

# Cities lament liability insurance problem

By JOANNE GAMLIN

SANTA ANA—A proposal that the California legislature enact a law requiring insurance companies to present a full accounting and disclosure of all losses and risk exposures related to municipal liability coverage has been made by the liability insurance task force of the League of California Cities. The legislation would pertain only to insurance companies which currently or in the past two years have issued liability policies to any of the 413 cities in the state. The proposal was put forward by David Tavernetti, a King City council member and chairman of

the liability insurance task force of the League of California Cities. He was speaking during an assembly committee open hearing on the topic of municipal liability held in Santa Ana, December 5.

In what might have appeared as a worn-out rerun of the medical malpractice 'crisis' which is currently causing Southern California physicians to talk of fleeing the state, representatives of California governmental entities—including the Los Angeles School District—took turns describing gigantic hikes in premiums, abrupt policy cancellations and exhausting struggles to locate surrogate carriers.

Mr. Tavernetti, the chief witness for the League of California Cities, pointed out that his group figures that liability insurance premiums for all 413 cities now exceed \$30 million annually. Yet for some cities, he said the increases have been far worse, often coupled with deep cuts in coverage. For example, he noted that the city of Campbell's liability premium rocketed 256% in one year, Bakersfield's 200% and Chula Vista's 185%.

Carrying the doleful theme further, another spokesman presented a study showing premium growth in relation to losses incurred for

26 Orange County cities.

The city of Santa Ana, he noted, saw its liability premiums balloon from \$119,837 in 1973-74 to \$309,000 in 1975-76. In the same time periods, however, its incurred losses appeared to be shrinking. For the 1973-74 period they came to \$80,100; for 1974-75, \$50,565 and for the first four months of 1975-76, to only \$3,000.

Richard D. Patton, director of finance for the city of Downey in Los Angeles County pointed out that his city has maintained a good track record in liability losses. Nevertheless, he declared that "the exposures to liability are becoming immeasurable.

"Erosion of governmental immunities, the expanding doctrines of legal liabilities, increasing public claims consciousness and an active plaintiff bar" are conspiring to deaden insurance company zest for writing municipal liability coverage, he testified.

He cited street and road condition claims as a prime example of the current climate in litigation.

"Virtually all automobile injuries occurring within Downey city limits represent potential claims against the city for breach of its duty to maintain streets and roads free of hazardous conditions." *Continued on page 20*



Cities of San Diego (above) and Los Angeles are among those in California facing bigger liability exposures but shrinking insurance markets.

Week of December 29, 1975

# business insurance

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## Celanese tells claims data in pregnancy-disability case

WASHINGTON—Celanese Corp. told the United States Supreme Court this month that it already pays substantially higher medical claims costs for its women employees, and therefore should not be found to discriminate against women because it excludes pregnancy, miscarriage, or childbirth from its disability insurance program.

Celanese is a defendant in two sex discrimination cases, pending in federal district courts, involving this pregnancy-disability issue. The company filed its arguments this month in a friend-of-the-court brief to be used with a similar case involving General Electric Co. now pending before the Supreme Court.

Celanese gave the court a study of health insurance claims from its

Charlotte, N.C. plant. The report was prepared by R. G. Wells, personnel manager for the Celanese domestic fibers group, and covers 1972, 1973 and 1974, when the Charlotte plant employed an average of 506 women and 1,189 men.

Celanese said medical claims costs of women employees totaled \$223,706 over the three years, or \$442 per woman, compared to \$229,228 for men, an average of \$193 per man. Celanese said medical costs for women employees were 129% greater than for men employees at the Charlotte plant.

About 75% of the men at the plant, 897 of them, filed 1,153 claims over the three years, compared to 580 women employees (115%) filing 917 claims in the same period. Celanese said em-

ployees could have submitted more than one claim for the same or different diagnosis or treatment. Average cost per claim filed by a man was \$199, versus \$244 per woman employee, or 22.6% more per average woman.

Nearly 35% of the women at the plant received \$73,296 in claims for health services that the company called sex-oriented. That included abortion, breast conditions, Caesarean sections, D&C, hysterectomy, gynecology, normal delivery and tubal ligation.

The average of these sex-oriented claims for women was \$416 per claim, or \$145 for every woman employee, the company said.

Celanese considered two types of claims as sex-oriented for men, *Continued on page 2*

## First suit is filed over sunken ore freighter

By MARGARET LeROUX

CLEVELAND—The first of what is expected to be a multi-million dollar series of lawsuits filed by survivors of the crew of an ore boat which sank in Lake Superior last month have been filed in district court, *Business Insurance* learned.

Survivors of two of the 29 crewmen of the Edmund Fitzgerald, all of whom perished when the ship sank during a severe storm on the lake Nov. 10, filed a \$2 million lawsuit.

The suit includes charges of negligence in the way the vessel was loaded. The Columbia Transportation Division of Oglebay Norton Co. operated the ship which was owned by Northwestern Mutual Life Insurance Co.

The ship was insured for \$8.8 million. Participants in the coverage include: the Great Lakes Protective Assn., a mutual club, 40%; the London market, 27.5%; The American Hull Insurance Syndicate, 12.5%; 20% was insured in the U.S. market outside the syndicate.

A spokesman for Oglebay Norton said "there is no question that the ship had adequate coverage... we had coverage that was required and in commercially acceptable amounts."

In a petition filed in U.S. district court, John J. Dwyer, president of Oglebay Norton said the company "is in close touch with every family involved to make sure that none lacks the immediate

*Continued on page 2*

## Bonds may cover more of bank's loss

NEW YORK—Franklin National Bank may be able to recover \$30 million in insured losses incurred when unauthorized currency speculation took place before the bank collapsed in October, 1974.

Insurance Co. of North America, Fireman's Fund Insurance Co. and Aetna Life & Casualty Co. all participated in providing the bank with fidelity bonds.

According to the Federal Deposit Insurance Corp., the bonds covered a maximum of \$15 million in losses for each separate "act" contributing to the losses.

Earlier this month, guilty pleas were entered by four defendants indicted in the collapse of Franklin National by a federal grand jury. The following week, a fifth,

Peter R. Shaddich, a former executive vice chairman of Franklin, pleaded guilty to counts of conspiracy, misapplication of funds, and for filing false statements.

Since separate "acts" by different defendants were involved, the pleas improved the bank's chances of recovering the total \$30 million it lost on foreign currency speculations.

Last year it was generally agreed that the Franklin Bank would have to prove that an employee was guilty of a fraudulent or dishonest act in order to recover losses from the insurers (*Business Insurance*, July 8, 1974).

Franklin Bank and the Federal Deposit Insurance Corp., which is

handling the bank's liquidation proceedings, have each filed claims against the three insurers to recover the \$30 million.

Exact levels of participation by the three insurance companies are not known. While each of them admitted to being involved on the Franklin Bank case, they were reluctant to discuss the extent of their individual coverage while the case is in litigation.

INA, however, said it held the excess coverage "above a certain limit" for Franklin Bank. And sources at Fireman's Fund said, although unofficially, that it seemed likely their firm's involvement was in the form of a reinsurance treaty with INA. Aetna *Continued on page 2*

Risk man talks about consultants—page 17

# Turbo jet coverage has insurers in turbulence

NEW YORK—Royal Globe Insurance Co. is apparently pulling back from a gas turbine jet coverage it had planned to write through broker James S. Kemper & Co. (*Business Insurance*, Aug. 25).

Instead, a similar coverage is being introduced by Kemper Insurance Cos. (the insurer which is unrelated to broker James S. Kemper & Co.).

Royal Globe refused comment on why it decided against providing the coverage, and referred all questions to a Kemper agency vp Bernard S. Sullivan.

Mr. Sullivan was unavailable for comment at press time, after repeated calls to his office.

One source complained that re-

ports of Royal Globe's involvement were untrue after this magazine published a story about it. Royal Globe would not reply to his version of events. Mr. Sullivan at that time said the source was wrong.

However, last month a Philadelphia broker who deals largely in placing aviation coverage, revealed that Royal Globe decided against writing the coverage, after internal dissent over the matter.

In December, Kemper Insurance Cos. confirmed that it will write aircraft engine reliability coverage through any agent or broker which represents the insurer.

The product will cover turbo jets, fan jets and prop jets with limits of up to \$500,000 with no deductible. Premiums will depend on the power of the engines involved.

For the smallest engines, premium rates would be approximately \$650 per engine per year on an annual policy covering two engines. For larger engines like a Rolls Royce Spey, the premium would be about \$3,000 per engine per year.

The policy defines an accident to an engine as a sudden or accidental break into two or more parts of internal components. It would not cover foreign objects, such as birds, which are sucked into the engine.

## GUIDE TO FEATURES

Opinions ..... 8  
 Perspective ..... 17  
 People ..... 22

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Also excluded are over-temperature situations and anything covered by another form of aviation insurance.

The largest engine the policy will cover would have 12,000 pounds of thrust.

Robert Nielsen, Kemper's boiler and machinery underwriting manager, is in charge of the new coverage. It is a specially designed endorsement on the company's standard general boiler policy.

However, risk managers or insurance buyers wishing to get the coverage do not have to purchase the boiler policy first. They can get the endorsement separately.

The company expects executive jets would be the major risks covered by the new policy, but it is not excluding small cargo jets at this point.

The policy has been approved in 43 states and is expected to get blanket approval from the remaining seven, according to a company spokesman.

## Franklin . . .

Continued from page 1 declined all comment on participation levels. Sources outside the company, however, also believe Aetna was involved on a reinsurance basis.

When Franklin was ruled insolvent last year, it was the largest banking failure in American history. Foreign exchange losses were blamed as a significant factor in the bank's collapse.

The insurance companies are expected to contest their liability in the liquidation in court cases that could drag on for years. The FDIC moved to press claims for the insurance recoveries because it was thought unlikely that any of the loss could be recovered without suing the insurers.

Whatever insurance recoveries are made, if any, will contribute to the funds available to creditors.

Although the insurers were officially quiet after the guilty pleas were entered and their liability was subject to question, a source at one of the companies told this magazine: "Nobody's supposed to talk about the Franklin case at all unless they're working with it directly. But I heard one of the bigshots in the fidelity department say it just looks like a matter of time before they'll have to pay up on the claim."

## Celanese . . .

Continued from page 1 prostate conditions and vasectomies. Some 37 of the plant's men employees (3.1% of the total) filed 4,034 of these claims in three years, with an average cost of \$109 per employee filing a claim or an average of \$3.40 per man in the workforce. This meant Celanese paid 42 times more per woman employee for sex-oriented care.

Sex-oriented claims filed by women accounted for 16.2% of the total dollars spent on health insurance claims for all employees over the three years. Sex-oriented claims for men represented less than 1% of the total.

Celanese argued it should not be found guilty of sex discrimination for trying to limit maternity benefits, since it already paid much more for other ailments particular to women.

From Jan. 1, 1971 through Aug. 30, 1974, Celanese paid out \$193,756 at its Charlotte facility in long term disability payments. Of this amount, women received \$109,166 and contributed only \$27,350 while males received \$84,590 but contributed \$157,408. In other words, male employees subsidized female LTD costs in the amount of \$72,818 and Celanese paid the other \$8,998.

# Federal indemnities for international art shows

WASHINGTON—Congress is moving to aid museums which now must find, and then pay for, costly art exhibits offered through exchange programs.

Legislation providing federal indemnities (S. 1800) passed the House this month and the Senate earlier in the year.

Museums will still face a \$15,000 deductible, however. And if the exhibit is particularly valuable, they will still be in the private insurance markets for excess coverage beyond \$50 million.

The legislation would limit federal art exhibit indemnities in effect at any one time to \$250 million. No one exhibit could be indemnified for more than \$50 million.

