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Emerging Markets Liability in Latin America

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EMERGING MARKETS LIABILITY IN LATIN AMERICA

RICARDO J. CATA*

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I. INTRODUCTION

In light of the North American Free Trade Agreement and other recent regional trade block pacts, Latin America has seen a tremendous increase in its trade and investment markets since 1990. This growth and expansion has led to an increase in many sectors of the economy, including manufacturing, jobs, and transportation. These benefits, however, are not without their problems. Following closely behind these improvements are inju-

ries, theft, hijackings, and natural disasters. These difficulties are creating forms of liability in Latin America which either have never arisen in the region or are emerging out of a relatively small, untapped market. This Article surveys these forms of liability and proposes the potential risks U.S. and multinational companies will take when operating in these foreign countries and the consequences which may follow. While not meant to be an in-depth analysis of any individual form of liability, the Article attempts to provide an overview of emergent areas of liability in the region in light of both Latin American and United States' legal practice and theory.

II. AGREEMENTS INCREASING TRADE AND INVESTMENT

A. *The North American Free Trade Agreement*

The North American Free Trade Agreement (NAFTA), effective since January 1, 1994, is the most far-reaching trade agreement in North American history. With the United States, Canada, and Mexico as members, the primary purpose of the NAFTA is to stimulate trade among its member countries through the liberalization of access to and investments in their respective markets.¹ Currently, accession negotiations continue efforts to bring Chile into the NAFTA as well.²

1. Lowry McAllen, *Trade Surpluses Ease Pain of Mexican Economic Crisis*, J. COM., Oct. 24, 1995, at 16A; Gavin Souter, *Cross-Country Coverage*, BUS. INS., June 5, 1995, at 2; Anthony de Palma, *For Mexico, NAFTA's Promise of Jobs Is Still Just a Promise*, N.Y. TIMES, Oct. 10, 1995, at A1; Thomas J. Donahue, *Delaying NAFTA Is A Bad Omen*, J. COM., Dec. 28, 1995, at 6A.

2. Officials from Canada, the United States, Mexico, and Chile met in Mexico City from July 25, 1995 until August 1, 1995 to advance discussions toward the accession of Chile into the NAFTA. With respect to trade, the major area of discussion concerned agreements over environmental, labor, and other provisions which are not directly related to trade. Politically, the primary obstacle is whether Congress will approve fast-track negotiating authority, which would speed trade pacts through Congress, without amendments, to the Clinton Administration. The Clinton Administration seeks broad fast-track authority to negotiate agreements not directly related to trade. However, the Republican Congress drafted a bill limiting fast-track authority to issues directly related to trade. Although this issue becomes more difficult as the presidential election advances, the House and the Senate are attempting to draft a narrowly defined bill to keep talks with Chile alive. John Maggs, *House Crafting Bill to Save Chile Talks*, J. COM., Dec. 13, 1995, at 1A; John Maggs, *Dole Becoming More Amenable to Compromise on Chile Trade Issue*, J. COM., Dec. 19, 1995, at 3A.

A possibility also exists where Mexico and Canada surpass the U.S. and negotiate separate bilateral trade agreements with Chile. Richard Lawrence & Kevin

The NAFTA has succeeded in increasing trade and investment among its member countries. Consequently, this success created new areas of liability for multinationals conducting business in Mexico (and other Latin American countries) as well as increased the likelihood of exposure to previously existing areas of liability in these countries. This Article surveys these emergent and existing areas of liability and the opportunities they create for the international legal field.

B. Other Regional Trading Blocks

In addition to the NAFTA, other regional trading blocks have developed in recent years. Like the NAFTA, these blocks have also given rise to new and existing markets of liability. Some of these trading blocks include MERCOSUR,³ a customs union between Argentina, Brazil, Paraguay, and Uruguay (effective as of January 1995); the Andean Pact, a customs union between Bolivia, Colombia, Ecuador, Peru, and Venezuela (also effective as of 1995);⁴ the Group of Three, a free trade zone between Colombia, Mexico, and Venezuela;⁵ the Central American Common Market⁶ (under which El Salvador, Honduras, Guatemala, Costa Rica, and Nicaragua are in the process of negotiating a free trade agreement); and the Caribbean Community (CARICOM), which comprises the fourteen English speaking countries of the region and Suriname.⁷ There is also a movement to create the Association of Caribbean States (ACS),⁸ potentially the fourth largest trade block in the world. The ACS would be comprised of CARICOM, the Group of Three, and the countries of Central America, Cuba, the Dominican Republic and

G. Hall, *Bilateral Deals Could Keep Chile's NAFTA Talks Alive*, J. COM., Dec. 6, 1995, at 1A; *Chile, Canada Start Talks Wednesday On NAFTA-Styled Free-Trade Agreement*, J. COM., Jan. 22, 1996, at 8A.

3. Robert S. Greenberger, *Latin Nations, Unsure of U.S. Motives, Make Their Own Trade Pacts*, WALL ST. J., Jan. 9, 1996, at A1; Stephen Landle & Nollis Crigles, *Consensus in the Americas: Free Trade by 2005*, BUS. MEX., special ed., 1995, at 70.

4. Cartagena Agreement, 28 I.L.M. 1165 (May 26, 1969).

5. *International Trade Developments*, INT'L ECON. REV., Jan. 1995 at 10.

6. General Treaty on Central American Economic Integration, Dec. 13, 1960, 455 U.N.T.S. 3.

7. Treaty Establishing the Caribbean Community, July 4, 1973, 12 I.L.M. 1033.

8. *Caribbean States Sign Regional Cooperation Pact*, 11 INT'L TRADE REP. 1179-80 (July 27, 1994).

Haiti.⁹

Recently, Chile actively negotiated with MERCOSUR to forge a trade agreement between the two parties.¹⁰ At the same time, MERCOSUR reached an agreement and signed a free-trade process with the European Union on December 15, 1995.¹¹ MERCOSUR is also considering joint participation with the Andean Pact.¹² The Central American countries, on the other hand, are making progress toward trade integration under the Central American Economic Integration Association (SIECA).¹³

Trade solely within MERCOSUR rose twenty-five percent in the past four years.¹⁴ Internal MERCOSUR imports rose from \$5.1 billion in the first half of 1994 to \$7.4 billion only one year later.¹⁵ Internal MERCOSUR imports totalled \$12 billion in 1994.¹⁶ In the past year, U.S. corporate investment in MERCOSUR member countries increased and may offer some of the best overseas investment opportunities for U.S. investors.¹⁷ In November of 1995, the Interamerican Development Bank in Washington, D.C. examined and considered multimillion dollar loan packages for several infrastructure projects in MERCOSUR countries, including a \$450 million loan to the Brazilian government to finance the expansion and restoration of its highways.¹⁸

9. Canute James, *Caribbean Leaders Meet to Forge Trade Bloc*, J. COM., Aug. 17, 1995, at 3A.

10. *Chile, Mercosur to Negotiate This Month on Trade Agreement*, J. COM., Sept. 1, 1995, at 3A; Kevin G. Hall, *Chile, Mercosur Extend Trade Talks 90 Days*, J. COM., Dec. 8, 1995, at 1A.

11. Hall, *supra* note 10, at 8A.

12. Maria Carlino, *S. America May Bypass NAFTA-Type Pacts*, J. COM., Dec. 4, 1995, at 2C.

13. Peter Brennan, *Central American Trade Integration Advances as NAFTA Debate Continues*, J. COM., Sept. 7, 1995, at 3A; *Zedillo Propone 'Alianza Privilegiada' En Cumbre de Colegas Centroamericanos*, EL NUEVO HERALD, Feb. 16, 1996, at 18.

14. Maria Carlino, *Mercosur Transport Projects in Fast Lane*, J. COM., Oct. 23, 1995, at 6A; Montieith Illingworth, *Mercosur Likely to Improve Region's Trade with World*, J. COM., July 12, 1995, at 6C; Charles W. Thurston, *Latin America's Regional Commerce Outpacing Trading with Rest of World*, J. COM., Nov. 21, 1995, at 5B; *Mercosur Trade Bolster Surplus*, LAGNIAPPE LETTER, June 23, 1995, at 2.

15. Carlino, *supra* note 12.

16. *Id.*

17. Paula L. Green, *Business Panel Recommends U.S. Investment in Mercosur Nations*, J. COM., Oct. 26, 1995, at 5A.

18. Carlino, *supra* note 14; Thurston, *supra* note 14.

C. Bilateral Trade Agreements

In addition to regional trade blocks, there are more than twenty-six bilateral trade agreements in Latin America including a 1994 free trade agreement between Chile and Colombia,¹⁹ a 1992 customs union between Colombia and Venezuela,²⁰ a 1991 economic complementary agreement between Argentina and Chile,²¹ a 1993 free trade agreement between Chile and Venezuela,²² and a 1991 free trade agreement between Chile and Mexico.²³

Countries in Latin America are in the process of massive and unprecedented privatization of many state-owned industries. The privatization of these industries is accomplished primarily through foreign investments and joint ventures. As a desirable consequence of these efforts, the development of national infrastructures such as roadways, telecommunications, railroads, and power production has accelerated greatly.²⁴

19. William R. Fadul, *Outlook for Latin America — FIDES Perspective*, ROUNDTABLE ON INS. CONDITIONS IN THE AMERICAS, Int'l Ins. Council (New York), Mar. 1, 1995, at 5.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Bolivia Stands by Privatization Plans*, J. COM., Feb. 20, 1996, at 5B; Richard Lawrence, *Agency Pledges \$1 Billion to Latin Private Sector*, J. COM., Feb. 20, 1996, at 10A; Sam Dillon, *Foreign Business to Put \$6.3 Billion in Mexico*, N.Y. TIMES, Dec. 5, 1995, at A4; *Untapped Latin Gas Fields Lure N. American European Investors*, J. COM., Sept. 15, 1995, at 9B; *Argentina Becomes Expert in Privatization of Industry*, J. COM., Oct. 31, 1995, at 9A; *Cardoso's Ambition: Economic Makeover*, J. COM., Oct. 25, 1995, at 4C; Johnathan Friedland & Peter Fritsch, *Latin America Lures U.S. Chemical Firms*, WALL ST. J., Dec. 20, 1995, at A10; Jonathan Friedland, *Utility Privatization Electrifies Bolivia*, WALL ST. J., July 27, 1995, at A8; *As Telecom Charges Sweep Region, Competition Is King*, LAGNIAPPE LETTER, Nov. 10, 1995, at 9; James Bruce, *Private-Sector Consortium Inks Deals to Oversee Brazil's No. 1 Highway*, J. COM., Nov. 3, 1995, at 10A; Kevin G. Hall, *Mexico to Open Bids in July For Independent Power Plant*, J. COM., Dec. 15, 1995, at 5B; Kevin G. Hall, *Brazil Takes First Steps to Privatize Railroad*, J. COM., Dec. 8, 1995, at 2B [hereinafter *Steps to Privatize Railroad*]; *Brazil Senate Cleans End of Petrobras Monopoly*, WALL ST. J., Nov. 9, 1995, at A16; Kevin G. Hall, *Mexico Proposes to Privatize Its Airports*, J. COM., Nov. 20, 1995, p. 2B [hereinafter *Privatize Its Airports*]; Kevin G. Hall, *Foreign Firms Ready to Enter Mexican Mart*, J. COM., Feb. 9, 1996, at 5B.

III. EMERGING LIABILITIES IN MEXICO AND LATIN AMERICA

As a direct result of the NAFTA and the overall surge of investment and trade between the United States and Latin America, both existing and entirely new areas of liability have increased or emerged. These areas can be classified into six general categories: 1) product liability, 2) trucking liability, 3) environmental liability, 4) labor-related liability and business interruption, 5) political risk and kidnap/ransom liability, and 6) directors' and officers' liability (albeit to a somewhat lesser extent than the first five categories listed). The following sections of this Article examine each category as a consequence of increased trade and investment in Mexico.²⁵

A. Product Liability

As a result of the peso devaluation debacle of December 20, 1994,²⁶ the ensuing weak peso, high interest rates,²⁷ and unemployment²⁸ depressed domestic consumption of goods and investment in Mexico.²⁹ However, those same factors have also been responsible for the single most important ingredient in Mexico's overall growth: exports. In the United States today, there is great demand for Mexican products, especially considering that Mexican products are now less expensive than they were just over a year ago.

As a result of the weaker yet more competitive peso, Mexican exports to the United States will continue to grow over the next year. Mexico's trade surplus with the United States

25. Where applicable, the analysis will also address developments in these emerging areas as they may apply to countries in Latin America other than Mexico.

