Spotlight on small business . . . Page 3

DECEMBER 2, 1985

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update

Manville to get $28.5 million in settlement with 2 insurers

DENVER—Manville Corp. will receive $28.5 million from the settlement of coverage disputes with two of the liability insurers with which it is litigating in a California state court.

Denver-based Manville settled disputes with Aetna Casualty & Surety Co. on policies Aetna wrote prior to 1978 and with Rocky Mountain International Insurance Ltd.

Under the Aetna settlement, the in-

Continued on next page

Rescue:

Mission bailout would benefit all but reinsurance buyers

By STEVE TARAVELLA

LOS ANGELES—Last week's proposed partial bailout of the insolvent Mission Insurance Co. and its subsidiaries will benefit direct insurance policyholders and other insurers, but not all the insurers that bought reinsurance from MIC.

Under an agreement between Mission Insurance Group, the California Insurance Department and American Financial Corp., all direct written policies of MIC and its subsidiaries would be transferred to MIC's owner, Mission American Insurance Co.

The direct business to be transferred totals $656 million in liabilities, according to the state Insurance Department. The assets to be transferred from MIC and its subsidiaries to Mission American total $616 million, creating a $40 million reduction in liabilities for the insolvent companies.

To cover the infusion of new business, Mission American will receive $125 million from AFC.

AFC, which is controlled by Cincinnati financier Carl H. Lindner, owns 49.9% of the stock in Mission Insurance Group, which owns Mission American, which in turn owns MIC.

AFC and Great American Insurance Co., AFC's chief insurance subsidiary, wrote off the balance of AFC's $123.3 million investment in Mission Insurance Group in the third quarter, according to AFC's spokesperson. The write-off, which began more than a year ago when MIG's stock price started diving, contributed to AFC's $32.5 million earnings loss at Sept. 30, she said.

Mission American was created earlier this year to replace MIC in the marketplace as part of a previous transaction between AFC and Mission Insurance Group that was billed then as a rescue of the troubled group.

If the latest bailout plan works, all direct policyholders of MIC and its subsidiaries will turn to Mission American to cover their claims. MIC wrote primarily workers compensation insurance, mainly in California.

And, other direct insurers could rest easy that there will be no calls on state guaranty funds to cover claims against MIC.

The only liabilities that will remain in MIC would be the reinsurance business it assumed, which produced the huge losses that created the company's insolvency.

About $160 million is due to ceding companies reinsured by MIC, according to the state Insurance Department. There could be as much as $160 million in assets available over the next 10 years to pay these claims, the department says.

However, at year-end 1984, MIC had reserved only $78.3 million to pay reinsurance claims, which the California department projected was deficient by $82.5 million.

Los Angeles-based MIC was placed in conservation Oct. 31 by the California Insurance Department after a preliminary examination by regulators in five states found that the insurer was insolvent by $169.5 million as of Aug. 31 (*BI*, Nov. 11). And, just last week, MIC's five insurance company subsidiaries were placed under the control of the insurance departments in California and Texas.

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Missouri seizes Transit Casualty

By DOUGLAS McLEOD

JEFFERSON CITY, Mo.—Transit Casualty Co., which reported a $12.6 million statutory insolvency in a Sept. 30 quarterly statement, is now under the control of the Missouri Division of Insurance.

Cole County Circuit Court Judge Byron L. Kinder last week granted the Insurance Division's petition to place Transit in conservatorship. The judge's order bars Transit's agents and employees from disposing of the insurer's assets or conducting any business without the Insurance Division's approval.

Glenn R. Jourdon, the Insurance Division's chief examiner, said Transit will be placed in rehabilitation for 30 days. He does not yet know whether the company will be liquidated after that period.

"We will attempt to rehabilitate it," Mr. Jourdon said.

However, the Insurance Division has been in touch with several outside consultants about managing a possible liquidation of Transit, according to one source who asked not to be named.

Mary C. Hall, the Insurance Division's acting

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Supreme Court asked to rule on punitive damages issues

By STEPHEN TARNOFF

WASHINGTON—In what could be a "monumentally important" case for American business, the U.S. Supreme Court is being asked to rule on the constitutionality of punitive damages.

The high court will hear oral arguments Wednesday on whether a $3.5 million punitive damage award assessed in a bad-faith action against Aetna Life Insurance Co. violated the Eighth and 14th Amendments of the U.S. Constitution.

If the court decides the issue in Aetna's favor, it could result in a restriction on the amount of punitive damages allowed or make it more difficult for plaintiffs to prove punitive damages are owed, attorneys say.

The case represents one of the few times the Supreme Court has specifically considered the constitutionality of punitive damages, even though it has upheld such awards in the past, attorneys say.

Because of the potentially billions of dollars at stake, the case has generated substantial interest in the insurance industry and among members of the plaintiffs' bar, both of which have filed amicus curiae briefs with the court.

"If the court chooses to address this, it could be monumentally important to the insurance industry and the general business community," says Ellis J. Horvitz, who represents a group of property and casualty insurers that filed an amicus brief with the high court.

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NEWSPAPER

Property/casualty insurers' latest results encouraging despite rash of catastrophes
Page 2

Group health, life benefits unscathed by tax proposal

By JERRY GEISEL

WASHINGTON—The sweeping tax overhaul bill that will be considered by the House this month wallops retirement and savings plans, while leaving employer-provided welfare plans largely unscatched.

The House Ways and Means Committee, at the end of a marathon drafting session that ended at 4 a.m. Nov. 23, approved an amendment by Rep. Charles Rangel, D-N.Y., to retain sections of the tax code that exclude employer-provided health insurance and the first $50,000 of term life insurance from employees' taxable incomes.

THE NEW TAX BILL

Both the Reagan administration and the Ways and Means Committee staff had recommended new taxes on these nearly universal benefits to offset lower basic tax rates (*BI*, Oct. 7; June 3).

In addition, the committee voted to extend the tax-free status of group legal plans and educational assistance programs through Dec. 31, 1987. The sections of the tax code that grant these two benefits tax-favored status are currently due to expire at the end of the month.

However, the committee took no action to extend the tax-favored status of employer-provided van pooling programs. The section of the tax code affecting these benefits also expires Dec. 31.

Earlier, the committee also approved the continuation of employer-provided dependent care benefits, but placed a $5,000 annual limit on the maximum amount of tax-free dependent care benefits an employee can receive.

While employers prevailed in resisting proposals to tax employer-provided health and other welfare benefits, few are savoring the victory.

Benefits experts say these triumphs pale in comparison to the stinging defeats suffered when the Ways and Means Committee approved provisions on pension and retirement savings issues (*BI*, Nov. 11).

Those provisions include a deep slash in maximum pension benefits and profit-sharing contributions, sharply lower deferral limits for 401(k) plans, more onerous 401(k) non-discrimination rules and an excise tax on asset reversions from overfunded defined benefit pension plans.

"Overall, we probably lost more than we won," summed up Stuart Brahs, executive director of the Assn. of Private Pension & Welfare Plans in Washington.

"Retirement and savings plans really got

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update

Manville settles with 2 insurers

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surer will pay Manville $14.25 million in three installments. The first installment is due Dec. 15, 1986, or five business days after confirmation of a Manville reorganization plan, whichever is later.

However, the settlement of the Aetna dispute applies only to policy years July 1, 1975, through July 1, 1978. The settlement does not apply to coverage written by Aetna for Manville after July 1, 1978.

Rocky Mountain will pay Manville $14.27 million immediately on confirmation of a reorganization plan, Manville said. The insurer provided coverage to Manville from July 1, 1977 to July 1, 1979.

Manville and Rocky Mountain will dismiss claims against each other pending approval of the settlement by the U.S. Bankruptcy Court in New York, where Manville is in reorganization. Manville and Aetna also will drop claims pertaining to the pre-1978 policies.

Manville has now settled for $459.5 million its disputes with nine of the 27 liability insurers that it sued over coverage for asbestos claims, a Manville spokesman says. The company, which contends it has more than $600 million in liability insurance, is continuing settlement discussions with its other insurers.

Nationwide, Wausau affiliate

COLUMBUS, Ohio—Nationwide Insurance Group last week completed its affiliation with financially troubled Wausau Insurance Cos. following final approval by the Ohio and Wisconsin insurance departments (*BI*, Nov. 11).

Wausau received a $250 million capital infusion from Nationwide under the affiliation, which also calls for Wausau to join Nationwide's intercompany reinsurance pool. The pooling arrangement will not begin until Jan. 1, a Nationwide spokesman said.

All but one of Wausau's board members will be replaced by senior Nationwide officials.

Bermuda's insurers grow

HAMILTON, Bermuda—The assets of insurance companies based in Bermuda, including captive insurance companies and reinsurance companies, grew 30% to $22.2 billion in 1984 compared with $17.1 billion in 1983, according to the Bermuda government.

Gross premiums written by Bermuda-based insurers and reinsurers totaled $7.6 billion in 1984, up 16% from $6.5 billion in 1983. Similarly, net premiums written increased almost 16% to $5.4 billion in 1984 from $4.7 billion in 1983.

Capital and surplus of Bermuda-based insurance and reinsurance companies grew almost 19%, to $9.9 billion from $8.4 billion in 1983.

The statistics are based on the annual reports filed with the Bermuda government by 874 insurance and reinsurance companies of the 1,186 licensed insurance and reinsurance companies.

Stetzel Thomson in liquidation

LONDON—Underwriting manager Stetzel Thomson & Co Ltd., which ceased underwriting in January 1984, is being liquidated, its attorneys confirmed.

Last week, the directors amd shareholders of the company—including U.S. broker Poe & Associates Inc.—voted to liquidate the company voluntarily and appoint two liquidators, said Jackie Stallard, a lawyer at Kennedy's, the law firm representing Stetzel. She said the two liquidators are Peter DuBoisson of accountants Binder Hamlyn and Gerhard Weiss of accountants Cork Gully.

Poe wrote off its 80% interest in Stetzel Thomson in 1984.

Stetzel Thomson wrote non-marine, aviation and hail coverages for 20 to 30 insurers through several pools (*BI*, Nov. 5, 1984).

Egyptian airline covered

LONDON—Egyptair is believed to have at least $250 million in liability insurance to respond to any claims stemming from last month's hijacking of an Egyptair Boeing 737.

Sixty people died when Egyptian commandos stormed the plane in Malta to rescue the 90 passengers held by Arab hijackers.

The airline's hull and liability coverage—including war risk coverage—reportedly was placed in the Egyptian market but is heavily reinsured in London through Lloyd's of London broker Leslie & Godwin Aviation Ltd. The hull is valued at $14 million.

Aviation & General Insurance Co. Ltd. is the lead reinsurance underwriter for Egyptair's hull and liability coverage.

The liability coverage includes war risk coverage, while Egyptair's hull war risk coverage is led by Lloyd's underwriter Barry Coleman of Harvey Bowring syndicates.

Sources say the London reinsurers will decide claim settlements.

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Insurers' results are positive, despite rash of catastrophes

By JUDY GREENWALD

NEW YORK—Lashed and buffeted by hurricanes, earthquakes and other catastrophes in the third quarter, commercial property/casualty insurers' nine-month results are nevertheless encouraging, analysts say.

The aggrgate net operating income of the major commercial property/casualty insurers surveyed by *Business Insurance* soared 22.6% to $1.6 billion during the first nine months of 1985.

This compares with a 2.4% year-to-year decline in net operating income during the first half of 1985 and a 46% plunge during the first quarter.

This profit rebound pleased analysts, especially in light of the heavy catastrophe losses faced by the insurers.

"There seems to be no end" to the catastrophes that hit the industry in the third quarter, commented Gloria L. Vogel, a vp at Legg Mason Wood Walker in New York.

She notes the disasters not only included Hurricanes Elena and Gloria and the Mexican earthquakes, but also several commercial airline crashes and several satellite losses.

The catastrophes added two to four percentage points to many insurers' nine-month combined ratios, estimates Denis J. Callaghan, first vp at Paine Webber Mitchell Hutchins in New York.

"Those two hurricanes really clipped us good," adds Paul W. Schlough, vp-investor relations for USF&G Corp., which reported a $25.4 million operating loss for the first nine months of 1985 as a result of $26.1 million in catastrophe losses. Catastrophe losses at USF&G totaled only $7.9 million during the first nine months of 1984.

ticker

Yet, aside from the catastrophes, the "underlying trends were quite good," says Michael A. Lewis, vp and financial stock analyst with E.F. Hutton in New York. Higher pricing, improved underwriting results, lower expense ratios and better loss experience all contributed to the industry's recovery, he says.

"For a change, things are looking up," agrees Ms. Vogel.

Mr. Callaghan says that insurers' results will improve further in the fourth quarter and that the industry upswing will continue through 1988, "so the direction of

Continued on page 62

Excess casualty facilities advance

By STEVE TARAVELLA

After months of studying alternatives to the capacity-starved commercial liability insurance market, risk managers in the chemical and banking industries are laying the groundwork for their own excess casualty insurance facilities.

About 15 chemical and petrochemical industry risk managers are preparing to establish a Bermuda-based mutual insurer to write excess liability coverage (*BI*, Oct. 14).

The company initially will write limits of $50 million excess of $50 million, but within five years may be able to write $100 million excess of $50 million or even $100 million excess of $25 million, says D. Hugh Rosenbaum, a principal at Risk Planning Group, a Darien, Conn., division of Tillinghast, Nelson & Warren Inc. The chemical company risk managers retained Tillinghast in June to conduct a feasibility study and make actuarial projections. Also involved in the study were attorneys at Baker & McKenzie in New York.

The coverage will respond to some of the exposures that have proven most difficult for chemical companies to insure, including product liability, directors and officers liability and sudden and accidental pollution liability.

"If it works the way we hope it will, this should turn out to be the lowest-cost insurance these members can get," Mr. Rosenbaum says.

The risk managers, members of the ad hoc Chemical Insurance Group, are calling their venture the CASEX Project (for "casualty excess") until they officially name the company.

The new company does not intend to compete directly with the commercial market, says Bob Stauffer, director of corporate insurance at Diamond Shamrock Corp. in Dallas. In fact, its policies will exclude coverage for liability exposures that the commerical market will still insure, like oil and gas drilling liability and aircraft product liability.

"We're not aiming to create coverage where coverage exists. This is geared at filling a void or vacuum in the marketplace," says Mr. Stauffer, the spokesman for the risk managers, who have requested that their names not be revealed.

By purchasing what coverage they can from the commercial market, the risk managers will minimize CASEX's exposure, Mr. Rosenbaum says.

A manager for the insurer has not been selected, but Mr. Rosenbaum says it probably will be an independent management firm.

At the group's next meeting, to be held Dec. 10-11 in Toronto, the risk managers will discuss a variety of issues, including the selection of a manager and

Continued on page 62

Some state legislators see need for federal insurance regulation

By CAROL CAIN

PHOENIX, Ariz.—A group of state legislators see a need for federal involvement in insurance regulation to ensure the affordability and availability of commercial property/casualty coverages.

According to preliminary results of a recent survey of 52 legislators who chair legislative insurance committees, about one-third "foresee a need for federal regulation or federal reinsurance and guarantees if these market conditions continue."

The survey was sent to 99 legislators by the Conference of Insurance Legislators. Each state legislature, except Nebraska, has two insurance committees, one in the Senate and the other in the House or Assembly. Nebraska has a unicameral legislature.

Although one-third of those responding to the survey saw the need for federal regulation, none of the legislators suggested what form federal involvement should take, said Charles O. Davis, executive director of COIL, which generally opposes federal intervention in state regulation of insurance matters.

The implications of the survey were discussed during COIL's 17th annual meeting, held Nov. 21-24 in Phoenix. COIL, based in Brookfield, Wis., is a national organization of state legislators supporting better understanding of insurance, state insurance regulation and insurance legislation.

Despite the results of the survey, COIL's Resolution Committee did not approve a resolution calling for the repeal of the McCarran-Ferguson Act and, therefore, the resolution was not presented for adoption at COIL's annual business meeting.

"There are so many problems with insurance and so much to do," said Washington State Rep. Eugene V. Lux, D-Seattle, who presented the resolution for adoption to the Resolution Committee.

He pointed out that the understaffed and underfunded state insurance departments can neither adequately monitor the insurance industry nor attract qualified staff to assist them.

"And what do legislators know? We're just part-time people," said Rep. Lux, who is an independent plastering contractor.

Rep. Lux's resolution, if passed, would have called upon Congress not only to repeal the McCarran-Ferguson Act, but also to adopt all necessary statutes to effectively regulate the management and market practices of the insurance industry and to establish federal reinsurance programs for those businesses and professions unable to obtain or afford liability insurance.

The McCarran-Ferguson Act, enacted by Congress in 1945, generally exempts the business of insurance from federal laws and specifically exempts it from federal antitrust laws, leaving regulation to the states.

However, Rep. Lux says the insurance industry, like the federally regulated banking industry, is complicated, operates across state lines and requires federal regulation.

Some 90% of the legislatures responding to the COIL survey also indicated legislation would be introduced in their states next year to control the availability and affordability of commercial liability insurance.

State regulators who attended the COIL meeting also noted that such legislation was likely next year.

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Small business

Brokers say 'Main Street' not ready for claims-made

By ROBERT A. FINLAYSON

The new claims-made commercial general liability insurance policy form is a bad deal for small businesses, according to most insurance brokers and agents.

Luckily, the majority of small and midsized businesses that do not represent big risks to insurers will not be forced to accept claims-made coverage, at least this year (see story, page 12).

But, many small and midsized businesses probably will be offered a claims-made policy as an alternative to the traditional occurrence form. And that worries agents and brokers.

Agents and brokers worry that because the claims-made CGL policy is expected to be significantly cheaper than a comparable occurrence policy, some small businesses may buy claims-made coverage without realizing that it is vastly different from the occurrence coverage they understand.

The new claims-made form is so complicated, agents and brokers maintain, that the unsophisticated insurance buyer probably will not understand what he or she is getting.

Brokers and agents also point to the potential for gaps in coverage under the claims-made form, and, they say, changing insurers while on claims-made coverage can be difficult and expensive.

However, a dissenting minority of brokers and agents see the claims-made form as an opportunity for small businesses to roll back insurance costs after a year of unprecedented price hikes. They also point out that claims-made coverage eventually could allow an insured to apply current policy limits to incidents that occurred years ago.

But, most agents and brokers say the claims-made form's potential for adverse consequences outweighs any of these potential benefits.

"I tend to think that the claims-made form is so complicated that it will be virtually impossible to explain to those businesses that don't have risk managers," concludes Dean E. Brooks, a principal of Brooks-Lussem Insurance Inc. in Des Moines, Iowa, an independent insurance agency. "I think that's why risk managers don't like it, because they understand it so well," he says.

"I'd sure as hell rather sell an occurrence policy than claims-made," declares Thomas R. Shea, a principal with broker Schwartz & Shea in Janesville, Wis. "It simply doesn't require as much of an explanation and it's not as much of a problem if the policyholder wants to change carriers," he adds.

"It's one thing for an agent to understand claims-made, but it's quite a different thing for an agent to sit down and explain it to the customer," remarks R.C. Riley, chief executive officer of broker Peel & Holland Inc. in Benton, Ky.

"I've had that experience," he continues. "And I found it extremely difficult to explain to the insured the product he'd be getting so he'd understand it."

Agents and brokers note that in small businesses, it is almost always the president or owner who buys the insurance.

"Insurance is just one of the hats he wears," says Corrie Foos, vp with Micor Insurance Brokers Inc. in San Jose, Calif. "The degree of sophistication really isn't there," he adds.

Because smaller-business presidents and owners lack sophistication in insurance matters, they will find it difficult to grasp the central concept behind claims-made coverage: that an accident or occurrence does not trigger coverage.

Coverage under a claims-made policy is only triggered by a written or verbal claim against the policy during the policy period.

And, the claim must be associated with an occurrence that took place after the retroactive date on the insurance policy, which insurers say will be the date of the first claims-made policy.

Most small businesses rely heavily on the advice of an insurance agent or broker, and many insurance professionals are having trouble with the claims-made coverage trigger, says Mr. Brooks, who serves on the commercial lines committee of the Independent Insurance Agents of America.

Mr. Brooks recently toured his home state of Iowa lecturing insurance agents on the claims-made form. He found that many of those agents didn't believe

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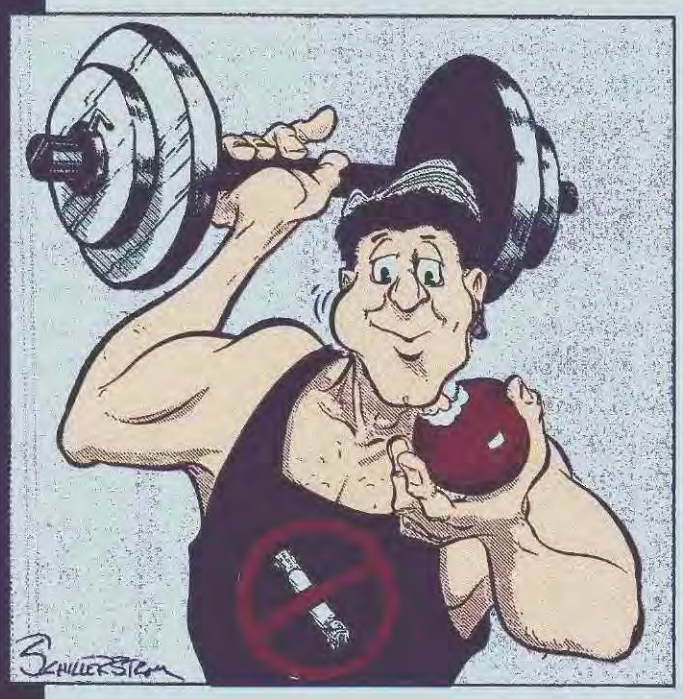
Small businesses leap into wellness



By DONNA DiBLASE

Small businesses are discovering they can improve employee safety, morale and productivity—and in some cases contain health care costs—by implementing wellness programs.

While the small employers have a hard time quantifying any savings, most say their wellness programs are well worth the cost.

Many of the programs were begun in response to increasing health care costs or problems with workplace injuries.

For example, Safeway Bakery Division in Clackamas, Ore., instituted a wellness program in 1978, after the company reported 1,760 lost workdays due to injury in one year.

President Bob Jacobson says that workplace accidents have been cut 98% since the program began, and the company has just ended a year without a single lost workday due to accidents.

In addition, absenteeism and employee turnover have decreased by 90%.