Rep. Albert H. Quie (R-Mn.) said he found the bill acceptable since much of the art insurance premium dollar "goes out of this country . . . and is not of any value to insurance companies in the United States."

In order to qualify for a federal indemnity, however, the foreign art exhibit would first have to be declared "in the national interest" by the Secretary of State.

Rep. John Brademas (D-In.), a supporter of the bill, said estimates put the cost of insurance as high as from one half to two thirds of the entire cost of an exhibition.

He noted that New York City's Metropolitan Museum of Art hosted nine major international art exhibitions since 1970, all without a loss. The premium for

the necessary insurance on these exhibits, which had an aggregate value of \$261.8 million, was \$881,000.

The 1973-74 Congress passed two emergency indemnity agreements to allow exhibits of Chinese archeological treasures and of Scythian gold artifacts from the Soviet Union to be shown in this country.

Critics of the bill said this would add \$250 million to the "off balance sheet" potential liabilities of the federal government, and that the program should go through normal processes for appropriations.

## Ore boat . . .

Continued from page 1 ate financial support it needs."

A Coast Guard board of inquiry, after 10 days of testimony, said there was no evidence the Fitzgerald had struck a reef or a shoal or that its stern had been lifted by one giant wave and its bow by another so that the vessel broke in two.

The board also said there was no evidence the 26,116 ton load of taconite the ship was carrying had shifted, that the hatch caps were damaged or that the ship capsized instead of breaking up.

A side scanning sonar device positively identified wreckage of the 729 foot ship, in three pieces, all upright on the bottom of Lake Superior.

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## Ski resorts face uphill struggle on liability risks

By HARRIET KING

SEATTLE—"People don't want to be compensated any more. They want to be rewarded for having an accident or injury."

So explains Don Christianson, vp of Crystal Mountain, Wa., one of the Northwest's most popular ski resorts. Mr. Christianson, like his peers in the ski industry, has seen his insurance rates jump a third or more this fall.

All segments of the estimated \$3 billion ski industry—manufacturers, wholesalers, retailers as well as ski area operators—seem apprehensive over the new wave of premium hikes brought on by a rash of lawsuits, huge sums awarded in recent months by juries and by the unstable financial condition of many insurance companies.

Many ski men are shaken by the increasing risks of doing business. "When I hear insurance specialists talk of the special protection that ski schools must have and when I consider the risks involved it almost makes me want to never take a dime from anyone again," says Jack Nagle who runs ski and rental shops at Crystal Mountain and in Enumclaw, Wa., and who maintains a noted ski school.

Adds Mr. Christianson: "People can come up to Crystal or to any ski area, fake an accident and really clean up."

The ski industry insurance market has traditionally been tight

and few underwriters have been willing to insure in the field because of what they consider to be the industry's "inherent catastrophe potential."

"All but a handful of companies have stopped writing ski area liability insurance. Those that have remained are doing so at substantially increased rate levels," says a report of Barringer & Williams Inc., plan managers for the National Ski Areas Assn.

Many companies still writing ski area business have returned to manual rates published by the Insurance Services Office. According to B & W, those rates, which became effective November 1, were:

State	1974		1975	
	Hi/low		Hi/low	
NY	\$13.08/ 7.50		\$22.05/ 10.43	
Penn.	9.20/ 4.41		15.43/ 4.42	
Wash.	5.92/ 5.16		11.61/ 9.99	
Cal.	18.37/ 12.35		22.05/ 12.50	
Minn.	11.46/ 8.23		13.06/ 12.94	
Colo.	6.32/ 5.43		7.06/ 5.88	
Mich.	10.14/ 6.46		13.52/ 10.14	

The rate hikes come at a time when ski people say the industry has never been safer. "There have been substantial improvements in ski design and construction, in safety release bindings, in boots, in ski instruction and in slope grooming techniques," says retailer Nagle. "Yet the suits continue and rates go up."

Mr. Nagle's insurance rates just

jumped more than 30%. He is particularly disturbed because he has had an excellent insurance claims record. "My rates should be going down, not up. How can my rental liability rates go up so drastically when I haven't had one single accident? Why don't insurance representatives come around and audit my record, and do this on an individual basis?" asks Mr. Nagle.

"What is happening in the courts today is a giant rip off. Fifteen years ago I didn't insure my ski school. In fact, a longtime lawyer friend told me that there were nine points of the law that a person had to go through to get a negligence claim to stand. Today, something is wrong—it seems as if no one really has to prove anything to make a claim stand. Skiers no longer ski at their own risk today," says Mr. Nagle.

"I just had some new rental agreements printed and they were obsolete as soon as they came off the press. They state: 'I agree that the use of this equipment is at my own risk. I do hereby release the Crystal Mountain rental shop from any and all claims.' Skiers sign this but it means nothing anymore because some smart lawyer can tell a skier, 'Why, you can't sign your life and limbs away,'" says the retailer.

Ski area operators also feel unfairly vulnerable. "It's as if people are looking for an excuse to pick up some insurance money," says Bud Nash, ski school director for the famed Timberline Lodge, granddaddy of Oregon ski areas. "Let someone fall down in the lodge parking lot or slip as they get off a chairlift and wow! The old adage of skiing at your own risk just doesn't hold up anymore. But it's just a fact of life that whether the plaintiff wins or loses, it does cost insurance companies money for courts and lawyers," says Mr. Nash.

Herb Sorensen, a broker with the North Star Agency in Enumclaw, Wa., has a number of ski business clients and he is aware of the growing inequities. "Even good ski areas and retailers are having a lot of problems with lawsuits. There has to be a complete turnaround in the attitude of the public. There'll be no market for skiing related coverages in the future if there isn't an attitude reversal.

"It's the public that eventually has to pay for increased lift tickets and equipment prices because ski areas and everybody else in the business has to make a profit to stay in business," says Mr. Sorensen. Next to payroll, insurance is often the second major expense ski people have, he adds.

Insurance underwriters, howev-

er, say that those in the industry have to consider the side of the carriers.

"It's safe to say that the industry is re-evaluating its position because of the exposure and because of the courts attitude toward claims. It's getting tough for us all," says I. E. Catherman, an underwriter in Continental Insurance Co.'s casualty department in Seattle. "Our rates have consequently gone up 75% to 300%."

"We've strengthened our underwriting approach. We don't take much for granted anymore. We carefully survey and review potential exposures. In the past, we might have said, 'OK, here's a ski lodge, this is the rate.' It used to be that people went to a ski lodge, took a lift and skied down the slopes and then went home.

"But today, our liability isn't just on the slopes but on the overall premises. We find that a great many people who go to ski lodges never put on a pair of skis. They eat in restaurants, come for the entertainment or sit in front of a fire. If they do ski, they're more of a hazard on the slopes than a guy who is conditioned to skiing. And today there are playpens for kiddies, live entertainment, activities above and beyond the skiing business," says Mr. Catherman.

"And almost every ski resort has snowmobiles for rent or for use by their employees. It used to be that a ski patrol guy got to the top of the mountain or around the site on skis. Now, he gets about frequently on a fleet of snowmobiles. So the exposure has increased and we have to look again."

Mr. Catherman notes, too, that suits filed several years ago are being paid out of today's dollars. "A guy could have suffered an injury two to three years ago and his hospital costs would have been maybe \$1,000. But it costs \$2,000 with today's dollars, which is what reimbursement rates are based upon. We have to pay for those losses with today's premium to cover this."

As a case in point: "We recently had a workers' compensation case that was filed three years ago. It would have cost \$9,000 if they had settled it then. Since then, workers' compensation benefits have increased so tremendously that the case cost \$91,000 by the time it was settled."

Continues the underwriter: "It seems that today, anyone who so much as breaks a toenail is looking for an excuse to pick up some insurance money. It's hard to tell afterwards if a guy just couldn't handle the slope he was on or if he really broke his binding or whatever," says Mr. Catherman.

"Therefore, some of the ski areas that we previously insured, we have now dropped."

Ski retailers are also sensitive about their exposures, especially since recent consumer protection laws have ruled that retailers can be considered manufacturers because they assemble parts when they attach bindings to skis.

One very popular Seattle ski retailer has never had a suit filed in his eight years of business but he blanches at the thought of what publicizing this could do to him. "My product liability insurance has gone up one third because people are suing just to be suing. To protect myself, I have to spend \$100 per employee to send them to a binding clinic and school just so they can be protected by Salomon binding's liability insurance. But that clinic is a waste of money and time. Anyone of my employees could have taught that clinic, they knew more than the instructor. But if we didn't go and a suit was later filed we might be taken to the cleaners if we tell the judge we didn't attend that clinic," says the retailer.

Jack Nagle also sent his employees to the binding clinics and he notes, "in addition, it takes reams of paperwork to protect ourselves."

For the immediate future, it looks as if casualty rate levels will continue to remain high. And if underwriters continue to turn a deaf ear on the needs and plight of those in the ski industry, then ski area managers may have to turn to London for coverage, "usually taken as a desperate measure," says Barringer & Williams in its report.

B & W notes that the key to successful underwriting in the ski industry has been to concentrate a substantial amount of business with one company which then provides the engineering, claims handling and legal facilities for the industry. But, says B & W:

"Some companies, encouraged no doubt by the sizable premiums that will be developed by the casualty portion of skiing accounts, will continue to underwrite individual areas on a spot basis. However, experience has shown that this underwriting method can be successful only for the short term and is fraught with danger not only for the underwriter, but also for the ski area which may find itself without insurance in a limited marketplace."

Those in the ski industry will continue to emphasize safety and press for a reduction in claims, and premiums, of course.

But as retailer Jack Nagle says, "Some people ought to be when he talks about the increasing amount of skier litigation in a powderuff!"



In spite of posted warnings, skiers no longer "Ski at their own risk"



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# Warning device rules delayed again by FAA

WASHINGTON—An electronic warning device never warmly received by the Federal Aviation Administration (FAA), the airlines, or their insurers is still so unreliable that the FAA is once again delaying rules requiring that it be used.

The FAA said this month that the "Ground Proximity Warning System" was producing "an unacceptably high number of false alarms" in the planes on which it has been installed.

This is a potentially critical flaw in a device that demands instant and unquestioned action from a pilot in order to be effective.

If operating correctly, the device will warn a pilot when his aircraft is on a course that will

cause it to literally "fly into" the ground or a hillside.

The National Transportation Safety Board (NTSB) and the Boeing Co., strong supporters of these systems, have argued that it can provide the seconds necessary for a pilot to change course and end the danger... but only if the pilot acts quickly when the alarm is sounded.

The types of crashes this system is designed to prevent—what safety experts term "controlled flight into terrain"—typically involve complete hull loss and large scale fatalities.

Pan American Airways suffered three such crashes in a fairly recent period serving locations in the Pacific area. It was among the first American carriers to install the systems.

Most domestic airlines had argued the devices were not needed for the heavily instrumented air lanes and airports of the United States. Airline flight safety specialists contacted by *Business Insurance* seemed to regard the system as just another \$10,000 electronic "black box" to be added to a cockpit already jammed with safety gear without any major increase in safety. Insurers did not encourage their installation.

Then came the December, 1974, crash of a Trans World Airlines Boeing 727 into a mountaintop in Virginia as it approached Washington's National Airport. The crash killed all 92 persons on board and destroyed the aircraft, making it the worst air disaster of 1974.

It was the sort of loss the systems were designed to prevent, and the sort of accident the FAA and the airlines had argued was not a major risk in the United States.

Nine days after the crash, the FAA ordered that ground proximity warning systems be installed on all U.S. commercial airliners by December 1, 1975.

In November, the FAA extended the installation deadline from December 1, 1975, to June 1, 1976, for airlines that were experiencing delays in equipment deliveries.

