NEWSPAPER

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Business Insurance®

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

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Updates

Clinton appoints commission to study health care quality

WASHINGTON—Three years after he disbanded his health care task force, President Clinton is establishing a health care commission.

But the new group—known as the Advisory Commission on Consumer Protection and Quality in the Health Care Industry—will have a much narrower mandate than the Clinton health care task force, which was charged with developing comprehensive reform legislation. The task force effort ultimately failed.

See **Updates** *on next page*

Hurricane Fran batters Carolinas, but Hugo-size claims unlikely

Movers and shakers in the Atlantic

1995

Hurricane Luis-
Aug. 27-Sept. 12 /
$2 billion total damages

Hurricane Marilyn-
Sept. 12-27 /
$875 million insured damages

Hurricane Opal-
Sept. 27-Oct. 6 /
$2.1 billion insured damages

1996

Hurricane Bertha-
July 5-14 /
$135 million insured damages

Hurricane Edouard-
Aug 21-Sept. 3 /
$7 million to $20 million
insured damages

Hurricane Fran-
Aug. 24-

Source: National Hurricane Center and Property Claims Services division/ISO



GRAPHIC BY ADAM DOI

By RODD ZOLKOS, SALLY ROBERTS and MICHAEL PRINCE

CAPE FEAR, N.C.—While packing a mighty punch, Hurricane Fran's northerly course averted far greater damage.

By striking land farther north than originally anticipated, Hurricane Fran skipped past Charleston, S.C., which was devastated by Hurricane Hugo in 1989.

Only weeks after Hurricane Bertha came ashore at the same point, Fran slammed into the North Carolina coast Thursday night, leaving flooded towns, wind damage and at least 12 deaths in its wake.

Even after being downgraded to a tropical storm as it made its way north and inland Friday morning, Hurricane Fran still held the threat of severe flooding in North Carolina and Virginia.

With gusts of up to 120 mph, Hurricane Fran came ashore at Cape Fear, N.C., shortly before 8 p.m. EDT Thursday, wreaking havoc in coastal areas. In anticipation of the storm, government officials in North and South Carolina had ordered the evacuation of nearly 500,000 tourists and residents.

Other storm preparations included canceled train service and the shutdown of nuclear power and fuel fabrication plants in the area.

Insurers sent catastrophe teams to the Carolinas prior to Fran coming ashore, with many establishing temporary offices in affected areas.

There were signs of some insurers preparing themselves financially for the storm as well, as the Chicago Board of Trade's Catastrophe Insurance Options market experienced the busiest trading day in its history last Thursday.

With the hurricane initially plotted to make landfall in the vicinity of Charleston, S.C., many feared a repeat of Hurricane Hugo, which caused almost $8 billion in damage in 1989.

See **Hurricane** *on page 29*

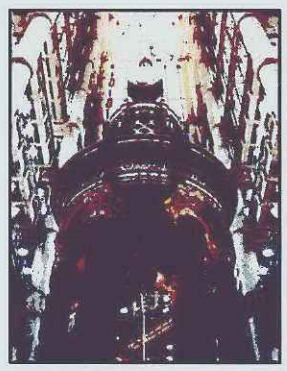
Lloyd's ringing in the good news

By EDWIN UNSWORTH

LONDON—So pleased was Lloyd's of London Chairman David Rowland with the news he had last Wednesday that he gave an unprecedented three rings to the Lutine Bell, traditionally rung once for bad news and twice for good news.

Mr. Rowland's news was very good indeed. In a ceremony before all those working at Lloyd's, he announced that Equitas Ltd. had received the go-ahead from the Department of Trade & Industry—the final element needed for the market to go ahead with its crucial £3.2 billion ($5.01 billion) recovery program.

The final stamp of approval for Equitas came with a declaration earlier Wednesday from Anthony Nelson, Minister of State for Trade & Industry, that after the high number of acceptances of the recovery plan by Lloyd's 34,000 names, "the reinsurance of names' 1992 and prior liabilities may now proceed." He said Equitas had met all the terms he had set in March for it to begin reinsurance operations.



The Lutine Bell sounded good news last week.

Mr. Nelson also expressed satisfaction that Lloyd's had put together and funded a solution to its problem without seeking government or taxpayer help.

In what Lloyd's thinks is the largest reinsurance transaction ever written by one entity, Equitas, which will be owned not by Lloyd's but by a discretionary trust, is being set up with total assets calculated at the end of 1995 at £14.7 billion ($23.03 billion) and an opening solvency margin of £1.68 billion ($2.63 billion). However, Equitas Chairman David Newbigging said that as a result of claims paid so far this year assets and liabilities have fallen by about £3 billion ($4.7 billion).

Mr. Nelson said that based on advice from the Government Actuary and an independent report from accountants Coopers & Lybrand, "I remain of the view that there is a reasonable prospect that Equitas will be able to meet its liabilities in full as they fall due."

See **Equitas** *on page 13*

Insurer lobbying of ethics panel criticized

By MICHAEL PRINCE

The relationship among policyholders, insurers and lawyers hired by insurers to defend policyholders is the subject of a dispute among legal experts seeking to define those relations.

A lawyer in that "tripartite" situation will have no conflict of interest as long as the interests of the insurer and policyholder coincide. Those interests can easily diverge, however, which triggers the question of where the lawyer's loyalty properly lies.

A proposal from the insurance industry would resolve that potential conflict by stating that insurers are a co-client of the attorney.

Under that approach, lawyers hired by insurers could share with them information learned from policyholders—even if such disclosures would hurt the policyholder's chances of later winning a suit against the insurer. Such a situation could arise when, for example, an insurer appoints an attorney to represent a policyholder, but the insurer also has issued a reservation of rights with respect to the final decision on payment of the claim involved.

That co-client proposal was accepted by the American Law Institute, which has been working for several years on drafting guidelines for such tripartite relationships.

The ALI is a Philadelphia-based organization of lawyers, judges and law professors. The institute publishes Restatements, which are treatises on various areas of the law that are often cited by judges and lawyers as authorities on a given subject.

The decision of the institute to consider the co-client proposal is attributed largely to successful insurance industry lobbying

See **ALI** *on page 28*

Senate approves mental health, maternity reforms

By JERRY GEISEL

WASHINGTON—The U.S. Senate last week took aim at group health care plan practices, and the result could be new costs for employers.

The Senate approved amendments to an unrelated appropriations bill that would:

- Require insured health care plans and health maintenance organizations to offer the same annual and lifetime limits for mental disorders as they do for physical problems.
- Require all health care plans, including self-funded plans, to offer at least 48 hours of inpatient coverage for a mother and infant following a vaginal delivery and 96 hours of inpatient care following a Caesarean section.

These amendments were proposed, respectively, by Sens. Pete Domenici, R-N.M., Bill Bradley, D-N.J., and added to legislation that would appropriate funds for the Department of Housing and Urban Development and the Veterans Administration. The appropriations bill, H.R. 3666, earlier passed the House of Representatives.

The fate of the two amendments, though, is in doubt. Procedurally, appropriations bills may not include amendments that write new law, notes Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

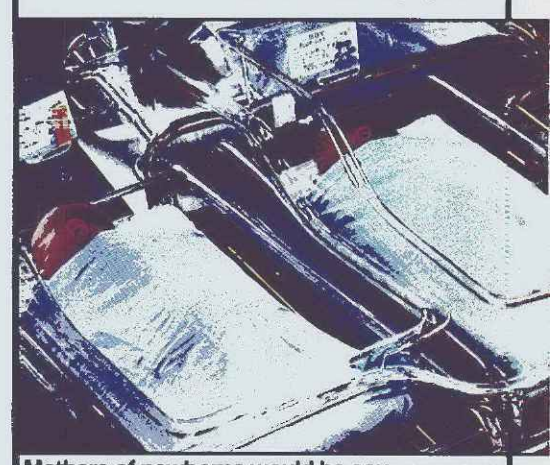
As a result, efforts could be made to knock out—on procedural grounds—the two amendments when a congressional conference committee meets to iron out differences in the bills.

On the other hand, given that national elections are less than two months away and these are politically popular proposals, the provisions could survive.

"In an election year, all bets are off," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

The mental health care provision, though, is only a shadow of an earlier proposal advanced by Sen. Domenici. His earlier proposal, which was added to a health care portability bill passed by

See **Reforms** *on page 30*



Mothers of newborns would be covered for longer hospital stays. Image Bank

Updates

Clinton forms health care panel

Continued from previous page

The 20-member commission, which will be co-chaired by Labor Secretary Robert Reich and Health and Human Services Secretary Donna Shalala, will make recommendations on ensuring consumer protection, health care quality and availability of treatment and services.

The administration says such a commission is necessary at a time of rapid change, such as the growth of managed care, in the health care delivery and financing system.

The advisory commission will submit a preliminary report by next Sept. 30 with a final report 18 months after its first meeting. Its members will include employers, insurers, health care providers and representatives from state governments.

Some groups welcome the new commission. The Health Insurance Assn. of America, for example, said the commission will provide an excellent opportunity for policymakers to review the different types of health care financing arrangements.

Others, though, are wary. "I'm always skeptical about commissions and whether or not they are being established to ratify pre-determined decisions," said James Klein, president of the Assn. of Private Pension and Welfare Plans in Washington.

On the other hand, the business community is very willing to provide any assistance the commission seeks, Mr. Klein added.

Cover denied for agent fraud

NEW ORLEANS—Fraud by an insurance agent can be legally attributed to the insurer, precluding coverage of the company under a comprehensive general liability policy, an appeals court has ruled.

A panel of the 5th U.S. Circuit Court of Appeals ruled that Travelers Insurance Co. does not have a duty to defend New York Life Insurance Co. in a lawsuit that accused a New York Life agent of fraud.

In the underlying case, a Texas woman charged that an agent in New York Life's office in Corpus Christi, Texas, misused $100,000 she had given him to invest, diverting some of the money to make premium payments on a life insurance policy she had not agreed to buy. New York Life settled the case after a state court jury hit it with $1.1 million in actual damages and $15 million in punitive damages.

New York Life then sued Travelers for failing to defend it. But, a lower federal court ruled that Travelers had no obligation under the policies, and the appeals court agreed in an Aug. 23 ruling.

The appeals panel noted that the underlying lawsuit was not an "occurrence" under the CGL policies because New York Life's alleged conduct "could not be construed as accidental in nature." Under Texas law, the panel added, there cannot be a covered occurrence when an insurer's liability arises from intentional wrongdoing by its agent.

Citing an earlier 5th Circuit ruling, the panel said an agent's fraud can be attributed to the insurer for coverage purposes because the insurer's liability is "related" and "interdependent" to the agent's fraud.

U.S. insurers' first-half results

NEW YORK—U.S. property/casualty insurers' consolidated net income increased 25.3% to $11.7 billion during the first six months of 1996, from $9.3 billion during the same period a year earlier, according to a new survey.

The joint survey by the Insurance Services Office Inc. and the National Assn. of Independent Insurers found that earned premiums grew 3.4% to $129.8 billion during the first half of this year, compared with $125.5 billion during the same period a year ago. Surplus grew as well, rising 12.8% to $237.4 billion during the first six months of 1996, compared with $210.4 billion during the same period a year earlier.

But net aftertax income during the second quarter of 1996 was considerably lower than the levels recorded during the first quarter of the year. Second quarter profits were $4.4 billion, or 39.7% lower than the $7.3 billion of profits recorded in the first quarter.

Net income was higher in the second quarter of 1996 than the year- earlier period, but both investment income and realized capital gains were lower compared with a year ago. The industry's rate of return on investments for the second quarter stood at 7.4% or about the same as that paid by U.S. Treasury bonds.

"With the industry facing the potential of large losses in the current lively hurricane season, the lackluster results from the second quarter provide no comfort to management," said Sean Mooney, senior vp and economist at the Insurance Information Institute in New York.

Minnesota rate drop expected

MINNEAPOLIS—Workers compensation rates in Minnesota may be headed significantly downward next year, for the second year in a row, an insurer organization reports.

Data from insurers writing in the state shows that advisory pure premium base rates, a major component of employers' comp rates, are expected to drop 14.8% overall in 1997, according to a report released last week by the Minnesota Workers' Compensation Insurers Assn. in Minneapolis. That follows a 15.6% decrease in the advisory loss costs in 1996, said Craig Anderson, the association's vp for actuarial services.

Advisory pure premium decreases for 1997, by industry group, are: contracting, 17% goods and services, 14.5% manufacturing, 14.3% office and clerical, 11.4% and all others, 14.9%.

Insurers are expected to use the information to determine their own rates, must be filed with regulators 60 days before implementation.

See **Updates** *on page 30*

Errors & omissions

• An article in the Sept. 2 issue reported the incorrect insurer for Melbourne, Australia-based Kraft Foods Ltd. Kraft's primary product liability insurer is Sydney, Australia-based Zurich Australian Insurance Ltd.

Industry bashes Superfund pledge

By MARK A. HOFMANN

WASHINGTON—President Clinton's promise to seek more federal money for Superfund site cleanups isn't winning him many plaudits from advocates of Superfund liability reform.

The president spelled out his environmental plans late last month in Kalamazoo, Mich. At the top of his list was a pledge to seek an additional $1.3 billion over fiscal years 1998 and 1999 for Superfund cleanups in order to double the speed of cleanup. He also called upon Congress to reauthorize special Superfund excise taxes before it adjourns for the November elections, even though neither house of Congress has passed any bill reauthorizing Superfund.

In addition, the president called for legislation spelling out new sanctions for people who commit environmental crimes.

But he said nothing about reforming Superfund's imposition of retroactive liability for cleaning up dump sites in which toxins were legally disposed of before Superfund's enactment. That omission rendered the proposals virtually meaningless, according to many reform proponents.

"The Superfund initiatives announced by President Clinton may be great political statements for the fall campaign, but would do little to address the very real problems which afflict this wasteful, unproductive program. Many of these proposals essentially boil down to simply throwing more federal dollars into the money pit that Superfund has become, which, of course, is unacceptable to those advocating meaningful reforms that would get the pro-

See **Superfund** *on page 30*

California drug liability ruling may reopen 'junk science' issue

By JOANNE WOJCIK

SAN FRANCISCO—California's highest court may have reopened a can of worms last month when it ruled that drug manufacturers could be held strictly liable for failing to warn consumers about the known or "reasonably knowable" dangerous side-effects of prescription drugs.

In its 4-3 decision, the California Supreme Court also said drug makers can be sued for breach of warranty in failing to warn the patient's doctor about potentially dangerous side effects.

But the court provided little or no guidance in determining what's "reasonably knowable," legal experts said.

As a result, the decision could re-ignite litigation in the state over the issue of "junk science," thought to have been resolved in California in 1976 with the landmark *People vs. Kelly* decision.

In that earlier case, expert testimony was deemed admissible only "if it is generally accepted as a reliable technique among the scientific community."

That California decision generally had been regarded as more rigid than the standard for proof of reliable scientific methodology that was established by the U.S. Supreme Court in *Daubert vs. Merrell Dow Pharmaceuticals Inc.* in 1993.

"Are simple expert testimony parameters sufficient?" questioned product liability expert Thomas Denver, managing partner at Hoge, Fenton, Jones & Appel in San Jose. "I'd be very, very concerned if the court does not set a clear set of guidelines," he said.

Still other legal experts say the decision may expand liability for drug makers in the state by apply-

See **Drugs** *on page 18*

Wellness plans may miss workers with most needs

By RODD ZOLKOS

Almost half the employers offering worker wellness programs are finding it extremely difficult to reach the employees whose health would benefit most from them, a new survey shows.

The survey by William M. Mercer Inc. also shows most plan sponsors aren't measuring their health management programs' performance as well as they could.

Almost all the wellness programs of the companies surveyed promote lifestyle changes aimed at improving health, such as programs to help employees lose weight or stop smoking. Disease prevention programs also are common, cited by 55% of respondents, with 51% indicating their programs emphasize self-care education.

But 44% of the employee wellness program sponsors surveyed cited lack of participation by high-risk employees as an obstacle to program success, and only 1% reported they'd been able to overcome the problem. The remaining 55% said such adverse selection was not an obstacle.

There are two primary reasons for employers' difficulties in attracting high-risk employees to their health management programs, said Stephanie Pronk, a senior consultant in Mercer's health management practice in Minneapolis who was involved in preparing the study.

"Typically in employer settings some of it is that people haven't been incentivized to participate in a health-risk assessment," Ms. Pronk said. Also, many programs haven't made a point of targeting high-risk employees.

But, she said, there are indications that more employers recognize the need to aim their wellness programs at employees who could most benefit from them and find ways to attract them to participate.

"It seems that the combination of the two is creating very good outcomes," both for employee

See **Wellness** *on page 31*

Directory deadline approaches

The deadline is approaching for companies to return questionnaires to be listed in *Business Insurance*'s annual directory of managed care providers.

The deadline for returning the managed care directory questionnaires is Oct. 4.

The directory will appear in the Dec. 17 issue, which also will contain rankings of the top managed care providers.

There is no charge to be listed in the directory, which is provided as an editorial service. Companies need only fill out and return a *BI* questionnaire by the October deadline.

If your company provides an HMO, POS or PPO and has not received a questionnaire, please request one immediately by calling Assistant Directory Editor Richard Trout at 312-649-5483.

Inside

• A provision in the Small Business Job Protection Act helps employers extending benefits to workers returning from military service. **PAGE 6**

• The Democratic Party platform is heavy on rhetoric and Republican-bashing, this week's editorial says. **PAGE 8**

• Industrial Risk Insurers is withdrawing from writing property coverage for utilities. **PAGE 15**

• A U.K. county must pay an £18 million judgment over damage caused by putting out a fire. **PAGE 23**

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Top NAIC administrator strikes balance between professional and private issues

By MEG FLETCHER

KANSAS CITY, Mo.—The new top administrator of the National Assn. of Insurance Commissioners has first-hand knowledge of the public, private and family pressures that affect insurance commissioners' actions.

Catherine J. "Cathy" Weatherford, 41, has experience working in the public and private arenas while also juggling responsibilities as a wife and the mother of three daughters.

In late July, Ms. Weatherford assumed the duties as executive vp of the NAIC, based in Kansas City, Mo. She serves as chief administrative officer and chief of staff for the organization, which employs 330 and has a $40 million budget. Her annual salary is $165,000.

She replaces David Simmons, who left in mid-March to join the law firm of Polsinelli, White, Vardeman & Shalton, also in Kansas City.

Ms. Weatherford is best known for being Oklahoma's insurance commissioner, after an appointment by Democratic Gov. David Walters in October 1991. She resigned in January 1995, after deciding the year before that the rigors of facing an election in 1994 would put too much strain on her family, including a 2-year-old born shortly after Ms. Weatherford took office.

However, insurance regulation was not a new field for Ms. Weatherford.

She began her career with the Oklahoma Insurance Department in 1976 in the Agents' Licensing Division, but subsequently served as assistant commissioner, legislative liaison and policy analyst. She also served one year as the governor's senior policy adviser prior to her appointment as commissioner.



Ms. Weatherford

Politics come naturally to Ms. Weatherford, who was born the second-oldest of five children in the small town of Miami, Okla. Her father was a lawyer and cattle rancher who also served as a state representative.

She built upon her heritage by majoring in political science at the University of Central Oklahoma in Edmond, where she graduated with a bachelor's degree.

Ms. Weatherford joined the NAIC in 1991 and quickly moved into its leadership ranks. She was elected the association's recording secretary in December 1993. In addition, she was elected chair of the NAIC's Midwestern Zone and held a seat on the NAIC's Executive Committee. Ms. Weatherford also served as chair of the association's Long-Term Care Insurance Task Force and Senior Issues Task Force. She also was treasurer of the NAIC Education Foundation.

See **NAIC** *on page 6*

Court expands ad injury scope

By ROBERTO CENICEROS

SAN FRANCISCO—In a case involving an alleged breach of an insurer's duty to defend, the 9th U.S. Circuit Court of Appeals has expanded the scope of coverage for advertising injury under commercial general liability policies.

In the case of *Sentex Systems Inc. vs. Hartford Accident & Indemnity Co.*, the court ruled Aug. 19 that misappropriation of advertisement should not be limited to the plagiarizing of text or written sales materials. It also must include ideas and a "wide variety of direct and indirect advertising strategies."

The decision is an important victory for policyholders because suits over misappropriation of advertising are becoming more common as companies wield the complaints as a way of competing against each other, said Carol L. Meedon, a policyholder attorney who represents Sentex. She is currently with the Irvine, Calif., firm of Hanley & Patch but worked at Callahan, Blaine & Williams in Irvine when she argued the case.

The case stems from a 1990 lawsuit filed in Prince George's county, Md., against Chatsworth, Calif.-based Sentex and one of its employees, Paul Colombo. The company designs and manufactures telephone-entry security systems for apartments and gated communities. The 1990 complaint was filed by Sentex's competitor, Camp Springs, Md.-based Electronic Security Services Inc.

Mr. Colombo formerly worked for Electronic Security, which alleged in its complaint that Sentex induced him to breach his non-competition agreement with Electronic Security. The plaintiff also alleged that Sentex, through Mr. Colombo, misappropriated trade secrets, including customer lists, marketing techniques, billing procedures and other confidential information used to solicit Electronic Security's clients, court papers show.

Sentex settled the case for $35,000 after its insurer, Hartford Accident & Indemnity Co., refused to defend the company. Sentex in turn sued Hartford in U.S. District Court in San Francisco.

The trial court entered a summary judgment in favor of the policyholder and held the insurer liable for the settlement amount and Sentex's defense costs.

On appeal, Hartford argued that the district court erred because advertising injury arising out of misappropriation of advertising ideas is limited to "text, words and form of an advertisement."

"While we may agree with Hartford that the mere misappropriation of customer mailing lists, standing alone, may not bring a complaint within

See **Ad injury** *on page 22*

The 20th Risk Manager of the Year

The 1997 *Business Insurance* Risk Manager of the Year, to be named in April, will be the 20th person to receive this honor.

Business Insurance created the Risk Manager of the Year award in 1977, on its 10th anniversary of publication, and presented the first award in 1978.

"In our 30th year of publication, it will be our great delight to name the 20th *Business Insurance* Risk Manager of the Year," said Kathryn J. McIntyre, publisher and editorial director.

"This award, intended to recognize outstanding risk management efforts and to promote risk management, has stood the test of time. The award is even being imitated by others around the world," Ms. McIntyre commented.