26. Julia Preston, *Mexican Peso Dives, as Economy Treads Water*, N.Y. TIMES, Oct. 27, 1995, at C1; Paul B. Carroll, *Peso May Feel Pressure Through 1995*, WALL ST. J., Nov. 6, 1995, at A20; Julia Preston, *Mexico Vows Restraint and Market Yawns*, N.Y. TIMES, Nov. 15, 1995, at D6; Kevin G. Hall, *Mexican Officials Hope Budget Political Win Will Aid Peso*, J. COM., Nov. 14, 1995, at 3A.

27. Dianne Solis, *Americans Grow Ugly in Mexicans' Eyes*, WALL ST. J., March 21, 1995, at A16.

28. Dianne Solis, *Mexico's Economic Crisis Pushes Unions to Consider Concessions*, WALL ST. J., Aug. 25, 1995, at A4; Kevin G. Hall, *Mexico's Poor Economic Report Will Be Tough for Traders to Digest*, J. COM., Nov. 21, 1995, at 3A.

29. Craig Torres, *The Banking Disaster in Mexico Whipsaws an Ailing Economy*, WALL ST. J., Jan. 25, 1996, at A1.

amounts to approximately \$600 million per month and is likely to continue at that level for some time.³⁰ The total export figure for Mexican goods in 1995 is predicted to reach \$79.2 billion, up from \$60.9 billion in the previous year.³¹ After the first nine months of 1995, Mexico enjoyed a \$12.2 billion trade surplus with the United States, compared with a meager \$1 billion surplus in 1994.³² This increase represents a 781% jump in Mexico's favor.³³

Furthermore, of the \$45.5 billion worth of products Mexico shipped to the United States during that nine month period, electrical goods were responsible for \$12 billion, vehicle exports totalled \$7 billion, and machinery accounted for \$4.6 billion.³⁴ The U.S. purchase of Mexican vehicle exports increased 42.5%,³⁵ climbing from forty-eight percent in 1994 to eighty percent in 1995.³⁶

Maquiladora production accounts for a significant portion of the exported electronic goods generated in Mexico.³⁷ These "maquiladoras" are primarily foreign-owned manufacturing and assembly plants located near the U.S. border that take U.S. and other foreign components or materials, assemble them into completed goods, and return them to the United States for resale. Tijuana, Mexico now hosts most of the world's major electronic and television manufacturers, and component suppliers are moving to the region as well. Between 1995 and 1996, some 160 maquiladora plants are expected to be added to the Mexican border.³⁸ This expansion will bring the number of maquiladoras

30. *Competitive Peso Raises Demand for Mexican Products*, J. COM., Dec. 13, 1995, at 5A; George Lerner, *Economists See Mexico Making Rebound in '96*, J. COM., Dec. 27, 1995, at 3A.

31. *Id.* Kevin G. Hall, *Mexico Posts Trade Surplus For 1995; 1st Since '89*, J. COM., Jan. 23, 1996, at 10A.

32. *Competitive Peso Raises Demand for Mexican Products*, *supra* note 30.

33. *Id.*

34. *Id.*

35. *Id.*

36. McAllen, *supra* note 1.

37. *Id.*; Kevin G. Hall, *Predictions Of Maquiladoras' Decline Unfounded, Thanks to NAFTA, Peso*, J. COM., June 9, 1995, at 9A [hereinafter *Predictions*]; Kevin G. Hall, *Mexican Peso Crisis Creates Mixed Bag for Texas Cites*, J. COM., Aug. 16, 1995, at 5A [hereinafter *Mexican Peso Crisis*]; Graciela Sevilla, *Mexico's Training Program Pays Off — Skilled Workers Provided for Factories*, PHOENIX GAZETTE, Sept. 1, 1995, at C1.

38. *Predictions*, *supra* note 37; see also *Mexico's Maquiladoras Provide 742,700 Jobs*, J. COM., Jan. 12, 1996, at 3A.

to a record high of 2250.³⁹

With such a large increase in the number of exports traveling from Mexico to the United States, especially in the three areas noted above, accidents involving the use or operation of these products in the United States will inevitably occur. As logically follows, it is only a matter of time before claims are brought in the United States for alleged product defects involving these Mexican manufactured products. In fact, lawsuits have already been instituted in the area of environmental liability in other Latin American countries.⁴⁰ Additionally, because many of these Mexican products are made with U.S. components and materials, and by subsidiaries or affiliates of U.S. companies, the liability for these products will extend back to the U.S. parent corporation or entity. Indeed, it is generally in the plaintiff's best financial interests to join a U.S. parent company in any products liability suit.

In light of these potential lawsuits, adequate insurance coverage and risk management techniques will be essential to U.S. and multinational companies that manufacture and export goods from Mexico into the United States. Equally as important to these companies will be "rapid-response" claim investigation teams, as well as experienced legal counsel capable of administering a claims and litigation program at a national level.

Moreover, given that the "duty to warn" is a very important component of U.S. product liability law,⁴¹ companies must scrutinize the types and contents of warning labels placed on products exported to the United States. If a product is being marketed to a non-English speaking segment of the U.S. population (e.g., a Spanish-speaking community), consideration must be given to printing warnings in both English and Spanish.⁴²

39. *Predictions, supra* note 37.

40. See *infra* part III.C.

41. *Hunnings v. Texaco, Inc.*, 29 F.3d 1480 (11th Cir. 1994); *Humphreys v. General Motors Corp.*, 839 F. Supp. 822 (N.D. Fla. 1993). Ricardo J. Cata & David M. Kittredge, *A Practical Review of U.S. Product Liability Law*, BUS. MEX., June 1995, at 35; Ricardo J. Cata & David M. Kittredge, *Legal Defense Is the Best Offense*, BUS. MEX., Aug. 1995, at 43.

42. Rosario M. Vignali, *Foreign Language Warnings and the Duty to Warn*, RISK MGMT., Apr. 1995, at 83; Kevin G. Hall, *Mexican Commerce Officials Set Product Labeling Rules*, J. COM., Jan. 25, 1996, at 3A. Other components of product liability claims include design defect and negligent manufacture.

With tort reform stalled in Congress since the summer of 1995, product liability claims are likely to remain a significant and costly component in U.S. tort litigation.⁴³ Therefore, this emerging area of liability represents a significant and substantial danger to U.S. companies either manufacturing products in Mexico or importing goods from Mexico into the United States.⁴⁴ In contrast, however, product liability claims are not yet a major factor in Mexican tort litigation,⁴⁵ which provides some relief to manufacturers and their parent companies.

B. Trucking Liability

As of December 18, 1995 under the NAFTA,⁴⁶ U.S. and Canadian truckers were scheduled to gain operating rights throughout Mexico's six border states.⁴⁷ In exchange, Mexican truckers were permitted to operate in California, Arizona, New Mexico and Texas.⁴⁸ Trucks transport approximately eighty-five percent of all trade between the United States and Mexico,⁴⁹

43. Jeff A. Taylor, *What Happened to Tort Reform?*, INV. BUS. DAILY, Nov. 17, 1995, at 1A; Dave Lenckus, *Tort System Is in Need of Repair*, BUS. INS., Nov. 27, 1995, at 3; Mark A. Hoffman, *Hopes Alive on Product Liability*, BUS. INS., Jan. 22, 1996, at 7.

44. *Juries Send a \$1.3 Billion Message — Malpractice, Faulty Products Dominate Largest Awards of 1995*, BUS. INS., Jan. 22, 1996, at 3; Edward Felsenthal, *Increase in Size of Jury Awards May Spur Efforts to Alter System*, WALL ST. J., Jan. 5, 1996, at B5.

45. Maria Casas Lopez, *How the Stakes Can Change*, BUS. MEX., Oct. 1995, at 47.

46. Tim Shorrock, *Pena Puts Brakes on Trucks at Borders*, J. COM., Dec. 18, 1995, at 1A; Robert S. Greenberger, *Clinton Delays Giving Mexican Trucks Freer Travel in the U.S. Border States*, WALL ST. J., Dec. 19, 1995, at A2; David E. Sanger, *NAFTA's Next Phase Is Delayed by Fears About Truck Safety*, N.Y. TIMES, Dec. 19, 1995, at A1; David E. Sanger, *U.S. and Mexico Try to Halt NAFTA Provision on Trucking*, N.Y. TIMES, Dec. 18, 1995, at A9; Kevin G. Hall, *Mexican Truckers Get a Break on In-State Registration in Texas*, J. COM., Dec. 5, 1995, at 3B.

47. However, on December 18, 1995 the U.S., under significant labor and political pressure, announced at least a forty-five day delay in the implementation of this essential NAFTA provision. Presently, truckers from either country cannot travel beyond a twenty-six mile limit across their respective borders. *U.S. and Mexico Try to Halt NAFTA Provision on Trucking*, *supra* note 46; Greenberger, *supra* note 46; Kevin G. Hall, *Mexico Protests Border Action*, J. COM., Dec. 20, 1995, at 1A; John Maggs, *U.S.-Mexican Trucking Disagreement Escalates as Trade Ties Break Down*, J. COM., Dec. 22, 1995, at 2A; Kevin G. Hall, *U.S., Mexico Play Game of Tit for Tat in NAFTA Row*, J. COM., Jan. 31, 1996, at 1A [hereinafter *Tit for Tat in NAFTA Row*].

48. *U.S. and Mexico Try to Halt NAFTA Provision on Trucking*, *supra* note 46; Greenberger, *supra* note 46; Maggs, *supra* note 47; Hall, *supra* note 47.

49. Souter, *supra* note 1.

resulting in revenues of \$3.25 billion per year.⁵⁰ Presently, eighty percent of this trade moves primarily through Laredo, Texas.⁵¹

U.S. motor carriers may purchase liability insurance issued by Mexican companies while operating in Mexico.⁵² Corporate risk managers must be careful, however, as there are differences in liability insurance coverage if the coverage is bought from insurers in Mexico rather than the United States. For example, if all-risk coverage is desired, the corporate manager must specifically request it, since it is not automatically provided.⁵³

In order to clarify the differences and opportunities of this emergent or increasing liability, a discussion of the four general categories of liability and their effect on the trucking industry is necessary: 1) third-party liability, 2) theft and hijackings, 3) freight claims, and 4) money laundering liability.

1. Third-Party Liability

Third-party liability in Mexico and other Latin American nations will have increasing importance to risk managers of multinational companies doing business in the region, especially as the region's general population gradually becomes more aware of their rights to sue for injuries or property damage.⁵⁴ With the assistance and counsel of U.S. attorneys, this awareness has begun to develop in Ecuador, Peru, and Chile and is already present in Argentina.⁵⁵

The unprecedented surge of foreign firms making huge in-

50. Marilyn L. Lytle, *NAFTA Brings Opportunities to Inland Marine Insurers*, BEST'S REV., July 1995, at 46.

51. Kevin G. Hall, *Insurance Worries Mexican Truckers*, J. COM., November 17, 1995, at 1A.

52. Souter, *supra* note 1, at 22. However, under a specific exception to the NAFTA, U.S. exporters to Mexico may secure U.S. insurance on a U.S. registered truck transporting goods into Mexico, even during the time the truck is in Mexico. An American exporter to Mexico can now insure shipments with a U.S. insurer under its open cargo policy with an American insurer, even when the risk of loss shifts to a Mexican during transit. Lytle, *supra* note 50.

53. Souter, *supra* note 1; Margo D. Beller, *Texas Official Signals Concerns About Mexico Truckers*, J. COM., Feb. 14, 1996, at 11A.

54. Alice Oshins, *Latin America Stages First Risk Management Conference*, RISK MGMT., Jan. 1995, at 6.

55. Pedro Zournadjan, *Good Prospects in Argentina*, MERCADO ASEGURADOR, Sept. 1995, at 26, 28.

vestments in Mexico and other Latin American countries⁵⁶ will encourage the growth of insurance in areas such as product liability, environmental liability, trucking liability, kidnap and ransom, political risk insurance, and even in niche markets such as accounting, legal, and medical malpractice.⁵⁷ As a result of massive foreign investment in that region, there will be a tremendous increase in insurance placed in Latin America. In fact, by the year 2025, emerging markets (in which Latin America

56. In December 1995, a group of U.S., Canadian, European, and Asian companies pledged to invest \$6.3 billion in Mexico during 1996. Of this, \$3.45 billion was pledged by American and Canadian companies, \$1.59 billion by Europeans, and \$1.18 billion by Asian companies. Companies involved included General Electric, Bayer, Bechtel, El Paso Natural Gas, AT&T, GTE Data Services, Amoco, Hyundai, Mitsubishi, Sony, BMW, and France Télécom. Dillon, *supra* note 24. Moreover, Mexico's announcement in November 1995 of its intention to open the natural gas sector to private transmission, distribution, and storage is likely to encourage additional foreign investment. Kevin G. Hall, *Mexico to Unveil Rules Opening Gas Sector*, J. COM., Nov. 8, 1995, at 6B. Additionally, Mexico's announcement of its intention to privatize its airports should increase foreign investment. *Mexico Forms Panel to Privatize Airports*, J. COM., Feb. 13, 1996, at 4A.

