Mill Factors' D&O cover in question

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business insurance

for buyers of employe, property and liability protection

45¢ a copy; $10 a year

August 4, 1969

A combined insurance package, jointly underwritten by Factory Mutuals and Employers Mutual Liability Insurance Co. of Wisconsin, will "fully cover" property and liability damage arising from an estimated $500,000 fire loss at an Amway Corp. plant in Ada, Mich., according to Amway treasurer Dale C. Discher. Nine people were injured in the fire, seven of whom were hospitalized. The package coverage includes business interruptions. —Wide World photo

747 makers reviewing new liability scheme; captive takes nose dive

NEW YORK—Air frame and component part manufacturers for the 400-passenger Boeing 747 now appear to be on the road to gaining liability coverage for the new jumbo jets, which are scheduled for delivery later on in the year.

Meanwhile, however, the airline's proposed captive insurance operation received a setback. In an announcement by the Air Transport Assn. and the International Air Transport Assn., it was disclosed that the starting date for the operation was postponed until Jan. 1, 1971.

Sir Giles Guthrie, chairman of Air Transport Insurance S.A., Lausanne, Switzerland, the industry captive, said that the plan for the company submitted to the Swiss authorities last spring "still awaited approval." There now remains "insufficient time" in 1969 for the airlines and governments around the world to complete preparations enabling the insurance company to start operations on the target date of Jan. 1, 1970, Mr. Guthrie said.

The Aircraft Builders Counsel, a group of 270 suppliers, seems to be having better luck. The group has given "favorable consideration" to a proposal by U. S. and London underwriters to supply up to $50 million liability coverage and up to an additional $10 million ground cover.

The proposal calls for the insurance to be written on an "individual aggregate" basis rather than an "industry aggregate" basis as underwriters had wanted last spring. The new plan means that each member of ABC would get $50 million in coverage on an individual basis.

The "industry aggregate" proposal put forth by underwriters last spring offered a flat $100 million of coverage—which all ABC members would have had to share. In addition, the entire industry would also have shared the cost of a loss to any individual air frame or component parts manufacturer.

All ABC members would have had to pay extra premiums to get the $100 million reinstated should a loss to any one of them occur.

IN OTHER WORDS, underwriters are now prepared to let members take out individual coverage (of up to $50 million) rather than share an industry limit of $100 million. This, as one insurance expert put it, is "a definite concession."

Underwriters said that although there won't be a formal rating setup for individual risks, the past history and future loss potential of large buyers will be taken into consideration. Also, suppliers with unusual risks or a poor loss experience may be individually rated.

ABC currently offers up to $20 million in liability coverage, but the greatly increased exposure brought about by the 747s has necessitated much expanded limits. It's estimated that a crash of one of the new 747s could result in hull losses of some $30 million and liability potential of another $40 million.

What keeps insurance managers awake nights, however, is the pos-

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Chubb on JFK theft; gem cover in air

NEW YORK—It looks like Chubb & Son stands to absorb much of the loss on a $600,000 cash and jewelry heist at Kennedy airport last month.

Chubb, it was learned, writes cargo insurance for Pan American World Airways, the airline that transported an undetermined amount of cash consigned to the First National City Bank from its correspondent bank, the Bank of Moravia in Liberia.

Bank of Moravia, which is a wholly owned subsidiary of First National City Bank, was also insured through Chubb for registered mail insurance coverage on the shipment, *Business Insurance* was told.

ANOTHER BANK that shipped money via Pan Am, the Bank of Bermuda, was believed to have arranged for protection through the airline. This money was also bound for First National.

Chubb has already paid off First National for the loss sustained by its Bank of Moravia subsidiary. Because First National was never in possession of the funds, its banker's blanket bond, through Lloyd's of London, would not respond.

The robbery occurred at 4:30 a.m. on July 21. The valuables were being guarded by one agency guard in a strongroom located in a cargo building at the airport. Three robbers, wearing Pan Am shirt patches, forced an airline employe, at gunpoint, to smile while he asked admittance to the security area. With only a small bullet-proof glass portal to peer through, the guard opened the door to the seemingly pleasant employe.

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NEW YORK—The mysterious disappearance of more than $500,000 in jewels and precious metals from the walk-in combination safe of the Jewelry Unlimited Mfg. Co. is looking more and more like a fidelity case, *Business Insurance* has learned.

Owners David Goldschild and Michael Hersey declined to release any insurance details of the burglary, but it was discovered that St. Paul Fire and Marine wrote the jeweler's block policy that, according to a St. Paul official, "covers almost every type of risk, with one exclusion: fidelity."

It could not be determined whether St. Paul also wrote the fidelity bond, but a source at the company stated, "an outfit the size of Jewelry Unlimited would rarely purchase enough bonding to cover a loss as big as a half million dollars."

THE THEFT was discovered July 26 when an employe reported to complete some unfinished work. When he discovered the vault open, he immediately summoned the owners who called the police and FBI.

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Late news

Heinz adopts incentive plan

PITTSBURGH—H. J. Heinz Co. has dropped its management profit-sharing plan and replaced it with an incentive plan that measures individual performance against sales goals established at the beginning of the fiscal year. The new plan also takes into account the performance of the Heinz profit center the employe is working in and the overall corporate results. In adopting the new plan, Heinz cashed in the interests of employes in the old profit-sharing plan.

Boise Cascade covers placed

BOISE, Ida.—Insurance coverage for the Boise Cascade Corp.'s new $14 million headquarters now under construction has just been arranged through Marsh & McLennan, Minneapolis, Clayton Carlson, corporate manager of insurance, told *Business Insurance*. Boise Cascade's liability will be covered by Employers Mutual Liability Insurance Co. of Wisconsin and the builders risk will be taken up by an existing St. Paul Fire and Marine contract. Workmen's comp will be bought by individual contractors who will then give certificates of insurance to Boise Cascade.

Nixon's safety bill coming

WASHINGTON—The Nixon Administration has decided to propose a Federal occupational health and safety bill, almost assuring passage of some sort of measure in this area this Congress, maybe even this session, *Business Insurance* has learned.

Continued on page 8

Builders association gets portable pension

COLUMBUS, O.—The Home Builders Assn. of Greater Columbus and Life Insurance Co. of North America have entered an agreement which will result in employer-paid pensions for employes of association members.

Edward D. Wood of Cincinnati, regional life manager for INA, said it was the first program of its kind in Ohio. The pension plan is portable within confines of the association.

James L. Deagle, president of the Columbus HBA, said employers who participate will contribute a sum equal to 5% of each employe's monthly earnings. About one-fourth of the contribution will pay for a life insurance policy. The remainder will be invested by the Huntington National Bank, as trustee, in securities or equities.

Four employers (with a total of 150 employes) signed up as soon as the program was announced. Some 5,000 employes are eligible through the plan if all eligible employers participate, it was estimated.

Employes between ages 19 and 59½, who have worked for a Columbus HBA member at least six months, are eligible. Each can increase his pension benefits by voluntarily contributing as much as 10% of his wages to the pension fund.

The plan was developed by insurance company representatives in conjunction with a task force of home builders, over a two-year period. ■

Farmer, Nixon civil rights aide, plugs U.S. health care, black needs

MIAMI—The assistant U.S. secretary of health, education and welfare told a Miami insurance convention that some form of national health insurance is needed to aid deprived and minority groups.

The official, civil rights leader James Farmer, also told the National Insurance Assn. that Negro insurance men need a lobbyist in Washington. In advocating national health insurance, Mr. Farmer emphasized that he was speaking for himself, not for HEW.

BUT HE emphasized that black corporations and black insurance companies will play an important role in the program if it becomes a reality.

"You people pioneered in black business before black entrepreneurship became a popular phrase," he told the 600 Negro men gathered for the 49th annual convention.

"When we were going to jail in masses your insurance companies came to our rescue. Now we are beginning the critical effort to harness the awesome power of government to help the little people.

"If this program of economic development is to get off the ground, it will take the help of black businessmen."

MR. FARMER, who in 1962 founded the Congress of Racial Equality (CORE), urged the insurance association to become actively involved in pressuring government officials to aid black capitalists.

"White businesses get large sums of money to train people for management," he declared. "You should be getting money too."

Funds are available in Washington to strengthen these enterprises, he said. "But you must have strong representation in Washington lobbying for money."

Black insurance companies face two kinds of competition—for policyholders and for skilled staff employes as well, he said.

Black-operated firms are losing trained employes to white-operated insurance companies which feel "they must have a showcase Negro" on the job.

"That's all right," Mr. Farmer said. "Black men must keep getting jobs wherever they can get them.

"But you must build more jobs into the companies which you have created. It can be done, but only if you are well-represented in Washington."

Black insurance companies, he said, have pioneered in providing services for black people—providing mortgage money when white firms would not, for instance.

But he added, if there is to be economic development of businesses owned and operated by Negroes throughout the nation, "it will take pushing and prodding from black people who have been in business through the years."

"What we must do," he said, "is to move minority groups into the mainstream of American life. Before I finish, I swear America will become the land of the free."■

'BI' adds contributing editors

NEW YORK—*Business Insurance* has added seven new contributing editors.

They are James J. Andersen, insurance manager of Squibb Beech-Nut Inc.; Harold A. Clark, manager-planning in the employe benefits department of Sperry Rand Corp.; Joseph Gullo, vp of insurance at D. H. Overmyer Co.; Paul C. Johnson, insurance manager, Sea-Land Service Inc.; M. Rex Pearson, insurance manager, Signal Cos.; and Robert Abrahamson, insurance manager of Control Data Corp. William J. Jones III, assistant treasurer, overseas chemical division, W. R. Grace & Co.

Current *Business Insurance* contributing editors are Donald Berry, vp of C. B. Lilly Inc.; John W. Giles, attorney-at-law; Elliot Beier, manager of pension and profit sharing of Nuveen Corp.; J. E. Benoit, of J. E. Benoit & Associates; Howard L. Peck, partner, Hewitt Associates; Bion H. Francis, manager of benefits and planning, Colt Industries; J. P. Olsen, insurance manager of Ingersoll-Rand Co.; Ned Miller, partner of Romm, Miller & Lazarus; and Carl J. Vogt, supervisor of workmen's compensation, General Tire & Rubber Co.

With the addition of the seven new contributors, *Business Insurance* can now call on 16 experts on insurance buying practices across the country and in Canada. Their columns will appear on a rotating basis in the publication's "Perspective" section. ■

Gilkenson fills 'BI' slot

NEW YORK—Stephen D. Gilkenson has joined *Business Insurance* here as Eastern Editor.

He succeeds Louis J. Haugh, who has been named editor of *Advertising & Sales Promotion* magazine, which is also a publication of Crain Communications Inc.

Mr. Gilkenson formerly was assistant Sunday editor of the Providence Journal, with responsibility for three Sunday sections of the newspaper.

In his nine years with the Providence Journal, he has served as a general assignment reporter, picture editor, makeup editor, radio-tv editor and entertainment editor. ■

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100 derailments a day ruining railroad coverage

By EDWIN BLACK

NEW YORK—Either railroads reduce their accident rates, or premiums will be "more expensive than earthquake insurance in San Francisco."

So said one worried railroad insurance manager. And a nervous broker added, "I don't think it can get much worse. The brokers are already breaking their heads trying to play down these railroad accidents to the underwriters."

The blame for an average of 100 railroad accidents a day is summarily passed on to "defects in or failure of track and roadbed, defects in or failure of equipment, and human error," in the words of a report submitted to the Secretary of Transporation by a special task force for the study of the present railroad safety crisis.

BUT THE REAL cause behind the 8,000 accidents in 1968, double the number of accidents recorded in 1961, is the fantastic pressure by marketers to operate with larger cars, longer cars and cars with load capacities that generally exceed the limitations of the facilities they run on, according to almost a dozen railroad executives interviewed by *Business Insurance*.

The director of operations and maintenance for an eastern railroad described the problem in this way: "Too many railroads are too concerned about high quantity and high capacity marketing. The tracks can't handle all of these high capacity and high quantity cars. Most of the tracks are geared to take 36' to 40' cars. But today the boys in marketing are pushing 80', 85', 90' jumbo cars.

"What complicates things is that wage increases for workers and the general money squeeze cut maintenance budgets, and the bloody competition is so much and so pressured that often the forces of marketing and maintenance don't get coordinated," said the official.

A SOURCE AT Trans Union Corp. holding company of Union Tank Car Co., a major lessor of railroad tank cars, confided that "on some small lines, certain bridges will not take a lot of weight per inch. All railroads have what is called a Cooper's Rating, that is, a calculation, rated for their own tracks, that measures the pressures of various cars—and if the cars don't pass that rating, they don't run."

"The problem is," commented an official of another builder of rolling stock, "that the length of trains, and the speed of trains over areas where the Cooper's Rating is close often is the source of danger."

The insurance picture is affected in a number of ways by the present status of railroad safety. Premiums inflate as the number of accidents and their severity increase. It affects the railroads, the builder of rolling stock, the shipper and the passenger, each in different ways.

EDWARD D. Hansen, risk manager at Trans Union Corp., explained to *Business Insurance* that the railroad is usually liable for damage to or destruction of rolling stock involved in an accident on the railroad main line. "Settlement is then made by the railroad with the owner of the car in accordance with rules of the Assn. of American Railroads," Mr. Hansen said. "This usually results in recovery of less than the replacement cost of the car destroyed. Trans Union insures the difference between the AAR recovery and the replacement value of the car involved in the accident."

Mr. Hansen acknowledged that during the past year or so there has been an increase in the number of cars involved in accidents. "As with any type of physical damage coverage, a continuation of an upward loss trend must ultimately be reflected in increased premiums," Mr. Hansen commented. "However, I am more interested in the trend in losses over a number of years than in any one particular year. Obtaining insurance coverage on our cars has not been too much of a problem to date, but we are continuing to be alert to the situation."

The insurance picture is different for the railroads. No one guarantees their losses. Almost all major railroads are self-insured to certain limits and maintain what is called "catastrophe" policies in excess of their retained liability.

SAID AL ROYCE, insurance manager for Penn Central Railroad, "The money I'm now paying for premiums is in six digits. For this money I'm getting catastrophe insurance in the neighborhood of eight digits. I can tell you that the greatest chunk of what I'm paying for the coverage I'm getting is for liability.

"The whole insurance market is tight," continued Mr. Royce. "Premiums are going up everywhere, and believe me, ours included. As pertains to the railroads, we all know that the railroads' loss experience is the best guide to premium rates. And I can tell you that if the increase in

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Two men were missing following the collision of a 73-car Milwaukee freight train and a 23-car Chicago and Northwestern Railway freight at Elberon, Ia., last March. Leo B. Menner & Co., a Lloyd's of London correspondent with headquarters in Chicago, handles the liability coverage for Chicago and Northwestern.

washington watch

Nixon Administration goal: Effective health care for everyone in U.S.

WASHINGTON—Pundits on the health scene say they are beginning to wonder if perhaps Lyndon Johnson isn't picking up a few extra dollars on the side writing catch phrases for the Nixon Administration.

If not, they say, it must have pleased LBJ considerably to see his successor's top health officials refer to a "national goal of effective and dignified health care for every American no matter what his station in life or where he lives."

The truth is, however, that Secretary Finch and Assistant Secretary for Health Roger Egeberg were quite serious when they spoke of this goal in behalf of the Administration. No matter how you slice it, they were talking about national health insurance as a means of meeting this goal—that is, some sort of program whereby each and every American is provided with comprehensive coverage for health care.

If this is shocking to some Republican conservatives, they need only to look at what happened at the recent convention of the American Medical Assn. in New York for a real eye opener. At that highly explosive get-together of our nation's MD leadership, the dominantly conservative organization endorsed a "voluntary" system of health insurance for all.

Under the AMA plan, the Federal government would give tax credits for private health insurance and would issue "vouchers" to the poor, which would be redeemable for health coverage costs.

The AMA is not expected to initiate any lobbying efforts in favor of its plan. It is really only a far-fetched attempt to show that the problem of health care for every citizen can be solved within the current system of health care delivery—a system that the MDs have a very deep interest in preserving.

Despite the lack of enthusiasm for the plan, the AMA is on record as being in favor of a national health insurance system. And, for all practical purposes, so is the Nixon Administration.

THIS LEAVES very few holdouts in the conservative camp. Interestingly enough, both the AMA and the Administration would ask the business community to pick up a large share of the tab, either by higher taxes or greater expenditures for health insurance.

The Administration's professed interest in seeing that everyone has adequate health care has not, as many conservative Republicans claim, been prompted by an infiltration of liberal sentiment into the ranks of the party hierarchy. While this may be true to some degree, the motivating force has been a genuine concern over the rising costs of health care.

This fact is probably best illustrated by a statement made by Sen. Paul Fannin (R., Ariz.) during recent hearings on rising health care costs by the Senate finance committee. The highly conservative Sen. Fannin commented that perhaps the only way to control the rising costs of Medicaid and solve other problems in the health field might be to "erect a national health insurance system of some kind."

Secretary Finch and Assistant Secretary Egeberg made a number of specific proposals aimed at cost reduction, which they said hopefully would challenge the private sector to "begin the process of revolutionary change in medical care systems."

NO SPECIFIC suggestion was made toward getting health services to all Americans.

Instead, it was indicated that this must wait until costs are brought into line.

"Expansion of private and public financing for health services has (already) created a demand for services far in excess of the capacity of our health system to respond," the Administration spokesmen held. The result, they said, is a "crippling inflation in medical costs causing vast increases in government health expenditures for little return, raising private health insurance premiums and reducing the purchasing power of the health dollar of our citizens."

An interesting sidelight is the make-up of the Nixon-appointed task force to deal with the "crisis" in the Medicaid program. Three members of the committee, headed by national Blue Cross head Walter McNerney, were co-authors of a recent headline-grabbing report released by Senator Edmund Muskie's subcommittee on health of the elderly, which called for an extremely liberal national health insurance program that would place strict controls on doctor fees.

THE THREE ARE Medical Consultant Agnes Brewster, United Auto Workers Social Security expert Melvin Glasser and the director of the Social Security Department of the AFL-CIO, Bert Seidman.

The Administration, of course, wants to stay within the current system, and it is highly unlikely, considering its close ties to the nation's MDs, that it will ever propose anything too drastic along the lines of national health insurance.

But, it readily admits, that despite its good intentions, the pluralistic, independent, voluntary nature of our health care system will be lost to "pressures for monolithic government-dominated medical care unless we can make that system work for everyone in this nation." ■

Benefits division heads

Ron Stever has been elected chairman of the board of Emett, Chandler & Stever, employe benefits brokerage division of Pinehurst Financial Inc., in Los Angeles. Clayton R. Hurst replaces Mr Stever as president and chief executive of the division.

Touchy Question #39

What happens when you have to tell 100,000 customers that their brakes may not work at 70 mph?

The PR department has a job.

They can talk about the fallibility of men. They can point out that it's a good thing this problem was aired before it was too late. And they can show their willingness to make repairs and adjustments.

