & Masback in Washington, D.C.

Mr. Gische represented American Casualty Co. of Reading, Pa., a unit of CNA Financial Corp., in the case before the 8th Circuit.

From 1981 to 1985, American Casualty wrote primary D&O coverage with annual limits of \$1 million for Farmers National Bank of Aurelia, Iowa, which was closed by the Federal Deposit Insurance Corp. in 1984. The 8th Circuit's ruling bars nine of the bank's directors and officers from tapping the policies for costs associated with an FDIC lawsuit alleging that they negligently managed bank loans.

## AIG reduces work force

NEW YORK—American International Group Inc. is planning to reduce its workforce due to reduced personal lines and workers compensation business and the soft insurance market, AIG says.

"As this business has run off, we have adjusted staffing levels accordingly," said Chairman Maurice Greenberg, who would not disclose the exact number of people being laid off or their locations within the company. "The selective staff reductions we are making are designed to maintain and strengthen AIG's competitive position," Mr. Greenberg said in a written statement last week.

A spokesman for New York-based AIG would not confirm or deny reports that the layoffs will number 1,000 across all business units.

Mr. Greenberg "runs a tight ship," said analyst Myron Picoult of Oppenheimer & Co. Inc. of New York. Mr. Picoult predicts more insurer staff cuts in the coming months and more mergers in the industry. Other insurers already have made significant staff cuts (BI, April 8; Nov. 5, 1990).

The staff cuts at AIG reflect "the soft market conditions and the regulatory and legislative problems that have gotten in the way of personal lines and workers compensation," said analyst David Seifer of Donaldson, Lufkin & Jenrette in New York.

## Emotional stress claim allowed

SAN DIEGO—A mother whose child was injured at birth can claim damages for emotional stress even though the mother was not injured and became aware of the cause of the harm done to the child years after the delivery.

California law has prohibited emotional distress damages in such cases.

The state appeals court's 2-1 decision, which overturns a lower court ruling, allows Michelle Anisodon to seek damages for emotional stress related to her daughter's birth in 1986. The child, delivered by Caesarean section at Mercy Hospital & Medical Center in San Diego, was born a spastic quadriplegic.

The child's injuries were diagnosed in 1988, when magnetic resonance imaging, a new technology at the time, indicated that a cervical spinal cord injury sustained during the child's birth caused her condition.

Ms. Anisodon then filed suit demanding damages for emotional distress as a result of the hospital's alleged negligence in the delivery.

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## Corruption crackdown

## Bill to oust dishonest execs wins support

By JOANNE WOJCIC and MICHAEL BRADFORD

SACRAMENTO, Calif.—An amended bill that would allow California's insurance commissioner to crack down on corrupt insurance executives that endanger the solvency of their companies is drawing enthusiastic support from the insurance industry.

S.B. 389, sponsored by Sen. Patrick Johnston, D-Stockton, would allow the insurance commissioner to remove or suspend indefinitely from the insurance business dishonest individuals who jeopardize the financial solvency of insurers. Those individuals could include employees, agents and brokers, managing general agents and other

individuals involved with management or control of the company.

Although it regarded earlier versions of the measure as "overly broad," the insurance industry generally supports the bill as amended and approved by the Legislature Sept. 13. The bill now specifies the procedures and bases for ousting dishonest executives.

"We believe this bill, if signed into law, will not only increase consumer protection but will also enhance public confidence in our insurance system," said Thomas F. Conneely, president of the Sacramento-based Assn. of California Insurance Companies, which represents most of the property/casualty insurers in California.

"The whole purpose of insurance

—protecting people from accidental losses—is defeated when unscrupulous executives jeopardize a company's ability to pay its customers' claims," he said.

"No insurer likes to see another company go bankrupt, especially when it is intentional or caused by dishonest executives. That is why we support Sen. Johnston's efforts," said Mr. Conneely.

The American Insurance Assn. also supports the bill, said Wayne Wilson, vp for AIA's western region in Sacramento.

"It allows the commissioner to remove someone who is damaging the solvency of a company," he said.

Fireman's Fund Insurance Co.

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## S&amp;P continues to lower life companies' ratings

By MICHAEL SCHACHNER

NEW YORK—Citing increasing risk to asset quality, Standard & Poor's Insurance Rating Services last week lowered the claims-paying ability ratings of four more life insurance companies.

As many as six more life insurers may be downgraded over the next few weeks, the rating agency says.

Although S&P stated that the risks facing the four were "far from solvency-threatening," the downgrades were based on "varying vulnerability to losses on commercial mortgages, real estate and fixed-income losses over the next two or three years."

The four are: New England Mutual Life Insurance Co., Northwestern National Life Insurance Co., Minnesota Mutual Life Insurance Co. and Principal Mutual Life Insurance Co.

While some of the insurers took issue with the downgrades, others chalked them up to the effects of the recession and noted that their ratings are still well above average.

"Many life insurance companies, to varying degrees, are facing the strong possibility of asset losses," said Roy Taub, executive managing director of S&P's insurance rating services division in New York. "While vulnerability to losses

varies to some extent, depending on the type of real estate an insurer has invested in, there is a strong likelihood that surplus will be dampened in the near future because of sizable commercial real estate holdings."

All four downgraded companies remain in S&P's "secure" category. "We're not anticipating any liquidity problems with these companies. Basically, they're all still strong companies," said Mr. Taub. "Any company facing severe liquidity problems would not maintain a secure rating."

On Sept. 24, S&P lowered the claims-paying ratings of Boston-

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## Government considers taxing health care benefits

## Medical reforms outlined

By JERRY GEISEL

WASHINGTON—The Bush administration is considering whether to propose taxing employees on the cost of health insurance supplied by employers.

Health and Human Services Secretary Dr. Louis Sullivan said last week that one of the "practical options" for reforming the health care delivery system is "exploring tax policies that would both increase consumer awareness of the true cost of health care and distribute current tax subsidies more equitably."

To benefit consultants, Dr. Sullivan's rather bureaucratic-sound-

ing statement sounds like a euphemism for including employer-paid health insurance as taxable income to employees, an idea the HHS secretary previously has supported.

Other options being considered by the administration include:

- Working to reduce the administrative costs in the health care delivery system.

To that end, Dr. Sullivan intends in November to convene a "summit" of health insurance executives to find ways to reduce administrative expenditures and needless paperwork.

- Making health insurance more affordable for small employers.

Dr. Sullivan did not elaborate on

how to accomplish this.

- Expanding the use of managed care in public programs like Medicare and Medicaid.

- Encouraging the use of more cost-effective health care through research on which treatments have been most successful.

Dr. Sullivan emphasized that the administration is adamantly opposed to reform proposals embraced by some Democrats in Congress. These plans would require employers, under a "play-or-pay" approach, to offer a health plan meeting certain federal standards or pay new payroll taxes.

The administration also opposes

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✓ Most home-based rehab providers do not economize by limiting services or quality personnel, says Alexandra Vickers of Crossroads Rehabilitation Systems Inc. in Perspectives. **PAGE 31**

✓ If space insurance is to progress, greater cooperation between insurers and the space industry is needed, says the chairman of Assicurazioni Generali S.p.A. at a conference on space risks sponsored by the insurer. **PAGE 37**

✓ Clarifying provisions in final Internal Revenue Service pension rules will make non-discrimination testing easier for special pension plans created to encourage workers to retire early. **PAGE 49**

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# NAIC acts to boost trust in state regulation

By MEG FLETCHER

PITTSBURGH—Insurance commissioners are taking several steps to bolster consumer confidence in state regulation.

"In this calendar year to date, we have made more progress in the solvency process and the accreditation process than any of us dreamed that we could do in this short (period) of time," said James Long, president of the National Assn. of Insurance Commissioners

at the group's quarterly meeting here Sept. 15-17.

Solvency-related legislation, for instance, has been considered in 26 states this year, he said.

And seven more states have requested accreditation inspections this year, according to Mr. Long, who is the North Carolina insurance commissioner.

Accreditation of an insurance department means that the state has enacted 16 model rules and regulations the NAIC deems neces-

sary to guarantee a minimum standard of financial regulation.

NAIC inspectors also must approve the department's operations following a visit to the state.

And, the NAIC is moving toward proposals that insurers domiciled in states without accredited departments would be subject to greater scrutiny by other states in the future. Thus far, the departments in New York, Florida, Illinois and South Carolina have been accredited.

Also, inspections are complete in Iowa and Wisconsin and scheduled in North Carolina and Kansas, according to Earl Pomeroy, the North Dakota commissioner who chairs the NAIC Committee on Financial Regulation Standards and Accreditation.

"There is a character in the Chinese language that can be used for both crisis and opportunity," Mr. Long said during the NAIC's opening session. "Lord knows there have been more 'opportunities' this

year than I ever thought possible," Mr. Long quipped, referring to proposals for federal insurance oversight.

Other NAIC efforts include two proposals by its Guaranty Fund Task Force to improve guaranty funds by:

- Establishing a formal mechanism within the task force to coordinate how state regulators trigger guaranty fund payments.

That will help assure that they

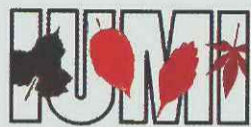
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## Marine rates rise up to 30%

### Underwriters restrict coverage terms

By STACY SHAPIRO

BOSTON—Rates are going up and new conditions for many types of marine risks are being considered as marine underwriters return to "basics" in an attempt to achieve profitability.



Boston Fall 1991

Already, rates are rising up to 30% over last year for energy-related and marine hull risks, underwriters said at the International Union of Marine Insurance conference held here Sept. 16-19.

IUMI delegates also are considering restrictions in policy wordings to tighten the coverage they provide against paying for losses from incompetent crew or older, worn-out vessels.

Even in cargo insurance, where rating is still competitive, rates are starting to bottom out, underwriters say. London cargo underwriters also are considering charging additional premiums for cargo on vessels more than 10 years old, rather than the current 15-year benchmark.

But all marine underwriters agree that the worst is still to come for owners of ships, cargo and energy-related operations after marine underwriters renew their reinsurance programs Jan. 1.

The underwriters predict that year-end renewals will be "bloody," with capacity virtually disappearing in the excess-of-loss reinsurance market, particularly in London. This contraction in reinsurance will mean bigger retentions for ceding companies, a move to proportional reinsurance and probably a further round of rate increases for marine-

related risks.

The hardening of the marine insurance market—including coverage for property catastrophes—"is on its way," said Thomas J. Prendergast, president of the Marine Office of America Corp., a Continental Corp. unit in Cranbury, N.J.

Last year, it was a "struggle" to place coverages, at mid-year it was "difficult" and at year-end renewals it will be "tough," he said. "Everybody's anticipating a hard market, but no one's adjusting their rates yet accordingly."

Mr. Prendergast warned, however, that if the market contracts too much and too fast, policyholders will find alternative markets "and we won't get them back."

Come year-end, "we're going to see market reduction everywhere" in the marine insurance industry, added Harry Keefe, vp of GRE Insurance Group in New York, a unit of U.K. insurer Guardian Royal Exchange P.L.C.

Already, with the loss of some Lloyd's of London syndicates and companies in the London market, "we're seeing a contraction in the market in the marine business," he said.

"With what's happening in London, where a great part of (marine) reinsurance goes, at year-end we will see a sharp reduction in capacity," he added.

"I have a feeling of optimism and there is light at the end of the tunnel as long as it does not turn out to be an oncoming locomotive," Maurice Jaques, president of IUMI told dele-



Photo by Stacy Shapiro

Also in Boston during the annual IUMI conference was Gaia, the flagship of an environmental project.

gates at the opening of the conference.

"Finally, there are indications that underwriters are returning to basics, performing the tasks of proper risk assessment," he said. "But I am afraid that this re-education is a

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## Task force investigation

### Targets are Lloyd's capital base, administration, commissions

By MICHAEL BRADFORD

HOUSTON—Lloyd's of London is looking for ways to shore up the financially battered marketplace, and a special task force is turning its attention to the market's capital base, administrative system and business acquisition costs.

Those areas are targets of the 14-person task force formed late last year to study the framework under which Lloyd's operates. The group, headed by David Rowland, chairman of Sedgwick Group P.L.C., is expected to produce a report by year-end that will include recommendations for changes in the operations at Lloyd's.

The task force's work was spurred by the market's 509.7 million pound (\$983.7 million) deficit reported for the 1988 underwriting year, which closed at the end of 1990 (*BI*, Sept. 2, July 1).

Underwriters' business acquisition costs, particularly broker commissions, are getting a hard look from the task force, said Stephen

Merrett, chairman of underwriting agency group Merrett Holdings P.L.C. and a member of the task force.

"We have no doubt at all that we cannot sustain a burden to our customers," said Mr. Merrett, referring to broker commissions of up to 25%.

"There's no way that our customers, in general, are prepared to see that sort of margin on top of the profit margins to which they believe we are entitled," he said in a speech at the Houston Marine Insurance Seminar held Sept. 15-17.

In response to an audience question, Mr. Merrett said he believes "a reasonable cost of business acquisition has a great deal to do with value added by the broker. So I guess in some cases we should deal with negative business acquisition costs."

After the audience's laughter had died down, Mr. Merrett acknowledged that many brokers are experiencing financial difficulties, "even with the proportion of the premiums they take and those premiums being substantially large."

Still, he repeated, "our customers simply will not be prepared over time to pay away the amount they have been paying away unless the burden to them is eased by the pricing of the insurance product," which underwriters

cannot afford to cut.

Continued high commission costs that ultimately are borne by policyholders will cause them to retain more risks and will stimulate the use of captives, Mr. Merrett predicted. "And, we can't tolerate that. It just makes no sense at all for the members of Lloyd's who have this unlimited liability that we all keep worrying about."

Mr. Merrett emphasized that he does not want to destroy the arrangement of Lloyd's brokers bringing business to the market. "What we do have to do is shorten the chain and reduce the cost of the intermediary to increase the value added."

In addition, according to Mr. Merrett, Lloyd's must find a way to "strengthen the relationship between the underwriter and the ultimate customer, working—I hope—with the intermediaries."

Mr. Merrett said he believes that "so far as the main lines of business are concerned, we will continue to deal through the Lloyd's broker to enable the customer and ourselves to benefit from the substantial added value that there ought to be through that relationship."

But, Lloyd's underwriters must bear some of the responsibility for lowering the costs of acquiring business, Mr. Merrett said.

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## PBGC may double its rates if LTV ruling is upheld

By JERRY GEISEL

WASHINGTON—Pension insurance premiums could eventually more than double if a recent federal court ruling over LTV Corp.'s three hugely underfunded pension plans is allowed to stand, says the Pension Benefit Guaranty Corp.'s executive director.

A U.S. District Court in New York earlier this month allowed Dallas-based LTV, which is seeking reorganization under Chapter 11 of the Federal Bankruptcy Act, to stop making regular contributions to its pension plans.

Also under the U.S. District Court decision, the PBGC is not given preferential treatment over LTV's other unsecured creditors (*BI*, Sept. 23).

If the ruling is not overturned, it will encourage other companies in bankruptcy to stop contributing to their pension plans and ultimately to dump their pension plans onto the agency, contends PBGC Executive Director James B. Lockhart III.

The PBGC then would have to stand in line with other unsecured creditors, and the agency's chances of obtaining a significant recovery from the employer would be minimal.

If that scenario is allowed to develop, the PBGC's deficit, now at about \$2 billion, could reach \$16 billion by the end of the decade, leading to another round of pension insurance premium hikes, Mr. Lockhart said.

Premiums, paid by employers with defined benefit plans, would easily double, and "in fact, it could be much more than that," Mr. Lockhart warned.

PBGC premiums have spiraled since 1974, when the agency was created to guarantee workers' and retirees' basic pension benefits when underfunded plans collapse and companies have not made sufficient contributions to fund promised benefits.

The annual PBGC premium, initially set by Congress in 1974 at \$1 per participant, has been raised several times by Congress after claims from terminated plans exceeded projections. The current premium ranges from \$19 to \$72 per plan participant, with the premium pegged to a plan's financial condition.

Speaking last week before the annual Washington legislative conference of the National Employee Benefits Institute, Mr. Lockhart said the PBGC is pursuing a multi-track strategy to reverse the LTV

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## Misconduct bill

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hasn't taken a position "as an individual company" regarding the bill's passage, but as a member of the AIA the insurer supports that organization's efforts and stance on the legislator, a spokesman for the Novato, Calif.-based insurer said.

A spokesman for the Independent Insurance Agents & Brokers of California in San Francisco said the trade group supports the bill now that it has been amended.

California Insurance Commissioner John Garamendi has written a letter to California Gov. Pete Wilson urging him to sign S.B. 389 because it would give the commissioner authority to "prohibit certain 'bad actors' from continued participation in the insurance industry."

"With the due process protections contained in the bill and the requirements that 'subject persons'

be proven to have engaged in repeated acts of misconduct involving fraud or personal dishonesty it simply cannot be argued that the bill is overreaching," Mr. Garamendi wrote.

"Any person who finds him or herself removed from the industry as a result of the misconduct made actionable by S.B. 389 amply deserves the sanction," he added.

The removal of such individuals could be conducted under two sets of circumstances, according to Ross Sargeant, chief of staff in Sen. Johnston's Sacramento office.

For example, removal could occur after notice is given and a hearing conducted by the commissioner determines that:

- The suspected individual has engaged in repeated acts of misconduct with respect to the operations of an insurer resulting in substantial financial loss.

- An individual's misconduct was fraudulent or consisted of willful acts or omissions involving

personal dishonesty in the acceptance, custody or payment of money or property that has endangered or is likely to endanger the insurer's solvency.

- The individual's pattern of misconduct demonstrates unfitness to continue as an employee or agent of the insurer.

Removal also could occur immediately if the suspect individual is charged in an indictment issued by a grand jury, or in an information, complaint or similar pleading issued by a U.S. attorney, district attorney or other criminal justice official for a crime that involves a fraudulent act or an act of dishonesty in the handling of money.

In both cases, the individual would have the right to appeal the commissioner's order to the state Superior Court, rather than filing a petition with the Administrative Law Office, which usually handles administrative complaints, according to Mr. Sargeant.

Significant amendments to the

original bill were necessary to gain the insurance industry's support.

"The bill was absolutely ghastly," in its original form, which appeared to be a "mish-mash" of statutes that would normally apply to savings and loans, banks and the Federal Reserve, remarked the AIA's Mr. Wilson.

Indeed, the legislation mirrors that of a similar statute already on the books in California that gives the commissioner of banking similar authority.

Mr. Wilson also said the original version of S.B. 389 was overly broad. In its original form, the bill would have given the commissioner the authority to remove "any officer or employee who causes any damage to the public." If that's not overly broad, I don't know what is," he said.

However, subsequent narrowing of the bill's language limited the field of those who could be removed from a company and defined the type of behavior that

could lead to a removal.

For example, the insurance commissioner can only remove or suspend an individual suspected of "personal dishonesty," not for simply making honest mistakes due to poor judgment, said Jeff Fuller, a lobbyist for the ACIC.

In addition, the legislation now provides for "substantial due process procedures" to prevent the commissioner from simply removing someone on a whim, added Mr. Wilson of the AIA.

Gov. Wilson has not indicated whether he will sign the bill. If he does not act on the measure, it will automatically become effective on Oct. 15.

California will not be the first state with such a statute.

New York insurance law includes a provision that allows the insurance superintendent to remove an officer or director if after a hearing it is determined that the person is involved in "dishonest or untrustworthy activities," according to a spokesman for the New York Insurance Department.

Individuals can appeal the department's decisions through the court system.

If after an administrative hearing, a company officer or director refuses a department order to step down, the superintendent has the authority to liquidate the firm.

Jim Schacht, chief deputy director at the Illinois Department of Insurance, said that Illinois law also sets out a process for the removal of directors or officers if they violate certain standards of integrity.

However, the Illinois law hasn't been invoked, he added. "If we thought there was an officer doing inappropriate things, we have suggested that the person be replaced. That has worked. We've never tried to utilize the statute."

The National Assn. of Insurance Commissioners also has developed model legislation that would allow officers of insurers in rehabilitation to be fined or imprisoned for disregarding orders by a state's liquidation officer.

North Dakota Insurance Commissioner Earl R. Pomeroy, who also is vice chairman of the NAIC's executive committee, said that while he hasn't reviewed the California legislation, he favors early intervention as a way to ensure the success of rehabilitation efforts, "particularly when the management of a company" is responsible for problems. "I think that studies of financial insolvencies in all financial services areas prove the point that earlier regulatory intervention is more effective," he said.

California's S.B. 389 was precipitated by the collapse of Coastal Insurance Co., a defunct personal lines automobile liability insurer based in Van Nuys, said Mr. Sargeant of Sen. Johnston's office.

Coastal sold auto policies that were marketed to the public via television ads featuring professional athletes who claimed: "If you have insurance problems, it's no problem at Coastal."

Because of commission incentives for employees accepting applications by phone, "no proper underwriting techniques were used," Mr. Sargeant said.

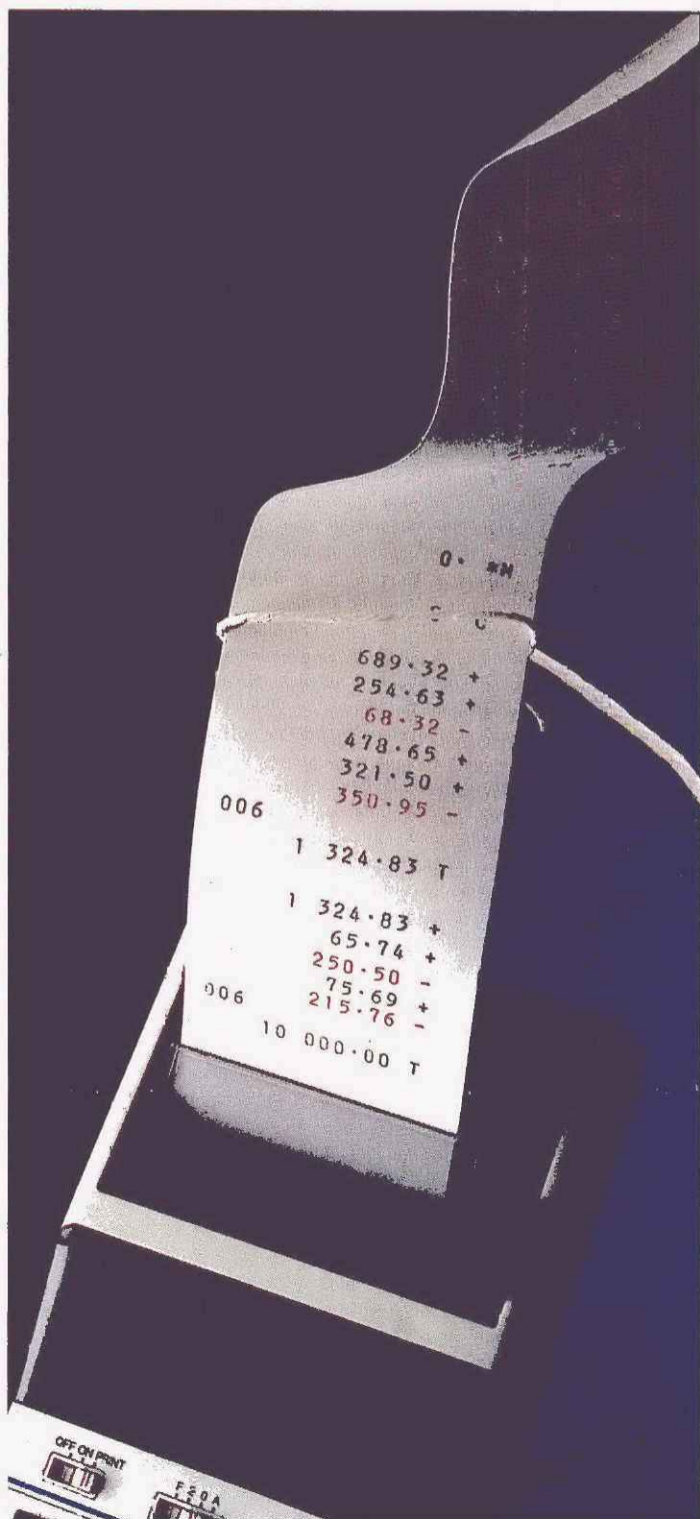
For example, when an individual filing an application admitted to having three convictions for driving while under the influence of an intoxicant, "the order taker would usually write down one," he said.

Likewise, employees would misstate the risk being insured, often translating Corvettes into Chevettes and listing 18-year-old applicants as being over age 25, according to Mr. Sargeant.

Eventually Coastal became insolvent and was seized by regulators in February 1989.

Now insurers are being forced to pick up the company's \$40 million shortfall through guaranty fund assessments, Mr. Sargeant said. ■

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# Health care a major issue in strikes: Study

Health care was a major issue in most labor strikes in 1990, according to a new survey.

The survey, conducted by the Washington, D.C.-based AFL-CIO, found that health care was a major issue in 27 out of 48 studied strikes in 1990. And, 55% of 243,000 workers who were on strike in 1990 struck over a health care issue.

Using Bureau of Labor Statistics survey data on work stoppages in 1990, the AFL-CIO contacted local unions at 51 strike locations across the country. Forty-eight of the 51 locals responded.

The survey found that in all the strikes involving health care, employers were attempting to shift costs to workers.

Increasing employees' out-of-pocket costs within an existing benefit plan was the reason cited for 90% of the health-care related

## Benefit beat

strikes, according to the AFL-CIO survey.

Approximately 5% involved employer attempts to cut benefits by changing to a different type of benefit plan.

And, another 5% of the strikes were prompted by employers trying to shift the total cost of health care to employees.

The AFL-CIO study also found that at large companies, those with 3,000 or more workers, 55% of strikes were related to health care, the survey found. Seven percent of these labor strikes involved 45% of all striking workers.

"We were surprised" with that finding, said Meredith Miller, assistant director in the AFL-CIO's

employee benefits department.

"One impression is that large employers have the money and the resources to come up with solutions that would avoid" strikes over health care, explained Ms. Miller.

The study also found that employers permanently replaced 11% of the 243,300 workers who went on strike in 1990.

Free copies of the survey, "The Permanent Replacement of Workers Striking Over Health Care Benefits in 1990," are available from the AFL-CIO Employee Benefits Department, 815 16th St. N.W., Washington, D.C. 20006; 202-637-5202.

—By Christine Woolsey

## New flex benefits

More employers are beginning to

offer non-traditional benefits in flexible benefit plans, according to a recent survey.

For instance, employees at some companies now can buy group auto and homeowners insurance through their companies' flexible benefit plans, says the survey by TPF&C, the benefits consulting division of New York-based Towers, Perrin, Forster & Crosby Inc.

"The results of our survey indicate that employers are slowly moving beyond established flexible benefits norms, expanding their plans to include new options," the survey authors said.

TPF&C surveyed 329 employers. Of those, 214 offer full flex programs with spending accounts; 100 offer only spending accounts; and 15 offer full flex programs without spending accounts.

Under flex plans, employees re-

ceive a number of annual flex benefit credits, which usually is based on their salary. These credits then can be used to purchase various benefits.

The survey found that 70%—or 229—of the survey respondents offer at least some non-traditional benefits.

For example, according to the survey, flex credits can be used to pay for:

- Parking privileges, 26 employers reported, with 24 offering the credits on an aftertax basis.

- Annual physicals, 25 employers reported, with 12 offering the credits on an aftertax basis.

- On-site day care, 15 employers reported, with five offering the credits on an aftertax basis.

- Group homeowners insurance, eight employers reported, with all offering the credits on an aftertax basis.

- Group auto insurance, eight employers reported, with all offering the credits on an aftertax basis.

- Financial planning services, five employers reported, with four offering the credits on an aftertax basis.

Employers also are beginning to institute some non-traditional factors into the plan credit formula, the survey found. For example:

- Thirty-five employers have begun figuring into the flex credit formula the number of years an employee had worked at the company.

- Seventeen have begun factoring in the company's financial performance.

- Ten have begun figuring in an employee's geographic location at the company.

- Seven have begun figuring in wellness initiatives made by employees.

- Two have begun figuring in individual attendance records and business unit performance.

None of the respondents figured in individual performance.

Just over 95% of the survey respondents reported offering flex spending accounts.

Only eight of these 314 companies make some sort of matching contributions to the health care account, while three companies make some sort of matching contribution to the dependent care account, the survey found.

Matching contributions at these companies are capped at between \$25 and \$100 annually.

The survey also looked at enrollment and communication tools used by employers.

Although most employers still use manual data entry to record employee annual benefit elections, "a significant minority has taken advantage of new technologies to make enrollment faster and more accurate," the study's authors note.

For instance, nearly one-fifth of the respondents use desktop computers to keep up with employee enrollment.

Almost 4% of respondents use touchtone telephone technology to enroll employees.

Less than 3% of the respondents use optical scanning and less than 1% use touch-screen computers, the survey found.

Likewise, electronic mail and personal computer software were used by nearly 6% of respondents to communicate flexible benefit options to employees.

Cable TV and computer kiosks were utilized less often, although the fact that anyone at all is using this technology was considered significant by the study authors.

Copies of the study are available from Robert J. McKee, TPF&C, 245 Park Ave., New York, N.Y. 10167-0128; 914-745-4175.

—By Sara J. Hartly

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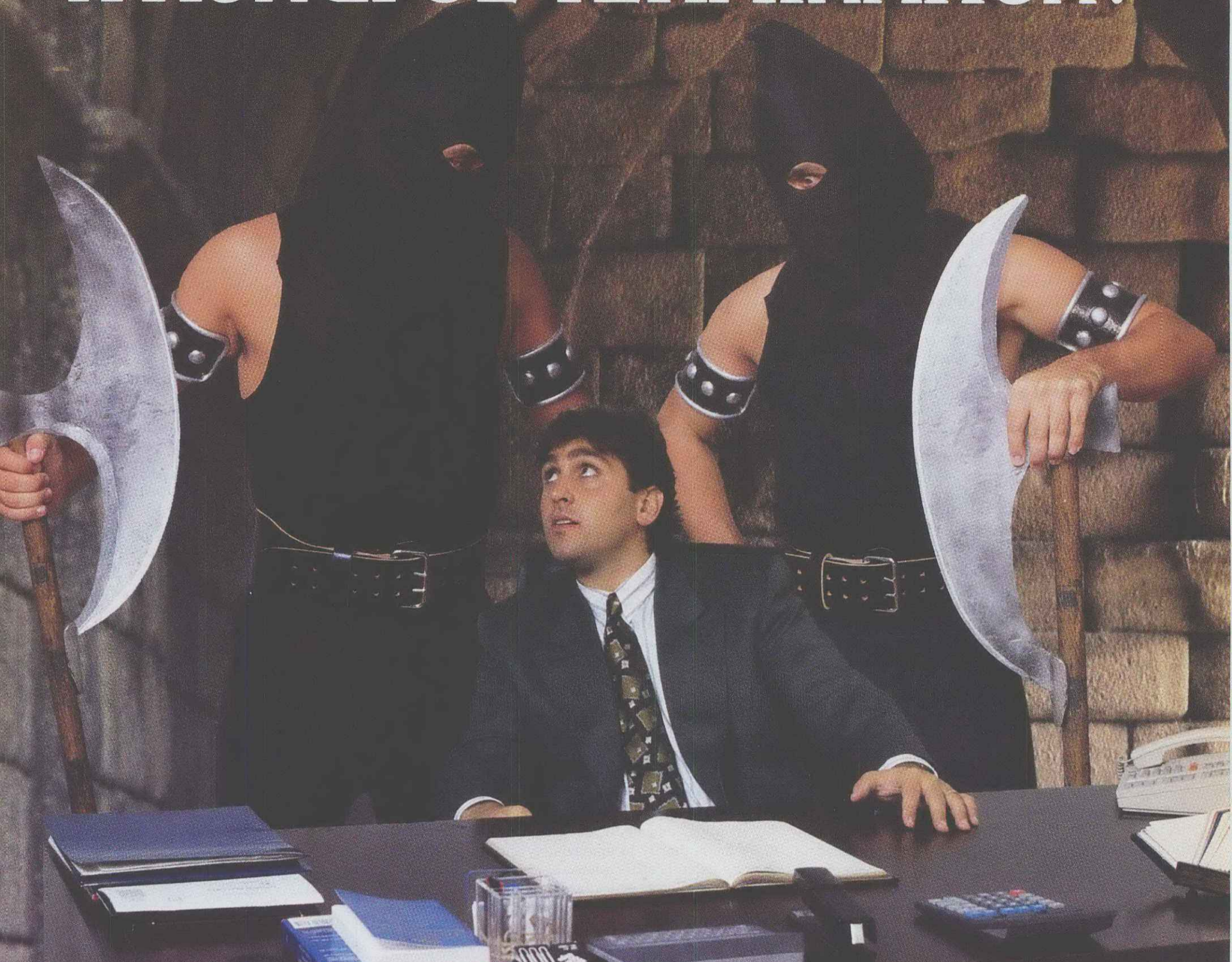


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## Opinions

## MEWA certification a must

HOW MANY MORE mismanaged or fraudulent multiple employer welfare arrangements have to collapse before Congress takes action and puts an end to what is a national scandal?

A new General Accounting Office survey reveals just how much damage collapsing MEWAs are leaving in their wake. Since 1988, nearly 200 MEWAs have left more than 400,000 workers and dependents stuck with more than \$132 million in unpaid medical claims (*BI*, Sept. 23).

While the GAO statistics illustrate the magnitude of the MEWA problem, they are hardly surprising.

Indeed, for nearly 15 years, *Business Insurance* has regularly reported on the collapse of mismanaged and fraudulent MEWAs and the enormous personal tragedies those collapses caused when workers discovered they had no coverage for their health care claims.

While the MEWA statistics are new, the causes—loopholes in federal law and inadequate regulation that fast-buck operators can exploit—are not.

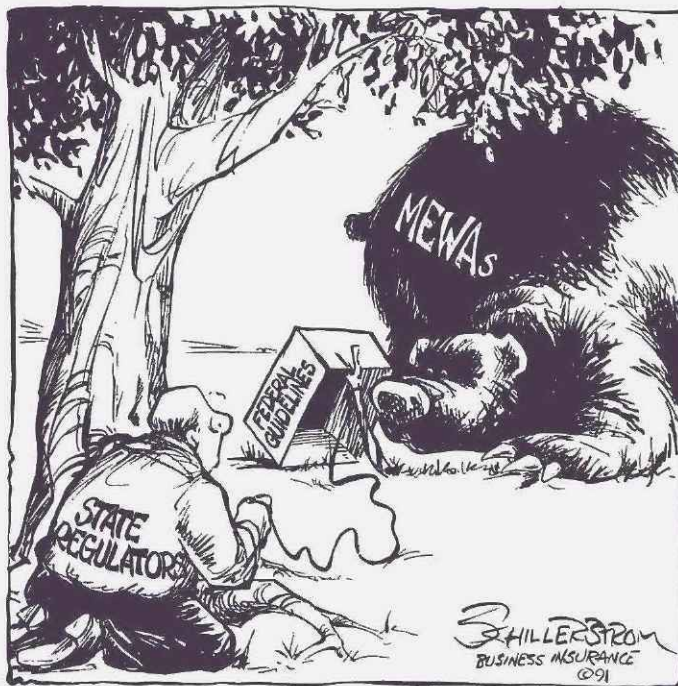
As was the case in the late 1970s, the most troublesome MEWAs often are organized by third-party claims administrators or those with insurance sales backgrounds.

Fraudulent MEWAs, marketed principally to small employers, commonly promise substantially lower premiums than those charged by commercial insurers. It is a sales pitch that small employers, which often are unsophisticated insurance buyers, find hard to resist.

Instead of using the premiums paid by employers to purchase adequate stop-loss insurance, the organizers of these MEWAs pay themselves high administrative fees and big commissions to agents. Eventually, the MEWA is overwhelmed by claims and collapses. Meanwhile, the organizers, fattened by those hefty administrative fees, have disappeared.

Congress' first legislative attempt to deal with self-funded MEWA problems, judging by the GAO statistics, is an obvious failure.

