APRIL 11, 1983

# business insurance®

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## update

### Kasten may sponsor bill clarifying Risk Retention Act

WASHINGTON—Sen. Robert Kasten, R-Wis., is expected to introduce legislation to make it clear that federal law determines what types of product liability risks can be insured through risk retention groups.

The legislation would state that the broad definition of product liability, as contained in the 1981 Risk Retention Act, would supersede any state definition of product liability and

*Continued on next page*

## Insurers fill demand for recall coverage

**By BILL DENSMORE**

NEW YORK—Insurers are scrambling to meet what they say is a growing demand for expanded product recall insurance.

"I think everybody's interested; they're definitely looking at it," says Carol R. Polkinghorn, assistant risk manager at The Pillsbury Co., in Minneapolis. "We have been looking at it. We don't know if we're going to buy it."

The coverage debuted in late 1981, but it was last fall's Tylenol tragedy that focused attention on the need for such insurance among manufacturers, drugmakers and food processors.

Seven people in the Chicago area died in October after taking Extra-Strength Tylenol capsules that were laced with cyanide. Since then, three more underwriters have developed expanded recall insurance products and others may follow.

The lead markets are currently Lexington Insurance Co., an excess/surplus lines affiliate of American International Group Inc.; Chubb & Son Inc.; The Home Insurance Co.; and First State Insurance Co, a Hartford Insurance Group affiliate.

Two unidentified Lloyd's of London syndicates also are developing policies, industry sources say, but so far London insurers have taken a back seat to U.S. underwriters on broadened recall or product protection coverage.

"We are generating new markets almost daily and I mean that literally," says William S. Jennings, a vp with broker Johnson & Higgins in New York. "Most of the markets have said to come to them with what we have and they'll see what they can do."

J&H took an early lead in selling the coverage, but for competitive reasons Mr. Jennings declines to identify the underwriters it is working with.

Because of the overwhelming interest in the coverage, which some classify as an expansion of product liability insurance to indemnify damage to the product itself and/or its reputation, the Risk & Insurance Management Society has scheduled a seminar on the subject at its annual conference later this month in Los Angeles, said Pillsbury's Ms. Polkinghorn.

The coverage offered by Chubb, Home, Lexington and First State varies greatly from just reimbursing the cost of taking a bad product off the shelves and replacing it to indemnifying a company for the profits it loses due to a recall. Often, policies are worded especially for a buyer's needs.

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## MGM settlement plan irks co-defendants

**By RHONDA L. RUNDLE**

LAS VEGAS, Nev.—The fate of 112 companies that have been sued in the MGM Grand Hotel fire litigation hangs on the hotel-casino company's decision due later this month on whether to accept a court-approved settlement plan.

But, no matter what MGM decides, these co-defendants will not be celebrating. Many of them feel that the settlement plan has been ramrodded down their throats.

The prohibitive cost of a six- to nine-month trial, on top of thousands—in some cases millions—of dollars already paid to attorneys over the past 2½ years, is virtually forcing defendants to ante up the full limits of their insurance coverage to settle claims even when they think they have no liability for the fire.

So far, the Plaintiffs' Legal Committee has secured settlement commitments from 27 of the 112 non-MGM defendants for a total of about $60 million. Added to the $75 million that MGM will eventually contribute, this fills the settlement pot with about $135 million (*BI*, Jan. 10, Jan. 17).

The complex settlement plan will be triggered if MGM decides on or before April 29 to accept the releases the Plaintiffs' Legal Committee can muster by that time. There are about 450 lawsuits representing 1,311 claimants and as many releases, which the PLC is scrambling to collect, record with the court and submit to MGM for approval.

Midway through last week, about 200 claimants had not signed releases. However, the PLC expects all but 20 or 25 of them to do so before the April 29 deadline. The holdouts will meet MGM—and other defendants who have not settled—in federal court in Las Vegas July 11.

**What the non-MGM defendants will pay***

| (in millions of dollars) | |
|---|---|
| Continental Mechanical Corp. | $10.75 |
| California Electric Construction Co. | 10.00 |
| Simpson Timber Co. | 9.40 |
| Otis Elevator Co. | 7.50 |
| Taylor Construction Co. | 5.50 |
| W.J. Thompson Co. | 2.73 |
| Clark County, Nev. | 2.50 |
| Martin Stern Jr. (architect) | 1.40 |
| Nay Mechanical Inc. | 1.25 |
| Familian Pipe & Supply Co. | 1.20 |

* Partial list, including only defendants paying more than $1 million.

The settlement plan gives MGM the option to reject the tendered releases unless every plaintiff participates, thus freeing the hotel company from the ordeal of a long, costly trial.

Bernard Segelin, MGM's vp and general counsel, says the plan specifies 100% of the releases and he will hold out for all of them.

"If we're going to go to trial, it might as well be against everybody as against 10 or 15," he said. "The whole purpose of settlement is to avoid going to trial."

Attorneys for both plaintiffs and defendents say, however, that such tough talk is pure posturing to keep up the pressure. MGM would be foolish to throw away settlements worth 98% of the dollar value of remaining claims against the company, they say.

If MGM accepts the settlement plan, it will make a

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## Blues lead in policies but lag in premium: Study

**By SALLIE J. DRURY**

Employers choose Blue Cross and Blue Shield plans to fund more of their employee benefit contracts than they self-insure or fund through commercial underwriters, statistics from 1980-81 show.

However, the nation's largest employers did not give BC/BS the bulk of their business, and this shows in the premium volume generated by group benefit underwriters in 1980-81. The Travelers Insurance Co.—not BC/BS—was the top choice based on premium volume.

These findings are based on an analysis of information culled from benefit plan reports employers must make to the Department of Labor under the Employee Retirement Security Income Act.

The information, supplied exclusively to *Business Insurance*, was compiled by ERISA Benefit Funds Inc. of Washington and is published in its "Group Insurance Directories."

ERISA Benefit Funds analyzed the Form 5500 filed by more than 20,000 businesses with more than 100 employees. The information provided data on 50,000 different benefit contracts—or separately identifiable benefits—that cost the employers $27 billion collectively.

The information applies to the 1980 calendar year or fiscal year 1981 because that is the latest information available from the Labor Department forms.

Of the 50,798 contracts analyzed, the Blues funded 11,461, which made it the top funding choice by an overwhelming margin. For example, the next most-popular funding method was self-insurance, but only 4,777

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**How business funds group benefits**

| | 10,000 workers or over | 5,000 to 9,999 workers | 1,000 to 4,999 workers | 500 to 999 workers | 100 to 499 workers |
|---|---|---|---|---|---|
| First choice | Self-funded | Self-funded | BC/BS | BC/BS | BC/BS |
| Second choice | Prudential | Prudential | Self-funded | Self-funded | Self-funded |
| Third choice | Aetna | BC/BS | Prudential | Aetna | Aetna |
| Fourth choice | The Travelers | Aetna | Aetna | Prudential | Union Mutual |
| Fifth choice | BC/BS | Metropolitan | CG | CG | Prudential |

Source: Group Insurance Directories, ERISA Benefit Funds Inc., Washington, D.C.

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## update

### Risk retention bill expected

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would be the only guide to what types of exposures risk retention groups could cover.

The legislation, if passed, also would pre-empt any state that decides to adopt a National Assn. of Insurance Commissioner's model bill that would allow states to impose their own definitions of product liability on risk retention groups (*BI*, Dec. 6, 1982).

Meanwhile, in another product liability development, Sen. Howell Heflin, D-Ala., told the Senate Commerce Committee last week that legislation introduced by Sen. Kasten, S. 44, which would create a uniform federal product liability, would knock "the legs out" of state tort law.

He also criticized the proposal because he said he believes it would interfere with the McCarran-Ferguson Act, which leaves insurance regulation to the states.

### Lloyd's offers reward in theft

LONDON—Lloyd's of London underwriters are offering a $750,000 reward for leads in one of the largest cash heists ever.

A band of thieves stole more than $7.5 million in small bills from the London headquarters of Security Express Co., an armored car firm, over the long Easter holiday weekend.

The bulk of Security Express' coverage, which will cover the loss, is placed at Lloyd's, a Lloyd's spokesman confirmed, although the size of the deductible is not known. The spokesman added that underwriters have retained an adjusting firm to handle the loss.

Officials at Jardine Glanvill Ltd., which brokered the coverage, could not be reached for comment.

### Manville's deadline extended

NEW YORK—Manville Corp. has been granted a 45-day extension for filing a reorganization plan with the U.S. Bankruptcy Court for the Southern District of New York. The deadline had been April 8.

Denver-based Manville filed for reorganization under Chapter 11 of the Federal Bankrutpcy Act last August, citing approximately 16,500 lawsuits filed by victims of asbestos-related disease and the possibility that it could be hit with thousands more.

A spokesman for Manville said that various parties agreed at a hearing last week that progress is being made toward a plan. The new deadline is May 23.

A hearing was set for May 5 on a motion by plaintiffs' attorneys to dismiss Manville's petition, and another hearing will be held May 13 on a motion to estimate the value of the future claims.

### Comp case may be settled

CINCINNATI—A precedent-setting workers compensation case, which the Supreme Court refused to hear last fall (*BI*, Nov. 8, 1982), may now be settled out of court.

"There's discussion going on right now. We're talking money," said Gerald F. Rapien, an attorney who represents Cincinnati Milacron Chemicals in the case, Blankenship vs. Cincinnati Milacron.

Eight Milacron employees filed suit against the machine tool and plastic manufacturing company in February 1979, seeking compensatory and punitive damages for their exposure to various toxic chemicals. The suits say that Milacron failed to correct work conditions, failed to warn employees of the dangers of chemical exposure and failed to provide medical examinations although it knew certain occupational diseases were being contracted by workers.

The high court's Oct. 4 decision let stand an Ohio Supreme Court's sending the case back to a trial court to determine whether Milacron committed an "intentional act" against eight injured employees.

A new trial court date was never set, since both sides were talking, Mr. Rapien said. Attorney Jerald D. Harris, who represents the employees, would not elaborate on a possible settlement.

### Scotia files plea arrangement

PIKEVILLE, Ky.—Scotia Coal Co., a subsidiary of Blue Diamond Coal Co. of Knoxville, Tenn., has filed a plea arrangement relating to criminal charges that it made false reports and violated safety standards in a mine that exploded in 1976, killing 15 workers.

Scotia pleaded guilty to charges of failing to train each miner at the Ovenfork, Ky., mine in the proper use of self-rescue breathing devices and filing a false report concerning the volume of air flowing through the mine on the day of the explosion.

The company did not contest three other charges leveled by the Justice Department, while the department dropped another charge.

A U.S. District Court judge in Pikeville will rule on the plea arrangement at a hearing set for May 10. The maximum penalty for the five violations would be a $95,000 fine.

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# Florida insurance exchange underwriting first policies

**By PATRICIA KELSEY**

MIAMI—The Insurance Exchange of the Americas Inc. is now open, providing a new market for international insurance and reinsurance buyers.

Although plans originally called for the exchange to open last October and then in January, the exchange finally received authorization to open from the Florida Insurance Department April 4.

And by the middle of last week, the exchange, which will have a $100 million underwriting capacity, was bursting with activity, said President and Chief Executive Officer Alan Teale.

"We've been having a bonanza (of underwriting)," he said. "Our underwriters have been on the phone all day."

"To initiate a volume of business, people have been warehousing business for us during this (waiting) period, so that when we opened we'd have the volume on tap," Mr. Teale said.

Mr. Teale, however, would not release any details on the types of risks being underwritten last week because all the information had not yet been sent to the central office, he said

But Mr. Teale did say the exchange would be most involved in reinsurance for the first year to 18 months.

"We've got to get a cash flow going, and the quickest way to attain that is to become part of something. And that's what we'll be doing," he said.

"I suspect the bulk will go to reinsurance in the early days, but we will be expending it to direct service lines on marine, aircraft and other lines later," Mr. Teale said.

Nuclear risks are also in the offing, Mr. Teale said.

He anticipates that about 30% of the exchange's business will come from Caribbean or South American markets. This is scaled down from the 35% to 40% originally projected due to the recession in Central and South America.

Mr. Teale also expects to attract a lot of attention from captives and surplus lines underwriters.

Projections call for $25 million in premiums to be written during the exchange's first year.

Four of the exchange's 32 member syndicates have been approved by the Insurance Department to operate and approval is expected shortly for eight more of the syndicates. These 12 will provide an initial capitalization of $16 million for the exchange.

Besides the 32 member syndicates, the exchange has 54 broker members, 48 subscriber members and 17 underwriting agencies.

By the end of the year, Mr. Teale expects the exchange to have 50 member syndicates, more than 75 brokers, 30 underwriting agencies and 100 subscriber members

According to Mr. Teale, the opening of the exchange was delayed for several reasons, including:

- To assure the quality of the syndicates.
- To provide time to train people to operate the syn-

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## St. Paul sues marine broker for $800,000

**By LEN STRAZEWSKI**

CHICAGO—St. Paul Fire & Marine Insurance Co. is suing a Chicago marine insurance broker for $800,000, alleging that it fradulently issued policies and binders.

The lawsuit, filed in Cook County Circuit Court, alleges that the Chicago-based Deerfield Organization and its owner, George Foundos, violated the terms of an agency agreement issued in 1978 that was expanded in 1980 to include binding authority.

Although the binding authority for hull, protection and indemnity and primary and excess liability coverage was canceled in 1981, the lawsuit claims that the brokerage continued to fraudulently issue policies and binders without notifying the insurer or forwarding premium.

These policies, placed for more than 10 U.S.- and Belgian-based companies, according to the suit, generated $598,813 in premium that was never received by St. Paul and $132,758 in losses that the insurer

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## Broker's broken smoking habit rewarded by penny pinchers

NEW YORK—Vince Catalli, a vp at Alexander & Alexander Inc., isn't generally known as a guy who counts his pennies, but his decision to give up smoking has him counting, rolling and eventually banking 25,000 of the coins.

The huge box of loose pennies was the final payment on Mr. Catalli's "lung recovery policy" that clients and friends took out last year against his giving up smoking (*BI*, Sept. 6, 1982).

The brainstorm of Michael C. Shermer, vp-risk management at Federal Express Corp. in Memphis, and an unidentified Lloyd's of London broker, the "policy" originated as a $1,500 bet that was submitted to other friends of Mr. Catalli on a Lloyd's underwriting slip.

The agreement made Mr. Catalli liable for the $1,500 return premium for "so much as looking the wrong way at a cigarette" or "anything that could be rolled up, lit and sucked."

Mr. Catalli, an aviation specialist at A&A, earned his reward last August after a smokeless six months, but only recently received a completed payment. The holdouts were two other A&A brokers, Moore McMahon and John Lumelleau, who owed him $250.

"It took two men to lift the box to Mr. Catalli's desk and who can guess how many trips to the bank to accumulate all those pennies," reports Federal Express' Mr. Shermer, the claims lead.

Pending a final tally of the coins, Mr. Catalli told *BI* that he is keeping the pennies on display in a 10-gallon aquarium tank in his office.

"I've already used the rest of the payment to continue the project. Recently I offered $1,200 to three dinner companions if they would follow in my footsteps. Two accepted and one did not so we have not yet come to terms," Mr. Catalli says. "I have also telexed London for an explanation of policy terms relating to the payment of removal costs from my office. There has been no response."

# Hamburg Rules may be ratified despite cargo insurers' worries

**By JOHN PARRY**

GENEVA, Switzerland—Despite objections from American and British cargo insurers, the United Nations Conference on Trade and Development is inching slowly toward adopting the controversial Hamburg Rules on ocean carrier liability.

The proposed rules will make it tougher for shipowners to avoid liability for lost cargo. Under the current Hague-Visby Rules, shipowners are virtually free of liability, even if they are negligent, while the cargo owner must pay for all cargo losses.

The Hamburg Rules, however, say the shipowner must prove that he was not negligent when the cargo was lost to avoid paying for lost cargo.

Officials at UNCTAD headquarters in Geneva say they expect that, within the next year, many more developed nations will ratify the Hamburg Rules, which were adopted at an UNCTAD conference in 1978.

The French Senate has already approved the rules and called on the government to ratify them, officials say. West Germany and Norway are also on record as saying they expect to ratify the rules in the near future.

Developing countries, for whose benefit UNCTAD was primarily created, are solidly behind the rules and can be expected soon to join the eight countries—Chile, Egypt, Uganda, Tanzania, Tunisia, Barbados, Mexico and Romania—that have already ratified them, officials say.

However, the officials, who asked not to be identified, said they expected the United States to be one of the last to ratify—if, indeed, the Reagan administration decides to support the rules at all. To become effective, the rules need to be ratified by 20 countries, something UNCTAD expects to happen by early 1984.

"The Visby Amendments (to the Hague Rules) were first proposed in 1972 and came into force in 1977—that's five years," the officials said. "So if things move at the same pace, we can expect the Hamburg Rules to be in force at the end of this year or the beginning of next."

The Visby Amendments update the 60-year-old Hague Rules. They have been adopted by 15 countries, although the U.S. Senate has not ratified them yet. But now the debate is over whether to keep the Hague-

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# The asbestos crisis (Part II)

## Defendants facing crucial decision: Settle claims or go to court

**By STEPHEN TARNOFF**

A company hit with an asbestos injury claim has two basic options: It can settle the claim or it can take it to court.

But, in most cases, the "settle-or-try" decision is not so simple.

For example, more than one company is often named as a defendant in the suit, and each may have a different opinion on whether to settle or fight to the bitter end.

While the debate over what strategy to take continues, the attorneys' fees and court costs that must be shouldered by the defendants and their insurers continue to climb. In fact, some estimate that litigation costs are currently running higher than claims payments (see story, page 40).

Among the major factors slowing the resolution of claims, according to defense and insurer attorneys, are:

- The different approaches the asbestos companies take in defending the approximately 20,000 claims already filed. Some say it's best to settle early before legal fees and defense costs get out of hand. Others stress that almost every claim should be tried to deter plaintiffs from filing frivolous suits.
- The number of defendants, sometimes 15 or 20, often named in one suit. They frequently have differing interests, which lead to infighting and a lack of a coordinated defense effort.
- Pressures on primary insurers. For example, excess insurers often pressure primary underwriters not to settle so they do not expend their policy limits quickly.
- The reorganization petitions filed last year by three of the asbestos defendants. Some other asbestos defendants are unwilling to settle until they learn what will happen to the companies in bankruptcy proceedings.

Despite these factors, some plaintiffs' and defense attorneys say that defendants now appear to be settling more cases as the financial burden caused by the litigation continues to grow for both sides.

In addition, there are now indications that insurers, asbestos companies and plaintiffs' attorneys may work out an agreement that could lead to a settlement of many of the claims (*BI*, April 4).

At the center of the legal morass is how to dispose of the cases in a manner that is fair and efficient to plaintiffs as well as defendants.

Almost everyone agrees it is too expensive to try all the asbestos suits, which could one day total in the hundreds of thousands. Most must eventually be settled.

"You just can't try all these cases," says David R. Gross, who was Manville Corp.'s Northeast regional litigation coordinator before it filed for bankruptcy.

Mr. Gross is with the Newark, N.J., firm of Budd, Larner, Kent, Gross, Picillo & Rosenbaum.

"Economics totally govern what you do."

In fact, most cases are settled.

Of the claims that have been filed so far, thousands have been settled or dropped, while fewer than 200 had gone to trail as of March 1.

For example, Manville, which faces about 16,500 current claims, reports it had disposed of 3,470 suits before it filed for bankruptcy in August. And Eagle-Picher Industries Inc., which faced about 13,500 outstanding claims at the end of last year, said it had disposed of about 3,200 claims at an average cost of $6,200 per claim, including legal fees.

Some, like The Travelers Corp., a major primary insurer for asbestos companies, have taken the view that there won't be as many claims as some predict and that it is cheaper for defendants and insurers to settle as many cases as soon as possible. Early settlements substantially reduce legal costs, they reason.

"Our general approach is to work with plaintiffs' attorneys to get the cases settled without going to trial," says Floyd H. Knowlton, a Travelers vp.

But he emphasizes that the insurer does not settle every case—some cases are indeed tried.

In addition, he says not all plaintiffs are compensated quickly because some file claims—even though the disease has not yet manifested itself—to avoid statute-of-limitations restrictions.

In those cases, the insurer may not make any payments until there is indication of an asbestos-related disease, Mr. Knowlton adds.

But other companies, like Commercial Union Insurance Co., a major primary and excess asbestos insurer, argue that settlements can play into the hands of the plaintiffs' attorneys.

They contend many of the claimants are not really that sick. By settling, defendants and insurers are paying claims unnecessarily, thus encouraging plaintiffs' attorneys to bring more suits—and make more money through contingent fees.

Companies that settle questionable cases finance plaintiffs' attorneys, sums up Lawrence G. Cetrulo, an attorney with the Boston firm of Burns & Levinson who represented UNR Industries Inc. in asbestos litigation before it filed for reorganization last year.

"Many cases that are filed are without merit," adds another defense attorney.

However, taking cases to trial—and even winning them—does not guarantee that plaintiffs' attorneys will be deterred from filing more suits, some lawyers contend. "History doesn't show that," Mr. Gross says.

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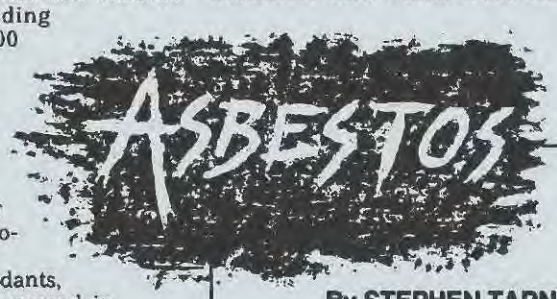


## Litigation a headache for judges, too

**By STEPHEN TARNOFF**

The avalanche of asbestos injury claims is creating large problems for the judiciary as well as for defendants and their insurers, several judges involved in the litigation say.

"We're sweeping a dust broom against a mountain," says Judge Harry A. Takiff of the Philadelphia County Court of Common Pleas. "The problem is so overwhelming there is a sense of impotence."

Of the approximately 20,000 asbestos claims that have been filed around the country, more than 2,500 have been filed in the Philadelphia court. Claims were recently increasing at the rate of about 50 per month, he says.

Five judges have been assigned to handle the cases, but Judge Takiff says there is no way all of the suits can be tried.

"The conventional, traditional trial by jury in civil courtrooms is inadequate and cannot physically cope with this," he says, explaining there aren't enough judges, juries or courtrooms to handle them.

Even if the court assigned 10 judges to work full time on asbestos cases, the most that could probably be resolved is 250 cases a year, just a fraction of the amount pending, he explains.

"There's no court system which can try 100% of the (asbestos) cases," Judge Takiff adds.

Several years ago, when there were fewer cases pending, the same lawyers argued most of the cases, Judge Takiff explains. For a while, these attorneys settled cases as a group, but factions within the defendants emerged and some insisted on going to trial when most wanted to settle.

Judge Takiff says there's a number of reasons why co-defendants in a case cannot agree on a settlement. For example, some defendants have "very serious insurance problems" regarding the extent of their liability coverage and coverage for defense costs.

In addition, the cash positions of some of the defendants, unrealistic demands by some plaintiffs and the sheer volume of cases add to the disagreements, he adds.

Since it takes a long time to educate juries on the medical and legal ramifications of asbestos exposure, the Philadelphia court instituted a new system last year in the hope of speeding up the cases that do go to trial.

All asbestos cases are first tried by a judge alone. However, any party in the case can still ask for a jury trial after the judge rules (see story, page 3).

Judges can handle asbestos cases more quickly than juries because the judges are more familiar with the issues, Judge Takiff said. But he adds that it is too early to tell how well the system works.

One of the problems inherent in the asbestos litigation, Judge Takiff says, is that some plaintiffs' attorneys take a "shotgun approach" and file suit against any company that might have had a connection with an asbestos product in order to prevent malpractice suits from their clients.

As a trial approaches, a significant number of defendants are dropped from the case, he says. But in the meantime, they must pay litigation costs, he adds.

"It isn't fair. There are a number of defendants who don't belong there."

If the asbestos litigation was a bad situation to begin with, Judge Takiff says the bankruptcy petitions filed by Manville Corp., UNR Industries Inc. and Amatex Corp. made it, worse, at least initially.

"Unarco was a shock," he says, adding

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# Uniform rules for comp pools needed: Study

**By DOUGLAS McLEOD**

BALTIMORE—Some state regulations governing workers compensation self-insurance groups may be hurting the pools, a new study concludes.

Insufficient regulation of the groups in some states may threaten self-insurance pools' long-term ability to pay benefits, while overregulation in others can deter the formation and growth of pools, according to the study submitted to the National Assn. of Insurance Commissioners' Workers Compensation Task Force at its spring meeting last month.

States that already allow or plan to allow group self-insurance of workers compensation risks should develop more consistent regulations for the groups, the report recommends.

The report offers suggestions on how regulators should oversee pools' financial conditions, pricing formulas, organization and administration and obligations.

The draft report was written after an analysis of regulations in the 28 states that allow workers compensation groups. Comments will be taken on the report and a final version prepared for presentation at the NAIC's June meeting in St. Louis, according to James W. Newman Jr., a senior vp with the American Insurance Assn. and chairman of the 24-member study committee that produced the report.

The report will be used either in developing a set of informal NAIC guidelines for the regulation of self-insurance pools or a more formal model law, said J. Michael Low, Arizona insurance commissioner and chairman of the Workers Compensation Task Force.

**The study's** most important recommendations concerned regulation of the pools' financial operations, Mr. Newman pointed out. These recommendations include:

- States should require that pools have a minimum combined net worth of $1 million and minimum annual premium volume of $250,000. Several states already impose net worth requirements ranging from $500,000 to $1 million and minimum premium requirements ranging from $100,000 to $350,000 annually, the report says.

Regulators should be able to periodically adjust minimum requirements for excess insurance and surety bonds, and should be able to impose higher minimums for certain pools based on their size, the nature of the members' business and other factors, it added.

- State regulators should hold workers compensation self-insurance groups to the same loss-reserve standards with which commercial insurers must comply.

Like insurers, pools should also be required to treat unearned premiums as liabilities and establish unearned premium reserves, the report says, adding that regulators should require groups to establish bad-debt reserves to cover claims the group may still have to pay for a member that has failed to pay its premium. This obligation may exist even if the member's coverage were canceled for nonpayment, the report warns.

- States should prohibit pools from investing reserves in common stocks, real estate and mortgages. The report deems these investments to be "unduly speculative."
- States need not establish a guaranty fund to protect members of insolvent workers compensation pools unless regulators decide that regulatory oversight, joint and several liability of members, surety bonds and excess insurance are not enough to insure payment of obligations.

**The report notes,** however, that a number of states—including Illinois, Maine, Michigan, Minnesota, Oregon and Rhode Island—have such guaranty funds in place.

Because comp pools could become insolvent if they don't collect enough in premiums or give back too much in dividends, the study group also offered the following recommendations:

- Workers compensation groups should be required to use manual rates published by the National Council on Compensation Insurance or the state rating organization, especially in the group's early years. Regulators should also monitor any subsequent use of experience-rating plans and premium discount or deviation plans.

Most states require that pools initially use manual rates; Connecticut is alone in allowing new groups to determine their own rates, the report notes. Three states—Michigan, Georgia and Maine—allow deviations from manual rates only after pools have been operating for one to three years.

- Regulators should have the authority to approve how much a group may distribute in dividends and how soon after the end of an accounting year the dividends may be distributed.

The increase in "long-latency claims," like those from asbestosis or cumulative trauma, has made reserving for incurred-but-not-reported losses more difficult, the report notes. Payment of dividends to group members from the group's surplus could, therefore, drain surplus to the point where it is unable to pick up a rush of IBNR losses.

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# Adoption of Hamburg Rules could be near

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Visby Rules or adopt the Hamburg Rules.

"The way we hear it here," the UNCTAD officials in Geneva said, "the U.S. State Department is urging the administration to support ratification of the Hamburg Rules. But there has been a lot of unhappiness among cargo insurers in the United States and, to a lesser extent in Britain, because they think there would be a lot more liability on the cargo carrier (under the Hamburg Rules) than under the Hague Rules," the officials said.

"So, the insurance industry is lobbying the Senate not to ratify the Hamburg Rules."

Cargo insurers, which insure the cargo owners, could lose business if the cargo owners' liability were reduced.

But while cargo insurers want to retain the current rules, the National Shippers Freight Claims Council in New York, which represents cargo owners, wants the Hamburg Rules ratified (*BI*, Sept. 13, 1982).

The Hamburg Rules are "an improvement of maritime law," UNCTAD officials told *Business Insurance*.

But factions from both the cargo owners and cargo carriers are fighting them.

"The cargo insurers are against the rules simply because they are afraid they will lose their premium base," say the UNCTAD officials.