Further increasing investment was Mexico's October 1995 announcement that it would sell ten petrochemical complexes consisting of sixty-one plants. Kevin G. Hall, *Mexico Will Begin Bidding Process for Petrochemical Plants Next Week*, J. COM., Oct. 24, 1995, at 6B; Anthony de Palma, *Mexico Renews Its Intention to Sell Parts of Oil Monopoly*, N.Y. TIMES, Feb. 13, 1996, at C4; see also *Untapped Latin Gas Fields Lure N. American, European Investors*, *supra* note 24. Recent interest expressed by U.S. railroads in investing in and expanding the Mexican railroad system will also increase the amount of U.S. investment in Mexico. Kevin G. Hall & Rip Watson, *U.S. Railroads Say Plans for Mexico Unaltered by Terms of Privatization*, J. COM., Nov. 15, 1995, at 2B.

Latin America will require as much as \$50 billion per year in investment capital for a variety of infrastructure projects, such as telecommunications, power plants, roads, water ways, airports, railways, and water treatment facilities. D. Pellard, *Latin America Opens the Door for Trade and Growth*, RISK MGMT., June 1995, at 8; William R. Fadul, *Trade Barriers Tumble in Latin America*, J. COM., Oct. 30, 1995, at 7A. Foreign investors have invested into Argentina alone some \$30 billion in infrastructure projects, either fully financed or "in the pipeline." *Argentina Becomes Expert in Privatization of Industry*, *supra* note 24.

Furthermore, Brazil has raised \$13 billion since 1990 by selling state-owned companies. *Cardoso's Ambition: Economic Makeover*, *supra* note 24. A number of U.S. chemical and power-generating firms have also targeted the region for investment. *Latin America Lures U.S. Chemical Firms*, *supra* note 24; *Utility Privatization Electrifies Bolivia*, *supra* note 24. Likewise, hundreds of companies are jockeying for position in the telecommunications industry in Latin America. As *Telecom Changes Sweep Region, Competition Is King*, *supra* note 24.

57. John Jennings, *Emerging Markets Seen Fueling Insurance Growth*, NAT'L UNDERWRITER, Dec. 4, 1995, at 31; Brian Cox, *U.S. Insurers Scramble to Sell Coverage in Mexico*, NAT'L UNDERWRITER, Jan. 16, 1995, at 3; Margo D. Beller, *U.S. Insurers, Brokers Making Chile Their Base for S. American Growth*, J. COM., Apr. 18, 1995, at 7A.

has a significant presence) will account for more than fifty percent of the total free-world insurance premium income.⁵⁸

Thus, it is this enormous increase in trade⁵⁹ and investment in Latin America that will fuel the region's increased awareness of litigation as a recourse for personal injuries or property damage. Eventually, Latin American countries will become more litigious, and U.S. courts may begin to enforce foreign judgments if they comply with minimum standards of due process and notice under U.S. law.⁶⁰ Additionally, legal conditions in Mexico and throughout the region are likely to change because judgments in property damage or personal injury cases brought in those countries will be significantly higher than in past years.⁶¹ Moreover, although dependent on the facts and circumstances surrounding a particular case, it is increasingly conceivable that a suit — arising from personal injuries suffered by a Mexican or Latin American national inflicted by a U.S. based entity — may be brought in the United States. This scenario is even more plausible if the injury occurs in a Mexican border state.

Barring delays, by the year 2000 the United States and Mexico will lift all cross-border trade restrictions between the two countries.⁶² U.S. trucking firms, using their own drivers and equipment, will be able to travel anywhere in Mexico, while Mexican trucks will be able to deliver goods anywhere in the United States.⁶³ This cross-border transportation is estimated to reach six million truckloads per year.⁶⁴ The NAFTA will not, however, place restrictions on truck carriage of domestic car-

58. Jennings, *supra* note 57, at 32.

59. Richard Lawrence, *The Hot Export Markets*, J. COM., Jan. 8, 1996, at 8.

60. John Stites, *Going Forward with Global Investments*, RISK MGMT., Nov. 1995, at 12. See generally *Hilton v. Guyot*, 159 U.S. 113 (1894); *Kohn v. American Metal Climax, Inc.*, 458 F.2d 255 (3d Cir. 1972), *cert. denied*, 409 U.S. 874 (1972).

61. David S. Macari, *Casualty Insurance and Reinsurance Development as a Result of NAFTA*, Employers Reinsurance Corporation, Latin American/Caribbean Regional Office (presented at the Encuentro InterAmericano de Reaseguro, Miami, Florida, May 1995). According to Mauricio Kitaigorodzki, General Coordinator of *Mercado Asegurador*, Buenos Aires, insurance companies in Argentina face an estimated 140,000 lawsuits arising from automobile accidents and work-related accidents annually.

62. Souter, *supra* note 1; Lytle, *supra* note 50, at 47. The Mexican states initially involved were Baja California, Sonora, Ciciwawa, Chihuahua, Coahuila, Nuevo León, and Tamaulipas.

63. *Id.*

64. *Id.*

go.⁶⁵

U.S. drivers, however, are unfamiliar with Mexican driving conditions, which are vastly different from those in the United States. Mexico's highway system is significantly smaller than the interstate system of the United States, and some eighty percent of the vehicles on Mexican roads are uninsured.⁶⁶ Additionally, although the primary Mexican toll roads are safer and in better condition, they are very expensive on which to travel. This may force truckers to use the minor roads, which are winding, badly maintained, and lacking street signs, and will result in a higher number of accidents.⁶⁷ Thus, third-party liability is an area in which trucking-related claims are likely to increase.

2. Theft and Hijacking

In 1994, Mexican police reported 270 truck hijackings on Mexico's federal highways,⁶⁸ which does not include many more thefts on less-protected local roads.⁶⁹ Generally, there has been an increase in both crime and the sophistication of the robbers who commit them.⁷⁰ Additionally, the economic crisis of the past year augmented this problem.⁷¹ Of these crimes, hijacking and theft remain the biggest source of losses for truckers and their marine insurers. In 1994, for example, Chubb paid one million pesos (\$176,000 at the May 1995 exchange rate) in cargo losses, of which ninety percent were attributed to hijacking.⁷²

While insurance coverage is an essential component of protection in this area, a well-thought risk-management plan is also necessary. As a preliminary measure, trucking companies must

65. *Id.*

66. Bill Mongelluzzo, *List of 16 Requirements Outlines Rules for U.S. Truckers in Mexico*, J. COM., Dec. 5, 1995, at 3B; Margo D. Beller, *Mexico Safety Factors Worry U.S. Truck Insurers*, J. COM., Jan. 30, 1996, at 9A.

67. Ryan Myhre, *Up, Up and a Way's to Go*, BUS. MEX., Nov. 1995, at 46; Stites, *supra* note 60; Souter, *supra* note 1; *Insurers Warn of Truck Risk in Mexico*, J. COM., May 15, 1995, at 1A; *Insurers Face Problems with Mexican Theft, Peso*, J. COM., May 2, 1995, at 6A.

68. Stites, *supra* note 60.

69. *Id.*

70. Andrew A. Reding, *Mexico's Law and Order Crisis*, J. COM., Aug. 1, 1995, at 8A.

71. Sergio Sarmiento, *My Encounter with Mexico City's Crime Wave*, WALL ST. J., Jan. 12, 1996, at A11.

72. *Insurers Warn of Truck Risk in Mexico*, *supra* note 67.

insist that their drivers use toll roads and remove any logos from their trucks which might indicate the contents of a shipment. When a theft does occur, truckers must obtain from local police a robbery report, which is required when presenting a claim to an insurance company.⁷³ U.S. carriers must know their Mexican partners and make sure the partner has the proper financial resources not only to provide terminal security, but to screen their drivers, as internal collusion is one of the biggest problems in this area.⁷⁴

In Brazil, which suffers from the same problem, truck carriers and their insurers implemented spy-in-the-sky technology, developed by the U.S. Armed Forces, to monitor vehicle location.⁷⁵ The satellite-based Global Positioning System (GPS) can locate a linked vehicle within ninety-nine feet of its true position and establish two-way communication within thirty seconds.⁷⁶ This system, costing approximately twenty dollars a day per vehicle in Brazil, is relatively inexpensive protection compared with the risk of losses.⁷⁷ In recent years the security costs associated with theft and hijacking in Brazil were one dollar for every ten dollars of receipts generated.⁷⁸ Mexico also uses the GPS technology,⁷⁹ which any carrier should consider when developing a security program for shipping in Mexico. These risk management techniques, as well as adequate insurance coverage, are indispensable elements in the overall effort to reduce liability.

73. Souter, *supra* note 1.

74. *Insurers Face Problems with Mexican Theft, Peso, supra* note 67.

75. James Bruce, *U.S. Sky-Spy System Helps Brazil Battle Hijackers*, J. COM., Nov. 30, 1995, at 1A. In Brazil more than eighty percent of commerce moves by truck. Hijackers, the plague of the industry, target surgical equipment, pharmaceuticals, stereo systems, domestic appliances, and cigarettes. Hijacking-related insurance payments in 1994 amounted to \$215 million, resulting in a premium increase of 150% in 1993-94, and another fifty percent in the first half of 1995. Generating in excess of \$30 billion annually, Brazil has more than 800 trucking operators, and two million trucks. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Roberto Cenicerros, *Mexican Market Remains Soft*, BUS. INS., Jan. 15, 1996, at 40. However, thieves quickly learned how to disable such devices. *Id.*

3. Freight Claims

Freight claims are another area of increasing liability to companies doing business in Mexico and other Latin American countries. The growing number of cargo-related crimes in Mexico and Brazil will likely spread to other Central and South American countries in the next few years. The frequency and severity of these crimes usually correlate to the economic state of the particular country in addition to the degree of social problems and corruption within the various government agencies responsible for trade and cargo matters. These problems are not unique to Mexico and Brazil. Other Latin American countries meet these "threshold" requirements,⁸⁰ and, as such, the problem will not remain confined to Mexico and Brazil.

While freight claims liability is a major concern to the trucking industry, liability is not limited to only that mode of transportation. The amount of air cargo shipped from the United States to Latin America is tremendous.⁸¹ With the largest number of cargo flights and U.S. cargo carriers, Brazil currently has the greatest potential for profit.⁸² Like air transportation, ocean cargo shipments between the United States and Latin America, especially Brazil and Mexico, have flourished in recent years.⁸³

80. Paul B. Carroll, *Mexicans Are Skeptical of Reform Despite Efforts to End Corruption*, WALL ST. J., Nov. 29, 1995, at A10; Diana J. Schemo, *Rio Residents Protest Crime and Corruption*, N.Y. TIMES, Nov. 29, 1995, at A11. Diana J. Schemo, *Top Politician Gunned Down in Colombia*, N.Y. TIMES, Nov. 3, 1995, at A6; Sam Dillon, *Mexico Takes Aim at Craft, but Holds Fire*, N.Y. TIMES, Sept. 21, 1995, at A4; Sam Dillon, *Mexican Police Go Straight (Now That's News!)*, N.Y. TIMES, Oct. 19, 1995, at A4; Patti Lane, *Banana Workers Return to Job After Massacre*, J. COM., Sept. 27, 1995, at 5A; Diana J. Schemo, *Brazilian Squatters Fall in Deadly Police Raid*, N.Y. TIMES, Sept. 19, 1995, at A1; Matt Moffett, *Venezuela Is Suffering, Its Economy Strangled by Too Many Controls*, WALL ST. J., Aug. 16, 1995, at A1; James Bruce, *Scandals Seen Spurring Brazilian Transport Reform*, J. COM., July 10, 1995, at 3B; Calvin Sims, *A Step-Up Terror Campaign in Peru Shows the Shinning Path Is Not Dead Yet*, N.Y. TIMES, March 20, 1995, at A5; Pamela Mercer, *Emergency Declared in Colombia to Fight Crime*, N.Y. TIMES, Aug. 17, 1995.

81. Lisa Burgess, *U.S. Airlines Grab Up Latin American Routes*, J. COM., Nov. 3, 1995, at 1A; William Armbruster, *U.S. Air Cargo Companies Looking South*, J. COM., Nov. 1, 1995, at 1A; William Armbruster, *A Slice of Latin American Pie*, J. COM., Oct. 30, 1995, at 6; Charles W. Thurston, *Latin Airports Struggle to Upgrade*, J. COM., Oct. 30, 1995, at 10.

