

business insurance

Reporting weekly for corporate risk, employee benefit and financial executives/\$1.50 a copy; \$52 a year

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Union Carbide reports difficulties finding coverage

DANBURY, Conn.—Union Carbide Corp. says its difficulties in obtaining liability insurance stem in part from the December toxic gas leak at its plant in Bhopal, India.

Carbide said in its 10-K report filed with the Securities and Exchange Commission that it now has lower liability insurance limits than prior to March 1, when the coverage in effect at the time of the disaster expired.

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Treasury rethinks proposal to ban 401(k) programs

By JERRY GEISEL

WASHINGTON—The Treasury Department is thinking twice about its proposal to eliminate 401(k) salary reduction plans.

Last November, in a move that stunned the employee benefit community, the Treasury Department proposed wiping out 401(k) plans as part of its radical plan to simplify the Internal Revenue Code (BI, Dec. 3, 1984).

However, a barrage of criticism from employers, benefit consultants and lobbyists has spurred the Treasury Department to reconsider its earlier decision to press for the elimination of the plans.



"There are a lot of options between current law and an outright repeal," said Harry Conaway, attorney-adviser in the Treasury Department's Office of Tax Legislative Counsel.

"We've received a lot of criticism and met with a lot of people," Mr. Conaway said. "It is fair to say that we are reviewing the provision."

These 401(k) options are being studied as the Treasury reviews its entire tax simplification plan before it sends a revised package to President Reagan next month.

While Mr. Conaway declined to discuss the 401(k) options under consideration by the Treasury Department, *Business Insurance* learned that the options include:

- Drastically reducing the maximum contributions that can be made to the plans. Options include reducing the maximum annual contribution to either \$10,000 or \$5,000. Currently, workers can reduce their pretax salaries by up to \$30,000 a year and shift the amount to a 401(k) plan, where the assets earn interest tax-free.

- Offset or reduce 401(k) contributions by the amount a worker contributed to an Individual Retirement Account.

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Brokers choose partners

Sedgwick-James deal fills both companies' needs

By STACY SHAPIRO
and JUDY GREENWALD

LONDON—The proposed merger of Sedgwick Group P.L.C., the largest Lloyd's of London broker, and Fred S. James & Co. Inc., the fifth-largest U.S. broker, should benefit both companies, company officers and analysts agree.

When the merger with New York-based James is finalized, Sedgwick will finally get the U.S. partner for which it has searched for the past seven years.

And, James, which is currently a subsidiary of San Francisco-based Transamerica Corp., will finally have access to a vast overseas network that it had previously lacked.

The merger of James and Sedgwick will also create a brokerage powerhouse.

How James and Sedgwick compare (Year-end 1984 results; in millions of dollars)



(British pounds converted to U.S. dollars at year-end exchange rate—1 pound = \$1.16 (U.S.); operating income includes exceptional charge.)

Although the two brokerages' combined 1984 revenues of \$578.7 million—based on year-end conversion rates—would trail far behind Marsh & McLennan Cos. Inc.'s \$1.1 billion in revenues, the Sedgwick-James combination would currently rank as the world's second-largest brokerage (see chart).

However, the merged Sedgwick-James would drop to third place if the merger between Alexander & Alexander Services Inc., currently the world's second-largest broker, and

Reed Stenhouse Cos. Ltd., the largest Canadian broker, is completed. Together, A&A and Reed Stenhouse reported calendar-year 1984 revenues of \$802.2 million (see story below).

It was, however, the strategic value of the merger—not the size of the combined entities—that finally enticed Sedgwick to

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A&A merger talks continue, despite '84 net loss

By JUDY GREENWALD

NEW YORK—Alexander & Alexander Services Inc. and Reed Stenhouse Cos. Ltd. are continuing to negotiate details of the proposed merger between the two brokerages, despite A&A's announcement that it posted a \$49.6 million net loss in 1984.

A&A and Reed Stenhouse executives last week denied rumors that the merger talks have been dissolved and said negotiations are continuing, even though A&A announced late last month that both companies may have failed to meet the conditions of the proposed \$345 million merger agreement (BI, April 1).

A&A said last month that it would not meet certain financial conditions of the agreement because of its decision early last month to dispose of underwriting units it acquired in 1982

How A&A and Reed Stenhouse compare (Year-end 1984 results; in millions of dollars)



(Canadian dollars converted to U.S. dollars at year-end exchange rate—\$1 (Canadian)=72.85 cents (U.S.).)

when it bought Lloyd's of London broker Alexander Howden Group P.L.C. (BI, March 11).

The disposal of the underwriting units and the losses sustained by the units led to the year-end net loss at A&A.

A&A did not specify how Reed Stenhouse may not have met certain conditions of the agreement, and a Reed Stenhouse official last week said that the Toronto-based brokerage did not believe it had failed to meet any of the merger conditions.

The acquisition of Reed Stenhouse would solidify A&A's position as the world's second-largest insurance brokerage in terms of gross revenues behind Marsh & McLennan Cos. Inc.

A&A and Reed Stenhouse reported combined gross revenues in calendar 1984 of \$802.1 million (see chart), compared with

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MGM calls coverage settlement a victory

By STEPHEN TARNOFF

LAS VEGAS, Nev.—MGM Grand Hotels Inc. is claiming victory after accepting a \$75.9 million settlement of litigation over the \$170 million in back-dated liability insurance it bought to cover claims from the 1980 fire at MGM's Las Vegas hotel.

The \$75.9 million settlement—signed by MGM, Frank B. Hall & Co. Inc., which brokered the back-dated coverage, and more than 30 insurers that had written the coverage—exceeds the \$75 million MGM paid to fire victims under a January 1983 settlement.

However, the insurance settlement falls short of covering all of MGM's costs stem-

ing from the fire litigation.

"It's an absolute victory," proclaimed Patricia Glaser, an MGM attorney with the Los Angeles firm of Wyman, Butzer, Rothman, Kuchel & Silbert.

"You can't shake a stick at \$76 million," she said. "It's a tremendous influx of cash."

"It was a good settlement for MGM based upon business considerations," said William Shernoff, MGM's trial attorney with the Claremont, Calif., firm of Shernoff & Levine.

Including the settlement, MGM will receive a total payout of \$87.5 million from its retroactive insurers and insurers for a contractor that was doing work at the hotel at

the time of the fire, according to Ms. Glaser.

Besides the \$75.9 million MGM will receive under the settlement, Ms. Glaser noted that the company already has collected \$11.5 million for defense costs from Union International Insurance Co., a Hall unit that wrote the first \$35 million layer of retroactive coverage.

In addition, MGM has collected the \$30 million in underlying liability coverage the company had at the time of the 1980 fire, boosting the company's total recovery from its liability insurers to \$117.5 million.

MGM has paid out a total of \$106 million to fire victims. The company had settled 2,200 other cases before the \$75 million settlement

with victims was made.

MGM would not say how much it has paid out in defense costs and other expenses related to the litigation. An attorney for Hall said last week that MGM has paid more than \$14 million in legal costs to defend claims from fire victims.

By agreeing to the \$76 million settlement last week, MGM settled for less than the more than \$100 million in compensatory damages it had sought in its lawsuit against Hall and the insurers.

In agreeing to the settlement, MGM attorneys said the company gave up some claims against the insurers and Hall for interest it

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Carbide's liability limits lower

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In addition, at least three insurers that formerly wrote liability coverage for Union Carbide are no longer on the risk, *Business Insurance* has learned.

Union Carbide officials declined to comment on how much liability insurance the company has purchased to date or any other details of its new coverage.

At the time of the Bhopal accident, Union Carbide had at least \$200 million in liability coverage (*BI*, Dec. 24-31, 1984). The company is facing billions of dollars in claims as a result of the Bhopal disaster.

"In part because of the accident in Bhopal, India, chemical companies, including Union Carbide, have had difficulty renewing their public liability insurance for the same coverage that had been in effect," Union Carbide explained in the statement filed with the SEC.

"On March 19, 1985, Union Carbide renewed its personal injury and property damage insurance and now has substantially less of such insurance with broader exclusions and a substantially larger deductible than in 1984. Union Carbide is continuing to seek additional coverage," according to the statement.

SEC regulations do not specifically require companies that must file with the commission to disclose insurance information. However, regulations do stipulate that companies must include information that would materially affect their financial health, an SEC spokeswoman explains.

The information concerning the company's liability insurance was included because "the law department felt it was necessary," according to a Union Carbide official.

Business Insurance learned that at least three insurers that had previously written liability insurance for Union Carbide are no longer on the risk. They include American International Group Inc., and, as previously reported, Transit Casualty Co. and American Centennial Insurance Co. (*BI*, March 11).

AIG, through its American International Underwriters unit, wrote \$15 million of coverage for Union Carbide on three layers above \$73 million.

According to AIU Vp Joseph Graziano, AIG did quote renewal terms on the coverage to Union Carbide. However, Union Carbide has not said whether it will accept the new terms. Mr. Graziano would not discuss the new terms AIU offered Union Carbide, except to say that liability coverage for all chemical risks costs more and includes more restrictions than it did in the past.

"Our terms and conditions basically are reflective of the hazards we see in the aftermath of Bhopal," Mr. Graziano explained.

Los Angeles-based Transit Casualty had provided Union Carbide with \$15 million in capacity in two separate excess layers through National Underwriting Agency in Chicago.

The insurer decided earlier this year to stop accepting all business written by MGAs, including National Underwriting Agency (*BI*, Jan. 28).

American Centennial had a \$5 million participation on one excess layer of Union Carbide's previous program. The insurer canceled the MGA contract of the company that produced the Union Carbide business and is no longer participating, according to American Centennial Vp Jack E. Helms.

CIGNA Worldwide head resigns

PHILADELPHIA—David W. Schrempf has resigned as president of CIGNA Worldwide Inc. to "accept a position with another company," CIGNA has announced.

Mr. Schrempf said he will leave April 12 to head up the property/casualty operations of a California-based insurer, which he would not name. He will not be involved in international insurance in the new job, he said.

Mr. Schrempf said the change represents a "tremendous opportunity" for him and eliminates an "extremely difficult travel burden" associated with his position at CIGNA Worldwide, the international arm of CIGNA Corp. formed after CIGNA's acquisition of AFIA Worldwide Insurance last year.

Bruce K. Howson, senior vp in charge of the European operations of CIGNA Worldwide, will replace Mr. Schrempf as president.

Home stock to be distributed

NEW YORK—City Investing Co. plans to distribute all the common stock of its Home Group Inc. subsidiary to its stockholders, according to a company spokesman.

The move means that The Home Group will be traded on the stock market, although it has not yet been decided on which exchange, said the spokesman.

The decision to distribute The Home Group common stock came as part of the plan to liquidate City Investing (*BI*, Dec. 17, 1984).

City Investing had previously said it would try to sell The Home. In August, Tamco Enterprises Inc. and IMB Capital Ltd. offered to

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Officials oppose reducing pollution liability standards

By JERRY GEISEL

WASHINGTON—The Reagan administration is turning a deaf ear to insurance industry pleas to change the federal Superfund law to lessen the hazardous-waste liability exposure of employers and insurers.

Officials from the Justice Department and the Environmental Protection Agency told a Senate committee last week they oppose a move to specifically eliminate joint and several liability standards for employers that dispose of hazardous waste.

Under joint and several liability, an employer can be held responsible for damages caused by any one or all other companies disposing of waste at a particular site.

Assistant Attorney General Henry Habicht II told the Senate Environment and Public Works Committee that joint and several liability provides an "incentive" to employers to quickly settle when the government seeks compensation for the cleanup of hazardous-waste sites.

However, insurer representatives who testified at the April 3 hearing said Congress must close liability loopholes opened by courts in recent years or pollution risks will become uninsurable.

The 5-year-old Superfund statute, which established a \$1.6 billion fund to clean up the nation's abandoned hazardous-waste dumps, expires this year. Measures to extend the law are pending in both the House and the Senate.

The Superfund law does not specifically call for joint and several liability, and neither the Reagan administration's recently released Superfund reauthorization proposal nor a reauthorization measure passed last month by the Senate Environment Committee include joint and several liability provisions (*BI*, March 4).

Congress did not intend to impose joint and several liability when it enacted the Superfund law, noted Sen. Pete Domenici, R-N.M., a committee member.

But many courts, with Justice Department backing, have been interpreting the law to require joint and several liability, says George K. Bernstein, a Washington attorney representing the American Insurance Assn., an industry trade group.

This expansion of liability threatens the solvency of insurers, Mr. Bernstein said.

"I submit that by the end of the summer there will be no pollution insurance written," said Mr. Bernstein.

"No one can write insurance under a system which can arbitrarily assign massive liabilities to parties who may have no control over the loss-producing events," William O. Bailey, president of Aetna Life & Casualty Co., said in a statement submitted to the committee.

However, the Justice Department's Mr. Habicht argues that if the government had to calculate each employer's share of the cost of cleaning up a waste site, it might have to deal with hundreds of employers on just one case.

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RIMS kickoff gala to recognize donations to Spencer Foundation

NEW YORK—Contributions to the Robert S. Spencer Memorial Foundation Inc., established to provide scholarships for outstanding students of risk management and insurance, total more than \$41,000 so far during 1985.

The foundation is affiliated with the Risk & Insurance Management Society.

The contributors will be recognized at an April 14 reception in New Orleans to benefit the foundation. The reception kicks off the 1985 RIMS conference, entitled "In '85 Strive for Excellence."

The companies and individuals that have donated to the Spencer Foundation this year include:

- Sponsors, which contributed \$5,000 or more: The Atlanta Chapter of RIMS; Marsh & McLennan Cos. Inc.; American International Group Inc.; and *Business Insurance*.

- Donors, which contributed \$2,500 to \$4,999: Johnson & Higgins; The Hartford Steam Boiler Inspection & Insurance Co.; Liberty Mutual Insurance Co.; Reed Stenhouse Inc.; and GAB Business Services Inc.

- Benefactors, which are non-profit organizations contributing \$1,000 or more: The Chicago Chapter of RIMS and the Los Angeles Chapter of RIMS.

- Friends, who are individuals who contributed \$100 or more: P. Richard Hackenburg, James F. Hughes, Ron Judd, James C. Newton, James W. Smirles, Anita Benedetti and Michael B. Maliavsky.

Other contributors are National Loss Control Service Corp.; Crawford & Co.; Corroon & Black Corp., the Indiana Chapter of RIMS, Ashford Holding Corp. and the New Jersey Chapter of RIMS.

In addition, the Atlanta, Cleveland-Akron, Florida, Minnesota, New York and Northeastern Illinois chapters of RIMS are participating

in a matching funds scholarship program, in which the foundation matches the interest earned on contributions made by RIMS chapters. The individual chapters can then use the money, including the funds contributed by the foundation, for chapter-sponsored scholarships.

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Armco units to get \$133 million

By STEVE TARAVELLA

MIDDLETOWN, Ohio—Armco Inc. is awaiting regulatory approval of its plan to inject more than \$133 million in cash and other assets into two of its insurance subsidiaries "to resolve certain capital deficiencies."

The companies that will receive the funds are Universal Reinsurance Corp. of Holland Township, N.J., whose business is now being run off, and Northwestern National Insurance Co. of Milwaukee, which is for sale.

Armco Inc. declined to discuss the specifics of the financial transaction, but according to the California Insurance Department, the transaction will infuse about \$133.4 million into Universal Re and Northwestern National. The California department is one of five departments that must approve the transaction.

According to the California department, Armco Inc. will inject \$66 million into Universal Re and will give \$10 million to Northwestern National by retiring an unsecured note.

It also will transfer to Northwestern National the ownership of Continental Western Insurance Co. in Urbandale, Iowa; Pacific National Insurance Co. in Fullerton, Calif.; Oregon Automobile Insurance Co. in Portland, Ore.; and their subsidiaries. These companies, which have combined assets of about \$56.4 million, will become wholly owned subsidiaries of Northwestern National, according to the California department.

In addition, the department says, Northwestern National will assume the liabilities it previously had ceded to Armco's Compass Insurance Co. of New York, making Compass a wholly owned subsidiary of Northwest-

ern National as well. Compass has not accepted new business and has been running off its existing business since July 1, 1984, according to a spokesman for Armco Insurance Group in Milwaukee.

Finally, ownership of Armco's Talbot, Bird & Co. Inc., a New York-based marine insurance manager, also will be transferred to Northwestern National, resulting in an additional \$1 million contribution, according to the California department.

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Seguine joins BI/Chicago staff



Ms. Seguine

CHICAGO—Holly E. Seguine, 28, has joined the Chicago staff of *Business Insurance* as graphics editor, announced Editor Kathryn J. McIntyre.

Ms. Seguine had been a managing editor of various Pioneer Press newspapers since 1981, most recently of the Northbrook Star in Northbrook, Ill. Previously, she was a staff writer and sports reporter at Pioneer Press, a group of suburban Chicago newspapers headquartered in Wilmette, Ill.

She received a B.A. in journalism from the University of Wisconsin at Madison in 1978.

Ms. Seguine can be contacted at 312-649-5277.

AFL-CIO comp panel worries employers

By CAROL CAIN

A recently created labor foundation is adding to employers' and insurers' worries about assaults on state workers compensation laws.

The Occupational Health Legal Rights Foundation, formed by a unit of the AFL-CIO, "could be the beginning of the undermining of the workers compensation system," one workers compensation insurer says.

Employers are just discovering the fledgling foundation, which began operating in January. It was chartered in September by the Industrial Union Department, an association of unions within the AFL-CIO that provides special services to its members.

The purposes of the foundation are:

- To ensure that workers get adequate compensation when they suffer from illness caused by workplace hazards.

- To educate workers about the existence of such hazards and steps they may take to safeguard their health and legal rights.

- To exert pressure on employers to eliminate or ameliorate such workplace hazards.

According to the prospectus for the foundation, the primary impetus for its creation is "the fundamental failure of state workers compensation programs to provide fair and

'The insurance industry has said we're creating this just to harass them. . . .(But) the purpose was to create a permanent structure that is necessitated by the political reality that no serious reform of the workers compensation system will be coming in the future,' says Mr. Samuels of the AFL-CIO.

adequate relief to workers who have suffered illness as a result of exposure to workplace health hazards."

"The insurance industry has said we're creating this just to harass them. . . .(But) the purpose was to create a permanent structure that is necessitated by the political reality that no serious reform of the workers compensation system will be coming in the future," said Sheldon W. Samuels, acting administrator for the foundation. Mr. Samuels also is director of health, safety and environment for the Industrial Union Department.

Although the creation of the foundation was mentioned publicly for the first time last summer at the International Conference on Disability Compensation for Occupational Disease in New York, its roots really go back to the 1972 recommendations of the National

Commission on State Workmen's Compensation Laws. The report was critical of workers comp laws in several states and made 19 recommendations to improve the individual state systems.

"At that point we predicted, and history has shown, . . . states would not respond," Mr. Samuels said.

"So we said we will pull together and assume there is no workers compensation system. . . .that we would go back to the courts. . . .that we've given up the battle and will let the insurance industry have the system," Mr. Samuels said.

But, employers share organized labor's view that the no-fault aspects of the system don't work.

"Workers compensation is intended to be a worker's sole remedy against his or her em-

ployer for injury or death connected with the workplace," states a recent report to the board of directors of the U.S. Chamber of Commerce from its Council on Workers' Compensation.

However, the report enumerates the rising number of lawsuits against third parties and co-workers for negligence, intentional injury, dual capacity and loss of consortium. These types of legal activities are eroding the exclusive-remedy doctrine of the system, the report notes.

"Heightening employer concerns further is the establishment by the AFL-CIO of a legal foundation to coordinate concerted attacks on the exclusivity doctrine. Organized labor supports invoking the doctrine only in cases where the injured worker is at fault," the report says.

"One of the purposes of the workers compensation system is to remove friction between labor and management. . . .not go to court," said Eric Oxfeld, manager of health care and employee benefits for the U.S. Chamber of Commerce.

"We believe (the creation of the foundation) flies in the face of the need for labor-management cooperation necessary to maintain the competitiveness of business in the

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Going for the gold

Risk manager wins computer captive contest

By KATHRYN J. MCINTYRE

Ray Olsen says he wouldn't run any company's captive insurance company the way he ran his computer-created captive "Riskibusiness."