"And, the cargo carriers don't like this (the Hamburg rules) because it would put more liability on the carrier than is the case under the Hague Rules, and that's why they're lobbying so energetically against ratification."

Cargo insurers in both London and New York also say shipping rates will rise if the Hamburg Rules are adopted because the P&I clubs will pay more claims.

That will result in larger insurance premiums for shipowners that will be reflected by higher freight rates, UNCTAD officials say.

**Ironically,** although UNCTAD is in the front line in the battle over the Hamburg Rules, the rules themselves are not technically an UNCTAD document. They were drafted by the U.N. Commission on International Trade Law.

However, as the officials pointed out, while UNCITRAL is technically the moving force behind the rules, "We have more concern to see that they are not maligned."

This may well prove difficult, given the current opposition to the rules in Britain and the United States. However, since UNCTAD has a built-in Third World majority, the rules can be rammed through anyway.

The officials said that given the powerful position of the United States and Britain in both shipping and insurance, they would prefer to see both nations adopt the rules.

Will this happen? The officials were vaguely optimistic, although declining to predict a timetable.

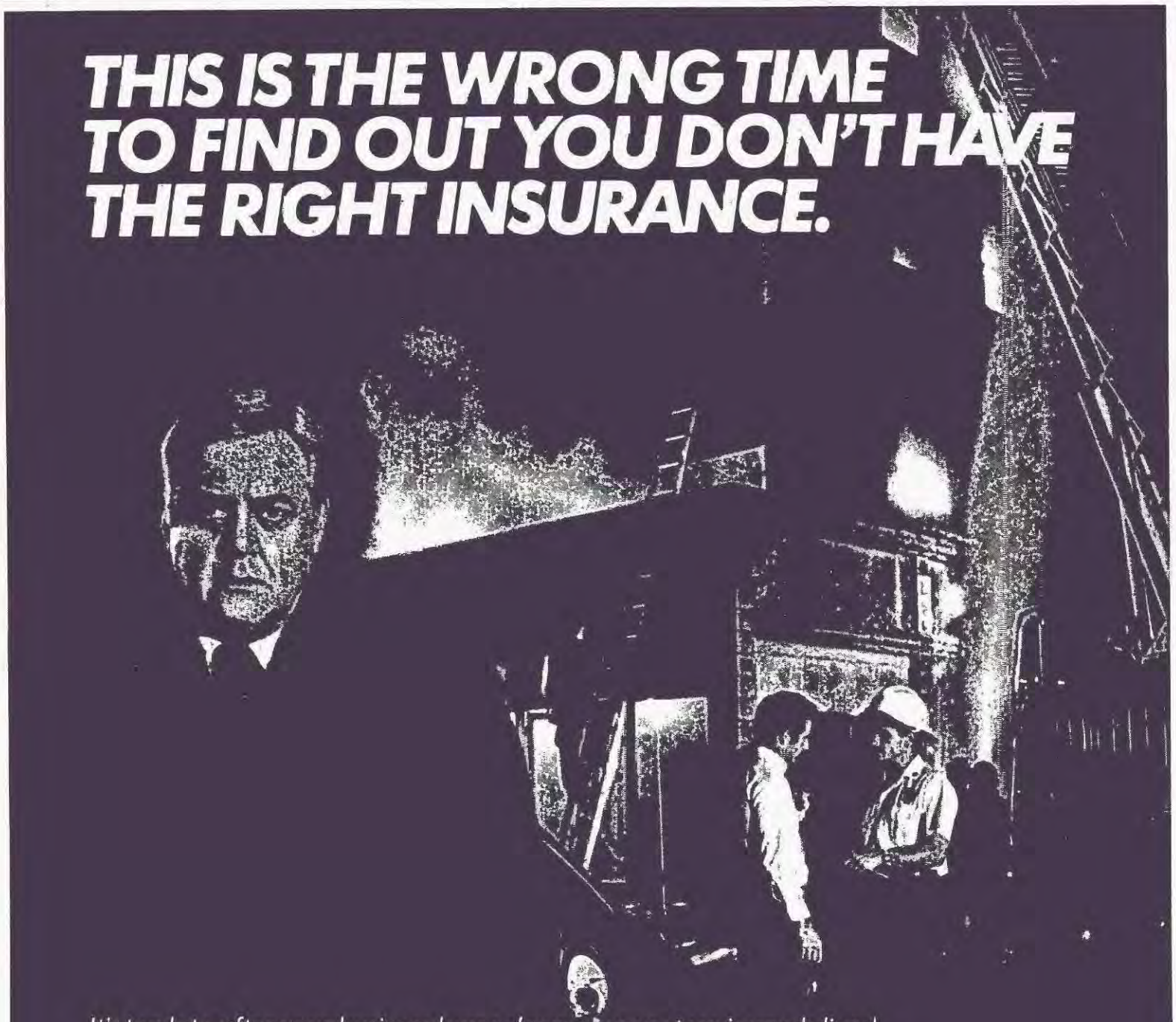
"The fault system embodied in the Hamburg Rules, where you're liable for the faults you commit, is not burdensome," the UNCTAD officials said.

Savings will eventually result because the system will be easier to administer than that set up under the Hague Rules, they say. Both litigation and claims settlement procedures would be easier, they add.

Yet the Maritime Law Assn. does not favor the Hamburg Rules because it says it would prompt more litigation and be more expensive to administer (*BI*, Feb. 28). It favors retention of the Hague Rules and the adoption of the Visby Amendments.

"In any case, the developing countries, which are the major cargo owners, are pushing for ratification, and as more and more people ratify, we expect more and more countries to jump on the bandwagon," UNCTAD officials say.

But, the last two countries expected to jump on are the United States and United Kingdom. ■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## Japan Air Lines is still settling crash claims

**By WILLIAM BOOTH**

TOKYO—Japan Air Lines, which is facing criminal negligence charges stemming from a February 1982 jet crash, is still negotiating with the families of 16 people killed as well as 60 survivors.

The Feb. 9, 1982, crash, which killed 24 people and injured 142, was apparently triggered when the pilot, Seiji Katagiri, purposely threw one of the plane's engines in reverse minutes before its scheduled landing at Tokyo's Haneda Airport. The pilot has since been committed to a mental institution.

Claims, including payments to survivors and the injured as well as the cost of the hull, are expected to reach at least $15.5 million.

JAL has already settled with the families of eight of the victims for a total of between $2.1 million and $3.1 million. Individual rewards settlements ranging from $260,000 to $390,000, which are the largest ever paid in a Japanese aviation disaster.

JAL, the nation's flag carrier, insures its entire fleet with the Japanese Aviation Insurance Pool, an underwriting syndicate composed of all 20 domestic insurers and the nation's only domestic reinsurer.

Last year, the airline paid $12 million in premium to the pool for hull and liability coverage for 82 aircraft, a JAL spokesman says.

The coverage is placed through Tokio Marine & Fire Insurance Co., the pool's lead underwriter and most powerful member.

According to agreement, Tokio then spreads 100% of the coverage among pool members, which traditionally reinsure large portions of risk with both the U.S. Aviation Insurance Group in New York and underwriters in London.

Shortly after the crash, JAL collected $6.5 million in hull insurance from the aviation pool.

The airline is still negotiating with the remaining claimants, who insist that JAL increase its offers since it is facing criminal negligence charges for allowing an unstable pilot to fly.

JAL's liability coverage has limits of approximately $100,000 per person. The airline is paying any claims that exceeds that amount.

In the months following the crash, JAL suffered a 10% to 15% decrease in the number of passengers it carried, which the airline partially attributes to the crash.

In addition, JAL paid no dividends to stockholders in fiscal 1982 after shouldering a recorded deficit of $139.5 million. ■

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# Florida exchange underwriting first risks

*Continued from page 2*
dicates.

● To coincide with the end of the current insurance cycle.

Although Mr. Teale expects the insurance market to remain soft through the end of the year, he thinks that will affect the admitted market more than the surplus lines the exchange will be writing.

"We took the time to take a second look, to conduct an extensive audit, work closely with the Florida Insurance Department and delve into an intensive two-month educational program for members," Mr. Teale said, explaining the delayed opening.

"If we've had to keep people waiting a month or two, its been in their best interest."

While waiting to open, the exchange has undertaken "quite a number of deals involving Lloyd's (of London) brokers," Mr. Teale said, adding that "We are getting closer to Lloyd's by the day."

> 'We've always seen ourselves as an integral part of the world insurance market, so we're working very closely with people rather than taking them on,' Mr. Teale says.

**He says** he's never seen his exchange as an out-and-out competitor of Lloyd's. "We've always seen ourselves as an integral part of the world insurance market, so we're working very closely with people rather than taking them on."

He also does not see his exchange in competition with the insurance exchanges in Illinois and New York.

"We were fishing in such different waters and we are of such different design that we are much more likely to coexist rather than anti-exist," he explained.

In fact, he says he is going to encourage this type of coexistence because "the exchanges need to get together, to work closely together, not fight each other," he pointed out.

Meanwhile, Mr. Teale says the Insurance Exchange of the Americas offers its members and buyers a low-cost, convenient insurance market.

**"Any market,"** he said, "whether it is a new exchange in Florida or a new insurance company formed in California, always attracts a volume of business through the known quality of its underwriters.

"Because we've got some extremely fine, well-known people here in Florida working on the exchange, our appeal is in the quality of our underwriters, the ease of gaining access to the exchange and the low-cost operation," he said.

For example, there are no entrance requirements for using the exchange, like minimum premiums, Mr. Teale pointed out.

Also, to keep operations efficient and inexpensive, emphasis is placed on high technology to get the job done.

"What we've done is deliberately go high tech. Once we're fully operative, we'll go totally on-line with brokers on computer, which is the first time this has been possible in the United States outside the agency system."

Brokers, he said, will have access to the exchange from anywhere through the computer system, rather than via letters or telephone calls.

And, Mr. Teale added, "All the information we need will be recorded, further reducing cost." ■

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# St. Paul suing broker

*Continued from page 2*
paid.

In addition, the suit seeks an unspecified amount of interest, legal fees and good will, bringing the total claim to at least $800,000.

Mr. Foundos told *Business Insurance* that he had not yet been served with the suit but was aware of the charges, which he denied.

Deerfield "never issued policies," he says, explaining that all coverage was approved by St. Paul underwriters. He also produced marine line slips for coverage on several Belgian-based risks cited in the suit that were stamped with the names of St. Paul regional managers.

St. Paul's complaint, filed by Chicago law firm Winston & Strawn, also points to a series of contract violations over the past five years and seeks a declaratory judgment that would force the brokerage to open its accounts to an audit by the insurer and would prevent Deerfield from continuing to represent itself as a St. Paul agent.

According to the suit, the alleged contract violations committed by Deerfield include:

● Representing itself as a St. Paul agent after termination of its agency agreement in 1982.

● Failure to remit premium within 45 days.

● Failure to promptly report all claims.

● Failure to permit St. Paul to audit financial accounting of coverage placed with the insurer.

● Failure to conform to underwriting policies as specified in the agency greement. For example, the lawsuit says Deerfield sub-brokered coverage for Harbville Insurance Brokers Ltd. in London, a company for which it says Mr. Foundos serves as a director.

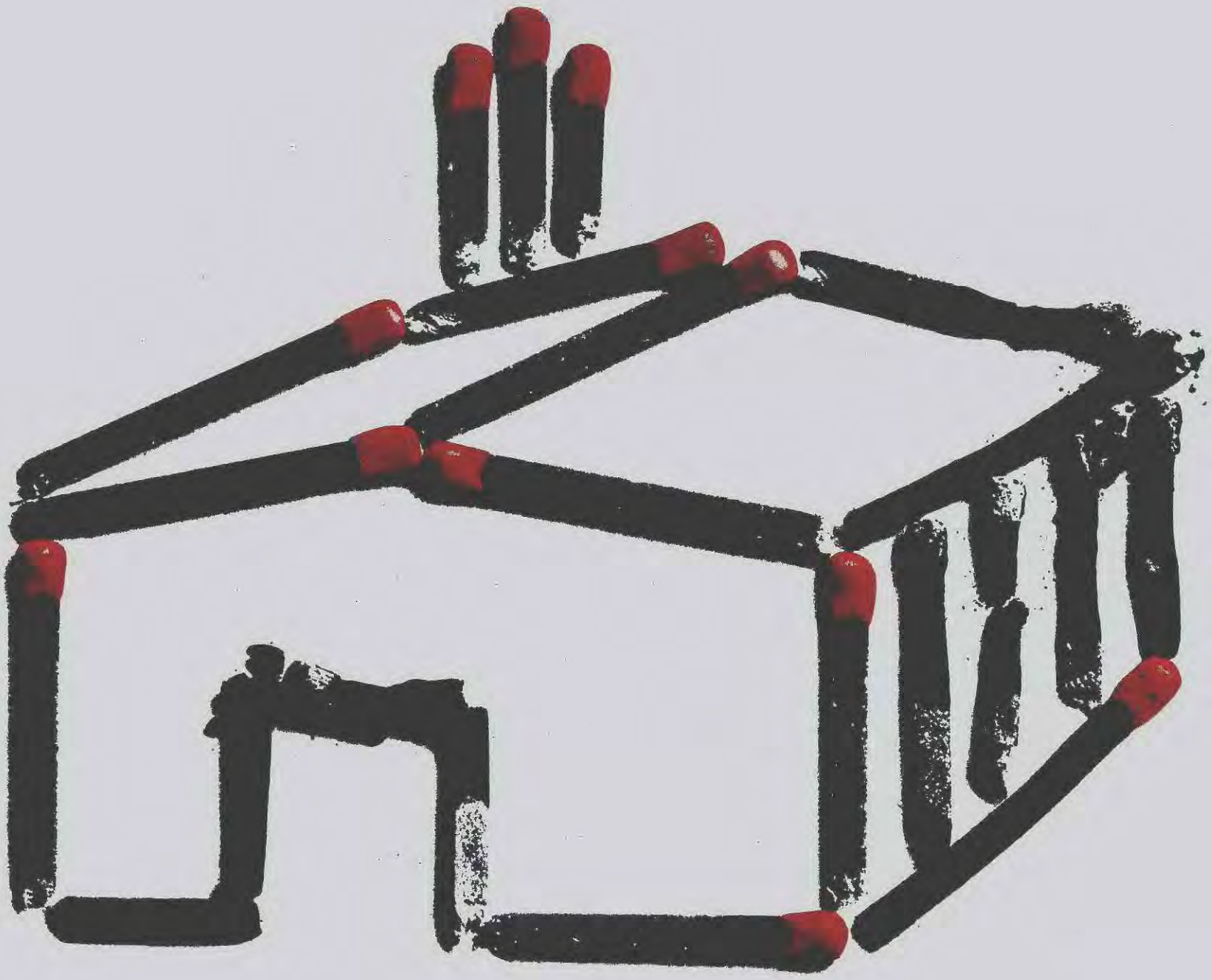
The insurer's agreement with Deerfield, the suit says, prohibited it from underwriting foreign hull insurance or risks that it did not directly produce.

Mr. Foundos, however, contends that the exhibits contained in St. Paul's suit did not include "several other contracts" between his brokerage and St. Paul, which he says nullify the charges. He also denies that he was an owner or director of Harbville. ■

## Storm losses tallied

NEW YORK—Insured property damage caused by storms that swept over coastal and inland portions of California Feb. 28-March 2 are estimated at $43 million by the American Insurance Assn.

The storm was assigned Catastrophe No. 86. ■



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## opinions

# A lesson in mountain climbing

"WE'RE SWEEPING A dust broom against a mountain."

That's the way one Pennsylvania judge hearing asbestos cases feels about the overwhelming litigation sparked by asbestos-related injuries.

And, he's not far off in his summation.

No matter which direction one looks, there is a mountain of problems to be crossed before even a small solution can be reached in the pending asbestos litigation crisis.

There's the fear that some reinsurers will crumble under the weight of asbestos claims, and in true domino fashion, cause the downfall of other insurers on the asbestos risks.

There's the fact that there are just too many asbestos suits to take them all to trial. Some are frivolous cases that cloud the sympathy one rightly feels for the real victims of asbestos-related disease.

But, there is the related fact that some of the asbestos defendants cannot choose to settle valid cases because they and their insurers cannot agree on how much liability insurance they have to cover any settlements they might reach.

There's the fact that the reorganization petitions filed in bankruptcy court by three asbestos defendants have made the mountain of problems even steeper. Now companies that were prepared to settle feel they should wait to see if the bankruptcy court is going to deal a better hand to the three companies in reorganization. Hence, the resolution of claims has slowed again.

On page 3 this week, *Business Insurance* is publishing the second of a five-part series exploring the asbestos crisis. The report by Associate Editor Stephen Tarnoff is the culmination of almost a year of research and reporting. The task at times seemed as difficult as the task of those trying to find a solution to the asbestos crisis. Every time Mr. Tarnoff thought he had just about finished his research, another major development, like Manville's bankruptcy filing, would change the picture.

And, although a lawyer himself, Mr. Tarnoff was surprised by all the legal maneuverings among defendants, their insurers and the plaintiffs. "You don't learn about *this* in law school," he says.

While the breaking asbestos news at times pushed this series into the background for weeks at a time, the long series of developments in the litigation over the last year convinced us that the crisis was even more multifaceted than we had imagined when we conceived the idea of a series. And, we are more convinced than ever that a comprehensive look at what these individual developments really mean is warranted to track how this phenomenal product liability problem will be solved.

The last part of Mr. Tarnoff's series will examine whether manufacturers and insures could find themselves in the same boat 20 or 30 years down the road. Instead of an asbestos crisis, it might be a benzene crisis or a vinyl chloride crisis.

While our current series will not end with a single solution to sweep away the asbestos dilemma, it hopefully will provide some insights that can be applied in the future when society discovers that another product has injured thousands of people.

There are scores of lessons to be learned as the mountains are climbed—by the manufacturers, their insurers and plaintiffs attorneys.

## letters

# Self-funding can help employers contain costs

To the editor: A Perspective article by Wallace E. Jeffs, "Deciding to self-insure health benefits?" (*BI*, March 14), touched on several important points on whether or not an employer should self-insure health care benefits.

There was, however, too much emphasis devoted to the mechanics of aggressively funded programs. (Note: I am not limiting this topic to "pure" self-insurance, as this extreme funding approach may not always be appropriate, depending on the size and claims experience of the plan sponsor).

We believe the reason to take charge of the administration of a health care program is to be able to exert more control over the delivery of this benefit. Unless a plan sponsor structures the administrative apparatus so he is directly responsible for claims experience, there is little incentive to implement sound cost-containment principles, which will result in the large, long-range dollar savings in any health care plan.

Of course, there will be some employers where, because of size or experience, it is impractical to pursue any approach other than enrollment in a pooled or fully insured situation.

Mr. Jeffs started to touch on the importance of cost containment toward the end of his article, but in our opinion that should have been a larger part of his message and integrated with why plan sponsors should consider some form of self-insurance in the first place.

We believe there has been too much emphasis in the past on the pros and cons of the "mechanical" elements of self-insurance, and not nearly enough on the real rationale for taking control of the administration of this particular benefit area. Only as more and more plan sponsors take the initiative to get directly involved in aggressively funded programs, where they are responsible for claims experience, will the needed impetus be present to incorporate cost-containment principles that affect the national consumption of medical services.

Such involvement will encourage choosing an administrator adept in processing claims efficiently and one that generates meaningful information reports so the most appropriate forms of cost containment for a particular employee group can be instituted.

We have a serious problem in this country with escalating health care costs. There is no instant, "magical" solution. As Mr. Jeffs correctly pointed out, self-insurance by itself is not a panacea for solving this dilemma. Conceptually, a move toward taking more control over the administration and experience of a health care program is decidedly a step in the right direction, whether it is termed "self-insurance," minimum premium, administrative services only, etc.

The pressing concern of employers today is how to structure a medical program so the implementation of cost-containment principles will save them money. The funding mechanism is one of many important factors that must be orchestrated properly to effectuate an efficient delivery of health care benefits.

Keep in mind—if the private sector does not aggressively pursue workable solutions to curtail medical costs, the federal government may intercede with solutions with which we will all find it difficult to live. We think a movement toward some sort of self-insurance (assuming all parameters point toward an actuarially sound system) can frequently result in a more efficient program for the rationale noted.

**Robert D. Preston**
Vp
Risk Planning Group Inc.
Darien, Conn.

## Pooling's conflicts

To the editor: I was surprised to read Dr. Robert Rubin's comments concerning small businesses (*BI*, March 14).

Dr. Rubin stated ". . .there is nothing to prevent brokers from bringing these groups (small businesses) together and offering them the buying power of a combined, larger entity. That is an example of American ingenuity working."

Why can't Dr. Rubin use his ingenuity to develop a benefit tax that allows small businesses to purchase health benefits at affordable rates without the conflicts of combining?

**John Fusik**
Plymouth, Mich.

## Logical extension?

To the editor: I suspect Mr. Strazewski confused the Xs and Os on his game card in his Riskwatch, "Libel coverage gives executives at Mobil retaliatory strike ability" (*BI*, March 7).

His description of Mobil's anti-defamation policy would suggest that a logical extension of this coverage would provide doctors with the funds to combat frivolous and groundless medical malpractice suits.

**Robert S. Cline**
Professor of Insurance
School of Business and Economics
University of North Carolina
Greensboro, N.C.

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# Harvard offers hospital risk management course

**By SALLIE J. DRURY**

CAMBRIDGE, Mass.—Harvard's ivied halls, which introduced this country to higher education, are now introducing higher education to hospital risk management.

The Harvard University School of Public Health now offers a graduate course in risk management especially designed for hospitals, which could be the only course of its kind in the nation.

"The Harvard course is the only one we know of in operation," said Cecelia Roach, editor of Hospital Risk Management, a monthly newsletter.

*Business Insurance* surveyed several leading graduate schools of health care administration on whether they offered a risk management course especially for hospitals. While some said they covered risk management topics in finance courses, only Harvard devotes a full-semester course to health care risk management.

> 'A lot of people think patients go around suing doctors for any little thing, but statistics show that is not the case,' Ms. White says. 'Patients sue if they've been harmed.'

Harvard's 30-hour course, now in its second year, is a cooperative effort of the Harvard School of Public Health and The Risk Management Foundation of the Harvard Medical Institutions Inc., which oversees risk management of the entire university. The course is part of the school's master of science and master of public health programs. Registrants include physicians, lawyers, nurses, hospital administrators and other management personnel.

"We feel that risk management is a growing area closely tied to quality health care. Our goal is to sensitize people to the role and principles of risk management in an institution," said Georgianna White, coordinator of medico-legal studies for the School of Public Health and one of the course's instructors.

"We're not so much concerned with the financial end of things, such as reducing medical malpractice insurance premiums, but with reducing risk for the patient's benefit," she said.

The course was designed and is principally instructed by William Curran, professor of legal medicine at Harvard who, according to Ms. White, is known as the "father of legal medicine." Professor Curran has served on a presidential committee for the study of medical malpractice, writes the law and medicine column for the New England Journal of Medicine and has authored a casebook on legal medicine used in law schools around the country.

The scope of the course involves defining injury, collecting information on injuries, developing systems to reduce harms and exploring malpractice. Students read legal cases and offer presentations on various types of hospital risk management.

"Some of last year's presentations were on Medicaid reimbursement, an impaired physician or nurse, no-fault compensation for required immunization programs and the Massachusetts screening panel for malpractice claims," Ms. White said.

The course seems to be becoming more popular. A spring semester elective, it attracted 21 students this year, compared with 18 in 1982.

"Last year we had one student directly interested in iatrogenic diseases (diseases caused by treatment itself)," Ms. White said, "which is just what the course is about. This year again we have a research fellow from Japan who's particularly interested in hospital risk management."

In addition to Ms. White and Professor Curran, the course is also taught by Wendy Mariner, an assistant professor with a master of law degree. Guest speakers are also invited to lecture.

Ms. White, who is a registered nurse, studied patients' rights while completing her graduate work and that interest is reflected in the course.

"A lot of people think patients go around suing doctors for any little thing, but statistics show that is not the case," Ms. White said.

"Patients sue if they've been harmed. We aren't seeing huge numbers of unmeritorious claims. In fact, there are probably more injuries in the health care system than patients report.

"There is so little really good data on patient injuries," Ms. White added. "We're just beginning to collect data on where risk needs to be reduced in hospitals. We want to develop a data base."

**Ms. White said** there are no plans to add another hospital risk management course to the curriculum, but she added that the school is "under tremendous pressure from the (hospital risk management) profession itself to offer executive training for people in the field.

"I must get two or three letters a week from hospital risk managers asking for such a course," she said.

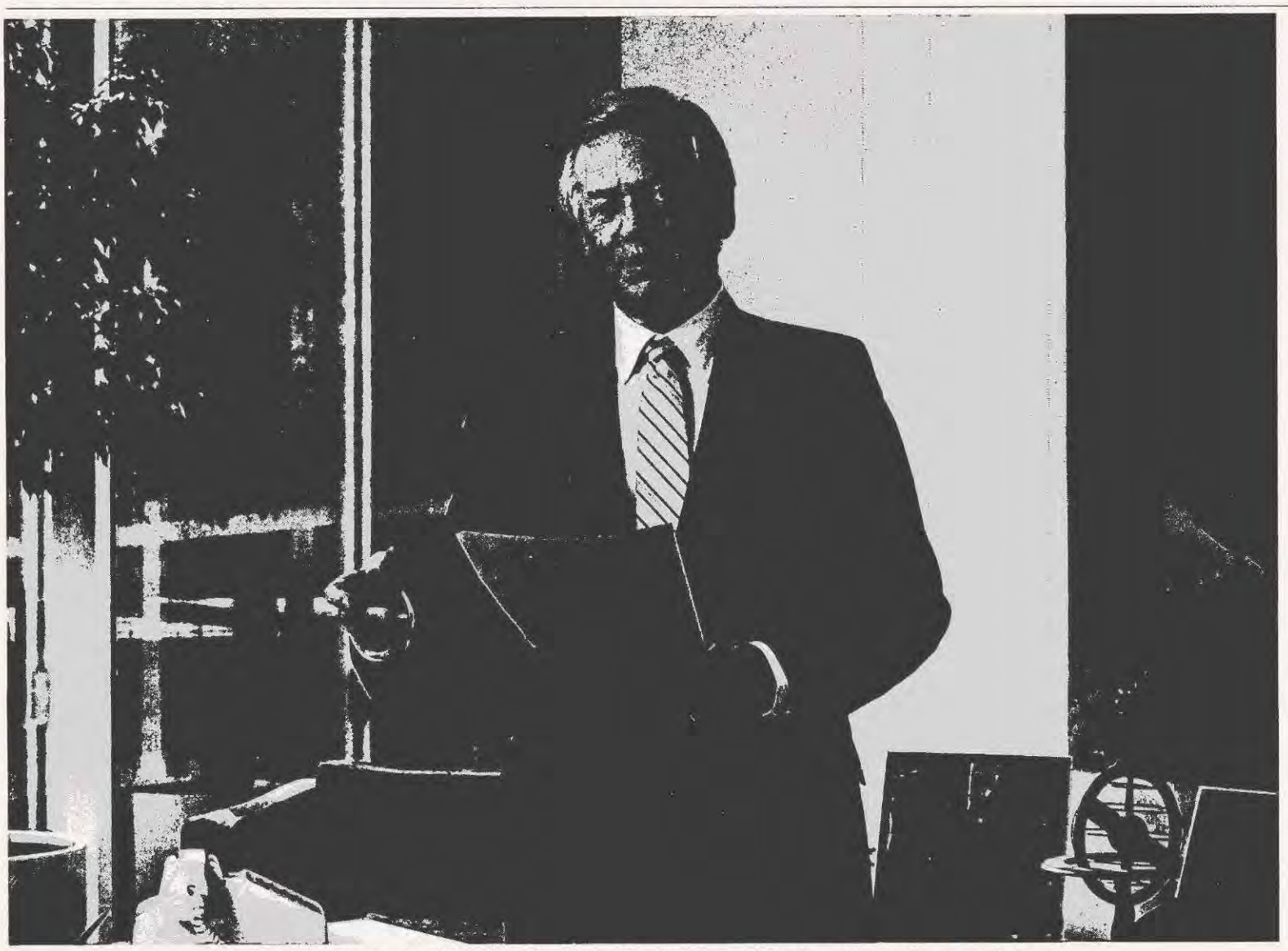
In-service training for the health care providers at Harvard medical institutions is handled through the Risk Management Foundation of the Harvard Medical Institutions Inc.

"We already have risk management educational programs, such as lectures and workshops, for the physicians, nurses and administrators of Harvard institutions," said James F. Holzer, the foundation's director of loss control.

"Each hospital has its own loss-control coordinator, which is a requirement of our captive," Mr. Holzer said. The foundation's Cayman-domiciled captive, Controlled Risk Insurance Ltd. (CRICO), provides professional liability and comprehensive general liability insurance for the 14 Harvard medical institutions. The foundation also manages claims and coordinates loss-control activities for all of Harvard's medical and non-medical units.