"There is an $800,000 return a year as a result of the program," he says.

Maryann Fichter, personnel director at Provident Indemnity Life Insurance Co. in Norristown, Pa., says it is too early to tell whether its wellness program is helping reduce the company's health care costs, but she says the program has "definitely increased morale."

And, employers are finding that this increased employee morale and productivity is in itself a valuable asset of the programs.

In fact, Jim Weidaw, employee relations director at Plaskolite in Columbus, Ohio, which offers a wellness program, says: "I'm not convinced that cost containment is the main accomplishment of the program. People see it as a benefit of working at Plaskolite."

A recent report prepared jointly by the Washington Business Group on Health and the Office of Disease Prevention and Health Promotion of the U.S. Department of Health and Human Services examines several successful wellness programs by small businesses nationwide.

These companies are taking a variety of approaches to setting up a wellness program. Among the more ambitious are those that include on-site fitness centers for their employees.

For example, Maupintour, a Lawrence, Kan.-based

Continued on next page

Leasing liability

Some small-business owners are leasing employees to cut administrative work. But, if they are not careful, they may be adding to their liabilities. Associate Editor Meg Fletcher tells small-business owners what to watch out for on page 18.

Innovative benefits

Innovative employee benefit plans are not only for large companies. On pages 27 and 28, Associate Editor Diane Lynn Kastiel looks at two how small companies, working with their employees, made big changes in their benefit plans.

Consolidating cover

It may be easier for small-business owners to find affordable property/casualty coverage if they place all their policies with one insurer, according to the experts. Free-lance writer Donna Leigh Yanish explains why on page 30.

Wellness programs

Continued from previous page
travel agency with 30 employees in its home office and 100 tour managers aound the world, operates a gym at the Lawrence office that includes weight equipment, a treadmill, stationary bicycles, a sauna and jacuzzi and lockers. The gym is open to employees and their spouses or guests.

The company also makes use of services available in the community by hiring a fitness expert, usually a graduate student in physical education, who works with employees to set goals each month.

These students "work on a semester basis. They come to set up programs for those who want to participate," says Pete Anderson, director of trade relations for Maupintour.

The company also sponsors group walks and runs after work during spring and summer under the direction of the fitness leader, he says.

In addition, the company bans smoking on company property.

Mr. Anderson says the company does not have statistics on the cost or savings of the 4-year-old program, but he says it has "overall improved morale. It is popular and people are active in it."

At Safeway Bakery Division in Clackamas, employees built an on-site fitness center on their own time.

The employees now manage the facility and pay dues to cover its expenses, says Bob Jacobson, president of the 130-employee company.

With the help of a fitness consultant, the employees also select the exercise and educational programs offered at the fitness center.

As part of its wellness program, called "Buns on the Run," the bakery division also holds "laugh clinics." The informal sessions are designed to help employees manage the stress of their jobs and other situations.

"We teach people to laugh at themselves," says Mr. Jacobson.

And, Safeway has a unique stop-smoking incentive. Separate lunchrooms are provided for smokers and non-smokers. The smokers' lounge has a cigarette machine, while the non-smokers lounge has a color television set—paid for with the profits from the cigarette machine in the smokers' lounge.

Mr. Jacobson says the program is "a living program concentrating on the wellness of attitudes and people's self-esteem."

Plaskolite, a Columbus, Ohio, company that manufactures lights, has had an on-site exercise facility for three years. The facility is open to the company's 300 employees and their families free of charge.

Jim Weidaw of Plaskolite says employees who take part in fitness programs at the center must take a general fitness test, which includes a blood-pressure test, a measurement of body fat and a general health analysis.

But, employees who use the center can earn prizes, such as T-shirts, shorts, trophies and gift certificates for merchandise from a local sporting goods company by participating in the fitness programs. And, based on their fitness progress, they can earn up to $300 per year.

And, he said, Plaskolite has reduced workplace accidents through an intensive safety program that includes employee identification of hazards, notification of management and action on the problem within two weeks, though he could not quantify the reduction.

The company also offers an employee assistance program, under which employees can attend up to six psychological counseling sessions for a personal or emotional problem free of charge.

Other small companies are offering their employees various incentives for changing to or maintaining a healthy lifestyle.

For example, as part of a six-month program offered this spring, employees at Provident Indemnity Life could earn "duck bucks" for attending health education programs, walking, wearing seat belts and various other wellness activities. The bucks could be used to buy company T-shirts, shorts and other sports clothing.

Ms. Fichter explains the term "duck bucks" was used because the company is "located on a really pretty property with a pond and lots of ducks."

She says that 97% of Provident's 87 employees participated in this incentive program.

Ms. Fichter says that the company also has an ongoing wellness program, which has three parts: activities, education and commitment to wellness. The program is managed by a volunteer five-employee committee whose motto is "Happiness is Wellness."

Employees can attend programs on such topics as cardiopulmonary resuscitation and osteoporosis, a bone disease caused by calcium deficiency. In addition, the company has arranged with a local restaurant to provide information on nutritional meals and has sponsored a roller skating night.

To commemorate the first anniversary of the program in September 1984, the company held an Olympics Day on a regular working day. Employees could participate in the events of their choice, competing for prizes such as sweatsuits, sweatshirts and gym bags.

Ms. Fichter says the wellness program is "really an upbeat program" and employee participation is high. She says the first year of the program cost the company $1,800.

She said the company believes that the program is cutting health care and absenteeism costs, but "it is too soon to give a dollar amount."

However, she said Provident has banned smoking anywhere on the premises for about two years, and "the savings on maintenance, property insurance and trash collection was $3,000" for one year, she says.

At Sherer Brothers Lumber Co. in Minneapolis, the management's philosophy is "to create and support a healthy lifestyle and attitude, both in the workplace and at home," according to Robert Peters, director of health promotion.

"Incentives as a reward for performance are the main point of the program" at the 200-employee firm, he says.

The most popular incentive program actually is negotiated into the workers' contract with the Teamsters union. A "well-pay" provision in the contract rewards employees for not being absent or late due to workplace injuries, he explained. Employees who miss no time are given two extra hours of pay per month. The money is accumulated and paid in December.

The company also has a workers compensation incentive program in which employees can earn up to $300. Employees can earn awards of $100 each if they have no injuries requiring clinical attention during the year, if they have no injuries resulting in lost time or if the company has fewer worktime injuries than during the previous year.

As a result, he says, "the program has reduced injuries and absenteeism," but he had no statistics.

Mr. Peters says that "the company's interest in what is now termed wellness began back in the 1930s."

Management "was concerned for the health and well-being of each employee, and not just whether or not they showed up everyday," he explains.

The company has removed cigarette machines, replaced candy

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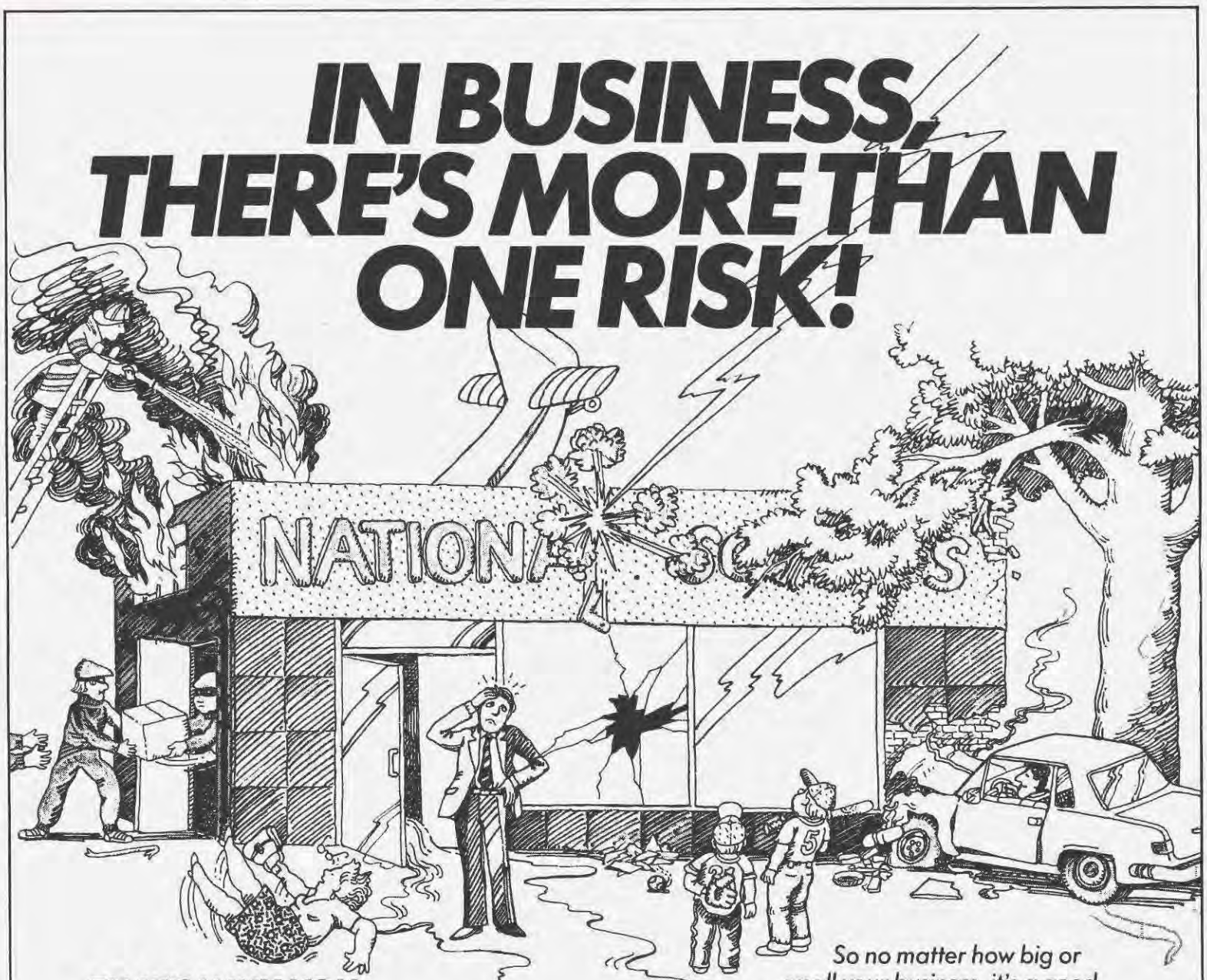
IN BUSINESS, THERE'S MORE THAN ONE RISK!



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Wellness

Continued from page 4

with fruit in vending machines, replaced caffeinated coffee with decaffeinated and provided free healthful lunches.

The company also sponsors programs on back injury prevention, smoking cessation, blood pressure monitoring and weight loss.

He says that most of the programs "run themselves. Most don't involve great cost. We feel that this is really the only way to do business. We don't see any excuse for anyone not to run their company this way."

Sky Brothers Inc. in Altoona, Pa., agrees that wellness promotion is good for a company. Kathy Knisely, risk manager for the food distributor, says that "morale is up. Employees like the benefits; it's not just a place to punch in and out."

A health fair and an employee assistance program are just two aspects of the wellness program offered to the firm's 450 employees.

The company held a health fair in August 1984 that included programs from a hospital, the Diabetes Assn., the American Cancer Society, the American Red Cross and the Shrine Burn Center for Children.

Even though the fair was held on a Saturday, she said attendance was good, and "we got good feedback from the employees."

Under the EAP, employees can visit any one of several community psychological counseling centers. The first two sessions are paid for by the company, and the counseling is completely confidential.

In addition, the company will pay up to $50 per employee for signup fees for area fitness clubs.

In order to obtain reimbursement, employees must take a quarterly physical evaluation, paid for by the company and conducted by a registered nurse. The results are compared with previous results to help employees set fitness goals, and the company awards $50 toward health club dues if quarterly goals are met for a full year.

Employees can also take advantage of the "Smokebusters" smoking cessation program offered by Sky Brothers. Under the program, the company pays for a chewing gum called "nicorette" to help smokers to quit smoking.

The 6-year-old wellness program is not very expensive to run, Ms. Knisely says.

"The cost of the evaluator (for the quarterly checkups) and memberships are the main costs—but they're not that great," she said, adding that the program uses many community services, which helps hold down costs.

Bodolay-Pratt in Lakeland, Fla., provides a wellness program for its approximately 75 employees through a health coalition in the surrounding county.

Richard Smith, president of the packaging machinery manufacturer, says the Employers Healthcare Group of Polk County helps small employers provide low-cost wellness programs.

"A lot of companies our size were spending a lot of money on health care. We decided to get together to discuss our common problems," he says.

Currently, the coalition is planning a countywide program on diet and nutrition in conjunction with an area hospital. And, it is considering instituting a "workplace warm-up" program to get employees to do stretching and warm-up exercises before beginning work.

The company does not give bonuses to employees who participate in the programs, but it does share in the costs involved. Also, the employees may use some company time for the programs.

The company also discourages smoking by banning cigarette machines from the premises.

Mr. Smith says the costs of the program are minimal because it uses so many community resources. And, he says: "There are no statistical facts to back it up, but we have reduced accidents in the workplace. We haven't seen the increase in (health insurance) rates that we usually do."

At Simpson Timber Co. in Seattle, an employee health awareness committee surveys the company's 150 workers to help develop programs that best suit their needs.

The 2½-year-old program was developed to respond to spiraling health care costs, and Mary Biller, secretary of the company's resource services department, says health costs have been lowered as a result.

So far, the committee has sponsored lunchtime programs on nutrition, safe driving, smoking, cancer, cardiopulmonary resuscitation and other topics.

In addition, blood pressure testing is offered frequently.

The company will also pay a portion of the cost of approved fitness clubs. Simpson pays $100 during the first three months for sign-up fees, and then pays up to $50 every three months to help cover dues.

The cost of the program has been low, Ms. Biller said, mainly because the company has made use of many free services.

She says company morale has improved, but it is difficult to measure how the program has affected health costs and absenteeism.

"It is hard to quantify, but I can really see improvement," she says.

Because the program is entirely voluntary, not all employees participate. However, she says: "If only 20 people are there, I look at it as 20 people who weren't doing it before.

'I think it can have good results on health care costs. But, we just feel good about the program because we see employees participating and having a good time."

Green Giant-Pillsbury in Glencoe, Minn., a division of The Pillsbury Co., keeps computer data based on the results of voluntary annual physical screenings. The data include medical history and current health habits of each of the division's 160 employees.

Employees of the food packing plant are provided with a printout of this information and an assessment of where they stand relative to others in their age group.

The screening costs about $200 per employee, of which the employee pays about $35, a spokesman said.

This and the division's other wellness programs are run by the division, independent of Pillsbury.

The division also sponsors various evening educational programs on wellness issues.

And, it sponsors one hour of free swimming a night from October to May at a nearby high school.

The division also offers a yearly stop-smoking program presented by the American Lung Assn.

Smokers who want to quit choose a sponsor who encourages them. If the employee quits for 60 days, his $5 fee for the program is returned and he gets a bonus of $75; the sponsor is given a $25 bonus.

If the employee quits for one year, he gets a $200 bonus and the sponsor gets $50. But, he must sign a contract stating that if he begins smoking during the rest of his employment, he must repay his bonus and the sponsor's bonus.

Connie Berry, occupational health and safety administrator, said a safety incentive program that awards gift certificates from area stores has reduced workplace accidents over the last four years, although she had no statistics.

Costs of the wellness programs have been moderate, Ms. Berry said, but she added, "Pillsbury felt it was a worthwhile investment." ■

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A primer on ISO's new claims-made policy

If you've just been visited by your insurance agent or broker and your head is spinning because he has developed a whole new vocabulary since last year's renewal, take heart.

You are not alone in your confusion.

It's been nearly 20 years since the standard CGL occurrence policy was overhauled. And now buyers, agents and brokers are bracing for the introduction next year of the Insurance Services Office's new claims-made CGL form.

Even the name of the CGL policy has been changed. Originally called the comprehensive general liability policy, insurers decided the word "comprehensive" might be misinterpreted by the courts to mean all-encompassing coverage. So they renamed the CGL the commercial general liability policy.

Here's a list of the basic claims-made jargon:

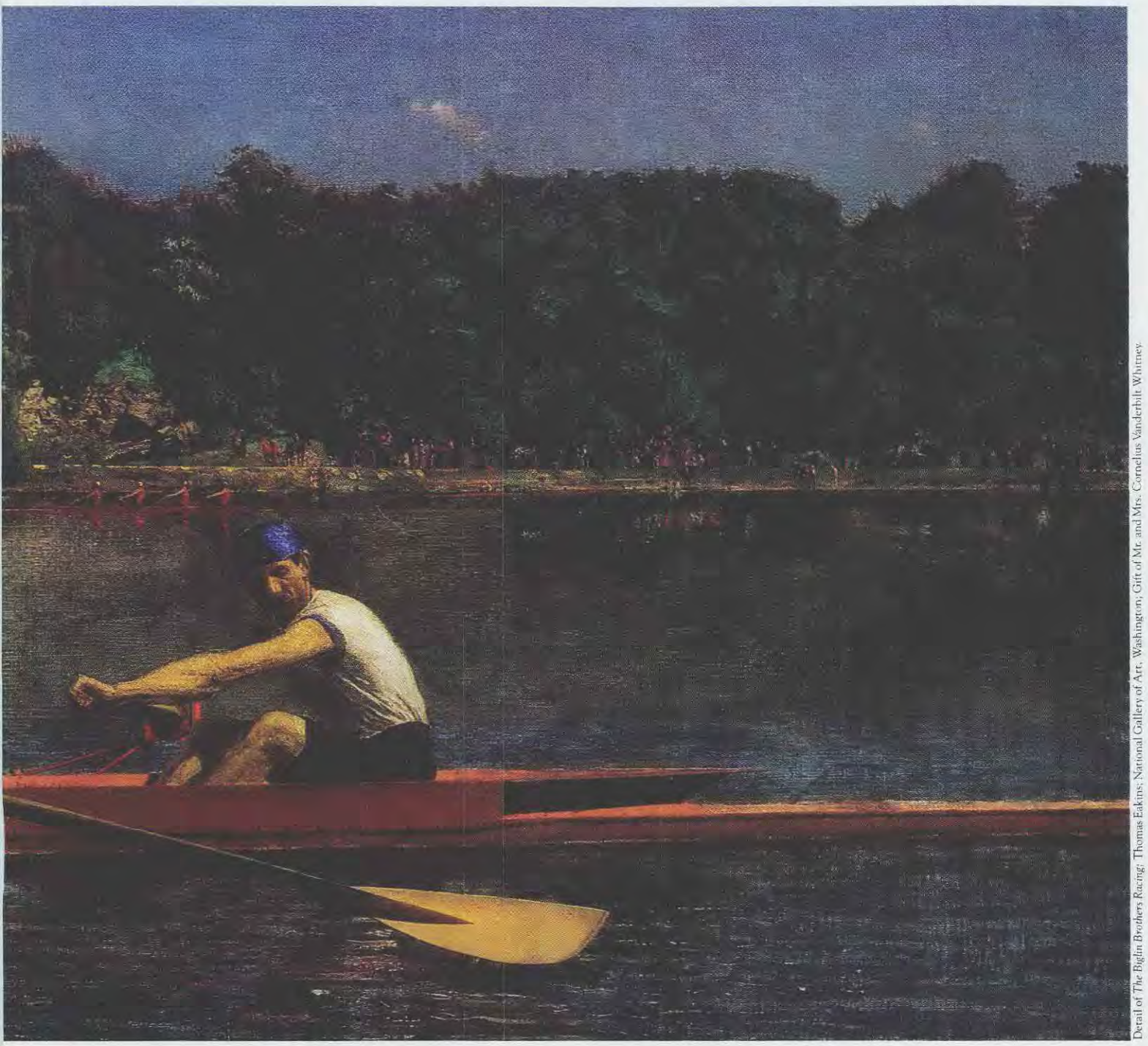
- Coverage trigger, which is the fundamental difference between the claims-made and occurrence CGL forms. In an occurrence policy, an incident that gives rise to a claim triggers coverage, regardless of when that claim is filed. But, under claims-made, only a written or verbal claim triggers coverage, and that claim must be made during the policy period.
- Retroactive date. To limit coverage under the claims-made CGL, the policy form includes a provision for excluding claims that stem from incidents that occurred prior to a specified date. Thus, even if a claim is filed during the policy period, the policy would not respond if the incident that gave rise to the claim occurred prior to the retroactive date.

Insurers say the retroactive date normally will be the date of the policyholder's first claims-made policy. If that same date is used in all subsequent claims-made policies, there will be no gaps in coverage. But, if that date is advanced, a gap is created between the date of the last occurrence policy and the new date.

- Extended reporting period. When the retroactive date of a claims-made policy is advanced, the policyholder normally can purchase additional coverage to fill in the gap. This coverage, known as extended reporting period or "tail" coverage, allows the policyholder to assign claims to an expired claims-made policy for a specified period of time.

The ISO form provides for an automatic 60-day tail, during which claims can be filed against the policy as though they were filed during the policy period. This automatic extension lasts for five years when no other insurance is applicable to the claim. And, a policyholder can purchase unlimited tail coverage for up to 200% of the original premium.

- Laser endorsements. ISO's claims-made also includes a number of endorsements that insurers can use to limit coverage. Known as "laser" endorsements, these provisions can exclude from coverage claims stemming from a specific incident, product or period of time.



Detail of *The Biglin Brothers Racing*; Thomas Eakins; National Gallery of Art, Washington; Gift of Mr. and Mrs. Cornelius Vanderbilt Whitney

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Claims-made cover

Continued from page 3

him when he told them that an occurrence does not trigger coverage under a claims-made policy.

"Agents are not ready to explain the claims-made form to the client so the client will understand it," Mr. Brooks says. In fact, he notes, about 50% of the agents attending his lectures hadn't yet seen the claims-made CGL form.

Many of the brokers and agents who have been working with the Insurance Services Office on the claims-made form say privately that the vast majority of agents and brokers know little or nothing about claim-made coverage. And, as if to underscore this point, insurers that write errors and omissions coverage for insurance agents drastically increased premiums for the coverage this year.

Noting that his errors and omissions insurance premium shot up 1,200% over last year's premium, A.F.Osterloh III of Osterloh & Durham Insurance Brokers of North America Inc. in Los Angeles says E&O insurers "don't think brokers will understand the new claims-made form, and they expect a lot of litigation over it."

Mr. Foos says casualty insurers have started asking their agents and brokers about their errors and omissions coverage. "The feeling is that, if the education process isn't handled well in going from occurrence to claims-made, everybody is going to get sued," Mr. Foos says.