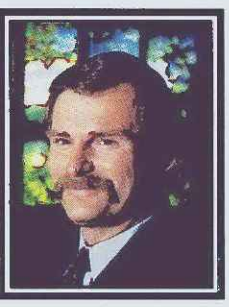
"It's important to note that any risk manager anywhere in the world is eligible for the *Business Insurance* Risk Manager of the Year award," she said.

"Our award was never restricted to U.S.-based risk managers. Indeed, we have had a Canadian Risk Manager of the Year and named another Canadian to the Risk Management Honor Roll," she added.

In addition to the Risk Manager of the Year, a 1997 Risk Management Honor Roll will be named at the judges' discretion.

The Risk Management Honor Roll was created by *Business Insurance* in 1981 to recognize outstanding achievements in risk management in different types of employment categories.

See **Judges** *on page 14*



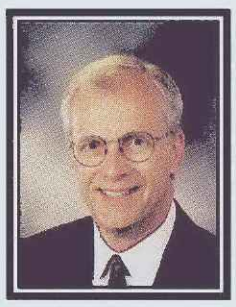
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Mr. Chookaszian



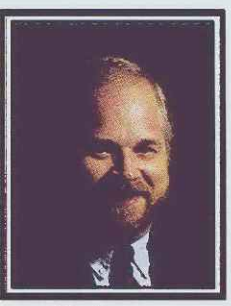
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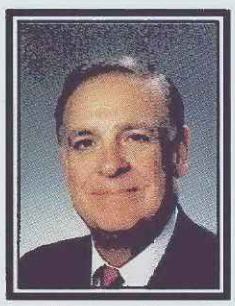
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Mr. Kaddatz



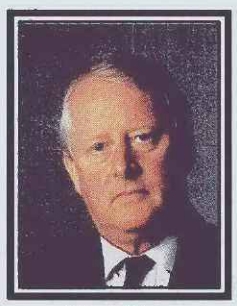
Mr. Lange



Mr. Lockton



Mr. Macdonald



Mr. Riley



Mr. Tawney

Pollution insurers receive favorable ruling in Alabama

By SALLY ROBERTS

MONTGOMERY, Ala.—Insurers in Alabama can deny coverage to policyholders with long-term environmental contamination claims after the state's Supreme Court ruling that the "sudden and accidental" exception to the standard commercial general liability policy does not apply to the gradual release of contaminants over many years.

In a 7-1 decision, the Supreme Court of Alabama late last month agreed with a lower court ruling that the term "sudden" has a temporal meaning in the context of the pollution exclusion and means "immediate."

Twenty-one state high courts nationwide have now split on whether the qualified pollution exclusion, common to comprehensive general liability policies issued in the early 1970s, precludes coverage for policyholders' long-term environmental claims.

According to court papers, the Alabama Plating Co. sued its insurers, United States Fidelity & Guaranty Co., Safety National Casualty Corp. and Ranger Insurance Co. as well as its broker, Hilb, Rogal & Hamilton Co., after it was denied coverage for the costs of cleaning up its contamination problem.

The Vincent, Ala.-based metal

See **Alabama** *on page 29*

Global warming concerns prompt insurers to act

By CRISTAL CODY

As the storm cloud of global warming looms overhead, the insurance industry is considering ways to prevent and guard against natural disasters—and losses—many believe global warming causes. But with scientific explanations sketchy, insurance industry approaches vary.

The property insurance industry is more likely than other industries to be affected by climate change, mainly because of the unpredictability of the frequency and severity of weather events, according to a U.N. Environment Program Insurance Initiative paper on climate change. The paper was discussed at the Convention on Climate Change in July in Geneva.

The International Panel on Climate Change predicts that over the next 100 years, the earth's temperature will rise 1.5 to 6.3 degrees Fahrenheit, and that sea level will increase between six and 38 inches, according to a paper by Frank Nutter, president of the Reinsurance Assn. of America.

Ivo Knoepfel, a climate change adviser with Swiss Reinsurance Co. in Zurich, said these "effects clearly carry the potential of increased property damage because of failing protection measures in certain areas. . .(and) inadequate planning and construction in areas at risk."

Mr. Knoepfel noted that when dealing with climate change risks, which cannot be predicted with certainty, it is impossible to "quantify anticipated economic and social impacts of climate change fully before taking action."

Major losses due to natural disasters often result from inadequate planning and development in high-risk areas such as flood plains and coastal areas.

"We believe that the potential loss can be reduced by implementing appropriate risk management measures," Mr. Knoepfel said. "By advising our customers, planners and the general public and making available our experience in risk management and loss prevention, we believe that we can help in reducing the risk of weather-related catastrophes," he said.

Mr. Knoepfel believes this is for now the most practical way for the insurance industry to combat the potential effects of global warming.

Paul Cogswell, vp of the Boston-based Insurance Institute for Property Loss Reduction, said his organization is waiting until there is more understanding of global warming and its effects before it takes additional steps beyond its current practices.

"We're doing all the right things, regardless of what the answer is," he said in support of using sturdier building codes and materials to mitigate damage for people living in high-risk areas. "It can only help if there is a global warming problem, and it will help even if there isn't."

Mr. Nutter, of the Reinsurance Assn. of America, said it is probably too early to determine what can be done to reduce global warming.

See **Warming** *on page 12*

ISG expands availability of program covering computer consultants

CAMBRIDGE, Md.—Insurance Services Group Inc. of Maryland is making its CCBsure computer consultant business insurance program available to agents and brokers throughout the United States. Until recently, the program was available only through ISG, CCBsure's national administrator.

Developed in 1992 in conjunction with the National Assn. of Computer Consultant Businesses, CCBsure offers coverages specific to the needs of the computer consulting industry in such areas as errors and omissions, third-party fidelity, multistate single-policy workers compensation, general liability and business income.

For more information, call 800-336-5659 or visit the CCBsure Web site at http://www.ccbsure.com.

Markets

Multistate comp

SAN FRANCISCO—CareAmerica Compensation & Liability Insurance Co. of San Francisco has reached an agreement with Southfield, Mich.-based Meadowbrook Insurance Group Inc. and its Star Insurance Co. subsidiary to jointly underwrite multistate national workers compensation accounts.

CareAmerica and Star will quota share risk on all multistate accounts. Target accounts primarily will be large California-based companies with significant operations in other states.

Among the flexible alternative programs to be offered through the CareAmerica-Meadowbrook arrangement are multistate retrospectively rated, deductible, guaranteed-cost as well as captive and rent-a-captive workers comp programs.

Claims, managed care, ergonomics, industrial hygiene and other risk management services will be offered on a bundled or unbundled basis, based on customer needs.

CareAmerica and Meadowbrook also will target association and other affinity group business in California and selected other states, using CareAmerica for workers compensation and Meadowbrook for package, automobile and professional liability coverages.

For more information about the CareAmerica-Meadowbrook program, contact Trip Ames, CareAmerica executive vp and managing director, at 415-675-2004, or Warren Gardner, vice chairman of Meadowbrook, at 810-358-1100, ext. 392.

Kemper reorganizes

LONG GROVE, Ill.—Kemper Insurance Cos. plans to reorganize its claims department effective Jan. 1 to improve client service and reduce expenses.

To enhance claims handling at the branch claims office level, claims examiner positions across the country will be redeployed to the branch level from the division level.

Kemper also will reduce the number of division claim office territories to three from four, with each regional manager located at the company's Long Grove, Ill., headquarters, placing the entire senior claims management team in one location.

Niche market entity

PHILADELPHIA—Reliance Insurance Co. has created a new entity, Reliance Specialty, aimed at providing specialized coverages to niche markets and customized policies for clients with non-standard needs.

Reliance Specialty combines the resources of two former Reliance Insurance facilities, the program division and the non-standard risk division.

The new entity will continue Reliance's focus on the transportation, property/habitational, contractors and manufacturing and non-profit markets, among others.

Reliance Specialty also will explore new specialty classes, structuring business units to respond to new opportunities.

Qualified agents can access all Reliance Specialty products through one of the company's existing profit centers: the Seattle-based Western Region, the Chicago-based Midwest Region or the Philadelphia-based Eastern Region.

For more information, contact Paula Anderson, vp-specialty operations, at 215-636-8554.

Reliance Insurance is the largest subsidiary of New York-based Reliance Group Holdings Inc.

HRH acquires agency

HOUSTON—The Houston office of Hilb, Rogal & Hamilton Co. has completed the acquisition of substantially all of the operating assets of The Schuppenhauer Co., an insurance agency specializing in life and benefits. Terms of the acquisition were not disclosed.

New Centre Re office

NEW YORK—Centre Reinsurance Co. of New York has opened a San Francisco office. The new office will focus on servicing existing Centre Re clients and brokers on the West Coast, as well as developing new business in that region.

Fred Dopfel has joined Centre Re as director of the Western region from San Francisco investment banking firm Russell Miller Inc., where he was president and chief operating officer.

The telephone number of the new San Francisco office is 415-222-0420, and the fax number is 415-222-0339.

New Near North office

CHICAGO—Near North National Group has opened a Houston office.

The primary function of the new office is to serve as a base for Near North's newly formed energy practice.

Two of the five members of Near North's energy insurance team, Neil Davis, vp, and Donna Peterson, assistant vp, are based in the Houston office.

The new office is located at 4801 Woodway Drive, Suite 300 East, Houston, Texas 77056. The telephone number is 713-513-4855 and the fax number is 713-965-0239.

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NAIC

Continued from page 3

Her husband, Steve, took a job in February 1994 as regional administrator for the U.S. Department of Housing and Urban Development in Fort Worth, Texas. Eleven months of living with a commuting husband and father, who was home only on the weekends, took its toll especially on their three daughters—Holly, now 17; Ally, 8; and Chelsey, 4.

"We are a very close family. My husband is also my best friend," she said. "It (resigning) was a very hard decision, but it was the right thing to do."

Ms. Weatherford then moved with the children to the Fort Worth area in January 1995, and took a job as regional manager for public affairs for Liberty Mutual Insurance Group. She worked there about 1½ years before being hired earlier this year as the NAIC's top executive officer.

"I never viewed this as a goal ahead of me," said Ms. Weatherford, who said she had always expected to eventually become a teacher or college professor.

However, she is enthusiastic about providing leadership and services to the NAIC's insurance commissioner members and their departments so they can do their jobs as effectively as possible.

Ms. Weatherford has moved with her two younger daughters to Kansas City, after her husband was promised a transfer there. Her oldest daughter is staying with a classmate's family in Texas so she can finish her senior year at Grapevine-Colleyville High School.

Ms. Weatherford brings significant talents and strengths to the NAIC organization, including her proven record as an administrator, according to NAIC President Brian Atchinson, superintendent of the Maine Bureau of Insurance.

"Her regulatory experience certainly helps her understand the large number of demands made upon insurance departments and industry regulators," he said. In addition, "her private sector experience helps her understand the needs of the marketplace as well."

In terms of NAIC operations, Ms. Weatherford favors the trend toward increased accountability in the budget-making process and expects that the organization will continue to move toward more program budgeting. Regulatory-related expenditures currently are categorized as solvency-related, market conduct-related or general.

Ms. Weatherford also is aware of complaints from a small number of insurers that have withheld data filing fees. Some insurers have taken this approach in an effort to sway NAIC policy and emphasize their belief that those fees should be primarily used for solvency-related activities.

"I know that the priority is that the fees be used for primarily solvency-related activities," and plans to keep that in mind as regulators prepare the NAIC's budget, she said.

However, some cross-subsidization—in which expenses from one area are used to fund other unrelated, but necessary activities—is necessary to support NAIC activities like its early-warning financial analysis, she said.

That activity "brings in no revenue, but we all would agree that it is a vital part of what the NAIC does."

Under such budgetary scrutiny, Ms. Weatherford expects belt-tightening efforts to continue at the NAIC.

For example, an increased use of conference calling in place of interim meetings "has enhanced cost control efforts," she said.

She also supports the NAIC leadership's directive that interim meetings be held in Kansas City so attendees can meet in the NAIC's free space, unless meeting organizers can demonstrate it is more cost effective to gather elsewhere.

In addition, the insurance industry has committed nearly $3 million to fund the Producer Information Network, so it remains "a viable option" that NAIC members will continue to discuss, she said. Also, the System for Electronic Rate and Form Filing continues as a pilot project involving 16 states and more than $300,000 in voluntary contributions from states and the insurance industry.

Ms. Weatherford also looks beyond the fine points of NAIC operations to larger issues of dealing with state legislators and others.

"Good regulation requires strong partnerships with all people involved—state legislators, governors, consumers and industry interests," she said.

In dealing with state legislative groups like the National Conference of Insurance Legislators, she said, "I think we have important relationships to build on."

Ms. Weatherford also pledged to have the NAIC comply with new reporting requirements enacted by Vermont (*BI*, July 15).

Ms. Weatherford also supports the idea that the NAIC consider giving large commercial policyholders greater freedom from rate and form requirements. BI

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Provision clarifies rules on veterans

WASHINGTON—If tensions in the Middle East lead to a call-up of military reservists, employers extending benefits to employees who return to work after military service will not have to worry that providing those benefits will cause them to violate Internal Revenue Service rules.

A little-noted provision in the Small Business Job Protection Act, which President Clinton signed last month, takes care of a problem Congress created two years ago when it passed legislation clarifying benefits owed to employees after they return to work after military service.

The 1994 law—a reaction to the Gulf War and the benefit issues it raised—sets rules on the type and manner in which employers must extend benefits to employees called up from military reserves.

Employers with 401(k) plans, for example, must allow returning veterans to make retroactive contributions. Companies must match those deferrals to the same extent they matched other workers' contributions during the employee's period of military service.

But the 1994 law failed to make changes to the Tax Code to accommodate certain requirements.

For example, employees now may defer up to $9,500 a year to their 401(k) plans.

An employee returning from active military service might want to make a retroactive contribution for his or her time in military service as well as for the current year. Those combined contributions, though, could exceed the $9,500 limit and violate tax rules.

If employers didn't allow the retroactive contributions, they would violate the 1994 veterans law and, thus, be between a rock and a hard place.

But a provision, retroactive to Dec. 12, 1994, in the small-business law, takes care of this potential problem.

It makes clear that complying with the veterans law would not cause a plan to fail IRS rules on maximum contributions that can be made to pension and savings plans during a year.

—By Jerry Geisel

Perk Perkins,
President & CEO
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Opinions

Democratic rhetoric

READING THE DEMOCRATIC PARTY platform and listening to President Clinton's acceptance speech last month in Chicago leaves us with decidedly mixed emotions.

On the positive side, gone from the platform and the president's remarks was the overblown rhetoric of four years ago about the nation's health care "crisis."

Indeed, the words "health care reform" are noticeably absent from the platform, a recognition by Democratic Party leaders that the administration's first health care effort was a fiasco and that it is best not to bring up any reminders of it.

Instead, President Clinton spoke about the recent enactment of legislation—widely popular and long overdue—that will make it easier for employees to change jobs and not worry that their new health care plans will deny coverage for pre-existing medical conditions.

And rather than promise the sky and the moon, President Clinton said the administration's next health care initiative will be a modest one: providing limited federal subsidies for low-income workers to help them pay health insurance premiums when they lose their jobs.

In the retirement area, President Clinton rightly took credit for developing and getting legislation passed that will shore up the Pension Benefit Guaranty Corp., the federal safety net that protects workers' and retirees' basic pension benefits when companies fail and can't deliver on their pension promises.

We also applaud President Clinton's recognition that the looming financial crisis in the Social Security program can only be addressed through a bipartisan effort.

Regrettably, there is much not to like in the Democratic platform. There is counterproductive Republican-bashing on the issue of Medicare. The platform says Republican leaders want "Medicare to wither on the vine." There is, of course, no evidence to support this silly charge.

Republicans, as well as the administration, all have supported controlling the future growth of Medicare, a necessity to prevent the program from collapsing. Engaging in demagoguery, which is what the Democrats have been doing on this issue, is hardly the way to prepare the public for the major changes that are essential.



"NOPE. I DON'T HEAR A THING!!!"

We also were bothered by the platform's assertion that employees should be able to take their pensions with them when they change jobs. Democrats apparently forget that it was only a few years ago that Congress did change rules to make it easier for employees to transfer account balances in their savings plans when they change jobs to their new employer's defined contribution plan.

But our biggest concern is what President Clinton and the platform didn't say: Neither mentioned the need to rein in the excesses of the tort litigation system. President Clinton, in fact, vetoed a federal product liability bill, which would have been a first step toward restoring balance to the civil justice system.

By contrast, Republican candidate Bob Dole made tort reform a key plank in his platform (*BI*, Aug. 19).

It may be up to businesses to educate President Clinton that tort reform is indeed in the national interest and that he should reconsider his previous position, just as he has reconsidered his approach to health care.

Letters

Regulator's attack on NRRA puzzling

To the editor: Louisiana Insurance Commissioner Jim Brown's attack on the National Risk Retention Assn. in particular and risk retention groups in general in the Aug. 19 issue of *Business Insurance* cannot withstand any reasonable analytical scrutiny.

However, I would like to comment on the commissioner's two major assertions: "The NRRA has lost credibility as anything other than a self-serving industry trade group that puts its members' interest ahead of the public" and "Once again, policyholders in Louisiana have been put at risk by entities that are allowed to operate under federal law without regulatory oversight."

NRRA's membership comprises risk retention groups and purchasing groups, which in turn include policyholders of the insurance-buying public. A federal court in Louisiana determined that the state's insurance department did indeed violate the rights of the NRRA's members granted under the federal Risk Retention Act and the supremacy clause of the U.S. Constitution. If NRRA's efforts to vindicate members' rights under the Constitution and federal law are "self-serving," then so be it.

As for the balance of Mr. Brown's contentions, the NRRA respectfully suggests that obvious refutations are found in the most cursory review of both the Risk Retention Act and the *NRRA vs. Brown* decision. Inasmuch as the Risk Retention Act grants to the domiciliary state of a risk retention group full regulatory authority over that RRG—just as it would any other insurer licensed in the state—I find illogical Mr. Brown's argument that the insolvency of Physicians National RRG, an insurance company domiciled in Louisiana and subject to the full regulatory authority of his department and state's laws, is an example of the failure of the federal law.

Moreover, sections 3 and 6 of the Risk Retention Act delineate at great length the significant aspects of a non-domiciliary RRG's operations that are subject to a non-domiciliary insurance department's authority. With regard to financial oversight, the Risk Retention Act allows any non-domiciliary state to shut down the operation of a financially impaired RRG nationwide by obtaining an injunction in federal court.

Such a national injunctive remedy exceeds the authority available to non-domiciliary commissioners over their own licensed/authorized insurers under the current regulatory framework.

Any non-domiciliary state can perform a financial examination on a non-domiciliary RRG if no recent examination has been performed by the domiciliary state. Perhaps even more important are the informal channels available to all non-domiciliary commissioners through which they can simply pick up a phone to contact a domiciliary regulator to voice their concerns or obtain more information about a risk retention group operating outside the chartering state. I know of no commis-

See **Letters** *on page 10*

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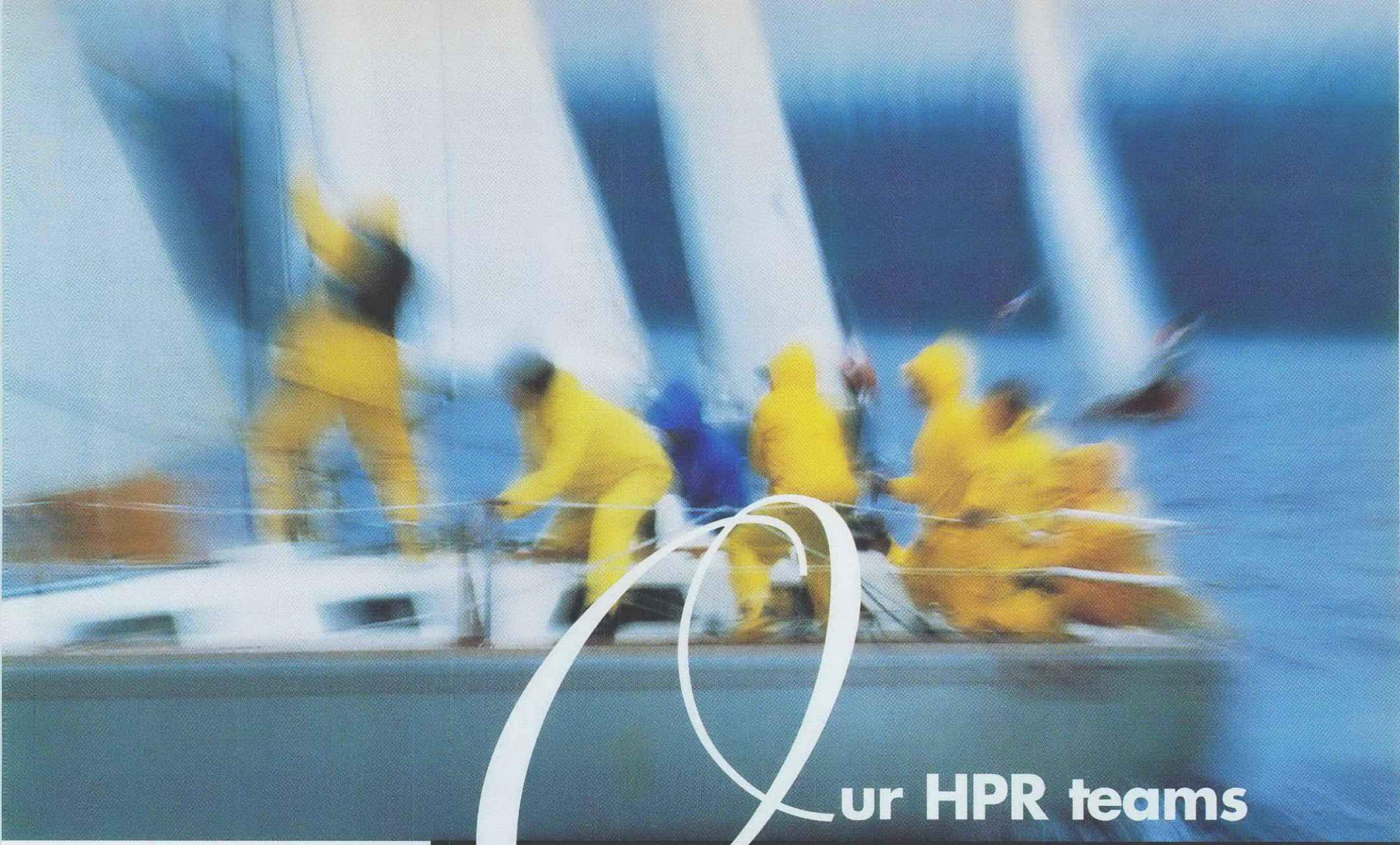
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Letters

Continued from page 8

sioner who would fail to follow up on a fellow commissioner's concerns.