The foundation was asked to help design the hospital risk management course providing laboratory experience for the students.

Mr. Holzer suggested that the university may be interested in developing a sequence of related courses to prepare a student for medical risk management, "but I doubt we'll offer a degree in hospital risk management." ■

Frederick M. Siegfried, CEBS, Vice President, Group Sales and Underwriting, talks about helping agents and brokers apply self-funding techniques to a broader spectrum of group health cases.

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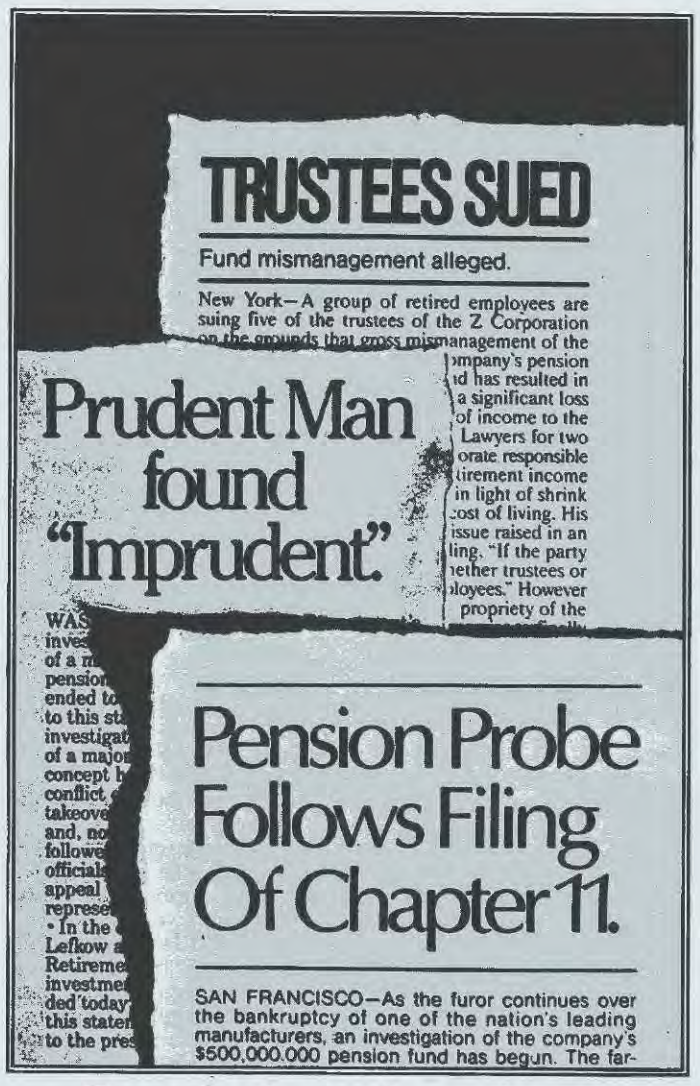
# THE YEAR'S BEST PENSION INSURANCE ADS WEREN'T ADS.



TRUSTEES SUED

Fund mismanagement alleged.

New York—A group of retired employees are suing five of the trustees of the Z Corporation on the grounds that gross mismanagement of the ompany's pension id has resulted in a significant loss of income to the Lawyers for two orate responsible tirement income in light of shrink cost of living. His issue raised in an ling. "If the party ether trustees or loyees." However propriety of the

Prudent Man found "Imprudent."

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# Texas students interested in risk management

**By SALLIE J. DRURY**

AUSTIN, Texas—When 200 students file into a lecture hall for a class, you could call it a Texas-size seminar.

You could also call it the introductory risk management course at the University of Texas.

The university, which began offering insurance courses during the mid-1940s, is now "bursting with business students" studying risk management, according to Dr. Robert C. Witt, chairman of the insurance department in the university's College of Business.

"Enrollment for our introductory risk management course jumped from 70 to 180" in the spring semester, he said, explaining that nearly 500 students annually enroll in the course, which is offered several times each academic year.

A heightened interest in the university's business administration program has made several improvements in the insurance department possible.

First, the department is undergoing a facelift. It formerly offered an insurance concentration for its bachelor and master of business administration and doctoral candidates, but it will now offer a risk management and insurance concentration.

"We've changed the content of the program by adding more risk management courses," Dr. Witt said. "Ten years ago, business insurance meant buying insurance. But the market has changed and we've got to reflect that. Now a company analyzes risks and may not even purchase insurance. The company may own a captive.

"We don't want to simply teach our students about buying an insurance policy. That's history. We want to prepare them for risk management 10 years down the road. That means teaching them analytical skills."

Second, the insurance department recently received a $500,000 endowment from the Texas Insurance Education Foundation, the Wortham Foundation, John L. Wortham Agency and 20 individuals. The department will also receive a matching grant from the university, bringing the value of the endowment to $1 million.

With the endowment, the department plans to develop a risk management and insurance institute involving high-level research, statistics and economic theory, Dr. Witt said. The department also may add to its staff, which now numbers five full- and part-time faculty members, plus two full-time instructors of actuarial science.

The department also plans to establish five doctoral fellowships, 20 M.B.A. scholarships and 20 B.B.A. scholarships. In addition, the endowment gives the department the opportunity to offer risk management symposiums in a university extension program.

Third, the College of Business' department of finance, which houses the insurance department, is becoming more competitive in its acceptance criteria.

"We're having to control enrollment and apply other braking procedures," Dr. Witt said, including requiring higher grade point averages, higher test scores and higher class rankings with each set of applicants.

"We now accept one out of every three or four applicants," said Seymour Schwartz, assistant dean of the College of Business and Graduate School of Business. "We're definitely gaining in prestige."

Both the undergraduate and graduate insurance and risk management programs emphasize the financial and statistical aspects of risk management, an approach to business administration made famous by The Wharton School of the University of Pennsylvania in Philadelphia.

"We don't want to duplicate the Wharton program," Dr. Witt said, "but we want to be mentioned in the same breath as Wharton."

Dr. Witt said university students should be taught the theories behind business that are not picked up in real life. "We prepare the students for what they may encounter in risk management—not by description of what has been done, but by theory, which can be applied to different situations 10 years from now," he said.

For the M.B.A. student with a concentration in risk management, the first year of study consists of core courses in financial and economic theory, statistics, research and development, business law, accounting and marketing. In the second year, the student takes four risk management and insurance courses, including an employee benefits course. The course work includes field trips and guest speakers, allowing a student to see the marketplace in action.

One hundred percent of the insurance department's students have jobs by graduation, Dr. Witt says. "Last year Marsh & McLennan, Alexander & Alexander and Mercer recruited. Brokers like the theoretical aspect of our program," he said. "Some students went with Hartford, some with Aetna L&C and some took over their father's agencies."

Dr. Witt also said M.B.A. graduates of the insurance program could expect starting salaries of $20,000 to $25,000, depending on the area of the country in which they work.

Tuition and fees are a modest $800 per semester for out-of-state students (approximately $300 for in-state students). The cost is low because the university is heavily funded by private endowments and subsidized by the state.

"Texans aren't known for being humble," Dr. Witt said, "but we do have one of the cheapest schools in the country with a first-class education." ■

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# The Home, reinsurers settle claims dispute

**By STACY SHAPIRO**

***london line***

LONDON—The Home Insurance Co. will receive an unknown sum from retrocessionaires that once participated in a reinsurance pool organized by agent Re/International Ltd. of Bermuda.

The settlement was agreed upon after The Home presented its case in High Court, Queen's Bench, in London.

"I am not at liberty to tell you what the figure we agreed upon is," said an attorney for Herbert Smith & Co., the London law firm representing The Home.

The Home had sought more than $14 million in claims from the retrocessionaires that used Re/International as its intermediary (*BI*, Jan. 17).

The Home, which had acted as a fronting insurer for AFIA of New York, charged in its lawsuit that Re/International and the 10 reinsurers, all foreign companies, did not reimburse it for marine and aviation claims.

The New York-based insurance company dropped its complaint against Re/International shortly after the trial began in January, but pressed its claims against the retrocessionaires.

The settlement ended the three-month trial that featured witnesses from as far away as San Francisco.

After the settlement had been announced, attorneys for the reinsurers said in court that they may start legal proceedings against Re/International in a California court.

The retrocessionaires say they are trying to sort millions of dollars in claims on business underwritten for them by Re/International, which ceased doing business last year.

## Travel safety

Travel agencies should be required to guarantee the safety of the accommodations they book for their clients, the British Safety Council says.

"The public should have a guarantee from their travel agent that the resort they have chosen and the hotel, villa or boarding house they have booked is safe and hygienic," said James Tye, director general of the council.

Recently, 10 British tourists were killed from carbon monoxide poisoning in their hotel rooms.

## Natural disasters

Storms that battered California, Hawaii, Great Britain and France—coupled with other natural disasters in Australia, India and Central America—flooded world insurers with billions of dollars in claims in 1982, according to a new report by Swiss Reinsurance Co.

In the United States alone, weather damage cost insurers more than $1.5 billion, says the Swiss Re report.

Storm damage in France and Britain totaled another $300 million and brush fires in Australia have cost more than $400 million in damage, the reinsurer's report points out.

The report, published annually by Swiss Re, lists the largest insured losses around the globe. Included are weather claims, as well as marine, aviation and non-marine insurance losses.

Among other huge losses in 1982 was a fire in a K mart Corp. warehouse in Morrisville, Pa., that cost insurers more than $100 million (*BI*, July 19, 1982).

Fires of a similar magnitude also occurred in Japan, France and West Germany, Swiss Re explains in the report.

Among claims stemming from accidents in offshore oil fields was the collapse of the drilling platform Ocean Ranger, which killed 84 people (*BI*, April 4). Property insurers paid out $86.5 million on the claim.

Several commercial airline crashes also added to world insurers' woes, according to Swiss Re. The two U.S. airline accidents mentioned in this year's report were the Air Florida crash in Washington, D.C., and the crash of a Pan American World Airways jetline near New Orleans (*BI*, March 28). ■

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# BC/BS is the top choice for smaller firms

*Continued from page 1*
contracts were funded that way.

The Blues, which includes Blue Cross, Blue Shield and Blue Cross & Blue Shield plans, were able to achieve this top post through their business with medium-sized and smaller employers.

BC/BS plans were the top funding choice of three categories of companies with fewer than 5,000 employees: 1,000 to 4,999 employees; 500 to 999 employees and 100 to 499 employees. Companies with fewer than 500 employees represented about 53% of the total number of benefit contracts analyzed.

In contrast, BC/BS was only the fifth funding choice for companies employing more than 10,000, the largest category in the survey.

These employers preferred to self-fund their benefit plans and then use several commercial insurers before not-for-profit BC/BS.

In a similar survey reported by *Business Insurance* two years ago on data from the 1978 plan year, the Blues fared much more favorably with large employers (*BI*, March 9, 1981). That survey, by Money Market Directories Inc. of Charlottesville, Va., showed that BC/BS was the second choice of the largest employers for funding benefits, compared with the fifth choice in the most recent survey.

However, it should be noted that the earlier survey involved analysis of a smaller number of contracts —37,000 compared with 50,000 in the 1980-81 plan year.

BC/BS' lack of large employers' plans in the latest survey bumps it from first place when funding choices are compared on the basis of premium volume.

The Travelers, which is the fourth funding choice of the largest employers and which only covered 1,610 benefit contracts altogether in 1980-81, is ranked first with $6 billion in premium volume. BC/BS generated $5.8 billion in premium for second place.

Apparently, employers with very large numbers of employees are using Travelers. It is also possible that Travelers charges a higher premium than other companies, but a significantly higher premium is unlikely given the intense competition of the market.

When funding choices are ranked according to number of contracts covered, the following insurers are in the top 10 behind BC/BS and self-funding: Aetna Life & Casualty Co., 3,194 contracts; Prudential Insurance Co., 2,654 Connecticut General Life Insurance Co., 1,953; Union Mutual Life Insurance Co., 1708; Life Insurance Co. of North America, 1683; Equitable Life Assurance Society, 1,635; Travelers, 1,610; and Metropolitan Life Insurance Co., 1,005.

However, this lineup changes when insurers are ranked by premium volume and some new companies make the top 10.

Behind The Travelers and BC/BS, which are ranked first and second according to premium volume, are Prudential, third with $2.3 billion in premium volume; Aetna, $1.8 billion; Equitable, $1.6 billion; Metropolitan Life, $1.4 billion; and Connecticut General, $1.1 billion.

The rest of the top 10 is made up of John Hancock Mutual Life Insurance Co., $478 million; Provident Life & Accident Insurance Co., $354 million; and Kaiser Foundation Health Plan, $289 million.

The ERISA Benefit Funds information also shows that $398 million was spent on self-funded plans, although the Form 5500 filed with the Labor Department does not ask how much was expended if a benefit plan is self-funded.

"Hence, some self-insured plans listed this amount on an attachment; others simply stated that they were self-insured but listed no dollar amounts at all," said Judy Diamond, publisher of "Group Insurance Directories."

The information culled by ERISA Benefit Funds also provides insight into the funding preferences of various size employers.

When the largest companies (more than 10,000 employees) choose to fund their benefits through an insurer instead of self-funding, Prudential is their top choice. Aetna Life & Casualty Co. was their next choice followed by Travelers and then the Blues.

For companies with 5,000 to 9,999 employees, self-funding and Prudential again were the first and second choices. The Blues were third, followed by Aetna and Metropolitan Life Insurance Co.

All categories with fewer than 5,000 employees ranked the Blues as the most-popular funding choice with self-funding in second place.

Companies with 1,000 to 4,999 employees chose Prudential third, Aetna fourth and Connecticut General Life Insurance Co. fifth.

Employers of 500 to 999 workers chose Aetna third, then Prudential and Connecticut General.

The smallest employers, those with 100 to 499 employees, picked Aetna third, then Union Mutual Life Insurance and Prudential.

The 1984 edition of "Group Insurance Directories," compiling data from fiscal year 1982 and calendar year 1981, will be published next February, Ms. Diamond said.

Insurers and brokers buy these directories for marketing and forecasting and to plan sales strategies.

"Group Insurance Directories" lists information only on companies with more than 100 plan participants, because smaller plans are not required to file Form 5500.

"But if someone could put together a book with information on companies with under 100 plan participants, he'd make a million bucks," Ms. Diamond said, adding that she has had many requests from agents and brokers that specialize in small plans.

ERISA Benefit Funds Inc. also publishes "The Red Book" and "The Blue Book" of pension funds, listing similar information for pension funds in several volumes.

The ERISA Benefit Funds compilation also shows what brokers are used most often to place benefits coverage and ranks insurers by benefits offered. This information will be reported in future articles in *Business Insurance*. ■


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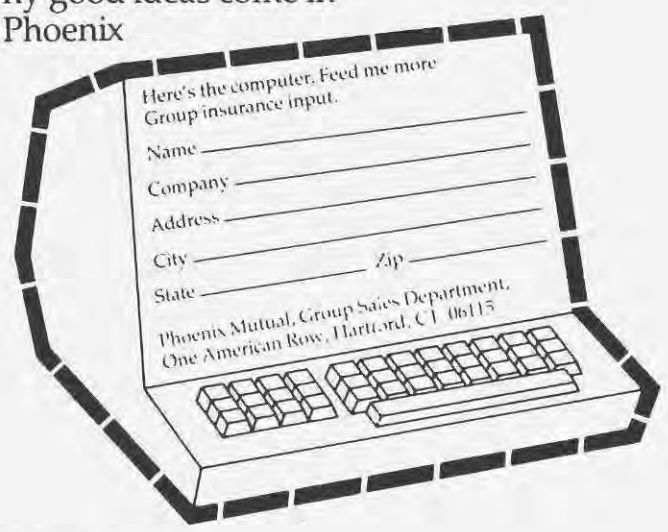


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## comings & goings: buyers

# ENSTAR names Huey to insurance position

**Stephanie Huey,** 34, has been named assistant insurance manager at ENSTAR Corp. in Houston. She will assist Insurance Manager Charles L. Shoemaker in handling property/casualty and marine insurance for the company. Ms. Huey was formerly corporate insurance manager at Behring International Inc. in Houston. She received a bachelor's degree from Miami University in Oxford, Ohio, and the Associate of Risk Management designation. She reports to Mr. Shoemaker.

* * *

The State of Alaska announces appointments to several new positions in its risk management division:

**Ira Peer,** 43, is deputy director for the division. He is the liaison between the state and brokers and consultants and is responsible for policy design and review for property/casualty, aviation and marine insurance. He was a principal consultant for Ebasco Risk Management in New York for three years; he also served as vp and account executive with Schiff Terhune Inc. for 10 years in the New York and Los Angeles offices. He received a bachelor of business administration degree in insurance from The College of Insurance in New York and has earned the CPCU and ARM designations. Mr. Peer reports to John Haywood, director of risk management.

**Thomas J. Slagle,** 39, is the new risk administration manager. He will analyze new exposures for the state and has some claims responsibilities. Mr. Slagle has been with the division five years, most recently as claims manager. He also was a claims adjustor with Crawford & Co. in its Anchorage office. Mr. Slagel received a bachelor's degree from Central Washington University in Ellensberg, Wash., and the ARM designation. He also reports to Mr. Haywood.

**Paul Troeh Jr.,** 46, is the claims manager, coordinating the defense of the state for tort and property claims, ocean marine claims for the state's nine ferry vessels, airport liability claims and workers compensation claims for 18,000 employees, among other responsibilities. He had for four years been with the Alaska Workers Compensation Board in Juneau as deputy director and designated chairman; prior to that, he was director and acting general counsel for the Alaska Public Employees Assn. Mr. Troeh received a bachelor of arts degree with honors in police science from Washington State University at Pullman and a juris doctor degree from Arizona State University in Tempe. He currently is an instructor for the paralegal program at the University of Alaska in Anchorage and Juneau. Mr. Troeh reports to Mr. Peer.

**Brad Thompson,** 28, is assistant claims manager, supervising the independent adjusters that have contracts with the state and handling property losses and some liability and workers compensation claims. Mr. Thompson was formerly a claims adjuster with the General Adjustment Bureau in Juneau for two years. He received a bachelor's degree from McGill University in Montreal, Quebec, and is now pursuing the ARM designation. Mr. Thompson reports to Mssrs. Haywood and Troeh.

The Division of Risk Management for the State of Alaska is located in Juneau.

•

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# Vaughan heads Hogg Robinson U.S. units

**James H. Vaughan** is joining Hogg Robinson Group P.L.C., a Lloyd's of London brokerage, as chairman of its U.S. operations. He will be based in the United States.

In the newly created position, Mr. Vaughan will oversee Hogg Robinson's U.S. subsidiaries and joint ventures, including Republic Hogg Robinson Inc., the nation's 14th-largest insurance brokerage, according to a 1982 *Business Insurance* survey.

Mr. Vaughan retired as chairman of Fred S. James & Co. Inc. in 1980.

**Other agent/broker changes:**

**Donald K. Heim** appointed president and chief operating officer of the Advanced Risk Management Services Division of Corroon & Black Corp. in Nashville, Tenn. He previously was executive vp of the unit's research and development department. In addition, **Richard W. Bureson** named president of Advanced Risk Management Services's newly formed national accounts service department. He previously was senior vp of research and development.

**James E. Lee** named senior vp of Rollins Burdick Hunter of Illinois Inc. Mr. Lee, who was vp-financial risk and surety, will continue heading the client services-special accounts unit, which includes the bond, mortgage bankers, association group, railroad, aviation and employee benefits departments.

**Robin N. Lamprecht** elected senior vp of Reed Stenhouse Inc., the New York-based subsidiary of Reed Stenhouse Cos. Ltd. of Toronto. He continues as senior vp of Reed Stenhouse International Inc., another subsidiary.

**Larry B. Butler** named vp and manager of the employee benefits consulting and claims administration departments of Reed Stenhouse Inc. of Illinois. Mr. Butler had been vp and regional sales and marketing manager at William M. Mercer Inc. in Chicago.

**Jospeh A. Giampetro** appointed group vp in charge of risk management services for Alexander & Alexander Services Inc.'s Mid-Atlantic region. Mr. Giampetro previously was a vp at A&A.

## comings & goings: industry

### Insurers

**John S. Anderson** named president of Petroleum Insurance Inc. in Philadelphia. He succeeds **Billie G. Morris**, who died after a lengthy illness. Mr. Anderson joined Petroleum Insurance in 1982 as vp and established the Chicago office. Prior to that, he was with Industrial Risk Insurers/Oil Insurance Assn. Petroleum Insurance is a unit of CIGNA Corp.

**Peter A. Gersten** promoted to vp-group underwriting at United States Life Insurance Co. in New York. He had previously been a second vp-group underwriting at USLife

**Michael von Stumm** elected vp of Nordstern Service International (U.S.) Inc. in New York. He will manage the New York office of Nordstern for the parent company, Nordstern Allgemeine Versichergunds-AG of Cologne, West Germany.

### Excess/surplus

**Warren S. Stanley** named chairman and chief operating officer of IWest Insurance Managers Inc. in Stockton, Calif. He joined the firm in 1982 and has been an executive vp since 1980. Mr. Stanley succeeds **James A. Bradley,** who was elected chairman and chief executive officer. Mr. Bradley was one of IWest's founders in 1969. He succeeds former Chairman **Robert Stahl,** who will remain a corporate consultant. IWest is a subsidiary of National Insurance Wholesalers, a unit of The St. Paul Cos.

**Peter H. Wood** joined Swett & Crawford as vp and manager of subsidiary Leslie H. Cook Inc. in Chicago. He is responsible for developing and marketing property and casualty business at Cook. Mr. Wood had been vp of Alexander & Alexander in Chicago. Swett & Crawford is a wholly owned subsidiary of The Continental Corp.

**Bob Collinger** joined Western Insurance Intermediaries Inc. in Tigard, Ore., as executive vp. He will help expanded the underwriting capabilities in the property and multiperil lines at Western. Mr. Collinger previously was vp of JKS Inc.

### Reinsurers

**John L. Stevens** named senior vp and **Kathleen L. Boreman, Roger J. DiRocco** and **John Hendrickson** named vps at Reinsurance Co. of America Inc. in Chicago. Mr. Stevens had been vp at the company; Ms. Boreman and Messrs. DiRocco and Hendrickson were second vps.

**John Zadjelovich** promoted to vp of property facultative reinsurance for National Reinsurance Corp. in Stamford, Conn. He joined National Re as an underwriter in 1978.

### Other suppliers

**Robert J. Myers** joined Meidinger Inc., a Louisville, Ky.,-based benefit consulting firm, as a special consultant on Social Security issues. Mr. Myers, who helped design the Social Security program during the 1930s, was the Social Security Administration's chief actuary between 1947 and 1970. More recently, he was executive director of the National Commission on Social Security Reform. He will work out of his home in Silver Spring, Md.

**Susan G. Beaman** named vp of NATLSCO Rehabilitation Management Inc. in Long Grove, Ill. Ms. Beaman was named executive director of NATLSCO in January. NATLSCO is an affiliate of the Kemper Group.

**Robert J. Ott** appointed vp-professional services of New Jersey Dental Service Plan Inc. in Parsippany. Dr. Ott had been a dental consultant with the plan.

**Richard B. Hall** named deputy managing vp of Anistics Inc., the risk management subsidiary of Alexander & Alexander Inc. in New York. He had been vp at Anistics.

**Scott T. Corwin** appointed vp of Consolidated Business Planning Services Inc. in New York.

**Fred W. Boelter** joined Carnow, Conibear & Associates Inc. in Chicago as senior industrial hygienist. He will be responsible for the development and overall management of the company's industrial hygiene, safety and engineering consulting programs. Mr. Boelter had been a senior industrial hygiene engineer at NATLSCO. ■

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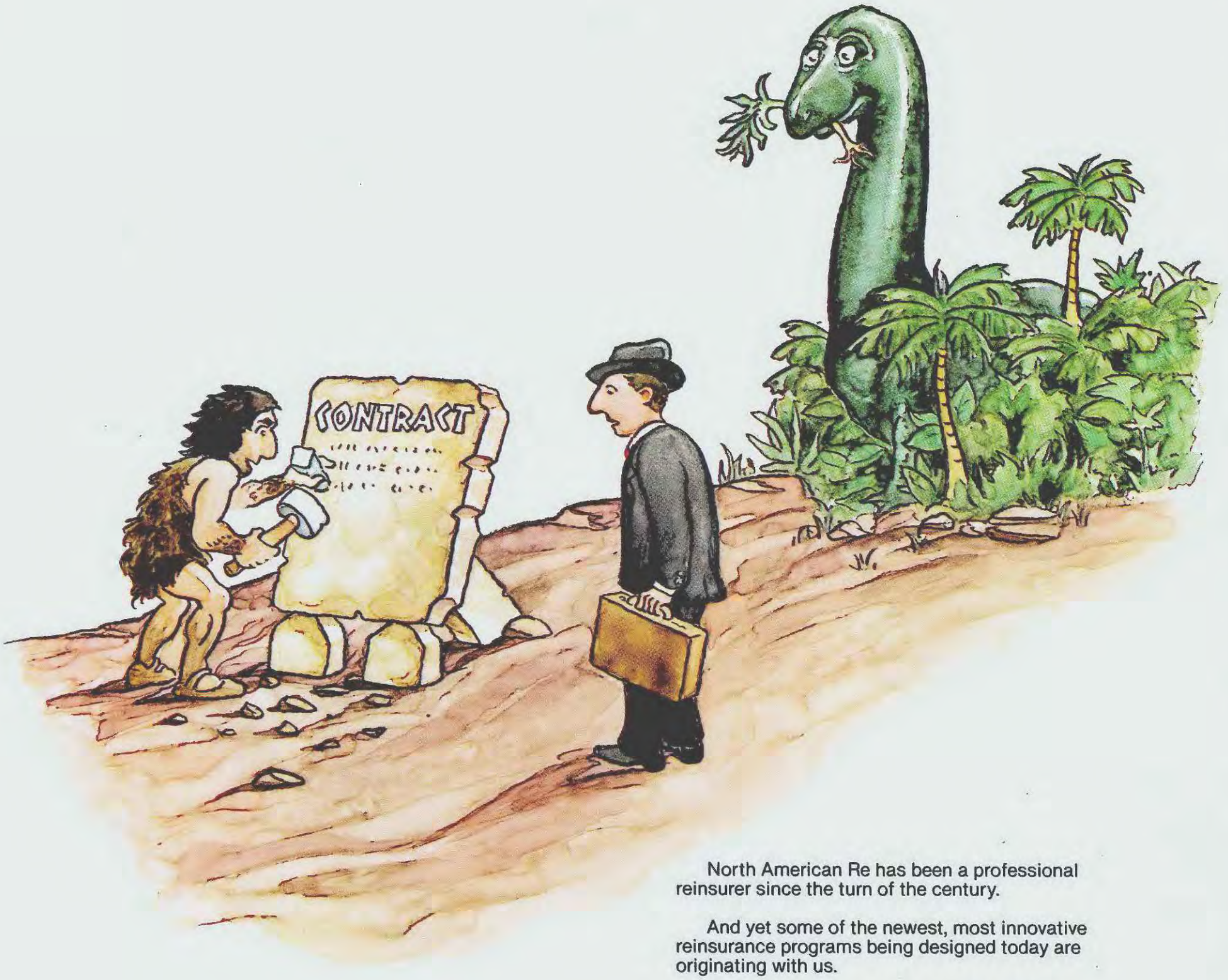


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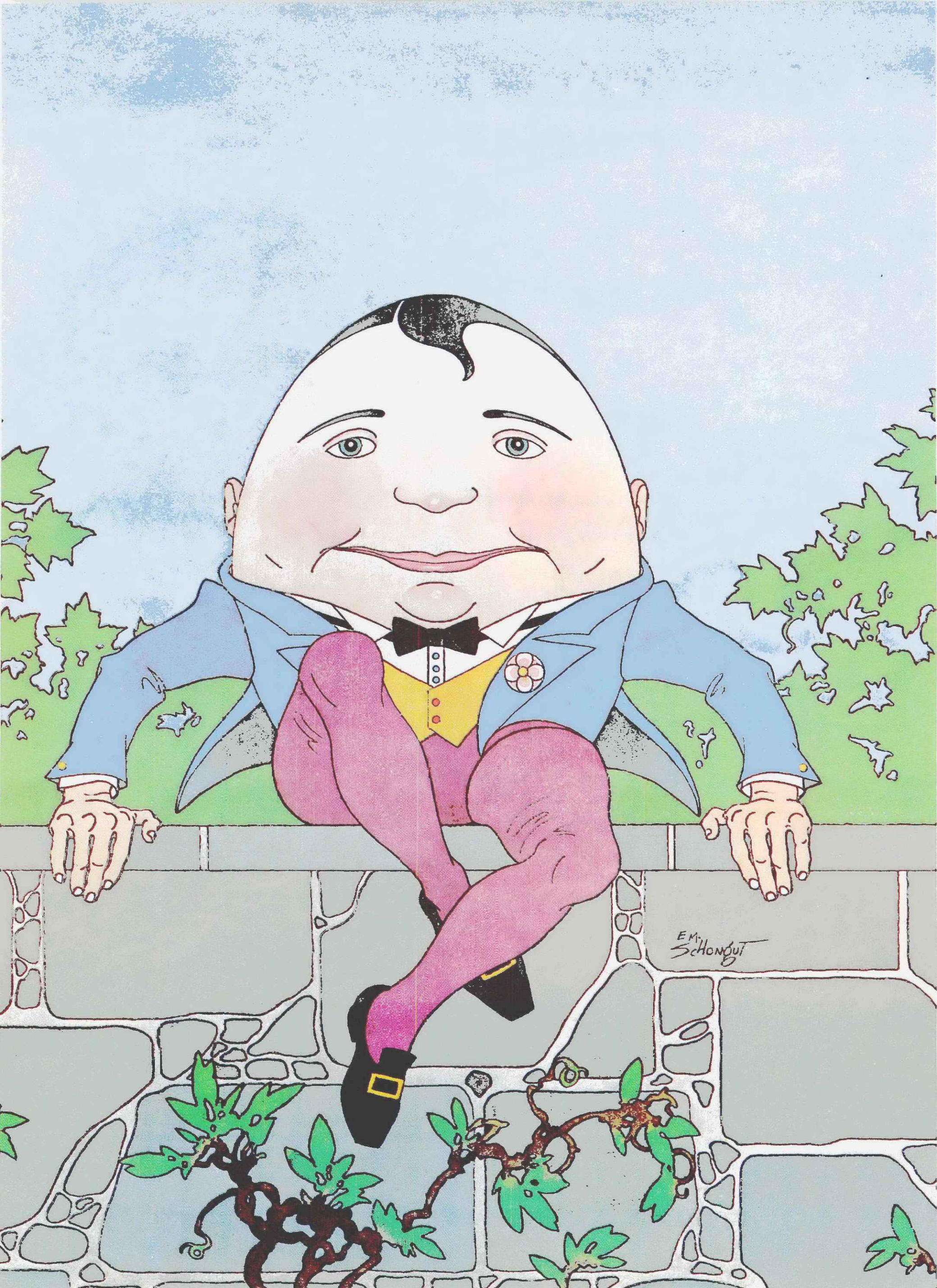
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The Plan is made up of Risk Estimators: the Personal Risk Profile[SM] which estimates an individual's risk of physical illness or injury and suggests definitive ways to reduce them; and the Personal Stress Profile[SM] which helps an individual identify and manage stress-related problems. Since confidentiality is very important to employees, individual Risk Estimates are sent directly to their homes.