In most cases, the customer remains loyal. But it's an expensive ordeal.

Products Recall Expense Insurance is a relatively new policy designed to fill this coverage gap. Our own version is hardly out of the egg as we write this.

We are not ready to offer this coverage to ship builders or to manufacturers of ethical drugs or pharmaceuticals, aircraft, or aircraft parts. And until enough experience has accumulated to provide credible guides, we are obliged to exercise a high degree of selection.

For obvious reasons, you must have your liability lines and some product lines with us. You must do at least $5 million in annual sales. You are expected to participate in 10% of the contract, with the minimum deductible set at $10,000. And in some instances, we may insist that our Products Loss Control Program (see Touchy Question #34) be in effect.

We realize that our requirements are stringent. And in that sense, we have arrived at a touchy question ourselves.

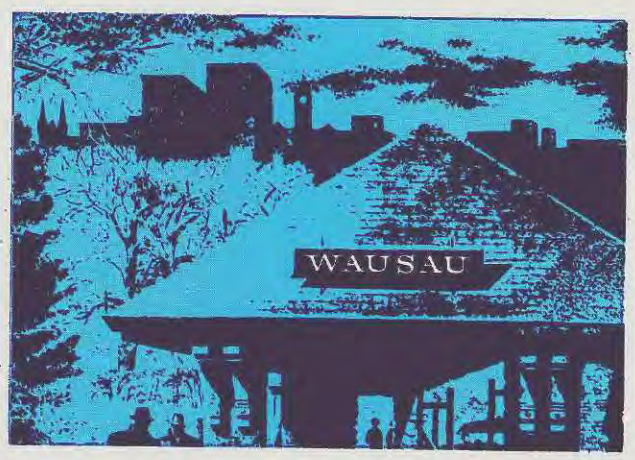
How conservative or how speculative should we be with this new insurance?

Of course we want to be flexible. But since Products Liability is not a well-seasoned insurance, we do not have the complete advantage of relying on pre-set generalizations. Instead, we must get brand new answers that fit only your company.

That means the doors must open to let us work, to examine facts, and to discover attitudes.

A little touchy, we agree. But if we do our job right, then that leaves you free to do your job right.

That's the Wausau Story.



Employers Insurance of Wausau

We think insurance ought to work for a living.

Stockholder throws Mill Factors' directors coverage into question

NEW YORK—A stockholder's suit charging fraud against officers and directors of the Mill Factors Corp. has thrown into doubt whether the factoring concern's key executives would be protected under its directors and officers liability policy.

The legal whirlwinds surrounding the surprise insolvency have resulted in class and derivative actions against both Mill Factors and the financial concern's creditors. New York Life Insurance Co., the largest single creditor of the allegedly defaulting firm, has met with a derivative suit from a stockholder following the announcement that $8.4 million was owed to the insurance company by Mill Factors.

The complaint against 18 Mill Factors executives charges they "employed schemes, devices and artifices to defraud." The action against New York Life names 27 key men and others the plaintiff holds responsible for extending loans and buying allegedly defaulted commercial paper, and also charges fraud.

Reports circulating among legal sources indicate other derivative actions may be filed against other creditors the major ones being Bankers Trust, Manufacturers Hanover Trust, Aetna Life & Casualty, Travelers Insurance Co., Lincoln National Life and Hartford Life Insurance.

According to the charge against Mill Factors, filed in U.S. district court, the executives of that company purposely circulated false press releases and "fraudulent and grossly overstated" interim reports to inflate the market price of Mill Factors common stock, thus "reaping substantial profits."

A source at Mill Factors discredited the charge as "ridiculous and without any foundation." The suit does not seek a specific sum of damages, but pleads simply for "damages for wrongs" alleged in the complaint.

A LEGAL SOURCE at New York Life called a similar suit against the insurer "a big nuisance," saying stockholders who initiate such actions are interested only in "adding up the tiny expense rewards the courts allow until some monetary gain occurs. Surprisingly enough, the man heading the Mill Factors account for New York Life, William Keiter, was not named as a defendant.

As reported in the July 7 issue of *Business Insurance*, claims against Mill Factors' D&O policy covering executives of the financially troubled concern reportedly have reached the policy limit—$5 million. Coverage was written in the London market.

It was speculated that Mill Factors' D&O policy might be one of the first to pay off on claims, since it had been alleged that the firm's financial reverses had come about through mismanagement and not any form of dishonesty, self-dealing or unjust enrichment, or short-swing profit taking.

If executives lost a stockholder's suit because they had mismanaged the assets of the company, Mill Factors' D&O policy would presumably respond. But if a court found that the fortune of the concern declined due to dishonesty, unjust enrichment or short-swing profit taking, recovery would be excluded.

IF THE STOCKHOLDER'S charge that Mill Factors circulated "fraudulent and grossly overstated" interim reports to inflate the market price of Mill Factors common stock, in order to reap "substantial profits," can be substantiated, the firm's D&O policy would exclude coverage, most insurance experts confirmed.

During 1967 and 1968, the suit charged, loans were granted by Mill Factors "particularly in its commercial financing operations in an improper, reckless, grossly negligent and imprudent manner, and without regard for the adequacy or quality of the accounts receivable taken as collateral for said loans, and without regard for the business and financial stability and responsibility of the borrowing clients of Mill Factors, all with the design of the defendants herein to report new volume highs in receivables and to obtain the highest rate of return with attendant increased net worth, and thereby to inflate the market prices of the common stock of Mill Factors and to maintain said prices at artificially high levels."

Also, according to the suit, Mill Factors gave extensions and modifications on loans that were in default "for the purpose of concealing defaults." The accounts receivables securing the loans were "inadequate collateral and a substantial portion thereof was overvalued and uncollectible," the suit stated.

WHILE THE PUBLIC (including the plaintiff) was induced to purchase common stock of Mills Factors, "and the market prices were inflated at artificially high levels," officers and directors of the firm sold some of their holdings, the suit added.

The suit included Lybrand, Ross & Montgomery, Mill Factors' accounting firm, as one of the defendants. The suit charged that Lybrand "participated in, aided and abetted and assisted in the perpetration of the fraudulent acts and practices, devices, schemes and artifices and misrepresentations hereinabove alleged, and acted fraudulently, carelessly and in an improper manner in making its reviews and audits of the books, records and accounts of Mill Factors. . . ."

The derivative action against New York Life cites its entire board of directors as individual co-defendants; it also cites Mill Factors' accounting firm for more than thirty years, Lybrand, Ross Bros. & Montgomery, and Goldman Sachs & Co., the brokerage firm that sold "defaulted" commercial paper to New York Life.

The suit alleges that $8.4 million in commercial paper purchased by New York Life was done so without registration and therefore illegally under the Securities Act of 1933. Goldman Sachs, according to the charge, "wholly failed" to investigate adequately the state of Mill Factors before they sold the notes, and "impliedly represented no substantial risk to be attached."

The suit states that because sale of the commercial paper was misrepresented and sold without legal registration, Goldman Sachs should pay the entire loss sustained by New York Life on the commercial paper.

LYBRAND, Ross Bros. & Montgomery, the accounting firm, was cited in the suit for negligence in that it failed to warn potential creditors of the true state of Mill

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state of the unions

Bargaining for retirees may present unions a headache, benefits men say

By RANCE CRAIN

NEW YORK—A ruling by the National Labor Relations Board giving retired workers the same bargaining rights as active employes could cause more trouble for unions than for management.

This was the assessment of several employe benefit managers and labor relations executives after chewing over the impact of the 22-page NLRB decision, which reversed the recommendations of a hearing examiner.

If this interpretation holds up, it would be somewhat ironic, since such employer groups as the National Assn. of Manufacturers and the Chamber of Commerce had urged that retirees not be given bargaining rights. The AFL-CIO, the United Automobile, Aerospace & Agricultural Implement Workers and other unions, on the other hand, opted for reversal of the hearing examiner.

ONE EMPLOYE benefit manager noted a "continuing trend" to update retired workers' pensions on a voluntary basis, even though up to now neither management nor labor was obliged to do so. He pointed out that the United Steelworkers of America, in a separate letter not part of the formal settlement contract with management, received an additional $15 for retired workers' pensions in 1965 and another $10 hike in 1968.

Another benefits expert said the NLRB decision could "play hell" with union elections. Now that retirees have been given bargaining privileges, he asked, are they eligible to vote? And if they can vote, wouldn't they hold out for increases in pension pay at the expense of wage gains for active workers?

"A balance must be maintained between the needs of the younger workers and the needs of the older workers," the benefits man explained. This decision could "put pressure on the balance and upset it," especially in view of the fact that more retired workers are going on the pension rolls all the time—and at an earlier age.

A labor relations man noted that retired workers, once they brought on a strike, would have no "economic incentive" for an early settlement. "They're not dependent upon wages, and hence they'd be under no particular pressure to return to work," he added.

THE 4-TO-1 NLRB ruling held that the Pittsburgh Plate Glass Co.'s chemical division in Barberton, O., failed to bargain in good faith with Local 1 of the Allied Chemical & Alkali Workers of America when the company unilaterally changed health insurance benefits for retired workers.

The dissent, by board member Sam Zagoria, pointed out that the majority decision "poses some difficult questions." For example, he asked, "where the union currently representing employes in a bargaining unit is not the same one chosen by the retirees when they were actively employed, which union is the appropriate representative of the retirees?

"In some situations the retirees may have earned their pension during a period in which the majority of employes rejected collective bargaining representation," Mr. Zagoria stated. "Is the present bargaining agent obligated to represent these retirees? If it does represent them, what is the extent of its duty of fair representation? Do the retirees have access to the board or courts, if they feel they have been unfairly represented? May the bargaining agent require pensioners to comply with union security requirements adopted by the active membership?"

Mr. Zagoria argued that retired people, because they "are no longer working for the employer, are not on the payroll, probably have no access to the plant or hope of recall to employment" are more accurately described as "pensioners" rather than "employes".

BUT THE majority, in deciding that Pittsburgh Plate Glass must bargain with Local 1 on retirees' health insurance plan, said that the labor act's protection is not "narrowly limited to those who are recorded on the employer's current payroll. Indeed, employes who have been actively employed for a sufficient number of years to have earned a pension have deep legal, economic and emotional attachments to a bargaining unit, which measurably exceed the attachments of others who have been held to be employes.

"If one can be an 'employe' *before* he has been hired, or *after* his employer has gone out of business, or even while he is on active military duty thousands of miles away, we cannot agree that one who has spent his productive years in the bargaining unit is beyond the protective gambit of 'employe' rights," the majority said. "When an employe retires from the bargaining unit, most of the threads which once bound him to the unit are severed, except those which affect his retirement rights. But his retirement status is a substantial connection to the bargaining unit, for it is the culmination and the product of years of employment.

Continued on page 8

Bond liability drops as money is returned

TAMPA, Fla.—The quick return of all but $96,000 of a $342,000 shortage discovered at the Tampa Bay Bank, which led to the arrest of the bank's president and four other employes, has eased pressure on the bank's $1 million-limit Aetna Casualty & Surety Co. blanket bond, Myron Gibbons, attorney for the bank, told *Business Insurance*.

Negotiations for the return of two other sums of money are now underway, the attorney added. One is for $29,000; the other is for $10,000. "The money," Mr. Gibbons explained, "is being raised."

Following a rush audit indicating the $342,000 shortage, the Federal Bureau of Investigation arrested and charged the Tampa Bay Bank president and four other employes with embezzlement. All five were then released in their own custody.

FBI AFFIDAVITS, accompanying arrest warrants, allege that Marvin Essrig, the 48-year-old president of the bank, made false bank record entries and embezzlements during the past three years totaling $253,000.

The affidavits charge that Mr. Essrig falsified bank records to indicate loans to prominent, local businessmen, then forged promissory notes to cover the fictitious loans. Two businessmen, whose names were allegedly forged, said in affidavits that Mr. Essrig has admitted falsifying the loans.

Charged with the embezzlement of $29,000 over the last four years is Julio Palaez, 35, a vp of the bank. Mrs. Laura Peters, 38, is accused of embezzling $26,000.

The two others arrested were Mrs. Peggy Housh, 41, an assistant cashier, charged with the embezzlement of $24,000, and William L. Hewett, 24, a data processing clerk, accused of embezzling $10,000.

According to FBI affidavits, Mr. Palaez, Mr. Peters and Mrs. Housh have made statements admitting to the embezzlements.

A spokesman for the bank said that the five employes have been relieved of their duties and that the bank, with $18 million in assets, will remain open. Officers of the First National Bank of Tampa, a correspondent of the Tampa Bay Bank, have taken over operations of the troubled institution. ■

Safety bill . . .

Continued from page 1

Widespread Democratic support for the Johnson safety proposal and a Nixon bill following it leaves only the problem of working out a compromise.

While Nixon Administration views differ greatly from those of the Johnsonian, it is thought that Capitol Hill Democrats will not risk killing the measure altogether by trying to bend it into the hardline approach endorsed by the Johnson Administration. Instead, Democrats are expected to be satisfied with the foot in the door granted by Mr. Nixon and then sit back and wait for another liberal administration to amend some teeth into the law.

President Johnson endorsed a bill that critics said would have granted the secretary of labor czar-like power over industry.

President Nixon endorses an approach that would give preference to enforcement by state agencies rather than the Federal branch. He wants to establish a national board to develop safety standards, and institute an "orderly process" for the development and promulgation of these standards and implement machinery for consideration of views from interested parties. State aid is expected. ■

NLRB . . .

Continued from page 7

"To accept the trial examiner's view that a retired employe is a legal stranger to the bargaining unit would require us to overlook obvious realities of human behavior as well as clear national policies which reject the view that workers are human machines who, when their economic utility diminishes, may be cast aside and forgotten," the NLRB stated. ■

info for buyers

Info for Buyers offers material that *Business Insurance* believes will be of value to its readers. The complete name and address of each supplier of information is listed so that readers can write directly to the publisher, simply saying that they saw the item in *Business Insurance*.

Readers are invited to submit items for inclusion in this column. A sample of the literature should be sent to: Info for Buyers, *Business Insurance*, 740 Rush Street, Chicago 60611.

• An illustrated 16-page booklet has been released by the sprinkler division of "Automatic" Sprinkler Corp. of America. **The High Cost of Burning** describes, through statistics and specific examples, how sprinkler systems can pay for themselves through reduced insurance premiums. The item also examines the possible advantages to companies of leasing fire protection systems. Methods of analyzing and protecting against special hazards are also described. Address requests to John P. Donnelly, director of corporate communications, "Automatic" Sprinkler Corp. of America, 722 Illuminated Bldg., 55 Public Sq., Cleveland, O. 44113.

• The public information office of Underwriters' Laboratories Inc. has made available an illustrated brochure that explains how the non-profit laboratory tests for public safety. The literature explains the significance of the UL symbol on a product and how its use is carefully controlled. For a free copy, contact the public information office at 207 E. Ohio St., Chicago, Ill. 60611.

• **Recommended Safe Practices for Outside Storage of Logs** (NFPA No. 46B-T), a new, tentative text designed to minimize the fire hazard in log yard storage areas, has been published by the National Fire Protection Assn. The 16-page work, which does not yet have official status, resulted from requests of industries that use logs and on occasion must store them for various periods of time. Provisions of this work apply to log yard areas containing saw, plywood and pulpwood logs stored in ranked piles. The text covers controlling the arrangement and spacing of log piles and exposures to and from these piles, adequate fire prevention and protection, and prompt detection and suppression of fire. Copies of the item are 75¢ each from the association at 60 Batterymarch St., Boston, Mass. 02110.

• Honeywell Inc. has compiled information on the use of computers in transportation in a booklet concerning a railyard switching system built by Wabco. There is the possibility that the switching system helps reduce accidents in the yard, although there are no statistics available. To obtain the booklet, contact Honeywell's computer control division at Old Connecticut Path, Framingham, Mass. 01701.

• A new employe and association-member benefits program, to help the small businessman or trade association manager compete for people or members at little or no cost, is described in **Pick and Choose Personalized Insurance Protection Plans.** Published by Bankers Life & Casualty Co., the color brochure explains various coverages and options and lists ways in which other organizations have used the program to strengthen employe/member relations. A worksheet is included. Write George H. Hunter, Dept. P.I.P., 4444 W. Lawrence Ave., Chicago, Ill. 60630.

• The Administration on Aging has released a publication entitled **Handle Yourself with Care.** The 46-page book is an instructor's guide for an accident-prevention course for older Americans and would make a useful employe handout or could be explained in classes through the company personnel or benefits department. The item is 50¢ and is for sale through the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402.

• **Getting More Mileage from Profit Sharing: How Better Reporting Can Help** is a booklet by Hewitt Associates, Libertyville, Ill. 60048. It relates, in outline form, the need to report to employes, what should be reported and how to make the reports. Copies are free from Hewitt Associates.

• A 32-page book, illustrated with charts and tables, has been published by the AFL-CIO, Department of Social Security. **Security in Time of Need** explains the role of trade union institutions in these categories: old age, survivors, disability and health insurance; public welfare; workmen's compensation; unemployment insurance, and health programs. The book is designed to review not only the past but also the steps which the AFL-CIO feels must be taken in the future to complete this country's social welfare structure. Write for publication #145 from the organization at 815 Sixteenth St., N.W., Washington, D.C. 20006, in care of Bert Seidman, director.

• A tamper-proof screw system, developed by Pan-L-Fast, is described in its booklet **Pan-L-Fast Systems.** The system is re-usable, but can be permanently installed by torquing the screw and filling the head. Filling the head also enables easy detection of any attempts to remove the screw. To receive the bocklet, write I. Schulman Pan-L-Fast, 13161 Sherman Way, North Hollywood, Cal. 91605.

• Copies of a four-page article by Warren G. Brockmeier, manager of client services for EBS Management Consultants Inc., are free by writing the group's risk management department, research section, 100 Church St., New York, N.Y. 10007. **Settling Losses before They Occur** deals with seven common causes of uncertainty in loss recovery and is limited to property losses and not concerned with third-party claims.

• In 1968 a bill requiring that adequate security measures be taken by all financial institutions under the jurisdiction of Federal regulatory agencies went into effect. One of the security standards called for was automatic recorded visual surveillance for all banking areas carrying on cash transactions. A closed-circuit tv video surveillance system, providing 60 hours of continuous bank surveillance, has been jointly developed by Diebold, Inc. and the Ampex Corp. The videotape recorder can scan a complete line of teller stations, providing surveillance for up to two weeks on a single role of tape. For further information write Jay DeBow & Partners Inc., 40 E. 49th St., New York, N.Y. 10017.

• **Amerada** Glass Co. has released a 12-page booklet concerning its various types of glass, which are designed for: sound control, glare elimination, heat exclusion, bullet resistance and defense, security and ultra-violet ray fade protection. Information is also available from Amerada on 25% to 50% insurance premium reductions for buildings whose contents are protected by Secur-Lite glass. The company is located at 2001 Greenleaf Ave., Elk Grove Village, Ill. 60007.