Rather than targeting the Risk Retention Act or the NRRA, perhaps Mr. Brown's complaints should be focused on what he apparently perceives to be the lack of adequate oversight by certain states, including—by his own reference—past actions of the Louisiana department. By rejecting the notion of lead state regulation inherent in the Risk Retention Act, Mr. Brown is backhandedly endorsing federal insurance solvency legislation, which has been introduced repeatedly by Rep. John Dingell, D-Mich., under the premise that federal oversight is needed because individual states cannot adequately coordinate meaningful solvency oversight of insurers operating interstate.

The bottom line is that Mr. Brown and his fellow commissioners have adequate tools under the Risk Retention Act's regulatory framework. What is needed is greater regulatory willingness to utilize these existing tools rather than attempts to engage in actions clearly pre-empted by federal law or to pointlessly vilify risk retention groups and the trade association that represents them.

Jon Harkavy
Chairman, Government and Industry Affairs Committee
National Risk Retention Assn.
Washington

* * *

To the editor: In his attack on the National Risk Retention Assn., Louisiana Insurance Commissioner James Brown ignores the fact that a federal district court judge has ruled that his proposed regulations are in violation of the national Risk Retention Act.

If Mr. Brown really believes that risk retention groups provide questionable financial solvency, he should be trying to get Congress to amend or repeal the Risk Retention Act. After all, if RRGs are bad for Louisiana, they are bad for other states as well.

Harry Cylinder
Philadelphia

Clarification of IRS provision repeal

To the editor: In my letter on 401(k) credit card loan options in the Aug. 19 issue of *Business Insurance*, I stated that the Internal Revenue Service had repealed the hardship withdrawal provision.

In fact, the IRS had repealed the prior tax benefits available under certain hardship withdrawals but did not repeal the provision itself. The provision remains available in certain situations; however, the 10% pre-retirement distribution penalty and income taxes now apply to these distributions, and in most cases the loan provision, if available, must be exhausted first. In addition, an employee who takes a hardship withdrawal may be ineligible to participate with new contributions for a short period.

The loan provision remains the only easily available, non-penalized method of access to 401(k) funds during continuing employment. However, my opinion that the credit card access option is irresponsible and potentially dangerous to fiduciaries and employees remains unchanged.

Fred C. Garfield
Partner, Employee Benefits Specialist
SMF Associates
Oakbrook Terrace, Ill.

Adding to claims audit vs. actuarial study selection

To the editor: With reference to the Ask a Casualty Actuary column Aug. 12, I have reviewed Richard Sherman's informative response to the hypothetical insurance executive's question: "I am concerned about the adequacy of reserves for our casualty losses. Should I have a claims audit or actuarial study performed?"

In addressing this question, Mr. Sherman provides examples of a number of standard analytical studies performed by actuaries in evaluating case and bulk reserve adequacy. In addition, he discusses some activities that might be included in individual claim file audits conducted by claim professionals, also relating to a reserve adequacy evaluation.

The purpose of this letter is to add a few observations respecting loss reserve analysis from a claim management perspective. While properly formulated actuarial studies should reflect what has happened statistically on a given book of individual losses, why it happened can best and perhaps only be answered with a knowledgeable claim professional's objective review of the subject-incurred loss files or at least a credible sampling thereof.

In my opinion, the mythical casualty insurance executive asking the question on reserve adequacy and adverse loss development should be receiving actuarial-based experience analysis reports routinely that inform him or her on a timely basis and in sufficient detail as to what the loss experience is. This, coupled with the availability of related underwriting data, will alert our executive as well as other management team members to the possibility that something may be askew, e.g., adverse development and/or frequency and severity.

When expected loss ratios are being breached or threatened on an incurred basis, our executive should look primarily to the claim function for the why component. If claims management is unable to expeditiously provide the answers, experienced, independent claim consultants should be retained for audit and objective analysis.

Again, if a system that effectively anticipates potential problems of the nature discussed in Mr. Sherman's article is in place and functioning, serious problems likely can be averted or at least controlled with minimal disruption and cost. Ideally, the executive will be aware of potential problems because of the availability of reliable, timely input from actuarial, underwriting and claims departments, allowing for the prompt resolution of problems while they are still in an early stage.

Paul C. Lovett
Lovett Associates
Danville, Calif.

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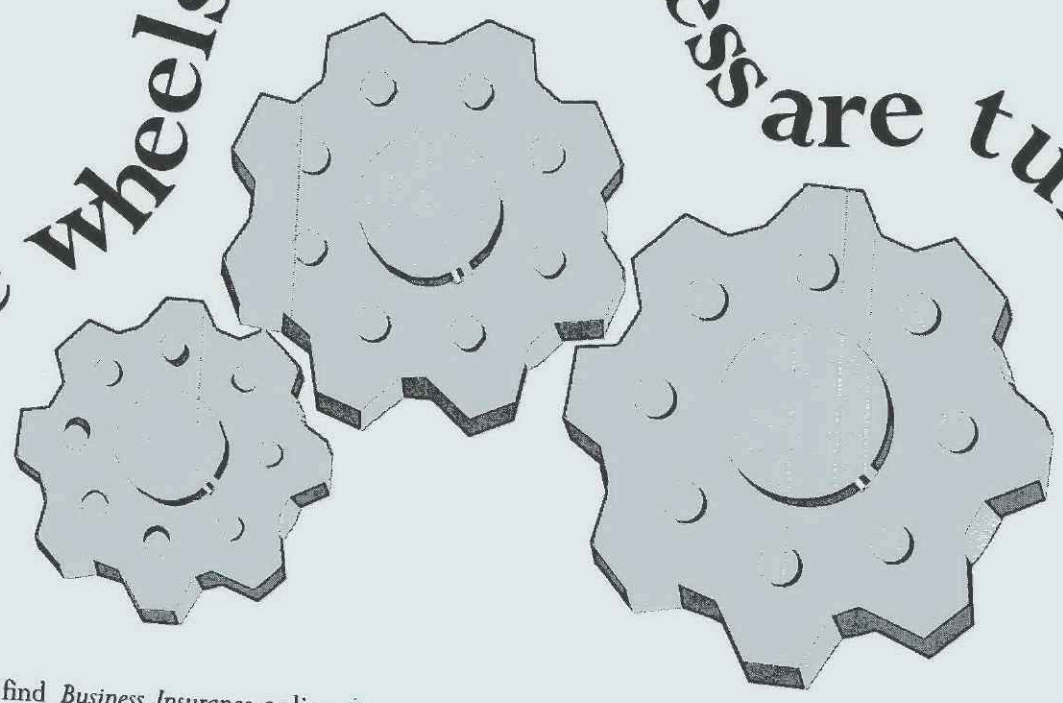
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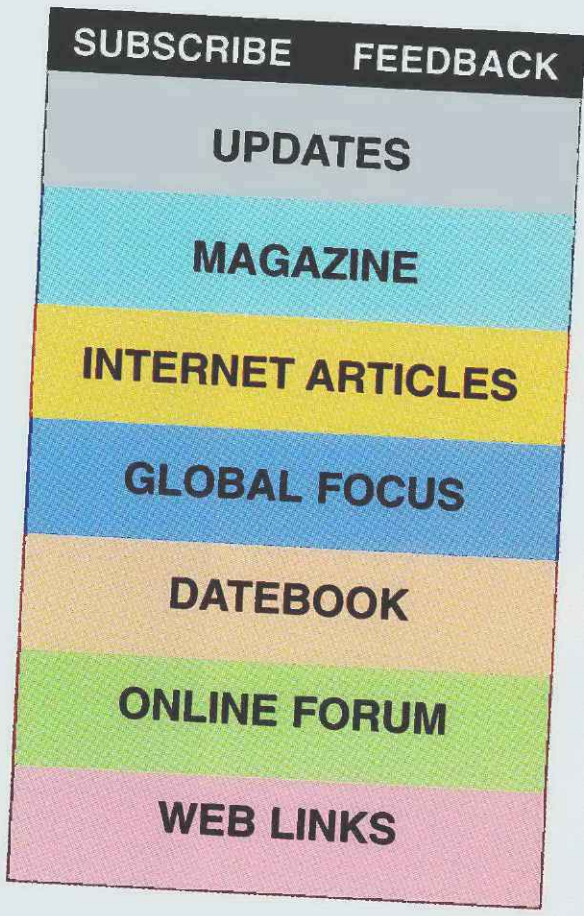
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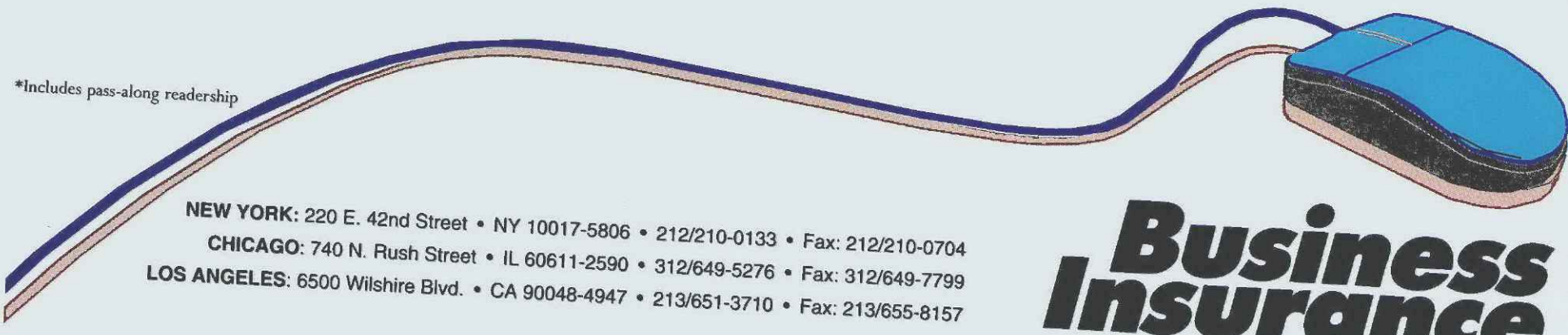
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Warming

Continued from page 3

"The progress in the U.S. probably has been related more to taking steps to understand the science in relation to climate change," he said. "In the insurance industry, we need more confidence in the analysis" before taking a stand on it.

Mr. Nutter said the industry should continue requiring more stringent building codes and better materials to reduce the effects of natural disasters, but it is likely beyond the insurance industry's control to call for other steps like switching from fossil fuels to solar energy.

David Pratt, senior vp for federal affairs at the American Insurance Assn., said the industry needs a sound analysis of what any climate or policy changes related to global warming might mean to the U.S. economy.

"It's a wake-up call," he said. "Policymakers need to think of these things (since) it's not just the environmental aspect but. . .the economic changes as well."

Mr. Pratt said AIA has no official position on global warming yet. "Our economy is a factor here, and we need to think through the economic effects of this as well," he said. "With respect to the climate issue, we're being educated and trying to ascertain what the ramifications are for our company and our customers worldwide."

Munich Reinsurance Co., the world's largest reinsurer, focuses its approach to global warming on research related to natural disasters. "We analyze losses which are related to severe weather events like flooding or droughts," said Ernst Rauch, a geophysicist at Munich Re.

"What we found out is the losses from severe weather events have increased significantly in the last 30 to 35 years. If global warming increased in the future, it is most likely that the intensity and severity of weather-related events will increase further, so that means losses from insured events will go up significantly," said Mr. Rauch.

Andrew Dlugolecki, group general manager of U.K. insurer General Accident P.L.C., said companies should plan on changing to become more environmentally aware. "The weather is becoming more erratic and extreme," he said. It takes a lot of "time and effort to get new technologies refined where they actually work in mass production."

Although a simple cure for what many think is a man-made disaster may be far into the future, there are some alternatives insurers can suggest to their industrial clients to help reduce greenhouse gas emissions, thought to contribute to global warming.

Setting up in-house recycling is still a viable option, according to Mr. Dlugolecki, along with reminding politicians what too much uninsured damage from natural disasters can do to the economy.

However, Mr. Dlugolecki said insurers cannot try to penalize companies for failing to add new technologies—such as solar energy and emissions control devices for carbon dioxide—unless laws are passed. "I would not recommend insurers do that because they would be taking on a responsibility that is really the government's."

"We should try to bring attention to the politics of global warming," he said. "Whether it's in-house demands or claims handling, we need to make the staff more aware of global (issues) when doing their jobs. And, in the external world, what to do about getting concerns understood and acted upon."

European underwriters are more involved in global warming issues than Americans, possibly because the environmental debates over causes and solutions started in Europe, Mr. Dlugolecki said.

"It could also be that American insurers tend to recognize that they have a problem with the weather, but they see it in an American context," he said. "There are such big underwriting issues to be seen in the U.S. There is also the uncertainty that the extreme weather in the U.S. is related to global warming," referring to some skepticism in the United States.

Another reason Mr. Dlugolecki gave for Americans' reluctance at entering the global issue is the possibility of litigation on claims for public catastrophe losses and negligence suits for signing policies in high-risk areas.

'Losses from severe weather events have increased significantly in the last 30 to 35 years,' says Ernst Rauch.

"They could be afraid to link themselves with global warming and then be exposed to legal action," he said.

Jeremy Leggett, scientific director of the environmental group Greenpeace in London, said insurers can take three measures to reduce the effects of global warming.

First, insurance companies need to express their concerns about global warming—such as the economic loss from increased storm activity—to governments seeking to regulate greenhouse gas emissions and control global warming, he said.

Negotiations are beginning to happen and "they are making clear insurers' views are different from businessmen."

"The (insurance) industry has got to make its voice heard," he said.

Mr. Leggett said the business community, even the traditional energy sector, is beginning to split on this issue.

"They are saying, 'Mea culpa'; we've got to change."

Second, insurers could suggest increasing spending on technological advances such as stronger building materials and battery-powered cars instead of decorative items and gas-powered autos, which Mr. Leggett says for the same cost can help reduce the risks and the causes of global warming.

"The third and most important is office management and investment behavior," he said.

By investing in high-profit energy companies, insurance companies are literally keeping afloat "the technology and industries that are fueling the greenhouse threat (and) that's dysfunctional behavior, really."

Mr. Leggett said he is glad to see that the insurance industry now is discussing global warming. "That, I would say, is encouraging (but) the first effort to begin" is the adjustment of investment behavior, he said. "No one has done that yet, but I remain very confident it's going to happen." BI



Equitas

Continued from page 1

As one of his conditions for approving Equitas, he is requiring Lloyd's to provide up to an additional £100 million ($156.7 million) in January 2002, if Equitas requests it, to mitigate the effects on Equitas' reserves in the event of lower-than-projected interest rates or a shortfall in the contributions due from agents or brokers.

Almost £900 million ($1.41 billion) of Equitas' premiums will come from names, who recently were sent final bills by Lloyd's reflecting what they would have to pay into Equitas if they wanted to accept the settlement offer.

More than 91% of names have endorsed the settlement plan, and the total is expected to rise by the extended acceptance deadline, Sept. 11.

About 70% of Lloyd's approximately 3,000 U.S Names have accepted, and Lloyd's is confident the proportion will rise as those who had held off making a decision while U.S. court cases were pending decide to accept.

Reinsuring into Equitas will enable Lloyd's syndicates to finalize "open" years they could not previously close because of anticipated future claims, and will enable Lloyd's to meet its 1995 solvency requirements with the Department of Trade & Industry this month.

Michael Crall, chief executive officer of Equitas, said it is hoped the run-off management services provided by the reinsurance company will become a model for the insurance industry.

Part of the rationale behind setting up Equitas is that reinsuring all outstanding claims relating to 1992 and prior years in one company will centralize responsibility and permit a more uniform, equitable and efficient approach to claims assessment and payment.

It also should be financially beneficial by removing the duplication of work, centralizing legal expenses, breaking down the intersyndicate reinsurance spiral, and improving investment performance and claims negotiations.

'Now it's up to all of you in this market to take this opportunity to move it forward. Let's get on with the job,' says Lloyd's Chairman David Rowland.

London insurers welcomed the go-ahead.

Both the London International Insurance & Reinsurance Market Assn. and the Institute of London Underwriters, which together represent most of the insurers, said in a joint statement: "We support R&R as the best way of securing the future of Lloyd's. . .It is hoped that Lloyd's, with the uncertainty now removed, will be in a position to join together with the London company market to promote the interests of the market worldwide. We believe that the excellent future that London has can only be established by ensuring co-operation between all parts of the London insurance market."

Sedgwick Oakwood Lloyd's Underwriting Agents Ltd., which is the largest members' agency in Lloyd's, commended the reserving methodology of Equitas, claiming it provides a consistent approach "to achieve the fairest solution possible."

Wednesday's events were the culmination of some three years of work during which Lloyd's had tried to find a way to settle past underwriting losses, mainly arising from pollution and environmental liability claims in the United States, and end a stream of litigation by names who believed they were being made to foot the bill for bad underwriting practices.

Lloyd's made its first £900 million settlement offer back in December 1993, but it was quickly rejected by names as too little and because it offered no finality to losses on past underwriting, thus preventing names from simply paying up and quitting the market.

Names' action groups continued to bring legal actions, sometimes successfully, to recover some of their losses.

One of the conditions of the current reconstruction and renewal plan is that names must agree to end all litigation, and sums awarded in past legal cases must be put into the kitty to fund the £3.2 billion settlement.

The present recovery program was launched in May 1995, when Lloyd's unveiled a £2.8 billion ($4.39 billion) reconstruction and renewal program under which names could cap their losses by paying a premium to reinsure them into Equitas.

The offer subsequently was increased to £3.2 billion with the help of contributions from agents and brokers.

Funding for the offer comes from a variety of sources, with the biggest share, £1.05 billion ($1.65 billion), coming from Lloyd's central resources.

Errors and omissions insurers are contributing £770 million ($1.21 billion), and £270 million ($423 million) comes from the sale of the Lloyd's of London Press publishing unit and the sale and lease-back of the Lloyd's building.

Agents and brokers are contributing £325 million ($509.2 million), while a refundable levy on those underwriting since 1993 will add a further £440 million ($689.4 million).

While ringing the Lutine Bell, Mr. Rowland said that the first knell was to acknowledge the market's sorrow at the pain and suffering past losses have wrought upon many Lloyd's members.

The second ring marked pleasure "at having reached our destination" in implementing the recovery program.

The unprecedented third knell, he said, was "to signal the beginning of a new journey to consolidate this market's reputation as a center of insurance excellence."

While he has emphasized that the Lloyd's community must learn from its mistakes and make up ground lost over the past three years, Mr. Rowland said he now wants the Lloyd's market and its customers to look to the future.

"Now it's up to all of you in this market to take this opportunity to move it forward. Let's get on with the job," he concluded in his address to Lloyd's members. BI

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Judges

Continued from page 3

Ten independent judges from all sectors of the risk management profession and the insurance industry will select the 1997 *Business Insurance* Risk Manager of the Year and the Risk Management Honor Roll.

The winners of the awards are selected based on the 10 judges' assessments of the risk managers as detailed in their nominations.

Candidates for the 1997 awards can be nominated now. Nomination forms are available from *Business Insurance*'s Chicago office.

Nominations must be submitted by Nov. 19.

The 10 judges who will select the 1997 honorees include the 1995 and 1996 Risk Managers of the Year, two members of the 1996 Risk Management Honor Roll, two insurance company executives, two brokerage executives, a risk management consultant and an insurance educator.

The judges for the 1997 awards are:

• Brian D. Casey, director of risk management and loss prevention at Corning Inc. in Corning, N.Y.

Mr. Casey was the 1996 *Business Insurance* Risk Manager of the Year (*BI*, April 22).

• Dennis H. Chookaszian, chairman and chief executive officer of CNA Insurance Cos. in Chicago.

He is serving as a judge for a second year, representing stock insurers.

• Richard Corbett, professor in the Department of Risk Management and Insurance at Florida State University in Tallahassee.

He is serving on the panel for the first time, representing insurance educators.

• Dwight E. Davis, president and chief operating officer of Wausau Insurance Cos. in Wausau, Wis. He is serving on the panel for the first time, representing mutual insurers.

• Michael M. Kaddatz, a principal of ARM Tech in Lake Forest, Calif.

He is serving for the first time, representing risk management consultants.

• Scott K. Lange, director of risk management for Microsoft Corp. in Redmond, Wash., and the 1995 Risk Manager of the Year (*BI*, April 24, 1995).

• Craig S. Macdonald, director of risk management at the Bi-State Development Agency in St. Louis. Mr. Macdonald was a member of the 1996 Risk Management Honor Roll representing government agencies (*BI*, April 22).

• John T. Lockton III, chairman and chief executive officer of Lockton Cos. in Prairie Village, Kan.

He is serving on the panel for the first time, representing insurance brokers.

• Sax Riley, chief executive officer of Sedgwick Group P.L.C. in London.

Mr. Riley is serving on the panel for a second year, representing insurance brokers.

• Michael Tawney, vp-risk management/loss control at Loomis Armored Inc. in Houston.

Mr. Tawney was a member of the Risk Management Honor Roll in 1996 representing companies with less than $300 million in sales (*BI*, April 22).

"These are very talented leaders in their fields who have agreed to score the nominations for the 1997 Risk Manager of the Year and Risk Management Honor Roll," said Ms. McIntyre. "It is a substantial commitment of their time to the risk management community, for which we are very grateful," she added.

The judges score each of the candidates on 10 criteria (see related story). The candidate with the highest score after the judging is completed is named Risk Manager of the Year. Then, the remaining nominees are separated by employment category:

• Corporations with sales exceeding $300 million.

• Corporations with sales of less than $300 million.

• Government entities.

• Tax-exempt or non-profit institutions.

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The highest-scoring candidate

See **Judges** *on next page*

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10 criteria used to score RMOY award nominations

Ten criteria are used to score the nominations submitted for the *Business Insurance* Risk Manager of the Year Award and Risk Management Honor Roll.

The 10 independent judges score each candidate on a scale of one to 10 according to how well he or she:

• Established and implemented an effective risk management program within the organization.

• Tackled and solved one or more major problems for his or her organization.

• Innovatively applies the diverse tools of risk management and insurance.