But, the risk manager for Emhart Corp. in Farmington, Conn., treasures the bottle of Bermuda Gold liqueur he won for mastering a computer model that simulates the operation of a captive insurance company.

Mr. Olsen was one of dozens of risk managers, captive managers and consultants to tackle "CapSim II," at the Ninth International Captive Insurance and Reinsurance Forum sponsored in Bermuda last month by Risk Planning Group, a division of Tillinghast, Nelson & Warren Inc.

The computer model requires the user to make all the kinds of decisions that are involved in running a captive insurance company: How much capital is needed, what kinds of parent risks the captive should insure and to what limits, what type and how much reinsurance the captive should buy and whether the captive should write any unrelated risk business.

The object of the computer game is to create the right conditions to produce the lowest cost of risk for the parent company per \$100 of sales.

But, as in a risk manager's real life, there are uncontrollable factors: losses.

The computer randomly assigns different loss histories to the parent company's business and any unrelated business, and sometimes a few huge losses.

As a result, the same captive profile will produce different results, depending upon the luck of the draw.

Mr. Olsen played the game straight the first time and produced a fairly respectable cost of risk of \$2.30.

But, when the competition churned out lower costs, Mr. Olsen became aggressive.

"I took big retentions, bought very little reinsurance and wrote lots of third-party business," Mr. Olsen boasts.

With those strategies, he got the cost of risk down to \$1.53 per \$100 of sales and captured the Bermuda Gold awarded by Risk Planning Group.

Mr. Olsen grants that his winning strategies "boiled down to a crap shoot. Either I was going to make it big or get killed."

Although he admits he would never manage a corporate captive the way he ran "Riskibusiness," Mr. Olsen says he learned something from playing the game.

"What I really got out of it was the effect of different decisions," he says.

That's what Tillinghast had in mind when it created the game, says David Mohrman, a staff assistant in the Hartford office of Tillinghast who helped build the model last year with two Tillinghast consulting actuaries, David Whiting in Bermuda and Steve Lowe in Hartford.

"It's simpler than the real world," Mr. Mohrman



Photo: Kathryn J. McIntyre

Ray Olsen shows off the Bermuda Gold he won for mastering a computer simulation of a captive.

says of the model.

"But you can learn about the effect of decisions, like not buying enough reinsurance or over-capitalizing your company," he adds.

Risk managers attending the Risk & Insurance Management Society conference in New Orleans next week will be able to try their skill—and luck—at "CapSim II." Four terminals will be available at the Tillinghast booth in the Rivergate Exhibition Center.

A respectable cost of risk using "CapSim II," by the way, is about \$2.20, Mr. Whiting says.

Both Mr. Whiting and Mr. Mohrman advise against using Mr. Olsen's strategy when playing the game.

"A lot of people won't get away with that," Mr. Whiting warns. "The chances are you'll get hit with a large loss, and without reinsurance it will be costly."

\$615 million reserve set for Dalkon Shield claims

By MEG FLETCHER

RICHMOND, Va.—A.H. Robins Co. is establishing a \$615 million reserve to pay claims from women who were injured by the Dalkon Shield, an intrauterine birth control device formerly manufactured by Robins.

In addition, Robins said last week it had agreed to pay \$6.9 million to settle a related lawsuit by shareholders.

"I think it is the biggest reserve ever set up" to pay product liability claims, commented Calvert Cray, a litigation analyst with Bear, Stearns & Co., a securities firm in New York. Robins' exposure to product liability claims may be second only to that of the estimated \$2 billion exposure of asbestos manufacturer Manville Corp.

Manville is currently in rehabilitation under Chapter 11 of the Federal Bankruptcy Act.

Robins said last week that it was forced to establish the reserve because \$405 million in liability insurance coverage available to pay Dalkon Shield claims is running out.

Robins says it had about \$70 million in insurance remaining at the end of 1984.

Aetna Casualty & Surety Co., Robins' primary and excess comprehensive general liability insurer from 1968 to 1978, last year agreed to pay Robins about \$70 million to end a five-year coverage dispute (BI, Nov. 26, 1984). In return, the agreement stipulated that all defense costs would be paid from within Robins' coverage limits.

As of Dec. 31, Robins and Aetna had paid out \$314.6 million to settle 8,300 claims from users in the United States, Robins said. That amount includes legal fees pertaining to settled cases, but not fees incurred in connection with 3,800 pending claims.

However, the reserve does not provide for any claims from Dalkon Shield lawsuits filed abroad or any punitive damages—which Robins says are uninsurable—because there is no substantive basis to quantify such exposures, the company says.

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Asbestos removal company gets cover, but at higher price

By ROBERT A. FINLAYSON

EAST HARTFORD, Conn.—Acmat Corp., one of the nation's largest asbestos removal contractors, will swallow a hefty premium increase in order to replace its canceled liability insurance coverage.

Three insurers will provide Acmat with \$6 million in general liability coverage, although the coverage has only a \$1 million limit for asbestos-related claims, says Frank Craemer, president of Amins Insurance Inc. of East Hartford, Acmat's agent.

In addition, Acmat has also purchased automobile liability and workers compensation coverage from two other insurers, he says.

Acmat was forced to find new coverage after its previous coverage was canceled by CIGNA Corp., effective April 1. The coverage was canceled, according to Acmat, because of Acmat's potential exposure to asbestos-related lawsuits (BI, March 25).

The CIGNA coverage included general liability, automobile liability, workers compensation, umbrella liability, installation floater, property and equipment coverages. Acmat last week was still trying to place the property, equipment and installation floater coverages, he said.

The new coverage purchased by Acmat will cost the company a total of \$6 million to \$7 million, according to Acmat President Henry W. Nozko Sr. The actual premium will be based on the company's receipts, he says.

Mr. Craemer previously reported that Acmat had paid \$1.5 million to CIGNA for the primary liability, umbrella liability and workers compensation policies.

Acmat's increased insurance bill is "hurtful, but at least we're in

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Administration opposes easing pollution liability

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Joint and several liability "provides incentives to parties to work together" to decide among themselves how they will contribute to a settlement, he said.

The parties realize "the government has the potential to sue us all," a powerful motive for employers to contribute to the cleanup of a toxic-waste site before litigation begins, added Gene Lucero, director of the EPA's Office of Waste Programs Enforcement.

Last year, efforts by employers and their insurers were largely responsible for the House deleting part of a Superfund reauthorization bill that would have established joint and several liability (BI, Aug. 20, 1984).

The House subsequently passed a

Sen. George Mitchell, D-Maine, said it was unfair to single out the Superfund law as the sole cause of the insurance industry's financial problems, adding that the industry also is losing money on many other lines of coverage.

Superfund reauthorization bill after eliminating the joint and several liability provision, but the bill died in the Senate.

Insurers have pointed out that such broad interpretations of liability make underwriting pollution risks nearly impossible, because the insurer cannot know about or control the actions of firms with which it does not have a contract.

Also, they say, insurers did not price their coverage to allow for such broad liability, and the losses they have had to pay are forcing many insurers out of the pollution market and even threaten the survival of some insurers.

As a sign of the industry's reluctance to write pollution risks, the Insurance Services Offices proposed commercial general liability

forms would exclude virtually all coverage for pollution risks. The current CGL form includes coverage for "sudden and accidental" pollution, but excludes "gradual and non-sudden" pollution.

Mr. Bernstein said at last week's hearing that if the Superfund law is not overhauled to limit employers' and insurers' liability, "real solvency problems loom ahead" for the insurance industry.

But, committee member Sen. George Mitchell, D-Maine said it was unfair to single out the Superfund law as the sole cause of the insurance industry's financial problems, adding that the industry also is losing money on many other lines of coverage.

Employers who testified at the hearing agreed with Mr. Bernstein

that the pollution insurance market is crumbling, particularly for non-sudden pollution incidents.

However, one trade group offered a suggestion for another way companies could protect themselves from a shortage of pollution insurance.

The Hazardous Waste Treatment Council, headquartered in Washington, told the committee that the Risk Retention Act should be expanded so that companies could set up captives to cover pollution risks.

Currently, the Risk Retention Act allows companies to set up captives—with minimal interference from state regulators—to cover their product liability exposures.

"When Congress found in 1981 that companies could not obtain product liability insurance, it enacted" the Risk Retention Act, said Stephen Zimmer, who spoke on behalf of the council.

"Today, companies cannot obtain pollution liability insurance and Congress, should, therefore, extend the RRA to allow coverage of these risks," said Mr. Zimmer, who also is vp-finance and administration at Systech Corp., an operator of incinerators in three states.

Shareholder suit includes Mission officers

LOS ANGELES—American Financial Corp. and 10 of Mission Insurance Group Inc.'s present and former directors and officers are being sued over last month's \$75 million transaction intended to put Mission on firmer financial ground.

The suit charges the officials with gross breach of fiduciary duty, corporate waste, mismanagement and "lack of due care" in approving the transaction, in which AFC, Mission's major shareholder, provided the Los Angeles-based company with \$75 million (BI, March 18).

The suit also alleges that the transaction constituted "improper diversion" of Mission's assets.

Mission declined to comment on both the shareholder suit and its directors and officers liability insurance.

William Steiner, a Mission shareholder, filed the stockholder's derivative action March 27 in Los Angeles County Superior Court, which charges that the transaction "constitutes a waste and misuse of Mission's assets" and "is intended for the sole benefit of Mission's principal shareholder, AFC."

Cincinnati-based AFC now owns 49.9% of Mission but could increase that amount to 91%, according to terms of the transaction.

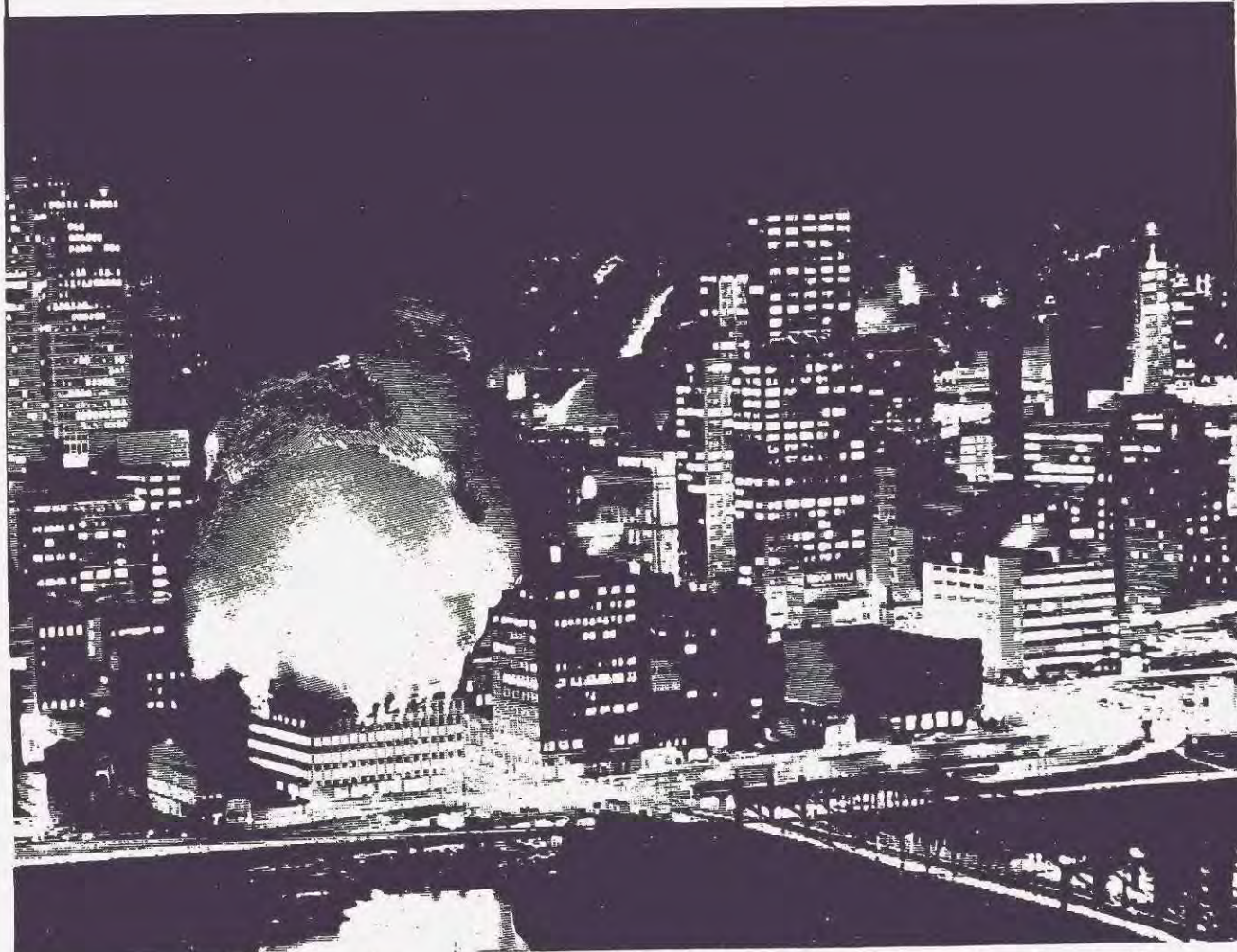
According to the suit, the 10 individual defendants own about 51% of outstanding Mission stock.

Mr. Steiner's suit charges that the financial transaction was "perpetrated solely to benefit Mission's principal shareholder and the personal interests of the officers and directors of Mission."

Because some Mission directors also hold key positions at AFC, and because of generous salaries, bonuses, fees and other benefits the directors received from Mission, the men were "unable to exercise independent judgment regarding the transaction with AFC," the suit alleges.

Mr. Steiner is asking for an explanation of all benefits that Mission directors might have received from the transaction and for the court to determine any damages the directors may have caused to stockholders. He also seeks reimbursement for his legal expenses.

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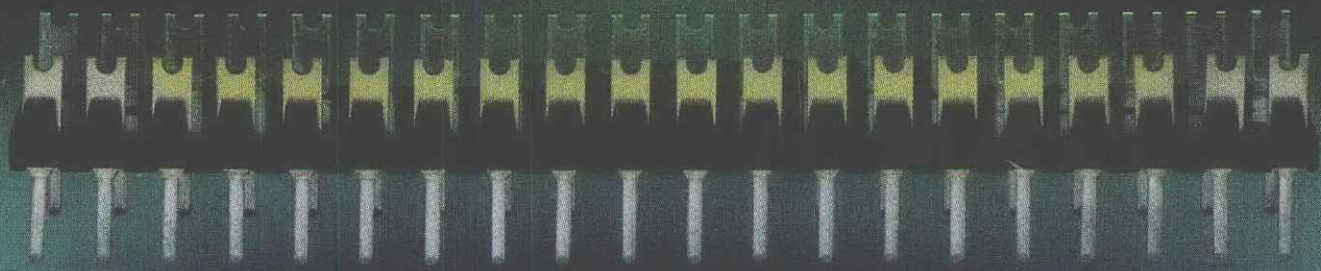


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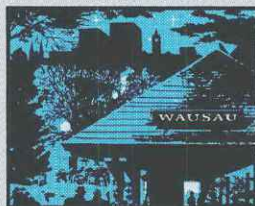
earned them our workers compensation coverage in 1981. We looked at this initial program as a 'test.'

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opinions

We'll take half a loaf of 401(k)s

IF HALF A LOAF is better than none, then the Treasury Department's decision to review its proposal to eliminate 401(k) salary reduction plans should be welcomed by employers (see story, page 1).

Employers, labor unions and benefit consultants were aghast when the Treasury late last year proposed wiping out 401(k) plans as part of its tax simplification proposal. Through lobbying efforts by some of these groups, the Treasury is now taking a welcome second look at 401(k) plans. It may yet allow this retirement savings vehicle—which has become one of the most popular benefits offered by employers—to continue, albeit with some drastic changes.

Although most employers would prefer that no changes be made to Section 401(k) of the Internal Revenue Code, the portion of the tax law that authorizes salary reduction plans, we believe portions of the 401(k) proposal currently under consideration by the Treasury Department are tolerable.

For example, we could tolerate reducing the \$30,000 maximum amount an employee can defer to a 401(k) plan—and thus excluding it from his or her taxable income. However, the maximum allowed deferral should be large enough so that a meaningful amount can be saved for retirement.

Likewise, the proposal to reduce the amount that could be contributed to a 401(k) plan by the amount the employee contributes to a separate Individual Retirement Account is also tolerable.

However, we do oppose some of the options being considered by the Treasury Department. For instance, we do not believe that the so-called "hardship withdrawal" and loan provisions of Section 401(k) should be abolished. A recent survey by benefit consultant



Hewitt Associates proved that 401(k) plans that included a loan or a hardship withdrawal feature generated a higher rate of employee participation than plans that did not include these features (BI, March 25). Employees will be more likely to contribute if they know they can withdraw the funds—paying any taxes that are due on the withdrawal—if they find they need the money because of a "hardship," like paying high medical bills or a financing a child's education.

And encouraging employees to save for their retirement is the biggest benefit of 401(k) plans, for both employees and employers.

letters

APPWP urges employers to fight benefit taxation

To the editor: Your editorial, "31% is not enough," (BI, March 25) has touched a nerve in the benefits community generally and in the leadership of the developing benefits coalition specifically. I couldn't agree more with the sentiment: "This battle requires the support of all employers, not just 31%."

As the Assn. of Private Pension & Welfare Plans' executive director, I know all too well that there is a serious risk of complacency and even reluctance by many employers to get actively involved in the current debate on taxation of employee benefits. Recent legislative assaults on benefits in the Congress have taught us too well that employers and other advocates of employee benefits need to be energized and catalyzed.

The APPWP has taken significant steps to develop the necessary coalition to bat-

tle the coming assault on benefits. Through the successful grass-roots program, our network of state and regional chairmen have conducted effective one-on-one educational meetings with senators and representatives in their home states and districts. We bring together major employers and congressional representatives to discuss the salient issues involved in tampering with America's comprehensive private employee security benefits system. Just recently, 14 major employers in the Houston area, representing more than 200,000 local employees—and constituents—met with Rep. Bill Archer, R-Texas, to bring these issues home to this powerful member of the House Ways and Means Committee.

In addition, we have joined with the ERISA Industry Committee (ERIC) to launch a nationwide public affairs initia-

tive designed to assist employers in alerting their employees on proposed changes in their benefit programs and to encourage employees to communicate their concerns to Congress.

The most effective way of reaching members of Congress is through their constituents. It is estimated that more than 100 million Americans would be negatively affected by proposed legislative changes in their benefits. If catalyzed, 100 million voices can make a lot of noise. We think they'll be heard.

As your editorial concluded, it's not too late for employers to join the fight to save the tax-preferred status of employee benefits. I think they will join the fight.

Stuart J. Brahs
Executive Director
Assn. of Private Pension & Welfare Plans
Washington

U.S. should cut spending, not tax benefits

To the editor: The use of the term "tax subsidy" in the Perspective section on the "Benefit Tax Debate" (BI, March 18) really annoys me.

The use of this term assumes the government is in the business of allocating our income, and anything we have left over is ours, but it's theirs to decide how it's allocated.

I resent the use of these words. They are far too freely strewn around by economists and academics who think they know better than anybody else how peo-

ple's income should be used.

The one good point made in the articles is that something should be done for uninsured people, as this certainly is a serious situation.

The cost of tax-free employee benefits ranging from 35% to 40% of wages is overstated. That figure includes Social Security, vacation, holidays (that are taxable), and coffee cups. When you really come down to it, tax-free benefits probably cost less than 10% of wages. I don't think it could stand taxing.

Why doesn't the federal government get its costs under control, instead of desperately casting here and there for areas that have never been taxed before. The problem isn't the revenue side of the budget, which is going up every year, but the spending side, which is going up faster than the revenue side.

J.E. Louer
Corporate Risk Manager
Perkin-Elmer Corp.
Norwalk, Conn.

Claims audits yield big savings for plan

To the editor: As administrators of the New York State Government Employees' Health Insurance Program, covering nearly 500,000 state and local government employees, we can confirm the value of claims processing audits as discussed by Richard H. Wille (BI, Feb. 25).

