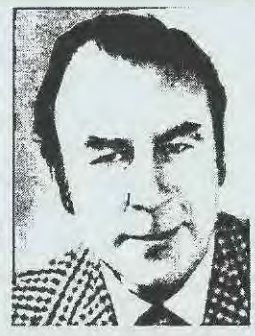
Annuities, trusts cut price of liability

By MARGARET LeROUX

"It's almost absurd to give the average person $250,000 and say, 'Make it last the rest of your life,' " says economist Robert Schultz.

"In virtually every case we hear of there's talk of some sort of structured settlement," says attorney David Harney.



LOS ANGELES—A Los Angeles court awarded a trust of more than $2 million last month to settle a claim resulting from the American Airlines DC10 crash May 25 in Chicago.

Although terms of the settlement were sealed by the court, it is known that the trust will provide for the dependents of one of the crash victims and that it was arranged by Aviation Underwriters with the approval of Lloyd's of London.

The trust settlement is part of a growing trend that applies the same techniques used in settling workers compensation claims to liability claims: payment over time rather than in a lump sum.

The technique guarantees the injured person a steady flow of income while at the same time reducing the ultimate cost of the settlement.

The trend has gained a stronghold in California where, for example, the city and county of Los Angeles require any lawsuits involving governmental liability to be settled in a structured manner of payment.

"In virtually every case we hear of there's talk of some sort of structured settlement," said David Harney, a leading Southern California malpractice attorney.

The Hawaii legislature is considering a bill that requires all cases involving the state's liability to be settled in a structured form. On the East Coast, structured claim settlements are appearing in liability cases in New York and Florida. A liability case was settled on a structured basis in Indiana last year (*BI*, May 29, 1978) and there are also reports of structured settlements being arranged in Ohio and Illinois.

Flexibility and the potential for holding down costs are advantages of trust or annuity settlements, the two types of structured settlements, say brokers who arrange them. A structured settlement costs less than a single lump-sum payment because the present cost is discounted by the amount that

Continued on page 45

Labor Dept. eases rules on benefits with subsidiaries

By JERRY GEISEL

"Companies will be very conservative about using offshore captives for benefits," predicts James Harlow of J & H.

WASHINGTON—A domestic insurance subsidiary is allowed to underwrite group insurance programs for its parent company's employes as long as the business doesn't account for any more than half of the subsidiary's book of business, the Labor Department ruled.

The long awaited exemption from the Employe Retirement Income Security Act provision on how much business a subsidiary insurance company can underwrite for its parent greatly liberalizes ERISA.

Until this month, under ERISA a parent company could not buy benefit plans for its employes from a wholly owned subsidiary insurer unless its group benefit business would generate less than 5% of the subsidiary's revenues.

The Labor Department has the authority under ERISA to grant exemptions to the law and proposed in May 1978 that up to 50% of an insurance company subsidiary's revenues could be generated by business from the parent company.

The now finalized 50% rule, which is liberal enough to satisfy the desires of some companies with such arrangements, applies only to domestic insurance company subsidiaries. The Labor Department still prohibits the direct insurance of employe benefit programs with offshore insurance companies.

In its new rule, however, the Labor Department did not address whether insurance company subsidiaries may reinsure employe benefit plans through a licensed insurer. Reinsurance arrangements will be judged on a case-by-case basis, the Labor Department told *Business Insurance*.

In the absence of any guidance, "Companies will be very conservative about using offshore captives for benefits," predicts Johnson & Higgins director James G. Harlow,

Continued on page 44

Week of August 20, 1979

business insurance

the national newsmagazine of loss prevention, risk financing and employe benefit management

$1 a copy; $20 a year

Chrysler pension plans could drain PBGC coffers

By JERRY GEISEL and JOHN MAES

WASHINGTON—The possible bankruptcy of Chrysler Corp. doesn't threaten pension benefits for retirees and workers, but the collapse of the nation's 10th largest corporation could trigger an increase in the premiums other companies pay for federal pension termination insurance.

If Chrysler were to go under, as some analysts believe is possible, the Pension Benefit Guaranty Corp. would have a preferred lien on Chrysler's huge pension assets and a right to 30% of its net worth. The PBGC is a federal agency guaranteeing vested pension benefits.

The PBGC, however, may be incapable of financing or administering a major catastrophe of this magnitude, worry observers here and around the country.

In addition to seeking a $1 billion bailout from the federal government, the No. 3 automaker asked the United Auto Workers to accept a wage and benefit freeze, which the union rejected. The automaker denies, however, that it intends to alter funding of its seven pension plans in an effort to strengthen its financial status and consultants doubt the company will alter its pension benefits in any way.

Even though the company is in a precarious financial condition, the pension plans won't necessarily be terminated. Federal aid, a takeover by another company or reorganiza-

Continued on page 46

If Chrysler terminated its pension plans, the PBGC "would expect to pay all guaranteed benefits," says Jeff Hart of PBGC.

Sasse may lose $41 million; Lloyd's considers penalties

By JOHN MILLER and KATHRYN J. McINTYRE

LONDON—The troubled Sasse Syndicate at Lloyd's of London faces ultimate losses of $41 million, says the Lloyd's underwriter trying to unscramble the syndicate's problems.

Stephen Merrett of Merrett Dixey Syndicates, who is directing the business of the suspended Sasse Syndicate under special request from the Committee of Lloyd's, recently released that estimate of losses after evaluating the syndicate's entire book of business.

Meanwhile, the Committee of Lloyd's wants Lloyd's underwriters to reinsure Sasse's outstanding losses from 1976 so the auditors can give the syndicate a clean certificate for 1976. Lloyd's may pay part of the cost of that reinsurance.

And Lloyd's is appointing special arbitrators to judge complaints against six persons for their alleged involvement in placing business with Sasse that started its troubles. Two people face unprecedented expulsion from Lloyd's and four others face suspensions.

Previously, Sasse's losses were pegged at $27 million. "The $27 million always referred to the particular cases we had dealt with," Mr. Merrett said, naming the fire insurance business brokered by Den-Har Underwriting Agencies, fire losses on Canadian business and losses under computer leasing risks.

"Now we have evaluated the rest

Continued on page 38

The inside story

Duty to settle

An excess insurer wins its suit against the policyholder and primary insurer for bad faith in failing to settle a liability suit. Around the states, **page 15.**

Pension offsets

Few pension plans subtract workers compensation payments from pension benefits **(page 16),** but plans that do are told by courts they can't **(page 17).**

The people column page 46

Computer lease risk hidden, reinsurers charge in lawsuit

By STUART EMMRICH

SAN FRANCISCO—In yet another suit in the computer-leasing insurance imbroglio, a group of European reinsurers is suing Itel Corp., its broker, its insurer and its appraiser, charging the four defrauded them into reinsuring the controversial leasing risks.

In the $20 million suit filed in federal court here late last month, the plaintiffs argued they were led to believe they were reinsuring real estate and heavy equipment—not the value of computer leases and equipment.

Along with Itel, the suit names Marsh & McLennan, Americas Insurance Co. and Guarantee Appraisal Corp. Itel denied the charges; the other defendants refused to comment.

Itel Corp. is already suing Marsh & McLennan and Americas for payment of the claim some of Americas' reinsurers are now fighting. Itel demands in its suit also filed here that Americas pay a $1.6 million claim and that each of the defendants pay $25 million in damages (*BI*, Aug. 6).

The computer leasing policies, underwritten primarily by Lloyd's of London and British insurers between 1974 and 1978, guaranteed the value of computer leases and equipment against contract cancellations. A new line of IBM computers spurred a rash of contract cancellations on rentals of an older model and the claims started pouring in. Lloyd's estimates its losses on the policies at $220 million and is already defending one suit involving leasing losses, filed in federal court in Baltimore by Federal Leasing Corp. (*BI*, July 23).

At issue in the European reinsurers' suit against Itel and the other defendants is insurance on a computer lease contract between Itel and the state of Georgia for two computers valued at $2.7 million. Georgia cancelled the contract in June and when Itel sold the computers it was for $1.6 million less than the computers' appraised value established in 1977 by Guarantee Appraisal Corp. Itel claimed $1,621,559 under its policy with Americas, less a $60,000 deductible.

When Americas tried to collect from its reinsurers on the Itel policy—which was 100% reinsured according to the reinsurers' suit—arguments began. The nine reinsurer plaintiffs, holding 47.5% of the risk, allege they first learned the true nature of the reinsurance contracts when they were faced with paying the claim.

The reinsurance contracts "would not have been entered into by any of the plaintiffs had they been informed as to the truth of the risk they were being asked to reinsure," the suit says. It charges that the London broker for the reinsurance, Bland Payne International, acting as an agent for the three defendants, relied on "various acts of neglect, concealment and false representations" to sell the contracts.

"Bland Payne indicated that what was being insured was real estate and heavy equipment against the possibility of earthquakes in Marin County which could destroy property and drive real estate prices down," charged John Markham, lawyer for the plaintiffs.

None of the reinsurers has paid any of the Itel claim, Mr. Markham said. The suit asks that the contracts be declared void and that the court award the plaintiffs $20 million in damages.

Mr. Markham would not elaborate on how Bland Payne "indicated" that the reinsurance was for anything else besides computer leases, explaining that would have to wait for the discovery process of the suit. The plaintiffs "have proof that they did this," he said.

"It is not that unusual for something like this to happen, for an insurance company to go to court and say 'I thought I was insuring X, but it turns out I was insuring Y.' If they can prove this, they can get out of the policy. We think we can prove it," Mr. Markham said.

Plaintiffs to the suit are Sentry Insurance Co. (U.K.) Ltd., Hanseco Insurance Co. Ltd., Ennia Insurance Co. Ltd., CNA Reinsurance of London Ltd., Yasuda Fire & Marine Insurance Co. Ltd., New India Assurance Co. Ltd., South British Insurance Co. Ltd., Sumitomo Marine & Fire Insurance Co. Ltd., and Gothaer Versicherungsbank. The suit states that these nine companies held a total of 47.5% of the reinsurance on the leases, with CNA and Yasuda each holding 10%. The reinsurers of the remaining 52.5% are unknown.

The suit continues to add to the woes of Itel Corp., which is slashing staff to cut back on operating costs. The company estimated in June it would lose $10 million in the second quarter this year, but has since said it could go higher.

One possible source of cash for Itel is Lloyd's, where Itel has filed $100 million worth of claims for computer-leasing losses. ▪

Newspaper publisher sued by former editor

NEW YORK—The former editor of the New York Amsterdam News has charged in a $1.15 million lawsuit that publisher John Procope ordered publication of editorials supporting Mayor Edward I. Koch so broker E.G. Bowman Co. could retain a $10 million city contract.

Brooklyn-based E.G. Bowman Co. is owned by Mr. Procope's wife, Ernesta. The firm receives a $250,000 management fee for servicing the group coverages for 13,500 employes of city anti-poverty agencies.

Bryant Rollins, who was fired as editor of the weekly newspaper in April, charges that after another weekly ran an article critical of the Bowman contract and the firm's ties to the Amsterdam News, Mr. Procope ordered him to run articles favorable to Mayor Koch and those responsible for renewal of the contract.

After publication of the critical article in April 1978, the city's contract with Bowman became subject to monthly review by the Board of Estimate, the suit alleges.

Mr. Rollins is seeking $21,042.30 for breach of contract and $1 million for defamation of character because of dissemination of the contents of his dismissal notice from the Amsterdam News and its owners. He seeks an additional $121,042.30 from E.G. Bowman Co. and Mrs. Procope, alleging their intervention resulted in his firing.

Attorneys for Mr. Rollins declined to comment on the case, adding that an out-of-court settlement may be achieved shortly.

Mrs. Procope characterized the charges as "maliciousness and untruths" and said she would not answer questions regarding them. ▪

Special issues coming up

Variety. The spice of life.

For the insurance manager, the broker and the underwriter, unpredictable risks provide day-to-day challenges. All risks have an element of unpredictability, but there are some risks so unusual they present a different kind of problem, and sometimes, different kinds of insurance needs.

Special risks make special reading. Once a year we send our editors out to do stories on some of the uncommon exposures insured during the year. Special risks also require a special kind of expertise on the part of those who buy insurance, broker it and underwrite it.

Business Insurance's Oct. 29 issue will take a closeup look at unusual risks and the special people who handle them. If you have an unusual risk you've insured, let us know by calling or writing Kathryn McIntyre at *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611; 312-649-5286.

•

Coming soon: The second annual directory of excess/surplus lines brokers nationwide will be published in the special Excess/Surplus Issue, Sept. 17. A mailing was made to 500 excess/surplus brokers for information to be included in the listings. If you've not received a letter and the proper form, but would like to have your excess/surplus brokerage firm appear in the directory listing, call Phyllis Gallagher at 312-649-5398.

errors & omissions

• A chart in the Perspective Section of the Aug. 6 issue suggested acceptable performance by an insurance broker. The time it should take a broker to submit a new proposal is 30 to 60 days, according to the author. Because of a typographical error, the item was not shaded to indicate the answer.

• The identifications of Charles Mather, president of Rollins Burdick Hunter Co., and George Burrows, vice chairman of RBH, were mistakenly switched on page 36 of the Aug. 6 issue. In the same issue, the printer mistakenly inserted a photograph of Donald King, senior vp of Corroon & Black in Nashville, where the photograph of Robert L. Emett, chairman of Pinehurst Corp., should have appeared.

for your information

Sinking of Atlantic Empress may cost insurers record amount

LONDON—The sinking of the 292,000-ton Atlantic Empress Aug. 2 in the Caribbean off Tobago was not only the largest ship to sink, but the potentially largest insurance loss on just one vessel.

Overall costs to world marine insurers, including severe damage to the 210,000-ton Aegean Captain, which was valued at $7.5 million, are being put at $100 million. The Aegean Captain collided with the Atlantic Empress July 19.

The ship was insured for $45 million with Lloyd's and other London companies, and her cargo of some 275,000 tons of crude oil for Mobil Corp. was insured by Lexington Insurance Co., a member of American International Group, and reinsured with one of Mobil's captives. The cargo was worth $50 million (*BI*, Aug. 6).

The previous highest loss was the German ship Munchen, which cost insurers $80 million after sinking in the Atlantic last December.

In another major oil loss, observers say it would be very hard for the U.S. to recover anything of the oil spill damage to Texas beaches caused by a well blowout off the Yucatan Peninsula. Mexico carried no insurance on the Campeche well at the time of the blowout June 3.

Kemper ends contracts in N.J.

SUMMIT, N.J.—The Kemper Group is ending all of its contracts with property and casualty agents here in a move to eliminate multi million dollar private auto insurance losses.

The insurer will continue to write commercial lines through licensed New Jersey brokers, said Mid-Atlantic marketing manager Gerald Carmody. Most of the commercial agents who have been terminated will still be able to place business with Kemper if they have broker licenses, he noted.

Kemper writes about $22.5 million in commercial premiums in the state on a variety of risks. Though the contract cancellation is designed to pull the insurer out of the auto market, Kemper is still interested in expanding commercial business, according to Mr. Carmody.

The New Jersey insurance department recently denied Kemper a private auto rate increase.

Pension panel sets hearings

WASHINGTON—President Carter's commission on pension policy, which is trying to chart a course for policymakers on pension and retirement income issues, has scheduled public hearings and the topics to be discussed this year.

Except where noted, all the hearings will be held at commission headquarters at 736 Jackson Place or the New Executive Office Building at 726 Jackson Place in Washington. Both buildings are directly across the street from the White House.

Aug. 21: What is an appropriate retirement age? 9:30 a.m.-4 p.m., Room 2010, 726 Jackson Place.

Sept. 7: Review of pension systems in other countries. 9 a.m.-2 p.m., Commission Library, 736 Jackson Place.

Sept. 27: Discussion of disability benefits. 9 a.m.-2 p.m., Room 2010, 726 Jackson Place.

Sept. 28: The role of private versus public pension systems and savings. 8:30 a.m.-5 p.m., Room 2008, 726 Jackson Place.

Oct. 10: Discussion of integration of Social Security benefits with private pensions. 9 a.m.-4 p.m., Room 2008, 726 Jackson Place.

Oct. 24: What is an adequate retirement income level? 10 a.m.-4 p.m., Detroit Plaza Hotel, Renaissance Center, Detroit, Mich.

Nov. 29: Tax treatment of pension contributions and benefits. 9 a.m.-4 p.m., Room 2008, 726 Jackson Place.

Nov. 29: Pension income and coverage of women and minorities. 9:30 a.m.-4 p.m., Room 2010, 726 Jackson Place.

Nov. 30: Regular commission meeting. 9:30 a.m.-4 p.m., Room 2010, 726 Jackson Place.

Dec. 11: Ownership, control and management of pension fund assets. 10 a.m.-4p.m., Location not set yet.

The commission hearings are open to the public.

Ads aren't jury tampering: Court

NEW YORK—A New York district judge has thrown out a suit by three accident victims who charged that an Aetna Life & Casualty advocacy advertising campaign about problems in the tort system deprived them of their constitutional right to a fair trial.

U.S. district judge Charles Sifton rejected the plaintiff's charges that statements in the ads were designed to influence potential jurors and thus constituted jury tampering.

Judge Sifton said the jury tampering charge was "highly speculative."

The ads, which the plaintiffs sought to stop, warned that the money to pay for high awards doesn't "grow on trees," but comes out of premiums the public pays for insurance.

index

Vol. 13, No. 17—Business Insurance [ISSN 0007-6864] is published every other Monday at 740 Rush St., Chicago, Ill. 60611. Controlled circulation postage paid at Brookfield, Wis., Chicago, Ill., and New York, N.Y.

Benefit trust sues to regain its status as valid ERISA plan

By JERRY GEISEL

LOS ANGELES—The battle over whether self-funded multiple employer trusts are employe benefit plans covered under the pension reform law is headed back to the courts again.

Insurance & Prepaid Benefits Trust of Tustin, Calif., has filed suit in U.S. district court here against the U.S. Department of Labor, asking the court to order the department to recognize that IBT is an employe benefit plan under ERISA.

Such recognition would remove the trust from state regulation and leave it subject to only federal regulation under ERISA.

In an advisory opinion letter released last month, the Labor Department said IBT was not an employe benefit plan but a "funding vehicle" (*BI*, Aug. 6). A California judge previously ruled that IBT was a benefit plan under ERISA.

Since the Labor Department was not a party in the California case, which involved a private dispute between IBT and Security Health Plan, a health care provider, the department said it would not be bound by the California ruling.

Now that the Labor Department has been named as the defendant in the latest California suit, a federal court will determine whether IBT is an employe benefit plan or is operating as an unauthorized insurer, as state regulators contend.

After the Labor Department released its advisory letter turning its thumbs down on IBT's contention that it is an employe benefit plan, California insurance officials said they were contemplating legal action to shut the trust down. No such action has been taken and further state moves against the trust may be delayed until the Labor Department-IBT suit is settled, sources said.

IBT administrator Thomas Wilkie said the trust was formed in accordance with ERISA. "We are operating as the law intended us to do," he said. Mr. Wilkie said the trust is controlled by a board of employer trustees and that there is a commonality of interest among participants, tests the Labor Department has established to judge whether a self-funded trust qualified as an employe benefit plan under ERISA.

Mr. Wilkie said the Labor Department "missed the boat" in ruling IBT is not an employe benefit plan. He said he believes the department did so because of adverse publicity surrounding METs and because of insurance industry pressure on the department to curb the trusts.

Mr. Wilkie also charged that press coverage of the METs controversy has been one-sided. An inordinate amount of publicity has been focused on the few METs that have gone bankrupt, he contended, while the media have ignored the successful METs that provide a valuable public service by offering affordable health insurance benefits to small employers—a group he thinks commercial insurers have shunned.

IBT covers 9,000 participants in California and receives more than $3 million in annual premiums. Comprehensive medical and hospital benefits cost $32 a month for individual coverage, while family coverage costs an average $80 a month.

"We offer better benefits for less or the same money as insurers," Mr. Wilkie said. ■

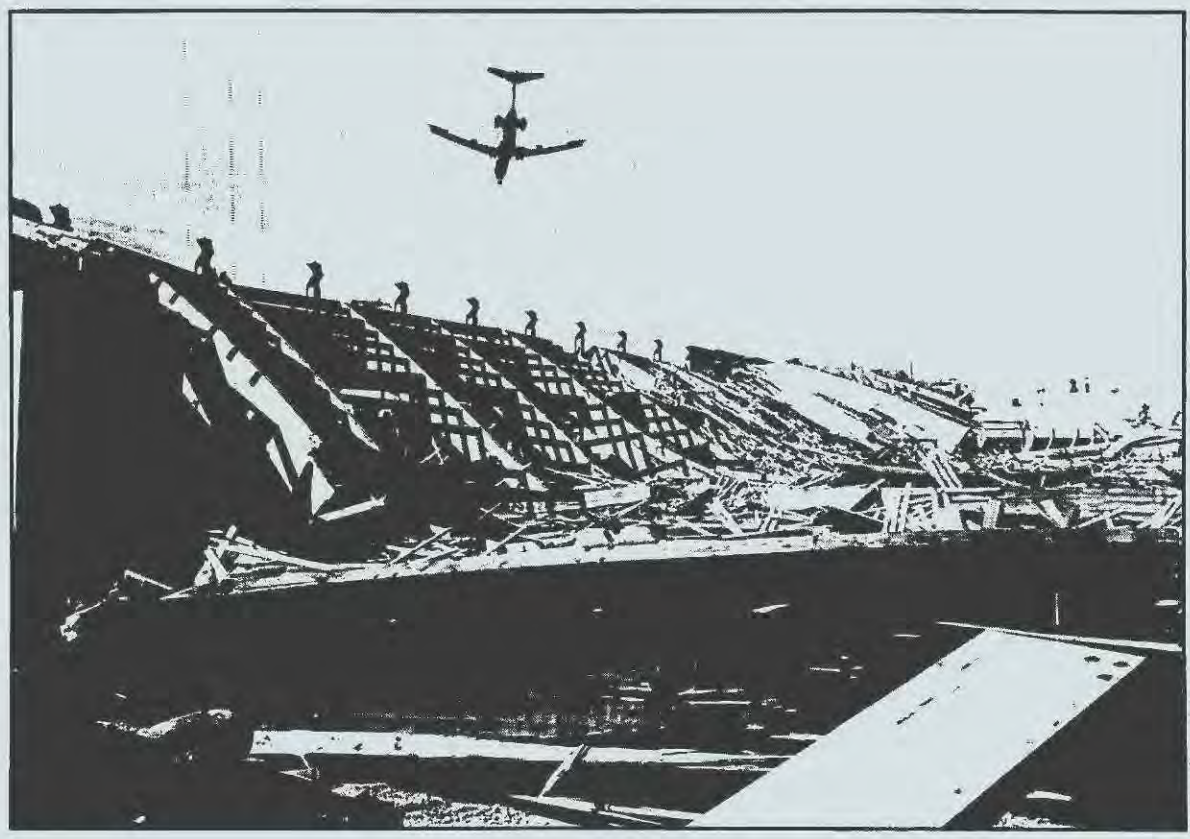


Photo: Mary Cairns

Arena cave-in kills 5, hurts 15

By MARY ELLEN McKEE

ROSEMONT, Ill.—Five workers were killed and 15 were injured after the roof of a suburban Chicago sports stadium collapsed while under construction.

Damage to the 20,000-seat facility, which was about one-third completed, was estimated at just under $3 million. But that figure is very "conservative," emphasized a spokesman for the village.

The Village of Rosemont, developer of the stadium, has $6 million of insurance on the project under a builders risk policy underwritten by Birmingham Insurance Co. of Pennsylvania and $2 million under an umbrella policy underwritten by Holland-America Insurance Co. of Los Angeles. The builders risk policy has a $5,000 deductible.