• Creatively and effectively uses the insurance markets to structure an insurance program that serves the needs of the organization (specifically addressing the types of policies purchased and manuscripted policies, if any).

• Established a workable intelligence system inside and outside the organization, culminating in a flow of information about events and activities that affect the organization's risk management and insurance. (How the risk manager secures information from other departments and the use of risk management information systems are addressed in this criterion.)

• Skillfully performs the functions of management in the overall organization and within the risk management/ insurance department. (The functions include planning, organizing, directing and controlling.)

• Achieves the most effective program at the optimum cost over the long term.

• Developed technical expertise in any or all of the broad categories included within risk management, leading to a better managerial grasp of the operations aspects of the job.

• Exhibits an attitude and performs activities fostering the advancement of the risk management profession (such as professional activities, speaking engagements, teaching and related activities).

• Develops in his or her career (as exhibited by job history, including current job description, education, honors and memberships).

Industrial Risk Insurers pulls the plug on primary property cover for utilities

By DOUGLAS McLEOD

HARTFORD, Conn.—Industrial Risk Insurers is no longer writing primary property coverage for utility companies, pulling out of a line it has written since 1984.

As of Aug. 1, IRI shifted primary property utility risks with limits up to $100 million to Hartford Steam Boiler & Inspection Insurance Co., an IRI member company, under a portfolio reinsurance agreement.

As their insurance programs come up for renewal, utility companies will have the options of buying primary coverage directly from Hartford Steam Boiler or from one or more other primary insurers.

IRI will continue writing only excess property coverage for utilities, offering limits of up to $1 billion excess of $100 million, said Dan R. Eudy, IRI executive vp and chief underwriting officer.

The move follows a decision by IRI managers that the business was not profitable enough to continue writing on a primary basis, Mr. Eudy said.

While IRI has seen numerous losses below the $100 million threshold, Mr. Eudy said the organization has never experienced a loss above $100 million.

IRI had insured on a primary basis approximately 30 power generating companies, most of them investor-owned non-nuclear public utilities, according to Mr. Eudy, who would not divulge the total premiums generated by the business.

IRI had previously insured many of these companies "from the ground up," and some had total limits higher than the $1 billion that IRI will provide going forward, he said.

The decision to cede the primary business to Hartford Steam Boiler fits IRI's strategy of working with member insurance companies to complement those insurers' strengths, Mr. Eudy explained.

In this case, the primary risk has been assumed by a company that is known for its strong loss prevention engineering capabilities.

Hartford Steam Boiler will look to improved loss prevention efforts to try to improve the book's profitability, said Richard Gibbons, second vp with Hartford Steam Boiler.

The move will allow both insurers to expand in their given segments of the business, the two executives say.

For Hartford Steam Boiler, "it opens up the door for us to other customers that we would not have been able to approach before" without IRI's complementary excess capacity, Mr. Gibbons said.

IRI, meanwhile, plans to expand its utility customer base, writing excess coverage above other primary insurers besides Hartford Steam Boiler, according to Mr. Eudy.

While expressing disappointment at IRI's withdrawal, brokers say they expect no significant loss of market capacity for utility risks.

"It's always unfortunate when a market of IRI's caliber decides to withdraw from a class of business that we believe can be written in a satisfactory manner," said Michael Golden, managing director and head of the utility and power production group at Marsh & McLennan Inc. in Stamford, Conn.

But as IRI exits the arena, several other insurers—including CIGNA Corp. and Zurich Insurance Group—have entered, and competition for the accounts is expected to be heavy, according to brokers.

"Count on it," predicted John McLane, senior vp and utility practice leader with Johnson & Higgins in New York.

While in the past a single insurer may have been the sole underwriter on a utility program, primary programs are likely to be written on a quota-share basis in the future, with the risk spread among several insurers, Mr. McLane added.

In part because of the readily available capacity—especially for regulated public utilities vs. unregulated independent power generators—brokers cautiously predict no significant change in the soft market for utility covers. BI

Judges

Continued from previous page

in each of the categories not represented by the Risk Manager of the Year is named to the Risk Management Honor Roll, subject to the judges' discretion.

As many as five nominees can be named to the Risk Management Honor Roll.

The 1997 honorees will be announced in the April 14, 1997, issue of *Business Insurance*, which will coincide with the annual Risk & Insurance Management Society Inc. conference April 13-18 in Atlanta.

A candidate need not handle risk management functions full time, but he or she must be a full-time employee of the organization for which he or she directs the risk management program.

A candidate can be nominated by anyone familiar with the candidate's work. For example, any employee or group of employees may nominate the organization's risk manager. A broker, insurer, consultant or other service supplier can nominate a client. And, a risk manager can nominate a colleague.

In addition to the completed nominating forms outlining the candidate's accomplishments, each nomination must include a letter from the sponsor nominating the candidate and a letter of endorsement by an executive of the candidate's organization, who may be the candidate's superior or any higher officer.

The letter must certify the accuracy of the information submitted in the nomination.

All nominations will be kept in the strictest confidence, with only the honored candidates' names announced.

To request a nomination form, contact Karen Tucker, Assistant to the Publisher, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611-2590; 312-649-5319. BI



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Listing of this year's Atlantic storm names is provided by NOAA and the World Meteorological Organization.

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Moderator: Kathryn J. McIntyre, Publisher/Editorial Director, Business Insurance

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Drugs

Continued from page 2

ing the doctrine of strict liability—liability without proving negligence—to them.

But Justice Stanley Mosk, who wrote the Aug. 30 opinion, pointed out that the court was merely reaffirming its position in prior cases.

"In prior cases, we have expressly and repeatedly applied a strict liability standard to manufacturers of prescription drugs for failure to warn of known or reasonably scientifically knowable risks," Judge Mosk wrote for the majority.

According to the ruling, strict liability applies to three types of defects: manufacturing, design and warning.

Specifically, the court said this ruling was merely applying its 1993 finding in *Anderson vs. Owens-Corning Fiberglas Corp.* that manufacturers are strictly liable for injuries caused by their failure to give warning of dangers that were known to the scientific community at the time they manufactured and distributed the product.

Product liability attorneys say the ruling will encourage suits against prescription drug makers.

Product liability defense attorneys predict the decision will encourage litigation against prescription drug makers, which could eventually limit the number of new products released into the marketplace here.

The decision also could prolong trials, said Thomas M. Moore, an attorney with Haight, Brown & Bonesteel in Santa Monica, Calif., who specializes in pharmaceutical product liability.

"Pharmaceutical and medical device cases are difficult for juries to understand in even the best circumstances," Mr. Moore said. "This certainly does not make it any easier and may, in fact, make it harder."

The case stemmed from a 1992 lawsuit filed by Wilma Peggy Carlin.

Ms. Carlin sought damages for injuries that she allegedly sustained while taking the drug Halcion, a sleeping medication, between 1987 and 1992. In her lawsuit, Ms. Carlin claimed that The Upjohn Co., the drug's manufacturer, was strictly liable for failing "properly to prepare and/or warn of the dangerous propensities of Halcion."

She specifically alleged that Upjohn "knew that the drug Halcion was defective. . .that those who were prescribed Halcion and took the same would experience, and did experience, severe physical, mental and emotional damages/injuries. . . ."

Upjohn later merged and is now known as Pharmacia & Upjohn Inc.

Halcion was banned in Great Britain in 1991, and more than 100 lawsuits have been filed in the United States over the drug.

In May, the U.S. Food and Drug Administration suggested that the Justice Department investigate whether Upjohn hid safety concerns about Halcion. However, the FDA did not order the product off the market.

In response to the California decision, a spokeswoman for Kalamazoo, Mich.-based Pharmacia & Upjohn said, "We are disappointed in the decision, and we feel this may create more confusion in this area of the law," referring to the concept of strict liability.

Neither Ms. Carlin nor her attorney, E.S. Deacon of Sacramento law firm Callahan & Deacon, could be reached for comment last week. But the plaintiff had agreed in a $2,500 settlement with the company to drop the suit before the Supreme Court issued its decision, the company spokeswoman confirmed.

She declined to say whether Pharmacia & Upjohn's product liability insurance helped pay the settlement or litigation costs.

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Wilma Peggy Carlin vs. The Upjohn Co., California Supreme Court; No. SO45912, Aug. 30, 1996.

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Home health care a viable option

The significant cost savings associated with home care are beginning to catch the attention of employers as they strive to balance costs with good benefits

By Carol L. Schaffer

HOME HEALTH CARE is a widely diverse and rapidly growing medical service. It is one of the fastest growing segments of the health care industry, with more than 17,000 providers delivering home care services to some 7 million people each year. Home health care agencies provide patients suffering from acute illness, long-term health conditions, permanent disability or terminal illness with high-quality, timely and cost-effective home treatment.

With this degree of professional care, corporate benefit managers, seeing the cost savings inherent in such a growing and integrated care environment, are beginning to include this setting in group employee benefits packages.

The steady growth of home health care in recent years is primarily due to the need to find cost-effective alternatives to long stays in expensive acute-care settings.

Home care also offers patients a more comfortable and emotionally supportive care environment. Of course, growth also has been contingent on benefit managers' determination that home care settings will provide the same or better benefits than those offered by traditional inpatient stays.

Short of specific patient outcome indicators for home health care, which have not yet been established on a national basis, each year, case-by-case evidence mounts detailing the effectiveness of care provided to patients of home care administrators.

Many types of treatment now can be provided as effectively, and for far less money, in the home. These services, depending on the provider, may include physical therapy, speech therapy, nutrition counseling, intravenous therapy, durable medical equipment and supplies, medical social services and the services of a home health aide.

Specific services vary somewhat from provider to provider. Almost all patients are eligible to receive home care benefits either through Medicare or other programs. Individuals, regardless of age, and families, regardless of size, can receive home services if the patient needs skilled care. A recent trend is to use home health care to avoid hospitalization in the first place and to train patients where they are most likely to use the skill, such as physical therapy in their own home. Short-term assistance also is available in cases of out-

Home care is appropriate whenever a person needs to stay home due to a disability but needs ongoing care.

patient surgery, maternity-related incapacity, illness, disability or aging.

Generally, home care is appropriate whenever a person needs to stay home due to a disability but needs ongoing care that cannot easily or effectively be provided by loved ones.

Home health care is not a replacement for all hospital care. Instead, it has become an important setting for delivering preventive, therapeutic, rehabilitative and long-term maintenance services, such as infusion therapy, skilled care, physical therapy and durable medical equipment.

The three largest segments of the industry are:

• **Infusion therapy.**

Infusion therapy refers to intravenous products and services, including total parenteral nutrition (intravenous feeding for patients without functional gastrointestinal tracts), intravenous antibiotics, intravenous immunoglobulins for the treatment of people with AIDS and other immunosuppressive diseases, and intravenous pain management.

Infusion therapy also may include the provision of nursing or skilled services by the infusion company.

• **Skilled care.**

A second segment of the home care market is the home care agency component, which provides skilled intermittent care. The majority of home care services fall into this category. These programs provide skilled nursing, home health aides offering personal care and medical social workers as well as physical, occupational and speech therapy.

All skilled home care services should be provided under the medical direction of a physician over a precertified period of time. A patient may obtain services beyond the initial certification period if his or her physician recertifies the patient. In the private pay sector of the market, the case manager may elect to approve this service.

• **Durable medical equipment.**

A third area of home health care is the area of durable medical equipment, including respiratory care.

DME providers supply equipment and related clinical services to patients in home care settings.

As is often the case, the availability of suitable home medical equipment is the difference between lengthy hospital stays and home recovery. Recent technological advances have made complex medical equipment more compatible with the home environment.

For example, cancer patients, given the aid of computerized pumps that deliver medication at precise dose frequencies and intensities, can not only return home, but also to the workforce.

Ventilators, specially designed for portable use in the home, allow babies with respiratory problems to return to the home environment under the loving care of their parents, not doctors. Even lab tests, often the only reason for extended hospital stays, now are available.

Technological advancements help make home health care much more accessible and, therefore, more viable as an alternative to traditional health services.

The expanded benefits of home care—such as a comfortable home-healing environment, reduced care costs and expanded skilled services including technological advancements—all have helped to grow the home care industry. Still, the smooth transition of a patient from the hospital to the home is important, and services must be provided by competent providers, or else liability exposures may emerge. To reduce this risk, it is critical to admit to home health care only patients appropriate for care in the home setting.

Employers and benefit officers should be certain that providers are equipped to handle the care they claim they can provide. And, not only must careful consideration be given to home care providers, but also to those guidelines established to help control patient access into home care programs. Home care must be limited to patients who meet the predetermined criteria, or liabilities will outweigh any potential benefits.

The best protection against liabilities is an accurate assessment of the patient's needs. This generally is performed during the patient's hospital stay or before home therapy is started.

Specifically, the risk manager should interact regularly with either the case manager involved with the case or the quality improvement officer for the home care agency. Information should be requested on quality and outcomes, as well as the provider's annual readmission rate, which can point to trends in treatment patterns a patient receives to ensure the patient recovers and doesn't experience relapses.

When selecting a home care agency, a simple rule of thumb can help you determine whether an agency fits a patient's particular needs. Getting proper home care for yourself or someone you love should be as important to the prospective agency as it is to you. A home care agency should be willing to provide any information necessary to help with the patient's specific care needs, including recommendations for alternate care settings or agencies. Generally, a free assessment is made available.

The best protection against liabilities is an accurate assessment of the patient's needs before home therapy starts.

Important factors to consider when looking for service providers are the quality of care, availability of services, benefit packages that properly match patients' needs, and coverage/cost parameters. Fortunately, expanded need also has increased the availability of services. The result, in most communities, is an abundance of care agencies from which to choose.

To locate home care agencies best suited to a patient's particular needs, a referral should be sought from the patient's doctor.

Employees also should be certain that care is being provided by competent providers. This can be accomplished by investigating providers for basic credentials, such as Joint Commission on Accreditation of Healthcare Organizations accreditation.

To achieve JCAHO accreditation, which is voluntary, home care providers must meet basic, accepted industry standards. This enables home care agencies to follow these standards in formulating basic guidelines for the care they provide.

Other organizations, such as state departments of health and aging, also can be helpful when evaluating care providers.

In addition, the National Assn. for Home Care and its member agencies work with patients and loved ones to promote excellence in home care and a general understanding of the industry.

What is the future of home care? The patient's home, family and community are at the core of this service and, therefore, the trend toward expanded home health care services is likely to continue. Improved cost effectiveness, advancing technologies and enhanced public awareness are all catalysts in the future growth of home care services.

With this growth, new responsibilities have befallen benefit managers. Home-based medical care offers a viable and cost-effective alternative to a long inpatient stay, but employers need to examine providers carefully, understanding each direct benefit as well as any potential liability.

When given the opportunity, benefit managers must measure providers based on successful outcomes, not just cost. By making recommendations based on efficiency vs. efficacy, benefit managers will play a significant role in shaping the future of home care. BI



Carol Schaffer is president and chief executive officer of CCF Health Care Ventures in Cleveland, a wholly owned subsidiary of The Cleveland Clinic Foundation. She holds a law degree and is a Registered Nurse.

Perspective

In litigation, consider outcome and cost

By Kirk G. Forrest

Use small trial teams, give them clear directions and remain objective

RISK MANAGERS WHOSE responsibilities include managing litigation face the difficult but not impossible task of resolving cases at a reasonable cost.

Risk managers or corporate insurance managers often must wear multiple hats, particularly at smaller or midsize companies, which often do not have in-house legal departments. In addition to being an underwriting and insurance professional, the risk manager may serve as a claims manager, a loss prevention expert and a litigation manager, without regard to whether the person has had sufficient legal training.

Because of a large self-insured retention or deductible, many companies are responsible from the first dollar of any judgment or settlement, while recognizing that coverage may be provided by the primary liability policy and other excess or umbrella policies at certain levels. Aside from the rare exception where there is a low retention or deductible, it is important for management to remember that the company's own money is at risk in the litigation. This is true for both defense costs and any ultimate payment or award to the plaintiff.

As such, the risk manager acting in the role of a litigation manager assumes responsibility not only for the protection of the corporation's legal interest, but also to ensure compliance with budgetary objectives from a business viewpoint. Oddly enough, in today's environment the litigation manager may not be criticized for losing a case, but will have much explaining to do if the budget is exceeded without proper planning and supplemental appropriations.

Resolving the dispute and managing the budget for the case are not mutually exclusive goals. Indeed, the task is to hire capable lawyers who can handle the matter at a reasonable cost. Years ago, cost containment was discussed among in-house litigation managers, but it was not the driving force in selecting counsel or approving a litigation strategy. On the contrary, some managers equated quality representation with high legal fees. Some believed that the biggest and most costly law firms were needed for even routine cases. It was no wonder, then, that the chief executive officer of a large manufacturer joked that his general counsel was the only executive within the company with an unlimited budget—and he exceeded it every year.

Unless the company is fighting the government or it is truly a "bet your company" case, those days are over and it is unlikely that budget-conscious controllers will permit them to return.

Simply stated, when managing litigation, the risk manager must think in terms of both the eventual outcome of the litigation and how best to manage and control the expenses associated with it.

In making decisions concerning litigation, clients no longer want to win at any cost. The goal is now to win at a reasonable cost. In this context, "reasonable" can best be defined as concluding the case within the agreed budget and with no surprises. Moreover, clients now decide how best to utilize the limited or scarce resources to fund a case whether as a plaintiff or defendant. It is the rare client who will permit retained counsel to undertake significant and/or costly tasks without prior approval. By controlling the checkbook, the client assumes the risk and responsibility for determining which stones to turn over and which to leave unturned during the discovery and pretrial process.

In its purest form, litigation management has evolved from a focus on results to cost analysis. Clients, attorneys and law firms also have changed their thinking. Risk managers now must be reasonably prudent business managers and insist that the lawyers hired to represent the company do the same. For the most part, the legal profession has recognized and is accepting this change of attitude. The litigation manager should insist that attorneys representing Corporate America continually ask the following questions:

- Is the litigation necessary?
- What is achieved by continuing with the litigation?
- How can the company best control litigation costs while meeting the objectives of the case?
- Can the case be settled on a non-monetary basis? Often a simple apology or recognizing the legitimate business interests of the other side will suffice.

For example, if two industry leaders have filed patent infringement actions and cross-claims in several courts, including foreign jurisdictions, all the pending cases could be settled on a cross-licensing basis with a nominal cash payment. This is to reflect the differing values of the various patents. The result would involve a creative and significant compromise by both sides and is perhaps the essential element of all good settlements.

Just as risk managers analyze and accept various levels of risk in property and casualty insurance, such as levels of retention and deductibles, coinsurance, policy aggregates and exclusions, a similar analysis needs to be done when managing litigation, especially major litigation. What level of risk is acceptable for the case, and are the principals comfortable with that risk?

Because risk managers are accustomed to such analysis, this task is perhaps easier for them than it is for many in-house lawyers who are new to the exercise. The efficiency of the case and the litigation manager's ability to keep it within budget is dependent on who is selected as counsel. The decision concerning which lawyers should handle the case is perhaps the single most important decision.

Responsibility for managing the case should not be delegated to the attorneys handling the case. The litigation manager must stay objective and not be quick to adopt the analysis and recommendations of others. Be decisive and give unambiguous direction to lawyers and staff working the case.

Even the most serious and difficult cases can be prepared and tried in an economical manner without sacrificing the quality of representation or infringing upon counsel's professional responsibilities.

Even the most serious and difficult cases can be prepared and tried in an economical manner without sacrificing quality representation.

For the most part, two central themes are involved: the proper management of people and resources; and making strategic litigation decisions that are consistent with the savings objective.

When managing people and resources:

✓ Keep the trial team small and get to know the strengths and weaknesses of each team member.

While the cost of deposition transcripts and other disbursements can add up quickly, usually more than 85% of the total legal bill for a case represents time devoted by attorneys and other professionals such as consultants and expert witnesses. Keep the trial team small and manageable.

Often, large cases can be prepared and tried with only three or four firm lawyers ever touching the file. For consistency, continuity and credibility, many partners prefer to work with lawyers who can devote 50% or more of their time to the case, rather than work with a larger group of attorneys with each devoting a lesser percentage of time. Following this rule of thumb is especially helpful as the case progresses through discovery. The smaller team not only will provide greater consistency in positions taken on the issues but the risk that a lawyer might commit a serious error, simply because of not being fully knowledgeable concerning the case, will be reduced.

Consider, for example, the potential damage done by a "reserve" team member who permits the witness to be deposed concerning a document, unaware that the other team lawyers had a practice of routinely objecting to the document at prior depositions and claiming a privilege for the document. Even if the legal team is fortunate enough to prevail in convincing the court that such testimony was inadvertently permitted—so as to protect the claimed privilege—imagine the embarrassment of having to explain to management how the issue arose and why additional legal work to correct the error was necessary.

✓ Insist that the litigation manager or a designee be included as a key team player.

Today, the successful litigation manager also must be an effective people manager by serving as both a team captain and a coach on the sidelines. At the end of the day, it is the company that will have won, lost or settled the case—no other person or entity has a greater interest in the outcome of the case and the money being spent. Being intimately involved with the case also helps improve communication and avoid billing disputes.

✓ Utilize the company's in-house personnel and resources.

Although the lawyers must be comfortable working as a team and sharing professional responsibilities, significant savings can be achieved by having corporate employees—including in-house counsel, where appropriate—participate in the case. In general, the corporate law department can locate and review documents and, if appropriate, handle almost all aspects of the document production process.

Similarly, there is usually a treasure trove of knowledge within the corporation that can be helpful to the case. In-housers who have either grown with the company from start-up, or in the case of larger, blue-chip companies, have a relatively long tenure with the company, are valuable links to potential experts within the company.

✓ In larger, multiple-party cases, share work responsibilities with other parties having similar interests.

Encourage lawyers to share tasks with competent counsel for parties similarly aligned. In larger coverage cases, the insurers' ability to divide responsibility for certain aspects of the case, such as depositions and fact development, is perhaps the largest single contributor to overall efficiency and cost savings. The savings can be further multiplied when the case is being managed by court-appointed lead counsel or a steering committee selected by both parties. While protecting the company's interests, it is best to let those charged with managing the case do so. This also can reduce the total legal fees for the case significantly.

✓ Do not be fooled by the availability of high-tech litigation support systems. Tedious, time-consuming work is still necessary.

✓ When being utilized, particularly in insurance coverage cases, make sure the steering committee or lead counsel does its job well and meets deadlines.

When making strategic litigation decisions:

✓ Evaluate and consider settlement early and often as the case progresses.