Beginning in 1983, we expanded our audit staff capabilities to examine the claims processing performance of our insurers both on a retrospective basis and through the development of an ongoing quality control program. In both cases, our review has included coordination of benefits, administration of special cost-containment provisions (such as mandatory second surgical opinions and outpatient diagnostic testing/ambulatory surgery incentives), as well as reasonable and customary limitations in assessing overall claims processing performance. In the case of our major medical insurer, claims processing performance is measured

Continued on page 8

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letters

Continued from page 6
against an acceptable error rate, which provides financial incentives for superior performance and penalties for unsatisfactory performance.

When frequent errors or system deficiencies have been found, we've notified insurer management and provided recommendations for improvement. Our insurers are required to identify actions they have taken or intend to take to prevent future occurrences. Our audit staff also follows up.

To date, our retrospective audits have resulted in recoveries totaling \$4.7 million.

In addition, quality control reviews of our major medical insurer have documented a steady improvement in claim processing accuracy.

We are confident that our quality

control activities and retrospective audits will continue to produce improvements in the future claims processing performance of our insurers.

Karen S. Burstein
Commissioner
Ronald Rich

Director of Employee Benefits
New York State Department
of Civil Service
Albany, N.Y.

HMOs must police their costs, services

To the editor: Letters from Ann M. Smith (BI, Feb. 18) and Eileen H. Wilson (BI, March 4) hit on important issues on how to reduce health care costs through benefits design and lifestyle changes by consumers of health care.

However, both writers have skirted even more important issues—physician fees, the cost of hospital services, unnecessary testing and medical politics.

The best-conceived benefits design and the largest and most encompassing preventive health care programs developed in a health maintenance organization delivery system are not enough. Unless HMOs police their costs and services, unless physicians become more cost conscious, unless physicians and hospitals understand the importance of providing quality care at less cost (by the elimination of unnecessary tests, surgical procedures, etc.) and unless everyone understands that "politics" has no place in providing quality health care, the cost of health care will continue to rise at the expense of the consumer—234 million Americans!

HMOs are playing a major role in our health care system. They are vulnerable to abuses by many professionals. It's time that HMOs begin policing themselves. If they don't start soon, this effective delivery system will fall to the greedy at the expense of the consumer. Some may have already taken a step in that direction.

Peter A. Kirsch
Falls Church, Va.

Reader blows smoke on smoking-ban idea

To the editor: Jan. 28 letter from W.R. Dagneau blows smoke of his own when he suggests a key to controlling rising health care costs is to ban smoking in the workplace.

Most serious students of the issue recognize the real "symptoms": increased public demand for better health care services; physician and hospital fees that have been rising much faster than the rate of inflation; use of expensive new technology; and the growing threat of malpractice, which has led to the ordering of additional patient testing and more expensive insurance coverage for physicians and hospitals.

These costs, of course, are passed on to the consuming public. Mr. Dagneau cites no study demonstrating that the average smoker incurs more medical expenditures over life than the average non-smoker. Studies conducted in the past year have demonstrated that total bans on smoking in the workplace have the potential to reduce productivity and adversely affect employee morale. And according to the February 1985 issue of Consumer Reports, ambient tobacco smoke has not been demonstrated to cause disease in non-smokers.

C'mon, let's not divert attention from decisions that must be made to control rising health care costs.

William D. Toohey
Director of Media Relations
The Tobacco Institute
Washington

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Spencer fund gifts top \$41,000

Continued from page 2

In 1984, more than \$80,000 was raised for the foundation.

The Robert S. Spencer Memorial Foundation was established in 1979 by the Atlanta Chapter of RIMS in memory of Mr. Spencer, who was president of RIMS in 1977. Mr. Spencer, who died in 1979, also was risk manager at Fuqua Industries Inc. in Atlanta.

In addition, nominees have been selected for the foundation's 1985 board of directors. The nominees are:

- Norman A. Baglini, senior vp and dean of the American Institute for Property & Liability Underwriters and the Insurance Institute of America in Malvern, Pa.

- Arthur P. Bostwick, risk manager at Stone Container Corp. in Chicago.

- Donald T. Browne, group vp and manager of the insurance division at First Atlanta Corp. in Atlanta.

- James V. Davis, chairman of the Advanced Risk Management Services Division of Corroon & Black Corp. in Nashville, Tenn.

- Paul K. Dougherty, senior vp of GAB Business Services Inc. in Parsippany, N.J.

- Russell A. Drake Jr., director of risk management at Borden Inc. in Columbus, Ohio.

- Rita P. Garcia, director of risk management at Castle & Cooke Inc. in San Francisco.

- Michael F. Grace, risk manager of the United Bank of Colorado in Denver.

- H. Felix Kloman, principal and advisory director of Tillinghast, Nelson & Warren Inc. and former president of Risk Planning Group in Darien, Conn.

- Alfred Malecki, publisher of *Business Insurance* in New York.

- Pamela J. Newman, managing director of Marsh & McLennan Inc. in New York.

- James C. Newton Jr. of Fuqua Industries in Atlanta.

- John Penick of Crawford & Co. in Atlanta.

- Scott Rich, director of corporate insurance and cash management at Flowers Industries Inc. in Thomasville, Ga.

- George H. Shattuck Jr., senior vp and director of Johnson & Higgins in New York.

- James W. Smirles, manager of national broker relations at the Kemper Group in Long Grove, Ill.

- Dick Smith, director of risk management at Cedars Sinai Medical Center in Los Angeles.

- Howard T. Weber, director of insurance at 3M Co. in St. Paul, Minn.

- Anne M. Zug, assistant risk manager at General Foods Corp. in White Plains, N.Y.

The board nominees will serve from the foundation's annual board meeting April 16 until the April 1986 meeting.

The foundation's executive committee members are Mr. Newton, chairman of the board; Anita Benedetti, director of research and education for RIMS, president; Ron Judd, executive director of RIMS, vp; John Harkavy, director of government affairs and counsel for RIMS, secretary; Haren R. Kahn, assistant director of governmental affairs of RIMS, assistant secretary; and Michael B. Maliavsky, assistant executive director of RIMS, treasurer.

Other committees for 1985 are:

- Scholarship Committee: Mr. Davis, chairman; Mr. Baglini; Ms. Benedetti; Mr. Penick; Mr. Smith; Mr. Weber; Ms. Zug.

- Fund-raising Committee: Mr. Smirles, chairman; Mr. Browne; Mr. Dougherty; Mr. Drake; Ms. Garcia; Mr. Judd; Mr. Malecki; Ms. Newman; Mr. Shattuck.

- Finance Committee: Mr. Rich, chairman; Mr. Bostwick; Mr. Grace; Mr. Kloman; and Mr. Maliavsky.

- Nominating Committee: Mr. Browne, chairman; Mr. Harkavy; and another position to be filled.

- Audit Committee: To be filled at the April board meeting.

Since the foundation was established, it has provided 22 scholarships to students at 13 universities and colleges.

For more information on the foundation, contact Ron Judd at RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292. ■

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Efficient Health Systems Inc. offers PPO in Chicago area

Efficient Health Systems Inc. in Skokie, Ill., is offering a preferred provider organization to employers in the Chicago area.

The PPO, called the Efficient-Care Network, includes 200 physicians and 10 hospitals throughout the Chicago area.

Employers who sign up with the PPO receive the services of EfficientCare Review System, a utilization review system. The system includes pre-certification review and continued monitoring of the case while the patient is under treatment. At the time of the pre-certification review, the PPO examines the possibility of using outpatient surgery or requesting a second opinion, and the PPO encourages

pre-admission testing.

Jack Sauer, vp-marketing for EHS, estimates employers who join the PPO can save 15% of their health care benefit costs. So far, five employers have joined.

Contact John Mitchell, Efficient Health Systems Inc., 5225 Old Orchard Road, Suite 31, Skokie, Ill. 60077; 312-967-7800.

Accident tracking

Comtec Inc., based in Farmington Hills, Mich., is offering a vehicle accident-tracking software pro-

gram for risk managers.

The Vehicle Accident Module, part of Comtec's Riskmaster product series, was developed for tracking various vehicle accident details, including claims reserves, driver information and narrative description. Risk managers can tailor the software to their needs.

The Vehicle Accident Module permits ad hoc as well as standard reports on all information in the system. More than 20,000 claims can be entered and tracked.

The system is compatible with the IBM PC and computer hardware from Honeywell, Prime and DEC, as well as with other Riskmaster software.

The software costs \$2,500 for a perpetual license and \$1,500 for a three-year, non-perpetual license. New releases and support are available for an additional \$10 a month.

Contact Mark E. Dorn, Comtec, 24350 Indoplex Circle, Farmington Hills, Mich. 48018; 313-478-8775.

Maritime law

Maritime law is discussed in "Damages Recoverable in Maritime Matters," a publication of the American Bar Assn.'s Section of Tort and Insurance Practice and Standing Committee on Admiralty and Maritime Law.

The publication, a collection of papers delivered at a 1983 ABA symposium, is based on the research of attorneys in major U.S. port cities. It explores the issues surrounding damage to structures and personnel while onshore, offshore or at sea.

The 120-page publication covers damages that can be collected if a ship collides with another or is beached, and tells how salvage damages are calculated. Questions on death, personal injury and toxic exposure also are examined, and longstanding law is reviewed.

To order, send \$37 a copy plus \$2 for handling to the ABA, Order Fulfillment No. 519, 750 N. Lake Shore Drive, Chicago, Ill. 60611.

Pension cassettes

The New York-based Practising Law Institute has issued three pension and benefits audio-cassette programs, called "1984 Tax Reform Act: Pension and Benefits"; "Qualified Plans Which Invest in Employer Securities"; and "Plan Terminations: Assets or Liability?"

Topics covered in the tax-act cassette include welfare plans, qualified retirement plans, executive compensation, fringe benefits and the Retirement Equity Act of 1984. The 1½-hour cassette costs \$20.

Qualified Plans is a five-hour program. Its topics include special considerations in mergers and acquisitions, plan termination, leveraged buyouts and fiduciary responsibility, and relevant parts of the Deficit Reduction Act of 1984.

Plan Terminations, also a five-hour cassette, includes a brief introduction to actuarial concepts and covers termination of overfunded and underfunded plans and pertinent sections of DEFRA.

Qualified Plans and Plan Terminations, which are both transcripts of PLI's June pension and benefit seminars, are \$60 each. The two programs are supplemented by handbooks, available separately on 10-day approval for \$35.

Contact June E. McDonald, Book and Audio/Video Publicity Manager, PLI, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700. ■

Can You Catch the Flu in a Crowded Elevator?

Test your flu-IQ and increase your chances of staying healthy

1. **What is the best prevention against the flu?**

- ☐ a. Become a recluse. Avoid crowds and close relatives.
- ☐ b. Hold your breath from October to April and watch that nasty flu virus disappear.
- ☐ c. Get plenty of rest, exercise, sound nutrition and keep your stress level at a minimum.

2. **What should you do if you get the flu?**

- ☐ a. Jog at least three miles a day. Profuse sweating will rapidly eliminate the flu virus from your system.
- ☐ b. Drag yourself out of bed and pretend you're feeling fit as a fiddle. Repeat "mind over matter" ten times every four hours.
- ☐ c. Stay in bed. Bed rest will diminish the intensity and duration of the flu. Be sure to drink extra fluids if you're running a fever. If symptoms persist for several days, seek medical attention.

3. **If you seek medical care, what do you anticipate it will cost?**

- ☐ a. Usually not concerned. Company medical plan covers expenses.
- ☐ b. About the same as it did last year.
- ☐ c. Approximately 14% higher than last year's health care costs.

4. **What measures, if any, has your company taken to control these costs?**

- ☐ a. Wrung their hands, cried the blues and blamed the government.
- ☐ b. Tried on-site audits.
- ☐ c. Increased deductibles, 2nd surgical opinion programs and joined business coalitions.
- ☐ d. Used and enjoyed PCC's services and loved the 10-1 savings!

5. **Approximately what kind of savings do you believe these measures have produced?**

- ☐ a. Barely enough savings incurred to cover the costs of the on-site audit itself.
- ☐ b. Some savings anticipated with the increased deductibles, 2nd surgical opinion program or the business coalition, but no real numbers available as of yet.
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**business
insurance**

*comings & goings: buyers***Borden Inc. names Faber employee benefits manager**

Kristina Faber, 32, has joined Borden Inc. in Columbus, Ohio, as manager of employee benefits. Ms. Faber is responsible for all benefits operations, including plan design, interpretation and financing. She reports to Michael Miller, the company's director of benefits. She replaces **Suzann Horne**, who joined the Emcom Group in Newton, Pa., as an employee benefit consultant. Previously, Ms. Faber was manager of welfare benefits at McGraw-Edison Co. in Rolling Meadows, Ill. Ms. Faber received a bachelor of science degree in psychology from the University of Wisconsin in 1980.

Randall B. Jones, 30, has been named senior insurance administrator for Tenneco Oil Co. Processing & Marketing, a division of Tenneco Inc., in Houston. Mr. Jones is responsible for workers compensation and general liability claims in addition to supervising insurance coverages for various company operations and assets. He replaces **Willa White**, who is now senior insurance administrator for Tenneco Inc. Mr. Jones reports to Larry Riggs, insurance manager. Previously, Mr. Jones was claims adjuster for Tenneco West in Bakersfield, Calif. He also received a bachelor of science degree in business administration from Pepperdine University in Malibu, Calif.



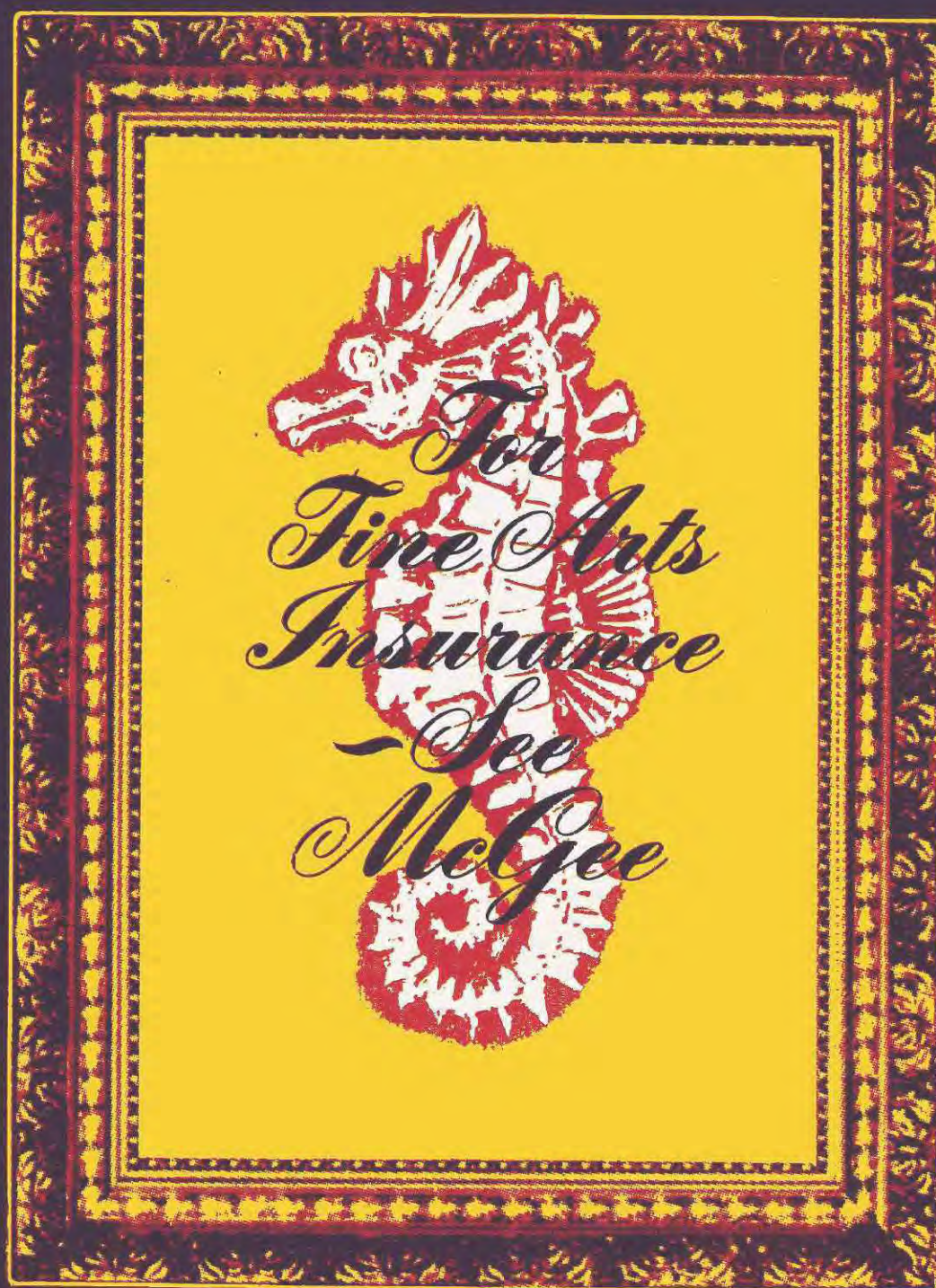
Mr. Jones

James D. Birchfield, 32, has joined the National Water Well Assn. in Worthington, Ohio, as director of safety and insurance. In this newly created position, Mr. Birchfield is responsible for the association's insurance programs and the development and implementation of safety programs. He reports to Jay Lehr, the association's executive director. Previously, Mr. Birchfield was assistant vp with Alexander & Alexander of Ohio Inc. He received a bachelor of science degree in business administration from Ohio State University in 1974. He also has the Associate in Risk Management designation and a Certificate of General Insurance from the Independent Insurance Agents of America. Mr. Birchfield is studying for the Chartered Property & Casualty Underwriter designation.

Gary W. Spangler, 42, has been promoted to director of risk management for Valero Energy Corp. in San Antonio, Texas. In this newly created position, Mr. Spangler is responsible for the design and coordination of risk management programs for the company and its 32 subsidiaries. He reports to Harlon Martin, Valero's treasurer. Previously, Mr. Spangler was the company's manager of risk management. The responsibilities of that position now are being split among Mr. Spangler; **Nathan B. Walker**, who was named risk management coordinator for the refinery division; and **Frank Aaron**, who is claims analyst. Mr. Spangler earned a bachelor of arts degree from Florida Southern College in 1972. He also received a master's degree in business administration from Florida Atlantic University in 1976.

In his new position, Mr. Walker, 46, is responsible for coordinating the risk management functions for Saber Energy Corp., a wholly owned subsidiary of Valero. He reports to Mr. Spangler and replaces **Ed Hope**. Previously, Mr. Walker was vp of Texas United Insurance Co. in San Antonio. He is a Chartered Property & Casualty Underwriter.

•
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APRIL 14-19. Risk & Insurance Management Society 23rd annual conference in New Orleans, sponsored by RIMS; \$545 for members; \$645 for non-members; reduced fees for part of the conference. RIMS Conference Department, 205 E. 42nd St., New York, N.Y. 10017.

APRIL 24. Political Risk in the Middle East conference in Dallas, sponsored by Frost & Sullivan Inc.; \$135. Marie Stratia, Political Risk Services, Frost & Sullivan Inc., 106 Fulton St., New York, N.Y. 10038; 212-233-1080.

APRIL 24-26. Advanced Computer Security Conference in Chicago, sponsored by the American Society for Industrial Security; \$330 for members; \$440 for non-members. Registrar, ASIS, 1655 N. Fort Myer Dr., Arlington, Va. 22209.

APRIL 24-26. Successful Retirement Planning Programs workshop in San Francisco, sponsored by Retirement Advisors Inc.; \$450. Also **June 28-28** in Chicago, **Oct. 16-18** in Kansas City, Kan., and **Nov. 6-8** in New York. Registrar, 919 Third Ave., New York, N.Y.; 212-421-2400.

APRIL 25-26. Self-Funding Your Employee Benefits course in Atlanta, sponsored by American Management Assns.; \$620 for members; \$715 for non-members. Also **May 9-10** in New York and **May 20-21** in Denver. Registrar, AMA, P.O.

Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

APRIL 25-26. A Brief Course in Ocean Marine Insurance in New York, sponsored by The College of Insurance; \$145. Russel Fershtleiser, Professional Development Programs, The College of Insurance, One Insurance Plaza-101 Murray St., New York, N.Y. 10007; 212-962-4111.