• A six-page brochure and accessory list is available from the Alarm Lock Corp. concerning its **Series 2000 Monitor Console.** Write the corporation at 33 Powerhouse Rd., Rosyln Hts., N. Y. 11577. The unit is connected by low-voltage wiring to the doors in question and unauthorized opening of a door or cutting of a wire results in a buzzer alarm or flashing light on the unit.

• A 27-page booklet, illustrated with 11 charts, has been published by American Credit Indemnity Co. of New York. **Signs of the Times** looks at economic events in the U.S. since 1951 and their effect on sound business management. It is free by writing the company at 300 St. Paul Pl., Baltimore, Md. 21202.

• Specific measures required to assure continuity of corporate management in a post-disaster period must include a system to protect vital documents. **Protection of Vital Records** is a 24-page publication prepared by a special committee of the Assn. of Records Executives and Administrators Inc. It enumerates, among other things, the information required to develop a program: (1) determination of what information is vital; (2) knowing what records reflect the information, and (3) learning how to protect the records. The booklet may be obtained from the Department of Defense, Office of Civil Defense, Washington, D.C. 20310.

• A 16-minute film, in color, has been released by the American Red Cross. **Breath of Life** shows scenes of mouth-to-mouth resuscitation drills and could be used for emergency first-aid employe-training classes. The film is for sale and price information is available from your local Red Cross office.

• Blue Shield has published a color-illustrated book, **Drug Abuse: The Chemical Cop-out.** The item is based on authoritative research and is aimed at dispelling the romantic illusions of drugs and separating the facts from the myths for both adults and young people. A pertinent comment from Dr. Alfred Freedman of the New York Medical College is included: "It's not so much the physical dangers of drugs which do exist or that they (young people) will become criminally insane, which is ridiculous, but rather it's the fact that they are developing an inward reality that is most meaningful to them rather than maintaining a concern with society in general. We are in very difficult times, it seems to me, and the participation of everyone, particularly the younger people, is extremely important. If the focus of their lives becomes centered upon drugs, which often happens, then I think we are losing something." The book is available at 13¢ per copy by writing Frank Taylor, Dir. of Advertising, National Assn. of Blue Shield Plans, 211 E. Chicago Ave., Chicago, Ill. 60611, and mentioning that the item was seen in *Business Insurance*.

Truck cargo thefts at staggering high

NEW YORK—The National Industrial Conference Board conference on crime and the corporation here was told that thieves are stealing a staggering $500 million a year in truck cargoes.

Claude M. Hamrick, McLean Trucking Co. counsel, told the seminar that this loss applies only to the regulated carriers. Thefts from private trucks are believed to be as great.

Mr. Hamrick asserted that the average truck theft loss last year amounted to $20,000, up from the $10,000 a decade ago.

These losses, to be sure, are costly to business and industry as well as to the trucking industry itself since they inevitably result in higher costs, particularly in increased insurance premiums.

Such unscrupulous activity also serves to divert millions of dollars worth of goods and materials annually from legitimate markets into underworld channels.

How serious is the element of truck hijacking in 1969?

Mr. Hamrick commented that New York City police records disclose some 1,000,000 truck hijackings last year. These were mostly vehicles containing cigarettes, liquor, clothing, appliances and household goods. This recent surge in truck hijacking, in Mr. Hamrick's view, can be attributed to thieves' belief that hijacking is much safer than, say, bank robbery.

Hijacking can be traced to these pertinent elements: lax security measures at docks, terminals and warehouses; infiltration of organized crime into the transportation industry; pronounced dishonesty on the part of employes; lack of union cooperation; difficulties in prosecuting offenders and an apparently "easy" market for stolen goods.

ONE SEMINAR participant remarked that many of his own employes regularly buy stolen goods at underworld outlets in several major cities where he maintains branches.

Mr. Hamrick added that retailers are all too often eager to purchase stolen goods at low prices for subsequent resale in the legitimate market.

"It is my opinion," he said, "that most of the truck hijackings are carried out by professionals. It seems abundantly clear that or-

Continued on page 16

Florida regulator, state rep rapped; probers eye Mafia-ex-insurer link

MIAMI—Tremors from the fall of a Miami insurance company have jolted not only the Florida Insurance Department but the state legislature as well.

Insurance department employes have been questioned after an executive of the insolvent State Fire and Casualty Co. refused to tell a senate hearing whether he had financial dealings with any of them.

State Insurance Commissioner Broward Williams, himself criticized for waiting so long before shutting down the failing company, said the employes signed statements denying payoffs.

AT THE SAME time, units within the Florida house announced an investigation into the lucrative dealings the chairman of the house insurance committee enjoyed with State Fire in its final months. That chairman, Rep. Carey Matthews, served as vp and general counsel of the now bankrupt firm, collecting more than $200,000 in fees from State Fire before it was forced into receivership.

The investigations were spawned by testimony before U.S. Senator Phillip Hart's subcommittee on anti-trust and monopoly, which is looking into recent insurance company failures.

Commissioner Williams said every department staff member who ever dealt with State Fire swore they had never taken money from company representatives.

BENJAMIN DOBSON, State Fire's president, took the Fifth Amendment in refusing to answer whether he had ever given or lent money to anyone in the department.

"I can only conclude that the reason for this insinuation was an effort to discredit our investigation of the fraudulent dealings of this company," declared Mr. Williams.

"I was told when you fight with the Mafia, they'll fight back."

Mr. Williams, also summoned to testify before the subcommittee in Washington, blamed State Fire's troubles on organized crime.

He testified that there was evidence of a plan to flood the country with State Fire's financial guaranty bonds.

Some of those bonds, testimony has indicated, were used in obtaining loans, with some of the borrowed money going to New York Mafia figure John A. Masiello Sr. Mr. Masiello, identified to the New York Investigations Commission as a loan shark, reportedly received $181,500 on one such loan.

Mr. Williams told the subcommittee that Federal safeguards are needed to prevent racketeers from muscling into the insurance business. He mentioned the manipulation of over-the-counter stocks as one device used by the Mafia to move in on legitimate businesses.

The National Assn. of Insurance Commissioners, he added, is compiling information on the activities of underworld figures to be disseminated to all state insurance commissioners and law enforcement agencies that request it.

Mr. Williams has been criticized for waiting too long to force the insurance firm out of business, while he contends his agency was waging a desperate effort to keep the company from going down the drain.

When the insurance commissioner first began his investigation several years ago, his staff members reported, State Fire was laboring under a deficit of about $1 million. But by the time a judge in Miami ordered it into receivership this spring, it was $8 million in the hole.

Mr. Williams said most of the money apparently was diverted out of the company in its final months, when persons he says were connected with the Mafia got into its management.

Late in its long and troubled history, the insurance firm was acquired by a company called Bar-Bal Inc. A Securities and Exchange Commission enforcement attorney told the Oklahoma Insurance Commission at a public hearing last October that Bar-Bal bought controlling interest in the Miami company through stock it listed as being worth $1,225,000.

MR. WILLIAMS identified Emil Tucker, George Henry and Peter Rugani as officials of Bar-Bal. All three were called to testify before the Hart subcommittee.

The insurance commissioner said all three signed the financial guaranty bonds, although his office had advised the company that it could not issue such bonds.

Earlier, Mr. Tucker told the New York Investigations Commission that he and his partners acted as middle men in a transaction in which State Fire issued bonds to guarantee three loans totaling $350,000. John Masiello Sr., he told the commission, received $181,500 of the loans, while Mr. Tucker took $35,000.

Mr. Masiello and his son, John Jr., have been indicted in New York on several charges including bribery.

New York authorities say the pair received most of $550,000 loaned by the Royal National Bank of Brooklyn on paid-up policies issued by State Fire and Community National Life Insurance Co. of Tulsa.

A Federal grand jury has been convened in New York to look into Mafia connections of Community National Life, a defunct Oklahoma company that did nearly half of its business in Florida.

The State Fire case, which rocked the Florida insurance commissioner's office, also has had repercussions in the Florida legislature.

Fred Schultz, the house speaker, has promised an investigation of Rep. Carey Matthews' involvement with State Fire.

"IF IT WARRANTS action, we certainly will take it," Rep. Schultz said after reading reports of testimony given by Sen. Hart's subcommittee linking Rep. Matthews with State Fire.

A week earlier, Rep. Scultz had said that Rep. Matthews, as chairman of the house's insurance committee, would head a probe of Florida insurance problems.

"We certainly want to clear up any cloud which might be hanging over Rep. Matthews before we decide what the makeup of the committee is going to be," Rep. Schultz said.

Rep. Jack Savage, said Rep. Matthews, said he would move "as quickly as possible" to acquaint himself with all details of the case and "take what steps are necessary."

The house ethics committee also has promised an investiga-

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Travelers writes $20 million all-risk for contractor at Yukon mine project

By ALLEN M. WIDEM

HARTFORD—The Yukon Territory, a 200,000 square-mile, right-angle triangle bordered on the west by Alaska, on the east by the Canadian Northwest Territories and on the south by the Province of British Columbia, still contains a proliferation of land riches.

The Yukon, for example, is responsible for some 20% of Canadian silver. Iron deposits of considerable size were uncovered some time ago and now there is pronounced interest in oil potential in the northern region.

An asbestos deposit is situated near Dawson City. A major copper development is near Whitehorse, the state capitol.

DURING THE World War II era construction of the fabled Alaska Highway, Whitehorse's population jumped from a hardy 754 to 40,000. At present, the community contains 7,000.

Some 150 air miles to the northeast of the capitol, Anvil Mining Corp. of British Columbia (an affiliate of the Cyprus Mine Corp.) is opening a mine.

The Ralph M. Parsons Construction Co. of Canada Ltd., is general contractor for this project, part of a $56 million development program to produce lead and zinc concentrate from Yukon Territory mines.

THE TRAVELERS Insurance Cos. of Hartford carries workmen's compensation, comprehensive general liability and automobile liability coverage on Parsons.

Getting into the explicits, a Travelers spokesman told *Business Insurance*: Workmen's compensation lists employer's liability limit of $2 million; comprehensive general liability is $10 million; builders all risks totals $20 million (deductible, $1,000); ocean marine and transoceanic air and war risk breaks down to $1 million on any one vessel, $500,000 on any one aircraft; automobile liability contains $100/300,000, bodily injury; $25,000, property damage; and aviation liability lists $100/300,000, bodily injury, and $100,000, bodily injury passenger per seat.

William J. McGregor of the Travelers field engineering staff, normally based in Vancouver, has been representing the local insurer at the mine.

SIGNIFICANTLY, the Travelers has not reported losses on its Parsons Construction Co. coverage.

Mr. McGregor has conducted what he calls "tool box" meetings for the Parsons working force, cautioning against frost bite, urging wearing of protective clothing and care of vehicles, listening to talk of potential building hazards and suggestions on how to best cope with them.

He found the bulk of the working force were natives of the region, hence more familiar with the terrain than would be "imported" laborers from the states, for example.

At one point, the problem of frozen water lines was overcome.

"UNTIL NOVEMBER, 1968," he said, "the only way into this site was by plane. But now a new bridge has been erected over the Pelly River to tie in with the new road from Carmacks."

Arrangements have been made with the Canadian government for the provision of roads, power facilities and assistance in the construction of a townsite to accommodate, at the outset, 1,000 to 1,500 persons.

Mr. McGregor, visiting the site about four times a year, gets stranded for days on end because of what the natives fondly allude to as "inclement weather."

When winter comes—and it approaches with deadly regularity in the Yukon—temperatures can range from 40 to 60 degrees below zero.

DAYLIGHT BREAKS at 10 in the morning; darkness begins falling by 3 in the afternoon.

Over the past year and a half, the mine crew has been clearing away the overburden (i. e., the earth and rock above the ore lode). By last February, all of the site buildings had been completely enclosed. Actual mining will start in October.

The Travelers is not a newcomer to insurance coverage in the frozen north.

Twenty-five years ago—in the midst of American participation in World War II—the Alaska Highway (also known as the Alcan Highway) figured in Travelers business. The highway was called, at the time, the greatest achievement of the U. S. Engineering Corps since the days of the Panama Canal.

AN ARMY OF 10,000 soldiers and 6,000 civilian workmen succeeded in slightly more than six

Continued on page 18

opinions

To soar like an eagle

Maybe the euphoria we experienced watching man set foot on the moon hasn't worn off yet, but we don't have much sympathy with those who say we should have spent the moon money for earth-bound problems.

Hunger and poverty are of course items that must be dealt with on a priority basis, but up to now we haven't noticed any great national commitment to deal with these problems.

In fact we haven't noticed any great national commitment to much of anything lately. Technological advancements aside, we think the greatest benefit of our space program will be to rekindle a sense of pride in ourselves and of what we're able to accomplish.

The old adage, "The sky's the limit," will have to be rewritten with the moon landing. As Ray Bradbury, the science fiction writer, pointed out on CBS tv's coverage of the moon shot, man has at last found a substitute for war. Now, he said, we can direct our energies to conquering space rather than conquering each other.

We like the sentiment, and although one brief walk on the moon does not a nobler spirit make, we're hopeful that striking out at one another will soon seem like a waste of time compared to striking out at the stars.

Workmen's compensation, employe comfort department

In our last issue, we outlined some of the late rulings in Illinois on workmen's compensation. These rulings are typical of the attitude of the court on various situations.

In the realm of personal comfort of the employe, the courts are lenient in granting compensation. For example, in response to a call of nature, a mine employe was last seen walking in the direction of an abandoned ditch, which was occasionally used for toilet purposes. When his body was found, it was determined that death was caused by gas that had settled over the ditch. The court granted compensation. (*Grola* vs. *Industrial Commission*. 338 Ill. 114.)

A night watchman was in the habit of building a fire for his own comfort. This was with the knowledge and consent of his employer and in the absence of the availability of other services. He was found lying in the fire. Compensation was granted. (*Ervin* vs. *Industrial Commission*. 364. Ill. 56.)

Employes are often injured in recreational activities sponsored by the employer. Take two baseball game cases. In one, the employe participated in an industrial league team sponsored by the employer. The employer allowed time off from work for players who were working on the night shift. The employer also bought tickets for the employes to attend the banquets and displayed trophies in the shops.

The baseball playing employe injured his arm while playing shortstop. This was held compensable.

In another baseball case, the employe was injured playing baseball on a team that the employer did not oppose. The employer agreed to contribute equipment as well as to post a notice by a company foreman requesting the employes to sign up for the team. The employes had been practicing on a vacant lot during lunch hour for three weeks before the notice was posted. Held, not compensable. (*Hydryline Mfg. Co.* vs. *Industrial Commission*. 19 Ill. 2nd 44.)

As you know, an employe injured on his way to work is not generally entitled to compensation. But there are exceptions. In this case the employe crossed a fence at the company's property line on his way to work, and while proceeding toward a boxcar where the time clock was housed, slipped and injured his knee. Because many employes took this route to the time clock, this accident was held compensable, (*Northwestern Steel & Wire Co.* vs. *Industrial Commission*. 38 Ill. 2nd 441.)

On the other hand, an employe was laid off because there was no work. When he did work on construction jobs he was paid for time spent going from one job to the other. On the day of the accident, the employer said he could go to another location to see if he was needed to help unload a cargo. On his way to that location he was injured in an auto accident on a public highway. It was held not compensable. (*Fay T. Moore Co.* vs. *Industrial Commission*. 35 Ill. 2nd 347.)

1966 Social Security Benefits: Factors related to benefit entitlement

	Disabled workers who get benefits	Disabled who don't get benefits
Number (in thousands)	842	4,475
Total percent	100%	100%
Race by percent		
White	86	78
Nonwhite	14	22
Education by percent		
Less than 8 years	38	36
8 years	20	16
High School, 1-3 years	19	20
High School, 4 years	15	17
College	7	10
Region by percent		
Northeast	22	18
North Central	22	24
South	40	42
West	15	16

Several sociological factors determine eligibility for Social Security benefits, as this table indicctes. Environmental factors, the data also suggest, are a major consideration in explaining benefit entitlement.
—Source: U.S. Department of Health, Education and Welfare

Fund managers are expert

While gathering information for a recent Following the Funds column, we asked a corporate investment specialist what most pension and profit-sharing fund managers are planning to invest in for the near future. He replied by saying, "I don't know what everybody else is going to do because there are no published reports."

Other fund managers and investment specialists we've talked with have echoed that statement. They watch the ups and downs of the market, read technical papers and pick up what information they can at conferences or from counselors. Many of the fund managers, in fact, were surprised that we were interested in their activities at all.

But purchased services—outside investment advisors, consultants, as well as outside fund managers—are a strong force in the pension and profit-sharing fund investment picture. These men consider themselves the experts, they know how to invest a fund into infinity, and they collect their fees accordingly.

In many ways, outside advisors, consultants and managers don't have a bad track record. A recently released study by the Pension Research Council of the Wharton School of Finance and Commerce shows that 70% of those pension funds studied have been well funded and handled.

What is perhaps even more revealing is the difference of opinion between corporate fund managers and these top bankers, both of whom work in the same area. While some fund managers are eyeing tanker loans, lease banks and oil royalties, some bankers are firmly holding to guidelines that all pension fund monies should be invested in common stocks and over 75% of profit-sharing monies should go into the same equities, although reverse is true in a few instances.

The upshot of our investigation for our Following the Funds column indicates that corporate fund managers—no matter what their titles may be—are as expert as their counterparts who advise and counsel them on investments.

It is our hope that published reports in *Business Insurance* on the fund managers' activities will assist them in their important roles.

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for buyers of employe, property and liability protection

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letters

Adds appreciation

To the Editor: I should like to congratulate you on the excellent article headed "Strict safety, usual suppliers' coverage accompany Apollo" on the insurance and safety aspects of the Apollo flight.

This article was most interesting and added greatly to my appreciation of what has been accomplished.

Harrington Putnam
Vice President, American Foreign Insurance Assn., New York, N.Y.

What cost for no-fault?

To the Editor: I read with interest Mr. Rodda's article in the July 7 issue of *Business Insurance* on the problems of developing a better automobile insurance system.

One area he didn't explore is the effect of these proposals on the profession of fleet safety engineering. Much fleet safety effort is directed toward superior investigation and determining who caused the accident, with the goal of preventing a recurrence. However, what good will it do a fleet to work at accident prevention if automatic payment is made regardless of liability?

If it is going to cost a fleet a higher insurance premium whether its driver caused the accident or not, it is hardly worth the extra effort required to find the cause. Of course, accident prevention work could still help avoid the close ones by selling the idea of defensive driving, and in a large case there would still be the need for serious investigation; but, hopefully, these would be in the minority.