Each of the more than a dozen contractors on the project purchased its own workers compensation insurance.

Rosemont is protected from liability under broad, all-encompassing hold harmless agreements with the contractors, *Business Insurance* learned.

The village's comprehensive general liability insurer is Aetna Insurance Co. The package policy for $1 million of coverage was brokered by Arthur J. Gallagher & Co. of Rolling Meadows.

Supported by 90-foot wooden beams each weighing a ton, the roof fell in at the center and broke from the supports to the concrete wall only seconds after a low flying jetliner had passed overhead.

Vibrations from the steady stream of jets that fly over the construction site will be evaluated in the investigation into the cause of the cave-in.

The Federal Aviation Administration reported that in the hour before the roof collapsed as many as 65 planes flew over the unfinished sports arena.

The stadium was designed by architect Anthony M. Rossi of Addison, Ill. Degen & Rosato Construction Co. of Bloomingdale, Ill. acted as project coordinator.

Meanwhile, the Occupational Safety & Health Administration, based on information garnered from its initial investigation immediately following the crash, is ordering a full scale catastrophe investigation. Engineering consultants Wiss, Janney, Elstner & Associates of Northbrook have been hired by the village to analyze the cause of the cave-in. ■

the benefit beat

UPS delivers improved health benefits to 74,000

The Teamsters Union and United Parcel Service have ratified a new three-year contract increasing sickness, life and major medical insurance benefits for some 74,000 employes.

Weekly sickness benefits are increased to $135 from $125 and major medical insurance limits are raised to $500,000 from $250,000 a year after a $50 deductible. Insurance payments for eyeglass frames are increased to $30 from $20.

Life insurance coverage for a worker remains calculated at 2,080 hours times the worker's hourly wage, which will increase 80 cents an hour in the first year of the contract and 35 cents in each of the second and third years. Life insurance coverage for a worker's spouse is increased to $5,000 from $2,000 and to $2,000 from $1,500 for a worker's child.

Blue Cross/Blue Shield underwrites UPS's medical and dental coverage and Aetna underwrites the life insurance. UPS will pick up the entire tab for the increase in benefits, but a company spokesman was unable to estimate cost of the increases.

Three unions representing 37,400 employes of Westinghouse Electric Corp. are back at the negotiating tables after walking out over an optional contributory pension plan Westinghouse proposed. The pressing need for a contract drew the unions back to negotiations.

Westinghouse is offering a contributory plan under which all current employes would pay 3% of annual income over $13,400. New employes would have to contribute 3% of income earned over $9,000. Linked to this is an offer to raise the minimum pension benefit to $15 a month per year of service from $11. If a worker refused to join the contributory plan, his pension would be frozen at the $11 rate.

Under the Westinghouse plan, only workers who earn less than $6.45 an hour would not have to contribute. But the average pay at Westinghouse is likely to rise to about $8.80 an hour by the end of a three-year contract given a 10% inflation rate, one union official cautioned.

The unions maintain that the contributory pension plan is a takeaway item and reflects the growing antiunion sentiment of Westinghouse management. Westinghouse, on the other hand, is puzzled by the unions' refusal to accept the plan, because the employes are getting much higher benefit levels for a minimal contribution, a Westinghouse official said.

A new dental program also was offered in the Westinghouse contract which covers checkups, cleanings, diagnostics, fillings, bridgework and crowns. Reimbursement would be on a fixed fee schedule designed to approximate 100% of reasonable and customary charges for preventive procedures and 50% of reasonable and customary charges for restorative and prosthodontic procedures.

$892,000 savings

The state of West Virginia expects to save $892,000 next year on its group insurance programs for 95,000 employes under two new contracts renegotiated with Equitable Life Assurance Society.

The Public Employes Insurance Board says $772,000 will be saved on the administrative services only contract with the insurer by changing the calculation of fees for processing claims under the medical benefits program. Equitable has charged a service fee of 3.52% of claims paid, an arrangement some legislators criticized as lacking incentive for close screening of claims.

The new contract effective July 1 provides for a flat fee of $1.21 per covered employe per month, producing an annual cost of $1.4 million for claims administration. Annual claims are estimated at $67.3 million.

The board also awarded Equitable a new contract to continue as insurer for life insurance for $3.9 million. By reducing the portion of premium for administrative costs, the new contract will save the state $120,000.

State employes, public school teachers and many local government employes are enrolled in the programs. The state pays the cost of medical and life benefits for its employes and teachers.

Equitable was the low bidder for the two programs, beating bids by Provident Life, Prudential, Blue Cross/Blue Shield, Pilot Life and Metropolitan among the 13 other bidders.

Describing HMOs

Employers are informing their employes about health maintenance organizations and dual choice concepts, according to the results of a recent survey of 43 organizations nationwide prepared by Personnel Research Associates of Verona, N.J.

Of the 43 companies surveyed, 27 or 63% said the HMO story reaches the employe's home. A company-produced mailing on HMOs, however, has not caught on among the surveyed companies with only 16 or 37% preparing their own HMO mailing. Of those 16 employers, over half were large companies with more than 20,000 employes and multiple sites.

A letter explaining the differences between an HMO and health insurance, costs, enrollment periods and procedures, times and locations of meetings is used by 41 or 95% of the companies. Thirty-seven companies or 86% issue a benefits comparison and 33 or 77% of the companies use both methods to pass on the HMO message.

Two-thirds of the companies surveyed also allow HMO meetings on company time and nearly 79% allow the HMO some form of direct access to the employe.

•

Benefit Beat keeps risk managers and employe benefit managers abreast of changes in plans around the country as well as other important developments. We'd like to know if you've made any changes or know of any significant developments. Write Kathryn J. McIntyre, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611 or call (312) 649-5286.

Insurers, brokers dispute use of exchange

By ELLIS SIMON

NEW YORK—Two opposing proposals on how the New York Free Trade Zone should filter business before it can be bartered at the New York Insurance Exchange are being prepared for the New York insurance department.

At odds are insurance companies and brokers.

Insurers, which participate in the state residual markets and the guaranty fund and pay premium taxes, argue they want to protect themselves from unfair competition. The brokers want easy access to the fledgling syndicate market.

How the insurance department decides to regulate the interface of the free trade zone and insurance exchange will likely determine the exchange's ability to compete as a direct domestic underwriter. The insurance department will likely be persuaded by "how loudly the two groups scream," insurance superintendent Albert B. Lewis said.

The insurance department is required by law to issue the regulation detailing how business is to be considered rejected by the free trade zone before it can be submitted to the exchange, but has no target date for it, Mr. Lewis said.

The free trade zone is composed of specially licensed insurance companies granted an exemption from prior approval on rate or form for risks generating more than $100,000 premium or included on the department's list of unusual risks.

An ad hoc committee of free trade zone-licensed companies has submitted a report to the department detailing majority and minority positions on the rejection process. A source close to the committee summarized its findings.

On large premium risks, the majority view called for a two-step procedure whereby a free trade zone committee would have the risk submitted to three companies after initial rejection by five other free trade zone companies. The minority report simply calls for five declinations.

On unusual risks, the majority view called for three declinations while the minority position demanded five declinations.

The brokerage industry's point of view, presumably more liberal, should be ready for presentation to the insurance department within several weeks, said David Holbrook, executive vp of Marsh & McLennan Inc. Mr. Holbrook is one of two broker members on exchange's board of governors.

He predicted the brokers' proposal would "follow the spirit of the surplus lines law" for certifying that a risk is eligible to be placed in Lloyd's or another surplus lines market.

Surplus lines laws, varying from state to state, essentially are designed to protect U.S. admitted insurers. The laws basically require that coverage be unavailable in the standard markets or at an unacceptable price before the buyer may tap the surplus lines markets.

"It would be ludicrous to begin (the exchange) from a position with requirements more stringent than for access to Lloyd's," Mr. Holbrook said, responding to the insurance industry's recommendations.

M&M chairman L. Patton Kline has called for elimination of the free trade zone as an impediment to placing direct domestic business on the exchange. "We should dismantle this impediment with a scalpel, as quickly and painlessly as possible," he told members of New York's financial community at a recent M&M-sponsored meeting.

However, Mr. Lewis and insurance industry officials counter that unrestricted access to the exchange would place licensed companies at a competitive disadvantage since the exchange is not required to participate in the state residual markets and guaranty fund nor must it pay state premium taxes.

Although it has not done so yet, RIMS also intends to contribute to the drafting of the free zone/insurance exchange interface regulation, according to Edith Lichota, RIMS vp-governmental affairs.

Ms. Lichota said the regulation "should not make the exchange any more inaccessible than the other excess and surplus markets." ■

Exchange investment risky: Execs

NEW YORK—Potential investors in New York Insurance Exchange Syndicates should recognize there are risks, Marsh & McLennan Cos. executives told members of the financial community at a recent M&M-sponsored seminar on the exchange.

"With the leadership it has today, the New York Insurance Exchange could become a major financial institution," said Bruce W. Schnitzer, chief financial officer of M&M Cos. "But the seeds are also there for an REIT (real estate investment trust)-type debacle and that's what we're worried about."

Real estate investment trusts were popular with investors during the early 1970s, but when the real estate market bottomed out around 1975 many of the REITs found themselves overleveraged and were forced into bankruptcy.

M&M's warning to potential investment bankers for exchange syndicates came as its underwriting management subsidiary, American Overseas Management Corp., was being granted authority from M&M's board of directors to capitalize a $10 million syndicate.

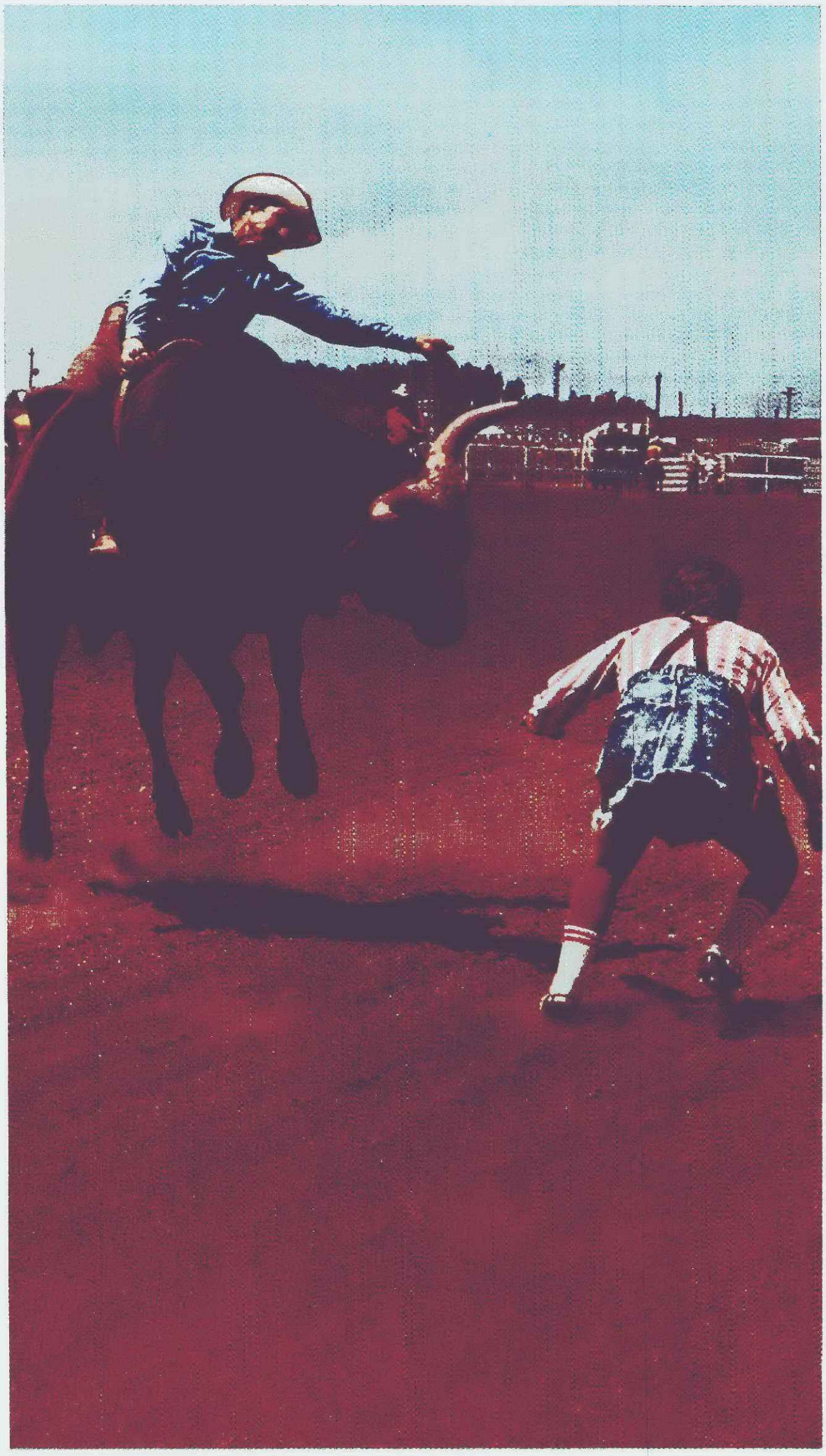
M&M intends to tap corporate clients of its subsidiaries to invest in its syndicate, including clients of M&M Inc. (insurance brokerage), Guy Carpenter & Co. (reinsurance brokerage), M&M International Inc. and affiliated London broker C.T. Bowring, American Overseas president Edward Gschwind said.

While the exchange could prove a "great boon" to the insurance industry, it must be an efficient market if it is to be successful, said L. Patton Kline, chairman of M&M Inc. He cautioned that syndicates with underwriting operations off the exchange could interfere with that efficiency by bypassing the exchange.

"The challenge is to make the exchange so efficient that this can't happen in good faith."

Meanwhile, J.L. Kelly Inc. of New York and Robert A. Lake of Northfield, Ill., were approved as broker members. ■

Every business has its risks. It takes a partnership effort to manage them.



Photographed at Cheyenne Frontier Days by Lewis Portnoy, Spectra-Action

BUSINESS INSURANCE IS A PARTNERSHIP.

If you run a business, you know that each day brings new challenges. But one thing remains constant. Controlling insurance *losses* is always the surest way of controlling insurance *costs*. It's done best when a knowledgeable insurance company works closely with a dedicated policyholder who is willing to take action on his own behalf to prevent losses.

At Employers Insurance of Wausau, that's the kind of policyholder we go out of our way to help. If you're looking for an effective partner in managing insurance risks, get to know the people who know business insurance like nobody else in the business.

Come to the source

®

Wausau Insurance Companies

Employers Insurance of Wausau

Water districts take plunge into risk pool

By CLIVE HALLETT

LOS ANGELES—Despite recent attractive offers from competitive insurers and some insurance industry opposition, 84 California water districts are finalizing plans to form a liability risk sharing pool Oct. 1.

The joint powers insurance authority, to be started with between $2.2 million and $2.5 million in premiums, could attract the largest number of members of all the state's municipal pools, says the broker for the pool.

Primarily, it will underwrite comprehensive general liability, auto liability and officials' errors and omissions. Fifteen agencies also have opted for a related program of dam-failure coverage.

California's water-supplying districts were among the public agencies that were squeezed until they hurt when the liability insurance markets tightened in the mid-1970s. Some saw their premiums triple overnight. Others were left hanging precariously with no coverage at all.

The hardest-hit members of the Assn. of California Water Agencies decided then that they would not leave themselves at the mercy of the market again.

They began looking at the possibility of forming a joint liability pool that would take them off the roller coaster ride of premium fluctuations and provide a more comprehensive insurance program at lower cost.

The joint program remained attractive even though the market has softened considerably and the big insurers have come wooing again. And most of the water districts failed to be browbeaten by certain local brokers who reacted angrily at losing traditional business.

Bud Griffin of Warren, McVeigh & Griffin, the risk and insurance management consultants who are developing the blueprints for the JPIA, says the pool will allow members "to cut costs, to get better control of claims handling, to develop their own data base and to provide other risk management services such as loss prevention and safety programs which most of them have never had before." Districts not participating will benefit from the pool's existence, generating competition that will help to lower rates generally, he says.

The JPIA will charge a deposit premium for each agency based on 1978-79 quotations from private insurers and assess dividends or extra payments according to loss records after two years.

Agencies share catastrophic losses and fixed or administrative costs based on the size of their payroll. They are also responsible for their own losses within predetermined retentions of $2,500, $5,000 or $10,000. The pool will pay losses above the retentions to $500,000 and reinsure above $500,000 to $10 million.

Premium savings are estimated at about 20 to 30%, with a potential for even greater dividends depending upon final quotations. Some savings will be kept in the pool to build a catastrophe reserve of $750,000 to $1 million, the exact figure still to be determined.

Most districts will raise liability ceilings—one by as much as 20 times—and some have benefited from preparatory studies by learning where to slash unimportant or overpriced coverage.

"The alternative to the pool was business as usual," says Mike Enfield of Marsh & McLennan, who is handling the account. "But business as usual was costly."

In the new pool, water districts can stabilize their insurance programs and bring their premiums into line with their loss records, he noted. The hefty premium hikes of three and four years ago often had "no loss experience whatsoever to support them."

Claims adjusters and brokers had often kept the agencies in the dark about settlements in their name and many agencies say they are hoping for improved communications. GAB Business Services, which will handle the pool's claims, has assigned an officer to administer the agencies' account in Sacramento.

"Our members had felt a sense of frustration over the years at the overwillingness of the insurance companies to settle claims entirely without merit," says John Fraser, executive director and general counsel of the water agencies' association in Sacramento.

Some districts also made do with less insurance than was advisable in the face of the increasing number of lawsuits filed against them, he noted. And while lawsuits were multiplying, courts have been too eager to grant damages against public agencies, Mr. Fraser complained, and the legislature has refused to pass tort reform to correct that tendency.

But the insurance industry wasn't entirely favorable toward the new pool when it was taking shape.

Some brokers grew openly hostile at the JPIA and in one case there was "an out-and-out effort to pirate our concept" and repackage it in a bid to bypass the JPIA, Mr. Fraser said.

One broker who had offered to handle the JPIA account then took another tack when he lost the business. He mailed out what one recipient described as "multi-page missiles" aimed at discrediting the project and promoting the broker's alternative insurance program.

Other opposition came from hometown brokers who thought they had a right to the business they had been writing in their own neighborhoods. Some of the water districts had brokers or others with a vested interest in the status quo serving on their executive boards.

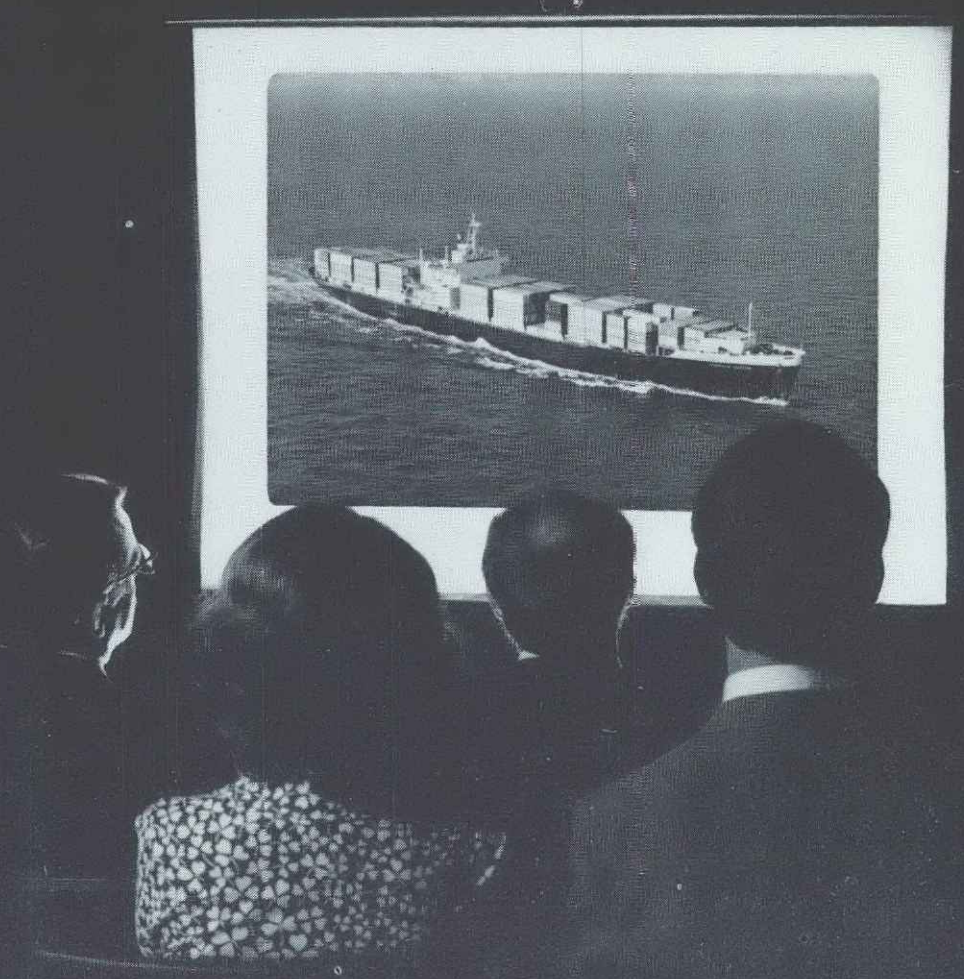
Several agencies involved in the JPIA feasibility studies dropped out, saying they genuinely believed they could negotiate a better deal individually.

But the pool lost some of the big districts because of politicking, said Lyndon Burzell, general manager of the San Diego Water Authority.

"I'm surprised we kept together the way we did with all the pressures from the insurance industry," he said. "But in the end most of (the districts) remembered they had been burned and that it could happen again."

Opponents of the JPIA had suggested the scheme would be run by amateurs although both Mr. Burzell and Mr. Fraser said the group had experienced no difficulty in attracting the highest caliber of professionals. The formation of the pool also tapped a rich source of expertise from among water agency association members. ■

For ninety-six years we've been writing the book. Now we've made the movie.



When we opened our doors in 1882, marine underwriting meant clipper ships and cotton bales. Today, it involves computers and containerization.

While the ships, the cargos, and even the risks have changed, the perils of the sea haven't. That's one of the reasons why our experience, and the stability we offer, are so important to our ocean cargo policyholders.

We've made a movie that describes the impact of containerization on shipping and on marine underwriting. If you would like to see it, your Chubb representative can make the necessary arrangements.

After all, it's not that often that a good movie can lead to an even better book.

CHUBB

Group of Insurance Companies

100 William Street, New York, N. Y. 10038

Marine insurance since 1882

INTRODUCING A PLAN TO SAVE AMERICA'S TOP EXECUTIVES FROM FINANCIAL RUIN.

Today executives all over the country face the possibility of financial ruin at any time.

The reason they're all vulnerable is simply because they serve on outside boards of directors, and they could be sued. For a lot of money. And until now, there was little protection for them.

The only protection available was to get an outside director's clause written into your company's regular D&O Liability Policy (for a premium). But with that coverage you're limited. And still vulnerable. And the outside directors could be taking away money needed to protect their company's own board of directors. (If the outside directors are sued, it reduces the amount of coverage available for a company's own board of directors. It can even wipe out the D&O coverage entirely.)

The truth is, if you serve on an outside board and get sued, not only could you be liable, so could your company.

In fact, the threat of lawsuits has gotten so bad, and the settlements so high, many executives are now hesitating to accept outside directorships.

American Home/National Union, member companies of AIG, have just come up with a plan to change all that.