APRIL 25-26. Effective Management and Direction of Malpractice Insurers and Trusts seminar in Atlanta, sponsored by Tillinghast, Nelson & Warren Inc.; \$600; \$500 for subsequent registrants from same company. Pat Kelley, Tillinghast, 3340 Peachtree Road N.E., Atlanta, Ga. 30028.

APRIL 28-MAY 1. The 1985 National Council of Self-Insurers meeting in Charleston, S.C.; \$250 for members, \$325 for non-members. Registrar, The National Council of Self-Insurers, 10 S. Riverside Plaza, Suite 1530, Chicago, Ill. 60606; 312-454-5110.

APRIL 29-30. Health Care Cost Containment workshop in Detroit, sponsored by Health Research Institute; \$395. Also **May 13-14** in Chicago, **June 17-18** in New York. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596.

APRIL 29-MAY 1. Product Safety and Liability

workshop in Madison, Wis., sponsored by the Department of Engineering and Applied Science; \$495. Professor Richard Moll or Diane Lange, University of Wisconsin, Extension, Department of Engineering & Applied Science, 432 N. Lake St., Madison, Wis. 53706; 800-262-6243.

APRIL 29-MAY 3. Accredited Safety Auditor seminar in Atlanta, sponsored by the International Loss Control Institute; \$775.50. Registrar, ILCI, P.O. Box 345, Loganville, Ga. 30249; 1-800-554-6001, 404-466-2208.

APRIL 29-MAY 3. 12th International Assn. of Industrial Accident Boards and Commissions Workers Compensation college in Tucson, Ariz., sponsored by IAIABC; \$300 for members; \$400 for non-members. Registrar, IAIABC College, P.O. Box 79109, Jackson, Mississippi. 39336; 601-366-4582.

APRIL 29-MAY 3. Assets Protection Course II—Practical Applications in Atlanta, sponsored by the American Society for Industrial Security; \$650 for members; \$695 for non-members. Registrar, ASIS, 1655 N. Fort Myer Drive, Suite 1200, Arlington, Va. 22209; 703-522-5800.

APRIL 30. Surety Claims '85—New Directions in Suretyship conference in Hartford, Conn., sponsored by CMA Consulting Group; \$230. Arlene Brower, Conference Coordinator, CMA Consulting Group, 170 E. Hanover Ave., Morristown, N.J. 07960; 201-267-7171.

APRIL 30. Environmental Impairment Liability workshop in Spokane, Wash., sponsored by The Society of Chartered Property and Casualty Underwriters; \$60 for members; \$75 for non-members. Coleen Mulhern, Society of CPCU, Kahler Hall, Providence Road, Malvern, Pa. 19355; 215-251-2735.

APRIL 30. Managing Health Care Cost seminar in Dallas, sponsored by Back Systems Inc.; \$145. Kirby Dalton, Director of Marketing, Back Systems Inc., 5495 Beltline Road, Suite 390, Dallas, Texas 75240; 214-960-9515.

MAY 1. Health Improvement/Prevention Workshop in Detroit, sponsored by Health Research Institute; \$195. Also **May 15** in Chicago.

June 19 in New York. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

MAY 1. Advanced Cost Containment workshop in Detroit, sponsored by Health Research Institute; \$195. Also **May 15** in Chicago, **June 19** in New York. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

MAY 1. Third-Party Administrator workshop in Detroit, sponsored by Health Research Institute; \$395; \$195 for subsequent registrants from same company. Also **May 15** in Chicago, **June 19** in New York. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

MAY 1-3. "Coalition for the '80s: Investing Our Political Capital" conference in Washington, sponsored by the Assn. of Private Pension and Welfare Plans; \$350 for members (\$380 after April 10); \$385 for non-members (\$415 after April 10). APPWP, 1331 Pennsylvania Ave. N.W., Suite 719, Washington, D.C. 20004; 202-737-6666.

MAY 2. Medical Directors workshop in Detroit, sponsored by the Health Research Institute; \$195. Also **May 16** in Chicago, **June 20** in New York. Registrar, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

MAY 2-3. International Reinsurance Law conference in London, sponsored by Union Internationale des Avocats, British Insurance Law Assn. and Business Law Communications Ltd.; about \$242 for members; about \$270 for non-members. Registrar, Business Law Communications Ltd., 53 Fleet St., London, EC4 1BY; 01-353-8154.

MAY 2-3. Labor/Management conference in Detroit, sponsored by Health Research Institute; \$195. Also **May 16-17** in Chicago, **June 20-21** in New York. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

MAY 3. Credit Enhancement Insurance workshop in New York, sponsored by The Society of Chartered Property and Casualty Underwriters

(CPCU); \$95 for members, \$120 for non-members. Also **May 23** in Miami. Coleen Mulhern, Society of CPCU, Kahler Hall, Providence Road, Malvern, Pa. 19355; 215-251-2735.

MAY 5-8. The Seminar for Non-Insurance Professionals in New York, sponsored by The College of Insurance; \$540. Laura McKeon, Professional Development Programs, The College of Insurance, One Insurance Plaza-101 Murray St., New York, N.Y. 10007; 212-962-4111.

MAY 6-8. 1985 Employee Benefits Institute for Small Businesses conference in Palm Springs, Calif., sponsored by International Foundation of Employee Benefit Plans; \$500 for members; \$575 for non-members. Registrar, IFEBP, P.O. Box 69, Brookfield, Wis. 53005; 414-786-6700.

MAY 6-10. Highly Protected Risk Property Conservation course in Long Grove, Ill., sponsored by the Kemper Group; \$400; free for Kemper HPR-insured property owners. Also, **Oct. 7-10** in Long Grove. W.P. Thomas Jr., Manager, Engineering Research & Staff Development, HPR Department, A-1, Long Grove, Ill. 60049; 312-540-3380.

MAY 6-10. Fundamentals of Industrial Hygiene Monitoring course in Long Grove, Ill., sponsored by the National Loss Control Service Corp.; \$500; 10% discount for two or more registrants from the same company. Also **Sept. 9-13** and **Nov. 11-15** in Long Grove. John Garis, NATLSCO, Long Grove, Ill. 60049; 312-540-2026.

MAY 8. Strategies for Medical Cost Containment seminar in San Francisco, sponsored by the Medical Care Committee of the California Workers' Compensation Institute; \$70. Also, **May 14** in Anaheim, Calif. and **May 15** in Los Angeles. Registrar, California Workers' Compensation Institute, 120 Montgomery St., Suite 715, San Francisco, Calif.; 94104.

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Ohio court urged to alter comp stand

COLUMBUS, Ohio—Eleven Ohio state representatives are asking the state Supreme Court to reconsider recent rulings that expand employers' workers compensation liability.

Rep. Thomas A. Van Meter, R-Ashland, and 10 other state representatives introduced a resolution last month that calls for the Supreme Court "to rethink the direction of its rulings and restore the clear boundaries that have previously circumscribed the boundaries of employer liability."

The resolution is an attempt to influence the court to reverse several decisions in the past few years that "rewrote a crystal clear section of the (state's) constitution," Rep. Van Meter said.

The most recent set of decisions were handed down Dec. 31. In one, *Jones et al. v. VIP Development Co.*, the court ruled that receiving workers compensation benefits did not preclude employees or their representatives from pursuing a common law action against their employer for an intentional tort. The court defined an intentional tort as an act committed with the intent to injure or the knowledge that the injury was substantially certain to occur (*BI*, Feb. 25).

Also, the court ruled that an employer that has been held liable for an intentional tort is not entitled to

an offset of the award equal to the amount of work comp benefits the employee had received.

The House resolution urges the court to restore the former boundaries of employer liability. Specifically, it asks the court to return to the idea that work comp is received by the employee in lieu of all other compensation and damages.

The resolution also charges that the rulings have hampered employers' efforts to restore Ohio's economy to vigor.

The resolution will "send a strong message to the court...and allow (it) to save face without getting into a confrontation," Rep. Van Meter said.

The resolution was introduced in the House Reference Committee and is awaiting committee and bill number assignment.

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**business
insurance**

Asbestos removal firm gets coverage

Continued from page 3
 business," Mr. Nozko says.

Although the company is paying a huge price for just \$5 million in general liability coverage—and only \$1 million in liability coverage for its asbestos-removal operations—Mr. Nozko says that it is a necessary expense.

A company is required to have liability insurance before it can bid on most asbestos-removal contracts, he explained. Asbestos removal generates about half of Acmat's \$50 million in annual revenue.

Great American Surplus Lines Insurance Co. of Cincinnati underwrites Acmat's newly placed primary liability coverage. The coverage has a \$1 million limit with a \$100,000 deductible, but stipulates that coverage for asbestos-related losses is written on a claims-made basis, while coverage for other liability claims is on an occurrence

basis, according to Mr. Craemer.

Under a claims-made policy, an insurer is responsible only for claims first filed during the policy period; under an occurrence form, insurers are liable for losses that occur during the policy period, regardless of how long after a policy's expiration date a claim is filed.

Also, a \$2 million umbrella liability policy is written by Pacific Employers Insurance Co. of Los Angeles; however, this coverage excludes liability claims stemming from asbestos-related operations, Mr. Craemer said.

Another \$3 million umbrella layer, which also excludes asbestos risks, is written by Hudson Insurance Co. USA, part of the Skandia Group, based in Stockholm, Sweden.

Both of the umbrella policies are written on an occurrence basis, Mr. Craemer says.

Also, Hartford Fire Insurance Co. will underwrite an auto liability policy for Acmat with a \$1 million limit, while Liberty Mutual Insurance Co. is underwriting Acmat's work comp cover.

Mr. Nozko said Acmat was able to acquire the coverage because the company's agent, Amins Insurance Inc., convinced the underwriters that asbestos removal is much less risky than asbestos mining and manufacturing.

Acmat officials had considered withdrawing from the asbestos removal business because of the difficulty the company encountered replacing its insurance coverage.

The company, which has been in business since 1950 and employs 700 people, entered the asbestos abatement field in 1973. The company also does heating, ventilation, air conditioning, plumbing and electrical contracting.

Mr. Nozko maintains that insurers have a tendency to lump all asbestos-related operations into one "uninsurable" category.

"They weren't considering our state-of-the-art equipment," he explains. Special filters, vacuum systems and self-contained breathing apparatus makes it virtually impossible for workers to inhale asbestos fibers, says Mr. Nozko, adding that Acmat has never had a claim in the 10 years it has been in the asbestos removal business.

In spite of the fact that Acmat was able to find replacement coverage, Mr. Nozko says the firm is planning to set up a captive insurance company that may be used to underwrite Acmat's asbestos-related liability. Mr. Nozko says he hopes the captive, which probably will be based in Bermuda, will be established by January 1986.

The company said last month it had contacted a consultant to conduct a captive feasibility study.

Acmat says its insurance problems began Feb. 15 when the company first was told that CIGNA planned to cancel most of Acmat's insurance coverage, which had been renewed Jan. 1. On Feb. 17, according to Acmat officials, CIGNA did a turnaround and told the company it would continue to write the coverage. But three days later, the insurer again notified Acmat that the coverage would be canceled on April 1.

Last month, a spokesman for CIGNA told *Business Insurance* that the insurer informed Acmat at the beginning of the year that it would not renew the coverage, but would extend the policies for 90 days to give Acmat time to find other insurance.

Experts predict asbestos removal will become a \$3 billion business within three years. Mr. Nozko and others in the industry maintain the insurance problems experienced by asbestos-removal firms must be resolved because many state and local governments are mandating that asbestos be removed from certain buildings.

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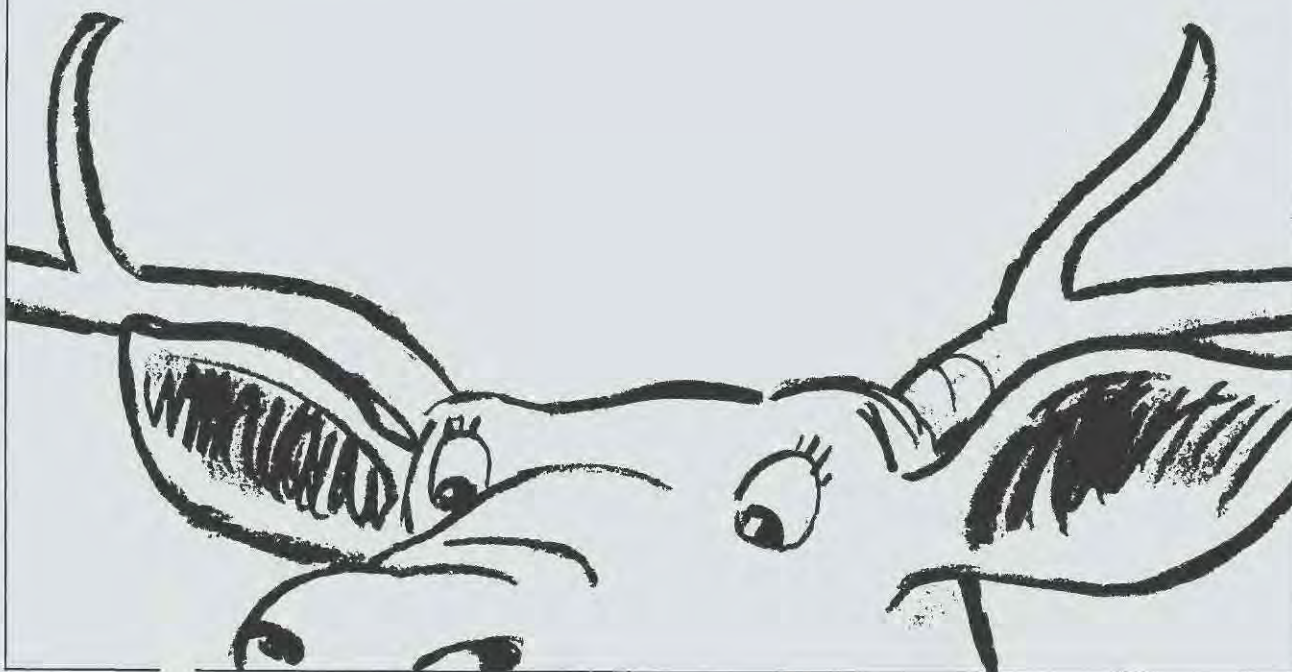
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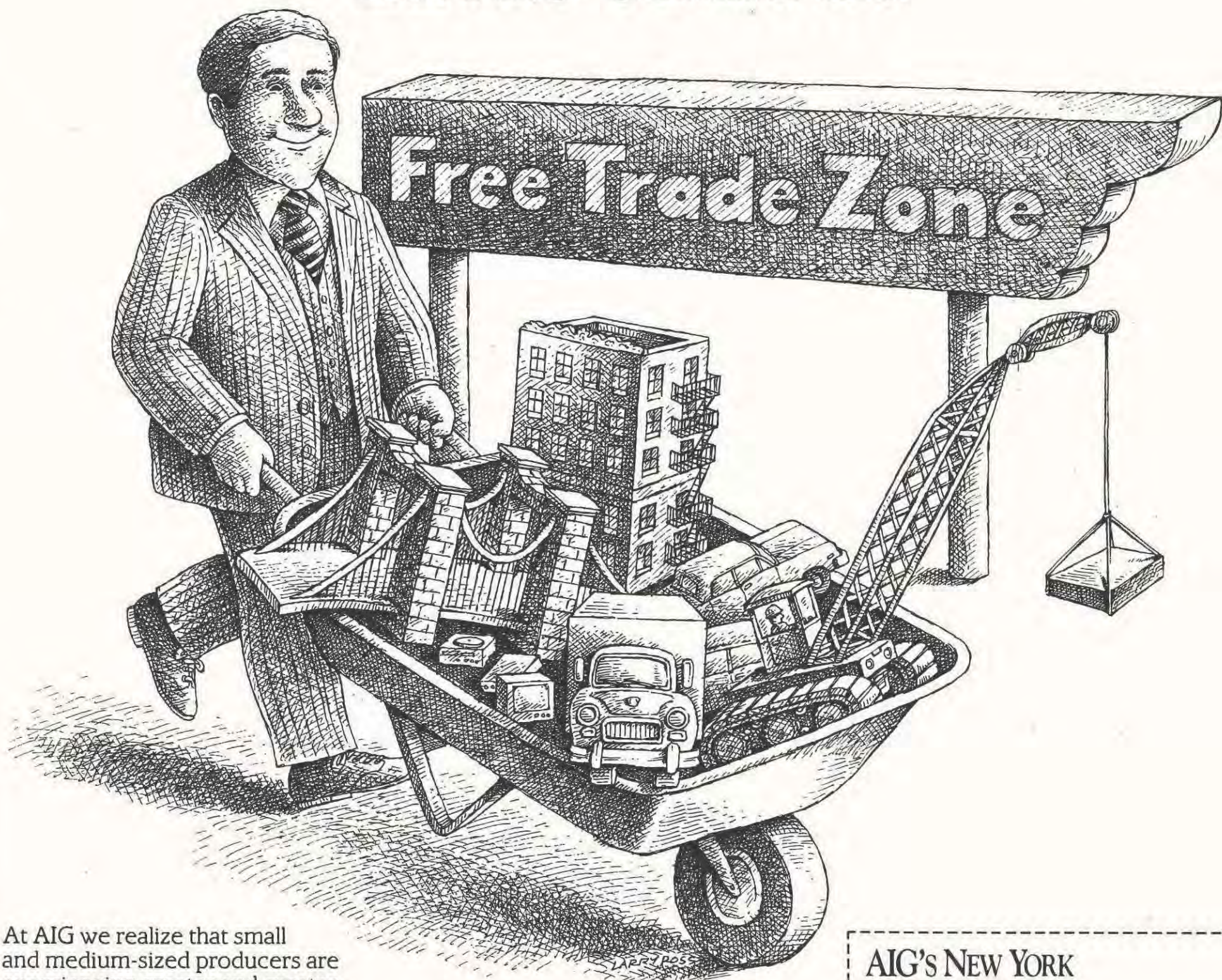
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'Claims-made' form needed in changing market

Continued from previous page

defend ended upon exhaustion of the limits of liability—but the insurer must defend to a conclusion all cases pending at the time of exhaustion. In the Raymark case, this meant the primary insurer had to retain, supervise and pay counsel for approximately 17,000 pending cases.

In 1984, in the *Keene* case, a federal judge from Washington, D.C., decided that the duty to defend terminates upon payment of the policy limits of liability. All of these opinions relate to asbestos bodily injury claims and are subject to appeals. Yet they graphically demonstrate the lack of certainty for the underwriter, and the absence of judicial consensus on the duty to defend.

Regarding the overall cost of defense in asbestos litigation, a study by the Institute for Civil Justice reveals that for every \$2.71 paid by defendants and insurers, the plaintiff receives only \$1, with plaintiffs' litigation expenses accounting for 71 cents and defense litigation expenses the remaining dollar. Stated differently, the plaintiff receives only 37% of the total amount expended.

This is an unconscionable, inefficient system of wealth transfer, benefiting professionals more than intended victim beneficiaries. Concerns of this kind have encouraged the Wellington asbestos negotiators to design a more efficient asbestos claims-handling facility.

The Institute for Civil Justice also estimates that between 1980 and 1982, defendants' legal fees and expenses for all tried asbestos claims averaged \$120,000 per case; for all asbestos claims closed before trial began, the average was \$33,000. What is the reason for these staggering defense costs? I don't have all the answers, but one element is the hourly fee-for-services method used in compensating outside attorneys.

The October 1984 American Bar Assn. Journal disclosed that the maximum average hourly rate for associates in private law firms in the Northeast is \$99 per hour. For partners, the same rate in the same geographic area is \$134 per hour.

The same issue of the ABA Journal also defines some of the considerations for attaining partnership, for example: "...the associate must demonstrate economic value to the firm. This means a consistent history of hard work and long hours producing a high number of client billable hours, which in turn generates significant fees for the firm. This is elementary."

Thus, the prime motivating factor for an attorney may be the accumulation of billable hours—not necessarily consistent with a good defense. If the attorney is defending cases for an insurance company on an hourly fee basis, some basic principles quickly emerge.

An insurer cannot set a ceiling on the amount its counsel spends on a given case—to do so would expose an insurer to allegations of bad faith, and possibly to excess verdicts. When questioned about his or her hours, a defense attorney might state with ethical indignity that professional responsibility requires complete defense of the insured, and that doing less could result in a malpractice claim. Furthermore, insurer interference with the attorney's professional judgment, and expensive time charges, may be interpreted as a breach of

fiduciary duty.