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Our plan works in various ways to reduce health and disability costs.

Most obvious is minimizing the risk of losing employees, particularly key employees, to disability, and the high cost of replacing them.

In addition, The Prevention Plan can provide a Group Summary or "snapshot" of the company as a whole which allows employers to expand into risk management areas and take corrective action to improve work environments or sponsor specific programs to promote corrective action.

This will prove particularly valuable to larger employers who are rated on their own experience and have direct control over their costs. But smaller employers as well see this as a helpful aid in benefit planning.

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The ingredients for a superior benefit are all here: an innovative product that makes tremendous sense to the employer sensitive to the spiraling cost of disabilities, both direct and indirect; one that the employee perceives as immediately beneficial; a plan whose cost is reasonable even to the smaller business; and a plan offered by a complex of companies whose experience, expertise, and continued innovation has made it number one in Group LTD for six years.*

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*Employee Benefit Plan Review, April 1982.

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# Hartford Specialty offering on-line claims information

## *products & services*

Hartford Specialty Co. is offering a computerized claims information system to risk managers. They can instantly get details on their company's claims with the system, called OSCAR.

The system allows claim inquries by displaying a "menu" of functions. Information can be retrieved by policy number, claim number, plant or department location or type of injury. Broader information categories available are claims status, claims data analysis, policy inquiry and customized loss reporting.

Risk managers can get up-to-date facts because claims data is entered into the system daily, not every 30 or 60 days.

The OSCAR system is available as an unbundled claims service or as a supplement to a customized insurance package. The system uses a telephone, an electrical outlet and a teleprinter, or video display terminal. OSCAR is compatible with most office computer systems.

The cost of the system is $6,000, which includes 200 hours of connect time and service.

For more information on the OSCAR system, contact Charles Turchi, Hartford Insurance Group, Hartford Plaza, Hartford, Conn. 06115; 203-547-2835.

## Restaurant coverage

The Travelers Corp. is serving up a new coverage package for fast-food and family-style restaurants.

The package, called Family Restaurant Pac, offers broad property coverage for fire, wind and lightning, hail, smoke, vandalism and vehicles. Glass coverage for insured-owned buildings and sign coverage for owned or rented, painted or illuminated signs are also provided. Business interruption protection covers revenue loss from off-premises power failures.

The package's general liability coverage protects against losses caused by personal or bodily injury lawsuits. Money and securities on the premises are covered up to the personal property limits of the policy. The general liability portion of the package carries a $300,000 combined single limit.

A deluxe version of Family Restaurant Pac covers all risks, excluding normal deterioration or acts of war or other similar exclusions. It has a $1 million combined single limit of general liability.

The deluxe version also features theft coverage (any act of thievery, which includes employee theft and counterfeit) and covers up to $5,000 in food spoliage caused by off-premises power failures

In both versions, non-owned automobile coverage is included.

The policy is available in Colorado and North Carolina.

For more information, contact your independent Travelers agent.

## Graphic arts policy

Liability and property insurance and a no-cost extension endorsement are included in the graphic arts business policy from Bituminous Insurance Cos.

Graphic arts businesses, like printing, publishing, typography, direct-mail advertising, commercial photography or stationery firms, are eligible for all-risk, replacement-cost basis coverage on buildings and personal property through Bituminous.

Available liability coverage includes comprehensive general liability, legal liability, printing services liability and a graphic arts supplemental endorsement.

Some of the materials covered under the general liability coverage include negatives, positives, dyes, forms, manuscripts and other artwork.

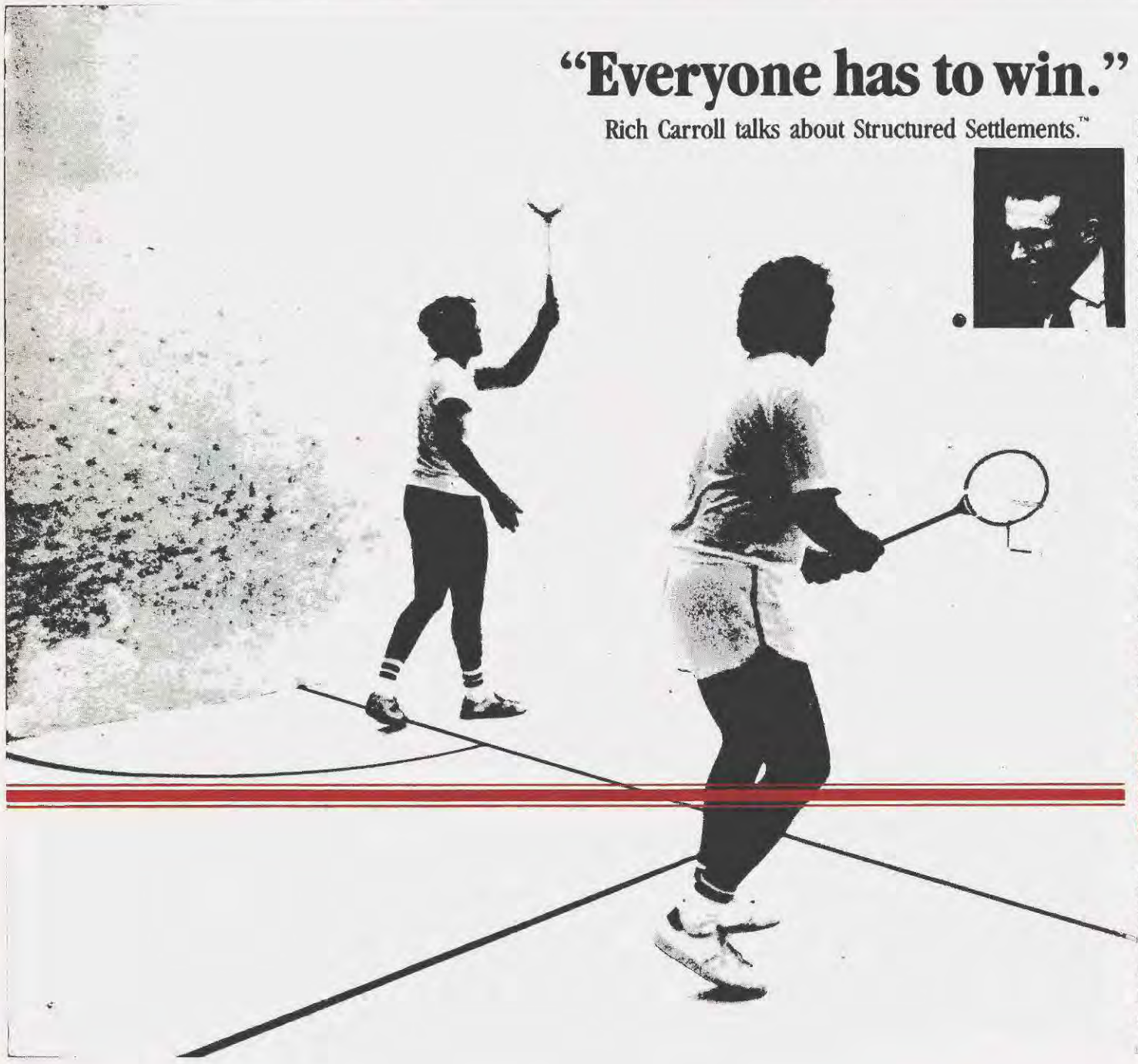
The graphic arts supplemental endorsement covers property of insured on another's premises, property of others on insured's premises and professional liability.

A broadened policy extension, called the Graphic Arts Extension Endorsement, increases liability limits for valuable papers and records, extra expenses (reimbursement for an expense otherwise covered by the policy), transportation and outdoor signs.

For more information on the graphic arts business policy, contact William J. Herold, Bituminous Insurance Cos., 320 18th St., Rock Island, Ill. 61201; 309-786-5401. ■

**"Everyone has to win."**

Rich Carroll talks about Structured Settlements.™





Rich Carroll is as highly talented on the squash court as he is a Structured Settlements negotiator. "The only similarity between my game and my work," says Rich, "is the fact that there are no pretenses. Squash is a one on one sport—a game you can't hide in. Negotiating a Structured Settlement is an honest game, too. The service we offer is very real, very concrete. All parties concerned can see the effort, and have to understand its direction."

"A Structured Settlement isn't anything like a one on one game. It's a process where everyone has to win—everyone has to feel successful within the context of the settlement."

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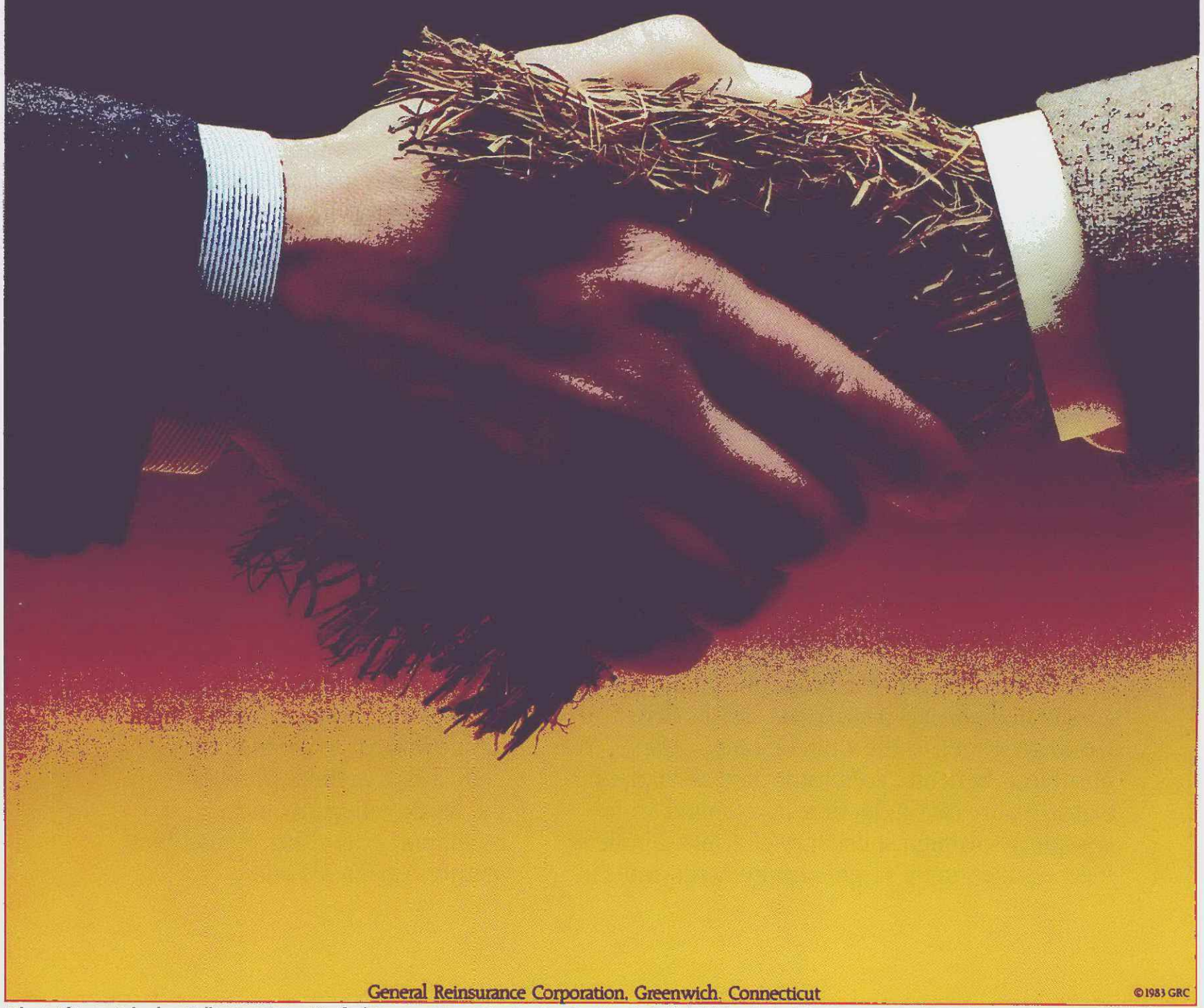

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# Now that you know all there is to know about captives, maybe you should forget it.

A successful Captive program, as many of the world's top multinational companies have discovered, can be an excellent tool. A tool that provides for prompt cash flow, control, capacity and flexibility.

Captives cannot, however, perform magic for everyone. The overhead incurred in running a captive, for example, may simply make it not worth your while. Or, perhaps because times have changed, your needs may have changed.

And so you may need a new solution. A solution that offers you the benefits of a captive without the necessity of forming a captive.

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A Controlled Master Program (admitted policies issued abroad combined with a Master Contract issued in the United States) offers numerous benefits. Premiums paid abroad, for example, are tax deductible to a United States company's foreign subsidiary. Admitted policies meet each country's legal requirements and can play a role in demonstrating good citizenship on the part of the insured. It enables the insured to avoid unnecessary taxes that are frequently levied on loss payments when those payments are made first to the United States parent and then transferred to the overseas subsidiary. The Master Contract offers broader coverage, eliminating gaps that can occur from country to country due to variances in local coverages. It brings control of the entire program to the risk manager in the United States. It allows for one underwriter worldwide rather than a different one in every country. And it avails the insured of AFIA's worldwide capabilities and capacity.

*AFIA adds a wrinkle.*

AFIA has developed a program that allows risk managers to gain even more control over their worldwide programs and, simultaneously, solve the problems inherent in trying to achieve uniform risk retention levels. This program is known as the "Deductible Funding Plan" and is added to the Controlled Master Program. It is an economical alternative for the corporation that wants to overcome the difficulty of having an overseas manager accept higher deductibles or to arrange for deductibles in those parts of the world where, by local regulation or custom, deductibles are not usually available.

Essentially this program allows the local manager to maintain either full insurance or a smaller deductible of his choice, with the parent corporation obtaining a credit based on a uniform worldwide deductible.

*Then again, maybe you shouldn't forget it.*

If, however, a captive does make good sense for your company, it makes good sense to plan that captive through AFIA. As a world leader in international captive programs, AFIA's captive client list reads like a Who's Who of American industry operating abroad.

So maybe you shouldn't forget about captives after all. On the other hand, maybe you should. In which case, you shouldn't forget about the Controlled Master Program, Deductible Funding, Global Insurance and a whole host of other programs that can be developed as alternatives for your specific needs.

In any case, what it comes down to is, you should definitely remember AFIA.

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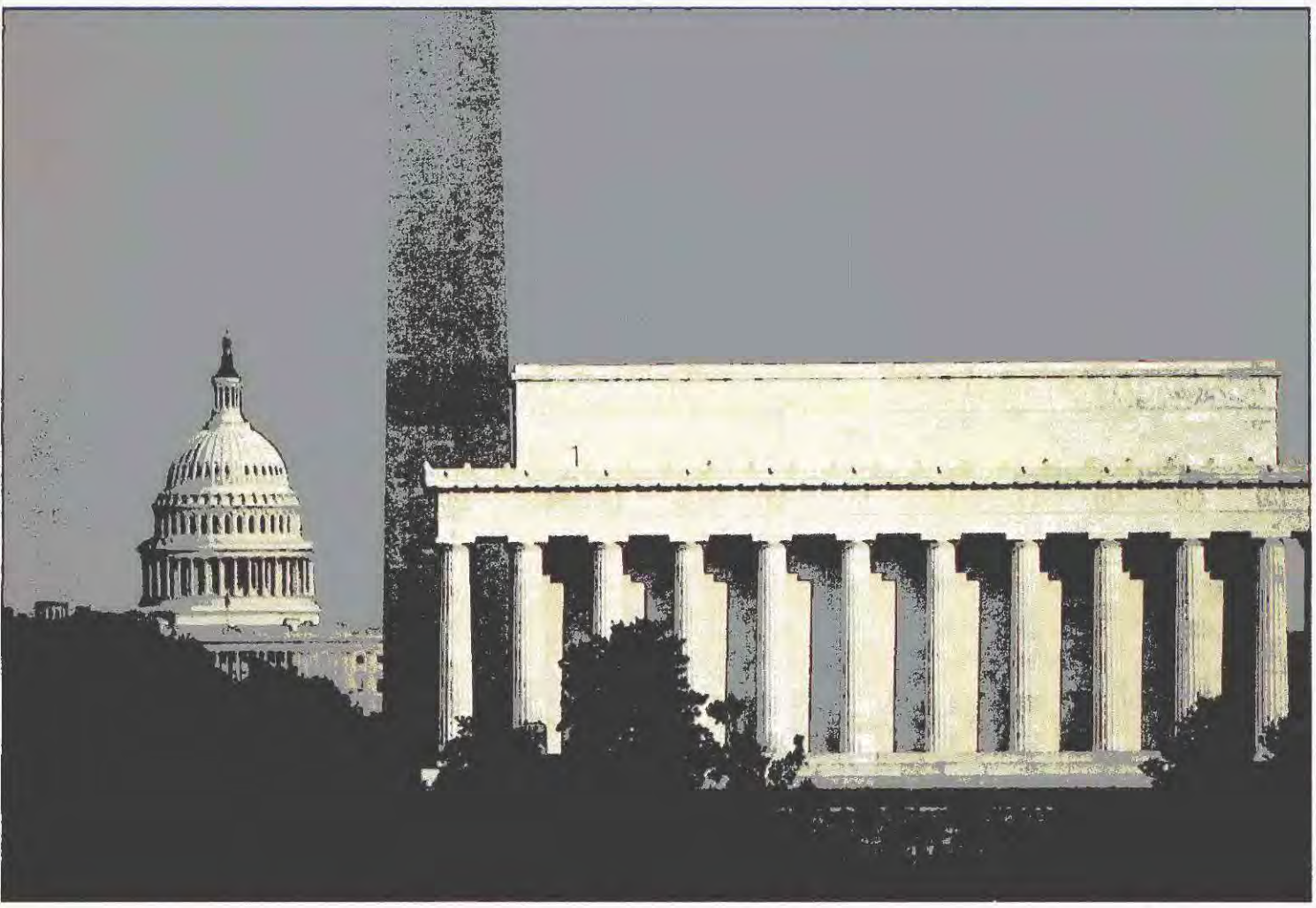
# A little tax knowledge can go a long way toward preventing capital loss.

Over the past decade or so, a number of alternatives to traditional risk transfer have become increasingly attractive to large corporations. No matter what form these alternatives take, they all have one main objective–increased cash flow. However, savings realized by avoiding or deferring premium payments may be offset (and sometimes more than offset) by adverse tax assessments.



At Travelers, we're keenly aware of the significance taxes can have on the overall cost of risk funding. And we're ready and willing to work with your own tax experts and counsel to help strengthen your tax position.

Our people receive training in the intricacies of tax regulations. And are kept abreast of changes in the tax laws and new IRS rulings. We're aware of the importance of "risk transfer" and "risk distribution" from a tax standpoint.

We can also help you pass the "All Events Test." Or recommend a program that better suits all of your cash flow needs.

Naturally, the type of program you decide upon has a lot to do with determining tax deductibility. Captives, paid loss retro programs, compensating balance plans, and deferred premium arrangements may be taxed differently. By integrating tax planning at the outset, we can structure a cash flow strategy in a manner that lets you enjoy the full tax advantages for which you qualify.

And you'll find that we do so with computer accuracy. In fact, we start by using computers to quantify the different ways in which a program can be taxed. Armed with this information, we can then design parameters to enhance the deductibility of the insurance related expense.

Ultimately, only the IRS and the courts can determine questions of tax deductibility. But at The Travelers we understand how taxes can affect your bottom line. And we make your bottom line our top priority.

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# TEFRA'S TAXING EFFECTS

## Withholding regulations put a new light on pensions

By Leo Arvin and Richard Koski

ONE OF THE targets of the Tax Equity and Fiscal Responsibility Act of 1982 was the tax-evading pensioner. Assuming that many pensions are unreported, TEFRA created rules requiring tax withholding on pension payments.

Before TEFRA, pensions were excluded from the definition of wages for withholding purposes. Retirees could prepay taxes on their pensions, if they wished, through voluntary withholding, W-4P, or through quarterly, estimated tax payments. The new withholding rules present a whole new set of problems for pension plan administrators and are creating confusion among pensioners.

It is helpful to administrators to have an understanding of the rules, issues and alternatives, so they can develop the most cost-effective and accurate systems and procedures. There may well be an inverse correlation between the level of understanding and the costs and problems associated with compliance.

Superficially, the TEFRA changes concerning withholding are very simple and straightforward: pension payments are to be treated as wages.

There are, however, some major differences that significantly complicate matters. First, any retiree can, at any time for any reason, elect that no tax be withheld. Second, without a contrary election by the retiree, federal tax is to be withheld as though the retiree were married and had three exemptions. Based on current rates, this means automatic withholding on pensions in excess of $5,400 a year subject, of course, to the employee's decision.

Obviously, a method to notify pensioners of the various options is necessary. The method required by TEFRA again seems simple: the recipient must be notified of the available options before payments begin and must also be sent an annual reminder. In addition to information on available choices, the notice must also discuss penalties applicable to insufficient prepayment of federal income tax.

The temporary IRS regulations make no major changes in the basic rules governing withholding on periodic payments. They do make clear that if an old W-4P voluntary withholding election was in effect it may continue.

TEFRA also mandates special procedures for withholding on single-sum payments from qualified plans. Such payments are becoming commonplace under the increasingly popular defined-contribution plans, such as profit-sharing and thrift plans. Also, lump-sum payments are sometimes an available settlement option under defined-benefit pension plans.

TEFRA rules governing single-sum, or non-periodic, payments distinguish between total and partial distributions. The law states that 10% of the taxable portion on a partial distribution is to be withheld. A partial distribution is typically an in-service withdrawal by an employee from his or her account under a profit-sharing plan.

If the distribution is a complete payout of the employee's account, it is a total distribution; a special withholding table is applied to the taxable portion of a total distribution. This table is designed to produce a withholding approximating a 10-year forward averaging.

With single-sum distributions, as with periodic payments, an employee can elect to have nothing withheld. This option, and other items, must be explained in the employee's notice. However, unlike periodical payments, timing of the notice is crucial because the election and the withholding are one-time events. The most common, preferred approach is to make the withholding election an integral part of the application process.

The temporary regulations have a great impact on non-periodic distributions:

- De minimas rule. If the taxable amount to be paid out in a calendar year is less than $200, no withholding applies. The $200 is cumulative and not a flat exemption from all payments.
- Company stock. Where a distribution involves company stock, the stock value is used to determine the withholding level, but only the cash portion is withheld against.
- Death benefit. In determining the taxable part of death benefits, the plan can assume the $5,000 exclusion applies and reduce the withholding base accordingly.

**The biggest** single problem is determining the taxable portion of the payment, the withholding base. Other problems include disability payments, shifting of liability to the payor, non-qualified plans and flat-dollar withholding.

That biggest problem, determination of the amounts upon which the withholding will be based, means calculation of these taxable amounts can range from simple to very complex. It is this area, more than any other, that has the potential for generating considerable problems.

A simple case is where the benefits are paid from a non-contributory pension plan. Here, the withholding rates will be applied against the total gross payments.

If a benefit consists entirely or partly of employee contributions, the situation gets more complicated. The plan payor or administrator would first have to determine if the employee's contributions are fully receivable by the employee during the three-year period beginning on the date the first amount is received. If they are, the three-year recovery rules apply and all payments are excluded from tax until contributions have been fully recovered. Afterward, all amounts are to be included in gross income.

However, if the three-year recovery rule does not apply, it is necessary to determine the portion of each payment that can be included in the recipient's gross income.

**A proportional** part of each amount is considered to represent a return of the employee contributions; this part is determined by the ratio of the investment in the contract (contributions) to the expected return under the contract (payments). A variety of special conditions exists that may require special adjustments to the investment and expected return portions. For example, payment options involving a refund of contributions, changing benefits or multiple lives will require complex calculations.

In addition, other factors may affect the determination of the exclusion ratio. These include employer contributions for certain periods of foreign service before 1963, employer contributions during state service prior to 1939, retirements prior to Jan. 1, 1954, and adjustments for payments other than monthly.

In some instances, therefore, the determination of the taxable income portion of annuity payments may be cumbersome enough to require a computerized system to generate the correct amounts efficiently.

For non-periodic payments, the determination of taxable income is fairly simple. It is usually a matter of determining how much is being paid in excess of employee contributions. Yet, the taxability of an in-service withdrawal will be affected by whether the plan adheres to a single-contract theory. This allows all amounts under the plan to be considered one pool for tax purposes. Withdrawals of taxable amounts can then be made tax-free by charging them against a unified tax-free base.

Under certain circumstances, up to $5,200 a year of disability payments can be excluded from an employee's gross income under Section 105 of the Internal Revenue Code. However, because the exact amount that is excluded depends on each individual, the temporary IRS regulations say that it's reasonable for a plan to assume that 100% of payment is taxable.

In most cases, the assumption will not cause problems because employees can adjust their tax returns to suit their circumstances. Where the plan is contributory, a problem arises because the rules governing taxability of plan benefits do not apply while a disability income exclusion is in effect. However, the plan cannot be sure that the exclusion applies for any employee.

Under TEFRA the plan administrator can shift the primary liability for meeting the withholding requirements to the payor (usually a bank trustee) by giving the payor certain information.

Problems do arise, however. The most frequent problem occurs when the plan administrator, for whatever reason, chooses not to shift the liability. According to a literal reading of the new law, the bank as payor must send a notice to the pensioner, even though the plan also does. A related problem crops up when a notice sent by a payor conflicts with a company's policies of communication with its retirees.

Finally, there are situations where liability cannot be shifted because one plan can have several payors. For instance, part of a benefit is provided by an annuity from an insurance company.

Were payments from non-qualified plans considered wages for withholding prior to TEFRA? The answer, it seems, is a definite "maybe."

While published rulings and commentary have supported the position that most such payments were, in fact, wages for withholding purposes before TEFRA, quite a few companies (and attorneys) take a contrary position. The oblique references to non-qualified plans in the temporary regulations only add to the confusion.