We've introduced Outside Directors Liability Insurance.

It's a separate policy bought by a parent company, which already has D&O, to cover any of their directors, officers or employees who are serving on outside boards at the request of the parent company.

So for the first time a company can offer their executives real protection. And the possibility of financial ruin for any executive becomes almost an impossibility.

We're very proud to be the first to recognize the need for this kind of policy and to act on it.

Our Outside Directors Policy is just one of over 300 policies AIG offers, through our more than 160 member companies, in more than 130 countries.

For more information, send in the coupon below.

If it's important for you to serve on an outside board of directors, it's even more important to be protected.

AIG'S "OUTSIDE DIRECTORS" POLICY

Please send me more information on Outside Directors

American International Group
Dept. A, 70 Pine Street, New York, N.Y. 10005

Name_____

Firm_____

Address_____ Tel_____

WE OFFER MORE KINDS OF INSURANCE THAN ANYONE IN THE BUSINESS.

We welcome inquiries from any licensed agent or broker. You don't have to be a regular producer to place business with an AIG company.

BI14X

editorial opinions

Second opinions untapped

SECOND OPINIONS now being required by more employers and unions before insured workers can have surgery haven't turned out to be the boon they were expected to be.

Originally envisioned as a cost saving tool, second opinions were instituted in many employe benefit programs as a way to limit the enormous number of unnecessary operations performed each year. Naturally, it has been in the employers' best interests for employes to seek second opinions, since employers generally pay the lion's share of surgical and hospital bills.

Several benefit managers for large employers recently revealed in conversation, however, that second opinions have turned out to be a boondoggle instead of a boon. In both cases, these companies provided full (100%) coverage of the cost of getting a second opinion on surgery recommended by a family physician. In a 12-month period, not a single employe in either firm (both of which employ thousands of workers) bothered to seek a second opinion, much to the employers' dismay.

This has much to do with the feeling of implicit trust a person has in an attending physician, particularly if the person is feeling sick and doesn't want to experience a delay or use the energy necessary to ask another doctor for a diagnosis.

Both managers were discouraged, but suggested there's a next step they'll try in order to encourage employes to seek second opinions. They'll offer a cash payment of $10 to $50 (a bonus, if you will) to workers for seeing another doctor before having surgery. They hope that kind of carrot will work.

Competition can be cruel

"IF YOU LEAVE THIS seminar with one thing today, remember simply this point: The name of the game in risk management is competition—but it is competition modified by the word 'legitimate.' "

So said Bill Cain of Dayton Hudson Corp. recently, speaking to an audience of corporate managers learning about insurance management techniques.

Insurers and brokers are extremely wary of heated competition in the insurance marketplace right now. They are—in some cases, rightly—warning corporate insurance buyers and risk managers to be careful about going out for competitive quotes on their property and liability programs. The reason to be careful, they say, is that the crunch will surely come again, that price shouldn't be a buyer's sole concern and that insurers aren't inclined to look kindly on a corporate buyer who disloyally hops from insurer to insurer from year to year, shopping for the best price.

Nobody argues with any of these statements, including buyers. But a point Bill made is a good one. He thinks it's important to encourage competition among brokers, if you're a buyer—not the kind of competition where a new broker tries to win the account simply by shaving the price, but the kind where a broker actually presents a better alternative for handling the risks and puts together a winning program offering real financial advantages.

"If a broker comes in with a great program at a lower cost, I think he should get the business," states Mr. Cain.

What's really disillusioning, say many risk managers, is the number of times when a risk/insurance manager finds a new broker who builds the proverbial "better mousetrap" and achieves terrific cost savings on overall insurance programs for a prospective client, only to have the incumbent broker successfully hold onto the corporate account because of a "political" situation—the broker is a personal friend or relative of an influential member of senior management, usually the president or chairman.

Quite often, the incumbent broker will grudgingly come up with some cost savings, pushed as he is into doing a little better by the client if only to save face. The risk manager is undercut and demoralized by the whole process, the old broker knows he can go back to coasting on this account and the competing broker feels used. Yet the example isn't farfetched—this happens all the time in the world of corporate insurance buying. "I think that's really cruel" to the people involved, says Bill Cain.

letters

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible and we reserve the right to edit or shorten letters for clarity or space. Please send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611.

Stunned disapproval

To the editor: I would hope that *Business Insurance* would express its dismay and that of many risk managers concerning the Lloyd's computer leasing experience.

I have, along with others, expressed my stunned disapproval in reading of this almost unbelievable computer leasing insurance fiasco engaged in by many Lloyd's syndicates and, one must assume, the brokers that brought it to them.

To realize that Lloyd's was accepting speculative risks—historically not a subject for insurance—during a period in 1973-76 when my company and the natural gas industry generally were being seriously limited as to capacity for true "occurrence" loss placements is incomprehensible.

We have always needed and leaned heavily upon the financial and business experience resources of the Lloyd's community. If it survives this misfortune we will need it again. However, serious risk managers must resent sharing their companies' fortunes in speculative gambling on this scale. Under these circumstances I find it most difficult to sympathize with those who have flagrantly flouted the traditions so long espoused by this trusted market and the brokers who profited therefrom.

A. Gordon Hanau
Assistant vp, risk management department, Consolidated Natural Gas Co., Pittsburgh, Pa.

Clear the record

To the editor: In your issue of June 25, there was an article dealing with asbestos and some of the issues surrounding it. In discussing Congresswoman Fenwick's proposed legislation dealing with the handling of asbestos claims of workers, your writer states that "Johns-Manville and the AFL-CIO support the proposal . . ."

On behalf of the AFL-CIO, I would appreciate if you would correct the record in your next issue. The AFL-CIO does not support the Fenwick bill and never has.

George H.R. Taylor
Director, Department of Occupational Safety and Health, AFL-CIO, Washington, D.C.

Complex situation

To the editor: Re July 23 story "Contractors battle big rip-offs of equipment."

This situation seems to be much more complex than your story would indicate. A certain amount of equipment theft is done by the workers, with the apparent support of their associates. Some stolen equipment is fenced. And some seems not to be stolen at all, but is used as a means of swindling the banks and/or the insurance companies.

The people involved in lifting this equipment are remarkably skillful.

Belden Menkus
Security consultant, Middleville, N.J.

B&M defense

To the editor: your editorial in the April 16 edition of *Business Insurance* displayed your lack of knowledge about boiler and machinery insurance.

ISO may classify B&M insurance as a casualty line. Why? I don't know! However, almost all of the U.S. writers of B&M coverage treat this line as a property line. Are our rates high? I don't think so. Boiler and machinery premiums represent about 5% of the total property and casualty premiums written in the U.S. The average HPR risk has a property damage and business interruption fire rate that runs between three cents and four cents per one hundred dollars of coverage. This same type of risk has a boiler and machinery rate that runs between eight mils and one cent per hundred dollars of coverage.

Buyers of B&M insurance generally establish the type of B&M program they desire. Most buyers allow (or their brokers do) little if any flexibility in coverage. Because of the buyers demands, the industry forms are standard. Another factor that causes standardized forms is the coverage itself. Boiler coverage is a named peril coverage. The named peril is "an accident to an object." Other than writing a rather broad definition of an accident or writing an extremely broad definition of an object, there is little to be done with the basic peril.

Price fixing? You've got to be kidding! With the exception of certain high hazard risks (public utilities included), buyers of B&M coverage can obtain just about any price they feel is proper on a boiler contract. Price competition today is brutal. Since I am the manager of a front line underwriting unit, I do speak with some authority in this area.

Why haven't other big property insurers joined the ranks of the 13 (not six or eight) national boiler and machinery insurers? Cost! What intelligent business person is going to invest $3 million or $4 million over a two or three year period to start up the B&M department? Expecially when the rate of return is about 4% to 5% over a five year period. None of the buyers of

Continued on page 46

business insurance

the national newsmagazine of loss prevention, risk financing and employe benefit management

G.D. CRAIN JR. *founder (1885-1973)*

MRS. G. D. CRAIN JR. *chairman of the board*
S. R. BERNSTEIN *chairman, executive committee*
RANCE CRAIN *president and editorial director*
KEITH E. CRAIN *secretary-treasurer*
DAVID J. CLEARY JR. *senior vp-group publisher*
ALFRED MALECKI *vp-publisher (New York)*

SUSAN ALT, *ARM, CPCU, editor* KATHRYN J. McINTYRE, *managing editor*
LEN STRAZEWSKI, *features editor*. JERRY GEISEL, *Washington editor*. VALERIE J. BERG, *copy editor*. *Associates: New York*—STUART EMMRICH, ELLIS SIMON. *Los Angeles*—CLIVE HALLETT, *Chicago*—JOHN MAES, MARY ELLEN McKEE, PHYLLIS GALLAGHER *(asst.)*. MERRILL SALTZMAN, *editorial production chief*: JOE FARACI, *Art director: Correspondents: London*—JOHN MILLER (01) 946-4215. *Seattle*—HARRIET KING (206-888-2340). *San Francisco*—MARGARET LeROUX (415-525-5082). *Proofreader*: ARLINE LARSON. *Editorial typist*: SHAUN WESTBROOK.

DONALD A. WALSH, *Advertising Director (New York)*
ROBERT L. NIESSE, *Midwest Sales Manager (Chicago)*

Advertising district managers: New York—CHARLES A. HORVATH, JACK FORREST, KEITH T. GALLAGHER. *Chicago*—DON MAHLMEISTER, *Assistant to Advertising Director: Los Angeles*—LORI WEINSTEIN. *Production manager: Chicago*—FRAN PRYBYLO. *Promotion manager: New York*—RONNIE I. DRACHMAN. *Assistant to the publisher: Chicago*—CELIA MALOUHOS; *New York*—JOYCE BAIDA.

Published by Crain Communications Inc., Chicago, HERBERT ZELTNER, *group vp*; ALFRED MALECKI, J.J. GRAHAM, S.E. COHEN, LOUIS F. DE MARCO, WILLIAM STRONG, ROBERT W. KRAFT, STEPHEN D. GILKENSON, ARTHUR E. MERTZ, *vice presidents*, JAMES M. FRANKLIN, *vp-finance and administration*; MERRILEE P. CRAIN, *assistant secretary*.

Published biweekly at 740 Rush St., Chicago, Ill. 60611 (312-649-5200). Offices: 708 Third Ave., New York, N.Y. 10017 (212-986-5050); Suite 1253 National Press Building, Washington, D.C. 20004 (202-638-5300); 6404 Wilshire Blvd., Los Angeles, Ca. 90048 (213-651-3710). 75 cents a copy. $15 a year in U.S. Foreign $5 a year additional. WILLIAM STRONG, *vp-circulation*. PAMELA JANOUSEK, *circulation manager*; ROGER DiGREGORIO, *fulfillment director*. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 740 Rush St., Chicago, Ill. 60611. Telex 25-4248; Cable CRAINCOM. Microfilm copies are available from University Microfilms, 300 Zeeb Rd., Ann Arbor, Mich. 48013. Microfiche copies available: Bell & Howell, Micro Photo Division, Old Mansfield Rd., Wooster, Ohio 44691.

BPA Member of Business Publications Audit of Circulation ABP

WITHOUT THE RIGHT TOOLS WE'RE ALL DUFFERS

No golfer—even a pro—would accept this kind of handicap. Yet, as a professional risk manager, you may be accepting a handicap as extreme as the one illustrated here.

Trying to control cost of risk without professional information tools is the case in point

If your responsibility is controlling risk cost, test your information tools against these standards. The professional risk management information system should:

- Monthly or quarterly communicate risk budget performance to each cost center
- Provide a quarterly, loss-cause analysis to each cost center
- Monitor the cost-per-manhour of employee injuries at each cost center
- Allocate cost of risk based on loss experience as well as exposure
- Present an accurate picture of both experience and exposure to competing underwriters
- Document improved performance of your risk management function to upper management

Of course, we have a putter to grind. The information tools we furnish monthly or quarterly to over 1,000 major corporations and governmental entities do all these things and much more

Providing risk management information is our only business. We've been doing it for a long time and do it extremely well

So, if you are handicapped in your effort to reduce the cost of risk by having only incomplete and obsolete information, let us tell you more. Call toll free 800 858-4351 from outside of Texas. From Texas call 806 376-4223

corporate systems—Professional Tools for Professional Risk Management

P. O. Box 31780, Amarillo, Texas 79120, (806) 376-4223, (800) 858-4351 (toll free outside of Texas), Corporate Systems Australia, "Holland House," 492 St. Kilda Road, Melbourne, Australia

Will try again

Ohio petition drive fails to spur work comp vote

By JACK THORNTON

COLUMBUS, Ohio—The petition drive to place a workers compensation referendum on the Ohio ballot Nov. 6 fell short of its goal at the Aug. 8 filing deadline.

But the backers, an ad hoc political action group here called Ohioans for a Free Choice, aren't giving up. They have begun circulating new petitions for an additional 100,000 names, said executive director Stephen Sandler, who hopes to get the question on the June 1980 ballot.

Slightly more than 284,000 names were needed, equal to 10% of the vote in the last Ohio gubernatorial election. "We had that many but we had less than a 5,000-vote cushion," Mr. Sandler said. He said as many as 20% of the signatures may be disqualified after such petition campaigns.

The petition drive, begun five months ago, aims to break the state's monopoly on workers compensation insurance, which is handled by the Ohio Industrial Commission (*BI*, April 30). If the referendum fails, Ohio will remain the only industrialized state in which private insurers cannot write workers compensation.

Mr. Sandler said that because the 5,000-vote cushion was so thin and a lawsuit had been filed against the petitioners, Ohioans for a Free Choice decided to skip the 10-day grace period for more signatures to be collected.

The lawsuit was filed by three individuals with ties to the Associated General Contractors of Ohio, an association of nonunion construction contractors, Mr. Sandler said. The suit, filed in Franklin County Common Pleas Court here, alleges solicitors "did not understand the issue and therefore gave a false synopsis to prospective petition signers," he said.

The legal challenge, if successful, would order the secretary of state, Anthony J. Celebrese, not to certify the petitions. Other parties to the contractors' suit are the Ohio AFL-CIO Council and the workers compensation service bureaus, private companies which sell their expertise in dealing with the state bureaucracy, Mr. Sandler added.

One hurdle that has been cleared is a requirement that signatures be collected from 5% of the voters in at least 44 of the state's 88 counties. Mr. Sandler said that test was met in 56 counties.

Mr. Sandler blamed record summer rainfall for discouraging petition solicitors.

Most of the support for Ohioans for a Free Choice has come from employers, long disgruntled with the premiums and fees they pay and with state administration of the insurance program. Employers say breaking the state monopoly will decrease their rates, even though the proposed referendum wouldn't abolish the state system. ■

Ohio work comp costs to drop

COLUMBUS, Ohio—Employer payments into the Ohio workers compensation fund will be reduced an overall 3.3% due primarily to high returns on investment income despite increased administrative changes, says the state workers compensation bureau.

Costs to some industries, such as retail, will drop 7.5% while rates for construction businesses will rise about 2%. Many others will remain unchanged.

The average basic insurance rate statewide will be $2.09 for each $100 of payroll, five cents below the present average of $2.04.

The state collected $606 million in compensation premiums in 1978 and only $525 million is expected under the new rates, effective January 1980. Investment income, which totaled $146 million last year, will supplement premiums.

Administrative charges to employers will be increased to generate an additional $42 million, $6.15 million of which will finance a rehabilitation program. ■

around the states

Policyholder liable to excess insurer: Court

SAN FRANCISCO—A California appellate court has upheld a 1976 ruling in favor of an excess insurer and against the policyholder and primary insurer carrier for bad faith in failing to settle a liability lawsuit within the primary policy limits.

This is the first time an excess insurance company has won a judgment against the policyholder for the policyholder's failure to consent to a reasonable settlement, California attorney H. Paul Breslin said. This is also the first California court case allowing an excess insurer to recover against a primary carrier for the primary carrier's failure to settle a liability case within the primary policy limits, Mr. Breslin added.

The case involved a wrongful death action following a trench collapse on a project for which Spink Corp. was the consulting engineer. Spink had a $100,000 professional liability policy with American Motorists, the primary insurer. The policy had a $15,000 deductible and required Spink to consent in writing to any settlement. Spink also had an excess insurance policy with Transit Casualty Co. with a $1 million limit.

The plaintiff offered to settle the case for a total of $300,000 from five defendants. Spink's share of the settlement was $75,000, but the firm refused to settle. American Motorist did not try to persuade Spink to settle.

The case went to court and Spink and two other defendants were ordered to pay $632,000. Transit paid $460,000 to settle the wrongful death action and three related cases then brought suit against Spink and American Motorists to recover the payments.

Program halted

LANSING—The Michigan Product Liability Market Assistance Program, established in 1977 to help businesses obtain product liability insurance, ceased operating Aug. 1.

A review by the Michigan insurance commissioner disclosed there was little demand for the program. However, MAP-Michigan could be reactivated if there is a serious problem with the availability of product liability insurance. The Independent Agents of Greater Detroit will continue to provide a mailing address and phone number for inquiries about product liability services.

Tort reform

MONTGOMERY—Alabama has joined the ranks of states that have passed tort reform legislation.

The measure (S.109), overwhelmingly passed by the legislature and signed into law by Gov. Forrest James, bars product liability suits 10 years after the time a product was put into use. The law also requires suits to be filed no later than one year after the time of injury.

The measure had been backed by a broad coalition of business groups.

Ski safety law

DENVER—The Colorado legislature has passed a law outlining the safety responsibilities of ski area operators and skiers.

Based on the doctrine of comparative negligence, the bill requires the operator to provide certain items of safety and direction, such as markers warning of hazards. The skier bears the burden of knowing the range of his or her ability.

Work comp increase

LINCOLN—A bill increasing workers compensation benefits was passed by the Nebraska legislature and sent to the governor for signature.

The bill (LB 114), sponsored by Sen. John DeCamp of Neligh, increases weekly maximum workers compensation benefits to $180 from $155. The increase will mean a 1.9% hike in insurance premiums Nebraska firms will pay for workers compensation, estimated Sen. DeCamp.

Reserve funds

ALBANY, N.Y.—Gov. Hugh Carey has signed a bill allowing local governments to establish reserve funds for liability losses.

Through the use of reserve funds, local governments will be able to self-insure or purchase insurance with larger deductibles.

MAP closed

CHICAGO—No demand for its services this year has closed down the Illinois marketing assistance program for product liability insurance.

Created and operated by product liability insurers and brokers in Illinois, the program was set up in April 1977 to help businesses and their brokers having difficulties finding product liability insurance. But in the last year, not a single plea for help from MAP has been heard.

Former Illinois insurance director Richard L. Mathias, who has since resigned, approved the dissolution of MAP July 9 provided the program could be re-established if it were needed.

Philip R. O'Connor, formerly deputy director, is now acting director of the insurance department in Illinois.

Surcharge dropped

TALLAHASSEE—The 8% surcharge on workers compensation premiums paid to the Florida assigned risk plan was eliminated Aug. 1, saving 57,000 employers an estimated $8 million a year.

The plan, which provides insurance to employers who can't find it elsewhere, received $100 million in premiums in 1978, primarily from small businesses. ■

Few pension programs offset work comp: Study

WASHINGTON—Prohibiting pension plans from subtracting workers compensation benefits from pension benefits due disabled workers would cost employers only a negligible amount, said a study done for the Labor Department.

The elimination of workers compensation reductions would boost employers' pension costs about $34 million annually. This figure is equal to about two-tenths of 1% of employers' total pension costs of $14.4 billion, said the recent study by consultant Hay Associates and its actuarial subsidiary Huggins & Co. Inc.

The study was requested to analyze the impact of eliminating workers compensation offsets as proposed by Sen. Harrison Williams (D-N.J.) and Sen. Jacob Javits (R-N.Y.) in their latest effort (S. 209) to overhaul the pension reform law (*BI*, Feb. 5). Some courts already have outlawed the reduction of pension plan benefits by the amount of workers compensation a plan participant receives (*BI*, Feb. 19).

Currently, only a small proportion, about 8.5% of the nation's 85,000 defined benefit pension plans, integrate workers compensation and pension benefits. The 7,198 plans that offset workers compensation benefits have about 1,227,000 participants who aren't now eligible to collect benefits from both their pension plans and from workers compensation programs.

However, only 40,500 (3.8%) of the 1,227,000 potential beneficiaries are occupationally disabled in any given year to be eligible for benefits under their pension plans as well as workers compensation programs.

And most of these injuries are of a short duration. In 1975, the last year complete figures are available, the average number of lost days per work accident was 57. Since most disability benefits payable under pension plans typically require a six-month waiting period, the vast majority of injured workers wouldn't be affected by the proposal because they couldn't otherwise collect benefits from their pension plans.

Only 2,000 workers out of that eligible pool of 40,500 are unable to work after six months and would benefit from no longer having their pension plan benefits reduced by payments received from their state's workers compensation program, says the report. ■

Fire damages 3M offices

ST. PAUL—More than $1 million in recent fire damage to one floor of the main office building of 3M Co. here is insured with Industrial Risk Insurers under a policy with a $250,000 deductible.

The fire on July 24 burned out the sixth floor of the building housing administrative offices but was confined to that floor of the unsprinklered building.

"The fire separations worked," noted 3M's director of insurance Howard T. Weber. There was minor smoke and water damage to other areas.

The cause of the fire hasn't been determined, Mr. Weber said. Damage is estimated at between $1 million and $1.5 million. The $250,000 self-insured cost will be paid by the company's corporate insurance program, which operates as an in-house insurance company.

Mr. Weber is attending to the "1001 tasks" that accompany a loss, such as analyzing which of the damaged equipment and furnishings to repair and what to sell for salvage value and replace, adjusting the loss of employes' personal property and meeting with payroll accounting on time lost. ■

Coverage expanded

Victor O. Schinnerer & Co. Inc. Insurance of Washington, D.C., is program administrator and underwriting manager for the physicians' excess professional liability insurance program offered in Maryland. The expanded program, underwritten by the CNA Insurance Cos., increases limits of liability and coverage for emergency room services.

Appeals courts to rule on pension offsets

By ELLIS SIMON

NEW YORK—Social Security payments might be the only permissible deductions from pension plan benefits if four federal court decisions are upheld on appeal, says an attorney defending pension offsets in a similar suit.

Subtracting workers compensation payments from pension benefits constitutes illegal forfeiture of benefits under the Employe Retirement Income Security Act, U.S. district courts in Newark, Detroit and Milwaukee have ruled.

Two New Jersey cases, General Motors v. Buczynski and Raybestos-Manhattan v. Alessi, are on appeal to the third circuit court in Philadelphia. A Michigan case, Consumers Power Co. v. Utility Workers Union of America, is likely to be ruled on shortly by the sixth circuit court in Cincinnati.

In a fourth case in Wisconsin, Stong v. Bucyrus-Erie, a federal judge ruled in late June on the issue of law involved but not the damages to be awarded. Bucyrus-Erie has petitioned for permission to appeal the partial decision, said Leonard S. Zybrensky, attorney for the plaintiffs.

The legal theory applied by the lower court judges could prevent pension plans from deducting from pension payments benefits paid by sources other than Social Security, said Pittsburgh attorney William Powderly, who is defending four of six steel companies in several class action suits filed earlier this year on the same question.

In the Buczynski case, judge Frederick B. Lacey noted that Congress, in drafting ERISA, declared: "An employe's rights, once vested, are (with certain exceptions) not to be forfeitable for any reason." Social Security is the only offset of benefits provided for in ERISA, Mr. Powderly noted.

Mr. Powderly has filed an amicus brief supporting GM in its appeal to the third circuit of the Buczynski decision. The steel industry suits are also pending in the third circuit's jurisdiction.