Irate policyholders that find that a claim that would otherwise be covered under an occurrence policy is not covered under their new claims-made policy are expected to sue.

With many insurance professionals not up to speed on the claims-made form, most small businesses are totally in the dark, agents and brokers report.

"Most small businesses have no idea what's coming," Mr. Foos says.

In their own defense, many agents and brokers say they also have held off discussing claims-made coverage with their clients because the claims-made form has been changed half-a-dozen times in the past year and many insurers have not committed on a date to implement the new form.

Mr. Foos explains: "We've been somewhat reluctant to run out and tell people the sky is falling."

As an added complication, agents and brokers point out that there will be several different claims-made CGL forms in use next year.

"There are a lot of claims-made forms popping up," says Mr. Riley. "Surplus lines and admitted carriers are not going to have standard forms," he predicts.

"When a carrier says claims-made, it doesn't necessarily mean ISO claims-made," he says.

Mr. Riley also points out that there are several claims-made umbrella policies being offered by domestic and foreign underwriters. And he says some umbrella underwriters have told him they will not write over a claims-made policy, while others say they will not write over an occurrence policy.

"This is going to be a horrible, horrible mess if we're not able to, on the smaller or midsized risk, design an umbrella that will properly interface with a claims-made policy," he says.

In addition to problems agents and brokers see in helping insurance buyers for small businesses understand the claims-made form, they also are concerned about potential gaps in coverage and the potential need to buy extended reporting period or tail coverage.

Gaps in coverage under a claims-made policy occur when the insurer advances the policy's retroactive date or includes an endorsement that specifically excludes

Continued on page 10

opinions

Small businessmen no dummies

REASONABLE PEOPLE can disagree over whether the new claims-made commercial general liability policy form is better or worse than the traditional occurrence form, but let's not underestimate the intelligence of the small-business owner to understand the debate.

Unfortunately, some agents and brokers assume that most small and medium-sized commercial insurance buyers can't grasp the differences in the insurance coverage provided by the two forms. And, they say they are afraid that the small-business buyer will leap for the lower-priced claims-made form and then end up without adequate coverage (see story, page 3).

We have no doubt that every agent and broker has horror stories to tell about commercial insurance clients who refuse to devote the time needed to understand their insurance policies. And, we are equally sure that some commercial insurance buyers—small and large—will buy claims-made coverage without sufficient understanding of the possible consequences in the years ahead.

But, an insurance buyer's lack of insurance sophistication doesn't excuse agents and brokers from doing their very best to explain the claims-made issue to their clients of all sizes in the best manner possible. That means that agents and brokers have to work harder themselves to understand the issues.

We believe that agents and brokers who understand the issues and can communicate clearly will find that most of their clients also can grasp the issues involved. And, together, the client and agent or broker can make a responsible decision about the claims-made policy form.

Of course, explaining the claims-made form issue is going to take a lot more time than just dropping by the buyer's office to deliver the new policy. Agents and brokers should verbally explain the differences in the forms and leave the client written material for further reference.

We can appreciate that no agent or broker relishes the thought of explaining claims-made insurance to a client, especially when he or she also has to explain why the cost of the insurance is going up by leaps and bounds, too.

Couple this need for extended communication between the agent and insurance buyer with the difficult time that agents and brokers are having finding responsive insurance markets and it's clear that agents and brokers have their work cut out for them.

But, that's what agents and brokers get paid to do—by their small-business clients as well as their jumbo accounts.

letters

Industry problems are real, and many share the blame

To the editor: I do not normally respond to what I consider irresponsible letters in this section, but S.H. Staubitz's letter (*BI*, Nov. 11) requires a response.

His letter indicates that he understands neither the claims-made concept nor the industry arguments in support of it. To be sure, the "arguments" as he describes them are indeed hollow and weak. Unfortunately, however, his letter does reflect what seems to be the prevailing opinion among regulators and politicians. They refuse to recognize that a real problem exists and feel that a raw exercise of political and consumer power can regulate the industry into submission. Such an attitude is both foolish and dangerous.

I have just returned from a trip to London and the Continent, where I had extensive discussions with a number of underwriters at Lloyd's of London and some prominent French and German reinsurance companies. The message was the same from all of them and it was loud and clear. On Jan. 1, 1986, the only reinsurance available will be claims-made, aggregate limit and cost-inclusive. If the regulators won't approve it, then there will be no reinsurance at all!

"You simply cannot win in an American court!" a Lloyd's underwriter said to me at a luncheon at a German company where we were both guests and I was the only American present.

A German underwriter followed: "Why do you bother having a policy form at all in America? Your courts won't follow it. What happened to the rules of contract law in America? The only thing predictable is that the insurance company will lose!" Another added, "We have to give some real consideration whether we want to even try to do business in North America anymore."

These problems will not be solved until there is a general recognition that a problem does exist and that no one is blameless. The industry itself is largely responsible for many of the problems. Instead of updating underwriting approaches to meet the needs of a changing society and developing underwriting and claim talent to handle it, insurers sacrificed fundamental underwriting principles in favor of speculative cash-flow underwriting to take advantage of interest rates. In their quest for cash, they entered into a price war in the same manner as a "gas war" among gas stations in a community.

A responsible exercise of regulatory power over the last five years might have gone a long way toward preventing many of the problems today. Instead, the regulators quietly watched an industry they're supposed to regulate bleed itself without making a move. They had to know that a crisis was building. Now, the regulatory power being asserted has the effect of just tightening the lid on the boiling pot rather than turning the fire down.

There has to be tort reform or the insurance industry, as we know it now, will not long exist. The foreign markets are telling us to "clean up" our judiciary, or they simply will not do business with us. Reinsurance is the lifeblood of the industry. We cannot exist without it.

Finally, to the buyer, I can only say the "gas war" is over. The "free ride" is over. Admittedly, the free ride lasted a little longer this last time, but not long enough to evolve into an inalienable right.

A solution will emerge when all of the above parties negotiate and compromise honestly in a spirit of understanding, not by political posturing or chest beating.

Philip A. Piety
President
Wausau International Underwriters
Wausau, Wis.

Bad underwriting not cause of claims-made

To the editor: As a professional risk manager, I am mildly embarrassed by a letter to *Business Insurance* (Nov. 11, 1985) from a fellow who blames the arrival of the claims-made form on cash-flow underwriting.

The seeds for the claims-made insurance issue were planted 45 years ago with the indiscriminate use of asbestos.

Those seeds have been nurtured along by activity (or inactivity) by the U.S. courts, Congress and the American Bar Assn. relating to products and professional liability.

Coincidentally, insurance buyers and sellers now are paying for the cash-flow underwriting practices, which have been identified as the root cause of the most recent insurance business cycle.

Unfortunately, the "claims-made" and "cash-flow" issues have come to a head concurrently. The notion that one caused the other is a basic logical error of the *post hoc, ergo propter hoc* variety. Both crises were inevitable, each justified by its own sorry set of circumstances.

Carl J. Kotheimer, A.R.M.
Risk Manager
Diebold Inc.
Canton, Ohio

Lindner is not to blame for Mission's woes

To the editor: You came down very hard on Carl Lindner because he hasn't voluntarily stepped in with $169 million to bail out Mission Insurance Co. (*BI*, Nov. 18).

Mr. Lindner's large investment in Mission when he increased his equity to 49.9% was very recent, only 18 months ago. I don't think that anyone can blame him for Mission's failure. This was done by the previous management resulting from many years of poor underwriting and pricing practices, particularly in Mission's reinsurance book of business.

He did what any prudent man would do in similar circumstances: protect the assets of his other companies, which, under his management, have prospered, and not drag them down with a situation that he appears not to have caused.

To avert similar problems in the future, perhaps regulators should require reinsurance to be handled only by professional reinsurance companies. If a company wants to play the reinsurance game, it should have to set up a separate company that would be required to stand on its own feet. This might also prevent a replay of our last soft market, which was fed a great deal by inexperienced firms selling reinsurance at prices and terms that could lead only to severe losses.

David F. Anderson
President
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Claims-made

Continued from page 7

coverage for a certain incident or time period.

And, although the ISO claims-made form will provide for extended reporting period coverage when the insurer advances the retroactive date of the policy, such coverage can cost up to two times the policy's original premium.

Pointing to the potential need for tail coverage and the cost of that coverage, Mr. Brooks says, "I can't think of any account where I wouldn't resist claims-made."

Agents and brokers also maintain that it will be difficult to change insurers once a buyer is on a claims-made policy because the new insurer is not likely to pick up the retroactive date of the original claims-made policy, forcing the policyholder to buy tail coverage from his previous insurer to avoid gaps in coverage.

As Mr. Shea explains it: "The new carrier isn't going to want to go back and pick up claims that occurred before it was on the risk. So, you have to buy tail coverage.

"It's kind of like: 'We've got ya,'" he quips.

Among the few agents advocating claims-made coverage for small businesses is Alan R. Nelson, vp with the Winona Agency Inc. in Winona, Minn.

Mr. Nelson anticipates making a presentation to every client to explain the difference between claims-made and occurrence. "I feel claims-made is superior to occurrence, whether you're talking about a small store owner or a larger manufacturer."

He plans to convert as many clients to claims-made as possible.

Not only will the claims-made form be cheaper than the occurrence form—up to 40% cheaper in some cases—but also it will allow buyers to keep their limits current, he says.

Mr. Nelson explains that under the occurrence policy, a company that is sued today for an accident that occurred in 1969 likely would be underinsured because the limits on the 1969 occurrence policy that would respond to the risk would be low in comparision to the cost of settling a casualty lawsuit in 1985.

But, in the future, after a buyer has purchased claims-made coverage for many years, the current claims-made policy will respond to occurrences in the past with up-to-date limits. However, that presumes that the newer claims-made policies do not move the retroactive date forward in time.

Mr. Nelson also notes that rates for claims-made coverage will be lower than for occurrence because insurers will not have to factor into their rate calculations adjustments for losses that have occurred but have not yet been reported to the insurer. This speculative factor, known as IBNR, for incurred but not reported, must be included in the cost of occurrence policies because the insurer is pledging to cover losses that occur during the policy period, regardless of when they are reported.

However, claims-made policies with retroactive dates reaching into the past will be considered mature policies and would be priced much like an occurrence policy.

Mr. Nelson also contends that an insurer may be out of business or insolvent by the time a claim is reported under an occurrence policy. This isn't likely to happen under a claims-made policy, because claims made during the policy period are covered by the current policy.

Mr. Nelson concedes that the major disadvantage of the claims-made form is the possibility that the buyer will have to buy extended reporting period or tail coverage. But, he says, less than 10% of his liability insurance clients ever have a claim and therefore most will not have to buy tail coverage.

"The tail and problems with laser endorsements don't apply to the majority of clients," he says.

As for agents' concerns that buyers will not understand the claims-made form, he contends the majority of buyers don't understand the occurrence form.

"And they don't want to," he adds. "It's just like when I go to have my taxes done," he explains. "My CPA may want to tell me how some new law is going to affect this or that deduction. But I really don't want to know.

"I just want to give him all the information I have and have him make sure I pay the least amount of taxes."

Mr. Nelson says it's the same way when businessmen come to him for insurance. "They don't understand the general liability policy as it is now written," he says. "They just want us to stand behind them when they are sued." ■

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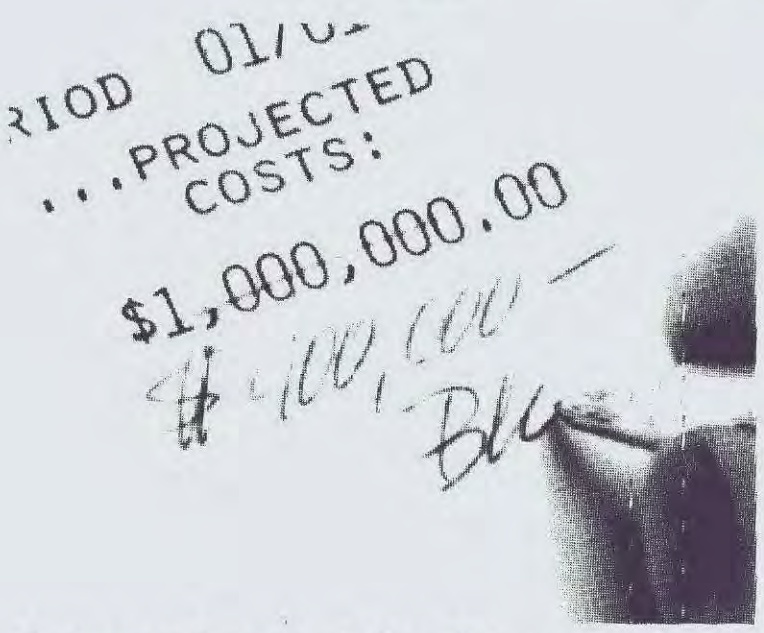

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Small firms will see delay in change to claims-made

By ROBERT A. FINLAYSON

There is little doubt that one way or another casualty insurers will begin using a new claims-made commercial general liability policy form next year, but many small businesses will escape the change—at least in 1986.

Most major U.S. casualty insurers will not meet the Insurance Services Office's planned Jan. 1, 1986, implementation date for the new claims-made CGL policy form. And, small businesses are low on insurers' priority list for conversion to claims-made coverage.

Instead, insurers have targeted larger businesses with long-tail exposures as the first to get the controversial claims-made CGL policy form (*BI*, Nov. 18).

The delay in broad implementation of the new claims-made policy form is the result of both the Insurance Services Office's recent revision of the form and continued concern among state insurance regulators that claims-made coverage may not be appropriate for ordinary risks.

Also, insurers are somewhat behind schedule in converting their computer systems and training staff underwriters to handle the new policy form—steps that must be completed before insurers can implement claims-made coverage for the millions of small and midsized businesses that buy CGL policies.

And, many U.S. casualty insurers have yet to decide exactly which risks will be offered only claims-made coverage and which will be offered a choice between claims-made and occurrence.

Thomas R. Shea, a principal with broker Schwartz & Shea in Janesville, Wis., notes that many small businesses are covered under a businessowners policy, which is written on an occurrence basis.

This policy is used widely by insurers for very small property and casualty risks and includes a broad range of coverages.

Mr. Shea says it's not clear "exactly which companies are going to use which form." He says that none of the companies his firm deals with is planning to introduce the claims-made CGL policy form on Jan. 1, 1986.

"I don't think there's any question that insurers will want large risks on the claims-made form," Mr. Shea says. But, he adds, insurers "appear to be holding back on their decision as to when to go with the claims-made form."

According to Mr. Shea, any risk that insurers believe has the possibility "of generating claims three, four or five years after a policy expires" probably will be offered only claims-made coverage. "But I don't think insurers have decided which risks those are," he adds.

"So far, the bullets have not been fired. It's all been behind the lines," Mr. Shea says.

Generally, insurers say that risks with long-tail exposures will be offered only claims-made coverage—regardless of the size of the policyholder.

This means, agents and brokers explain, that many small contractors and small manufacturers of "sensitive products," such as medical supplies, probably will be forced to accept claims-made coverage.

Agents and brokers are quick to point out that claims-made coverage may be a blessing for small and midsized businesses that have long-tail exposures, because without it, they say, many of these businesses simply would not be able to obtain liability insurance.

"For some businesses, claims-made may make the difference between insurance and no insurance," says Corrie Foos, a vp with commercial insurance broker Micor Insurance Brokers Inc. in San Jose, Calif. "The size of the business doesn't matter; it's what they do."

"The vast majority of small businesses should be able to get an occurrence policy," says Phillip Ben-Zvi, senior vp with Continental Corp. in New York, which plans to begin introducing the claims-made form in July of 1986.

"We have a businessowners policy, which is designed for smaller businesses, and that will be avail-

Continued on page 16

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Policy change

Continued from page 12

able in either occurrence or claims-made," according to Fred P. Themmes, senior underwriting officer for St. Paul Fire & Marine Insurance Co.

Mr. Themmes says most small businesses don't have the kind of long-latent exposures that have prompted the insurance industry to introduce claims-made CGL coverage.

Liberty Mutual Insurance Co. plans to switch all of its CGL policies over to claims-made, says Vp John W. Purkis. But, he says that most of Liberty's small-business accounts are insured under the businessowners policy form, which is an occurrence policy.

Mr. Purkis notes that the point can be made that some small and midsized businesses don't need to be on claims-made because they don't have long-tail risks.

"But I can say, if that's the case, they'll do just fine on claims-made," he adds.

Agents and brokers point out that many small and midsized businesses are insured with regional insurance companies, and they maintain that these insurers are generally in better financial shape than the larger domestic casualty underwriters. Therefore, they say, the regional insurers are in a better position to continue offering occurrence coverage.

"Frankly, I think the regional insurance companies are not going to be very quick to go to the claims-made form," maintains R.C. Riley of broker Peel & Holland, Inc. in Benton, Ky.

"Most of the regional companies will stick with the occurrence form for the smaller accounts," he adds, saying that competition for the small, low-risk commercial accounts will prevent them from switching to claims-made.

Several regional insurers interviewed said that they plan to offer their smaller policyholders a choice between occurrence and claims-made coverage, while some of the larger insurers said in November that they would not be ready to convert their smaller accounts to claims-made during 1986.

"We plan to offer both," notes Dennis E. Hoffmann, president of John Deere Insurance Group in Moline, Ill.

Mr. Hoffmann believes that the occurrence form is best for small businesses because most small businesses do not have the expertise to understand the complexities of the claims-made coverage trigger.

"This type of customer will have difficulty ensuring that he is properly covered for most eventualities" under the claims-made form, Mr. Hoffmann says.

Ohio Casualty Insurance Co. in Hamilton, Ohio, also plans to offer both the occurrence policy form and the claims-made CGL, says Frank Weaver, head of casualty underwriting.

However, although agents and brokers predict that most small and midsized businesses will be able to buy occurrence coverage in 1986, they say the future of the occurrence form depends on how quickly reinsurers can recover from the disastrous results of the past few years.

Much of the pressure for the claims-made policy form is coming from the reinsurance industry, agents and brokers acknowledge. Many reinsurers have said they simply no longer will underwrite the occurrence CGL policy.

"Whether they maintain that position depends on their results in 1986," remarked one broker, who asked not to be named.

While some reinsurers have said they will continue to support the occurrence form (*BI*, Nov. 11), "I've heard a lot of dire predictions that the occurrence form will be gone by 1988," says Dean E. Brooks, a principal of Brooks-Lussem Insurance Inc. in Des Moines, Iowa, and a member of the commercial lines committee of the Independent Insurance Agents of America.

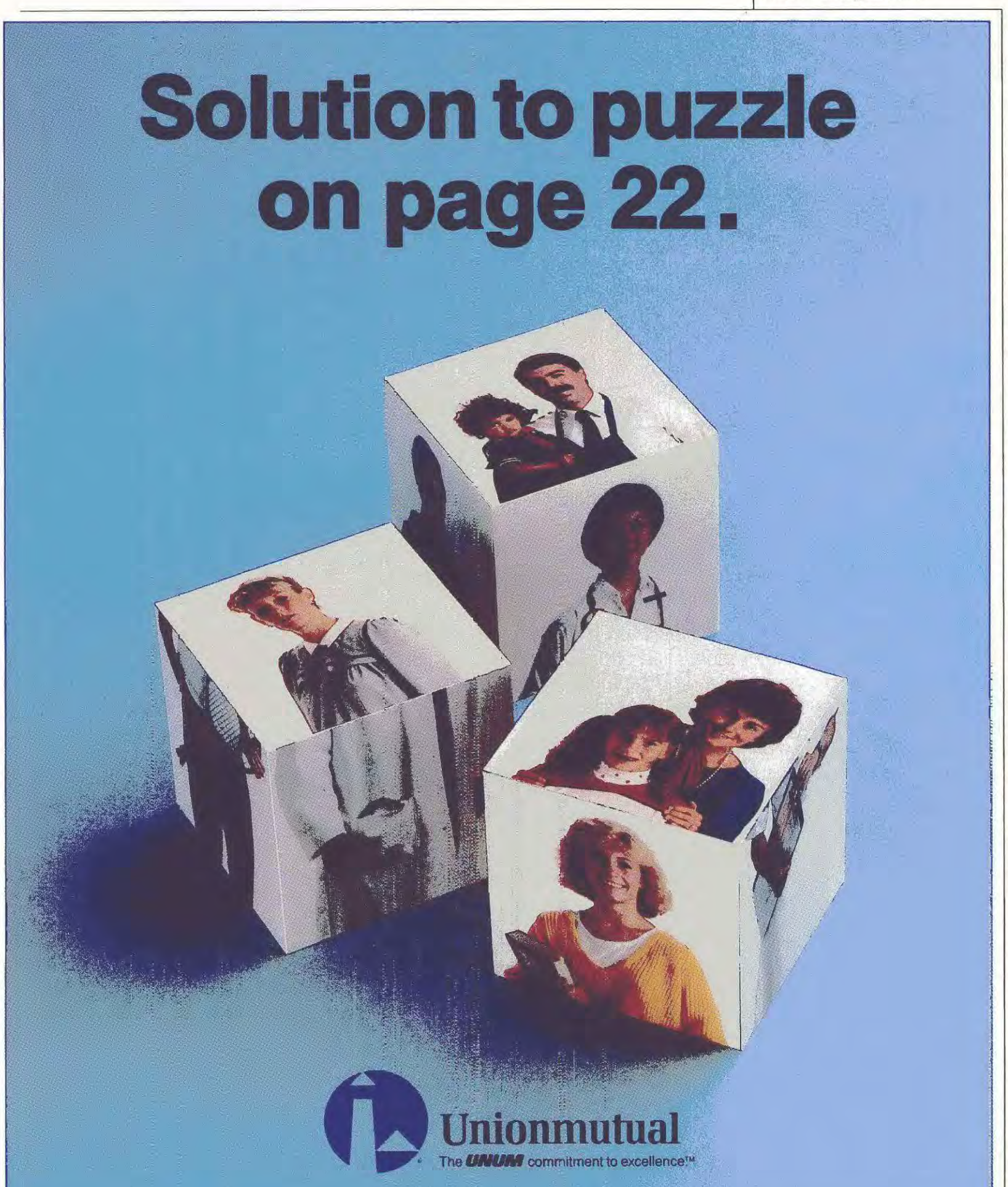
"I don't know whether I believe that or not," he adds. "We'll just have to wait and see what happens in 1986, and particularly in those states where the claims-made form is not approved."