Responding to the pleas of state regulators, Congress in late 1982 passed legislation that gave state insurance officials authority to regulate most self-funded MEWAs. MEWA operators had evaded state regulation by contending that MEWAs were employee benefit plans and thus exempt from state authority under pre-emption provisions of the Employee Retirement Income Security Act.



But that legislative effort—while well-intended—is fundamentally flawed. It sets no registration or certification system, thereby allowing shady MEWA operators to establish a program and collect premiums before anyone knows about it.

The legislation also left intact ERISA pre-emption for single-employer plans as well as plans covering different employers that were established as part of collective bargaining agreements, exceptions that fraudulent MEWA organizers have exploited.

Fortunately, the solution to MEWA fraud and abuse is not difficult. Congress should set uniform federal standards, enforced by the Labor Department, for self-funded MEWAs, including standards for stop-loss insurance and reserve levels.

A self-funded MEWA would have to meet these standards and obtain certification from the Labor Department before it could operate. Stiff penalties must be imposed on those who operate a MEWA without certification, and state and federal regulators would have the authority to immediately shut down MEWAs lacking federal certification.

Obviously, other safeguards may be necessary, but certification—stopping the problem before it begins—is essential to stop abuses.

## Letters

## Foreign companies not under siege in Colombia

To the editor: I was dismayed and saddened to read the Sept. 2 article on terrorist insurance in Colombia, "Coverage Scarce in Terror-ridden Colombia," wherein comments attributed to me have contributed to a very negative and misleading impression of the real situation in this country.

I wish to point out that that coverage, including terrorist risks, is offered by most local insurers (with reinsurance placed in international markets when required) for both national and multinational companies operating in Colombia. Rates for the coverage vary, and deductibles, even for oil companies, begin as low as \$5,000 per occurrence.

The article suggests that foreign companies and their employees are virtually

under siege here and that is simply not the case. Your correspondent fails to mention that Colombia's young president, Cesar Gaviria, and his government team are much admired for having successfully eliminated narco-terrorism and for their persistent efforts to reach a peaceful solution to the guerrilla groups' activities.

Nor is there any mention of the general level of renewed optimism in the country

following this year's introduction of a new constitution coupled with wide-reaching reform to the economic, political and legal systems.

Thank you for allowing someone who lives and works very happily in Colombia to briefly describe the true picture.

**Michael F. Crocker**  
Senior Partner  
Centurion Asesores de Seguros Ltda.  
Bogota, Colombia

## Insurers must pay for errors

To the editor: I am writing concerning the story in the Sept. 2 issue titled "Health Insurers May Face Penalty for Claims Errors," which refers to bills in Congress that would allow remedies for policyholders who are victims of unfair insurance claims practices within the confines of an ERISA plan.

I would like to address two points. The first point has to do with the comments contained in the article by industry spokesmen making the same old, tired assertion that if insurers become legally accountable for their misconduct, the cost of insurance will rise for employers. Besides being a ridiculous argument (this

would be the same thing as lawyers arguing they should not be legally responsible for malpractice because they would have to increase their fees to their clients), it simply is untrue.

ERISA was enacted in 1974. Between 1974 and 1987, when the Pilot Life decision came down, group health insurers were legally responsible for their misconduct by the application of state law. It was not until 1987, with the Pilot Life decision, that state law was pre-empted in favor of ERISA, bringing about the net effect that lawsuits could not be brought under state law seeking general

*Continued on page 12*

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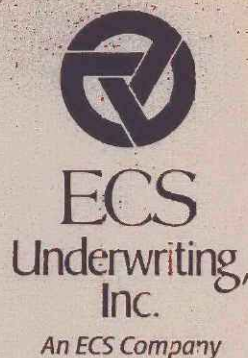
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You're going to hear more from me about Hertz Claim Management. Or my name isn't Orenthal James Simpson. ”

# Letters

Continued from page 8 and punitive damages.

Official Chamber of Commerce statistics show that ERISA insurance premiums have actually increased 5.2% faster on average in the years since the Pilot Life decision than in the 13 years before. It is therefore obvious that costs attributable to litigation under ERISA plans are negligible and that the primary cost factor for increased premiums is inflation and other factors.

The second point to be made is

that these bills favor state-by-state insurance regulation rather than setting up a federal bureaucracy under ERISA for the regulation of insurers dealing with ERISA plans. It is ironic that the insurance industry, within the confines of this small issue, argues against state-by-state regulation. It is obvious that the current set-up is inadequate. The Department of Labor, which has jurisdiction over ERISA, does not have the expertise or the budget to deal with insurance claims regulation. Accordingly, if these bills do not pass, it is certain that future legislation will mandate more stringent federal reme-

dies. This would be the foot in the door for additional federal regulation of insurers.

Lastly, I would like to make the point that punitive damages are not a remedy under any state law for claims "mishandling." It is only those rare, egregious cases that amount to fraud in which punitive damages can be rendered, and then the case is generally reviewed a few times on appeal to make sure it was justified.

Under our current system of law, every citizen and corporation in the United States is responsible for damages upon a proven showing of fraud—except for insurers under

ERISA plans. How can anybody argue with a straight face that such an immunity should be maintained?

**William M. Shernoff**  
Shernoff, Bidart & Daras  
Claremont, Calif.

## Early 'heads up' may help keep health tab down

To the editor: Your readers should thank you for an early "heads up" on legislation that

could result in higher employee health benefit costs. Your Sept. 16 editorial, "Say No to a Bad Idea," about the efforts to open up health benefit claims to punitive damage awards was timely and right on track.

Our health care system faces some difficult challenges, and we are working with the Congress and the state governments to address them.

We have to find ways to make quality health care more accessible and affordable for millions of Americans who lack health insurance or who work for firms that no longer provide adequate coverage.

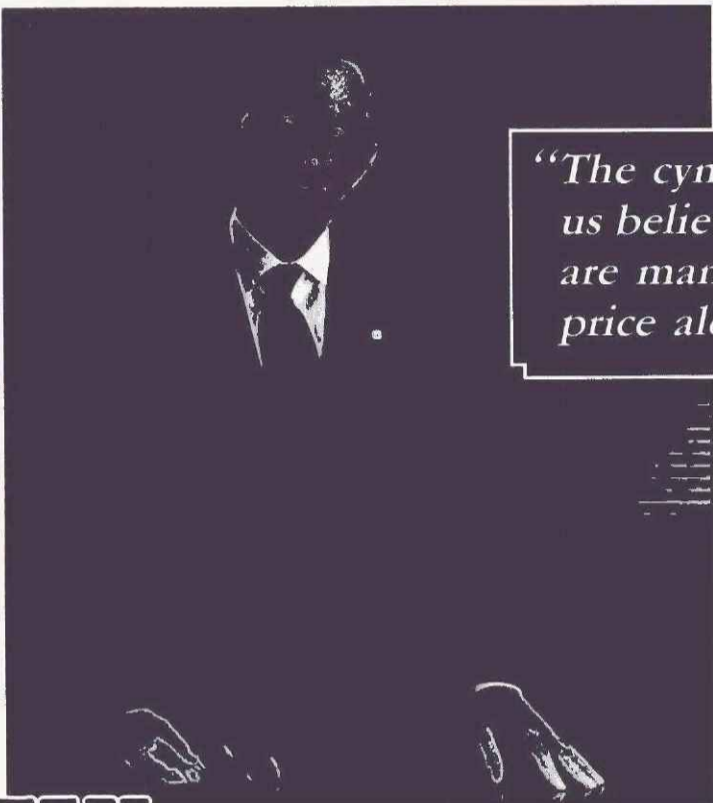
The underlying problem is the cost of providing health benefits. All of our energies and strategies should be focused on the cost increases that make health insurance too expensive for many employers. Moderating these increases will improve access to health insurance.

Putting in place incentives to pursue multimillion-dollar suits will only make the problem of unaffordable coverage worse for many employers. As your editorial pointed out, the increased threat of lawsuits will drive up litigation costs, which ultimately must be reflected in increased premiums. Furthermore, these new costs would fall primarily on small employers because the legislation being considered by Congress would apply only to insured groups. Smaller firms tend to insure, rather than self-insure, their health care benefits, so they are more likely to be hurt by the legislation.

The Employee Retirement Income Security Act already provides clearly defined procedures for appealing decisions on health benefit claims and for judicial review when necessary. These procedures were designed to resolve as many cases as possible without having to resort to prolonged and costly litigation.

Punitive damage awards will create more problems than they solve. Rather than kindling the costs of litigation, we need to make the existing procedures work better and find alternatives to our already-burdened court system for resolving disputes.

**Bernard R. Tresnowski**  
President/Chief Executive Officer  
Blue Cross & Blue Shield Assn.  
Chicago



*"The cynics would have us believe that markets are manipulated by price alone."*

Dave Driscoll  
RLI Southeast Regional Office  
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# Marine rates

*Continued from page 3*

difficult and slow process. After all, there are now underwriters in many of our markets who don't know anything other than the way business has been conducted in recent years."

Mr. Jaques warned that brokers who have a "mindset of never-ending competition" also will have to return to the basics of "service, security and loyalty."

"Marine underwriters are a hardy bunch and they know what has to be done," Mr. Jaques said.

Tony Nunn, chairman of IUMI's ocean hull committee, told delegates that all the marine insurance markets that reported to him said they had suffered from "overcapacity" last year.

But now, some marine markets were beginning to contract, he said, namely those in the United States, France, Norway, the United Kingdom, Canada and Germany.

The U.K. market, for example, reported that "rate rises are being charged on most renewals but rating levels are still woefully inadequate," he said.

"We should turn reduced capacity to our benefit," Mr. Nunn told delegates. "We're in a critical situation. Let's look in the mirror rather than out the window. . . . Are you satisfied with the current situation?"

Nearly 470 delegates and their spouses from more than 40 countries gathered in Boston earlier this month to attend the IUMI con-

ference.

During the three and a half days of the meeting, delegates addressed issues in the cargo, hull, energy and marine liability sectors of the insurance market. Guest speakers were also invited from shipping, salvage and maritime fraud businesses to give alternative perspectives.

IUMI delegates avoided talking about specific rate increases during the meeting to avoid allegations of antitrust violations (see story, page 21).

But, while the delegates in the main meeting area only discussed the market in general terms, others talked specifically about rates and conditions in private conversations scattered around the hotel where the meeting was held.

Underwriters agreed that signs of rate increases were evident in just about all sectors of the marine market except cargo, where rates are bottoming.

However, they believe that further rate hikes are needed to return to profitability.

Ocean hull risks, for example, are finally seeing rate increases of 15% to 20% from last year, Mr. Prendergast told *Business Insurance*. "But ocean hull is so underrated that we need more (rate increases) to get back to profitability, say another 30%," he said.

Underwriters also need to increase deductibles for ocean hull risks, he said. Leaving deductibles at their current "inadequate" levels would erode the rate in-

creases, he contended.

Mr. Prendergast sees no sign of rate increases, however, for inland marine business in the United States, despite the estimated \$800 million loss from Hurricane Bob (*BI*, Sept. 2).

With a reduction in capacity, marine underwriters are now seeing "modest rate increases" for hull risks, including as much as 30% for ocean-going vessels, added Mr. Keefe of GRE Insurance Group.

Hull rates are also increasing in Germany, though the market is small in this sector, said Gerhard Luttmner, executive board member of Gerling Konzern Allgemeine Versicherungs A.G. in Cologne.

Meanwhile, cargo coverages are still competitively priced, but "rates are not going down," said Mr. Keefe, echoing other underwriters' views. Insurers are still managing to make a profit in cargo, so rates have yet to increase, he said.

However, Leslie Maton, marine underwriter for Andrew Weir Insurance Co. Ltd. in London, told IUMI delegates that there is a substantial decline in premium volume and profitability in the cargo insurance sector. This is caused by overcapacity, a high incidence of catastrophe losses and increasing fraud and related crimes.

But if reinsurance isn't available at year end, cargo underwriters will be forced to increase retentions and reduce capacity, said Mr. Maton.

In London, the lack of reinsur-

ance capacity is already evident, which could increase cargo insurance rates next year, IUMI delegates heard. If this is true, "it's clear that action is required immediately," said Mr. Maton.

Meanwhile, hull and cargo underwriters are considering changes in terms and conditions to tighten their coverage following reports that many losses are caused by crew incompetence and the age of vessels (see story, page 15).

Crew negligence claims that are insured today "far exceed the intentions of the cover originally intended by underwriters," said Michael Ellis, general manager of The Salvage Assn. in London. Often, he said, surveyors find that a "whole range of machinery damage" is considered to be caused by crew negligence when in fact it's due to improper maintenance.

"Who is negligent, and are underwriters liable when an owner—quite aware that the main engine cylinder liners are worn—tries to squeeze in a further voyage and the vessel breaks down?" Mr. Ellis asked rhetorically.

Surveyors often find that damage can be caused by the crew's lack of familiarity and training on the ship or their inability to communicate due to language barriers, he said.

"I am confident that all our surveyors take the view that the broad insurance cover which underwriters offer gives an unjustified level of comfort to owners and managers who ignore standards," said Mr. Ellis. "It is certainly not

for surveyors to suggest to underwriters the terms on which they should write their business. But The Salvage Assn. could in most instances draw the distinction between crew negligence and crew failures directly brought about by owners' or managers' incompetence or indifference."

Mr. Ellis pointed out that engine repair costs have approximately tripled between 1976 and 1990, and costs for spare parts have gone up sixfold. "Underwriters will know whether their premiums over those periods have reflected rises of that order. Similarly, have deductibles moved in line? I doubt that they have."

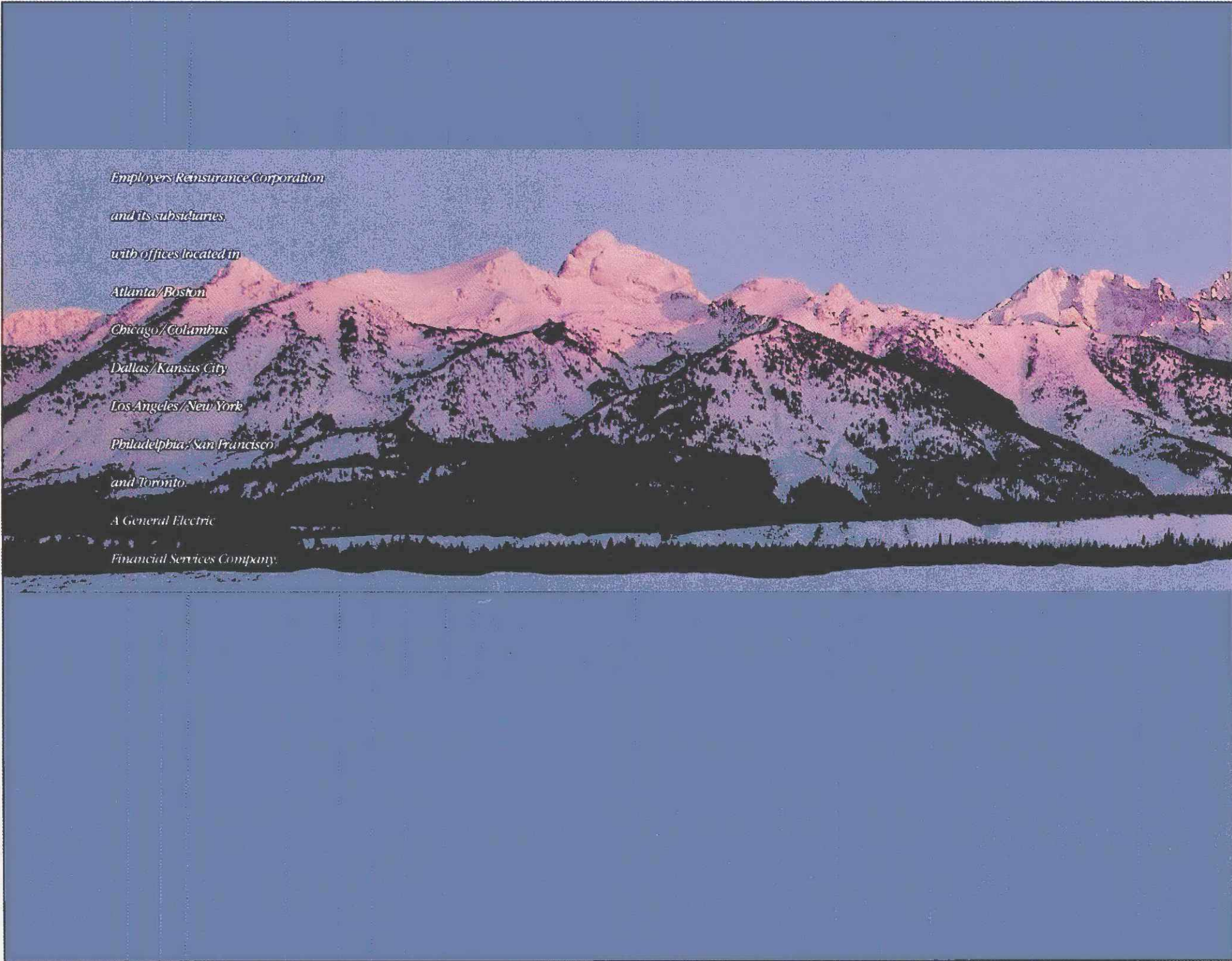
If underwriters are offering this kind of broad coverage for premiums that are lower than inflated repair costs, "that suggests to me that the fortunes of some sections of the shipping industry are being achieved in part at underwriters' expense."

Cargo underwriters in London, meanwhile, are considering charging additional premiums for cargo shipped in vessels more than 10 years old, said Mr. Maton. Such charges now apply only to vessels more than 15 years old.

The cargo underwriters—along with hull underwriters who already charge additional premiums—are concerned with the frequency of losses to older ships, IUMI delegates heard. Of the 39 bulk cargo vessels that were total losses between January 1988 and April 1991, 90% were more than 10

*Continued on next page*

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Continued from previous page  
years old and 73% were more than 15 years old, said Michael Hill of the Insurance Council of Australia.

"Loss experience clearly demonstrates an increased risk once bulk carriers exceed 10 years of age, and this should be reflected in rating," said Mr. Hill.

Meanwhile, the energy sector of the marine insurance market is being hit hardest by the dramatic reduction in London's excess-of-loss reinsurance market. Energy-related insurance rates are now 15% to 20% higher than last year for platforms and drilling rigs, said Mr. Prendergast.

Much of this contraction is tied to the dramatic LMX market contraction, according to Mr. Prendergast.

By year end, the LMX market will further contract and be more expensive. Mr. Prendergast predicted, with LMX underwriters already suggesting that there will be one loss retention, in which the ceding company will have to pay for one loss before coverage is triggered.

IUMI delegates also suggested that LMX underwriters will insist that aviation and marine risks be written on separate reinsurance contracts in order to charge the ceding company more premium, rather than on a single contract as has been done in the past.

"We are facing a market situation which is extremely unstable and unpredictable," said Oddvar Kvan, chief operating officer with Norwegian insurer UNI Store-

brand International A/S in Oslo. "We are unable to tell our clients in the energy industry to what extent we can offer the requisite risk carrying capacity in 1992."

What underwriters do know, though, is that to offer any capacity, "energy underwriters must produce a better return than we have achieved in the past few years," said Mr. Kvan. "The price of energy insurance has to go up!"

Marine and energy associations have been saying that the market is now hardening because of the slew of losses between 1988 and 1990. But "we all know that this is not quite true," said Mr. Kvan. "The market was fully aware of the impact of these losses already at the end of 1989, but no corrective measures were taken at that time to increase rates in the light of recent loss experience."

The reason energy rates are going up now is because of the reduction in the reinsurance market, particularly the LMX market, which has been hit by substantial losses, said Mr. Kvan.

"It is only in 1991 that we have seen prices starting to move up as energy accounts come up for renewal," said Mr. Kvan.

"Not because the loss situation has aggravated further since 1989. Not because we perceive the risks to be greater than they were last year. The simple answer is that the availability—and consequently the price—of reinsurance protection decides the price that energy underwriters charge for insuring an oil company's exposures." ■

## 'Preventable' hull losses examined

By STACY SHAPIRO

BOSTON—Hull underwriters should re-examine the coverage they provide so that they are insuring only accidental rather than preventable losses, delegates at the International Union of Marine Insurers conference suggest.



Boston Fall 1991

Hull insurance should not cover losses caused by incompetent crews and unsafe vessels that should not be sailing, the IUMI members agree.

And, as the age of the world's commercial vessels increases, some members question whether the cost of coverage and deductibles should be raised to cover those ships' increased risk of losses from wear and tear.

"I suggest that the time has come to stand back and remind ourselves of the proper role of hull insurers," said M.J. U'Ren, director and group marine manager of Sun Alliance & London Insurance P.L.C. in London.

"We all know how difficult it is in modern market conditions to obtain sufficient premium for the cover we now provide, and I suggest that we need to give consideration to whether that cover is often too wide," Mr. U'Ren told IUMI delegates.

Too often in recent years, underwriters have found themselves paying "very large sums" that really should have been borne by the ship-

owners or others, according to Mr. U'Ren. These include maintenance costs, development costs of new methods of design or construction; loss or damage due to building or design defects; or loss or damage due to inadequate investment by the ship operators in maintenance, the hiring of experienced crews and proper fire-fighting equipment, he said.

"It seems to me that one should ask whether hull underwriters are not, to an extent, subsidizing the bad practices of some owners and picking up costs which should rightly be met by others as a result of their negligence or wrongdoing," Mr. U'Ren said.

Underwriters should ask themselves whether merely increasing premiums is sufficient to cover the expense of paying those claims, he said. If the answer is no, then they should look closely at the coverage they offer, said Mr. U'Ren.

In particular, hull underwriters should consider the coverage they provide under the "additional perils clause," which is part of the Institute of London Underwriters' Time Clauses (Hull) published in 1983.

The Institute Time Clauses are the most common insurance conditions used by hull underwriters in the world, although there are other wordings in countries like Norway and the United States.

"It is perhaps not always realized that this clause, which is often to be found tucked away in a mass of

word-processed conditions, has the effect of converting the insurance from a 'named perils policy to an all-risks policy with exclusions," according to Mr. U'Ren.

Any attempt to remove the additional perils clause would be met with strong opposition from shipowners, he said. "But, we should ask ourselves whether insurers should continue to make so freely available such wide conditions, which not only cover 'any accident' but also extend our liability for claims resulting from defects in existence before the commencement of the risk."

The ILU's additional perils clause also covers loss due to negligence, incompetence and error of judgment of any person whatsoever, he said. In this way, the onus of proof of who caused the loss is transferred to the underwriter, he said.

Nicolas Wilmot, legal and claims director for Vesta Insurance Co. of Bergen, Norway, agreed that the ILU's additional perils clause turns hull coverage into an all-risks policy.

For example, it allows shipowners to be insured for damage to machinery, even though court decisions have said that machinery is not a peril of the sea, Mr. Wilmot pointed out.

"For some strange reason, underwriters are particularly anxious to cover broken shafts and boilers," which are included in the Institute

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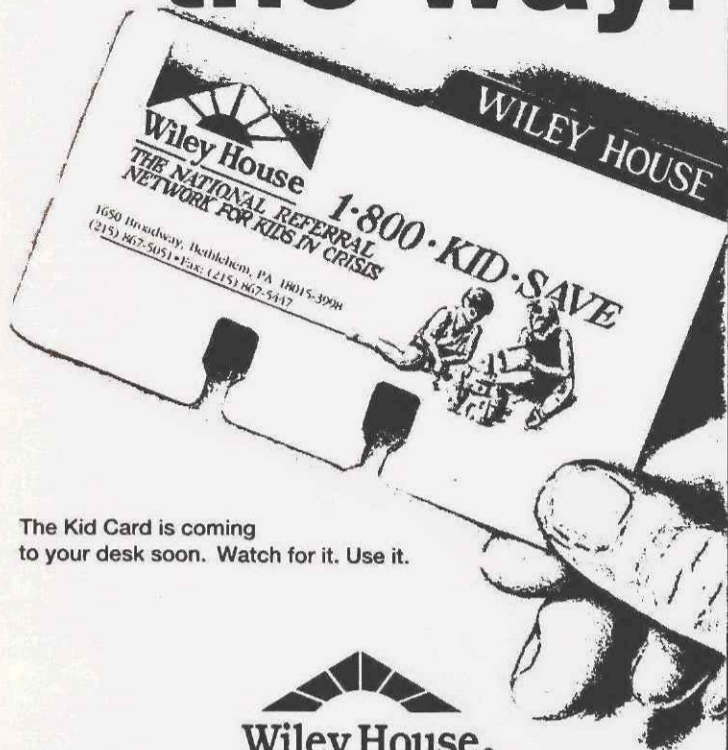
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## Hull losses

*Continued from previous page*  
Time Clauses, he said.

The Institute Time Clauses also do not exclude losses due to "wear and tear or unseaworthiness," said Mr. Wilmot.

However, he added, these risks are not covered according to precedent set by the British Marine Insurance Act of 1906, which says that "unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured."

The additional perils clause definitely covers crew negligence, said Mr. Wilmot. "So whatever happens, blame the crew" and the claim will be paid, he said.

Norway's hull clauses "are, of course, better than the Institute Time Clauses," according to Mr. Wilmot. For example, they have a specific exclusion for losses due to lack of maintenance even when it is the fault of the crew, he pointed out.

The American Institute of Marine Underwriters' hull clauses, however, "are the worst of the lot," according to Mr. Wilmot. They contain no reference to any background law and there is no marine insurance statute in the United States like there is in Britain, he contended. There is also no specific exclusion for losses caused by wear and tear, he said.

Underwriters might suggest that the best way to tackle this problem of overly broad coverage would be to raise deductibles, particularly for older vessels, but both speakers said this was only a short-term solution.

"It is quite possible to draft a perils clause that regulates these matters in a comprehensive and fair manner,"

said Mr. Wilmot. "It is irresponsible of us to give blanket coverage of any form of crew negligence, and we need an absolute exclusion for (losses) caused by lack of maintenance. A well-drafted perils clause will benefit the cause of maritime safety and the good owner and it will leave us to compete on a level and well-prepared playing field."

"Whilst I do not advocate any concerted action, I do suggest that perhaps we should each set in our minds our own individual guidelines embracing minimum deductibles based primarily on age, tonnage and type and then adjusted for any other relevant factor," said Sun Alliance's Mr. U'Ren.

"A combination of the anticipated higher insurance costs and uninsurable self-retentions assessed in this way may go some way to encourage owners to replace their older tonnage rather than to continue to operate them in the knowledge that underwriters will pay up when they meet with a casualty," he said.

"Clearly, our experience in recent years makes it plain that marine insurers cannot continue to be the 'fall guys' for the growing practice of shipowners, whether deliberate or through economic necessity, to operate older and older vessels, often cutting corners on maintenance and crewing at the same time," he said.

For example, Mr. U'Ren noted that more than 60% of the total tonnage lost in 1990 was bulk and combination carriers. Of 19 such vessels lost, as many as 17 were 15 years old or older, he said.

And, in the first six months of this year, almost 74% of the world's ships were 10 years old or older, he added.

Underwriters should confine their responsibilities to "covering the accidental rather than the inevitable," Mr. U'Ren stressed.

The speeches by Messrs. U'Ren and

Wilmot, which came at the end of the conference, gave rise to more conversation among delegates than any other IUMI session.

One underwriter from Germany, for example, said that German hull insurance clauses offer some of the restrictions suggested by Mr. Wilmot.

"No" is the one word missing from underwriters' vocabulary, a Danish underwriter said.

Mr. U'Ren agreed, but added that "brokers will get used to the word 'no' very shortly."

Meanwhile, IUMI delegates criticized the classification societies that inspect vessels and rank their seaworthiness.

Lloyd's underwriter Peter Christmas, for example, said that the standards of the societies are "not up to what we require."

A Norwegian delegate added, "we must hurry up and improve our own standards."

Lloyd's underwriter Stephen Merrett pointed out that the speakers were suggesting excluding a "significant amount" of hull coverage and urged that this not be treated as a general movement by underwriters. If customers can afford to pay for what underwriters offer, then they should continue providing the cover, he said.

Mr. Wilmot added that "we should not collectively try to boycott" shipowners. However, he said, underwriters should consider what is an accidental loss that should be covered by insurance and what is not an insurable loss. It would be "in the interest of maritime safety" to consider excluding some of these situations, he said.

Meanwhile, Institute of London Underwriter delegate John Parton suggested that there was one human factor that underwriters had overlooked, namely, "ourselves." The problems underwriters have today also are a result of their own inabilities, he said.

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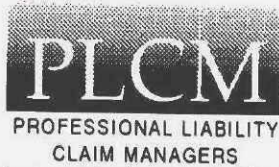
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# MOAC chief denies rumors of troubles

By STACY SHAPIRO

BOSTON—One of the big topics of conversation at the International Union of Marine Insurance conference earlier this month was the fate of America's largest marine underwriter, the Marine Office of America Corp.

Many delegates wondered whether Cranbury, N.J.-based MOAC was going under following the departure of two presidents, the shutdown of its London and European operations, the pullout from the American Hull Insurance Syndicate and the announced sale of its reinsurance operation.

Thomas J. Prendergast, the company president, sought to allay those concerns. "MOAC's in terrific shape," he said. "We continue to be the (marine) market leader in the United States, in North America. It's a very enviable position."

MOAC, which writes marine business for parent company Continental Corp., has been underwriting marine insurance "in one way or another" since 1872, said Mr. Prendergast. "The climate keeps changing (and) you have to be proactive."

Announcing those major pullbacks and other changes over a period of weeks, rather than all at once, has been the company's biggest mistake recently, he said. Each announcement fueled still more rumors.

But each move, he insisted, also brought the company closer to its objective—to streamline down to its core strength of North American marine insurance underwriting.

Change probably started at MOAC the day after the 1990 IUMI conference in London when George S. Zacharkow, then its president, suffered congestive heart failure.

After a month in British hospitals, Mr. Zacharkow returned to the United States and decided to retire early this year at age 64. A key player in the American and international markets over the years, Mr. Zacharkow attended IUMI this year as an independent consultant.

Samuel Byron, who took over as president following Mr. Zacharkow's retirement, also retired earlier this year. MOAC and Continental executives say Mr. Byron retired for personal reasons.

Mr. Prendergast succeeded Mr. Byron as president earlier this year.

MOAC has been the main underwriter for New York-based Continental in marine business. According to Continental's 1990 results, the underwriting losses of Continental's "specialized commercial" operations, including MOAC, increased almost 25% to \$96 million from \$77 million in 1989.

In its annual report, Continental attributes that deterioration "primarily" to an addition of \$33 million to reserves for losses from the marine-related 1988 Piper Alpha oil rig disaster.

Continental's inland/ocean marine written premiums rose 7.1% to \$319.7 million in 1990. But its combined ratio deteriorated to 115.7% from 106.2% a year earlier.

MOAC started announcing changes in August when it and two other insurers decided to pull out of the American Hull Insurance Syndicate (BI, Aug. 26).

MOAC helped found the syndicate in 1920 to write American merchant fleet business, said Mr. Prendergast. Since then, however, that fleet has shrunk from thousands of vessels to 300, he said.

"After 71 years, things change."

MOAC will continue, however, to write American merchant fleet hull insurance through the All American Marine Slip, which is an affiliate of the American Hull Insurance Syndicate, he said.

At the beginning of September, Continental Corp. announced that it was shutting down its member companies in the Institute of London Underwriters, namely Lombard Continental Insurance P.L.C. and Continental Insurance (U.K.) Ltd.

Although these companies were managed this year by Continental International, London market participants considered them to be MOAC companies because MOAC had been managing them up until this year. Mr. Prendergast, in fact, had once lived in London and overseen the European operations.

At the same time, Continental International ceased underwriting indigenous marine accounts written by managing agents in Australia, Belgium, Denmark, France, Hong Kong and the Netherlands.

Most of these managing agents were considered to be MOAC organizations.

Continental International said that the withdrawal from indigenous marine accounts in those countries was part of its restructuring to focus on multinational clients (BI, Sept. 9). But many IUMI participants saw it as an ill-timed retrenchment just when the marine market is hardening and increased profits are foreseen.

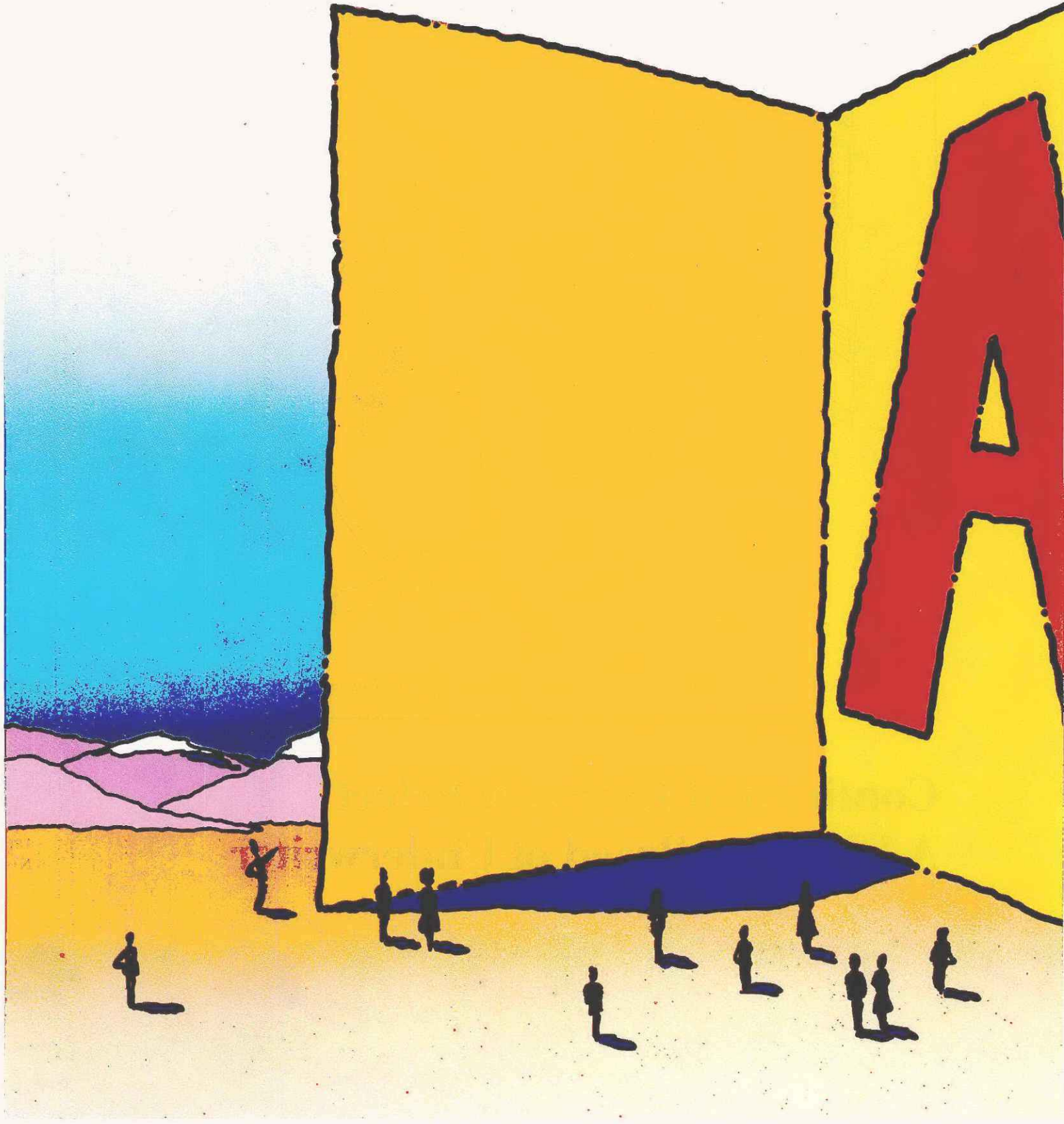
Moving out of international marine insurance underwriting fol-

lowed the group's six-month review of its operations and its decision to focus on its core operations, namely North American insurance, said Mr. Prendergast. By doing so, the group will now focus all of its capital on its core operations rather than split it with international operations, he said.