Attorneys for both sides have submitted one of the seven suits against the steel companies pending before U.S. district court in Pittsburgh to the court for a partial summary judgment, having agreed to a stipulation on the facts involved. The decision in the one case will affect all the others. But everyone is waiting for the decision of the third circuit court in Philadelphia on the Buczynski case.

Defendants in the steel industry cases are: U.S. Steel, Jones & Laughlin, Wheeling-Pittsburgh Steel, Mesta Machinery, Pullman-Standard and Chenango Steel.

The U.S. Department of Justice has also filed an amicus brief supporting General Motors and has become an intervening defendant in the steel cases and Strong v. Bucyrus-Erie.

The Justice Department seeks to sustain an IRS regulation permitting pension plans to deduct workers compensation payments from payable pension benefits. It also supports the contention that ERISA overrules a New Jersey statute outlawing that practice, said tax division attorney William A. Friedlander.

Judge Lacey, in deciding the Buczynski case, invalidated the IRS regulation, declaring it is contrary to ERISA, and said ERISA doesn't preempt the New Jersey workers compensation statute barring the offset.

The Pennsylvania workers compensation law similarly prohibits pension plans from deducting workers compensation payments from pension benefits, said Martin Singer, plaintiffs' attorney in the steel cases.

These prohibitions, however, were not applicable in the Michigan and Wisconsin cases.

"The legal principals involved are important, but the size of the cases are not earth-shaking," said Mr. Zybrensky, plaintiff's attorney in the Stong case. He represents seven people seeking to recover pension benefits from Bucyrus-Erie.

Even the steel cases, believed to be the largest actions on the issue, are unlikely to result in payments totaling more than $3 million. However, Mr. Singer said the number of affected steel workers has yet to be determined.

With cases pending in three federal judicial circuits, a Supreme Court decision may be needed to determine whether deductions from pension benefits for workers compensation benefits are permissible. Conflicting decisions by one or more of the appellate courts would increase the likelihood of a Supreme Court ruling.

Actuarial studies indicate that eliminating the workers compensation offset from the steel industry pension plan would raise the companies' pension costs between three quarters of 1% and 1.5%, said Mr. Powderly. However, increases of that magnitude applied to pension plans throughout the country could boost pension costs by "several hundred million dollars," he said. But an actuarial firm disagrees. (See related story, page 16).

The Williams-Javits ERISA Improvements Act pending in Congress would prohibit subtraction of workers compensation payments from pension benefits, but would permit the offset against disability payments. The bill is awaiting action by the Senate Finance Committee.

The existing steel industry plan contains just the opposite provision, Mr. Powderly said. The industry does not subtract workers compensation payments from disability benefits as it does from pension benefits because a totally disabled worker is less likely to reach age 65. ■

The iceman cometh.

Not many people have to be as cool under pressure as the man in the intimidating mask. After all, being caught off guard for a single second in a sixty minute contest could lead to the goal that proves to be the margin of defeat. To avoid that dangerous situation takes phenomenal concentration. It takes the ability to play at a consistently high level and the nerve to avoid panicking no matter what the obstacles to victory. It takes, to put it briefly, a specialist.

It's not unusual for an insurance company to offer a coverage one year and then fail to offer it the next because of substantial losses in that particular market area. After all, for an insurer to be consistent within a market, be it hard or soft, and to avoid panicking at the sight of a few setbacks, it must have the resources to provide appropriate coverages on a long-term basis. It must have the ability to be patient. It must be, to put it simply, a specialist.

For over 140 years, Allendale has been providing its insureds with a consistent market in a wide variety of ways. To accomplish this stability, innovation was necessary not merely in the loss control area, but in the areas of underwriting and coverages as well. For example, Allendale was the first to add riot, civil commotion and vandalism to its basic policy as well as the first to include full replacement and boiler and machinery in standard property coverage.

A key result of Allendale's stability has been the establishment of many long-term client relationships. In fact, the typical Allendale policyholder has been with us for more than 20 years, while some have been with us for more than 100 years. Included in these accounts are a significant majority of both the Fortune 500 and the Canadian Top 200 industrials; companies that have become and remained our clients because of their commitment to maintain acceptable loss control standards.

Perhaps all of your risks won't require second to second monitoring. Nevertheless, we believe you'll be glad to know that whatever these risks are, at Allendale we won't take them lightly. Allendale Mutual Insurance Company, Allendale Park, Johnston, Rhode Island 02919.

Factory Mutual System

Allendale Insurance

The property insurance specialists.

info for buyers

• Workers Compensation and Employers Liability Experience Rating by John R. Stafford covers the National Council on Workers Compensation **experience rating plans.** The major 1977 revision of the plan is also explained. Prepaid cost is $6.95, otherwise $7.20. Write J&M Publications Dept. B, P. O. Box 338, Palatine, Ill. 60067.

• Can you identify the hazards and stresses created by your company's work environment? Could you control them? Employe Benefits Insurance Co. offers an illustrated brochure outlining their services in the field of **occupational health.** For a free copy write James E. Little, Vp and California Division Manager, EBI Cos., 234 Gish Rd., San Jose, Calif. 95112.

• Equitable Life Assurance Society is offering a booklet listing **1979 hospital room and board charges.** Data is based on information submitted by 2,700 short-term hospitals, providing weighted average charges for private, semi-private and intensive care accommodations in 1,650 cities. State and national average charges are also included. For a free copy write John H. Goddard, Senior Vp, Equitable Life Assurance Society, 1285 Ave. of the Americas, New York, N.Y. 10019.

• International Service Corp. is offering a brochure listing its worldwide insurance and **risk management** services. For a free copy of the brochure write M. John Wansink, ARM, Assistant Vp, International Service Corp., 1600 Arch St., Philadelphia, Pa. 19101.

• A manual, combining available information along with analysis and explanations of **workers comensation,** is now available from RIMCO. The manual is written in layman's language and designed for use by insurance buyers, agents, underwriters and auditors. Cross-referenced with both numerical and alphabetical listings, the manual contains rules, classifications and interpretations for all states except those with monopolistic funds. For a free brochure describing this $95 manual write William Beck, RIMCO Risk Management Inc., 10300 N. Central Expressway, Suite 350, Dallas, Tex. 75231.

• Sanders Inspections Ltd. does inspections, appraisals and **loss control** surveys for self-insurers, risk managers and insurance companies. The company's services are described in a new brochure. For a free copy write Sanders Inspections Ltd., 49 S. Main St., Spring Valley, N.Y. 10977.

• American Insurers Administrators Inc. offers a promotional brochure describing its **claims administration** program for insured and self-insured companies. For a free copy write Herbert Schaffer, American Insurance Administrators Inc., 6420 Wilshire Blvd., Suite 340, Los Angeles, Calif. 90048.

• What You Should Know About Made-To-Order Business Insurance Packages is a brochure describing the **commercial package policies** of Continental Insurance Cos. For a free copy write Public Relations Manager, Continental Insuance Cos., 80 Maiden Lane, New York, N.Y. 10038.

• **The Gypsum Assn.** is offering its catalog of safety, training and materials handling manuals. For a free copy write Gypsum Assn., 1603 Orrington Ave., Suite 1210, Evanston, Ill. 60201.

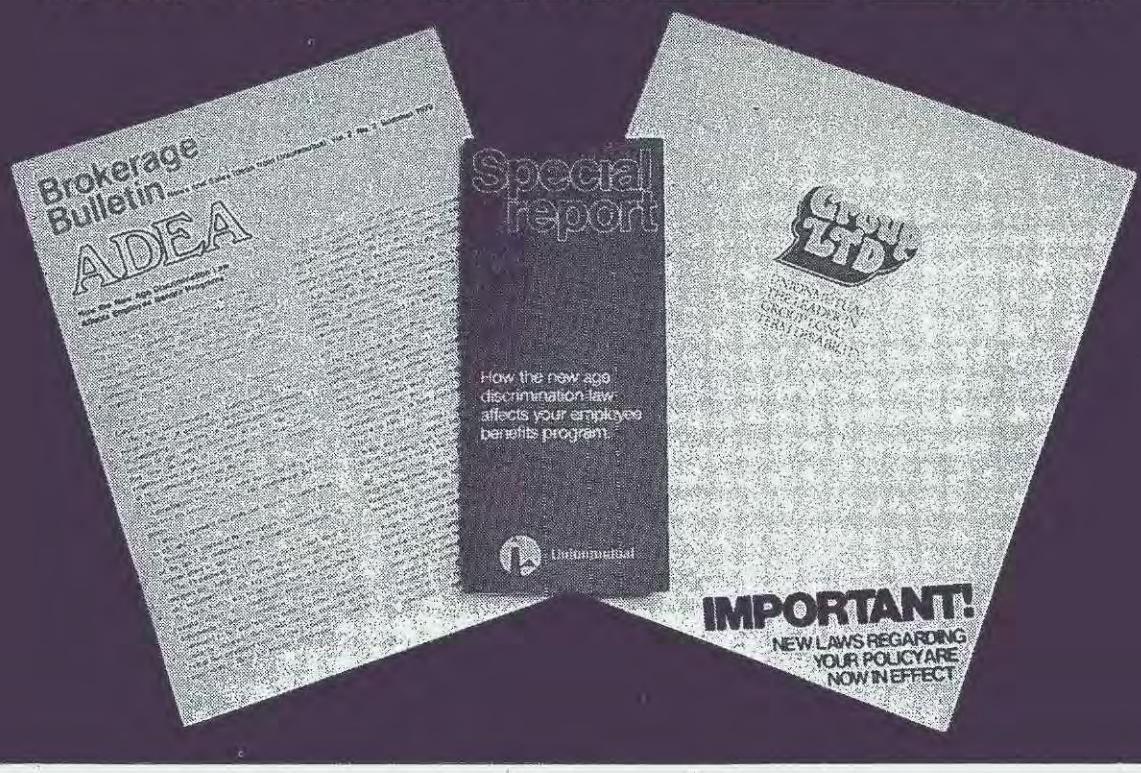
dates

SEPT. 4-5. Risk Research Group (London) Ltd. is sponsoring a mini-course on practical **reinsurance** at the Mandarin Hotel in Singapore. Guidelines on establishing, operating and managing captive insurance companies will be covered in a mini-course on **captive** insurance companies on **Sept. 6-7.** For more information on the courses, contact Gillian Morley, Risk Research Group, Bridge House, 181 Queen Victoria St., London EC4V 4DD; phone 01-236-2175 or telex 8811636.

SEPT. 5-7. The Risk & Insurance Management Society will sponsor a course on **risk management** in Vancouver, British Columbia. The course will be repeated in Columbus, Ohio, **Sept. 10-12** and in Charlotte, N.C., **Sept. 12-14.** Cost is $200 for each member, $150 for each additional member, and $300 for nonmembers. Contact Lynn Fischoff, The Risk & Insurance Management Society, 205 E. 42nd St., New York, N.Y. 10017; phone 212-557-3210.

SEPT. 10-12. A two-part course on **employe benefits** sponsored by the Risk & Insurance Management Society will be given in Chicago. The course will be repeated **Sept. 12-14** in Orlando, Fla. Cost is $120 for each part of the program, $200 for both. Cost for non-members is $175 for each part, $300 for both. Contact Lynn Fishoff, The Risk & Insurance Management Society, 205 E. 42nd St., New York, N.Y. 10017; phone 212-557-3210.

If you write LTD insurance with us, you already know all about ADEA.



If you don't, call or write and we'll be glad to fill you in.

Here it is. Everything that you should know about the new amendment to the Age Discrimination in Employment Act. The first definite and explicit solution to the new regulations. And completed barely a month after the Department of Labor's final interpretative bulletin.

Our Broker's Bulletin describes how ADEA affects employee benefit programs, and what steps Unionmutual is taking to help policyholders comply.

In our Special Report, an even more comprehensive commentary on the new law's impact for brokers and policyholders is provided.

And in early August, every one of our over 9,000 group disability clients — through their individual brokers — will have received a choice of compliance options and the cost of each. Including one government-approved plan — designed by Unionmutual — which will offer them substantial savings. We call it the "Unionmutual Option."

It's fast, aggressive service like this that has made us the number one writer of Group LTD, and one of America's fastest growing major life insurance companies.

We'll gladly send you our Special Report on ADEA (just contact our nearest branch seen at the left) — even if you aren't currently doing business with us. Because that's Unionmutual.

Unionmutual

DEPT. 2211 CONGRESS STREET, PORTLAND, ME 04122

UNION MUTUAL LIFE INSURANCE COMPANY, PORTLAND, MAINE 04112
UNIONMUTUAL STOCK LIFE INSURANCE CO. OF AMERICA, PORTLAND, MAINE 04112
UNIONMUTUAL STOCK LIFE INSURANCE COMPANY OF NEW YORK, ELMSFORD, NEW YORK 10523

Best's rating down; Bellefonte recruits ITT vp as chairman

By KATHRYN J. McINTYRE

MIDDLETOWN, Ohio—Bellefonte Insurance Cos. here, recently demoted by A.M. Best's Co. to a B from an A rating, will have a new chairman and chief executive officer Sept. 1.

Howard T. Cohn, currently vp and product group manager for insurance and finance at International Telephone & Telegraph Corp., has been tapped to "take over the executive leadership of the Bellefonte Cos.," said Harry Holiday, chief executive officer of Armco Inc., Bellefonte's parent company.

The development of Bellefonte over the last 10 years from a captive insurer to the 64th largest U.S. underwriter of property/casualty insurance has been closely watched by industry observers and risk managers interested in expanding the business of their companies' captive insurers.

Robert Lee, who as risk manager of Armco was the driving force behind taking the captive into third-party underwriting and has directed its development since its first foray into outside business in 1968, continues as president of Bellefonte.

Bellefonte is often cited as the shining success of a captive insurer growing into a major underwriter. The company has grown quickly, to $262.5 million in net premiums in 1978 from just $219,000 in net premiums in 1969, a compounded growth rate of 65% per year.

But it has also suffered underwriting losses for the last four years, the highest turned in last year: $17.2 million. The losses, primarily on treaty reinsurance business, cut Bellefonte's net income for the year to $5.8 million from $10 million in 1977.

Armco officials were aware that a new insurer growing as rapidly as Bellefonte would turn in losses when claims on business underwritten in its young years started pouring in faster than new premiums. But the parent company did not anticipate "the magnitude" of 1978 losses, an Armco spokesman said.

It's not unusual for a parent company to import a "financial man" when a subsidiary starts showing bad results, observed one risk manager when told of Mr. Cohn's appointment. Mr. Lee is considered by many to be the "entrepreneurial" type, who will complement and be complemented by Mr. Cohn's expertise in finance.

Mr. Holiday of Armco said Mr. Cohn's "leadership supports Bellefonte's established objective to become a superior insurance company . . . pursuing a well-planned, controlled growth pattern."

Bellefonte officials don't agree the company deserved the demoted rating by Best's, but have decided not to argue that publicly. The poorer rating was bestowed because of Bellefonte's "unsatisfactory underwriting results, coupled with the effect of rapid expansion," Mr. Weeks said at a press briefing in New York last month.

The lower rating will hurt some of Bellefonte's smaller programs, Mr. Weeks also admitted. Bellefonte's mortgage guarantee insurance program will be affected because mortgage granters insist the underwriter be an A-rated company. "Discussions with several of our largest customers indicate no significant impact," he added.

Mr. Weeks also said Bellefonte is already showing improved results, producing $8.6 million in net income in the first half of 1979 compared with $5.9 million in net income in the first half of 1978.

Among the changes Bellefonte instituted to correct its poor underwriting results, Mr. Weeks said, were to limit growth in the treaty reinsurance unit, to restructure its mix of business within certain groups and to improve underwriting capabilities. ■

3 listings supplement A/B profiles

These agent/broker profiles supplement the listing in our special Agent/Broker Profiles issue Aug. 6.

B. R. I. Coverage Corp.

156 William St., New York, N.Y. 10038; 212-233-7171

	1978	1977
Premium vol. ...	$51,000,000	$45,000,000
Gross rev.	$ 5,900,000	$ 5,100,000
Employes	85	74
Commercial bus.	95%	90%

Principal officers: Donald P. Ferrarini, president; Howard Miller, senior vp, director of sales; Arthur Ostrow, Bruno Rumignani, Fred Ghawi, senior vps; James R. Sweitzer, Herbert Kramer, John Kelly, James J. O'Donnell, vps.

Compensation: Commissions and fees.

Branch office: Montreal, Que., Canada.

Subsidiary: B.R.I. Silver.

Licensed excess/surplus broker in: New York and New Jersey.

Kindler & Laucci

1545 Wilshire Blvd., Los Angeles, Calif. 90017; 213-484-0220

	1978	1977
Premium vol. ...	$75,000,000	$65,000,000
Gross rev.	$7,100,000	$5,900,000
Employes	155	145
Commercial bus.	95%	95%

Principal officers: A.H. Kindler, president; Gordon E. Noble, executive vp; Rodney A. Fletcher, secretary-treasurer; E.M. Farrell, first vp and Northern California general manager; William J. Fleeman Jr., senior vp.

Compensation: Commissions and fees.

Branch offices: San Francisco, Fresno, San Diego, Pasadena, Palo Alto, Santa Maria, Newport Beach, Encino, all California; Phoenix and Holbrook, Arizona.

Subsidiary: S.J. Petrakis Insurance Services.

Parent company: California Insurance Management & Investment Corp.

Licensed excess/surplus broker in: California and Arizona.

Producers Exchange Inc.

1310 Texas American Bank Building, Dallas, Tex. 75235; 214-357-6504

	1978	1977
Premium vol. ...	$6,900,000	$6,700,000
Gross rev.	$865,000	$845,000
Employes	27	25
Commercial bus.	99%	99%

Principal officers: Max McCrary Jr., chairman & CEO; Bill M. Morrison, president and chief operating officer; Travis Dale Roberts, Ernie A. Tucker, Vernon M. Gilmore, all vps.

Compensation: Commissions and fees.

Branch offices: Houston and Lubbock, Tex.

Subsidiaries: Producers Exchange Life Insurance Agency Inc. (PELIA); MGM Agencies.

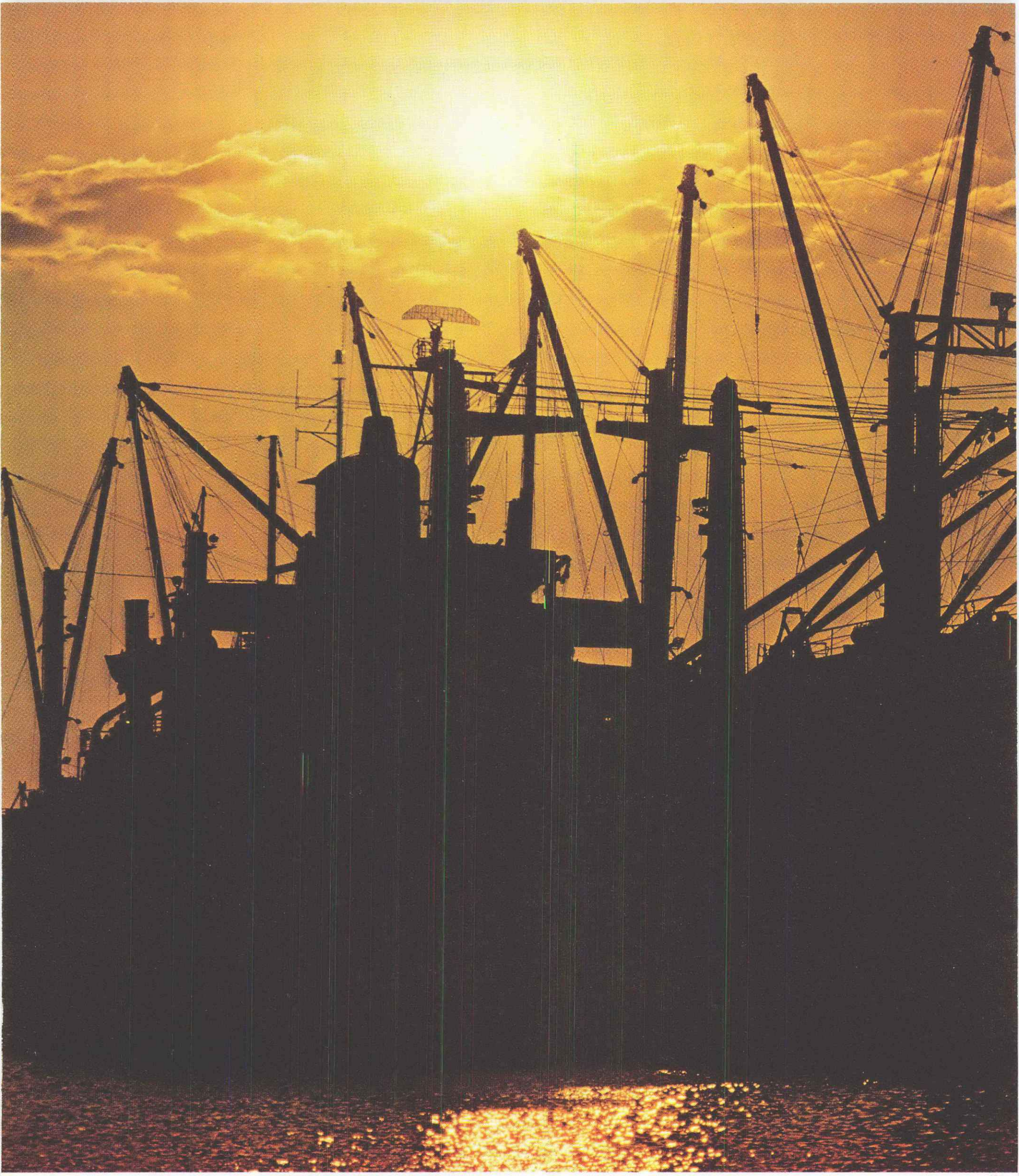
Parent company: PEMCO (Producers Exchange Management Co. Inc.)

Licensed excess/surplus broker in: Texas.

School relocated

The insurance school of Chicago has moved into new quarters.

The school, with a faculty of 52 and 2,764 students enrolled in the last academic year in the various programs affiliated with the Insurance Institute of America and Chartered Property and Casualty Underwriting, is now at 330 S. Wells St. Fall semester classes will begin in the new facility Sept. 4.



The INA foreign poli

cy policy.

5.

The single port of call: it should be a reality in securing worldwide coverage of marine cargo risks.

The complexities and risks of multinational shipping are of a different order of magnitude than even a few years ago. A U.S.-based firm, for example, may have manufacturing plants in many overseas locations – and cargo from these plants may move through dozens of different countries to worldwide destinations.

Securing coverage for U.S. exports and imports, as well as cargo originating overseas, needn't involve approaching insurance carriers in foreign countries. INA can be your "single port of call" for a Multinational Trade Program that gives comprehensive control over all U.S. and foreign cargo exposures through a single policy. Gaps and overlaps in your client's coverage are effectively eliminated.

The Multinational Trade Program, available through INA's Marine facilities, provides worldwide claims and loss control services... and offers INA's unexcelled recovery, subrogation and salvage facilities. Active in 110 countries, INA is recognized for its expertise and innovation in worldwide marine cargo insurance.

For details and the latest edition of "Ports of the World," write to INA: 1600 Arch St., Philadelphia, PA 19101. Or contact an INA Marine office: Los Angeles, CA; San Francisco, CA; New Orleans, LA; Cleveland, OH; Philadelphia, PA; Boston, MA; New York, NY; Chicago, IL; Seattle, WA; Atlanta, GA; Houston, TX.

INA International, whose network of worldwide facilities is the largest of any single U.S.-based insurance company, has developed a number of operating standards that should prove of interest and benefit to agents and brokers.