Thus, the attorney has a perfect situation—an insured client who wants a gold-plated-Cadillac defense, a bill-paying insurer with an infinite supply of checks who cannot exercise effective control, and a billing system that provides incentives for an attorney to maximize his fees. Moreover, the cost of defense does not concern the insured, for it does not in any way reduce the available insurance limits. Thus, insureds are increasingly demanding millions of dollars for defense but not one cent for settlement.

A drastic example of the combination of these factors has been visited upon Liberty Mutual. We allegedly insured Emons Industries, formerly a small distributor of DES, until 1971, when Reserve Insurance Co. became their insurer. Emons is a defendant in hundreds of DES-related personal injury cases, and in 1979, a New York federal judge ruled that Reserve and Liberty Mutual were both liable for Emons' defense.

Reserve, however, was put in liquidation by the Illinois Insurance Department and contributed nothing toward the Emons defense. Due to the

The simplest, most obvious solution is to place an aggregate dollar limit on an insurer's duty to defend. Immediately, insurer, policyholder and defense counsel have a unitary interest and goal—to best marshal the finite indemnity limits and defense cost limits to meet claims and lawsuits. The defense obligation then becomes an additional corporate asset, to be used for the policyholder's good.

Indeed, such an aggregate limit would lead to quicker claims settlements and to vigilance by policyholders to ensure that defense costs do not exceed the value of the claims. Again, I submit that unless our business starts to address this area, we may ultimately be unable to meet our policyholders' needs.

The final area I'll discuss is like a cloud in a summer sky—definite in shape and substance but impossible to grasp or control. I would like to talk about insurance coverage for pollution. Included in my definition of pollution are claims for environmental damage, personal injury resulting from pollution and government reimbursement for environmental hazards.

Our country clearly faces monumental problems regarding the state of our environment. According to the

A 'claims-made' policy is a giant step forward. . . A limit on our duty to defend would be another. And finally, working toward some certainty and stability in the liability rules for pollution and hazardous-waste damages will help.

coverage dispute, Emons has instructed its own counsel, who merely sends bills to Liberty Mutual.

As you may know, it is common in many jurisdictions to name numerous DES defendants, but to serve process only on "targets." Emons' counsel opted to monitor more than 100 cases in which there was no indication that the plaintiffs' counsel would, or even could, serve Emons.

More defense bills were generated, and the policyholder's visibility was increased in these cases.

In 1984, Emons filed for protection under Chapter 11, which entitled it to an automatic stay to permit its firm to continue to defend Emons. Among other things, these attorneys argued that Emons' defense wouldn't cost the bankrupt estate a cent since Liberty Mutual was required to pay. Despite our opposition, the bankruptcy court permitted the defense to proceed—at Liberty Mutual's expense.

In my opinion, the only clear beneficiaries were defense counsel. To date, Liberty Mutual has spent \$2.5 million defending Emons, with no meaningful opportunity to control the expenditure or the quality of defense. This is intolerable.

As insurers we may be quick to blame greedy attorneys, a liberal judiciary and the social climate of entitlements for the dilemmas associated with our duty to defend. However, a fairer portrait would place a large portion of responsibility on insurance executives' shoulders. We cannot change the past or recall our old policies. Yet, for the future we can recognize the problems and hazards of the broad duty to defend and the economic threat it poses to our industry.

Environmental Protection Agency, there are more than 17,000 hazardous-waste sites in need of cleanup or containment. In addition, there is a growing class of persons and communities suffering personal injury and property damage as a result of pollution.

In the early 1970s, after the Torrey Canyon disaster and the Santa Monica oil spills, the insurance industry included the so-called "pollution exclusion" on most liability policies. The basic intent was to exclude coverage for most damage caused by pollution that was the natural result of industrial or commercial activity. Our industry was, in 1970, prepared to cover off-site pollution that was an unforeseen and fortuitous event.

In the past few years, however, the "pollution exclusion" has been emasculated by the courts. I will not detail the cases, but the gutting of the endorsement was so complete and the judiciary's reasoning so inconsistent that the drafters of the new commercial general liability policy felt it would be impossible to draft an exclusion to reflect the desired intent, but that also would withstand judicial scrutiny. The new pollution exclusion excludes all coverage for "pollution claims" except for products and completed operations.

Whether this distinction will be accepted by the judiciary remains to be seen. Yet the insurance industry's economic caution regarding pollution is totally appropriate. As society addresses the problems of accumulated toxic wastes, long-dormant pollutants, increased synergism of chemical exposures and other legacies of the last century of American prosperity, the term "social inflation" will assume new meaning.

A case in point is the recent report from a Massachusetts special legislative commission that, among other recommendations, esoterically suggests the application of strict liability for damage for all hazardous-waste handlers; negligence need not be proven.

As with civil rights legislation for minorities and common law remedies for DES victims that could not be anticipated 30 years ago, legislators and courts will respond in the future with remedies for victims of pollution. It will make little difference whether the damage is aquifer contamination or childhood leukemia, *there will be a remedy.*

I have mentioned the magnitude of the pollution problem, the insurance industry's posture and the inevitable social inflation to illustrate my theme—the need for certainty and long-range stability.

Clearly, there is a "pollution problem" in our society. Clearly, our industry has an obligation and an opportunity to participate in solving the problem. Our customers need our risk shifting and loss distribution capacity. We need to develop innovative methods for dealing with pollution claims—such as sharing liability like the nuclear hazard or pooling risks through the Pollution Liability Insurance Assn.

However, to achieve these worthy goals, liabilities must be readily defined and quantifiable. The newly emerging judicial remedies and legislative fiats can hardly be called definite or quantifiable—especially if they operate retroactively.

As with the "occurrence" language, the present system of addressing liability for hazardous-waste sites is time consuming and inefficient. In a quest for pollution solutions, insurers must advocate rational compensation schemes—with predictability and efficiency. Some proposed victims' compensation or cleanup legislation simply will not permit private insurer participation. As an industry we must communicate our position and not allow legislators to falsely believe that newly created liabilities can or will be funded by the insurance industry.

The liability rules for pollution and for hazardous waste are currently in a state of flux. We have seen that the insurance industry's historical contractual defenses have been eroded by the judiciary and that as a result, the industry's capacity to provide pollution coverage has diminished. Insurers must help bring certainty and stability to the liability rules before we can hope to solve the problems of pollution coverage.

And so as I said at the outset, unless insurers begin to bring some certainty and stability to the liability arena, our industry may ultimately be unable to respond to society's needs.

If the problems that insurers have encountered have been largely of our own making—and I think they have—then it follows that the insurance industry also has the collective power to solve those problems.

A "claims-made" policy is a giant step forward, if insurers only have the courage and foresight to use it.

A limit on our duty to defend would be another. And finally, working toward some certainty and stability in the liability rules for pollution and hazardous-waste damages will help. ■

DEFENDING THE NEW CGL FORMS

'Claims-made' policy essential to help insurers survive in changing times

By Melvin B. Bradshaw

I WOULD LIKE TO touch on three specific aspects of the complex, challenging and pivotal liability arena, which is where many insurers' fortunes will be made or broken in the next several years.

In doing so, I will offer my own candid opinions as to what insurers must do to recapture control over our destinies as responsible businessmen in a pluralistic, competitive society.

Other Insurance Services Office affiliates and other corporate spokesmen may differ on some of these points, but clearly, there is a solid consensus within the insurance industry that the situation in the liability line of insurance is completely out of hand and will not be remedied unless insurers confront and resolve some extremely difficult and controversial issues.

I submit that unless insurers bring some certainty and stability to this liability area, the property/casualty insurance industry may ultimately be unable to respond to the needs of policyholders.

The insurance industry can no longer continue to mortgage its future by the sale of "occurrence"-based general liability coverage with an expansive "duty to defend" not subject to an aggregate limit. This premise becomes more compelling if the emerging liability theories of the "toxic tort," "environmental hazard" and "victim compensation" are considered.

I'd like to start by examining the development of the problems with the present "occurrence" language and then evaluate the long-term effects of this coverage grant.

The trigger of coverage contained in general liability policies has undergone great change since the program was first implemented in 1941. Years of discussion and debate led to the contract as we know it, in which an insurer agrees to: "...pay all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage neither expected nor intended from the standpoint of the insured caused by an occurrence. An occurrence means an accident, including injurious exposure to conditions, which results during the policy period in injury or damage."

Never have so few words in a contract generated such vast problems and so many lawsuits for the insurance industry. These short phrases and definitions, despite their apparent clarity, present an abundance of legal and factual issues.

The classic example of judicial confusion is the attempt to define when

bodily injury "occurs" with respect to asbestos-related diseases. Liberty Mutual has been involved in three major coverage suits regarding this issue—the cases are notable for their diversity of result.

In 1980, the 6th Circuit in *Forty-Eight Insulations* stated that insurance coverage is triggered by the exposure to asbestos dust, regardless of when disease manifests. In 1981, the District of Columbia Circuit Court in *Keene* told us that coverage is triggered continuously from first inhalation, through exposure in residence, continuing until manifestation of disease. In 1983, the 1st Circuit in *Eagle-Picher* held that when asbestos-related disease is reasonably capable of diagnosis is the determining factor for insurance coverage.

In 1984, the drug-related case of *American Home Products* offered Liberty Mutual a fourth interpretation of when bodily injury occurs for coverage purposes. According to the 2nd Circuit,

Clearly, a 'claims-made' form is not a panacea. There will be litigation and pricing uncertainties. However, the range of uncertainties is reduced. . . . As insurers, we need not continue to gamble our economic destiny on the occurrence policy when a 'claims-made' form is available.

bodily injury occurs when there is "injury-in-fact."

We are not alone in the confusion raised by the courts' diverging opinions on trigger of coverage. A recently published list includes more than 140 pending declaratory judgment actions on this critical issue.

Not only is the timing of bodily injury a prominent question under the occurrence language, but litigation has also increasingly focused on such issues as the timing of property damage in gradually emerging claims, the number of occurrences for limit of liability purposes or the application of deductibles. Consequently, the focus of insurance litigation has changed. Once the issue was the scope of coverage. . . in essence, the exclusions. Now the courts probe the trigger of coverage. . . in essence, the timing of injury.

The belief that the American judicial system is ill-suited to adjudicate thousands of individual asbestos claims led a group of insurers and manufacturers to spend more than two years and thousands of hours trying to establish an asbestos claims facility under the guidance of Dean Harry Wellington. While the solution may be beneficial, the underlying problem and the resolution process have been painful.

And what has been the upshot of the courts' increasingly liberal interpretation of coverage? By this broad grant of coverage insurers are compelled to pay claims attributable to insurance policies issued in the 1940s, 1950s and 1960s. Realistically, this means the policy your company sold in 1947 is only now beginning to pay claims. Also, from a cost

accounting viewpoint, only in 1985 can an insurer determine the actual costs of that 1947 policy. Naturally, the occurrence policy priced and sold in 1985 may have losses maturing in the year 2012 under the current judicial interpretations—or it may not! Obviously, retrospective rating plans and ISO statistical plans from 1947 are long since closed, as will the 1985 policy year rating plans be closed in 2012.

But wait, you say—what about my actuaries and their calculation of incurred-but-not-reported losses, trend factors and other ratemaking methodology? Are they not providing for the future? I submit that despite the noble intentions and technical expertise of such individuals, they are ill-equipped to evaluate inflation over the next 30 years to adequately price the general liability product today. Certainly, mathematical formulas can shed some light on future discount rates, economic inflation and life expectancies.

But no one has the crystal ball that can illuminate the path of social inflation. Is anyone willing to wager a guess on the shape and texture of the tort transfer system, the judiciary or a victims' reparations system 30 years hence? But that is exactly what the insurance industry is doing with the occurrence language. We are speculating about the future—guessing about the proper price to charge—and the future stream of losses.

Due to the competitive pressures, recent general liability rates charged by the industry have been approximately 37% below ISO monoline advisory rates. Given the liberal interpretation of the occurrence language and virtually guaranteed economic and social inflation, can any executive be confident of today's pricing decisions? I, for one, do not wish to leave Liberty Mutual with a book of underpriced liability insurance with late-maturing losses that may threaten the stability of my company for the next generation of managers.

Please don't interpret this as a call for higher prices. Obviously, I believe in responsible pricing guided by the design of a competitive marketplace. I want to charge our insurance-buying customers a fair price. I don't want to charge a price based upon wild speculation about future liability exposures. Yet, marketing an occurrence-based liability product poses a pricing dilemma: Should the price be modest to reflect current market competitiveness or much higher to cover every contingency for upcoming decades?

I prefer neither of these extremes. ISO plans to make both "claims-made" and

"occurrence" policies available, although personally, I would rather discard the "occurrence" policy once and for all. I believe a "claims-made" policy is the only sensible solution to the outrageous costing and pricing uncertainty we now face.

Under the new "claims-made" policy, an insurer's coverage obligation is triggered by the receipt of a written claim. Other provisions allow for the purchase of an extended reporting period if the policy is terminated for other than non-payment.

Clearly, a "claims-made" form is not a panacea. There will be litigation and pricing uncertainties. However, the range of uncertainties is reduced. Insurers will know within a few years if pricing is accurate. Policyholders will not risk future litigation to determine if business-threatening liabilities are covered. Our industry will no longer be fighting with some of its best customers, but instead the two can join forces to battle losses. As insurers, we need not continue to gamble our economic destiny on the occurrence policy when a "claims-made" form is available. It is time for a change to the "claims-made" form.

Now to shift the focus slightly but retain my theme, I would like to examine the duty to defend. A key element of most liability policies is the insurer's right and duty to defend suits or claims against the insured that potentially may be within the coverage grant. It is a necessary and desirable benefit purchased by an insured. However, several factors—the judiciary, emerging mass toxic tort litigation and the hourly fee-for-services system—combine to render a broad duty to defend an unrealistic and unwise contractual undertaking.

First, what do insurers promise with respect to defense? The new simplified policy doesn't change the conceptual framework—an insurer agrees to defend any suit seeking damages covered under the policy. No dollar limit whatsoever applies to the defense obligations, but courts have imposed a fiduciary duty on insurers to give equal weight to the insurer's and the insured's interests. Additionally, a defense attorney owes his or her primary duty to the insured as a client in the event of a conflict of interest or a coverage question. These propositions seem reasonable, but let's examine some concrete examples where an insurer has lost all control of its destiny because of the unlimited duty to defend.

A key question if an insured has been sued thousands of times is the extent of a primary insurer's contractual defense duty.

In 1983, in the *ACandS* case, a Pennsylvania federal judge said that an insurer must continue to defend cases even after its liability limit is exhausted. Thus, the duty to defend, according to this judge, continues for an eternity.

In 1984, in the *Raymark* case, an Illinois state judge ruled that the duty to

Continued on next page



Melvin B. Bradshaw is chairman and chief executive officer of Liberty Mutual Insurance Cos., and he was the 1984 chairman of the Insurance Services Offices. This article is the text of a speech he presented at ISO's annual meeting.



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AFL-CIO comp panel worries employers

Continued from page 3

United States," Mr. Oxfeld explained.

But, labor says it wants to work with employers, and it blames the insurance industry for the misunderstanding and friction.

"Potentially, the employers and ourselves are on the same side. They will understand this increasingly. . . . It's within their interest to do something about the workplace to reduce (illnesses and injuries)," Mr. Samuels said.

'Potentially, the employers and ourselves are on the same side. They will understand this increasingly. . . . It's within their interest to do something about the workplace to reduce (illnesses and injuries),' Mr. Samuels said.

He says the insurance industry and employer trade associations, like the U.S. Chamber, have misinformed employers by overemphasizing the short-term bottom line, rather than the long-term impact of workplace conditions.

And, according to Mr. Samuels, the federal product liability reform bill that was introduced in the last session of Congress by Sen. Robert Kasten, R-Wis., "did more to galva-

nize the creation of (the foundation), than anything else that employers did."

Under the Kasten bill, which died in the last session of Congress but has been reintroduced this year, product liability awards would be reduced by the extent that a plaintiff's negligence contributed to an accident. And for accidents occurring in the workplace, product liability awards would be

reduced by the amount of workers compensation benefits received (BI, April 1).

"If there were no Kasten bill, there would be no legal rights foundation," Mr. Samuels commented.

"The foundation did not come as a surprise to anyone. . . . (Occupational disease) is an area that labor has not been participating in (discussions about) in the past," said Robert J. Sullivan, vp of government affairs with Crum & Forster Corp. in Morristown, N.J.

For example, he noted that labor has been absent from discussions of a recent 1½-year study of occupational disease being carried out by a task force of the National Assn. of Insurance Commissioners.

Mr. Sullivan believes the foundation may just be an "artificial

way to show that state systems are not working."

But, he said, by its creation and the general thrust to use the courts for remedies in work comp cases, "Organized labor is doing a disservice to its membership by not seeking reform in the comp system."

However, Mr. Samuels countered, "This is simply not going to be a litigation program. There are plans under way to develop a massive educational program to handle cases without attorneys in those states where that is possible."

Part of this educational thrust will be the development of a manual to tell workers how to identify and cope with workplace hazards, he said.

"In the long-range, we have a legislative program to reform the system in this country, but until then, we need to help workers defend themselves," Mr. Samuels said.

The foundation plans to tap both the existing workers compensation system and the private tort system to help injured workers.

"This will be done by helping to ensure that workers with valid claims relating to workplace exposures have qualified legal representation at equitable costs," the foundation's prospectus says.

"It sounds like a referral agency for plaintiffs' lawyers," said Douglas F. Stevenson, executive director of the National Council of Self-Insurers in Chicago.

But, according to the prospectus, the foundation will concentrate its efforts on three types of cases:

- Those involving hazards from toxic substances in which the association between workplace exposure and occupational disease is just being discovered.
- Those on behalf of workers who have been exposed to toxic substances that have long been associated with illness but who have been unable to obtain adequate legal representation.
- Those where an important legal precedent could be established.

So far, the foundation is considering action on six cases, according to Mr. Samuels.

The cases, which he described as routine, stem from situations in Ohio, Virginia, New Jersey and other states. Mr. Samuels would not elaborate further.

Major cases are still being considered while the foundation is putting together two advisory panels. One panel will be made up of attorneys, and the other panel will be comprised of physicians and scientists.

It will be about a year before the first major case is filed, Mr. Samuels predicts.

"Cases stem from the unions," he noted. "The foundation works with unions. We don't solicit; cases are referred to us."

Some of the cases may even be non-union and non-worksites situations, like cases involving toxic wastes, Mr. Samuels said.

"There are a lot of people not receiving funds. . . because their case falls in the cracks, especially in the area of toxic wastes," he said.

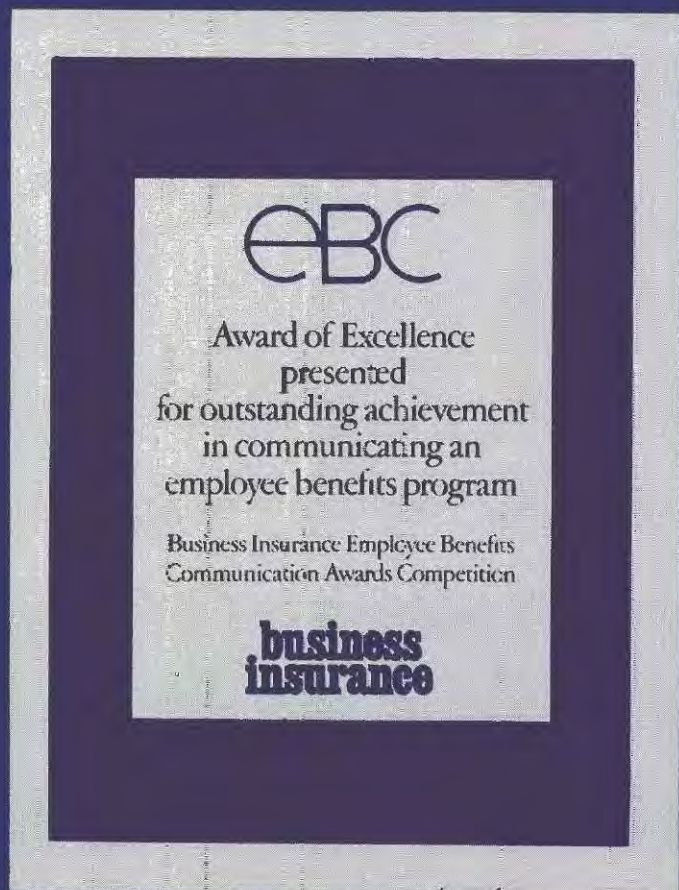
The foundation will solicit contributions and loans from labor unions.