Everyone knows it, judges, lawyers and clients alike: more than 90% of the cases filed never make it to trial because the parties reach a settlement. Too bad that many of these settlements are reached only after a significant amount of money has been spent. Thinking as a business executive or owner and not strictly in a legal analysis, settlement needs to be considered and evaluated very early in the case, even if an overture is not made to the adversary. The litigation manager is responsible to have this analysis done by both the lawyers and the impacted business executives.

As another information tool, consider demanding that a settlement recommendation range and an indication of the likelihood of success accompany all progress reports from counsel.

In the past, it was argued that parties settling earlier in the case did not receive as good a deal when compared with settlement opportunities that arose later.

There was no solid support for that proposition then and even less reason to believe it today. Often, in insurance coverage cases and other complex commercial litigation, the parties that climb aboard the settlement train early get the best deals and are able to set the parameters and terms with which others may have to follow later.

In the past, some trial lawyers have suggested that clients, particularly new ones, will perceive an early discussion of settlement as a weakness or as a lack of confidence in taking the case to trial.

While some executives may still want to hire a gladiator, the modern client will see the wisdom of the settlement approach. This is particularly true as corporations squeeze the litigation budgets and reduce in-house counsel staffing.

As the profession moves away from hourly billing and toward a system of flat-fee retainers, it is likely that law firms will see it is to their advantage to offer settlement evaluations in their early reports.

See **Litigation** *on next page*

Litigation

Continued from previous page

✓ Make sure attorneys request and utilize a series of pretrial conferences as a method to narrow the issues and focus on the heart of the case.

Planning for case development is important in every case, but it is essential in major litigation. Properly utilized, pretrial conferences are a good method for reducing litigation costs. Parties are less likely to take hard-nosed positions concerning simple matters when they are discussed in the informal setting of the judge's chambers, especially if that judge also will be the trial judge or making rulings on dispositive motions.

In federal court, for example, Federal Rules of Civil Procedure Rule 16 provides that the court may order a pretrial conference, at the request of any party for such purposes as: expediting the disposition of the action; establishing control and management of the case; discouraging wasteful pretrial activities; improving the quality of the trial through more thorough preparation; and facilitating settlement of the case.

These conferences present great opportunities to discuss with the court reducing litigation costs of a case by avoiding unnecessary proof and cumulative witnesses. Decisions reached should be reflected in one or more of the case management orders and, if appropriate, the final pretrial order.

If the adversary remains obdurate on a costly issue for which there is a practical alternative, remind the judge of the goal of the federal rules as stated in FRCP Rule 1: the "just, speedy and inexpensive determination of every action." Many federal practitioners have never cited Rule 1, but it is a potent weapon if the goal is to reduce the cost of trying or otherwise resolving the case.

✓ Request that a case management order, or CMO, be entered that is specific to the needs of the particular case and parties.

✓ In document-intensive cases, unless otherwise provided for in the CMO, have the court approve a simple method for both the production and authentication of documents.

✓ Avoid unnecessary experts and cumulative witnesses.

There are many ways to manage the spiraling costs of business litigation. Keep in mind that there is no panacea.

The litigation manager's goal is to find the methods that work best. BI



Mr. Forrest is a litigation partner at Carroll, Burdick & McDonough in San Francisco where he handles commercial litigation and insurance coverage disputes.

Book details problems inside Lloyd's

"Risky Business: An Insider's Account of the Disaster at Lloyd's of London"
By Elizabeth Luessenhop and Martin Mayer
Published by Scribner, 1230 Ave. of the Americas, New York, N.Y., 10020
$25

Books & Ideas

By Kevin M. Quinley

TO MANY IN THE FIELD of risk, Lloyd's of London is the insurance equivalent of Lourdes. Stately and venerable Lloyd's evokes in most people a sense of stability that only a long-standing institution can engender.

Many think of it as a specialty insurer that insures everything from a starlet's legs to the hands of an NFL quarterback. Most risk managers consider Lloyd's of London to be more than just another insurance company.

In fact, it really is not a monolith but rather a small society of about 30,000 private individuals—roughly 10% of whom are Americans—who accept the risk of unlimited liability and pledge their wealth to back the insurance policies Lloyd's writes.

So long as premium calculations are sound, everyone prospers.

Well, at least that is how it was supposed to work—and that is how it indeed did work for hundreds of years.

Recent history, however, has produced perilous years for Lloyd's.

By extension, they also were rocky for the Names who backed Lloyd's business. It was also during the go-go years of the 1980's when the Names grew by 50% to cover the disastrous losses the company began to suffer.

One of those American names was Elizabeth Luessenhop.

Her new book, "Risky Business," offers risk managers a revealing peek inside the recent faltering of Lloyd's of London. Written with financial veteran Martin Mayer, the book is a detailed account of how the management—or mismanagement—of Lloyd's has affected thousands of U.S. investors who, like Ms. Luessenhop, sought low risk and high security for their money.

Although it is a British company, Lloyd's has a strong impact on the U.S. business community and the risk management landscape.

For starters, it is a huge source of reinsurance capacity, backstopping U.S. insurers.

Many seemingly sophisticated, well-known U.S. businesspeople are among the ranks of names.

They include Charles Schwab, Transamerica Corp. Chairman James Harvey, former Undersecretary of the Treasury George Gould, Senior Partner James Boggs of the famous Washington, D.C., lobbying firm Patton Boggs, and U.S. Supreme Court Justice Stephen Breyer.

Also identifying many of the key influential players inside Lloyd's, Ms. Luessenhop and Ms. Mayer make a case for how irresponsibility, incompetence, greed and fraud at one of the world's most venerated enterprises caused the company to lose $12 billion over the past decade.

One problem with a muckraking book like this is that it tries to tell a story still in progress, a tale still unfolding. The final chapter on Lloyd's has yet to be written.

History is likely to overtake the chronicle described in "Risky Business" as Lloyd's moves forward (*see story, page 1*).

Combining the revelatory wit and charm of "Liar's Poker" with the dramatic pacing of "Barbarians at the Gate," "Risky Business" takes risk managers inside a unique business institution and makes clear that the ramifications of a possible Lloyd's failure will not only be severe, but they will be felt globally, as well.

Any attempt to write Lloyd's obituary may be premature, though.

Lloyd's has proven itself to be a resilient organization. To paraphrase author Mark Twain, reports of Lloyd's death and demise may be greatly exaggerated.

Many in the insurance industry believe that it has a collective interest in seeing to it that Lloyd's survives, if only due to the shock waves that would reverberate throughout the market in the wake of a Lloyd's dissolution.

Whether you are a supporter or detractor of Lloyd's, "Risky Business" is an interesting read for anyone who works in insurance and risk management. BI



Kevin M. Quinley is senior vp of risk services for MEDMARC Insurance Co. Inc. and subsidiary Hamilton Resources Corp., both of Fairfax, Va. He holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Liability policy to cover apartment molestation claims

Legal Briefs

The definition of "occurrence" in a comprehensive business liability insurance policy was ambiguous, according to the Supreme Court of Virginia. Thus, the court held that the policy has to be construed in favor of coverage.

West American Insurance Co. had issued a policy of comprehensive business liability insurance to the owners of an apartment building.

Seven lawsuits were filed against the owners of the apartment building. The suits claimed that infant claimants were sexually assaulted and/or molested on multiple occasions by the building owners' resident manager.

The claimants asserted that the owners were negligent in their hiring, selection, retention and supervision of the manager.

The policy covered bodily injury or personal injury caused by an occurrence.

Occurrence was defined in the policy as an accident resulting in bodily injury neither expected nor intended and with respect to personal injury, the commission of an offense, or a series of similar or related offenses.

The insurance company brought this action, seeking a declaration that the claims constituted a single occurrence and were limited to the maximum recovery of $1 million.

The trial court in the case agreed with the insurance company.

The appellate court, however, concluded that the definition of occurrence in the policy was susceptible to numerous interpretations and was, therefore, ambiguous.

For example, the court said that an occurrence could be deemed as any one of several events: the policyholders' negligence in hiring of the manager, or the policyholders' negligent supervision of the manager, or the policyholders' negligent retention of the manager.

The court said it was incumbent upon the insurance company to use language sufficiently clear to avoid any such ambiguity if the insurance company desires to limit its coverage.

Finding the policy ambiguous, the court construed the policy in favor of the claimants, concluding that each of the seven infant claimants could recover up to the $1 million maximum.

S.F. vs. West American Insurance Co., Supreme Court of Virginia, Nov. 3, 1995 (*BI*/04/My.-$10). BI

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

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Ad injury

Continued from page 3

the scope of possible coverage for advertising injury as misappropriation of advertising ideas, it is clear that the scope of (Electronic Security's) lawsuit was much broader," the appeals court ruled.

"We thus agree with the district court that Hartford breached its duty to defend under these policies. We do not necessarily agree with the district court's broader conclusion, however, that allegations of misappropriation of a customer list, because it comes within common law concepts of unfair competition, can alone trigger coverage under the language of these policies pertaining to 'misappropriation of advertising ideas,'" according to the 9th Circuit.

"Because we conclude that (Electronic Security's) suit raised a potential for liability under the offense of misappropriation of advertising ideas we need not consider whether (Electronic Security's) suit raised a potential for liability under any other enumerated offenses."

The ruling "definitely expanded the meaning of what constitutes advertising injury," Ms. Meedon said.

But she said it was another case of an insurer looking to deny coverage.

"It's sad when insurance companies sell you a product based on 'You will be covered,' and then when it comes to putting their money where their mouth is they tell you, 'No, you are not covered,'" she said.

"So not only are you fighting a case that runs hundreds of thousands of dollars (to defend), but you are also trying to get coverage on the other end and they are fighting you tooth and nail," Ms. Meedon said.

William Savino, a partner with Rivkin, Radler & Kremer in New York, said the court mistakenly ruled that theft of trade secrets can be equated with the misappropriation of advertising style.

Mr. Savino consulted on the case and spoke on behalf of Hartford. Theft of trade secrets is an altogether different tort than misappropriation of advertising and the former should not be covered as advertising injury, he said in an interview.

In any future cases, "we intend to vigorously litigate this question again, wherever it has to be litigated, until we believe courts do understand the distinction between misappropriation and theft of trade secrets and how those torts are different," Mr. Savino said.

However, the 9th Circuit's decision was, in part, favorable for insurers because the court went out of its way to state that theft of a mere customer list alone is not enough to bring a misappropriation complaint under advertising injury, he said.

"That is not going to be within the scope of the advertising injury provisions no matter how hard policyholders attempt to shoehorn them into that coverage," Mr. Savino said.

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Sentex Systems Inc. vs. Hartford Accident & Indemnity Co., 9th U.S. Circuit Court of Appeals; No. 95-55980.

Minority-owned insurer in works

SAN FRANCISCO—Insurance broker Aaron Richardson and Reliance National have announced plans to form Onyx Insurance Co., which would be the United States' only African-American owned property/casualty insurance company.

The new company, to be domiciled in California, will be capitalized at more than $5 million and will be jointly owned by Mr. Richardson as the majority common shareholder and Reliance Group Holdings Inc. unit Reliance National.

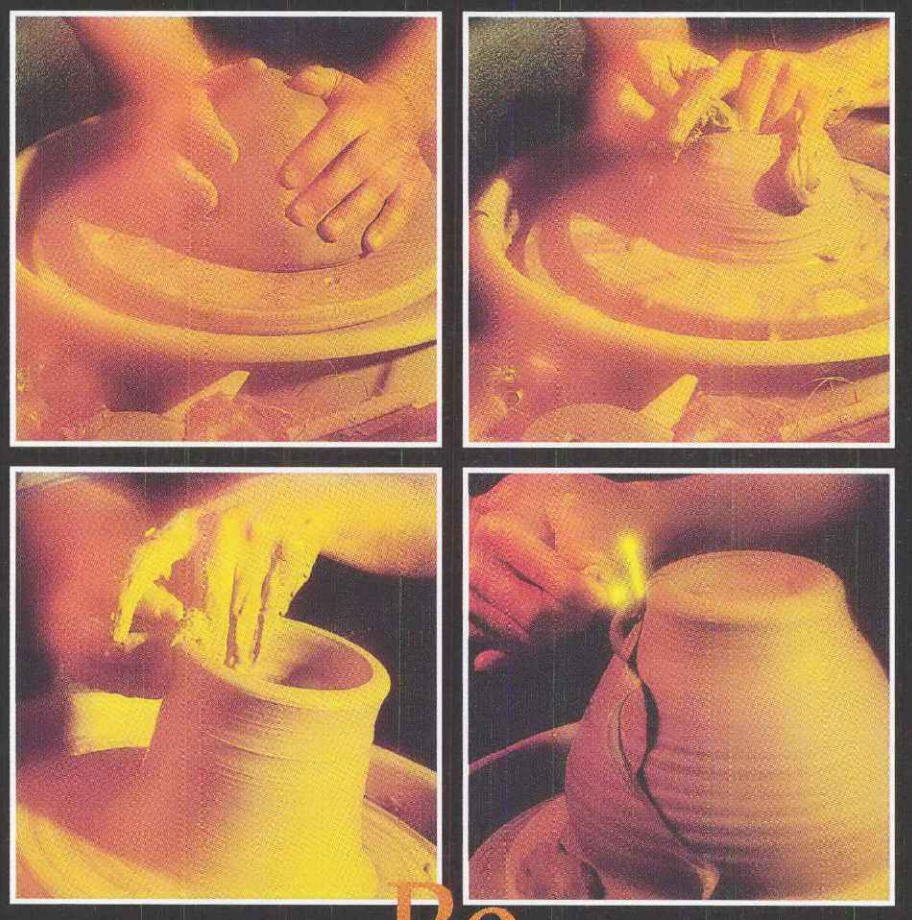
Onyx will offer a broad range of insurance products and services to public utilities, public entities and Fortune 1000 corporations, particularly those with minority-owned business enterprise procurement goals.

The company initially will focus on California-based corporations or those with significant operations in the state. Onyx will retain a small portion of each risk, reinsuring the remainder through Reliance National.

Mr. Richardson, founder and owner of the San Francisco-based Aaron Richardson Insurance Services Corp. brokerage, will serve as chairman, president and chief executive officer of the new company.

For additional information, call 415-986-3999.

—*By Rodd Zolkos*



Reshaping Ourselves

Some stereotypes of a traditional insurance company have, unfortunately, been well earned. The business has been a highly conservative world that focused almost exclusively on insurance products and then made a limited amount of options available. A world where terms were almost dictated to you. But we're out to change all that. By literally reshaping ourselves and the way we do business.

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INTERNATIONAL

Japan, U.S. talks

Deregulation talks for Japanese market continue to move forward despite snags

By MICHAEL PRINCE

WASHINGTON—U.S. and Japanese trade officials have agreed to meet later this month to continue the ongoing negotiations for deregulating the Japanese insurance industry.

Formal negotiations adjourned last month in Vancouver, British Columbia without reaching an agreement.

After a brief meeting in Washington last week between U.S. negotiator Ira Shapiro and Japanese Ministry of Finance negotiator Eisuke Sakakibara, a U.S. trade official said that although progress has been made, they will remain "difficult negotiations."

The upcoming negotiations will be the first since the Japanese Ministry of Finance granted permission last month to 17 Japanese insurers to create subsidiaries to compete in other market sectors in Japan.

To date, the Japanese have begun some deregulation. I. I.but these steps 'still had significant shortcomings that stopped them from becoming adequate,' says a U.S. trade official.

Under the terms of the MOF permission, Japanese life and non-life insurers, which formerly were restricted from selling products outside their respective sectors, now will be able to sell products in both the life and non-life sectors. It was not announced what products they will be permitted to sell, but the deregulation also applies to Japan's so-called Third Sector, which consists mainly of speciality coverages like cancer coverage, home health care and long-term disability.

The MOF has set Oct. 1 as the date the Japanese subsidiaries will be licensed to operate in the so-called Third Sector, which accounts for about 5% of the overall market and is led by foreign insurance companies (*BI*, April 22).

However, the MOF also plans to issue restrictions on Sept. 30 that will affect what business can be done in that sector.

What concerns U.S. trade officials is how these regulations will apply to the subsidiaries entering the Third Sector.

An October 1994 U.S.-Japan trade agreement calls for the life and non-life sectors to be opened to foreign insurers before any "radical" deregulation of the Third Sector takes place. Allowing the Japanese subsidiaries to operate in the Third Sector prior to deregulation of the primary sectors would be in violation of the agreement. The United States does not expect this to occur, however, and trade officials expect the Japanese to honor the agreement.

A major goal of the treaty is to allow foreign insurance companies to offer "any product at any price" in the primary sector. As an example, the foreign companies want to offer auto insurance to women at lower rates than offered to men. This was rejected by the Japanese saying it "would amount to discrimination against women," according to a U.S. trade official.

To date, the Japanese have begun some deregulation of the life and non-life sectors. These steps "still had significant shortcomings that stopped them from becoming adequate," a trade official said.

Negotiations have continued after the July 31 deadline set by President Clinton and the Japanese Prime Minister Ryutaro Hashimoto because of the progress the talks have made, a trade official said.

Award leaves British county seeking rescue from flames

By CAROLYN ALDRED

LONDON—A British municipality is making a desperate appeal to the government to be allowed to borrow money to pay a nearly £18 million ($27.2 million) court award against it for legal fees and damage caused by fire-fighting efforts.

The Hampshire County Council also plans to seek legislative changes to guarantee firefighters public immunity from legal action if it fails in its attempt to overturn a High Court ruling.

The Hampshire County Council warned earlier this summer that it would have to radically cut its budget for schools and road maintenance if it cannot borrow money to cover the award.

Hampshire County Council was ordered to pay £15.8 million ($24.7 million) after the U.K. High Court found council-employed firefighters liable for damage to a computer company's offices in Basingstoke, about 40 miles southwest of London.

Judge Havery ruled that the council must pay £4.5 million ($7.02 million) to Digital Equipment Co. Ltd., which leased the offices, £11.3 million ($17.6 million) to the offices' owner, Capital & Counties P.L.C. and £2 million ($3 million) in legal fees.



U.K. fire brigades seek immunity from legal action.

The central government tightly controls the budgets of local authorities, which cannot borrow more without authorization from the Department of the Environment.

"We will have no alternative than to wipe millions of pounds from our capital building program unless the government steps in," warned Council Leader Mike Hancock, after the council's June 22 Policy Resources Meeting.

The self-insured council has applied to the High Court for leave to appeal the High Court decision. If its appeal is upheld, the council would not have to borrow the money, because the judgment would be overturned.

Hampshire County Council claims the ruling sets an alarming precedent for public fire-fighting services in the United Kingdom.

"Firefighters have to make life-and-death decisions in the heat of the moment. It is beyond all common sense that they can be held to blame for doing their job to the best of their ability. This is a nightmare decision for fire brigades throughout the land," Mr. Hancock said.

"It means that Hampshire Council taxpayers will be forced to pay the insurance costs of buildings. The community shouldn't have to underwrite commercial insurers. Insurers collect premiums against fires—and they should pay up—not the public. We are being used to bypass the insurance system," he argued.

The council, which claims it will continue to fight the case on behalf of fire brigades nationwide, is one of many local authorities

See **Fire** on page 27

Royal & Sun results on target

First half results down, but not as low as predicted

By EDWIN UNSWORTH

LONDON—Royal & Sun Alliance Insurance Group P.L.C., the big multiline insurer formed in July by the merger of Royal Insurance Holding P.L.C. and Sun Alliance Group P.L.C., is on target to achieve savings of more than £175 million ($274.3 million) annually by the time full integration of all operations is completed in 1998.

Roger Taylor, executive deputy chairman of the new company, said last Thursday: "We have made rapid progress in integrating the two groups and are well on target to achieve our goal of full integration by 1998. We shall be in a strong position to fulfill our potential as a leading insurance company in the U.K. and internationally, and to bring to our customers and shareholders better service and enhanced earnings."

He was speaking as the company released pretax operating profits on a pro rata basis for the first half of 1996 of £450 million ($705.3 million), down from £514 million ($805.6 million) in the first half of 1995. Despite being lower, the first-half result is better than analysts' forecasts of profits in the range of £340 million ($532.9 million) to £430 million ($673.9 million).

Mr. Taylor said this year's first-half decline is partially attributed to to a £94 million ($147.3 million) increase in weather-related claims worldwide to £183 million ($286.8 million) from £89 million ($139.5 million) in the year-earlier period.

Meanwhile, total first-half premiums, including those from life insurance, increased to £4.88 billion ($7.65 billion) from £4.69 billion ($7.35 billion).

Of the anticipated savings forecast from the merger, some will come from the elimination of 5,000 jobs.

Group Finance Director Paul Spencer said that so far some 1,300 jobs cuts have been announced, mainly at key sites in Horsham and Liverpool.

More savings will result from halving to three from six the number of major London offices that the merged insurers have between them.

Some 93 branch offices also will be closed, and there will be "sig nificant" cost savings from reducing duplication in major centers where both companies have broker networks, he said.

Some £20 million (S31.3 million) of the annual cost savings will come from non-U.K. offices. While Royal & Sun Alliance said it would focus on trimming savings from operations in the United States, Italy, Spain and Ireland, Mr. Taylor declined to say anything more specific about how the savings would be achieved.

The United States contributed £52 million ($81.5 million) to first-half operating profits, down from £66 million ($103.4 million) in the first half of 1995. Net premiums written in the United States declined to £578 million ($905.9 million) from £714 million ($1.12 billion). Much of this decline came from Sun Alliance USA, the smaller of the two companies in the United States. After an agreement last year to reduce the amount of business ceded to it from Chubb Corp. and the sale of Wm. H. McGee & Co. Inc., an underwriting agency subsidiary (*BI*, July 17, 1995), Sun Alliance's U.S. net premiums fell to £71 million ($111.3 million) in the first half

See **Royal** *on page 27*

Insurers divest shares of reinsurer SCOR

PARIS—Traditional cross-holdings of shares between French insurers and reinsurers are unraveling as the companies seek a broader shareholder base.

Until late last year, Paris-based reinsurer SCOR S.A. had an agreement with its insurer shareholders that none would sell its shares in SCOR without the prior consent of the others.

That agreement has given way to an informal agreement among the same companies to divest themselves of these crossholdings so that the companies can attain more flexible shareholder bases.

SCOR now is preparing for a listing on the New York Stock Exchange.

Paris-based insurers Assurances Generales de Paris and AXA S.A. sold their holdings during July and August. AGF disposed of most of its 9.7% equity stake in SCOR by selling 2.4 million of its 2.6 million shares. The company retains a net 0.7% holding in SCOR.