To a fleet engineer, there is a vast futility in the assumption that "accidents are inevitable," just as there is the same assumption about occupational injuries. Accidents and injuries *do* yield to sound safety management. The no-fault systems might cut down on nuisance claims and the escalation of damage estimates, but at what a cost to fleets and the economy as a whole! For, "inevitable" accidents can only increase in numbers and expense.

Frank M. Williams
Director of Safety, Pacific Intermountain Express Co. Oakland, Cal.

Editor's Note: The April 28, 1969, issue of Business Insurance *reported that the now-dead, semi-no-fault auto insurance reform package proposed in Connecticut would not affect fleet insurance coverage.*

This package, called the Cotter plan because it was introduced by Connecticut Insurance Commissioner William R. Cotter, has been a model for other states that have proposed reform legislation to deal with the crisis in auto insurance compensation. Under the Cotter plan and in the case of a fleet-personal passenger auto accident, in which the fleet driver was at fault, the driver of the personal passenger auto would collect his first-party claim from his insurance company, which would then subrogate against the fleet operation.

If the driver of the personal passenger auto is at fault in the same type of circumstances, the driver of the fleet vehicle would not collect immediately. Liability would be settled by tort law procedures.

Retirement plan facts

To the Editor: The information contained in *Business Insurance* is extremely valuable and of aid

Continued on page 15

"This $300 suit is going to cost this hotel $300,000 before I'm through."

When a guest makes noises like that, you don't need an insurance policy. You need an insurance company. And, preferably, one with guts.

Consolidated is known as one of the tough, no-nonsense companies. But with a difference. We've got guts enough to relax and try a little tact.

For instance, our fashionable friend, here, became our fast friend when presented with a generous gift certificate from an exclusive haberdashery.

So you'll find that getting everybody—including outspoken claimants—off the hook is usually our approach to claims. And keeping everybody-including hotel engineering departments—on their toes is our approach to accident control.

A lot of the latter keeps us in fighting trim for the former. And a lot of both keeps our loss ratios low.

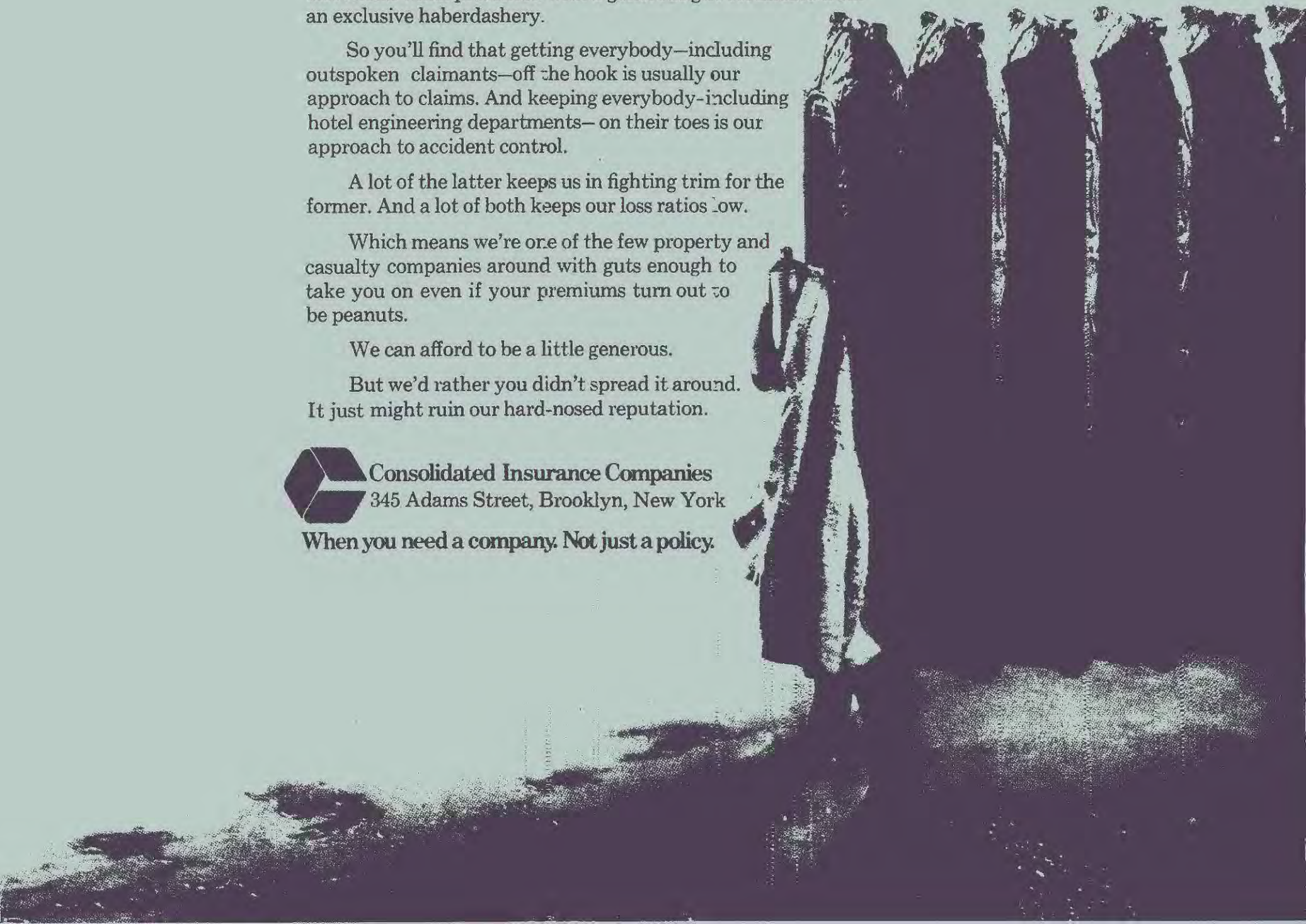
Which means we're one of the few property and casualty companies around with guts enough to take you on even if your premiums turn out to be peanuts.

We can afford to be a little generous.

But we'd rather you didn't spread it around. It just might ruin our hard-nosed reputation.

Consolidated Insurance Companies
345 Adams Street, Brooklyn, New York

When you need a company. Not just a policy.



Northern Trust's blanket bond pays on former employe's embezzlement

CHICAGO—Aetna Casualty and Surety Co. has paid Northern Trust Co. $398,000, the total amount embezzled by a former bank employe over a one-year period, Thomas H. Lueck, Northern's insurance manager, told *Business Insurance*. The embezzler, Federal authorities said, was a compulsive gambler.

The payment was made under provisions in the bank's blanket bond cover, Mr. Lueck said.

The ex-bank employe, Edward J. Chanda, 33, has been convicted of embezzlement and sentenced to three years in Federal prison. He was a 15-year employe of the bank and earned $8,400 a year when the thefts were discovered.

After pleading Mr. Chanda guilty to Federal charges, his lawyer told a district court judge: "In the end it wasn't the matter of winning or losing for (Mr.) Chanda He just had to bet. When apprehended he was betting $150,000 a week." (While the amount embezzled was $398,000, Mr. Chanda had bet close to $6 million, Federal authorities said.)

HIS ALLEGED accomplice and middleman bookie, Philip G. Johnson, 33, was convicted and sentenced to 10 years in jail. A third man, Robert W. Likes, 30, alleged by Federal authorities to be a top South Side Chicago bookie, faces charges involved in the embezzlement.

Nicholas Etten, assistant U. S. attorney, told *Business Insurance* the embezzlements were accomplished by internal "check kiting." In essence, Mr. Etten said, Mr. Chanda worked the thefts this way:

By having access to large, seldom-used checking account figures, he would debit one such account to cover his gambling debts. He would then credit a personal checking account held by Mr. Johnson.

At the end of the month, when bank statements were sent to customers, Mr. Chanda would send an advise of credit to the account holder he had just debited, telling him an error had been made and that the matter would be rectified in the next monthly statement.

THE FOLLOWING month, Mr. Chanda would repeat the process by debiting another large, seldom-used account, this time for an amount equal to the sum taken from the first account plus what would be needed to cover more bets. He would then credit both the first account and Mr. Johnson's account and send out an advise of credit to the account holder he had just debited that an error had been made.

This process was repeated until a $398,000 shortage was discovered. Some of the accounts Mr. Chanda embezzled money from had balances of $500,000 to $1 million, according to Mr. Etten.

Mr Chanda testified that he believed he would be caught and kept a complete record of the nearly $400,000 he stole from the bank. He turned these records over to the Federal Bureau of Investigation.

In addition to placing bets for Mr. Chanda, Mr. Johnson built up a $207,700 account in the First National Bank of Evergreen Park and a $172,000 account in the Tri-State Bank of Markham. This was money he had purportedly placed in bets for Mr. Chanda, but, in fact, had kept for his personal use. ■

Ex-Travelers man hit for embezzling

HARTFORD—A seminary student, at one time an employe of the Travelers Insurance Cos., has been ordered committed for psychiatric observation before sentencing for embezzlement of some $76,000 from the firm.

U.S. District Judge T. Emmet Clarie ordered that Joseph F. MacDonald, 27, be committed for 90-days of observation by Federal psychiatrists before the final sentence is imposed.

Mr. MacDonald is faced with a maximum 10-year imprisonment.

A FORMER supervisor for the Travelers railroad claims department in Minneapolis, Mr. MacDonald had been studying for several months at Pope John XXIII Seminary, Weston, Mass., institution for older men desiring to study for the priesthood, when he turned himself in to the FBI (Federal Bureau of Investigation) here.

His legal counsel, Hartford Attorney James N. Egan, disclosed that some $25,000 of the money embezzled (during 1967) has been returned.

After leaving Travelers employ in the autumn of 1967, Mr. MacDonald toured globally, using embezzled funds, according to Federal authorities.

WHILE WORKING for the Travelers, Mr. MacDonald came up with a scheme in which he had railroad survivors' checks made out to nonexistent beneficiaries, according to Assistant U.S. Attorney Paul S. Sherbacow.

Checks for $4,000 each were endorsed and cashed by the accused.

Mr. MacDonald, earlier this year, pleaded guilty to the Federal charge of transporting stolen checks across state lines.

Neatly dressed, articulate, Mr. MacDonald told the judge that he was under medication while embezzling from the Travelers.

He said that a company physician had prescribed the medication because of "chronic fatigue." ■

Tanker that cut cable pays claim

BUFFALO, N. Y.—The Niagara Mohawk Power Corp. has settled for $51,000 its claim against a Cleveland shipping firm, one of whose tankers on June 22, 1968, severed submerged power cables in the Niagara River.

Attorney J. Edmund de Castro Jr., counsel for the power company, claimed that the tanker belonging to Cleveland Tankers Inc. failed to maintain a proper lookout and failed to navigate in a prudent and seaman-like manner.

The tanker severed the cables when its anchor became entangled in the cables and was then raised several times in attempts to free it, according to de Castro. ■

Major fire losses down for 1968, NFPA reports

BOSTON—Records compiled by the National Fire Protection Assn. show that 1968 losses to U.S. industry from major fires were down nearly 11% from 1967.

A spokesman for the fire protection group said that industrial facilities valued at $93.8 million were destroyed during 1968 in 130 large-loss fires—defined as those individually causing $250,000 or more in damage. Most of these fire losses were largely insured losses, the spokesman said.

The total loss figure was a decrease of $11 million from the losses during 1967, when damage from 114 major industrial fires totalled $105 million.

TWENTY-EIGHT of industry's large-loss fires in 1968 cost $1 million or more, and 11 others destroyed at least $750,000 worth of property, according to the NFPA.

The largest loss among all U.S. fires last year occurred Oct. 4 in an industrial complex of 21 mill buildings in Bondsville, Mass.

This fire, which was of suspicious origin, caused an estimated $10 million in damage. A spokesman for the General Adjustment Bureau in Springfield, Mass., told *Business Insurance* that claims are far from settled and probably no one will ever know the total insured loss because adjusters throughout the U.S. are handling individual claims for customer goods.

Other major industrial fires during 1968 included the $3,905,000 fire on Aug. 17 at Tacoma (Wash.) Boat Building Co., which began in an unsprinklered foreman's shack inside the plant, which was sprinklered elsewhere.

ON JULY 25, there was a $3,250,000 fire at the shoe box manufacturing plant of Millin Industries, Lawrence, Mass. Fire also leveled the manufacturing area of a Applied Dynamic Corp. computer plant in Dexter, Mich., causing $2,662,000 damages on Nov. 10.

Swift & Co.'s beef processing plant in Chicago was destroyed by fire on Jan. 10, causing $2,100,000 damages and on May 27, Union Carbide Corp. suffered a $2,000,000 fire loss.

Industrial fires costing $1,500,000 each occurred at two lumber mills: a sawmill at Temple Industries, Tex., was destroyed by fire Jan. 7 when the wet pipe system that might have saved the structure was temporarily out of service; the lumber mill of the Dwyer Division, Publishers' Paper Co., Portland, Ore., was severely damaged Dec. 7 by a fire that began when sparks from a welder's torch ignited sawdust. Another $1,500,000 fire occurred Sept. 28 at the Fruitvale Canning Co., Oakland, Cal., where flames were fed by wrapping material on densely packed cans on closely stacked pallets.

Cost of all large-loss fires in the U.S. during 1968 (including industrial fires) was $314,363,000—$90 million below the previous year's total, the NFPA records show. This property loss occurred in only 487 fires, most of which started as small fires but grew. ■

letters

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in our company planning. We are becoming even more vitally concerned with gaining useful information regarding activities in company retirement plans. One provision of our new union contract requires that we provide a workable retirement plan by May, 1971. Hence, our interest will continue to increase regarding articles pertaining to various retirement plans now in effect.

Neil E. Hansen
Personnel Director, Eberline Instrument Corp., Santa Fe, N. M

Add interest for agents

To the Editor: Your magazine is excellent. Now try to add a little information designed to interest independent agents—yes, you already have some, but I would like to see more.

David S. Bessman
Owner, Bessman Insurance Agency, Detroit, Mich.

london line

British losses mounting on the home front lines

LONDON—Losses by British insurance firms are mounting so heavily that there must be higher premiums on the domestic market in the long run.

Whether this will extend to the competitive field in the United States depends on other factors that underwriters will have to decide for themselves.

These two points stand out clearly in a major survey of the past year's international business, which has been carried out by the British Insurance Assn. on behalf of its 280 members, who represent 80% of that country's insurance business.

UNDERWRITING losses during 1967 on its world-wide record total of $7.5 billion trading account soared to $30 billion from the combined results of fire, motor and accident claims filed in 1968.

This was the largest loss since figures began to be kept four years ago, and the increase means that many premiums are now being raised, although this can take time because of the insurance regulation mechanism in some foreign countries.

Whether the losses will directly affect the bid for business in the U.S., which provides the much-prized dollar income of $1.2 billion for members of the British Insurance Association every year, remains to be seen.

For there is another side to the picture in the large stake that Britain has invested in American funds.

THE SURVEY points out that half the foreign premium income of British insurance companies is earned in the United States, though they have invaded only 5% of its market so far.

It proceeds: "Difficult underwriting conditions and inflation contributed to unsatisfactory results there, but these were well offset by investment revenue on invested funds and reserves. There was bad experience with liability claims, but a light hurricane season and Federal riot reinsurance now protect against catastrophic loss in these areas.

So the loss picture looks different if it is balanced, at least to some extent, by profits from other American sources.

* * *

Commercial crime is being fought so hard in Britain that many robbers are ceasing to attack business buildings, and are changing to thefts from private houses instead.

That is the view of the British Insurance Association, which found that claims from ordinary householders rose by 20% in the past year.

Altogether its members paid out more than $40 million in theft compensation last year, of which $12 million went to private homes.

Latest problem for London police is a series of art thefts from the private houses of wealthy people. But a specialist squad at Scotland Yard has been formed to fight it.

* * *

Phoenix Assurance Company estimates that its premium income will rise this year by $19 million through its acquisition of the Pacific of New York group. The new move should add $25 million to its assets, and increase its surplus by $6.4 million. Phoenix chairman Viscount De L'Isle reports that his group's operating ratio in the USA was satisfactory last year at a time when underwriting results were generally poor. ■

Losses down 13.9%

Estimated dollar losses caused by fire in the U.S. dipped 13.9% in April, according to the National Insurance Actuarial & Statistical Assn. The April loss figure was $169.9 million, down from $197.2 million in April of 1967, and down 2.3% from the March, 1969, loss total of $173.9 million. The association also reported that losses from extended coverage perils—caused by windstorms, explosions and other hazards—totaled $1.1 billion in the 12-month period through April, 1969, down from $1.3 billion in the preceding 12 months.

Cargoes . . .

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ganized crime syndicates, often working with inside help, are deeply involved.

THE McLEAN organization, he revealed, is taking a "long hard look" at its own security procedures and policies as other concerns in the industry are doing.

Special security measures adopted recently by the McLean organization include personnel screening; in-depth lock controls; freight bill controls; communications with law enforcement officials; tighter security around terminals, yards and buildings, and the use of seals on loaded items.

Mr. Hamrick remarked that many companies are now employing, on an increasing scale, trained, experienced law enforcement personnel.

Moreover, the ATA (American Trucking Assn.) has formed a special committee on theft and hijacking. ■

benefit tax slants

Treasury's stock option regulations still hanging

By JOSEPH S. ROBINSON

NEW YORK—Back in April, the Nixon tax reform included a proposal that would spell disaster to compensation deals in restricted stock. Reason: It would kill both the tax deferment and capital gains possibilities. For this reason the Treasury has held off its final regulations on restricted stock options promised before the end of June.

If the proposed change in the rules is turned down or put off by Congress, Internal Revenue may then come down with its version of restricted stock rules. (See Treasury Release TIR—1017—6/20/59.)

This means that there's now complete uncertainty as to the general rules covering compensation plans in restricted stock after June 30, 1969. The present tax breaks might continue beyond the June 30 cut off date. The Nixon proposal (if adopted at all this year) might not apply until after June 30. And the Treasury regulations might also be made effective after June 30. But all this is up in the air.

HOWEVER, this much is clear: The present rules—which allow both tax deferment and capital gains—should apply to restricted stock arrangements made on or before June 30, 1969, and also after June 30, 1969, and before January 1, 1970, provided there is a written plan adopted and approved before June 30, 1969.

* * *

IN THESE DAYS of personal piracy, it's not uncommon for qualified pension and profit-sharing plans to provide that, if an employe switches his job to a competitor, he forfeits his interest in the plan to the extent of the employer's contributions. And it makes no difference if the employe's rights are fully vested.

This point was aired before a New York court when an employe brought suit to recover his pension after he left to join a firm in a similar business. The court ruled that the "plan" established by the employer with its own funds was a mere promise to pay a pension to noncompeting former employes. The express provisions made this condition clear. (See Kumm, 233, N.Y.S. 2d 598.)

* * *

YOU CAN GET tax exemption for a pension plan that allows participants to pull out their *voluntary* contribution with accrued interest, while still employed. Internal Revenue says that such a provision will not disqualify the plan. (See Rev. Rul. 69-277.) ■

Donlon joins CPC

Joseph R. Donlan has joined the staff of Corporate Policyholders Counsel Inc., independent consultants on insurance and employe benefits, Chicago.