"We have looked at ourselves very hard over the last six months in terms of what made us what we are today, what made us a success. The success was being very, very

*Continued on next page*

## When you get this kind of report card, it's big news.



Continued from previous page  
good at our trade—which was writing marine insurance in North America," said Mr. Prendergast. "We all wring our hands about excess capacity, but nobody seems prepared to step back from any share they have anywhere. And we have decided it was an appropriate time to put the words with the music."

"We didn't see that we brought anything unique to Europe that wasn't there," he added. "Our capacity didn't make the difference in any market. But the utilization of that capacity is very significant here."

Mr. Prendergast added that the London market has been around

**'We didn't see that we brought anything unique to Europe,' says MOAC's Mr. Prendergast.**

for more than 300 years, while MOAC was there for only 20 years. "If we had never been there, they wouldn't have noticed we were leaving," Mr. Prendergast said. "London won't stop because we've withdrawn from the ILU. Our commitment is here. Continental wants to be the pre-eminent pro-

vider in specific markets. In North America, MOAC is a pre-eminent provider."

That streamlining was brought a step further during the week of IUMI when the company announced that it is selling MOAC Reinsurance Management Co. to Underwriters Reinsurance Co. of Woodland Hills, Calif. (BI, Sept. 23). Terms were not disclosed.

That sale also was prompted by the review, said Mr. Prendergast. MOAC Re "is good, it's solid, but if we invest the time and resources to manage it properly, then again it's a drain on our core business," he said. "So it seems a lot better to me to arrange a sale to someone that is totally focused as a professional

reinsurer."

MOAC Re accounted for about 10% of MOAC's \$450 million premium volume and only 20 employees out of its 600 total employees. The unit admittedly had a 117% combined ratio last year, but that was in line with other U.S. insurers, he contended.

MOAC believes that there "clearly are opportunities" in marine reinsurance as the market hardens, said Mr. Prendergast. Since Continental owns 44.5% of Underwriters Re, the group will continue to benefit from that upturn, he added.

James Stevens, president of MOAC Re, said he is excited about the sale. It will give MOAC Re ex-

ecutives the chance to work for a professional reinsurance company that devotes all of its resources "to assist in our mission," said Mr. Stevens.

MOAC Re is to become a separate marine and aviation department within Underwriters Re.

Selling its reinsurance operation was the final stage of the streamlining, said Mr. Prendergast. "This is it."

The company continues to be "committed" to the energy-concentrated All American Marine Slip and has no intention of leaving it, despite rumors to the contrary, he said. "We intend to be active in the energy market," Mr. Prendergast asserted.

"The view of MOAC for the future in terms of what we are about (is that) we are very actively involved in marine, we're committed to growing that business and we're not going away," Mr. Prendergast concluded. "There are a lot of guys who would love to see us go away, (which would) open up market share and take some quality competition out of the market."

"We're not going to do that." ■

## Republics may draft own rules on insurers

By STACY SHAPIRO

**BOSTON**—Insurance companies and brokers that plan to establish operations in the Soviet Union will have to be approved by the government of each Soviet republic, a Soviet insurance executive says.

Although the Soviet central government has drafted insurance legislation for the entire nation, it now is likely that each republic will draw up its own insurance laws in light of last month's failed coup, said Mikhail Safronov, chairman of Ingosstrakh, The Insurance Co. of the U.S.S.R. Ltd.

The insurance legislation that had been drafted for the entire Soviet Union now will become the insurance law for the republic of Russia, Mr. Safronov said. The legislation is expected to be passed by the Russian republic's legislature by the end of this year, he said.

"I understand that the old union governmental bodies will be dismantled following the coup, and each of the republics will process insurance legislation itself," Mr. Safronov said.

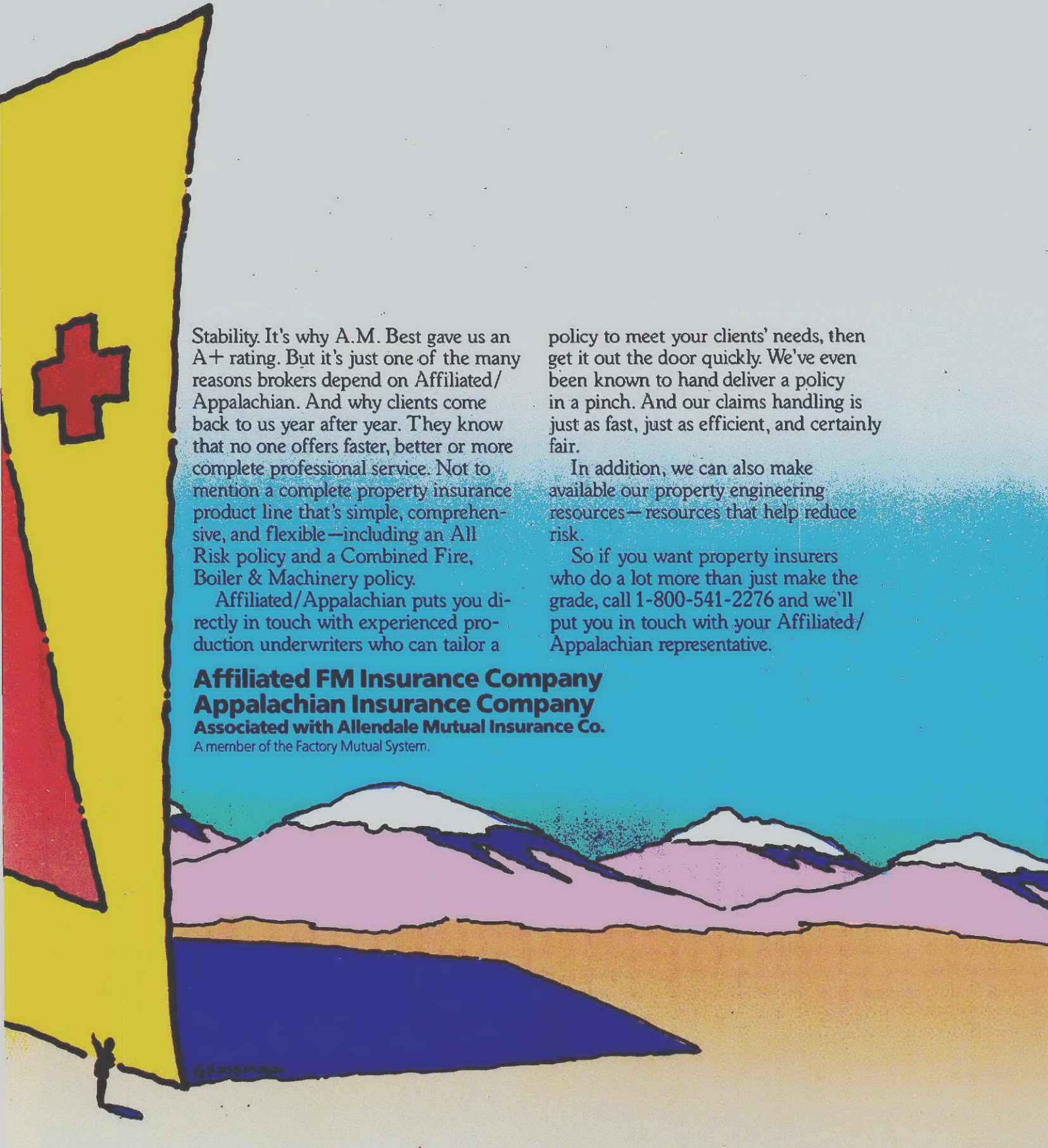
"In Russia, they want to put legislation into practice as soon as possible, and insurance legislation is high on their priorities. I am optimistic that before the end of the year the draft (Russian insurance) legislation will be adopted, and then we can build an insurance market."

Mr. Safronov said that details of the Russian insurance legislation, which Ingosstrakh helped draft, have not been made public.

However, the legislation is expected to create a supervisory authority that would establish standards like capital requirements for insurers. No such regulatory organization currently exists in the Soviet republics.

The legislation also would regulate insurance brokers and allow foreign insurers to operate in the republic, Mr. Safronov said. Already, two brokers—including Willis Corroon P.L.C.—have set up operations in Moscow (see London

Continued on next page



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## Republics

Continued from previous page column on page 37).

Lithuania—which the central Soviet government recognized as an independent nation earlier in September—already has passed a new insurance law, pointed out Mr. Safronov, who was interviewed during the International Union of Marine Insurance conference in Boston earlier this month.

Although national marine insurance associations usually represent their countries as IUMI delegates, Ingosstrakh acts as the Soviet delegate because Ingosstrakh had been the only state-owned Soviet insurer that wrote foreign business.

Mr. Safronov predicted that once Soviet insurance legislation is in place and more insurance companies exist, marine insurance as-

sociations will be established and replace Ingosstrakh as the Soviet IUMI delegate.

Many IUMI members who attended the annual meeting in Hamburg in 1986 received their first taste of a more open Soviet Union when Mr. Safronov gave details of the sinking of a Soviet cruise ship, which killed 390 people (*BI*, Sept. 29, 1986).

It was the first time in recent history that a member of the Soviet insurance industry spoke publicly about internal affairs, though Mr. Safronov says he always has been outspoken.

"Perestroika a few years ago proved valuable to the insurance industry because (the Soviet economy) started to develop along (open) market lines," he said.

"Insurance is used as an instrument to protect assets. Our com-

**A new Soviet market economy will attract 'young, bright entrepreneurs,' says Mr. Safronov.**

pany was quick enough to realize that it would become more and more liberal and free and there would be less state influence."

Ingosstrakh, which wrote about \$400 million in premiums last year, has become the major Soviet insurer of joint ventures between state institutions and foreign investors.

The insurer announced this summer that it will attempt to increase its share capital to 755 million

rubles (\$443.3 million) from 100 million rubles (\$58.7 million) to meet expected demand for coverage for international risks. The additional capital is expected to come from the sale of new stock to institutional investors, diluting the Soviet government's shareholding in Ingosstrakh (*BI*, Aug. 5).

The intention is for Ingosstrakh to become "a classic stock company" rather than a state-owned insurer, Mr. Safronov said.

This scenario might have been jeopardized if the leaders of the Aug. 17 attempted coup had been successful, Mr. Safronov said.

One of the purposes of the coup was to take steps to guarantee that power stayed with the central government, and "that would have influenced our policy," since Ingosstrakh is seeking to dilute the government's control over its operations, he said.

Mr. Safronov said he had an idea that there was unrest among the Soviet leadership before the coup because the economy "was in such a bad state."

However, he was on vacation in Finland when his office in Helsinki, Finland, phoned to tell him the coup had begun. Because he did not understand broadcasts on Finnish television, "I immediately turned on the radio" to receive broadcasts he could understand, Mr. Safronov recalled.

He knew that Ingosstrakh would not be immediately affected by the coup leaders because it is not a major Soviet financial instrument that would attract immediate interest. However, he immediately called his office in Moscow to determine whether there had been any calls or messages from higher authorities. There had not been any such calls.

Mr. Safronov considered driving back to Moscow, but his route

would have passed through Leningrad, where a police curfew had been imposed. He was considering alternatives when it became clear that the coup was crumbling.

So, "I finished my vacation," he said.

Now, Ingosstrakh will "continue its transformation," Mr. Safronov said.

Ingosstrakh, which had insured only external Soviet risks, also will concentrate on developing domestic business, where its sister company Gosstrakh has dominated the field. State-owned Gosstrakh, which had been the nation's major domestic insurer, has been replaced with a new company, Soyuz Gosstrakh, which has been capitalized privately.

Other private insurers have been formed in the Soviet Union in recent years, he noted, with 100 to 200 separate insurance "units" now writing domestic business. "But almost all of them are very small with weak professional knowledge."

However, about three to five of these are better known to the public, and "these could become serious competitors," he said.

"We will be in direct competition with Soyuz Gosstrakh and the others that are now appearing," he said.

The failed coup will generate other benefits, as well, Mr. Safronov predicted. He believes that the Soviet Union is now committed to a market economy that will attract "young, bright entrepreneurs" who are optimistic about the future.

There also should be more encouragement now for foreign investment, which will need to be insured. Increased foreign investment would help bolster an economy that still is in a bad state, he said. ■

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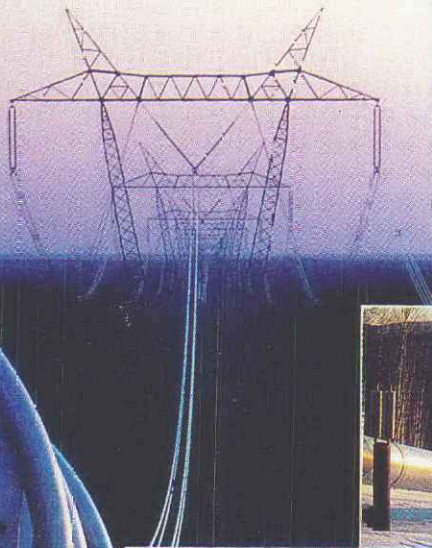
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# At IUMI conference, mum's the word

By STACY SHAPIRO

BOSTON—Freedom of speech has its limitations if you are a delegate at the International Union of Marine Insurance annual conference.

While touring Boston—the birthplace of the American Revolution—some delegates were reminded that the United States is the home of the free when they visited the 24-gun frigate H.M.S. Rose docked in the harbor. The largest operational wooden tall ship in the world was in port as part of its nine-month, 24-city East Coast tour in celebration of the 200th anniversary of the ratification of the Bill of Rights (BI, Aug. 5).

On the ship, visitors were given a copy of the Constitution and the Bill of Rights, including the First Amendment, which says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

That was the lesson outside the meeting hall. Inside, the 468 participants from 43 nations learned something quite different.

On the first day, just before questions were taken from the floor at the cargo workshop, IUMI executive committee member Alan Jackson, deputy chairman of Lloyd's of London, read aloud IUMI's new policy statement that applied because the conference was held in the United States.

The statement, similar to that usually read aloud by the U.S. delegation at every conference, reminded delegates that they could not discuss rates in an open forum for fear of antitrust lawsuits.

"The executive committee of IUMI wishes to underscore the importance of compliance with the laws of the United States, and those of other countries where similar laws are applicable, in all respects throughout the 1991 conference in Boston," the statement read.

"The laws of such countries prohibit underwriters from entering into any agreement or understanding, express or implied, on matters affecting rates or conditions of insurance. It is the policy of the International Union of Marine Insurance and its members and delegates to honor and abide by these prohibitions in all respects."

After it was read, Mr. Jackson asked delegates if they had any questions to ask the speakers of the cargo workshop. "It's too dangerous to ask questions," yelled one delegate.

When someone did try to make a comment on returning to profitability by imposing some restrictions, American Institute of Marine Underwriters Chairman Harry Keefe shot up and said that any such comment would be in violation of the IUMI policy statement.

Slowly the question and answer session wound down, with delegates afraid that what they said would violate the policy.

The next day, during the official opening of the conference, IUMI President Maurice Jaques told delegates that he understood that some people were disappointed that there was not more discussion at the cargo workshop. However, he cautioned members about respecting the laws of the host nation.

"We are not a ratemaking operation," said Mr. Jaques. "But we can listen to each other's opinions. . . . This shouldn't inhibit discussion."

Following Mr. Jaques' comments, delegates worked hard to dodge calling for increasing rates while they were in the auditorium. In private meetings, though, the need for rate hikes dominated discussion (see story, page 3).

The IUMI policy statement was written following last year's conference in London when a delegate said on the podium that rates should be increased "25% across the board" (BI, Oct. 1, 1990). Marine rate increases actually were not noticeable until July this year (BI, July 22).

E.C. officials also criticized IUMI for recommending that radioactive contamination caused by nuclear accidents be excluded from marine insurance policies.

Marine underwriters in the European Community say they still are not sure what they could dis-

cuss without running afoul of E.C. antitrust law.

Bo Wahllof, senior vp of Skandia Insurance Co. Ltd. in Stockholm, Sweden, who took over as IUMI president following the conference, says he believes an E.C. regulation allows the "insurance sector" to discuss premium tariffs, standard policy conditions and the settlement of claims.

Other IUMI members living in E.C. nations, however, believe the regulation is vague and gives no guarantee against antitrust prosecution.

Nevertheless, because of the "serious concern" raised by member associations, particularly in the United States and some E.C. nations, the IUMI policy statement was written, said Mr. Jaques in a letter to IUMI executives.

"While we can discuss statistics

and technical results in relation to our stated goal of representing and safeguarding marine insurance, we must avoid specific statements about increases in rates as we are not a rating organization," said Mr. Jaques. "I ask you all to be sensitive about this issue as it is very important to some of our members and, in particular, to our hosts in Boston."

During the conference, delegates from 43 of the 53 countries whose marine markets belong to IUMI discussed topics including loss statistics, increased maritime fraud, new liability rules throughout the world, marine insurance in Czechoslovakia and earthquakes.

During the traditional host night—when the host country gives its guests a taste of the food and culture of the land—the American Institute of Marine Underwriters

served up a "traditional" clambake in a warehouse on Boston Harbor.

Delegates dined on steamed lobster, oysters, clams, chicken, corn-on-the-cob and coleslaw.

Before dinner, guests were greeted by the marching band and baton twirlers of Boston College in Chestnut Hill, Mass.

After dinner and a slide show, gospel singers concluded the evening by singing the "Battle Hymn of the Republic."

Next year's IUMI conference will be held in Berne, Switzerland on Sept. 6-10, 1992. Stockholm, Sweden, will host the meeting in 1993 and Toronto will host the following year.

For more information, contact Emanuel Burckhardt, IUMI's general secretary, at Baloise Insurance Co. Ltd., P.O. Box 4002, Basel, Switzerland. ■

## ENVIRONMENTAL LIABILITY

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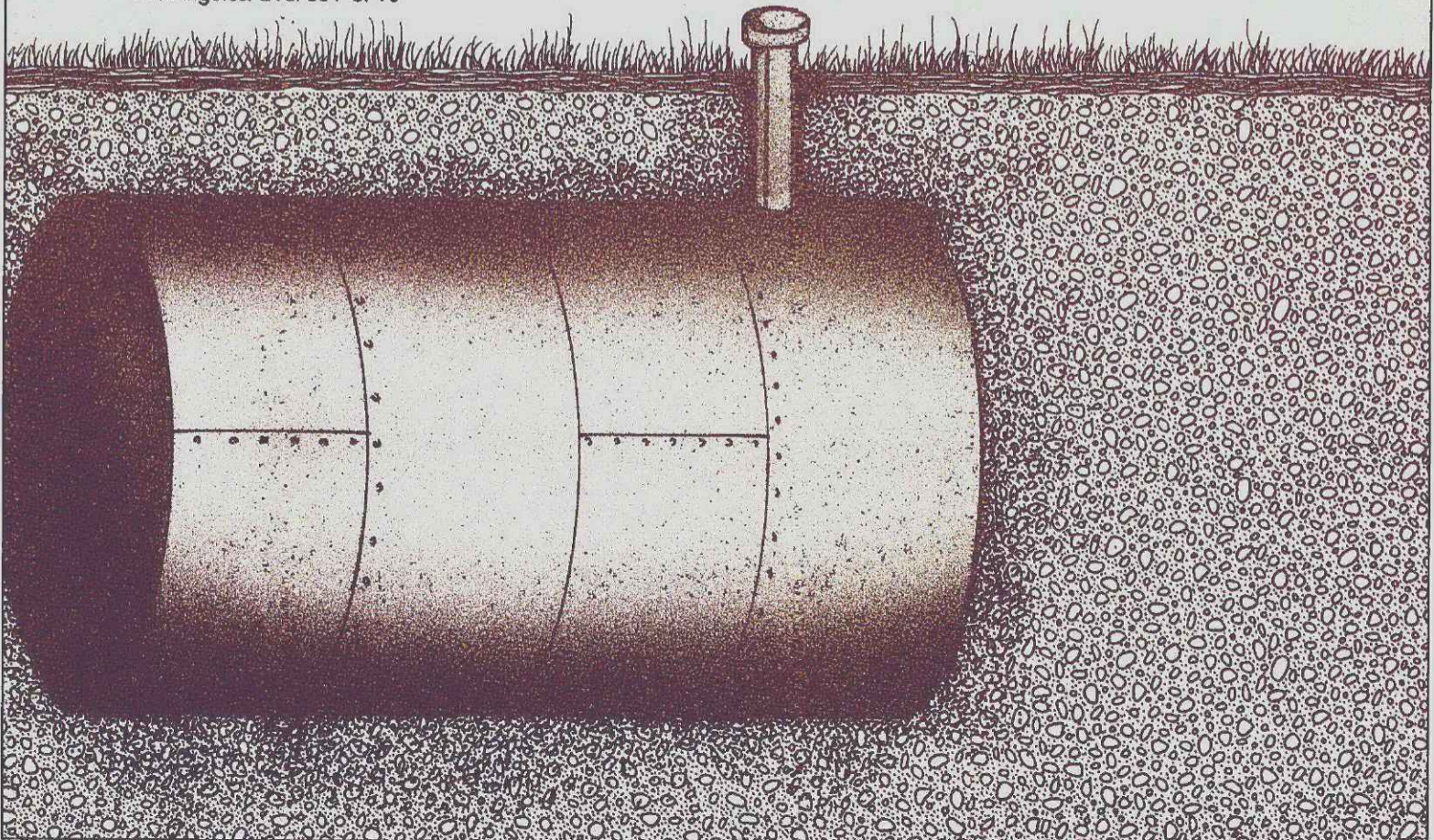
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# P&I clubs deny unlimited cover for oil spills

By STACY SHAPIRO

**BOSTON**—Tanker owners, which now can face unlimited liability for oil spills in U.S. waters under certain federal and state regulations, cannot rely on their protection and indemnity clubs to guarantee that all spill-related costs will be paid.

The 17 P&I clubs—shipowner mutual insurers that write liability coverage for more than 95% of the world's shipping fleet—say they will not issue certificates of financial responsibility required under the Oil Pollution Act of 1990 or any of the 19 state oil pollution laws that call for unlimited liability for oil spills.

The clubs, which offer \$700 million in oil pollution liability coverage, have no intention of becoming the "guarantors" for oil companies under unlimited liability laws, said Richard Youell, underwriter for Lloyd's of London syndicate 79, a leading P&I club reinsurer managed by Janson Green Ltd.

"By introducing its own laws at the state level in addition to the federal law resulting from oil spills, the United States applies a uniquely draconian patchwork of laws, the effects of which are at best uncertain," Mr. Youell told delegates at the International Union of Marine Insurance conference earlier this month in Boston.

"The P&I clubs made clear to Congress before it passed the Oil Pollution Act last year that the clubs were unwilling to issue certificates of financial responsibility under such legislation" that contained unlimited liability, said Mr. Youell, IUMI's liaison officer with the P&I clubs.

"The position of the P&I clubs remains unchanged and applies with even more force to any state legislation. Other commercial insurers and reinsurers have taken a similar position.

"Thus, while the P&I clubs and their reinsurers continue to provide the highest level of insurance cover commercially possible to protect their members against liability for oil pollution in the United States, they are not willing to subject themselves and their members to the risks associated with giving anticipatory guarantees, either under the Oil Pollution Act or individual states' acts," Mr. Youell said.

"Certificates of financial responsibility will therefore not be available from the P&I clubs either under the Oil Pollution Act or individual state oil pollution laws."

Mr. Youell said the U.S. Coast Guard, which will be responsible for enforcing the Oil Pollution Act, has not yet written regulations governing the certificates of financial responsibility because of the concerns raised by the P&I clubs.

Oil companies and insurers are concerned about unlimited liability for oil spills, pointed out Rear Adm. A.E. Henn, chief of the U.S. Coast Guard's office of marine safety, security and environmental protection in Washington, D.C.

"In informal discussions with industry and the P&I clubs, we have been advised that this provision may cause some shippers to abandon the U.S. trade," he said.

However, the P&I clubs know that ships must trade in U.S. waters and, to do so, the ships must have some type of financial responsibility for oil spills, Mr. Youell said. Therefore, the clubs will continue to offer pollution coverage to ships sailing into U.S. waters, he said.

While P&I clubs now provide

\$700 million of liability coverage for oil spills, this limit will be reduced before P&I club policies renew on Feb. 23, Mr. Youell predicts.

Congress last year approved a new federal oil spill liability law in the aftermath of the March 1989 Exxon Valdez oil spill in Alaska's Prince William Sound (BI, April 3, 1989).

The Exxon disaster "shook the American consciousness," Adm. Henn noted.

"The Congress, which had been working on oil pollution prevention legislation for 15 years, unanimously passed The Oil Pollution Act of 1990," he told IUMI dele-

gates. "The act will change forever the way the big business of oil transportation operates in the United States."

The law:

- Increases an owner or operator's liability for oil spills to \$1,200 per gross ton of the tanker's displacement, from the current \$150 per gross ton. However, the law allows for unlimited liability in certain circumstances, including cases of gross negligence or willful misconduct.

However, the law does not preempt state oil spill liability laws. At least 19 states impose unlimited liability on those responsible for oil spills.

- Expands the types of damages for which a shipowner can be held liable, including the loss of the use of natural resources and increased costs to state and local governments for fire, police and other safety services.

- Requires that double hulls be used in all newly constructed tankers.

- Establishes a federal oil spill liability trust fund to provide up to \$1 billion per incident to pay for cleanup costs, natural resource damage and compensation for any victims of the damage when those responsible for the damage cannot be identified or are unable to pay, or in cases in which liability limits

are reached. The fund is to be financed by a levy on the oil industry (BI, Aug. 27, 1990; Aug. 6, 1990).

Owners and operators of vessels, terminals, pipelines and offshore platforms also must submit comprehensive spill response plans to the Coast Guard, which will enforce the law, by February 1993. The owners and operators also will have to prove financial responsibility for oil spills.

"The importance of this legislation extends far beyond U.S. waters," Rear Adm. Henn said. "More than a third of all crude oil and refined product shipped in the world market passes through U.S.

*Continued on next page*

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Continued from previous page waters. More than 360 million tons of crude oil and refined product is loaded or discharged through U.S. ports each year. By any measure, oil transportation is big business and the United States is the major market. U.S. regulations will have international significance, particularly in the areas of tanker design and operation."

To enforce the federal law, the Coast Guard has set up two divisions.

One is the National Pollution Funds Center in Arlington, Va., which will "develop and administer" areas of the law dealing with financial responsibility and the Oil Spill Liability Trust Fund, Rear Adm. Henn said.

The second new division is "the OPA 90 Staff," which Rear Adm. Henn heads. That division is re-

sponsible for writing regulations, as well as overseeing and coordinating the studies and reports required under the act.

The OPA 90 staff also works closely with other federal agencies and with state and local governments to establish "interagency cooperation," Rear Adm. Henn said.

Since the "best defense against pollution damage is prevention," the staff is conducting a major study on improvements in tanker navigation, according to the rear admiral. This will include the adequacy of the training and qualifications of crew members; appropriate crew sizes; and the crew's ability to implement emergency procedures.

The Coast Guard also is working with the International Maritime Organization to "study the role played by human factors, such as

**The 'best defense against pollution damage is prevention,' says Rear Admiral Henn.**

fatigue, in causing pollution incidents," he said. "Hopefully, efforts like these will help us to reduce the risk of a collision or grounding in the first place."

The Coast Guard also is studying the economic viability of requiring all tankers that carry oil to have double hulls, he said, noting that double hulls may not be the only vessel construction option to yield "significant environmental gains."

In addition, the Coast Guard

"has taken several important steps to ensure rapid effective action is taken as soon after a spill is reported as possible," Rear Adm. Henn said. The guard now has three strike teams to respond to an oil spill, one more than last year, and a single control center. The Coast Guard also is establishing "district response groups" in each of its 10 districts to marshal all Coast Guard resources within one district when there is a spill.

Meanwhile, the Coast Guard is working on regulations that will govern oil spill contingency planning, including prevention, cleanup, compensation and restoration, Rear Adm. Henn said.

Contingency/response plans must be submitted by owners and/or operators by February 1993.

The Coast Guard, along with the Environmental Protection Agency,

has been co-chairing monthly meetings to draft a revised national oil spill contingency plan by the end of autumn, he said.

The Coast Guard also is working on final rules concerning response plans for both vessels and oil facilities, which should be finalized by August 1992, he said.

In anticipation of the regulations to be enforced by the Coast Guard under the oil spill law, 20 oil companies have formed the Marine Spill Response Corp. and the Marine Preservation Assn. to coordinate the oil industry's response to oil spills.

These two private organizations were established in response to the Exxon Valdez spill when it became obvious that "the capability did not exist, neither in industry nor government, to successfully contain and remove a spill the magnitude of the one in Alaska," said G. Stephen Duca, vp-readiness and external affairs of the MSRC in Washington D.C.

The MSRC, which plans to operate from five regional response centers, "will be the nation's largest spill response and cleanup organization," Mr. Duca told IUMI delegates. Under the direction of the Coast Guard, the MSRC "will provide a best-effort response to cleaning up spills of persistent (crude) oil that are beyond the capacity of local response organizations."

The MSRC's five-year costs for operations, capital equipment and research and development will reach \$900 million, which will be funded by annual dues from the 20 oil company members, Mr. Duca said. But in case of a spill, cleanup costs will be paid by the responsible parties, not the MSRC, he noted.

The MSRC plans to be fully operational by February 1993, when the Oil Pollution Act requires owners and/or operators to submit comprehensive spill response plans, Mr. Duca said.

"Much must be done in the intervening two years," Mr. Duca said.

## Task force

Continued from page 3

Underwriters will have to become "far more responsive to modern communications techniques" to speed up the process of writing business, he said. And, they must reduce various forms of waste, "whether it's the waste provided by a multiplicity of units or excessive salaries paid to participants in the London market."

The issue of cost cutting "is going to be tackled head-on by the Rowland task force," Mr. Merrett told his audience. "And, you can be absolutely sure that a whole raft of us in different areas of the marketplace have every reason to be concerned as to what the results will be."

The task force will not be able to respond to the problems at Lloyd's without producing some discomfort to insurers, brokers and others in the marketplace, he noted.

Mr. Merrett also said that many Lloyd's names are troubled over the question of whether they should be exposed to unlimited liability.

Some observers have suggested that the practice of unlimited liability be changed to some form of "mutualization," under which syndicates' losses could be capped at a certain level, with any losses above that mark paid by levies on all members.

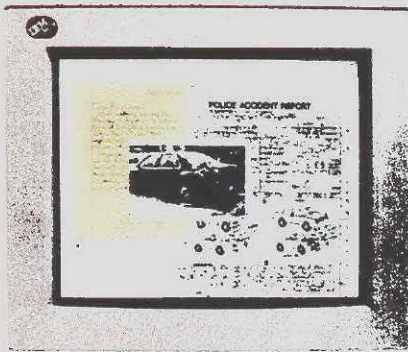
"The variety of advice that we have received in London about limitation of liability and matters of that kind is enormous," Mr. Merrett said.

"I think that the emphasis on mutualization" may focus on providing some sort of protection for Lloyd's members by restricting

Continued on next page

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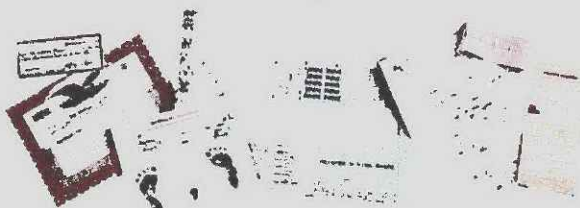
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## Task force

Continued from previous page  
“the impact of catastrophic incidents on a few syndicates” and therefore their investors, he said. However, what form such protection might take is unknown, Mr. Merrett noted.

Mr. Merrett said the task force also is concerned about the administrative government at Lloyds, or the “unwieldy nature of some of the parts of our institution. And that is also coming under the microscope.”

Regarding the state of Lloyd's in connection with its 1988 market-wide loss, Mr. Merrett reminded the audience that more than one-third of Lloyd's names made a profit in 1988.

“The most unhappy individual results from Lloyd's recently are largely those of names who received more than their share of the cost of the property catastrophes,” he explained, referring to syndi-

**Lloyd's administrative government  
‘is also coming under  
the microscope,’  
says Mr. Merrett.**

cates hit hard by losses stemming from the Piper Alpha North Sea oil rig explosion and Hurricane Gilbert in 1988.

He explained that the “apparent profitability” of the excess-of-loss reinsurance market in years before 1988 “led many names and some of their agents to wish to concentrate their underwriting in that area.”

But big property losses have left excess-of-loss syndicates reeling. In fact, Lloyd's officials have said that 30% of Lloyd's members are paying 70% of the losses because of the heavy hits taken by those syndicates (BI, Sept. 2).

Those losses have led to “a great deal of media attention on the attempts of some names to try and avoid having to respond to those losses,” Mr. Merrett said (BI, Sept. 16). And that attention has not helped efforts by Lloyd's to attract investors and expand its capital base, he said.

Lloyd's capital base also is linked to syndicates' profitability, and the capital base will not expand if syndicates do not see profits, Mr. Merrett said.

Profit “has to come back into our business,” he said. “Unless the underwriters are able to provide a reasonable probability of substantial profits over time for their names,” the market will not be attractive to members or potential investors.

Mr. Merrett believes that more capacity eventually will find its way to the Lloyd's and the entire London marketplace. Some syndicates and insurance companies “have taken the view in the last two or three years that the general level of rating and the conditions under which business has been placed have not justified their continued involvement, particularly in the energy field,” he explained.

There is no doubt that “when rates rise, as they are rising now, and terms get tighter, there will be significantly more market pulled in to support the placing,” Mr. Merrett said. ■

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# Persian Gulf conflict, nuclear warfare threat prompt innovations

By MICHAEL BRADFORD

HOUSTON—The fear of nuclear warfare and the threat of worldwide terrorism during the Persian Gulf War led underwriters at Lloyd's of London to develop some on-the-spot coverages for those risks, a Lloyd's underwriter says.

War risk underwriters faced an extremely difficult task in providing coverage during the war, said Nicholas J. Metcalf, deputy underwriter for syndicate 861, which is managed by Alston Brockbank Agencies Ltd.

"Although at the beginning of the year we entered the world's most publicized war, no one could have guessed the extent of the offensive and the complexity of the weapons about to be used," Mr. Metcalf said during a speech at the Houston Marine Insurance Seminar earlier this month.

From the time of Iraq's invasion of Kuwait until the U.S.-led offensive to free the emirate, "rates across all areas had to be closely scrutinized," Mr. Metcalf said. "The validation time for acceptance of rates became shorter and shorter. Potential problem countries—those within missile range of Iraq and those pro-Iraq—were identified."

And, he emphasized, "the potential for a nuclear detonation was a very real worry. Which country's leader might actually push the button was far from clear. Did Iraq have a nuclear capability? Israel certainly has, but would she use it?"

Fear of nuclear war created a coverage controversy at Lloyd's, Mr. Metcalf continued.

A clause in marine and aviation hull policies terminates coverage upon detonation of any nuclear weapon anywhere in the world, he explained. Controversy arose because brokers and policyholders wanted coverage reinstated as soon as possible after a detonation.

The controversy led to the creation of "automatic termination covers" for marine and aviation hull business," Mr. Metcalf said. "These were simply a vehicle for accepting declarations after a nuclear detonation."

Under the ATC, a broker would be able to make new declarations for existing accounts after a nuclear detonation. Each declaration would be individually rated and would not be bound until ordered by the policyholder.

The covers were available with limits of \$100 million on marine hulls and \$225 million on any one aircraft hull.

"Sadly, an unsavory result of these negotiations was that some brokers tried to use the issue as a marketing exercise," Mr. Metcalf observed. "This was most inappropriate under the circumstances and was not our intention."

In fact, the war was a losing proposition for Lloyd's, he said. Additional premiums paid in as a result of the war amounted to about \$250 million, but claims totaled about \$400 million.

The largest claim was the \$300 million paid on the loss of 15 Kuwaiti Airways Corp. aircraft, he said (BI, Sept. 24, 1990).

The situation in the Persian Gulf also focused attention on the possibilities of terrorism, Mr. Metcalf said.

Coverage against terrorist acts "did not respond to the peril which many corporate entities felt they were exposed to" during the conflict, he said.