The sale was conducted at the end of August at an average price of 204.5 francs ($40.26) a share. AGF made a net capital gain of 47 million francs ($9.3 million).

A company spokeswoman in Paris said AGF's balance sheet does not carry any provisions for SCOR losses. AGF is diverting reinsurance business through its 46%-held reinsurer, SAFR.

AXA S.A. sold all of its 9.75% holding, 2.61 million shares, during July and August.

The sale was in six installments at an average price of 204.3 francs ($40.23). An AXA spokeswoman said the SCOR share price was high during these months. AXA S.A. has its own group reinsurer, AXA Re.

UAP has yet to dispose of its 41% stake in SCOR. A UAP spokesman said the company was planning to dispose of a "significant" amount but may probably wait until closer to the time later this fall when SCOR applies for a listing on the New York Stock Exchange.

Other insurance industry sources suggest UAP may dispose of its SCOR shares within a matter of weeks.

The UAP Group's reinsurer is Pan Euro Reinsurance Co.

—By Maria Kielmas



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  Presented by Marsh & McLennan, Incorporated and Centre Reinsurance
- EMPLOYER'S PRIVATE ROUNDTABLE
- EARLY REGISTRATION AND WELCOME RECEPTION

THURSDAY, NOVEMBER 7, 1996

- REGISTRATION AND CONTINENTAL BREAKFAST
  Hosted by Kemper National Insurance Companies
- OPENING REMARKS FROM THE CHAIR
- CONFRONTING WORKPLACE VIOLENCE AS A WORKERS COMPENSATION ISSUE
- REFRESHMENT BREAK AND TABLETOP EXHIBITS
  Hosted by Commonwealth Risk Services, Inc.
- POINT/COUNTERPOINT SESSION: INTEGRATING MANAGED CARE APPROACHES INTO WORKERS COMPENSATION
- ELECTRONIC DATA INTERCHANGE
- LUNCHEON: WHY SOME EMPLOYERS DO SO MUCH BETTER THAN OTHERS AT WORKERS COMPENSATION
  Hosted by Intracorp
- CASE STUDIES:
  - U.S. Air, Inc. Case Study: Alternative Collateral Raises $70 Million
  - Creative Safety Incentive Programs
  - Return to Work
  - Reducing & Managing Repetitive Stress Injuries
- RECEPTION

FRIDAY, NOVEMBER 8, 1996

- BREAKFAST
  Hosted by GENEX Services, Inc.
- OPENING REMARKS FROM THE CHAIR
- COST CONTAINMENT PERFORMANCE MEASUREMENT
- REFRESHMENT BREAK AND TABLETOP EXHIBITS
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REQUEST FOR CONSULTING SERVICES

NOTICE OF INVITATION OF LETTERS OF INTEREST

The Examination Division of the Insurance Department of the State of Connecticut ("Department") seeks to establish a pool of qualified service providers for a variety of services including actuarial and financial. Any individual or organization interested in obtaining detailed information regarding the establishment of such a pool, must submit a letter of interest to:

Frances J. O'Connor, Director
Examination Division
State of Connecticut
Insurance Department
P.O. Box 816
Hartford, CT 06142-0816

A Request for Consulting Services ("RFCS") will be sent to all individuals and organizations that submit a letter of interest to the Department. The RFCS will provide general information regarding the establishment of the pool of qualified service providers, and outline the specific needs of the Department. In addition, the RFCS will set forth the mandatory requirements for each of the Department's needs. The RFCS will invite individuals and organizations to submit a Statement of Qualification ("Statement") to the Department, in which the applicants will be required to outline their qualifications and provide a statement of usual fees. A committee appointed by the Division Director will review the Statements received by the Department, and all those that meet the Department's criteria as established in the RFCS will be placed on the Division's Qualified Service Provider List ("List").

The List will be used as the basis of selection when the need for a specific service arises. When such a need arises and after it has been established that no conflict of interest exists, one or more qualified service providers will receive a letter of intent from the Department. The ultimate decision for an award of any contract will be made by the Insurance Commissioner.

All letters of interest must be received no later than 12:00 noon, September 15, 1996.

In establishing a pool of qualified service providers, and ultimately engaging the services of a service provider, the Department will comply with all applicable provisions of the Connecticut General Statutes and federal laws. Nothing in this Notice should be construed as an offer to contract or a contract.

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Vice Presidents, General Managers and Other Administrative Personnel	4,884
Financial:	
Chief Financial Officers and Vice Presidents of Finance	3,011
Secretaries, Treasurers, controllers and other Financial Personnel	2,827
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	17,307
Sub-total	**29,775**
Associations	301
Government, Unions and Educational Institutions	969
Commercial Consumers	
Sub-total	**31,045**
Insurance Agents and Brokers	8,664
Insurance Companies	7,831
Accountants, Actuaries, Attorneys & Consultants	3,148
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,880
Others Allied to the Field	680
Total Qualified	**53,248**
Non-qualified	12
Single Copy Sales	40
TOTAL CIRCULATION	**53,300**

★ *Source Business/Occupational breakdown of qualified circulation, May 27,1996 Issue, as submitted to BPA for June 1996 BPA Publisher's Statement*

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

GEORGE F. GRODE, Insurance Commissioner of the Commonwealth of Pennsylvania, Plaintiff
v.
THE MUTUAL FIRE, MARINE AND INLAND INSURANCE COMPANY Defendant

No. 3483 C.D. 1986

ORDER

AND NOW, this 26th day of August, 1996, upon consideration of the Rehabilitator's motion to confirm cedent claims eligible for distribution, and, after notice to all known cedents and others, it is hereby ORDERED that only those cedents listed on Exhibits "A" and "B" to said motion, as well as Imperio Reinsurance Company (U.K.) and Syndicate 602, shall be eligible for distribution of funds from The Mutual Fire Marine and Inland Insurance Company (In Rehabilitation), subject to the adjustment and/or Court approval of their claims.

CHARLES A. LORD, Senior Judge

REQUEST FOR PROPOSALS

REQUEST FOR PROPOSALS

The County of Onondaga, New York is soliciting proposals from brokers qualified to service its property/casualty insurance needs. A copy of the specifications can be obtained by written or FAX requests to:

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LEGAL NOTICE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION OF GENEVA ASSURANCE SYNDICATE, INC. **NO. 96 CH5093**

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on July 11, 1996, the Circuit Court of Cook County, Illinois entered an Agreed Order of Liquidation With a Finding of Insolvency against Geneva Assurance Syndicate, Inc. ("Geneva"). Mark Boozell, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of Geneva ("Liquidator").

TAKE FURTHER NOTICE, that on August 6, 1996, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and Claim Filing Deadlines ("Fixing Order"). Pursuant to the Fixing Order, all rights and liabilities of Geneva and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of July 11, 1996, unless otherwise provided in prior or subsequent orders of the Court.

TAKE FURTHER NOTICE, that all persons and entities who have, or may have, claims against Geneva, its property or assets, or against a Geneva insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before July 11, 1997 at 4:30 p.m. (C.D.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by Geneva shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before July 11, 1997 at 4:30 p.m. (C.D.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before July 13, 1998 at 4:30 p.m. (C.D.T.). Any contingent claim for which a proper proof of claim is filed on or before July 11, 1997 at 4:30 p.m. (C.D.T.), but which is not liquidated on or before July 13, 1998 at 4:30 p.m. (C.D.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Geneva, at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to Geneva upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST GENEVA, OR ITS POLICYHOLDERS, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE JULY 11, 1997 AT 4:30 P.M. (C.D.T.).

Peter G. Gallanis
Special Deputy Receiver

Royal

Continued from page 23

from £186 million ($291.5 million).

In the United Kingdom, Royal & Sun Alliance's first-half operating profit dropped to £182 million ($285.2 million) from £274 million ($429.4 million), though net premiums improved to £1.80 billion ($2.82 billion) from £1.73 billion ($2.71 billion). The earnings deterioration was attributed mainly to a near doubling of weather-related losses in the United Kingdom to £112 million ($175.5 million) and from £12 million ($18.8 million) in claims from the Manchester and London Docklands bombings (*BI*, June 24; Feb. 19).

Group Chief Executive Richard Gamble said that while competition in the United Kingdom remains intense, there are initial signs of some improvement in certain classes. These include the motor and household accounts, where rates are showing signs of stabilizing, and commercial business, where competition for good business appears to be easing. BI

Fire

Continued from page 23

that have turned to self-insurance in recent years in an effort to cut costs.

Of the council's £1 billion total annual budget, about £32 million ($49.9 million) goes to the fire brigade. The council's entire current budget is allocated, with no provisions set aside for potential liabilities, the council informed the judge.

If Hampshire fails to obtain permission to appeal the judgment, it plans to start a major lobbying campaign to have the law changed to ensure firefighters have some immunity against legal action, a council spokeswoman said.

The Assn. of County Councils also is concerned about the judgment. "There is a distinct danger that if the judgment is upheld it may affect the way fires are put out. We are also concerned about it because of the impact on council budgets," said an ACC spokesman.

Commercial underwriters and fire services are watching the issue closely, because at least two other liability lawsuits claiming damages from public fire brigades may be appealed.

This follows a spate of judgments on the duty of care owed by fire brigades, including the June award against the Hampshire fire brigade, which was the first property claim to succeed in the English High Court against a fire brigade.

"Following a century of 'no comment' " the courts have been asked to hand down five decisions within six months commenting on the fire brigade's duty of care," said John Hanson, a partner of Barlow Lyde & Gilbert, which represented Digital.

The Hampshire judgment appears to widen the liability of fire brigades just weeks after two other judgments appeared to support wider public immunity, said the Assn. of County Council's spokesman.

In fact, at the Hampshire Council's request, Judge Havery waited for rulings in the two other cases before making his final judgment.

In February, Judge Crawford ruled that the Church of Jesus Christ of Latter Day Saints could not claim damages from the West Yorkshire Fire and Civil Defence Authority for damage to a Huddersfield church in the fall of 1992. The church, which does not insure its properties, claimed the fire brigade had negligently, and in breach of its statutory duty, failed to properly maintain fire hydrants or to secure enough water.

In April, Justice Rougier found that Wimbledon-based company John Munroe Acrylics could not claim damages against the London Fire and Civil Defense Authority for the failure to discover onsite that a fire still was smoldering.

Judge Havery, however, ruled that in both these cases the fire brigade had failed to take action.

In contrast, in the Digital case, "the Fire Brigade. . .committed a positive act of negligence for which anyone else would be liable; and that neither on grounds of fairness, justice and reasonableness nor on considerations of public policy should the Fire Brigade not be liable."

The Hampshire case, which centered around the leading fire officer's decision to turn off the building's sprinkler system because he thought it wasn't being effective, was one the insurers felt obliged to bring, said Chris Palmer, U.K. insurance manager for Reading, Berkshire-based Digital, a subsidiary of Maynard, Mass.-based Digital Equipment Corp.

'There is a distinct danger that if the judgment is upheld it may affect the way fires are put out,' says a spokesman for the Assn. of County Councils.

Digital was insured by Factory Mutual International Ltd. and Capco was insured by Zurich International in Portsmouth, a subsidiary of Zurich Insurance Co. Ltd.

"The building had an intelligent building system with smoke detectors and sprinklers. The system monitored everything that was happening," said Mr. Palmer.

Forensic investigations after the 1990 fire showed the fire increased after the fire brigade switched off the sprinkler system, said Mr. Palmer.

The insurers, which indemnified Digital and Capco for damages amounting to almost £20 million ($31.2 million), "felt that there was too much evidence of a mistake to ignore it," said Mr. Palmer.

Ken Davies, senior general adjustor for Factory Mutual Insurance Co. Ltd., said the insurance companies' reason for bringing the case is obvious from the judgment, noting it is the first such case the company has brought against a fire service in the United Kingdom.

Other defendants in the original lawsuit—including the office builders, maintenance contractors, architects, and manufacturers of the electrical product that ignited—settled shortly before the trial began. But Hampshire County Council refused to contribute to the settlement.

In his judgment, Judge Havery said he was "satisfied that if the sprinklers had not been turned off, the fire brigade would have extinguished the fire."

Judge Harvey described the decision to turn off the sprinklers "as a bad blunder" and a decision "so unreasonable that it cannot be described as other than negligent."

Hampshire County Council argued in court that the case could open a floodgate of lawsuits against fire services, but Judge Havery disagreed.

"The floodgates argument has been persuasive. . . .The courts are not astute to find professional persons who make a mistake guilty of negligence," he said.

"In the case of the fire brigade there are often, as there were here, the added elements of danger and urgency. Unmeritorious actions against fire brigades will not be successful. I do not think it likely that there should be a flood of such actions in the absence of blanket immunity. Certainly, I do not consider that the possible risk of that is a reason for denying an otherwise just claim," he concluded.

"The brigade should not have a blanket immunity so that no remedy would be available to an injured plaintiff even in the case of the most glaring negligence," Judge Havery ruled.

Andrew Deighton, a partner in the London law firm of Barlow Lyde & Gilbert, also believes fears of a flood of commercial claims against public fire brigades are overstated owing to the degree of negligence in this case.

The judgment rests on the facts of the case, he said. The negligence in the case "was overwhelming. It was a clear case of liability where the fire brigade took a positive act of negligence in turning off the sprinkler system," he said.

Mr. Deighton agreed that the case was one of several in the last few years in which the liability of public bodies has been considered and developed. These include a ruling in March this year by the Court of Appeal, Swinney vs. Chief Constable of Northumbria Police, which held that police did not have a blanket immunity.

Meanwhile, in an earlier case, the Admiralty Court ruled on March 6 that the London Fire and Defence Authority must pay 75% of the damages incurred when a pleasure cruiser owned by Crown River Cruises Ltd. caught fire.

The incident occurred when a fireworks display to celebrate the 50th anniversary of the Battle of Britain in September 1990 resulted in a firework igniting a barge on the River Thames.

The London Fire Brigade was sued for failing to extinguish the fires, which then spread to the adjacent cruiser. Kimbolton Fireworks Ltd., which manufactured the fireworks, was found 25% responsible for the damage.

The case is not being appealed by the LFDA, said an LFDA spokesman. BI

Losses from Pemex plant explosion may top $1 billion

MEXICO CITY—Total losses from an explosion this summer at a Mexico gas processing plant could reach $1 billion, according to some oil industry experts.

The July 26 explosion at the Petroleos Mexicanos, or Pemex, shut down one-third of Mexico's gas processing capacity, bringing gas exports to a halt and forcing the government to increase imports from the United States, Saudi Arabia and Algeria (*BI*, Aug. 5). Mexico's petrochemical industry, a major consumer of gas, also temporarily closed down after the explosion.

Insurers and reinsurers that wrote coverage for the plant in southern Mexico have appointed adjusters to calculate losses stemming from the blast.

No figures for Pemex's ultimate losses have been released. Pemex said in a statement, however, that the explosion and resulting partial production had cost the company $18.1 million in lost production.

Replacement of the wrecked units at the plant may cost about $250 million, oil industry experts suggested after the blast. But once costs due to lost production and exports, as well as necessary gas imports are taken into account, the final loss for Pemex could approach $1 billion, experts say.

The direct insurer involved in Pemex's overall insurance program, Aseguradora Mexicana, or Asemex, has appointed loss adjuster Cunningham International, a division of London-based Cunningham Group, according to information released by Pemex.

The reinsurers, who are unnamed, have appointed London-based Thomas Howell Group as loss adjusters. Pemex itself has hired Irvine, Calif.-based engineering firm Fluor Daniel Inc. to conduct an independent damage assessment study.

According to insurance market sources, Asemex acts as a fronting company in Mexico, passing Pemex's insurance program to the oil company's Bermuda-based reinsurance captive, Kot Insurance Co. Kot, in turn, reinsures on the international market to unidentified reinsurers through brokers Alexander Howden Reinsurance Brokers.

The Pemex statement did not say if it has business interruption coverage.

—By Maria Kielmas

Services Guide

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ALI

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against an earlier one-client proposal initially adopted by the ALI drafters.

A revised draft of the proposal could be issued later this month and voted on by the full membership of the ALI at its next annual meeting in May 1997.

But the proposed revision has sparked a heated dispute between experts in legal ethics and insurance law.

Some legal observers contend the organization's acquiescence to the insurance industry's lobbying hurts the prestige of the ALI, and also say the co-client approach compromises lawyers' ethics.

Insurer attorneys and other observers say, though, that the input of the insurance industry helped the ALI members better understand the issues.

The key section of ALI's draft proposal that sparked the dispute is Section 215, which said: "A lawyer might be designated by an insurer to represent the insured under a liability insurance policy in which the insurer undertakes to indemnify the insured and to provide a defense. The lawyer represents the insured. The insurer is not, simply by the fact that it designates the lawyer, a client of the lawyer."

"That drove everyone in the insurance defense bar berserk," according to William Barker, a partner with Chicago's Sonnenschein Nath & Rosenthal and leader of the lobbying effort to revise the draft proposal. He contends that the insurance company should be considered a co-client except when a conflict exists, as is now the practice under insurance law.

"This is a real document with real consequences on real lawyers, not an abstract document," said Ronald Mallen, an ALI member with San Francisco's Long & Levit who represents insurance companies. "It failed to deal with the real world."

The language in Section 215 would have altered the way the insurance industry now operates. The general rule of law is that a third-party payer cannot control the attorney. But this changes when an insurance company is the third party, said Mr. Barker, and in those cases the insurer is considered a co-client. "There was a tacit understanding that third-party payer meant non-client," he said.

The practical problem for insurance defense attorneys is that lawyers have loyalty to the insurance company that hired them, paid them and will hire them in the future. An ethical rule that forces lawyers to devote their exclusive loyalty to the client—when that client is a policyholder who may be in conflict with the insurance company—creates a conflict for the lawyer.

If, for example, the lawyer learns information from the policyholder that would support the insurer's non-coverage contention, he might feel obligated to notify the insurer.

To change the proposed one-client approach being considered by the ALI, the insurance industry began a concerted lobbying effort similar to efforts directed at members of Congress.

The costs of the lobbying, including mailings and phone calls, were paid by three insurance industry groups: the American Insurance Assn., National Assn. of Independent Insurers, and the Alliance of American Insurers, said Mr. Barker. The effort included calling and writing to ALI members to press the insurance industry's position.

"We felt we had to manage to disseminate a statement of our position to the membership for them to have an opportunity to consider it before the meeting," Mr. Barker said.

Declaring the issue was "of grave concern," an insurance defense lawyer's group, the Defense Research Institute, sent an open letter to the ALI membership. Although applauding the ALI's efforts to resolve potential conflicts, the letter stated, "We urge that this area of professional responsibility rules be given a far deeper examination and that the process include the significant involvement of those segments of the legal community most affected by any resulting publication."

'This is a real document with real consequences on real lawyers, not an abstract document,' says Ronald Mallen, an ALI member.

Insurance industry representatives and defense lawyers met on numerous occasions with the drafters of the proposed Restatement, along with providing a steady stream of phone calls and letters.

"I've never encountered so many efforts to contact us by interested parties," said one of the key drafters of the ALI proposal, Charles Wolfram, a professor at Cornell Law School in Ithaca, N.Y.

Professor Thomas D. Morgan, law professor at George Washington University National Law Center in Washington, and another of the drafters, said that while input from people outside the institute is rare, the meetings were necessary to learn more about the issue. "We felt it was reasonable to get input into what the problems were and what the solutions were," he said.

Another goal of the insurance industry was to attract more ALI members to the meeting four months ago to support insurers' position. Only those who attend the annual meeting can vote on proposals to be published as Restatements.

There was "a little get-out-the-vote aspect to this," Mr. Barker said.

During the lobbying, Mr. Barker presented to members of the ALI a memo outlining the insurance industry's position that the insurance company also is a client of the lawyer. Such a view is "supported by an exhaustive analysis of the underlying legal doctrines," the memo said.

The support referred to is the work of two professors, Charles Silver of the University of Texas School of Law in Austin, and Kent Syverud of the University of Michigan in Ann Arbor. A footnote to the memo stated that the two professors conducted their research on behalf of two insurance industry legal groups, the DRI and International Assn. of Defense Counsel.

"It's certainly relevant," said Mr. Barker of the research's sponsors, but he defended the results as accurate. "They were retained to follow the analysis wherever that went," he said.

The insurance defense lawyers also enlisted a federal judge from Boston, Robert E. Keeton, to their cause. In a letter dated April 29, a few weeks before the annual ALI meeting to approve the draft, Judge Keeton proposed withdrawing the one-client approach in Section 215, saying the opposing view is supported by "judicial decisions that are not only greater in number but also better-reasoned."

The judge's views, however, contradict a leading textbook on legal ethics. The textbook, "The Law and Ethics of Lawyering," written by three professors of ethics—including Geoffrey C. Hazard Jr., director of the ALI—states the attorney should represent the policyholder with undivided fidelity.

"The cases hold that defense counsel's duty of loyalty to the insured bars her from taking any action that may be adverse to her clients' interests," the text states.

In addition, one expert in legal ethics attacked Judge Keeton's letter.

"His expertise is not with ethics but with insurance law," said Monroe Freedman, professor of legal ethics at Hofstra University Law School in New York and a member of the ALI.

That, in fact, is the crux of the dispute: In drafting the Restatement, the ALI reporters touched upon insurance law, an area out of their expertise. The insurance lawyers say the ethics experts don't understand insurance law, while the ethics experts say the insurance lawyers don't know ethics law.

"We were talking slightly different languages," Mr. Barker said of the proposal's authors.

Professor Freedman argues that ethical rules state an attorney owes his undivided loyalty to the client, not to the person who pays the bill. In order for the lawyer to have dual loyalties, he says, the policyholder client must explicitly agree to that arrangement after being told of the ramifications.

But insurance lawyers contend policyholder clients agree to that arrangement when they sign the insurance contract. Insurer defense attorneys suggested revising the proposal to specify that the lawyer has to consult with the client only when there is "substantial risk" that the client won't be covered by the policy.

Mr. Mallen, an ALI member and insurer attorney, said that "substantial risk" means more than "a remote possibility of conflict." If a reservation of rights letter is issued that affects the defense of the suit, that would qualify as a substantial risk, he explained.

But this proposal is unsatisfactory to Professor Freedman.

"You cannot contract out of the ethics rules," he said. "The lawyer cannot simply say, 'That relieves me of my responsibility to get an informed consent.' "

Professor Morgan said he knows that many in the ALI disagree with the decision of the proposal's authors to meet with the insurance industry.