"The 'run-of-the-mill' small business will not be forced on to the claims-made CGL policy form in 1986," Mr. Brooks maintains.

"Beyond that, I don't know what's going to happen," Mr. Brooks adds. "A great deal depends on the insurance industry's financial picture."

Once the insurance industry's financial results improve, many agents expect insurers to use the occurrence policy as a competitive tool to win accounts—especially small-business accounts. ■

Solution to puzzle on page 22.



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Leasing employees raises liability worries

By MEG FLETCHER

A business owner who leases his employees to cut his administrative workload may not necessarily cut his liabilities.

Over the past few years, many small employers—looking to cut their work and expenses—have opted to "lease" their employees from an employee leasing company rather than establish a traditional employer-employee relationship.

Under a leasing arrangement, the leasing company pays the employee's wages, Social Security and unemployment taxes and premiums for health, workers compensation and, sometimes, liability insurance. Those costs are essentially reimbursed by the employer.

The leasing company also administers the payroll, withholds income taxes, schedules vacation time and handles health and workers compensation claims. For these services, the employer pays the leasing company a fee of 6% to 10% of the employee's total compensation.

But, how much liability an employer retains under a leasing arrangement depends on the employer-employee relationship established under the leasing contract and how much direct control the employer retains.

Employee lease agreements must be "meticulously created to meet the desired objectives and avoid the incredibly destructive pitfalls," which include "very real dangers of legal liability," according to James O. Castagnera, an associate labor law attorney with the Philadelphia-based firm of Saul, Ewing, Remick & Saul.

Specifically:

- A business owner could be liable if a leased employee makes an error that harms a third party.
- A leased employee who is injured on the job may be able to sue the business owner for damages in addition to filing a workers compensation claim with the leasing company.
- A business owner—especially one who directly controls his leased employees—could be held legally responsible if the leasing company does not transfer to the appropriate party income, Social Security and unemployment taxes withheld from an employee's pay. This becomes a crucial issue when a leasing company goes bankrupt.

It's also possible a business owner could be held liable for promised pensions.

- A business owner could face liability if he or the leasing company violates an employee's rights under federal civil rights legislation or labor law.

An important factor in each of these cases is whether the leasing company directly controls the leased employees, replacing the small-business owner as the employees' "common law" employer.

The National Labor Relations Act considers duties of a common law employer to include: hiring and firing; promotions and demotions; setting wages, work hours and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job, said John V. Jansonius, an attorney with Haynes and Boone in Dallas.

However, courts and administrative agencies in some cases have ruled that the business owner and leasing company are joint or special employers.

This blurs the lines of liability more. For example, an owner's liability in a discrimination case may increase if he is considered a joint employer, but his liability for third-party lawsuits from injured employees could decrease because the employee would be expected to file a workers compensation claim rather than file a third-party suit against the employer.

"It's all a gray area," said William B. Morland, president of Tustin, Calif.-based Contract Staffing of America Inc., which operates in 10 cities nationwide.

"You open a whole Pandora's box with various government agencies about what can be done and what cannot be done," he said.

And, because many of the new leasing companies that have sprung up in the last two years have relatively few resources to tap to pay an adverse judgment, the small-business owner could be the one the courts expect to compensate an injured worker or third party.

"The deep pocket is the one that people go for," said Max Schwartz, technical consultant with Towers, Perrin, Forster & Crosby.

The crucial question then becomes: Can the employer purchase general liability, professional liability or workers compensation coverage for leased employees, or will they be covered by insurance purchased by the leasing firm?

Some leasing companies have very complete liability insurance packages, including comprehensive general liability insurance and medical malpractice and errors and omissions coverages.

In other cases, employees are listed

Continued on facing page

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Continued from previous page
as named insureds on the business owner's policy. But, the business owner must be sure leased employees would be covered under the insurance policy. In some cases it might be necessary to purchase an endorsement to cover them.

One architect, for example, decided not to switch his eight employees to a leasing arrangement because he feared that under the lease arrangement they would be considered contract labor, which was excluded under his architect's professional liability policy.

Employers that lease employees also can be the target of subrogation actions by the leasing company's insurer if the leasing company is sued by a third party injured at the employer's business.

Contract Staffing, in an effort to eliminate business owner's liability as much as possible, includes in its leasing agreements a waiver of its right to subrogate the owner's insurance, Mr. Morland said.

In contrast, the leasing agreements issued by Staff Resources Inc. in Chico, Calif., do not waive the leasing company's right of subrogation against the employer, said President Kent Ahlswede.

For example, if the leasing company were sued for a negligent condition in an owner's office, it could seek to recover damages from the owner.

"We don't see leasing at all as a way for a doctor or dentist to get out of liability," said Mr. Ahlswede. "They are still responsible for the safety of their office."

In some cases, the leasing company will ask to be a named insured on the employer's general liability policy so it will be protected if it is named in a third-party lawsuit against the employer.

In addition, leasing companies may ask a doctor to show that he has malpractice insurance if he is leasing employees.

Business owners who are not common law employers also could be open to third-party liability suits from full-time leased workers who are injured on the job.

Without the establishment of an employer-employee relationship, the employer would not be covered under the exclusive remedy provisions of workers compensation laws, said Steven D. Millikan, director of workers compensation for The Alliance of American Insurers in Schaumburg, Ill.

"The potential for circumventing the classic exclusive remedy under the workers compensation act is there," he said.

However, if a court decides that an owner was a joint employer, in most cases no third-party lawsuit would be allowed, and the employee's sole remedy would be workers compensation, said attorney Mr. Castagnera.

Employee leasing arrangements also make work comp insurers uncomfortable when an employer has both leased and hired workers.

Often, the insurer will ask the leasing company to provide proof that it has workers compensation insurance and to sign a hold-harmless agreement, Mr. Byrne said.

Perhaps the most costly liability that could befall a small business owner who leases his employees—but still maintains direct control of them—would be responsibility for unpaid income taxes, pension benefits and umemployment taxes if the leasing company goes out of business.

"Employee leasing opens up substantial possibilities for severe abuse in pension, unemployment tax and income tax withholding areas," says James Swartzwelder, acting director of the planning division of the Internal Revenue Service.

"Leasing companies are going into business with relatively few assets and very quickly accumulating large pension benefit, unemployment and income tax liabilities, and then failing and leaving those liabilities unpaid," he told an October meeting of the National Staff Leasing Assn. in Washington.

"It's very, very important to look carefully at whom you're dealing with when you get in with the employee leasing industry" because there are "many possibilities" of the IRS coming back to employers if the firm they're dealing with should fail, he added.

However, if the leasing company is the true common law employer, the IRS will probably not be able to force the business owner to accept the responsibilities, he said.

Whether a business owner would be held responsible for the pension benefits promised to leased employees depends largely on the type of leasing arrangement the owner established.

The Tax Equity and Fiscal Responsibility Act of 1982 includes a safe harbor provision that allows a business owner to establish a qualified pension plan for himself independent of his leased employees as long as the leased employees' plan meets certain requirements (see story, page 24).

However, if the leasing company has not been making proper contributions to the employees' pension fund, TEFRA's safe-harbor pension provisions will have been violated—and the owner's own pension plan could be disqualified unless the leased employees' plan is funded properly.

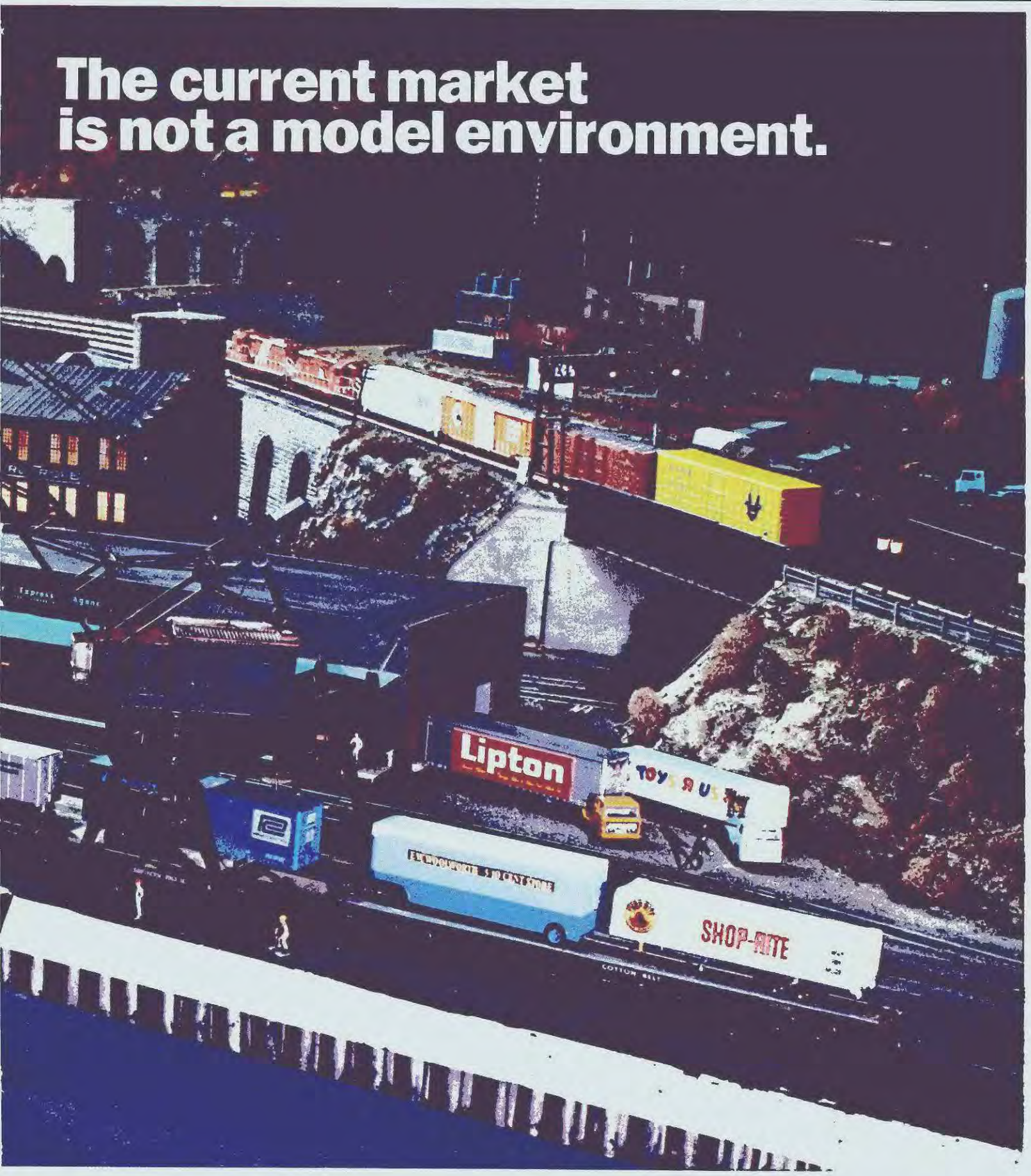
However, exactly how pension responsibilities would be decided is unknown because the IRS has not yet released regulations interpreting the pension-related statutes in TEFRA. A draft version of the regulations are expected to be released this month for comment.

A final version of the regulations is expected in the spring of 1986, says the IRS' Mr. Swartzwelder.

Meanwhile, a lot of business owners interested in employee leasing are watching the bankruptcy proceedings involving the Dallas-based leasing company Omnistaff Inc. and two affiliated

Continued on page 20

The current market is not a model environment.



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Leasing workers

Continued from page 19

companies, Unistaff Inc. and Ultrastaff Inc. Omnistaff filed for bankruptcy earlier this year.

It is unknown whether the 1,500 companies nationwide that leased between 5,000 and 8,000 employees from Onmistaff and its affiliates will face any liability for the companies' debts, according to Rob Yaquinto, a Dallas-based attorney who is the bankruptcy trustee.

Omnistaff's $9 million in liabilities include $650,000 in bounced payroll checks, plus federal income and Social Security taxes, state unemployment taxes and premium payments for various insurance coverages, including workers compensation, Mr. Yaquinto said.

The bankrupt companies' failure to pay workers compensation premiums caused at least some of the insurers to terminate the coverage.

The small employers who leased employees through Omnistaff bought their own replacement coverage as soon as they learned of the problem, Mr. Yaquinto said.

J.V.P. Inc. in Hinckley, Ohio, which operates a small trucking business with landscape products and rental properties, was one of Omnistaff's clients.

General Manager Joe Pischieri said J.V.P. reimbursed four employees for about $800 to $900 in payroll checks that bounced. In addition, the employees lost a much smaller amount of accumulated pension benefits, he said.

But, J.V.P., in turn, is being reimbursed by National Employer Inc., a Cleveland-based leasing company that now provides employees to Mr. Pischieri, according to Ronald D. White, National Employer's president. National Employer picked up the losses to convince J.V.P. to contract with it.

However, J.V.P. lost one month's service fee and about $600 in signup fees to Omnistaff, Mr. Pischieri said, adding that National Employer also waived its signup fee.

Omnistaff's bankruptcy also affected group health insurance benefits for J.V.P. workers.

They were covered by Travelers Insurance Co., Omnistaff's health and life insurer, for a while after the bankruptcy, but then group coverage was dropped.

Although Travelers offered the employees the opportunity to convert their group coverage to individual coverage, J.V.P.'s leased employees were without health insurance for about three or four weeks until the contract with National Employers took effect.

"I felt bad personally," Mr. Pischieri said. "You are responsible for more than the money you lose."

Despite problems caused by some disreputable companies, Mr. Swartzwelder emphasized there are reputable leasing firms.

He applauded efforts of the one-year-old National Staff Leasing Assn., which is moving from Chico, Calif. to Los Angeles in mid-December, to police its industry.

The group's code of ethics requires a leasing company member to submit quarterly verification by an outside accountant that the leasing company has made timely state and federal tax deposits and contributions for pensions.

The relationship between a business owner and his leased employees also will affect exposure to civil rights and labor relations suits.

Typical civil rights violations could include race, sex or age discrimination, while labor law violations could include failure to bargain with a union, lawyers say.

The potential for an owner to face liability for discrimination against a leased worker was dramatized last year when the U.S. District Court for the Southern District of New York allowed a black woman, who was employed by Mature Temps Inc., to sue Merrill Lynch.

She alleged that she had been discharged from her temporary assignment and not hired on a permanent basis because of her sex, race and national origin.

The judge found that for the purposes of protecting the employee's civil rights, Merrill Lynch was a "special" employer of the woman.

The court ruled earlier this year that the employee failed to prove that she had been discharged for discriminatory reasons and also found that her work performance was unsatisfactory.

Most problems in this area are caused by the "inevitable" and "necessary" overlap of employee supervision by the company owner and the leasing company, said attorney Mr. Castagnera.

"When the finding of joint employer is made, the wrongs and problems of the leasing company become the wrongs and problems of the client company," he said. ■

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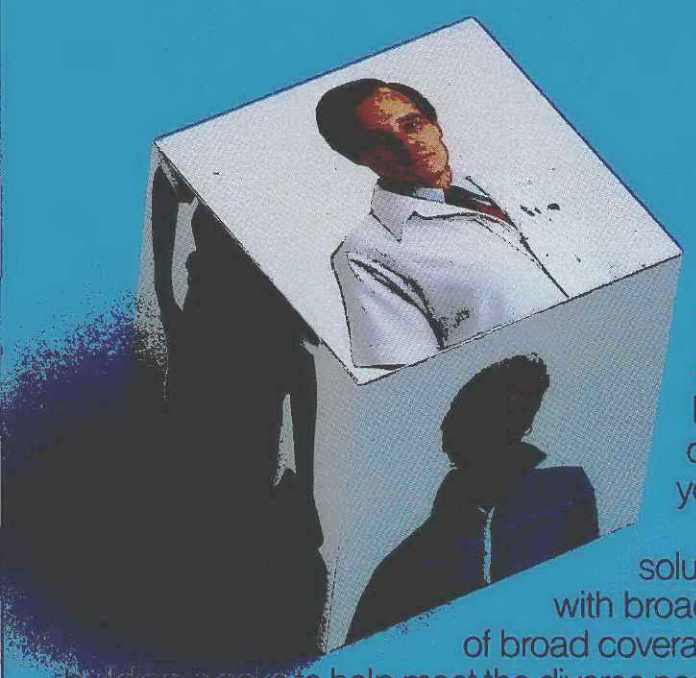

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Advantages of leasing can outweigh the risks

By MEG FLETCHER

While leasing employees can increase an employer's liability in some areas, the risks do not outweigh the advantages for many small employers.

Besides transferring time-consuming payroll and other administrative duties to the leasing company, a leasing arrangement could give the owner of a small business more leverage in designing his own pension while offering employees more lucrative benefits overall.

"It seems to be a win-win situation," says William B. Morland, president of Contract Staffing of America Inc., a 10-year-old Tustin, Calif.-based leasing company with offices in 10 cities.

The number of leasing companies increased exponentially after the Tax Equity and Fiscal Responsibility Act of 1982, which created disincentives for a business owner to have a pension plan that disproportionately favored him over rank-and-file employees.

However, the law provided a "safe harbor" for a business owner who wanted to keep an independent pension plan: He could release his employees, have a leasing organization hire them with guaranteed pension benefits and then lease back the employees.

For the owner's pension plan to be qualified under tax law, the Internal Revenue Service requires that the leasing company have direct control of the workers—with responsibility for hiring, firing and transferring them—and supply them with a "qualified, non-integrated, money purchase pension plan that provides for immediate participation, full and immediate vesting and an annual contribution of 7.5% of compensation."

"If these requirements are met, the leased employee does not have to be counted for any purpose pertaining to the qualified plans of the recipient organization," tax regulations say.

However, many employers that lease employees now do not take advantage of this safe harbor option.

One reason is that the safe harbor employee pension plan is "very expensive" because the IRS requires immediate vesting, said Thomas Byrne, president of New York-based American Staffing Group Inc.

Instead, "non-safe harbor" leasing companies have been established that do not shelter a business owner's pension plan and, therefore, do not have to meet the TEFRA requirements.

Non-safe harbor programs have the flexibility of determining pension benefits, which are often 3% of an employees' gross wages, and have various vesting arrangements.

"This has the bigger market now," Mr. Morland said.

Generally, with or without a safe harbor arrangement, a business owner in a leasing arrangement saves time and often money by delegating to the leasing organization employee administration chores.

These can include payroll and tax-form filing, handling health insurance and workers compensation claims and vacation scheduling.

The leasing company generally pays Social Security, unemployment and any income taxes; pension plan contributions; and premiums for health, workers compensation and perhaps liability coverages needed for the employees.

The business owner essentially reimburses the leasing company for these costs and pays an administration fee of between 6% and 10% of the employees' gross compensation.

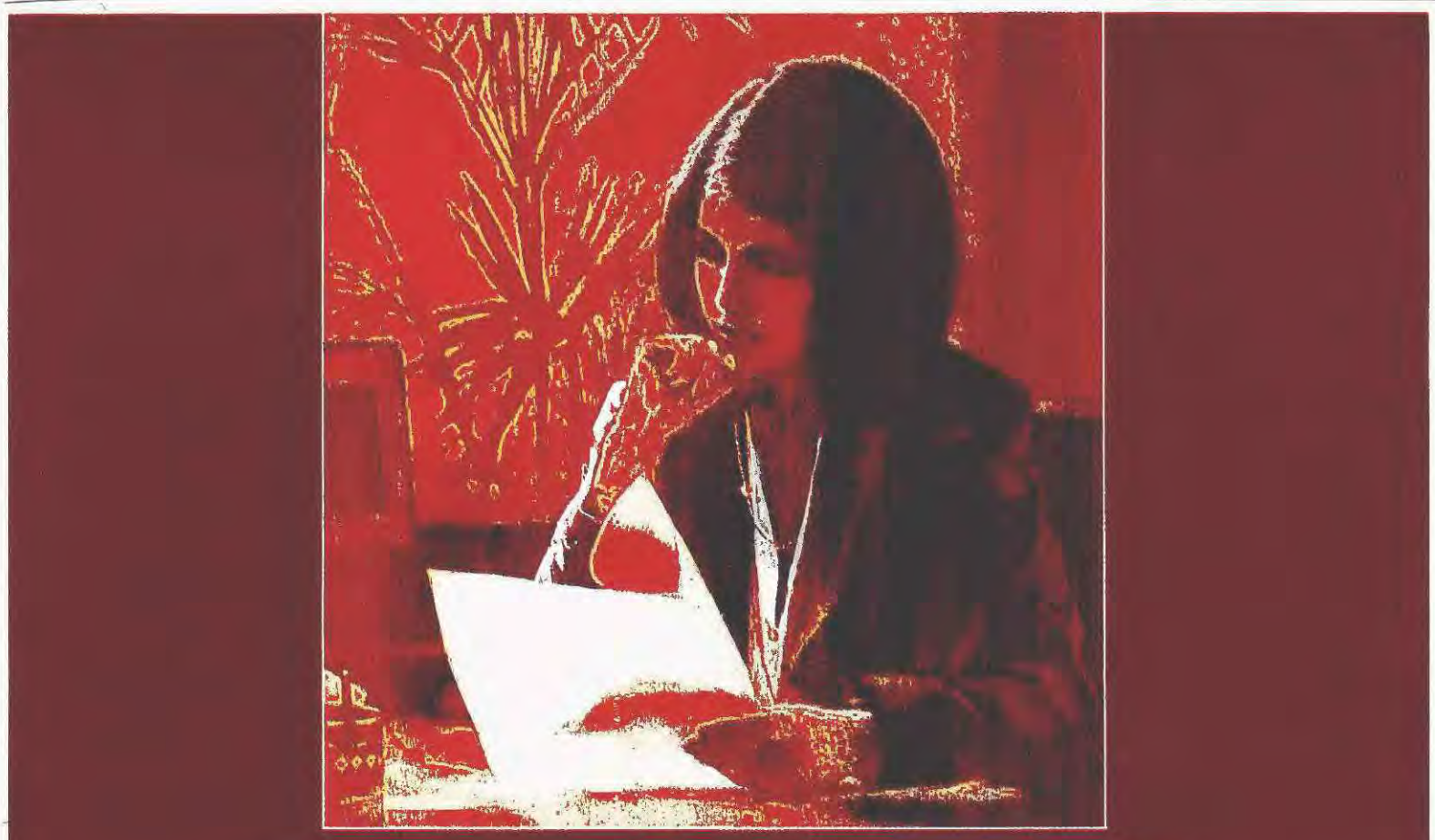
Leasing arrangements also generally mean better benefits for employees, especially improved health care benefits.