This month, however, the FAA said it will not require that the system be operational before next September 1. And they will allow pilots to turn the device off if it is malfunctioning in flight.

There have been too many false alarms, said the FAA, agreeing with a petition it received from the Air Transport Assn. in mid-November. The time is needed, they said, to assure greater reliability of the device.

The ATA had argued that "pilots will quickly lose confidence in this system if this (the false alarms) continues for even a short period of time. Once they lose confidence, it will be practically impossible to regain. Then the efforts of both the FAA and the airline industry to realize the safety benefits which this system promises will have gone for nothing. We will have spent thousands of manhours and millions of dollars on a black box that nobody trusts."

### Marine officer

Thomas A. Fain was elected president of the American Institute of Marine Underwriters at the annual meeting here last month. He succeeds Carl E. McDowell, who is retiring early in 1976 after heading the organization for 25 years.



## Budding ski buff.

His name is Bill Hanley and he's the owner of Wm. C. Hanley Associates of Pittsburgh, Pennsylvania, an independent insurance agency that is one of the northeast's leading producers of general aviation insurance business.

□ That Beech Bonanza also belongs to Bill. He bought it about three years ago and logs well over 200 hours a year visiting clients on weekdays and relaxing on weekends. □ Although he's still a novice on the ski slopes, don't be surprised if he'll soon qualify as an expert. He's that type of guy.

□ When it comes to insurance, there's not much you can teach Bill Hanley. He's a pro. That's why he has his own aviation insurance with USAIG, the pros in aviation insurance. □ "USAIG is a lot more than just another insurance market", says Bill. "Their people really know their business and it shows in everything they do. If I have a problem, they usually have a solution. They really take an interest in your business. And when it comes to paying claims, nobody's any quicker. They're tops in my book."

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## Columnist's victory in libel case is expensive

WASHINGTON — Syndicated columnist Jack Anderson's victory in a five year old libel case last month was an expensive one.

The often controversial Mr. Anderson has no libel insurance, a personal aide told *Business Insurance*, and no one is willing to sell him any.

Nor would anyone sell libel insurance to Mr. Anderson's predecessor, long time Washington columnist Drew Pearson who originated the newspaper feature that became known as the Washington Merry-Go-Round.

All of which means that legal expenses necessary to win last month's favorable jury verdict will probably amount to between \$40,000 and \$100,000, all payable

by Mr. Anderson, his aide said.

Mr. Anderson had been sued by Edward L. Carey, the former general counsel of the United Mine Workers of America, for a December, 1970, column that charged Mr. Carey and then Mine Workers president W. A. (Tony) Boyle with removing boxfuls of records from the union's office in Washington.

The column said that Mr. Carey later claimed burglars had struck the office.

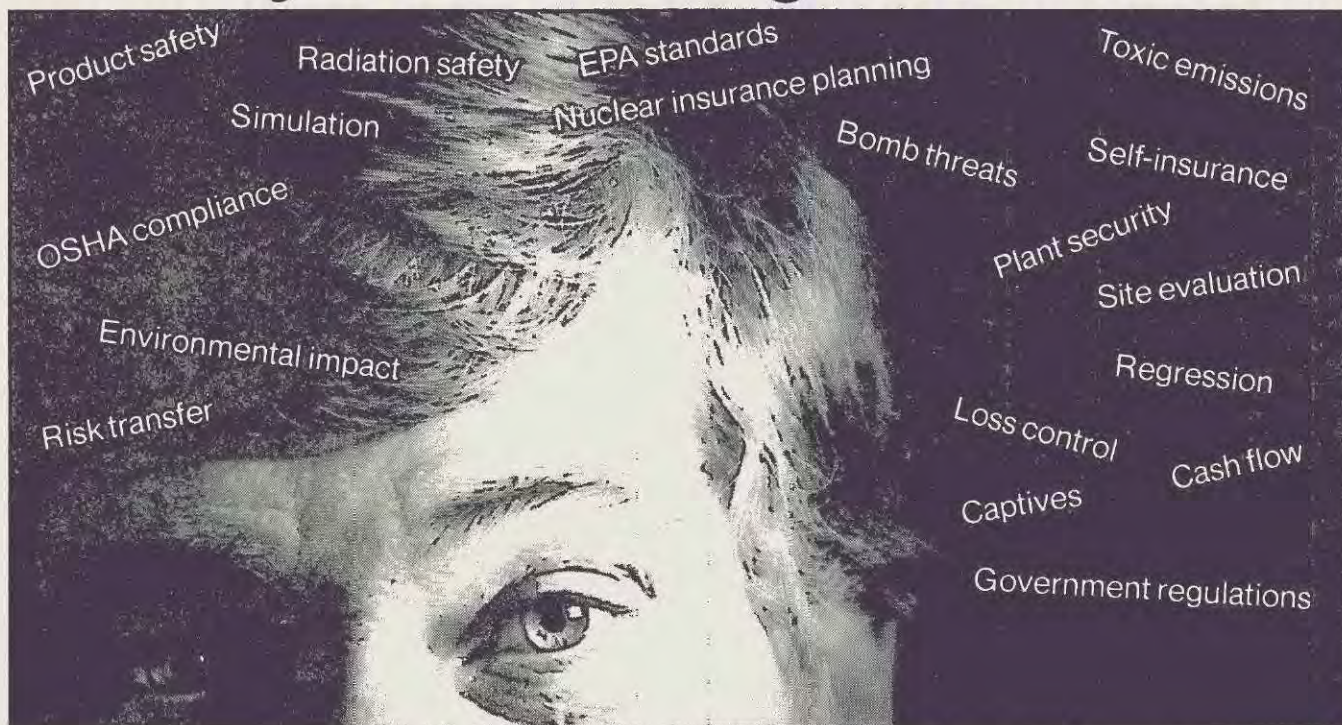
Mr. Carey said the charge was "a contemptible, despicable lie," but Mr. Anderson claimed the account of the incident was "substantially accurate."

The case had been pending in U.S. District Court in Washington.

Mr. Anderson's aide said he had given up on finding libel coverage in the market about a year ago.

"If you know of anybody who wants to sell it to us," the aide said, "we'll go ahead and take it."

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## Public pays the cost of malpractice

NEW YORK—The sharp growth in malpractice lawsuits and awards added more than \$1.5 billion in the cost of health insurance this year, according to a study by the Health Insurance Assn. of America (HIAA).

The HIAA said the growth in malpractice claims and awards has "resulted in malpractice insurance costs to physicians and hospitals in 1975 of \$1.5 billion, a 25-fold increase from \$60 million in 1960."

The association breaks down the cost at \$500 million paid through private insurance, and \$1 billion each paid through insurance companies and Blue Cross-Blue Shield.

The increasing cost of malpractice insurance "is or soon will be reflected in higher medical care prices and fees," the HIAA study said. "Thus it is the public that pays the cost of malpractice insurance, either through direct payments to medical care providers or through third party payers such as insurance companies, Blue Cross-Blue Shield or Medicare and Medicaid."

The HIAA's position on the availability of malpractice insurance, stated in the study notes that the association is "not opposed to the creation of short term non-profit joint underwriting associations (JUAs) which are coupled with other long term reforms and safeguards to avoid malpractice costs from being subsidized by insurers."

The association, however, "is opposed to health insurers being required to participate in JUAs."

Other solutions to the malpractice insurance problem offered in the HIAA study include: placing limits on the recovery of general damage and punitive damages but not limiting recovery of actual damages; shortening time periods in statutes of limitations; statutory provisions allowing for periodic payments to a claimant over a period of years rather than providing a lump sum and statutory provisions allowing for the use of voluntary binding arbitration as an alternative to litigation.

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## editorial opinions

# Certification of risk consultants

ELSEWHERE IN this issue appears an article on the use of risk management consultants. Its author, Gary J. Bausom, risk manager for Transamerica Corporation, has used risk management consultants to supplement his own department's efforts in managing Transamerica's risks and, it would appear, with some success. In any event, Mr. Bausom offers some sound suggestions on how to go about retaining a consultant, and his article is commendable for its balance and fairness in approaching the question of whether they should be retained at all.

Without wishing to contribute to the Risk Management Consultant's Full Employment Act of 1976, it is our opinion that consultants do serve a very useful purpose in the risk management process.

The knowledge of a consultant is generally a cut above that of others in the field; for the most part they have no (indeed, some insist they have none) financial interest in insurance transactions that may result from their recommendations; and they are usually privy to a solid base of information on how solutions to a whole realm of problems have been found by others.

But so much for that. Risk management consulting firms appear to be doing very nicely, thank you, and certainly far better than the subjects of much of their consulting.

Because they are doing so nicely, however, we think it is time for the risk management consulting profession to make some solid moves in the direction of professional certification.

The Institute of Management Consultants, of course, does certify individuals with the Certified Management Consultant (CMC) designation. To our knowledge, however, few

risk management consultants have this designation; nor do we think for a minute that designation is the most desirable for the risk management discipline.

As yet, however, the two professional organizations serving this particular field—the Institute of Risk Management Consultants (IRMC), and the Insurance Consultants Society (ICS)—have not gone beyond issuing much more than a few guiding principles for their members. Part of the problem, of course, is that these organizations themselves have differed over several issues in the past, some of them petty, some not so petty. One major issue facing the consultants is whether or not they should be allowed to receive fees from insurance companies, or parties independent of the client and the consultant. One clear difference exists, for example, over whether an insurance company should pay the consultants' fee for the risk management audit of a corporate client (although this issue of ethics appears to have been contradicted on at least one occasion by one consultant that had been vocally opposed to accepting fees from insurers).

We see nothing wrong with an insurance company, or other party, paying a risk management audit consulting fee on behalf of a corporate or state/municipal government client—with one major qualification: The arrangement should be clearly defined and all parties should be so informed and agree to it.

If that issue were resolved and if the various risk management consultants could get together as one, then perhaps risk management consultants could get on to more pressing matters—professional certification, for one thing. Better sooner than later.

## International call for March 8 issue

ON MARCH 8 *Business Insurance* will publish its annual International Issue, focusing on protection of people and property abroad.

For companies with expanding operations in many foreign countries, the issue will also contain a listing of international services and specialists available to risk, insurance and benefit managers with problems to solve and programs to establish.

The listing will provide a directory of property engineering, risk management consulting, captive management, brokerage or insurance facilities in countries outside the U.S. Also included in this directory will be excess lines insurance and brokerage facilities in foreign countries, and the names of reinsurance sources.

If your firm offers services through foreign branches, or offers special facilities for international insurance or benefit programs, please submit a brief description of those services or facilities, including a contact at your firm for our readers to direct queries to, address and phone number. Direct these items to the attention of Susan Alt, managing editor, 740 Rush St., Chicago, Ill. 60611, by February 9.

Beyond this directory of international services, we'll be pursuing other topics with an international risk management angle: Joint ventures established with Japanese firms, trade

agreements with Red China, U.S. manufacturing operations in Eastern Bloc countries of Europe and in the Soviet Union, and expanding interests in the Middle East. We'll look at the influence of London and Japanese insurers on world markets. Any story suggestions or contributions are welcomed.

## Honest employes

PERSONS WITH responsibilities for arranging bonding coverage for employes—as well as those persons responsible for hiring "bondable" employes—may be interested in a little item from the Labor Department.

The department reports that there have been fewer than two defaults for every 100 persons covered under a special federal fidelity bonding program since 1966.

And this is in spite of the fact that the participants in the bonding program are ex-criminal offenders.

The experience has been so good that rates for the bonds, purchased through a commercial company, have been cut in half since the program began eight years ago.

With all the white collar thievery that goes on in business and industry today it's reassuring to learn that at least some progress is being made with ex-offenders.