"At least in the eyes of some, going to people outside of the ALI was a mistake or lowered the view of the ALI," he said.

Others view it more harshly. "It's unfortunate that the entire process is completely tainted by this type of self-interested lobbying," said Professor Freedman. He says that lobbying is increasing in the ALI, and lawyers now use it to change the law to help out their next case. "It is making the ALI a brief-writing session for one side," he said.

This is inevitable, though undesirable, said Mr. Mallen. "The problem is the ALI views itself as an academic organization free of influence, and they are preparing a Restatement of the law," he said. "The Restatement has tremendous influence and their product is not neutral and has lots of influence."

"It's naive for the membership to try to maintain an insular position," he added.

The leader of the insurance industry's efforts, Mr. Barker, defends its actions. "It was not an effort to exert pressure but to make people aware this issue was coming up for discussion."

And while the revised draft has not yet been issued, Mr. Barker thinks the insurance industry's activities have had the desired effect. "The (ALI drafters) have agreed with us," he said.

"The result is one we can accept and be happy with." BI

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Hurricane

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But, Hurricane Fran not only struck farther north than Hugo, early indications were that the storm also was less destructive.

"At this point in time, (Hurricane Fran) doesn't look as bad as Hurricane Hugo," said Gary R. Kerney, assistant vp in the Property Claim Services division of New York-based American Insurance Services Group. "Hugo went ashore as a Category 4 hurricane. Fran was a Category 3 and on the weaker side."

However, there is a "dense risk inventory" in coastal North Carolina because of the resort towns, he said. Hurricane Fran also "has the potential to cause a tremendous amount of rain. . .which could add to the overall loss total," Mr. Kerney said.

PCS expects to have an insured property loss estimate from the hurricane late this week.

Hurricane Fran marks the seventh catastrophic event to occur during the second half of 1996, according to PCS.

The first six months of 1996 marked the second-costliest such period on record, with an estimated $4.2 billion in insured property damage, according to PCS (*BI*, July 22). Twenty-three catastrophic events occurred during the first half of the year, the second-highest frequency on record.

A preliminary damage estimate from Menlo Park, Calif.-based Risk Management Solutions set insured losses from Hurricane Fran between $450 million and $900 million. RMS estimated the total insured value of property in the coastal counties from Myrtle Beach, S.C., and Wilmington, N.C., at $35 billion.

On Friday, insurers were still assessing damage caused by Hurricane Fran.

"From our initial examination, it doesn't appear we will have the volume of claims Hugo brought," said a spokesman for State Farm Insurance Cos. "It's hard to get a handle on it beyond that." After Hurricane Hugo, the Bloomington, Ill.-based insurer received 93,000 claims and paid out $450 million.

State Farm so far has sent 600 claims adjusters and support staff to the affected areas to set up satellite offices.

Travelers/Aetna Property Casualty Corp. sent a team of 25 claim specialists to the affected area to join the company's local claim staff in preparing to help customers affected by Hurricane Fran.

A spokesman for the Hartford, Conn.-based insurer said while it had both commercial and personal lines exposures in the affected areas, "it is not a very big exposure."

"I've heard preliminary predictions that the total insured loss for companies is less than $1 billion," said Jack Weber, executive director of the Natural Disaster Coalition in Washington. So far, "it looks like a lot of flood damage," and insurers do not bear the risk of that, the government does.

Indeed, the Insurance Services Office Inc.'s standard commercial property policy excludes coverage for damage caused directly or indirectly by flooding.

And policyholders typically cannot collect for business interruption losses unless they also are covered for the underlying physical loss that interrupts operations. Insurers write flood coverage via specific endorsements and difference-in-conditions contracts that supplement property coverage for larger risks.

Due to the limited capacity for flood risks in the commercial insurance marketplace, many small businesses and individuals are left with only the low limits and no business interruption coverage available from the National Flood Insurance Program.

By midday Friday, a spokeswoman for the Federal Insurance Administration, which oversees the NFIP, said the government agency had not received word of any declared states of emergency. If that occurs, the administration will send emergency funding to assist those in the affected areas.

As residents and government officials in North Carolina worked to recover from the storm, their counterparts in South Carolina, where memories of Hurricane Hugo are still fresh, breathed sighs of relief Friday.

"We are a blessed state," said Jim Byrd, deputy director in the Office of Consumer Services of the South Carolina Insurance Department in Columbia. "For what North Carolina got, we certainly sympathize with them."

A report from Gov. David Beasley's Friday morning flyover of affected South Carolina sites indicated "very little damage," Mr. Byrd said. "We probably had more trees down than structural damage."

Beach areas around Myrtle Beach, S.C., were already preparing to reopen Friday morning, the South Carolina insurance official said.

While they aren't expecting any damage "that will lead to massive claims being reported," South Carolina officials do expect some reports of minor structural damage to homes along the North Carolina border and planned to have the Insurance Department staffed over the weekend, Mr. Byrd said.

In Chicago, Hurricane Fran provided an opportunity for Chicago Board of Trade's catastrophe options market to function exactly as its proponents have said it should. The record-setting 3,308 contracts traded Thursday matched the market's previous three months' trading volume.

"It was interesting. There were buyers and sellers, people willing to take an opinion in both directions in front of the hurricane making landfall," said J. Michael Crouch, vp and treasurer at CBOT member firm Kottke Associates.

"It was a fairly exciting day," Mr. Crouch said. "A lot of firms that we haven't seen in a while came in either as buyers or sellers, essentially buying or selling reinsurance right on that same day's activities."

"One of the things about the futures market is you're never really sure who the ultimate buyers are, because all we see are the clearing firm names," he said. But, he said, some of the clearing firms active in the catastrophe option market Thursday "represent real live insurance entities."

CBOT officials estimated Thursday's trading gave the insurance industry $6.6 million in coverage capacity.

"Obviously we would like to trade at times other than a hurricane, but what we're pleased about is this represents a facility where if you have to change your mind or re-evaluate your position, you can do that in a very short period of time, even as the event is occurring," Mr. Crouch said.

Along the coast, storm preparations went beyond evacuation of residents.

A Carolina Power & Light spokesman said the utility's decision to shut down both units at its Brunswick nuclear plant in Southport, N.C., "is the normal process we would follow." Two Nuclear Regulatory Commission employees remained in the plant's control room during the storm.

The reactor did not suffer any damage because of the storm, the spokesman said, and the plant suffered only superficial damage to some buildings.

The NRC also announced that a General Electric Co. nuclear fuel fabrication plant in Wilmington shut down in anticipation of the storm. The plant, which also produces parts for jet engines, was shut down as both a precaution and to allow employees to go home, not because of any government guidelines, a company spokesman said,.

The storm disrupted Amtrak's train service along some of its Atlantic coast routes. The Auto Train that runs from Lorton, Va., to Sanford, Fla., was canceled in both directions on Thursday. Also canceled were two trains from Miami and Tampa to New York while other trains along the same route ended in Jacksonville, Fla., Amtrak announced.

CSX Corp. also canceled freight train service in the region.

At least nine Belk Stores Services Inc. locations in Fran's path took precautions against the storm following a detailed hurricane contingency plan based on the company's experience with Hurricane Hugo, which devastated a number of stores.

"We've taken this storm much more seriously than a few years ago," said Eston Walling, senior vp for the Charlotte, N.C.-based chain of 250 department stores.

After Hugo, the company revised its hurricane planning in 1990 and has revised the plan again since.

The plan is focused not as much on protecting the stores but in getting them up and running after the storm clears. The key "is to be able to react to the partial loss of a store as quickly and rapidly as possible," Mr. Walling said, as there is "not a whole lot you can do in the way of preparation prior to an occurrence."

As part of the plan, the company can shift people and merchandise between stores that were not affected to those that were damaged.

Louisville, Ky.-based KFC Corp. has a 25-page disaster response plan that was largely developed after Hurricane Andrew devastated south Florida in 1992, said Chris Mandel, the company's director of risk management. Like the plan for Belk Stores, the recently updated plan focuses on getting stores operational after a disaster.

Even the best of plans, however, cannot be foolproof. A major component of KFC's plan is the establishment of an emergency operations center located away from the storm's path. For Fran, Raleigh, N.C., was chosen—a poor choice, it turned out, as Fran hit Raleigh with unexpected force, causing flooding and damage to KFC stores there.

Holiday Inn Worldwide in Atlanta, issued a hurricane preparation bulletin to its franchisees located in Fran's path.

Holiday Inn urges guests in threatened areas to leave, said Wendell Couch, director of Technical Services at Holiday Inn, and if an evacuation order is issued, as was done in some areas with Fran, insists they do so.

A problem arises, Mr. Couch said, when people try to check in. "It's not uncommon for news people to register" during hurricanes, he said.

For those brave, or foolish, enough to ride it out, "we ask them to sign a waiver, if the local authorities permit them to stay," Mr. Couch said.

If there is a mandatory evacuation order and guests refuse to leave, Holiday Inn will bring in the police to physically remove them. BI

Reforms reduce some work comp exams: Study

By JOANNE WOJCIK

The cost and frequency of medical-legal exams involving permanent partial disability and stress claims have declined significantly since workers compensation reforms were enacted in California, a new study shows.

However, workers compensation claims in general are taking just as long—if not longer—to resolve, the study also found.

The report is the first on the impact of the 1993 reforms to be released by the California Commission on Health and Safety and Workers Compensation.

The study, which also looked at the impact of 1989 and 1991 reforms, was conducted by the UC DATA Survey Research Center at the University of California at Berkeley using data provided by the Workers Compensation Insurance Rating Bureau.

The study looked at various issues related to medical-legal exams—medical evaluations that are arranged by the worker, the employer or both to determine legal issues related to the injury, such as the extent of a permanent partial disability.

According to the study, the total cost of medical-legal exams in permanent partial disability cases declined more than 84% to $64.5 million in 1994 from $394.5 million in 1991.

In addition, the average cost per exam has declined nearly 38.6% to $606 for the 1994 accident year from $987 for the 1991 accident year, the study showed.

The average number of exams per claim also declined by half to 1.1 exams for the 1994 accident year from 2.2 exams for the 1991 accident year.

Both the 1989 and the 1993 reforms attempted to reduce the number and cost of medical-legal reports by forensic doctors, a situation that had been labeled the "dueling docs" syndrome. For example, a fee schedule was established by the reforms for the cost of each medical-legal examination, which could be conducted only by a qualified medical examiner selected by both the injured worker and the insurer and/or employer.

The study also found significant reductions in the number and cost of psychiatric medical-legal examinations, with the costs of such exams dropping to $5.9 million in 1993 from $93.8 million in 1991.

Reforms in 1989, 1991 and 1993 severely restricted recoveries under workers compensation for psychiatric injuries, known as "stress claims."

The study didn't find any statistically significant improvements in the time it takes to resolve workers compensation claims. In fact, cases filed after 1989—the first year the reforms were enacted—appear to be reaching resolution more slowly than cases from the 1989 injury year, the study pointed out.

The Commission on Health and Safety and Workers Compensation, which was created by the workers compensation reform legislation of 1993, is charged with overseeing the health and safety and workers compensation systems in California and recommending administrative or legislative modifications to improve their operation.

The commission also conducts continuing examinations of the workers comp system and of the state's activities to prevent industrial injuries and occupational diseases.

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For a free copy of the report, contact Christine Baker, Executive Officer, Commission on Health and Safety and Workers Compensation, 30 Van Ness Ave., Suite 2122, San Francisco, Calif. 94102; 415-557-1304; fax: 415-557-1385. The report also is available through the Department of Industrial Relations' Internet Web site at: http://www.dir.ca.gov.

Alabama

Continued from page 3

finishing company has been in operation since the 1950s, and for most of that time has operated an electroplating operation that created liquid waste containing cadmium, chromium, cyanide and zinc.

Eventually, the contaminants polluted a stream and area ground water, prompting the Alabama Department of Environmental Management in 1986 to order Alabama Plating to clean up its contamination problem.

Alabama Plating sued its insurers, arguing that the term "sudden and accidental" in the policy exclusion is ambiguous and should not be read to denote an element of immediacy. Instead, it argued the term can apply to events that are "unexpected and unintended," and said its contamination problem was indeed unexpected and unintended.

The state high court's decision to preclude coverage for policyholders' gradual environmental contamination claims comes on the heels of 11 other similar state high court decisions.

"This issue has been the subject of numerous opinions and we find the better-reasoned view to be. . . that the word 'sudden' is unambiguous and has a temporal meaning in the context of the pollution exclusion," the high court said in its opinion.

The ruling "clearly tilts the balance of state supreme courts in the direction of providing a clear and meaningful reading on pollution exclusion," said Walter Andrews, an attorney with Wiley, Rein & Fielding in Washington who represented the insurers in the case. "It clearly means polluters (in those states with pro-insurer rulings) cannot pass the cost of their pollution activity on to insurers" if the pollution is not abrupt, he said.

John Fried, an attorney with Anderson Kill & Olick P.C. in New York, who represented the plaintiff, said Alabama Plating will consider petitioning the court to reconsider the ruling. However, that option is rarely granted, Mr. Fried admitted.

Several state supreme court rulings have favored policyholders.

Most recently, the Arizona Supreme Court ordered a 1995 state Court of Appeals' decision depublished. The appeals court decision said the term "sudden" in the pollution exclusion clause meant "abrupt." The high court's decision means that the pro-insurer appellate ruling stands, but cannot serve as precedent (*BI*, March 25).

Nine state supreme courts—Colorado, Georgia, Illinois, Indiana, New Jersey, South Carolina, Washington, West Virginia and Wisconsin—have refused to apply the exclusion as a categorical bar for gradual pollution claims, according to the Insurance Environmental Litigation Assn. in Washington.

The Washington Supreme Court, for example, ruled in 1994 that hazardous waste that unexpectedly migrates from a landfill or other contained area can be "accidental" pollution and thus not excluded by the standard commercial general liability policy (*BI*, Sept. 19, 1994).

Alabama joins Delaware, Florida, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio and Oklahoma in enforcing the pollution exclusion to bar coverage for long-term pollution claims.

"With such a disagreement between (state supreme court) judges, one would have to believe the clause is ambiguous," Mr. Fried said.

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Alabama Plating Co. and J.M. Rowe Jr. vs. United States Fidelity and Guaranty Co., et al., Supreme Court of Alabama; No. 1941753, Aug. 30, 1996.

Superfund

Continued from page 2

gram moving and sites cleaned up," said George Baker, executive director of Superfund Reform '95, an insurance-backed coalition in Washington that advocates abolishing Superfund's retroactive liability.

"As long as they don't touch the liability reform, they're just tinkering around the edges and not addressing the underlying problem of Superfund," agreed Paul Brown, director of government affairs for the Risk & Insurance Management Society Inc. in New York.

"It's interesting that they found the money after arguing for two years that there wasn't enough money to achieve the type of reform that the Republicans were promoting. But the Clinton plan is really just tinkering," said Julie Rochman, assistant vp of the Alliance of American Insurers in Washington.

"To reauthorize the taxes without passing reform would merely commit an additional more than $1 billion to a wasteful program," said a spokesman for the American Insurance Assn. in Washington.

Reform advocates in Congress scoffed at the proposal as well, and even mentioned President Clinton's former chief political consultant—Richard Morris—in their criticism.

"Originally, Clinton's EPA Administrator Carol Browner backed my plan to reform Superfund, calling it 'wise and informed,' but once Dick Morris and the other political operatives identified the environment as a wedge issue, the Clinton administration pulled all support for the bipartisan proposal," said Rep. Sherwood Boehlert, R-N.Y., a proponent of Superfund reform that stopped far short of calling for the total repeal of retroactive liability sought by RIMS and the insurance industry.

In addition, under the president's plan, federal prosecutors would be able to get prejudgment orders putting defendants' assets under court control. They also would be allowed to conduct "sting" operations to foil attempted environmental crimes.

No one has introduced legislation embodying the president's recommendations.

The Alliance's Ms. Rochman noted that reform advocates have long urged that there be a statutory difference between people whose conduct was legal when they dumped materials at a Superfund site and those who dumped after the conduct was proscribed.

"They're talking about seizing assets prior to any conviction—they're calling people environmental criminals before they've been convicted," she said. BI

Reforms

Continued from page 1

the Senate but later stripped by congressional conferees, would have required all health care plans to offer the same benefits for mental disorders as for physical problems.

That provision, which triggered a massive, employer-led lobbying campaign, would have led to group health care plan cost increases of between 4% and slightly less than 9%, according to various studies.

But Sen. Domenici, seeking to defuse employer opposition, drastically scaled back his earlier measure. Under his latest proposal:

- Benefit parity would be defined as offering the same annual and lifetime limits for mental disorders and physical coverage.
- Lower limits still could be applied to substance abuse and chemical dependency.
- In addition, under an amendment offered by Sen. Phil Gramm, R-Texas, group health care plans would be exempt from mental health care benefit parity if the mandate resulted in a cost increase of at least 1%.

While this would appear to exempt many plans from the requirement, benefit lobbyists worry about the administrative burden it would impose.

"This could be unworkable," said Anthony Knettel, director of health policy at the ERISA Industry Committee. For example, the legislation doesn't spell out exactly how employers and insurers would prove whether equalizing annual and lifetime limits for mental disorders and physical ailments boosted plan costs by 1% or more.

And that isn't the only problem with the amendment. It also isn't clear if the measure applies to self-insured plans. The statutory language is ambiguous.

"This is a very crudely drafted bill," Mr. Ugoretz said.

But it is clear that health care plans would have to be overhauled to comply with mental health care benefit parity. Often, group health care plans have no annual limits for coverage of physical problems and $1 million to $2 million lifetime limits.

By contrast, mental health care limits nearly always are carved out separately from limits for physical problems, noted Mary Case, a principal with Kwasha Lipton L.L.C. in Fort Lee, N.J.

For example, employers often cap annual limits for outpatient treatment for mental problems at $1,000 to $5,000, while lifetime limits for mental problems often range between $25,000 and $50,000.

Those separate and lower limits for mental disorders amount to "rampant discrimination," says Sen. Domenici.

By mandating benefit parity, Congress is sending "a little ray of hope to the millions of American people" that they no longer will have "trivial coverage" for mental disorders, Sen. Domenici said.

But others say the amendment is yet another example of a congressional foray in the benefit arena without understanding the consequences.

"Government is meddling into areas that it does not know much about. They are doing what is politically expedient without knowing what is necessary," said Joseph Duva, president of J.W. Duva Associates, a New York-based managed health care consultant.

"What we have is Congress practicing medicine," said Bob Coburn, a principal with A. Foster Higgins & Co. Inc. in Washington.

The Bradley amendment on maternity care follows a spate of legislative activity at the state level. In the last two years, more than two dozen states have passed measures mandating 48-hour coverage for normal delivery and 96 hours for C-sections.

Those state laws, though, only apply to insured plans and HMOs. States—under the pre-emption provision of the Employee Retirement Income Security Act—cannot pass laws that "relate" to employee benefit plans. By contrast, the Bradley bill would apply to all health care plans, including self-funded plans.

The Bradley bill, as well as the state proposals, are a backlash to ever-shortening hospital stays for births.

For example, in 1992, a woman giving birth by vaginal delivery spent an average of 2.1 days in the hospital, down from an average of 3.9 days in 1970.

And some managed care organizations, for example, are experimenting with programs in which women and babies are discharged in 12 hours or less.

Sen. Bradley says such short stays do not allow health professionals to detect many health problems facing newborns, such as jaundice and dehydration.

But managed care organizations and others say there is no evidence that earlier discharges are leading to an increase in health care problems for mothers or their infants.

But some benefit managers are not opposed to federal intervention in this area.

"There should be a level playing field," said Michael Pikelny, corporate actuary for Hartmarx Corp. in Chicago, referring to state mandates on insurers and HMOs. "And 48 hours is a reasonable amount of time." BI

PBM creates prescription UR program

MONTVALE, N.J.—Merck-Medco Managed Care Inc. is developing a new drug utilization management system that guarantees pharmacists review certain prescriptions for senior citizens to substitute less costly, less hazardous alternatives.

The Montvale, N.J.-based prescription benefit manager is training 250 of its staff pharmacists in geriatric pharmacology, the study of the special needs of senior citizens on medications. Those pharmacists would be in contact with seniors' doctors to review the medications that have been prescribed and make changes if necessary.

The immediate goal is for Merck-Medco pharmacists to learn how to negotiate with doctors to cancel a prescription believed to be improper, change the dosage or approve an alternative. Other goals include cutting costs and reducing the likelihood of adverse drug reactions.

Merck-Medco's program, called "Partners for Healthy Aging," is a revamping of an existing program. It reorganizes prescribing criteria around 11 classes of drugs used in cases of anxiety, chronic pain, depression, diabetes, hypertension, and sleep disorders. he program is the first time a PBM has developed such extensive training requirements and standards for utilization review for older patients.

Some of the medicines to receive extra scrutiny will be anti-depressants, barbiturates and narcotic painkillers. The new approach to the guidelines was developed in association with the Philadelphia College of Pharmacy & Science.

Merck-Medco has 7 million plan members age 65 and older out of its total member base of 47 million.

—By Robert Kazel

Updates

Superfund appeal to be heard

WASHINGTON—Insurers are urging a federal appeals court to uphold a ruling that Superfund retroactive liability is illegal.

The 11th U.S. Circuit Court of Appeals in Atlanta is expected to begin hearing arguments in *United States vs. Olin Corp.* during the week of Sept. 30. U.S. District Court Judge W.B. Hand of Mobile, Ala., ruled in May that Superfund liability could not be applied retroactively because there is no statutory language stating that the law should be applied retroactively (*BI*, June 3).

He also ruled that the Environmental Protection Agency had no authority to pursue retroactive damages in the *Olin* case because the pollution occurred in a single state—Alabama. The commerce clause of the Constitution, which gives Congress the right to regulate commerce among states, gives it no such power to regulate commerce within a single state, Judge Hand wrote.

Insurer groups have filed two briefs with the appeals court in support of Judge Hand's ruling.

One, filed by the American Insurance Assn., the National Assn. of Independent Insurers and the Reinsurance Assn. of America, holds, among other things, that the U.S. Supreme Court's 1994 decision in *Landgraf vs. USI Film Products* prohibits retroactivity in the absence of a clear congressional consensus favoring retroactive liability and that the government has failed to overcome the presumption against retroactivity (*BI*, May 2, 1994).