Because the leasing organization buys health care benefits for a larger number of employees than the small employer, it has more leverage in the marketplace to provide better coverage at a lower cost.

The benefits are "substantially" better than anything available elsewhere, said an officer of a consulting firm in Barrington, Ill., that leases two employees from Contract Staffing.

Her two full-time office workers and their families have comprehensive medical and dental cover-

Continued on page 26



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Advantages

Continued from page 24

ages with a $200 joint deductible and an 80% coinsurance clause. Contract Staffing also offers some employees health maintenance organization or preferred provider organization options.

Employees leased from Contract Staffing also have life insurance equal to their annual salary plus $5,000, long-term disability insurance, access to a credit union and a $200 annual continuing education grant.

American Staffing Group Inc. expects to offer a cafeteria plan in the future so workers can choose child care benefits instead of major medical coverage that often duplicates coverage available under a spouse's group health care plan, said President Thomas Byrne.

It also offers employees divorce mediation services at reduced rates. Leased employees also enjoy greater job security because the leasing company can find them other jobs if one position does not work out or they move.

In some cases, however, leasing can open the door to abuse by employers.

Leasing arrangements have been used to short-circuit attempts by employees to organize unions and to provide the minority employees a company needs to land a government contract, industry sources point out.

On the other hand, business owners considering employee leasing are warned to be sure the leasing company they are dealing with is a reputable, financially stable organization.

A business owner considering employee leasing should take the following steps:

- Decide what kind of leasing program he or she wants, including whether or not a "safe harbor" is needed for the busiess owner's pension plan.
- Find a good leasing company by comparing not only benefit plans and costs but also the financial and personnel management plans of the leasing companies.
- Consult an attorney and accountant about the legal and insurance ramifications of a lease agreement.
- Live within the leasing agreement to ensure that employee supervision is provided by the appropriate persons to keep clear who is the employer.

A booming industry

The employee leasing industry is enjoying a phenomenal boom.

Since the Tax Equity and Fiscal Responsibility Act of 1982 laid down the rules for leasing employees under a safe harbor arrangement to protect a small business owner's personal pension plan, the concept of employee leasing has taken off.

In 1980, there were only three leasing companies in the U.S.

But then TEFRA took effect on Jan. 1, 1984, "and that was the starting point of the boom in employee leasing," says Thomas Byrne, president of American Staffing Group in New York.

Now there are 300 or more leasing organizations nationwide, of which some 50 to 100 are well established, according to Kent Ahlswede, vp of the National Staff Leasing Assn. and president of Staff Resources Inc., his leasing company in Chico, Calif.

John Naisbitt and Patricia Aburdene, authors of "Re-inventing the Corporation," predict that within a decade 10 million workers will be leased.

In 1983, fewer than 4,000 employees were leased, according to Mr. Naisbitt and Ms. Aburdene. But, by 1984, some 50,000 to 60,000 full and part-time workers were leased, according to industry estimates.

More than half of all leased employees work in doctor and dentist offices, and most leased employees work for businesses with only four or five employees.

However, a wider range of businesses are leasing workers as the concept spreads.

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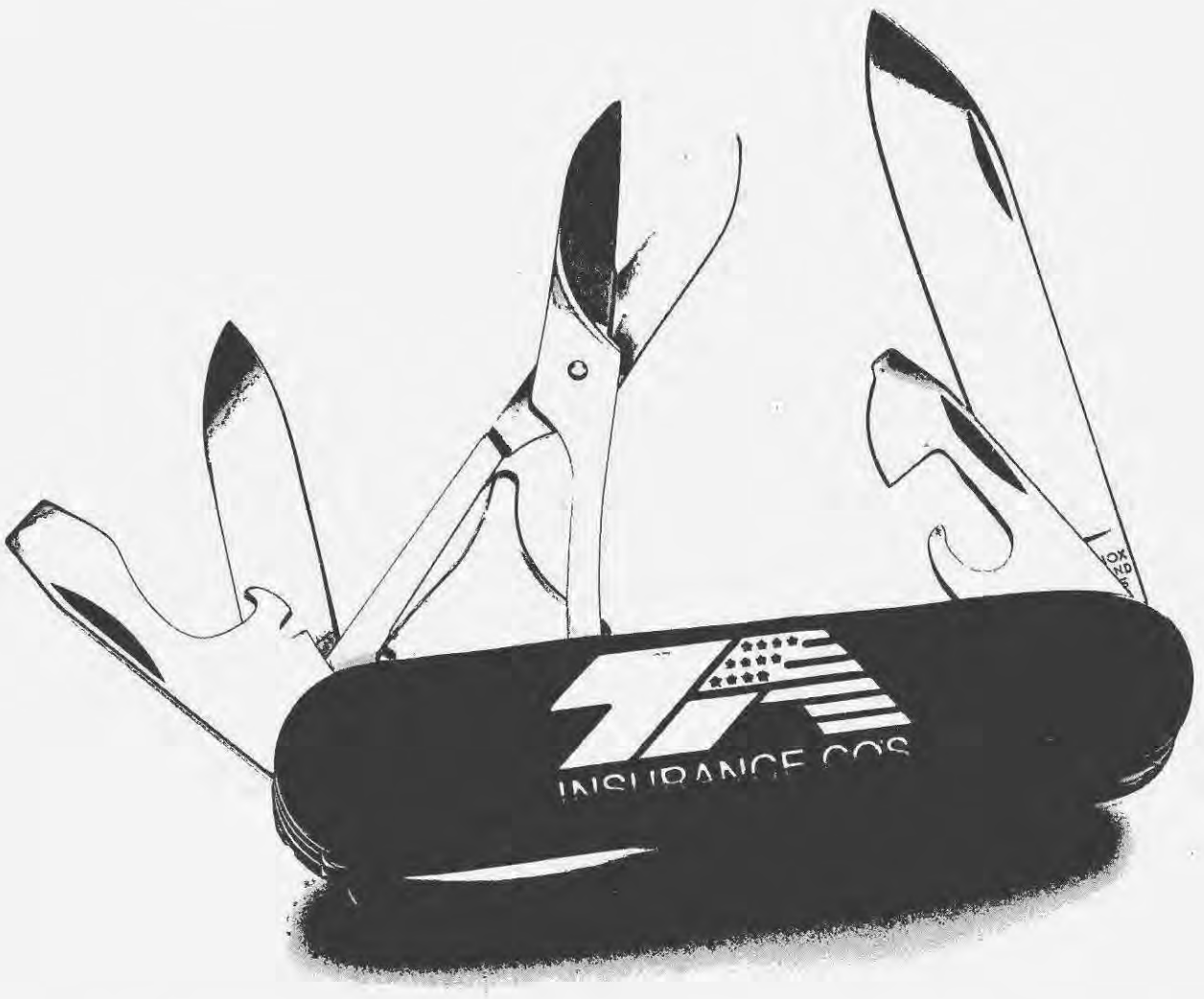

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One-on-one retirement counseling offered

By DIANE LYNN KASTIEL

Innovative employee benefit plans are not retricted to large employers. The United Hospital Fund, profiled on this page, and National Commercial Bank, featured on page 28, are two small employers that have taken big pains to assess their employees' needs and then mold their benefit plans to fit those needs. In some ways, their size made their tasks much easier.

NEW YORK—Charity begins at home for the United Hospital Fund of New York.

When the increasing use of computers made it prudent for United Hospital to reduce its 70-man workforce, the philanthropic and research organization for not-for-profit hospitals implemented an early retirement program.

However, it not only offered employees a financial incentive to retire, but also went one step further and provided them with one-on-one counseling to make sure they were ready for such a major lifestyle change.

"They saw the need to help their people who were trying to decide whether to make the election to retire," said David Gravitz, consulting actuary at Buck Consultants Inc. in Chicago, who served as consultant on the retirement program.

It's not unusual for large companies to provide retirement counseling—but it's very unusual for an employer the size of United Hospital Fund to do so, said Mr. Gravitz. And, rarely do employers provide individual counseling, he added.

"Most of the clients we do this for are much larger corporations where we make presentations for 40 to 50 people at a time," Mr. Gravitz said. "There's usually a place for some questions and answers, but not individual counseling."

But, United Hospital Fund used its small size in its favor, Mr. Gravitz explained.

"It's a matter of dollars and cents," he said. "Most companies would not want to pay our fees to take two or three weeks to talk to all their people."

Because United Hospital Fund is so small, counseling for the 16 employees who made appointments only took a day and a half, and cost only $1,500, said Eileen Scott, vp of administration and finance.

In June, United Hospital announced an early retirement "window" offer that would pay an increased pension and provide enhanced post-retirement medical benefits. Thirteen employees were eligible for the early retirement incentive program plus some incentives were offered to six other employees over 65 years old.

The employees had between June 1 and Sept. 30 to accept the offer, which required they retire before Dec. 31, Ms. Scott said.

United Hospital intentionally extended the acceptance period into September because it moved to new offices in July, and Ms. Scott knew the new commute would be inconvenient for many employees.

"We deliberately set up the window period so people would be able to take advantage of it if they found they didn't like the commute," she said.

The charity's normal retirement benefit pays employees 2.25% of their average monthly salary for the last five years worked, multiplied by their years of service, Ms. Scott said.

Its normal early retirement plan allows employees to retire at age 55 with 10 years of service, but provides a reduced benefit. The reduction is based on a sliding scale, based on an employee's age at retirement, Ms. Scott said.

For example, employees who retire at 55 receive 50% of their benefits until they reach 65 while employees who retire at age 64 have their benefits reduced by only 7% until they are 65.

However, under the early retirement incentive offer, employees under 65 would be promised no less than 60% of their normal benefits, regardless of their age. And, three years would be added to their age so they would qualify for full retirement benefits three years earlier.

As an additional incentive to retire early, United Hospital Fund wanted to provide a cash bonus to both the early retirees and the employees over 65 years old. However, the financial outlay of a lump-sum payment posed too big of a financial burden.

"We could not afford to give a great deal of cash up front, so we decided to pay a bonus out over three years," Ms. Scott said.

The bonus was calculated in two parts. First, all employees, regardless of their years of service, would receive an additional $150 a month. Secondly, each would receive $1 a month for every month they had worked for United Hospital.

As a further inducement to retire, United Hospital implemented a post-retirement medical plan in June and added extra enhancements for the under-65 employees.

Again, strict budgetary limitations played a role in the design of the plan.

Under the post-retirement medical plan, United Hospital contributes $75 a month toward the premium for individual coverage and $150 a month for family coverage.

Employees age 65 or older pay

Continued on next page

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Bank gets employee input on benefit needs

By DIANE LYNN KASTIEL

NEW YORK—The National Commercial Bank has only 54 employees, but its approach to designing and implementing its employee benefit program could rival many large employers' strategy.

In late 1984, when National Commercial decided to redesign its benefits program, it went directly to employees and asked each what benefits he or she wanted.

And, once it found out, top management helped communicate the new plan.

As a result, NCB now offers its employees better dental benefits, a 401(k) plan, educational benefits and a mortgage assistance and loan program, in addition to a generous traditional medical plan, and life and disability benefits.

Plus, any employee who is covered by another medical plan can trade his or her group health benefits for an additional company contribution to the 401(k) plan.

NCB was opened in June 1982 as a representative office of National Commercial Bank in Jeddah, Saudi Arabia, and became a branch office in September 1983.

At that time, its benefits program had "nothing but the very basics," according to Lawrence G. Smith, executive vp and general manager for the New York branch bank. It consisted of a medical and dental plan, life insurance, long-term disability and accidental death and dismemberment insurance.

When it decided to expand its benefits program in late 1984, NCB hired Hewitt Associates of Lincolnshire, Ill., and appointed a task force to design the new plan.

"We wanted to know what was going on in the market in New York, how the market was changing, and what the competition was offering," Mr. Smith said.

But, the task force—which included Mr. Smith; Nicole Watts, head of human resources; and Camille Chbeir, vp and head of operations—had no idea what benefits the bank should offer.

Part of the problem was the bank's main decision-makers had come from different U.S. and foreign banks, and they all had different ideas of what employees might want, Mr. Smith said.

"The only thing we were sure of was a retirement plan," he said. "We thought there should be other things but each of us had a different idea of what should be offered."

That's when the bank decided the best way to find out what benefits it should offer would be to ask employees what they wanted.

"It was our idea and Hewitt's methodology," Mr. Smith said. "We had a unique opportunity here, in that we started from scratch. We had no precedent and little legal obligations in this area so we thought it was a good opportunity to find out what people thought and what they wanted. We wanted employee input."

Its small size was an advantage in this area.

"Because of NCB's small size, it was relatively efficient to get all employees involved and get feedback from everyone," said Patricia Graham , consultant with Hewitt in New York. "They literally invited everyone to participate."

"They were honest about the fact that they had been hiring people very quickly and, even though they had a sense of the concerns and the problems, the didn't want to spend any new benefits dollars without getting employee input on the value of those dollars in terms of what they wanted," she said.

NCB expects to employ 100 to 120 people in the next five years.

To elicit the most candid responses from employees, consultants from Hewitt conducted interviews with groups of eight to 12 employees. They were asked for

Continued on next page

Retirement plan

Continued from previous page

$10.66 a month for individual coverage and $29.50 a month for family coverage. Employees younger than 65 pay $22.52 a month for individual coverage and $85 a month for family coverage.

However, employees who retire early under the window plan received additional contributions from United Fund, and pay only $2.50 a month for individual coverage and $19 a month for family coverage, Ms. Scott said.

Once all the incentives were set, the next step was to help employees decide if the plan was for them, and if so, help them prepare.

At this point, Paul Westbrook, a retirement counsultant at Buck, was brought in to provide individual counseling for employees.

"We didn't want people making decisions based on partial information or incorrect information," said Ms. Scott.

Before the sessions, United Fund sent letters to employees eligible for early retirement and who were 65 or older, delineating their pension and post-retirement medical benefits with and without the early retirement enhancements.

And, the employees were encouraged to make an appointment with the retirement counselor and bring their spouses.

Mr. Westbrook, they were told, would provide counseling on a wide variety of subjects, including taxes, investments, and lifestyle issues, Ms. Scott said.

To encourage employees to make an appointment with Mr. Westbrook, he visited the office informally first to meet them.

It proved to be an effective strategy. The general retirement meeting, held one week later, had 100% attendance, Ms. Scott said. And, 16 of the 19 employees eligible made appointments for counseling. Most of the individual sessions lasted 45 minutes to an hour, she said.

She also encouraged employees who were not eligible for retirement to talk to the counselor.

"I said to them, 'You should really sit down and talk to him because this is something you're going to have to address in five or 10 years,'" she said.

United Hospital Fund's efforts were well worth its time and the total cost of $5,000, Ms. Scott said.

Out of the 13 people eligible for the early retirement incentives, 12 accepted them. And, four of the six employees over 65 also retired. And, United Fund is satisfied its employees are entering retirement well-prepared and at ease.

"It was something we wanted to do," Ms. Scott said. "It was something our board wanted.

"It doesn't take a major investment," Ms. Scott said. "And it was really very worthwhile for everybody involved." ■

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Continued from previous page
their input on both benefits and direct compensation.

"The most interesting thing is not that NCB talked to people but that they listened to people," Ms. Graham said.

"A lot of companies conduct focus groups, but they already have decided what they're going to offer employees. NCB had design alternatives in mind, but they really didn't know what employees wanted and they wanted to find out."

In the end, NCB discovered employees liked their generous medical coverage, which requires no employee contribution to the premium and provides full hospitalization coverage for up to 365 days.

And, employees pay only a $100 individual deductible for major medical coverage and $300 for family coverage. Coinsurance is 20% of the first $2,000 in expenses exceeding the deductible. After that, the plan provides 100% coverage.

As a cost-containment measure, beginning July 1, NCB will reimburse employees 100% for the cost of surgery if they get a second opinion, Mr. Smith said.

But, employees complained that claims took too long to be processed, so NCB took the medical plan out of an insurance pool administered by Manufacturers Hanover Trust Co., self-insured it and hired Adjustco Inc., the claims management subsidiary of Frank B. Hall & Co. Inc. which was recommended by Hewitt for its quick claims turnaround time, he said.

And, to accommodate those employees who have medical coverage through a spouse's group health plan, NCB now allows employees to opt out of NCB's group health plan and have $750 contributed by NCB to the 401(k) plan.

However, an employee first must show that they have health care coverage under another plan.

"It wasn't an inducement for them to opt out because they had to demonstrate they had adequate coverage somewhere else," Mr. Smith said. "But if they did opt out, we'd save money, so we offered to share that savings."

NCB employees also said their dental benefits were inadequate.

Under NCB's self-insured dental plan, employees are reimbursed according to a fee schedule, which employees said was too low.

So, NCB increased the fee schedule by $10 to $15 an item.

It also increased the maximum lifetime reimbursement for major dental care to $1,000, from $750, Mr. Smith said.

NCB's traditional defined benefit pension plan was not what employees wanted, Mr. Smith said. Instead, they asked for a savings and investment vehicle that could also be used as a pension plan.

"They wanted something that they could contribute to and see growing and maybe even get their hands on, rather than something they would get when they turn 65," Mr. Smith said.

Even though the norm in the banking industry in New York is a traditional defined benefit pension plan with 10-year cliff vesting, Hewitt recommended that NCB accommodate the needs of its young and mobile workforce.

NCB's answer was a 401(k) plan with generous employer contributions and some immediate vesting.

"Our 401(k) was going to have to do double duty in that it would serve as a pension plan as well as a savings plan," Mr. Smith said.

NCB contributes 6% of salary annually to each employee's 401(k) plan, in which employees cliff vest after five years.

And, the company will match, at 50 cents on the dollar, the first 4% of salary employees contribute to the plan. Employees become vested in this portion of the plan immediately, a feature NCB hopes will help attract and retain employees.

Employees can contribute an additional 10% of their pre-tax income to the 401(k) plan, but without a company match.

The plan offers employees four investment options.

Although the 401(k) plan, like the other benefits changes, became effective July 1, NCB made the company's contribution retroactive to Jan. 1, Mr. Smith said.

In addition, the $750 savings contribution for employees that opted out of NCB's medical plan was counted as an employee contribution to be matched by the bank.

The response to the 401(k) was overwhelmingly positive. Some 96% of NCB employees contributed to the plan this year with 21 contributing the full 4% eligible for a company match, and eight contributing the maximum 14% of salary, Mr. Smith said.

Employees also requested an education benefit, which surprised the company, said Mr. Smith.

But NCB responded, providing $500 a semester for educational expenses, with a maximum annual benefit of $1,500.

And, although a course must be related to an employee's work to qualify for reimbursement, Mr. Smith said the company interprets the relationship between job and course "in the broadest sense."

So far, five employees have taken advantage of the new education benefit, Mr. Smith said.

At the employees' request, NCB instituted a mortgage assistance program, too. Under the plan, employees purchasing or upgrading their primary residence can receive through the bank a mortgage equal to 2½ times their base salary, with prime rate interest.

The bank also instituted an individual loan program that allows employees to borrow up to the equivalent of four months' salary, payable in up to five years, with interest calculated at the prime rate.

Employees must have been with the company for at least one year to be eligible for an individual loan.

The focus group discussions also revealed that employees wanted more contact with senior management, said Ms. Graham of Hewitt.

To respond immediately to this request, NCB senior management helped lead meetings at which the new benefits package was explained to employees.

"The important role of management was to explain the rationale," Ms. Graham said. "Hewitt was just there to explain the technical aspects."

NCB also brought in an investment counselor to help employees decide which investment funds to choose under the 401(k) plan.

"NCB realized this would be a very new process for employees; it let them sit down and ask questions and talk about risk and investments," Ms. Graham said.

"Anybody can implement a new benefits program. But NCB probably got as much mileage out of the communication that took place about the program as they did out of the benefits," she added.

"The neat thing is they listened to employees and they used their suggestions.

"A lot of people say they want employee feedback but if they hear something they don't like, they ignore it. NCB addressed the bad news as well as the good," she said.

Besides creating a benefit package that gives NCB the most for its money because it does respond to employee needs, the redesign effort itself resulted in better employee-management communication overall, the bank says.

"It has opened up the channels of communication so much," said Nicole Watts, head of human resources. "I personally am gettting much more feedback than I did before we did this exercise." ■

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Small firms advised to consolidate coverage

By DONNA LEIGH YANISH

Small-business owners may have an easier time finding affordable property/casualty coverage if they place all of their policies with one insurer, experts say.

However, buyers should not expect the insurer to offer a discount on each policy it writes, they add.

Building insurer loyalty is a major reason for trying to place a small business' account with one insurer, says John E. Hatton, managing director for Marsh & McLennan Inc. in New York, even though the insurer may not quote the most competitive price on each piece of business.

Small-business accounts shouldn't be splintered whenever economically feasible, agrees Lawrence Geneen, a senior vp at Johnson & Higgins in New York.

"An account that looks like it's been around is seen (by insurers) as a distressed piece of business," he says. Insurers probably will not want to write this kind of business, at least not at a rate anywhere close to what was previously charged, he explains.

The U.S. Small Business Administration also advises that firms purchase their property/casualty coverage in as large a unit as possible, noting that small-business package policies are "often the only way a small business can get really adequate protection."

The SBA also says that a small business should try to place all of its business through one agent or broker. "Having more than one may spread and weaken responsibility," the agency says.

But, no matter how much coverage a small business can place with one underwriter, some small businesses are facing substantial rate increases that could wipe out the companies' profits.

"We're seeing $200,000 insurance premiums increasing to $500,000," Mr. Geneen says. "That could be a small business' profit."

'We're seeing $200,000 insurance premiums increasing to $500,000. That could be a small business' profit,' says Mr. Geneen.

The size of the rate increase a small company faces—and sometimes whether the company can find coverage at all—depends on the type of coverage, the company's loss history and just how small the company really is, brokers say.

Most industry observers pigeonhole small businesses into three categories: companies with up to 50 employees, companies with 51 to 250 employees and companies with from 251 to 500 employees.

Although small businesses of all sizes are being battered by rate hikes, experts generally agree that businesses at either end of the spectrum have less difficulty than those in the middle.

The smallest companies—those with less than 50 employees—often can purchase all of their property/casualty coverages through package policies developed specifically for their industries. Many insurers continue to sell these package programs for small businesses, although the cost has leaped as much as 30% industry observers say.