82. See sources *supra* note 81.

83. Michael Fabey, *Container Trade Surges Between U.S. and South America*, J. COM., July 12, 1995, at 5C; Kevin G. Hall, *Privatized Veracruz Terminal Makes Changes on Many Fronts*, J. COM., Sept. 21, 1995, at 12A; *Texas Ports Boost Their Efforts to Snare Trade*, J. COM., Dec. 13, 1995, at 6A; *Bright Signs Dot the Horizon*

Major ports in the United States experienced a 143% increase in container shipments to Brazil, and trade growth in the South American shipping lanes is expected to continue.⁸⁴

Air cargo shipments, however, are not necessarily advantageous over ground transportation, as many problems exist in the air cargo industry as well. In Brazil, for example, customs inspections take so long and secure storage is so limited that air freight could sit on the tarmac of São Paulo's airport for extended periods. Entire shipments can be held up for weeks or months, and packages are often lost in enigmatic government facilities. Corruption in inspections and warehousing procedures remains a major problem in this aspect of trade.⁸⁵

Ocean cargo shipping is also problematic in Latin America. Piracy of goods occurs at the dockside and port warehouses in Brazil.⁸⁶ Even more disturbing is the limited and sometimes nonexistent effort of the authorities to control it.⁸⁷

Many U.S. shippers are surprised, however, when they discover the differences between United States and other Latin American legal systems as they pertain to freight claims. In Mexico, for example, the law does not recognize the concept of contract of carriage and limits the time allowed for filing freight claims and lawsuits for cargo loss and damage.⁸⁸ Under current Mexican law, in the absence of a higher declared value, a carrier's responsibility is limited to an amount equal to fifteen days of minimum wages in Mexico's Federal District for each metric ton (or for shipments weighing over 441 pounds, but less than 2204 pounds).⁸⁹ Claim payments for shipments weighing less than 441 pounds are limited to four days of minimum salary.⁹⁰ As of November, 1995, the minimum daily wage in the

for *Cargo and Cruises*, J. COM., Dec. 14, 1995, at 4B.

84. See sources *supra* note 83.

85. Kevin G. Hall, *Brazil Air-Cargo Boom Proves Mixed Blessing*, J. COM., Nov. 2, 1995, at 1A.

86. Peter M. Tirschwell, *Ship Lines Protest an Invasion of Piracy in Brazil's Ports*, J. COM., Apr. 17, 1995, at 1A; Michael Fabey, *Polluters Over Pirates*, J. COM., Jan. 4, 1996, at 3A.

87. See sources *supra* note 86.

88. Gregory S. Johnson, *Liability Woes, Flood of Rules Plague Cross-Border Shippers Under NAFTA*, J. COM., Nov. 15, 1995, at 2B.

89. *Id.*

90. *Id.*

Federal District was only two dollars and forty cents.⁹¹

To solve these discrepancies between legal systems, the United States, Mexico, and Canada attempted to forge an agreement on uniform liability. Unfortunately, the uniform liability code, which the parties expected to create in October 1995, never materialized.⁹² As a result, three different liability programs remain in place under the NAFTA: 1) the full U.S. liability, 2) the two Canadian dollars per pound applicable to Canadian truckers, and 3) Mexico's three U.S. cents per pound.⁹³

In order to minimize the freight loss liability that may result to their companies, risk managers need to pay close attention to freight claims liability and to the applicable law in the different jurisdictions. Efforts to adequately plan for the filing of freight claims must be integrated into the anticipation of and planning for freight theft and hijacking and the reduction of that liability.

4. Money Laundering Liability

The emergent area of money laundering liability applies mainly to the U.S.-Mexico trucking industry, but it could also pertain to ocean cargo or air freight. With the NAFTA set to open U.S.-Mexican borders to trucking sometime in the near future, drug enforcement agencies have growing concerns that cross-border trade will be targeted by narcotics traffickers seeking smoother trade flows.⁹⁴ Early in the next century an estimated 10,000 to 15,000 trucks will cross into the United States from Mexico on a daily basis.⁹⁵ Currently, as much as seventy percent of the cocaine entering the United States comes across the Mexican border.⁹⁶ According to the DEA and U.S. Customs, in 1994 forty percent of the drug seizures and twenty percent of

91. *Id.*

92. *Id.*

93. Kevin G. Hall, *NAFTA Border Opening Set Today*, J. COM., Dec. 18, 1995, at 1A.

94. Kevin G. Hall, *Transporters in Cross Fire of U.S. Drug Crackdown*, J. COM., Sept. 26, 1995, at 3A [hereinafter *Transporters in Cross Fire*]; *Mexico Seizes Drugs Headed for Texas*, J. COM., Feb. 13, 1996, at 2B.

95. *More Carriers Seek Cross-Border Authority*, J. COM., Feb. 13, 1996, at 2B.

96. *Id.* See also Sam Dillon, *Mexico Arrests a Top Suspect in Drug Trade*, N.Y. TIMES, Jan. 16, 1996, at A1.

the cash seizures by the DEA originated in Texas.⁹⁷

Nor is the increased drug-trafficking activity limited to smuggling drugs into the United States. Just as drug merchants need to move their product into the United States, they need to transfer their earnings south and convert them into pesos. Put in more delicate terms, they need to "launder" their earnings.⁹⁸ The Cali drug cartel is reportedly funneling billions of dollars in drug profits back to Latin America through a wide variety of American companies — large and small, witting and unwitting.⁹⁹

In a single investigation conducted in New York, the Federal Customs Service identified 105 American companies that accepted drug money for electronics, auto parts, and other goods shipped to Colombia.¹⁰⁰ In October 1995, President Clinton directed the U.S. government to identify front companies involved in money laundering and freeze their assets.¹⁰¹ The Treasury Department's Financial Crimes Enforcement Network reported that wholesale representatives of many American companies, including General Electric, Microsoft, Apple Computer and General Motors, sold goods to importers they did not know were fronts for laundering drug proceeds.¹⁰²

A 1995 U.S. embassy report singled out Mexico as the largest money laundering center in Latin America.¹⁰³ The report stated that Mexico's financial system, serving the Colombian drug barons and the Mexican cartels, was particularly vulnerable to money laundering by the narcotics trade.¹⁰⁴ In the drug trade, the Mexicans appear to be doing better business than the Colombians.¹⁰⁵ In response, Mexico unveiled a twenty-nine point reform plan for the Attorney General's office, creating an elite anti-drug unit, promoting greater coordination with the

97. *Transporters in Cross Fire*, *supra* note 94.

98. Clifford Krauss & Douglas Frantz, *Cali Drug Cartel Using U.S. Business to Launder Cash*, N.Y. TIMES, Oct. 30, 1995, at A1; Sam Dillon, *Speed Carries Mexican Drug Dealer to the Top*, N.Y. TIMES, Dec. 27, 1995, at A6.

99. Krauss & Frantz, *supra* note 98.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. Leslie Crawford, *Mexico Prepares Cash Laundering Law*, FIN. TIMES, May 4, 1995, at 8; Dillon, *supra* note 98.

armed forces, and eliminating multiple levels of bureaucracy, making it easier to avoid corruption and prosecute traffickers.¹⁰⁶

With a strong anti-crime response coming from the United States and Mexico, U.S. companies operating in Mexico and Latin America, especially those using ground transportation, must be diligent in ascertaining who their true partners are and how they screen their drivers. There is also a pressing need for companies to avoid being entrapped in a money laundering sting operation which would be very disruptive to operations, expensive, damaging to the company's reputation, and might possibly give rise to criminal liability of corporate management.

C. Environmental Liability

Over the next thirty years environmental liability claims will reach \$40 billion, with clean-up costs being a major component of that amount.¹⁰⁷ Of 1100 insurance companies, approximately forty will shoulder eighty percent of these losses, making them vulnerable to major restructuring, insolvency, and lower financial ratings.¹⁰⁸ Although these figures are not specific to Latin America, that region is emerging as an active source of environmental liability for multinational companies. Such liability is already evident in the region, as the following case studies make clear.

1. Peru's Fight for Fresh Air

The town of Ilo is located near the Pacific Ocean in the southern part of Peru. For the past thirty years Ilo has been the site of the Southern Peru Copper Corporation, controlled by three American companies — Asarco, Inc., the Phelps Dodge Corporation, and the Marmon Group. Environmentalists report that the plant's smelter releases 2000 tons of sulfur dioxide into the air daily, exceeding the limit imposed in the United States by ten to fifteen times.¹⁰⁹ Southern Peru Copper asserts that it

106. *Mexico Undertakes Own Anti-Narcotics Measures*, J. COM., Sept. 26, 1995, at 3A.

107. Margo D. Beller, *Environmental Claims Will Soar*, J. COM., Oct. 30, 1995, at 15A.

108. *Id.*

109. Calvin Sims, *In Peru, A Fight for Fresh Air*, N.Y. TIMES, Dec. 12, 1995, at

has always operated within the confines of Peruvian law; Peru does not set limits on emission rates.

However, seeking damages for what they allege to be decades of environmental harm, residents of Ilo, with American representation, filed suit against Southern Peru Copper, its owners, and its creditors in a Texas court.¹¹⁰ The suit alleges that the company destroyed a twelve mile stretch of coastline by dumping thirty million metric tons of untreated mining wastes into the Pacific Ocean annually.¹¹¹ If successful, the suit could return damages against Southern Peru Copper totalling millions of dollars for health problems and clean-up costs.

2. Ecuador's Pesticide Suit

Naranjal is a banana plantation town in the southern part of Ecuador's Pacific coast. In 1972, the plantations began using a pesticide, dibromo-chloropropane (DBCP), to kill a microscopic worm that, if left untreated, could have destroyed the banana crop allocated for exportation to the United States. In 1977 DBCP was found to cause sterility in men.¹¹² This resulted in an immediate ban of DBCP in California and sharply restricted its use elsewhere in the United States.¹¹³ It was eventually banned by the Environmental Protection Agency in 1979, but American-based food growers continued to use the chemical in countries lacking the U.S. standards of environmental, legal, and occupational protections.¹¹⁴ Allegedly, the product continued to be shipped to Ecuador through 1981.¹¹⁵

Today, in a class-action suit, some 25,000 workers from twelve developing countries, including Ecuador, allege that the use of the fumigant caused sterility in men.¹¹⁶ The manufacturers deny sending the pesticide overseas after 1979. They also

C1. Phelps Dodge is also involved in a Chilean copper mine project. *Phelps Dodge Looks for Growth at Chilean Copper Mine*, FIN. TIMES, Apr. 6, 1995, at 25.

110. Sims, *supra* note 109.

111. *Id.*

112. Diana J. Schemo, *Pesticide from U.S. Kills the Hopes of Fruit Pickers in the Third World*, N.Y. TIMES, Dec. 6, 1995, at A8.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* Corporate defendants named in the suit include Dow Chemical, Shell Oil, Occidental Petroleum, Del Monte Fruit, Chiquita Brands and Dole Food. *Id.*

maintain that labels were printed in Spanish advising the use of protective gear and warning of the danger of sterility.¹¹⁷

While the plaintiffs' American lawyers will have to overcome significant legal obstacles to succeed, the potential liability in this case, both to the defendants and their insurers is in the millions of dollars. If the suit proceeds, even without a plaintiffs' award the costs of defense and burden of discovery to the defendant companies will be staggering.