This is the fifth in a series.

Capture new business. Now!

Kemper's Group Dental offers the flexibility to put you out in front.

One of the fastest-growing employee benefits is Group Dental coverage. And there, at the forefront, you'll find the Kemper Cavalry.

Our Group Dental Plan gives you the edge others may lack: flexibility.

You can write it either as a comprehensive or as a scheduled benefit plan. With varying deductibles and co-insurance options on either.

Group size starts as low as 15, with a two-year rate guarantee for less than 100 employees. You can even write it alone or in conjunction with your client's existing coverage.

Remember, as the agent you can look forward to the support of an outfit that keeps ahead of the rest in Group Life and Health and in Special Risk.

Sign on! Ride with Kemper, and see how quickly new business will be riding with you.

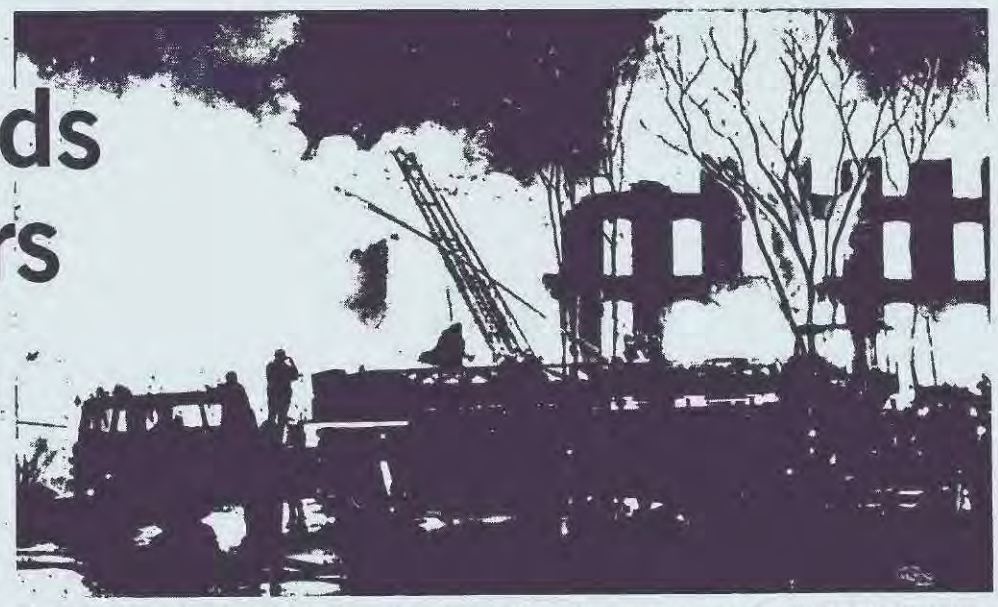
For information, contact the Group Insurance Department, Kemper Insurance Companies, Long Grove, Illinois 60049 or your nearest Kemper Group Representative.

Kemper Insurance Companies

We're riding hard to serve you better.

PERSPECTIVE

Unreported fire hazards can burn policyholders



Unreported changes in fire hazards can allow insurance companies to deny coverage after a fire has destroyed the property.

By Henry Salfeld

A RECENT CASE BEFORE THE U.S. District Court, District of New Jersey, involving the increase in hazard clause in the standard fire insurance policy requires an update of the interpretation of the policy conditions.

In the case of Peggy M. Elston v. Insurance Co. of North America et al, the owner of a warehouse that was totally destroyed by fire claimed the loss from three of the largest and most prominent insurance carriers in this country. The insurance companies denied liability because of an alleged increase in hazard prior to the fire. No moral risk was involved.

The insured had leased part of the warehouse to the REA for storage of different types of general merchandise. When the REA's lease terminated, the space was rented to another tenant for the storage of baled paper. The owner notified her insurance broker in order to determine whether the new occupancy might involve an increase in rate because the lease with the new tenant contained an obligation of the latter to reimburse the landlord for any additional premium that might result from the new occupancy.

The broker submitted the matter to the Insurance Services Office, which promulgated a new fire insurance rate for the building. This rate was higher than the previous one due to certain faults in management and the change in occupancy. The faults of management were corrected prior to the fire. A new rate card was issued and sent to the insurance companies prior to the fire. After several examinations before trial in the suit against the carriers and the insurance broker, the case was settled.

Henry Salfeld was an insurance broker with Frenkel & Co. in New York, since 1935 and has been a consultant to that firm since 1974 when he retired as senior vp. He has written extensively on insurance.

The denial of liability on the part of the insurance carriers was based on lines 28 to 31 of the standard fire insurance policy reading as follows: Conditions Suspending or Restricting Insurance. Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured.

In analyzing this provision, we should first consider two sections of the general property form used in New Jersey and other jurisdictions. In the forms edited July 1970 and May 1977, the section captioned "other provisions" contains a clause on "control of property," which states that the insurance shall not be prejudiced by any act or neglect by any person (other than the named insured) when such act or neglect is not within the control of the named insured. This supersedes the control provision in the fire policy itself.

The form of July 1970 under the separate section captioned "extended coverage endorsement No. 4," but not in the main section of the form, also contains a provision that "a claim for loss by any peril insured against by this endorsement shall not be barred because of change of occupancy. . ." Without any apparent notification to the producers or insureds, the ISO omitted this provision in the form edited May 1977 which combines fire and extended coverages. It is a violation of an established rule of law that any elimination of an important benefit to the insured must be communicated to him or her on renewal.

Automatic suspension

The basic fire insurance conditions suspending or restricting insurance provide for an automatic suspension of the insurance while the hazard is increased. It is not sufficient, as it might have been in years past, that the insured or his or her representative notifies the insurer that there is an increase in hazard, unless such insurer provides "in writing" that the insurance company will stay on the risk while the hazard is increased. However, signature on a binder or other type of memo should be adequate.

From a practical point of view, insurance companies, notified of any increase in hazard, either send notice of cancellation should they refuse to stay on the risk or advise the broker that upon publication of a new rate for the increased hazard the insured will be charged the higher premium. Rarely, if ever, have insurance companies upon such notification issued written endorsements voiding the suspension or extending coverage.

In the New Jersey case, the insurers implied that in case of direct notification of all three companies there would have been no suspension of the insurance even though there was no waiver in writing. They only maintained that the broker's notification of the ISO and his request for publication of a new rate was insufficient to void the suspension even though the companies naturally admitted that they are subscribers to the ISO and did not deny that they also received rate cards amending the rate on account of the new occupancy.

Without going into the question of automatic suspension and the requirement of a written endorsement, the U.S. District Court, M. Pennsylvania on March 3, 1951, in St. Louis Fire and Marine Insurance Co. v. Whitney et al, concluded that "the rating bureau . . . was the customary channel for notifying the insurer."[1] On the other hand, in a 1964 Louisiana decision,[2] the court came to the conclusion that a fire insurer had no obligation to make use of rate cards supplied by rating bureaus other than obtain rate information when policies are issued so that insurer was not chargeable with constructive notice of the use of premises as shown in the rate card.

Burden of proof

All courts and commentators agree that the question as to whether the hazard has been increased is one of fact with the burden of proof imposed upon the insurer and the matter to be decided by a jury.[3] But this refers to a case in litigation. Before that, the insured has the problem whether a change in occupancy or operation might be considered after a fire to have been an increase in hazard and the insurance suspended.

Courts and juries, recognizing the dilemma, are generally interpreting the clause in favor of the insured. In Plaza Equity v. Aetna Casualty & Surety Co., the U.S. District Court, Southern District of New York, stated in 1974 that "increase in hazard occurs only when the insureds perform acts which reasonably calculated to increase the hazard and which the insureds know or should know will raise the risk; negligence or misjudgment of the insureds is insufficient to bring the action within the exclusion."[4]

Another Federal decision, however, states that only actual knowledge and not that the insured "should have known" counts. The knowledge must pertain to the increase in hazard itself; it is not sufficient that the insured knows the facts if he is unaware that they produce an increase in hazard.[5]

However, this still does not resolve all the problems. If, for instance, the insured is notified by the ISO or the broker of faults in management which resulted in an increase in rate, must he now assure that this automatically indicates an increase in hazard suspending his insurance?

According to lines 28-31 of the policy, the insurance is suspended while the hazard is increased "by any means within the control or knowledge of the insured." Knowledge alone would, therefore, be sufficient to trigger the suspension even though the increase was beyond the control of the insured.

Increase defined

This would be particularly dangerous as an increase "by any means" counts, for instance, if an oil tank is erected by another firm near the insured plant or the insured becomes aware of a moral hazard on the part of another tenant. However, in several cases, without specific elaboration, courts have rendered their decisions as if the word "or" read "and," so that knowledge alone of the insured would not be sufficient if he had no means of controlling the situation.[6]

Even though the policy does not so state, courts have generally decided that only a real, substantial increase in hazard and not just a temporary increase in hazard can cause a suspension, but if there is such an increase, it is immaterial that the fire was not a consequence of the increase.[7]

Continued on page 31

Boost insurers' systems to cut work comp costs

By Norman L. Goodman

TODAY'S WORKERS COMPENSATION market has imposed the burden of sharply rising costs on the owners and managers of all businesses, regardless of whether the business is a manufacturer, contractor or service oriented.

In 1977, employers experienced an unprecedented escalation in workers compensation rates ranging from a national average of 11.2% to 24.9% in Colorado. This pace continued in 1978 and similar increases can be expected in 1979.

These increases hit small and medium sized employers the hardest. Unlike larger firms, they do not have access to significant cost-cutting methods such as captive insurance companies, self-insurance, retrospective rating plans and negotiated dividend plans. But the knowledgeable employer, whether large or small, does have access to methods and procedures that either will reduce or slow the increase in workers compensation costs relative to his competitors.

In today's high-cost environment, many sophisticated insurance buyers realize that with a fundamental knowledge of the rules and general insurance company procedures, they can reduce their costs substantially.

For instance, by developing a bookkeeping system that isolates and summarizes every reduction to premium and by using all legitimate benefits available, employers can reduce their insurance costs significantly. The bookkeeping system should identify premium overtime (pay at an accelerated rate), employe and officer excess pay, standard exception employes (office, salesmen and drivers) and for contracting risks, a separation of wages between the different categories of work performed.

Most premium auditors will not question a well prepared payroll analysis completed by the policyholder and will accept it at face value. The result can be an accurate audit showing actual exposures in line with premium, as well as the rules being interpreted to the employer's benefit.

Often an employer can save on this insurance by first agreeing with the broker what classification will be used for certain employes, the method of calculating overtime, the manner in which records must be maintained and the methods for elimination or reducing charges for contingent liability exposures. Although many brokers might hesitate to enter into such an agreement, competitive market forces dictate that brokers and insurers agree to favorable terms for desirable risks.

Finally, an awareness of the rules that apply to his industry can be invaluable to the businessman. Many classifications contain provisos, both favorable and unfavorable to the policyholder, that must be understood before premiums can be minimized. For instance, certain industry classifications (hotels, restaurants, etc.) had always included clerical employes in the "governing class." But in 1978 the classifications were amended to allow a separation between the main class and clerical office employes. The result is a dramatic reduction in premium if the underwriter and broker are aware of the change and adjust the premium accordingly.

Norman L. Goodman is president of Insurance Cost Management Service Inc. in Keene, N.H., a firm specializing in premium audits on all casualty insurance lines.

WE'RE SHOWING YOU THIS PICTURE STRICTLY FOR ITS SHOCK VALUE.

There's nothing wrong with this picture.

And there's nothing wrong with this building.

In fact, it's a perfectly good building, in a good neighborhood. Which makes it a very good risk.

What will surprise a lot of people, and shock a lot of other people, is that we insure it.

Because AIG companies have never been known for offering traditional kinds of insurance.

High risk coverages, of course. Unusual. Specialized. Even far out.

But not the standard, everyday kinds of coverages.

Well Commerce & Industry, an important member of AIG, is anything but far out.

C&I writes nothing but standard kinds of coverages. Mainly for preferred risks like manufacturers, department stores, shopping centers, motels, bowling centers, country clubs and condominiums.

We call it our "Not-So-Standard Standard" Policy, and our coverages include All Risk package programs, straight fire and allied perils, and highly protected risk business.

We'll insure better than average risks in any class of business, and we can write your policy just about any way you want it written.

We're the only major commercial insurer with an independent rate filing for all classes of property insurance. So we can evaluate every risk on its own merits (not by the category it's in). And, we'll price it accordingly.

We'll give you a "yes" (or a "no") to a risk within 48 hours. And in many cases, our "yes" will cost you less than anyone else's.

As a member of AIG, C&I also has the ability to offer the capacity and full service facilities that are essential in today's market.

Our "Not-So-Standard Standard" Policy is just one of more than 300 policies AIG offers, through our more than 160 member companies, in more than 130 different countries.

For more information, send in the coupon below.

Now that you've gotten over your initial shock, let us know when you want to do business.

AIG'S "NOT-SO-STANDARD STANDARD" POLICY

Please send more information on Commerce and Industry.

American International Group
Dept. A, 70 Pine Street, New York, N.Y. 10005

Name_____

Firm_____

Address_____ Tel_____

AIG

WE OFFER MORE KINDS OF INSURANCE THAN ANYONE IN THE BUSINESS.

We welcome inquiries from any licensed agent or broker. You don't have to be a regular producer to place business with an AIG company.

BI13X

PERSPECTIVE

Common carriers aren't responsible for all damages during shipping

By William H. Rodda

IT IS SOMETIMES said that a common carrier is practically an insurer of property that is in its custody—with emphasis on the word "practically." The shipper who places goods in the hands of a common carrier for delivery to another place wants to be certain the value of the goods can be recovered if they are lost or destroyed.

However, there are many circumstances in which the shipper cannot recover the value of lost property from the carrier. Should the shipper assume whatever risk there may be that recovery cannot be made?

What is the responsibility of the common carrier? The common carrier under the English common law (on which American law is based) generally is responsible for the safe delivery of goods except for losses from:

- Acts of God.
- Acts of the public enemy.
- Exercise of public authority.
- Fault or neglect on the part of the shipper.
- Inherent vice or nature of the property.

It should be noted that this responsibility of the carrier by land in the United States is applicable regardless of negligence on its part. It is a very broad liability. What risk of any consequence is there for the shipper to assume, or to insure against, if risk retention is not advisable?

The liability of a railroad or trucker follows closely this common-law liability. But the liability of the carrier is different if the shipment is going overseas by ship or if it is going by air either domestically or overseas.

The carrier by sea generally is not responsible for loss to cargo if the carrier has provided a seaworthy ship and is otherwise free from negligence. All participants in a venture by sea are considered to be taking their own chances and the carrier may not be liable for loss or damage if the loss results from perils of the seas. Thus in the case of a shipment by sea the shipper must decide on the basis of values and other factors whether risk retention or insurance is the desirable course.

William H. Rodda, president of Marine Insurance Handbook Inc. in Chicago, frequently speaks on property insurance.

Air carriers are also subject to a special set of rules that differ in some respects from the common-law liability. The air carrier may not be liable if the damage results from perils of the air, from riot or civil commotion or violations by the shipper or consignee of the carrier's tariffs regarding improper or insufficient packing. There may be more risk to be retained or to be insured against in connection with a shipment by air than for a comparable shipment by land.

How important are these exemptions of a common carrier from liability? Let us look first at acts of God. These are generally natural disasters. A flood is a natural disaster which under most circumstances would be considered an act of God. Yet there are many shipments for which the owner may desire protection against flood loss. Earthquake is another act of God, and yet the shipper may desire earthquake coverage.

Riots and civil commotions may be exempt from liability on the part of the carrier under many circumstances. The exemption of the air carrier from loss because of violation of tariffs regarding packing may prove to be costly to the shipper. It is virtually impossible for a shipper to know all of the details of an air carrier's tariffs. Inadvertent violation might be expensive to the shipper if the carrier is not liable.

The common carrier has another privilege that can wreak havoc on the shipper's right to recover for loss. That is the right to limit the dollar amount of recovery. Railroads, for example, have a straight bill of lading that makes the railroad liable for the full value of goods, but most shipments are made under a released bill of lading that limits the dollar amount the shipper can recover. The charge for shipping a straight bill of lading is substantially higher than the charge for the released bill of lading.

Air carriers and truckers generally use a released bill of lading or its equivalent, so the amount that can be recovered from the carrier is limited. Tariffs provide for additional charges if the carrier is made liable for the full value of goods.

Different modes of carrying goods require different types of coverage. In many cases the carrier is exempt from liability for the goods, says William Rodda.

An important reason for looking at the possibility of recovering for lost goods from the carrier is the difficulty of collecting. A claim must be made within time limits specified in the bill of lading or in the carrier's tariffs. There may be special problems in the case of concealed damage. The package appears to be undamaged upon receipt, and a clean release is signed. However, damage is later discovered when the package is opened.

Individual carriers differ in the amount of trouble they will give the shipper or consignee who claims concealed damage. One of the problems is that notice of concealed damage must be given promptly, usually in a shorter time than is required for a claim

ERISA's heavy hand reshapes pensions

By Robert M. James

CHANGE IN EMPLOYE benefits in recent years is indeed evident in retirement plans which have been altered to comply with the Employe Retirement Income Security Act.

As one would expect, the heavy hand of ERISA is most apparent in the pension area when comparing the results of the 1975 and 1978 Hay-Huggins Noncash Compensation Comparison. (This highly detailed national survey of employe benefit practices for salaried employes, published annually since 1972, drew 458 responses in 1975 and 526 responses in 1978.) The 1975 survey results describe pension plans as they existed before ERISA mandates, the 1978 survey reflects changes made in pension plans under ERISA rules.

In the 1978 survey results, the vesting eligibility, pre-retirement death benefit and maximum benefit level provisions no longer exhibit the diversity one might expect from nearly 500 separate plans. The minimum or approved standards laid down by ERISA have become the norm and a definite commonality is evident. This has usually worked to the advantage of employes.

Commonality, however, is nothing new in pension plans, as a glance at the retirement plans chart will reveal. These figures cover the basic salaried employe pension plan design reported by survey participants in 1975, before ERISA changes were made, and in 1978, after changes required by ERISA were made.

Robert M. James is director of benefits and noncash consulting services in the Chicago office of Hay-Huggins, a division of Hay Associates. This is the third in a three-part series Mr. James wrote on changes in employe benefit plans in recent years.

One key reason for the commonality that existed before ERISA mandates is, of course, the same as ERISA: the influence of government action. This was a heavily regulated area even before ERISA. The advantages of having a "qualified" plan for tax purposes were so overwhelming, virtually all employers designed their plans to be as internally equitable and externally competitive as possible while still complying with the Internal Revenue Service regulations governing "qualified" plans. In addition, the growing level of Social Security benefits and taxes made integration with Social Security imperative in any intelligently designed plan. And, the roaring tide of inflation has made some form of "final salary" plan the only way to provide a reasonable benefit at retirement in relation to an employe's standard of living without frequent, or at least periodic, amendments to the plan.

Fortunately, the government has not yet mandated the level of benefits a plan must provide and in this key area a healthy diversity is still apparent. The Hay-Huggins survey indicates the average salaried employe pension plan will provide a 30-year employe having a final salary slightly above the FICA tax base with something around half pay at normal retirement including primary Social Security. Because of the greater impact of Social Security benefits as a percentage of salary at the lower salary levels, this income replacement ratio is the highest (about 80%) at relatively low salary levels and declines as salary levels increase.

The major negative impact of ERISA—the termination of pension plans in record numbers—is not at all evident in our two selected survey samples. But most plan terminations have occurred among employers with fewer than 100 employes, where the per-capita cost of compliance is all but prohibitive, and such employers rarely participate in complex detailed surveys.

Retirement Plans

	1975	1978
Responses	**458**	**524**
Some sort of pension plan	93%	94%
Plans using "final average" salary to determine benefits	81%	81%
Of "final average" pension plans, those using five-year average	93%	95%
Of all reported pension plans, those integrated with Social Security	88%	86%

Among those plan design areas where the impact of ERISA is all too obvious is plan eligibility, as shown in the plan eligibility chart. The "other" category has almost disappeared in the 1978 survey and immediate eligibility also has declined, while 61% of survey participants have adopted the ERISA standard of "25 and one" in some form. This can be considered something of a gain for employes, as most of the "other" requirements reported in 1975 were more restrictive than this ERISA standard.

However, for career-oriented employes who stayed with an employer for more than five years, this "gain" is rather illusory. Nearly all such employes would have met even the more restrictive eligibility standards in effect before ERISA and, in most

Continued on facing page

Eligibility Requirements

	1975	1978
Responses	**413**	**485**
None, immediate coverage	39%	31%
Age 25 only	5%	4%
1 year of service only	13%	17%
Both age 25 and 1 year of service	11%	40%
Other requirement	32%	8%

where the damage is evident upon delivery and where the obvious damage is noted on the receipt for the goods.

There are several alternatives to be considered by the shipper (or the consignee where incoming shipments are at the risk of the consignee) for the handling of lost and damaged goods in transit:

- Dependence may be placed on the liability of the carrier if the nature and value of goods are such that most shipments would be covered by the carrier's liability. This may extend to retention of risk for values in excess of the carrier's liability.
- Payment can be made for an increase in the carrier's liability to meet the actual value of the goods where the released valuation is not high enough.
- Buying insurance from the carrier for each shipment where such insurance is available from the carrier. Airlines may have such coverage for individual shipments.
- Buying a transit insurance policy from an insurance company covering all shipments, or shipments valued in excess of carrier's liability, or on some other excess plan.

Break-even points

Where are the break-even points between dependence upon the carrier's liability, paying for increased limits of liability and buying insurance? The number of shipments, the values and the shipper's loss experience are the most important factors. Also to be considered are whether shipment is by railroad, truckline, airplane or whether overseas as well as domestic shipments are involved.

The answer is perhaps easiest to reach in the case of overseas shipments. A high proportion of cargo losses by sea are without fault of the carrier, so recovery is unlikely. A decision has to be made whether the frequency and the value of shipments justify insurance. In the case of infrequent shipments of low value, the shipper may find it economical to assume losses as a business expense.

Frequent shipments of higher value may justify the expense and trouble of getting an open cargo policy to cover overseas shipments. This policy should cover on a warehouse-to-warehouse basis, from the shipper's plant or store to the final location of the consignee. The policy should cover for the value of the property at destination, including any shipping charges that become part of the selling price.

The economic feasibility of buying such insurance should be determined by getting a quotation from an ocean marine insurer for the open cargo policy that would cover the property. Infrequent but high-value shipments can be covered by trip cargo policies. Then a risk management decision can be made whether the insurance is worthwhile. It is a question of relating the cost to the values that are subject to loss.

The decision regarding domestic shipments may be more difficult. The carrier by land or by air does have a substantial liability. The chances of recovery must be weighed against this factor as well as against the cost of any insurance.

The question of whether to buy insurance or to assume part or all of the risk of loss requires evaluation of several factors, such as the possibility of catastrophic loss from some peril for which the carrier is not liable. Floods or earthquakes are examples.

Insurance in a company with a good transportation department ensures immediate payment. This normally would be more prompt than the payment by the carrier.

Assessing losses

A collateral advantage to carrying insurance is that the insurance company takes over the task of collecting from the carrier. This is especially important to the smaller shipper which does not have a transportation department of its own that is familiar with tariffs of the carriers that may be used.

What questions should be considered in determining whether to retain the risk.

How many shipments are made in a year? Is it economically feasible for the shipper to retain all risks above that which is recoverable from the carriers? If so, then the only consideration for buying insurance is whether the loss collecting service of the insurance company is worth the premium.