Although "a lot of (insurance companies) are getting out of the small-business market, there's still a market" for very small companies looking for package policies, says John R. Robertson, director of underwriting for State Farm Fire & Casualty Co. in Bloomington, Ill., which sells package policies for companies in many industries.

More small businesses now appear to be shopping for package policies, he added. "We've had fairly substantial increases in applications" for small-business packages

Although insurers don't sell package policies for companies at the top end of the small-business spectrum, these companies usually have more insurance options than their smaller brethren.

These businesses are often large enough to purchase tailor-made policies to meet their specific insurance requirements, M&M's Mr. Hatton says.

However, companies with 51 to 250 employees have the most difficulty purchasing insurance at rates that won't consume most of their profits, Mr. Hatton says.

Many subcontractors and component parts manufacturers are in this category, he says, noting that these types of companies tend to have product liability exposures that many insurers are unwilling to underwrite.

Although these companies' exposures can be relatively complicated, few have insurance specialists on their staffs. Yet, insurers require the same amount of detailed information from these companies as from giant corporations, says Patty Potenza, assistant vp in the special accounts department at Alexander & Alexander Inc. in Chicago.

"It's virtually impossible to market" coverage for these companies "without complete loss information. You need loss information for five years," Ms. Potenza says. "Insurers also want detailed financial information, but many small businesses don't have auditors backing them up all the way."

Likewise, small manufacturers and distributors can place their coverage more easily if they submit detailed product information to underwriters, says Bob Hughes, deputy managing vp for A&A in Chicago. Engineering reports and brochures can refute an initial impression that a company's product is highly risky, he explains.

However, finding affordable product liability coverage may be a tough feat for most small businesses, even if the rates for their other property/casualty policies remain static.

For instance, one five-person business with less than $500,000 in annual sales was hit with a product liability rate increase that exceeded 400%, even though it had a spotless claim history and had bought the coverage from the same insurer for five years.

The best quote that Levittown, Pa-based Lavery Enterprises Inc.'s received for its product liability coverage was $9,000, compared with a current premium of $1,700, says President Michael Lavery. One insurer quoted a premium of $25,000 for the coverage, he says.

The company blends, repackages and relabels chemicals like cleaning compounds, lubrication oils and rust-proofing compounds. "We're not even a manufacturer," Mr. Lavery stresses.

Rates for the company's other coverages remained static or only increased slightly, he says. "In fact we had a reduction in our auto policy."

Mr. Lafery says he will go bare rather than pay an inflated premium for the product liability coverage. "I'll wait until I get the right rate."

However, completely dropping coverage should be a small business' last resort, says James A. Kelch, senior vp and branch manager of the Los Angeles office of Jardine Insurance Brokers Inc. "But some are taking certain losses on their own shoulders," he notes.

One Jardine small-business client, for example, is no longer buying comprehensive coverage for autos in its fleet that are more than 4 years old, he says.

"Some clients want to cut out business interruption insurance, although we advise them not to," Mr. Kelsch says.

Before eliminating coverages, policyholders should examine their deductibles, he advises. A small business with a $1,000 deductible for property insurance should consider increasing the deductible to $5,000 or $10,000 or possibly more, he says. ■

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THE STRUCTURED SETTLEMENTS COMPANY

Ohio village loses mayor after losing coverage

SHILOH, Ohio—Shiloh, a small Ohio village of 840 residents, has a new general liability insurance policy—and a new mayor.

Shiloh's former mayor, Francis Gowitzka, resigned on Nov. 1 after the village was notified that its liability coverage was being canceled.

"I didn't want to be subject to personal suits," said Mr. Gowitzka, who was scheduled to retire on Jan. 1.

Delmar Nesbitt, who was elected mayor in the general election earlier this month, then stepped into the post. One of the new mayor's first orders of business was to obtain replacement coverage.

According the Mr. Nesbitt, the city solicited bids that were to be opened by the village council several weeks ago, but no bids were submitted.

However, the evening the bids were to be opened, "a woman came through town and gave a quote," Mr. Nesbitt said.

That woman was Mary Ann Vaughan of the Vaughan Insurance Agency in Columbus, who has placed liability coverage for Ohio townships for several years.

'I didn't want to be subject to personal suits,' says former Mayor Gowitzka.

A clerk for one of those townships had told Ms. Vaughan about Shiloh's situation. Ms. Vaughan attended the board meeting and wound up as the only agent to offer to place the village's coverage.

The new policy, which was approved by the Shiloh Village Board Nov. 18, is written by Comprehensive Ensurers Market Syndicate on the Illinois Insurance Exchange. The IIE is an approved surplus lines insurer in Ohio.

The new policy has a $500,000 per-occurrence limit on bodily injury with no deductible, and a $500,000 per-occurrence limit on property damage with a small deductible, Ms. Vaughan said. The policy also carries a $500,000 combined single limit on auto liability, she said.

The new policy cost the village $9,465, an increase from the $5,700 premium it paid for the previous policy, which was underwritten by Grange Mutual Casualty Co. in Columbus.

Ms. Vaughan placed the coverage with the help of Claude B. Wolf, the owner of a brokerage of the same name in Delaware, Ohio.

"We've been doing political subdivisions for three years. . . .Our loss ratio has been less than 10% over the past three years," Mr. Wolf said.

Besides this piece of business, Mr. Wolf anticipates placing at least $1 million more in premium with CEM Syndicate next year.

Shiloh isn't the only Ohio municipality that has found it difficult or expensive to obtain liability insurance this year, according to Ms. Vaughan.

However, legislation, H.B. 176, signed last month by Gov. Richard Celeste may make it easier for cities and counties to find coverage, she said.

The bill was the legislative response to a series of Ohio Supreme Court decisions in 1982 that abrogated the sovereign immunity status of political subdivisions like villages and townships, said a legislative staffer.

Under the measure, which restores sovereign immunity in certain instances to political subdivisions:

- Punitive damages are not recoverable from political subdivisions.
- Compensatory damages are fully recoverable only for such items as out-of-pocket expenses, current and future lost wages, medical expenses and property loss.
- A $250,000 per-person cap is placed on compensatory damages for intangible losses for such things as pain and suffering.

More insurers may write municipal liability insurance next year with the signing of this bill, Ms. Vaughan said. ■

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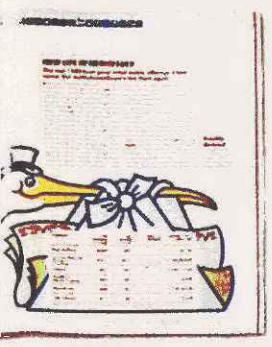

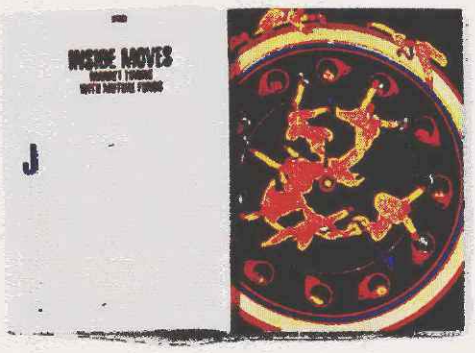

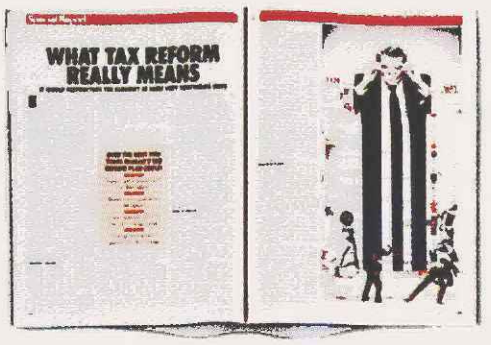

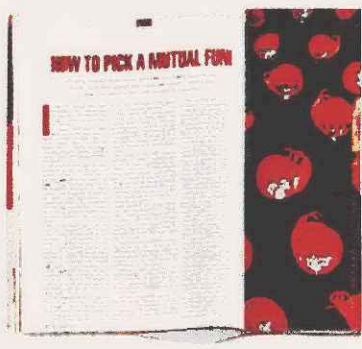

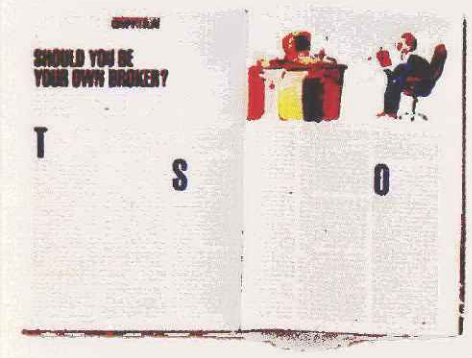

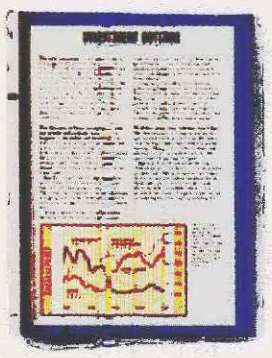

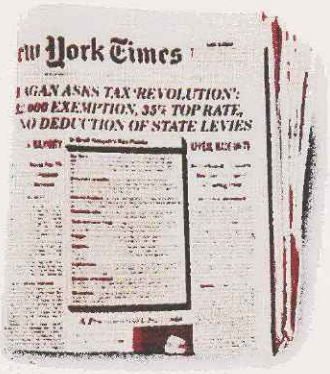

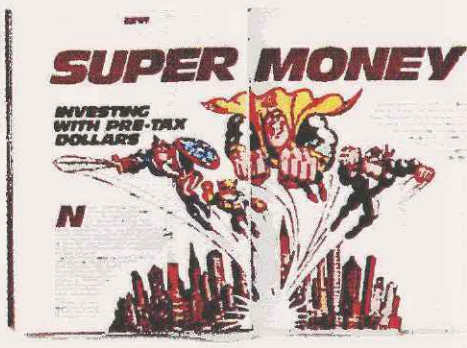

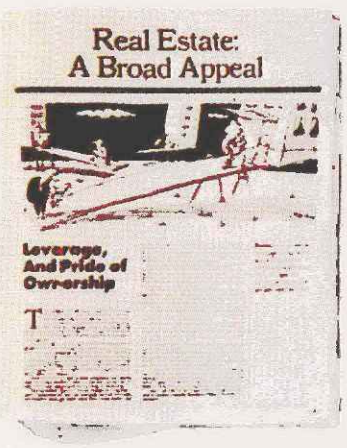

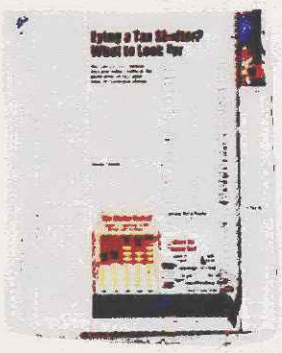

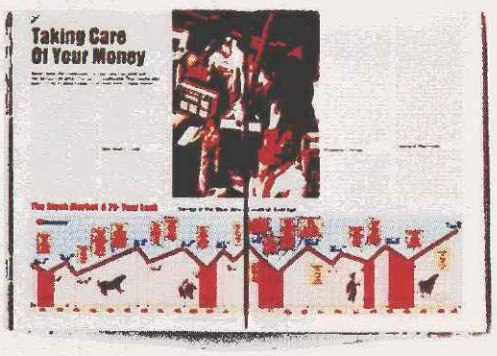

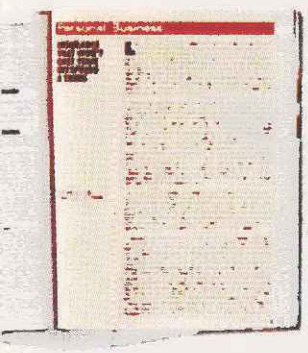

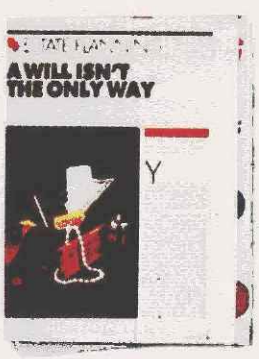

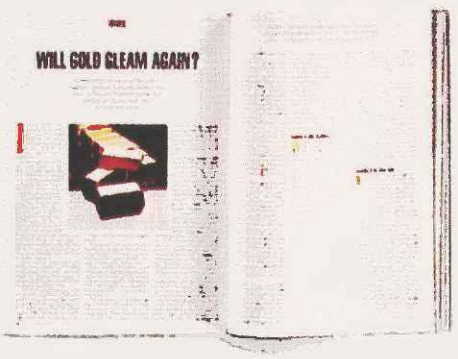

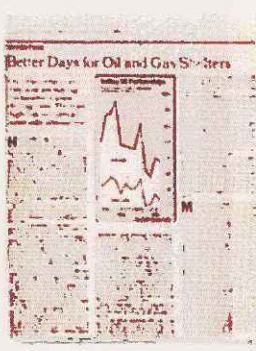

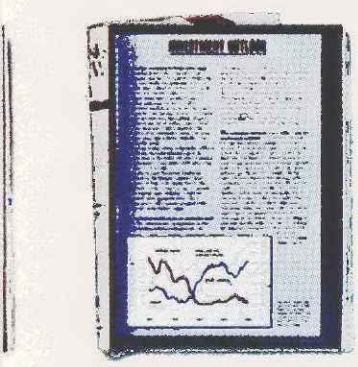

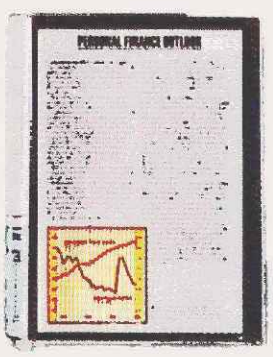

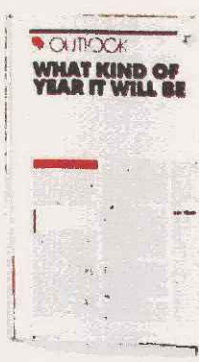

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SOUTH AMERICAN RISKS

Inflation, regulation are major problems for U.S. risk managers

By Jerome Karter

RISK MANAGERS charged with protecting corporate assets in South America face a constant challenge.

Today, the dual burden of excessive foreign debt and a sluggish economy that plagues most South American nations is playing havoc with risk management.

The problem is aggravated further by the fact that South America, unlike North America, is not an integrated continent. Many South American nations identify more closely with Europe or North America than with their neighbors, and there is very little interchange among their insurance markets.

Most U.S. risk managers who oversee assets in South America know that the six largest South American nations enjoy individuality in their local insurance practices.

In Chile, for example, the insurance market is very free, with no controls on rating or reinsurance. The Peruvian market is also fairly liberal, although reinsurance is tightly controlled.

But, the insurance markets in Brazil, Argentina, Colombia and Venezuela are subject to substantial government supervision. The most-regulated market is Brazil, where virtually all classes of insurance are tariff-rated by the Brazilian Reinsurance Institute, a state-controlled entity that also dictates policy terms and conditions and monopolizes the reinsurance market.

These diverse insurance markets share a common problem of protecting assets against inflation: All six countries are suffering from inflation, although to varying degrees.

In the 12 months prior to July 1985, inflation ranged from less than 20% in Venezuela to more than 1,000% in Argentina. While Colombia and Chile sustained relatively moderate rates of 25% and 35% respectively, Peru ranked at 184% and Brazil at 217%.

Clearly, the impact of inflation on asset protection is most severe in Brazil and Argentina, but even the "relatively moderate" inflation rates in Chile and Colombia are a subject of concern when insuring local risk exposures.

In the United States, a U.S. risk manager who buys insurance on domestic locations can sleep soundly, knowing that the U.S. dollar value of the policy will remain fairly stable. Also, most well-designed U.S. property policies carry an element of coinsurance deficiency coverage to fill in any gaps.

Inflation becomes an insurance problem in South America when policies are written in a local currency; a policy issued in pesos, soles or cruzeiros may lose as much as 10% of its monthly values.

Thus, the insurance contract in South America becomes a promise to pay an indemnity in a currency that may be fluctuating wildly against the currency needed to replace damaged assets.

In order to hedge against internal inflation, insurance contracts in South America now frequently are being written in a "harder" currency.

Both Peru and Argentina allow property insurance contracts to be written in U.S. dollars.

In Argentina, however, it's easier to use an alternative Argentine currency called "bonex," which are bonds that have a U.S.-dollar par value and are quoted on financial markets. Bonex often are used as the unit of currency for a property contract in Argentina because they minimize the risk of underinsurance resulting from internal inflation.

Chile is using a similar measure to address its internal inflation problem with the "Unidad de Fomento," a development unit whose value in terms of escudos is adjusted daily.

The price of the UF is fixed by the Central Bank every month. In order to determine the equivalent, the Central Bank considers the increase in the Consumer Price Index over the previous month and distributes this figure among days of the next month. An insurance contract purchased in UFs is sheltered from internal inflation in Chile from the moment that the insurance policy is contracted until the day on which the final claim payment is made.

Although U.S. multinationals operating in Argentina, Chile or Peru now can protect their assets from internal inflation by buying insurance in an alternative, "harder" currency, companies operating in Brazil, Colombia and Venezuela are not as fortunate: Property contracts in those countries still must be written in local currency.

In addition to inflation, U.S. multinational subsidiaries operating in any of these countries face a host of difficulties stemming from local insuring practices.

To begin with, the valuation basis for fixed assets usually is not established between the underwriter and the insured prior to a loss. It is only after a loss, when values at risk have been assessed and compared with insured values, that the basis of indemnity is defined.

But, property insurance in South America usually is subject to average or coinsurance, and loss recovery on a full replacement-cost basis is permitted only when the sum insured is sufficient. If it is not, the indemnity will be reduced in proportion to the amount of underinsurance.

In most South American countries, the risk of underinsurance can be alleviated by blanketing values for industrial plants. But, this practice is prohibited in Brazil, where the insured is required to provide separate values for each "isolated risk"—building, floor, compartment, etc.—within a plant at the time of loss.

Asset protection for U.S. multinationals in Brazil, therefore, involves valuing hundreds of separate items in order to minimize the risk of underinsurance or uninsured losses.

This means that successful asset protection in high-inflation areas must begin with soundly established insured values. The first indispensable step in the valuation process is to maintain excellent fixed-asset records.

In cases where an insured has not paid sufficient attention to valuing fixed assets properly, a specialized appraisal firm often is hired to provide a detailed inventory of all equipment. This inventory then can be used to establish an updated valuation basis.

Once values have been updated, they must be maintained scrupulously through detailed recordkeeping. If not, assets soon will cease to be adequately protected.

For example, huge distortions often arise when sums insured in local currency are carried from one year to the next with only a minor adjustment for inflation.

Locally insured values should be adjusted to reflect the non-uniformity of price increases in construction costs as well as for different types of equipment.

Insureds that purchase equipment in a high-inflation economy and then increase their insured values to reflect internal inflation rates only will find that their assets are heavily underinsured if a loss occurs when the local currency is undervalued against other currencies.

To avoid this, some U.S. multinational subsidiaries protect assets against inflation by tracking all values on a U.S.-dollar basis and then converting to local currency at prevailing exchange rates. Unfortunately, this practice also can distort the value picture when insuring buildings and locally purchased equipment.

Adequate asset protection also should include frequent monitoring of exchange parities, because South American currencies sometimes are overvalued against other world currencies, and they sometimes are undervalued.

There is a widespread fallacy that leads many U.S. risk managers to assume that when a country's currency is devalued, an automatic gap occurs in local values equivalent to the amount of the devaluation.

While this is true for imported machinery, the cost of construction does not rise in local currency simply because a country's currency has been devalued.

Indeed, if insurance is written in U.S. dollars, a major devaluation usually will result in overinsurance on buildings and locally made equipment.

But, the reverse holds true when indexing is based on local price indices and no devaluation occurs: Imported equipment will become underinsured.

A periodic review of all sums insured will show whether the currency base has remained in line with real prices.

Indexing is the most common way to ensure that sums insured in South American currencies remain in line with real prices.

As an alternative, local insureds may be able to protect assets adequately while holding down premiums by using a reduced coinsurance percentage to provide a margin against inflation.

Some U.S. multinational subsidiaries calculate 100% replacement values but then declare those 100% values to the local underwriter as if they were 80% of value. This creates a 25% margin for inflation—until the next value adjustment should be made—but the additional premium outlay is only 10%.

As long as a loss does not exceed the total sum insured, the assets should remain adequately protected.

As U.S. risk managers know, a strong asset protection program should include a contingency plan. U.S. multinationals operating in South America periodically should reassess the probability of obtaining import licenses, check price levels for equipment that they no longer can import and ascertain if replacement equipment is being manufactured locally.

These steps are extremely important in Brazil, which has become highly protective of its capital goods industry.

During the days of rapid industrial expansion, Brazil allowed U.S. multinational subsidiaries to import machinery duty-free. Today, however, this equipment may have to be replaced by locally manufactured equipment, often at much higher prices.

And, replacement equipment that still can be imported may be subject to duty at much higher rates.

U.S. risk managers should be heartened by the fact that most South American countries today are taking steps that help local insureds achieve adequate asset protection.

Argentina's introduction on July 1, 1985, of its new currency, the austral, along with a concurrent freeze in wages and price increases, has led to a drop in that country's internal inflation rate to 1.9% for the month of November!

It remains to be seen whether this low level of inflation can be sustained once wage and price increases are allowed, but initial indications are positive.

More good news is that the subject of post-loss inflation is being addressed through the "harder" currencies available in Argentina, Chile and Peru.

More importantly, the National Insurance Council in Brazil recently ruled all loss payments will be indexed to cover inflation between the date of loss and date of settlement.

And, for the first time in living memory, substantial changes are expected in the Brazilian insurance market, which is movng toward reform with an attitude favoring private enterprise.

Hopefully, these changes will include greater flexibility in rating, full indexing and perhaps some possibility of directing reinsurance toward captive insurers.

In the meantime, U.S. multinationals and their South American subsidiaries should continue to maintain a strong asset protection program, plan ahead for inflation, be prepared for the loss and remain hopeful that these initial rounds of reform will lead to a more-uniform method of protecting assets. ■

international issues

Jerome Karter is vp and manager of the New York International Department of Johnson & Higgins. His column on international issues appears the first Monday of every month.

perspective

ASK AN ACTUARY

Safe harbor not always as safe as it seemed

Q **When is a safe harbor not a safe harbor? Please explain the new safe harbor limits for funding contributions to welfare benefit funds.**

A We all thought we understood what Congress and the Internal Revenue Service meant when they used the term "safe harbor." The term referred to some action that a taxpayer would take and know *with certainty* that the IRS would not make some unfavorable response, such as disallowing a tax deduction or disqualifying a retirement plan. In short, the taxpayer was safe from negative IRS response.