"What we're doing is taxing our (Industrial Union Department) membership for the organizational cost of about \$400,000," Mr. Samuels said.

A budget for the new foundation does not yet exist, but one is expected to be developed within the year, he noted.

"In a sense, there isn't any budget. . . except the budget of the IUD, which has \$2.5 million in income and another \$1 million in reserves," he said.

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Treasury rethinks proposed ban on 401(k) plans

Continued from page 1

For example, if the Treasury set the maximum annual contribution to a 401(k) at \$5,000 and a worker deposited \$2,000 in an IRA during a certain year, only \$3,000 could be contributed to the 401(k) plan during that year.

- Eliminate so-called hardship withdrawals from 401(k) plans to prevent employees from withdrawing funds before they leave a company.

Currently, many 401(k) plans allow employees to withdraw funds before retirement to pay expenses such as a child's college education, uninsured medical bills or the purchase of a primary residence.

- Bar employees from withdrawing funds until they reach a specified retirement age, possibly age 59½. If an employee terminated employment and went to work for another company, the funds would have to be kept in the 401(k) plan or be rolled over into an IRA, where they would remain until the IRA funds could be withdrawn.

Currently, an employee of any age can withdraw 401(k) plan contributions and the interest on those contributions after leaving a company.

- Ban 401(k) plans from loaning funds to employees. Currently, more than one-third of 401(k) plans offered by employers have loan provisions, consultants say.

- Tax employees on benefits they receive from all retirement plans—including 401(k) plans and IRAs—that exceed a yet-to-be-determined amount.

It's not known which option is most favored by the Treasury. Mr. Conaway, for example, points out that the Treasury still could decide to repeal 401(k) plans.

"We are far from knowing how the debate will come out," adds Edward J. Davey, vp-technical analysis at Johnson & Higgins in New York.

But, the options now under review suggest that the Treasury may be shifting course from proposing an elimination of plans to preserving the plans with new limitations.

Some experts say that while new restrictions on 401(k) plans are almost inevitable, the plans will still be in place when the dust settles. "There may be limits on contributions...tightening of hardship withdrawals, but they still will be viable retirement income vehicles," said Frederick Rumack, director of tax and legal services at Buck Consultants Inc. in New York.

The Treasury's decision to review its proposal to repeal 401(k) plans came after employers and consultants mounted a full-court press to convince the Treasury to change its mind.

The Employers Council on Flexible Compensation, a Washington-based benefits trade group, met with Ronald Pearlman, assistant Treasury secretary for tax policy, to convince him that a repeal would have disastrous consequences for millions of American

'A repeal would be devastating to short-service employees and those workers with small companies who may not have a defined benefit plan,' says William Chip, counsel for the Employers Council on Flexible Compensation.

workers.

Mr. Pearlman was told that wiping out 401(k) plans would mean that workers who never stay long enough at any job to meet the 10-year vesting requirements found in many defined benefit plans might never be able to collect an employer-provided retirement income. Salary reductions to a 401(k) plan vest immediately.

"A repeal would be devastating to short-service employees and those workers with small companies who may not have a defined benefit plan," said William Chip, counsel for the ECFC.

"We tried to make them realize the tremendous inequities that a repeal would cause," Mr. Chip said.

While the proposed options, which could discourage employee participation by making the programs less attractive, aren't generating much enthusiasm, benefit experts say they are better than an outright repeal of 401(k).

And, benefit experts are encouraged that the Treasury's position on 401(k) plans isn't carved in stone and that the options could be the basis of negotiations with Treasury.

"The Treasury is coming out of its hermetic seal," said Stuart Brahs, executive director of the Washington-based Assn. of Private Pension Welfare Plans.

While some benefit lobbyists met with Treasury Department officials in an effort to save 401(k) plans, some corporate executives went even higher.

For example, Edward Telling, chairman of Chicago-based Sears, Roebuck and Co., the nation's largest retailer, urged President Reagan to reject the Treasury's proposed repeal of 401(k) plans.

Wiping out 401(k) plans would be contrary to the administration's policy of stimulating national economic growth through the encouragement of retirement savings, Mr. Telling said.

Sears recently added a 401(k) feature to its 70-year-old profit-sharing plan, which now covers about 300,000 people.

Other groups are distributing surveys to congressional committees and to the Treasury Department to show policy-makers that participation in 401(k) plans cuts across all salary levels.

For example, a new survey of 228 plans by the APPWP found that 76% of employees in the upper-income group participated in a company's 401(k) plan—as did about 60% of those in the lower two-thirds income group.

"This survey refutes the notion that the plans are primarily utilized

by upper-income individuals," said Mr. Brahs.

Mr. Brahs said he believes that the findings in the APPWP survey, along with another survey by Lincolnshire, Ill.-based benefit consultant Hewitt Associates that indicates broad participation in 401(k) plans, may be influencing Treasury Department thinking (BI, March 25).

"I think the Treasury is realizing what they proposed made no sense. They didn't analyze the effect a 401(k) repeal would have on the average worker," Mr. Brahs said.

What changes, if any, the Treasury Department decides to propose for 401(k) plans in its revised tax simplification package—and whether Congress later adopts those changes—could affect the retirement benefit planning of thousands of companies.

Several surveys reveal that 401(k) plans are the fastest growing employee benefit.

Employers have rushed to set up the plans because they are relatively inexpensive to provide. For example, smaller companies that determine a defined benefit plan is too costly to set up are flocking to establish 401(k) plans, whose costs are much more predictable, consultants say.

Employees like 401(k) plans because they allow them to reduce their pretax salaries by up to \$30,000 a year, thus cutting their taxes substantially.

Employees also like the plans because funds earn interest tax-free until they are withdrawn.

In addition, employers often match employee contributions to

the plan up to a certain percentage of salary.

If 401(k) plans were eliminated, employers would face new pressures to improve or add defined benefit plans, experts say.

With the Treasury's final decision still to be made, experts say employers must continue to lobby and explain to Treasury and Congress how their 401(k) plans work.

"Keep those cards and letters coming," said Susan Koralik, a partner with Hewitt Associates.

"Keep directing your remarks to the Treasury. You must stress the

importance of these plans to retirement savings," said Theresa Stuchiner, a partner with Kwasha Lipton, a Fort Lee, N.J.-based benefit consultant.

Employers shouldn't become complacent about getting involved because they believe the Treasury Department is softening its hard-line stance on 401(k) plans.

"Remember, Harry Conaway says repeal still is an option," observed Dallas Salisbury, president of the Employee Benefit Research Institute, a Washington-based benefits think tank.

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Georgia passes comp bill

ATLANTA—A workers compensation measure supported by both business and labor is awaiting the signature of Georgia Gov. Joe Frank Harris.

S.B. 160, a compilation of four separate bills, calls for an increase in benefits and a decrease in mandated weeks of rehabilitation.

Maximum weekly benefits to injured workers with permanent total injuries are slated to increase July 1 to \$155 per week from \$135, and then again on July 1, 1986, to \$175 per week.

Temporary partial benefit maxi-

mums also will increase to \$104 per week from \$80 per week as of July 1.

Another provision in the bill calls for a decrease in mandated rehabilitation programs to 26 weeks, from the current 52 weeks. However, this period may be extended on an individual basis by the Board of Worker's Compensation.

The measure also allows insurers that write group health coverage to be reimbursed by the workers compensation insurer for medical bills the group insurer paid in workers compensation cases.

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Robins forms reserve to pay IUD claims

Continued from page 3

A total of \$17.2 million in punitive damages has been awarded in eight cases to date. The company has paid out \$8.8 million in six cases and is appealing the other two awards, according to a company spokesman.

A class-action motion has been filed in the U.S. District Court for the Eastern District of Virginia to resolve in a single proceeding whether Robins should be liable for subsequent punitive damages in Dalkon Shield cases.

Robins Senior Vp G.E.R. Stiles, the company's chief financial officer, said Robins believes the reserve represents a reasonable estimate of the minimum cost to the company for compensatory damages and legal expenses in connection with the disposition of pending and future claims.

Because of uncertainties of the company's total exposure, the reserve may not necessarily be the amount of the loss ultimately experienced by the company, Mr. Stiles said. However, he noted that it is not likely that the ultimate loss will be less than the amount reserved.

Establishment of the reserve is primarily responsible for Robins' \$461.6 million net loss in 1984, compared with net earnings of \$58.2 million in 1983, according to a company statement.

The suits filed against Robins allege that women suffered infections, sterility and spontaneous abortions as a result of their using the Dalkon Shield.

Until Robins ceased manufacturing the device in 1974, 2.8 million Dalkon Shields were sold in the United States and 2.19 million were actually inserted. An addi-

tional 1.7 million devices were marketed abroad in 79 countries, although fewer than 100 lawsuits have been filed on behalf of women living abroad.

Robins had received an average of about 150 claims per month, but has averaged 300 claims per month for the first three months of 1985, according to a Robins spokesman.

The increase may have been due, in part, to greater awareness spurred by a public information campaign last fall in the United States. The campaign told women still using the Dalkon Shield to have it removed at the company's expense.

Robins has paid more than \$1.15 million to have Dalkon Shield IUDs removed from about 4,400 women and for examinations to another 775 women who were found not to be using that device, says

Jack B. Kull, Robins' manager of risk management.

A similar removal program is now in progress abroad.

In a related action, Robins said last week it has agreed to pay \$6.9 million to settle a class-action shareholders' suit against the company and three of its current and former officers.

A hearing seeking court approval of that agreement was held late last week, according to plaintiffs' attorney Eric Keisman of the New York-based firm of Wolf, Popper, Ross, Wolf & Jones. He represented more than 10,000 stockholders in the case.

The lawsuit, filed in 1977 in the U.S. District Court for the Southern District of New York, alleged that the defendants violated federal securities law by making misleading statements and failing to disclose material information regarding the Dalkon Shield, which resulted in financial loss to stockholders of the company. The lawsuit sought an unspecified amount of damages.

The settlement agreement provides that persons who purchased A.H. Robins stock from March 8, 1971, through June 28, 1974, and who still held such shares at the end of the period will be eligible to participate in the settlement.

Plaintiffs' counsel concluded that there is no basis for a finding of liability against the individual defendants, said William A. Forrest Jr., Robins vp and general counsel. The settlement agreement contains an acknowledgment by counsel for the plaintiffs that proof of claims against the company would be difficult, he added.

"This was a reasonable and expedient means of disposing of the problem," said Mr. Kull.

Both sides declined to comment on Robins' directors and officers' liability coverage.

Group to help Illinois firms control costs

CHICAGO—The Illinois Chamber of Commerce has established a Health Care Cost Management Department to help Illinois businesses deal with rising health care costs.

Pamela D. Mitroff will manage the new program. Ms. Mitroff has 10 years experience in health care insurance and cost control, first with Blue Cross & Blue Shield of Illinois, and then with BMS Services Inc., a third-party administrator of plans for self-insured companies. She has an undergraduate degree from Knox College in Galesburg, Ill., and a master's of business administration from Rosary College in River Forest, Ill.

The goal of the new department is "to make the competitive approach to cost containment work in Illinois," said Lester W. Brann Jr., president of the Illinois Chamber.

"We've established this new department and broad program objectives to respond to the desire of Illinois employers to gain control over increasing health care costs," Mr. Brann said.

He said the department's goals include:

- To monitor the implementation of S.495, the new state law designed to help employers bargain with health care providers to hold down costs.
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- The BI Directory features an index of companies ranked by number of employees. Also included is a geographical index, arranged by state.

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Armco units to get \$133 million

Continued from page 2

According to the company, the financial injection will "significantly strengthen" the financial positions of all the companies involved.

Universal Re stopped taking on new business and began running off its existing business on April 1, 1984, according to the spokesman for the Armco Insurance Group.

Armco has tried unsuccessfully for about a year to sell its U.S. insurance operations.

Allianz Versicherungs A.G., the giant West German insurer, at one time considered buying Armco's insurance units, but later decided not to acquire the group (BI, May 21, 1984).

When Armco discontinued underwriting at Compass and Universal Re, the company estimated that the amount that would be needed to wind the companies down, including additional reserving, was about \$120 million.

But, last week, Armco's auditor, Deloitte Haskins & Sells in New York, qualified its opinion on Armco Inc.'s 1984 financial statement.

The auditor said, among other things, that, "Since the ultimate effect of the discontinuance of these businesses cannot be precisely determined at this time, the loss could be greater or less than the \$120 million."

Armco Inc. posted a net loss for 1984 of \$295 million, \$64.5 million of which occurred in the last quarter.

Armco said it developed the \$133 million plan after about a month of negotiating with regulators in New York, New Jersey and Wisconsin. The proposal must be approved by the insurance departments in those states, as well as by the departments in California, Oregon and Iowa.

Armco said it expects the departments to approve the plan in a few weeks.

"Unless we find some major unknown, it's approvable. We look at it as a positive plan," said Randy Bluner, deputy director of the Wisconsin Insurance Department's financial examinations bureau.

The New Jersey and New York departments are now examining the adequacy of loss reserves of both Compass and Universal Re. Mr. Bluner reports, noting that Wisconsin will look at those conclusions before approving the transaction.

Officials at the New Jersey department confirmed that they were studying the proposal, but they declined further comment. Officials at the New York department could not be reached for comment.

Mr. Bluner explains that the six departments are working together because there are reinsurance agreements common among the underwriters, so problems at one of the companies could affect the remainder.

Last November, Armco closed two of its British underwriting units, North Atlantic Insurance Co. and British National Insurance Co., because it couldn't find a buyer for them (BI, Nov. 19, 1984).

Universal Re reported \$120.1 million in net written premium in 1983. It posted a combined ratio of 155.9% for 1983, compared with an industry average of 116.4% reported by the Reinsurance Assn. of America (BI, April 30, 1984). It had an underwriting loss of \$69.5 million and a policyholder surplus of \$39.9 million in 1983, according to A.M. Best Co.

Northwestern National Insurance Co. reported net premiums written of \$183.7 million in 1983. It had an underwriting loss of \$18 million, a combined ratio of 109.1% and a policyholder surplus of \$75.8 million in 1983, according to Best's.

Continental Western reported net premiums written of \$63.5 mil-

lion in 1983, according to Best's. It reported an underwriting loss of \$3.8 million, a combined ratio of 105.1%, and a policyholder surplus of \$28.8 million for 1983.

Pacific National reported net premiums written of \$38.3 million in 1983, according to Best's. It had an underwriting loss of \$7.6 million, a combined ratio of 120.9% and a policyholder surplus of \$12.9 million for 1983.

Oregon Automobile reported net premiums written of \$57.4 million in 1983. It reported an underwriting loss of \$3.3 million, a combined ratio of 105.2%, and a policyholder surplus of \$29.9 million in 1983, according to Best's.

Compass reported net premiums written of \$76.9 million in 1983. It had an underwriting loss of \$10.6 million, a combined ratio of 114% and a policyholder surplus of \$29.2 million for 1983, according to Best's.



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A&A merger

Continued from page 1

M&M's 1984 gross revenues of \$1.1 billion.

The revenues for the merged entity are based on A&A's 1984 revenues of \$550.4 million and Reed Stenhouse's calendar-year 1984 revenues of \$251.7 million after conversion to U.S. dollars from Canadian currency.

Reed Stenhouse's fiscal year ends on Sept. 30.

The proposed merger between Sedgwick Group P.L.C. and Fred S. James & Co. Inc. would produce a company with 1984 revenues of \$579.5 million after currency translation, or greater than that of A&A by itself (see story, page 1).

The merged A&A and Reed Stenhouse would also surpass M&M in revenues generated by retail property/casualty brokerage based on 1983 business (BI, Dec. 10, 1984).

A&A's decision to dispose of the underwriting operations it acquired in the Howden merger led to a \$67.5 million net loss in the fourth quarter of 1984 and a \$49.6 million net loss for the entire year.

But, despite the bottom-line loss at year-end 1984, A&A's aftertax income from continuing operations rose 62.9% to \$25.9 million in 1984, compared with a \$15.9 million profit in 1983. The company said the operating gains were primarily

attributable to a lower effective tax rate and gains in net investment income.

For the fourth quarter of 1984, Alexander & Alexander reported a \$7.2 million aftertax profit from continuing operations, compared with a \$5.5 million operating loss for the fourth quarter of 1983.

But, the fourth-quarter operating gains were undermined by \$74.7 million losses generated by the underwriting subsidiaries that A&A acquired with Howden, including London-based Sphere Drake Insurance Co.

A&A reported that \$51.6 million of the \$74.7 million loss from its discontinued operations represents the estimated cost of disposing of the underwriting units, including the write-off of intangible assets and realization of foreign exchange losses.

Operating losses, including reserve strengthening, account for the remaining \$23.1 million of the loss.

Because A&A has said it plans to dispose of the operations, they are treated as a separate item in its financial statement.

A&A reported that its operating revenues declined slightly in 1984, dropping to \$550.4 million from \$550.9 million in 1983.

Revenues rose in the fourth quarter, however, to \$145.9 million from \$133.1 million in the last quar-

ter of 1983.

Peter Densen, A&A's chief financial officer, commented that the brokerage's 1984 results reflect a "pretty positive" trend in operating results that he expects will continue this year.

Securities analysts say Alexander & Alexander's operating results are about what was expected, although losses stemming from the underwriting operations had been difficult to estimate.

Joan Zief, vp at Merrill Lynch Capital Markets in New York, noted that A&A's operating results reflect a stronger environment for insurance services and indicate that expenses are "pretty much under control."

Officials at both A&A and Reed Stenhouse said last week that merger talks between the two brokers are continuing despite the losses at A&A.

Mr. Densen said last week that the "due diligence" part of the proposed merger, where both companies examine one another's books, is continuing.

Mr. Densen, commenting on reports that the \$345 million price A&A has offered for Reed Stenhouse may be renegotiated, noted that because A&A has failed to meet at least one condition in its merger contract, Reed Stenhouse "could choose to renegotiate or walk away."

Mr. Densen added, however, that "right now, there's no renegotiation."

John Riley, Reed Stenhouse's vp-corporate office, said, "We're looking forward to the deal closing on the terms agreed to in December."

He said Reed Stenhouse "pretty much knew from March 4," when A&A said it would boost the reserves of its underwriting subsidiaries, that there would be a substantial write-off that would affect A&A's ability to meet all the terms of the merger agreement.

But, he said, "We expect to press on."

He said he was unsure why A&A believes Reed Stenhouse may not have met all the conditions of the merger agreement. "We think it may simply be a judgment call" on A&A's part, he said, adding that Reed Stenhouse does not believe it has failed to meet any of the conditions of the proposed merger. If it has, he said, it is "not in any major way."

Under the current schedule, according to Mr. Riley, the mutual review of books will be concluded in about a week, a proposed merger agreement will be presented to shareholders of both companies in May, and the two firms will begin reporting on a consolidated basis in July.

Both Mr. Densen and Mr. Riley denied allegations made last week

that the two companies had shelved the merger plans.

A man who identified himself as a senior A&A official in a West Coast office called *Business Insurance* on Saturday, March 30, saying that the merger had been scuttled. The caller would not give his name, and *Business Insurance* could not verify if the caller was an A&A official.

Mr. Densen called the caller's remarks "hogwash."

Mr. Riley said the rumors "don't deserve any attention whatsoever," adding that those spreading the rumors "sure don't know what they're talking about."

Securities analysts say they believe both companies still want the merger to be completed.

The proposed merger between James and Sedgwick is likely to spur A&A and Reed Stenhouse to complete their own merger, says Thomas G. Rosencrants, research director at Conning & Co. in Hartford, Conn.

"I think both parties would like to see the deal go through," says Ms. Zief of Merrill Lynch.

Leonard M. Wilson, a special limited partner of L.F. Rothschild Unterberg & Towbin in New York, said also that it would appear that the deal is still going through, although he said it may have encountered some "choppy water" for undisclosed reasons.