In determining how to handle losses that occur to property in transit by common carriers, consider:

- What is your loss record for the past three years? How many losses have you had of property in transit by common carrier and what is the total amount of such losses?
- Are the frequency and total losses per year more than your organization can stand as a business expense?
- If some relief from the amount of loss is necessary, can this best be achieved by: Shipping all, or the higher valued shipments, under excess value declarations? Buying trip transit insurance for the small number of high value shipments? Buying an annual transit type of insurance policy covering all shipments, either from the bottom line of shipments or on some kind of an excess or deductible basis? ■

Unreported hazards . . .

Continued from page 27

As we have seen in the New Jersey case, a change in occupancy may be considered by insurers as an increase in hazard and reason for a denial of liability. Whether a change from storage of general merchandise to storage of baled paper did substantially increase the risk would have been for the jury to decide, possibly after hearing safety engineers as expert witnesses. Under the general property form of 1970 mentioned above, which was still in effect at the time of the fire, such change of occupancy would not have entitled the insurers to deny liability had the loss been caused by explosion covered under the extended coverage endorsement rather than by fire.

A problem which apparently has not been dealt with in this context is: Who is the "insured" or "named insured" and whose knowledge or/and control determines whether an increase in hazard results in suspension of the insurance? If the insured is an individual or partnership, the individual or a general partner is responsible. In case of a corporation, any executive officer. Knowledge or/and control of any other employe, even if supervisory, should not entitle an insuer to invoke the suspension clause unless knowledge had been conveyed to the insured as defined above.

Even though the present standard fire insurance policy is over 35 years old, restrictions like that pertaining to increase in hazard may now gain additional importance due to the more rigid attitude of insurers in handling claims. More than ever before, risk managers and producers must, therefore, be aware of the necessity of controlling hazards and also of the policy conditions that enable the insured to prevent "in writing" the right of the insurer to invoke the increase in hazard clause in support of a denial of liability. ■

[1]96 F. Supp. 555

[2]McCoy v. Pacific Coast Fire Ins. Company 164 S. IId 386-165 So. 2nd 48, 1964.

[3]U.S. Sup. Ct. 2/23/1932 St. Paul Fire & Marine Ins. Co. v. Bachmann 285 U.S. 112.

[4]372 F. Supp. 1325 also Brooks Upholstering Co. v. Aetna Ins. Co. 276 Minn. 257.

[5]Am. Manufacturers Mutual Ins. Co. v. Wilson Keith Co. etal. US Ct of App. 8th Circ. 8/14/57 247 F. 2d. 249-258.

[6]Clausen: National Underwriters 9/8/1955 Feinstein: Weekly Underwriters 2/28 & 3/7/1953 Johnson: Federation of Insurance Counsel. Winter 1977 pp. 197.

[7]Williams v. The People's Fire Insurance Co. see ([3]) above Clausen: see ([6]) above.

ERISA's hand . . .

Continued from page 30

plans, would have then received credit for all their pre-eligibility service.

An even more dramatic swing to the ERISA standard is evident in changes in the maximum age for entering a pension plan. In 1975, only 18% of 228 plans set 60 as the maximum entry age, while 82% set another age, mostly under 60. In 1978, the figures are nearly reversed with 86% of 272 plans setting 60 as the maximum entry age and 14% of the plans using another age.

Vesting changes

This affects very few people in relation to the total work force, even in our increasingly mobile society. However, for those individuals who do switch employers at advanced ages, being able to join a pension plan at, for example, age 55 can be tremendously advantageous. Assuming the same length of service for an older as opposed to a younger employe, it is also quite expensive for a plan since the cost-saving potential of interest and turnover has so little time to operate before benefit payments are due. Both this advantage, as a recruiting tool, and this cost to the sponsoring employer may well become hot issues in the '80s as management employes become scarcer.

Vesting is another plan design element that has undergone a massive change since ERISA, as indicated on the vesting chart. The swing has obviously been to the full-in-10 or "cliff vesting" method, which is one of the three ERISA-approved standards. This is by far the easiest to administer, particularly when all the ERISA requirements for recognizing and calculating accrued benefits are considered.

One of the hidden time bombs in the ERISA legislation is the potential for requiring much stiffer (and more costly) vesting standards for "high turnover" industries such as aerospace and other industrial segments relying heavily on government contracts.

The original legislation established a task force to study the need for such stiffer standards. There hasn't been any meaningful feedback as yet, but it is liable to be a real bombshell when it finally arrives.

The final areas where ERISA standards have obviously affected pension plan design are provisions for stated benefit maximums and pre-retirement death benefits. In 1975 only 10% of the survey participants reported having any form of benefit maximums in their pension plans, while 90% of the plans reported some specific maximum in 1978, with nearly all based on the ERISA standard of $75,000 with inflationary adjustments.

The most interesting figures are those indicating what the 1978 participants plan to do about any benefits lost because of the application of this mandated maximum, which are shown in the lost benefits chart.

It should be noted that the largest single category (48%) involves plans in which the problem hasn't surfaced yet. To the extent it does in the future we may expect that significant numbers of employers will opt for some form of supplement to replace benefits denied by the ERISA-required maximum.

Only 62% of 1975 survey respondents reported a pre-retirement death benefit to a surviving spouse in their pension plans. In 1978, virtually all of the participants have such a benefit because it is now required. Sixty-six percent of 372 employers surveyed in 1978 said they pay for the benefit and extend it automatically to employes. Thirty-four percent of the employers shift the cost of the pre-retirement death benefit for a surviving spouse to the employe, who chooses whether to buy it.

Most participants use the employe's accrued pension, reduced for early retirement, as the basic benefit on which the surviving spouse's coverage is calculated. Of the 385 responses in 1978, 75% reduced the accrued benefit for early retirement, 20% used the full accrued benefit and 5% projected the benefit at normal retirement.

Increases for retirees

Once this basic benefit is determined, 70% of the survey respondents then adjust it actuarially for a joint and survivor annuity and most (78%) use a 50% continuance so the surviving spouse receives one-half of the adjusted amount.

Beyond the effects of ERISA, the impact of inflation is also obvious if pension practices from the 1975 and 1978 surveys are compared. Extending increased benefits to those already retired has become more common as shown in the chart.

Quite obviously, American industry is displaying a considerable moral responsibility to those with fixed incomes who are the most cruelly affected by inflation. Although some pretty heavy urging from collective bargaining agents is involved in some cases, it is heartwarming to see that more than half the respondents report one or more increases to retired employes.

It should be noted that few participants report a formal cost-of-living provision for pensioners' increases. There are several reasons for this, but cost and the loss of control are paramount. A formal provision for pensioner increases tied to a volatile unknown like the consumer price index is, relatively, about the most expensive pension plan change imaginable.

There also may be a philosophical issue involved, with plan sponsors reluctant to "index" their benefits to cost-of-living because of the very real fear of helping fuel the inflation they're trying to combat. An argument can be advanced that indexed cost-of-living provisions in wages and other areas has led, not followed the inflationary spiral.

The survey results from 1975 and 1978 also indicate an interesting switch away from profit sharing plans and toward the thrift/savings approach when supplementing pension plans. In 1975, 27% of 458 companies reported maintaining a profit sharing plan and 27% reported maintaining a thrift/savings plan. While the percent maintaining profit sharing plans slipped to 23% of 524 companies in 1978, those reporting thrift/savings plans increased to 36%.

Pension plan costs as a percent of payroll in 1978 are shown in the chart. ■

Vesting

	1975	1978
Responses	**402**	**483**
Full vesting after 10 years	21%	74%
Graded vesting (5 to 15 years etc.)	33%	9%
All other types (age/service combinations, etc.)	46%	17%

Response to Lost Benefits

	1978
Responses	**314**
None	29%
No benefit affected yet	48%
Deferred compensation	0.6%
Non-qualified "excess" plan	19%
Other supplement	4%

Increases for Retirees

	1975	1978
Responses	**414**	**489**
None ever made	69%	48%
Discretionary increases made (1 or more)	23%	41%
Formal cost-of-living adjustments part of plan	8%	7%
Adjustments based on investment performance	0%	4%

1978 Pension Plan Costs

Responses	**244**
Costs as % of payroll	**% of responses**
Less than 5%	27%
5% to 6.9%	26%
7% to 8.9%	22%
9% to 10.9%	11%
11% or more	14%

legal brief

Wash. appeals court defines occurrence

A WASHINGTON APPELLATE court, in a suit brought by a manufacturer against its liability insurer, ruled that the negligent manufacture of concrete panels and resulting property damage constituted an "occurrence." The court also ruled that a "sistership" exclusion did not apply when no claim was made for the withdrawal or loss of the product by the insured.

Yakima Cement Products Co., a manufacturer of precast concrete panels, supplied defective panels used in the construction of a building. Yakima took immediate corrective measures at substantial increases in costs and materials. The roof of the building was also damaged. When the owner refused payment, Yakima sued.

The owner counterclaimed for its damages. Yakima tendered the defense of the countersuit to its liability insurer, Great America Insurance Co., but was refused. The policy insured Yakima for damages because of property damage caused by an "occurrence." Yakima settled its suit for $70,000 with the building owner. It was this sum Yakima sought to recover here against the insurance company. The trial court held that there was an "occurrence" within the meaning of the policy but that recovery was precluded by the "sistership" exclusion clause.

The appellate court said that the word "accident" should not be construed as excluding claims involving negligence or breach of warranty "otherwise, little protection would be given to the insured." The court concluded that there was an accident here within the "occurrence" coverage of the policy that resulted in property damage neither expected nor intended by the insured. The court also concluded that a policy provision excluding damages for withdrawal of the insured's product, commonly known as a sistership exclusion, was inapplicable because the concrete panels were not withdrawn from the market. *Yakima Cement Products Co. v. Great Am. Ins. Co.*, Court of Appeals of Washington, Jan. 30, 1979 (BI/01/Au.-$4).

Contractors' liability

A contractor sued several insurance companies to determine their obligations to defend and indemnify the contractor for damages claimed to have resulted from defective or negligent performance of construction contracts. A New York appellate court ruled that the claims came within an exclusionary clause for "damage to products."

J.G.A. Construction Corp. was sued for over $3.5 million for negligence and breach of contract by the owners of two construction projects. Each suit arose out of defective workmanship by subcontractors. Although several insurance companies were involved, all of whom refused to defend, the principal question arose with regard to a series of comprehensive liability policies written by Aetna Casualty & Surety Co.

The policies excluded coverage for work performed "by or on behalf of the insured." However, a "broad form property damage" endorsement denied insurance only "to work performed by the named assured." Furthermore, the Aetna policies contained an exclusion for "property damage to the named assured products." The trial court ruled for Aetna.

The abstracts published in this column were prepared by Cases Unlimited Inc., Evanston, Ill.

The appellate court agreed that there was an ambiguity regarding the work performed which should be resolved against Aetna, especially as the defective work on both projects was performed by a subcontractor and not the named assured.

But, the court also concluded that both claims fell within the "products" exclusion. The court said that the buildings of these projects were the contractor's "products," for it constructed them. The court observed that it could hardly be contended here that the parties intended these liability policies to operate as performance bonds for the work performed by the contractor or his subcontractors. *J.G.A. Const. v. Charter Oak Fire Ins.*, New York Supreme Court, Appellate Division, Feb. 16, 1979 (BI/02/Au.-$4).

Workers comp

Is an employe's injury arising out of an industrial league basketball game compensable under the workers compensation law?

The court of appeals of Kentucky denied compensation where the activity was remote from the place of work, was not compelled by the employer and yielded the employer no advantage nor benefit.

Jerome Jackson suffered an eye injury while playing basketball on an industrial league team composed of employes of Cowden Manufacturing Co. The league was sponsored by a park department and games were played in a public school. Membership on a team was limited to employes of a particular company sponsoring that team. The workers compensation board awarded Mr. Jackson benefits. This was overturned by the trial court.

The appellate court said that Mr. Jackson could not recover compensation benefits for his basketball injury unless the injury was work-related.

The general rule, according to the court, for determining employer liability in cases of recreational injury was whether: 1) the injury occurred on the employer's premises during a recreational period as a regular incident of employment; or 2) the employer required participation; or 3) the employer derived substantial direct benefit from the activity beyond the intangible value of improvement of employe health.

The court concluded that none of these factors were present here and that Jackson's injury was not work-related. *Jackson v. Cowden Mfg. Co.*, Court of Appeals of Kentucky, Dec. 22, 1978 (BI/03/Au.-$4).

Copies of the entire decision may be obtained by sending a check for $4 made out to Cases Unlimited to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please list the number for each opinion.

benefit tax slants

Income tax ax falls on 2nd distribution of pension benefits

By JOSEPH S. ROBINSON
Attorney-at-Law

Lump-sum distributions from qualified pension or profit-sharing plans are afforded special tax treatment as capital gains or are eligible for 10-year forward income averaging or may be rolled over to an IRA if paid within one taxable year.

But sometimes a participant's interest in a qualified plan cannot be distributed within one taxable year because of litigation or other events beyond the control of the plan. In this situation, favorable tax treatment may not be available to the participant to the full amount of his/her account.

Here's a situation that demonstrates the tax consequences when an employe could receive more than one distribution:

A qualified plan was to be terminated in connection with the liquidation of the corporation, not resulting from a merger or consolidation. Upon determination of accrued benefits due plan participants, substantial excess assets remained.

The plan sponsor claimed that such assets were the result of actuarial error and should be returned to the company pursuant to the terms of the plan. However, some employes challenged the determination and laid claim to the excess assets in a court suit. The plan offered to make a distribution to the participants of the accrued benefits upon separation from service and another distribution of the excess amount in a future year if the court decided in favor of the participants. In lieu of this, a participant could have chosen to make an irrevocable election not to receive any benefits until a final determination of all rights has been made.

I.R.S. ruled that there can be only one payout from the plan that will be eligible for lump-sum treatment, regardless that the participants' claim to benefits is indivisible.

If a participant elects to take the accrued benefits attributable to his account as of the date of separation from service, such a distribution will qualify for lump-sum treatment, regardless of whether any future payout is made to the participant. Any subsequent distribution made to a participant in a later tax year will be taxed as ordinary income. *(Letter Ruling 7915032).*

Prepaid legal plans

Don't overlook the fact that the 1976 Tax Reform Act added an important item to the list of employe benefits: group prepaid legal plans.

As in the case of group health insurance, employers get a deduction for their payments as well as on the dollar value of any personal legal services for, say, house closings or wills, that employes or their dependents receive under the plan. *(I.R.C. Sec. 120).*

A group legal plan qualifies if it meets the following requirements:

The employer must have a separate written plan for the exclusive benefit of employes (or their spouses or dependents) that provides them with specified benefits. These benefits must be spelled out so that employes understand what personal legal services are covered under the plan.

The plan cannot discriminate against the rank and file in favor of officers, shareholders or highly compensated employes.

Employer contributions can be paid only to tax-exempt organizations or trusts, insurance companies, persons who provide legal services or a combination of them. ■

london line

Insurers start fund to pay DC10 claims

By JOHN H. MILLER

LONDON—Aviation insurers from three markets involved in the Chicago DC10 crash have agreed to contribute a total of $50 million to a fund to promptly settle passenger liability claims.

U.K., U.S. and French insurers are pooling their resources to avoid lawsuits against American Airlines and McDonnell Douglas Corp. Lawyers may still negotiate for their clients, but insurers will not debate among themselves their shares of the cost.

When U.S. courts or civil authorities determine blame for the crash, the insurers will decide their share of the damages and readjust their contributions to the pool to pay settlements.

The settlement fund idea was born after the Tenerife air disaster two years ago in which 583 persons were killed. The fund helped reduce final costs to around $150 million because claims were settled quickly without excessive legal costs.

Although the fund is being started at $50 million to meet immediate settlements, it can be expanded without specific limits. Insurers say liability claims may approach the $100 million mark, but as high as $200 million was predicted in June.

War risk zone

Heeding warnings from U.S. authorities about the chance of Palestinian guerrillas hijacking a tanker in the Persian Gulf, marine insurers have decided to treat the area as a war risk zone.

This means underwriters may levy excess premiums on all kinds of ships traveling in the area, but tankers will be hit hardest.

U.K. insurers estimate that as many as 50 tankers, worth $50 million to $100 million each, are using Gulf ports and that the potential exposure could be $3 billion to $5 billion if they were trapped by extremists blocking the passage at the end of the Gulf.

War risk policies for most ships are written on a 12-month basis and 14 days notice must be given if the coverage is to be changed.

A hijacking would have serious repercussions on other tankers, insurers said. As one expert put it, "If vast quantities of laden tankers are trapped inside the Gulf, it would be far worse than the situation created in the Suez Canal blockade several years back."

Only a few parts of the world, including the Egypt-Israel area and Cambodia, are subject to extra war risk rates by insurers in the United Kingdom.

Agreement dropped

A planned U.S.-U.K. agreement for the reciprocal enforcement of civil judgments has been dropped after bitter protests by London underwriters that it would lead to bigger premiums for a large number of British industrial corporations and would favor U.S. businessmen at the U.K.'s expense.

Top lawyers in the U.K. government's trade and legal departments say the timetable to bring the agreement into effect has been disrupted. U.S. corporations had originally hoped the reciprocal enforcement law would go into effect last year.

Negotiations to help U.S. businessmen, who wanted the rules to protect them against legislation in several European Economic Community countries, will have to begin again and may take two years to complete.

The trouble began in 1968, when France, Germany, Italy and Holland, as well as other EEC nations adopted joint rules that would enable them to seize a foreign business's assets to settle court awards.

When Britain joined the EEC in 1973 it had to accept the rules, but promised U.S. businessmen it would draft a separate provision with them. U.K. insurers protested the conditions of the proposal, fearing liability premiums for British exporters sending goods to the United States would increase to astronomical levels to meet U.S. court awards.

The U.S. State Department is now trying other measures to protect U.S. business interests in the EEC regulatory zones.

The proposed agreement was dropped mainly because laws in many U.S. states are different from those in England, but it does not affect claims against companies that have assets in the U.S. or who face damage awards that are in keeping with normal British rules of justice.

Ship salvaged

Lloyd's was saved from a record breaking shipping loss on the U.S.-owned LNG (liquified natural gas) carrier El Paso Paul Kayser when it was refloated after going aground off Gibraltar on June 30 with 100,000 cubic meters of gas cargo on board.

Insured for $160 million in the U.S. and London markets by its owner, El Paso Natural Gas Co., the vessel was initially feared a total loss. The record shipping loss is $80 million held by the German barge carrier Munchen which vanished in mid-Atlantic last winter (*BI*, Jan. 8).

Under salvage efforts, the tanker transferred its cargo to its owner's other ship, El Paso Sonatrach, and the stricken vessel was lightened enough for it to be taken to port for repairs.

LNG carriers have been unofficially called "floating bombs" by insurers, but they have a remarkably good safety record because of their highly sophisticated design. They are equipped with double bottoms and double side shells and there have been no catastrophes in their 20-year history.

El Paso Paul Kayser was bound for Cove Point, Md., when it went aground in fog. ■

Margaret LeRoux shows how patient she can be.

Margaret is San Francisco correspondent for Business Insurance.

She has her finger on the pulse of America's health maintenance organizations; who started them, how they are funded and organized, how HMO's lower the cost of health care without affecting quality.

Not too long ago, following the concern by corporate executives with the rising cost of health care and insurance premiums, former Secretary of HEW Califano, chaired an HMO seminar.

Margaret contributed to a series on HMO's in Business Insurance that were included in the background information kit distributed to Fortune 500 chief executive officers who attended. Margaret also joined an HMO so that she could give Business Insurance readers a first hand report about the workings of such an organization.

Yet Margaret, like all of our editors and reporters, does not specialize. Her stories cover a wide spectrum of insurance, risk management and employe benefits. And her incisive, thorough reports have been the subject of discussion, earnest analysis and *action* by influential corporate and government officials.

It is this kind of in-depth reporting that makes Business Insurance the most widely used and quoted authority in its field.

And because Business Insurance does so much for its readers, it also does more for its advertisers.

It's where the insurance marketplace takes shape, week after week.*

Shouldn't you be there?

**Business Insurance goes weekly in 1980.*

business insurance

A PUBLICATION OF CRAIN COMMUNICATIONS INC.,

New York: 708 Third Ave., NY 10017 (212) 986-5050 • **Chicago:** 740 Rush St., IL 60611 (312) 649-5275 • **Los Angeles:** 6404 Wilshire Blvd., CA 90048 (213) 651-3710

Sasse may lose . . .

Continued from page 1

of the book," he said, which included some insurance on U.S. entertainment establishments but was "spread across a whole range."

Sasse had underwritten a "substantial third-party liability account," Mr. Merrett explained, "and its experience is similar to that of U.S. underwriters in 1975 and 1976." U.S. underwriters suffered heavy losses in those years. "It just took longer to show," Mr. Merrett added.

The additional business which is pushing Sasse's estimated losses up another $14 million was produced by many different brokers, Mr. Merrett said. "There was almost no additional business from Brentnall Beard," the Lloyd's broker who brought Sasse the fire insurance that first plunged the syndicate into difficulty and prompted Lloyd's to suspend it from underwriting new business.

Mr. Merrett reported "progress is being made on the reinsurance" of Sasse's business in 1976, but said he could not elaborate because he is not negotiating it.

Lloyd's may pay bill

Losses on Sasse's business in 1976 and unpaid losses from previous years due in 1976 are estimated by Mr. Merrett at 15.6 million pounds Sterling ($35.6 million). The Committee of Lloyd's is proposing other syndicates reinsure the business for a premium equaling the funds Mr. Merrett said are needed to meet the syndicate's liabilities.

If the reinsurers won't take the business for that amount, the Committee of Lloyd's will pay the extra premium demanded by the underwriters.

"We expect the reinsurance will be wholly written by Lloyd's," Mr. Merrett noted.

He does not expect the Committee of Lloyd's will try to reinsure business written by Sasse after 1976, on which losses are estimated at another $5.4 million.

When Mr. Merrett released his latest estimate of Sasse's ultimate losses at 20 million pounds Sterling, it was converted to $44 million by some. Mr. Merrett said $41 million is more accurate because many of the losses are in U.S. dollars, which he had converted to pounds, and others are now converting back to U.S. dollars.

Asked what the losses would be in U.S. dollars, Mr. Merrett said, "It is almost impossible to give a sensible answer, but it would be closer to say $41 million for all losses from 1976 and previous years and the audit deficiency—which is not a loss but a current expectation of eventual loss."

Meanwhile, appointed as special arbitrators to judge charges against six people for their alleged involvement in plunging Sasse into its precarious financial position are Charles Close-Smith and Leonard Durham, both former chairmen of Lloyd's Non-Marine Underwriters Assn.

Subject to expulsion are Frederick H. Sasse, the Sasse Syndicate's top man for many years, and John H. Newman, an executive of Lloyd's broker Brentnall Beard, who was involved with many of the troublesome risks that came to London from Den-Har Underwriting Agency of Florida.

Unusual action

Mr. Sasse and Mr. Newman have the right to file responses to the complaints with the arbitrators before Lloyd's makes any final decisions. It may be several months before the outcome is known.

Mr. Sasse, who has been with Lloyd's for 28 years, has taken no active part in Sasse affairs since early 1978. Mr. Newman, a Lloyd's member for only seven years, has now been suspended from executive duties with Brentnall Beard until the facts are fully known (*BI*, July 23).

Secret report

The complaints against them and four other executives, two with the Sasse Syndicate and two with Brentnall Beard, are contained in a 25-page report filed with Lloyd's by an inquiry committee which has been sitting for more than a year. Its findings are being kept secret until the case can go before the arbitrators, but it is known Sasse Syndicate overwrote its permitted premium levels in 1976.