"When hostilities broke out in the Gulf, we were inundated with inquiries for full war coverage on fixed assets. Owners of hotel chains, factories and fixed drilling platforms alike perceived a very great risk of damage to their property by war or acts of terrorist groups sympathetic to the Iraqi cause."

But insurance contract wording "did not respond to such a loss," Mr. Metcalf said. "And, to compound the dilemma," many policyholders were receiving notices of cancellation on their terrorist policies.

As a result, new contract wording was written to cover damage from "covert military action by a

government or agents thereof with whom we are at war," he said.

"The world flocked to obtain quotations for this cover, and although little was bought initially," more has been sold in the wake of the conflict, Mr. Metcalf said (BI, Jan. 28).

"Regretfully, terrorist cover is very much a working product in our uncertain world, rather than any sleep-easy form of insurance. In my opinion, the Middle East is still a major problem area. Could anyone have imagined that the coalition forces would sign a peace treaty without Saddam Hussein submitting his resignation as a precondition?"

But eight months after the start of Operation Desert Storm, "Saddam has as tight a grip as ever on Iraq," Mr. Metcalf observed.

"We at Lloyd's have always strived to offer a service to our clients, and I am proud to recall that during the Gulf War the world turned to Lloyd's as the one place which had the expertise and capability to provide war and terrorist cover," he said. ■

# Risk managers in the classroom

Academic foundation needed: Professor

By MICHAEL BRADFORD

HOUSTON—A risk manager's education should start in the classroom, not on the job, according to an executive professor and retired risk manager.

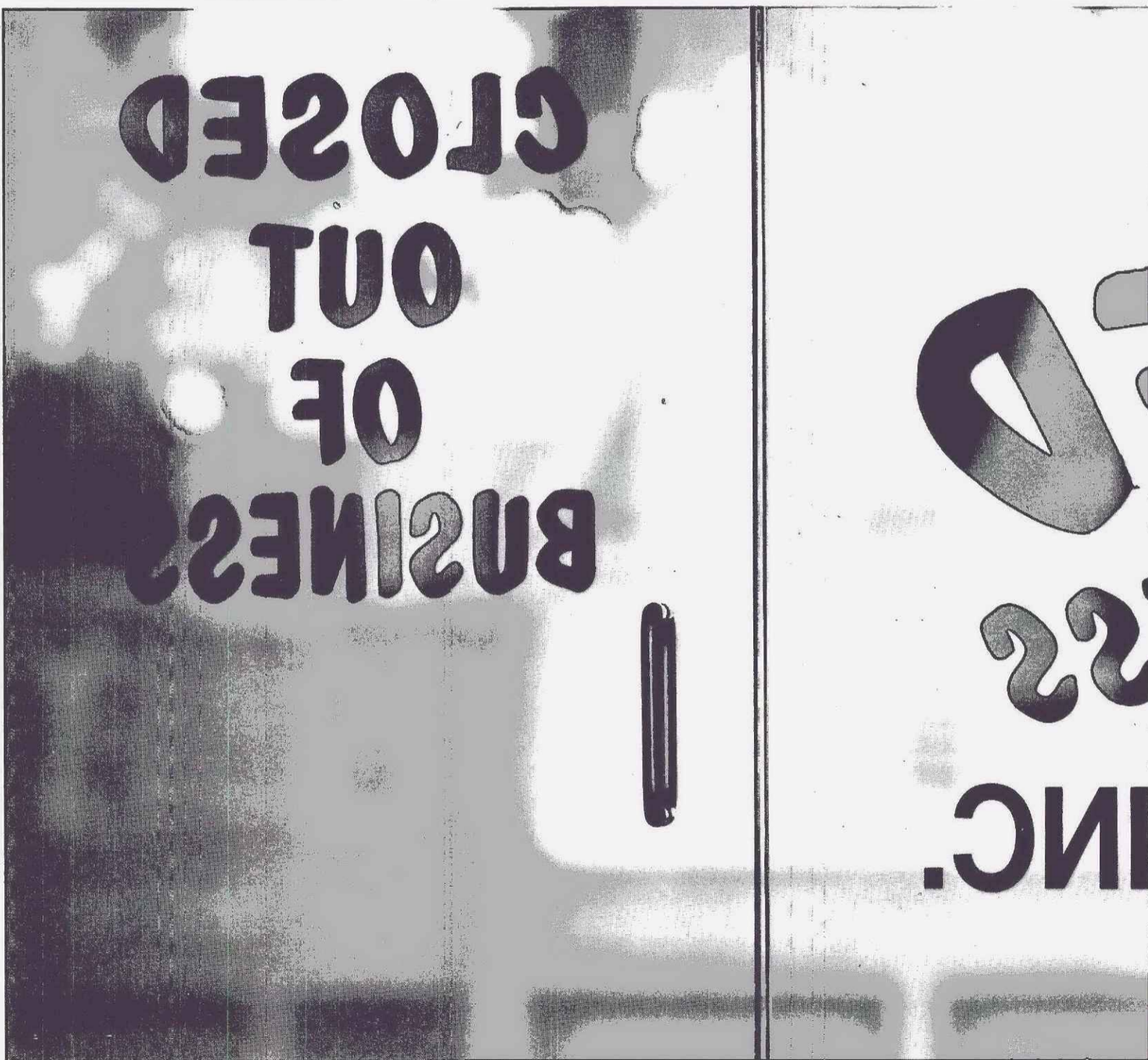
Risk managers too often are simply chosen from other corporate departments, according to Clay Carter, visiting executive professor at the University of Houston's College of Business Administration.

Historically, many companies' operating management, which frequently is also executive management, has known little about the "nitty gritty" of risk management, Mr. Carter said during a speech at the Houston Marine Insurance Seminar earlier this month.

The trend has been that financial managers frequently are "stuck with the role" of risk manager, and financial managers usually are no better informed about risk management than are operating managers, he said.

"Many of them are assigned the role, directly or indirectly, with little

*Continued on next page*



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Continued from previous page  
or no understanding or appreciation of the role of insurance or risk management in our society," he said.

Treasurers and assistant treasurers who have never had academic training in risk management have been handed the job and have had to depend on brokers, underwriters, lawyers and others "to give them an assist in the role," Mr. Carter said.

"Many have become fine risk managers," he acknowledged, but they lacked the "basic foundation that many other disciplines enjoy."

Mr. Carter, who retired from Exxon Corp. in 1986 after more than 25 years in insurance and risk management, had to rely on on-the-job training, he noted. But, that type of training must be changed, he said.

"I'm prejudiced" on the topic of risk management education, admitted Mr. Carter, who began teaching at the University of Houston in 1987.

"But, I believe most disciplines in universities today need at least a fundamental course in risk management

and/or insurance. There is no aspect of our life—personal or corporate—that we're not confronted with insurance and risk management decisions."

The insurance and risk management course he teaches at the University of Houston is one of only a few available at the college level, Mr. Carter said.

While there is a highly acclaimed program at the University of Georgia in Athens, most colleges and universities offer no courses, he said.

It can be asked, "Why an industry as large and diversified as ours has such limited academic involvement?" Mr. Carter said.

"It can be debated, of course, that in reality our industry is a composite of many disciplines. And there is merit in such a position," he said.

"Yet, who would deny the fact that many of the aspects of our industry are simply not introduced—much less explored in any depth—at the academic level?"

Major disciplines like science, engi-

neering, law, accounting and humanities are supported by academia, Mr. Carter pointed out. "Why should insurance and risk management be an exception? How beneficial it would be if throughout this great country campuses were overflowing with potential employees already interested in our industry as a career and already educated in at least some fundamental principles?"

Enlarging the base of risk management recruits would not be the only benefit from an academic emphasis on the profession, he said. There also would be contributions from graduate students involved in research and development and a larger body of qualified faculty members available to assist the profession.

Mr. Carter pointed to several ways academia can become involved in strengthening the risk management profession. He said he would like to see greater participation in:

- Forums like the Houston Marine Insurance Seminar and increased in-

volvement in professional risk management associations.

- Debates over industry-related legislation at the state level. Lawmakers and regulators are bombarded by different views related to insurance and risk management issues, but academia is conspicuously absent from the debates, Mr. Carter said.

- The debate over whether the insurance industry should be regulated by states or the federal government.

- Exploring methods to reduce insurance premiums, like mandatory risk retention and mandatory arbitration.

- Insurance product development. Mr. Carter implored his audience to urge colleges through both their "alumni and recruitment capacity" to expand their insurance and risk management course offerings.

He recommended that companies recruit from schools that offer insurance and risk management courses and support scholarships that will encourage students to enroll in

the programs.

"Encourage a joint effort between the business community and educational institutions to promote awareness of risk management and insurance through summer intern jobs for students and faculty," he suggested.

"The insurance and risk management industry is ripe for renewed emphasis in academia, he said. ■

## Energy insurers to retain more risk

By MICHAEL BRADFORD

HOUSTON—Heavy losses in the London excess-of-loss reinsurance market will probably force energy insurers to more closely examine the risks they write and to retain

more of those risks, according to a Lloyd's of London underwriter.

Lured by the prospect of large profits, excess-of-loss reinsurers in recent years had taken larger chunks of risk at lower rates, explained Elvin Patrick, a Lloyd's underwriter and chairman of syndicate manager Bankside Underwriting Agencies Ltd.

But, recent losses have hammered those underwriters, he pointed out in a speech during the Houston Marine Insurance Seminar earlier this month.

As a result, energy risks will find insurers scrutinizing their accounts more closely, Mr. Patrick said. Those insurers are responding to excess-of-loss underwriters' attempts to get a better handle on the risks they cover, he explained.

Energy business is "slightly unusual," he said. "It is not simple. It is not small," but often involves "very, very large individual risks."

Most large energy risks are complex because they typically are written as packages that contain both marine and non-marine exposures.

But capacity for marine risks has shrunk because direct insurers no longer are able to buy as much excess-of-loss reinsurance after recent heavy losses in that market, he said.

Energy insurers, as a result of shrinking capacity in the reinsurance market, "are going to have to do several things, in my opinion," said Mr. Patrick. "One is, they are going to have to take much bigger retentions on risk."

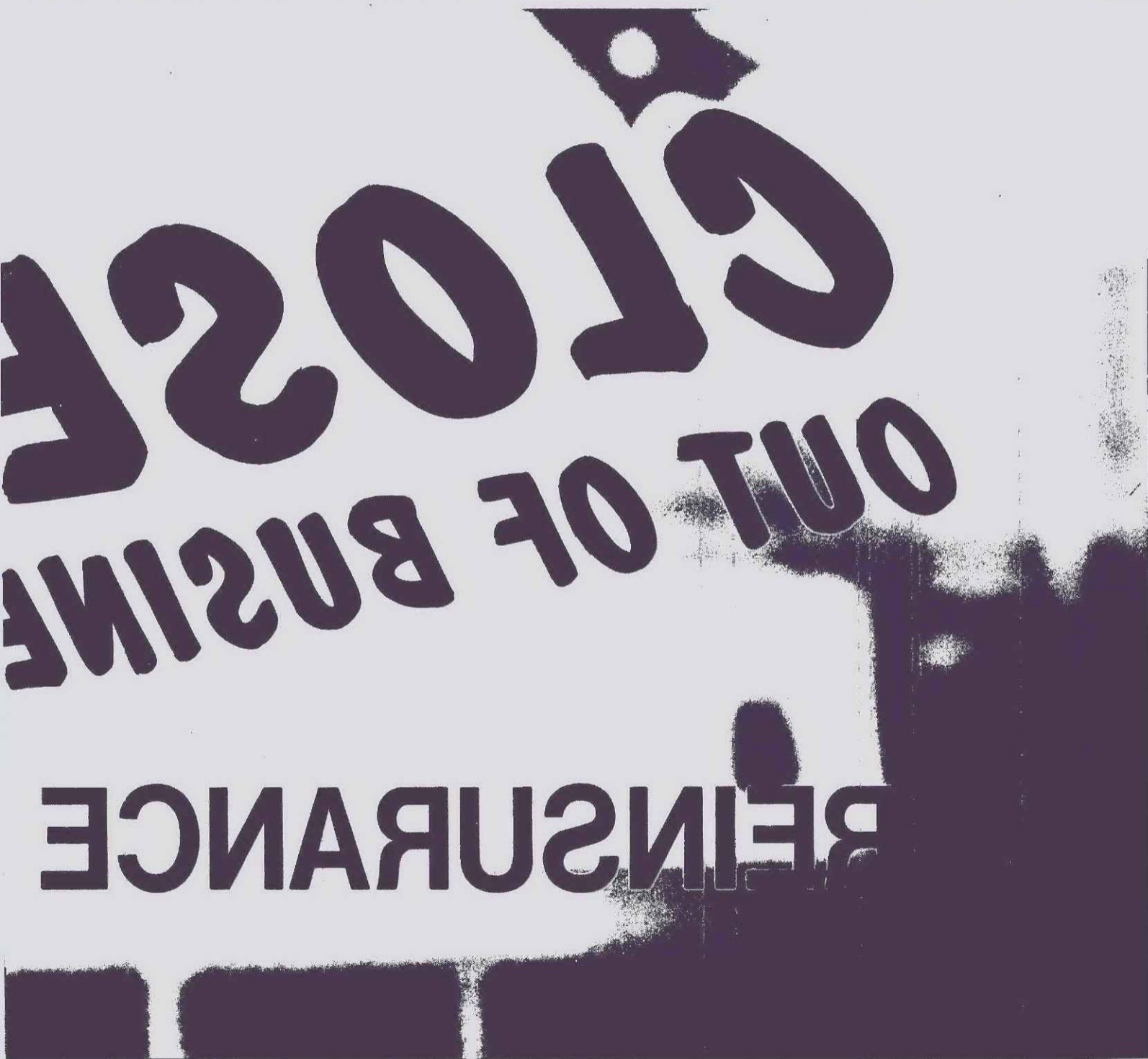
Some won't be able to buy any reinsurance, he suggested, "because reinsurers are going to get funnier and funnier about what their client base looks like."

Large package risks will have to be broken into their component parts, said Mr. Patrick, because "packaging makes the assessment of risk by (excess-of-loss reinsurers) doubly difficult. They cannot get a handle on the nature of the risk, the nature of its component parts."

Risks will still be packaged, he explained, but only after they are reorganized to let reinsurers better assess the risk.

"Small packaging is not a major problem" for insurers and reinsurers, Mr. Patrick said, because it is easier to determine "what is involved in the risk itself. If you have a big enough concentration of small enough packages, you are heading more toward the actuarial bucket that you would like to be in."

The big packages, he emphasized. *Continued on page 35*



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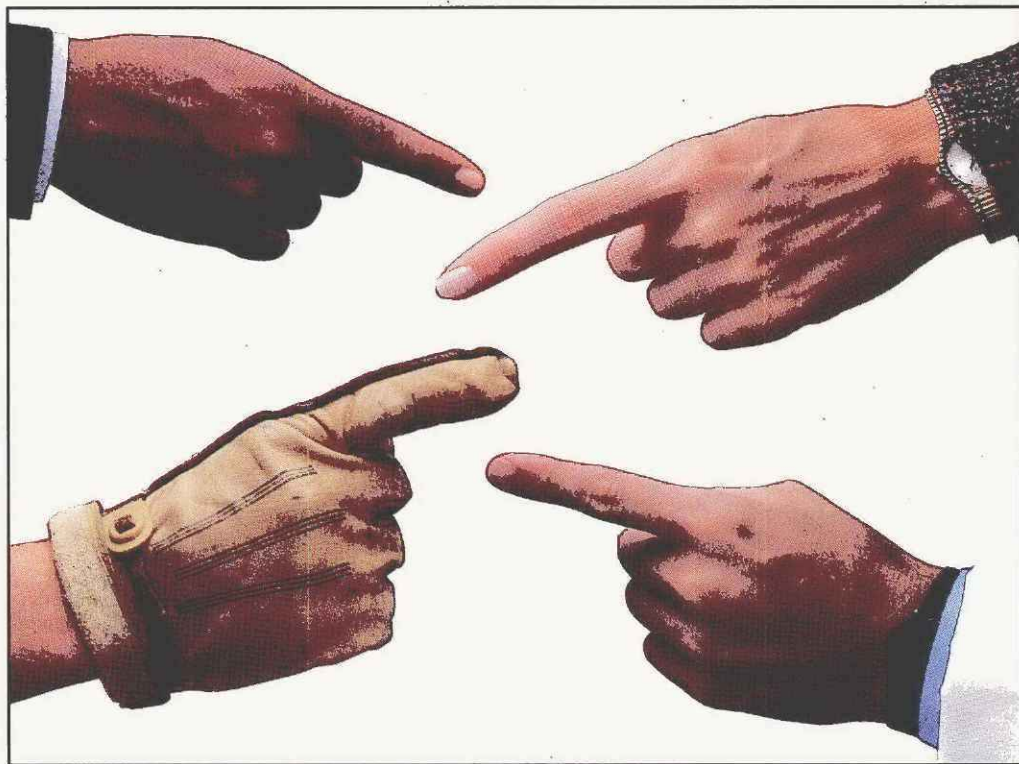
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# Home sweet home

## Home-based rehab tailored to make optimal use of benefits

By Alexandra Vickers

ONE RAINY NIGHT, 17-year-old John drives into a telephone pole. He survives with a badly crushed hand, other fractures, and severe neurological and cognitive deficits due to head injury.

The incident, already a study in the connection between foul weather and driving accidents, leads us to other patterns. John's recovery is certain to be slow, difficult, painful and trying for him and his family.

It will also be expensive. Discussions with insurance companies show bills for a case such as John's range from \$500,000 to \$1.5 million in the first year, with rehabilitation accounting for a big chunk of this expense.

Last year, 96% of catastrophically injured patients went from a trauma unit or acute care hospital to hospitalization in a rehabilitation facility. They spent an average of 16 weeks in inpatient rehab, and this segment of recovery added roughly \$110,000 to their costs.

The irony is that prolonged inpatient rehabilitation may be unnecessary. It can even have a detrimental effect, if the facility has limited resources or the patient is sensitive to absence from home; or if, as usually happens with stroke and head injuries, the patient's medical needs are minimal compared to behavioral, learning and emotional problems. Indeed, inpatient rehab as a matter of course in the rehab following catastrophic injury can constitute misuse of benefit dollars.

Luckily, John's case breaks the mold on this point. His caregivers want him out of rehabilitation sooner than the norm, and his major medical policy covers home-based rehab care. His doctors and insurer believe that a well-chosen home-based rehab service can provide, coordinate and manage comprehensive care that is better suited to him. As a result of their progressive thinking, John's recovery will be faster, better, and less expensive—benefits that are inextricably combined.

Home-based rehab and facility-based rehab are alike in that their people are their service. John will need help from numerous professionals—speech/cognitive therapists, physical therapists, occupational therapists and neuropsychologists, in addition to ongoing physician attention. Home-based care can arrange to provide every one of these, without stinting on comprehensiveness or professionalism.

Contrary to prevailing misconception, most home-based rehab providers do not economize by limiting the spectrum of their services or contracting with less qualified personnel. The best firms depend on professionals—from nurse to neuropsychologist—with the same accreditation as their in-facility colleagues. They are no less stringent in their contract qualifications than facilities are in hiring policies.

What is different is freedom of choice. In a facility, John's care would be limited by the capabilities of on-site or affiliated staff, while the home-based rehab consultant can schedule appointments for John with any independent practitioner his insurer recognizes. This could include a job placement counselor if John's case involved workers comp—a specialty rarely offered the facility-bound patient.

In a facility, John would be seen by resident or treating doctors; on his own, he'll always see a treating doctor. In a facility, because of cross-purposes in staffing and human resource allocations, registered nurses may take care of the majority of John's needs most of the time. But in the post-acute stage of recovery, John's injuries don't require attention from a RN. Why squander the

benefits on costly RN care, when he can be taken care of at home by family members and only those therapists or medical professionals whose services precisely match his needs?

The involvement of John's family is a distinguishing advantage of home-based care. Experts say that while patients with head injuries in particular recover better by learning in the setting where the lessons will ultimately be applied, many other patients also respond better to treatment surrounded by familiar things and people. One reason is that family members can be taught to repeat many of the rehab exercises.

John's family's help amounts to learning reinforcement—he'll retain more between therapy sessions and will probably progress faster.

But John is suffering emotionally after his accident, acting in ways that distress his family. With home-based care, however, a psychologist can treat John individually, and has family collectively, in their own environment.

Even if the rehab hospital has a family counselor on staff, it could be difficult to get the whole family there. And if the hospital can provide patient or group therapy only, the family's needs would most likely go unmet.

Outpatient therapy for John's hand may also be conducted in a group setting. This session may show up on his bill as an hour of therapy, although he probably received just minutes of personal attention. But that's institutionalism: house staff caring for patients to the extent their schedules allow.

In contrast, home-based rehab tailors a comprehensive program for John. It's one-on-one structure is more patient-responsive, more amenable to critical modifications in the therapy program. Such personal attention, a hallmark of home-based care, usually solves problems better, faster, and in a more satisfying way. It will for John. Not by cutting corners, by cutting out anything that doesn't directly benefit him.

Personal lines insurers, having built their profits on volume, may have difficulty seeing the economic advantages to customizing service for every case. But with rehab, customizing is economizing, by:

- Cutting treatment time.
- Avoiding the "hotel costs" of facility rehab.
- Contracting only with professionals who meet John's needs, instead of paying salary and benefits to the entire staff.

Our recent market surveys indicate that a day in a rehab facility costs \$600 to \$1,200, with therapy costs extra in some areas. And some facilities itemize treatment modalities—charging \$25 to \$50 for each hot pack, electrotherapy treatment or massage the physical therapist gives in addition to his or her time.

Our research finds home-based care usually running \$400 to \$800 per day, including therapy. Most home-based rehab firms bill for the therapist and the treatment modalities at a flat rate—\$85 per hour at the most competitive firms. If the patient needs only one form of therapy—speech therapy following a stroke, for example—the economy is obvious; yet because of the effectiveness of individualized care, even those patients who receive multiple therapies gain cost-efficiency.

Still, some insurers and corporate risk managers equate home-based rehab with a loss of control over patient care and treatment costs. The reality is that home-based rehab services rely on several review, monitoring and reporting vehicles that not only enhance quality and economy but put the reins squarely in their hands.

The relationship begins when the rehab company's medically-trained senior manager assesses a prospective patient. Home-based rehab

generally is appropriate for catastrophic cases such as stroke, spinal cord injuries, head injuries, or severe neurological defects in newborns. The assessor will carefully review diagnostic and treatment records (some also meet with the patient and his family) to determine whether or not the case is acceptable. The company has nothing to gain by accepting those patients it is not able to handle well.

With John, for instance, the assessor finds a young man who has reached a plateau after several weeks in a rehab hospital. He has regained mobility, but his injured hand is useless and he needs more cognitive therapy. Since John's only remaining physical problem is his hand, there's no need for him to remain facility-bound. In fact, staying in the facility would exhaust his benefits before his cognitive and emotional needs are well addressed.

The rehab consultant's recommendation to John's insurer includes:

- A customized therapeutic treatment program.
- Specific goals in measurable terms.
- A schedule for anticipated progress.
- Cost projections.

By accepting or rejecting this plan, in part or total, the insurer dictates control from the outset. With approval, what typically happens is this: A supervisor, sometimes called a "patient care coordinator," convenes a team of rehabilitation professionals near John's home, and they work out the specifics of his care.

After every session with John or his family, each rehab professional submits a written report of findings and activities to the client and to the team supervisor. These reports offer the most immediate checkpoint on care and benefit utilization.

In addition to session reports, the team meets monthly to review John's progress, compare it to stated goals and revise as necessary. The insurer or risk manager can freely attend these meetings, and families should also be included. If the insurer or risk manager doesn't attend, the supervisor provides a written update on the patient's care. Again, the insurer or risk manager can approve, reject or demand a modification of the program.

This system of frequent monitoring and close patient interaction tightly integrates case administration and medical care. As a result, the aggregate costs and patient outcome with home-based rehab compares favorably to the aggregate costs and patient outcome with facility "hotel costs" and therapists.

Today's major medical policies vary greatly as to compensable claims. But because home-based rehab makes optimal use of any benefit dollars available, some group health insurers have turned to extra-contractual allowance of home-based rehab in selected cases.

In New Jersey, where regulators have capped automobile injury claims at \$250,000 and set a strict fee schedule for payments to therapists, insurers and risk managers probably can't afford to overlook this effective alternatives.

In fact, insurance companies and corporate risk managers everywhere have several compelling reasons to consider home-based rehab: improved loss control, greater policyholder and employee satisfaction, and the enhanced recovery of a fellow human being. ■



Alexandra Vickers is a vp of Crossroads Rehabilitation Systems Inc., a home-based rehab program contractor in Mount Lebanon, Pa.

# ASK A CASUALTY ACTUARY

## Stressed-out actuary faults job rating study

### Q

A new book that rated 250 occupations indicated that being an actuary is the best job in America. Do you agree?

### A

I would certainly agree that being an actuary is one of the most desirable occupations, as "The Jobs Rated Almanac" indicates. Whether it is the most desirable is more open to question than the book's authors would lead readers to believe.

In the book you refer to, which was edited by Les Krantz and published by World Almanac, each of 250 occupations is ranked from best to worst in each of six categories: environment, income, outlook, stress, physical demands and security. For each occupation, rankings in each of these six categories were added to arrive at an overall score. The actuarial profession ranked second in environment, 25th in income, fifth in outlook, 15th in stress, fourth in physical demands and 22nd in security. This gave the profession an overall score of 73, which is significantly better than even the second-ranked job of computer programmer, which had an overall score of 185.

In contrast, migrant farmworkers ranked last, coming in 235th in environment, 250th in income, 250th in outlook, 188th in stress, 243rd in physical demands and 250th in security for an overall score of 1,416! Surprisingly, NFL football players ranked 241st in the study. Although they ranked fourth in income, they were rated 248th in environment, 243rd in outlook, 246th in stress, 244th in physical demands and 245th in security. Obviously, in Mr. Krantz's rating system, money isn't everything.

To understand the rating system, it's important to understand each of the categories and why different jobs ranked high or low. Following are some of the key assumptions behind Mr. Krantz's rating system:

- **Environment.**

It is better to have a shorter work week; to work indoors; not to be confined; not to have to do any lifting, crawling or stooping; not to be exposed to toxic fumes or noise; not to need a high level of stamina; not to be put in life-threatening situations; not to endure a high level of competition; and not to work with the public.

- **Income.**

The higher the income the better, and the greater the chance for raises, the better. The latter is measured by taking the percentage differential between the top salaries—defined as the 90th percentile income in the field—and starting salaries.

- **Outlook.**

The most important factors are: the current unemployment rate; the percentage growth in the number of jobs in the field through 1995; salary increase potential; promotion opportunities; and the absence of seasonality in the work load.

- **Stress.**

The less stress the better. Stress is produced by physical demands (lifting, stooping, climbing); environmental conditions (confinement, noise, toxic materials, pollutants); hazards, especially life-threatening conditions; rigorous requirements (speed, precision, detail, deadlines, quotas, initiative and stamina); and the presence of adversarial circumstances (advocacy, win-or-lose situations, working with the public and competition).

- **Physical demands.**

The fewer the demands, the better. Such demands

include "lifting, pulling, pushing, standing, walking, stooping, kneeling, crawling, climbing, crouching and reaching." The extent of these demands was increased or decreased according to the length of the average work week, exposure to adverse weather and the need for stamina.

- **Security.**

Starting with the outlook score as a base, this was increased for the extent of unionization and job classification and decreased for the extent of competitiveness, exposure to injury or death, and current unemployment rates.

All in all, this is an interesting set of assumptions that carries a high level of validity insofar as it corresponds with the preferences of most workers. The authors readily admit that there are always special factors and personal preferences that may

example, the book admits that there is a high level of overlap between physical demands and stress. Similarly, there is a high level of overlap between outlook and security, since the latter starts with the former as a base that is modified for certain positive or negative factors.

The first table provides a comparison of the rankings of the actuarial profession with other jobs that are common in insurance companies, while the second table provides the rankings for other common occupations outside the insurance field. Unfortunately, neither risk managers nor employee benefit managers were included in the study, so we are left to our own devices to figure out where they would fall in the rankings. Given the underlying assumptions of the book, it should not be surprising that the typical risk or benefit manager's job or

### Ranking of jobs commonly found in insurance companies

Rank within individual category

Occupation	Environment	Income	Outlook	Stress	Physical demands	Security	Overall score	Overall rank
Actuary	2	25	5	15	4	22	73	1
Computer programmer	12	88	9	32	16	28	185	2
Underwriter	25	100	62	62	63	52	364	24
Librarian	46	145	95	7	76	14	383	26
Attorney	212	29	32	226	28	77	604	83
Secretary	81	186	170	81	49	83	650	96
Insurance agent	185	73	53	221	37	92	661	100
Market analyst	153	47	156	149	8	178	691	109
Receptionist	100	232	153	13	45	160	703	118
Safety inspector	92	77	90	171	176	113	719	122

Source: The Jobs Rated Almanac

GRAPHIC BY JOHN J. BOHORQUEZ

### Ranking of common jobs not found in insurance companies

Rank within individual category

Occupation	Environment	Income	Outlook	Stress	Physical demands	Security	Overall score	Overall rank
Hospital administrator	6	20	4	148	44	1	223	6
Bank officer	57	78	34	86	12	4	271	11
Aerospace engineer	83	26	40	104	42	50	345	21
Architect	203	49	22	228	71	69	642	92
Registered nurse	172	122	26	215	137	76	748	129
Physician	211	85	67	216	144	38	761	131
Teacher	121	124	146	170	103	112	776	137
Travel agent	182	230	169	199	45	108	933	170
Retail salesperson	151	217	193	101	105	180	947	177
Truck driver	169	151	242	192	203	234	1,191	236

Source: The Jobs Rated Almanac

GRAPHIC BY JOHN J. BOHORQUEZ

make one job more appealing than another. They cite the example of the jockey or other sports professional who gets a thrill from the activity, even though the book's rating system gives sports professionals low marks.

It seems that there are some additional considerations. Jobs with some variety in the level of physical activity might be better than those with very little activity. Boredom and restlessness can easily occur when there is no variation in the type of activity or the level of physical action. I find the absence of physical activity in my work to be a negative. I would argue that some level of physical activity should be rated as positive, unless such activity is hazardous or requires a high level of stamina.

Additionally, some stress-inducing situations may be necessary to counteract the potential for boredom. Finally, some level of outdoor activity can be a positive if one lives in an area where the weather is usually pleasant.

It seems to me that the book's rating system tends to double- or triple-count a number of factors. For

insurance company job would receive a better-than-average ranking.

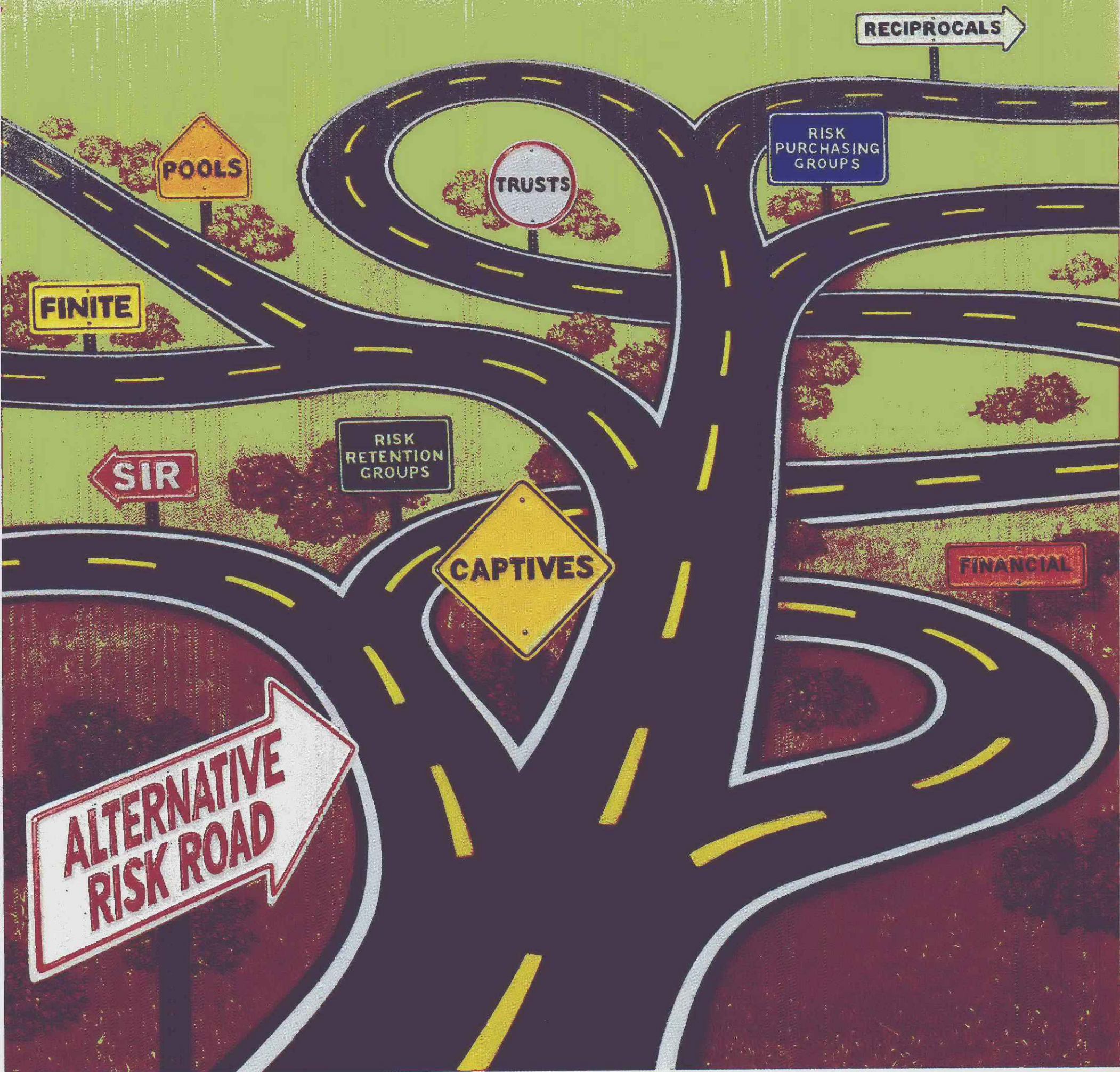
While one may easily quibble over small points with any ranking system, the ratings assigned to actuaries appear to be fairly accurate with one glaring exception: stress. Without going further into the precise definition of Mr. Krantz's rating system, a review of the ratings in the stress category leaves me questioning the source or accuracy of this rating.

While it is true that there are some actuarial positions that are quite low in stress, such positions are becoming rare. "Backroom" actuaries who have little contact with senior management or with a questioning or hostile public are becoming quite scarce. Certainly such a low stress ranking does not apply to actuaries who are consultants! Company actuaries and consultants who are active in giving testimony at rate hearings are engaged in an activity not unlike that of attorneys, whose stress rating is 226th.

In addition, I believe the book's stress rating is inaccurate with respect to actuarial students who

Continued on page 34

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## Actuarial stress

Continued from page 32

are holding down a full-time job while they are studying 20 hours a week for three months prior to each of 10 actuarial exams. Because the pass ratio on such exams is often less than 40%, even for the higher-level exams, the level of competition is severe and the stress ratings should reflect that.

I find it difficult to believe that most actuaries operate in a work environment where the stress level is comparable to that of the average pharmacist, janitor, file clerk, receptionist, piano tuner or florist. But that is what the book's stress rating of 15th implies. A more accurate rating would place actuaries near accountants (106th), market analysts (149th), underwriters (62nd), aerospace engineers (104th) or economists (124th).

Interestingly enough, if the actuaries' stress rating were adjusted to as high as 127th, they would still rank first overall, just one point ahead of computer programmers. Actuaries' stress ranking would need to be over 150 to drop to fifth place overall.

In reviewing the 22 factors used for rating stress, I

believe actuaries face average or greater-than-average stress in the following areas: deadlines, advocacy, detail, precision required, speed required, meeting the public, working in the public eye and competitiveness. This would seem to imply a stress rating near the middle of the pack rather than near the top.