Our recent experience has revealed a remarkable diversity of interpretations of the TEFRA requirements. Most professionals, including Buck Consultants, have taken the approach that a retiree has similar withholding options for pensions as for wages, i.e., marital status, additional allowance plus additional dollar amounts. However, some payors have limited a retiree's choices to two: no withholding or withholding as though the retiree were married and claiming three allowances. Most have allowed the old flat-dollar (W-4P) withhholding, but several have adamantly refused to continue this practice.

*Continued on next page*

*Leo Arvin, left, is director of administrative consulting and Richard Koski is associate benefit consultant at Buck Consultants Inc. in New York.*

***perspective***

# Getting the facts on computerized data bases

**By John J. McGonagle Jr.**

THE BENEFITS OF computers in risk management are becoming more and more obvious every day (*BI*, Feb. 21). The benefits of computerized data base research, however, haven't been fully explained.

Computerized data base research uses computers for up-to-the-minute research, which is no small feat.

It has been estimated that more than 7,000 scientific and technical articles are written each day. Without computers, it is becoming impossible to conduct meaningful business or technical research. In computerized research, there are two types of data bases. There are advantages and disadvantages to both.

The two basic types of data bases are bibliographic and interactive.

Bibliographic data bases got their name from the first data bases, which were basically book title lists. Today, these data bases are among the most important tools for all business or technical research.

A bibliographic data base entry usually contains the following information:

- The title of the book, article, paper or hearing or name of the lawsuit. In most cases, the subtitle is also included, which is a helpful bit of additional information because many captions are not prepared with the purpose of alerting the researcher to their contents.
- The author of the book, paper or article. This also includes the name of a person presenting testimony before a congressional committee. This item may or may not include the author's full name. In some cases, the author information may be extended to provide professional designations and affiliations at the time of the article or testimony.
- The name of the publication or the court in which the case was decided. The publication's name can be a tip-off about an article's or paper's contents. You would expect different data from pieces printed in Fortune or Chemical Weekly.
- The date of the work. For a book, this is the year it was published. For an article, it is the date the issue was published. For a news story, it is the issue date or the date it appeared on wire services. For a legal case, it is the day the judge handed down the opinion.
- An abstract of the work. This is a brief summary of the piece, usually prepared by someone other than the author. Instead of a summary, you may find the article has been tagged with some key words, the names of people and places assigned by the company preparing the entry.

The key words enable you to search for information by using a specific set of index terms, much the same way the Reader's Guide to Periodical Literature is used. Some bases, like those in legal research, include the full text of the work, so you may be able to scan the entire piece.

There are now more than 1,100 bibliographic bases, with hundreds more expected by the end of 1983.

The other data base is the interactive base. You actually work with the base.

For example, in a bibliographic base, you may find the population of Chicago in 1980 and projections for 1990 and 2000. With these numbers, you can estimate Chicago's growth rate over this period.

With an interactive base, the computer can analyze the data and calculate the growth rate and use only the final rate. Or you can obtain the growth rate and the underlying data as well.

If you were studying 10 cities, you could instruct an interactive base to do the same calculation for them and then sort the results by displaying the fastest-growing city first. The same principle applies to other interactive bases, such as those with on-line actuarial tables.

With more than 1,100 data bases, information seems limitless. Some topics are:

- Business. Information available includes current statistics on economics, labor and business from public and private sources; historical data and projections; in-depth studies of individual companies, foreign countries and regions of the United States; lines of business and products by academics, business writers, consulting firms, government agencies and investment advisors.
- Science and technical. Information includes engineering, insurance, medical, environmental, chemical, biological and psychological papers from the world over; and ongoing research papers or abstracts where results have yet to be published.
- Legal. Available data include all reported cases in the United States and Canada since the mid-1960s; access to more than 70 law reviews and 200 other legal publications; federal regulations and statutes; special area collections for toxic chemicals, the environment and patents; congressional hearings present and past, their issues and who testified; the legislation status of any topic; what new regulations have been issued or are planned.

To the risk manager, this is a new world of information. No longer will he or she have to depend on dated, secondary sources, upon the insurers or other interested parties or on what is in the nearest business library. With access to information such as this, the risk manager can make better decisions, evaluate more material more efficiently and locate specialized and qualified assistance quickly and confidentially.

Yet, computer data bases are limited.

Basically, you cannot get information restricted by law, like credit records. Also, you cannot find out, directly, any information that has not been released publicly in some form, such as data on privately held companies. And, you can't find information not yet gathered.

However, computerized data base research can often assemble much information not directly available from secondary sources. That is the essence of computerized research: using all public materials to assemble as complete a picture as possible on any topic.

Here are three ways to conduct data base research, along with some pros and cons:

- You can do it yourself. This lets you control and revise your search strategy as you go and control your costs if your research has not been well-thought-out. To do this you need a computer, the equipment to communicate with the data bases, a contract with the data bases to use them, manuals and search aids, time to learn how to use them and to keep current on their changes. You also need a printer to "copy" the data.
- You can go to a public or specialized private library. In the past, libraries ran bibliographic searches at little or no charge. That may not be the case now.

Libraries still run searches in more general bases, like card catalogs, but they usually do not have access to many specialized bases. Usually, you will have to ask for what you want because you are familiar with the issue.

Some libraries have a substantial minimum charge for research conducted; others do not. Usually you have to pay for the search in advance and pick up the information gathered.

If the nature of the search or its results are confidential or sensitive, public libraries are at a disadvantage. In the case of private libraries, most limit their services to members only.

- You can use an information broker. These specialized firms conduct on-line searches. Some are very narrow in focus; a few are broad in scope. Typically, they work with you on the search design and charge you for the time involved in the search design and in the search itself.

Generally, information brokers use higher-speed equipment than most libraries do and have access to many more bases. They are somewhat more expensive than libraries, but in some cases not much more. They can design special searches, run them regularly and bill you. ■

*John J. McGonagle Jr. is vp of The Helicon Group Ltd., a consulting firm in Doylestown, Pa.*

# A risk management book for veterans and newcomers to the profession

***books & ideas***

**"Corporate Uncertainty & Risk Management"**
**By Edward P. Lalley**
**Risk Management Society Publishing Inc., 205 E. 42nd St., New York, N.Y. 10017**
**187 pages, $19.95**

**By Kathryn J. McIntyre**

BUY TWO COPIES of this book: one for you and one for your boss.

If you are new to risk management, this is a readable overview of the profession that you are entering.

If you are a sage risk manager, you'll enjoy reading what Ed Lalley has to say about the world of "Corporate Uncertainty & Risk Management." And it is a perfect book to give a new person on your staff to introduce the novice to your department.

If your superior has a fuzzy view of risk management, Ed Lalley's new book, which is published by an affiliate of the Risk & Insurance Management Society, will clear his or her vision.

Although the book does not hold "new" information for the experienced risk manager—the author did not intend it to—it does offer the experienced reader some interesting insights.

Regarding what a risk manager should do when management doesn't want to buy insurance for a risk the risk manager believes should be insured, he advises, "Every opportunity available should be taken to persuade the company to this point of view." And, "The risk manager's success and continued career is, itself, subject to a host of fortuitous events, over which there is little or no control. The point is that the risk manager is in the business of fortuitous risks."

That perspective reminds the reader that risk management is not for those who have a low tolerance for risk.

Regarding the Internal Revenue Service's position that self-funded loss reserves are not tax deductible, the author suggests, "Self-insurers, particularly those who self-insure workers compensation, operate under state statutory and administrative regulations requiring the self-insurer to conform explicitly to obligatory features of the coverage in a manner identical to an insurer. Would this not be enough for most juries to determine as a fact that the self-insurer was also entitled to the tax deduction?"

The author, who rose from risk manager to his current position of president and chief executive officer of Ideal Mutual Insurance Co. and the Optimum Cos. in New York, is clearly still very devoted to the risk management profession. What other insurance company president would offer reasons for self-insurers to be allowed tax deductions for their self-funded reserves?

Perhaps the most important message of the book, however, is in the epilogue in which the author brings risk management to a personal conclusion that will both enlighten and inspire every reader.

I won't give it away here. Order your own two copies. ■

*Kathryn J. McIntyre, A.R.M., is editor of Business Insurance.*

# TEFRA's effect on pensions is taxing

*Continued from previous page*

However, the biggest divergence concerns new flat-dollar withholding elections. Wage withholding only allows flat dollar as an addition to table amounts. Some payors, however, allow no flat-dollar amounts, whereas others allow flat-dollar withholding as an alternative to the table bases. The recent issuance of the revised W-4P form has settled this question once and for all.

It is too soon to measure the full effect of the new TEFRA withholding rules. Some companies have experienced marked increases in the monthly amounts being withheld for taxes, some have marginal increases and some, in fact, now have less withheld. For virtually every company there have been increased administrative costs.

The available evidence indicates that the majority of retirees is still not going to have taxes withheld—either due to the small size of the payments or due to an election out by the pensioner.

A still-unanswered question is whether the increased revenue from pension withholding more than offsets the additional costs and burdens placed on plan administrators. Priority should be given to minimizing and controlling these expenses.

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**APRIL 28. Financial Considerations of Managing a Non-Life Insurance Company** seminar in London, sponsored by Tillinghast, Nelson & Warren Ltd.; 149.50 pounds; 115 pounds for additional registrants from the same company. Patricia Kelley, 3340 Peachtree Road, Suite 2000, Atlanta, Ga. 30026; 404-261-5420.

**APRIL 28-30. Product Liability Litigation As It Is and As It Will Be** seminar in Atlanta, sponsored by the Atlanta Bar Assn. and Emory University School of Law; $400. Atlanta Bar Assn., 606 Equitable Building, 100 Peachtree St. N.W., Atlanta, Ga. 30303; 404-521-0781.

**APRIL 29. Casualty Insurance in the United States** seminar in London, sponsored by Tillinghast, Nelson & Warren Ltd.; 149.50 pounds; 115 pounds for additional registrants from the same company. Patricia Kelley, 3340 Peachtree Road, Suite 2000, Atlanta, Ga. 30026; 404-261-5420.

**MAY 2-3. Principles of Petroleum Insurance** workshop in San Antonio, Texas, sponsored by Professional Development Institute; $395. Also **May 9-10** in Houston, **May 16-17** in New Orleans and **May 26-27** in Dallas. PDI Accounting & Insurance Center, Box 13288, NT Station, Denton, Texas 76203; 817-565-3383.

**MAY 2-4. Recognition of Accident Potential in the Workplace Due to Human Factors** course in Los Angeles, sponsored by University of Southern California; $300. USC, Office of Extension & In-Service Programs, Institute of Safety & Systems Management, Los Angeles, Calif. 90089; 213-743-6523.

**MAY 2-4. Risk/Loss Control Management** seminar in Lake Geneva, Wis., sponsored by the International Safety Academy; $435. ISA, 1600 Arch St., Philadelphia, Pa. 19101; 215-241-3176.

**MAY 4. Workers Compensation and Employers Liability Policy** seminar in New York, sponsored by the National Council on Compensation Insurance; $75 for members; $100 for non-members. NCCI, One Penn Plaza, New York, N.Y. 10119; 212-560-1095.

**MAY 4-6. Corporate Health Care Cost Containment** workshops in Chicago, sponsored the United Telephone Co. of Ohio Learning Center; $155 per day; $415 for all three days. Registrar, UTO Learning Center, P.O. Box 3555, Mansfield, Ohio 44907; 419-755-8591.

**MAY 8-11. Washington Legislative Update** seminar, sponsored by the International Foundation of Employee Benefit Plans. $390 for members; $465 for non-members. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

**MAY 9. Confined Space Entry Safety** workshop in Dallas, sponsored by Loss Prevention Associates; $185. Loss Prevention Associates, P.O. Box 59888, Dallas, Texas 75229; 214-241-0396.

**MAY 9-10. Flexible Compensation, 1983** seminar in Washington, sponsored by Employers Council on Flexible Compensation; $300 for members; $425 for non-members. ECFC, 1700 Pennsylvania Ave. N.W., Washington, D.C. 20006; 202-393-1728.

**MAY 9-10. Current Issues in Workers' Compensation** conference in New Brunswick, N.J., sponsored by Rutgers University; $125. Donna Lee Rodriguez, Rutgers University, Ryders Lane and Clifton Avenue, New Brunswick, N.J. 08903.

**MAY 9-11. 1983 Electrical Safety** conference in Madison, Wis., sponsored by the University of Wisconsin; $395. Victor P. Janule, Department of Engineering and Applied Science, University of Wisconsin-Extension, 432 N. Lake St., Madison, Wis. 53706; 608-263-7429.

**MAY 9-13. Property Conservation** course for property owners in Long Grove, Ill., sponsored by the Kemper Group; $400. W.P. Thomas Jr., NID (HPR) A-1, Long Grove, Ill. 60049; 312-540-3380.

**MAY 10-11. Managing Latent Occupational Disease Liability** conference in Arlington, Va., sponsored by The Energy Bureau Inc.; $695. Linda Doren, The Energy Bureau, 41 E. 42nd St., New York, N.Y. 10017; 212-687-3178.

**MAY 10-12. Insurance: The Future** conference in St. Helier, Jersey, sponsored by the Risk Research Group; 350 pounds. Conference Coordinator, RRG Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD, England; 01-881-1636.

**MAY 10-13. Hazardous Materials Safety** seminar in Nashville, Tenn., sponsored by the Hazardous Risk Advisory Committee of Nashville; $135 before May 9; $150 thereafter. Hazardous Risk Advisory Committee, Seminar Registration Desk; Metro Civil Defense, 2060 15th Ave. S., Nashville, Tenn. 37212; 615-385-8575.

**MAY 11-12. Health Care Cost Containment** workshop in New York, sponsored by the Health Research Institute; $395. HRI, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

**MAY 11-13. Employee Stock Ownership Assn.** sixth annual conference in New Orleans; $350 for members; $400 for associate members; $450 for non-members; discounts available for additional participants from the same company. ESOP Assn., 1725 DeSales St. N.W., Suite 400, Washington, D.C. 20036; 202-293-2971.

**MAY 11-13. Property Conservation** seminar in Wilmington, Del., sponsored by the International Safety Academy; $275. ISA, 10575 Katy Freeway, Box 19600, Houston, Texas 77224; 713-932-9400.

**MAY 12-13. Evaluation of Structural Failures** program in Madison, Wis., sponsored by the University of Wisconsin; $275. Rolf T. Killingstad, University of Wisconsin Extension, 432 N. Lake St., Madison, Wis. 53706; 608-272-3748.

**MAY 16. An Analytical Approach to Risk Management** seminar in New York, sponsored by *Business Insurance*; $535; 10% discount for additional registrants from the same company. Also **May 18** in Dallas, **May 23** in Los Angeles, **June 15** in Chicago and **June 20** in San Francisco. Ann Vazquez, *Business Insurance*, Communications Services Department, 220 E. 42nd St., New York, N.Y. 10017; 212-210-0137.

**MAY 16-19. Inspector Training** seminar in Houston, sponsored by the International Safety Academy; $490. ISA, 10575 Katy Freeway, Box 19600, Houston, Texas 77224; 713-932-9400.

**MAY 16-20. Fundamentals of Industrial Hygiene Monitoring** course in Long Grove, Ill., sponsored by the National Loss Control Service Corp.; $425. Also **May 25-26** in Chicago. John Garis, NATLSCO, Long Grove, Ill. 60049; 312-540-2026.

**MAY 17. Manual Lifting** seminar in Schaumburg, Ill., sponsored by the International Safety Academy; $150. ISA, 1600 Arch St., Philadelphia, Pa. 19101; 215-241-3176.

**MAY 17-18. Health Care Cost Containment** conference in San Francisco, sponsored by the National Assn. of Employers on Health Care Alternatives; $295; $200 for additional registrants from the same company. NAEHCA, 1134 Chamber of Commerce Building, 15 S. 5th St., Minneapolis, Minn. 55402; 612-338-4823.

**MAY 18-20. National Safety Management Society** annual conference in Arlington, Texas; $250 for members; $295 for non-members. David M. Wassum, NSMS, P.O. Box 170174, Arlington, Texas 76003; 214-631-6070.

**MAY 22-27. American Industrial Hygiene** conference in Philadelphia, sponsored by the American Industrial Hygiene Assn. and the American Conference of Governmental Hygienists; $65 for members; $90 for non-members; $15 additional for on-site registration. Stephanie Beidler, AIHA, 475 Wolf Ledges Parkway, Akron, Ohio 44311; 216-762-7294.

**MAY 23-25. Employee Benefits** symposium in San Francisco, sponsored by the International Society of Certified Employee Benefit Specialists; $420 for members; $495 for non-members. ISCEBS, Box 209, Brookfield, Wis. 53005; 414-786-6700.

**MAY 23-25. Fundamentals of Industrial Exhaust Ventilation** course in Long Grove, Ill., sponsored by the National Loss Control Service Corp.; $350. John Garis, NATLSCO, Long Grove, Ill. 60049; 312-540-2026.

**MAY 23-25. Techniques of Loss Control** course in New York City, sponsored by the Risk & Insurance Management Society; $345 for members; $445 for non-members. Education Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**MAY 23-25. An Advanced Course in Employee Benefits** in New York, sponsored by the American Management Assns.; $695 for members; $800 for non-members. AMA, 135 W. 50th St., New York, N.Y. 10020; 518-891-0065.

**MAY 23-27. Basic Safety Management** seminar in Atlantic City, N.J., sponsored by the International Safety Academy; $570. ISA, 10575 Katy Freeway, Box 19600, Houston, Texas 77224; 713-932-9400.

**MAY 24-26. Benefits in Crisis** conference in Washington, sponsored by the Assn. of Private Pension & Welfare Plans; $315 for members; $345 for non-members. APPWP, 1201 Pennsylvania Ave. N.W., Suite 340, Washington, D.C. 20004; 202-737-6666.

**MAY 24-27. Ergonomics** seminar in San Jose, Calif., sponsored by the International Safety Academy; $375. ISA, 10575 Katy Freeway, Box 19600, Houston, Texas 77224; 713-932-9400.

**MAY 26. Employee Health & Fitness: The Corporate View** conference in Chicago, sponsored by Campbell Soup Co. and Universal Gym Equipment; $150. Employee Health & Fitness, Box 741, Cedar Rapids, Iowa 52406; 319-365-1663.

**MAY 26-28. Litigation in Aviation and Space Law** second national institute in Washington, sponsored by the American Bar Assn.; $393 for members; $418 for non-members; $368 for tort and insurance practice lawyers; $343 for young lawyers and government employees; $75 for law students. ABA, Division of Professional Education, 10 W. 35th Street, Chicago, Ill. 60616; 312-567-4675.

**JUNE 1-3. Fundamentals of Insurance** conference in Chicago, sponsored by the Risk & Insurance Management Society; $345 for members; $445 for non-members. Editorial Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**JUNE. 1-4. Public Risk and Insurance Management Assn.** annual conference in St. Paul, Minn.; $220 for members before April 25; $275 for members after April 25; $425 for non-members; $375 for subsequent non-member registrants from the same organization. PRIMA, 1120 G St. N.W., Suite 707, Washington, D.C. 20005; 202-737-7556.

**JUNE 2-3. Principles of Petroleum Insurance** workshop in Denver, sponsored by Professional Development Institute; $395. Also **June 9-10** in Oklahoma City. PDI Accounting & Insurance Center, Box 13288, NT Station, Denton, Texas 76203; 817-565-3383.

**JUNE 7. Health Care Cost Containment** briefings in Kansas City, Mo., sponsored by the International Foundation of Employee Benefit Plans; $130 for members; $155 for non-members. Also **June 8** in Milwaukee, **June 28** in Pittsburgh and **June 29** in Tarrytown, N.Y. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

**JUNE 7-8. Legal Aspects of Occupational Safety & Health** course in Los Angeles, sponsored by the University of Southern California; $250. USC, Institute of Safety & Systems Management; Office of Extension & In-Service Programs, Los Angeles, Calif. 90089; 213-743-6523. ■


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# AFIA forms reinsurance security department

AFIA Worldwide Insurance has formed a reinsurance security department to review the operations and financial condition of its reinsurers.

The recent allegations of fraud in world reinsurance markets and the bankruptcies of several undercapitalized reinsurers prompted AFIA to form the department, according to J. Gerald Levey, a senior vp at AFIA.

In addition to examining reinsurance contracts, AFIA's new reinsurance security department will review the company's dealings with captives, brokers, agents and intermediaries, Mr. Levey explained.

The new department will consist of James Mullin, an assistant vp; Amato Contino, AFIA's coordinator of affiliated companies; and Joseph T. McElroy, accounting manager.

## markets

### Benefit consultant

Keller Benefit Services Inc. has been formed to offer consulting services on employee benefit programs, including group medical, life and disability insurance as well as pension and profit-sharing plans.

The new firm is located at 7979 Old Georgetown Road, Suite 402, Bethesda, Md. 20814; 301-652-3650.

### International coverage

Owens International is a recently formed insurance marketer in Clearwater, Fla., specializing in international risks.

The three-person organization was formed by Patrick Owens, a 15-year insurance industry veteran. Mr. Owens estimates Owens International's first-year premium volume will be about $250,000.

Owens International will write international coverages including kidnap and ransom, marine, air cargo, property, foreign product liability and foreign surety bonds.

Owens International's address is P.O. Box 11605, Clearwater, Fla. 33516; 813-546-4428.

### Emergency office

Underwriters Adjusting Co. has opened an emergency office in Southern California to handle storm damage claims arising from the bad weather that has battered the state.

The office is located at 4141 MacArthur Blvd., Newport Beach, Calif. 92660; 714-975-7800.

UAC, a subsidiary of Continental Corp., provides claims handling services through more than 350 offices and 100 drive-in claims centers nationwide.

### Life insurers bought

American General Corp. will buy the insurance operations of Gulf United Corp. for about $1 billion in stock.

Houston-based American General, the nation's 18th-largest property/casualty insurer based on written premiums, says its agreement with Jacksonville, Fla.,-based Gulf United does not include Gulf's broadcast properties.

Gulf is primarily a life insurer. Its subsidiaries include Gulf Life Insurance Co., Republic National Life Insurance Co., American Amicable Life insurance Co., Gulf Life Group, Republic National Life Group and Interstate Fire Insurance Co.

American General is still burdened with $501 million in long-term debt from its acquisition of NLT Corp. last year.

### New administrator

Continental Health Underwriters Ltd., an administrator of employee health plans, has been formed.

The new firm will offer administrative and technical services to both self-funded and fully insured health plans and can participate as a broker on the insured plans, says H. Elder Brown Sr., the company's president.

Continental's offices are located at 419 Decatur St., New Orleans, La. 70130; 504-581-7493.

### Broker formed

A new commercial lines insurance brokerage, Owens Group, has been formed with offices in New Jersey and New York and a staff of 20.

The firm's New Jersey office is located at 560 Sylvan Ave., Englewood Cliffs, N.J. 07632; 201-568-2300. The New York office is at 130 William St., New York, N.Y. 10038; 212-732-5290.

### HMO program

The Health Maintenance Organization of New Jersey is offering a prepaid health care program to employers and unions located in central and southern New Jersey.

The program will also be offered to employers and unions in southeastern Pennsylvania through the Health Maintenance Organization of Pennsylvania.

The New Jersey program will provide comprehensive health care coverage through 55 primary physicians working in their own neighborhood offices. Referrals to 100 participating specialists may also be made.

### Self-insurance

Associated Claims Management Inc. is a newly established company specializing in the administration of self-insured programs for workers compensation, general liability, auto/fleet, accident and health and short- and long-term disability coverages.

The firm's mailing address is P.O. Box 9350, Walnut Creek, Calif. 94598; 415-930-9883.

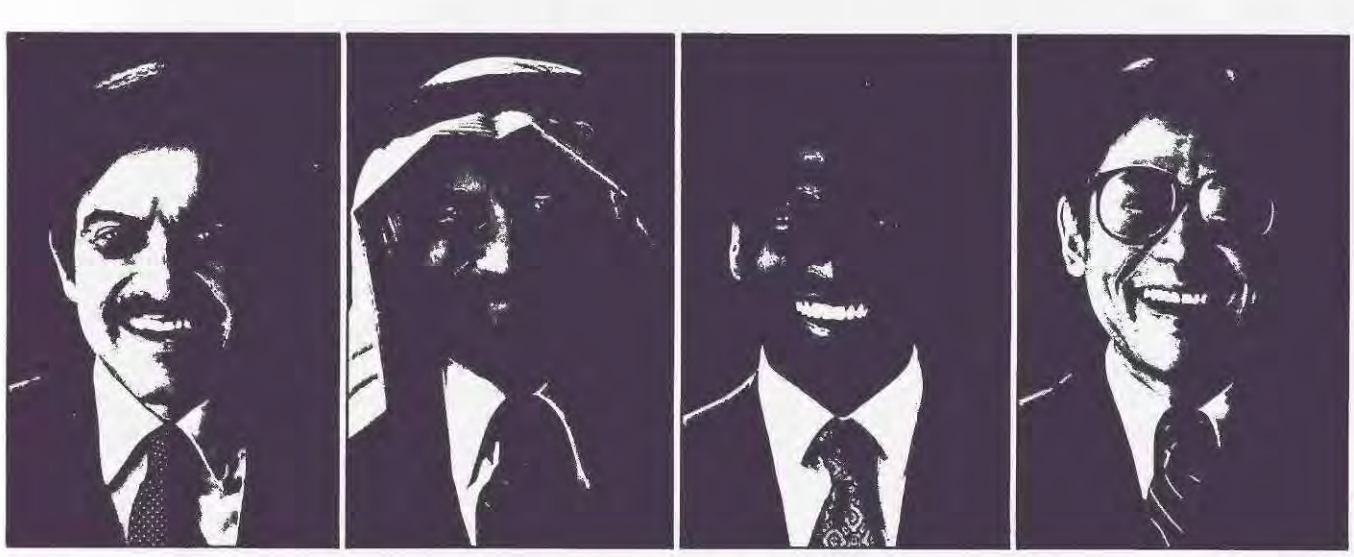
Associated Claims Management, which is headed by Thomas R. Leonard, also has offices in Brea (Orange County), Calif., and Phoenix, Ariz.

### Acquisitions

**M. Schacher Ltd.** and **American Coverage Corp.**, both insurance agencies located in Great Neck, N.Y., have merged. M. Schacher will move into the offices of American Coverage at 185 Great Neck Road, Great Neck, N.Y.

**The Tennessee Co.**, an adjusting firm based in Nashville with offices throughout the state, has purchased **Murphy & Associates,** a multiline adjusing company located in Jackson, Tenn. ■


# Multinational Benefits? They're Greek To Us. And Arabic... And Swahili... And Japanese...



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# Broker claims Kenilworth owes him $5 million

By LEN STRAZEWSKI

CHICAGO—How many agents and brokers recognize the name of Jack V. Goepfert?

How many know he is a convicted insurance fraud artist who has been implicated in a variety of swindles including those against Argonaut Insurance Co., Resources Insurance Co., the Sasse Syndicate at Lloyd's of London and the Kenilworth Insurance Co.?

Not many, says Robert Patterson, and even fewer would have known that early last year before Goepfert was convicted of fraud in New York.

In fact, prior to investigations into the financial status of Kenilworth, for which Mr. Patterson ran a managing general agency, he claims he had no idea that the man who introduced him to the insurer's upper echelon was under investigation for fraud in several states.

Mr. Patterson, a thin, 44-year-old Chicago broker who operated Robco Worldwide Facilities under an MGA agreement with Kenilworth, is the first of a score of agents and intermediaries to respond to a report presented by Kenilworth liquidator William Allen to the National Assn. of Insurance Commissioners last December (*BI*, Dec. 6, 1982).

The report described how a stack of agents, brokers, intermediaries and underwriters generated at least $40 million in insurance premium for Kenilworth while taking more than 60% of it away in commissions and complicated reinsurance deals. The "conspiracy to commit fraud," as the report termed it, eventually led the insurer into insolvency and liquidation by the state of Illinois.

Mr. Allen's report exaggerated Mr. Patterson's responsibility for Kenilworth and his "temporary" apartment/office in Chicago's residential Lake Point Tower, according to Mr. Patterson.

And, Mr. Patterson also claims that he does not owe Kenilworth more than $700,000 in unforwarded premiums, as Kenilworth liquidators have alleged. Instead, he says, Kenilworth owes him $5 million in commissions.

In a response and counterclaim to a suit filed by the Illinois Insurance Department in Illinois Circuit Court seeking an alleged premium balance of $714,720, Mr. Patterson alleges that the premiums were paid directly to Kenilworth at the request of the insurers' officers. But, he adds, a 10% commission on all Kenilworth business is owed to Robco, his own incorporation.

In an interview he arranged with *Business Insurance*, Mr. Patterson said the "exaggerations" and "nonsense" in Mr. Allen's report misrepresented him and destroyed his reputation in the insurance business. Moreover, Mr. Patterson claims his relationship with Kenilworth conformed to what any broker would do.