## letters

Letters are welcome. Address letters to the Editor of *Business Insurance*, 708 Third Ave., New York, N.Y. 10017.

### Increased emphasis

To the Editor: In your November 17 issue, *Cyprus Mines Corp.* was included in a feature story on how three West Coast firms had "shuttered their risk management departments" in an effort to cut costs. We are hopeful this letter will clarify that article as it related to *Cyprus*.

We do not believe that we have downgraded the importance of the risk management function at *Cyprus*. In fact, we are giving it increased emphasis.

*Cyprus* has recently reported that third quarter and first nine months of 1975 net income decreased from 1974 record results due primarily to depressed copper and lead prices and low ocean shipping rates. However, *Cyprus* remains profitable and financially strong. This year, in connection with the sale of \$100 million of 10-year notes, *Cyprus* was given an "A" quality rating by Standard & Poor's and Moody's thus indicating their evaluation of our present and future financial strength. Further, we are constantly seeking ways of economizing in order to realize the maximum return on our staff functions. This is a continuing program throughout the operations of our company.

We have consolidated the basic duties of our former internal insurance operation. Employee benefits functions are now incorporated within our personnel department. The risk management portion of the function also reports to me but has newly-defined management objectives. We will be concentrating on financial management, loss prevention, and risk control. A major portion of our program will be to communicate to our operating management the importance of risk management in their daily operations. Finally, we will continue to coordinate the purchase of insurance.

In summary then, *Cyprus* has not written off the risk management function to cut costs. Far from it. We are improving the operations of the function and encouraging our managers to give it higher priority in their daily planning.

**Richard Grantham**

Senior vp, *Cyprus Mines Corp.*,  
Los Angeles, Ca.

### FASB rules

To the Editor: I appreciate your providing valuable information as you did in your article in the December 1 issue of *Business Insurance* magazine. It was gratifying to hear that Casualty Self-Insur-

*Continued on page 10*

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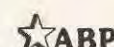
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# letters

Continued from page 8

ance was going to increase 50% over the next five years. I do, however, have reservations about the validity of this data in the light of recent Financial Accounting Standards Board Bulletin Number Five. Since your article is based on information accumulated prior to the issuance of this bulletin, we can assume that these figures will change.

Please advise me of some opinions of the effects this bulletin will have.

**Fred L. Wettstaedt**

Insurance Administrator, International Multifoods, Minneapolis, Mn.

*Editor's note: We'd like to hear from BI readers about the mechanical (i.e., bookkeeping) changes brought about by the FASB rules, and also about any changes in corporate attitudes toward self-insurance in the wake of the rules.*

*Morris Ginsburg of the San Francisco office of Coopers & Lybrand offers his view this way: "If the economics of self-insurance were and are valid, then the FASB pronouncements should not disturb that. If captive insurance companies had good business reasons for being established, then, again, the FASB (rules) should not disturb those reasons either. The accounting implication should not, in my view, affect management's answer to be self-insured or not to be self-insured." Mr. Ginsburg also proffered that past*

*practices among self-insurers to rely on inexact estimates of losses for self-insurance provisions might change. "The recognition for losses that have occurred would be required to be based on more data. In effect then, the self-insured business enterprises would be required to use methods and approaches similar to those used by insurers in establishing liabilities for losses that have occurred," said Mr. Ginsburg.*

## Withdraw completely

To the Editor: In an effort to keep your publication up to date concerning policy changes at Employers Insurance of Wausau, I wish to inform you that our company is withdrawing completely from the professional medical and

hospital liability insurance market. A report in the Nov. 17, 1975 issue of *Business Insurance* alluded to this in a story headlined—"Employer's will stop writing malpractice in Pennsylvania." We recently notified our remaining physician and hospital policyholders in Alabama and Wisconsin, and the National Assn. of Residents and Interns that their coverage will not be renewed.

All of us in the insurance industry are familiar with the cause of the malpractice crisis and the financial burden it has placed on the resources of individual insurance companies. Following a careful study of our long experience with professional medical and hospital liability coverages, we have concluded these lines are not an insurable risk for our company.

Our withdrawal from the professional medical and hospital liability insurance market is being accomplished in an orderly manner. Doctors and hospitals covered under our malpractice policies were notified well in advance of our intention not to renew their coverage. No policies have been cancelled in mid-term. In addition, we have agreed in all cases to help locate other insurance sources and share our actuarial information with new carriers if necessary. Where new coverage cannot be obtained in the voluntary market, we have and will continue to assist state authorities in the formation of joint underwriting associations to provide basic professional liability coverage. In Wisconsin, for example, our company is the servicing carrier for the state's newly organized JUA. Our decision to withdraw from the malpractice market recognizes that most of the states affected have JUA legislation making professional medical and hospital liability coverages available.

We continue to take an active interest in the search for solutions to the malpractice problem. There are obvious reforms necessary in the malpractice reparations system. But, most important, the insurance industry must make it clear to the public that patients, not insurance companies, ultimately pay for the often outrageous awards and settlements that are driving up the cost of malpractice coverage, and driving insurers out of the professional medical liability insurance market.

**Reinhold R. Klein**

Senior vp, Employers Insurance of Wausau, Wausau, Wi.

## Moving industry

To the Editor: The article in the November 17th issue of *Business Insurance* about the captive agency owned by Bekins Van Lines states that civilian employees of the GSA will be charged an average premium of \$55 for a declared value of up to \$100,000 per shipment. It goes on to say that the firm's rates will be 20% to 30% lower than those charged by van lines to individual customers. The going rate in the industry is 50 cents per \$100 of value which develops a premium of \$50 on a \$10,000 shipment under the Declared Value protection coverage on the bill of lading. Can this firm operate for 11% of what others are writing the same coverage for and losing a bundle in the process?

Another article in the same issue quoting H. B. Hancock of Farmers Group: "No Movers Compensate for Total Loss" tells an opposite version of conditions in the industry.

On Jan. 1, 1967, in order to eliminate coinsurance penalties on insured moves, the ICC established \$1.25 per lb. as the minimum insured valuation of household goods on bills of lading. Thus

a 10,000 lb. shipment at \$1.25 per lb. is valued at \$12,500. At a rate of 50 cents per 100 value this amounts to a charge of \$62.50 on the bill of lading for full value insurance. The shipper may value his goods at a higher amount but rarely does.

Household goods in 1975 are actually worth \$2 per lb. on the average. (The charge should be \$100 to provide insurance to value.) The result is that the shipper is paid in full for a partial loss, he recovers 62.5% of a total loss, and the motor carrier and his insurance company end up without enough dollars to absorb the increasing size of claims. If the customer elects to release the shipment at 60 cents per lb., which many National Account customers and all military do, the insurance to value gap is even wider.

It is difficult to imagine how prevailing rates for local, intra, or interstate moves can be reduced when the moving industry is operating with rates established 25 years ago and valuations established in 1967 when household goods were worth 60% of what they are worth in 1975.

**R. William Perry Jr.**

CPCU, Geneva, Il.

## Self-serving

To the Editor: I'm certain you're going to have a problem selecting one of many letters in response to Edward J. Noha's talk at the Arizona agent's association (*Business Insurance*, Nov. 17.) It was blatantly self-serving.

CNA's track record has not been particularly impressive over the years. They most certainly can't be described as a stable market. They have moved in and out of programs and agencies with each turn of the market and underwriting experience.

The agent who does not have several back-up markets is crushed at each cyclical crunch. Mr. Noha refers only to switching markets at renewal time for an improved premium. He does not consider the agent's dilemma when his carrier will not renew because "we no longer will consider this class of business," quite often even as renewal business.

A company must operate according to the dictates of its management (quite often in an ivory tower). The agent is subject to its whims—thus, it is impertinent of a company's executive to suggest that his agent narrow his field for the company's self-interest.

**Sidney Golovin**

Monticello, N.Y.

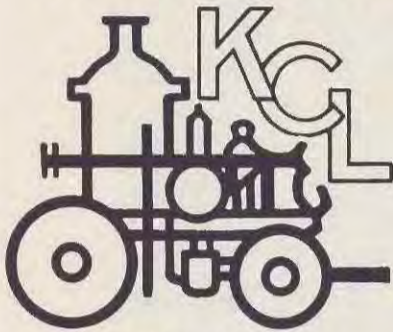
## Houston tells of risk meet

HOUSTON—An overview of the commercial insurance industry as seen by leading insurance professionals will be featured at the second biennial "I-Days" sponsored by the Houston chapter of Risk and Insurance Management Society (RIMS).

Moderated by Edwin S. Overman, president of the American Institute of Property and Liability Underwriters Inc. the panel of experts includes: Warren Brockmeier, director-risk management services, The Wyatt Co.; George F. Reed, senior vp and counsel, American General Insurance Co.; Dan E. Sullivan, risk manager, Northern Electric Co. Ltd., and national RIMS president; Joseph D. Hawkins, commissioner of insurance for the state of Texas and L. Patton Kline, president, Marsh & McLennan.

The day long session will be March 10, 1976 at the Houston Oaks Hotel. ■

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# Kraftco insurance arm ups outside business

CHICAGO—Ideal Mutual Insurance Co., a wholly owned subsidiary of Kraftco Inc., has shifted its book of business so that approximately 25% of its revenues are now from third parties, while about 75% of its business is done with the parent company. In 1972, over 95% of Ideal's business was done with Kraftco, the parent company.

Edward P. Lalley, president of the insurer, noted that the shift has come about since 1972 when "it was decided that it would be expedient to broaden our range of insurance." In a talk at the 25th anniversary RIMS meeting here, Mr. Lalley explained that corporate (or commercial) lines of business still heavily dominate Ideal's book at 95% of volume, with the other 5% in personal lines.

Ideal's personal lines business involves primarily homeowner's and auto policies sold to employees of Kraftco, he said.

The shift in business also has meant other new ventures for Ideal, such as taking on a large commercial client as an insured last year who required a nationwide network of claims adjusting offices. As Mr. Lalley noted, this insured had operations all over the country and didn't want Ideal Mutual to handle claims out of New York. Thus, Ideal Mutual contracted with Crawford & Co., Atlanta, to handle claims for this client through its 400 offices.

During the session on food industry captives at which Mr. Lalley spoke, he registered a bemused reaction to the resurgence of interest in the mutual insurance captive concept. The IRS's possibly more favorable attitude toward deductibility of premiums paid into a mutual captive company by the owner-members seems to be creating new interest in mutuals, he added.

At the same session, Jerry R. Lane, formerly corporate insurance manager for Darling & Co., noted that since Darling began using its Colorado captive, the workers' compensation loss ratio

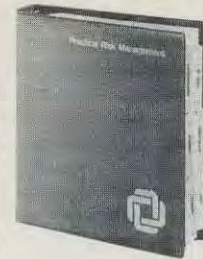
was pared to 61% from the previous 134%. Mr. Lane is now at McDonald's Corp.

Darling's rates for workers' compensation insurance, based on class rates for companies in the rendering business, ran \$10 to \$11 per \$100 payroll, according to Mr. Lane. "That's why we wanted a captive for work comp," he de-

clared.

He noted that if there is any single aspect of a captive that he wasn't fully aware of when Darling activated its captive in 1974, it is the amount of work involved in managing the affairs of the captive. "There is a hell of a lot of work involved" in a captive both for the management company and the corporate insurance manager, he cautioned.

Mr. Lane also noted that Darling & Co.'s captive insurance company "has some reinsurance on the books," and is doing limited business with third parties. ■



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## Tell growth of catastrophic health cover

NEW YORK—Catastrophic health insurance coverage has retained its position of fastest growing form of private health insurance this year, according to the Health Insurance Assn. of America.

Some 149 million people in the U.S. had catastrophic health coverage at the beginning of 1975, an increase of 12 million over 1974, the Association stated.