I would change the book's stress rating for actuaries from 15th to 125th and its physical demands rating from fourth to 50th because such a low level of physical activity is less desirable than moderate activity. Similarly, I would change the environment rating from second to 50th for the same reason. With these changes, the actuary's overall score would rise to 277, dropping the actuarial field to an overall rating of 12th. How the rating would change if the environmental and physical demands ratings of all jobs were revised to my values would, of course, require redoing the book. ■

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Mr. Sherman

*This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Pacific Actuarial Resources in Ashland, Ore. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions in the benefits field. Susan M. Werner, director of risk management at Hardee's Food Systems Inc. in Rocky Mount, N.C., answers risk management questions. And Dennis J. Nirtaut, manager of employee*

*benefits at Continental Bank Corp. in Chicago, answers questions on employee benefit plans. Ms. Werner's and Mr. Nirtaut's columns appear on the second Monday of alternate months. Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of each month.*

*Mr. Sherman's next column will appear in November. Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*

# Recession spurs loss prevention

By Paul Fitzgerald

**E**CONOMIC UNCERTAINTY IS ON everyone's mind as we move through the 1990s. Recession, high levels of debt and unstable financial markets are causing businesses to find ways of minimizing unnecessary expenses.

While the 1990s may be a time of uncertainty and reduced capital spending, it is also an opportune time to invest in improving the policies and processes that can protect corporate assets—including loss prevention programs.

Many property losses occur because of unanticipated change. The storage of new commodities, changes of people involved in loss prevention, new equipment and new government regulations can all affect a business' exposure to loss. In today's business environment, it is more important than ever for companies to manage changes like these.

Anticipating change is one of the most difficult tasks that managers have to factor into their plans. Generally, businesses do factor change into their plans in areas like marketing, product development and finance. The same concept is equally applicable to loss prevention programs, to ensure that business assets are protected adequately at all times, regardless of the changes that occur.

Change can take many forms. The retirement or loss of key individuals within the loss prevention program is one of the most frequently overlooked areas of change. For example, frequent turnover at a mining operation in a remote location prevented the mining company from keeping a full-time operator at a fire-tube boiler. The company was relying on the boiler's low-water cutoff to prevent a fire if the water level fell too low during the work day.

During an inspection visit, a consultant discovered that the low-water cutoff and alarm were not operating properly. To prevent disaster, the mining company flushed and cleaned the boiler, replaced the cutoff and installed a backup cutoff.

## Plans must adapt to quick changes in products, packaging, personnel

This significantly increased the safety of the unattended boiler.

A changeover of equipment also can increase the risk of property loss if the change is not reflected in the company's loss prevention procedures. Sometimes the procedural changes that are overlooked are quite simple. In a recent visit to a corn milling factory, for example, a consultant discovered that the electrical relays and circuit breaker protecting a steam turbine had not been tested since their installation four years earlier. The facility's superintendent agreed to have all the breakers in the power house calibrated and tested during the next facility shutdown.

During the shutdown, the electrical contractor found that several breakers needed minor attention, but that the new generator breaker was defective enough to cause a costly interruption of electricity in the facility, or even damage to the expensive turbine generator. As a result of this experience, the corn milling facility has placed generator relays and circuit breakers on a documented three-year inspection and testing program.

When companies incur large losses from fires, the losses often occur because of unrecognized exposures. These exposures are, to a large degree, "invisible." A product's material or packaging may change in a way that significantly increases combustibility, but to the facility manager, it is the same product.

Plastics are a well-known example of this problem. Plastics bring many advantages to a wide range of products, especially consumer goods. Over time, plastics have been integrated into the designs of an increasing number of products. But because plastic has a higher heat release rate than metal, such changes in product significantly increase combustibility, dictating new protection.

Today, plastics are replacing paper and paperboard in packaging, and

metal or glass in containers. As a result, these containers may have radically different fire protection requirements compared to those of five or 10 years ago. For instance, plastics are used to contain a variety of combustible liquids, like motor oil. Because these plastic containers melt under fire exposure and release contents directly into a fire, the new packaging markedly changes the fire hazards associated with the products' storage.

Even more insidious are changes that affect a product's combustibility but do not change its external appearance. Aerosol products are a well-known example. In the 1970s, to meet new environmental regulations, nonflammable propellants in aerosol cans were replaced by flammable propellants. As a result, aerosol products became easier to ignite when damaged during normal handling. This increased chance of ignition likely contributed to several serious aerosol storage fires of the last decade.

Product evolution is inevitable. New materials are constantly being developed, as are new applications for them. Managing change involves recognizing change, anticipating the effects of change and then putting preventive measures in effect to minimize the exposure to loss before the change takes effect.

When should change be considered and managed? Ideally, it should start with the initial product or plant design. Product designers today should seek the early advice of loss prevention experts to help them understand loss prevention measures and reduce the hazards inherent in the product. In many cases, this expertise is available through their own corporate risk management or loss prevention departments. If not, advice can be obtained from outside loss prevention resources.

In the construction of new facilities, property or loss prevention advice should be sought well before ground is

broken. When buildings are renovated, management should seek to minimize losses from activities like cutting and welding.

Another factor in managing change is to have an ongoing relationship with the local fire service, to keep it informed of plans, sprinkler systems and any other loss prevention mechanisms. When business and the fire service work together to develop pre-fire plans, they can significantly improve the fire response, thereby reducing fire losses and increasing safety.

As 1992 approaches, companies and manufacturers of products also will need to respond to another type of change: addressing how increased international trade can mean less control.

The lead time required to replace parts in specialty machinery can be devastating to a company if it causes significant downtime. When a company uses machinery manufactured in another country, spare part control and other maintenance issues must be planned carefully. The potential impact of loss can be reduced if international standards can be developed to permit greater interchangeability of parts. Third-party evaluators also can help by evaluating products in terms of international standards.

The future holds new challenges for businesses and their senior management. The key to maintaining a safe, responsible and profitable company is constant vigilance, a sensitivity to change and the ability to respond to change. In today's challenging business environment, the need for planned response and a well-thought-out loss prevention program are more important than ever. ■



Paul Fitzgerald is president and chief executive officer of Factory Mutual Engineering & Research in Norwood, Mass.

## Energy risks

Continued from page 27

sized, "are the big problem, where you have this combination of very, very large individual risk exposures coupled with a lack of control over the geographical nature of that risk."

Further complicating that mix is the "inappropriate mixture of tails" on the coverages in the package, he said. "I don't think the issue is whether packages should exist," he said. "The issue is whether the network—which consists of the client, the insurer and his reinsurers—can cooperate to produce a structure that makes some kind of intelligent sense" in insuring the exposures.

Problems in the XL market are one reason insurers will retain more risk and break up package policies, Mr. Patrick said.

Those problems began when players began crowding into the reinsurance market, he explained.

It can be a very profitable field, especially when losses are infrequent, he said. But during prosperous times, underwriters can fall victim to a false sense of security.

"Writers tend to write the business in a more and more frenetic way with lower and lower prices and greater exposures until to everybody's amazement a major loss comes along. And of course there's a problem in the industry."

In recent years, those problems have come in the form of such losses as the 1988 Piper Alpha oil platform explosion, costing \$1.4 billion; Hurricane Hugo in 1989, costing \$4.3 billion; and European windstorms in 1990, costing \$10.1 billion (BI, Sept. 2).

When a large loss hits, not only does it reach the XL market, but it also makes its way to retrocessionaires, Mr. Patrick explained.

In theory, he said, the retrocession market "is the ultimate catastrophe market" and should be affected only by "very large losses" because other losses should be retained in the direct insurance and first-tier reinsurance markets. "Only the major catastrophes should leak out into the retrocessions."

That is not what's happened in recent years, Mr. Patrick said. "What we've had is people buying excess-of-loss at lower and lower levels" and at reduced prices, he explained.

As a result, hungry retrocessionaires have taken on more risk, and when losses arrive, they become concentrated among the "handful of major retrocession players who are disinclined to understand the nature of the risk they are taking." On a global scale, reinsurance capacity has shrunk because reinsurers can no longer find as much capacity from retrocessionaires, he said. "That means the (reinsurance) market is still there, but it is smaller."

■

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## Houston seminar features experts in London market



HOUSTON—The Houston Marine Insurance Seminar's accent was decidedly British this year.

Four London market experts were featured at the gathering—

which is well-known for attracting top speakers—Sept. 15-17 at the Adam's Mark Hotel in Houston.

A Lloyd's of London update was presented by Stephen Merrett, chairman of Merrett Holdings P.L.C.

Trevor F. Scutts, a retired London market underwriter and committee member of the Institute of London Underwriters, spoke on the status of the ILU.

The London excess-of-loss reinsurance market was the topic of a speech delivered to attendees by Lloyd's underwriter Elvin Patrick.

And, Lloyd's underwriter Nicholas J. Metcalf outlined some of the marketplace activity during the Persian Gulf War.

Other speakers discussed topics including pollution and maritime laws and compensation coverage for longshoremen and harbor workers in the United States.

Attendance at the 25th annual seminar topped 1,000 for the first time.

While previous seminars were sponsored by the Houston Mariners Club, this year's event was sponsored by Marine Insurance Seminars Inc., a non-profit organization set up to hold the seminar.

Information on next year's conference, set for Sept. 13-15, is available from Frank Wetzel at 713-840-9292. ■

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# ILU's role in London market touted by former underwriter

By MICHAEL BRADFORD

HOUSTON—The Institute of London Underwriters, while not as well-known as Lloyd's of London, plays an important role in the London marine and aviation markets, a former underwriter says.



"As important as Lloyd's might be, it is only one part of the London insurance scene," said Trevor F. Scutts, a director of English & American Insurance Co. Ltd. in London.

The "international marine, energy and aviation business that flows into London is being shared more or less equally between Lloyd's underwriters and the companies forming the Institute of London Underwriters," according to Mr. Scutts, who is also a retired ILU committee

member

Mr. Scutts explained how the ILU fits into the London market during the Houston Marine Insurance Seminar earlier this month.

The institute is made up of 114 companies that share space at a common facility in London.

In 1990, ILU companies wrote premiums totaling 1.68 billion pounds (\$3.24 billion at year-end 1990 exchange rate), though claims totaled 2.73 billion pounds (\$5.27 billion) (BI,

Sept. 2).

Mr. Scutts noted that of the 114 ILU members, 41 are British companies and the remaining 73 are either branches of foreign insurers or foreign-owned insurers based in the United Kingdom. There are 14 members owned by U.S. insurance companies.

When a risk arrives in the London market, it generally is not placed with one insurer or entirely at Lloyd's or the ILU, "but, rather, with a number of insurers from whatever denomination," Mr. Scutts explained.

Parts of one account, for example, could be written by underwriters at both the ILU and Lloyd's.

Although the two are considered competitors, Mr. Scutts contended

that in reality they "have combined their talents to project a totality of London expertise and capacity."

Lloyd's brokers, he noted, are the same intermediaries that bring business to the ILU. And, while Lloyd's brokers often identify themselves as such on their stationery, Mr. Scutts said, "I've often felt it would be more accurate and helpful" if they would add the ILU name to their letterhead.

There are several key distinctions between the two markets, he said.

Lloyd's business is written by individual syndicates whose investors pledge their personal wealth if needed to pay claims. ILU underwriters, on the other hand, are individual insurance companies that share risks in the manner of Lloyd's syndicates but do not risk the same unlimited liability.

For years, Mr. Scutts noted, many assumed Lloyd's and the ILU were "one and the same" because the ILU occupied space at the Lloyd's building. In 1986, though, the ILU moved to its own quarters.

The collection of 114 companies in one location means insurers benefit from lower expenses, including costs related to business acquisition, he said. "This means that ILU companies are able to compete effectively in world insurance markets."

Many insurers aspire to become ILU members, he added, but application requirements "are not easily satisfied." The ILU intends to maintain its reputation and its record of never having a member company default on a claim, said Mr. Scutts. To become a member, a company must:

- Have written marine and aviation accounts in the London market or in a comparable market abroad for at least three years.

"This enables the institute to form an opinion as to the effectiveness of the underwriting policy and management of the company," he said.

- Submit detailed business projections for the next five years along with information detailing its financial strength and ownership.

- Pledge to honor all liabilities related to its ILU policies "as long as those liabilities remain," Mr. Scutts said. "If the company is a subsidiary or another organization has a substantial holding in it, an unlimited guarantee must be given to the ILU by that parent or ultimate holding company."

The ILU, Mr. Scutts said, "recognizes that it cannot be taken in isolation," but it "certainly plays a significant and responsible role" in the London insurance market. ■

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## INTERNATIONAL

## UNI Storebrand buys stake in Skandia

By MARIA KIELMAS

LONDON—Norwegian insurer UNI Storebrand A/S has acquired 8.8 million shares, or 11.4%, of the total equity in Scandinavia's largest insurer, Skandia Group Insurance Co. Ltd. of Sweden.

"The share acquisition is regarded as a long-term investment in the largest Nordic insurance group. It also ensures UNI Storebrand a strategic position in any discussion regarding the future structure of Scandinavian insurance," said a spokesman for the Oslo, Norway-based insurer.

The spokesman said there had been no discussions so far about the purchase with Skandinaviska Enskilda Banken, Sweden's largest bank. Stockholm-based SEB holds an option to purchase a 28.5% stake in Skandia. That option is due to expire in March 1992.

UNI Storebrand did, however, discuss the move with a number of other financial institutions, the spokesman said. And it informed both SEB and Skandia at the time it made the purchase, he added.

Market analysts earlier this month had speculated that SEB may have increased its stake in

Skandia after 10% of the insurer's stock traded hands. Others suggested that the mystery buyer was a Danish insurer or a continental European company in anticipation of the removal of caps on foreign ownership of Swedish companies.

Sweden now caps foreign ownership at 40%. But the Moderate Party led by Carl Bildt, who became prime minister after elections earlier this month, has stated that it would remove the ceiling as soon as possible.

Skandia stock, which is listed on the Stockholm Stock Exchange, was trading at 183 krona (\$29.83)

per share last week. At that price, the stock purchase would be valued at about \$261 million, although Skandia stock was trading at around 245 krona (\$39.94) when the purchase was made, valuing the deal at about \$349 million.

The UNI Storebrand spokesman said the acquisition was made with its own resources, namely: 50% contributed by life insurer Storebrand Livsforsikrings A/S and 50% from group holding company UNI Storebrand A/S. The spokesman declined to elaborate on the Norwegian company's future strategy in the Scandinavian market.

A spokeswoman for SEB said the bank hopes to reach a decision on its Skandia option sometime this autumn, but for now could not provide any details. "We have radio silence here on what is going on," she quipped.

SEB had originally planned to create a bank-insurer group that would particularly focus on life insurance, savings and asset management, the spokeswoman said. "We are now taking up new discussions on the question of a merger or some form of cooperation."

Mikael Sjoqvall, a director at  
*Continued on page 40*

## Brokers' liability ruling in U.K. stands

By WILLIAM PITT  
and STACY SHAPIRO

## LONDON

LONDON—A recent ruling by the House of Lords, Britain's highest court, dashes London brokers' hopes that a notoriously gray area of their liabilities might be clarified once and for all.

The Law Lords refused to hear an appeal from two insurance brokers who were found by a lower court to owe a duty of care to Punjab National Bank as the assignee of coverage placed on behalf of a bank client in the early 1980s.

At issue in *Punjab National Bank vs. de Boinville and others* is the duty of care brokers owe to third parties to whom a policyholder assigns its rights. A Commercial Court ruling on this point in January, delivered by Justice

Hobhouse, was upheld by the Court of Appeal in May. Although the House of Lords refused to hear the appeal, it may still hear the plea once the rest of the case is decided in the Commercial Court.

The brokers' original client was Esal (Commodities) Ltd., which is now in liquidation. In the early 1980s, Esal sought to secure financing arrangements for shipments of various commodities to the Sudan. Punjab National helped finance the shipments, ensuring that Esal was paid even if letters of credit, opened by the Bank of the Sudan in Khartoum and payable in London, were not honored.

As further security, both for it-

self and Punjab National, Esal arranged export credit insurance in the London market to cover the shipments. The cover was arranged by two individual brokers, Nicolas de Boinville and John Deere, through five brokerages at which they worked in 1982 and 1983. These included Lloyd's of London brokerages F.E. Wright (U.K.) Ltd. and Fielding Juggins Money & Stewart.

When Bank of the Sudan failed to honor the letters of credit to Esal, a claim was made with the underwriters. They refused to pay, however, on the grounds of misrepresentation and non-disclosure of material facts.

Punjab National sued the individual insurance brokers, as well as the firms for which they worked on the grounds that they had

breached their duty of care to both Esal and to Punjab National as the policyholder's assignee.

Before determining whether the brokers had breached their duty, the court had to determine whether they owed a duty of care to Punjab National as an assignee of the policies in any case, as the bank alleged. Justice Hobhouse concluded that they did.

The main action against the brokers is due to be heard in the Commercial Court early in October.

Commenting on the House of Lords decision, attorney Michael Pugh of Barlow Lyde & Gilbert in London, who specializes in brokerage disputes, said that the duty of care brokers owe to third parties, such as assignees, remains a "fairly uncharted area."

Although Mr. Pugh has no direct

involvement in the case, he said it is an interesting one because the two brokers are being sued personally, which would lead to an expansion of brokers' liability.

"It will be interesting to see what the courts' attitude will be in future to the question of the personal duty owed by employees to clients and third parties," Mr. Pugh said.

"It may add to the arguments in favor of directors and officers liability cover in cases where claims are not already covered by the firm's own errors and omissions insurance," he said.

## Willis Faber in Moscow

Willis Faber & Dumas Ltd., the international and wholesale insurer  
*Continued on next page*

## Insuring space-related risks

## NASA, insurers cooperate to launch private projects

By GAVIN SOUTER

ROME—NASA is developing a closer relationship with commercial property/casualty insurers as it increasingly joins private concerns in space projects, an agency representative says.

Those space projects are covered by commercial property and liability insurance obtained by the space agency's private partners, said General Counsel Edward Frankle.

In addition, NASA is arranging commercial insurance programs that its private partners in certain projects can tap to meet the risk financing requirements the space agency has established for those projects, he said.

The National Aeronautics and Space Administration's changing relationship with commercial insurers is due to the space agency's changing role, Mr. Frankle said at a conference on the insurance implications for commercial and industrial activities in space in the 1990s sponsored by Assicurazioni Generali S.p.A. in Rome earlier this month.

Changes in U.S. laws also have led to a closer relationship between NASA and insurers, Mr. Frankle said.

"Historically, U.S. government agencies like NASA had little direct involvement with the insurance industry. Under U.S. laws, the money appropriated by Congress generally was not available to insure government property," he said.

And, the government is protected against most liability claims under sovereign immunity law, Mr. Frankle said.

"All in all, it was a neat little package," he said.

But a new era in insuring government space risks is emerging as NASA itself enters a new era in its development, Mr. Frankle

explained.

"A new relationship between the government and the commercial space industry is developing. That new relationship puts NASA in the role of a provider of goods and services, in addition to its traditional role as a purchaser," he said.

NASA is increasing its involvement in commercial activities partly due to the  
*Continued on page 40*

## Exchange of information on space technology sought

By GAVIN SOUTER

ROME—Space coverage has come a long way since its inception in the 1960s, but if it is to progress further, greater cooperation between insurers and the space industry is needed, says a leading space insurer.

Until the space industry is able to communicate more information about the technical aspects of space risks to insurers, insurers

will be unable to more accurately assess rates for space risks, said Eugenio Coppola, chairman and managing director of Assicurazioni Generali S.p.A. in Trieste, Italy.

"There need to be frank, two-way discussions between insurers and industry. Without this, we will wander around in a semi-blind state and the only way we will try to cover our costs will be to demand higher premiums," he said.

Although information about space-related risks has improved greatly over the years, he said the space insurance industry still is unstable and rates are subject to great fluctuation.

And competitive pricing among insurers that is not based on valid technical information could easily "upset the apple cart," Mr. Coppola said at a conference on the insurance implications for commercial and industrial activities in space in the 1990s.

The conference, which attracted 326 attendees from 24 countries, was sponsored by Generali in Rome earlier this month.

The exchange of technical information, though, is not the only issue that could help bring stability to the space insurance market, Mr. Coppola said. An increase in the number of insurers writing coverage for space risks also would help, he added.

If there were an increase in the number of companies or syndicates offering space coverage, risks would be shared by more insurers and the effect of a big loss on individual insurers would be reduced, said Mr. Coppola. That, in turn, "could lead to a reduction in premium and better coverage," he said.

New insurers would enter a market in which the number of insurable launches is gradually increasing, said Generali Joint  
*Continued on page 43*



The famous Fountain of Neptune in Rome, where Assicurazioni Generali hosted a recent conference on the insurance implications of space developments in the 1990s.

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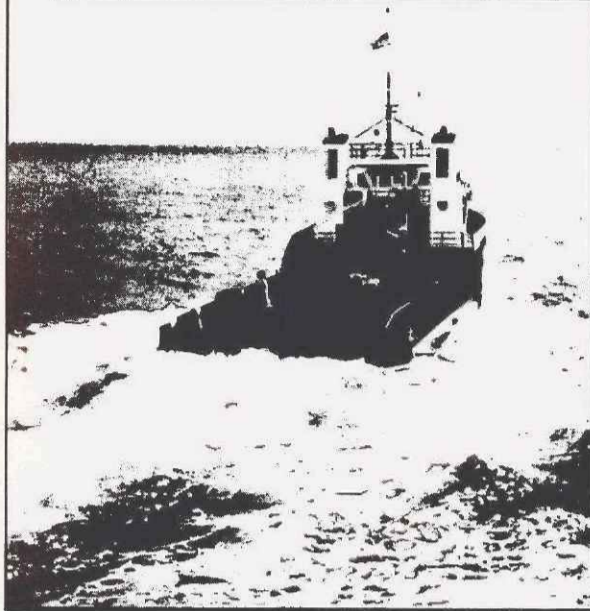
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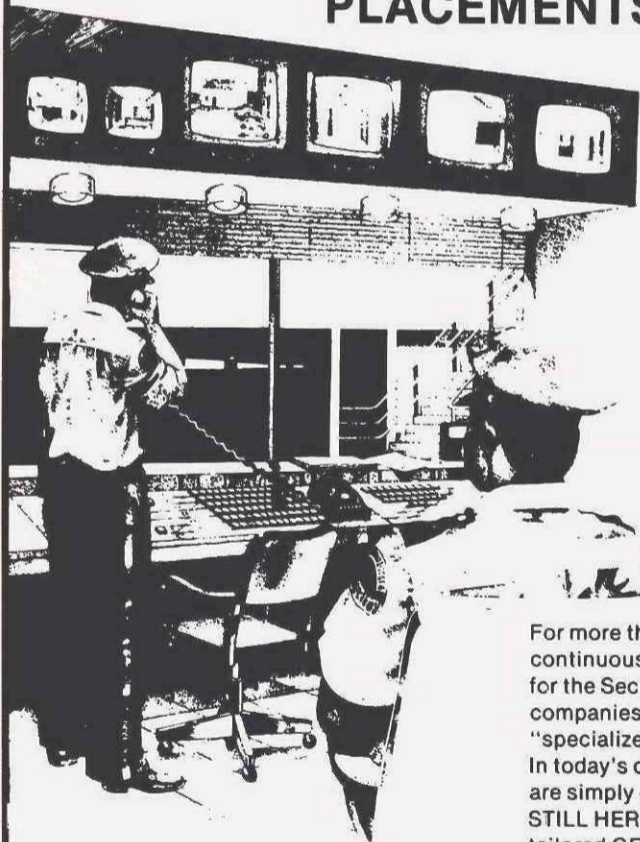
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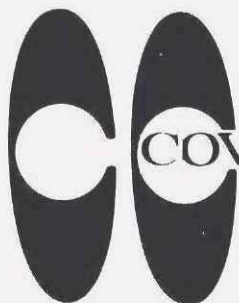
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## INTERNATIONAL

### LONDON

Continued from previous page  
ance subsidiary of Willis Corcoran P.L.C., has been authorized to set up a representative office in the Soviet Union.

The office will mainly handle business for multinational companies seeking coverage for their Soviet operations, said Michael White, territorial managing director in London for Central European and Eastern Europe.

The representative office will be in Moscow but future political developments may require offices in other Soviet republics, Mr. White said. The authorization for the new office was announced after last month's failed coup led to calls for independence for the republics.

The chairman of Ingosstrakh, The Insurance Co. of the U.S.S.R. Ltd., said at a conference earlier this month that insurers and brokers seeking entry into the Soviet Union likely will now have to apply for approval from each individual republic (see story, page 19).

The accreditation of Willis Faber as an authorized insurance broker by the Soviet Ministry of Finance follows more than a year's negotiations with the Soviet authorities, Mr. White said.

Willis Faber already has an operation and staff in Moscow, which up to now has acted mostly on an advisory basis. A joint venture between the broker and Dynamic, a Soviet computer company, had been operating in Moscow since last year. Without authorization, however, Willis Faber could not obtain revenue from the venture, Mr. White said.

The new operation will have a threefold purpose, he said.

"Primarily, it will service multinational clients who have interests in the Soviet Union. Obviously a lot of the business will be for property risks where the companies have obtained or are in the process of obtaining premises in the country," Mr. White said.

The office also will help strengthen the relationship Willis Faber has with the Soviet state insurers, Ingosstrakh and Gosstrakh, he said. Willis Faber has had dealings with Ingosstrakh for 60 years and it currently places a portion of the Soviet insurer's pro-rata reinsurance treaties, Mr. White said.

Thirdly, the new office could act as the reinsurance broker for the Soviet state insurers once they are privatized, he said.

"There is currently about 17 billion pounds (\$29.5 billion) worth of non-life and life insurance premiums paid to the Soviet companies, and while we would not be seeking to place that business elsewhere, we would be seeking to place catastrophe reinsurance for the companies," Mr. White said.

It is too early to say what effect the current Soviet political turmoil will have on the Willis Faber operation, he said.

"We may find that we will need to seek accreditation in each of the republics, but we don't know yet,"

Mr. White said. "But whatever happens, Moscow is the obvious place to start from."

### Miller changes name

Lloyd's of London broker Thos. R. Miller & Son (Holdings) Ltd. is formalizing its nickname by shortening its name to The Miller Insurance Group Ltd.

The old name—created by Sir Peter Miller, the broker's chairman, in the 1950s after he joined the family firm—"is a jolly clumsy mouthful," said Sir Peter last week.

Anyone who called the broker was greeted by switchboard operators saying, "Miller Insurance," so it made sense to shorten the name, he said.

The name change will also help stop the confusion between Miller's and the protection and indemnity club manager Thos. R. Miller & Co., which also was founded by Sir Peter's great-grandfather, Thomas Robson Miller in 1902.

All of Miller's subsidiaries are shortening their names. For example, Thos. R. Miller & Son (Overseas) Ltd., which handles many binding authorities in North America, is changing its name to Miller Overseas Ltd. And the lengthy name of Thos. R. Miller (Reinsurance Brokers) North America Ltd. will become Miller Reinsurance Brokers North America Ltd.

In the last 40 years, the brokerage has grown from "a tiny firm to a large firm," said Sir Peter, employing more than 400 people at year-end 1990 with total brokerage revenues of 32 million pounds (\$61.8 million at year-end exchange rates).

Many London brokers have been interested in buying the firm, but the partners and the employees, who own the company through an employee trust set up two years ago, have decided not to sell. "It's much more fun" staying the way we are, said Sir Peter.

The company instead has decided to strengthen the areas where it is strongest, like marine liability and hull risks. For example, Miller Overseas Ltd. is one of the largest brokers in North American binding authorities, said Chris Eliot, head of the division.

The philosophy of the group in the future will be "to continue to be independent and a big player in the game (that we know) and look for new opportunities," said Sir Peter.

### Lloyd's marketing plan

Lloyd's of London has launched its first central marketing campaign to show customers that Lloyd's is more than just a bunch of underwriters insuring "exotica."

Lloyd's has been one of the 20 top brand names in the world, but it has never flaunted its name centrally, though it has been advertised by individual brokers and underwriters, said Andrew Duguid, head of market services at the Corporation of Lloyd's.

Earlier this month, however, the Corporation of Lloyd's announced a central marketing campaign because "we're not as well known as we'd like to be," said Mr. Duguid.

The brochure being used to launch the new campaign tells policyholders that Lloyd's can tailor-make packages and can offer the best deal that money can buy. It explains what Lloyd's is and addresses some of its lesser-known offerings, such as life, contingency, professional liability, commercial auto and accident and health insurance.

Lloyd's is also advertising for a manager to coordinate its new marketing activities.

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From Business Insurance, "Agent/Broker Profiles," June 18, 1990.

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## INTERNATIONAL

## NASA

*Continued from page 37*

insistence of Congress, he said.

For example, under the Launch Services Purchase Act of 1990, NASA is required to buy launch services from commercial providers unless one of four exemptions applies. And, a 1991 law requires the agency to encourage the fullest commercial use of space, Mr. Frankle said.

"I can't claim to know now exactly where these two new functions will lead us, but I do know that we will be doing more things commercially and that if you look closely at any modern commercial practice, you don't have to look far before you find insurance," he said.

For example, as required under the Launch Purchases Act, NASA now relies heavily on commercial expendable launch vehicles to launch its satellites. The launch service providers buy their own property damage packages to cover a series of launches, and the cost of the insurance is passed on to their clients—including the government—through the launch costs, he said.

Defense contractor General Dynamics Corp. of St. Louis, for example, runs its commercial activities at Cape Canaveral under an agreement with NASA which requires it to buy \$50 million worth of property damage insurance, Mr. Frankle said.

As for third-party claims, General Dynamics had to show that its activities at Cape Canaveral had been added to its \$1 billion umbrella casualty policy and that the U.S. government was named as an additional policyholder, Mr. Frankle said.

Mr. Frankle also pointed to NASA's recent \$184 million contract with SPACEHAB for in-orbit use of the SPACEHAB commercial module, which is designed to be used aboard the space shuttle in 1993. A substantial portion of the fee is for insurance, Mr. Frankle said.

Its insurance covers: pre-launch, space flight, termination flight delay, property/casualty and political risks.

## Skandia stake

*Continued from page 37*

London-based securities broker Kleinwort Benson Securities Ltd., said that Sweden's current economic difficulties make an outright merger between SEB and Skandia unlikely, unless there is outside financing from other Swedish companies like automaker A.B. Volvo or heavy construction and engineering firm Skanska A.B.

In addition, the different shareholder voting rights structures in the two companies are incompatible, he said. "Skandia has a democratic system with very restricted voting rights," Mr. Sjovald said. In contrast, SEB gives a disproportionate amount of weight to votes cast by the Wallenberg Foundation, which holds only a 5.6% stake. Once Sweden's most prominent financial/industrial family, the Wallenbergs founded SEB.

In a separate development, a Skandia spokesman said that the insurer's Colombian non-life subsidiary is for sale.

Skandia has two wholly owned subsidiaries in Colombia, life insurer Cia. de Seguros de Vida Skandia de Colombia S.A. and non-life insurer Skandia Seguros de Colombia S.A.

"The life company will probably stay with Skandia," the spokesman said.

Several companies have been interested in acquiring the non-life unit, including Commercial Union P.L.C. of London, he said. However, Commercial Union's interest coincided with a management buy-out attempt by Skandia Colombia employees that fell through, he added.

The sale of the company "is a strategic decision," the spokesman said. "The total combination of companies in Skandia is always under review," he explained. ■

But such extensive insurance is probably excessive, he said.

"I do hope that as we all learn to love commercial space, we will be able to back off from some of the more unique requirements which seemingly apply to space ventures," Mr. Frankle said.

NASA also has arranged commercial property/casualty insurance programs that its commercial space industry partners on certain projects can tap to ensure those firms are adequately insured, Mr. Frankle said.

One case is when commercial companies use NASA's KC-135 aircraft to carry out experiments in a weightless environment.

The extra flights needed to run such tests meant that a substantial amount of the aircraft's risk exposure was not related to the government's own missions, Mr. Frankle said.

NASA negotiated an insurance program with Washington, D.C.-based International Technology Un-

derwriters Inc. that provides the space agency's partners \$50 million of liability coverage, \$5 million for aircraft damage and \$1 million per person for crew members. The premium was about 10% of the cost of a KC-135 flight, Mr. Frankle said.

The commercial users of the KC-135 did not have to use the INTEC facility, but they did have to buy insurance providing equivalent coverage, he said.

"Since the facility has become available, we have entered six agreements with customers who wanted 32 flights, and all of them utilized the facility," Mr. Frankle said.

NASA also is working on setting up a program that will provide coverage to the commercial owners of the payloads the shuttles carry.

A predecessor program has not been needed since 1986, when the Challenger shuttle exploded, because no later shuttles carried commercial payloads.

However, this soon will change, Mr. Frankle indicated. "With the first flight of our new orbiter, Endeavor, in May 1992, we will be back in the business of providing launch services to customers."

And, between then and year-end 1993, nine more shuttle flights will carry commercial payloads, he said.

Consequently, a new shuttle facility that will provide \$500 million of liability coverage is currently being negotiated, Mr. Frankle said.

Despite the increased insurance requirements NASA has established for commercial entities that use NASA facilities, the space agency is unlikely to insure its own spacecraft, he said.

Insurance is not necessary because most of the spacecraft are unique. If one is lost it is unlikely to be rebuilt, because technology will have advanced and scientists "won't be able wait around for a second shot at the same mission," Mr. Frankle said.

However, where the spacecraft is

not unique, insurance may be needed, he said. For example, NASA is planning a replacement series of data relay satellites, the Advanced Tracking and Data Relay Satellite System.

Mr. Frankle also pointed out that the builder of the series might launch the satellites into orbit. But, "if we do that, it is not clear whether we would permit the builder to buy, and charge us for, insurance of the spacecraft until we take title in orbit," he said.

Further into the future, the space station Freedom may offer opportunities to insurers, Mr. Frankle said.

However, insurance must take second place to good risk management techniques in reducing the cost of operating in space, he said.

"As pioneers in space activity, one of our major roles should be to define and demonstrate good program and risk management," Mr. Frankle said. If the space industry can achieve this, it will show that it is stable and worthy of insurance, he said. ■



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## INTERNATIONAL

# Space explorers seek innovative insurers

By GAVIN SOUTER

ROME—Innovation in the space industry demands similar innovations from the insurance industry, two lawyers say.

High-value and high-risk space projects require new coverages that will allay the fears of their financial backers, the lawyers say. While some new coverages have been developed, like contingency insurance for space risks, others are sorely needed.

However, the complexity of some new coverages already is leading to a surge in contract disputes, one of the lawyers contends.

The two made their remarks during a conference on the insurance implications of commercial and industrial activities in space sponsored by Assicurazioni Generali S.p.A. in

Rome earlier this month.

"The high risks involved in space projects present significant challenges to the finance and insurance communities, requiring careful evaluation and often innovative solutions," said Peter Nesgos, a partner at Haight, Gardner, Poor & Havens in New York.

Those high risks are the result of using high-value and often untested equipment that usually is damaged beyond repair if there is a launch failure, he added.

Insurance has played a key role in financing the risk of these space projects, Mr. Nesgos said.

"Today, traditional property and liability insurance policies, such as pre-launch, launch and in-orbit first-party insurance and product liability insurance, have become mandatory

parts of most space project financings," he said.

Before satellite manufacturers can secure a line of credit, they frequently must buy insurance covering any construction delays or pre-launch damage, he explained.

Manufacturers face other hurdles, too. Before granting credit, lenders often also require firm assurances that launch insurance will be available, said Mr. Nesgos. Because this usually means obtaining commitments from insurers up to five years in advance of a launch, satellite manufacturers have frequently had problems meeting this demand, he said.

"In the mid-1980s, at a time of significant adverse loss experience and a reduction in capacity, launch insurance could not be bound earlier than 90 days before launch," Mr.

Nesgos recalled.

One solution, Mr. Nesgos suggested, would be for insurers to provide financiers with a less binding commitment, rather than a firm guarantee of coverage.