Fla. probe . . .

Continued from page 10

tion, but the chairman of that group noted that Rep. Matthews never kept his involvement with State Fire a secret.

Rep. Jack Savage said Rep. Matthews had voluntarily filed a letter with the ethics committee prior to the last legislative session outlining his affiliation with State Fire. There is no prohibition against a legislator representing an insurance company, Rep. Savage noted.

Evidence placed before the Hart subcommittee indicated that Rep. Matthews collected sizable fees from the failing company until its waning days.

A reporter who interviewed Rep. Matthews before the subcommittee convened quoted the legislator as denying rumors that he had been paid $250,000 in legal fees by State Fire.

"GOOD GOD, NO," he was quoted as replying. "Our total billings wouldn't amount to anything like that."

The Senate subcommittee placed in its record a report by an attorney assigned to review State Fire's plight after it was placed in receivership.

According to that report, Rep. Matthews' firm billed State Fire for more than $202,000 in the 15-month period from January, 1968, to March, 1969.

In addition, the report indicates, Rep. Matthews' law firm subleased its offices from State Fire for $3.25 per square foot when it was costing State Fire $4.50 a square foot.

Furniture for the Matthews law office was supplied by State Fire and its telephone lines went through State Fire's switchboard. Rep. Matthews and his partners received free use of duplicating equipment, the services of a receptionist and a conference room.

Because the Matthews law firm was five months behind in its rent when the receiver stepped in, the back rent was requested, the report shows. Rep. Matthews—who said he had not paid the rent because State Fire owed his firm money—responded by billing State Fire for another $34,000 worth of legal services for the month of March, 1969. ■

following the funds

Mutuals sour more on market than pensions

WASHINGTON—Mutual funds seem to have soured on the stock market to a greater degree than did private pension plans in the first quarter of 1969, figures released by the Securities & Exchange Commission showed.

Net purchases of common stock for pension funds hit $1.7 billion in the first quarter, down slightly from the fourth quarter of 1968 but up 37% over the first quarter of last year, according to SEC.

But mutual funds sold off on balance $125 million in stocks during the first quarter compared to net purchases of $965 million in the previous quarter.

Stock purchases in the first quarter by pension plans were $3.9 billion and sales were $2.2 billion, SEC said. Stock buys for mutual funds were $5.1 billion (down from $6.5 billion the previous quarter) and sales were $5.3 billion (down from $5.6 billion).

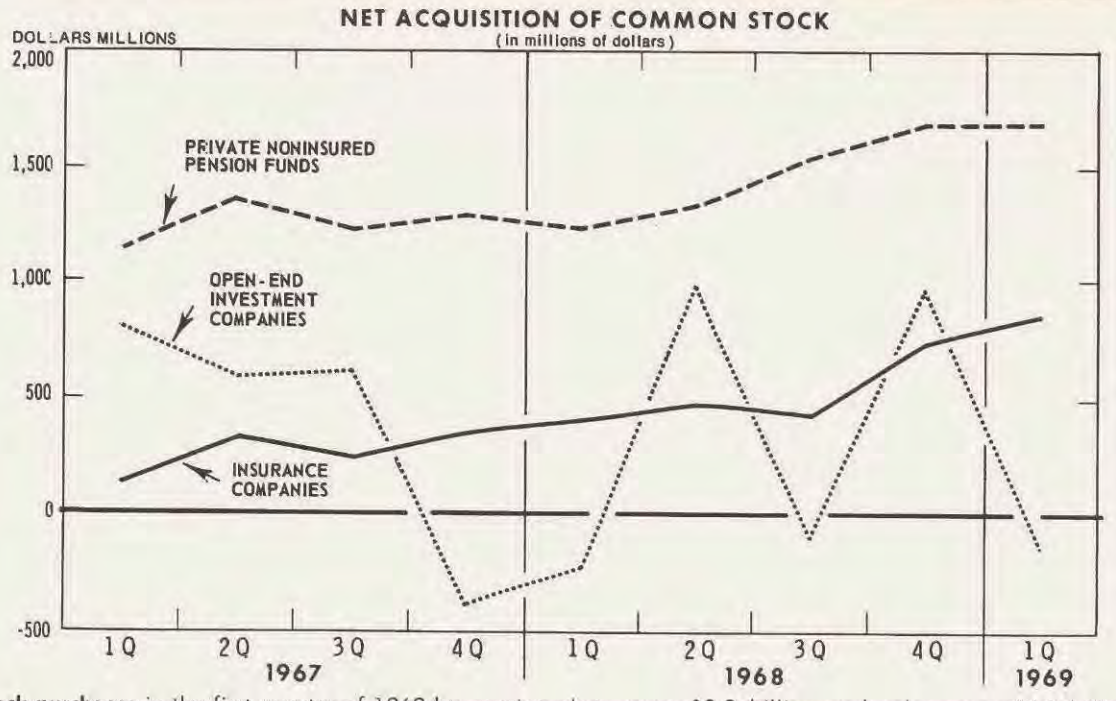
Insurance companies edged upwards in net purchases of common stocks, SEC figures showed. Life insurers added $415 million to their portfolios (via purchases of $875 million and sales of $460 million) and property and liability insurance firms added net purchases of $445 million ($690 million in purchases and $245 million in sales).

For all institutions—pension funds, mutual funds and insurance firms—first quarter trading activities resulted in net common stock acquisitions of $2.4 billion. Combined purchases were $10.7 billion and sales were $8.3 billion. Net purchases, however, were almost $1 billion less than in the fourth quarter but $1 billion greater than the first quarter of 1968.

* * *

WESTINGHOUSE Electric Corp. 1968 pension fund results: Value, $647.6 million; company contribution, $24.8 million; payments, $22 million; number of employes, active and retired, 150,500. Unfunded prior service liability at yearend was estimated at $227 million, down from $234 million in 1967. The company contribution is the amount necessary to provide benefits earned during the year and with prior service liabilities amortized for 30 years.

Westinghouse also reported that more than 22,000 employes are participating a payroll deduction savings program with the value of investments at yearend (the first 18 months of operation) totaling $27 million.



Stock purchases in the first quarter of 1969 by pension plans were $3.9 billion and sales were $2.2 billion, the Securities & Exchange Commission reports.

* * *

PRIVATE PENSION plans are improving in Canada, but it is a slow process.

The latest study of Canadian pension plans prepared by National Trust Co., Toronto, shows that 51 of the 136 plans analyzed provide pensions based on final earnings or final average earnings.

Fifty-seven plans pay benefits based on average earnings or career average earnings Another 21 have uniform or flat benefits; three are money-purchase plans and there are four profit-sharing schemes.

PENSIONS based on earnings at or near retirement will, of course, be higher than those based on earnings averaged over the whole period of employment.

In National Trust's last survey, published in 1961, only 35 of the 157 plans studied had benefits based on final average earnings. There were 83 plans of the career-average type and 20 money-purchase and profit-sharing plans.

The new survey covers 136 plans of 113 employers. As compared with the 1961 survey there are no new employers. However, due to mergers and other changed circumstances some plans reviewed in 1961 were not available for the new study.

The increase in the number of plans based on final earnings rather than career earnings is gratifying to pension consultants who have been warning about the effect of inflation on pensions.

STARTING out with a higher pension at least postpones the bitter effect of the rising cost of living.

To help minimize the ravages of inflation, some pension men have been advocating pensions equal to 100% of final earnings.

While this is a bit rich for some, almost all pension authorities are in favor of plans that in some fashion allow for increases in the cost of living by boosting pension benefits.

Just two plans in the National Trust survey contain an automatic adjustment to take cost-of-living hikes into account.

One provides a 3% consumer price index adjustment, and the other provides an annual adjustment also based on the consumer price index for employed and retired. ■

Yukon . . .

Continued from page 11

months in laying the double-lane highway of 1,671 miles between Fairbanks, Alaska, and Dawson Creek, British Columbia.

The Travelers was insurer of private contractors entrusted with building of Army facilities connected with the highway (airplane landing strips, hangars, garages, classification yards, power stations, supply depots, access roadways, railroads, marine docks, quarries, gas storage tanks, living quarters, first air stations and hospitals) to which were brought American casualties in encounters with Japanese troops in the Aleutians.

Form of coverage at the time included workmen's compensation, public liability, automobile fleet, boiler, commercial blanket bonds and forgery bonds.

MAJOR PROBLEMS included the obtaining of pure drinking water.

Travelers engineers and claim personnel were based in Fairbanks, Whitehorse, Skagway, Watson Lake, Dawson Creek and Edmonton. One engineer's notebook reflected the vastness of territory and terrain: 3,600 miles by train, 4,300 by automobile, 10,000 by airplane and 1,500 by boat.

In one situation at the time, a contractor's wrecker ran into an Eskimo and his squaw who darted across the highway in a dog sled. The woman suffered a fractured leg. The man was slightly injured. The valuable lead dog was killed.

Settling the claim wasn't as easy as something happening in Hartford, by any stretch of the imagination.

The Travelers claim representative, out of Fairbanks (some 2,200 miles from his Edmonton base) drove to Northway to see the Eskimo and learned, on arrival, that the man was in Palmer, where the wife was hospitalized.

En route back to Fairbanks, the gasoline froze. (Later the company engineer on the job learned the trick of adding a pint of alcohol to every tank of gas to overcome this).

WITH TWO companions, he built a smudge in the station wagon, expecting to spend the night in sleeping bags.

Happily, a truck came by and provided transportation to Fairbanks.

The temperature? 60 degrees below.

But the quarter-century-ago episode wasn't all grim.

The Travelers received a claim involving a workman from the states. He was coming out of a latrine when he was struck over the head by a heavy pole.

After the man recovered his senses, he looked up and saw an Indian.

The Indian shrugged and said, "Sorry. I mistook you for a friend." ■

35 of 72 trade papers have bought libel cover

NEW YORK—Almost half of the business publication firms responding to a survey by the American Business Press have libel insurance.

ABP, in a libel questionnaire sent out to 139 publishers, received replies from 72. Of those, 35 said they had libel cover and 37 indicated they did not.

Chief reason for not having libel insurance was that they felt it was unnecessary (26 publishers gave this reason for not buying the coverage). Seven others thought it was too expensive.

One publisher said that libel insurance "appears a little difficult to obtain and a rough estimate of cost indicated that it might be very high. However, we are checking into the matter again as our insurance people indicate they may have a better proposal to offer us shortly."

ANOTHER COMPANY, which also rejected the coverage, explained: "We have never felt the need for this kind of insurance and have therefore never considered it. We are very sure of our technical accuracy."

One major firm, in saying that the insurance was too expensive, added that "the deductible features of most policies make it reasonable to rely upon competent house counsel to review questionable copy."

Publishers who carry libel insurance have had it for anywhere from a year up to 35 years. Six firms have had the cover for about five years, three for ten years, two for 15 years and two for 20 years.

Twenty publishers had libel coverage underwritten by Employers Reinsurance Corp. of Kansas City. Another seven had the coverage through Fireman's Fund or its National Surety Corp. unit. Other insurers used by publishers (one by each firm) were Seaboard Surety, Western Casualty, U.S. Fire Insurance and American Employer's Insurance.

All but three of the publishers indicated that they had not been asked to absorb a rate increase or an increase in their deductible for libel insurance in the last year. Of the three that had increases, one said rates went up 20.2%, another's jumped 4.2% and the third had rates increase 4%. ■

California bill proposes reinsurance

SACRAMENTO—New proposals now before the California state legislature would create two new insurance company associations that all carriers in their respective fields would be required by law to join.

One would provide insurance coverage on the state's riot exposures created under the Federal FAIR plan act and the second would be designed to meet the obligations of any company that became insolvent.

California's constitution prohibits its use of taxes or assessments against carriers, other than the premium tax. Creation of the two new associations would permit funding.

ONE BILL before the legislature would establish a California Riot and Civil Disorders Insurance Assn.

All carriers writing property coverage would be required to belong as a condition of their certificate of authority to do business within the state.

Governors of the association would include the state director of finance, the state insurance commissioner and an insurer.

The association would insure the state against any liabilities it might incur under terms of the Federal Riot Reinsurance Act, through issuance to the state of an insurance policy covering the $30 million, which would constitute a state layer of reinsurance under the Federal act.

The bill provides that up to $1.5 million might be used as premiums for this purpose. The actual premium would be subject to negotiation. ■

Giles on the law

Oregon auto accident case proves need for caution in use of releases

By JOHN W. GILES
Attorney-at-law

WASHINGTON—It hardly seems necessary to remind you that any releases of anyone by an insured where claims are involved should only be executed after careful study by counsel, and this means counsel expert in insurance law.

A recent Oregon case illustrates the importance of this rule. Following an automobile accident that resulted in injuries to the insured's wife and three children, the insured had settled with, and released, the wrongdoer without the consent of the insurer.

The Oregon court said that these acts by the insured violated the subrogation clause of the policy and thus barred recovery against the insurer. The court said that the subrogation clause clearly reserved for the insurer the right to subrogation upon payment under the policy.

If the insured recovered his medical expenses from the tort-feasor, or if the tort-feasor had been released without the consent of the insurer, the insured was barred from recovery under the policy. (*Goetz v. State Farm Fire & Casualty Co.*—Oregon Supreme Court. March 12, 1969.)

* * *

WE ARE NOT exactly happy with a recent decision in Illinois.

In the case the insurer was held to be obligated on a liability insurance policy to pay a judgment against its insured for his intentional misconduct. The policy only covered liability for accidents. The Illinois court said that an "accident" includes injuries caused by wilful and wanton misconduct.

In addition, the insurance company had to pay $10,000, which was allowable as punitive damages. This, said the court, is a proper part of "all sums" that the insured became liable to pay, and these sums were covered by the policy. The court said that the situation must be viewed from the standpoint of the injured party.

The question of accidentality is determined from the standpoint of the injured person, and not from the standpoint of the aggressor. The aggressor may have performed an intentional act, but to the injured party, he has met with an accident. The court cited *Hawthorne v. Frost*, 348 Ill. App. 279. (See *Scott v. Instant Parking, Inc.*, Ill. App. Court, First District Jan. 20, 1969.)

* * *

FLORIDA HAS a statute that provides that if an insured obtains a judgment against his insurer in a Florida court, the judge shall award reasonable attorney's fees incurred by the insured. The purpose of the statute is to discourage the contesting of insurance policies in Florida.

In a recent case, the effect of this statute was tested. The insured sought to recover attorney's fees it had paid to settle certain product liability claims. The U. S. district court held that where the insurance policies were issued in New York and delivered to the insured in New York or Kentucky, insured was not entitled to recover attorney's fees in Florida in the event it recovered a judgment against the insurance company, even though the policies recited coverage on insured's properties and activities in Florida.

If the policies had been delivered in Florida, then the Florida statute would apply. (See *Celanese Coatings Co. v. American Motorists Ins. Co.* 297 Fed. Supp. 598.)

* * *

THE INVESTIGATION of the damaged grove revealed that the total crop would have exceeded 80,000 boxes, which at $1.75 per box represented a minimum valuation of $140,000. This now raised the question as to the insured's compliance with the 80% co-insurance clause. Hence the litigation.

The jury determined that the loss should be based on the insurer's estimate of 40,000 boxes, but the insured was not penalized under the terms of the co-insurance clause.

On appeal the case was decided on principles of agency. The coverage was initially bound after determining the value of the crop. Since an accurate estimate of the crop had not been made, the determination was based on the previous year's crop, in compliance with the suggestion of the insurance agent.

This agent was the local representative of the insurance company's exclusive agency in that area. This made him a sub-agent of the insurer, with at least apparent authority to bind the company by word and deed. Since the insurance company could act only through its agents and sub-agents, it could be bound by their agreements.

The insured here was entitled to accept the agent's method for determining the value of the crop—and that acceptance was binding on the company through its agent. Therefore, the company was not entitled to impose the penalty contained in the co-insur-

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business insurance/perspective

The retailer's liability for products

by William H. Rodda, president,
Marine Insurance Handbook, Inc.
Chicago, Ill.

William H. Rodda

A person who is injured by something that he has bought is likely to sue everybody in sight, as the lawyers say. The retail merchant who sold the product is the purchaser's nearest contact, and he is almost certain to be joined in any suit that is filed.

Courts have tended more and more to hold that the manufacturer of a product should be held liable for any injury or damage that occurs from use of the product. This is contrary to decisions of a few years back which held in many cases that recovery could not be made from the manufacturer because there was no business contact between the ultimate user and the manufacturer. There was a lack of privity between the ultimate buyer and the maker, which is a legal way of saying that recovery could be made only if the injured person had a direct business relationship to the manufacturer. Offhand it would seem that this new version of manufacturer's liability would save the retail merchant from being held responsible. Sometimes it helps, but there are enough exceptions to make the retailer a target for liability suits.

It is considered smart legal tactics for the claimant in a products liability case to sue everybody who had anything to do with the product which is alleged to have caused the injury. The manufacturer, the wholesaler or distributor if the product passed through the hands of such an intermediary, and the retail merchant are all named in a great many suits. The retail merchant who has exercised the greatest of care and who is not actually responsible for the injury often has to defend himself against the suit.

THERE ARE MANY circumstances under which the retail merchant may find that he is held liable for injury by something that he has sold. The retailer cannot maintain that he is merely a conduit through which the goods are channeled to the customer and that he has no responsibility for the product. It has been held rather uniformly that the retailer implies that the goods which he sells are merchantable. That is, by offering the goods for sale, he says to his customers that, "This is a satisfactory piece of goods, in my opinion. It will do the job for which I am selling it. I have purchased this from a manufacturer whom I consider to be reliable." A retailer may be held liable for injury on the ground that he is in a position to reduce the chances of injury by choosing those manufacturers that make only the best goods. Carelessness on the part of the retailer in selecting his suppliers may subject him to liability.

What is merchantability? How far does the retailer have to go in selecting suppliers who can be depended upon to provide safe products? Merchantability of product does not require that it is the very best that there is on the market. A merchantable product is one that is of average quality, it is adequately contained, packaged and labeled. It is fit for the purpose for which it is sold.

This is comparable to basic tort liability under which a person is expected to act as a prudent man would act under the circumstances. It is not necessary that the merchant make exhaustive tests or that he examine every product available to see if it is the best. He is merely required to use reasonable judgment in selecting a product and a supplier that on a reasonable basis appear adequate for the purpose intended.

An important factor in the retailer's responsibility is the adequacy of the product for the purpose for which it is sold. A retail merchant is asked frequently to suggest or to recommend a product for a specific purpose. This situation may be that of the druggist who is asked, "What is good for a headache?" or the hardware dealer who is asked to recommend a good power lawn mower. The dealer reinforces his warranty of merchantability when he suggests a particular product or device. He is not only saying to his customer that, "I think this is a satisfactory piece of merchandise," but he is also saying that it is a good product for the purpose about which the customer inquired.