"I first met Jack Goepfert in August 1981 because I had placed a piece of surety bond business with a company that his brokerage in New Jersey—Endicott Fraser—represented," Mr. Patterson recalls. "Most of my contact had been with a guy named Allan Harris, who I later found out was Allan Assael."

Assael was convicted of fraud with Goepfert in Pennsylvania and New York last year.

During a layover at the airport in Newark, N.J., Mr. Patterson says he arranged to meet with Assael to turn over a premium payment owed to Endicott Fraser for subbrokernig the surety risk. Assael showed up with Goepfert and introduced him as a colleague at Endicott Fraser.

"I had never heard of him (Goepfert) until that day and I had no reason to believe that he was anything but another broker. However, he was aware that I had previously placed some business with Kenilworth and said he was interested in Kenilworth as a future market."

Mr. Patterson says he later met with Goepfert and another colleague, Noel Bernard, and discussed the idea of producing additional business for Kenilworth because the insurer was attempting to expand its volume. Goepfert later that month introduced Mr. Patterson to Kenilworth President Chester Mitchell.

In September 1981, Mr. Patterson entered into a profitability agreement by which Kenilworth would pay Mr. Patterson a 7.5% commission on commercial insurance premium he generated, he said.

A copy of a letter given to *BI* by Mr. Patterson suggests that he was to be Kenilworth's major commercial producer. Until this time, Kenilworth had written primarily substandard auto insurance and a small volume of surety bonds.

A year later, Mr. Patterson says, his status was upgraded to an MGA and his agreement called for 30% commission on Kenilworth's total gross insurance premiums. His suit, however, cites the terms as 10% of total net insurance premiums.

In April 1982, Robco's records were seized by the Illinois Insurance Department under dramatic circumstances, according to Mr. Allen's report.

Mr. Allen said he found the records strewn around a residential apartment in a Chicago's Lake Point Tower apartment complex. Joyce Splendoria (identified in the report as Goepfert's personal bookkeeper) was working at a dining room table when Mr. Allen arrived and there were indications that Kenilworth's Mr. Mitchell, Ms. Splendoria and others were living in the apartment, he said.

Mr. Patterson says the "detective story" description was an exaggeration and that while records were packed in boxes for a move into another apartment in the building, they were not thrown around.

"Allen came in like some crime stopper and announced that he was seizing the records. I had already been cooperating for two weeks with Illinois department officials who said they were conducting a routine audit for surplus lines tax before he (Allen) made his entrance."

As for the apartment, it did belong to Mr. Mitchell who had used it when he worked late at Kenilworth rather than drive to his home in suburban Barrington, Ill., said Mr. Patterson.

"There may have been a clean shirt and tie of his there, but certainly not a whole wardrobe as Allen suggests," Mr. Patterson says. "And we were only using the apartment as a temporary office because it was close to the Kenilworth offices and my own brokerage office was overcrowded. We were going to move out in a couple of days."

Ms. Splendoria, he adds, was recommended to him by Goepfert and Mr. Mitchell as a qualified bookkeeper who needed a job.

"She worked late practically four nights a week, so I thought it would be better for her to stay in the apartment on those days rather than have the company pay for a hotel," Mr. Patterson notes. "Fifteen or 20 people who worked for or placed business with Kenilworth also stayed there over several months as a courtesy."

The investigators descriptions of the apartment, Mr. Patterson says, "make me out to be some kind of underworld type. All I did was broker business. Kenilworth owes me, not me it." ■


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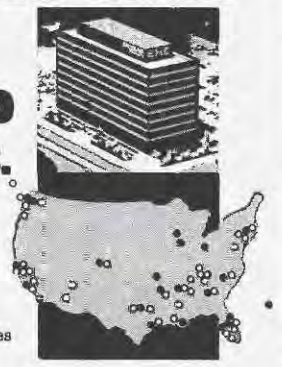

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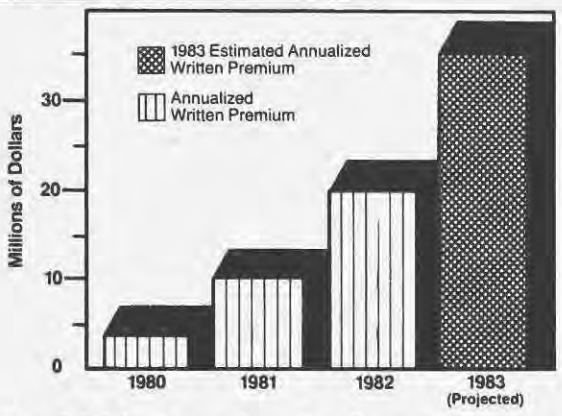


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## N.Y. regulator names deputies

NEW YORK—Newly appointed New York Superintendent of Insurance James P. Corcoran has named three deputy superintendents.

Donald D. Gabay was reappointed first deputy superintendent, a position he has held since joining the Insurance Department in 1978.

Prior to that, Mr. Gabay, 47, served for three years as chief counsel to the New York state Assembly's Insurance Committee.

**Salvatore** R. Curiale, 37, was also named a deputy superintendent. He previously served as counsel to the New York State Racing and Wagering Board. Before that, he was the racing commission's assistant counsel.

Donald J. Lundgren, the third deputy superintendent, was a member of the the law firm of McCarthy, Finger, Donovan, Glatthaar, Drazen & Smith prior to his appoitnment. Mr. Lundgren, 45, also served as an assistant general counsel at New York Life Insurance Co. ■

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# New MET law won't solve all worries: Regulator

**By DOUGLAS McLEOD**

BALTIMORE—A bill passed by Congress last year that gives states the power to close self-funded multiple employer trusts may not solve all the problems posed by poorly managed METs, one expert warns.

"I'm not confident that the Erlenborn-Burton (bill) will be the panacea that we hoped it would be," said Donald A. Dowdell, general counsel for the Florida Insurance Department.

Unscrupulous MET administrators may still find ways to escape or delay state regulation despite the new law which amended the Employee Retirement Income Security Act of 1974.

"Entrepreneurs have been creative in the past and I expect that they will be in the future," Mr. Dowdell told an audience at the National Assn. of Insurance Commissioners' spring meeting.

The law passed by Congress last December was intended to help stem the rising tide of MET failures by filling a regulatory void created by ERISA, which held that qualified self-funded multiple employer welfare plans were exempt from state regulation.

For a self-funded MET to qualify as an ERISA benefit plan, however, the trust must be controlled by participating employers, not by a third-party administrator. Few self-funded METs can meet this test, and many are considered by state insurance departments simply to be unauthorized insurers.

Before the ERISA amendment was passed last year, states that attempted to examine an MET's records to determine if it was a bona fide ERISA plan were stopped with the argument that state authority is pre-empted by ERISA.

It sometimes took years for the U.S. Department of Labor or courts to decide if a plan was actually an ERISA-qualified plan, and by that time, the trust had gone out of business, leaving behind unpaid medical claims.

In California, for example, 47 METs have gone out of business since 1977, according to Frank L. Damon, former chief deputy insurance commissioner, who also addressed the NAIC meeting.

"We ran into incredible delaying tactics, which allowed questionable METs to operate," he said.

"In every instance that the MET didn't voluntarily close its doors, the issue of federal pre-emption was raised."

To solve these problems, the ERISA amendment—sponsored by Reps. John Erlenborn, R-Ill., and Phillip Burton, D-Calif.,—required all self-funded METs to be subject to state reserving and contribution regulations.

In addition, self-funded METs are not protected by ERISA until they're certified by the Labor Department. Until a certification decision is made, METs are subject to all state insurance regulations, including reserving and contribution requirements, and may be shut down by state insurance departments.

But while the states have new powers to deal with badly managed self-funded METs, dishonest administrators may still find ways around regulation, Mr. Dowdell warns.

Despite the backing of the Erlenborn-Burton bill, regulators will still have to get past a "threshhold" of resistance from MET entrepreneurs, Mr. Dowdell said.

For example, one MET operator in Florida managed to delay an inspection of its records by claiming that the 150 company plans it administered were all separate accounts and didn't constitute an MET at all, according to Mr. Dowdell.

When state examiners finally gained access to the records, they found funds from all 150 companies in a single account, he said.

In addition, some self-funded MET operators may try to escape state scrutiny by making their METs look like fully insured plans.

For example, some entrepreneurs may insure the plans through a fronting company that, in turn, reinsures 100% of the risk with an offshore operation run by the MET administrator, Mr. Dowdell fears.

Another problem arises because of the Erlenborn-Burton bill exempts from state regulation those METs that are established through collective bargaining agreements. It might be possible, Mr. Dowdell speculated, for an employer to set up an MET through collective bargaining and then offer the plan to other employers, claiming that Erlenborn-Burton doesn't apply.

The Labor Department hasn't yet said what constitutes an acceptable collectively bargained plan. Meanwhile, the states bear the burden of proving that a given plan is not acceptable, Mr. Dowdell said.

These problems will probably not be solved without litigation, and it's still possible that some questionable METs will continue operating—or even go broke—while the questions are being settled, he added.

Jeffrey N. Clayton, the Labor Department's administrator of pension and welfare benefit programs, agreed that court battles are inevitable, but said it will be the duty of the states to pursue the matters.

"(Federal intervention) cannot be a substitute for orderly development of legal opinions," Mr. Clayton said.

"Sometime you're going to have to bite the bullet," he told the state regulators. "Case law on these questions will have to be developed."

He added that the Labor Department would "welcome" any requests from the states for help in implementing Erlenborn-Burton, and will probably be busiest issuing advisory opinions on the collective bargaining question.

Erlenborn-Burton will be only one tool in fighting questionable METs, Florida's Mr. Dowdell said. Another tool—one that should be adopted by all states—is the so-called "jurisdiction to determine jurisdiction" law, he added.

The first such law was passed in California last September, before Erlenborn-Burton was enacted, and served as the basis for NAIC model legislation approved at last summer's meeting in Philadelphia.

The California law specifically gives the state Insurance Department the power to obtain MET records to determine if the MET is a qualified ERISA plan. If the MET does not surrender its records, the Insurance Department may assume that state regulations apply.

Illinois has passed its own version of the law, and similar legislation is pending in Florida and Texas.

In addition, some state have proposed that the Labor Department and state regulators sign a contract that would clarify the duties of the state and federal governments in dealing with METs.

In the contract, now only in draft form, the Labor Department recognizes, among other things, the power of states to investigate METs to determine if state regulations should apply, regardless of claims by MET operators that they are exempt under ERISA.

The contract also says that states may submit information on METs to the Labor Department for an advisory opinion on whether the MET is a qualified ERISA plan, although the department reserves the right not to issue an opinion if it considers the information to be insufficient.

Under Erlenborn-Burton, regulation of the MET would fall automatically to the state if an opinion is not issued. ■

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# Comp is biggest worry: Survey

NEW YORK—Workers compensation tops the list of insurance concerns of corporate executives, industry trade associations and state insurance department officials and others, according to a survey conducted by the Insurance Information Institute.

Of the 199 respondents, which also included agents and state legislators, 55% mentioned workers compensation as one of the three most-pressing insurance issues in 1983.

This is the second year that workers compensation was the top item in the annual III's "Priority Concerns for Property/Casualty Insurance" survey.

The second most important issue, cited by 29% of the respondents, was pricing and market conditions.

Other important insurance issues cited by the respondents include:

- Insurer solvency and insolvency, which was mentioned by 10% of those responding.
- Liability (other than automobile), 9%.
- Property insurance, 4%.
- Self-insurance, 4%.
- Banks sales of insurance, 3%.

Investment income, insurance fraud, integrated financial services, consolidations and mergers and reinsurance regulation were all mentioned by 2%.

In a state-by-state breakdown, respondents in more than 20 states expressed concern about workers compensation in 1983. Respondents in more than 12 states voiced concern about pricing and the soft market.

●

*Copies of "Priority Concerns for Property/Casualty Insurance" are available by writing the Publications Service Center, Insurance Information Institute, 110 William St., New York, N.Y. 10038. The report costs $4.50 per copy.*

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# Report calls for uniform pooling rules

*Continued from page 3*

"If regulators let groups return money too fast, they're just asking for trouble," Mr. Newman says.

Because of the "solvency considerations" involved, many states—including Arkansas, Florida, Georgia, Maine, Michigan, Oklahoma and Virginia—already require prior regulatory approval for the payment of dividends, the report notes.

In the area of organization and administration of workers compensation pools, the study recommends the following:

- At least a majority of a self-insurance pool's governing board should be composed of representatives of pool members.

Current state requirements vary, the report notes. Arkansas and Florida, for instance, require a simple majority of group members on the board, while Alabama states that the entire board must consist of group members. In Georgia, board members must be approved by the state insurance commissioner.

The study also recommends that no one connected with the group's administrator or service company —which can provide excess insurance and bonds as well as loss-control and claims services—should be allowed to sit on the board.

- State laws should define the role of the group administrator and require the administrator to post a fidelity bond to protect the group against misappropriation of funds.

For example, Illinois requires a $20,000 bond for administrators of groups with assets of less than $500,000, with the amount of the bond increasing with the group's assets. Georgia requires both a $100,000 fidelity bond and a $100,000 errors and omissions insurance policy. Other states have bond requirements that do not specify coverages or amounts, the report notes.

- Service companies should be required by law to handle "to their conclusion" all claims and other obligations incurred during the period they contract with a pool and should be required to post a surety bond to guarantee performance.

Louisiana, which requires a $50,000 bond, is the only state with such a provision, the report says.

- States should not impose stiff restrictions or penalties on an employer that voluntarily withdraws from a pool. Kentucky, Louisiana and Minnesota have such restrictions but "it is not clear that a legitimate public policy purpose is served" by the rules, the report concludes. Other states merely require that regulators be notified of withdrawals and their effect on the groups' finances.
- There are "persuasive advantages" to requiring pool members to be in the same trade and have similar risk characteristics.

States should also require all pools to provide substantially the same coverage to members, although the report stops short of recommending a standardized policy. Alabama and Florida already have a model policy form that pools must follow, the report notes.

On the subjects of a pool member's obligations to the group and the group's obligations to the state, the report makes several recommendations, including:

- State regulations should explicitly require "joint and several" liability among group members for the group's workers compensation obligations, meaning that each member of a pool should be responsible for the losses incurred by all pool members.

Regulations should also spell out the liability of a former pool member for obligations incurred by the pool before the employer withdrew. In many cases, groups have difficulty collecting assessments from former members, the study notes.

Several states—including Georgia, New York and Rhode Island—require former members to pay their share of obligations incurred while they were still part of the group. Other states don't provide for the situation at all, according to the report.

- States should not require groups to participate in so-called "residual market mechanisms," state-created insurance pools funded by all workers compensation insurers in a state to cover employers that can't buy the insurance from an insurer because of poor loss records or the hazardous nature of their business.

**Commercial work comp** insurers argue that the added burden of covering residual market risks increases rates for employers with good loss records, adding that pools should share this burden. Self-insurance pools argue that they are more like individual self-insurers, which are exempt from participation in the residual market.

The report concludes that to include self-insurance pools in residual market funding would create tremendous administrative problems for regulators. It notes that no state has yet required groups to participate in the residual market.

- Regulators should require groups to contribute the same amounts to special state comp funds that self-insurers and commercial insurers must contribute. These special funds typically cover uninsured employers, rehabilitation program expenses, benefit cost-of-living adjustments and second injuries to handicapped workers, the report says.

Groups should also be required to pay the same fees and assessments as commercial insurers and self insurers must pay to the state insurance department or whatever state agency administers workers compensation, the report advises.

The NAIC study committee doesn't say, however, whether self-insurance groups should pay premium taxes.

The study committee also advised that state legislatures should make sure that the work comp regulators have sufficient money and personnel to regulate self-insurance pools effectively.

"It's not a question just of who will regulate the group. It's a question of whether the resources will be there to get the job done right," study committee chairman Mr. Newman said. ■

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# NAIC says sale of insurance by banks requires more study

BALTIMORE—States shouldn't allow banks to enter the insurance business without carefully weighing possible harmful effects of such a move, insurance regulators say.

The executive committee of the National Assn. of Insurance Commissioners unanimously adopted a resolution calling for careful study of insurance sales by banks at its spring meeting in Baltimore.

The resolution comes in the wake of a bill signed into law March 4 by South Dakota Governor William J. Janklow allowing state-chartered banks to conduct insurance business.

South Dakota legislators were heavily lobbied by Citicorp, the giant holding company for New York's Citibank. Citicorp has since agreed to buy a controlling interest in American State Bank of Rapid City (*BI*, Feb. 28, April 4).

A similar deregulation bill, also being pushed by Citicorp, is being prepared in Delaware.

The NAIC resolution states that the group "opposes permitting the banking industry to engage in the business of insurance without adequate analysis of the potential impact on the consuming public and on appropriate regulatory mechanisms at both state and federal levels."

The conglomeration of banking and insurance activities can create an "enormous concentration of economic power and coercive potential inimical to consumer interests," the resolution says. It adds that "the public will not be served by uncertain, unclear and contradictory regulatory standards" that may result from a rush to deregulate.

"The potential for harm here is substantial. We feel this is such a dramatic change that it demands careful study," said Iowa Insurance Commissioner Bruce W. Foudree, author of the resolution and chairman of the NAIC Integrated Financial Services Task Force, where the resolution was first introduced.

Mr. Foudree emphasized that NAIC is not necessarily against banks selling insurance, but simply believes that such integration should not be allowed before regulators have a chance to weigh the impact on consumers.

He added that the resolution was based on suggestions made to the task force by Delaware Insurance Commissioner David H. Elliot, who is on record as opposing the efforts in his state to allow banks to underwrite insurance.

The task force, which was created at last December's NAIC meeting in Dallas, will now begin work on a study of the impact of laws like South Dakota's, as well as other questions raised by financial services integration, Mr. Foudree said.

The introduction of the resolution at the task force meeting followed a joint meeting on the subject between NAIC members and members of the Conference of Insurance Legislators, an organization of state legislators involved in insurance regulation.

At the meeting, New York State Sen. John R. Dunne, R-Long Island, asked for swift action against what he called the threat posed by conglomerate takeovers of insurance operations (*BI*, April 4).

"We are faced here with a latter-day version of the War Between the States, where narrow parochial interests advanced in the name of economic development threaten the solvency of insurers and the effectiveness of traditional regulation," Sen. Dunne, a past president of COIL, said.

He also called on the NAIC to join COIL in a six-point program that would include:

- Issuing a joint policy statement that problems created by the merging of financial services be given immediate attention by the groups.
- Contacting other regulators' associations, such as the Conference of State Bank Supervisors, to focus attention on the issue.
- Contacting organizations of state officials—like the Council of State Governments, National Conference of State Legislatures, National Assn. of Attorneys General and the National Conference of Governors—to make their concerns known.
- Finishing work on a model Insurance Holding Company Act, which would address financial services integration issues and pushing to have the proposal adopted.
- Pushing for increased funds for state insurance departments to allow them to take on the increasingly complex job of regulating financial services conglomerates.
- Establishing greater contact between COIL members and members of Congress.

Mr. Foudree said he did not know if the NAIC would formally adopt the COIL program. ■

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# Legal fees rival asbestos claims payments

Nearly two years ago, attorneys representing 66 law firms converged on a California courtroom for a hearing in the litigation over how insurance coverage for asbestos defendants should be interpreted.

The cost to the insurance industry was more than $100,000, according to Floyd H. Knowlton, vp of The Travelers Corp.

"And they didn't decide the issue," Mr. Knowlton says.

If one thing stands out as symptomatic of the futility of the asbestos crisis, it is the enormous litigation costs.

Asbestos companies and insurers are paying out hundreds of millions of dollars every year for attorneys' fees, court costs and expenses related to the litigation.

Hamilton, Rabinovitz & Szanton Inc., a consultant that authored a report for insurers involved in the litigation, estimates that $25 billion to $30 billion in legal fees could eventually be paid over the next three decades.

And, according to one defense attorney, more than $400 million was paid out in litigation fees last year.

While the costs to a particular asbestos defendant or insurer vary according to size and the extent of involvement in the litigation, many are paying as much or more in legal and administrative costs as they are in claims.

"Legal fees are running at least twice the amount being paid in settlements," says Victor L. Drexel, corporate counsel for Amatex Corp., a Norristown, Pa., asbestos defendant that filed for reorganization last year.

The Travelers has estimated that it has spent 81 cents for defense for every dollar it pays in claims and says many companies pay more.

Manville Corp. reported that it paid out $12.75 million in asbestos-related defense costs for 1981.

An attorney from the law firm of Heller, Ehrman, White & McAuliffe, the San Francisco firm representing Manville in the California litigation, said in court that it had billed Manville "approximately $2 million for professional services plus approximately $300,000 for related costs and disbursements" from January through August 1982.

Some of the parties involved in the asbestos litigation say these exorbitant legal costs are unnecessary. They contend that it is mainly the attorneys who are benefiting from the litigation, adding that defendants and insurers could avoid paying these costs.

"I don't choose to spend the money (on litigation costs)," says a corporate counsel for a major asbestos defendant. "I can settle the cases now or settle them three years from now" at a higher cost, he said.

Last year, for every dollar in claims paid, his company paid 16 cents for attorneys' fees and an additional 11 cents in other litigation-related fees, far lower than many of the other companies involved.

Plaintiffs' attorneys agree that some defendants have settled cases at a fraction of the cost of companies like Manville.

"Johns-Manville got itself into its problems to a large extent through its own doing," plaintiffs' attorney Stanley J. Levy of the New York firm of Kreindler & Kreindler said at an asbestos litigation conference last month sponsored by Andrews Publications Inc.

"They could have resolved far more of the cases at a far, far lower cost if they had chosen to," he said.

Mr. Levy recalled a videotaped deposition of a witness in a case in which Manville did not participate, but in which four Manville attorneys showed up anyway.

Other parties in the litigation believe that unscrupulous or overeager plaintiffs' and defense attorneys are a major reason asbestos litigation costs are so high.

Plaintiffs' attorneys are vying for blocks of cases, says David R. Gross, Manville's Northeast regional counsel prior to its bankruptcy petition and a partner in the Newark, N.J., firm of Budd, Larner, Kent, Gross, Picillo & Rosenbaum. "(Asbestos) is the golden goose," he commented.

The real benificiary in the litigation is the plaintiffs' bar, adds William McLaughlin, general counsel for Chciago-based UNR Industries Inc., another asbestos defendant that has filed for reorganization.

"If the plaintiff gets 25 cents out of the dollars paid out, he's lucky."

In addition to their contingent fees that can range up to 50%, plaintiffs' attorneys can also recover litigation-related expenses from the plaintiff's settlement or jury award.

Plaintiffs' attorney Neil Peterson of the Philadelphia firm of Greitzer & Lockes says some of these expenses include the cost of court transcripts, videotapes, expert witnesses and depositions. These items can easily cost thousands of dollars, he says.

But some say plaitiffs' attorneys aren't the only ones benefiting from the asbestos litigation.

"There are bad defense lawyers padding time sheets (and) overdoing depositions," an attorney for an asbestos defendant acknowledges. "I've got some defense lawyers who are chiseling the hell out of me."

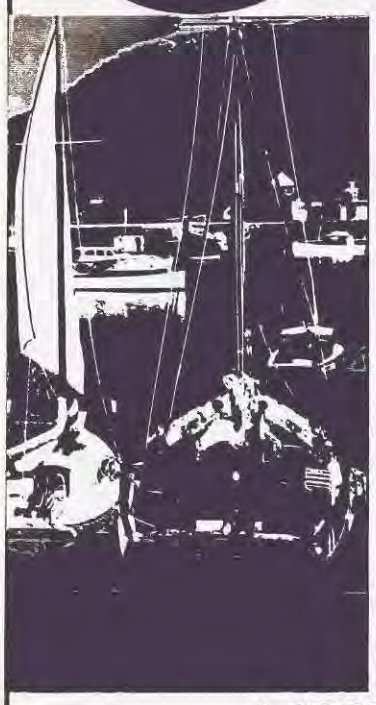
Defense lawyers, who often charge $100 or more per hour, are "reinventing the wheel," adds Robert E. Sweeney, a Cleveland plaintiffs' attorney with the firm of Robert E. Sweeney & Associates.

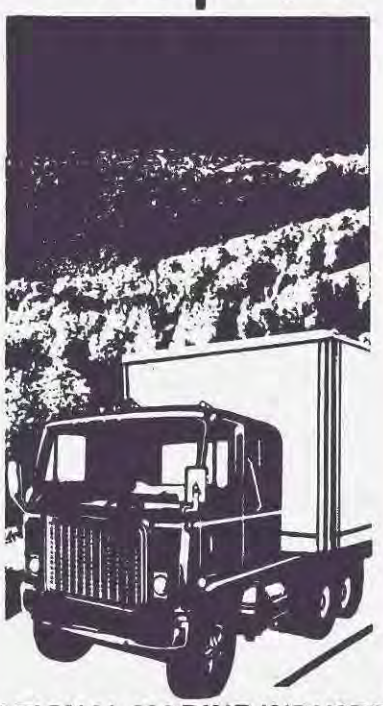
Defense attorneys, he charges, take depositions of the same witnesses in case after case to run up their fees.

Dennis Markusson, an attorney for Manville, blamed both defense and plaintiffs' attorneys for the high costs in a 1982 report issued by a committee of the New York Academy of Sciences studying the asbestos crisis.

"Counsel for all parties tend to engage in paper warfare with interrogatories, requests for admission and production of documents that often result in nothing more than confirming what is already in the files in their respective offices," he said in the report. ■


3 Great Workers' Compensation Group Programs





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## Chain of asbestos litigation includes unlikely participants

When Clarence Borel won a personal injury suit against six asbestos companies 10 years ago, little did the legal world know that the ruling would trigger a wave of litigation perhaps unsurpassed in American history.

The 1973 decision by the 5th U.S. Circuit Court of Appeals against six defendants marked the first time a court ruled that asbestos companies were liable for asbestos-related diseases in workers.

Ten years later, tens of thousands of suits stemming from asbestos are pending. The cost of the litigations could run into the billions, experts say (see related story).

"Everyone knows people are dying from asbestos-related diseases," said a speaker at a recent conference packed with asbestos attorneys. "But it seems that more people are living off it than dying from it."

Indeed, with huge sums at stake, plaintiffs, asbestos companies and their shareholders, primary and excess insurers, reinsurers, brokers, the federal government and attorneys for all of these parties have gotten into the act.

Recently, the stage has shifted somewhat from state and federal trial courts to bankruptcy courts, so now not only are the plaintiff and defense bars involved but bankruptcy attorneys, too.

In the proliferation of asbestos lawsuits, a variety of legal confrontations have shaped up, including:

- Plaintiffs vs. asbestos companies. Approximately 15,000 to 20,000 claims against defendants who manufactured, sold or had some other connection to asbestos products have been filed by plaintiffs who say they or their families were injured through exposure to the mineral.
- Asbestos companies vs. asbestos companies. The defendants in many of these injury suits have attempted to bring into the litigation other asbestos companies they think should share liability.
- Defendants vs. primary and excess insurers. Insurers and policyholders are locked in disputes across the nation because they interpret comprehensive liability policies differently (*BI*, April 4).
- Excess insurers vs. primary insurers. At least one excess insurer has sued the primary insurer of an asbestos defendant on the grounds the primary underwriter expended its limits unnecessarily, thus shifting liability to the excess insurer.
- Asbestos companies vs. insurance brokers. Last year, Manville Corp. sued its long-time broker, Marsh & McLennan Inc., for breach of contract and numerous other violations for allegedly putting together a poor insurance package for the asbestos producer (*BI*, Jan. 18, 1982).
- Primary, insurers vs. reinsurers. Last October, General Accident Insurance Co. of America sued its reinsurers, claiming that it was owed more than $7 million from reinsurance contracts that the reinsurers had wrongfully refused to pay (*BI*, Nov. 1, 1982).
- Asbestos companies and their insurers vs. the federal government. Believing that the federal government has significant liability for the injuries resulting from asbestos use, some defendants and their insurers want the government to share compensation costs. And, earlier this year, a Supreme Court ruling cleared the way for asbestos firms to bring more actions against the government (*BI*, March 7).
- Shareholders vs. asbestos companies. Before it filed for reorganization last year, a Manville Corp. shareholder sued the company, claiming that Manville overvalued its worth to stockholders. And shortly after the petition was filed, others sued Manville's directors and officers, saying that they should warned that asbestos claims could push the company into bankruptcy (*BI*, Sept. 20, 1982).

Other, sometimes seemingly incongruous parties have recently entered the fray. For example, lawsuits have been filed against asbestos companies on behalf of school districts and other public entities for the cost of removing asbestos material from buildings.

In addition, inmates at Attica Prison in New York state recently sued more than 30 state officials for violating their constitutional and civil rights because the convicts were allegedly exposed to asbestos during their incarceration. ■

# Some asbestos firms settle quickly

*Continued from page 3*

"Even when there are defense verdicts, there are settlements beforehand so that they are rarely a total loss to plaintiffs," defense attorney Mr. Cetrulo says.