About 91 million of the 149 million are covered by insurance company major medical policies, while 45 million are covered by Blue Cross/Blue Shield policies. About 11 million have high level insurance company basic policies and another 11 million have various types of prepaid group practice plans, the Association noted, adding that nine million people are covered by a combination of plans.

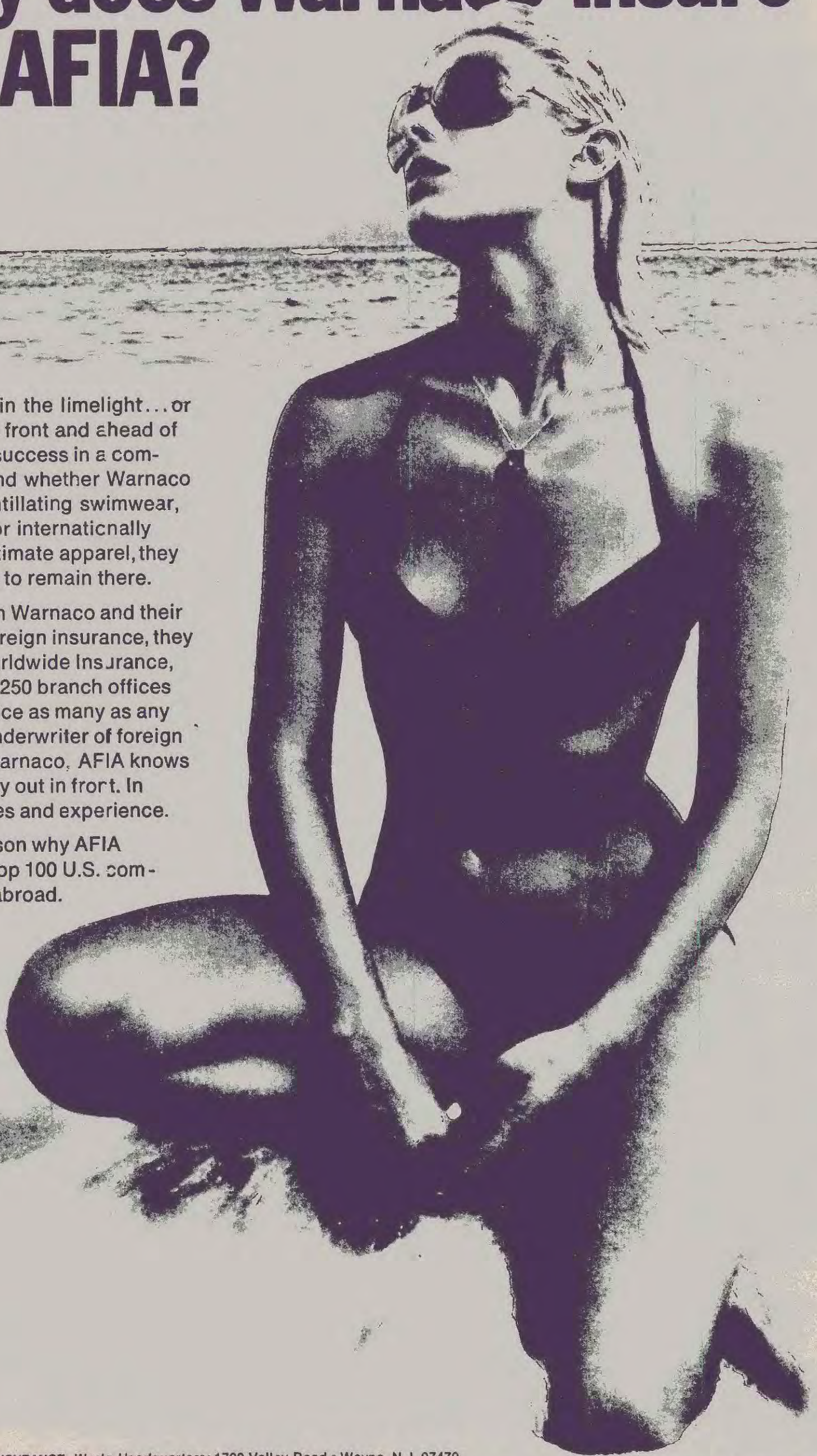
Catastrophic health insurance was first developed in 1951 with only 100,000 Americans enrolled. By 1960, some 28 million had the coverage, and by 1970, the number reached 103 million. ■

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# PERSPECTIVE

## Risk consultant plays key role as problem solver, used wisely

By GARY J. BAUSOM  
Risk Manager  
Transamerica Corp.

WEBSTER DEFINES "consultant" and "consult" as follows:

Consultant—1. A person who consults another person, 2. A person who gives professional or technical advice, as a doctor, lawyer, engineer, etc.

Consult—To seek information or instruction from; ask the advice of, refer to.

I like to think of a consultant as someone who tells it like it is.

Do you really need a consultant?

This seems like an elementary question. Nevertheless, it is a very important one. In order to satisfactorily answer this question, it becomes necessary to examine several key factors:

- Has the problem that you are trying to solve been specifically and clearly identified? In almost all cases, you should be able to state the problem in one sentence.

- What can a consultant do better than, or what can he do that is beyond the capabilities of your present staff? Consultants can provide assistance on day-to-day matters, but their time may be better spent helping you establish goals, audit or do research.

- Finally, are you prepared to accept openly what a consultant might tell you? It may be painful!

There are both favorable and unfavorable aspects of utilizing consultants, and such factors may vary depending upon a particular situation. Some of the general positive and negative aspects include:

**Positive: Objectivity**—A consultant who is compensated on a time and expense basis has nothing to gain or lose as a result of the evaluation or its outcome.

**Organizational Mobility**—Normally a consultant is not inundated with the administrative problems and "red tape" which tend to limit and restrict insiders to conform with the organizational structure.

**Credibility**—Valued employees have cred-

ibility with management. An outside consultant, however, has a different type of credibility with management. It is one thing for you to tell management that you did, or are doing a good job, but it carries more weight and credibility if management is given an independent opinion.

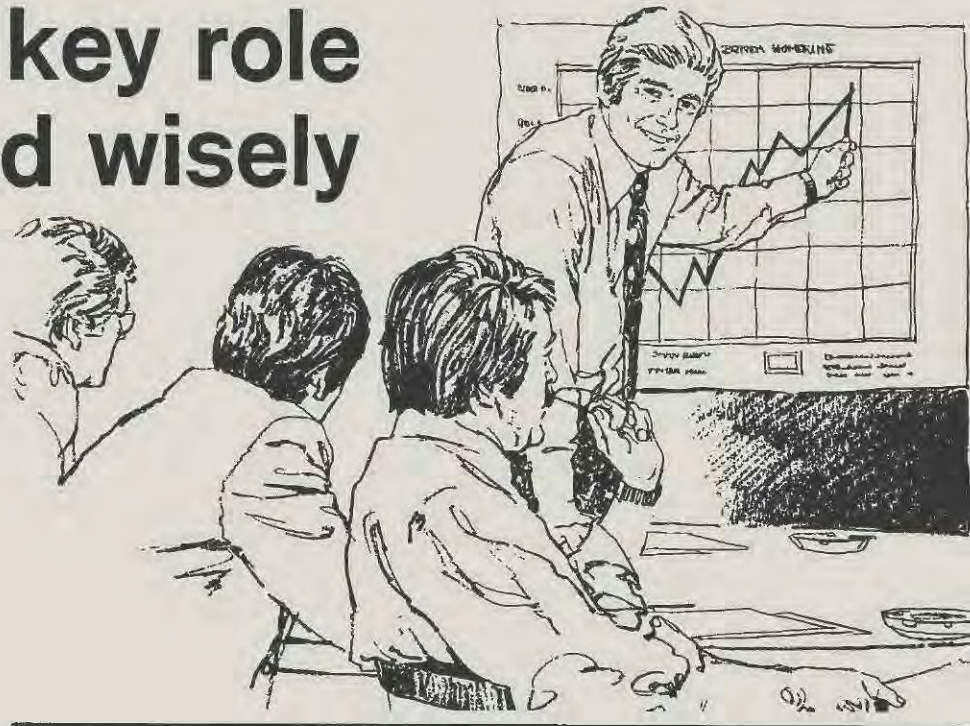
**Diversity**—A consultant brings to any job a broad range of exposure and experience, which can be used in solving problems. The geographical mobility helps to stimulate new ideas and means of approaching problems and of helping you to develop solutions.

**Negative: Cost**—Generally speaking, the use of consultants can be expensive. Good consultants usually command a high hourly rate, but the total annual expenditure need not necessarily be unreasonable. By wise use of a consultant's time, one can balance the cost and the benefits.

**Time**—it requires your time to manage, assist, and to bring consultants up to "speed" on the management, employee, historical and operational phases of your particular organization. In order to be of any value, a consultant must be kept informed and his information updated as changes occur.

**Selection of a management consultant** is different and perhaps more difficult than the selection of an attorney. An attorney, before commencing practice, must successfully complete studies and examinations prescribed by legal statutes. Upon successful completion of both, he is bound to practice his profession according to an established canon of ethics. Attorneys can be deprived of their right to practice law, if it is proved that those rules of prescribed conduct or ethics have been violated.

On the other hand, management consulting is not yet subject to governmental regulation that would legally define the profession and set standards for required education and experience. Therefore, the selection of a management consultant for a specific purpose becomes more difficult. California had a bill pending in the legis-



lature that would require state licensing of management consultants.

The first step in the selection process is, of course, the agreement of the management of a given firm that a consultant is necessary or desirable. Once agreed upon, the selection of such should be given to a responsible individual.

The second step is the actual seeking out and retaining the services of a particular consultant. One of the better sources of information on consultants seems to be professional organizations. A number of professional organizations for consultants are self-regulatory bodies. They have established a code of ethics, as well as minimum requirements for education, experience, and guidelines by which the members must conduct themselves. Opportunities are also provided whereby members can further their knowledge and expertise.

The Institute of Management Consultants is such an organization of professionals. Its individuals are engaged in various types of management consulting. A key factor is that the IMC certifies not firms, but individuals who meet the professional standards of competency and ethics for membership. The judgment of whether or not

these criteria have been met is determined by the Institute through extensive inquiry, a check of case study materials, and interviews. After January 1, 1974 applicants have not only to meet the requirements, but also to submit an extensive paper and pass oral examinations. After completing these steps, the individual becomes a Certified Management Consultant (CMC).

**It is important** to emphasize the qualifications of an individual, as opposed to those of a firm. Firms can be merged, sold or dissolved. Individuals have personalities and characteristics which remain fairly constant. The experience, knowledge, and sustained professional integrity of the individual person remain with him, and it is these tools that he brings to his work. In short, people, not firms, get things done.

At the present time, there are two national professional organizations, whose combined membership totals approximately 100 persons, involved in risk management and insurance consulting: The Institute of Risk Management Consultants (IRMC), and The Insurance Consultants Society (ICS). The basic differences are:

*Continued on following page*

## Defends dual role as broker, consultant

"The primary role of the consultant in claims work is assisting in the recovery of losses insured under property policies, and very few businessmen have any idea of where to start when they do experience a major property loss."

By WILLIAM W. DINTLEMAN  
Associated Underwriters Inc.  
St. Louis, Mo.

IN VIEW OF THE increased stature of insurance consultants, it may seem strange that there is conflict within the industry, but it is simply an intensification of the underlying competition. As the value of consultants has become more widely recognized, gross billings and competition have increased correspondingly. So has name calling.

As an unaffiliated consultant also performing as a broker, I am not affected by the organizational disputes but must admit that the conflict-of-interest inference of the "pure" consultants has gotten to me. The implication that a person acting in a broker capacity cannot give unbiased advice as a consultant, or would take advantage of information gained as a consultant, is undoubtedly competitively based. It is also a method of showing strength where weakness exists, as there are two important areas of the business in which the broker type of consultant is better positioned to

offer complete services than is the pure consultant.