THERE MAY BE circumstances where the dealer will have to stand the entire responsibility even though the manufacturer is the actual culprit in selling a defective product. A customer sustained an injury from a prune pit in a jar of prune butter. The dealer tried to pass the responsibility back to the manufacturer but he had no evidence to show that he had purchased the prune butter from a particular manufacturer. He was left holding the responsibility for the injury because he could not prove where he got the product which caused the injury. He had warranted as to the product's merchantability by selling the prune butter and he was solely liable for the injury.

The retailer who sells foreign-made goods may find that he has the sole responsibility for any injury. There are many products that are imported directly from foreign countries with no representative of the manufacturer in the U.S. An injured person undoubtedly would make his claim against the dealer from whom he bought such a product. A safeguard to the merchant would be to handle only goods made by firms that have representatives in the U.S. who could be reached by a claimant in a products liability case.

There is a real danger to the merchant in establishing a house brand. His name on the product will probably make him liable for an injury. A distributor of groceries was held liable for a broken dental plate caused by a stone in a can of peas because he had put his own label on the can.

Many of the products liability cases that involve food are based upon the presence of a foreign substance in the food. In the case just mentioned, the stone was foreign to the peas which were in the can. The consumer of the peas would not expect to find a stone while eating the peas. It was held by a court in another case that a fish bone was not a foreign substance in a fish chowder. The defendant's brief in this case urged the court that "fish chowder, as it is served and enjoyed by New Englanders, is a hearty dish, originally designed to satisfy the appetites of our seamen and fishermen."

THE COURT WAS further told that by ruling for the defendant that it "will not only uphold its reputation for legal knowledge and acumen, but will, as loyal sons of Massachusetts, save our world-renowned fish chowder from degenerating into an insipid broth containing the mere essence of its former stature as a culinary masterpiece." The court agreed and ruled for the defendant. The important point here is that the consumer does have to assume the normal hazards of a product. The retail merchant is expected to follow the standards of his trade in offering his goods to his customers.

'An adoption of the manufacturer's advertising by the retailer may make the retailer liable . . .'

There are many acts that a retailer can perform which will increase his chances of being held liable for injury from the products that he sells. The storekeeper's handling of a product may be careless. There are suits as a result of exploding soft drink bottles. A frequent assumption in such cases is that the bottle was not filled properly. It may have been charged too heavily with the carbonic gas, or there may have been a defect in the bottle or cap. The retailer may be cited in the suit also, and it is his obligation to prove that he did not do anything that would weaken the bottle. It might be shown, for example, that the bottle, or a case of bottles, had been dropped while in the storekeeper's custody. Carelessness of the retailer or of his employes in the handling of a product may be the cause of the injury and may make him liable rather than the bottler.

An adoption of the manufacturer's advertising by the retailer may make the retailer liable with the manufacturer if the advertising proves to be inaccurate and leads to an injury. It is not suggested here that the retail merchant refuse to adopt or support the advertising of a large and reputable manufacturer, but is is suggested that he avoid any appearance of adopting the advertising of a supplier whose products are not well known to the merchant.

It has been held by a court that advertising claims must be supported by research and testing on actual consumers. Assurances of safety or failure to warn of potential dangers are likely to be considered negligence. This would be imputed to the retailer if he has adopted or supported the manufacturer's advertising.

THE MERCHANT MAY under certain circumstances actually abrogate the manufacturer's liability. A merchant was sued for death of a customer's cattle. The customer had fed his cattle a product sold by the merchant. The merchant tried to pass the liability back to the manufacturer. However, the manufacturer proved that he had sent to the merchant an unequivocal warning that the product should not be sold for cattle feed. The merchant's act was held to be an independent, intervening act in selling the product for cattle feed after receipt of the warning letter from the manufacturer. It is important for the merchant to read his mail and to pay strict attention to any warnings or instructions that he receives from the manufacturer.

The merchant who sells and installs appliances has the obligation to install them properly and safely. A woman bought a new refrigerator. The delivery man for the store discovered that the electrical cord on the refrigerator was too short to reach the electrical outlet in the kitchen. He asked the woman if she had an extension cord, which she did supply to him so the refrigerator would work. The extension cord proved to be inadequate for the electrical load and a fire resulted. The storekeeper was held responsible for the damage by fire. The court said that the purchaser had the right to assume that the merchant who sold the refrigerator with his knowledge of electrical appliances would not install the appliance in a manner to create a fire hazard, whether the installation was temporary or permanent.

What should a merchant do to make reasonably certain that he will not be sued? An important precaution is to handle merchandise so that no hazard is created by his handling. A reputable manufacturer will stand back of his product if there has been no additional hazard created by the merchant.

THERE MAY BE circumstances where the merchant should warn the buyer of dangers. This may be done by a disclaimer of liability if the product is used in certain ways. This may be done by inserting a warning in the labeling of the product or it may be done verbally in the selling of the product. The merchant who sells cosmetics may find it necessary to warn purchasers that certain products can cause allergic reactions. The courts have generally taken the position that a product may be sold without strong warnings if it is safe for normal people to use.

The courts have recognized that manufacturers cannot as a matter of practical production make absolutely certain that no harm will come to anyone from a product. The standard is based upon what the product will do to a normal person. A salesgirl's statement that a product was "wonderful" was held to be merely seller's talk and without legal significance. This did not create any additional warranty as to the product's efficacy or safety.

There is a doctrine of "strict liability" which has been developing in the courts for several years. It is not as onerous as the doctine of "absolute liability" which makes a person or firm responsible for any injury that results from a device or product, but strict liability does increase the

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perspective

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chances that the merchant will be held liable for injury. Under the common law and earlier decisions it was necessary for the injured person to prove negligence or breach of warranty in order to collect damages in a products liability case. More recently many courts have held that it is only necessary to prove that a defective product caused the injury. This is an oversimplification of the rule, but that is what it means as a practical matter to the merchant who is being sued. Exploding bottle cases tend to be decided on this basis.

It is no longer necessary for the injured person to prove that the bottle was negligently filled or handled. It is merely necessary for the claimant to prove that the injury was caused by the bottle and that the bottle was defective. The fact that it exploded is just about conclusive evidence that it was defective. The practical effect is that the injured consumer is going to collect from somebody. The retail merchant is in the line of fire and should take all of the precautions that he can in preventing the liability from being placed at his door.

ACTIONS THE RETAILER may take to reduce his chances of being held liable for injury include:

- Choose a reputable supplier who can be expected to stand behind his product and accept the liability if it is proved that some product was defective.
- Follow good practices in the handling of products. Make as certain as possible that there is no damage to goods which might cause them to explode or otherwise injure the purchasers. If the merchandise is damaged in handling, either don't try to sell it, or sell it under a clear disclaimer of liability.
- Give a clear warning of danger in the selling of any device that does have a potential hazard. Do this by label or written warning if possible. Supervise sales personnel to see that the warnings actually are given. It is an important point in connection with warnings that the customer is not forced to buy the product. If he does buy in the face of a warning, he does so with some assumption of risk on his part.

The final advice to the merchant who is seeking protection from liability in the sale of products is to make certain that he has products liability insurance. Unfortunately, this is not a simple solution. There are several variations of products liability insurance which must be taken into account by the merchant to make certain that he is fully protected.

Insurance covering the products liability of a merchant is generally divided into three parts. This division is reasonable from the standpoint of the insurance companies because they have to evaluate different situations and make their rate charges accordingly. These divisions can be confusing to the retail merchant who needs protection for all of the situations that may affect him.

THE PRODUCTS LIABILITY insurance that is usually sold to a retail merchant, such as a hardware merchant or clothing store, covers bodily injury and property damage that occurs away from the premises of the insured and after he has relinquished physical possession of the products. This takes care of the injury that results from the exploding soft drink bottle that explodes in the customer's home. It takes care of the property damage that is caused by faulty installation of the refrigerator which causes a fire in the customer's home. In summary, it takes care of the bodily injury or property damage that occurs away from the insured's premises from a product which he has sold.

Attention is called to the words, "bodily injury." What about the much discussed case of the girl who bought a bathing suit of a new fiber which disintegrated when she entered the water, and left her completely unclothed in the presence of a large group of people at the pool-side She was not injured bodily in any way, but she certainly sustained a tremendous embarrassment which she felt justified her suing the merchant who sold her the bathing suit. Her injury was not "bodily," in the terminology of the insurance companies, but was "personal" injury. This takes a special kind of insurance.

The merchant should consider whether his operations are likely to cause personal injury to his customers as well as bodily injury. Included within the area of personal injury are also false arrest (such as the arrest of a suspected shoplifter), libel and slander. The liability insurance coverage of the merchant usually should include personal injury insurance, and this should apply to products liability as well as to business liabilities.

Attention is called to the provision that products liability insurance normally covers bodily injury or property damage that occurs "away from premises owned by or rented to the named insured." Operators of restaurants and other establishments where food or other products are served to be consumed on the premises need a special kind of products liability insurance. This version of the products liability insurance eliminates the reference to premises and covers bodily injury and property damage arising out of the insured's products and occurring after physical possession thereof has been relinquished to others. This would include injury or damage occurring from food that has been served to a patron in a restaurant. But how about samples of food which are passed out to customers in a grocery store? Or how about the merchant who decides to hold a reception from time to time at which he serves refreshments, either free or for a small charge? If the caterer is a bit careless and some of the customers get sick, is the liability insurance company going to consider that this is normal business activity on the insured's business premises, or will they deny liability on the ground that this is akin to a restaurant operation?

THE TIME TO REVIEW the products liability insurance is before the injury occurs. The insurance company divisions of products liability insurance may not fit the exact nature of a retailer's operations. The potential claims against a retail merchant from the use or malfunctioning of the goods he sells are substantial. In fact, they are so serious in connection with some products that the merchant may have difficulty in securing adequate insurance protection. Every facet of the merchandising operation should be discussed with the insurer to make certain that adequate insurance is provided. All reasonable precautions should be taken to avoid occurrences that may result in claims. The loss from customer ill will may be even more expensive than the results of a suit. Knowledgeable insurance companies and agents can advise on precautionary measures. ■

An industry at the point of no return

by E. W. Altstaetter,
corporate director of insurance,
North American Rockwell Corp.,
El Segundo, Cal.

Never in the history of our business have we faced such a monumental task as that presented by today's technology explosion. The vast concentrations of values, and attendant uncertainties as to loss, stagger the imagination. Industrial complexes with several hundred million dollars of property under one roof are a reality. The supersonic Concorde and jumbo 747 are flying. Soon with passengers.

And where is the American insurance industry? Certainly not responding to the challenge. It is still hiding behind a false mask of alleged underwriting losses, using archaic distribution systems, running to the Federal government, or hiding under London's umbrella of reinsurance. An umbrella, incidentally, which doesn't keep off the rain the way it used to do.

The failure of insurance to respond to the requirements of the modern technological society is a case of failing to see the forest from the trees. Fire insurance coverage, capacity problems and retreat of aviation underwriters in the face of "jumbo jets" are merely highly dramatic and emotion-charged examples of this failure.

WHEN THE INSURANCE industry ceases to fulfill its fundamental purpose in the market place, it will suffer the fate of the dinosaur. Private commercial insurance as a useful tool of management is at the point of no return on its slide toward the tar pits. In fact, it may be that the point has been passed. It seems to this observer that it deserves a better fate. If there is still a chance, let's do something about it. Please note that I am not saying, "Watch out, your half of the boat is sinking."

We are all in this together and we had all better start bailing. Such bailing calls for leadership. Dynamic leadership. Leadership by executives of the underwriters, agents and brokers, buyers of insurance and risk managers, regulators and legislators. We must put aside our petty misunderstanding and our selfish interests for the greater good of restoring a once vital industry to its useful and proper place in our economy. It was once said in a time of stress that "we must all hang together or we shall surely hang separately." Never has that had more meaning than for us in the insurance industry today.

Federal regulation and control may be the only hope of bringing together this badly fragmented business. If so, such regulation and control should be exclusive, replacing the 50 states with one jurisdiction, not just adding a 51st.

A Federal department, if created, should involve itself with the financial stability of carriers, guaranteeing their ability to discharge their contract obligations. Minimum standards for mass marketed coverages, anti-trust, and taxation, should likewise be of concern, as should the basic collection and dissemination of data.

Under no circumstances should it become involved in rate regulation, prior approval, file and use, or otherwise.

If private commercial insurance is to again become a viable element of our economy, the supplier and the consumer must be free to exercise the maximum range of options in the design and pricing of the contract.

The infinite number of rating bureaus scattered around the country should stop setting their myriad rates on a five-year behind-the-times basis. They should not be involved in determining gross rates at all. Their operations should be combined under one central organization eliminating wasteful duplication, and taking advantage of the vast data systems capability currently available. The central data bank should collect, reduce and analyze all insurance related data, then prepare and disseminate such information, leaving the individual underwriters, regulators and customers free to draw their own conclusions.

The Justice Department needs to reconsider its apparent opposition to pooling the resources of the industry through joint underwriting operations. For example, if any program of liability insurance for the 747 jets and their sisters is to be created before December, such relief for the aviation pools is essential.

IN FACT THE two major pools must be joined by most, if not all, other major elements of the American insurance industry. Let me emphasize the word *American, USA* companies on a net line basis. No running to London on this one.

This brings us to why underwriters should bother. After all, haven't they been losing money for years? Tons of red ink have come from every source.

But, there is the rub. That position is "green eyeshade and blinders" nonsense. It is typical of most insurer and broker management which permitted the deterioration in the system to reach its present advanced state.

I say *system* for a reason. The insurance mechanism is actually a series of subsystems within a series of ever enlarging systems, known as financial management.

Underwriting is one element of an insurer's operation, as is loss prevention engineering, the claims department, printing, statistics and the investment department. It is as silly for insurance management to cry about underwriting losses, disregarding the favorable cash flow between earned premiums and incurred losses and its investment results, as it is for a banker to say he is losing money on his checking account operations, therefore, the banking business is bad, and never mind what the trust department did.

OTHERS SEE THIS point even if some insurance company executives refuse to see it. Saul Steinberg, president of Leasco, draws an analogy to American Express trying to ignore the float created when it sells travelers checks and saying its check writing operation is a loser.

As eminent a figure as Dean Sharp, assistant counsel for the Senate antitrust and monopoly subcommittee, is quoted as saying, "In many instances the insurance companies claims of underwriting losses are statutory in nature, but when losses are adjusted, many times they become profit."

Certainly National General didn't think the Great American was doing badly.

There was a headline in the Los Angeles Times of May 5—"INA looking for way to spend 900 million Cash—Profitably." Parenthetically—not in the insurance business. Why not; where did that cash come from if not its policyholders?

Just for fun listen to some figures.

The financial results of 11 property and liability companies for the 10 years 1958-1967 were:

Premiums earned	$92.8 billion
Losses incurred	61.0 billion
Underwriting expenses	32.5 billion
Underwriting loss	731 million
Net earnings from investments	7.2 billion
Other income	311 million
Total gain	6.8 billion
Federal taxes incurred	658 million
Dividends to stockholders	3.6 billion
Gain from miscellaneous surplus items	4 billion
Increase to policyholders surplus	6.6 billion

Now you tell me the insurance business is unprofitable.

There is a crying need to examine the rules for measuring insurer performance and profit, used to determine how and when to commit their resources.

Absolutely, the business must continue to be profitable, as it truly has been. It must also be allowed to grow and earn a return acceptable to its owners. No thinking consumer would have it otherwise.

The system needs:

- To be considered as a system
- Be measured on a true basis
- Eliminate the inefficient and obsolete
- Centralize its data gathering
- Be regulated realistically

New, young, enlightened and vigorous leadership must come forward to achieve these things *now*. ■

This article was adapted from a speech given to the Central Ohio ASIM chapter in May.

The odds were against it.

We've heard it before. We'll hear it again. That's what they always say about freak accidents that swallow American Corporations: "The odds were against it." And they're usually right.

But being right doesn't pay for the catastrophe.

That's what CNA excess coverages are for—property and casualty protection that starts where primary coverages stop. High limit protection against the monster that can finish you.

CNA is uniquely willing to write such coverage. Because we're good at it.

We've been in this business a long time. We can recognize an unusual risk. Analyze it. And rate it. All with remarkable skill.

We've had experience writing both business umbrella policies, and huge excess manuscript policies unique to a specific corporation's needs.

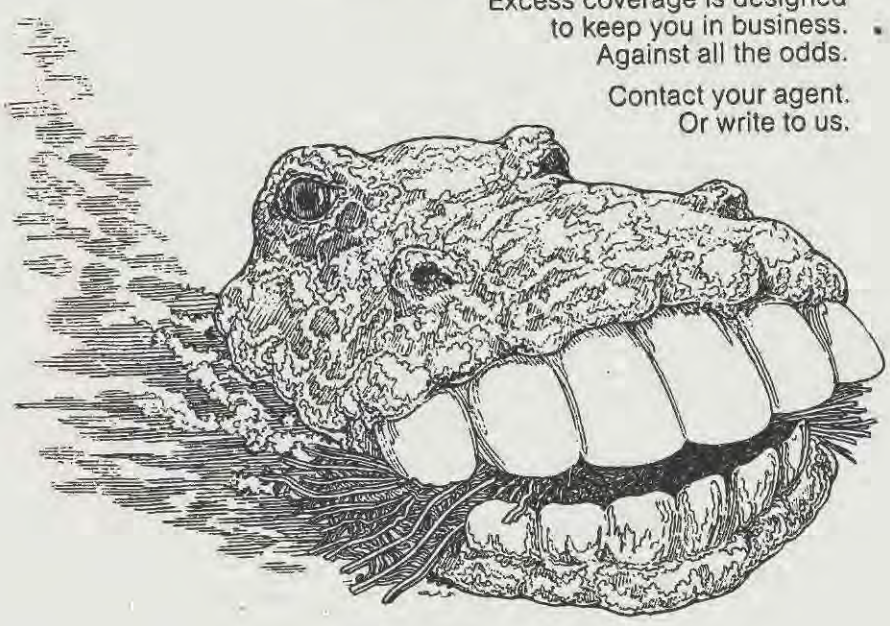
We're large enough to handle almost any need. Anytime.

But it takes more than brains and money to write excess coverage. It takes nerve. And CNA has it.

You can see it in all our insurance systems. It's just more obvious in excess coverage.

Most of our systems are designed to lower your cost of doing business. Excess coverage is designed to keep you in business. Against all the odds.

Contact your agent. Or write to us.



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BART gets huge check as work comp dividend

SAN FRANCISCO—The largest workmen's compensation dividend ever declared in California and one of the largest in U.S. history has been paid by two California insurers to the San Francisco Bay Area Rapid Transit District.

The $1,302,420 dividend went to BART from Argonaut Insurance Co., Menlo Park, and Fireman's Fund American Insurance Companies here, joint compensation carriers for the transit district.