Other innovations in insurance arrangements also are required by satellite manufacturers and their backers, according to Mr. Nesgos.

For example, he said, "one of the greatest risks faced by financial institutions purchasing space equipment in a tax-driven sale-leaseback transaction is the residual value of the equipment at the end of the lease term."

Those institutions need coverage to protect them against unexpectedly severe deterioration of satellite values, he said. Such coverage is common in the aviation market.

And appraising the value of space equipment to be insured, particularly transponders, has often proved difficult because of a lack of experience, Mr. Nesgos said.

Transponders, which receive radio signals, are one of the most valuable pieces of equipment on a satellite; however, no insurer will now cover lender's risk that they will be undervalued, he said.

Demand for such coverage would be plentiful if an adventurous insurer would take on the challenge, Mr. Nesgos said.

Some innovative forms of space-related coverage are already on the market, said Stephen Tucker, partner at Mendes & Mount in New York.

One example is the contingency risk coverage obtained to cover the SPACEHAB project, he said.

SPACEHAB is a private company that is manufacturing modules that will fit into the payload bay of the space shuttle, thereby quadrupling the space available for experiments. The modules contain compartments that can be leased by scientists who would otherwise be unable to do their projects in space, Mr. Tucker explained.

"If the space shuttle program were to be somehow discontinued or severely delayed, SPACEHAB would have no way to protect its investments, repay its bank loans and launch the specially tailored modules into space," he said.

But it has managed to buy insurance to cover these contingencies, Mr. Tucker said (BI, July 8).

The policy covers SPACEHAB in the event of the shuttle flights being discontinued; NASA failing to honor commitments to supply launch services; the government canceling or postponing the flights which will carry the module; and the modules not being delivered by the manufacturers, for reasons beyond the control of the assured, he said.

About 150 insurers participate in the contingency coverage with 80% being written by Lloyd's of London syndicates, he said.

One downside to the innovative and complex new coverages is that they often are the subject of contract disputes, according to Mr. Tucker.

"Issues in space insurance contract disputes can turn on, in some cases, understanding three-dimensional motion of satellites in space. . . or, in others, on an understanding of the subtleties of how radio signals travel through transponders aboard satellites," Mr. Tucker said.

Also, the technologies involved with space risks develop so quickly it is difficult for insurers to consider all the future applications of the risk they are underwriting, he added.

"One need only consider that before Sputnik came on the scene in 1957, there were no man-made objects in space. Now there are thousands," Mr. Tucker said.

Three tried and tested approaches help minimize the number of protracted contract disputes, he said.

First, risk assessments should be performed by knowledgeable third parties and these should be followed by frank discussions between the parties to the contract, Mr. Tucker said.

Secondly, careful attention should be paid to the legal effect of the contract language, before contracts are signed, he said.

Finally, when disputes do arise, the parties should consider using alternative dispute resolution methods, such as non-binding mediation, Mr. Tucker said.

"Non-binding mediation is often effective in neutralizing hostility and causes parties to be more realistic about the strengths and weaknesses of their cases, after hearing the views of the impartial mediator," he said. ■

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# Satellite loss record unacceptable: Operator

By GAVIN SOUTER

ROME—Satellite operators are not doing enough to minimize their losses, according to a leading operator.

If they paid more attention to risk management and quality control, their satellite insurance costs could be reduced significantly or, in some cases, eliminated in favor of self-insurance, he says.

However, even if better risk management reduces insurance costs, the sheer volume of future launches should keep the space insurance industry soaring for years—as long as it keeps up with demand, another satellite operator said.

The satellite industry seems to find a 15% to 20% loss rate either acceptable or inevitable, said Frederick Bartlett, vp-finance and administration for Telesat Canada in Gloucester, Ontario.

Some operators, for instance, order more satellites than they actually need. "In other words, they plan failures," Mr. Bartlett said.

As an industry, satellite operators

have compiled an unacceptable risk management record, he said. His comments came during a conference on the insurance implications for commercial and industrial activities in space in the 1990s sponsored by Assicurazioni Generali S.p.A. in Rome earlier this month.

Telesat Canada's risk management program can give some operators some pointers on reducing their losses, he said.

Since launching its first satellite in 1972, the company has done nine other launches, using the Delta rocket, the space shuttle and the Ariane rocket, he said.

"Taking into account all the satellite programs we have worked on, only one minor claim for \$4.2 million has been filed. I haven't done the mathematics, but it is less than 1%," of the value of the satellites, Mr. Bartlett said.

Top-flight engineering teams are at the heart of the Telesat Canada risk management program.

"We have had to develop our own expertise and we have implemented specific programs to ensure that we

retain that body of knowledgeable and competent people and have taken steps to ensure that this expertise and knowledge remains up-to-date," Mr. Bartlett said.

The next step is to ensure that the satellites themselves are well designed, he said.

Mr. Bartlett recommends investigating the flight history of components and giving preference to those that have been proven in space.

Operators should also evaluate the quality control efforts of satellite manufacturers, he said. "To do so, we have built into our contracts with manufacturers reliability tests that must be met and monitored by Telesat engineers."

Telesat Canada's own experience demonstrates the benefits of such monitoring, he said. A few years ago the company rejected a satellite motor that was subsequently used on another satellite and caused a total loss when it failed.

Operators also should ensure that they have first-hand knowledge of the launch vehicles being used to launch their satellites, he said.

"Given the importance we place on this aspect of our program, you can see why we do not favor in-orbit delivery of satellites," he added.

To further reduce its risk of loss, Telesat Canada has a one-year overlap on its satellite replacement program, so that a replacement will be ready one year before it is actually needed, Mr. Bartlett said.

"The last step in the risk management program for launch is to acquire launch insurance," he said.

Once in orbit, however, the Telesat Canada satellites are not insured.

There are two reasons for this, Mr. Bartlett contends: Such coverage is too expensive, and it is unnecessary. "We make a very substantial investment in the many spare or back-up systems in our spacecraft. This investment is essentially our insurance against an operational failure."

A company emergency committee is prepared to deal with an in-orbit failure, he added. Twice a year, it runs through a simulated failure.

Its risk management successes have led the company to review its requirements for launch insurance. Although it still intends to buy the coverage, if it considers the terms and conditions too harsh, the company will instead opt to increase its self-insured retention, he said.

To make sure that insurance remains an integral part of launch programs, it is necessary for operators and underwriters to work closely together, according to Mr. Bartlett.

"We as operators must implement comprehensive risk management programs, and underwriters must find ways of rewarding operators that institute such programs and have proven track records," he as-

serted.

Another satellite operator agreed that insurers have to make some changes in the way they approach space-related risks.

Future space programs will provide vast new opportunities for insurers and a new approach to space insurance will be needed, said Leo Mondale, vp at Motorola Satellite Communications, a strategic business unit of Schaumburg, Ill.-based Motorola Inc. that is planning to set up an extensive satellite network between 1994 and 1997.

The Iridium satellite program will involve 77 satellites that will provide 7 million cellular telephone links and 20 million pager links, he said.

"It will require a new way of thinking because it is larger in size and scope than any program that has been proposed before," he said.

The first seven satellites will be launched in 1994, the remaining 70 will be launched during 1995, then they will be deployed during 1996 and the Iridium service will begin to be offered to customers during 1997, Mr. Mondale said.

The minimum number of launches will be 14 and the combined cost of the satellites and the launches will be \$3 billion, he said.

If it cannot secure adequate insurance capacity, the company will self-insure its exposure rather than postpone the launches, Mr. Mondale said, because maintenance of the production schedule is vital.

"Consequently, we will be asking the launch business to think of new ways to self-insure, and we will have to convince traditional space insurers to think a little differently to fulfill their part in the program," he said. ■

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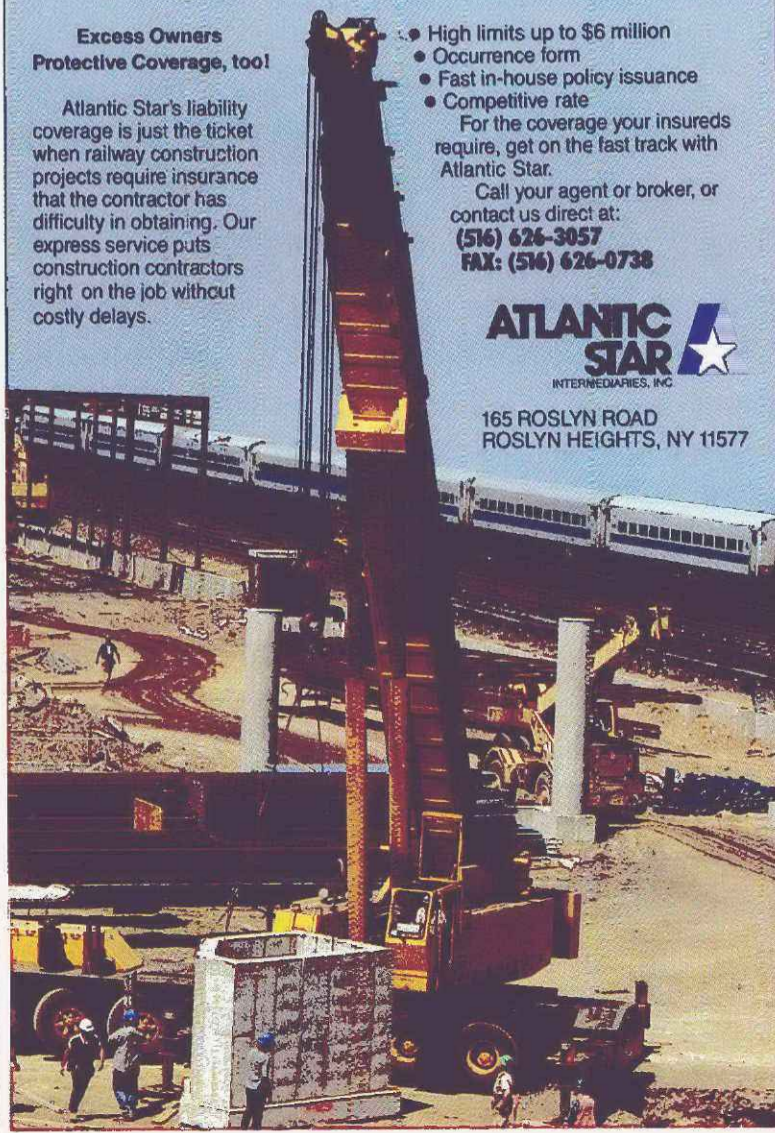
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## INTERNATIONAL

## Space coverage

Continued from page 37

General Manager Benito Pagnanelli.

Although there was a slump in the five-year average number of commercial space launches between 1985 and 1990 following a series of failures—including the shuttle Challenger explosion (*BI*, Feb. 3, 1986)—the average for 1990-1995 is expected to reach an all-time high of 15 launches per year, he said.

And the insured values of the satellites launched are increasing substantially, Ms. Pagnanelli said, noting that "in the last 10 years, the values insured have more than tripled."

Consequently, the gross earned premium income of satellite insurers is also growing. During 1990, satellite insurers' total gross premium income was \$400 million and, in the first eight months of 1991, it already had reached \$223 million, Mr. Pagnanelli said.

However, the amount of claims paid by insurers over the past 15 years has varied greatly, he said.

The claims statistics show "a peaks and valleys trend that could be interpreted as indicating periods of great care in the equipment design, manufacturing and testing of (space equipment and hardware), which are followed by some moments of

relaxation, probably due to an excess of confidence during the industrial process," Mr. Pagnanelli said.

For example, in 1977, claims for the space industry totaled less than \$50 million; in 1980, there were no claims; in 1985, the total exceeded \$350 million; then in 1987 the total claims dropped to about \$50 million before surging to nearly \$400 million in 1990.

Over time, insurers have matured in their reaction to the losses, Mr. Pagnanelli said.

"While in 1984-1985 the market heavily reacted to a series of consistent losses by increasing the launch premium rates from 7% to

8% to 15% to 16% and then to more than 25% in 1985, the 1990 (losses) witnessed a substantial maturity of the insurance market which resulted in a very moderate premium rate increase," he said.

The later increases were coupled with requests from underwriters for more detailed and more promptly delivered technical information about the risks covered, he added.

However, the current moderate attitude taken by insurers will only remain intact if the space industry resolves problems that have caused failures over the past 18 months, he cautioned. These recent problems have included several satellite fail-

ures (*BI*, May 27; April 22; Jan. 14).

Insurers also are having to deal with other changes in their claims experience, Mr. Pagnanelli said.

"In the past, the majority of claims were consequent to launch vehicle failures. Presently, a significant portion of claims are attributable to satellite underperformance. Fewer satellite failures occurred in the past, most notably because fewer spacecraft safely reached their final orbit," he said.

Now, space insurers are less concerned about launch failures and more concerned about in-orbit failures because of the improvements in satellite technology, he said. ■

## 'Good' space risks call for rate relief

By GAVIN SOUTER

ROME—Space launch underwriters should restructure their rating system to provide some rate relief because the cost of space insurance is so prohibitive that it is retarding advances in the space industry, satellite operators agree.

Space launch underwriters are entitled to a profit, but they should radically restructure their rating system so that owners of satellites made by manufacturers with poor track records pay the highest space launch premiums, satellite operators maintain.

That way, insurers would not have to charge higher rates across-the-board to make their profit, they said during a conference on the insurance implications of commercial and industrial activities in space in the 1990s sponsored by Assicurazioni Generali S.p.A. in Rome earlier this month.

Different rates for different policyholders would force operators and manufacturers to improve their standards of quality control, and this would lead to fewer losses, satellite operators said.

The current budget constraints on commercial space industries and government agencies means that there often are insufficient finances to purchase insurance for space projects, said Hans Schimrock, head of risk management at the European Space Agency in Paris.

"Finding the money to pay insurance premiums of 18% (of a satellite's value) is a real difficulty for many customers," he said.

Space launch insurance premiums currently range from 17% to 20% of a satellite's insured value.

Rates would have to drop to below 10% of a satellite's value before all companies and agencies would find insurance an attractive proposition, Mr. Schimrock said.

"Only then could you say that if you did not buy insurance it was a failure of the management not to buy insurance," he said.

Mr. Schimrock recommended that insurers find a way of making the space industry more responsible for its work, instead of charging all policyholders high premiums.

"Some manufacturers take advantage of insurance simply because it covers liabilities, which really they should assume themselves," he said.

Manufacturers would become more responsible if insurers differentiated between good and bad companies when they establish rates, other speakers urged.

And, insurers would benefit greatly from making coverage available to companies with improved loss records, they said.

The cost of satellites has increased greatly since they were first launched in the 1960s, said Robert Perry, vp and chief financial officer at COMSAT Communications Satellite Corp. in Washington, D.C.

"Last month we launched Intelsat 6, which cost \$250 million. This

compares with our satellite launched back in 1965, which was known as Earlybird and cost \$7 million," he said.

The increase in costs reflects advancing technology, and this technology, as well as the number of satellites, will grow at an even faster pace over the next 25 years, Mr. Perry predicted.

"One of the key factors that will help that growth will be competitively priced insurance," he said.

Mr. Perry said he recognizes that insurers need to make a profit from space insurance underwriting. But, insurers also should set different rates for different types of buyers if they are to make insurance attractive, he said.

Companies involved in the space industry that invest heavily in quality control and technical expertise should be rewarded with lower premiums, he said.

"In the long term, this will lead to fewer losses and more profits for everyone," Mr. Perry asserted.

While it is understandable that insurers have become more wary of space risks, given the number of large losses they have suffered in recent years, they should become more amenable to the notion of different rates for different customers, agreed Ramin Khadem, director of finance and administration for the International Maritime Satellite Organization in London.

"As a result of the losses, insurers are giving much more attention to the technical side of the risks than they were before. So, now that they have this increased knowledge of the risks, why aren't good programs given better rates?" he asked.

This also would help bring stability to the market, because the good operators would still benefit from lower rates even when bad operators have produced large losses, Mr. Khadem said.

"What we have at the moment are periods of stability which are followed by a loss and then unjustifiable increases for all risks," he said.

If differential rates were introduced, there would be a dramatic improvement in quality control in the space industry, because companies and agencies would strive to reduce their insurance premiums by improving their loss record, Mr. Khadem said.

Bad operators would not be able to afford their insurance premiums unless they improved their quality control, he added.

INMARSAT is largely self-insured, but it does have some commercial insurance in the form of coinsurance arranged through Lloyd's of London broker Crawley Warren & Co. Ltd., according to Mr. Khadem.

Although INMARSAT is willing to buy some insurance for its risks, the insurance market needs to go through some fundamental changes if it is to attract more buyers, he said.

GE American Communications Inc. in Princeton, N.J., has launched 12

Continued on next page

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## Rate relief

Continued from previous page spacecraft, and only one was launched without insurance. That was in 1975 when insurance rates were 27% of the satellite's insured value, said Walter Braun, senior vp-government and technical operations.

At that time, space insurance was nowhere near being fair, reasonable, predictable or stable, he said.

"Buying insurance should not be like playing roulette," Mr. Braun said.

However, the current space insurance market is far from perfect. This is deterring people from investing in space because "businessmen hesitate to make investments in an industry when they are unable to predict what their expenses will be," he said.

Currently, satellite systems can cost \$600 million and, with insurance rates in the region of 20% of that value, investors are reluctant to invest in the industry if they cannot have some assurance of stability in their insurance costs, he said.

"All members of the space industry would benefit from programs which would smooth out the insurance costs," Mr. Braun said.

To do this, underwriters should become more involved in loss control, he said.

"We can't do this, because we as customers do not have access to each other's loss histories, but you as underwriters do have that information," Mr. Braun said.

Underwriters could set up working groups of underwriting engineers who could review satellite losses without identifying the owners or specific satellites, he suggested.

The information could then be shared throughout the space industry and loss control procedures would become more sophisticated. ■

## Space cover rates, terms debated

By GAVIN SOUTER

ROME—Buyers and underwriters of space coverages are squaring off on the subjects of long-term policies and differential ratings.

Space insurance buyers contend that underwriters should use differential ratings that would reflect differences in loss experience between customers and should offer long-term policies to help meet the demands of projects that often take many years to get off the ground.

Underwriters counter that such actions are impracticable and could be disastrous for insurers.

Several space industry professionals aired their opinions in a roundtable discussion at a conference on the insurance implications of commercial and industrial activities in space. The conference, sponsored by Assicurazioni Generali S.p.A., was held here earlier this month.

Underwriters should use differential rates because that is what their clients want, said Walter Braun, senior vp-government and technical operations at GE American Communications, a General Electric Co. unit in Princeton, N.J.

"All sensible business starts with listening to your customers' requirements and sorting out a way to meet those requirements," he said.

But varying rates based on assessments of the risks involved would not just benefit the space industry, he said. Insurers would also stand to gain premium volume because insurance would become more attractive to companies with good loss histories that now self-insure, Mr. Braun said.

Also, loss experience should improve under differential rates. "It

would exercise a self-control mechanism on the insured and it would give launchers and manufacturers an incentive to curb their losses," he said.

An underwriter, though, contended that differential rates do not offer insurers such clear-cut advantages.

"What are the advantages to us if we double the number of clients we have and then reduce our rates by 50%?" asked Hartmut Hesse, departmental executive manager at Munich Reinsurance Co. of Munich, Germany.

Also, reducing rates would not necessarily attract more clients from the space industry, because some manufacturers and launchers would still not buy coverage at the rates insurers must charge to make a profit, he said.

Insurers also would have difficulty assessing which risks deserve lower premiums and which ones deserve higher premiums, Mr. Hesse said.

"Sometimes a piece of hardware seems good and then it suddenly fails," he said.

And differentiation also means discrimination against companies that are considered bad risks, Mr. Hesse said. This might lead an underwriter to push himself out of the market if he insists on a higher rate for those customers that are deemed a bad risk, he said.

"With only 15 to 20 launches a year, once you have said 'no' three or four times, your book becomes less balanced and more like a Las Vegas-style gamble," Mr. Hesse said.

One way underwriters could help reduce the element of chance involved in insuring the space industry is by becoming more involved in quality control, said Charles

Lloyd, vp and managing director of General Dynamics Commercial Launch Services Inc. of San Diego.

"Underwriters should gather together and conduct a survey of launch providers and satellite manufacturers and establish a system of best practices," he said.

The information could then be shared throughout the industry and quality control would be improved across the board, Mr. Lloyd said.

Although this outcome would be desirable, it could not possibly happen, another panel member said.

The notion of underwriters designating the best practices is fatally flawed because of the competition between manufacturers and launchers in the space industry, said Harold Caplan, managing director of International Insurance Services Ltd., a London consulting firm.

While there can be a general pool of knowledge to some degree, commercial rivalry among companies means that not all of the knowledge can be shared, he contended.

And insurers will not be able to develop the in-depth expertise needed to develop a system of the best practices without the cooperation of manufacturers, Mr. Caplan said.

"If there is a need for more information on the risks, it could perhaps be supplied by independent consultants, but insurers are never going to be in a position where they will have the expertise to be involved in the design process," he said.

Buyers and underwriters also differed on whether advanced long-term coverage—that would cover all phases of a project over a long period—should be offered.

Long-term coverage would certainly interest space insurance buyers, said Richard Nausch, managing director-aviation at Marsh & McLennan Cos. Inc. in New York.

As with differential ratings, underwriters should provide the coverage because the client requires it and insurers should always try to meet the needs of their clients, he asserted.

And, underwriters also would benefit from writing such long-term coverages, Mr. Nausch said.

"They would have guaranteed revenue, they would be able to invest the deposit premium, and if rates go down, the rates already agreed would be higher," he said.

But long-term policies could not be underwritten by Lloyd's of London underwriters, argued Janet Sadler, satellite underwriter in London for the Ariel syndicate, which is managed by Methuen (Lloyd's Underwriting Agents) Ltd.

The capacity of Lloyd's syndicates cannot be guaranteed years in advance because their capacity is determined by the number of members who support the syndicate in a given year, which annually changes.

Also, underwriters who could write long-term policies would be unwilling to do so because short-term technical changes in space hardware can dramatically affect project costs. Consequently, underwriters would be unable to accurately value a long-term risk, Ms. Sadler said.

And, if long-term policies were introduced, underwriters could lose out if future rates increase, she added.

"If industry has difficulty in predicting what will happen in the future, how can we do it?" she asked. ■

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## Berman bill

Continued from page 1  
employers.

Subcommittee Chairman Pat Williams, D-Mont., who insurance companies heavily lobbied before the vote, signaled his willingness to try to develop a compromise proposal before the full Education and Labor Committee considers the Berman legislation in late October.

"Members of this committee are open to alternatives. We want to craft a solution that does not disrupt the insurance market," Rep. Williams said, conceding that he was not certain that applying state penalties to group health insurers that mishandle claims is the right approach.

"A month is plenty of time" to work out a compromise before the full committee votes on the bill, Rep. Williams added.

Rep. Donald Payne, D-N.J., also voiced his misgivings about the bill. "As we try to come up with a remedy, we should take up everything," including how the legislation could affect health insurance costs and availability, Rep. Payne said.

Except for Rep. Matthew Martinez, D-Calif., other Democratic panel members generally voted for the Berman bill without comment. Rep. Martinez said that because of the 1987 Supreme Court decision, "insurers are free to do what they damn well please."

This mostly silent acquiescence is a sign that Democratic support for the legislation as written is wavering and that they want a compromise, insurance industry lobbyists say.

"I would use the word 'cautious' to describe how members feel about proceeding," assessed Paul Dennett, director of congressional

relations in the government relations office of Blue Cross/Blue Shield Assn. in Washington, D.C.

"Many Democrats expressed their reservations or were silent. There is a sensitivity to the cost and litigation" potentialities created by the bill, according to Mr. Dennett.

However, Rep. Williams warned that if a compromise cannot be reached, he will press for passage of the Berman legislation as drafted.

"The problem (of insurers not paying legitimate claims) has gotten worse. We intend to fix it," Rep. Williams said.

But, insurers describe the Berman bill as an answer in search of a problem.

"What exactly is the problem? We don't see any evidence of legitimate claims being denied," said Marie Walsh, assistant Washington counsel for the Health Insurance Assn. of America in Washington, D.C.

Ms. Walsh added that penalties under ERISA are adequate to ensure that bona fide claims are paid.

Insurers are reluctant to say this soon in the legislative process whether they will drop their opposition if a compromise bill is proposed.

"I wouldn't expect any group to say it is willing to compromise when it isn't clear if the bill, in its current form, stands a good chance of passage," according to Frank McArdle, a consultant in the Washington, D.C., office of Hewitt Associates.

Insurers, though, are willing to say that they will never drop their opposition as long as the bill eliminates ERISA pre-emption of state penalties, like punitive damages, for improper claims handling.

"When you talk about punitive

damages, there is not much room for compromise," said Stuart J. Brahs, vp-federal government relations in the Washington, D.C., office of The Principal Financial Group, a diversified financial services company.

As the bill currently is written, "we will fight the bill to the (House and Senate) floor if we have to," Ms. Walsh said.

"Certainly, we will seriously consider Rep. Williams' invitation to discuss the legislation. But we

health insurance premiums, concurred Rep. Richard Arme, R-Texas.

That would put the cost of coverage out of reach for more employers and increase the number of workers without health insurance, he said.

Approximately 34 million Americans now lack health insurance. More than two-thirds of the uninsured Americans are either employed or are dependents of uninsured employees.

**'Members of this committee are open to alternatives. We want to craft a solution that does not disrupt the insurance market,' says Rep. Williams. 'A month is plenty of time' to work out a compromise, he adds.**

cannot and will not compromise on weakening ERISA's broad pre-emption," said Michael Romig, senior counsel at the American Council of Life Insurance in Washington, D.C.

During the subcommittee debate last week on the Berman bill, Republican panel members warned of a litigation explosion if group health insurance claims handling practices are opened up to state penalties, like punitive damage awards.

Rep. Marge Roukema, R-N.J., predicted that enactment of the Berman bill would be a "boondoggle" for plaintiffs' attorneys without really helping plan participants.

And, increased litigation "would cause premiums to skyrocket. It could be a real can of worms," said Rep. Bill Barrett, R-Neb.

"It will ignite an explosion of litigation," leading to higher group

"At a time of rising health care costs, (enactment) of this bill is the last thing we should do," Rep. Arme said.

Rep. Roukema said the Berman legislation would crack the basic foundation of ERISA: the pre-emption of state laws that relate to benefit plans in favor of uniform federal rules.

"The legislation fundamentally disrupts the foundation of ERISA: federal pre-emption," which Congress included in ERISA to encourage employers to offer benefit plans, according to Rep. Roukema.

Other panel members said that if ERISA pre-emption of state unfair claims practice laws is eliminated, it could start a new legislative assault against ERISA pre-emption.

"Chipping away at ERISA pre-emption causes me great concern. There are 50 different state legislatures that would love to meddle with ERISA plans. My concern is

what is next," said Rep. John Boehner, R-Ohio.

Panel members also said that certain provisions in the Berman bill are vague and, unless clarified, could expose employers that self-insure their health care plans to punitive damage awards.

For example, the Berman bill says that nothing in ERISA shall exempt an insurance company or other insurer from state statutory or common law that provides remedies against insurers in administering an employee benefit plan or processing claims.

"I don't know what 'other insurer' is. It must be something other than an insurance company. It certainly is confusing," said Rep. Harris Fawell, R-Ill.

Benefit experts earlier said that without a more specific definition in the legislation, an employer that self-insures and self-administers its health care program could be considered an insurer and subject to state unfair claims practices laws.

Meanwhile, two high-ranking Bush administration officials last week signaled the administration's opposition to the Berman bill.

The legislation "purportedly addresses 'problems' that have not been substantiated, and (they) certainly do not warrant such drastic legislative solutions," said Labor Department Secretary Lynn Martin and Health and Human Services Secretary Dr. Louis Sullivan in a joint letter to Rep. Williams.

"The problem of rising health care costs is an issue for all employers, particularly small businesses, and the nation as a whole. At a time when the administration is struggling to find ways to address the problem of access to affordable health care, it seems counterproductive to add to the cost of health plans, the letter said. ■

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**OCT. 7-8. How To Audit Your Insurance Program: Getting Your Money's Worth** seminar in New York City, sponsored by the American Management Assn.; \$850 for AMA members; \$980 for non-members. Also Nov. 14-15 in Boston; Nov. 18-19 in Atlanta; Dec. 9-10 in Los Angeles. AMA, P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

**OCT. 7-9. The Corporate Retirement Benefits Conference** in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; \$690 for IFEBP members; \$765 for non-members. In-

ternational Foundation of Employee Benefit Plans, Registration Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

**OCT. 7-9. National Risk Retention Assn. Annual Meeting** in Washington, D.C.; \$550 for members; \$700 for non-members. NRRRA, Box 1740, 3421 M St. N.W., Washington, D.C. 20007; 800-999-4505.

**OCT. 7-9. Environmental Regulation Course** in Beverly Hills, Calif., and Virginia Beach, Va., sponsored by Executive Enterprises Inc.; \$1,045. Also Oct. 16-18 in New York City and New Orleans; Oct. 21-23 in Chicago and Seattle; Nov. 6-8 in Albuquerque, N.M., and Cleveland; Nov. 13-15 in Atlanta and Washington, D.C.; Nov. 18-20 in Boston; and Princeton, N.J.; Dec. 4-6 in Charlotte, N.C.; Dec. 9-11 in Philadelphia and Indianapolis; and Dec. 10-12 in Honolulu. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

**OCT. 7-11. The Fundamentals of International Employee Benefits** in Brookfield, Wis., sponsored by the

International Foundation of Employee Benefit Plans; \$1,050 for IFEBP members; \$1,175 for non-members. International Foundation of Employee Benefit Plans, Registration Department, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

**OCT. 7-11. Public Risk Management Assn. 1991 Fall Government Risk Management Seminar** in Orlando, Fla.; \$525 for PRIMA members; \$625 for non-members. PRIMA, 1117 N. 19th St., Suite 900, Arlington, Va. 22209.

**OCT. 8. Back to Basics on Surety Bonds** seminar in Burbank, Calif., sponsored by the Insko/Dico Group; \$19.95. Also Oct. 15 in Fresno, Calif. Tim Mitchell, Insko/Dico Group, 800-782-1546.

**OCT. 8. Where Are the Changes? In-Depth Review of the Commercial Property Policy** workshop in Lansing, Mich., co-sponsored by The Society of Chartered Property & Casualty Underwriters and the Mid-Michigan chapter of the Society of CPCU; \$80 for society members;

\$90 for non-members; lunch is \$8. Tricia Hogan, Continuing Education Coordinator, The Society of CPCU, 720 Providence Road, P.O. Box 3009, Malvern, Pa. 19355; 215-251-2773

**OCT. 8. Flexible Benefits: New Options for Non-Profit and Public Sector Employers** seminar in Chicago, sponsored by the Employers Council on Flexible Compensation; \$185 for ECFC members; \$195 for non-members. Also Nov. 12 in Denver. ECFC Conference Center, Department 5063, Washington, D.C. 20061-5063; 202-659-4300.

**OCT. 8-9. Safeguarding Your Rights in Reinsurance Agreements** conference in New York City, sponsored by Executive Enterprises Inc.; \$1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

**OCT. 9. Storage Tanks and Warehousemen's Legal Liability** seminar in New York City, sponsored by the Inland Marine Underwriters Assn.; \$100. Also Oct. 15 in Newton, Mass.; \$50. Karen Sherbine, IMUA, 14 Wall St., New York, N.Y. 10005; 212-233-7959.

**OCT. 9. Human Resource Management Systems Technology** seminar in Chicago, sponsored by GENESYS Software Systems Inc.; no charge. Also Oct. 10 in Milwaukee; Oct. 16 in Toronto; Oct. 17 in Calgary, Alberta; Oct. 23 in Detroit; Oct. 24 in Cleveland. Jayna Smith, GENESYS, 5 Branch St., Methuen, Mass. 01844; 508-685-5400, Ext. 3080.

**OCT. 9-11. New Offshore Finance Legislation in the Turks and Caicos Islands** conference in Providenciales, Turks and Caicos Islands, sponsored by KPMG Peat Marwick; \$375 for offshore delegates; \$275 for island residents. KPMG Peat Marwick, P.O. Box 357, Providenciales,

Turks and Caicos, British West Indies; 809-946-4613.

**OCT. 9-12. 13th Annual Meeting and Educational Conference of the American Society for Healthcare Risk Management** conference in Nashville, Tenn.; \$450 for ASHRM members; \$520 for non-members. Bari Johnson, ASHRM, 840 N. Lake Shore Drive, Chicago, Ill. 60611; 312-280-6403.

**OCT. 9-12. National Conference of the American Society of Chartered Life Underwriters & Chartered Financial Consultants** in San Francisco; \$399 for ASCLU & ChFC members; \$499 for non-members; \$195 for spouses; \$379 for student members. American Society of CLU & ChFC, 270 Bryn Mawr Ave., Bryn Mawr, Pa. 19010-2195; 800-392-6900.

**OCT. 10-11. Financial Reinsurance Agreements** conference in New York City, sponsored by Executive Enterprises Inc.; \$1,045. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-831-8333; 212-645-7880.

**OCT. 10-11. ERISA Litigation Conference** in San Francisco, sponsored by Prentice Hall Law & Business; \$675. Also Feb. 13-14 in Orlando, Fla. Prentice Hall & Business, 270 Sylvan Ave., Englewood Cliffs, N.J. 07632; 800-223-0231.

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## Info

• **"The Employee Handbook for a Healthier Lifestyle,"** published by the International Foundation of Employee Benefit Plans, includes information on exercise, personal habits, weight loss and suggested schedules for medical exams and screenings. The 97-page book is available for \$13 to IFEBP members, \$15 for others. Discounts are available for bulk orders. Publications Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

• The Occupational Safety and Health Administration has published a new book that contains safety and health standards for construction work as well as general industry standards that may apply to construction work.

The volume, OSHA No. 2207, stock number 029-016-00122-1, is available for \$21. Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, D.C. 20402; 202-783-3238.

• **"Product Liability in the United States: A Primer for Manufacturers and their Employees,"** published by the law firm of Perkins Coie, provides basic information about product liability laws and measures that may reduce liability exposure. Single copies are available at no charge to any manufacturing company. Additional copies are \$11.95 each. Direct requests in writing on company letterhead to Keith Gerard, Perkins Coie, 1201 Third Ave., Seattle, Wash. 98101-3099.

• The International Risk Management Institute Inc. recently published the fourth edition of the CGL/WC "Classification Cross-Reference." The reference book includes the latest changes to workers compensation classifications, new non-profit CGL classifications and a cross-reference between workers comp classifications and Standard Industrial Classification codes.

The 85-page publication costs \$29.95; discounts are available for bulk orders. International Risk Management Institute, 12222 Merit

Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

• **"Legal Liability for Cost Containment Strategies,"** a discussion paper published by the New York Business Group on Health Inc., reviews the potential liability employers may incur as they attempt to slow the escalation of health care costs. The paper reviews applicable case law and discusses various cost containment strategies, like excluding coverage of experimental treatments. Copies are available for \$12.50 each. New York Business Group on Health, 622 Third Ave., 34th Floor, New York, N.Y. 10017-6763; 212-808-0550.

• **"The Misrepresentation Case: In a Changing Life & Health Insurance Climate,"** published by the American Bar Assn.'s Tort and Insurance Practice Section, contains several essays that explore the current legal climate for insurers in cases in which the policyholder has misrepresented or concealed facts about smoking, AIDS, substance abuse and mental illness. The 98-page book is available for \$34.95; \$29.95 for TIPS members. American Bar Assn., Order Fulfillment 519, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-5555.

• **"The Impact of Consumer Activism on the Insurance Industry,"** a compilation of 17 articles recently published by The Society of Chartered Property & Casualty Underwriters, traces the consumer movement in insurance. Different authors discuss the impact of consumer activism on Proposition 103, the McCarran-Ferguson Act and the Unfair Claims Settlement Practices Act. Copies are available for \$29.95 from The Society of CPCU, Communications Department, P.O. Box 3009, Malvern, Pa. 19355-0709; 215-251-2743.