The Travelers' Mr. Knowlton points out that if defendants go to trial and lose a huge verdict, it can encourage more suits.

"Plaintiffs' verdicts seem to get more publicity," he says, possibly causing plaintiffs' attorneys to file more claims.

Just how dangerous it can be to take a claim to trial was shown in a recent case in Philadelphia.

Under a unique method of dealing with the avalanche of asbestos claims in the Pennsylvania state court, cases are first screened by a judge, and both sides have the right to go before a jury. In the recent case, the judge said the plaintiff did not die of an asbestos-related disease. But when the plaintiff's attorney took the case before the jury, the defendants were socked for a $1.35 million award.

Overall, Mr. Knowlton sees the two different approaches—settle or try—as "differences of degree" and that the approaches "are getting closer and closer all the time."

But many other factors, besides general philosophy and the validity of a claim, motivate asbestos defendants and insurers. The huge number of cases pending, skyrocketing litigation costs, the positions taken by co-defendants and the uncertainty of insurance coverage force some defendants to settle early and others to prolong the litigation.

**Some companies** settle claims before trial, even if the worker shows little injury, because it is cheaper than going to court (see story, page 40).

"If a company can get out with $500, why should it pay $10,000 to try a case even if it can win it?" asks an attorney who once represented Manville in the asbestos litigation.

On the other hand, some companies do not settle because their insurer won't pay claims or they have run out of money, another attorney suggested.

"They ain't got the cash," he says.

Also, many defendants are apt to settle because they are afraid they will be hit with some of the liability that should be shouldered by co-defendants in a case.

For example, under the legal concept of joint and several liability, a jury verdict is shared equally by all defendants regardless of the involvement of the company.

Mr. Knowlton points out that a company that only distributed asbestos products might not believe it has as much liability as a major manufacturer. These distributors may try to settle for a smaller amount before the trial rather than take on additional liability if they lose the verdict, he explains.

Also, smaller companies that have not been in business over long periods of time often believe their liability is much less than that of huge asbestos manufacturers and they should not have to pay nearly as much to plaintiffs. Hence, they settle.

"Different companies differ on what their liability is," says William Gibson, vp and general counsel of Continental Corp.

"Perceptions of what their responsibilities are vary from one company to another," says Victor Drexel, corporate counsel for Amatex Corp, a Norristown, Pa., asbestos company that has filed for reorganization.

Such settlements can create a chain reaction. Other companies may decide to settle, too, rather than face the possibility of going to court alone and being hit with a huge jury verdict.

"Panic exists out there," one insurer said. "It's very difficult to defend alone if you are part of 20 defendants and the others drop out."

"Egos are also involved here," another attorney says. For example, several attorneys might emerge as the lead counsels in a particular case and want other defendants to do things their way, he explains.

"It's clouded the opportunity to work together."

Another example of a problem that co-defendants face is when the lead counsel in a case represents a company that settles. As a result, the other defendants are left without the attorney vital to the case.

"What do the rest of the defendants do?" asked one attorney. "They are left with no lead attorney."

Of course, one of the greatest hindrances to a quick resolution to the asbestos litigation is the ongoing disputes among insurers and asbestos defendants (see story, page 40).

For example, policyholders and excess insurers can press primary insurers to refuse to settle claims for large sums.

The policyholders are sometimes reluctant to settle because they do not want the limits of their primary policies—and often coverage for defense costs—exhausted too quickly.

Excess insurers—and their reinsurers—are concerned because the quicker the primary insurer exhausts its limits, the quicker the excess underwriters must pay claims.

"The pressure is there," Conti-

*Continued on next page*


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# Bankruptcies affect settlements

*Continued from previous page*

nental's Mr. Gibson says. "It's always there whether you talk about it or not. You have an obligation not to squander the limits of coverage.

"The obligation to all these people (excess carriers, reinsurers and insureds) is that the primary insurer will take reasonable steps," he says.

"They (primary carriers) can get gun-shy and hamper efforts to move on settlements," adds Mr. Knowlton.

Recently, Commercial Union, which is excess insurer on a line of coverage led by The Travelers for defendant Pittsburgh-Corning Corp., charged in litigation in U.S. District Court in Philadelphia that The Travelers paid asbestos claims too quickly in order to exhaust its limits.

These squabbles between policyholders and insurers and between insurers and insurers have hindered settlements, says plaintiffs' attorney Stanley C. Levy of the New York firm of Kreindler & Kreindler.

Ideally, companies decide at an early point in the litigation which cases should be tried and which settled, Mr. Levy says.

"If there was a clear insurance picture and not so many defendants fighting among themselves, most of this (litigation) would be resolved," Mr. Levy adds.

Despite all these obstacles and the complaints of plaintiffs' attorneys, trials and settlements proceeded until UNR, Manville and Amatex filed bankruptcy during the second half of 1982. Then, they virtually stopped altogether.

Many asbestos defendants and plaintiffs' attorneys quit agreeing on settlements when the petitions were filed so they could watch what the bankruptcy courts would decide.

**'If there was a clear insurance picture and not so many defendants fighting among themselves, most of this (litigation) would be resolved,' says plaintiffs' attorney Stanley C. Levy.**

And litigation pending in state and local courts was temporarily halted as Manville, UNR and Amatex were removed from the litigation, since bankruptcy petitions stay all claims against the petitioners.

Other asbestos defendants initially attempted to have the stays extended to all asbestos trials, however, the litigation in most jurisdictions is proceeding without the three defendants that are tied up in bankruptcy court.

However, the co-defendants still contend the bankruptcies have interferred with discovery proceedings and the ability to try the cases. They add they could also face larger verdicts since Manville, which faces a huge number of claims, has been separated from cases.

On the other hand, attorneys speculate that an Ohio jury recently absolved the remaining defendants in a case because Manville, which had a large share of the liability for the worker's injury, was not a defendant.

Sources involved in the litigation also disagree on the effect the bankruptcies have had on settlements.

One insurer, for example, says that some defendants are continuing to settle cases but that some of the larger companies are holding out, awaiting the outcome of the bankruptcy proceedings.

Others, however, say more cases are being settled. One insurer said that his company is now participating in more bulk settlements, or instances in which as many as 200 or 300 cases are settled at one time.

"Settlement activity has increased quite a bit," he says. "Plaintiffs have taken a real interest in moving the cases."

The insurer says that plaintiffs appear to be concerned that additional defendants could declare bankruptcy. They are also expressing concern over the huge amount of time and effort they must devote to asbestos claims, he adds.

"Plaintiffs have to get something out of it," he explains. "The interest (to settle) seems to be there."

Some insurers also note that the number of claims filed seems to have declined in recent months, although they indicated this cannot be interpreted as a trend.

One insurer says that during the first three months of 1983, the number of claims filed declined 50% from the same period in 1982.

Sources are also expressing optimism that current negotiations among the three major parties in the asbestos litigation—insurers, defendants and plaintiffs' attorneys—could lead to an agreement on how to settle with the thousands of victims who are pressing claims.

One of the proposals now being debated—a central claims-handling facility—would reduce litigation and claims costs and eliminate some of the problems impeding settlements.

**(Next week: Why the workers compensation system is not handling asbestos claims.)**

# Some collecting awards although they're not ill

A former worker at a Mississippi shipyard recently won more than $1 million in compensatory and punitive damages for his exposure to asbestos between 1953 and 1971.

But the victim, who was diagnosed as having asbestosis, had missed 30 fewer days of work in the last five years and was currently managing a warehouse in Alabama.

One of the novel aspects of the asbestos crisis is that some workers have collected awards and settlements even though they are still working, are not seriously injured and may, in fact, never die from or even become ill from their exposure to asbestos.

Clearly, many claimants are seriously ill. Various forms of cancer including lung cancer and mesothelioma, a cancer of the lining of the lung, have been linked to exposure to asbestos. These diseases are often fatal.

**But some claiments** are only in the initial stages of asbestos-related disease and not physically suffering, though there's the chance that they could develop more serious asbestos-related diseases in the future.

"I believe the great majority of plaintiffs are not sick," says defense attorney David R. Gross, a Newark, N.J., attorney who was Northeast regional counsel for Manville Corp. before it filed a Chapter 11 petition for reorganization last year.

"There are a tremendous number of non-meritorious claims being filed," a spokesman for a major asbestos insurer agrees.

Even plaintiffs' attorneys say that it is not uncommon for them to bring cases on behalf of workers that may have some lung impairment but no apparent physical disability.

"There's no question there are a lot of cases where the people are not disabled," says plaintiffs' attorney Stanley J. Levy of the New York firm of Kreindler & Kreindler.

"In many, many cases, there are large numbers of plaintiffs who aren't sick," adds another plaintiffs' attorney who asked not to be identified.

Plaintiffs' attorneys, however, blame this situation on state statutes of limitations, which force plaintiffs to file suits even when they are not disabled.

Many statutes say that plaintiffs must file a suit within three or four years after they know—or should know—of the disease.

Thus, if an X-ray of a worker who has been exposed to asbestos reveals some scarring of the lung, he must file a suit even if he feels healthy, is suffering no adverse effects and is able to work.

If the plaintiff waits until he is actually disabled, which could take years, defendants will be sure to point out that his claim should be barred by the statute of limitations because he knew of the disease, a plaintiffs' attorney says.

"You're really on the horns of a dilemma," Mr. Levy says. "It's a very serious problem that the system itself has fostered."

One plaintiffs' attorney, who says he was involved in New Jersey litigation affecting 600 asbestos cases approximately two years ago, estimates that 70% to 80% of the plaintiffs may not have been physically disabled.

At the time, the plaintiffs' attorneys offered to enter into an agreement with the defendants to dismiss the cases with the right to bring them again if they actually became ill.

All of the defendants rejected the offer, the attorney says, explaining they were concerned that if the plaintiffs came back with claims five years later, their injuries might be much more serious and defendants would have to pay a much larger amount.

**Plaintiffs** and defense attorneys are currently looking at ways to deal with the problem of victims who must file claims before they decome disabled because of statute-of-limitation problems.

One possible solution is the establishment of a centralized facility that would place these claims on a suspended status until the victims suffer more serious problems (*BI*, April 4).

Attorneys involved in the asbestos litigation, however, say that some plaintiffs' attorneys deliberately file suits on behalf of workers who do not suffer from asbestos disease.

Greedy attorneys and plaintiffs play on the huge backlog of cases or receive diagnoses from unscrupulous doctors to win settlements, one plaintiffs' attorney admits.

"It's easy to get a doctor who says someone has asbestosis," a defense counsel said.

These attorneys can make enough from settling cases to string along others to the point where they eventually try a case, hoping to receive a contingent fee of up to one-half of a huge award.

Plaintiffs' and defense attorneys acknowledge, however, that these unscrupulous attorneys are in the vast minority. ■

# Litigation a headache for judges, too

*Continued from page 3*

that Manville's petition compounded the problems. "There's no question that the bankruptcies had a chilling effect."

Los Angeles County Superior Court Judge Christian Markey, who is overseeing between 3,500 and 4,000 asbestos cases, agrees with Judge Takiff.

"A lot of good things were going on until J-M filed for Chapter 11," says Judge Markey, who began hearing asbestos cases Jan. 1, 1982. "Without the problem of Chapter 11, we never considered the cases insurmountable. We could have handled it."

Judge Markey explains that all asbestos suits in California were stayed after last August when Manville filed for bankruptcy, but the stay was lifted and settlements began to proceed again in January.

"Settlements are going ahead, but probably not as willingly as when Manville was around."

However, he says that most plaintiffs' attorneys have lowered the amounts they are seeking for their clients now that Manville is not a party to the cases.

Judge James M. McMonagle of the Cuyahoga County (Ohio) Court of Common Pleas agrees that before Manville filed for reorganization, there was not much of a problem reaching settlements.

"Since that filing it has been just the opposite," he says.

Asbestos settlements in the Cleveland area now average about $50,000 per claim, Judge McMonagle says, compared with an average of about $70,000 per claim before Manville filed for bankruptcy last August.

> 'There's no question that the bankruptcies had a chilling effect,' Judge Takiff says.

In Los Angeles, Judge Markey works with attorneys to reach settlements, handling motions, discovery and other proceedings. If a settlement cannot be reached, the case is referred to a trial judge.

Only eight cases had gone to trial in Los Angeles County Superior Court as of the beginning of this year, while hundreds have been settled, Judge Markey says, adding that he perceives his job as seeing that cases don't go to trial.

There is no courtroom in the world that could handle the thousands of cases now pending, he explains.

The fact that a trial is often an all-or-nothing proposition—defendants may get hit with large jury awards or they may be awarded nothing—is an incentive for both sides to settle, he says.

"They're facing the moment of truth" when they go to trial, he explains. "That seems to do the trick."

Judge Markey says he tries to settle cases within six months from the time he starts to handle them. Since by California law a suit must be resolved within five years, Judge Markey must focus on the oldest cases first. Preference is also given to plaintiffs over age 70 or those who are desperately ill.

As a result, cases filed in 1979 are just now being considered.

Judge Markey says a "strict settlement conference procedure" including status hearings and pretrial conferences is held in an attempt to settle the case.

One of the problems in reaching settlements, he says, is that companies are not sure of their insurance coverage.

"That would have taken care of a lot of settlements," he said.

Judge Markey says he's skeptical of some studies that say hundreds of thousands of asbestos cases may be brought.

"In the not-too-distant future, there would seem to be an end to (the number of cases)," he says. "I think they will start going down." ■

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Dr. Kenneth R. Oppenheimer, President of Decision and Risk Analysis, Inc., of Palo Alto, California, specializes in executive education and the application of decision and risk analysis to corporate decisions in the insurance, fire protection, banking, wood and paper products, data processing, cattle feeding, and oil and gas drilling industries. Prior to founding Decision and Risk Analysis, Inc., he spent five years with the Decision Analysis Group at S.R.I. International (formerly Stanford Research Institute). His academic background includes a B.S. in mathematics from Tufts University, and a M.S. and Ph.D. in Engineering-Economic Systems from Stanford University. While at Stanford, he was a member of the Decision Analysis Group at Xerox Corporation.

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**Agenda**
1. Introduction to decision and risk analysis
2. A risk management decision (case study)
3. Assessing the probabilities of loss
4. Assessing the corporate attitude toward risk
5. Analyzing risk transfer alternatives (case study)
6. Analyzing risk control alternatives (case study)
7. Conclusion

# MGM settlement plan irks co-defendants

*Continued from page 1*
second $25 million payment into the escrow account held by the court for allocation among settling claimants according to a preset schedule.

At this stage, another provision of the plan will be activated, which directly impacts the other defendants.

In exchange for the other defendants' agreement to settle and contribute to the escrow fund, MGM must indemnify them against compensatory damages sought by the claimants who reject the settlement and go to trial.

This is the carrot to induce the other defendants to settle. But, there is a catch that troubles many of the companies that have not capitulated, as well as some that have: There is no guarantee that the holdout plaintiffs won't press punitive damage claims against the non-MGM defendants.

Such claims would mean more legal costs for the defendants—something they are gambling to avoid by joining in the settlement—as well as the possibility they could be hit with punitive judgments.

One attorney summed up the views of non-MGM defense counsel on the litigation. "The settlement negotiations have been one of the biggest blackjack contests ever played in the legal game," said John Bonelli, an Encino, Calif., attorney for Familian Pipe & Supply Co.

The major defendants that were named by plaintiffs in the litigation from the outset have settled, including Taylor Construction Co.; Continental Mechanical Corp.; Otis Elevator Co.; Clark County, Nev.; California Electric Construction Co.; and architect Martin Stern Jr. (see chart, page 1).

Some of these companies and their attorneys would argue, however, that they were marked as major defendants because of their deep pockets rather than their degree of liability for the 1980 fire at the MGM Grand Hotel, which killed 84 people and injured more than 700 others.

Otis Elevator Co. fits this description, says the company's attorney, Nicholas Hornberger of the Los Angeles firm of Shield & Smith. Through its parent, United Technologies Inc., Otis was flush with $275 million in liability insurance, more than MGM Grand or any other defendant named in the case.

Elevators built by Otis continued to function during the fire and 10 people were found dead in them. The elevators did not malfunction: They just were not designed to stop running automatically.

MGM Grand employees were supposed to shut the elevators off in the event of fire, but they failed to do so.

Otis recently agreed to settle with the PLC for $7.5 million, down from earlier demands of $40 million. However, the company is still concerned about the possibility of being hit with punitive damage claims.

The vast majority of the 112 defendants were not named in the wrongful death and personal injury cases by plaintiffs until last fall. At that time, the plaintiffs amended their complaints to include a peripheral group of hotel materials suppliers and distributors involved in related suits brought by MGM Grand and the so-called major defendants.

Some of these companies did nothing more than deliver materials to the hotel. Familian Pipe & Supply Co., for example, bought some plastic pipe and sold it to MGM, says Mr. Bonelli. "They didn't alter it or modify it in any way."

The plaintiffs charged that some of the plastic pipe sold by Familian burned in the fire, emitting black, toxic fumes.

Orvin Engineering Co. manufactured sprinklers installed in the hotel. "Whenever the fire came within 15 feet of the sprinklers, it was put out," says attorney Peter Ezzell in Los Angeles.

"We were sort of heroes in this story. Orvin told MGM again and again they should have a sprinkler system," he says.

Although Mr. Ezzell believes Orvin had "absolutely no exposure," he was urged by Allianz Insurance Co. to settle to avoid mounting defense costs.

"The client was outraged," he said.

The PLC will get $300,000 after an initial demand of $500,000. Legal costs already exceeded the settlement amount. "We could have knocked them down further if we'd had more time," added Mr. Ezzell.

Another supplier furnished a laminate used on one of the doors that burned in the hotel and was willing to pay $200,000 to settle claims against it.

*Continued on facing page*

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| **Financial Management:** chief financial officers, vps of finance, secretaries, treasurers, etc. | 9,634 |
| **Insurance Management:** vps, directors, managers of insurance, risk, benefits, compensation, safety, security, etc. | 5,948 |
| **Government, Associations, Unions, Educational Institutions** | 1,004 |
| **Commercial Consumers Sub-total** | **23,083** |
| Insurance Agents & Brokers | 9,629 |
| Insurance Cos. | 4,944 |
| Financial Institutions | 314 |
| Actuaries, Attorneys, Adjusters, Appraisers & Consultants | 2,408 |
| Others allied to the field | 854 |
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The contract shall be subject to the applicable compliance standards and procedures of Executive Order No. 11246, as amended; Equal Employment Opportunity, and other provisions as specifically set forth in the Specifications.

*Continued from facing page*

Most of the settlement commitments have been in the $200,000-to-$500,000 range, many for the limits of the companies' comprehensive general liability policies.

The legal costs for the peripheral defendants continuing to fight run about $35,000 to $40,000 per month, while they are five times that for a major defendant employing two or three law firms, a defense attorney in the litigation estimates. An educated guess of the aggregate cost of the litigation for about 100 defendants is $5 million a month.

Two major defendants—general contractor Taylor Construction Co. and heating and ventilation system contractor Continental Mechanical Corp.—are rumored to have spent $14 million and $11 million, respectively, in legal costs.

Spokesmen for both companies would not confirm or deny these reports.

Although some defendants are angry that their insurers insist on settling when liability is doubtful, insurers that want to take a tough stand can be caught in the middle between their policyholder and excess insurers.

**If the** primary insurer holds out and goes to trial and the eventual award exceeds the limits of its coverage, it could be sued for bad faith by its policyholder or an excess insurer.

PLC Co-chairman Wendell Gauthier is unsympathetic. The hotel was constructed using a fast-track method, he points out. Shortcuts and code violations were rampant. Most of the subcontractors either participated in code violations or turned their backs on them, he says.

One of the complaints hurled by defense attorneys at U.S. District Court Judge Louis C. Bechtle, who is presiding over the multidistrict litigation stemming from the fire, is that he is more interested in expediting the settlements than in applying the law.

Some defendants claim they have been unable to find out the nature of the evidence against them. They say the settlement plan has been cloaked in secrecy so that the non-MGM defendants do not know the terms of the court's agreement with MGM. Different deals have been cut by the PLC with different defendants.

"The judge got on the side of the plaintiffs early on and the tactic has been to divide and conquer the defendants," said one disgusted attorney.

> **'If we're going to go to trial, it might as well be against everybody as against 10 or 15. The whole purpose of settlement is to avoid going to trial,' says Bernard Segelin, MGM's vp and general counsel.**

This is a reference to the approach used by the PLC to focus its settlement negotiations on successive tiers of defendants. This tactic has created an impression in defendants' minds that they were target defendants at a given time because pressure to settle for policy limits—or at least large sums—has been so intense.

**Now that** the so-called major defendants have settled, there is a new set of "major defendants." The PLC has shifted its energies from the general contractors to subcontractors that actually performed electrical wiring and heating, ventilation and air conditioning work at the hotel.

The PLC's Mr. Gauthier explains that the discovery process is still going on and that new evidence tends to strengthen—or weaken—the liability case against certain defendants.

To show that this process can work in favor of defendants as well as against them, Mr. Gauthier points out that seven companies were recently dismissed from the litigation altogether.

Many experts who investigated the cause of the fire believe that smouldering wires in one wall of a hotel restaurant ignited when they came in contact with aluminum conduit.

The heating and ventilation system also has been blamed for the rapid spread of smoke and flames throughout the hotel (*BI*, Jan. 26, 1981).

"Aluminum conduit has a low ignition level and burns like a dynamite fuse," said Mr. Gauthier.

**The defendants** that have settled up to now are: Continental Mechanical Corp. for $10.75 million; California Electric Construction Co. for $10 million (parent company G.K. Technologies Inc. purchased retroactive liability insurance above existing limits of $40 million, which apparently will not be exhausted); Simpson Timber Co. for $9.4 million; Otis Elevator Co. for $7.5 million; Taylor Construction Co. for $5.5 million.

Also, W.J. Thompson Co. for $2.73 million; Clark County, Nev., for $2.5 million; Martin Stern Jr. for $1.4 million, all that remained of a $3 million policy after deduction of defense costs; Nay Mechanical Inc. for $1.25 million; and Familian Pipe & Supply Co. for $1.2 million.

Also, Air Balance Co., W.A. Perry, Standard Cabinet Co., Advance Mechanical, RAH Construction Co. and Richard Hatfield Inc. doing business as Norm's Refrigeration & Ice Equipment for $500,000 each; NWS Construction Corp. Inc., Roberts Electric Inc. and Southwest Air Conditioning Inc. as a group for $800,000; Ralph Phillips Inc. for $75,000—all that remained of a $250,000 policy after defense costs; and Orvin Engineering Co. for $300,000.

Northrop Architectural Systems, Temtrol/Governaire, Wilkenson Co. Inc., Valley Distributing Co. Inc., Thorpe Insulation and RAM Products Co. also contributed unknown amounts. ■

# Shelton Burgess dies in Bermuda

HAMILTON, Bermuda—Shelton Burgess, 36, former registrar of companies in Bermuda, was found dead last week from an apparent suicide.

As registrar of companies from 1973 until 1980, Mr. Burgess was the government official who met with those developing Bermuda's captive insurance and reinsurance industry during its most dramatic growth. Mr. Burgess was the principal architect of the Bermuda Insurance Act of 1977 and the industry committee system that still advises the government on regulation of the offshore insurance business.

After leaving government in 1980, Mr. Burgess established his own consulting company, which later became associated with Tillinghast, Nelson & Warren.

The Bermuda insurance community was shocked and saddened by his death.

The family of Mr. Burgess has asked that in lieu of flowers money be contributed to several charities and organizations, among them the education fund of the Bermuda Insurance Institute, P.O. Box 1351, Hamilton 5, Bermuda. ■


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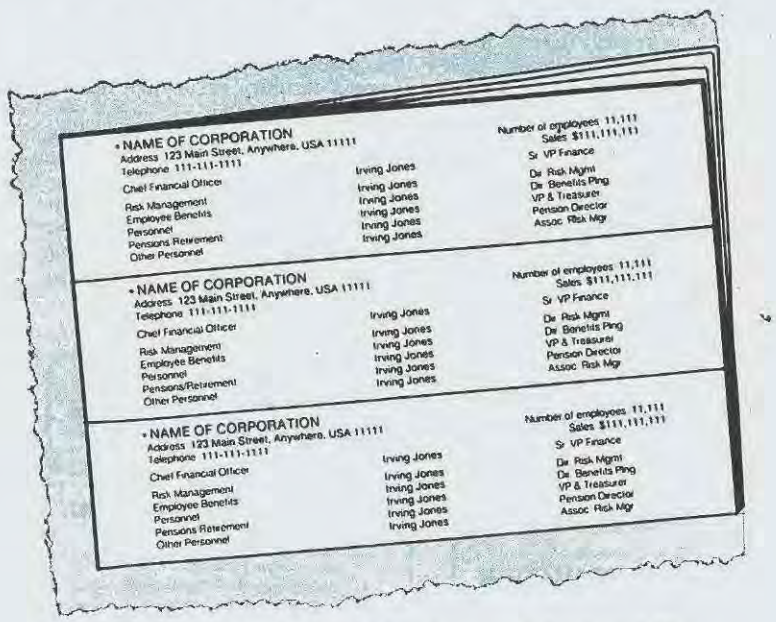


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# Insurers fill demand for recall coverage

*Continued from page 1*

The price also varies from premiums competitive with those paid for standard product liability coverage to premiums in the high six figures. Deductibles can range from nothing to millions of dollars.

At their most basic, the new family of policies offers reimbursement for administrative and transportation costs of carrying out a recall of a product found by the government or manufacturer to be hazardous. Coverage for the cost of replacing a single product or a line of products sometimes will be included.

Underwriters and brokers say basic coverage for recall expenses has been available for years but was often rejected by buyers because of its exorbitant cost.

At their broadest, the policies offer an almost unlimited guarantee of reimbursement for financial losses—including profits—when a product threatens injury to consumers or damage to property.

**To trigger** this broad coverage, however, the product must have been maliciously tampered with or otherwise made dangerous by a source beyond the manufacturer's control.

The Home Insurance Co.'s "Extra Strength Product Liability Insurance" is the most limited of the coverages. But it is also likely to be the least expensive.

The policy apparently is directed at smaller manufacturers and wholesalers: It has relatively low limits—usually $1 million; is written as an endorsement to a basic product liability policy; and is being marketed through 7,000 independent agents rather than the big brokers.

Priced to be competitive with basic product liability coverage, it will indemnify a policyholder for the cost of replacing an *individual* product that has caused bodily injury or property damage and will pay the administrative and transportation costs of recalling products similar to the faulty or contaminated one.

However, it won't pay to replace the whole line of products, but only the one product that caused injury.

The recall also has to be because of an extortion threat, by government order or with the permission of the insurer for coverage to apply.

**In a recall,** neither the costs of replacement products nor the cash value of damaged products withdrawn would be covered by The Home unless those products actually caused personal injury or property damage.

For example, The Home would insure a portable television manufacturer for the cost of replacing a customer's television if the portable TV's handle broke while being carried and the TV fell, injuring the customer's foot. Normal product liability insurance would indemnify the manufacturer for its liability for the foot injury but wouldn't pay for replacing the TV.

However, The Home policy will not pay the cost of replacing all similar TV sets that may have a similar handle defect.

"Our intent is to cover the odd batch or individual article that fails to perform its intended purpose or is damaged," explains Arthur Phillips, a senior vp who directs The Home's casualty insurance operations in New York.

This makes The Home's policy distinctly different from the other recall policies that will reimburse the cost of replacing whole lines of products. The Home's policy, unlike the others, also does not cover loss of profits or business interruptions expenses caused by a recall.

The Home, which has quoted 15 policies and written four or five, seeks buyers with product sales of at least $1 million and will normally write an aggregate annual limit of $1 million with first-dollar coverage, although higher limits may be available. A specific aggregate limit of $100,000 applies to recall expenses.

Rates are supposed to be 5% to 25% higher than regular product liability coverage, says Mr. Phillips.

Based on a manufacturer's sales and the type of product manufactured, rates can range from a basic 10 cents per $1,000 of gross receipts for the product line covered to a high of $1.25 per $1,000 of gross receipts.

Officials at The Home point out that their policy can serve as a primary layer for excess or umbrella coverage written by other insurers.

First State Insurance Co.'s "products integrity impairment" policy will indemnify companies for lost profits, business interruption and recall expenses—including replacement costs—when a product is maliciously tampered with in such a way that that it would or does cause bodily injury or property damage to the public.

"Our form is pretty much limited to malicious and intentional acts damaging a product as opposed to business risks," says Ralph J. Palmieri, executive vp of Cameron & Colby, underwriting manager for First State and another Hartford affiliate. "Most of the risks we've seen are major food manufacturers.