That's what I understood "safe harbor" to mean until I heard an actuary from the IRS National Office discuss the "safe harbor limits" under Section 419A of the Internal Revenue Code.

Section 419A was added to the tax code by the Deficit Reduction Act of 1984, and it is supposed to provide a safe harbor for tax-deductible contributions to fund welfare benefit claims—including life insurance, medical and long-term disability benefits—that have been incurred but where the benefit payment has not yet been made.

For example, an employee may be disabled and entitled to monthly income; in this case, monthly payments after the current month are not yet due, although the claim has been incurred.

These incurred but unpaid claims can be funded on a tax-deductible basis by contributions to a 501(c)(9) trust, also known as a Voluntary Employee Beneficiary Assn. or VEBA, or they can be funded through an experience-rated, or dividend-paying, group insurance contract.

Before DEFRA, some employers accumulated tax-deductible contributions in a VEBA to the extent that they would fund not only incurred but unpaid claims, but also claims that had not even been incurred yet—sometimes one year's worth or more.

Other employers received large dividends on their group insurance contracts—so large, in fact, that when these dividends were combined with funds retained by the insurer for claim fluctuations and contingencies, the combined amount exceeded incurred but unpaid claims. Congress saw these practices as abuses and added Section 419A to the tax code to curb them.

Effective in 1986, Section 419A limits the tax deductible contributions that an employer can accumulate in a "welfare benefit fund"—which includes, among other things, VEBAs and experience-rated group insurance contracts—to those amounts that fund only incurred but unpaid claims. (Some funding beyond incurred but unpaid claims is permitted for retiree medical and life insurance benefits.)

Congress apparently realized that determination of the amount of incurred but unpaid claims generally would require a reserve calculation by an experienced actuary. In order to make it easier for employers to comply with the new limits, Congress apparently provided for certain benefit safe harbor limits, which could be calculated by an employer without actuarial assistance.

These safe harbor limits provide an approximation to the incurred but unpaid claims. For example, the safe harbor limit on medical benefits is 35% of the prior year's claim payments; an employer could accumulate a larger amount in the welfare benefit fund with actuarial certification.

My reading of Section 419A led me to believe that, with respect to medical benefits, an employer could accumulate up to 35% of the prior year's claim payments in a welfare benefit fund with the assurance that the IRS would not challenge the associated tax deductions.

"Not so," says the IRS. A safe harbor limit may not be safe under Section 419A.

Their suggested reading of Section 419A is that the permitted accumulation is the *lesser* of the safe harbor limit or the amount from an actuarial certification. Thus, an employer could not be certain that deductions for accumulations up to the safe harbor limit could not be challenged.

At the recent Conference of Actuaries in Public Practice meeting, Jim Holland, an actuary in the IRS National Office, indicated that the IRS may take this position in proposed regulations that may be released in the near future. What makes Mr. Holland's comments significant is that he is one of the individuals who participated in formulating the proposed regulations under Section 419A.

Mr. Holland's suggested interpretation of Section 419A surprised me, so much so that I went back and reread DEFRA and the associated conference committee report.

Whenever Congress passes a piece of major tax legislation, a conference committee, composed of members of the House and Senate, generally reconciles differences in the House and Senate bills and determines the final provisions of a single bill, which usually becomes law.

The conference committee report is an explanation of the law, and it sometimes is used to determine what Congress intended. Upon review of the conference report, I was surprised to find that it may well provide support for the IRS position.

The conference report states, "Even if the safe harbors are satisfied, the taxpayer is to show that the reserves, as allowed under the general standards provided by the bill (e.g., claims incurred but upaid) are reasonable."

The statement indicates to me that Congress may have intended that employers provide some justification that the safe harbor limits are a reasonable basis for determining its tax-deductible contributions.

If the employer does not get the safe harbor limit automatically, the safe harbor is not truly safe.

Proposed regulations should be out soon, if they are not out already by the time this column is published. This should help to clarify this issue.

If your firm self-insures welfare benefits using a VEBA or insures welfare benefits under an experience-rated group insurance contract, it will be worthwhile for you to check whether the proposed regulations have made the safe harbor limit unsafe. ■

Would you like advice from an experienced colleague on a risk management, benefit management or actuarial problem? Three features in the Perspective section of Business Insurance can give you some answers.

Mr. Miner

Ask An Actuary, Ask A Benefit Manager and Ask A Risk Manager answer written questions from readers on risk and benefit management issues and actuarial problems.

This month's column, on actuarial issues, is written by William J. Miner, an actuary with The Wyatt Co. in Chicago. Ralph F. Perry Jr., vp and director of risk management at Amfac Inc. in San Francisco answers risk management questions. And, Joseph Duva, director of employee benefits and compensation at SCM Corp. in New York, answers benefit management questions.

Mr. Miner's column appears every other month on the first Monday of the month. Mr. Duva's and Mr. Perry's columns appear alternately on the second Monday of each month. Mr. Miner's next column will appear in February.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Fire insurer that didn't give expiration notice held liable

legal briefs

A fire insurer that failed to give notice to an insured of the expiration of a policy, thereby violating a regulation requiring notice of cancellation or intent not to renew be given, was liable for a fire loss, a New Jersey appellate court ruled.

The Barbara Corp. purchased a fire insurance policy on Jan. 26, 1979, from Continental Casualty Co. insuring a car wash. The policy was renewed through Barbara Corp.'s agent for another year in January 1980. At the end of the second year, no premium demand or notice was sent to Barbara Corp. saying the policy would expire on Jan. 26, 1981.

A $95,000 fire loss occurred June 13, 1981. Barbara Corp. requested payment, but Continental denied coverage, claiming the policy expired on Jan. 26, 1981. Barbara Corp. sued for breach of contract and won in the trial court.

The appellate court noted that the New Jersey insurance commissioner had promulgated a regulation requiring 30 days notice of cancellation or non-renewal of fire insurance.

Continental argued the regulation was inapplicable here. The court was satisfied, however, that the Legislature's intent in authorizing such an action by the commissioner was to avoid lapses in coverage for want of notice.

The court said the requirement applied whether the intent not to renew was absolute or only conditional depending upon the insured's failure to pay the premium. *Barbara Corp. v. Bob Manelly Insurance Agency*, Superior Court of New Jersey, App. Div., Dec. 12, 1984 (*BI*/03/D.-$5).

Psychological injury claim

An Oregon appellate court ruled that a claimant was entitled to workers compensation for psychological problems resulting from physical injury to the same extent that physical aggravation of an injury was compensable.

Anna Scheidemantel sustained a compensable back injury in 1979. She was treated and was found to be medically stationary in 1980. Thereafter, she made an aggravation claim resulting in an award of 7.5% unscheduled permanent partial disability.

She was again treated for chronic back pain in 1981; however, the state compensation fund refused to meet those expenses, although there was evidence she had developed functional problems attributable to her compensable physical injury.

On appeal, the court said the issue was whether an aggravation claim could be predicated on psychological problems resulting from a compensable injury when no physical worsening had occurred.

The court said that there was no evidence here that the claimant had suffered significant psychological difficulties before her compensable injury and her subsequent difficulties were linked directly to that injury.

Thus, the court concluded that there was support for her claim that her condition had worsened and that the worsening was due to her compensable injury. The court said that the the claim should be accepted. *Scheidemantel v. SAIF*, Court of Appeals of Oregon, Oct. 31, 1984 (*BI*/05/D.-$5). ■

These abstracts were prepared by Cases Unlimited Inc. A copy of an entire decision may be obtained by sending a check for $5 made out to Cases Unlimited to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. List the number for each opinion.

datebook

DEC. 11. Purchasing Crash Protection in Auto Fleets seminar in Washington, sponsored by the Insurance Institute for Highway Safety, the National Safety Council and the National Assn. of Governors' Highway Safety Representatives; free. John R. Cook, Insurance Institute for Highway Safety, Watergate 600, Washington, D.C. 20037; 202-333-0770.

DEC. 11. Health Improvement/Prevention Workshop in Chicago, sponsored by the Health Research Institute; $195. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

DEC. 11. Advanced "Post-Graduate" Cost Containment workshop in Chicago, sponsored by the Health Research Institute; $195. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

DEC. 11. Medical Directors workshop in Chicago, sponsored by the Health Research Institute; $195. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200, Walnut Creek, Calif. 94596; 415-676-2320.

DEC. 11-13. Legal Operational Issues in HMOs, PPOs and CMPs program in Chicago, sponsored by the National Health Lawyers Assn.; $350 for members; $400 for non-members. Program Division, National Health Lawyers Assn, 522 21st St., N.W., Suite 120, Washington, D.C. 20006; 202-833-1100.

DEC. 11-13. Ocean Cargo Claims Handling seminar in New York, sponsored by The World Trade Institute; $775; $730 for each additional registrant from same organization. Registrar, The World Trade Institute, One World Trade Center, 55W, New York, N.Y. 10048; 212-466-4044

DEC. 12-13. Labor/Management workshop in Chicago, sponsored by the Health Research Institute; $195. Workshop Coordinator, Health Research Institute, 49 Quail Court, Suite 200. Walnut Creek, Calif. 94596; 415-676-2320.

DEC. 12-13. New Issues In Accounting, Legal and Reporting Aspects of Loss Reserves seminar in New York, sponsored by Executive Enterprises Inc.; $750; $650 for each additional registrant from same organization. Executive Enterprises Inc., Reference E5381, Session #5CINS23, 33 W. 60th St., New York, N.Y. 10023-7988; 800-223-0787; in New York, 212-489-2680.

DEC. 20. The Economy 1986 and Beyond luncheon program in Chicago, sponsored by the Assn. of Certified Employee Benefit Specialists; $25. Tom Gaffigan, Assn. of Certified Employee Benefit Specialists, P.O. Box 600, Chicago, Ill. 60690; 312-732-3988.

JAN. 12-14. Paradox of the '80s: Regulating Health Care in a Deregulated Environment conference in Washington, sponsored by the Group Health Foundation; $285 for members before Dec. 11, $335 after Dec. 11; $325 for non-members before Dec. 11, $375 after Dec. 11. Conference Office, Group Health Foundation, 624 Ninth St., N.W., Suite 700, Washington, D.C. 20001.

JAN. 13-17. Modern Safety Management in Atlanta, sponsored by the International Loss Control Institute; $695. International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; 800-554-6001; 404-466-2208 in Georgia.

JAN. 20-21. Developing and Managing an Employee Medical Monitoring Program course in Los Angeles, sponsored by the University of Southern California Institute of Safety and Systems Management; $350. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-Service Programs, University Park, Los Angeles, Calif. 90089-0021; 213-743-6523/6524.

JAN. 21-22. Annual Flexible Compensation conference in Arlington, Va., sponsored by Charles D. Spencer & Associates Inc.; $400 to subscribers of the EBPR Research Reports; $475 to non-subscribers. Charles D. Spencer & Associates Inc., 222 W. Adams St., Chicago, Ill. 60606; 312-524-6400.

JAN. 23. Current Developments in the Use of Letters of Credit in the Insurance Industry conference in New York, sponsored by Executive Enterprises Inc.; $595 for the first registrant from an organization; $495 for subsequent registrants. Executive Enterprises Inc., 33 W. 60th St., New York, N.Y. 10023-7988.

JAN. 29. An Insurance Odyssey (The Twentieth Century) meeting in Minneapolis, sponsored by the Insurance Federation of Minnesota; free. Insurance Federation of Minnesota, 1310 Pioneer Building, P.O. Box 1467, St. Paul, Minn. 55101; 612-292-1099.

JAN. 29-31. Regulation of Chemicals in the Global Environment: Protecting the Public Against Hazards from Chemicals program in Brussels, Belgium, sponsored by The Bureau of National Affairs; $420. International Chemicals Symposium Registrar, BNA Conferences, The Bureau of National Affairs Inc., 2550 M St., N.W., Suite 699, Washington, D.C. 20037; 800-424-9890, 202-452-4420 in Washington.

FEB. 12-13. London Market and its Future conference in London, sponsored by Risk Research Group Ltd.; 293.25 pounds ($410.55); 517.50 pounds ($724.50) for two registrants from same organization. Judith Hobday, Risk Research Group Ltd., Bridge House, 181 Queen Victoria St., London, EC4V 4DD; 01-441-236-2175.

FEB. 17-19. Fifth Annual Pension Seminar in Kissimmee, Fla., sponsored by Corbel & Co.; $395. Brenda Chatham, Registrar, Corbel & Co., P.O. Box 17548, Jacksonville, Fla. 32245-7548; 904-731-4455.

FEB. 19. OSHA Hazard Communication conference in Springfield, Ill., sponsored by the Illinois State Chamber of Commerce; $45 for ISCC members; $70 for non-members. Also **Feb. 25** in Chicago. Carol Jensen, Illinois State Chamber of Commerce, 20 N. Wacker Drive, Chicago, Ill. 60606; 312-372-7373.

MARCH 5-7. Life Safety Symposium in College Park, Md., sponsored by the Society of Fire Protection Engineers; $515 for members; $545 for non-members. Contact Lisa Juliano, Administrative Assistant, Society of Fire Protection Engineers, 60 Batterymarch St., Boston, Mass. 02110; 617-482-0686.

MARCH 11. Captives in Brief workshop in Hamilton, Bermuda, sponosored by Tillinghast, Nelson & Warren Inc.; $300. Micki Briskin, Tillinghast, Nelson & Warren Inc., 722 Post Road, Darien, Conn. 06820-4798; 203-655-9791.

MARCH 12-14. 10th International Captive Insurance & Reinsurance Forum in Hamilton, Bermuda, sponsored by Tillinghast, Nelson & Warren Inc.; $750; $675 for additional registrants from same organization. Micki Briskin, Tillinghast, Nelson & Warren Inc., 722 Post Road, Darien, Conn. 06820-4798; 203-655-9791.

MARCH 13-14. Workers Compensation: Your Safety and Health Balance Sheet course in Los Angeles, offered by the University of Southern California; $150 per day. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-Service Programs, Los Angeles, Calif. 90089-0021; 213-743-6523.

MARCH 18-20. Reasoning Reinsurance seminar, in Irving, Texas, offered by the University of Dallas; $525. Bruce Evans, University of Dallas, 1845 E. Northgate Drive, Irving, Texas 75062-4799; 214-721-5360.

MARCH 23-28. 13th Workers Compensation College at Duke University, Durham, N.C., sponsored by the International Assn. of Industrial Accident Boards & Commissions; $300 for members; $400 for non-members. IAIABC College, P.O. Box 79109, Jackson, Miss. 39236; 601-355-4582.

MARCH. 24-26. The 50th Loss Managers Conference in Orlando, Fla., sponsored by the Property Loss Research Bureau; $70 for members; $190 for non-members. Property Loss Research Bureau, 1501 Woodfield Road, Suite 400 West, Schaumburg, Ill. 60195-4978; 312-490-8650.

MARCH 24-28. Fundamentals of Industrial Hygiene Monitoring course in Long Grove, Ill., sponsored by National Loss Control Service Corp.; $500; $450 for two or more registering at the same time. Also, **May 5-9; Sept. 8-12; Nov. 10-14.** National Loss Control Service Corp., K-3, John N. Garis, Long Grove, Ill. 60049; 312-540-2026.

MARCH 25-26. 1986 Employees Benefits Conference in New York, sponsored by The Conference Board Inc.; before Dec. 20: $550 for associates, $620 for non-associates; after Dec. 20: $595 for associates, $665 for non-associates. The Conference Board Inc., P.O. Box 4026, Church Street Station, New York, N.Y. 10261-4026; 212-759-0900.

APRIL 16-19. Arbitration and Dispute Resolution institute in Scottsdale, Ariz., sponsored by the International Foundation of Employee Benefit Plans; $450 for members; $525 for non-members. IFEBP, Registration Department, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

MAY 18-21. Fifth Annual Employee Benefits Symposium in San Diego, sponsored by the International Society of Certified Employee Benefit Specialists; $450 for members; $525 for non-members who are ISCEBS graduates. ISCEBS P.O. Box 209, Brookfield, Wisconsin 53005-0209; 414-786-8771.

The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed.

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SAFECO appoints Bruce Maines as CEO

Bruce Maines has been named chief executive officer of SAFECO Corp. in Seattle.

Mr. Maines, who retains his post as chief operating officer, succeeds **R.M. Trafton**, who retires after 33 years with SAFECO. Mr. Trafton, who served as chief executive officer for seven years, continues as chairman of the board and a member of the board's finance committee.

Mr. Maines joined SAFECO in 1950 as a trial lawyer and was promoted to general counsel in 1966. He was named chief operating officer of the insurer in 1974 and a director in 1977. He was elected president and chief executive officer of the company's property/casualty subsidiaries in 1979. He has been president and chief operating officer of SAFECO Corp., the parent company, since 1981.

Also at SAFECO, three branch managers were named resident vps: **Wayne Beckwith**, Cincinnati branch manager; **James Perucca**, Portland branch manager; and **Stuart Wood**, Fountain Valley branch manager.

Mr. Okner

Other insurer changes:

S.N. Okner elected president and chief operating officer of The Signature Group Insurance Cos., a subsidiary of Montgomery Ward & Co. Inc. in Schaumburg, Ill. Mr. Okner most recently served as president of Signature Direct response, a Signature Group affiliate. Signature Group includes Montgomery Ward Insurance Co. and Forum Insurance Co.

comings & goings: industry

David J. Kemmerer named vp-health cost management at Chattanooga, Tenn.-based Provident Life & Accident Insurance Co. Mr. Kemmerer, who joined the company in 1977, most recently served as vp-interdepartmental marketing.

Gerald J. Oyen named vp and senior actuary at The Penn Mutual Life Insurance Co. in Philadelphia. Mr. Oyen, who joined Penn Mutual 21 years ago, most recently served as second vp and actuary.

Dr. Michael A. Stocker named vp and medical director of U.S. HealthCare Inc. in Paramus, N.J., an operator of health maintenance organizations. Dr. Stocker was formerly medical director of the Anchor Organization for Health Maintenance in Chicago.

Dr. Stocker

James D. Wickwire Jr. named vp and chief actuary at Orion Group in Farmington, Conn. Mr. Wickwire joined the company in 1983 as assistant vp and actuary. Also at Orion, **Gerald H. Pastor** named vp and actuary. Mr. Pastor joined Orion Group in 1984 as assistant vp and actuary.

Howard M. Cadmus named vp and head of the new research and development department at Carolina Casualty Insurance Co. in Jacksonville, Fla. Mr. Cadmus previously was vp-claims.

Also at Carolina Casualty, **Charles E. Lanphear** named vp-claims and **James L. Legge** promoted to vp-loss control. Mr. Lanphear previously worked in the claims department at Transport Indemnity Co. in Los Angeles. Mr. Legge joined Carolina Casualty in 1977 and has been assistant vp-loss control.

Edwin J. Goss named chairman and chief executive officer of American States Insurance Cos. in Indianapolis. Mr. Goss, who has been affiliated with American States since 1951, most recently served as president.

Also at American States: **Robert A. Anker** promoted from executive vp to president and chief operating officer; **Thomas M. Cox** named vp of the Twin Cities division; and **Michael F. Heywood** named vp of the Santa Ana, Calif., division. Mr. Anker joined the company in 1974. Mr. Cox, who joined American States in 1971, most recently served as Twin Cities division manager. Mr. Heywood joined the company in 1984 as Santa Ana division manager.

James S. Carey named vp and senior executive-commercial property/inland marine underwriting at Fireman's Fund Insurance Cos. in Novato, Calif. He succeeds **David Conway**, who recently became manager of Fireman's Fund's Long Island, N.Y., branch. Mr. Carey previously was vp-product, agency management and mass marketing at Reliance Insurance Co.

James Cavitt named vp-property/casualty underwriting at Superior National Insurance Co. in Los Angeles. Mr. Cavitt most recently served as vp and manager of Comstock Insurance Co.

Excess/surplus

Allan N. Young named vp-claims administration at L.W. Biegler Inc. in Chicago.

James W. Chapman named vp-governmental programs at Markel Service Inc. in Richmond, Va. Mr. Chapman joined Markel in 1980 to manage its division specializing in law enforcement, public officials and school board liability coverages.

John Mutter named vp in the Philadelphia office of Chicago-based Interstate Insurance Group, a unit of Interstate National Corp. Mr. Mutter has been Philadelphia branch manager since last April.

Other suppliers

Coopers & Lybrand has named several new senior consultants in its Actuarial, Benefits & Compensation Consulting Groups **Werner Gliebe**, who will work in C&L's group benefits and health care cost-containment division in Detroit; **Richard Levinson**, who will work for the insurance group in Detroit; **Keith Panetta**, who will work in the Actuarial, Benefits & Compensation Consulting Group; and **Michael D. Issacson**, who joins the New York casualty insurance practice.

Ruth Joplin joins Corroon & Black of Illinois in Chicago as a consultant in the risk management department.

John F. Dodds named staff consultant at T.E. Brennan Co. in Milwaukee.

Steven W. Sachs named executive vp at PaineWebber Risk Management in Columbia Md., a subsidiary of the PaineWebber Group. Mr. Sachs, who joined the company in 1973 as an account executive, manages its commercial insurance operations

Susan S. Wise named vp of the defined contribution division of Booke & Co. in Winston-Salem, N.C. Ms. Wise, who joined the firm in 1977, most recently served as assistant vp.

Ms. Wise

Warren Fandrey named executive vp at Transport Employee Benefits Inc. in Los Angeles. Also, **Bill Hanson** named senior vp in the Los Angeles office and **Tom Rardin** named senior vp in the Portland, Ore., office. Mr. Fandrey joined TEBI in 1970. Mr. Hanson most recently served as vp and senior consultant at Fred S. James & Co. Mr. Rardin joined TEBI in 1980 to open its Chicago office, and transferred to Portland in 1982.

Deborah M. Wilkerson, named medical services coordinator at Summit Consulting Inc. in Lakeland, Fla. Ms. Wilkerson, a regis-

Continued on next page

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Continued from previous page

ered nurse and certified occupational health nurse, formerly was the divisionwide supervisor of occupational health for Coca-Cola Co. and an occupational health nurse for the citrus division of Kraft Inc.

Charles E. Taylor named vp in charge of the Claremont, Calif., office of Galaher Settlements, which specializes in arranging structured settlements.