One of them is the propriety of premium charges. Uncertainty about premium charges is one of the major reasons many companies engage a consultant, particularly if the relationship they have with their broker is very close or of long standing. Short of requesting proposals on their coverages, employment of a consultant is the only way buyers can obtain assurance that their interests are properly served, and constant change in the insurance market place makes it extremely difficult for those not actively involved in marketing to keep abreast of the fluctuations.

**Some consultants** wisely avoid detailed discussion of premiums. It would not seem possible for them to do otherwise unless they had a working relationship with another firm engaged in day-to-day insurance marketing operations.

In the minds of many, a surreptitious arrangement of that kind would present a greater ethical question than that of the consultant openly engaged in the broker-

age business. The latter will do the job on a confidential basis and go on his way, but the pure consultant would have no control over the other firm from which premium comparisons were obtained. They could use the secretly acquired information to literally steal the account.

However, the foremost advantage of the consultant-broker evolves from the work performed in claims situations. There is a serious need for policyholder assistance in this facet of the business, and the broker providing complete risk management services has a continuing flow of claims from which knowledge can be gained. These cases also keep the broker in personal contact with many claims specialists from whom he can draw further knowledge and opinions about difficult situations.

The primary role of the consultant in claims work is assisting in the recovery of losses insured under property policies. Few businessmen have any idea of where to start when they experience a major property loss, and agents and brokers concentrating their efforts on the selling end of the business can seldom provide the guidance required to maximize the recovery. The largest claims I assisted in settling this year were insured under policies written by a broker who is the son of the policyholder and who is associated with a full-service agency.

Although the majority of consulting jobs concern property losses, I was recently retained in a most unusual and interesting

liability situation which exemplifies the need for total consulting services. It also serves to reveal the vulnerability of the average commercial insurance buyer.

Basically, the claim resulted from the installation of an alarm system in a residence several years prior to the loss. The claim occurred when the residence burned and the owner was underinsured. Subsequent investigation disclosed that a smoke detector had not been installed as called for in the contract and specifications, so the owner sued the contractor for the difference between his amount of loss and the insurance recovery, presumably on the assumption that had the detector been present and activated the damage would have been much less.

**The claim** was referred to the liability insurer, as completed operations insurance was provided under the policy, but the carrier denied the claim stating that the loss did not qualify as an "occurrence" under the policy terms. Efforts by the broker and the corporate attorney failed to persuade the insurer, so I was consulted by a director for whom I had previously worked.

Upon hearing a summary of the details, my initial reaction was one of agreement with the insurer position, as it was an error and omissions loss, but further thought led me to the proper conclusion that completed operations insurance is essentially errors and omissions coverage for employ-

*Continued on following page*

# PERSPECTIVE

## Consultant . . .

Continued from preceding page

Size/Age: IRMC—35 individuals from 14 firms, 3 years old.

ICS—65 individuals from 15 firms, 8 years old.

Bylaws: IRMC—bylaws forbid members to work for or receive remuneration from insurance companies or brokers.

ICS—bylaws allow members to work for an insurance company or broker on a fee basis, but they cannot be directly involved in the sale of insurance.

Fees: IRMC—rules state that members must charge straight fees and may not receive contingent fees based upon the reduction in costs, increase in profits, etc.

ICS—rules are silent on the point of fee being charged based upon savings and in some cases, members have been known to charge on this basis.

These are only a few points covered by each organization's bylaws, rules, and guiding principles. When you are seeking a consultant, professional organizations provide a means of evaluating the quality of the individual, as well as a place to file a claim of dissatisfaction.

However, not all consultants in the field of risk management belong to a professional organization. By no means does this indicate that they are not qualified, competent or ethical. On the contrary, a number of excellent consultants are completely independent of all professional group affiliations.

In summarizing the selection process, the following basic steps should be taken:

- Personal interview with the potential consultants(s).
- Determination of the types and scope of the activities of work performed for other clients. It is also important to ask for the names of other clients and to request the consultant's clearance to contact them.
- Request and review samples of their work, recognizing it is confidential.
- An attempt should be made to obtain references and third party references. (Third party references are names of other individuals knowing the consultant which have been obtained from the references furnished by him.)
- In the end, there is no good substitute for sound management judgment.

Now that you have retained a consultant, what do you do with him?

Having decided which consultant will be used, the next thing to be done is to obtain an engagement letter. This letter should contain an understanding and definition of the problem or task to be accomplished, a general outline of the approach or methods to be employed, and the time frame considered necessary to accomplish the work.

When the engagement letter has been received, it is important that management carefully select a liaison person to coordinate with the consultant. The liaison should be someone of authority and also, someone whose area of responsibility is to be affected by the study.

It is a good idea to communicate to the staff affected by the study what the goals and objectives of the consultant are, and hopefully, the internal reasons for the study. By doing this, it will be possible to avoid potential negative effects on employee morale, enhance employee cooperation and reduce the amount of time required to get things back to normal.

Company personnel should be used to assist the consultant with detail work. The employees are familiar with the available data and know where to find it. (It also places some responsibility on the consultant to make sure that the requests for data are proper.)

Periodic progress reports should be requested and continually compared to the engagement letter to assure that there are no major deviations. If there are material discrepancies, they should be brought to the immediate attention of the consultant and discussed with him. The consultant should,

in such an instance, be able to provide a reasonable explanation.

How should consultants be evaluated?

Did the consultant do what was stated in the engagement letter? Did the consultant make it happen, assuming that the engagement letter adequately stated the problem or task? Here are some factors which help in evaluating the consultant and his performance:

- Was the work well planned and executed?
- Did the consultant conduct himself in a professional manner?
- Did the employees benefit from their association with the consultant?
- Was the firm able to carry forward his recommendations?
- Were his recommendations practical and economical?
- Was the work performed within the time frame and fee range established?
- Did the consultant follow up with you to make certain you were satisfied with the quality of the work, although not necessarily with the outcome?
- Would you feel comfortable using the consultant again? Would you recommend him to someone else?

Do consultants have a future? Yes!

Recently the AICPA did a study with 1,250 firms selected from Standard and Poor's 1971 Register of Corporations. This quality of service being provided by public accounting firms. The study indicated that more and more clients (of the public accounting firms) had a need for management consultants and their services. It was further concluded that through the use of such, the public accounting firms could then provide the public with a more qualified opinion, as it respects the financial conditions of their clients.

There are some guidelines which may be issued soon by the Securities & Exchange Commission suggesting that public accounting firms use outside consultants, as opposed to internal integration or diversification. The SEC does not want the public accounting firms to grow too rapidly, perhaps thereby compromising the quality of a financial audit.

The risk management function is a prime example of the need for improved internal expertise in public accounting firms, or a

more extensive use of outside consultants. When a public firm is audited by a public accounting firm, and their risk management function, in particular, is audited, the reliability of that audit is questionable. The public accounting firm can very well audit to see that certain policies are in force and that the premiums have been paid; however, it is questionable that they are in a position to determine if the types and amounts of coverage, or other risk-financing techniques employed are adequate. In other words, are the firm's financial position and future earning power protected from catastrophic losses which could materially affect the present condition, and can the auditors adequately judge the effectiveness of the current coverage?

As previously mentioned, consultants can assist the risk manager in intermediate and long-range planning, auditing the program for management, and with research projects.

How does Transamerica use risk management consultants?

Transamerica Corp. was created in 1928 as the holding company for the Bank of America. As a result of the Bank Holding Act of 1956, Transamerica chose to divest itself of its bank holdings. Some of the present major holdings include: Occidental Life Insurance Co., Pacific Finance, United Artists, Budget Rent-A-Car, Delaval Turbine Inc., and Trans International Airlines. Worldwide, the Transamerica family employs approximately 25,000 people, although the parent company consists of only 80 employees.

Of the 80 people employed by the parent company, only three are involved in the risk management function. The risk management department has responsibility for all of the subsidiaries, which number over 100. Naturally, three people cannot handle this entire function, and that is where the outside consultants become involved. Some of these outside consultants are retained on a continual basis, while others are retained on a periodic basis.

Transamerica's risk management function overtly transfers only catastrophe exposures. We specify that the risk transfer is to be exclusive of any services, which we must, therefore, provide.

The broker group handles the normal marketing functions connected with the placement and procurement of our excess insurance contracts. In addition, they provide other supports which could be performed by the internal staff.

## Dual role . . .

Continued from preceding page

ers errors. Research revealed material which showed the situation was indeed within the ISO definition of occurrence, and a carefully worded letter was written to evoke the desired insurer response.

Surprisingly, it did not, but we followed up with a point-by-point discussion of the favorable factors which included the names of several claims managers and underwriters who agreed with our position. One of them was an underwriter in the home office of the insurer in question, so we finally achieved the reaction we wanted.

This claim is only one of many which have convinced me that it is most unwise to summarily dismiss any loss as not being covered. The conviction is most strongly reinforced by a property insurance matter to which I was referred by a policyholder.

His client seemingly was denied payment of a claim by the direct-writing insurer for a fire loss which occurred after the carrier cancelled a policy without notification to the insured. My client thought this was a terrible way to do business, and I agreed as I knew the insurer to be very good in all respects. Other facts soon explained the insurer position.

The apartment building in question had been purchased by a young man, but the name of his father was also on the title to facilitate financing, as the father owned a number of other properties and had an excellent credit rating. The insurance was placed with the company insuring the property of the father, and the agent added it to the policy of the father. Subse-

quently, the father decided to change insurers and cancelled the direct-writer policy, inadvertently cancelling coverage on the apartment building owned by the son.

A fire loss occurred three months later which caused substantial damage. When it was reported, the insurer promptly denied coverage.

Since cancellation was effected upon the written request of the policyholder who was a legal partner in ownership of the property, pressing the claim appeared hopeless, and the immediate reaction was to express sympathy and withdraw. However, further probing brought forth factors which altered the outlook.

The son had ordered the coverage and a binder had been issued in the name of him and his wife. As he had requested, the son had been billed for the premium and paid for the policy with a check drawn upon his account. When the policy was cancelled, neither he nor the mortgagee was notified by the insurer. The son further contended that he had never known that the coverage was added to the policy of the father, and there was nothing to indicate that the agent, who had left the company, had ever advised him to that effect. The new agent was unaware of the original transaction and had no reason to discuss the cancellation with the son.

These facts were formally brought to the attention of the insurer, and their file was reopened, but their position toward the insured was not materially changed. Of course, the mortgagee had collection rights because of lack of notice, but that was of little consolation to my client, because that section of the policy also gives the insurer the right to take over the mortgage should payment be made to the mortgagee when

The loss control group manages the safety and fire protection services. In this area we have been successful at managing and guiding any of the inquiries made by our excess insurance carriers.

The claims group primarily handles our workers' compensation and liability losses. In most cases, our excess carriers have knowledge of only those claims which approved our retention levels.

The risk management consultants perform a number of special assignments in the auditing and research areas of our risk management program.

Having had an opportunity to work both in a situation with a large internal staff, and in one with a consultant type of staff, I prefer the latter. There are a number of pluses, as well as minuses, to the consultant approach. It is not always the best approach for all situations.

Some positive reasons for retaining consultants include:

- A higher quality of individual, who probably could not be justified on a full-time basis. It would be difficult to keep such people challenged on a full-time basis.
- It is easier to make "staffing" changes, should that become necessary.
- We are of the philosophy that people, not companies, get things done, (i.e., John Doe can make things happen, but that is not necessarily true of an insurance company, broker, or any institution.)
- Consultants work for us and not for a boss at an insurance company.
- The total annual cost is less than what Transamerica paid over three years ago, when they paid commissions on a fully insured program.