The other brief, filed by the Alliance of American Insurers, argues many of the same points as well as raising the constitutional question.

Deadline set for implant claims

WASHINGTON—Individuals or companies with claims against Dow Corning Corp. involving silicone gel breast implants or other implants have until Jan. 15, 1997, to file their complaints against the manufacturer, the U.S. Bankruptcy Court has ruled.

The court, which is overseeing the reorganization of Dow Corning, set the January deadline last week for U.S. claimants. Foreign claimants were given until Feb. 14 to file their claims.

According to the order last Thursday by Judge Arthur J. Spector, claimants filing after these dates may be forever barred from asserting claims against the company. However, filing a claim does not necessarily entitle a claimant to compensation.

The judge also ordered Dow Corning to launch a worldwide notification program that will include advertising in 15 countries and publicity efforts in more than 30 countries, in addition to direct mailings to all known potential claimants.

Midland, Mich.-based Dow Corning filed for bankruptcy protection in May 1995 after a proposed $4.25 billion global settlement of breast implant claims collapsed because too many claimants opted out to file individual lawsuits (*BI*, Feb. 12; Oct. 16, 1995).

Lloyd's solvency improves

LONDON—Having cleared all the hurdles to implementing its £3.2 billion ($5.01 billion) recovery plan, Lloyd's of London last Thursday submitted its annual solvency return to the U.K. Department of Trade & Industry.

For general insurance business underwritten by Lloyd's syndicates, the returns showed the required minimum solvency margin had been covered 5.1 times. This represents an improvement over the 1994 margin of 3.9 times and the 1993 margin of 3.0 times.

Commenting on the achievement, Lloyd's Chairman David Rowland said that coming so soon after the successful completion of the market's reconstruction and renewal program, customers "will be encouraged, as we are, by the sharp improvement in the overall solvency level of the market."

Separately, Lloyd's also announced plans to open a branch later this year in Sweden. The move, which requires DTI approval, is part of Lloyd's continuing strategy under its 1993 business plan to take advantage of commercial opportunities offered by the opening up of European insurance markets. Lloyd's has appointed Sven G. Svedberg, an authorized agent in Sweden, as its legal representative.

Briefly noted

California legislators approved A.B. 1663, which would create **medical appeals panels** to review whether experimental treatment denied by health plans might help terminally ill patients (*BI*, Sept. 2). The bill now goes to Gov. Pete Wilson. Separately, California legislators gave their final approval for the creation of the **California Earthquake Authority** (*BI*, Aug. 26). Gov. Wilson is expected to sign the legislation. . . .Edward F. Kosnik, chief financial officer of Alexander & Alexander Services Inc. since 1994, has been named to the additional position of **chief operating officer.** John J. Degman, who is managing director, vice chairman and general counsel of Chubb & Son Inc., has been elected **president of the holding company,** Chubb Corp., succeeding in that position Dean O'Hare, who continues as chairman and chief executive officer. . . .New York Superintendent of Insurance Edward J. Muhl has approved the transfer of approximately $5.5 billion from the **Lloyds American Trust Fund** to reinsurer Equitas Ltd. . . .**PCS Health Systems Inc.** has been awarded a two-year contract with the state of Maryland to offer pharmaceutical benefits to 92,000 state employees and retirees. Late last year, the state canceled a four-year contract with Merck-Medco Managed Care Inc. after several large drugstore chains said Medco's intended reimbursement rate was too low and they would not honor prescriptions covered by the company. Medco then filed an antitrust suit against the drugstore chains (*BI*, Feb. 26; Jan. 1). . . .California regulators ordered San Diego-based **Golden Eagle Insurance Co.** to boost its reserves by $138.5 million after a department audit found deficiencies totaling that amount for 1995. Golden Eagle, a property/casualty insurer that wrote $607.6 million in direct 1995 premiums in California, Arizona and Kentucky, has until Nov. 15 to remedy the reserve deficiency.

Wellness

Continued from page 2

participants and their employers, Ms. Pronk said. "It's sort of a risk management approach."

The Mercer survey showed that 63% of respondents use some incentive to encourage employee participation. Non-cash awards, offered by 26%, were the most popular, followed by discounts on insurance premiums, 22%; cash rewards, 15%; flex credits, 6%; and financial penalties, 5%.

Half the respondents indicated they target high-risk employees, though only 15% of those pro-actively contact them to encourage their participation.

More popular approaches included highlighting health management program features of interest to high-risk employees in program communications, cited by 31%, and designing programs specifically to appeal to high-risk groups, cited by 25%.

'What we've noticed, though, is that over time any program can lose part of its excitement,' says Jean Bey, Honeywell Inc.'s health services manager.

Minneapolis-based Honeywell Inc. has had a health promotion program called "Lifesavers" in place since 1991. Incentives play a key role in encouraging employees to participate, said Jean Bey, the company's health services manager.

The plan has provided a $200 cash reward each year for participants meeting all the program's criteria, and the award has prompted a "relatively high enrollment," Ms. Bey said, ranging from 50% to 70% of eligible employees from year to year.

"What we've noticed, though, is that over time any program can lose part of its excitement," Ms. Bey said. So, like other wellness program sponsors, Honeywell faces a constant challenge to maintain interest in its program.

To rekindle excitement, Honeywell modified its reward program this year. Employees participating in the first phase of the program, a cardiovascular screening, immediately receive a $50 gift certificate. Then, if they complete the remaining program, they receive $150 cash at the end of the year.

The change had the desired effect, Ms. Bey said. "This year our participation is 30% higher than it was last year at this time," she said. "So we feel the change has helped us with attracting a lot of our high-risk people to the program."

The company also has found that adjusting some program goals to make them less intimidating has helped attract more high-risk employees.

And she cites evidence from initial screenings of Honeywell employees entering the wellness program as evidence that it's not only the healthy workers that apply.

When employees enter the program they are tested for body mass index, blood pressure, cholesterol, glucose level and carbon monoxide.

"We find at least 34% of our people fail one of the screens," Ms. Bey said. "We don't find that it's only healthy people who are coming into our program."

The Mercer survey also showed employers aren't evaluating their health management programs' effectiveness as well as they could.

The most common measurement, employee participation, was cited by 68%, with 53% of respondents saying they use employee feedback to gauge program success and 36% saying they rely on employee behavioral changes, such as the number of people who have quit smoking.

But only one-third of those with wellness programs said they measured the decrease in health-care claims and costs as a way of evaluating their programs, and only 16% said they examined changes in the number of sick days.

Only 9% said they could quantify the savings their health management programs have produced.

"I think one of the things that happened in the industry was that measuring and evaluating outcomes was always an afterthought," Mercer's Ms. Pronk said. That's changing, however, as now most employers creating or recrafting their wellness programs are including evaluation in the program design, she said.

"They're using data much more widely than they have in the past," Ms. Pronk said. "It's also more of a systems thinking kind of approach," she said, in which employers are integrating the wellness program into the company's overall goals.

Ms. Bey said Honeywell takes a three-pronged approach in evaluating its wellness program.

First, the company conducts a customer satisfaction survey of Lifesaver participants. The most recent results showed that 51% of respondents felt more comfortable taking care of minor injury and illness at home, an outcome Ms. Bey attributes to a "Take Care of Yourself" class offered as part of the program.

The survey also showed that 72% of participants think they have become smarter health care consumers, likewise the result of a health care consumer class.

Overall, 95% of those surveyed expressed satisfaction with the Honeywell program.

The company also does computer analysis of changes in participants' risk factors over the course of a year. "So we're actually counting the reduction of risk factors from the beginning of the year to the end of the year," Ms. Bey said.

Finally, Honeywell examines changes in employee medical claims for preventable conditions. Working with Mercer to examine the period from 1991 to 1994, the company found that the wellness program had produced $3.6 million in health-care cost savings for Honeywell, while wellness awards and program costs totaled about $2.6 million, producing a net savings of $1 million over that period.

While many employers seem to be growing more aware of how to design and monitor wellness plans in ways that will maximize their chances for success, Ms. Pronk cited one survey statistic in particular as showing there's still work to be done in getting the message out.

The Mercer study found that 53% of respondents were unfamiliar with the findings of the recently published U.S. Surgeon General's report on physical activity and health. Another 32% said they expected the report to have no impact within their organization.

"One of the things that tells me that we need to do a lot more communication is the Surgeon General's report," Ms. Pronk said. "I was a little disappointed by how many of these companies' people were unfamiliar with the report."

The Mercer study surveyed 259 employers, 157 of which indicated they had health management programs in place or in the process of being implemented.

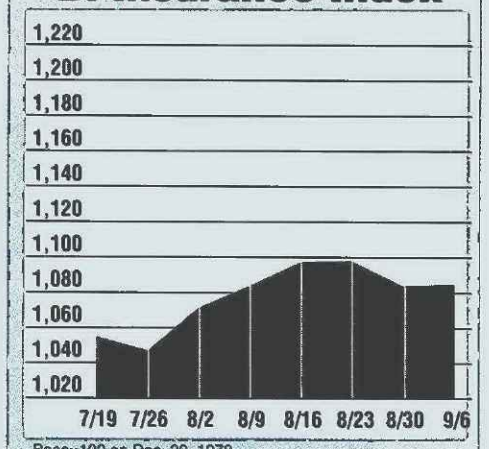
Of those with programs, 64% cited health benefit costs as the primary reason for instituting a wellness plan.

Of those without a health management program, 38% cited concerns about a low return on investment, 34% said they were deterred by the inability to measure effectiveness and 32% said program costs kept them from developing a wellness program.

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Free copies of Mercer's health management survey report are available by writing: Marketing Communications, William M. Mercer Inc., 1166 Ave. of the Americas, New York, N.Y., 10036; or by calling 212-345-7584.

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc.

PCS catastrophe options

As of Sept. 6

	Call spread	Price bid/ask
Eastern September 1996		
	40/60	2/4.5
	50/70	—/—
	80/100	.6/2
Southeast Sept. 1996		
	80/100	.5/2
Texas Sept. 1996		
	40/60	.7/1.4
	80/100	.3/1.2
California Annual		
	40/60	.5/1.3
	80/100	.3/1.1
Western Annual		
	40/60	.6/1.5
	80/100	.4/1.3
Northeast Sept. 1996		
	40/60	—/1.4

Total volume: 3,308 **Total open interest:** 4,789

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Sept. 5	Price	P/E	Div.	Yield	1 week
Companies	pence		pence	%	high—low
Comml Union	591	11.3	35.3	6.0	597—591
Genl Accident	642	9.7	38.8	6.0	647—642
Gdn Royal Exch	256	9.5	11.3	4.4	256—253
Independent	568	10.6	14.1	2.5	570—568
Royal & Sun	410	9.8	21.6	5.3	418—409
Brokers					
Bradstock	71	11.8	7.1	10.0	71—71
Fenchurch	97	6.5	10.6	10.9	97—91
CE Heath	90	10.6	6.3	7.0	91—90
JIB Group	112	11.1	9.4	8.4	112—112
Lloyd Thmpson	175	10.7	11.3	6.5	175—175
Lowndes Lmbrt	119	7.8	10.5	8.8	119—119
Nelson Hurst	188	11.5	9.8	5.2	188—187
Sedgwick Grp	124	9.7	8.1	6.5	124—124
Steel Brl Jones	37	4.8	5.6	15.1	38—37
Willis Corroon	132	11.9	8.3	6.3	132—131

Source: Philip Olson, London

BI Industry Stock Report SEPT. 2, 1996, THROUGH SEPT. 6, 1996

BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Acordia Inc.	NYS	30.75	0.00	3.36	33.75	23.50	9
Alexander & Alexander	NYS	16	1.59	-15.79	25.50	15.38	255
E.W. Blanch Holdings Inc.	NYS	21	5.00	-10.16	25.50	17.75	90
Gallagher Arthur J. & Co.	NYS	34.375	1.10	-7.72	39.50	30.00	96
Hilb, Rogal & Hamilton	NYS	13.25	0.95	-0.93	14.38	11.38	85
Kaye Group Inc.	NDQ	5.375	0.00	-32.81	8.75	4.63	1
Marsh & McLennan	NYS	91.75	-1.34	3.38	101.63	80.50	485
Poe & Brown	NDQ	23.75	-0.52	-4.52	25.50	22.75	2
BROKERS	AVERAGE		0.8	-8.1			
INSURERS/REINSURERS							
ACE Ltd.	NYS	47.125	1.07	18.55	50.38	30.63	291
Acceptance Insurance Cos.	NYS	17.625	2.17	18.49	18.63	13.13	25
AEGON N.V.	NYS	49.625	1.28	12.78	51.38	33.88	23
Aetna Life & Casualty	NYS	66	-0.19	-4.69	78.75	55.38	2796
AFLAC Inc.	NYS	34.375	0.00	18.53	36.50	24.38	841
Allied Group Inc.	NDQ	39.375	0.96	9.38	44.25	31.50	65
Allmerica Prop. & Casualty	NYS	27.625	-2.21	2.31	28.75	21.88	82
Allstate Corp.	NYS	46.25	3.64	12.46	47.00	33.25	2755
AMBAC Indemnity Corp.	NYS	54.625	0.46	16.53	56.00	42.00	209
American Bankers Ins.	NDQ	45.875	-3.42	17.63	47.75	32.50	287
American Financial Group	NYS	31.625	1.61	3.27	34.50	27.75	123
American General	NYS	36.375	-0.34	4.30	39.13	31.00	687
American Heritage Life Ins.	NYS	20.75	7.10	-9.29	24.25	19.00	37
American Indemnity/Fin'l	NDQ	10	0.00	0.00	13.38	9.13	0
American International	NYS	94.875	-0.13	2.57	103.38	78.50	1915
American Re Corp.	NYS	63.375	0.40	55.05	63.38	36.25	1140
Aon Corp.	NYS	50	-0.99	0.25	56.00	38.63	483
Argonaut Group	NDQ	30.5	4.27	-6.15	35.00	28.75	54
AVEMCO Corp.	NYS	16.25	1.56	1.56	17.50	11.75	52
Baldwin & Lyons Inc.	NDQ	18.375	0.00	13.08	20.75	14.25	1
Berkley W.R. Corp.	NDQ	43.375	-4.37	-19.30	55.50	40.25	180
Berkshire Hathaway Inc.	NYS	31700	1.28	-1.25	38000.00	25800.00	0
Capital RE Corporation	NYS	38.125	0.33	23.98	38.50	28.00	14
CapMac Holdings Ltd.	NYS	29	0.00	NA	32.75	21.13	58
Capsure Holdings Corp.	NYS	18.375	3.52	4.26	18.88	13.00	134
Chartwell Re	NYS	23.5	-6.93	NA	25.25	10.00	189
Chubb Corp.	NYS	44.125	-0.28	-8.79	52.25	40.88	982
CIGNA Corp.	NYS	115.5	-0.54	11.86	125.50	95.25	683
CNA Financial Corp.	NYS	99.625	-0.87	-12.22	123.25	95.75	83
EMC Insurance Group Inc.	NDQ	11.5625	-1.60	-15.91	15.25	10.13	2
Everest Reinsurance	NYS	24.875	2.05	6.42	26.50	18.50	537
Executive Risk Inc.	NYS	33.375	-2.91	15.09	38.25	22.00	37
EXEL Ltd.	NYS	33.25	-0.75	9.24	36.88	26.50	414
Fremont General Corp.	NYS	27.25	0.46	11.22	27.50	17.75	274
Frontier Insurance Group	NYS	39	0.00	21.88	40.88	27.50	157
Gainsco Inc.	NYS	10	0.00	-12.09	12.38	8.31	69
GCE Holding Ltd.	NDQ	23.625	2.72	NA	27.25	19.75	333
General RE Corp.	NYS	144.375	-0.35	-6.85	158.25	138.75	859
Gryphon Holdings	NDQ	12.75	2.00	-33.77	20.25	12.00	28
Guaranty National Corp.	NYS	14.375	1.77	-6.50	18.13	13.38	57
Harleysville Group	NDQ	25	0.00	-22.78	33.00	24.50	44
Hartford Steam Boiler	NYS	45.625	2.24	-8.75	52.50	43.25	125
HCC Insurance Holdings	NYS	29.5	12.38	59.46	31.25	12.38	229
IPC Holdings Ltd.	NDQ	20.5	-0.61	NA	22.25	19.00	85
ITT Hartford Group	NYS	53	0.47	9.56	55.00	44.50	715
LaSalle Re Ltd.	NDQ	23.5	1.08	NA	23.63	19.50	12
Lincoln National	NYS	43.625	-1.41	-18.84	57.00	40.75	1318
Markel Corp.	NDQ	89	1.14	17.88	94.50	66.00	35
MBIA Insurance Group	NYS	80.5	-1.23	7.33	82.38	66.75	341
Meadowbrook Insur. Group	NYS	27.625	-4.33	-17.54	34.13	24.00	25
Mid Ocean Ltd.	NYS	41	-0.91	10.44	43.00	32.63	159
MMI Cos. Inc.	NYS	32.75	2.34	36.46	33.38	22.00	28
Mutual Risk Mgmt. Ltd.	NYS	30.5	-3.17	-11.11	34.88	26.88	194
NAC Re Corp.	NYS	39.125	3.64	8.68	39.13	28.50	406
National Re Corp.	NYS	52.625	0.00	38.49	52.63	30.00	105
Navigators Group	NDQ	18.625	-3.25	5.67	20.25	13.50	4
Nobel Insurance Ltd.	NDQ	11.625	-3.63	2.20	12.75	10.88	41
NYMagic Inc.	NYS	18.625	-0.67	9.56	22.00	15.38	14
Ohio Casualty Corp.	NDQ	33	3.53	-14.84	40.00	30.00	151
Old Republic Int'l	NYS	22.375	0.56	-5.46	24.38	18.00	356
Orion Capital Corp.	NYS	50.5	0.50	16.43	51.25	39.88	79
Partner Re Ltd.	NDQ	28.625	1.33	4.09	31.88	23.75	202
Penn-America Group Inc.	NDQ	15.625	-3.85	9.65	16.75	10.50	9
Philadelphia Cons. Holding	NDQ	18.75	-2.60	15.38	22.50	16.25	9
PXRE Corp.	NDQ	23.625	1.61	-10.85	29.75	22.25	300
Reliance Group Holdings	NYS	7.875	0.00	-8.70	9.25	6.50	786
Reliastar Financial Corp.	NYS	45.25	2.55	1.97	51.63	38.13	148
RenaissanceRe Holdings Ltd.	NYS	29.5	-0.84	-2.88	33.13	22.88	22
Risk Capital Holdings	NDQ	16.75	-0.74	-28.34	23.38	16.50	34
RLI Corp.	NYS	24.875	0.00	-0.50	25.88	21.75	56
St. Paul Companies	NYS	51.125	-1.21	-8.09	60.50	50.00	610
SAFECO Corp.	NDQ	32.875	-0.75	-4.71	39.75	30.88	1724
Seibels Bruce Group	NDQ	2	-3.03	33.33	4.25	0.44	119
Selective Ins. Group	NDQ	32.625	1.16	-8.10	38.75	31.00	45
Sphere Drake Holdings	NYS	9.375	0.00	-33.04	19.13	8.13	37
TIG Holdings	NYS	28.25	-1.74	-0.88	34.25	24.63	366
Titan Holdings, Inc.	NYS	13.625	-4.39	-5.22	16.63	12.50	178
Tokio Marine & Fire	NDQ	58.5	1.30	-11.36	69.25	50.88	4
Torchmark Corp.	NYS	43.25	1.76	-4.42	49.88	40.00	321
Transatlantic Holdings	NYS	71.25	2.70	-2.90	75.25	62.38	51
Transnational Re Corp.	NDQ	24.25	-1.52	-1.02	27.25	20.88	62
Travelers Aetna Property	NYS	27.125	-1.36	NA	28.50	23.13	102
Travelers Corp.	NYS	43.75	0.86	4.79	47.25	32.25	2223
Trenwick Group Inc.	NDQ	54	1.41	-4.00	57.50	46.00	7
Unico American Corp.	NDQ	7.875	3.28	26.00	7.88	5.50	22
Unionamerica Holdings	NYS	18.75	0.67	NA	19.00	14.75	17
United Fire & Casualty	NDQ	32.25	-5.15	15.18	40.00	22.25	4
Unitrin	NDQ	49.25	-1.50	2.60	51.75	44.25	91
UNUM Corp.	NYS	63	-0.79	14.55	65.00	48.38	510
US Facilities Corp.	NDQ	17.0625	0.37	-20.18	23.38	14.88	143
USF&G Corp.	NYS	16.125	0.00	-4.44	19.50	14.25	1643
USLIFE Corp.	NYS	29.625	1.28	-0.84	33.25	26.88	247
Washington National	NYS	28.125	-3.02	1.81	30.50	21.88	264
Zenith National Ins.	NYS	26.375	-2.31	23.39	28.88	20.00	28
Zurich Reinsurance Centr.	NYS	29	-2.93	-4.53	32.63	28.13	15
INSURERS/REINSURERS	AVERAGE		0.0	2.8			
HEALTH MAINTENANCE ORGANIZATIONS							
FHP International	NDQ	36.875	1.72	29.39	37.13	21.75	960
Healthsource Inc.	NYS	15.875	5.83	-55.90	40.88	9.75	2649
Humana Inc.	NYS	19.875	6.00	-27.40	28.88	15.00	5696
Oxford Health Plans	NDQ	43	-6.01	16.41	55.25	24.25	8083
Pacificare Health Sys.	NDQ	77.75	1.97	-10.63	98.75	54.75	332
Safeguard Health Enter.	NDQ	19.75	6.76	69.89	22.50	11.25	64
Sierra Health Services	NYS	31.125	-1.58	-1.97	36.00	24.13	113
United Healthcare Corp.	NYS	38.75	0.32	-40.73	69.00	30.00	6340
Wellpoint Health Networks	NYS	31.375	1.21	-2.33	39.13	23.38	131
HMOs	AVERAGE		1.8	-2.6			
ALL COMPANIES	AVERAGE		0.9	-2.6			

Top advancing issues: HCC Insurance Holdings, American Heritage Life Ins., Safeguard Health Enter. Leading decliners: Chartwell Re, Oxford Health Plans, United Fire & Casualty. Most active issue: Oxford Health Plans. The BI Index rose 0.1%; the Dow Jones 30 Industrials rose 0.8%; the S&P 500 increased 0.6% and the NYSE Composite gained 0.5%. Average P/E: Brokers, 14.9; insurers/reinsurers, 37.2; HMOs, 39.2.

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