3. Going After Big Oil

From 1972 to 1990, the Trans-Ecuadorian Pipeline carried 1.4 billion barrels of crude oil, generating hundreds of millions of dollars for Texaco, America's fourth largest oil firm.¹¹⁸ Environmentalists assert that in the process the pipeline caused parts of the country's most biologically rich area to become a toxic waste dump.¹¹⁹ Residents along the pipeline's path claim that breathing the oil-polluted air and drinking and bathing in oil-blackened waters has increased their susceptibility to cancer. Texaco no longer operates in Ecuador.¹²⁰

Residents along the pipeline's path have filed a class-action suit in a New York district court and seek to recover \$1.5 billion from Texaco. The case, as reported in the Miami Herald, "is part of a trend in which international activists are forming networks to protect wilderness left vulnerable by uncaring, cash-strapped or corrupt governments . . ." and "is part of a growing effort by environmentalists in the United States and developing countries to make multinational firms answer to higher standards"¹²¹

Pending talks between Texaco and Ecuadorean officials, the court stayed the suit in the winter of 1994. However, when plaintiffs rejected the pact proposed as a result of these talks, a U.S. Magistrate allowed the case to proceed in June 1995.¹²²

117. *Id.*

118. Katherine Ellison, *Activists Take on Big Oil to Protect the Wilderness*, MIAMI HERALD, Aug. 20, 1995, at 1A.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

4. The Shrimp Farm Case

A suit filed in 1994 in a South Florida Circuit Court¹²³ alleges that from the late 1980s to the early 1990s a large number of Ecuadorean farmers, including banana growers, began using a variety of agricultural chemicals, including products known as Tilt, Atrazine, and Calixin, to combat various maladies which were affecting the crops.¹²⁴

The suit further alleges that CIBA-GEIGY Limited recommended and sold the fungicide Tilt and the herbicide Atrazine, which were imported into Ecuador and used there by banana growers.¹²⁵ Furthermore, the suit also alleges that Del Monte Fresh Produce N.A., Inc. and Del Monte Fresh Produce Company provided consultants who recommended the use of these chemicals in the Ecuadorean banana plantations.¹²⁶

An amended fourth-party complaint, filed by Lango-Taura S.A., a shrimp farm operator in Ecuador, alleges that the use of the chemicals caused a substantial reduction in the productivity of Lango-Taura S.A.'s shrimp farm, caused a significant increase in the mortality of the shrimp, reduced the size of the shrimp produced, and caused undesirable symptoms and characteristics in the shrimp which adversely affect their life expectancy, size, and marketability.¹²⁷

The amended complaint seeks monetary damages from the fourth-party defendants Del Monte Fresh Produce N.A., Incorporated, Del Monte Fresh Produce Company, CIBA-GEIGY Limited, CIGA-GEIGY Corporation, Basf Aktiengesellschaft, and International Fertilizer Limited on the basis of negligence, design defects, known hazards of the products, or failure to test the products, all of which allegedly caused significant monetary damages to Lango-Taura S.A.¹²⁸

123. *The Fish Peddler, Inc. v. Pink Star Corp.*, No. 94-10139-27-FRANZA (Circuit Ct., Broward County, Fla.). The suit has brought in, as fourth-party defendants, Del Monte Fresh Produce N.A., Inc., Del Monte Fresh Produce Company, CIBA-GEIGY Limited, CIBA-GEIGY Corporation, Basf Aktiengesellschaft, and International Fertilizer Ltd. *Id.*

124. *Id.*, amended fourth-party complaint, at 8.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 9.

5. The Fight Over Gas Pipelines

Chilean environmentalists vigorously oppose a proposed giant natural gas pipeline to be built over the Andes which, they assert, will cross an active earthquake fault and carry its highly combustible contents only yards from people's homes.¹²⁹ The pipeline, which would pass over the highest mountains in this hemisphere, will carry ten million cubic meters of liquid natural gas from Mendoza, Argentina to Santiago, Chile each day.¹³⁰ The environmentalists further allege that the pipeline, to be built by Canada's Nova Corporation and Chilean electrical utility, Chilgerer at a cost of U.S. \$300 million, will not comply with safety laws in Canada and will require slashing down rare, protected native forests.¹³¹

Although no lawsuit has yet been filed, this scenario demonstrates the level of environmental awareness and aggressiveness that the Latin American general population has developed against multinational corporations. Additionally, Chilean media coverage of the pipeline controversy has steadily grown. If the environmentalists fail in their present efforts to halt this project, legal action may be the next option they consider.¹³²

6. Going After PEMEX

In January 1996, demonstrators led by Mexico's Democratic Revolution Party (PRD) blocked dozens of oil wells belonging to Petroleos Mexicanos (PEMEX). Protestors asserted that PEMEX's wells, in the Tabasco region of Mexico's Gulf Coast, had polluted the soils and the waters of the surrounding rivers,

129. *Chilean Environmentalists Rip Standards for Proposed Pipeline over the Andes*, J. COM., Oct. 6, 1995, at 5B.

130. *Id.*

131. *Id.*

132. *Id.* An incident in Guyana involving another Canadian company, Omai Gold Mines, Ltd., clearly illustrates the threat of legal action. Omai Gold Mines owns one of South America's largest mines, located in Guyana. In January 1996, the Guyanese government authorized the mine to reopen following a five-month shutdown caused by a cyanide leak, contaminating the Omai Creek and the Essequibo River. On behalf of residents of Guyana effected by the disaster, a Montreal environmental group, Public Interest Research Associates, said it would probably sue the company in the province of Quebec, Canada, where the majority owner, Cambior Inc., is headquartered, to block the reopening. Aviva Freudmann, *OK to Reopen Won't Mean End of Troubles for Mine in Guyana*, J. COM., Jan. 11, 1996, at 5B.

lakes, and communities and that fishing ceased to be one of the principal sources of subsistence because of the alleged pollution.¹³³ The demonstrators sought benefits from PEMEX as well as restoration of the environment.¹³⁴ As of mid-February, PEMEX was claiming daily losses of more than five billion pesos (U.S. \$700,000) as a consequence of the protests and denial of access to the wells.¹³⁵

These events signify the Mexicans' increased awareness of industrial pollution and their right to seek redress from perceived ecological damage. As Mexico is planning to privatize fifty petrochemical plants in addition to natural gas distribution operations,¹³⁶ multinational corporations planning to invest in former PEMEX operations must be diligent in investigating any existing environmental harms, so as to avoid costly claims that could be asserted against the investors for pre-existing environmental damage.

Although most Latin American countries have already enacted environmental legislation, not all enforce these laws with the same zeal.¹³⁷ In Argentina, for example, environmental regulations are expected to play an increasingly important role in foreign investment decisions. Recent legal developments there revamped the legislative framework, tightening the legal protection of the environment.¹³⁸

Brazil recently enacted several laws in the area of environmental protection, resulting in a substantial number of cases being brought in the Brazilian courts.¹³⁹ Under present Brazilian laws, polluters are subject to joint and several strict liability.¹⁴⁰ Thus, a polluter may be liable regardless of knowledge,

133. Sam Dillon, *Mexican Protest Blockades Oil Wells in a Gulf State*, N.Y. TIMES, Feb. 1, 1996, at C7.

134. *Id.*

135. Martin Langfield, *Zedillo Launches Energy Plan, Slams Protests*, J. COM., Feb. 14, 1996, at 5B; *PEMEX Acusa De Sabotaje A Izquierdistas* [PEMEX Accuses the Leftists of Sabotage] EL NUEVO HERALD, Feb. 16, 1996, at 1B.

136. Anthony de Palma, *Mexico Renews Its Intention to Sell Parts of Oil Monopoly*, N.Y. TIMES, Feb. 13, 1996, at C4.

137. *Environmental Law and Policy in Latin America*, Osvaldo R.I. Agatiello, ed., (Baker & McKenzie) Miami, 1995.

138. R. Eugenia Bec & Horacio J. Franco, *Environmental Issues for Foreign Investors*, LATIN AM. L. & BUS. REP., July 31, 1995, at 9.

139. *Environmental Protection in Brazil*, in 1 LATIN AMERICAN LEGAL DEVELOPMENTS BULLETIN No. 3 (Baker & McKenzie), Oct. 1993, at 5.

140. *Id.* at 8.

fault, degree of care, or intent. Additionally, the "deep pocket" doctrine applies, where each party is liable for all parties' liabilities.¹⁴¹ Another extremely important concern is that a polluter's successor or anyone contributing to the environmental damage is also liable for damages.¹⁴²

Although critics recently asserted that Brazilian environmental laws are not being enforced as aggressively as they should be,¹⁴³ a multinational corporation participating in Brazil's huge privatization program must be aware of this potential liability.¹⁴⁴ It should proceed under the assumption that the laws in the books may and probably will be enforced. It would simply be too costly to believe otherwise.

Chile's Environmental Act of March 1994¹⁴⁵ creates environmental liability for violators acting negligently or maliciously¹⁴⁶ and establishes a legal presumption of liability for the person violating environmental standards.¹⁴⁷ The burden of proof as to negligence or malice rests on the violator, who must disprove the allegations.¹⁴⁸

The Commission on Environmental Cooperation (CEC), a three member commission formed under the NAFTA,¹⁴⁹ over-

141. Sarah Goddard, *Deep Pockets Beware*, BUS. INS., Oct. 9, 1995, at 77.

142. *Environmental Law and Policy in Latin America*, supra note 137, at 31.

143. Diana J. Schemo, *Amazon Is Burning Again, as Furiously as Ever*, N.Y. TIMES, Oct. 12, 1995, at A3.

144. *Environmental Law and Policy in Latin America*, supra note 137, at 52. Multinationals purchasing existing industrial facilities in Latin America must be very careful to conduct all the necessary environmental soil studies, as pre-existing contamination could, under some countries' laws, such as Brazil's, be charged to a successor owner. In Colombia, for example, the National Liberation Army and the Revolution Armed Forces of Colombia have been responsible, through years of bombings, for thousands of barrels of crude oil spilled into the environment. James Brooke, *Colombia Oil Spills Net Fines for All but Rebels*, N.Y. TIMES, Mar. 6, 1995, at A2. The danger becomes even more threatening now that U.S. chemical and oil firms are moving into Latin America. Friedland & Fritsch, supra note 24; Allanna Sullivan, *Where Others Feared to Drill, One Group Hits a Gusher of Oil*, WALL ST. J., Jan. 3, 1996, at A1; Bruce Vail, *ICI Americas Sees Latin America As Primary Target for Expansion*, J. COM., Feb. 20, 1996, at 7A.

145. *Environmental Law and Policy in Latin America*, supra note 137, at 46.

146. *Id.* at 52.

147. *Id.*

148. *Id.*

149. NAFTA — *Related Agreements*, BUS. MEX., special ed., 1995, at 79; Kevin G. Hall, *NAFTA Countries Agree to Focus on PCB Elimination*, J. COM., Oct. 17, 1995, at 6B [hereinafter *Focus on PCB Elimination*]; *Panel's First Case Makes Headway*, J. COM., Oct. 18, 1995, at 5A.

sees environmental issues and disputes and has the power to increase the enforcement capabilities of the NAFTA partners, particularly Mexico.¹⁵⁰

In October 1995, the CEC presented a report to the environmental ministers of the NAFTA countries on the mysterious water bird kill of 1994, where between 25,000 and 40,000 migratory water birds were killed in Mexico's Silva Reservoir, near the City of Leon in the central state of Guanajuato.¹⁵¹ The CEC recommended that Mexico adopt independent monitoring of its waste treatment in Central Mexico and create a wildlife health and disease outbreak surveillance network.¹⁵²

The CEC's report, submitted against the wishes of the Mexican Environmental Secretariat, signaled that the CEC was a strong and proactive force to be taken seriously.¹⁵³ The CEC has already announced that it will work on a joint action plan to eliminate PCBs (stable but environmentally harmful chemicals) from the Mexican environment. The CEC also plans to address three other potentially harmful pollutants in Mexico, mainly lead, cadmium, and the pesticide DDT.¹⁵⁴

The CEC is not, however, the only entity working to solve Mexico's environmental problems. Soon after his inauguration, Mexican President Ernesto Zedillo established the position of Secretariat of Environment, Natural Resources, and Fisheries.¹⁵⁵ Among other duties, the Secretariat¹⁵⁶ is charged with

150. Federico Ruanova & Carlos Angulo-Parra, *Guidelines For Generators of Hazardous Waste*, LATIN AM. L. & BUS. REP., Feb. 28, 1995, at 20.

151. *Panel's First Case Makes Headway*, *supra* note 149.

152. *Id.*

153. *Id.*

154. *Focus on PCB Elimination*, *supra* note 149. In January 1996 the Mexican Environmental Law Center and two other Mexican environmental groups petitioned the Commission on Environmental Cooperation (CEC) to study whether Mexico properly followed its laws in approving a development project for Playa Paraiso in the State of Quintana Roo, on the island of Cozumel. The three groups are asking for the CEC's support on the grounds that the builder, Consorcio H, and the transport and environment ministries failed to assess the impact of the development associated with the project. Kevin G. Hall, *Mexican Groups Question Project*, J. COM., Jan. 19, 1996, at 3A. On February 12, 1996 the CEC agreed to hear testimony on the Cozumel project and issue a judgment — the first time it had agreed to do so in its history. Julia Preston, *Where Cruise Liners Intrude, NAFTA Tests Waters*, N.Y. TIMES, Feb. 26, 1996, at A4.

155. *Secretariat of Environment, Natural Resources and Fisheries*, BUS. MEX., special ed., 1995, at 32.

156. Julia Carabias, the former President of Mexico's National Ecology Institute,

establishing official standards concerning the preservation and restoration of the environment and ecosystems, sustenance of natural resources and wildlife, and treatment of waste water and dangerous materials.¹⁵⁷

The Secretariat, now using the new approach of "polluter pays," introduced another important reform, risk-based analysis. A risk-based analysis determines environmental impact on a fixed maximum permissible limit, taking into consideration the location of the discharge and the risk involved. Also, the Secretariat's use of environmental impact statements is likely to increase.¹⁵⁸ Companies should expect a greater imposition of fines for violations, often in addition to plant closings and the collection of surety bonds posted by companies.¹⁵⁹

Moreover, the Secretariat will require maquiladoras to export any hazardous waste generated from raw materials imported temporarily into Mexico.¹⁶⁰ Failure to comply with these requirements will also result in plant shutdowns and fines.¹⁶¹ Furthermore, maquiladora facilities are mandated to keep a monthly log of all hazardous waste generated.¹⁶² Transfer of these wastes must be recorded in a log indicating the date of the transfer, origin, and destination.¹⁶³

Even though Mexico announced in October 1995 that it was relaxing requirements for environmental impact statements, multinational companies doing business in Mexico must still proceed with caution. First, the amount of criticism generated by the new rules, especially within environmental groups in the United States, may result in a total or partial reversal from these relaxed norms.¹⁶⁴ Second, the CEC, as previously dis-

is now the head of the Secretariat.