A negative aspect to retaining a consultant is a lack of concern for your problems which could occur if a personal commitment is not obtained from the individuals you choose to retain.

Retaining consultants is only one of a number of approaches to solving problems and accomplishing goals. It is not the answer for all problems; however, if properly utilized, it can be a worthwhile and beneficial experience. ■

Gary J. Bausom is the risk manager of Transamerica Corp., headquartered in San Francisco. Prior to joining Transamerica in 1972, he was employed in the risk management departments of Allis Chalmers Corp. and the University of Wisconsin, Madison.

there was no liability to the property owner. The client would be in the same position. He could then withhold mortgage payments, but the insurer could then foreclose on the property.

Fortunately, the insurance company had no wish to be in the property rental business, and a number of meetings led to a settlement that came very close to the cost of building repairs.

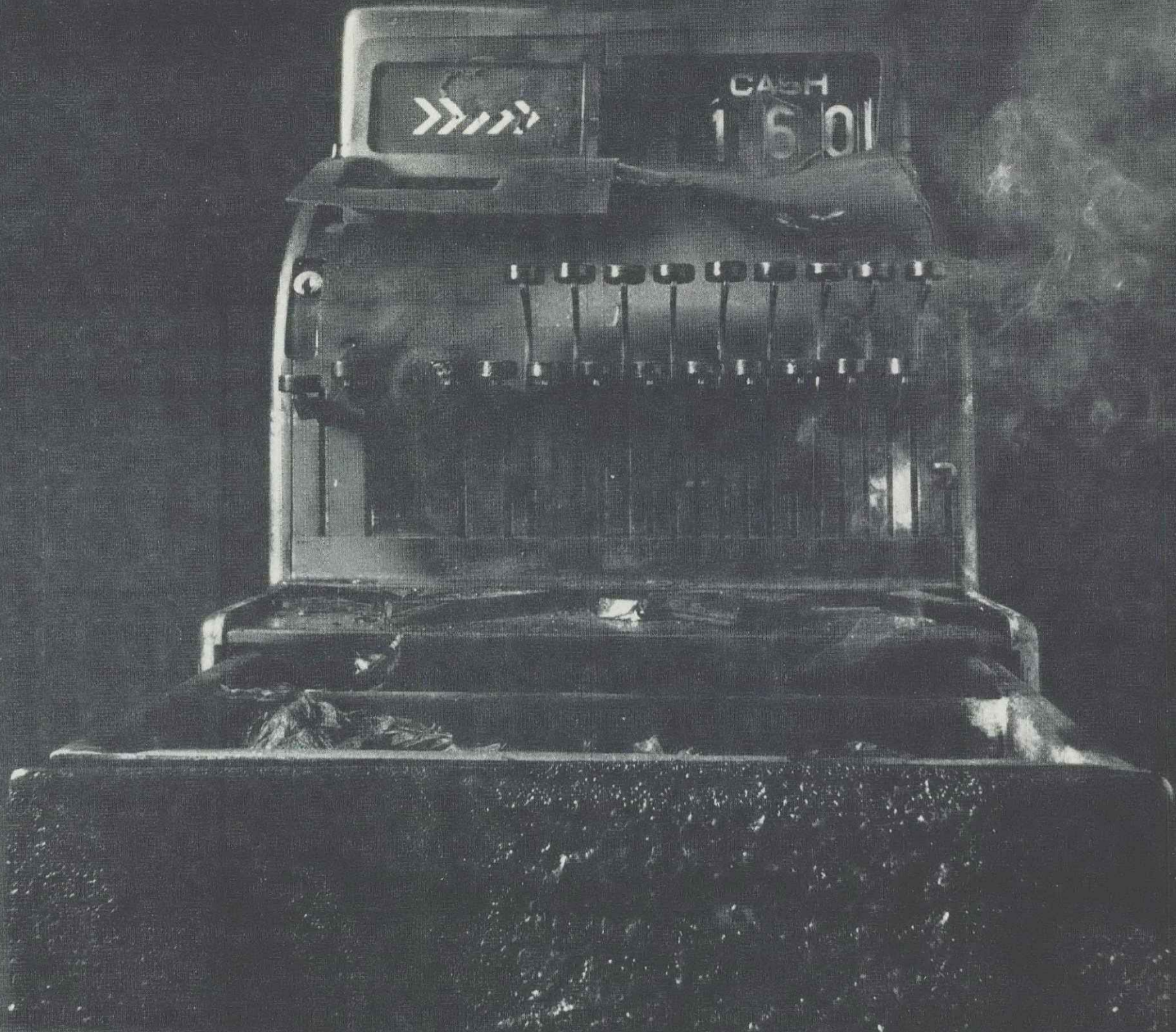
The satisfactory resolution of the claim was again reached by sifting thoughts of other claims specialists, and it taught me that nothing can be taken for granted, as many of the other persons felt my efforts were a waste of time. Even the most hopeless case may have underlying merit that will be revealed by penetrating study.

The reverse is also quite possible, as one negative element may destroy an otherwise solid case. The combination serves to put the consultant in a very delicate—and often difficult—position, but it also makes the guidance of a qualified consultant invaluable in unusual claims situations.

Albeit, the ordinary property damage claims present most consulting opportunities. Few small-to-medium businesses ever have more than one major property loss, so the managements are never able to act from experience. Having no idea of how to proceed they rely on their agent who may rely on the adjuster to properly settle the matter. That is seldom to the advantage of the businessman.

Considering that the adjuster has primary responsibility for protecting the assets of the insurer, he will not be doing his job if he is generous with claimants. And, as a qualified specialist, he has absolute control if no knowledgeable person is on the other side of the negotiating table. ■

# We protect your business where it's most vulnerable.



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Even the best commercial fire policy around can't pay your employees or your on-going bills when disaster pulls your earnings out from under.

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We'll reimburse you for earnings lost while your business is disrupted and for at least 30 days after you reopen. You can add up to 360 days if needed.

We'll cover the expense of setting up a temporary operation from your present quarters or new location nearby if it's possible.

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Even if it means overtime. Because the sooner you get back in business the fewer customers you lose.

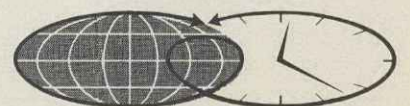
We've also done away with the old bugaboo, the standard co-insurance clause.

And we were the first company to offer such broad coverage for any number of locations under one policy with one limit, making it an ideal remedy for claims headaches.

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## Municipal risks . . .

Continued from page 1  
tions," said Mr. Patton.

He predicted that a decline in incoming funds, including gas tax monies, will compel Downey to allow its roads and sidewalks to grow more hazardous.

At the same time, Mr. Patton quoted from records that showed that his city received only 219 liability claims for the 52 months from Nov. 16, 1970, to March 19, 1975. He said the total incurred loss payout for the period was \$208,954. Of the 219 claims, 211 were for losses of less than \$5,000, he added.

"This breaks down to an annual average of 47 claims and \$48,406 of incurred losses," he said, noting later to *Business Insurance* that his city is paying \$200,000 a year for liability coverage.

Yet despite Downey's relatively good loss experience, Mr. Patton told the legislators that the city has been notified by its current liability carrier, the Insurance Co. of the Pacific Coast, a part of the Gulf Group of insurance companies, headquartered in Dallas, that it must locate a new liability carrier.

Indeed, most witnesses agreed that aggravating the dilemma of out-of-sight liability premiums is the abandonment of the California municipal liability market by a mounting number of underwriters.

Chubb Pacific (Pacific Indemnity) withdrew from the market in July, 1974, it was repeatedly noted. Now other small underwriters—the Insurance Co. of the Pacific Coast had premium writings of only \$5,214,000 for the first

10 months of this year—are either cutting back or giving up the coverage entirely.

"The situation in municipal liability portends to be more serious than that in malpractice," glumly observed Alister McAlister, chairman of the assembly committee on finance, insurance and commerce, one of the two committees that sponsored the open hearing.

Chief among the causes for the situation, now identified as a 'crisis,' is the diminution of governmental immunities that accompanied the enactment in 1963 of a comprehensive California statute establishing tort liability for political subdivisions.

John H. DeMouly, executive secretary, California Law Revision Commission, testified that the law lays down three principal areas of public entity liability: (1) vicarious liability for employees and independent contractors; (2) dangerous condition of property and (3) failure to discharge a man-

atory duty.

Since 1963, the courts have plowed deeper inroads into the governmental realm, noted Mark C. Allen, Jr., city attorney for the cities of El Segundo and Palos Verdes Estates.

Mr. DeMouly noted that inverse condemnation, an expanding area of municipal liability, is not affected by the 1963 statute because it has a constitutional basis.

He went on to urge that any new immunity legislation be directed at a specific problem. "It is my personal belief that some additional, narrowly drawn immunities might be justified," he acknowledged.

Not that new immunities stood alone as a possible answer to the complex question.

Mr. Tavernetti, who proposed a law compelling full disclosure of risks by companies writing municipal liability in the state suggested that legislators pass a law

that would safeguard cities from financial jeopardy "placed upon them by untimely cancellations or by increases of premiums" on liability policies.

In addition, Mr. Tavernetti asked for a "thorough investigation of the law of governmental tort liability."

Taking that point further, James E. Neal, chairman, City Managers/City Attorneys Joint Committee on Insurance Liability, submitted a written piece advocating that "attorney's fees be mandated."

Assemblymen took all proposals under advisement.

Self-insurance accompanied by professional risk management programs was put forward as a way out of the crisis.

While there was concern voiced about the ability of small cities (over 200 of the 413 cities in California have populations under 15,000) to utilize this form of protection, a number of speakers, including Richard D. Patton, director of finance, Downey, repeated a conviction that higher deductibles are the best answer—at least for large cities.

He told this magazine that after Downey's liability policy is terminated by the Insurance Co. of the Pacific Coast next summer, he hopes to have a new system of excess coverage and high deductibles firmly in place.

"Then we shall contract out all claims management and claims adjustment services," he said, pointing out that he believes there are more benefits in contracting out services to specialized concerns than in relying on insurance companies for these jobs.

In pursuing this course, Downey will have plenty of company. The fabled city of Beverly Hills this fall replaced a liability policy having a \$500 deductible with one requiring a \$25,000 deductible. The old, low-deductible policy was from Centennial Insurance Co., which gave notice on October 25 that it was cancelling its liability coverage for the city, said to be confronting financial woes. The new liability carrier is Admiral Insurance. ■

## Insurers and brokers still serve cities

SANTA ANA, CA.—It wasn't all gloom and doom for the beleaguered California city officials who attended the assembly hearing on municipal liability problems.

Even though such underwriters as Chubb Pacific (Pacific Indemnity) and the Insurance Co. of the Pacific Coast either have exited or will exit from the municipal liability field, there are brokers and carriers who are interested in providing liability coverage for California cities.

These companies include Admiral Insurance, part of Security of Hartford Insurance, Hartford, Ct.; Jefferson Insurance Co., New York; Calvert Insurance Co., Baltimore, Md. and Covenant Mutual, Hartford, Ct.

In addition, Cal-Surance Associates, Torrance, Ca., is a brokerage firm that specializes in supplying insurance and risk management services to California municipalities. ■

## Rail safety

State railroad safety inspectors will be allowed to make freight car as well as track inspections under rules changes announced last month for the federal-state joint railroad safety program.

## Business Insurance Employe Benefits Communications Awards Competition



### Award of Excellence presented for outstanding achievement in communicating an employe benefits program

On April 27, 1975, at a luncheon during the Risk and Insurance Management Society's annual conference, *Business Insurance* will present awards for outstanding achievement in communicating employe benefits programs. Awards will also be presented to consultants.