• A new brochure discusses the risks employers face if they opt out of the Texas workers compensation system. Copies of "The Dangers of Going Bare" are available at no charge from the State Board of Insurance, Publications

(009-10), P.O. Box 149104, Austin, Texas 78714-9104; 800-252-3439.

• The publication, **"Profile of DI Beneficiaries Who Return to Work,"** is a summary of the Menninger Return to Work Centers' two-year project to develop a selection process to identify appropriate candidates for vocational rehabilitation. Copies of publication TMF-I017-60R are available for \$33 from Menninger Return to Work Centers, 700 Jackson, Suite 900, Topeka, Kan. 66603; 800-678-0633.

• The International Risk Management Institute Inc. recently published its fifth edition of the **"Glossary of Insurance and Risk Management Terms."** The glossary defines more than 1,300 insurance and risk management terms and more than 500 abbreviations and acronyms. The book also contains a directory of state insurance departments and more than 90 risk management and insurance organizations and associations. The glossary costs \$18; discounts are available for bulk orders. International Risk Management Institute, 12222 Merit Drive, Suite 1660, Dallas, Texas 75251-2217; 800-827-4242.

• **"Workers' Compensation in Minnesota: An Administrative Inventory,"** recently published by the Workers Compensation Research Institute, describes how the workers comp system in Minnesota works. The 118-page book also notes possible changes to the system that might result in reduced costs. Copies are available for \$20. Request publication No. WC-91-1 in writing from the Workers Compensation Research Institute, 245 First St., Suite 1402, Cambridge, Mass. 02142; 617-494-1240.

• Tips on what manufacturers and their employees can do to avoid litigation are included in the **"Product Liability Guide for Manufacturers."** The 20-page booklet includes a litigation checklist for laymen, tips on working with insurance companies and a glossary. Copies are available for \$3. Hand Tools Institute, 25 N. Broadway, Tarrytown, N.Y. 10591; 914-332-0040.

• The Occupational Safety and Health Administration has published a revision of the booklet

**"All About OSHA."** The 48-page booklet also contains details on new penalties and updates provisions for federal employees as well as employees of state and local governments. Single, free copies of the volume, OSHA No. 2056, are available from the agency's regional offices or write OSHA Publications Office, Room N 3101, U.S. Department of Labor, Washington, D.C. 20210; 202-523-8151.

• **"Risk Management, Practical Ideas and Applications,"** a guide by Edward W. Siver for small to medium-sized firms, describes basic risk management techniques and concepts. It also discusses implementing a risk management program; asset, income and liability risks; risk financing, loss control and the insurance marketplace. The guide includes a 60-question checklist designed to help evaluate a risk management program's effectiveness. Copies are available for \$9.95 from Risk Management Society Publishing, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

• A new videotape on workers comp reform is available from the American Insurance Assn. The 12-minute tape, "Workers' Compensation: Restoring the Balance," features an injured worker's experience with the system and examines workers comp reform. Copies of the video are free for AIA members and \$15 for non-AIA members. Contact the Publication Department, American Insurance Assn., 202-828-7197.

• **"Rupp's Insurance and Risk Management Glossary"** defines more than 4,000 insurance terms and 300 acronyms. The glossary includes more than 10,000 cross references that direct the reader to synonyms and related terms. The reference also includes the French, German and Spanish equivalents for key terms. Copies are available for \$29.95 from NILS Publishing Co., 21625 Prairie St., Chatsworth, Calif. 91311; 800-423-5910.

• **"Insurance Fraud, A Consumer Alert,"** published by the Insurance Crime Prevention Institute, helps alert consumers to insurance fraud schemes. The booklet discusses staged auto accidents, slips and falls and fraudulent repair shops. For a free copy of the

booklet, call 800-221-4954.

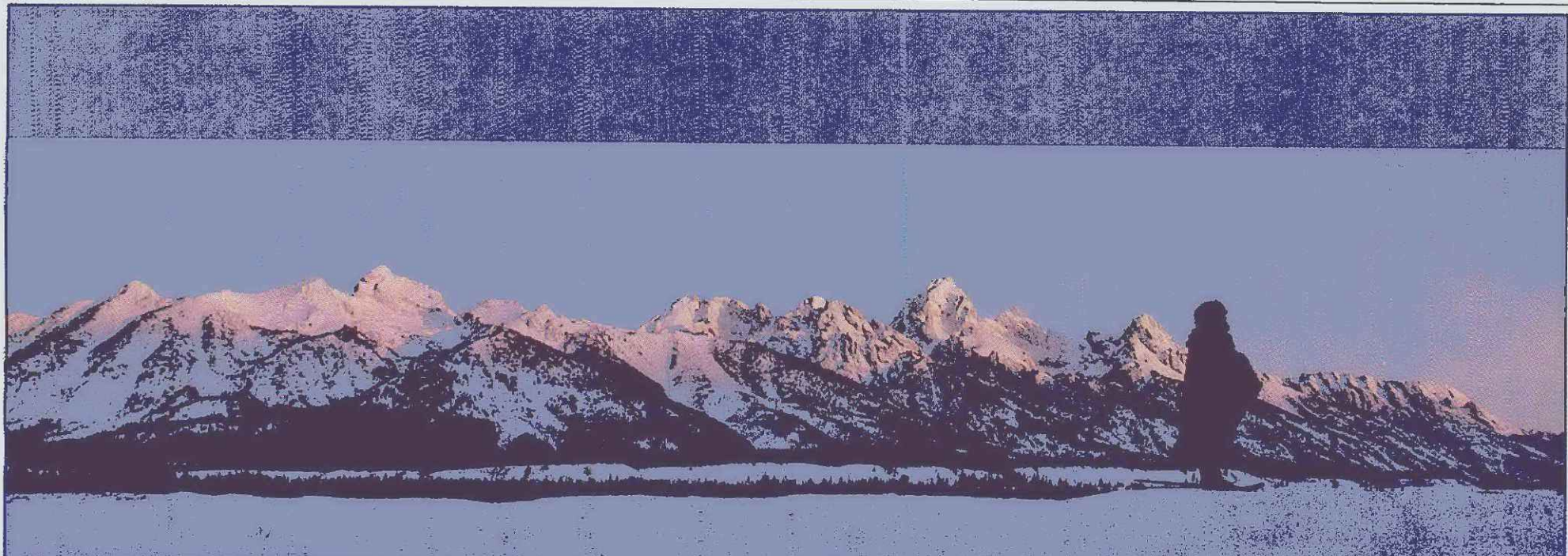
• A 10-page booklet discussing proper seating posture, keyboard position, terminal adjustment and proper location of auxiliary office equipment is available from Hamilton Sorter Co. Inc. For a free copy of **"Ergonomics—The Human Factors,"** contact Jim Weisberg, marketing director, Hamilton Sorter Co. Inc., P.O. Box 18008, Fairfield, Ohio 45014-0008; 800-543-1605.

• **"Insuring Underground Storage Tanks,"** a monograph prepared by the Academy of Producer Insurance Studies, examines the scope and impact of federal standards governing the operation, maintenance and liability of underground storage tanks. Copies are available for \$10, plus \$1.50 shipping and handling. Contact Jim Cuprisin, 800-526-2777.

• **"A Guide to Catastrophe Preparedness"** is now available from the Independent Insurance Agents of America. The guide includes sections on contingency plans for alternate premises, claims handling, developing a referral list of contractors after a natural disaster and a public relations guide. Copies are available for \$14.75. Contact the Independent Insurance Agents of America at 800-221-7917.

• **"1990-1991 Directory of Health Care Coalitions in the United States"** is available from the National Business Coalition Forum on Health. The directory profiles 64 individual health care coalitions, including names and addresses of board and staff members and a review of each coalition's health care management priorities. Copies are available for \$35 from the NBCFH. Contact Misshay White at 202-408-9320.

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## S&P downgrades

Continued from page 2  
 based New England Mutual and Des Moines, Iowa-based Principal Mutual to AA from AA+. St. Paul, Minn.-based Minnesota Mutual fell to AA+ from AAA, and Minneapolis-based NWNL dropped to A from AA.

Exposure to soured commercial real estate investments was singled out by S&P as the reason for each of the downgrades.

Increasing commercial mortgage losses were singled out for New England Mutual. S&P predicts the company will post write-offs of between \$130 million and \$160 million this year.

A company spokesman stressed that the lower rating is still one of S&P's highest. "The rating indicates that the recession is having only a limited effect on our company. The rating denotes that our claims-paying ability is still excellent," he said.

**A lower rating should not be seen as an 'erosion of... basic strength,' contends Minnesota Mutual.**

Principal Mutual, which established \$50 million in statutory reserves for real estate losses, should set aside 10% to 15% of its \$1.6 billion capital base to absorb expected losses, according to S&P.

But Roy Ehrle, vp-investments with The Principal Financial Group, said the real estate investments of its Principal Mutual subsidiary are performing at a rate that is better than the industry average, and that S&P based its downgrade on future losses that it cannot accurately predict.

"We feel that the future is unknown. We're in accordance with the National Assn. of Insurance Commissioner's reserve standards and our commercial mortgages are performing better than the industry average," said Mr. Ehrle.

S&P lowered Minnesota Mutual's rating based on expected losses from mortgage defaults of \$10 million to \$15 million per year over the next few years.

Coleman Bloomfield, chairman and chief executive officer, said in a statement that the rating reduction "should not be interpreted as an erosion of Minnesota Mutual's basic strength, which S&P previously rated AAA. Only 6% of our investment portfolio is in commercial real estate, which is less than half of the industry standard."

And, NWNL was downgraded because S&P expects bond and mortgage portfolio losses to exceed current reserves this year by more than 200%.

In a statement, John Turner, president and chief executive officer of NWNL, took issue with the rating agency's assessment. "S&P's belief that losses in the bond and mortgage portfolio will exceed reserves and write-offs taken by the company to date reflect S&P's broad economic assumption for future loss experience."

Recently, Moody's Investors Services Inc. cut the financial strength ratings for both NWNL and Principal Mutual, citing exposure to real estate losses (BI, Aug. 26). ■

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# IRS safe harbor is too narrow for most cash balance plans

By JERRY GEISEL

WASHINGTON—Clarifying provisions in final Internal Revenue Service pension rules will make non-discrimination testing easier for special pension plans created to encourage workers to retire early.

And other clarifications will allow greater pension benefits for higher-paid employees who join a company in mid-year.

But a safe harbor in the final rules, designed to let cash balance plans avoid non-discrimination testing, may be of little benefit to employers, benefit consultants agree. The safe harbor is so narrowly defined that very few plans will actually qualify, they say.

"It is confusing. One has to wonder why the IRS took the time to develop a safe harbor for cash balance plans and then developed a safe harbor that most plans won't be able to meet," said Frank Roque, a consultant at Hewitt Associates in Lincolnshire, Ill.

Even though most cash balance plans will still have to run the tests, benefit consultants did take some encouragement from the final IRS rules. At least the updated version recognized their validity, experts said; earlier rules did not mention the rapidly growing plans.

"We have specific IRS recognition that the plans are viable and legitimate," said Gerry Bell, a partner with Kwasha Lipton in Fort Lee, N.J.

Benefit consultants are continuing to plow through the 610 pages of IRS non-discrimination regulations, which are to go into effect next January.

While it may take weeks to analyze them fully, consultants welcomed the portions of the new rules that clarify ambiguous sections of the 1990 proposals.

One such clarification involves early retirement window plans—plans that offer enriched benefits to encourage older workers to retire before normal retirement age. Such plans have mushroomed in popularity in recent years as a more humane alternative to layoffs and firings.

The final rules on non-discrimination testing make clear that these plans will be evaluated based on the portion of high- and low-paid employees who are offered the option, rather than the portion of employees in those groups who actually retire early.

Benefit consultants note that tests based on who actually retired early would have been more difficult for plans to pass. That is because high-paid employees often have sufficient savings to allow them to stop working and take advantage of an early retirement incentive program, said Hewitt Associates' Mr. Roque.

Meanwhile, another clarification of the proposed rules will help high-paid employees to receive richer pension benefits, in certain situations.

This clarification involves the maximum amount of annual employee compensation a company can recognize in calculating employees' pension benefits and contributions. That limit—initially set at \$200,000 in the Tax Reform Act of 1986 and indexed to annual increases in the Consumer Price Index—currently is \$222,220.

The proposed rules didn't make clear, however, whether the compensation limit had to be pro-rated for employees who joined a pension program in mid-year.

The final rules, though, make clear that the limit does not have

to be prorated for employees covered for only part of the year.

Assume, for example, an employee joined a savings plan on July 1. The plan allows employees to make after-tax contributions of up to 10% of salary. During the last six months of the year, the employee earned \$200,000. The employee would be allowed, assuming other non-discrimination requirements were met, to contribute \$20,000 to the plan.

"Elimination of proration makes administration of a pension plan a lot simpler," said Richard Joss, a consultant and actuary with The Wyatt Co. in Seattle.

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## State regulation

Continued from page 3

act in tandem to regulate guaranty fund activities, the NAIC said.

• Improving the structure of the existing guaranty fund system so funds can coordinate their activities and perform better.

That will entail discussing many issues, including coverage amounts, funding, capacity and communication.

The group also will explore alternative mechanisms like an interstate compact.

"While the existing system of guaranty funds has performed admirably, changes in the business of insurance have prompted us to upgrade the entire system to better address the changed environment," said Mr. Pomeroy, who chairs the task force.

That action followed eight months of study, including two public hearings.

"Now it's time to roll up our sleeves and hammer out some concrete solutions," Mr. Pomeroy said.

Also at the quarterly meeting:

• The group approved amendments to its Insurers Rehabilitation and Liquidation Model Act that would grant immunity to the receiver of a financially troubled insurer and some of his or her employees.

That immunity—both personally and in their official capacity—would cover lawsuits and liability for damages or personal injury due to "any act, error or omission" in connection with their duties, unless it was caused by "intentional, willful or wanton" misconduct.

These changes would permit use of the assets of the insurer's estate to pay the receiver's and his staff's defense and indemnity or settlement costs. The estate would have to be repaid, though, if a court determines that the damages were caused by the

receiver's misconduct.

If all states adopt the amendments, then governmental immunity would apply uniformly to insurance commissioners and all of their employees when they act as receivers.

Without a promise of immunity, receivers and their employees may be afraid to act in the best interests of the insolvent insurer's estate and its policyholders, according to Vincent Vaccarello, special deputy receiver for Mutual Fire, Marine & Inland Insurance Co. (BI, June 3).

In response to criticism, drafters somewhat narrowed the scope of the protection provided receivers to preserve the insurer's estate to pay policyholders.

Critics included Richard A. Brown, an attorney with Spiegel & McDiarmid in Washington, D.C., and William H. McCartney, Nebraska insurance director and NAIC vp.

Under the narrower version, "attorneys, accountants, auditors and other professional persons or firms who are retained by the receiver as independent contractors and their employees shall not be considered employees of the receiver."

• The NAIC asked staff members to gather information about rating agencies, including how they operate and differ from one another.

Commissioners will use the information in deciding whether the organization should rate the rating agencies, Mr. Long said.

Just a month ago, the NAIC said it did not plan to consider Mr. Pomeroy's suggestion that the group develop core criteria that rating agencies would have to use in developing ratings for insurers to become NAIC-certified raters (BI, Aug. 19).

The NAIC may develop literature to help educate consumers about the role of rating agencies, said Mr. Pomeroy, who favors rating agency evaluations by the commissioners.

• The NAIC directed a working group to present for final adoption at its Dec. 8-12 meeting in Houston a specific proposal to enhance consumer participation in the NAIC's decision-making process.

The Consumer Participation Working Group plans to discuss issues like selection criteria for consumer representatives. The group anticipates that consumer representatives will vary depending on the topics being discussed, said its chairman, Mr. McCartney.

The NAIC also expects to seek funding from outside sources, possibly including trade associations and foundations, to help cover the consumer representatives' expenses for attending association meetings, he added.

• The NAIC's Market Conduct and Consumer Affairs Committee agreed to again study a proposal from an industry group to establish a computerized data bank of uniform information about the licensing of all property/casualty and life/health insurance agents in the nation.

Centralized Insurance Services Inc. of Atlanta, a unit of the Life Office Management Assn., is proposing to provide technical and financial resources to develop the State Insurance License Network.

But it asks that three or four state insurance departments provide at least two staff members each to help develop the final system.

The system would not interfere with the authority of individual states to set licensing standards, according to a CISI prospectus provided by Claire L. Stine, LOMA's vp of information services.

The group proposes passing the costs on to insurers, agents and agents seeking licenses.

NAIC subgroups previously considered such a proposal, but support for it was lacking. ■

# New NAIC fronting proposal contains 'major' changes

By MEG FLETCHER

PITTSBURGH—Captive insurance company industry watchers expect to receive a draft this week of the National Assn. of Insurance Commissioners' latest proposal on fronting arrangements, which contains "major" changes from earlier versions.

The new version, which was still being crafted last week, was briefly outlined at the group's quarterly meeting here earlier this month.

Among other things, the proposed model law would permit authorized insurers to front programs without prior approval from regulators.

And, while insurers would not be allowed to delegate important functions—like underwriting, settling claims and establishing loss reserves—to an unlicensed reinsurer, they could delegate underwriting authority to a captive reinsurer.

The new draft is expected to be available sometime this week, according to Vincent Laurenzano, chief of the New York Insurance Department's Property Companies Bureau and chairman of the NAIC working group that is drafting the model law.

Insurance regulators favor a model fronting law that would ensure the solvency of fronting insurers. Unveiled in December (BI, Dec. 10, 1990), their proposal came

under immediate attack. Policyholders, brokers and insurers said it would have banned nearly all fronting arrangements involving captive insurers.

Since then, members of an industry advisory group have met several times with regulators in an effort to develop a workable proposal (BI, June 24; April 29; April 15; April 8).

The exchange of ideas has generally resulted in a softening of the ban on fronting arrangements with captive insurers and a firming up of reporting requirements for fronted arrangements.

"We were willing to make a concession that self-insured programs via captives are a reasonable business arrangement," Mr. Laurenzano said.

Significant progress was made at a joint drafting session Aug. 13 in Washington, D.C., several industry sources said.

But many observers were surprised when Mr. Laurenzano verbally outlined new, "major" changes to the proposal on Sept. 16, during the NAIC meeting in Pittsburgh.

In addition to the rules on delegation of underwriting tasks, the proposal contains some measures to ensure that the captive will not cause a ceding company to become insolvent. Mr. Laurenzano said the proposal would require that the captive either post collateral or

Continued on next page

## The professional marketplace

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### Business Insurance

## Circulation Breakdown\*

#### Commercial Consumers

**Administrative:**  
CEO's Presidents, and Owners . . . 2,500  
Vice-Presidents, General Managers  
and Other Administrative Personnel . . . 4,263

**Financial:**  
Chief Financial Officers and Vice-presidents of Finance . . . 2,972  
Secretaries, Treasurers, controllers and other Financial Personnel . . . 4,406

**Risk/Employee Benefits:**  
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations . . . 10,976  
**Sub-total** . . . 25,117

Associations . . . 458  
Government, Unions and Educational Institutions . . . 1,234

#### Commercial Consumers

**Sub-total** . . . 26,809  
Insurance Agents and Brokers . . . 9,430  
Insurance Companies . . . 8,045  
Accountants, Actuaries, Attorneys & Consultants . . . 3,405  
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers . . . 1,392  
Others Allied to the Field . . . 1,518  
**TOTAL** . . . 50,599

\* Source Business/Occupational breakdown of qualified circulation, November 27, 1991 issue, as submitted to BPA for June 1991 BPA Publisher's Statement.

## Fronting rule

Continued from previous page  
125% of anticipated claims, maintain a surplus account of one-third of its annual gross written premium, or have its parent promise to indemnify the reinsurer for unpaid losses.

The proposal also would limit cessions to any one unauthorized reinsurer to 5% of the ceding company's policyholder surplus, he said.

This is "to ensure diversification for fronting arrangements," Mr. Laurenzano said.

The model proposal would also allow a fronted arrangement with an unauthorized reinsurer in which more than 50% of the premium is ceded if the arrangement includes certain minimum contract terms and reporting requirements.

And, a ceding company may not cede more than 50% of its total annual book of business to unauthorized reinsurers without the prior approval of regulators.

The model fronting proposal also continues to exempt from all its requirements intercompany reinsurance or pooling arrangements within the same holding company, and those arrangements that are already subject to state regulation.

The new proposals are "consistent" with what the advisory group discussed in Washington, contends Mr. Laurenzano, although he acknowledged they contain a few more

restrictions than the group expected.

Other observers, though, disagree.

"It is quite different from the approach they were following before," said Edmond F. Rondel, senior vp, general counsel and secretary of General Reinsurance Corp. in Stamford, Conn., who chairs the industry advisory committee on fronting.

"It sounds like they are starting from a whole new concept," he added.

Paul Brown, director of legislative affairs for the New York-based Risk & Insurance Management Society Inc., said after the briefing, "I'm very disappointed. I think it is a staggering step backwards from what we discussed in Washington."

Observers declined to comment on specifics until they could examine the proposal.

The proposal will be faxed to advisory group members when it is available later this week, Mr. Laurenzano said. Copies can also be requested from the NAIC in Kansas City, Mo.

Mr. Laurenzano said he would accept comments on the proposal through Oct. 15 and plans to meet with the advisory committee Oct. 31 in Washington, D.C.

He hopes to have a final version prepared for possible adoption at an NAIC meeting Dec. 8-12 in Houston. ■

# Software offers NAIC data

PITTSBURGH—A new computer software product will allow purchasers to personally analyze insurers' financial data.

The Lotus Development Corp. in Cambridge, Mass., will offer "CD/Insurance," which will provide comprehensive data on the 4,700 property/casualty and life/health insurers that file financial statements with the National Assn. of Insurance Commissioners.

"This is the first time someone has packaged (NAIC data) into a computer product for individual analysis," said Jim Rose, the NAIC's director of information in Kansas City, Mo.

The NAIC is selling the insurer-supplied data to Lotus.

The current "turmoil" in the insurance industry is creating a need for an alternative to rating agency assessments to determine an insurance company's financial viability, the computer company said in a statement.

CD/Insurance, which will be available only on computer compact disc, could be used in research on insurers conducted by brokers and reinsurers, in merger and acquisition research, in strategic planning, in credit analysis and in marketing research, a Lotus spokeswoman said.

The software product features a

"menu-driven software environment" and is fully integrated with Lotus' popular 1-2-3 spreadsheet software, which will allow a user to perform his or her own personal analyses.

For property/casualty insurers, the software comprises three data bases featuring financial data on more than 2,800 insurers.

The data bases will provide a company's financial information, premiums and losses by line and by state, as well as loss data over a 10-year period.

For more than 1,800 life/health insurers, the software comprises two data bases: financial information and results by line and by state. Historical loss data is not available.

Lotus plans to have the software system fully available by March 1992, containing 1991 and 1990 data.

Lotus already is offering "charter" subscriptions to customers for \$10,000 for both property/casualty and life/health databases or \$6,000 for just one or the other.

However, the data currently is "very incomplete," because the

NAIC's information from insurers' annual statements is still being input into the system, a Lotus spokeswoman said.

Lotus will credit a subscriber's charter fee, though, toward the \$35,000 price of a full year's subscription for both software versions beginning in March 1992.

Subscriptions to each of the three P/C and two L/H data bases also can be purchased separately. The rates are \$12,500 for one data base, \$7,500 for a second, and \$5,000 for each additional data base.

The subscription fee includes monthly updates of financial information.

Once the system is fully operational, Lotus expects that there may be only a two-week lag time between the insurers' filing of annual statements with the NAIC and subscribers' access to it through the software product, the Lotus spokeswoman said.

Additional information on the system can be obtained from Gary Brach, Lotus' product manager, at 617-693-7375.

—By Meg Fletcher

# NAIC targets comp plans abused by leasing firms

By MEG FLETCHER

PITTSBURGH—Insurance regulators hope their states will adopt a new model law and a new regulation to crack down on illegal or unethical employee leasing arrangements.

Regulators want to stem the growth of disreputable leasing firms that advertise they can help client companies with poor workplace safety records avoid high workers compensation insurance premiums.

Workers comp insurers complain that leasing firms do that by masking a client's poor loss experience in a variety of ways, including underreporting the number of employees in high-risk jobs and losses.

Such leasing arrangements have cost insurance companies, especially in residual markets, at least tens of millions of dollars annually (BI, June 25, 1990).

The National Assn. of Insurance Commissioners adopted the measures at a recent meeting in Pittsburgh after months of hammering out a compromise between regulators, insurers and reputable leasing companies.

The effort was overseen by Joseph A. Edwards, who recently resigned as superintendent of insurance in Maine.

If adopted by a state, the Employee Leasing Registration Model Act will require each leasing firm to register with the state insurance commissioner or other appropriate state official before it is eligible to purchase workers compensation insurance.

The leasing firm will have to provide basic biographical information. It must include the firm's prior names and the names of every person and entity that owns at least a 5% interest in the firm or has owned a 5% interest during the preceding five years.

In addition, the firm must list every instance in which a workers comp insurance policy was canceled or was not renewed for it or any predecessor company.

Any leasing firm whose workers

comp insurance has been terminated within the past five years due to efforts to avoid paying premiums will be ineligible to register, or remain registered, the model act states.

The registration model act also establishes criminal penalties against leasing firms, client companies and executives of both who "knowingly utilize or participate in any employee leasing agreement, arrangement or mechanism for the purpose of depriving one or more insurers of premium otherwise properly payable."

Raton, Fla.

"This will facilitate auditing" by insurance companies, Jim Watford, an actuary with the Florida Insurance Department, told regulators at the NAIC quarterly meeting in Pittsburgh.

In addition, if a client company leaves a leasing firm that purchased coverage in the residual market, the client company will retain its own experience. Or if its experience is not distinguishable, it will assume the leasing firm's experience.

The NCCI is willing to adminis-

**The National Staff Leasing Assn. is willing to accept the regulators' proposal to quell 'market turbulence,' says Gregory Hammond, general counsel to the NSLA. 'I think it's a fair compromise,' he says.**

Executives who violate the law could be imprisoned for up to six months. In addition, companies could face fines of up to \$5,000 and individuals could be fined up to \$1,000.

The second measure, the Employee Leasing Model Regulation, states that it is designed "to ensure that an employer who leases some or all its workers properly obtains workers compensation insurance coverage for all of its employees... and that premium is paid commensurate with exposure and anticipated claims experience."

Under the model regulation, if a leasing firm obtains workers comp coverage in the residual market, a single servicing carrier would handle all policies relating to a leasing firm and its clients and would issue them on a "multiple, coordinated policies basis."

For example, a leasing firm and each of its client companies would have individual insurance policies with the same effective dates, according to James Nau, vp-government, consumer and industry affairs for the National Council on Compensation Insurance in Boca

ter the program as proposed, Mr. Nau.

In addition, the model regulation calls for a leasing firm that obtains workers comp coverage in the voluntary market to discuss coverage arrangements with the insurer to ensure that a client company's loss history will be preserved and that it will pay an appropriate premium.

The model regulation also includes several other requirements designed to help insurers identify and track a leasing firm's arrangements with clients, including a requirement that it provide copies of financial data filed with the Internal Revenue Service.

The National Staff Leasing Assn., an Encino, Calif.-based trade and standards-setting association, is willing to accept the NAIC's proposals because some regulations are needed to quell "market turbulence," said Gregory L. Hammond, an attorney with Hammond & Cunningham in Akron, Ohio, who acts as NSLA general counsel.

"I think it's a fair compromise," Mr. Hammond said. ■

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## PBGC premiums

*Continued from page 3*  
decision.

In the courts, the PBGC is appealing the Sept. 13 decision by U.S. District Court Judge Kevin Duffy to the 2nd U.S. Circuit Court of Appeals in New York.

At the same time, the PBGC will seek emergency legislation to make clear that companies must fund their pension programs while in bankruptcy, according to Mr. Lockhart.

Mr. Lockhart did not say when that legislation will be introduced, other than "soon."

Washington benefit observers expect that the proposal will be introduced sometime in October and will be attached to other, unrelated legislation that must be passed.

In addition, the PBGC is preparing comprehensive legislation that would clearly give the agency priority status in bankruptcy proceedings.

Mr. Lockhart said he is aware of the difficulties of passing such comprehensive legislation, noting that six different congressional committees would share jurisdiction over the proposal.

"It will be tough. But we can get something through. We have a case," Mr. Lockhart said.

The LTV case, which was triggered four years ago when LTV tried to establish low-cost "follow-on" pension plans to replace its terminated underfunded plans, is not the only development that

poses a threat to the PBGC's financial stability.

"Despite the fact that we already have huge deficits, there are those who want us to shoulder even greater burdens. They want us to take on additional responsibilities," Mr. Lockhart told the NEBI conference.

For example, legislation S. 243, which could soon be taken up by the Senate, would require the PBGC to guarantee benefits—up to \$75 a year for each year of service—for workers and retirees whose underfunded pension plans folded before the PBGC was established in 1974.

This proposal, which ultimately would cost the PBGC \$500 million, is unfair to employers that pay premiums to the PBGC, Mr. Lockhart said.

"There is no reason why PBGC's premium payers should pay this half billion dollar cost. It sets a bad precedent to raid PBGC's trust funds to pay for benefits we never insured," according to Mr. Lockhart.

The PBGC's executive director also warned of the huge administrative burden the agency would face in trying to track down individuals who retired, in some cases, as long as decades ago.

At the same time, some legislators, most notably Sen. Howard

Metzenbaum, D-Ohio, believe the PBGC should guarantee annuities purchased by employers to replace workers' and retirees' pension benefits.

Those calls for PBGC annuity guarantees were triggered earlier this year when California insurance regulators seized Executive Life Insurance Co.

Under a conservator's order, individuals covered under annuities from the Los Angeles-based insurer now receive only 70% of promised benefits.

Mr. Lockhart said that requiring the pension insurance agency to guarantee annuities is the wrong approach.

The "PBGC cannot afford the additional \$50 billion in exposure that present annuities represent. Furthermore, without federal regulation of the insurance industry, a federal guaranty program would constitute an unreasonable risk that could not be controlled or limited," Mr. Lockhart said.

The PBGC, however, is reviewing comments in deciding whether new standards are necessary for employers that want to purchase annuities to replace workers' and retirees' pension benefits.

The only current, clearly defined requirement is that the annuity insurer be licensed in at least one domestic state.

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## Grants offered to study regulation

The Journal of Insurance Regulation has established a national research grant for projects examining issues relevant to insurance regulation.

Beginning in 1992, two grants of up to \$5,000 each will be awarded annually.

For more information, contact Judy Lee, director of operations, National Assn. of Insurance Commissioners, 120 W. 12th St., Suite 1100, Kansas City, Mo. 64105.

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## Executive Life

Continued from page 1

\$300 million into a new California-based entity that would take over Executive Life's business.

Individual and group annuity holders—including pension plans that bought GICs—would recover about 81% of the value of their contracts under the Altus plan, and might receive the remaining 19% from guaranty funds.

Earlier this month, though, a group of life and health guaranty funds proposed its own plan. That plan would create a new insurer, GALICO, that would retain Executive Life's junk bond portfolio and receive \$300 million in new capitalization.

NOLHGA member guaranty funds also would be prepared to assess insurers up to \$1 billion to provide more capital, if needed.

If approved, the plan would supersede an earlier agreement under which guaranty funds would assess insurers up to \$1 billion to supplement benefits provided by the Altus proposal (BI, Sept. 2).

Several other buyout proposals emerged in the days following the guaranty fund group's announcement.

One is being developed on behalf of muni-GIC holders by RRH Capital Management, a New York-based investment adviser, and is spearheaded by John J. Creedon, a retired president of Metropolitan Life Insurance Co.

An initial version of this plan called for muni-GIC holders to forgive 50% of the principal value of their contracts, theoretically relieving Executive Life of \$900 mil-

lion in liabilities and leaving the failed insurer with \$500 million in surplus, said L. George Rieger, an RRH principal.

In exchange, the muni-GIC holders would become the equity owners of Executive Life, which—as in the NOLHGA plan—would retain its junk bonds.

Mr. Rubinstein, the California department's attorney, raised serious doubts about this plan's viability, though, saying that even if the value of the muni-GICs is written down to zero and \$300 million in new capital is pumped into Executive Life, the insurer will still be unable to pay policyholders 100 cents on the dollar.

RRH last week came up with a revised plan under which muni-GIC holders would write off 100% of their investments in exchange for Executive Life's stock, which Mr. Creedon said theoretically would leave the insurer with \$1.46 billion in surplus.

Neither RRH plan calls for a cash contribution to Executive Life's capital, said Mr. Rieger, who added that he doesn't believe it would be needed.

RRH is discussing a possible \$300 million contribution from investors, but doesn't have commitments yet, he said.

Mr. Creedon and RRH officials were scheduled to meet with Mr. Rubinstein on the revised plan late last week, though Mr. Rubinstein still sounded doubtful.

"I'll believe that they've got a real bid when I see it," Mr. Rubinstein said. "They need to bring it into this world (first), and then it would have to have a lot more detail."

Details of the other potential

bids also remain scarce.

An offer reportedly being prepared by Mr. Rainwater, Mr. Geffen and Bechtel is believed—like the NOLHGA and RRH plans—to be a "bonds-in" deal that would keep the bonds in the company.

Neither Mr. Rainwater nor Mr. Geffen could be reached for comment, and Mr. Rubinstein declined to say whether he has discussed the

**'NOLHGA doesn't have any money,' says John Byrne of Fund American. 'They can't buy lunch.'**

bid.

A fifth group was organized by Hellman & Friedman, a San Francisco investment banking firm, and includes Mr. Byrne and Chicago investor Samuel Zell.

Mr. Byrne declined to discuss his group's plan in detail, but said it would be a "bonds-in" deal that would bring \$800 million in new capital to Executive Life and provide policyholders with "substantially more" than the 81 cents on the dollar estimated for the Altus plan.

However, the group has withdrawn rather than compete with the guaranty fund group, Mr. Byrne said.

"Their announcement was designed to beat our offer to the table by about one hour, which it did," according to Mr. Byrne, who complained that the guaranty fund

group is using its assessment power to compete with private capital.

"NOLHGA doesn't have any money. They can't buy lunch," Mr. Byrne said. "It just seems like a strange adventure for NOLHGA to use its assessment power this way."

Meanwhile, while the deadline for formal bids approaches, a battle is scheduled to begin today in Los Angeles Superior Court over whether the muni-GIC holders are entitled to the same priority status as other Executive Life policyholders in the conservation proceedings.

The muni-GIC holders argue that their contracts are products of an insurance company and that they deserve to be treated as policyholders rather than lower-priority general creditors.

The muni-GICs are recognized as annuities and insurance policies under California law and there is no legal basis for them to be treated less favorably than the GICs pension plans bought or other annuities, the muni-GIC holders argue.

The California department, however, maintains that muni-GICs—in which municipalities invested the proceeds of bond issues—are funding agreements as defined by state insurance law and are not insurance.

While the muni-GIC holders maintain that they transferred investment risk to Executive Life, insurance regulators argue that the GICs did not transfer any kind of risk or exhibit any attributes of insurance contracts or annuities.

Siding with the department are various Executive Life policyhold-

ers, including pension plans that hold group annuities.

For example, Stamford, Conn.-based Xerox Corp.—whose pension plans bought Executive Life annuities—charges that the only purpose of the muni-GICs was to allow municipalities to engage in interest rate arbitrage, collecting a higher rate on the contracts than they had to pay to municipal bondholders.

Only one loan from the proceeds of all \$1.85 billion in GIC-backed municipal bond issues was used to fund a public project, Xerox charges.

In 1989, the California Legislature also specifically refused to amend the state's priority statute to raise holders of funding agreements to the same priority as insurance policyholders, Xerox argues.

The trial on the muni-GIC priority issue could last several weeks, though resolution of the issue isn't necessary for the California department to seek court approval of an Executive Life takeover bid, Mr. Rubinstein said.

Any Executive Life deal will have to be "formula driven," providing—as the Altus proposal already does—for the possibilities that muni-GIC holders may be ruled policyholders or that the Internal Revenue Service is successful in pressing its claim for \$643 million in back taxes and penalties, he said.