157. *Secretariat of Environment, Natural Resources and Fisheries*, *supra* note 155.

158. Gary Newman, *In Theory and in Practice*, BUS. MEX., special ed., 1995, at 40.

159. *Id.* at 42.

160. Ruanova & Angulo-Parra, *supra* note 150, at 23.

161. *Id.*

162. *Id.*

163. *Id.* at 21.

164. Kevin G. Hall, *Environment Rule Change Draws Fire in Mexico*, J. COM., Oct. 26, 1995, at 1A. Under the new rules, which took effect on October 24, 1995, many companies, including large, pollution-prone industries, will no longer be required to undertake environmental impact studies. Instead, they will be obligated to file prevention plans with the federal government. If the INE fails to respond within

cussed, has given notice of its intent to be a force in the region rather than just a "paper" agency. Finally, if a U.S. company operates a maquiladora near the U.S.-Mexican border, resulting in pollution in the United States, that company could be held liable under U.S. laws.¹⁶⁵

D. Labor Liability and Business Interruption

Another area of emerging liability for multinationals doing business in Latin America is that of labor related liability and associated business interruptions that may arise as a direct result. In the third quarter of 1995, Mexico's economy contracted by 9.6%, following an even worse 10.5% contraction in the second quarter.¹⁶⁶ In the past year, one million jobs disappeared¹⁶⁷ while, at the same time, the Mexican labor force increased by one million workers annually.¹⁶⁸ Business and industry groups have used these events to force concessions from the unions,¹⁶⁹ which has instilled a dramatic change in how Mexicans perceive Americans and the American companies now moving into Mexico.¹⁷⁰

thirty days of the filing, the company is free to commence plant construction. If they are located within an industrial park, large businesses will not be required to produce an environmental impact statement. This exception includes most border area maquiladoras. *Id.*

165. *Lawsuit over Brain Defects in South Texas Set for Trial — Suit Claims Toxic Emissions from GM, Others Harmed Children*, AUSTIN AMERICAN-STATESMAN, Aug. 23, 1995, at B3; James E. Garcia, *GM, Companies Settle Lawsuit over Brain Defects in Valley*, AUSTIN AMERICAN-STATESMAN, Aug. 26, 1995, at B9. These suits are yet another example of "emerging liabilities." The suits involved allegations that maquiladora plants operated by GM and two other companies in Matamoros, Mexico, were creating emissions causing birth defects in babies born across the border in the Rio Grande Valley, in Cameron County, Texas. While the defendants did not admit any liability, on the eve of trial the suits were settled for undisclosed amounts. In 1993, suits filed in Texas district court initially named eighty-eight owners of approximately thirty-five factories in Matamoros as defendants. Plaintiffs asserted that the air pollution drifted over the border and caused birth defects such as spina bifida and other neural tube defects. Over the past two years, all defendants have settled for amounts ranging from \$100,000 to \$2 million. *Id.*

166. Craig Torres & Paul B. Carroll, *Mexico Says Economy Contracted 9.6%*, WALL ST. J., Nov. 20, 1995, at A11.

167. *Id.*

168. *The Economic Situation in Mexico*, N. AM. INS. BULL., Deloitte & Touche LLP, Spring 1995, at 13.

169. Dianne Solis, *Mexico's Economic Crisis Pushes Unions to Consider Concessions*, WALL ST. J., Aug. 25, 1995, at A4.

170. Dianne Solis, *Americans Grow Ugly in Mexicans' Eyes*, WALL ST. J., Mar.

As the product of post-revolutionary Mexico, between 1910 and 1920, its labor laws are considered worker friendly.¹⁷¹ Although the Mexican government wants to relax labor rules for businesses,¹⁷² U.S. corporations must take care to comply with these rules. Labor relations in Mexico and the United States differ dramatically, and it is essential that U.S. companies understand the differences.

Under Mexican law, there is no "at will" employment. Mexico protects the employee by providing for an indefinite term of employment, with termination only for "cause."¹⁷³ Moreover, if the employment is for a specific duration or task, the employee, absent cause, is entitled to remain employed for the specified duration or until the task is completed.¹⁷⁴ Even when termi-

21, 1995, at A6. *Protesters Close Down Mexican Stock Market*, N.Y. TIMES, June 6, 1995, at A4.

171. Solis, *supra* note 169.

172. *Id.*

173. Rebecca A. Winterscheidt & Joseph E. Lambert, *Termination of Employees under Mexican Labor Law*, LATIN AM. L. & BUS. REP., Jan. 31, 1995, at 16.

174. *Id.* Mexico's Federal Labor Law (LFT) lists fifteen acts or omissions that constitute "cause" which allows an employer to rescind employment without liability:

1. Inducing the employer to hire the employee by false certification of skills or abilities he or she does not possess;
2. Unprovoked on-the-job violence, dishonesty, threats, or mistreatment to the employer or the employer's family or to management or administrative personnel;
3. Unprovoked on-the-job violence, dishonesty, threats, or mistreatment of co-workers that disrupts workplace discipline;
4. Unprovoked off-duty violence, dishonesty, threats, or mistreatment to the employer or the employer's family or to management or administrative personnel if the misconduct is sufficiently serious to make fulfillment of the contract impossible;
5. Intentionally causing material damage to the employer's property during performance of work;
6. Negligently causing serious damage to the employer's property if the negligence is the sole cause of the damage;
7. Negligently endangering the safety of the establishment or persons therein;
8. Engaging in immoral behavior in the workplace;
9. Disclosing trade secrets or other confidential information to the detriment of the company;
10. Being absent without permission or justification more than three days in a thirty-day period;
11. Disobeying the employer as to a work-related matter without justification;
12. Refusing to follow safety procedures;
13. Reporting to work under the influence of alcohol or non-prescription drugs;
14. Receiving a prison sentence which prevents the employee from performing his or her duties;
15. Committing other acts similar in seriousness and consequences to those above. *Id.*

nating an employee for cause, the employer must abide by a highly employee-favorable procedure:

1) the employer must provide the employee with a written statement defining the date and reasons for the termination;

2) the discharged employee then has two months to appeal to a Conciliation and Arbitration Board;

3) the employer, to justify the termination, must prove that the employee engaged in one or more of the fifteen prohibited categories of conduct; and

4) if the employer cannot meet its burden of proof, the employee is entitled to unadjusted back pay as well as either reinstatement or "indemnification."¹⁷⁵

An employee discharged without cause and prohibited from reinstatement is entitled to indemnification equal to three month's salary plus an additional amount.¹⁷⁶ Any other employee terminated in violation of the law is given a choice of reinstatement or indemnification equal to three months salary.¹⁷⁷

In a recent case, 118 Mexican factory workers, mostly women in their twenties, instituted suit in California nine months after they were fired. The suit alleged that a U.S. company, American United Global, Inc., fired the workers and then refused to pay them severance benefits as required by Mexican law.¹⁷⁸ The employees actually worked for Exportadora de Mano de Obra, registered as a Mexican company with a Mexican general manager. Although American United Global maintained that it and Exportadora de Mano de Obra were separate entities, it did settle for an undisclosed amount.¹⁷⁹

175. *Id.* A "confidential" employee (management, supervisors, inspectors) or one who worked less than one year, provided domestic services, or worked on a transient basis, is not entitled to choose reinstatement. *Id.*

176. *Id.* "Salary" includes premiums, bonuses, commissions, and fringe benefits. If the employee's contract was for less than one year, the additional amount equals full salary for half the entire period of employment. If the contract was for more than one year, the additional amount equals six months' salary for the first year plus twenty days' salary for each additional year of service. *Id.*

177. *Id.*

178. *Fired Mexican Workers Settled with U.S. Firms*, J. COM., Nov. 1, 1995, at 3A.

179. *Id.*

Moreover, under the NAFTA side agreement on labor, National Administrative Offices (NAOs) were set up to monitor labor conditions in member countries. The offices had the authority to implement trade sanctions in the event of misconduct in the areas of child labor, minimum wages, health, and safety.¹⁸⁰ However, in recent NAO cases involving General Electric, Honeywell, and Sony Electronics, the U.S. NAO signaled that it will not investigate the fairness of a member country's labor practices.¹⁸¹ Nevertheless, because the NAO monitors health and safety conditions, U.S. companies need to comply with provisions of Mexican law to avoid investigation and liability in countries with questionable labor practices.¹⁸²

Exposure to labor liability is not, however, confined solely to Mexico. In Argentina, where dismissal indemnity amounts equal one month's wages per year worked, costly fringe benefits have been onerous for business.¹⁸³ These benefits constitute one of the biggest disincentives to new hiring in Argentina.¹⁸⁴ Created in the fall of 1995, a bill required an employer to make annual contributions to a new pension plan fund. When fired, the terminated employee receives unemployment benefits from the fund over a set period of time.¹⁸⁵

Like its South American neighbors, the Chilean government is also in the process of modernizing labor laws. Proposals made last fall would allow cross-firm wage negotiations in companies with fewer than 100 employees, forbid employers from hiring replacement workers during a strike, and establish a framework for wage negotiations with temporary laborers in the agricultur-

180. Tim Shorrock, *Labor Violations Not Addressed, U.S. Official Says*, J. COM., Nov. 13, 1995, at 3A; Renee Haines, *Mexican Border Plant Workers Allege Labor Violations*, REUTER BUS. REP., Feb. 13, 1995.

181. Winterscheidt & Lambert, *supra* note 173, at 18; Shorrock, *supra* note 180.

182. James Blears, *15 Minutes with Efrain Salazar Robles*, BUS. MEX., Nov. 1995, at 6. Mr. Robles is General Manager for Mexico of Servicios Liberty, S.A. de C.V., a subsidiary of Boston-based Liberty International Risk Services. Mr. Robles notes that in 1994 there were more than 500,000 on-the-job injuries in Mexico and 1,600 fatalities. He attributes the accidents, in large part, to a lack of safety. *Id.*

183. *Debate Reopens on Labor Benefits*, LAGNIAPPE LETTER, Nov. 10, 1995, at 2; Paula L. Green, *Argentina Untangles Knot of Labor Laws Gained over 40 Years*, J. COM., July 10, 1995, at 5A.

184. *Debate Reopens on Labor Benefits*, *supra* note 183.

185. *Id.* In the fall of 1995, Argentina also enacted a new law requiring that insurance companies pay damages resulting from accidents on the job and sets a \$55,000 cap on maximum indemnity. The new law applies to all government and private sector employees. U.S./LATIN FINANCE, Nov. 1995, at 16.

al sectors. However, critics claim that the proposal fails to address an effective unemployment benefits program.¹⁸⁶

With labor reforms occurring throughout Latin America and the current trend of U.S. companies to establish operations there, U.S. business entities must pay careful attention to the labor laws of the country in which they operate in order to avoid costly penalties, adverse publicity, and potential liability payments.

An often predictable consequence of labor disputes in Latin America, business interruptions are emerging as a liability and, while not an entirely new concept in that region, are becoming a greater source of potential liability as a U.S. corporate presence continues to grow in Latin America. The factors affecting this area of liability include labor strikes, bureaucratic delays and corruption, theft and piracy, political upheavals, terrorism, and natural catastrophes.

As the region experiences the rigors of privatization and shrinking economies, unemployment, along with the hardship and frustration resulting from it, will rise.¹⁸⁷ These actions will likely lead to labor strikes, resulting in losses to U.S. companies operating in the region. Events in the past year have already begun to show this dissatisfaction among the labor force.

For example, in the spring of 1995, Brazilian dock workers staged a long and costly strike in the nation's largest ports over the issues of job security and wages.¹⁸⁸ During the same period Panama Canal pilots protested long operating hours and unsafe labor conditions.¹⁸⁹ In August 1995, labor unrest and violence erupted in Panama when the government passed a new labor law that, while designed to make Panama more competitive in the international labor market, reduced employment and pension plan benefits.¹⁹⁰

186. *Labor Reforms Rankle Both Sides*, LAGNIAPPE LETTER, Nov. 10, 1995, at 4.