BART's insurance program is managed by Transit Insurance Administrators, directed by Leland J. Hoagland.

WITH THE current refund, BART has collected $1,939,111 in compensation dividends since 1964.

This is enough to purchase seven of the electronically controlled cars that will be running on the 75-mile, three-county rapid transit system by late 197-.

The latest dividend check was delivered to BART directors by Stuart D. Menist, executive vp of Fireman's Fund, and J. P. Taheny, chairman of Argonaut.

Mr. Menist and Mr. Taheny credited the dividend size to "BART's accident prevention philosophy and the safety programs of the insurance managers, Transit Insurance Administrators."

"Everyone involved in the program," Mr. Menist told the directors, "is giving accident prevention the highest priority. Safety is more than a well-intentioned management policy. It is a day to day operating objective.

"As a result," he continued, "the BART safety record is 25% better than average for the heavy construction industry. This is an outstanding achievement that is paying off in humanitarian benefits and cost savings to local taxpayers."

Transit Insurance Administrators has a full time safety coordinator working with the four safety engineers assigned to BART projects by both insurance carriers. TIA also operates a compressed air medical facility here that examines and treats construction workers who must work in pressurized atmosphere underground.

This facility operates around the clock, with a staff of six doctors and eight nurses and technicians.

DURING THE period for which the current dividend was calculated, the workmen's compensation insurance covered an average of 2,500 workers in 19 different job classifications, with a peak work force of 5,000.

A total of 20,106,000 man hours was recorded. The injury rate per million man hours was 26.26. There were only 528 lost time injuries and only two deaths.

During the period, BART had 135 contracts with a total value of $650 million. ■

Several firms negotiating for major medical umbrella

MILWAUKEE—Six aerospace firms in the Los Angeles area plus several firms in Wisconsin are negotiating with Northwestern National Insurance Co. for a group umbrella for their major medical policies with unlimited or $100,000 limits.

The Wisconsin Insurance Agents Assn. has signed up for the plan, a company spokesman said. *Business Insurance* learned that one of the aerospace firms involved is Hughes Aircraft.

Called "excess med," the policy pays 100% of the costs over and above individual or group major medical or primary accident and health policies, the company said.

COSTS OF THE coverage can run from $3 to $7 monthly, based on age, number of dependents and benefits included. The spokesman said that with quasi-group underwriting, the policies can be individually issued, and the policies are portable.

In addition, the program can be guaranteed renewable for life, with a future option for an increase in limits regardless of health of insured or dependents.

Other options include: variable daily room limits; intensive care; mental health care; surgical complication; in- or out-patient benefits; and hospital service and supply, X-ray, lab test, drug or medicine coverages. ■

Giles . . .

Continued from page 20

ance clause. Judgment was for the insured. (*English & American Ins. Co., Ltd.* v. *Swain Groves, Inc.*, Florida District Court of Appeal, Fourth District. Jan. 13, 1969.)

* * *

WE HEAR A LOT about negligence. What is it?

Negligence is the failure of a person to use, for the safety of another, the care required of him by law after he knows or, by the exercise of reasonable diligence, could know, of danger to such other person, and after he has had a reasonable opportunity in which to exercise such care.

Negligence is the doing or not doing of some act which a reasonably prudent person would or would not do under the same or identical circumstances and conditions here existing.

In other words, it is the failure to use ordinary care under the circumstances existing.

What is ordinary care? Ordinary care in law is that care which reasonably prudent persons exercise in the management of their own affairs in order to avoid injury to themselves or their property or the persons or property of others. (See *Hubbard* v. *United States* 295 F. Supp. 524.) ■

Must prove due care

CHICAGO—The Illinois supreme court has ruled that a workman's failure to plead and prove his exercise of due care for his own safety bars his recovery against the manufacturer of a trenching machine that injured him.

The workman was injured while operating a trencher that "bucked" him to the ground and ran over him. His action against the manufacturer was based on strict liability for injury caused by a defective product.

Justice Underwood wrote that "there must be a defect in the product, it must be established as existing at the time of leaving defendant's control, and it must be such as renders the product dangerous to the consumer. . . . That the defect is not the result of the defendant's negligence is no defense, and it is in this respect, and in the elimination of the privity requirement, that the theory of strict liability represents a major departure from contract law principles.

"IT IS universally agreed that a necessary element of plaintiff's case is a showing that the defective condition renders the product reasonably dangerous. In our opinion this necessarily implies that a plaintiff exercising due care for his own safety would not have discovered the defect. . . .

"If a reasonable man would have discovered the defect, there is no defective condition unreasonably dangerous to the consumer and no cause of action exists. And conversely, if the defective condition is unreasonably dangerous to the user or consumer, it is incongruous for defendant to argue that a reasonable man would have discovered it or guarded against the possibility of its existence."

But said the high court, "This case was tried on the assumption that plaintiff need not plead and prove his exercise of due care for his own safety. That assumption was incorrect and the trial court rulings were erroneous insofar as their effect was to remove from plaintiff the burden of pleading and proving that the injuries were caused by the defective condition and not by his failure to use due care for his own safety. Accordingly, there must be a retrial." (Ill. supreme court: *Williams* vs. *Brown Manufacturing*.) ■

Travel accident

Lunarnauts have cover

HOUSTON—A $50,000 travel-accident insurance policy written on the three astronauts of the Apollo 11 project "just opens the door" to other space man covers.

According to John E. Smith, manager of the life insurance department of Harlan Insurance Services here, astronauts should be able to buy ordinary life insurance at standard premiums—rather than at the $15 extra per $1,000 of coverage they're required to pay as test pilots.

The travel-accident policy, which covers the three Apollo 11 astronauts from the time they blasted off to the time they get out of quarantine, was arranged by the Harlan agency and underwritten through Travelers Insurance Co. in Hartford.

MR. SMITH said that "personally, I think astronauts are safer than test pilots." He added that the life insurance policies would be bought by astronauts individually, "and we'd have to call on them and sell them just like we would anyone else."

Under the definition of the travel-accident policy, injuries include diseases that are "endemic to the lunar surface or its environs."

The policies state that coverage includes "all acts or procedures necessarily performed during the continuance of the flight plan or lunar flight Apollo 11, commencing with entrance into the command module preliminary to ignition and take-off of such module, and including recovery therefrom and the period of required quarantine in the lunar receiving laboratory."

Beneficiaries named in the policies are the three astronauts' wives.

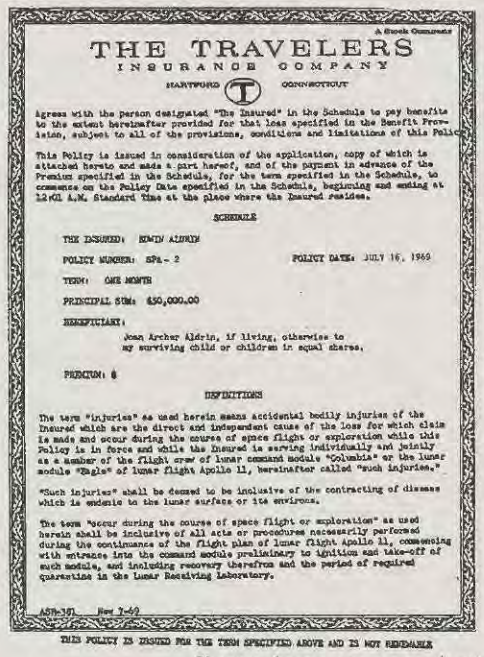
BECAUSE Travelers is required by law to charge a reasonable premium, and the agents' licensing law makes it mandatory that Harlan collect the premium, two Houston businesses agreed to pick up the tab—Austral Oil Co. and Cullen Center Bank & Trust.

Travelers, by the way, wrote the nation's first travel-accident policy back in 1864, wrote the first auto insurance coverage in 1897 and in 1919 came up with an aviation insurance package that included travel-accident (for President Woodrow Wilson).

Mr. Smith and Earl H. Bell of Travelers, who put the project together, worked to get clearance for the moon insurance from the National Aeronautics & Space Administration. The two men discussed the proposition in detail with Astronaut Alan Shepard and NASA's director of public affairs Brian Duff.

By July 8 they delivered the finished proposed policy form to Mr. Duff, who cleared it with the space administration's offices in Houston and Washington. But because the astronauts were fearful that public notice of the insurance policy might indicate a lack of confidence in the success of the Apollo 11 mission, its release was held up until after splashdown July 23.

On the morning of July 11, Morrison H. Beach, senior vp of the Travelers; Mr. Smith; Mr. Bell; William E. Harlan, president of Harlan Inc.; Robert G. Greer, president of Cullen Center Bank & Trust; and W. S. Shipman Jr., senior vp of Austral, flew from Houston to Cape Kennedy to obtain the policy applications from the three astronauts. ■



A Stock Company

THE TRAVELERS
INSURANCE COMPANY
HARTFORD CONNECTICUT

Agrees with the person designated "The Insured" in the Schedule to pay benefits to the extent hereinafter provided for that loss specified in the Benefit Provision, subject to all of the provisions, conditions and limitations of this Policy.

This Policy is issued in consideration of the application, copy of which is attached hereto and made a part hereof, and of the payment in advance of the Premium specified in the Schedule, for the term specified in the Schedule, to commence on the Policy Date specified in the Schedule, beginning and ending at 12:01 A.M. Standard Time at the place where the Insured resides.

SCHEDULE

THE INSURED: EDWIN ALDRIN

POLICY NUMBER: SPA - 2 POLICY DATE: JULY 16, 1969

TERM: ONE MONTH

PRINCIPAL SUM: $50,000.00

BENEFICIARY:

Joan Archer Aldrin, if living, otherwise to my surviving child or children in equal shares.

PREMIUM: 0

DEFINITIONS

The term "injuries" as used herein means accidental bodily injuries of the Insured which are the direct and independent cause of the loss for which claim is made and occur during the course of space flight or exploration while this Policy is in force and while the Insured is serving individually and jointly as a member of the flight crew of lunar command module "Columbia" or the lunar module "Eagle" of lunar flight Apollo 11, hereinafter called "such injuries."

"Such injuries" shall be deemed to be inclusive of the contracting of diseases which is endemic to the lunar surface or its environs.

The term "occur during the course of space flight or exploration" as used herein shall be inclusive of all acts or procedures necessarily performed during the continuance of the flight plan of lunar flight Apollo 11, commencing with entrance into the command module preliminary to ignition and take-off of such module, and including recovery therefrom and the period of required quarantine in the Lunar Receiving Laboratory.

AGTA-3(T) Rev 7-69

THIS POLICY IS ISSUED FOR THE TERM SPECIFIED ABOVE AND IS NOT RENEWABLE

BENEFIT PROVISION

LOSS OF LIFE

If "such injuries" shall be sustained by the Insured and shall, within 100 days after the date of accident, result in loss of life, the Company will pay the Principal Sum specified in the Schedule.

EXPOSURE AND DISAPPEARANCE

Loss resulting from unavoidable exposure to the elements shall, for the purposes of this Policy, be deemed to be resulted from accidental bodily injuries, provided such unavoidable exposure is caused by an accident occurring under circumstances otherwise fulfilling the conditions for coverage under this Policy.

If the Insured cannot be found within one year after the disappearance or sinking or wrecking of the conveyance in which, at the time of such disappearance or sinking or wrecking, the Insured was riding under circumstances fulfilling the conditions for coverage under this Policy, it will be presumed for the purposes of this Policy that the Insured suffered loss of life within 100 days after, and as the result of accidental bodily injuries sustained at the time of, such disappearance or sinking or wrecking.

POLICY PROVISIONS

Entire Contract; Changes: This Policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this Policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this Policy or to waive any of its provisions.

Notice of Claim: Written notice of claim must be given to the Company within twenty days after the occurrence of any loss covered by the Policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the Insured or the beneficiary to the Company at Hartford, Connecticut, or to any authorized agent of the Company, with information sufficient to identify the Insured, shall be deemed notice to the Company.

Claim Forms: The Company, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this Policy as to proof of loss upon submitting, within the time fixed in the Policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

Proofs of Loss: Written proof of loss must be furnished to the Company at its said office within ninety days after the date of the loss for which claim is made. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

Page 2

Time of Payment of Claims: All indemnities payable under this Policy will be paid immediately upon receipt of due written proof of loss.

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment.

Legal Actions: No action at law or in equity shall be brought to recover on this Policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this Policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

Change of Beneficiary; Assignment: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this Policy or to any change of beneficiary or beneficiaries, or to any other changes in this Policy. No change of beneficiary or assignment of interest under this Policy shall be binding upon the Company unless and until the original or a duplicate thereof is received at the Home Office of the Company, which does not assume any responsibility for the validity thereof.

Conformity with State Statutes: Any provision of this Policy which, on its effective date, is in conflict with the statutes of the state in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

In Witness Whereof, The Travelers Insurance Company has caused this Policy to be signed by a Senior Vice President and a Secretary but it shall not be binding upon the Company unless countersigned by a duly authorized Agent of the Company.

R. P. Clancy
Secretary, Hartford

Morrison H. Beach
Senior Vice President

Countersigned

John E. Smith
Licensed Resident Agent
Harlan Insurance Services

Page 3

Shown here are reproductions of the original pages of the travel-accident policy written on Edwin Aldrin. The coverage stays in effect until the astronaut leaves quarantine.

Pan Am . . .

Continued from page 1

But the question on insurers' minds is: Why were the shipments still in that room in the first place? The First National shipment had arrived at Kennedy, it was disclosed, on the afternoon of July 9, eleven days before the hold-up. Furthermore, City Bank had not been notified until July 13, which a Pan Am source conceded was "a bit tardy."

Normally, the customs broker and consignee are informed of the arrival of their shipment. A representative of the broker then clears the shipment through customs officials, and in the case of cash or valuables, calls for an armored courier to transport the shipment to the consignee. In a situation involving a great deal of cash, as this was, the dispatch is usually as speedy as possible, according to a large international customs broker.

THIS RAISES several insurance questions. An official at Chubb, which stands to underwrite Pan Am's loss, points out that "Pan Am was bound as the carrier, but they had successfully completed their carriage when the money was stolen. In effect, they were acting as a warehouseman or storer, with the money awaiting the 'pleasure' of the customs broker, to get on over there and take it away."

Business Insurance discovered, however, that the air bill specified "delivery to the consignee."

In speaking to various customs brokers, it was learned that most airlines communicate the arrival of a shipment immediately. But, protested one representative, "With Pan Am it could take anywhere from a day to a few weeks. The problem with them is they're too big, and they've got so much coming in and out of there it's a wonder they get to call us." ■

Nixon asks business to curb health costs

WASHINGTON—The Nixon Administration has enlisted the aid of business to hold the lid on soaring health care costs.

David J. Mahoney, president of Norton Simon Inc. was named chairman of an industry group that is to study the role of preventive care programs in industry for the Department of Health, Education and Welfare.

Mr. Mahoney and 12 to 15 business leaders will meet in Washington during the next year to knock out a strategy for packaging and delivering preventive care programs within industry. Dr. James Cavanaugh, HEW deputy assistant secretary, told *Business Insurance*.

They will study the areas of early detection of illness, annual physicals, innoculation against communicable diseases, prenatal care, and alcoholism and drug abuse protection to determine if it would be feasible to recommend that employers include them in their benefits programs.

The new group was announced in a comprehensive report on the nation's health care needs released early this month by HEW Secretary Robert H. Finch and Dr. Roger O. Egeberg, nominee for assistant secretary for health. The report asked for the involvement of the business community in the nation's health problems.

It stated: "We will ask and challenge American business to involve itself in the health care industry, including the creation of new and competitive forms of organization to deliver comprehensive health services on a large scale." ■

747s . . .

Continued from page 1

sibility of a mid-air collision. One buyer said that $100 million liability coverage "would help me sleep easier at night," but he added that $150 million coverage is the optimum coverage needed.

Although it's hoped that ABC's broker committee can come up with the new liability limits by the end of September, the remaining stumbling block is obtaining excess coverage. The problem is, as one buyer explained it, that most of the lead underwriters in the primary liability market are also involved in the excess market, and there might not be enough capacity to go around.

Meanwhile, the airline-operated captive insurance operation which has announced it was postponing its starting date by a year, hopes to eventually offer participating air carriers up to $125 million in liability coverage, with the first 60% supplied by the normal insurance market and the remaining 40% absorbed by the captive.

One source close to the airline's insurance problems said that the announcement to push back start of the captive "will not be happily received by the airlines." But he added that the money earmarked to capitalize their insurance operation can be used to finance the big new jets. ■

Jewelry . . .

Continued from page 1

It was revealed that the vault was locked the night before, protected by a Holmes electronic security device sensitive to an pressure inside the vault or any specified pressure against the sides of the vault. In addition, a protective alarm, a tumbler lock, and a Fox police lock secured the heavy-duty door to the corridor.

An investigation showed the pressure-sensitive vault device was "opened" by someone who knew the correct code of signals and correct time to give them on a device that led to a security circuit.

Sources near the scene of the crime noted that the only parties who knew the signal progression were employes of Holmes, the security agency, and employes of Jewelry Unlimited. According to Holmes sources, the "automatic" device was signaled early Saturday morning before the discovery.

SOME OF THE questions posed by insurance people related to Holmes' liability. But risk officials at Holmes cited an indemnifying clause in the subscriber's contract that released the protection firm from any liability resulting from circumvention of their devices. "But," said a risk official, "the situation in general is getting so bad we are already in the process of purchasing errors and ommissions, just in case we would run into a claim like this."

The small store shares the 16th floor of a professional building with only one other store. The corridor, 40' by 7', is accessible on the weekends only by a special service elevator workable by a key. Authorities are presently "looking into" backgrounds of ten employes who work for Jewelry Unlimited.

A question was summed up by one bond writer: "What was an outfit the size of Jewelry Unlimited doing with a half million dollars in jewels in a combination vault?" ■

JWT counterclaim filed against former executive

NEW YORK—J. Walter Thompson Co., the world's largest advertising agency, said a former executive who has filed a stock option action claim against the agency, postponed his retirement one month so he could be covered under the firm's medical and hospital insurance plan.

The extension, said the agency, automatically made his stock options exercisable during the first three months of 1969, instead of 1968. In January, 1969, the call price of JWT stock was $45.24 per share, or $9.28 higher than the February, 1968, price. This represented a gain to O'Neil Ryan of $46,400, JWT said.

Mr. Ryan sued the agency in May, charging that when the agency repurchased his stock last January, exercising its option, it didn't advise him of its plans to go public in the spring.

HE CHARGED JWT with violating the Securities & Exchange Act dealing with full and complete disclosure. Mr. Ryan said that under JWT's recapitalization plan, the $276,200 paid him for his 5,000 shares of common and 2,000 shares of preferred stock would have escalated to as much as $800,000 more, based on a five-for-one split that accompanied the public sale of 750,000 shares.