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MGM settlement

Continued from page 1

says it is owed and attorneys fees in both the underlying and the coverage litigation.

MGM also gave up its claim for punitive damages for the insurers' alleged bad faith, delay of payment and other wrongful activities, which MGM contended could have doubled or tripled the compensatory damages it had sought.

Mr. Shernoff said he personally would have liked to pursue the punitive damage claims against Hall, Union and some of the insurers, but added a trial would likely have taken eight months and that a verdict in MGM's favor would have carried the risk of a retrial and lengthy appeals.

"The carriers took a real bath," Mr. Shernoff added, noting that "it's the beginning and end of retroactive insurance in America."

The settlement was agreed to March 29, 11 days after a trial began in a state court in Las Vegas to determine who should pay for the \$75 million settlement between MGM and the fire victims (BI, March 18).

Serious negotiations to settle the coverage dispute were conducted as early as March 2 when attorneys met at Hall's headquarters in Briarcliff Manor, N.Y. Rumors of a proposed settlement began to circulate soon after the trial began on March 18 (BI, March 25).

The trial stemmed from a March 1983 lawsuit filed by MGM against Hall, Union International and insurers on the second and third layers of MGM's retroactive coverage. MGM alleged the insurers had not indemnified the hotel company after the \$75 million settlement with the victims.

About 20 insurers on the fourth layer were subsequently added to the suit.

Three months later, Hall and Union International asked the Nevada state court to declare null and void the first \$35 million of the back-dated coverage written by Union. Hall and Union alleged that MGM intended to use the retroactive liability insurance to cover punitive damages as well as compensatory damages, which was in violation of the policies.

Hall, Union and the other insurers say it was apparent that the \$75 million settlement with the fire victims, which they alleged was excessive, included punitive damages.

A month later, Hall and Union International sued Del E. Webb Corp., a general contractor working at the hotel at the time of the fire, Webb's liability insurers and MGM to force Webb's insurers to pay MGM losses. Hall and Union contended MGM's retroactive coverage was excess of the coverage provided by Webb's insurers.

Hit hardest by the settlement is Hall and its subsidiary, Union International. Union, in addition to writing all of the first \$35 million retroactive layer, also wrote a \$3.5 million portion of the second back-dated layer.

According to the settlement, Hall and Union will pay \$36 million of the \$76 million to be paid to MGM. It will pay \$27 million by April 15; \$4.5 million by April 15, 1986, plus 12% interest retroactive to April 15, 1985; and another \$4.5 million by April 15, 1987, plus 12% interest also retroactive to April 15, 1985.

Combined with the \$11.5 million Union already has paid to MGM, Hall and Union will pay a total of \$47.5 million to MGM. The hotel company paid Union a \$25 million premium for the first \$35 million in retroactive coverage. It's not known how much in premium Union collected for its participation on the second layer.

More than 15 insurers that participated in the first, second and third layers of back-dated coverage, along with 12 of Webb's insur-

ers, will contribute the other \$40 million of the settlement.

Insurers on the second layer of back-dated coverage—which wrote \$35 million excess of \$65 million, including the \$30 million underlying layer—will pay about \$26.5 million into the settlement.

A group of insurers on the third back-dated layer, which had limits of \$25 million excess of \$100 million, will pay about \$2.3 million to MGM, while the insurers on the fourth back-dated layer will not have to contribute to the settlement.

In addition, Webb's primary insurer, Granite State Insurance Co., agreed as part of the settlement to pay MGM \$7.25 million in defense costs. And, a group of Webb excess insurers agreed to pay another \$3.9 million.

As part of the settlement, all parties drop all claims against all other parties to the litigation.

While MGM attorneys hailed the settlement as a victory for their client, attorneys for Hall and some insurers said the settlement was the best deal they could get under the circumstances.

Last week, Hall Vp and General Counsel Thomas G. O'Brien III acknowledged that Hall and Union will pay more to MGM as a result of the settlement than the face amount of Union's coverage.

However, he said, "We consider it an acceptable and satisfactory settlement. In any settlement like this, no one ever is entirely happy because it involves compromises."

"On balance, this was as good a settlement as could be achieved."

Mr. O'Brien contended that by signing the settlement Hall and Union gave up valid claims against MGM and the Webb insurers.

"We were ready for trial; we felt we had good defenses and good legal and factual arguments to the MGM claims and for our claims against Webb," he said. "We gave those up and the opportunity to vindicate our position as well."

Mr. O'Brien pointed out that Hall and Union would recover a portion of the settlement cost from Union International's reinsurers and from Hall's errors and omissions liability insurers. He added that Hall has established reserves to pay costs not covered by these underwriters, though he would not comment on the size of the reserve.

In a prepared statement, Hall said that the settlement will not have a negative impact on its earnings.

Mr. O'Brien said the company will collect from its E&O insurers in connection with MGM's allegations that Hall acted negligently and improperly in putting together the retroactive insurance package. He would not identify Hall's E&O insurers or comment on how much it will collect.

Under an agreement between Hall and its E&O underwriters, the insurers will be released from any other liability in connection with the MGM coverage litigation.

In addition, Mr. O'Brien acknowledged that Hall and Union, which reinsured 100% of its liability on the retroactive coverage under a payout agreement with General Reinsurance Co., would receive "significantly less than \$35 million" from General Re.

Under the original arrangement with General Re, the reinsurer was not obligated to pay Union International any money until 1984. Payments of \$7 million were due in 1984 and 1985 and additional payments were to be stretched out until 1990.

When the settlement was reached with the fire victims in January 1983, the payout schedule has already been renegotiated with General Re to accelerate payments from the reinsurer. Because of the accelerated payout and General Re's loss of use of the money, the amount of the payments from General Re to Union International was

reduced.

Mr. O'Brien also said that Hall's reputation should not suffer in light of the litigation and that Union did the right thing when it stopped making payments to MGM prior to the \$75 million settlement with the fire victims.

An attorney for insurers on the second back-dated layer said although it reduced the risks of litigation and very substantial trial costs, the settlement represented a "very unprofitable business transaction" from his clients' standpoint.

The second-layer insurers will pay \$26.5 million, according to the settlement. MGM paid these insurers a total premium of \$7 million.

"The premium was inadequate in view of the amount that was paid out," said Robert S. Warren, an attorney for several second-layer insurers with the Los Angeles firm of Gibson, Dunn & Crutcher. "It was not a happy piece of insurance business."

Insurers on the third layer, which contributed about \$2.3 million to the settlement, say that their participation was largely to avoid legal costs associated with the trial.

MGM paid \$2.5 million for the \$25 million third layer.

"We paid a little less than we got in premium," said Robert N. Schiff, an attorney for Insurance Corp. of Ireland. ICI will pay \$460,000 toward the settlement.

"As far as we're concerned, it is a nuisance settlement. It's not a recognition of liability on the part of my client. It would have cost us more to try the case."

"We paid more than we should have but less than the premiums received," added Richard M. Shusterman, of the Philadelphia firm of White & Williams, who represents five third-layer insurers. "We paid an amount probably in the neighborhood of what it would have been to try the case."

MGM attorney Mr. Shernoff noted the retroactive insurers paid significantly more than if they had approved a proposed \$50 million settlement with fire victims in November 1982. At that time, MGM said it would contribute \$25 million to pay the \$75 million underlying settlement with fire victims.

The failure of Union International and the second-layer insurers to agree to the \$50 million settlement was the basis for cross-complaints filed by the third layer of retroactive insurers against Union International and the second-layer insurers. The third-layer insurers contended that if the underlying insurers had agreed to the settlement, claims would have never pierced the third layer.

"They could have settled for \$50 million and should have settled for \$50 million," Mr. Shernoff said.

Webb's excess insurers, which also contributed to the settlement, say that the costs of litigating the case was a major factor behind their decision to settle.

Robert A. Zeavin, who represents five Webb excess insurers, said that his clients did not believe they had any liability, though they ended up paying much less than if the case had been tried.

"We brought ourselves out of an inordinately expensive trial," said Mr. Zeavin with the Los Angeles firm of Buchalter, Nemer, Fields, Chrystie & Younger.

David Clark, the attorney for Integrity Mutual Insurance Co., another Webb insurer that will pay \$2.75 million under the settlement, said Integrity settled after taking into consideration the costs of going to trial and the remote chance that the court would have found Integrity liable.

"My client is very pleased with the settlement," said Mr. Clark of the Los Angeles firm of Chase, Rotchford, Drukker & Bogust.

In addition to Union, the other insurers on the second layer of MGM's back-dated coverage and the amount they will pay toward

the settlement include: American Home Assurance Co., \$9.1 million; The Central National Insurance Co. of Omaha, \$12.7 million; Federal Insurance Co., \$1.7 million; underwriters at Lloyd's of London led by underwriter Robin Jackson of Merrett Holdings P.L.C., \$1.5 million; International Surplus Lines Insurance Co., \$977,459; and Industrial Insurance Co. of Hawaii Ltd., \$434,426.

Insurers participating on the third layer and the amount they will contribute include: National Union Fire Insurance Co. of Pittsburgh, Pa., \$952,200; Insurance Corp. of Ireland, \$460,000; St. Paul Surplus Lines Insurance Co., \$294,400; Northbrook Excess & Surplus Insurance Co., \$230,000; The Travelers Indemnity Co., \$92,000; United States Fire Insur-

ance Co., \$92,000; The Home Insurance Co., \$92,000; Northumberland General Insurance Co., \$69,000; and Guardian Insurance Co. of Canada, \$18,400.

Contributions by Webb insurers include the \$7.25 million in defense costs to be paid by Granite State.

Webb's excess liability insurers and the amounts they will contribute include: Integrity Mutual Insurance Co., \$2.75 million; First State Insurance Co., \$225,000; Granite State \$211,112; National Union \$113,333; Federal \$60,000; underwriters at Lloyd's of London and associated underwriters \$250,000; Lexington Insurance Co., \$40,000; Allianz Insurance Co., \$60,000; American Excess \$85,000; Columbia Casualty Co., \$50,000 and International Surplus Lines \$35,000.

update

Home Group stock distributed

Continued from page 2

purchase The Home Group along with City Investing's Motel 6 chain. But, City Investing's board in September directed its management to pursue "possible alternatives" to the offer. The Motel 6 chain was later sold for \$565 million to a group led by Kohlberg, Kravis Roberts & Co. and Merrill Lynch Capital Markets.

The spokesman would not discuss whether the company had received any other offers for The Home, which posted a \$61.4 million aftertax operating loss in 1984. The stock distribution is scheduled for early June.

Bank loses D&O cover

SAN FRANCISCO—Bank of America Corp.'s primary directors and officers underwriter has followed the lead of the bank's excess D&O underwriter and will cancel its portion of the bank's coverage.

Employers Insurance of Wausau, Bank of America's primary D&O insurer, told the bank in March that it will cancel \$80 million of the bank's \$100 million in D&O coverage on April 15. Wausau is terminating the three-year, claims-made policy—which had been due to expire May 15, 1986—because of "underwriting reasons," said Wausau attorney Anthony M. Lanzzone of the New York-based firm of Lanzzone & Kramer. Mr. Lanzzone declined further comment.

Bank of America's \$20 million excess D&O policy with First State Insurance Co. was due to expire May 15, 1986 (BI, March 11, 1985). However, First State notified the bank in January that it would terminate the coverage a year early because the company has decided to reduce its exposure in this line, according to a First State spokesman.

Bank of America last month filed a lawsuit in Los Angeles Superior Court against Wausau, First State and six bank officers. That suit alleges the D&O insurers should respond to a \$95 million loss triggered by the bank's involvement with allegedly fraudulent mortgage-backed securities.

Representatives for Bank of America and Johnson & Higgins, the bank's D&O broker, declined to comment on whether the bank is seeking or has obtained D&O replacement coverage.

Playtex recalls tampons

STAMFORD, Conn.—International Playtex Co. is recalling some of its tampon products in the wake of controversy over the products' alleged link to toxic shock syndrome.

A spokesman for the company said last week that the company has recalled its super, super-plus and slender deodorant and non-deodorant tampons and is offering replacements to consumers. These products contain a highly absorbent fiber called polyacrylate, which has been linked to an increased risk of toxic shock syndrome.

In a prepared statement, Playtex President Hercules P. Sotos said the company will eliminate polyacrylate from Playtex products and is continuing its research into toxic shock syndrome.

Regular tampons, which do not contain polyacrylate, are not affected and will remain on the shelves, the spokesman said.

The decision to take the products off the shelves came shortly after a Feb. 25 federal court jury verdict in Kansas that ordered Playtex, a unit of Beatrice Cos., to pay more than \$1 million in compensatory and \$10 million in punitive damages to the estate of Betty L. O'Gilvie.

The plaintiffs charged that Ms. O'Gilvie contracted toxic shock syndrome after using Playtex Super Deodorant Tampons, and later died.

The Playtex spokesman would not discuss the pending litigation or the company's insurance for the award.

Greyhound sells two insurers

PHOENIX—The Whitney Financial Group has bought Pine Top Insurance Co. and Pine Top Life Co. from the Greyhound Corp. for about \$20 million.

Pine Top Insurance specializes in reinsurance and excess and surplus lines, said a Greyhound spokeswoman. Pine Top Insurance reported net premiums of \$26.6 million in 1984; Pine Top Life had net premiums of \$1.7 million last year.

Greyhound has been trying to find a buyer for the companies for more than two years, the spokeswoman said. In December 1982, Greyhound said that its British subsidiary, Pine Top Insurance Co. Ltd. U.K., had withdrawn from writing new business. Pine Top had net premiums of 26.6 million in 1984 and Pine Top life had net premiums of \$1.7 million.

Sedgwick merger

Continued from page 1

make its long-awaited move to buy a U.S. broker and for James' parent, Transamerica, to agree to the deal, officials from all three companies say.

"For some years, we have made clear our pragmatic approach and determination to add a new dimension to our business in North America as soon as the right opportunity presented itself," Sedgwick Chairman Carel Mosselmans said last week. "The merger with James, with whom we have enjoyed working for many years, will meet this objective."

James Harvey, chairman and president of Transamerica, said: "The combination of the Sedgwick Group and James will create the premium insurance and reinsurance brokerage group in the world, and we intend to be a supportive participant in Sedgwick Group's future growth. We look forward to working with Sedgwick to our mutual benefit."

"Sedgwick and James is a natural partnership," added Richard M. Page, chairman and chief executive officer of James.

Under the proposed merger, Transamerica will transfer 100% of James' shares—which includes Lloyd's broker Wigham Poland Holdings P.L.C. and newly acquired Canadian broker Tomenson Inc.—for 73.6 million new common Sedgwick shares and 68.4 million shares of a new class of restricted voting stock.

The companies hope to complete the merger by Sept. 30.

The transaction, which is valued at 533 million pounds (\$639.6 million), will give Transamerica a 39% equity interest in Sedgwick.

Transamerica had purchased all of James' shares in December 1982 for \$299.6 million in cash.

For Sedgwick, the merger marks the end of seven years of looking for a partner across the Atlantic.

Sedgwick held merger negotiations with A&A for 2½ years during the late 1970s and early 1980s, but the talks broke down in July 1981 because of tax problems (BI, Aug. 3, 1981).

A&A later that year purchased a Sedgwick competitor, Alexander Howden Group P.L.C. Problems at Howden's underwriting units have forced A&A to take several extraordinary charges, including

charges that triggered a \$49.6 million net loss for 1984.

Sedgwick was then rumored to have attempted to acquire A&A in July 1983—after the problems at Howden surfaced—but no deal was made, and neither side would confirm that an offer was even made by Sedgwick (BI, July 18, 1983).

Since then, Sedgwick's name has been linked to other U.S. brokers, including Corroon & Black Corp. and Frank B. Hall & Co. Inc.

According to Mr. Mosselmans, the Sedgwick chairman, talks between Sedgwick and James did not begin until after Jan. 1, when Mr. Page became James' president and chief executive officer, succeeding Charles A. O'Malley. Before joining James, Mr. Page, was president and chief executive officer of Howden.

When Sedgwick and James approached Transamerica about the merger, the San Francisco-based conglomerate was interested.

"We knew when we purchased James that one of the weaknesses was the lack of an international network," said Frank C. Herringer, Transamerica's executive vp. Transamerica reported last year that only about 15% of James' 1983 revenues was derived from foreign sources (BI, June 25, 1984).

Last year, Transamerica purchased the 35% of Wigham Poland that James had not acquired when it purchased a controlling interest in the Lloyd's broker in 1980.

But, building an international presence through Wigham Poland "would have taken us years," said Mr. Herringer. "It was a question of what to do... Sedgwick and James got together when Mr. Page became CEO, and they came to us."

At first, he said, Transamerica proposed buying Sedgwick, but the British broker refused.

Sedgwick then made an offer for James, he said, but Transamerica was not interested. Finally, the companies agreed to the complex deal.

"We are comfortable with the role outlined for us," he said.

James, with 6,000 employees, is best known for its U.S. retail brokerage operations. James has 80 of its 120 offices in the United States.

Besides its retail brokerage operations, James owns James Benefits, a large employee benefit consulting operation, and John F. Sullivan Co., which ranked as the second-largest U.S. based reinsurance brokerage, according to *Business In-*

urance.

Sedgwick's major operations include its London-based brokerage operation, Sedgwick Ltd., and its large reinsurance brokerage unit, E.W. Payne Cos. Ltd.

Sedgwick, which has 6,320 employees and 163 offices around the world, has three major U.S. operations: Maclean, Oddy & Associates, a Dallas-based wholesaler; Sedgwick Group Services Inc., a New York-based consultant; and Southern Marine & Aviation Underwriters, which provides insurance services to aviation, oil and gas industry clients.

Some James operations will be merged with Sedgwick's after the merger. For instance, Mr. Mosselmans said last week Wigham Poland will be absorbed by Sedgwick.

However, Mr. Page told BI that James will retain its name following the merger. And, John F. Sullivan Co., James' reinsurance intermediary, will continue to operate independently under its current name, even though E.W. Payne has its own U.S. operation.

Sullivan is a "very valuable," name, he said, adding that "we're certainly not going to interfere" with a "very successful" operation.

Although Sedgwick is often regarded as the larger of the two companies, James generated greater revenues in dollar terms during 1984, thanks to the strength of U.S. currency.

James reported revenues of 292.8 million in 1984, up 19.6% from 244.9 million in 1983. Aftertax operating income rose 33.6% to \$14.7 million in 1984 from \$11 million the previous year. Net income stood at \$10.2 million in 1984, compared with a \$1.3 million net loss in 1983.

According to the Transamerica annual report, 41% of James' domestic brokerage commissions and fees were derived from casualty insurance brokerage; 21% came from employee benefits and life insurance operations; 18% from property insurance brokerage; 12% from reinsurance brokerage; and 8% from other operations.

Sedgwick's revenues grew 19.3% in 1984 to 247.1 million pounds (\$286.7 million) using the year-end exchange rate from 207.1 million pounds (\$240.2 million) in 1983. Profit on ordinary activities after taxation—including exceptions charges—totalled 50.5 million pounds (\$56.6 million) in 1984, up 24.2%. Net profit increased 22.5% to 50.8 million pounds (\$58.9 million).

The bulk of Sedgwick's revenues—96%—came from insurance and reinsurance brokerage, while just 4% came from Lloyd's and other underwriting operations.

Some 56.4% of Sedgwick's revenues came from clients in Europe, including the United Kingdom. Some 27.2% was derived from North American business, with the remaining 16.4% coming from clients in other portions of the world.

Analysts on both sides of the Atlantic said last week the merger was smart for both companies.

"Each one probably needed to have some kind of backup on the other side of the Atlantic," said June I. Hoffer, a securities analyst with Prudential-Bache Securities Inc. in New York.

Thomas G. Rosencrants, director of research at Conning & Co. in Hartford, Conn., added that since Sedgwick is essentially a wholesale broker, it needed a "major U.S. partner" to assure it of a "continuous flow of business from the United States."

Sedgwick, he said, as the only major Lloyd's brokerage without a U.S. affiliation, "has been fighting against a shrinking market potential in the United States here." As a result, it was "essential" that it form a financial relationship with a large U.S. brokerage, he added.

But, he said he is a "little surprised" that Sedgwick, in essence, was "willing to give up some of its independence."