It is highly exceptional for Lloyd's to contemplate expelling any of its members, but it has the right to do so under British Acts of Parliament passed in 1871 and 1911.

Lesser penalties of suspension from the market for up to two years are expected to be sought against the other four individuals named in the proceedings: Thomas Turnbull and John Scott of the Sasse Syndicate and Stanley Elsbury and Derek Gravestock, of Brentnall Beard. They too have the right to contest the complaints.

Brentnall Beard has now appointed a new chief executive, Maurice Fullerton, after reporting a $1.4 million loss for the six months prior to March 31 due to difficult Canadian marketing conditions. ■

City pays out for fire loss

CHICAGO—A fire Aug. 3 that destroyed nine Chicago Transit Authority rapid transit cars and a CTA repair shop caused an estimated $4.75 million loss, $1 million of which is self-assumed by the authority.

The current replacement value of each rapid transit car is estimated at $500,000, a CTA spokesman said, and the wood-frame building used for inspection and light repairs was valued at $250,000. Eight other cars were damaged.

CTA buses, trains and maintenance buildings are covered by a $20 million fire and damage policy underwritten by Aetna Casualty & Surety Co. of Hartford, Conn. The policy has a $1 million deductible. The CTA has received one $500,000 payment from Aetna so far.

The cause of the fire has not been determined, but Chicago chief fire marshal William Foley has said the fire may have started when sparks from a welder, working on a car outside the repair shop, ignited railroad ties, and spread to other tracks and the building. ■

INA forms bond unit

PHILADELPHIA—Insurance Co. of North America has formed INA Bond Facilities Inc. in Chicago, a new facility for managing and marketing contract, surety and financial institution bonds.

Michael B. Fodor, who has been associated with INA's bond operations since 1958 and previously served as bond manager of the New Orleans, Cincinnati and Chicago service offices, is president.

INA Bond Facilities' headquarters are located at 10 South Riverside Plaza, Chicago, Ill 60606. In addition to the Chicago office, four regional bonding offices have been established in San Francisco, Chicago, New York and Atlanta. Other lines previously managed within INA's bond department will be the responsibility of the commercial property department, the company said. ■

M&M pleads guilty of kickbacks to GOP

By ELLIS SIMON

SYRACUSE, N.Y.—A state investigation into political kickbacks paid to the Onondaga County Republican Party by various suppliers to the county and City of Syracuse has yielded a conviction against Marsh & McLennan of New York Inc.

The division of the nation's largest insurance broker pleaded guilty to one count of violating state election laws, was fined $5,000 and ordered to make a $30,000 restitution payment to Onondaga County.

Marsh & McLennan is the first broker or agent convicted in New York for politically motivated commission sharing, said Peter D. Andreoli, special prosecutor for Onondaga County.

Similar activities had been found in Nassau and Broome counties (*BI*, Oct. 30, 1978) and indictments are pending against three other Syracuse brokers.

Mr. Andreoli said M&M and other brokers for Onondaga County's insurance between 1969 and 1977 were instructed by GOP officials to put 50% of their commissions from county business into a special fund. The proceeds of the fund were distributed to other agents and brokers in proportion to the size of campaign contribution they made to the county Republican organization, he explained.

During the period, M&M brokered $500,000 in insurance premiums for the county, some years as broker of record while in others it received shared commission funds, Mr. Andreoli said.

Indictments are pending against brokers Young Agency, Ellis, Moreland & Ellis and George C. Shunk; county executive John C. Mulroy; and Martin S. Auer, former Onondaga County Republican Party chairman and a member of the senate insurance committee.

The investigation, which extends beyond insurance purchasing activities, has resulted in convictions against the county director of purchase, county attorney, Republican commissioner of elections, a deputy county auditor and a town supervisor.

Marsh & McLennan has been "cooperating fully" with the investigation and has promised to continue with its assistance, Mr. Andreoli said.

An M&M spokesman in New York said the company agreed to plead guilty to the election law violation rather than face the cost of extensive involvement with legal proceedings. It is "extremely doubtful" that M&M's actions constituted a violation of the law in effect at that time, the spokesman added.

Meanwhile, the U.S. attorney for the Eastern District of New York reportedly is investigating whether Nassau County's broker of record, Richard A. Williams & Son, was coerced into engaging in commission sharing arrangements there. ■

Institute to get education chief

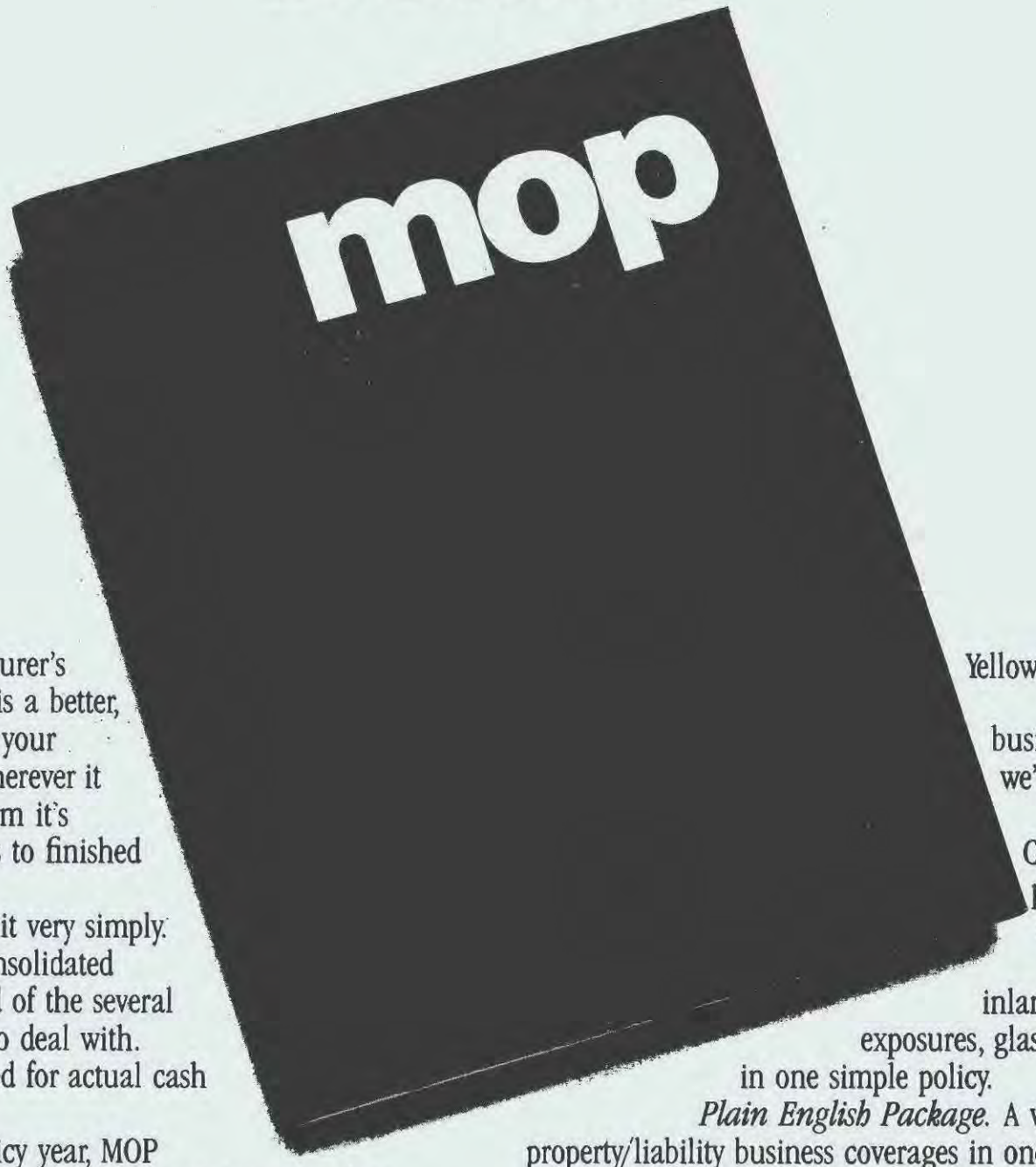
HAMILTON, Bermuda—The Bermuda Insurance Institute will hire a full-time director of insurance studies/training officer this fall to tend to the education needs of its 91 member companies and to promote a career in insurance among Bermuda's students.

In addition to analyzing the education and training needs of the institute's membership and designing and conducting seminars to fill those needs, the insurance studies director will teach insurance courses at Bermuda College as part of the business administration program and will visit schools in Bermuda to explain the opportunities in the insurance business to students, said Clive W. Himsworth, president of the institute.

The dramatic growth of the insurance industry in Bermuda, primarily in captive insurance companies, has increased demand for trained personnel far beyond the local supply, said the institute in announcing the new position. Reaching and teaching Bermudians, not expatriates, is the institute's objective in hiring the director, Mr. Himsworth noted. ■

What would you call a policy that protects parts coming in, finished products going out, inventories stored wherever, and most everything in your main plant?

Better.



The St. Paul Manufacturer's Output Policy (MOP) is a better, simpler way to protect your company's property, wherever it is. And in whatever form it's in, from raw materials to finished products.

And you can do it very simply. MOP coverages are consolidated into one policy instead of the several you'd normally have to deal with. Property can be insured for actual cash value or selling price.

During your policy year, MOP coverage automatically expands or contracts according to the value of property covered. That way, your assets are protected in peak or slow times. Whether inventories are high or low. Whether your firm is receiving, shipping or storing materials. Or all of these. All in one policy. There's also automatic coverage for new non-manufacturing facilities without notifying The St. Paul.

What's more, there's usually no deposit premium, which lets you handle premiums on a pay as you go basis. Which, in turn, can help cash flow. Good loss experience and deductible options can keep your insurance costs down.

Want more information? Contact your Independent Insurance Agent representing The St. Paul. Check your Yellow Pages.

Here's more business insurance we've made better:

COMPACT. Commercial property insurance for buildings, contents, inland marine exposures, glass and more in one simple policy.

Plain English Package. A variety of property/liability business coverages in one policy, without all the gobbledygook.

EDP. All-risk computer insurance from the company that originated data processing insurance.

Umbrella Excess Liability. One million dollars excess liability coverage on small businesses for as little as $200 per year. Can also handle larger accounts with limits up to $20 million.

Commercial Auto. The St. Paul has the expertise, people, resources and stability to back you strong in this coverage.

Inland Marine. We're one of the largest across the board writers. We've built expertise since 1853.

We keep making insurance better. The St.Paul Property & Liability Insurance

YOUR Independent Insurance AGENT SERVES YOU FIRST

Serving you through Independent Agents: St. Paul Fire and Marine Insurance Company/St. Paul Mercury Insurance Company/The St. Paul Insurance Company/ St. Paul Guardian Insurance Company/The St. Paul Insurance Company of Illinois: Property and Liability Affiliates of The St. Paul Companies Inc., Saint Paul, Minnesota 55102.

Product liability bill changes to be unveiled

WASHINGTON—The Commerce Department expects to unveil in early September its revised model product liability bill.

The most important changes in what is expected to be a significantly different bill from a preliminary version published in January (*BI*, Jan. 22) will be in provisions dealing with the length of time a manufacturer can be held liable for its products, the state of the art defense and the relationship of workers compensation to product liability.

A new provision involving express warranties is also being added to the revised bill, which is reorganized for easier reading.

Victor Schwartz, chairman of the Interagency Task Force of Product Liability and Accident Compensation who has played the lead role in drafting the model bills, said his goal for the bill is "to have within the context of product liability law a careful balancing of interests of product sellers and users."

The model law, designed for adoption by states, represents one of the Commerce Department's long term solutions to the nation's product liability problems. Another solution—allowing federal chartering of business sponsored risk retention pools—was killed by the Office of Management and Budget (*BI*, July 9).

The model law attempts to end current inconsistencies from state to state in the tort litigation system—a factor believed to cause uncertainties for underwriters measuring product risks and contributing to the rise in product liability insurance premiums.

These uncertainties would be eliminated through a uniform product liability law that would give insurers the predictability they say is needed to assess and quantify product exposures, the Commerce Department contends.

The first draft of the model bill has played a limited role in the battles now being waged in state legislatures to change the tort law as it affects product liability.

The governors of North Dakota and Idaho, who vetoed bills this year, both cited the Commerce model bill recommendation that state legislatures should not be passing widely differing proposals and should stick with a uniform bill in vetoing product liability bills. (North Dakota legislators overrode their governor's veto.)

More recently, much of the Commerce Department model bill language was incorporated in Connecticut's new product liability law. In Wisconsin, the final model bill is expected to be introduced in the state legislature this fall. ■

riskWatch

By ELLIS SIMON

New backup computer facilities can avert business catastrophes

How long could your company function without its computer system?

A study by the University of Minnesota Graduate School of Business says the typical manufacturer would be nearly shut down after 10½ days without its computer—suffering a loss of 93% of its business activity.

In banking and other financial services, depending on computers is even more severe and so is the risk exposure. "In the case of a bank, five days (without its computer) may be too late," warns risk management consultant Felix Kloman.


Simon

An increasing number of companies are likely to establish contingency facilities over the next 10 years where they can resume data processing operations if a catastrophe strikes their computer centers, Mr. Kloman predicted. Such facilities are the "ultimate risk management technique," he contends.

But contingency facilities are also costly. Two years ago, several New York banks and other corporations began studying the feasibility of establishing such a center. High costs and technical difficulties led many of these firms to drop out of the project, said Irving Trust Co. assistant vp Steven J. Ross.

Irving, Chemical Bank and Exxon still are involved in the project, but other alternatives, such as splitting a company's computer workload between two facilities, each of which would back up the other, are also worth considering, Mr. Ross adds.

Another risk management alternative is corporate membership in a commercial computer backup center. Two such facilities, equipped with IBM 3033 computers and supporting equipment, are in the greater Philadelphia area.

Sunguard Services of Philadelphia, a division of Sun Co., has been operational since Jan. 31. Its 36 clients include Levi-Strauss, Celanese, Connecticut General and Bank of Ohio, account manager Hugh Chekemian says.

Depending on whether they desire full or limited use of the facilities, clients pay Sunguard a monthly membership of $4,000 or $2,500. When disaster strikes, they pay a $25,000 notification fee and daily rent of $4,500 or $6,000 to use the facility.

Sunguard also has raised floor space for a client to set up and operate its replacement equipment. This space is let for $500 per day and has a six-month use limit versus six weeks for the house computer.

Shared Stanby Systems, a subsidiary of Shared Medical System Inc., is scheduled to make its computer operational Sept. 1. Its 27 contracted users include Fortune 500 companies, banks and utilities, general manager Jim Carter said.

Membership fees for the King of Prussia facility range from $1,850 to $4,700 a month depending upon the amount of computer space needed. The disaster notification fee is $10,000, which is credited toward the first three days rent. Daily rentals range from $1,500 to $3,000.

A less costly option is membership in one of six recovery operation centers being built by Data Processing Security Inc. The recovery centers provide raised floor space, air conditioning, power sources and other amenities needed for computer operations—but not the computers.

Charter membership in the recovery centers is $1,000 per month on a seven-year lease. There is no notification fee and monthly space rental is 75 cents per square foot.

On equipment from IBM, which supplies 70% of the nation's computers, a system can be put together, transported by air and installed at the Fort Worth facility within five to six days, Mr. Scoma contends.

But there is no guarantee of such performance, admits Joe Pedico, vp-marketing. In addition, client contingency plans must provide for obtaining equipment with lead times running as long as 24 months, he advised. The firm recommends clients with common equipment pool resources to purchase a unit for installation at the recovery center.

Such recovery centers are "OK for companies in which 85% of data processing can be put off for a week," said Irving Trust's Mr. Ross.

Added Mr. Ross: "From a risk manager's view, there is no question of whether or not to have a recovery center. It's a question of calculating the cost of that backup system versus the cost of losing a computer facility."

Where are you headed in the Excess Surplus Special Risks insurance market?

As underwriters try to chart a surer course in many areas of risk, and some coverages seem hard to come by, excess and surplus insurance appears especially attractive.

The September 17 issue of Business Insurance will plumb the depths of this increasingly important segment of the insurance marketplace. The editors of Business Insurance will review conditions in this field, report in detail how major companies around the country, and the world are using excess and surplus lines to fill needs that require the flexibility and speedy underwriting not always available in primary markets.

It will be a "must read" issue for the risk/insurance/employe benefit managers and the agents, brokers, and consultants who work with them to create protection packages geared to today's fast-changing conditions.

Your advertising message will never find a more important or attentive audience.

Ad closing date is September 4th. For further information about rates, and to place your advertising reservations call Don Walsh, Advertising Sales Director, at (212) 986-5050 or write to one of the Business Insurance sales offices.

business insurance

A PUBLICATION OF CRAIN COMMUNICATIONS INC.

New York: 708 Third Ave., N.Y. 10017 (212) 986-5050
Chicago: 740 Rush St., Ill. 60611 (312) 649-5275
Los Angeles: 6404 Wilshire Blvd., CA. 90048 (213) 651-3710

Labor Dept. eases . . .

Continued from page 1

who has advocated the use of offshore captives for employe benefits.

The new ruling also doesn't allow Colorado or Tennessee-based captive insurance companies to underwrite benefit programs since both states prohibit captives from underwriting life and health insurance.

Still, the ruling is welcome news to corporations with insurance subsidiaries domiciled in the U.S. and underwriting a substantial amount of outside business. Under the 5% limitation, large corporations such as Montgomery Ward of Chicago would have violated ERISA by insuring their employes' group benefits with the corporate insurance company subsidiary.

"For our purposes, (the new 50% test) does the job," said Jerry Dennis, general counsel of Montgomery Ward Life Insurance Co. "It solves our problem." Providing benefits for Montgomery Ward employes accounts for about 8% of Ward's insurance company subsidiary's business.

Can't meet test

But some companies, such as John Deere & Co. of Moline, Ill., have so much of the parent's business in their insurance subsidiaries that they can't even meet the 50% test and will ask the government to grant an individual exemption. "We've argued . . . that if a company has a domestic state-regulated insurance company, the policyholders are protected and there is no particular purpose to be served by the 50% test," said John Deere attorney Ron Modlin.

Government sources, though, maintain the 50% outside business requirement is necessary because "it shows that the insurance company is in the business of selling insurance to the public . . . and hasn't been set up only to sell insurance to the parent's employe benefit plan."

Other companies are annoyed that the new rule fails to resolve whether a corporation's insurance subsidiary can enter into "fronting" and reinsurance arrangements with other unrelated insurance companies.

Under a "fronting' arrangement, insurance policies are usually issued by a well known, licensed insurance company. The licensed insurer then reinsures a substantial portion of the risks with the parent company's insurance subsidiary.

For example, Travelers Insurance Co. provides life, medical and sick leave benefits to employes of Agway Inc. of Syracuse, N.Y. Travelers, in turn, reinsures the policies with Agway's two insurance subsidiaries, Agway Life Insurance Co. and Agway Insurance Co.

Under the reinsurance arrangement, Travelers pays one of Agway's insurance subsidiaries 50% of the premiums it receives for the Agway benefit plans. In return, Agway's insurance subsidiaries reinsure Travelers for 50% of the risk under the plan.

In other reinsurance arrangements, a handful of U.S. companies such as Sambo's Restaurants Inc. of Santa Barbara, Calif., are using their Bermuda captives to reinsure large domestic insurers writing the policies for the parent corporation (*BI*, June 11).

The government did not say reinsurance situations such as Agway and Sambo's arrangements are illegal, but said it will approve or disapprove reinsurance transactions on a case-by-case basis. "How we are going to deal with those (reinsurance) transactions has not been decided," one source said.

How the Labor Department finally will decide the reinsurance issue remains unclear. But one source said it would be reasonable to assume Labor will be more sympathetic judging reinsurance arrangements in which both the insurer and reinsurer are licensed domestic insurance companies than in cases where the reinsurer is an offshore captive.

The government traditionally has opposed use of offshore captives to insure employe benefits, considering them difficult to regulate and not as safe as domestic insurance companies.

Some observers, such as New York attorney Edward Vrooman, blamed the government for sidestepping the reinsurance controversy. "Reinsurance is the key issue to many corporations. . .Labor has been mulling over the issue for many years now. . .and once again they have failed to address it," he said.

Reinsurance

But other observers see a ray of optimism shining through the government's decision to defer for now any decision on reinsurance transactions.

"The decision to evaluate reinsurance on a case-by-case basis shows a somewhat realistic attitude on the part of the department that they are not out to kill all these arrangements and that if a company can justify whatever particular reinsurance arrangement it may have, the department will listen," Chicago attorney Frank VanderPloeg said.

The government bar against using an offshore or non-U.S. insurance company subsidiary to directly write benefit policies for the parent reflects its concerns about the stability and lack of regulatory control over the foreign captives.

Cleveland attorney Thomas Jorgenson, who represents an unidentified manufacturing company with an offshore captive, questions if the Labor Department has the expertise to determine if domestic insurance companies are safer than foreign insurance companies. Excluding foreign insurance subsidiaries from insuring their parents' benefit risks is "unnecessary, unreasonable and arbitrary," Mr. Jorgenson argues.

The final rule, although beneficial to companies such as Montgomery Ward, whose insurance subsidiary already is doing mostly outside business, is unlikely to set off a stampede of companies setting up domestic captives to supply benefit coverage for the parents' risks, most observers agree.

"I think anything less than a 100% rule (allowing a subsidiary to earn all its revenues from issuing benefit policies to its parent) is going to discourage the creation of subsidiaries to provide employe benefits for the parents' plans because of the difficulties of initially attracting enough outside business," Mr. VandenderPloeg said.

Unless a subsidiary is willing to go out and aggressively attract outside business, a company is not going to start an insurance subsidiary simply to serve its own employes, he added.

This month's publication of the final rule caps a four-year battle by corporations to liberalize the "5% ERISA rule." When ERISA was being drafted in 1974, the bill's architects originally proposed barring any employe benefit transactions between a parent and its insurance subsidiary to prevent possible self-dealing.

However, the outright prohibition was replaced with the 5% limitation so Sears, Roebuck & Co. could continue to insure its employe benefit plans with Allstate Insurance Co., its subsidiary.

Sears easily met the 5% test since more than 95% of Allstate revenues come from insuring non-Sears risks. However, other companies could not pass the 5% test and started lobbying for a higher percentage.

Companies insuring employe benefits with subsidiaries are given until Dec. 31, 1981, to comply with the standards mandated in the final rule. ■

Malpractice costlier in time, money: Survey

MILWAUKEE—Medical malpractice claims are taking longer to settle and costing more, an extensive survey of medical malpractice claims closed since July 1975 shows.

The study, conducted by the National Assn. of Insurance Commissioners (NAIC) and containing summaries of 16,592 claims closed since July 1, 1976, by more than 100 insurers, found that the average time between injury and claim closures jumped to 42 from 32 months in a 1974 study despite legislation designed to resolve disputes faster.

The average payment for a malpractice claim increased by 28% since 1974. Inflation in the national economy and growth in the medical industry account for the increase, according to Patricia Sowka, project director.

The closed claims study also found a substantial increase in the use of the courts to resolve claims, with 16% of the claims going to trial despite legislation favoring alternative models of dispositions occurring within the trial system.

In the last survey the physician-defendant won four out of five court cases while the recent study shows the physician-defendant winning in court more than nine times out of 10.

Despite the extensive nature of the study, the NAIC cannot ascertain whether these developments reflect the effect of recent legislation or a resistance to a settlement in the absence of negligence.