The agency, in its answer to Mr. Ryan's U. S. district court suit, denies Mr. Ryan's charges and adds that the complaint "fails to state a claim against the defendant upon which relief can be granted."

Through its law firm, Breed, Abbott & Morgan, JWT has filed a counterclaim in which it maintains that if Mr. Ryan's charges are true—that he relied on "false and misleading" representations by JWT in selling back his stock—then his original stock purchase should be rescinded.

Mr. Ryan paid $93,492 for his stock, the JWT counterclaim notes, "and on the sale, pursuant to exercise of the option, plaintiffs received a total of $276,200, or a difference of $182,707," plus $88,825 in dividends.

THE AGENCY says rescinding the deal would mean Mr. Ryan owes JWT $187,707, plus dividends, or $271,532.

That amount, plus interest, dismissal of Mr. Ryan's complaint, awarding of damages, and legal fees, are sought by JWT.

The agency also states that Mr. Ryan became 65 years of age prior to Dec. 31, 1965, and was scheduled to retire as of that date. Had he done so, under the stock plan set up by JWT, JWT's option to repurchase his stock would have arrived three years later on Jan. 1, 1968, at a call price of $35.96 a share. ■

Shot in dark doesn't rate work comp

FT. WORTH—A truck driver can't collect workmen's compensation because he was shot while having a late night drink with a stranger, the Ft. Worth court of civil appeals has ruled.

The driver, 31-year-old Jimmy Wayne Walker, said in his suit that he stopped at a motel in the course of a cross-country trip and met a stranger who suggested he go to his room "to have a drink."

Mr. Walker said that the man started shooting as soon as he entered the room and that a bullet struck him in the back.

THE DRIVER'S attorney argued that Mr. Walker faced increased risks when he was forced to spend nights on the road, and that as a result his employer was liable for the wound he suffered.

But Associate Justice Thomas J. Renfro ruled that "a late-night visit to the room of a person whose sex he did not know for the purpose of having a drink was not a risk or hazard arising out of his employment."

Justice Renfro said that the evidence showed Mr. Walker was "on a purely personal mission of pleasure, and was not entitled to collect insurance." ■

Sinclair-Koppers begins new oil safety program

KOBUTA, Pa.—The initial step in a program to phase out the use of chemical pumps in combating oil fires has been taken by Sinclair-Koppers Co. here.

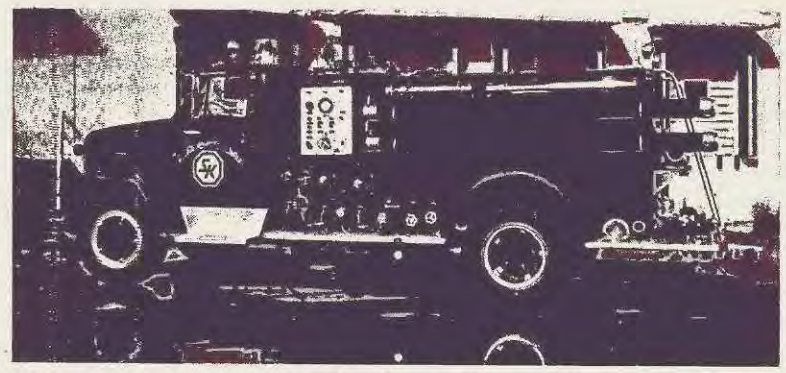
George Prince, director of fire and safety for the company, told *Business Insurance* that a new National AER-O-FOAM truck with a 1,000-gallon capacity will enable one driver and one assistant to handle fires that would previously have required the efforts of several men.

The truck carries a 3% concentration of XL3 solution, which is used in a subsurface injection system on burning oil storage tanks. The technique forces the foam up through the oil so that it reaches the fire from beneath. The vehicle can also be designed to carry half water and half solution.

Mr. Prince said that there was no rate reduction immediately involved in the purchase of the new fire-fighting equipment. He had, however, been in touch with the insurance carrier concerning the transportation. Oil Insurance Assn. of Chicago writes the blanket risk for Sinclair-Koppers.

HE SAID that the purchase was approved by the plant manager in Kobuta and the company insurance manager was not involved.

Mr. Prince works with seven full-time fire and safety coordinators at his plant and there is one fireman present on each shift.



Volunteers from the Kobuta, Pa., Sinclair-Koppers plant will be trained by one of the seven full-time fire and safety coordinators at the installation to operate this foam fire-fighting truck. The vehicle will allow one driver and one assistant to handle fires that would previously have required the efforts of several men.

Each of the firemen is responsible for training his own shift brigade, composed of volunteers from the personnel. There are approximately seven men on each brigade.

Also at his disposal is a 20-man volunteer auxilliary fire-fighting squad made up of men who live in the vicinity of the plant and who are available at any hour to help in an emergency. Each is trained to handle the new foam truck.

Sinclair Oil and Koppers Co. of Pittsburgh are the parent companies of Sinclair-Koppers. The company was originally a producer of plastics during the Second World War. ■

Insurance expires, but busses roll

PITTSFIELD, Mass.—Insurance policies for the Yellow Coach Lines Inc. expired at midnight July 12, but it appears probable that the debt-ridden bus company will continue to operate indefinitely.

The Pittsfield firm has received $21,000 in cash, to be used to purchase insurance to keep the busses on the road.

Attorney M. Arthur Gordon of Boston, counsel for the Yellow Coach receiver, said that he would arrange for the liability and workmen's compensation insurance.

"WE WILL either get this insurance extended or get other insurance coverage," said Mr. Gordon. "The company will continue to operate, and, in my opinion, I think they will rehabilitate themselves under the plan for reorganization."

The plan is being drawn up by Attorney Andrew F. Campoli of Pittsfield, counsel for Yellow Coach. It includes the proposed sale of Yellow Coach's interstate operations franchise.

Gray Line Inc. of Boston, was reported interested in taking over the Yellow Coach operations throughout Berkshire County. ■

D&O . . .

Continued from page 6

Factors. It also claimed Lybrand "issued misleading certificates and financial statements" concerning their client, Mill Factors, which is described as a violation of the Securities Exchange Act of 1934.

The complaint demands Lybrand be liable to New York Life for "sustained losses."

Regarding the board of New York Life, the suit states: "They owe a fiduciary duty and obligation to the company to protect its interests at all times." The charge is that the members of the board failed in that duty when they permitted "the purchase of unregistered securities . . . consisting of millions of dollars of commercial paper issued by Mill Factors without making any investigation whatever."

The charge further claims that New York Life merely "relied on the name and reputation of Goldman Sachs, and that to date proceedings have still not been initiated against either Goldman Sachs or Lybrand, constituting negligence on the board's part. The complaint demands the 27 executives of New York Life "account to the company for their acts and conduct . . . and that they jointly and severally pay over any losses connected with their actions." ■

Aetna wins group cover for 46,000

COLUMBUS, O.—Aetna Life & Casualty Co. was awarded the group medical and hospitalization contract for some 46,000 state employes on its bid of $14.7 million for a year's service.

The State Employes Compensation Board, which said Aetna was the lowest of seven companies bidding on the contract, bypassed a request by Blue Cross-Blue Shield to force a second bidding.

The Blues said its bid of $15.7 million with a $1.8 million retention rate presented the "most realistic rates."

Aetna promised a retention rate of $874,000 to be used for administration and profit.

Other bidders on the insurance plum were Equitable Life, Nationwide Life, New York Life, Confederation Life of Canada and Travelers Insurance. ■

Maker of defective tool pays compensation award

ATLANTA—A workman injured by a defective tool can get relief through workmen's compensation and also sue the tool manufacturer in a product liability action.

The U.S. district court for northern Georgia has ruled the manufacturer can also sue a joint tortfeasor—in this case seeking a liability contribution from the foreman who allowed the workman to use the defective tool.

The mechanic, while using a new metal punch furnished him by his foreman, was allegedly blinded by a fragment when the punch shattered. Crescent Tool Co., the manufacturer, sued the foreman, alleging that his negligence "was a contributing cause of any such injuries."

The foreman argued that the complaint was barred because he and the plaintiff are fellow-servants, because he was acting solely as employer's agent and because any tortious act was done within the scope of his employment.

THE GEORGIA compensation act provides that workmen's compensation rights and remedies "shall exclude all other rights and remedies of such employe "for injury or death."

The Federal court ruled that "despite the absolute language of this provision, it has long been recognized in Georgia that a plaintiff who receives workmen's compensation is merely barred from suing his employer at common law, not from suing a negligent third party."

However, Judge Idenfield noted that "the notion slipped into several Georgia decisions, by way of dictum, that while an employe could proceed against a negligent third party after receiving a workmen's compensation award, no suit would lie if the third party were a joint tortfeasor with the employer."

Despite these erroneous dicta, Judge Idenfield swept them away with the ruling that "the joint tortfeasor prohibition is no longer the law in Georgia—if it ever had been before." Had Georgia wished to impose the limitation on recovery urged by the foreman, the judge further noted, it could have done so by drawing a statute to require it, as has been done in North Carolina, Virginia and New York. ■

Auto dealers charged with breaking California state insurance codes

SAN FRANCISCO—Ten southern California automobile dealers have been charged with "serious infractions" of the state's insurance code in the sale of credit life and disability insurance to automobile buyers.

Dealers and their operational names are: Ognar Volkswagen Inc.; John Bohls Oldsmobile Inc.; Foulger Ford Inc.; Utter Pontiac Co. Inc.; Ogner Motors Limited Inc.; Vel's Ford Inc. (Vel's); Parnelli Jones Ford; Jet Imports Inc.; Del Amo Dodge; Citizens Chevrolet Co.; C. H. Dimmette Inc.; and Prince Chrysler Plymouth Inc.

The accusations issued by State Insurance Commissioner Richards D. Barger charge that all dealers sold credit life and disability insurance without a notice on file with the insurance department.

SUCH a notice would have authorized the dealership to act as the agent of the insurance company.

The dealers also were charged with selling insurance at rates in excess of those on file with the insurance department by the insurer.

Certain of the dealers also were charged with selling credit insurance to both husband and wife covering one automobile loan, contrary to insurance statutes.

Other charges are: failing to verify the existence of a group master policy to which the certificates that were sold could be connected; and sale of credit insurance in excess of the actual loan, again contrary to statute.

The dealers have the right to present evidence at a hearing to refute and/or explain the insurance commissioner's charges.

"It is necessary to institute such formal action," Mr. Barger said, "in order to correct what may be widespread improper sales practices in the credit life and disability field, particularly in the southern California area.

"We are asking each insurance firm involved," Mr. Bargers added, "to investigate whatever legal remedies are available to the company to recover commissions paid by the company to the auto dealerships involved." ■

Work comp costly for moving errors

CHICAGO—Records show that nearly one-fourth of all serious occupational injuries result from manual handling of materials, according to the National Safety Council.

The average workmen's compensation claim for a materials-handling injury is about $750, state labor department sources indicate, with fatal accidents of this type resulting in an average payment of $20,900, permanent disability workmen's compensation claims averaging $1,900 and temporary disability claims averaging $265.

The safety council, using these state figures, has compiled a list of the following unsafe work practices that have lead to manual handling injuries:

- Placing fingers or hands at pinch points while moving objects.
- Gripping objects improperly, allowing them to fall or slip.
- Carrying too heavy a load.
- Failing to wear safety shoes.
- Lifting in an awkward position, or lifting with the back instead of using leg muscles.
- Failing to use cranes, hoists and elevators provided for the job.
- Failing to wear proper protective gloves or failure to use hand guards for sharp-edged items.
- Loosening coils or cutting taut binding wire, metal straps or cable without wearing face protection.
- Working in cluttered, cramped quarters. ■

Write $20 million administration bond

NEW YORK—A $20 million administration bond, one of the largest such bonds ever placed in the U.S., has been written by the New York office of Fireman's Fund American Insurance.

The bond was executed on behalf of three adminsitrators of the estate of David Coleman, a stockbroker here, who died April 17 leaving an estate of $20 million and no will.

The three administrators are Anita Manshel, Warren Manshel and Leo H. Borenchoff, Business Insurance learned.

THE BOND guarantees that the three administrators will faithfully perform their duties, which include marshalling the assets of the estate, paying the debts of the decedent including taxes and distributing the net proceeds of the estate to the heirs.

The three administrators were appointed by the surrogate court on the petition of the heirs. Funds to pay the premium for the $20 million bond will come from the gross assets of the estate.

Federal and state taxes will take an estimated $13 million of the estate.

Fireman's Fund declined to give the identity of either the deceased stockbroker or the three administrators, but Business Insurance gained their names by checking the obituary pages of the newspapers against records of the New York County surrogate court.

Railroads . . .

Continued from page 3

derailments and accidents in general continues, the rates are sure going to go up."

The world's leading policy-writer for railroads is Lloyd's of London, although dozens of major American companies write small amounts of coverage. Railroad Insurance Underwriters is a U.S. pool of companies that write policies for railroads, but they touch very little passenger and third-party liability.

Major railroads self-insure for $1 million and more, and the maximum limit of the RIU is said to be about $1 million.

NO MAJOR POLICY coverage is extended to any one American company, mainly because railroads have been excluded from reinsurance treaties.

According to one official with Aetna Life & Casualty Co., "Our experiences were just too loss ridden to continue writing coverage for railroads. When the losses began to outrun the premiums, we came to the realization that the experts—the RIU—were better equipped to handle this type of risk."

One insurance broker said, "I don't think the railroad business is popular. They never wanted to buy from the American market, and this resulted in an almost total lack of capacity."

Railroad insurance broker James White, with Marsh & McLennan, indicated that a massive safety program is now under way in the railroad industry. "The first thing the lines are doing is pursuing a grade crossing elimination program in full earnest. The railroads are either depressing or elevating the grade crossings in an attempt to limit the exposure they have to the public. A chief basis for high premiums is the number of grade crossings on a line."

Out of 225,000 grade crossings in the country, only about 20% are protected by automatic devices. The anxiety about the precarious state of the nation's grade crossings is shared with local and Federal government agencies, particularly the Federal Bureau of Public Roads, which is sharing, through state agencies, many of the high costs of grade crossing elimination.

The Pennsylvania Railroad reportedly spent $29 million on a safety program before the New York Central merger was consummated a few years ago. Spokesmen for Penn Central attribute the expenditure to a desire for safety, and not premium savings, although the insurance advantage "was certainly one we took into consideration in making the decision."

Other areas of danger lie in station platforms, roadbeds and existing track. According to one railroad company vp, "The problem is we are using 20th Century equipment on early 1900 tracks. We don't have the money to execute the type of track renewal we'd like, although it's always been taking place on a limited basis."

"I guess our biggest problem is waiting too long to recognize that a problem existed. The point is that now we do realize this and additional Federal legislation, as is proposed by the task force, isn't going to do anything but give us another problem."

Bangor-Aroostook railroad operations and maintenance director Palmer H. Swales attributes the situation to lack of "a total systems approach to present facilities. The industry must see to it that rolling stock is compatible with facilities or revamp the facilities.

"FURTHERMORE," continued Mr. Swales, "we know derailments are up, and we know they account for two thirds of all the industry's accidents. The thing we don't know is *why*. I believe it is deplorable that the railroad industry has virtually no research and development, like other industries. Essentially, in this business, we depend upon our suppliers for research and development.

"That's why I endorse the railroad safety task force's recommendation to initiate research and development. I believe this will be a far more effective move than all the statutory control that can ever be legislated."

A defense from railroad marketers came from John Cassidy, of the Western Pacific Railroad sales department. "I don't think that marketers are to blame. We don't go out and ask for any equipment until the public demands that equipment. We don't push anything. It's the shipper that demands the oversized cars, and of course, if we're to stay in business we have to give it to him.

"The cars they ask for are bigger and bigger," continued the marketer. "The shipper wants to load 120,000 pounds at one time now. Certain commodities like canned goods push for these and only these types of cars. The competition forces us to request this kind of cars. I say it's the public."

MOST RAILS ARE capable of supporting about 250,000 pounds, including the weight of the car, which usually means 150,000-pound cargoes. Union Tank Car Co. is presently experimenting with a car that will place 550,000 pounds of pressure on a rail.

No Federal regulations presently cover the design of rolling stock. There is self-inspection in the form of the Assn. of American Railroads, which establishes specifications for all rolling stock. The specifications account for the individual car on the individual portion of rail and coordinates with Cooper's Ratings.

"But," said one wary railroad official, "when we have to make up a train that's longer than it should be, or goes over areas at speeds which encourage empty cars to bounce, and ladened cars to go out of control, all the AAR specs and Cooper's Ratings in the world won't save you. I'm just happy nothing much has happened in the middle of a town somewhere."

But other railroad voices protest that their records are safer than that of any transportation medium. Thomas M. Goodfellow, president of the Assn. of American Railroads, recently dissented from the popular view in a letter to the New York Times, criticizing the paper's "distorting the safety picture out of its true dimensions."

HE CLAIMED railroads were three-and-a-half times safer than airlines in the past ten years, citing only 13 passenger deaths on railroads last year as compared to 62 fatalities in 1958. According to an AAR newsletter, "the fact that more trains were running at that time doesn't effect the comparison."

Other railroad sources accuse motorists of making grade crossings unsafe by deliberately running into trains. An operations official at Western Pacific Railroad declared, "We've had three derailments so far this year. In one a drunk deliberately drove into our train. Another resulted from a rock that slid down a mountainside. These are things we can't control."

The task force on railroad safety agrees that an immediate program of driver education is necessary to curb the estimated 1,400 deaths that result from grade crossings annually, or 65% of all railroad fatalities.

BUT THE INSURANCE community doesn't yield sympathy to the claim that it's the other guy's fault. They look at a history of several derailments per day and scores of other accidents daily. "I could say safely, it's a good thing they self-insure for the first couple of hundred thousand dollars, because nobody wants to touch them," stated an underwriter with Continental Insurance Co.

"Catastrophes don't happen every day," said another underwriter. "We all know this. For this reason railroads are viewed through a ten-year perspective. If they have one once in five or eight years, that represents a sizeable increase in their risk, and therefore their rates."

"The insurance market for railroads is drying at this time," said J. B. Morgan, insurance manager for Western Pacific Railroad. "Because the loss ratio is becoming greater than what the underwriters ever dreamed it could trun into, the crisis is here. Either the coverage will be dropped, premiums will be raised so high they will be unavailable—like insuring a boy sitting on the edge of a cliff—or there will be a drastic reduction in train accidents. I, for one, would love to see our record clear up." ■

Museum has no theft cover

CHICAGO—The Field Museum of Natural History carries no insurance that would cover the theft of Madagascar collectors' items stolen from a basement display case.

E. Leeland Webber, museum director, told *Business Insurance* that nothing short of a recovery of the rare artifacts would compensate for the loss. "But I'm not too optimistic about any recovery."

Although the museum does buy insurance for some rare items, Mr. Webber declined to comment on the extent of the coverage.

The loss was the first major one since the early 1930s. ■

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