The competition officially opens on **January 1, 1976 for entries to be received** in the New York office of *Business Insurance* (note address below).

There are four categories of communication which will be judged by an independent panel selected by *Business*

*Insurance*. The categories involved are: **Booklets . . . Personalized Correspondence . . . Audio-Visuals . . . Total Communications Program**. The competition is open to all companies and is not limited by the number of employes.

For more information about the competition, to obtain entry forms or to submit your employe benefits program, call . . . Ronnie Drachman, Awards Coordinator, 212/986-5050 or clip the coupon and send it to us as soon as possible.

Note: Entries will not be received after February 23, 1976. If your entry will be delayed, for any reason, please let us know.

### Employe Benefits Communications Awards Competition

Mail to: Benefits Communications Awards • Business Insurance • 708 Third Avenue • New York, N.Y. 10017

Yes, I am interested in entering our communications program(s). Please send me \_\_\_\_\_ entry blank(s) and the competition rules.

Name, title \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

# Hit heavy pension costs in nation's capital

WASHINGTON—Pension costs should be slashed in the District of Columbia, even if that means cutting benefits, to head off gigantic financing problems in the future, a key U.S. Senator told District Mayor Walter Washington this month.

The District is sitting on unfunded future pension liabilities of more than \$1 billion, but Mayor Washington warned that tampering with pensions already being paid or promised to District employees should be "highly explosive."

A move by the District to borrow \$50 million in the bond market, the first private borrowing ever by this local government, has triggered fears in the Congress of a future New York City in the making.

This is despite the fact that District officials have argued that the \$50 million would merely refinance, at lower interest rates, a similar debt already owed the federal government.

Sen. Thomas Eagleton (D-Mo.), chairman of the Senate District Committee, is insisting, however, on a complete outside audit of District finances, including pension costs, before allowing any such borrowing to take place.

The District is in a peculiar position with regard to its benefits programs and its pension costs.

It only recently won home rule powers from Congress, which traditionally has run the municipal affairs of this federal city.

Home rule, however, has left about 60% of the District employees under the U.S. Civil Service System, which costs the District 7% of payroll. Another 5% of District employees are covered by Social Security alone or through the Teachers Insurance Annuity Assn., (TIAA) or College Retirement Equity Fund (CREF).

Grammar and high school teachers are in a District run pension fund, as are police and firemen.

The police and fire fund is generous in its benefits—retirement after 20 years of service at one half of final year's pay. That amount is unreduced by an ac-

tuarial considerations.

The average retirement benefit of policemen and firemen retiring in the fiscal year ended last June 30 was \$13,000 a year. Retirement costs for 3,100 retired policemen and firemen now amount to about \$42 million a year.

About 6,000 active policemen and firemen are presently contributing 7% of their pay to the fund.

While benefits are generous, they are also totally unfunded, with the future liability of these benefits estimated at \$1 billion.

The teachers pension fund isn't in quite the same predicament. With about \$60 million in assets, the unfunded liability is estimated at \$450 million.

About 2,500 retirees drew \$22 million in benefits in the fiscal year ended last June 30. There are about 7,500 active teachers.

District officials have complained to Congress that they have merely inherited a benefit schedule established by Congress when it had full control over the District's fiscal problems.

Mayor Washington said it would be legally questionable if the District could make any changes in benefits or pay status promised to workers already employed by the district.

Sen. Eagleton retorted that if Congress "grandfathered" these employees into the District's benefit schedule it can "grandfather them out."

The Mayor said he would look carefully at revamping the pension benefit schedule for employees to be hired by the District in the future.

But the District has yet to formulate its own pay and benefits policy—one separate from that they inherited from the federal government.

Its home rule authority requires a comprehensive pay and benefits plan to be in effect by Jan. 1, 1980, but its not considered likely that any individual changes—such as in pension benefits—will be made until the total package is ready.

The District last year had suggested a \$75 million a year plan that would finance the pension

benefits of the teachers, policemen and firemen over a 30-year period.

The District plan included a federal contribution of from 15% to 25% of that amount. It was never acted upon in Congress.

The policemen and firemen are

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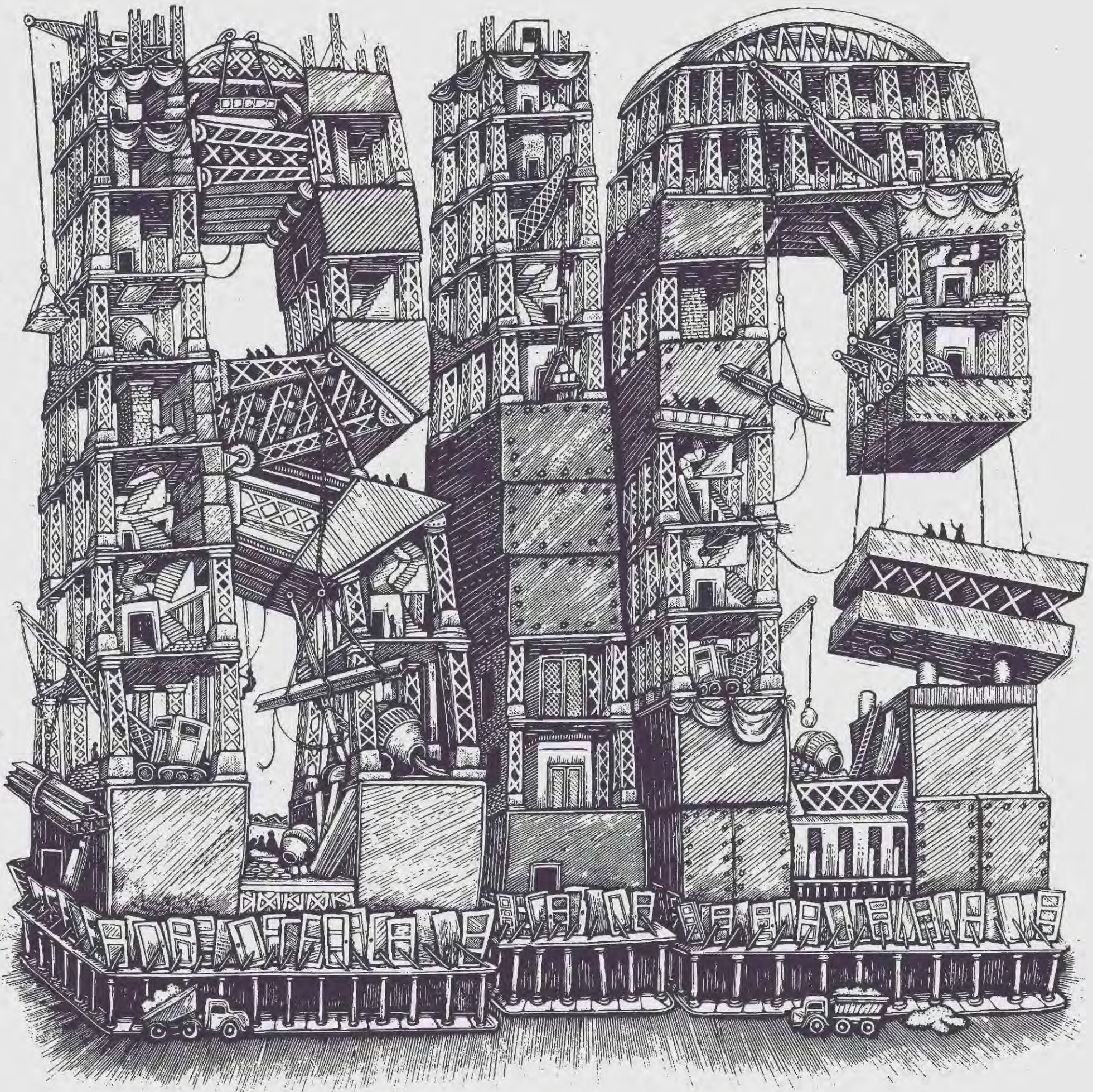
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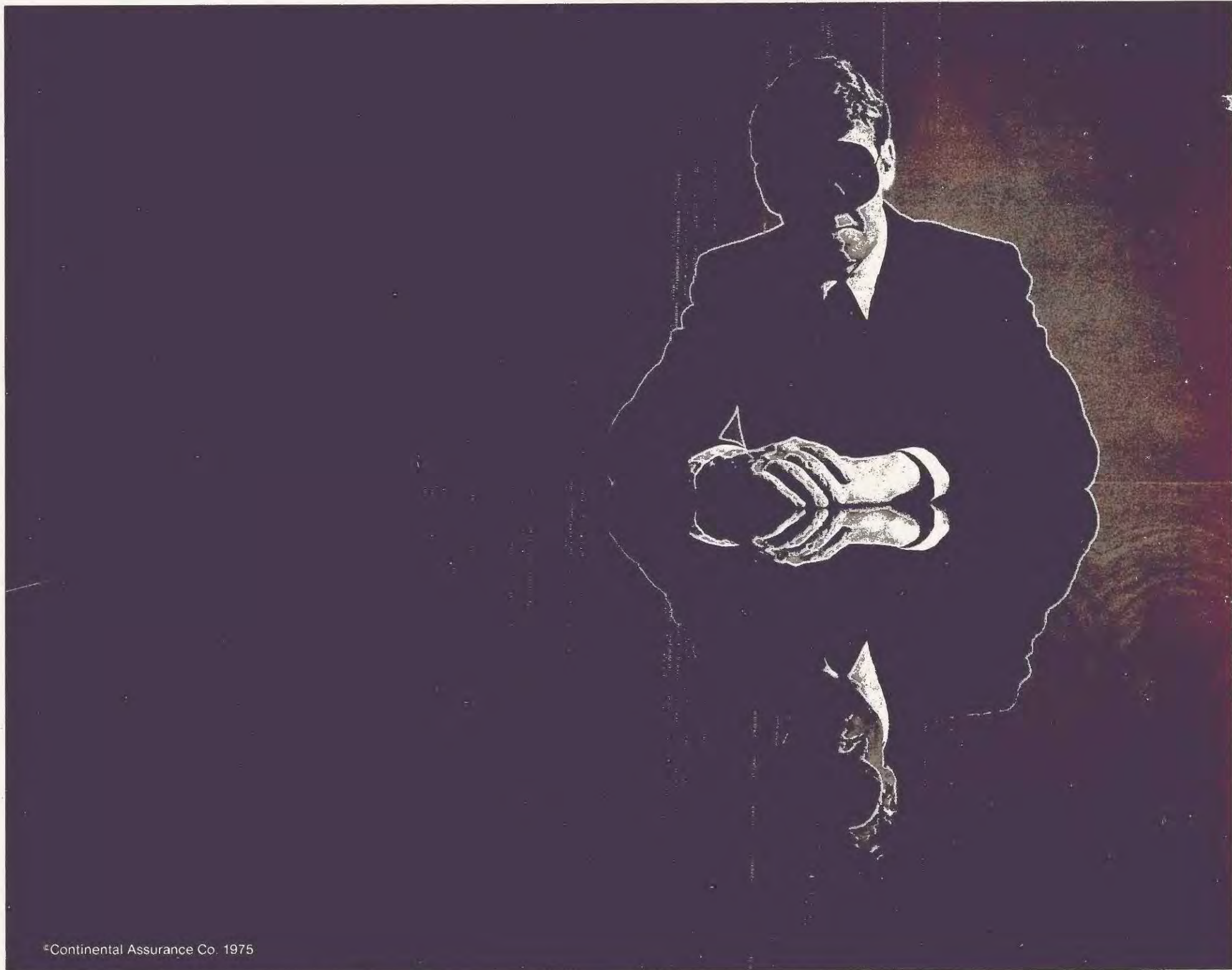
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