"We will make up for the loss of the insured's net profit and we would make up for any continuing expenses or necessary expenses," Mr. Palmieri says.

Also covered is the reasonable cost of withdrawal, inspection, destruction and restocking of the insured's product and conveying it to other locations.

Boston-based First State's form was recently completed, says Mr. Palmieri, and no policies have been sold yet. First State is offering an aggregate annual limit of $5 million with self-insured retentions of $100,000 to $1 million.

The First State policy will not cover products damaged or recalled due to contamination in the normal manufacturing process.

**Similarly,** the Chubb and Lexington policies will not pay loss of profits or business interruption expenses if the contamination occurs due to a cause under the manufacturer's control. However, these two insurers plan to offer a separate, more limited policy that will pay only recall expenses when a manufacturer's error necessitates a recall.

"Let's suppose you are intentionally cutting corners in the production of a product," says Chubb's George T. Van Gilder, an assistant vp in Short Hills, N.J. "If you let it go anyway because it's too expensive to fix it or you don't think anybody will find out, we view that as a management decision and the only part of our policy that would apply to that would be the recall expense."

Chubb is currently drafting its policy for these situations.

And while the First State policy only specifies coverage for the cost of replacing a damaged product with another, the Chubb and Lexington policies apparently go a step farther and also pay the costs, including advertising expenses, of re-establishing a product whose image has been tarnished after a covered incident.

Mr. Van Gilder says Chubb can offer limits of $25 million within its treaty reinsurance but can package limits of $100 million "with no difficulty."

"Several brokers feel there would be a positive reception for specific programs in London if terms, conditions and limits were attached," says Mr. Van Gilder. Then, he says, limits of $150 million to $200 million might be available.

**He says** the deductible for multimillion-dollar programs, which can range from $5,000 to $25 million, is not a significant factor in pricing because most losses are expected to be catastrophic.

Chubb has sold about 25 policies since the broad recall coverage was unveiled in October and has quotes out to about 300 companies, says Mr. Van Gilder. He says "a pretty fair number" of drug companies are among buyers of the coverage, which Chubb is aiming at makers of consumable goods, pharmaceuticals, cosmetics and foods.

The "product integrity" policy written by Lexington is individually manuscripted for clients, but because of the recent interest in the product, the insurer is refining its coverage into four basic policies.

"We view this as a real promising coverage that has a bright future as it is refined," says Kevin Kelley, vp of casualty underwriting at the insurer. Lexington bound its first policy in December 1981, 10 months before the Tylenol incident (*BI*, Oct. 11, 1982).

Mr. Kelley says Lexington, in apparent contrast to the other underwriters, wants to require buyers to coinsure between 5% and 25% of primary coverage above any deductible or self-insured retention.

Covered recall expenses under the Lexington policy are defined as costs of physically withdrawing, transporting, inspecting, destroying and disposing of the product, as well as loss of profits and business interruption expenses.

Like the First State and Chubb policies, the Lexington coverage also covers the cost of physically restocking wholesalers or retailers with replacement products

And, like Chubb, the Lexington policies also can cover the incremental expenses of introducing a new product as a means of mitigating losses from the tarnished line, as well as advertising and other expenses associated with re-establishing the existing item.

Lexington's Mr. Kelley says he will write an aggregate limit of $10 million to $15 million with retentions ranging from zero to $10 million.

Three of the Lexington forms will define covered damages as lost net profits, including continuing and expediting expenses, as well as extra expenses to recall the impaired products. Mr. Kelley views this as a guarantee against financial loss under varying trigger situations, and he emphasizes the coverage terms are flexible depending upon a buyer's needs.

The most limited of these three forms says loss of profit and recall expenses will be paid only if the recall is triggered by an actual product tampering that causes or threatens to cause bodily injury.

A second form will cover recalls prompted by tampering and also expenses incurred by Food and Drug Administration-required recalls even if no tampering occurred.

The broadest form Lexington offers covers lost profits and recall expenses resulting from actual bodily injury or discovery by the policyholder that bodily injury may arise or fear of bodily injury among the general public for any reason beyond the policyholder's control. It specifically does not limit coverage to tampering situations. But the evidence of such injury must be substantiated and be "neither intended nor expected" by the manufacturer.

The fourth policy Lexington is developing covers only recall expenses, not lost profits, and is triggered when a product must be recalled because it threatens bodily injury due to any "error or inadvertent omission" on the manufacturer's part. This apparently is similar to the coverage Chubb offers in situations where the recall is prompted by an error under the manufacturer's control.

**Mr. Kelley** says some of the forms are not yet printed. He says he expects to have them available for his presentation during the RIMS conference later this month.

Competitors and at least one reinsurer say Lexington is having trouble arranging reinsurance for its recall insurance because the coverage is so broad and is aimed at giant consumer products manufacturers.

They say Lexington had difficulty arranging facultative reinsurance on some early placements with limits in the $50 million range.

Lexington disputes this, saying that while reinsurance is limited, it has been able to arrange backing for any policies before they were bound.

"As yet, the premiums in the marketplace do not produce sufficient enough money to take care of a Tylenol situation," says Steve Mestman, national casualty facultative director at Prudential Reinsurance Co. in Newark, N.J.

Mr. Mestman says big food companies, like cereal and soft-drink manufacturers, are keenly interested in the coverage. He says reinsurers worry there aren't enough such buyers to produce a good spread of risk for a catastrophic loss.

As a result, he says, Prudential has yet to commit itself to facultative reinsurance on any such policy.

First State also acknowledges that its capacity is being held back by limited facultative reinsurance although layered programs of up to $100 million can be arranged. ■


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# Cubeta to head municipal work comp pool

NEW HAVEN, Conn.—Michael J. Cubeta, mayor of Middletown, Conn., has been elected chairman of the Connecticut Interlocal Risk Management Agency based in New Haven.

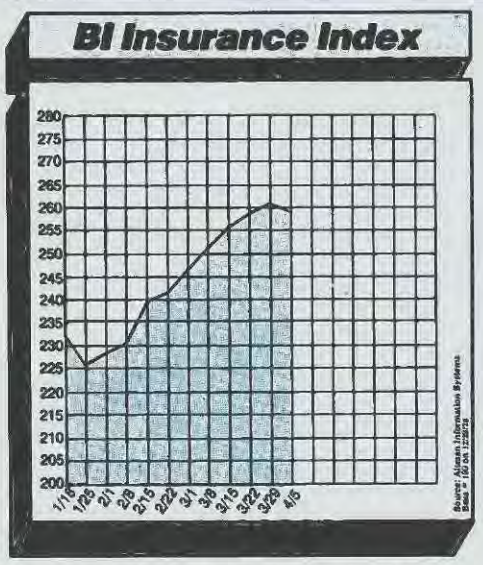
He will serve through Dec. 31, 1983, and will also take a seat on the agency's board of directors.

CIRMA is a non-profit service program of the Connecticut Conference of Municipalities It provides workers compensation coverage for member municipalities and local public agencies.

CIRMA offers its members, some 61 local government entities, an upfront 15% annual discount from commercial rates. It also distributes dividends to members based on a formula that considers each member's contribution and safety performance.

CIRMA provides coverage for 22,000 local government employees, making it Connecticut's largest provider of municipal workers compensation coverage.

The agency was formed in 1980 after state municipalities said they believed they were paying excessive workers compensation premiums. ■




**Insurance industry stocks declined slightly during the week ending April 5 as the *Business Insurance* stock index suffered its first decrease in 11 weeks, falling 1.7 points to 259.4 from a record of 261.1. Twenty-one stocks posted gains, 26 declined and 21 were unchanged. The strongest gains were tallied by Old Republic International Corp., 4.2%; The Hartford Steam Boiler Inspection & Insurance Co., 3.1%; USLife Corp., 3.1%; CIGNA Corp., 2.4%; and Combined International Corp., 2.3%. The largest losses were posted by Aneco Reinsurance Co. Ltd., 18.8%; Bitco Corp., 5.0%; The Travelers Corp., 4.8%; American General Corp., 4.1%; and Tokio Fire & Marine Insurance Co., 3.4%. The *BI* index declined 0.6% but still managed to outperform the Dow Jones 30 industrials average, which dropped 1.0%.**

## British Issues

| 5 Apr Companies | Price pence | P/E | Div. pence | Yield % | 1 Week High—Low pence | pence |
|---|---|---|---|---|---|---|
| **Comml Union** | 132 | 40.0 | 16.86 | 12.8 | 132— | 130 |
| **Eagle Star** | 373 | 14.9 | 24.29 | 6.5 | 375— | 365 |
| **Genl Accident** | 394 | 12.6 | 24.29 | 6.2 | 394— | 378 |
| **Gdn Royal Exch** | 434 | 11.5 | 27.86 | 6.4 | 434— | 410 |
| **Phoenix** | 320 | 16.8 | 24.00 | 7.5 | 320— | 310 |
| **Royal** | 490 | 12.7 | 37.86 | 7.7 | 493— | 488 |
| **Sun Alliance** | 945 | 15.8 | 61.43 | 6.5 | 960— | 945 |
| **Brokers** | | | | | | |
| **CE Heath** | 357 | 10.2 | 18.71 | 5.2 | 357— | 355 |
| **Hogg Robinson** | 105 | 8.1 | 8.57 | 8.2 | 105— | 104 |
| **JH Minet** | 134 | 12.2 | 5.43 | 4.1 | 136— | 127 |
| **Sedg Grp** | 240 | 13.7 | 10.00 | 4.2 | 240— | 232 |
| **Stenhouse Hldg** | 108 | 10.1 | 7.86 | 7.3 | 108— | 106 |
| **Stew Wrightson** | 257 | 9.2 | 18.57 | 7.2 | 257— | 255 |
| **Willis Faber** | 568 | 15.0 | 25.00 | 4.4 | 568— | 560 |

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

# Despite the lull, odds favor more brokerage acquisitions

**By LEONARD M. WILSON**

Special to Business Insurance

HARDLY A DAY passes without a headline detailing another example of financial conglomeration. Only last week a money-center bank announced the proposed acquisition of a state-domiciled insurance company. The ingenuity of the combinations, the financial clout of the participants and the bending of statutes to accommodate the link-ups are creating a well-nigh irresistible wave.

Mr. Wilson

The publicly owned insurance brokers, with the possible exception of Marsh & McLennan Cos. Inc., remain inviting targets for the exponents of amalgamation. And yet, since the mergers of Fred S. James & Co. Inc. and Rollins Burdick Hunter Co. into larger enterprises last year, none of the other public brokers have made matches except in the financial rumor mills.

Why the lull? It could be just a simple case of buyers and sellers—that is, the directors of the insurance brokers—disagreeing on price. Or could it be a growing realization that vertical integration between commercial insurers and commercial brokerages may have its drawbacks?

Certainly, the tides are lately running against the concept of vertical integration. Marsh & McLennan has made public its intention to divest its underwriting activities. Admittedly, Crusader Insurance is mainly a life underwriter and not a major property/casualty market for C.T. Bowring, M&M's British subsidiary.

However, Crusader's South African underwriting subsidiary is now involved in a dispute over warranty reinsurance. This event did not influence Marsh & McLennan's decision to withdraw from underwriting, but it may provide additional justification if any were needed.

Marsh & McLennan's two other underwriting subsidiaries, American Overseas and English-American, are essentially underwriting managers but they, too, will be divested to complete the divorce of underwriting and brokerage.

The troubles at Alexander & Alexander Services Inc., it might also be added, revolve mainly around the underwriting activities of Alexander Howden Group P.L.C., not its brokerage operations. Aside from the alleged shortfalls at Howden, now the subject of litigation, it appears that the quality of underwriting at Howden's insurance subsidiaries was slipshod, at least judging by the successive rounds of reserve strengthening. It is possible that underwriting standards fell prey to overzealous brokerage, with resulting multimillion-dollar reserve inadequacies.

Indeed, advocacy of vertical integration in the United States is in sharp contrast to the trend in London. The separation of underwriting agencies from brokerages mandated by the new Lloyd's self-regulation law comes at a time when the practices of some London brokers reinforce doubts about the concept of affiliated brokerage and underwriting.

In another vein, there is the question raised by Frank B. Hall's & Co.'s involvement in the claims litigation stemming from the 1980 MGM Grand Hotel fire through its underwriting subsidiary, Union International Ltd. (*BI*, March 21).

Granted that the MGM's retroactive coverage was innovative brokerage and perhaps could not have been brought off without the participation of Union, some investors have expressed anxiety over the sums at issue and Hall's potential liability in the event of an adverse judgment.

Litigation is not a novelty in property/casualty insurance, but one facet of a broker's investment appeal has been the distance from underwriting and its unpredictability. Whatever the outcome of the MGM litigation, it makes reasonable observers wonder anew about the desirability of vertical integration, even in cases where the broker owns the underwriter.

To be sure, if everyone were to agree that vertical integration is a doubtful proposition, there would still be a generous supply of suitors for the public brokers outside the ranks of property/casualty underwriters. The vertical integrators may well be outnumbered by the horizontal integrators.

There is a parallel in the industrial sector of the economy, where companies own a variety of businesses that are quite unrelated. General Electric Corp., one of the most diversified U.S. companies, produces both nuclear reactors and refrigerators, with the common denominator presumably being that both products have something to do with electricity. So in the financial sector, a horizontally integrated entity might control a securities broker, a bank, a real estate broker, a lending company and so on. Therefore, why not an insurance broker?

Horizontal integration, as a descriptive phrase, could also embrace the entry of an industrial corporation into financial services. Industrial companies have thus far been more receptive to acquiring insurance companies. Perhaps it is easier to rationalize paying two times book value for an assets-intensive underwriter rather than paying four or five times book value for a people-intensive broker. Financial assets do not ride elevators. But this squeamishness may not last.

We think it is almost axiomatic that a competent specialist will outdo a generalist. Moreover, the entrepreneural character of insurance brokerage may not readily adapt to the culture of the large corporation. In addition, how does the client benefit from an acquisition?

Maybe these are valid issues. Nevertheless, the odds are still quite likely in favor of more brokerage acquisitions. Bigger equates with better in many corporate board rooms.

We also believe that investors continue to bet on potential acquisitions, judging by the market valuations of Alexander & Alexander, Corroon & Black Corp. and Frank B. Hall. As a result, until premium rates harden, the possibility of acquisitions could well continue as the most important influence on brokerage stocks. ■

*Leonard M. Wilson, a vp of L.F. Rothschild, Unterberg, Towbin in New York, specializes in insurance brokerage stocks. He is a member of the New York Society of Security Analysts.*

# BI Industry Stock Report

**APR. 5, 1983 3/30/83 THRU 4/5/83**

| Insurance Cos. | | Price | % Chg. | P/E | $ Div. | % Yld. | High | Low | Vol. (000) |
|---|---|---|---|---|---|---|---|---|---|
| Aetna Life & Cas Co | NYSE | 38.13 | -2.6 | 6.6 | 2.64 | 6.9 | 39.00 | 38.13 | 323.7 |
| American Bankers Ins Group | OTC | 13.13 | 1.0 | 10.3 | 0.50 | 3.8 | 13.25 | 13.13 | 93.7 |
| American Gen Ins Co | NYSE | 64.38 | -4.1 | 8.7 | 2.20 | 3.4 | 66.00 | 63.25 | 201.2 |
| American Indty Finl Corp | OTC | 22.75 | 0.0 | 22.5 | 1.12 | 4.9 | 22.75 | 22.75 | 1.0 |
| American Intl Group Inc | OTC | 86.75 | 1.5 | 12.4 | 0.48 | 0.6 | 87.00 | 86.00 | 219.2 |
| American Natl Ins Co | OTC | 18.50 | -2.0 | 7.8 | 0.84 | 4.5 | 19.00 | 18.50 | 33.7 |
| American Sts Life Ins Co | OTC | 27.50 | 1.9 | 7.8 | 0.88 | 3.2 | 27.50 | 27.00 | 0.3 |
| Aneco Reins Ltd | OTC | 3.25 | -18.7 | 81.2 | 0.00 | 0.0 | 3.88 | 3.25 | 43.4 |
| Avemco Corp | AMEX | 15.75 | -1.6 | 9.2 | 0.58 | 3.7 | 16.25 | 15.75 | 10.6 |
| Banks Iowa Inc | OTC | 42.00 | 0.0 | 11.7 | 1.52 | 3.6 | 42.00 | 42.00 | 1.0 |
| Bitco Corp | OTC | 38.00 | -5.0 | 6.7 | 2.00 | 5.3 | 39.00 | 38.00 | 4.7 |
| Carolina Cas Ins Co | OTC | 7.25 | 0.0 | 10.7 | 0.32 | 4.4 | 7.25 | 7.13 | 3.0 |
| Chubb Corp | OTC | 58.38 | 0.6 | 9.7 | 2.92 | 5.0 | 58.63 | 58.25 | 20.3 |
| Combined Intl Corp | NYSE | 32.88 | 2.3 | 11.1 | 2.00 | 6.1 | 33.00* | 32.13 | 127.5 |
| Continental Corp | NYSE | 34.50 | 0.7 | 16.9 | 2.60 | 7.5 | 35.25 | 34.50 | 264.4 |
| Crawford & Co | OTC | 19.25 | -1.3 | 14.4 | 0.57 | 3.0 | 19.50 | 19.25 | 10.1 |
| Crown Life Ins Co | OTC | 97.00 | 0.0 | 6.3 | 3.10 | 3.2 | 97.00 | 97.00 | 0.4 |
| Employers Cas Co | OTC | 35.75 | -0.7 | 7.5 | 1.20 | 3.4 | 35.75 | 35.75 | 1.0 |
| Equifax Inc | NYSE | 30.50 | -2.0 | 15.0 | 1.40 | 4.6 | 31.00 | 29.75 | 22.4 |
| Excelsior Ins Co | OTC | 11.00 | 0.0 | 0.0 | 0.70 | 6.4 | 11.00 | 11.00 | 3.9 |
| Farmers Group Inc | OTC | 41.75 | 0.0 | 11.3 | 1.36 | 3.3 | 42.25 | 41.63 | 299.5 |
| Foremost Corp Amer | OTC | 48.25 | 0.0 | 15.3 | 1.24 | 2.6 | 48.25 | 48.25 | 22.2 |
| Fremont Gen Corp | OTC | 22.50 | 1.1 | 41.7 | 0.48 | 2.1 | 22.50 | 21.88 | 297.3 |
| Great West Life Assurn Co | OTC | 188.00 | 0.0 | 15.3 | 10.00 | 5.3 | 188.00 | 188.00 | 0.0 |
| Hanover Ins Co | OTC | 45.50 | 0.6 | 6.8 | 0.88 | 1.9 | 45.75 | 45.50 | 10.1 |
| Hartford Steam Boiler Insptn | OTC | 49.50 | 3.1 | 11.0 | 3.00 | 6.1 | 50.00 | 49.50 | 24.6 |
| Jefferson Natl Life Ins Co | OTC | 45.50 | 0.0 | 11.8 | 0.76 | 1.7 | 45.50 | 45.50 | 4.3 |
| Kemper Corp | OTC | 41.38 | -0.6 | 7.8 | 1.80 | 4.4 | 41.75 | 41.38 | 25.6 |
| Lincoln Natl Corp Ind | NYSE | 50.50 | -1.0 | 9.0 | 3.00 | 5.9 | 50.50 | 50.00 | 55.3 |
| Mission Ins Group Inc | NYSE | 35.88 | 0.3 | 8.9 | 1.00 | 2.8 | 35.88 | 35.25 | 60.0 |
| Nationwide Corp Ohio | OTC | 41.75 | 0.6 | 15.3 | 0.70 | 1.7 | 41.75* | 41.75 | 0.0 |
| Northwestern Natl Life Ins | OTC | 36.00 | 0.7 | 25.2 | 1.50 | 4.2 | 36.00* | 35.88 | 18.2 |
| Ohio Cas Corp | OTC | 48.88 | 0.0 | 10.0 | 2.52 | 5.2 | 49.25 | 48.88 | 32.5 |
| Old Rep Intl Corp | OTC | 34.13 | 4.2 | 8.7 | 0.92 | 2.7 | 34.13* | 33.25 | 71.8 |
| Orion Cap Corp | NYSE | 22.25 | -2.7 | 11.8 | 0.66 | 3.0 | 22.88 | 22.25 | 139.6 |
| Preferred Risk Life Ins Co | OTC | 30.25 | -0.8 | 8.2 | 1.00 | 3.3 | 30.50 | 30.25 | 3.3 |
| Provident Life & Acc Ins Co | OTC | 60.50 | 0.0 | 8.4 | 2.60 | 4.3 | 60.50 | 60.50 | 8.7 |
| St Paul Cos Inc | OTC | 68.88 | 0.0 | 7.1 | 2.80 | 4.1 | 69.13 | 68.88 | 104.0 |
| Safeco Corp | OTC | 53.00 | -2.1 | 12.6 | 2.40 | 4.5 | 54.50 | 53.00 | 48.1 |
| Sri Corp | OTC | 45.00 | -3.2 | 9.1 | 1.12 | 2.5 | 47.25 | 45.00 | 39.1 |
| Seibels Bruce Group Inc | OTC | 24.25 | -3.5 | 11.9 | 0.80 | 3.3 | 25.00 | 24.25 | 26.6 |
| Statesman Group Inc | OTC | 7.63 | 0.0 | 5.6 | 0.15 | 2.0 | 7.75 | 7.63 | 30.5 |
| Tokio Marine & Fire Ins Co | OTC | 109.00 | -3.4 | 17.5 | 0.92 | 0.8 | 112.50 | 109.00 | 28.8 |
| Travelers Corp | NYSE | 29.75 | -4.8 | 8.1 | 1.80 | 6.1 | 31.50 | 29.75 | 983.9 |
| United Fire & Cas Co | OTC | 31.75 | 0.8 | 10.4 | 0.88 | 2.8 | 32.00* | 31.50 | 5.4 |
| United States Fid & Gty Co | NYSE | 48.88 | -1.0 | 12.3 | 3.84 | 7.9 | 49.25 | 48.38 | 171.1 |
| United Svcs Life Ins Co | OTC | 20.13 | 0.6 | 6.0 | 1.00 | 5.0 | 20.13 | 20.00 | 4.2 |
| Uslife Corp | NYSE | 25.00 | 3.1 | 6.7 | 0.88 | 3.5 | 25.00* | 24.50 | 124.9 |
| Washington Natl Corp | NYSE | 26.63 | -3.2 | 12.9 | 1.08 | 4.1 | 27.75* | 26.63 | 187.5 |
| Zenith Natl Ins Corp | OTC | 20.25 | 1.2 | 10.1 | 0.80 | 4.0 | 20.50 | 20.25 | 17.3 |
| INSURANCE COMPANIES | AVERAGE | | | 10.3 | | 3.9 | | | |
| **Agents/Brokers** | | | | | | | | | |
| Alexander & Alexander Svcs | NYSE | 21.13 | -3.4 | 0.0 | 1.00 | 4.7 | 21.75 | 21.13 | 226.7 |
| Baldwin & Lyons Inc | OTC | 41.50 | 0.0 | 7.5 | 0.80 | 1.9 | 41.50 | 41.50 | 0.0 |
| Corroon & Black Corp | NYSE | 26.13 | -0.9 | 12.5 | 1.80 | 6.9 | 27.00 | 26.13* | 14.8 |
| Crump E H Cos Inc | OTC | 10.00 | 0.0 | 14.3 | 0.40 | 4.0 | 10.00 | 10.00 | 44.8 |
| Emett & Chandler Cos Inc | OTC | 11.00 | 0.0 | 0.0 | 0.00 | 0.0 | 11.00 | 11.00 | 5.0 |
| Hall Frank B & Co Inc | NYSE | 30.00 | -1.6 | 14.5 | 1.70 | 5.7 | 31.00 | 30.00 | 62.0 |
| Integrated Res Inc | AMEX | 43.75 | -1.4 | 12.1 | 0.00 | 0.0 | 45.88 | 43.38 | 62.3 |
| Marsh & Mclennan Cos Inc | NYSE | 41.50 | 1.5 | 12.4 | 2.20 | 5.3 | 41.75 | 40.88 | 116.6 |
| Poe & Assoc Inc | OTC | 6.75 | 0.0 | 63.1 | 0.40 | 5.9 | 6.75 | 6.75 | 8.2 |
| Reed Stenhouse Cos Ltd | OTC | 15.50 | 1.6 | 14.8 | 0.60 | 3.9 | 15.50 | 15.25 | 1.8 |
| AGENTS/BROKERS | AVERAGE | | | 14.1 | | 3.6 | | | |
| **Conglomerates/Holding Cos.** | | | | | | | | | |
| American Express(Fireman's Fd) | NYSE | 60.88 | -1.6 | 13.4 | 1.80 | 3.0 | 62.75 | 60.88 | 1,184.2 |
| Anderson Clayton(Ranger/PanAm) | NYSE | 32.38 | 8.8 | 13.4 | 1.32 | 4.1 | 32.38* | 29.88 | 84.3 |
| Armco Inc | NYSE | 18.50 | 0.0 | 0.0 | 0.80 | 4.3 | 18.63 | 18.50 | 266.8 |
| City Investing Co. (Home Ins.) | NYSE | 30.75 | -0.4 | 8.4 | 1.80 | 5.9 | 31.13 | 30.75 | 171.0 |
| CNA Finl Corp (CNA) | NYSE | 19.00 | -0.7 | 7.8 | 0.00 | 0.0 | 19.00 | 19.00 | 12.0 |
| Control Data (Comml. Credit) | NYSE | 45.75 | -5.2 | 11.1 | 0.60 | 1.3 | 49.25 | 45.75 | 502.3 |
| General Re Corp | NYSE | 67.25 | -1.8 | 14.4 | 1.28 | 1.9 | 69.25 | 67.25 | 109.6 |
| Gulf Utd.Corp | NYSE | 27.25 | -0.5 | 8.8 | 1.32 | 4.8 | 27.88 | 27.13 | 1,415.1 |
| Cigna Corp | NYSE | 48.13 | 2.4 | 7.2 | 2.48 | 5.2 | 48.13 | 47.75 | 334.0 |
| ITT (Hartford Group) | NYSE | 35.25 | -3.4 | 7.4 | 2.76 | 7.8 | 36.25 | 35.25 | 1,380.2 |
| Optimum Hldg Corp | OTC | 8.88 | 0.0 | 8.5 | 0.00 | 0.0 | 8.88 | 8.88 | 2.4 |
| Sears Roebuck & Co. (Allstate) | NYSE | 34.13 | -3.2 | 13.9 | 1.52 | 4.5 | 36.00 | 34.13 | 1,381.8 |
| Baldwin Utd Corp | NYSE | 15.13 | 1.7 | 2.9 | 0.88 | 5.8 | 15.13 | 11.63* | 3,696.2 |
| Teledyne Inc (Argonaut) | NYSE | 144.00 | -3.5 | 11.4 | 0.00 | 0.0 | 151.25 | 144.00 | 415.4 |
| Transamerica Corp (Occidental & Fred.S. James) | NYSE | 27.75 | -0.9 | 9.7 | 1.50 | 5.4 | 27.88 | 27.75 | 241.7 |
| CONGLOMERATES/HOLDING COS. | AVERAGE | | | 11.2 | | 2.9 | | | |

*Record high/low since Jan. 1, 1983

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# Financial briefs

## Crum & Forster

Underwriting losses more than doubled in 1982 and aftertax operating income declined by one-third at Crum & Forster Inc., the major property/casualty insurer acquired Jan. 11 by Xerox Corp.

Crum & Forster's 1982 aftertax operating income fell 33.3%, to $117.6 million from $176.2 million, while net income fell 34.4% to $115.5 million.

C&F's pretax property/casualty underwriting losses surged to $235.7 million, up 203% from the $77.8 million reported at year-end 1981. That compares with an aggregate 58.0% increase in underwriting losses among 27 insurers charted by *Business Insurance* (*BI*, March 14).

Pretax investment income rose 10.9% to $272.9 million, exceeding the aggregate gain of 9.1% posted by the same 27 companies. Crum & Forster's combined ratio reached 113.2%, up from 104.4% a year earlier and almost two percentage points higher than the aggregate of 111.3% in the *BI* survey.

Revenues for 1982 rose 3.7% to $1.996 billion.

Calling competition "nothing short of ferocious," C&F Chairman and Chief Executive B.P. Russell says in Xerox's annual report there are some scattered signs of easing in the commercial rate war, "but no marked improvement in the situation will probably be evident for another year or so."

Xerox paid $1.6 billion for Crum & Forster in an exchange composed 49% of cash, 27.5% preferred and 23.5% Xerox common stock. In its annual report, Xerox says that the amount exceeded by $917 million the fair value of C&F's net assets on the date of the acquisition.

## E.H. Crump

E.H. Crump Cos. Inc. has declared a regular quarterly dividend of 10 cents per share of common stock, payable April 8 to shareholders of record March 31. ■

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