187. Roberto Fabricio, *Latin America's Income Gap*, J. COM., Jan. 12, 1996, at 6A.

188. *Brazilian Dockworkers Reach Last Days of Strikes*, J. COM., Apr. 20, 1995, at 8B; Michael Fabey & James Bruce, *Dock Strikes in Brazil Snarling Shipments*, J. COM., Apr. 12, 1995, at 1A.

189. Tim Shorrock, *Panama Canal Pilots Protest Long Hours, Unsafe Conditions*, J. COM., Apr. 20, 1995, at 8B.

190. Juan Pritsiolas, *Unrest Looms in Panama with Labor Law's Passage*, J. COM., Aug. 16, 1995, at 2A.

In the fall of 1995, fears of massive layoffs in Venezuela associated with a privatization sale of four government owned aluminum companies instigated concerned labor unions to organize opposition against the planned sale.¹⁹¹ In January 1996, the Colombian Labor Minister held meetings to prevent a strike by 10,000 banana workers at 280 plantations in the northwest region of Uraba. The laborers were protesting against their employer's refusal to raise wages by twenty-one percent.¹⁹²

In the spring of 1995, Mexican truckers threatened to strike.¹⁹³ Later that year, the Brazilian government was threatening to fire oil workers unless they ended their month-long strike,¹⁹⁴ and 300 workers from the port of Kingston, Jamaica staged a strike to protest the level of wage increases.¹⁹⁵ In February 1996, 200 peasants, who claimed an ownership right in land owned by Chiquita Brands and disrupted operations for fifteen months, had to be removed from that land by the Honduran military.¹⁹⁶ In that same month, workers at Petroleos del Perú (Petroperú) staged a strike to protest the privatization of the industry, interrupting operations at oil refineries and oil wells.¹⁹⁷

Problems associated with theft, robberies, piracy, government corruption, and bureaucratic delays create costly business interruptions on an ongoing basis. Guerrilla activities that plague the region often target foreign operations as easy, visible, and symbolic, and in the process create delays, disruption, and losses for the business operations of the companies involved.¹⁹⁸

191. *Union Fights CVG Sell-Off*, LAGNIAPPE LETTER, Nov. 10, 1995, at 8.

192. *Colombian Minister Attempts to Avoid Strike by Banana Workers, Producers*, J. COM., Jan. 23, 1996, at 3A.

193. Kevin G. Hall, *Mexican Truckers Threaten Strike, Seek Government Help*, J. COM., Apr. 13, 1995, at 3B.

194. *Brazil Threatens Petrobras Strikers with Mass Firing, Leaders with Jail*, J. COM., June 1, 1995, at 5B.

195. Canute James, *Port of Kingston Reopens as 300 Workers End Strike*, J. COM., Dec. 19, 1995, at 6B.

196. *Echan a Campesinos Hondureños De Una Finca de Chiquita Brands* [Honduran Peasants Are Thrown off Chiquita Brand's Farm Land], EL NUEVO HERALD, Feb. 2, 1996, at 1B.

197. *Huelga Indefinida Contra Privatización de Petroperú* [Indefinite Strike Against the Privatization of Petroperú], EL NUEVO HERALD, Feb. 2, 1996, at 1B.

198. Julia Preton, *On Eve of Talks, Mexican Rebels Seize Spotlight*, N.Y. TIMES, Oct. 18, 1995, at A3; Patti Lane, *Guerrillas Force Dole to Suspend Colombia Operation*, J. COM., Sept. 19, 1995, at 1B; Calvin Sims, *A Stepped-Up Terror Campaign in Peru Shows the Shining Path Is Not Dead Yet*, N.Y. TIMES, Mar. 20, 1995, at A5;

Natural disasters, such as earthquakes, hurricanes, and flooding often cause business interruptions in the region.¹⁹⁹ In September 1985, a large earthquake severely damaged Mexico City. A decade later another earthquake occurred in Mexico, albeit smaller than the previous one.²⁰⁰ Yet another strong earthquake hit Mexico's Pacific Coast on October 1995 near the city of Manzanillo.²⁰¹ The quake destroyed two beach-side hotels and heavily damaged several others,²⁰² killing fifty-seven people and injuring more than 100.²⁰³ Earthquakes are a continual threat throughout the region primarily because of the Andes mountains, which run the entire length of western South America. The entire area is seismically active.²⁰⁴

According to figures released by Munich Re in 1995, the increased concentration of economic value in catastrophe prone regions of the world caused a fourteen-fold increase in the cost of natural disasters between 1960 and 1995.²⁰⁵ This dramatic rise will likely cause a "risk partnership" between policyholders and insurers.²⁰⁶ In 1994, natural catastrophes and other casualties resulted in insured losses of \$18.8 billion, the third-largest figure ever recorded.²⁰⁷

Matt Moffett, *Peruvian Firms Profit fom Normality*, WALL ST. J., Apr. 18, 1995, at A16; James Brooke, *Colombia Oil Spills Net Fines for All but Rebels*, N.Y. TIMES, Mar. 6, 1995, at A2; Leon Cyens, *Guatemalan Marxists Vow to Fight to the Last Indian*, WALL ST. J., Aug. 4, 1995, at A9; Calvin Sims, *Persistent Rebel Threat Seen in Peru*, N.Y. TIMES, Dec. 22, 1995, at A9; *Asalto A Bus Deja 11 Muertos En Zona Bananera Colombiana* [Bus Attack Leaves 11 Dead in Colombian Bananero Zone], EL NUEVO HERALD, Feb. 15, 1996, at 3B.

199. Gavin Souter, *Demographic Changes in Latin America Require Risk Management Shifts*, BUS. INS., Jan. 1, 1996, at 17.

200. Sam Dillon, *Strong Earthquake Hits Mexico Coast, 57 Reported Killed*, N.Y. TIMES, Oct. 10, 1995, at A1, A6.

201. Kevin G. Hall, *3 Weeks after Quake, Manzanillo Facility Set to Reopen*, J. COM., Nov. 3, 1996, at 6B.

202. Dillon, *supra* note 200.

203. *Id.*

204. *An Earthquake in Chile Leads to an Advance in Copper Prices*, N.Y. TIMES, Feb. 22, 1996, at C5; *Advierten Que Volcán Colombiano Podría Generar Alud* [Warning that Colombian Volcano Could Generate Avalanche], EL NUEVO HERALD, Feb. 24, 1996, at 3B; *Maremoto Deja Tres Muertos* [Tidal Wave Leaves Three Dead], EL NUEVO HERALD, Feb. 22, 1996, at 3B.

205. Ralph Atkins, *Insurers Find Sharp Rise in Cost of Disasters*, FIN. TIMES, Mar. 14, 1995, at 4; John F. Powell, *Insurance Liability Woes Are Exported Worldwide*, NAT'L L. J., May 5, 1995, at 8A.

206. Powell, *supra* note 205. See also John F. Donahue, *Insurers Need Help with Catastrophe Losses*, BEST'S REV., Jan. 1996, at 58.

207. '94 Catastrophe Losses Soared to \$18.8 Billion, J. COM., Apr. 10, 1995, at

Therefore, as more U.S. financing, facilities, plants, and machinery are invested into the region, it becomes increasingly more important for risk managers of U.S. companies to take the necessary steps, including adequate insurance coverage, to compensate for losses associated with business interruptions, whatever their source.

E. Political Risk, Kidnapping, and Ransom

The several factors which will increase liability exposure to U.S. and other multinationals doing business in Latin America will at the same time directly affect the likelihood of an increased "political risk" of losses these companies may experience in the region.

For example, in November 1995, there were widespread rumors of an impending coup in Mexico.²⁰⁸ These rumors were serious enough to further devalue the peso,²⁰⁹ which could indicate that locals with inside knowledge of the Mexican government believed such a takeover possible. El Barzon, named after a revolutionary song about debt peonage and oppressive land barons, is a significant protest movement developing in Mexico which some diplomats feel has a greater potential for disruption and social unrest than the famed Zapatista National Liberation Army.²¹⁰

In Colombia there are also potential rifts which could increase political risk. The U.S. and Colombian governments are currently arguing in the "banana battle," concerning restrictions on banana imports to the European Union.²¹¹ Political unrest also exists over allegations that drug traffickers may have supported Colombia's President, Ernesto Samper, in his election campaign.²¹² The U.S.'s recent decertification of Colombia may

7A. Prior to 1989, insured losses from catastrophes worldwide never accounted for more than 0.02% of the industrialized countries' gross domestic product (GDP). Since 1989 they have never accounted for less than 0.04% of GDP. Rudolf Enz, *Paying for Disaster*, GLOBAL REINSURANCE, Dec. 1995 - Feb. 1996, at 53.

208. Michael Scott, *Rumors of Military Coup Depresses Mexican Peso*, J. COM., Nov. 6, 1995, at 10A.

209. *Id.*

210. Henry Tricks, *Protest Movement Provides Voice for Mexico's Middle-Class Debtors*, J. COM., Sept. 26, 1995, at 6A.

211. John Maggs, *Dole May Use Budget Bill to Strip Colombia of Trade Benefits*, J. COM., Oct. 5, 1995, at 1A.

212. *U.S. Criticism of Panel Draws Colombia Protest*, N.Y. TIMES, Dec. 19, 1995,

create further political dissension between the two countries.²¹³ Either or both of these controversies could incite political instability in Colombia with concomitant political risks to U.S. companies doing business there.

Kidnapping also poses a serious threat to U.S. companies in Latin America. According to the U.S. Department of Justice, there were an average of 620 kidnappings in the United States annually over a six-year period ending in January 1994, with the numbers overseas estimated to be even higher.²¹⁴ Professional Indemnity Agency, Inc., which offers kidnap and ransom coverage, reported that in recent years the monthly claims handled under their program increased from an average of one claim per month to four claims, split equally between the United States and overseas.²¹⁵

In light of this growing and serious threat, risk managers and security managers of U.S. corporations operating in Latin America must take the necessary steps to guard against political risks and the threat of kidnappings associated with doing business in that region. Moreover, because it is impossible to guarantee that these risks will not materialize, proper steps must also be taken to insure against them and adopt appropriate measures to compensate and mitigate economic and human losses when they do occur.

F. Directors and Officers' Liability

Directors and officers' liability is not a well-developed area of liability in Latin America. However, currency devaluation and the significant losses a company may incur if its officers or directors fail to take appropriate steps in anticipation of such an event may provide a source for such suits.²¹⁶ In light of recent

at A9; Sarita Kendall, *Colombia Political Crisis May Bring Economic Woes*, FIN. TIMES, Jan. 31, 1996, at 8; José de Córdoba, *U.S. Sanctions Loom in Colombia as Crackdown on Cocaine Lags*, WALL ST. J., Feb. 16, 1996, at A6.

213. Diana J. Schemo, *U.S. Barbs Are Biggest Blow to Colombia Ties, Its Leader Says*, N.Y. TIMES, Mar. 10, 1996, at 8; Diana J. Schemo, *U.S. Slap on the Hand Brings Colombia Out Punching*, N.Y. TIMES, Mar. 6, 1996, at A6; Christopher S. Wren, *Clinton Declares that Colombia Has Failed to Curb Drug Trade*, N.Y. TIMES, Mar. 1, 1996, at 1.

214. Christopher Dauer, *Industry Responds to Rising Kidnapping Threat*, NAT'L UNDERWRITER, Jan. 16, 1995, at 3.

215. *Id.*

216. James W. Hutchin, *Currency Exposures — Lessons Learned in Mexico*, RISK

realignments of international monetary parity, risk managers, directors, and officers of multinational companies face a challenge which will require their best insurance, financial, analytical, and political skills.²¹⁷

Corporate management of multinational companies should also stay abreast of the following warnings, that in the past have preceded most devaluations: 1) increased foreign indebtedness in the subject country; 2) a deficit trade balance; 3) high inflation and increasing rates of inflation; 4) changes in quotations on the foreign exchange markets; and 5) capital flight from the subject country.²¹⁸ If one or more of these warning signals are identified, the probability of devaluation increases.

Companies operating in Latin America may protect their assets against devaluation in several ways, including inserting a devaluation clause in the master property damage/business interruption policy, providing non-admitted protection for changes in values, and applying co-insurance deficiency penalties.²¹⁹ Where possible, a corporation should also consider local policies on a dollar denominated basis, particularly where imported goods are involved. Additionally, business entities should frequently review local inflation endorsements, designed to adjust values automatically, for adequacy.²²⁰

Furthermore, companies must review policy limits for imports and exports. Imports should be accounted for in monthly reports at a new exchange rate. A parent corporation can protect its shipments to foreign subsidiaries more effectively if it purchases such shipments on a cost, insurance, and freight (CIF) basis.²²¹

Although at the time of this writing there were no reported cases involving a directors and officers' liability suit resulting from losses secondary to devaluation, the Mexican devaluation of December 20, 1994 and its consequential losses²²² to multina-

MGMT., July 1995, at 31; Kevin G. Hall, *Multinationals Take It on Chin in Mexico*, J. COM., Dec. 26, 1995, at 3A; Daniel Dombey, *Devaluation Takes Toll on Mexican Industrial Groups*, FIN. TIMES, May 4, 1995, at 19.