A summary of the survey is not yet available. The entire study can be purchased for $100 from NAIC, 633 W. Wisconsin Ave., Milwaukee, Wis. 53203. ■

classified advertising

RATES AND CLOSING TIME: *$3.00 per line, minimum charge $15.00. Cash with order. Figure all cap lines (maximum—two) 30 letters and spaces per line; upper & lower case 40 per line. Add two lines for box number. Replies are forwarded daily. Closing deadline: Copy in written form in Chicago office not later than noon, Monday, 7 days preceding publication date. Published every other Monday. Display classified takes card rate of $33.25 per column inch, and card discounts on size and frequency. Mail ads to Business Insurance, classified advertising dept., 740 N. Rush St., Chicago, Illinois 60611.*

Annuities, trusts . . .

Continued from page 1

can be earned and funded in the future.

For example, a $1.3 million settlement recently arranged by IBAR Inc. in Los Angeles and Frank B. Hall & Co. of Los Angeles for an eight-year-old California girl whose feet were amputated in a malpractice incident was worked out for a total cost of $700,000.

She received "upfront money," a lump sum of $100,000 for immediate costs, and a trust fund at City National Bank of California was set up by the Hartford Insurance Co., for the hospital's malpractice insurer.

The fund will provide the girl with a tax-free annual income of $33,000 until she is 30, when she will receive another lump sum payment of $400,000.

An annuity settlement arranged by the brokerage firm of Walker, Sullivan Co. in Los Angeles is paying a triple amputee injured in a railroad accident a total of $1.5 million.

Steady income

The man, a railroad employe injured in the state of Washington, received an upfront payment of $250,000 and will receive an annual tax-free income of $30,000 for the rest of his life. The cost to his self-insured employer was only $500,000.

When discussing the advantages of structured settlement of liability claims, all of the sources contacted by *Business Insurance* quoted some variation on the story of the young paraplegic (in some versions it was an amputee) who within three years squandered away the lump sum awarded in a jury trial and then became a welfare case. Whether or not the incident ever really occurred, sources cite it as a potential problem.

"It's almost absurd to give the average person $250,000, for example, and say, 'Make it last for the rest of your life,' " said Robert E. Schultz, an economist with IBAR. "You couldn't even expect most attorneys or judges who hear these cases to invest that amount of money wisely."

With an annuity or trust or combination of both, an injured person is guaranteed a steady flow of income that can be structured so it is tax free.

"Depending on the individual case, an annuity or trust will work better," said Robert E. Galaher, a claims veteran with 31 years insurance experience who heads the Hall division in the brokerage firm's Los Angeles office. "You have to set up the payments so the person is protected for the rest of his life."

Since trusts established with U.S. Treasury bonds have a maximum lifespan of 30 years, annuities most often are used to provide income in cases involving children who will need medical attention throughout their lives.

Trusts can be arranged so they revert to the dependents of the injured person when he or she dies. They also can be arranged to revert to the self-insured defendant or to the insurer in a liability claim.

For self-insured defendants in liability lawsuits or insurance companies, the advantage to structured claim settlements is twofold. There is a public relations benefit in offering a hefty sum of money to the injured person without the correspondingly hefty outlay of cash or tie-up of reserves.

New market

"There's a psychological benefit of being able to offer an injured person $1.9 million," said malpractice attorney Mr. Harney, "when it's only costing the company $400,000 to do it."

Purchasing an annuity also allows an insurance company to close the books on cases that would have dragged on for years if they were litigated.

The trend of structuring settlements of liability claims has opened up a new market for brokers who arrange the purchase of annuities or establishment of trusts. For actuaries and economists who compile data on earning projections, lifespans and the cost of long-term medical treatment of injured persons, such settlements are a bonanza.

Leading the field in sales of structured settlements is Walker Sullivan, which claims a trademark on the term.

Walker Sullivan has a team of five negotiators headed by Frank Barker, CLU, and Allan White, CLU, who hammer out compromises between plaintiffs and defense attorneys.

"We don't try to estimate what to spend," Mr. Barker said. "The claims personnel give us a range. We then put together a package of benefits that's better than the plaintiff expects for less (money) than the defendant expects to pay."

The Walker Sullivan brokers favor annuities over trusts in the settlements they negotiate and arrange most of them through Manufacturers Life Insurance Co. of Canada. The underwriter makes an actuary available to them on a 24-hour basis for negotiations.

Armed with programmable calculators and thick files of background information on each case, the negotiators see their role as "a buffer zone between plaintiffs' attorneys who want to 'get' or punish the insurance companies and defense attorneys who are concerned about the settlements' cost to their client," Mr. White said.

"A lot of clients get hung up on the price of the annuity," Mr. Barker said, who prefers to stress that "the savings occurs in the negotiation process."

While Walker Sullivan emphasizes its brokers' skills in negotiating annuities, Hall entered the field with a new structured claim settlement division in June that does both annuities and trusts.

"As far as we know, we're the only ones who use both means of structuring settlements," Mr. Galaher said.

Hall works primarily with Insurance Co. of North America for annuities, though settlements also have been arranged with Aetna/Cravens Dargan Co.

Bank of America and Title Insurance & Trust Cos. are used by Hall in establishing trusts.

"Insurers first became interested in this approach as a means of saving money," Mr. Galaher said. "Now they've become more sophisticated in their approach."

Because structured settlement of claims is still a relatively new approach, Mr. Galaher is leading a series of seminars to explain "the whys and wherefores to attorneys and groups of self-insured risks," he said.

Frequently Hall consults with economists Robert E. Schultz and Raymond G. Schultz in arranging trusts. The two brothers, both former faculty members at the University of Southern California, serve as expert witnesses in liability and workers compensation lawsuits.

They make lifetime income projections, analyzing the cost of both the injury and resulting loss of wages.

The Schultz's company, IBAR, purchases U.S. Treasury Department bonds through stockbrokers Merrill, Lynch, Pierce, Fenner & Smith. IBAR also has arranged the purchase of annuities from the life insurance companies of several major underwriters including The Chubb Group, Farmers Insurance Group and The Travelers Insurance Cos.

Other underwriters who sell annuities include American International Group, John Hancock Mutual Life Insurance Co. and Metropolitan Life Insurance Co.

The market for annuities is wide open, say brokers who arrange their purchase. One of the few problems is avoiding overuse of the same market, says Walker Sullivan's Mr. Barker.

Annuity strain

"Writing annuities creates a severe strain on a company's surplus, and unless an underwriter is very strong, it shouldn't be getting too heavily involved in the annuity market," he said.

Substandard annuity policies, annuities for severely injured or comatose persons, are more difficult to market, the brokers agreed.

"Most underwriters shy away from substandard cases because they're a guessing game of how long a person is going to live," Mr. White said.

"There just isn't sufficient data developed to predict life expectancies on substandard cases," Mr. Galaher said.

Structured settlements can provide more for less cost, says broker Frank Barker.

Among the few companies that do write substandard annuities are Manufacturers Life Insurance Co. of Canada and INA.

Despite their advantages, structured settlements are not the panacea for malpractice or other liability lawsuits, Mr. Barker warned.

Structured settlements should be one of several tools used in working out compensation, he continued. "Another problem is timing. Working out a settlement should be done as soon as possible, not three years later on the steps of the courthouse." ■

Record settlement in Ill.

A structured settlement that could pay out as much as $4.1 million—the largest sum in Illinois history—has been awarded to a Chicago boy who suffered brain damage after a drug to hasten delivery was administered to his mother during his birth.

Luis Lopez Jr., born at Augustana Hospital in 1965, was awarded a lump sum of approximately $600,000 and will receive weekly annuity payments out of a $600,000 fund. The hospital at the time carried $2 million in liability coverage with Continental Insurance Cos. of New York. There was no deductible on the policy.

In agreeing to the settlement, the hospital denied any wrongdoing.

Attorneys for Continental have filed suit against Parke-Davis & Co., manufacturer of the drug Pitocin. The suit alleges that instructions for the drug's use failed to warn about potential dangers in births with complications.

Insurance committee to voice U.S. concerns

NEW YORK—U.S. insurance professionals are setting up a hotline to communicate U.S. insurance concerns to international organizations.

At the request of the U.S. Council of the International Chamber of Commerce, a group representing insurers, reinsurers, brokers and risk managers organized last December as the U.S. Council's committee on insurance. They will primarily advise the International Chamber's commission on insurance problems.

The international commission involves buyers and sellers in formulating business positions to be presented to organizations such as the United Nations, the European Economic Community and the General Agreements on Tariffs and Trade.

Continental Corp. senior vp H. Donald Lindell chairs the U.S. Council committee and is vice chairman of the International Chamber's commission. Vice-chairman of the U.S. committee are: James Morone, executive vp of AFIA; Philip J. Brown, executive vp of Marsh & McLennan Inc.; C. Frank Aldrich, president of Kemper Re, and E. William Alstaetter, vp of Rockwell International.

Another nine members serve on five subcommittees set up to study specific issues. Two of these subcommittees are assisting in development of positions to be presented to Common Market officials developing draft directives on insurance and product liability.

Two other subcommittees will assist in developing positions on cargo fraud and insurance issues and international organizations. The fifth is assisting in development of an International Chamber-sponsored international risk management conference, tentatively set for Nov. 15-16 in Paris.

Subcommittee chairmen are: Mr. Morone, insurance services; Edith Lichota, assistant treasurer of Carborundum Corp., product liability; Thomas Fain, president of American Institute of Marine Underwriters, cargo fraud; Ronald Shelp, vp of American International Group, insurance issues and international organizations; and Rita Epstein, editor of Risk Management magazine, risk management conference. ■

people

Phone service calls up Roth as risk exec

Sheldon Roth has been hired by Continental Telephone Service Corp. in Atlanta as its director of risk management. Mr. Roth, 40, comes to the newly created position from Phillips-Van Heusen Corp. in New York, where he was director of risk management and employe benefits. He will be responsible for development and coordination of risk management programs, the handling of major claims, development of loss control programs and administration of self-insurance programs. He will report to Charles Bell, treasurer. Mr. Roth has a BS degree in business from the University of Maryland and an MBA from the College of Insurance. **Michael Ekman** has replaced Mr. Roth as risk manager for Phillips-Van Huesen. He was previously a tax manager for one of the shirt manufacturer's subsidiaries.

* * *

Former Marsh & McLennan account executive **Donald Duncan** has been named to the newly created position of corporate risk manager for Collins & Aikman Corp. Mr. Duncan, 42, joins the Charlotte, N.C.-based company to direct its loss control efforts and its property and casualty insurance programs. He reports to Charles Doran, corporate treasurer. Mr. Duncan is a graduate of the University of Missouri, where he received a BS in chemical engineering. He also earned an MBA in operations research from the University of South Carolina.

* * *

American Water Works Service Co. of Haddon Heights, N.J., has hired **Michael Kowalsky** as its new risk manager. Mr. Kowalsky, 43, a former marketing underwriter representative for Aetna Casualty & Surety, replaces **James Moore,** recently named manager of the Southern California Joint Powers Insurance Authority. Mr. Kowalsky reports to company president J.V. LaFrankie in his new position. He has a BS degree from Temple University.

* * *

Paul Morrison has joined G.D. Searle & Co. in the newly created position of insurance manager. Mr. Morrison, 30, was previously a commercial multi-line underwriter for the Hartford Insurance Group in Indianapolis. In his new position, Mr. Morrison reports to John Roskopf, risk manager for the Skokie, Ill.-based company. He has a BS degree from Ball State University and an MBA from Indiana University.

* * *

Bruce Beeler has been named assistant treasurer of Mallinckrodt Inc. of St. Louis. In his new position, Mr. Beeler, 38, will continue to be responsible for the company's risk management programs and employe benefits plans and also will assume corporate responsibility for international treasury management. Mr. Beeler has been insurance manager for the company since 1975. He continues to report to C.R. Holman, vp, treasurer and controller. Mr. Beeler has a bachelor's degree from California State University-Sacramento.

* * *

Frank Patti Jr., 39, has joined GAF Corp. in New York as its new manager of employe benefits, replacing George Duokas, who resigned. Mr. Patti was most recently assistant manager of the pension and savings department of Bristol-Meyers Co. Mr. Patti, who has a BBA in economics from Pace University, reports to R. Seitz, director of benefits.

* * *

Marshall R. Gordon has joined Gulf States Utilities Co. in Beaumont, Tex., in the newly created position of employe benefits specialist. He was most recently employed in the pension administration department of American General Life Insurance in Houston. In his new position, the 33-year-old Mr. Gordon will administer the company's employe benefits programs and recommend changes in them. He will report to Frank J. Loeffler, supervisor of employe benefits.

* * *

J.T. Garrett has been named to the newly created position of corporate manager of safety and industrial hygiene for Akzona Inc. and the subsidiaries of the Asheville, N.C.-based company. He most recently was manager of safety and health programs for Akzona's American Enka Co. subsidiary in Tennessee. Mr. Garrett, 37, will be responsible for coordinating safety programs, workers compensation, industrial hygiene and environmental activities. He has a doctorate in health education and a masters degree in occupational and environmental health and safety from the University of Tennessee. He will report to John Kiefer, director of insurance.

•

We'd like to report on staff changes in your risk management or employe benefits department. Just drop a note to Stuart Emmrich, Business Insurance, 708 Third Ave., N.Y., N.Y., 10017 or call 212-986-5000. We'd also like to receive pictures of those involved.

Letters . . .

Continued from page 10

boiler and machinery insurance would even think of such a marginal business venture. By the way, why is it that there are only six separate insurance operations (four FM comanies, IRI and Kemper) that write HPR coverage? Why haven't the large property insurers seen fit to go into the HPR market? Why do the big property insurance companies use HSB as a B&M market.

There are as I see it, two reasons.

1. Competition. Would you trust a $20,000 multi-peril prospect to another multi-line company just for the boiler and machinery coverage? I doubt it. HSB is a monoline company.

2. HSB has taken the time and effort to develop markets for reinsurance programs.

Your comment on "sloppy service" is unfounded. During a "sales pitch," some boiler insurance sales people will promise anything to get an order. However, the policy says that the insurance company will make inspections at the discretion of the insurance company and for the benefit of the insurance company. The insured will make the insured objects available for inspection at "reasonable" times. That some sales persons will promise anything to get an order is very unfortunate. Their individual behavior reflects poorly on an industry that is proud of its ethical behavior.

If a risk manager or insurance buyer wants semiannual or quarterly inspections, they should insist that such provisions be endorsed to the policy. The boiler and machinery insurance buyer should also be ready to pay for this type of additional service. If any insured is unhappy with the type of inspections being made, it should talk to its boiler and machinery insurance carrier. Tell the carrier what is expected in the way of inspections. If special services are requested, expect to pay for them. Also, tell the carrier what is expected in the way of inspection reports. Far too many B&M insurance buyers allow their broker to place B&M coverage in the lowest priced market. Then they ask the broker to change markets when the service is not what they desire.

On moderate to large size risks (annual premium in excess of $15,000) only a novice or a rate clerk uses the ISO B&M rate manual for "pricing" a risk. The current ISO rate manual is cumbersome and outdated. Everyone in the B&M industry agrees that a better method of pricing and rating is needed. Rating should not be a method of justifying price.

L.C. Smilor
Manager, Specialty Lines Unit (Boiler & Machinery), Kemper Insurance Cos., Los Angeles, Calif.

Retirement age boosted

WASHINGTON—A House panel has approved legislation boosting the mandatory retirement age for commercial airline pilots to 61½ from 60.

The measure, which was approved with a voice vote by the House subcommittee on aviation, would require pilots over 60 to pass medical examinations at least four times annually.

Pilots, who are lobbying for the change, argue the current requirement to retire at age 60 is arbitrary and discriminatory. The Federal Aviation Administration contends a pilot's flying and navigational skills deteriorate with age.

Commercial airline pilots were excluded from legislation Congress passed last year that raised the mandatory retirement age to 70 from 65 for most of the working population. ■

Chrysler pensions . . .

Continued from page 1

tion under the protection of federal bankruptcy laws might enable Chrysler to remain a going concern in the face of disaster. Part of Chrysler's mounting difficulties are its escalating vested pension liabilities left unfunded, totaling a whopping $1.5 billion. This unfunded liability equals 37.6% of Chrysler's net worth, which is high compared with most other U.S. corporations.

If Chrysler were to fold, the PBGC would take over the company's pension plan assets, which are more than $1.5 billion. These assets and the income they generate would in the short haul be more than sufficient to cover the $262.3 million Chrysler contributed in 1978 to its pension funds. Chrysler wouldn't say how much of that amount it actually paid in benefits to 37,000 retired workers and their spouses.

Increase in premium

Under the Employe Retirement Income Security Act of 1974, the PBGC also would be entitled to collect 30% of Chrysler's net worth to pay the guaranteed vested benefits earned by Chrysler employes. However, Chrysler's true net worth isn't known, since the PBGC has not issued a final regulation defining how corporate net worth is to be measured.

Net worth, though, is closely related to book value of a corporation. Chrysler's book value has been estimated at $2.92 billion and the PBGC's 30% share might give the agency an additional $876 million to pay vested benefits. In the end, PBGC may or may not have a right to seize a portion of Chrysler's assets, since the courts have yet to determine whether the agency would be a preferred or subordinated creditor.

The combined pension and corporate assets claimed would enable the PBGC to pay Chrysler pensions for many years. "The PBGC would expect to pay all guaranteed benefits, as ERISA charges us to do," said PBGC acting executive director Jeff Hart.

Under federal law, PBGC guarantees all vested benefits, except benefit increases during the most recent five years which it phases in over a five-year period, up to a $1,076.83 monthly maximum. Chrysler retirees now receive an average of $700 a month in pension benefits.

Over the long term, though, the termination of Chrysler's pension plans almost certainly would force an increase in the $2.60 per participant annual premium PBGC charges all companies with defined benefit pension plans for termination insurance.

A major premium increase is likely if Chrysler's plans are terminated. Chrysler's $2.7 billion in funded and unfunded pension liabilities exceeds the $2.37 billion in assets PBGC could collect from the company, leaving the PBGC with about a $200 million deficit. In 1977, when pension plan terminations increased at a faster-than-expected rate, Congress approved an increase in the annual termination insurance premium to $2.60 per participant from $1.

Without a premium increase, "My guess is that the single employer fund would fall quite short of being able to pay Chrysler's pension liabilities," said Peter Turza, Sen. Jacob Javits's (R-N.Y.) pension aide.

"The insurance program under ERISA will not handle a major catastrophe," said Steve Sacher, special counsel to the Senate Labor and Human Resources Committee. "It can cover 99.9% of single plan terminations that will ever take place. But it simply is not capable of covering, at least at this young stage of its life, a catastrophe."

When Congress returns next month from its summer recess, it will look at a variety of proposals to shore up the ailing automaker. Chrysler executives have appealed for about $1 billion in federal aid, but observers say it is too early to predict how receptive Congress will be. The Carter Administration, however, has rejected the request for $1 billion but is considering loan guarantees, which sources estimate could be between $500 million and $700 million.

Payroll vs. pensions

In the meantime, the United Auto Workers have rejected Chrysler's request for freezes in wages and benefits, which the manufacturer says it needs to reduce its deficit. The union views freezes as tantamount to cuts because the rate of inflation is so high.

A UAW spokesman in Detroit said "the door is open" to possible concessions on pension improvements during negotiations with Chrysler, but he wouldn't elaborate. He said the union first would have to reach agreement with Ford and General Motors in order to establish a pattern for bargaining with Chrysler.

Benefit consultants predict Chrysler won't tamper with its pension plans unless the company "is pressed to the wall" to solve its financial problems. Rather, the firm probably will try to correct its deficit by reducing payroll.

"Pensions are a strain, but payrolls are a bigger strain," said Leonard Mactas, a consulting actuary with Kwasha Lipton, an employe benefit service in Englewood Cliffs, N.J. Despite its high unfunded vested pension liability, the pension fund's $1.5 billion in assets appears to be enough to meet current obligations, he said.

Possible benefit cut

If, however, the UAW is unwilling to accept freezes in wage levels, the union may be forced to accept some cuts in health insurance benefits if pensions are not frozen, the consultants say.

Kenneth K. Keene, senior vp and director of Johnson & Higgins in New York, believes such benefits as dental plans may have to be discontinued until Chrysler is able to correct its deficit. The company could offset this blow to employes with a promise of some added future benefit, he said. American Motors Corp. made such a promise about 10 years ago during hard times when it instituted a profit sharing plan for hourly workers in exchange for benefit cuts, he said.

If placing a lid on pension increases becomes vital to Chrysler's survival, the company could stop pension accruals for a year on all employes, hourly and salaried. This would enhance Chrysler's cash flow. Chrysler Corp. paid $262.3 million into its pension fund last year, $143 million of which were payments to hourly workers.

"That would provide a partial answer and there would be no immediate money from anyone's pocket," Mr. Keene said.

The company also may be able to obtain a waiver from the federal government on its requirements for funding pensions if it could prove that foregoing the contributions will help ease financial difficulties, consultants speculated.

Amendments to the Internal Revenue Service code added by ERISA allow companies to receive a one-year waiver of their standard contribution requirements. No more than five waivers can be granted over any 15-year span.

Pension liabilities, however, won't be Chrysler's downfall, says one expert. "Toppled companies create pension problems but companies don't topple because of pension problems," Mr. Keene said.

What every self-insured risk manager should know.

As more and more risk managers choose to self-insure their companies' primary liability exposures, the question of what type of coverage in excess of SIR best serves their corporate interests becomes a key one.

And once the facts are known, more and more of these companies are choosing a claims-made policy for this purpose, rather than an occurrence-type. The reason is that with a claims-made liability cover over primary self insurance, a risk manager can better estimate the amount of dollars needed for his own liability loss fund. Large reserves need not be tied up for years for this purpose. (An important tax consideration since these funds are not currently considered deductible.)

Losses Incurred But Not Reported (IBNR) are not a major problem with a claims-made policy, as they are with occurrence policies. Thus a claims-made excess cover lets a self-insured transfer unneeded reserve dollars from one year's loss fund to the next's with greater confidence. And possibly reallocate surplus dollars to more profitable uses.

This is because with a claims-made Excess of SIR program, a self-insured has no need to "hedge" dollars against claims not yet known or reported—each year he *knows* where he stands and can allocate his reserve funds accordingly.

As a result, the risk manager's report to management is more certain and the performance of his self-insurance program more reliable.

Shand, Morahan & Company is a leading exponent and underwriting manager for liability insurance —products, general and professional—written on a claims-made basis.

Your agent or broker knows about us. Ask him for more information about our claims-made type SIR coverage. He'll be glad you did. And so will you.

And how you can find out.

Shand, Morahan & Company, Inc.

One American Plaza Evanston IL 60201 312/866-2800 Cable Shanmor Telex 72-4328

Peter Bleyler, vice president, tells how A&A works from a client's point of view:

"We're way ahead in projecting how new retirement laws affect benefits planning."

"Our computer operation is already able to project accurately the changes in the Social Security law and tell clients what they need to know: not only the employer cost of the Social Security tax but also its financial impact on their benefits programs. We're also counseling on the effect of the new mandatory retirement age. From the client's point of view, pensions, life insurance, medical plans and disability income programs could all be problem areas."

Working from a client's point of view is our way. In St. Louis, where Pete Bleyler, F.S.A., is a consulting actuary. And in over 110 cities here and overseas. That means working as allies, solving business problems together. Our Human Resource Management experts not only coordinate benefits planning to avoid costly overlapping, but they're on top of late-breaking governmental regulations.

We think our dedication to acting as an ally of the clients we represent is a big reason why A&A has become a worldwide leader in the insurance brokerage and financial services business. We have the facilities, expertise and strength to act as effective allies. We work from the client's point of view, whether the corporation is large or small.

Alexander & Alexander
The Allies