There were competitive forces working on James as well, said Mr. Rosencrants. While the brokerage does have Wigham Poland, "it is not very large," and James must do more international business to compete effectively with the other large U.S. brokerages who have international affiliations.

Transamerica's desire to expand its international presence, he said, was reinforced by the fact that, with the recent sharp turn in commercial lines pricing, the brokerage business is on the threshold of an "earnings breakthrough."

"It would seem that the timing is good, and the market will be tracking favorably for them at least through '87," he said.

There is another advantage to the merger as well, said Robert V. Brokaw Jr., a senior analyst with New York-based Miller Tabak Hirsch & Co.

According to Mr. Brokaw, while James still has a good brokerage operation, "I've felt it lacks a spark. It's had unstable earnings compared with the best U.S. brokers." James, he maintains, lacks the skilled financial managers that Sedgwick can provide in addition to an international presence.

Mr. Page said, however, that he feels James has done a "pretty good job" in maintaining earnings compared with other brokerages. "I think we're in pretty good shape."

Analysts in London said that although Sedgwick may have paid too much to gain access to the U.S. market, the merger will be worth the cost in the long run.

"The acquisition of James fills an important strategic need for Sedgwick," said Alan Clifton, an analyst at London stockbroker Kitcat & Aitken. "Once A&A agreed to the merger with Stenhouse, Sedgwick was left with no credible alternative to James. However, the price agreed to purchase James looks somewhat rich to our eyes."

Christopher Huxley, insurance analyst for stockbrokers Fielding, Newson-Smith agreed that the price may be too high, but he added, "It is just the thing they both needed."

"A lot of people are looking at the price. But unless they paid in gold dust, if I was a Sedgwick shareholder, I wouldn't be quibbling. Sedgwick and James are

both in a time of very fast growth, seeing the rise in premium rates."

"It is a good acquisition, though they paid a high price," said Peter Martin, insurance analyst and partner for stockbroker Capel-Cure Myers. "But that is the price one pays to get into a big market. I think it is quite reasonable. It is a high entry fee, but it is quite justified."

James employees say they are also enthusiastic about the merger.

"There's no particular reason, coming from my vantage point, we shouldn't be anything but excited by it," according to one James official.

Another James executive said the merger was greeted by applause when it was announced.

Besides gaining a 39% equity interest in Sedgwick, Transamerica, along with James, acquired seats on the Sedgwick board.

The new 21-member Sedgwick board will include Mr. Harvey and Mr. Herringer of Transamerica. In addition, four current James officers will be added to the board: Mr. Page; Alton F. Irby III and James C. Crane, both executive vps at James; and James J. Meenaghan, president and chief executive officer of John F. Sullivan Co.

And, Mr. Page will become a Sedgwick deputy chairman and retain his titles as chairman and chief executive officer at James.

The merger is subject to a number of conditions.

The proposal must be approved by Sedgwick Group shareholders, the London Stock Exchange, the British Office of Fair Trading and U.S. and British tax authorities.

Lloyd's has already approved the merger, Mr. Mosselmans said.

Also, under the terms of the merger, Transamerica agrees not to increase or decrease its stake in Sedgwick for at least four years. At that time, if Transamerica wants to make a bid to acquire Sedgwick, Transamerica will have to relinquish its seats on the Sedgwick board and wait six months before making an offer.

But, Transamerica has no intention of acquiring all of Sedgwick, said Mr. Herringer.

"We can't imagine doing anything hostile," he said. "Right now, it is in the best interest for the companies to remain independent." ■

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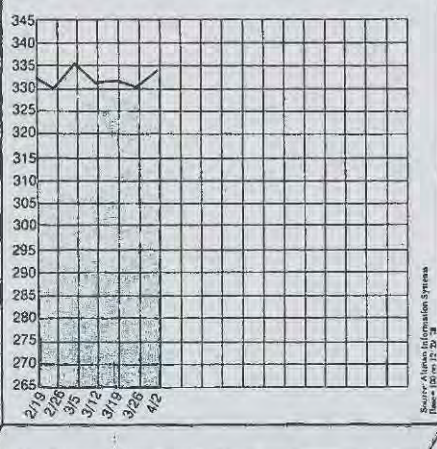
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BI Insurance Index



The *Business Insurance* index of insurance industry stocks rose to a new record high for the trading period ending April 2. The *BI* index closed at 334.5 on April 2, an increase of 4.4 points from 330.1 on March 26. The new record is 0.4 points higher than the previous record of 334.1 points, which was set March 5. A total of 33 stocks posted gains during the week, 14 stocks closed down and 11 stocks were unchanged. The biggest gains were posted by Mission Insurance Group Inc., up 10.2%; Frank B. Hall & Co. Inc., up 9.9%; Old Republic International Corp., up 9.7%; Protective Corp., up 8%; and Torchmark Corp., up 6.8%. The biggest losses were posted by United Fire & Casualty Co., down 20.8%; Reed Stenhouse Cos. Ltd., down 4.3%; W.R. Berkley Corp., down 2.5%; Travelers Corp., down 2.4%; and Statesman Group Inc., down 2.1%. The *Business Insurance* stock index rose 1.3% during the trading period. By comparison, the New York Stock Exchange composite and the Standard & Poor's 500 each rose 1.2% and the Dow Jones 30 Industrials rose 0.5% during the trading period.

British Issues

2 Apr	Price	P/E	Div.	Yield	High—Low
Companies	pence		pence	%	pence/pence
Comm Union	213	N/M	16.9	7.9	213—204
Genl Accident	602	102.0	28.6	4.7	607—596
Gdn Royal Exch	693	20.1	37.1	5.3	698—685
Royal	593	N/M	33.9	5.7	595—585
Sun Alliance	480	23.1	22.1	4.6	480—470

Brokers

CE Heath	628	10.7	30.0	4.8	635—620
Hogg Robinson	283	16.2	11.6	4.1	283—277
JH Minet	302	20.8	8.0	2.6	302—298
Sedg Grp	375	16.4	14.3	3.8	384—375
Stew Wrightson	599	15.7	25.7	4.3	630—599
Willis Faber	680	23.3	18.6	2.7	680—650

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

Rate hikes renew love affair between investors, brokers

By LEONARD M. WILSON

Special to Business Insurance

THE PUBLICLY OWNED insurance brokers have regained investor favor with a vengeance over the past six months.

Price-to-earnings ratios have advanced and now stand in the area of 15 times or higher on 1985 earnings estimates. Some informed observers believe that current share prices can only be justified on possible 1986 results.

Pricing on commercial lines is the variable that has galvanized investor attitudes toward the insurance brokers. Rising rates are the pivotal factor driving the resumption of brokerage earnings growth.

For most of the 1970s, insurance brokers were perceived as incorporating a number of attractive investment attributes. In particular, brokers were regarded as growth stocks with the ability to provide consistent and well-above-average earnings progress.

It was also viewed that the group was largely immune to the property/casualty underwriting cycle. Periods of rising commercial insurance prices fueled faster earnings growth. Periods of soft rates dampened the growth rate, but earnings still advanced, albeit modestly.

With the advent of the ruinous pricing, the earnings of the insurance brokers proved not to be immune to the cycle. Earnings fell for most brokers, though the volatility was less extreme than that of many leading commercial lines insurance underwriters.

Further damaging the brokers' image as a refuge from the property/casualty underwriting cycle was the impact of brokers' underwriting subsidiaries. The entry into underwriting was on a relatively small scale, with the intent to abet brokerage operations. Knowing the pitfalls, the brokers logically should have avoided the mine fields of the

Leonard M. Wilson, a special limited partner at 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.



Mr. Wilson

'We adhere to the view that, notwithstanding the latest shrinkage in earning power, the publicly held brokers are still growth issues. In our view, this last cycle was abnormal in terms of depth and longevity, owing to a confluence of interrelated factors not likely to be repeated.'

recent underwriting scene.

Instead, leaders like Alexander & Alexander Services Inc., Frank B. Hall & Co. Inc. and Corroon & Black Corp. incurred painful operating losses that also increased the adverse effect of the cycle. Difficult earnings in brokerage and losses in underwriting seemed to demolish the twin premises of consistent growth and immunity to the underwriting cycle.

We adhere to the view that, notwithstanding the latest shrinkage in earning power, the publicly held brokers are still growth issues. In our view, this last cycle was abnormal in terms of depth and longevity, owing to a confluence of interrelated factors not likely to be repeated.

They included the secular rise in interest rates, the unusually generous rates of return on insurance capital infusion attracted by these profit levels, the wide availability of cheap insurance, and the tidal wave of captives providing new capacity.

In addition, the insurance brokers through 1981 were beset by a high general inflation rate that pushed up costs even as insurance prices were falling precipitously.

Although it never warrants becoming too optimistic about the property/casualty underwriting cycle, we expect the next phase of soft markets to be more temperate. The forces that precipitated the recently ended orgy of price cutting are not likely to recur, at least all together, and inflation is likely to be held to a moderate pace.

Perhaps the pricing cycles of smaller amplitude in the 1960s and early 1970s will prove to be better models for the future.

As for brokers and the underwriting business, the exit from risk-taking is well under way, although at uncomfortable cost in the form of charges to the income statement. Brokers will not be susceptible to underwriting loss in the next cycle.

Future earnings growth should be driven by several factors. Commercial premiums in

the United States should expand a little faster than the gross national product over the balance of the decade.

In addition, the rising proportion of international business, with inherently solid growth potential, will also be important to the brokers.

Finally, the major insurance brokers probably can sustain market-share gains emanating from clout in tighter markets and access to all worldwide insurance markets. In the years ahead, coverage and placement abilities should edge out price as the determining element in the choice of a broker.

This will give the leaders an estimable advantage.

Brokers' earnings are also likely to outstrip the growth in revenues, even after the major phase of price increases. Depressed margins will respond to the positive leverage of improved revenue gains and the diminished effect of inflation on expenses beyond 1986.

One caveat is the pace of dividend growth. Several of the public brokers are disbursing a greater percentage of earnings currently than long-term prudence would dictate. Consequently, in those instances, dividends may rise more slowly than earnings, and this could affect stock appraisals.

In assessing the longer-term outlook then, we think the industry dynamics argue solidly for the rehabilitation of the brokers' image as growth issues.

Hartford Steam Boiler dividend

The Hartford Steam Boiler Inspection and Insurance Co. has increased its regular quarterly dividend to 80 cents per share from 75 cents, payable April 30 to shareholders of record at the close of business April 10.

USF&G increases dividend

USF&G Corp. has increased its stock dividend 3 cents a share to 55 cents a share, payable April 30 to shareholders of record March 22.

Swiss overseas business up

Swiss insurers generated 28.9 billion Swiss francs (\$11 billion) in premium income in 1983, more than half of which was in business overseas, according to the Federal Office for Private Insurance's annual report.

The office, the regulatory body for Swiss insurance companies and foreign companies here, said 1983 was the first year in which foreign business had exceeded 50% of the total. Of the 14.7 billion francs (\$5.6 billion, based on the U.S. exchange rate as of April 2) of premium income coming either directly or indirectly from abroad, 8 billion francs (\$3 billion) came from reinsurance, 4.5 billion francs (\$1.7 billion) from direct insurance against accidents and damages, and 2.2 billion francs (\$837 million) from direct life insurance.

Life insurance premium income continued to mount, rising from 49.8% of the total in 1982 to 51.7% in 1983. Accident insurance declined from 12.7% to 11.9% of the total premium income over the year, however. And, other branches—health insurance, transport and fire insurance—remained largely static.

Premium income on Swiss risks also increased in 1983, the report said, rising 1.1 billion francs (\$418 million) to 13.8 billion francs (\$5.25 billion).

The report covered the activity of 114 insurance and reinsurance companies operating in Switzerland—77 Swiss and 25 foreign direct insurers and 12 Swiss reinsurers. The direct insurers included 23 life companies (21 Swiss and two foreign), and 79 accident and general insurers (56 Swiss and 23 foreign).

BI Industry Stock Report

April 2, 1985 3/27/85 thru 4/2/85

Brokers	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
Alexander & Alexander Svcs	NYSE 30.00	-2.0	333.3	1.00	3.3	31.25	30.00	1,486.5
Baldwin & Lyons Inc	OTC 53.00	0.0	11.3	0.80	1.5	54.00	53.00	5.4
Corroon & Black Corp	NYSE 43.75	3.6	34.4	1.00	2.3	43.75	42.88	95.1
Crump E H Cos Inc	OTC 26.00	0.5	21.8	0.64	1.7	26.00	25.75	64.7
Ewert & Chandler Cos Inc	OTC 15.00	0.0	250.0	0.00	0.0	15.00	15.00	0.8
Gallagher Arthur J & Co	OTC 36.50	-1.4	23.0	0.28	0.8	37.00	36.50	23.7
Hall Frank B & Co Inc	NYSE 25.00	9.9	0.0	1.00	4.0	25.00	23.13	341.1
Marsh & McLennan Cos Inc	NYSE 61.50	-0.4	38.0	2.40	3.9	62.00	60.88	249.9
Poe & Assoc Inc	OTC 8.25	0.0	0.0	0.00	0.0	8.25	8.25	7.5
Reed Stenhouse Cos Ltd	OTC 22.00	-4.3	31.4	0.60	2.7	23.00	21.25	1,038.6
AGENTS/BROKERS	AVERAGE		35.8		2.3			
Conglomerates & Holding Cos.	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
American Express(Fireman's Fd)	NYSE 41.50	-1.5	14.9	1.28	3.1	42.38	41.38	3,110.1
Anderson Clayton(Ranger/PanAm)	NYSE 40.38	-1.5	20.8	1.32	3.3	40.38	39.50	140.0
Armco Inc	NYSE 7.88	-14.9	0.0	0.00	0.0	9.13	7.88	1,338.3
Berkley W R Corp	OTC 14.75	-2.5	0.0	0.32	2.2	15.25	14.75	80.0
CIGNA Corp	NYSE 49.50	2.9	450.0	2.60	5.3	49.88	48.50	734.5
City Investing Co. (Home Ins.)	NYSE 37.88	2.4	9.1	0.00	0.0	37.88	37.13	1,422.9
CNA Fint Corp (CNA)	NYSE 37.00	-2.0	15.4	0.00	0.0	37.63	37.00	60.4
General R Corp	NYSE 75.75	2.4	47.3	1.56	2.1	75.75	72.38	232.9
ITT (Hartford Group)	NYSE 35.50	4.0	12.0	1.00	2.8	36.00	34.50	5,665.4
Optimum Hldg Corp	OTC 0.50	0.0	0.0	0.00	0.0	0.50	0.50	0.0
Sears Roebuck & Co. (Allstate)	NYSE 34.75	0.0	8.7	1.76	5.1	34.75	34.13	1,780.6
Teleline Inc (Argonaut)	NYSE 242.50	-4.0	13.3	0.00	0.0	249.00	242.50	150.4
Transamerica Corp	NYSE 29.25	1.7	12.6	1.64	5.6	29.25	28.63	750.1
(Occidental & Fred S. James)	NYSE							
CONGLOMERATES/HOLDING COS.	AVERAGE		20.3		1.8			
Insurers	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
Aetna Life & Cas Co	NYSE 41.38	2.2	26.0	2.64	6.4	41.38	40.63	818.4
American General Corp	NYSE 29.38	3.5	9.8	1.00	3.4	29.38	28.75	1,727.5
Amerin Heritage Life Invst Co	NYSE 31.00	-0.4	9.3	1.08	3.5	31.25	30.88	0.7
American Indty Fint Corp	OTC 17.50	0.0	0.0	1.12	6.4	18.00	17.50	0.7
American Intl Group Inc	NYSE 72.38	1.2	16.9	0.44	0.6	73.38	72.38	339.8
Aneco Refins Ltd	OTC 1.50	0.0	0.0	0.00	0.0	1.50	1.50	0.7
Avenco Corp	NYSE 24.50	0.0	11.9	0.60	2.4	24.88	24.38	5.5
Bitco Corp	OTC 15.00	0.0	0.0	0.40	3.0	0.00	0.00	0.0
Business Rens Assurn Co Amer	OTC 57.00	2.7	7.2	2.08	3.6	57.00	55.75	11.4
Chubb Corp	NYSE 58.13	2.4	16.5	2.20	3.8	58.13	56.88	1,208.1
Combined Intl Corp	NYSE 44.13	3.8	8.9	2.16	4.9	44.25	43.63	205.7
Continental Corp	NYSE 39.88	0.9	20.7	2.60	6.5	39.88	39.25	986.2
Crown Life Ins Co	OTC 133.50	2.7	13.8	5.00	3.7	133.50	130.00	0.8
Durham Corp	OTC 39.50	-0.6	7.6	1.28	3.2	39.75	39.50	7.4
Farmers Group Inc	OTC 56.00	1.1	10.2	1.76	3.1	56.00	55.38	245.8
Fremont Gen Corp	OTC 27.63	2.3	0.0	0.48	1.7	28.25	27.63	438.7
Great West Life Assurn Co	OTC 350.00	0.0	9.4	14.00	4.0	350.00	350.00	0.2
Hanover Ins Co	OTC 36.00	1.4	33.3	0.56	1.6	36.25	36.00	12.0
Hartford Steam Boiler Insnptn	OTC 80.00	3.2	71.4	3.00	3.8	80.00	76.50	26.2
Kans City Life Ins	OTC 83.50	0.6	9.6	2.88	3.4	83.50	83.00	0.9
Kemper Corp	OTC 50.63	0.7	29.4	1.80	3.6	50.75	50.25	37.4
Liberty Corp S C	NYSE 31.75	-0.8	15.3	0.72	2.3	31.75	31.50	14.3
Lincoln Natl Corp Ind	NYSE 41.38	1.5	10.9	1.84	4.4	41.63	41.00	214.4
Mission Ins Group Inc	NYSE 8.13	10.2	0.0	0.00	0.0	8.13	8.00	148.1
Monumental Corp	OTC 30.50	0.4	12.7	1.30	4.3	30.50	30.25	41.8
Northwestern Natl Life Ins	OTC 35.13	-1.4	8.2	0.80	2.3	35.75	35.13	125.0
Ohio Cas Corp	OTC 52.00	1.5	19.5	2.80	5.4	52.00	51.38	69.4
Old Rep Intl Corp	OTC 38.13	9.7	12.8	0.88	2.3	38.38	34.88	829.8
Orion Cap Corp	NYSE 25.25	3.6	0.0	0.76	3.0	25.25	24.63	39.5
Protective Corp	OTC 23.50	8.0	8.0	0.62	2.6	23.50	22.00	66.7
Provident Life & Acc Ins Co	OTC 95.00	-2.1	6.8	3.38	3.6	97.00	95.00	17.1
St Paul Cos Inc	OTC 60.88	6.8	0.0	3.00	4.9	61.50	58.25	758.1
SAFECO Corp	OTC 37.50	5.3	12.3	1.50	4.0	37.50	35.50	97.4
Sri Corp	OTC 17.25	-0.7	29.2	0.68	3.9	17.50	17.25	103.6
Setbels Bruce Group Inc	OTC 23.50	1.1	0.0	0.80	3.4	23.50	22.75	1.4
Statesman Group Inc	OTC 5.88	-2.1	8.8	0.15	2.6	6.00	5.88	20.7
Tokio Marine & Fire Ins Co	OTC 174.00	2.1	30.1	0.00	0.0	179.00	174.00	15.1
Torchmark Corp	NYSE 45.00	6.8	10.7	1.00	2.2	45.00	42.63	250.6
Travelers Corp	NYSE 41.13	-2.4	10.0	2.04	5.0	41.63	41.00	567.3
United Fire & Cas Co	OTC 19.00	-20.8	0.0	0.80	4.2	24.00	18.50	1.8
United States Fid & Gty Co	NYSE 31.58	3.3	18.2	2.20	7.0	31.38	30.75	1,056.2
US Life Corp	NYSE 42.38	5.6	9.7	1.04	2.5	43.00	41.00	527.9
Washington Natl Corp	NYSE 27.25	5.8	8.4	1.08	4.0	27.25	26.25	83.6
Zenith Natl Ins Corp	OTC 12.50	4.2	22.7	0.68	5.4	12.50	11.75	65.3
INSURANCE COMPANIES	AVERAGE		16.5		3.4			

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