217. Hutchin, *supra*, note 216, at 124.

218. *Id.*

219. *Id.* at 32.

220. *Id.*

221. For additional steps that may be taken to protect against the effects of devaluation, see *id.*

222. There has been an actual situation where failure to insure to "full value"

tionals have now provided clear notice of this risk. The failure of directors and officers to secure proper measures to compensate for future devaluation could amount to a "wrongful act" on their part, which, in turn, may result in a suit against them.

Another situation leading to directors and officers' liability is lack of due diligence and appropriate investigative and security measures to prevent an unwitting and innocent involvement in money laundering operations on behalf of the company. The business interruption, damage to reputation, and losses that are likely to result from the seizures and forfeiture proceedings associated with a money laundering sting and subsequent prosecution could cost a company millions of dollars. A scenario such as this one, resulting from a lack of due care by those controlling the company, could lead to a directors and officers' suit.

A final area of potential directors and officers' liability exposure is that of employment related suits against U.S. and multinational employers operating in Latin America. A suit brought against a company alleging illegal or improper labor practices or termination would likely name the company's directors or officers directly involved in the alleged acts as defendants. Suits naming these defendants have already occurred in the United States and are likely to follow in Latin America.²²³

IV. INSURANCE OPENINGS AND PRODUCT AVAILABILITY

In the past five years, an unprecedented opening of the insurance industry in Latin America has occurred.²²⁴ Although this opening is required by the NAFTA agreement, it is not confined to the NAFTA countries.²²⁵ Effective as of January 1, 1996, the NAFTA now permits foreign insurers involved in joint ventures with Mexican insurance companies before July 1992 to

following the Mexican devaluation resulted in an unchosen and unanticipated retention in a total loss situation of \$9,278,000. *Id.* at 31.

223. Dave Lenckus, *Fewer, but Bigger, D & O Claims Foreseen*, BUS. INS., Oct. 16, 1995, at 4; Victoria Sonshine Pasher, *Employment-Related Liability Claims on the Rise*, NAT'L UNDERWRITER, Nov. 27, 1995, at 25; Sara Marley, *Insuring Against Harrassment*, BUS. INS., Nov. 13, 1995, at 25.

224. William R. Fadul, *Liberalization in Developing Countries*, MERCADO ASEGURADOR, Sept. 1995, at 14; Jane Wallace, *With Open Arms*, REACTIONS, July 1995, at 36; William R. Fadul, *Trade Barriers Tumble in Latin America*, J. COM., Oct. 30, 1995, at 7A.

225. *Trade Barriers Tumble in Latin America*, *supra* note 224.

purchase up to 100% of the stock of these Mexican insurers.²²⁶ Foreign firms that have already invested in joint ventures with Mexican insurers since July 1992 can increase their ownership to forty percent as of January 1, 1996, up to forty-five percent in 1997, up to fifty-one percent in 1998, and up to seventy-five percent in 1999.²²⁷ The NAFTA will allow foreign insurers complete access to these Mexican companies in the year 2000.²²⁸ As of October 20, 1995, twelve of the forty-eight insurance companies constituting the Mexican market have foreign investors, while another seven are subsidiaries of foreign insurers.²²⁹

226. *AIG May Be 1st Insurer to Own Mexican Firm Under NAFTA*, J. COM., Oct. 20, 1995, at 7A; Wallace, *supra* note 224. Under the NAFTA, foreign firms that have set up a Mexican subsidiary can own only nine percent of the stock as of January 1, 1996. The percentage increases to ten percent in 1997, eleven percent in 1988, and twelve percent in 1999. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* Presently, the following are some of the foreign insurers with a presence in Mexico through joint ventures with Mexican companies or through subsidiaries or representative offices. Most of these insurers are also present in the rest of Latin America:

- Aegon Insurance Group, in an affiliation known as Seguros Banamex;
- Aetna Life & Casualty Co., in an affiliation known as Seguros Monterrey Aetna;
- Allianz, in an affiliation known as Allianz Mexico, S.A.;
- American International Group (AIG) in an affiliation known as Seguros Interamericana;
- American Skandia Life — through a subsidiary, to be known as Skandia Vida;
- American Re-Insurance Co., through a representative office;
- Chubb & Son, Inc., in an affiliation known as Chubb de Mexico Compañía de Seguros, and a subsidiary known as Chubb de Mexico Compañía Afiliadora.
- Cigna International, in an affiliation known as Seguros CIGNA, S.A.;
- Combined Insurance Cos. of America, in an affiliation known as CICA Seguros de Mexico;
- Employers Reinsurance International through a representative office;
- Internationale Nederlanden U.S. Insurance Holdings, Inc., through a subsidiary called ING Seguros S.A.;
- Liberty International in an affiliation known as Compañía de Seguros Veracruzana;
- Pioneer Financial Services in an affiliation with Pioneer Seguros Especializados;
- Reliance National Insurance Co., in an affiliation known as Seguros Renamex, S.A.;
- Tokio Marine through a representative office known as Tokio Marine Compañía de Seguros, S.A.;
- Zurich American in an affiliation known as Zurich Chapultepec.

Helen R. MacLeod, *Developing Nations Increasingly Alluring*, J. COM., Dec. 7, 1995, at 7A; Kevin G. Hall, *Seguros Monterrey Aetna Nails Down S & P Rating*, J. COM., Nov. 9, 1995, at 7A; Helen R. MacLeod, *Aegon Reaffirms Interest in Mexican Part-*

The Mexican financial and economic crisis proved difficult to both domestic Mexican companies as well as multinational companies operating there. However, a recent report by the Inter-American Development Bank predicts that in 1996 Latin America in general, and Mexico in particular, will "regain the path of moderate growth with stability."²³⁰ Moreover, while five years ago the Mexican insurance market was not even generating \$3 billion in premiums, it had doubled in size by May 1995 and is expected to be a \$50 billion market by the year 2005.²³¹ By the year 2000, the number of insurance companies operating in Mexico should reach one hundred.²³² Hence, the number of foreign insurers operating in Mexico and the number and variety of insurance products available are also likely to increase in the near future.²³³

Mexico is not alone in the recent opening of access to its insurance market. Insurance markets throughout most of Latin America have also experienced expansion in the past five years, allowing foreign insurers and reinsurers to penetrate an area

nership, J. COM., Oct. 6, 1995, at 9A; *American Re-Insurance to Open Mexico Office*, J. COM., Sept. 5, 1995, at 11A; *Mexico Approves Insurer Subsidiary*, J. COM., Oct. 23, 1995, at 7A; *Mexico Approves 2 Foreign Insurers*, J. COM., Aug. 17, 1995, at 7A; Tony Dowding, *Down but Far from Out*, REACTIONS, July 1995, at 38; Julia Sirotna, *Liberty International Takes an 86% Share in Seguros Caracas*, J. COM., June 13, 1995, at 9A; Kevin G. Hall, *Mexico OKs Operations by 2 More U.S. Insurers*, J. COM., June 12, 1995, at 7A; Cox, *supra* note 57.

230. *U.N. Agency: Latin Growth to Accelerate Next Year*, J. COM., Dec. 26, 1995, at 3A.

231. Roberto Cenicerros, *Niche Marketing Best Entree to Mexico*, BUS. INS., May 8, 1995, at 20.

232. Helen MacLeod, *Health Insurance Booms in Mexico, Despite Crisis*, J. COM., Dec. 28, 1995, at 7A.

233. Some of the insurance products presently available in Mexico, as well as the rest of Latin America, through many of the primary insurance companies listed *supra*, note 229 include:

- broad commercial package policies;
- brokers' blanket bond;
- contractor and consultants' policies;
- directors and officers' liability;
- general liability policies;
- health insurance;
- life and benefits products;
- marine cargo coverage;
- medical malpractice liability;
- pollution liability;
- products liability;
- property-casualty insurance;
- third party legal liability.

that was previously controlled by governmental insurance and reinsurance monopolies. Most Latin American governments have eventually recognized that high protectionism and import substitution are not the most effective means of promoting economic development in the region.

In light of openings in insurance markets, the wave of privatizations sweeping through the region, and the surge of foreign investments in past years, Latin America's emerging markets will fuel much of the future growth of the world's insurance industry.²³⁴ Henry Parker III, international insurance adviser to Chubb & Son, stated "we will see a massive increase in the insurance placed and the volume of insurance premiums generated [in emerging markets], specially as newly privatized industries seek the sophisticated coverage common to more nature markets . . .," and "by the year 2025 more than fifty percent of total free world premium income will be generated by the emerging markets"²³⁵

Chile, Colombia, Peru, Mexico, and Argentina are completely free markets, while Uruguay, El Salvador, Bolivia, Guatemala, Paraguay, Honduras, Venezuela, and Costa Rica have begun the liberalization process. Brazil, on the other hand, still has a reinsurance monopoly, the Instituto de Reaseguros do Brasil, but should also change in the next year or two because of MERCOSUR. Cuba and Nicaragua still have completely state-controlled markets.²³⁶

As of 1995, Brazil, Mexico, and Argentina accounted for approximately seventy-seven percent of the region's premium income; Chile, Colombia, and Venezuela accounted for about eighteen percent; the rest of Latin America was responsible for the remaining five percent.²³⁷ The average insurance expenditure in Latin America is only \$127 per year, representing low

234. John Jennings, *Emerging Markets Seen Fueling Insurance Growth*, NAT'L UNDERWRITER, Dec. 4, 1995, at 31; John Jennings, *Report Bullish on Latin America Market Potential*, NAT'L UNDERWRITER, Sept. 18, 1995, at 1; Michael Gonzales, *Insurance Firms Enticed to Invest in Latin America*, WALL ST. J., Aug. 31, 1995, at C1; MacLeod, *supra* note 229.

235. Jennings, *supra* note 234, at 31, 32.

236. Tony Dowding, *Latin America: Less Talk, More Action*, REACTIONS, July 1995, at 36; Peter Brennan, *Costa Rica Prepares to End State Insurance Monopoly*, J. COM., July 31, 1995, at 7A.

237. Dowding, *supra* note 236, at 36, 37; *Liberalization in Developing Countries*, *supra* note 224.

penetration and leaving a large opportunity for growth.²³⁸

While Chile, because of its 100% free market, has become the Latin American base of operation for many U.S. insurers and brokers,²³⁹ Brazil, Argentina, and Mexico dominate the Latin American insurance market.²⁴⁰ Moreover, Latin American insurers are becoming more sophisticated, not only in policy wording, policy forms, and underwriting practices, but also in incorporating modern computer technology into their businesses.²⁴¹ These advancements are attributable, at least in part, to the freedom to operate in the international reinsurance market without the "protection" of governmental monopolies. Finally, in addition to the foreign insurers entering the region, Latin America has also become home to a large number of captive insurers, formed by Latin American companies to reduce costs, improve corporate control over risk financing, develop a more structured risk management program, and develop better access to the reinsurance market.²⁴² Expected to triple by the year 2000, captives will reach a record number of forty.²⁴³

V. CONCLUSION

The emerging areas of liability enumerated are not "new" in the literal sense of that word. However, as a result of the significant increase in trade between the Americas and expanded investment in Mexico and Latin America, these areas are acquiring much more importance to U.S. companies operating there.

While business opportunities continue to emerge in the region, U.S. multinationals doing business south of the border must pay careful attention to the various liability issues discussed in this Article. Even more important is the need for U.S. companies to take the appropriate steps to address and compensate for them. There is an increased requirement for insur-

238. The average per year expenditure in the U.S. is over \$2,100. Jennings, *supra* note 234.

239. Margo D. Beller, *U.S. Insurers, Brokers Making Chile Their Base for S. American Growth*, J. COM., Apr. 18, 1995, at 7A.

240. Jennings, *supra* note 234.

241. Margo D. Beller, *Latin American Insurers Making the Move Online*, J. COM., Nov. 1, 1995, at 7A; Gavin Souter, *Demographic Changes in Latin America Require Risk Management Shifts*, BUS. INS., Jan. 1, 1996, at 17.

242. *Latin American Captives to Grow*, BUS. INS., Nov. 13, 1995, at 43.

243. *Id.*

ance coverage of various types in order to protect company assets from these potential liabilities. Additionally, it is essential that companies implement adequate risk management and loss control services, as well as establish an "in place" network of legal counsel both in Latin America and in the United States. These precautions will ensure that the U.S. business will be informed of pertinent legal issues and have the capability to quickly address claims and matters related to such claims, ultimately minimizing liability exposure to the company.