If these added liabilities emerge, any plan must provide for lower payments to all Executive Life policyholders.

"Everybody will get a haircut, pro-rata," Mr. Rubinstein observed. ■

# Property/casualty guaranty funds faulted

By MARK A. HOFMANN

WASHINGTON—State property/casualty guaranty funds are not functioning as they were designed to, charges a former federal insurance administrator.

In fact, these guaranty funds—designed in part to give regulators "backbone" to deal swiftly and effectively with insolvencies—have had the opposite effect, George K. Bernstein last week told the House Committee on Banking, Finance and Urban Affairs' subcommittee on policy research and insurance.

Insurance commissioners do not want to declare an insurer insolvent during their term of office because it looks like an admission of failure, so they tend to delay taking action against troubled insurers until it is too late, said Mr. Bernstein, a Washington attorney who served as federal insurance administrator in the Nixon administration.

The result of that "failure of regulatory will" is higher costs to the guaranty funds and to taxpayers, he said.

When asked by subcommittee Chairman Rep. Ben Erdreich, D-Ala., whether guaranty funds might indeed act as a disincentive to sound regulation, Mr. Bernstein

replied, "That's exactly what I'm saying."

Mr. Bernstein, also a former first deputy superintendent and general counsel with the New York Insurance Department, advocated dropping guaranty fund protection for most commercial policyholders and instituting a system of "risk-based" assessments under which state guaranty funds would assess insurers in proportion to an insurer's individual risk of becoming insolvent.

Mr. Bernstein noted during an interview after the hearing that he has advocated this approach for some time but that he does not expect it to be adopted anytime soon (BI, March 27, 1989).

Rep. Douglas Bereuter, R-Neb., asked Mr. Bernstein what types of insurance products should be covered by the guaranty funds.

Mr. Bernstein replied that relatively unsophisticated buyers of personal automobile, homeowners and other personal lines coverage should have that protection.

J. Robert Hunter, president of the Alexandria, Va.-based National Insurance Consumer Organization and a former acting federal insurance administrator, stressed that although he could support dropping guaranty fund

protection for commercial policyholders to a certain degree, he would not support cutting personal lines protection.

However, commercial lines coverages cannot be totally excluded from guaranty fund protection, he said. For example, the operators of "mom and pop" businesses cannot be assumed to be sufficiently sophisticated to always pick the soundest insurer, he said.

Mr. Hunter said he also would want some way to protect third-party claimants, like victims of a birth-control device, in cases where a defendant's liability insurer has been declared insolvent.

But, Mr. Hunter agreed that risk-related guaranty fund assessments make sense.

He also told the panel that the insurance industry is not "on the brink of another savings and loan crisis," although he expects a period of massive consolidation among insurers of all kinds during the next 20 or so years. Only 1,000 or so insurance companies may be doing business in 2010, compared with about 6,000 now, he said.

These anticipated consolidations will involve mergers as well as insolvencies, with as many as 50 insolvencies annually between now and 2010, he predicted.

in Washington, D.C.

Some proponents of a health care tax cap believe that if employer-paid premiums—exceeding a certain level or cap—were included as taxable income to employees, workers would choose less expensive health care plans with more cost sharing to avoid the tax. These workers, proponents of a tax cap maintain, would become more careful consumers.

In calling for a summit of health insurers to explore ways to reduce administrative overhead, Dr. Sullivan said that estimates of administrative costs are exaggerated.

The General Accounting Office

Mr. Hunter questioned whether current regulation is sufficient to handle the transition to a more consolidated marketplace.

He suggested that Congress empower the Federal Trade Commission to study the insurance industry, repeal the limited antitrust exemption granted insurers by the McCarran-Ferguson Act, create minimum guaranty fund standards for all states to follow and move to regulate offshore reinsurers.

He also said that the Kansas City, Mo.-based National Assn. of Insurance Commissioners should release financial data about insurers to the public, and that state insurance departments should set up "SWAT teams" to uncover financially shaky insurers.

However, Mr. Bernstein argued against greater insurer regulation.

The states ought to get out of rate and form regulation for commercial lines because commercial buyers do not need or want that protection, he said. States should put the resources they save into solvency regulation, Mr. Bernstein said.

He also said that adequate standards for assessing solvency currently exist.

"The problem is insurance departments didn't act" when they

uncovered signs of financial problems that led to past insurer insolvencies, he said. Regulators should have noticed insurers that entered lines of business in which they had no experience, that relied on dubious reinsurance and that gave managing general agents wide-ranging powers, he said.

Any federal intervention must be approached carefully, Mr. Bernstein advised.

However, he added after the hearing that he would support federal chartering and solvency regulation of large commercial insurance companies serving large commercial policyholders.

Meanwhile, life insurance guaranty funds do not require federal legislation, said Eden Sarfaty, president of the National Organization of Life and Health Insurance Guaranty Assns. in Herndon, Va.

Without mentioning any recent life insurance company failures, Mr. Sarfaty said that the protection offered policyholders under the life guaranty system is "remarkably uniform," and that "the vast majority of policyholders across the country have at least the same high level of protection in dollar terms as under the federal banking guaranty system." ■

## Health insurance tax

Continued from page 2

adoption of a single-payer system, like a national health insurance program, he said.

Such approaches, Dr. Sullivan said, "simply finance additional inflationary pressures on health care from the taxpayer's wallet."

In addition, a play-or-pay approach or national health insurance would smother competition and innovation as well as lead to rationing and waiting lists, Dr. Sullivan contends.

"At the precise moment in history when the rest of the world is moving away from the inefficiencies, distortions and shortages

characteristic of centrally-managed economies, it is ironic that some propose we go in the opposite direction," Dr. Sullivan said.

Benefit experts are not surprised that the Bush administration appears to be leaning toward a cap on the amount of tax-free health coverage employers can provide to workers.

"Ever since the Reagan administration, the executive branch has viewed a health care tax cap as a way of controlling health care costs and as a way of raising revenue without new increases in basic tax rates," said Frank McArdle, a consultant with Hewitt Associates

earlier this year said that more than \$66 billion in annual administrative costs could be saved through the adoption of a single-payer system like the Canadian program (BI June 10).

Still, examination of the administrative burdens of the health care delivery system is warranted, Dr. Sullivan said.

The Health Insurance Assn. of America, an industry trade group in Washington, D.C., welcomes the opportunity to work toward a meaningful solution to try to reduce administrative costs, a spokesman said.

Some insurers, though, ques-

tioned what such a summit would accomplish.

Summits tend to be for show with a focus on getting a 30-second sound bite on the evening news, said Stuart J. Brahs, vp-federal government relations in the Washington, D.C., office of the Principal Financial Group, a diversified financial services company based in Des Moines, Iowa.

Yet, a summit could be useful if only to prove that the estimated lower costs of running government health programs compared with programs administered by commercial insurers are misleading, according to Mr. Brahs. ■

## Variety award

Continued from page 1

attempted in 1985 "to rid itself of the liabilities associated with its combine and foundries division through the creation of a new legal entity, Massey Combines Corp."

In a transaction entitled "Project Sunshine," the combine and foundry business that previously was conducted by Des Moines-based Massey-Ferguson Inc. and Massey-Ferguson Industries Ltd., a Toronto-based Variety unit, was transferred to MCC in Brantford, Ontario, according to court papers.

About 1,000 Massey-Ferguson Inc. and Massey-Ferguson Industries Ltd. active employees and 4,000 retirees were transferred to the new Canadian unit.

But the plaintiffs—233 Massey-Ferguson Inc. U.S. employees and retirees—asserted that Variety and Massey-Ferguson Inc. "made fraudulent or negligent misrepresentations to induce plaintiffs to accept employment with MCC."

The companies "presented the transfer of plaintiffs' employment to MCC as a *fait accompli* and assured plaintiffs that their benefits would be unchanged with MCC," according to the plaintiffs' brief.

In 1986, MCC President Ivan Porter sent a letter to the employees that "requested that each of the

MCC's largest annual fixed cost, the brief noted.

In addition, MCC carried \$284.9 million Canadian (\$215.8 million at year-end 1985 exchange rates) of Massey-Ferguson Inc.'s and Massey-Ferguson Ltd.'s long- and short-term debt.

Because of these alleged misrepresentations, the retirees and former employees "were denied the opportunity to make fully informed decisions about" working for MCC, the complaint states. "Under these circumstances, plaintiffs' acceptance of employment with MCC does not constitute a valid assent to the transfer of defendants' obligations to provide welfare benefits under the Massey-Ferguson Inc. plan."

MCC directors eventually filed for bankruptcy in 1988 and, on March 4, 1988, the Supreme Court of Ontario appointed Peat, Marwick Ltd. as MCC's receiver. All operations ceased and all employees were terminated without severance pay.

In addition, all welfare benefits formerly provided to retired and disabled employees and their dependents were terminated.

The underfunded pension plan is still part of the receivership and has not been terminated—a requirement to trigger payments by the Pension Benefit Guaranty Corp.

**'The letter and information sheet also state that there would not be any change in the pay levels and benefits program or loss of seniority or pensionable service with the transfer from Massey-Ferguson to MCC,' the plaintiffs charge.**

employees sign a statement accepting employment with MCC," the suit said.

An accompanying information sheet did not give them an option to remain employed by Massey-Ferguson Inc., the plaintiffs' suit said.

The information sheet also detailed employees' benefit program, pensions and employment conditions.

"The letter and information sheet also state that there would not be any change in the pay levels and benefits program or loss of seniority or pensionable service with the transfer from Massey-Ferguson to MCC," the plaintiffs' suit charged.

However, the information sheet did not address Variety or Massey-Ferguson Inc.'s severance pay policy for employees who were transferred.

And, the employees who transferred to MCC "did not receive an employee benefits handbook, summary plan description or annual reports of the various benefits plans of MCC," according to the complaint.

The plaintiffs' brief also argues that the "defendants failed to disclose to plaintiffs MCC's unstable financial condition and poor prospect for survival. Defendants also failed to disclose the effect that MCC's probable bankruptcy receivership or insolvency would have upon the welfare benefits of MCC employees. Finally, defendants failed to offer plaintiffs the option of early retirement or termination with severance pay."

MCC started with nearly four times as many retirees as employees and was saddled with between \$10 million and \$12 million Canadian (between \$7.6 million and \$9.1 million at year-end 1985 exchange rates) of self-funded retiree health care and pension expenses.

"These retirees represented a significant drain on Variety—until they were shifted to MCC's ledger sheet," the plaintiffs' trial brief said. In fact, retiree benefits were

Plaintiffs' attorney Steven K. Gaer, who is with the Des Moines law firm of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, said that evidence showed that Variety and Massey-Ferguson Inc. still controlled the benefits of the former employees and retirees. And, because Massey-Ferguson Inc.'s plans had never been terminated, the corporation still had a contractual duty to provide benefits to terminated, disabled or retired employees, he said.

For example, in its services agreement with MCC, Variety agreed to provide MCC with "accounting, legal and patent, tax, treasury and internal audit services," the complaint said.

The complaint also points out that MCC executives maintained their executive status with Variety.

But, Mr. Gaer said, "this is really a notification case. From our view, what was communicated to employees was that they would receive these benefits for life. The jury in this case is saying if a company is going to provide these types of benefits, it needs to communicate what the benefits are and under what conditions these benefits can be changed."

Of the \$9.8 million in compensatory damages awarded, about \$7.6 million was awarded to the 83 MCC retirees and \$1.5 million to the 140 employees who were terminated without severance pay.

In addition, 10 workers who retired from Massey-Ferguson Inc. before MCC was formed were awarded damages ranging from \$45,000 to \$180,000 each.

The \$36 million of punitive damages is to be allocated among the 233 workers and retirees involved.

Previously, Variety settled litigation brought in Canada by 718 Canadian employees and retirees.

Variety's attorney, Thomas J. Kavalier of Cahill, Gordon & Reindell in New York, said Variety will seek a reversal of the U.S. judgment and, if necessary, will "vigorously appeal."

Mr. Kavalier maintains that the

fact that punitive damages were awarded in an ERISA case is a "complete error."

"We'd appeal even if the punitive damages award was \$1," he asserted.

In addition, Variety "argued against the case being heard by a jury and the judge ruled against" that motion, Mr. Kavalier said. "That's part of the error that we believe has occurred here."

But plaintiffs' attorney Mr. Gaer said: "In the last year or two there have been cases allowing the recovery of punitive damages under ERISA."

The jury in this case was instructed that if they found the defendants guilty of three of the five theories pleaded under ERISA—breach of fiduciary duty, fraudulent misrepresentation and interference with protected rights—they could award punitive damages.

"There has been a conflict among the courts about whether an ERISA case can be heard by a jury," according to Mr. Gaer.

But, he said, "our feeling was that the more recent cases show a preference for a jury trial for legal causes under ERISA."

U.S. District Court Judge Donald O'Brien agreed in this case, he said.

Consultants say this decision is another warning to employers that they should tread carefully if they alter any of their benefit plans.

"Most of the courts look to the language in employee communications materials given to employees. If they don't find a reservation of rights clause allowing the company to make changes, the courts are finding that a contract exists" that cannot be unilaterally broken by the employer, said John Hoos, an attorney with Hewitt Associates in Lincolnshire, Ill.

In the Variety case, the jury "simply did not find anything in the handbook that would allow the company to alter employees' benefits," he said.

"This case is further evidence that employers need to be extremely careful in the way they word all of their communications to employees about the future of their benefits," said Norman T. Fowlkes, a consultant with The Wyatt Co. in Washington, D.C.

Mr. Fowlkes pointed out that "there have been cases where the employer's right to change benefits was communicated to employees and the decision still went against the employer." In those cases, courts have looked beyond employee handbooks and summary plan documents and ruled that extenuating circumstances prohibit the employer from cutting benefits, he said.

Wyatt clients that are considering reducing medical care benefits for current retirees are "weighing the potential of any cost savings against the potential cost" of litigation," he noted.

While not surprised by the jury's decision, consultants questioned the awarding of punitive damages.

"I would view this case with suspicion—it's a bit of an anomaly because the plaintiffs were awarded punitive damages," said Chip Kerby, a principal with William M. Mercer Cos. Inc. in Washington, D.C.

A 1987 Supreme Court case involving Pilot Life Insurance Co. questioned whether plaintiffs could assert and recover punitive damages under ERISA.

"There is language in that decision that says you can recover your benefits and attorneys fees, but nowhere is there language about punitive damages," Mr. Kerby explained.

*Charles Howe et al. vs. Variety Corp. and Massey-Ferguson Inc., U.S. District Court of the Southern District of Iowa Central Division; Civil File No. 88-1598 E.*

## Update

### Emotional stress claim allowed

Continued from page 2

Damages also are being sought on behalf of the child.

The decision is unusual because it treats the birthing mother and child as a "family unit" and holds that because the child was injured during birth, the mother as part of the unit can seek compensation for her pain and suffering.

But in a dissenting opinion, Judge P.J. Kremer said the ruling "creates a new class of direct victims eligible to recover for emotional distress—mothers whose infants are injured by malpractice during birth."

### Settlement partially covered

CHICAGO—Directors and officers liability insurance will cover about \$20.5 million of a proposed \$66 million settlement of a class-action suit brought against several defendants by shareholders of eight publicly traded real estate funds.

The \$20.5 million of insurance represents the coverages of all defendants, said a spokesman for Chicago-based Banyan Management Corp., which now manages the five real estate investment funds and three limited partnerships.

However, neither Banyan nor New York-based Prudential Securities Inc., which played a role in marketing the funds, would reveal the names of the insurers, citing a confidentiality agreement. Prudential Securities is a unit of Prudential Insurance Co. of America.

The suit stemmed from the 1990 suspension of payments to lenders and to the funds by Chicago-based VMS Realty Partners Inc., which was the initial sponsor of what are now the Banyan Funds. Shareholders sued, charging that, among other things, they had not received enough information regarding the funds. The eight publicly traded funds then cut their ties to VMS and hired their own managers.

The tentative settlement is subject to approval by the U.S. District Court in Chicago. As part of the proposed settlement, no defendants admit any wrongdoing.

In addition to the insured portion, the various Banyan funds will pay roughly \$24 million toward the settlement and Prudential Securities will pay \$10.5 million. The remainder will be paid by various appraisers, VMS and other defendants.

### Another benefits unit for sale

FORT WAYNE, Ind.—Lincoln National Corp. is trying to sell a major portion of its group life and health insurance business, including its 25 health maintenance organizations, 59 preferred provider networks and 17 third-party administrators.

Talks have been held with several potential buyers, but Ian M. Rolland, president and chief executive officer of the Fort Wayne, Ind.-based insurer, would not identify them.

Employers Health Insurance Co., Lincoln National's small employer health insurance business in Green Bay, Wis., is not for sale.

Despite "dramatic" improvement over the last two years, Lincoln National is unsure of the future of group life and health business and does not want to make further investments, Mr. Rolland said.

He would not reveal the asking price, but a spokesman said the company hopes to make a return on the approximately \$250 million invested in its group life and health business.

Lincoln National is the latest insurer to pull back from group health. Last year, for example, Equitable Life Assurance Society of the United States withdrew from the market when EQUICOR, a joint venture, was sold to CIGNA Corp. for \$777 million (BI, Jan. 22, 1990).

### Asbestos removal study

BOSTON—Asbestos in buildings that are in good repair does not pose a significant enough health risk to require removal, a study says.

"Asbestos-containing material (ACM) within buildings in good repair is unlikely to expose office workers and other general building occupants to airborne asbestos fiber concentrations above the levels found in air outside such buildings," said the congressionally mandated study, conducted under the auspices of the Health Effects Institute-Asbestos Research, a non-profit organization in Boston. Thus, "there does not appear to be sufficient justification on the grounds of risk to the health of general occupants for arbitrarily removing intact ACM," it said.

The study affirms "that too many years have been spent chasing too little risk," said John F. Welch, president of the Safe Buildings Alliance in Washington, D.C., an association of building product companies.

However, asbestos victims rights groups disagree with the report's findings. And, the National Assn. of Attorneys General questions the objectivity of the panel.

### Briefly noted

Two U.S. members of Lloyd's of London have persuaded a federal magistrate to recommend the issuance of an injunction barring Lloyd's from calling on letters of credit until their action alleging securities law violations is heard in federal court (BI, Sept. 16). . . . A group of native Alaskans, fishermen and property owners have dropped the state of Alaska as a defendant in its suit over the Exxon Valdez oil spill after officials agreed to turn over government scientific studies considered crucial in continuing the litigants' case against Exxon Corp. The native Alaskans also agreed to file claims only for damages to their subsistence lifestyle, not for damage to natural resources. And, state officials have resumed settlement negotiations with Exxon. . . . The House Energy and Commerce Committee passed a banking reform bill that would narrow insurance powers for banks (BI, Sept. 23). The bill is expected to reach the Rules Committee for vote by late October. . . . Chicago Symphony Orchestra musicians were scheduled to vote over the weekend on a proposed agreement with management to end their strike over proposals that they assume a portion of their health care costs and that a preferred provider organization be added to their insurance plan. . . . Four more lawyers accused of being part of a network known as the "Alliance," charged with defrauding California insurers by manipulating and prolonging litigation, have been sentenced to between 37 and 46 months in prison, fined up to \$100,000, and ordered to pay millions of dollars in restitution (BI, Aug. 26).

# Insider trading

**American International Group Inc.:** Patrick J. Foley, vp, exercised an option for 3,250 shares and sold 3,250 shares of common stock at between \$17.80 and \$84.25 per share from July 26 to Aug. 1, and now directly and indirectly holds 15,531 shares of common stock.

**Starr International Co. Inc.,** beneficial owner, indirectly sold 5,000 shares of common stock at \$50 per share on Aug. 1, and now directly and indirectly holds 33,895,090 shares of common stock.

**AIG stock** was trading at \$82.75 per share on Sept. 20.

**Continental Corp.:** Fred G. Marziano, vp, disposed of by gift 200 shares of common stock at an unreported price per share on April 25, and now directly and indirectly holds 5,145 shares of common stock.

**John P. Mascotte,** chairman, disposed of by gift 600 shares of common stock at an unreported price per share on April 22, and now

directly and indirectly holds 20,205 shares of common stock.

**Continental Corp. stock** was trading at \$25.00 per share on Sept. 20.

**Hartford Steam Boiler Inspection & Insurance Co.:** Donald K. Wilson, vp, disposed of by gift 1,000 shares of common stock at an unreported price per share on May 29, and now directly holds 30,920 shares of common stock.

**Hartford Steam Boiler stock** was trading at \$53.75 per share on Sept. 20.

**Poe & Associates Inc.:** William F. Poe, chairman, indirectly sold 20,000 shares of common stock at \$11.50 per share on Aug. 9, and now directly and indirectly holds 1,261,991 shares of common stock.

**W.F. Poe Syndicate Inc.,** beneficial owner, sold 20,000 shares of common stock at \$11.50 per share on Aug. 9, and now directly holds 454,969 shares of common stock.

**William F. Poe,** director, exercised an option for 5,375 shares and sold 5,375 shares of common stock at between \$6.60 and \$11.38 per share on Aug. 15, and now directly and

indirectly holds 5,658 shares of common stock.

**Poe stock** was trading at \$11.75 per share on Sept. 20.

**SAFECO Corp.:** Rodney A. Pierson, vp, sold 4,500 shares of common stock at \$39.50 per share on Aug. 22, and no longer holds shares of the company.

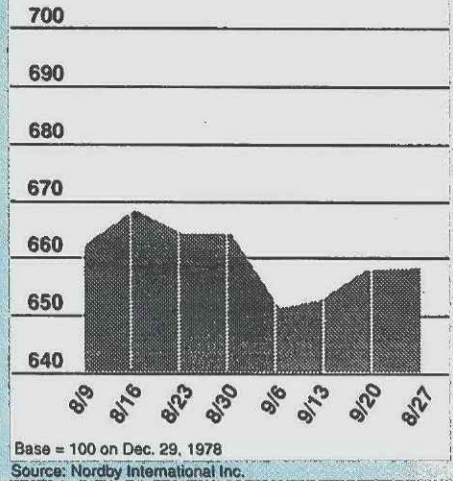
**SAFECO stock** was trading at \$39.13 per share on Sept. 20.

**Transamerica Corp.:** James R. Harvey, chairman, indirectly exercised an option for 13,445 shares of common stock at \$22.57 per share on Aug. 16, and now indirectly holds 68,718 shares of common stock.

**Transamerica stock** was trading at \$37.50 per share on Sept. 20.

*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.*

## BI Insurance Index



Base = 100 on Dec. 29, 1978  
Source: Nordby International Inc.

Insurance industry stocks flattened last week as the *Business Insurance Index* rose 0.6 point to 657.7 on Sept. 27, from 657.1 on Sept. 20. Advancing insurance issues for the week were led by Frank B. Hall, up 14.3%; Chandler Insurance, up 12.5%; and SCOR U.S. Corp., up 9.5%. Declining insurance issues for the week followed Seibels Bruce Group, down 17.2%; Argonaut Group, down 9.9%; and United Fire & Casualty, down 5.6%. The most active insurance issue for the period was U.S. Healthcare, with 2.5 million shares traded. The *BI Index* was up 0.1%; the Standard & Poor's 500 dropped 0.5%; the Dow Jones 30 Industrials were down 0.4%; and the New York Stock Exchange Composite fell 0.4%.

# Approval sought for Integral Insurance rehab plan

JEFFERSON CITY, Mo.—Missouri insurance regulators and executives of Integral Insurance Co. expect to ask a state court judge today to approve a rehabilitation plan for the financially troubled long-haul trucking insurer.

They plan to propose that Integral Transportation Services Inc., a newly formed subsidiary of John Deere Insurance Group of Moline, Ill., take over Integral Insurance's claims handling, underwriting and market support services beginning Tuesday.

Integral, which reported assets of \$101.9 million and liabilities of \$94.2 million at the end of March, is operationally sound but it does not have \$2.4 million in approved capital and surplus required to continue operating under Missouri law, regulators and company spokesmen say.

Though Integral operates from Brookfield, Wis., it is domiciled in Missouri.

Lewis Melahn, director of the Missouri Insurance Department, praised Integral for its cooperation and added that "the financial strength" of John Deere will provide Integral's long-haul

trucking policyholders with needed stability. In a related action, Re Capital Corp. of Stamford, Conn., the parent of Re Capital Reinsurance Corp., one of Integral Insurance's reinsurers, said it expects to take a \$886,400 charge to net income, or 12 cents a share, in the third quarter. The company said the charge would reflect the anticipated commutation of some reinsurance agreements with Integral and the issuance of a new, non-traditional reinsurance agreement with John Deere.

—By Meg Fletcher

# EPA may extend tank requirement deadline

WASHINGTON—The U.S. Environmental Protection Agency may extend to December 1992 the approaching deadline for companies with a small number of underground storage tanks to show they can pay for damage caused by the tanks.

The current deadline is Oct. 26 for petroleum marketers owning or operating up to a total of 12 USTs located at multiple sites or fewer than 100 USTs at a single site. The deadline also applies to non-marketers with less than \$20 million in net worth. That deadline had been extended from Oct. 26, 1990 (*BI*, Oct. 8, 1990).

EPA regulations require businesses to purchase environmental impairment liability insurance or show that they have some other mechanism to assure financial responsibility for damage caused by leaking tanks. Larger companies have had to comply with the financial responsibility requirement since January 1989.

The EPA recently proposed extending the deadline for small companies by 14 months, because it is "concerned about small businesses' ability to obtain financial assurance by Oct. 26."

The agency is now reviewing comments on its proposal. "We hope to have a rule by Oct. 26," said Sammy Ng, branch chief of the Underground Storage Tank Division at the EPA.

Though insurance markets "have yet to focus on the smaller owners," some insurers have tailored products for smaller UST risks, said James Cox, assistant vp at Johnson & Higgins in New York.

For example, Agricultural Excess & Surplus Insurance Co., a subsidiary of Great American Insurance Co. in Cincinnati, is offering a basic UST policy for smaller risks, said Richard Koscielak, senior vp and general manager. The basic policy would cost 20% to 30% less than AESI's regular tank coverage. Agricultural Excess policyholders on average pay \$750 per tank for UST coverage.

—By Louise Kertesz

## British Issues

Sept. 26 Companies	Price	P/E	Div. %	Yield %	1 Week	
					High—Low	percentage
Comm Union	508	N/M	30.7	6.0	519—508	
Genl Accident	533	N/M	35.7	6.7	544—533	
Gdn Royal Exch	186	N/M	15.9	8.5	189—185	
Royal	364	N/M	34.7	9.5	374—364	
Sun Alliance	345	N/M	18.7	5.4	350—345	
<b>Brokers</b>						
Bradstock	166	18.9	6.0	3.6	166—166	
CE Health	521	18.2	34.5	6.6	521—517	
Hogg Group	222	13.2	10.7	4.8	222—215	
Lloyd Thompson	430	21.6	12.0	2.8	430—424	
Lowndes Lmbert	326	16.6	15.3	4.7	326—318	
PWS Holdings	78	9.6	4.7	6.0	78—73	
Sedgwick Grp	257	24.4	16.0	6.2	265—257	
Steel Brrl Jones	338	17.7	16.3	4.8	338—336	
Willis Corroon	303	16.0	17.6	5.8	305—303	

Source: Philip Olsen, Insurance Industry Analyst, London

# BI Industry Stock Report

SEPTEMBER 23, 1991 THROUGH SEPTEMBER 27, 1991

BROKERS	Price	Weekly % change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	Price	Weekly % change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value			
				High	Low										High	Low									
Alexander & Alexander	NYS	20.38	-1.81	-11.89	27.63	16.13	276	1.00	4.91	17	9.77	2.09	NAC Re Corp.	OTC	23.75	-3.06	-28.03	28.34	17.66	147	0.16	0.67	13	18.90	1.26
Gallagher Arthur J. & Co.	NYS	19.50	0.00	-16.13	28.38	19.00	41	0.64	3.28	16	5.88	3.32	Navigators Group	OTC	33.00	-1.49	51.15	35.00	16.50	2	0.00	0.00	19	13.52	2.44
Frank B. Hall	NYS	4.00	14.29	10.34	4.38	2.00	103	0.00	0.00	-8	-5.24	-0.76	Nobel Insurance LTD.	OTC	3.63	3.57	20.83	4.38	2.50	4	0.00	0.00	5	7.76	0.47
Hilb, Rogal & Hamilton	OTC	14.25	1.79	-3.39	17.50	11.25	67	0.36	2.53	22	3.56	4.00	NWNL Companies	NYS	28.25	-5.04	67.41	32.88	11.75	376	1.40	4.96	7	42.73	0.66
Marsh & McLennan	NYS	76.13	-1.62	-2.40	87.25	60.75	496	2.60	3.42	18	14.77	5.15	Ohio Casualty Corp.	OTC	44.38	-1.93	8.23	50.25	26.75	150	2.48	5.59	9	36.38	1.22
Poe & Associates	OTC	11.75	0.00	83.59	12.50	6.25	31	0.32	2.72	14	2.29	5.13	Old Republic Int'l	NYS	30.63	0.41	33.88	31.88	17.38	169	0.72	2.35	7	33.09	0.93
BROKERS		AVERAGE	1.8	8.6					2.4	11			Orion Capital Corp.	NYS	31.25	0.00	78.57	31.50	13.00	125	0.92	2.94	9	20.42	1.53
CONGLOMERATES & HOLDING COMPANIES													Phoenix RE Corp.	OTC	9.50	-2.56	22.58	10.25	5.00	25	0.20	2.11	11	13.30	0.71
Berkley W.R. Corp.	OTC	24.25	0.00	-35.33	32.25	20.75	330	0.32	1.32	14	23.89	1.02	Protective Life Corp.	OTC	22.00	0.00	47.90	22.50	11.50	21	0.84	3.82	9	16.29	1.35
Berkshire Hathaway Inc.	NYS	8850.00	3.51	32.58	8850.00	171.88	1	0.00	0.00	-32	4612.00	1.92	Provident Life	OTC	19.75	-2.47	12.86	24.50	12.00	140	1.00	5.06	5	25.88	0.76
ITT (Hartford Group)	NYS	55.25	-2.86	15.10	63.00	40.25	1483	1.72	3.11	8	64.01	0.86	Re Capital Corp.	ASE	14.38	0.88	11.65	18.63	11.75	12	0.20	1.39	10	15.05	0.96
Sears (Allstate)	NYS	38.38	-2.23	51.23	43.50	22.00	2104	2.00	5.21	13	37.38	1.03	Reliance Group Holdings	NYS	5.00	0.00	8.11	7.50	4.25	-14	0.32	6.40	-8	1.32	3.79
CONGLOMERATES		AVERAGE	-0.4	15.9					2.4	1			RLI Insurance Corp.	NYS	14.88	-0.83	2.59	16.38	9.75	10	0.48	3.23	8	14.41	1.03
INSURERS/REINSURERS													St. Paul Companies	OTC	61.00	-5.43	-2.79	74.25	48.00	512	2.60	4.26	7	52.00	1.17
Aetna Life & Casualty	NYS	33.25	-1.85	-14.74	49.13	29.00	2149	2.76	8.30	7	64.23	0.52	SAFECO Corp.	OTC	37.25	-4.79	13.31	44.75	25.13	1143	1.48	3.97	9	31.50	1.18
American General	NYS	39.88	0.00	29.67	41.13	23.50	932	2.00	5.02	9	37.14	1.07	SCOR U.S. Corp.	NYS	15.88	9.48	28.28	15.88	-8.38	46	0.24	1.51	10	11.19	1.42
American Heritage	NYS	29.38	1.73	39.88	32.25	19.63	2	1.08	3.68	13	19.25	1.53	Seibels Bruce Group	OTC	6.00	-17.24	41.18	8.88	4.25	71	0.36	6.00	120	7.35	0.82
American Indemnity/Fin'l	OTC	7.25	7.41	123.08	7.75	2.75	4	0.08	1.10	4	12.93	0.56	Selective Ins. Group	OTC	17.00	-4.23	28.30	18.00	12.50	44	1.04	6.12	9	18.91	0.90
American International	NYS	82.88	0.15	7.80	102.00	58.50	1352	0.48	0.58	12	45.34	1.83	Statenman Group Inc.	OTC	5.13	2.50	227.90	5.88	1.25	351	0.00	0.00	-256	2.48	2.07
Aon Corp.	NYS	36.75	-0.68	5.76	41.75	26.75	254	1.60	4.35	10	18.50	1.99	Tokio Marine & Fire	OTC	51.63	1.98	9.26	56.88	36.00	4	0.00	0.00	-	70.93	0.73
Argonaut Group	OTC	22.75	-9.90	6.64	33.38	17.75	34	0.68	2.99	7	48.26	0.47	Torchmark Corp.	NYS	49.75	-1.00	1.79	58.50	38.00	183	1.60	3.22	12	16.70	2.98
AVEMCO Corp.	NYS	25.00	9.29	48.51	25.00	14.13	19	0.40	1.60	19	9.55	2.82	Transamerica	NYS	37.25	-0.67	14.18	38.38	23.25	468	2.00	5.37	14	36.56	1.02
Baldwin & Lyons Inc.	OTC	23.00	0.00	22.67	25.25	17.00	0	0.28	1.22	7	24.29	0.95	Transatlantic Holdings	NYS	33.25	-1.85	21.46	39.38	20.25	50	0.20	0.60	11	18.38	1.81
Belvedere Corp.	ASE	3.13	-3.85	25.00	3.38	1.75	2	0.04	1.28	21	7.65	0.41	Travelers Corp.	NYS	19.00	-4.40	14.29	25.38	11.50	761	1.60	8.42	-9	41.44	0.46
Chandler Insurance	OTC	2.81	12.52	-59.08	7.25	2.13	250	0.00	0.00	-2	5.95	0.47	Trenwick Group Inc.	OTC	26.25	-0.94	13.51	30.00	16.25	61	0.60	2.29	10	21.71	1.21
Chubb Corp.	NYS	61.75	-2.76	13.82	75.25	34.63	939	1.48	2.40	9	35.19	1.75	United Fire & Casualty	OTC	44.13	-5.61	25.62	58.00	28.75	2	1.32	2.99	11	35.39	1.25
CIGNA Corp.	NYS	44.75	-1.92	9.48	56.75	33.25	452	3.04	6.79	11	73.15	0.61	USF&G Corp.	NYS	7.00	0.00	-6.67	19.25	6.13	1246	0.20	2.86	-1	11.96	0.59
CNA Financial Corp.	NYS	85.13	-2.44	24.04	92.50	49.50	81	0.00	0.00	12	70.23	1.21	UNUM Corp.	NYS	61.50	0.61	31.90	70.25	32.13	290	1.04	1.69	11	37.25	1.65
Continental Corp.	NYS	25.00	0.00	0.50	30.63	15.75	401	2.60	10.40	9	37.83	0.66	USLIFE Corp.	OTC	40.88	0.93	45.98	42.75	23.25	128	1.64	4.01	9	60.34	0.68
Durham Corp.	OTC	30.25	-3.97	8.04	34.25	23.00	42	1.00	3.31	17	28.04	1.08	Unirin	NYS	37.75	-0.66	22.76	41.50	26.00	91	1.00	2.65	14	30.70	1.23
Fund American Corp.	NYS	65.38	1.75	26.02	65.38	42.63	112	0.88	1.04	19	36.11	1.81	Washington National	NYS	15.13	2.54	39.08	16.75	9.38	28	1.08	7.14	-5	26.86	0.56
Frontier General Corp.	OTC	24.50	-2.49	68.97	25.25	10.13	61	0.88	3.59	7	19.13	1.28	USLICCO Corp.	NYS	17.75	-4.05	11.81	21.00	14.75	31	1.00	5.63	10	29.44	0.60
Frontier Insurance Group	NYS	24.75	-0.50	30.26	25.88	15.69	13	0.00	0.00	10	11.20	2.21	Zenith National Ins.	NYS	15.38	-2.38	12.84	18.50	9.88	168	1.00	6.50	-81	13.14	1.17
Gainsco Inc.	ASE	12.50	2.04	63.93	12.88	4.25																			

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