Michael G. Warren named consulting actuary in the employee benefits-consulting benefits practice of Johnson & Higgins Willis Faber Ltd. in Toronto.

Lawrence W. Ring named manager of the Minneapolis office and **Alan H. Dugan** named manager of the Washington office of benefit consultant Towers, Perrin, Forster & Crosby. Mr. Ring joined TPF&C in 1974 and was named a vp in 1984. Mr. Dugan joined the company in 1965 and was most recently vp and manager of the Minneapolis office.

Richard J. Klares joins Braishfield Associates Inc. as vp-risk management control division. Mr. Klares was previously a vp with Alexander & Alexander Inc.

Agents/brokers

Cathy Jones named president of Pembroke Financial Services Co. in Virginia Beach, Va., a division of Pembroke Insurance Agency Inc.

Ms. Jones

John R. Pacholick named president and chief executive officer of Rollins Burdick Hunter of Illinois Inc. in Chicago. Mr. Pacholick, who also becomes senior vp-central region of parent company Rollins Burdick Hunter Co., succeeds **Roger M. Simpson**, who was named senior vp-product/service development. Mr. Pacholick previously was Rollins Burdick Hunter's western regional manager.

Mr. Pacholick

Sam H. McGoun named president and chief operating officer of Corroon & Black of Michigan Inc., Detroit. Mr. McGoun most recently served as executive vp of a Chicago-based brokerage firm.

Also, at Corroon & Black of Alaska Inc. in Anchorage, **Wayne W. Brown** promoted to chief executive officer. Mr. Brown, who joined a predecessor company of the firm in 1966, most recently served as chief operating officer.

Sentry Chairman John Joanis dies

STEVENS POINT, Wis.—John W. Joanis, chairman of Stevens Point-based Sentry Insurance Group, died Nov. 18 of a cardiac illness. He was 67.

Mr. Joanis joined Sentry in 1947 after working as an attorney with an Oshkosh, Wis., firm. He was named secretary and general counsel in 1954; vp and general counsel in 1966; and executive vp in 1962.

In 1966, Mr. Joanis was named president and chief executive officer. He was named chairman and chief executive officer in 1972.

Earlier this year, he relinquished the title of chief executive officer to Larry C. Ballard, who succeeds him as chairman.

Mr. Joanis received a law degree from the University of Wisconsin Law School in 1942 and later attended the advanced management program at Harvard University. ■

Reinsurance

Curtis R. Donnell named president of Aviation Extended Reinsurance Organization, the division of Aviation Office of America Inc. that participates in airline hull and liability risks. Mr. Donnell previously had served as senior executive vp of American Eagle Insurance Co.

Albert J. Marino named senior vp at Reliance Reinsurance Management Inc., an affiliate of Reliance Insurance Co. of Philadelphia.

Several promotions have been announced at Munich American Reinsurance Co. in New York. Promoted to senior vps were **Michael Cojohn** and **Erich Schweikert** of the property department and **Lyle Morien** of the casualty department. Those named vps include **Daniel Avery** and **James Macdonald** of the casualty department and **Frank Lorenzo** of the property department. ■

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Cost-containment plan targets small firms

Massachusetts Mutual Life Insurance Co.'s group life and health division is marketing a new health care cost-containment program for small to medium-sized companies.

"The Controller" program offers five separate cost-containment strategies to employers with 15 to 99 employees.

The strategies range from a "starter" approach that is based on incentives that encourage more prudent use of health care services among employees, to a comprehensive strategy that includes a preferred provider organization option.

All five of the strategies integrate many cost-containment options currently used by Massachusetts Mutual's larger group health insurance clients. These options include pre-admission reviews, mandatory second surgical opinions, enhanced outpatient surgical benefits and limitations on emergency room treatment.

Specific strategies are available for companies that want maximum health care cost containment, that want to attack inappropriate hospital and surgical utilization, that want to add cost-containment features to their plans gradually and that want to introduce a PPO option.

For information, contact Janett C. Greenberg, Vp-Cost Containment, Massachusetts Mutual Life Insurance Co., 1295 State St., Springfield, Mass. 01111; 413-788-8411.

products & services

Psychiatric services

A new system for financing and delivering psychiatric care is offered by Preferred Health Care Ltd. in New York.

Under the "Preferred PsychCare" program, Preferred works with self-insured employers—as well as insurance companies, health maintenance organizations and preferred provider organizations—to organize and manage psychiatric care programs.

Inpatient and outpatient services, or services provided in alternative settings, are offered under the program at a fixed price lower than that which employers would normally pay, Preferred says.

"In view of the ever-escalating costs of psychiatric care, we believe that the market will be receptive to a financial arrangement involving pricing against historical psychiatric costs," said Dr. Jay S. Reibel, chairman of Preferred.

"We anticipate that our managed system can generate significant cost savings by controlling utilization, negotiating rates with providers and using alternative settings where appropriate, while at the same time making a positive contribution to the quality of care," he said.

For information on the PsychCare System, contact Fred McCain, Four Winds Hospital, 800 Cross River Road, Katonah, N.Y. 10536; 914-763-8151.

Flexible plans

Pilot Life Insurance Co. has introduced "Flex Advantage," a series of flexible benefits programs specifically designed for companies with 100 to 1,000 employees.

Flex Advantage "offers a unique, specially developed software program that makes in-house self-administration economically possible for participating companies," says W.D. Blalock, senior vp of Pilot Life's group division. "The cost of administration has been a major reason small to medium-size companies have been unable to offer flexible benefits plans."

The Flex Advantage program offers smaller employers a choice of three types of plans:

- Passive Flex, which allows covered employees to pay for benefit choices with pretax dollars rather than with aftertax payroll deductions.
- Modular Flex, which allows employees to select from high-option and low-option plans.
- Full Flex, which offers a broad array of benefit choices.

All of the options allow employees to contribute to a 401(k) salary reduction plan.

For more information, contact Group Marketing Department, Pilot Life Insurance Co., Greensboro, N.C. 27420; 919-299-4720.

Real estate plan

Metropolitan Life Insurance Co. is offering a product that provides public pension plan sponsors returns driven by the real estate market along with a complete guarantee of principal.

"The Guaranteed Real Estate Contract offers the opportunities for investment returns from the real estate market, while providing protection against the possible downside risks associated with equity products," said Robert Bott, Metropolitan's vp-public pension market.

Principal invested in the contract is completely guaranteed, backed by Metropolitan's $70 billion general account. A minimum return of 8.5% is also guaranteed as is the liquidity of the investments when they mature.

Metropolitan charges as annual expense fee of 1%. A minimum investment of $500,000 is required.

For information, contact any Metropolitan Life regional office.

HMO digest

The National Assn. of Employers on Health Care Alternatives has published the first edition of its "Blue Book Digest of HMOs.

The publication contains information on 449 HMOs throughout the United States. The information is current as of Sept. 1, except for enrollment figures, which are based on Jan. 1, 1985 data.

Besides enrollment figures, the publication also contains data on whether an HMO is an individual practice association or a group or staff model, whether a plan is independent or part of a chain and whether an HMO is a commercial or not-for-profit entity.

The "Blue Book" costs

Continued on next page

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Betting on the future

Agents devise winning strategies

By LINDA J. COLLINS

RENO, Nev.—Insurance agents are frustrated.

Agents are "frustrated by the marketplace and by the rapidity with which it's changed, by the lack of market availability and by commission reductions in some areas," says James H. Davies, the new president of the National Assn. of Professional Insurance agents and president of Davies & Associates agency in Murray Hill, N.J.

And, they are frustrated with insurers that are trying to control their expenses by reducing the number of agencies they do business with, concedes William O. Bailey, president of Aetna Life & Casualty Co. in Hartford, Conn.

Agents don't like to see their markets dwindle, Mr. Bailey said. When insurers reduce their markets, agents respond with "resistance and outcries and anguish and some legitimate concern," he added.

But, Mr. Bailey says, "There are too many companies represented by too many agents who disagree with them, and vice versa."

Agents' relationships with their insurers was one of the topics reviewed by several industry leaders during a news conference held during the National Assn. of Professional Insurance Agents' annual convention in Reno last month. Client relationships, the price and availablity of insurance, agents' distribution methods and the new claims-made commerical general liability form also were discussed.

Agents could reduce their frustrations by carefully selecting their insurers and then being loyal to their markets.

"Choosing which insurers to represent is one of the most important decisions an agent ever makes," said Aetna's Mr. Bailey.

"If you don't do it with great care, then all the other good decisions you may make are in jeopardy."

There is no magic formula to determine how many insurers an agency should use, Mr. Bailey said.

He suggested agents represent as many companies as they need to serve their clients and to "give them whatever level of comfort that they think they need in terms of the longevity of their business."

But, once insurers are selected, agents should remain loyal to them, it was suggested.

Agents who simply searched for the lowest quote and were not loyal to their insurers during the soft market now are paying for their mistake, pointed out William G. Bailey, 1984-1985 president of the PIA and president of George B. Lailey Agency Inc. in Dryden, N.Y.

"Many agents out there sent out one application duplicated five times to five different companies for about four or five years. Those agents are in deep trouble because they had no loyalty to their companies," Mr. Bailey explained.

Those who were loyal to their insurers, however, are reaping the benefits now, he observed.

His loyalty to his insurers started paying off when the market began to harden, Mr. Bailey continued. As prices started to rise, he said, he told his clients that rate increases sought by insurers were justified. He urged his clients to stay with their current insurer, and now he has won the respect of both the insurers and his customers, he said.

"And, as a result, my agency now has markets that I think I might not have had," he added.

Agents who have formed strong relationships with

Continued on next page

Convention draws 2,000 to bright lights of Reno

RENO, Nev.—More than 2,000 agents, insurance company representatives and spouses converged on the MGM Grand Hotel in Reno, Nev., from Oct. 27-30 for the National Assn. of Professional Insurance Agents' national convention.

Amid the jingling of slot machines, the flashing of lights and the singing and dancing of showpeople, agents heard industry experts and fellow agents discuss the state of the market, offer marketing tips and detailed methods to improve agency operations.

The convention included a session on "Regulation and Legislation for the Hard Market," an address by national news commentator Paul Harvey, and forecasts on the industry by an insurance company executive and an industry analyst.

Other sessions covered a variety of topics, including financial planning, mergers and acquisitions, creating a marketing plan, agency management, selecting an automation system, account selling and consulting.

Recognizing that agents couldn't attend all the sessions they want, the PIAction News team videotaped conference events, including a special news conference, and conducted interviews with attendees, officials and participants. Its reports were aired regularly over the MGM's in-house audiovisual system, which broadcast through television sets in attendees' rooms.

In the midst of it all, the PIA sponsored its PIA/Special Olympics All-Star Bowl, a fund-raiser held at the MGM's bowling alley to benefit the association's official charity, the Special Olympics for handicapped people.

Also, James H. Davies, president of Davies & Associates, an agency in Murray Hill, N.J., was chosen to succeed William G. Bailey, president of the George B. Bailey Agency in Dryden, N.Y., as president of the PIA. In addition, Nick A. Verreos, president of Verreos Insurance Agency in Brisbane, Calif., was voted president-elect.

Business plans breed success, agent advises

By LINDA J. COLLINS

RENO, Nev.—Formulating a business plan is the first—and most critical—step toward agency growth, an agency principal says.

"If you don't know where you intend to go, it doesn't really matter which road you take," said Willis Hargrave, Jr., president of Harco Insurance Services agency in Houston.

Most agencies need a business plan—"a serious instrument by which we can track ourselves"—he told agents during the National Assn. of Professional Insurance Agents' annual convention in Reno.

Mr. Hargrave said that, too often, agents achieve success in spite of themselves; few have a well-developed plan for organization and growth "that tells us where we'll go, how we'll get there and how much it will cost."

"Planning doesn't have to be complicated to be effective," he said. But, he said, to be effective in today's changing market, all agencies need a plan.

"Planning brings together all the resources of your agency and directs them toward specific goals of profit, sales, service, expenses and staffing. At the same time, it leaves room for you to act and react quickly to market opportunities and problems," Mr. Hargrave said.

Formulating a business plan also allows an agency to examine its strengths and weaknesses compared with those of its competitors.

He added that the independent agent's most-formidable competitors, direct writers, usually have long-range business plans that they have developed using the best statistics at their disposal.

And, he said, many banks also have developed sophisticated plans for marketing insurance so they will be ready for action if current regulations against bank sales of insurance are lifted.

Mr. Hargrave stressed that designing a business plan is a "dynamic process," which forces agents to make assumptions about the market and the competition.

And, he said, because of changes in the market, an agency's business plan must be adjusted periodically and modified if needed.

In drafting a business plan, agencies first should compose a statement of mission that defines the broad purpose of the agency—what the agency wants to do or be. This mission statement should be as detailed as possible, Mr. Hargrave stressed.

Mr. Hargrave

A mission statement explains what lines of coverage the agency wants to sell, to whom it want to sell and how it plans to sell and service that business, he said.

Often mission statements are defined primarily in terms of the markets the agency wishes to target, Mr. Hargrave explained.

He said mission statements can include:

- The geographic area the agency plans to serve.
- Targeted clientele.
- The levels of service the agency will provide.
- The lines of business the agency specializes in.

Agents should ask the insurers they represent what business they are interested in writing and give special attention to those lines of business, Mr. Hargrave suggested.

This will provide them with a better guarantee that there will be markets for the business they attempt to place.

After defining their mission, agents need to set both long-term and short-term goals, Mr. Hargrave said.

Long-term goals should be set for a target period of between three and five years and should define the steps needed to carry out the mission, he advised.

Agents also need to set short-term goals to support their long-term goals, he explained.

"These goals are for targets that can be accomplished in short time periods—usually six to 12 months," Mr. Hargrave said.

Both short-term and long-term goals need to be reviewed and updated on a regular basis, he said. Agents should ask themselves:

- "Does the mission statement really reflect your agency's future direction, or should you restate it?
- "Is your long-term goal a realistic one? Should it be expanded? Should its focus be narrowed?
- "What funds do you need to meet your short-term goals? Are the funds available? If not, how can you get them?"

Mr. Hargrave said he knows of an agency that reviews its major goals on a monthly basis and holds weekly meetings among agency management "to discuss the impact of current problems and opportunities on the plan."

But, Mr. Hargrave said that designing the plan is not enough. He warned that if an agent does not communicate the plan to everyone in the office, the planning process will come to a grinding halt.

And, if agents hype proposals in the plan to their employees, they must follow through with those changes, Mr. Hargrave added.

"People like change," he said. "What they dislike is the promise of change that never comes to fruition."

Agents should make sure that their staffs understand the goals set up in the plan by providing them with a "road map" of the steps that must be met to attain them.

"Staff members will have a vested interest in making the plan work if they are asked to participate," Mr. Hargrave explained.

Mr. Hargrave stressed that a business plan helps an agency react to crises based on information and to make better decisions for the agency's future.

But, he added, "Above all, be flexible. Stay on top of your plan and be ready to change it to meet the changing times." ■

Agents seek solutions

Continued from previous page

insurers also often can offer their clients better continuity of coverage, Aetna's Mr. Bailey said.

Insurers faced with having to reduce the amount of business they write in the hard market usually will continue to take business from their top agents. Those same insurers, however, probably will turn down business submitted by agents who were not loyal to them during the soft-market price wars.

Mr. Davies

Agents who have maintained good relations with their insurers also have the ability to expand their current market share by selling life insurance and other financial services products, Mr. Bailey also said.

"We have found that life products have become a very important part of our sales in the property/casualty agency," he said.

Mr. Davies added that an agent who handles all of a client's property/casualty business has a better chance of retaining the account. The client's attention is less on price than it is on the agent's ability to act as the client's counselor, he pointed out.

Mr. Davies admitted that with recent substantial price hikes in both commercial and personal lines, clients may be paying more attention to price than they normally would.

"But, I still say that if you counsel, if you know your job, if you have that whole account, unless you really blow it," agents should not lose that business to a competitor, Mr. Davies added.

The PIA's Mr. Bailey agreed. "If you can get into the consulting position and offer your expertise in a professional way, price is not a major consideration, because the person wants proper insurance coverage," he said.

Explaining rate hikes to clients has helped his agency retain business, Mr. Bailey said. Many other agents, however, have lost market share because they do not meet personally with their clients on an ongoing basis to discuss specific coverages or market conditions, he noted.

"There are so many people out there who have not seen an agent in five or six years, that for the aggressive agent who goes into the marketplace, there is a tremendous amount of business," he added.

With new clients in hand, agents won't have a problem finding markets, according to Michael E. Hogue, president and managing director of Philadelphia Insurance Research Group.

Bucking conventional opinion, Mr. Hogue said: "The insurance industry is overcapitalized. There's excess capacity in the business. We're back to a lack of price discipline similar to what we had in 1969, 1974 and 1979, and we're going to find ourselves very quickly back in the throes of pricing competition."

While he agreed with statistics indicating a shortage of capacity for high-risk business, he said, "that only accounts for a small portion of the total insurance premium dollar.

Mr. W.O. Bailey

"When you look at personal lines and non-hazardous middle markets on down, where the majority of (business is placed), there's no lack of interest in penetrating those markets," Mr. Hogue argued.

Mr. Hogue said he expects to see a return to "cutthroat" competition before the end of the year on some lines, but not on large, catastrophic risks.

"I would expect by the first quarter, or no later than the second quarter of 1986, we're really going to start getting into the thick of the issue of market share. In personal lines, I think it's already started," Mr. Hogue added.

"I'm not quite sure there's too much capital in the market," countered Aetna's Mr. Bailey, adding that state regulators who oversee insurance company solvency are finding many insurers have surplus deficiencies "that will restrict their ability to even write the book of business that they have today at higher price values—or certainly to expand."

And, although a few companies are increasing their volume of business, Mr. Bailey said "if you look at the business globally, my honest judgment is that the market is continuing to tighten, and will continue to tighten, throughout much of 1986. Not just in the difficult classes, but in general."

After five years of price cutting, "there are enormous reserve deficiencies within some substantial companies that still have to be covered before earnings improvement comes," Mr. Bailey warned.

"Every company in the business has substantial net operating losses to recover," he added. When insurers start to recover those losses, it will benefit their surplus and improve market conditions, he said.

"But I'm not hearing anybody out there saying, 'Boy, I think prices are now in good shape on the commercial side of the business, and we're ready to go all out for market share.' There may be some, but I'm not hearing it from our colleagues," he said.

According to the PIA's Mr. Bailey, the PIA has seen no sign of a return to rate competition. In fact, there has been evidence of personal lines rate hikes from regional insurers and national insurers.

Regional insurers "have been very competitive in the past, but their prices are going up," he said. He added that he is still seeing a tightening of the personal lines market.

Mr. Davies pointed out that while the market is restricted, "I would be remiss if I didn't say that in many cases the regional carriers, at this point, can react faster than the major carriers. And there are markets for Main Street business, up to a given size, with the regional or local carriers."

Panelists also predicted that the methods of compensating agents probably will change.

In the future, agent compensation will be a combination of commission and fee income, Mr. Davies said. This is already occurring to some degree; however, fee income increasingly will be paid in lines where commissions may be low or where the amount of time involved in placing and servicing the business is more than the commission received.

But, Mr. Hogue suggests that the cost of distributing insurance products is too high.

He says agents must find ways to market insurance products at less cost.

And, agents can't expect much help from insurers on this project, he warned, because insurers are busy automating their own operations and trying to make a profit.

Insurers have "neither the experience nor do they have the time" to help agents, he says. "They'll be able to make recommendations, but the distribution alternatives should be handled by the distribution force."

Mr. Hogue

Agents are streamlining their business, Mr. Davies pointed out. And, once agencies and companies become completely automated, personal lines will be a "singular package product," he said. Automobile insurance and homeowners insurance, for example, will be written in one policy, he predicts.

And, if current efforts to keep banks out of the insurance business fail, the PIA will study the option of working with banks to distribute insurance, "so that we're not a one horse system," Mr. Davies said.

Finally, the experts took up the controversial topic of the Insurance Service Office's changes to the commercial general liability form and including defense costs within policy limits.

When asked why the PIA decided not to fight ISO's decision to include defense costs within the limits of its new CGL policy beginning in July 1986, the PIA's Mr. Bailey said the association opposed the move until ISO moved the date of implementation from Jan. 1 to July 1, 1986.

He explained that when ISO changed the date, the PIA agreed to go along with the change.

"We need to have a definable product with definable exposures. . .We've also been given statistics from ISO that said that (only slightly over) 1% of claims exceed $15,000 in defense costs, and only six-tenths of 1% of all general liability claims paid exceed $25,000 in defense costs."

Mr. W.G. Bailey

Those figures suggest that including defense costs within policy limits is not a significant issue, the PIA's Mr. Bailey explained.

And, by supporting the insurers on the issue of defense costs, "We feel that we have extended the olive branch to the companies. Now they've got to give us market availability."

Aetna's Mr. Bailey acknowledged that neither agents, insurers nor the industry in general really wants to see a claims-made form.

"But until we can get tort reform and significantly fix an out-of-control civil justice system, we've got to make policyholders, unfortunately, a risk assumer along with us. We just can't be the only deep pocket around, because then we won't get their support, which we so badly need in getting reform of the system," the insurer executive said.

The CGL claims-made policy is "an inevitable intermediate step," Aetna's Mr. Bailey said.

There have to be some limits on the liability assumed by insurers, he added, or insurers will not use their capacity to insure liability risks "with the very bad court decisions that are coming down the line."

Mr. Davies pointed out that, like the insurers, the PIA supports civil justice reform. He said he and the PIA's Mr. Bailey have held press conferences nationwide during the past year on the need for tort reform.

"We realize that it's going to be a long, hard struggle, but we've made a commitment. We've got to get down to the bread-and-butter issues and we've got to get some programs together," Mr. Davies said.

He added, "I'm not talking about just the insurance industry now, I'm talking about all industries."

Other industries also are being hurt by the current court attitudes, he said. Industries must work together and come up with a master plan, then go state-by-state to identify state legislatures that "are interested in doing what is necessary to accomplish tort reform."

Mr. Davies also said that as the new president of the PIA, one of his goals will be to make sure that the organization considers all its options when looking for solutions to industry problems. ■

Regulators respond to market problems

By LINDA J. COLLINS

RENO, Nev.—The current hardening insurance market is complicating the jobs of insurance regulators and legislators, according to a panel of agents, insurers and regulators.

Midterm policy cancellations, reductions in terms and limits of coverage and midterm premium increases on commercial and personal lines insurance contracts are angering insurance buyers, the panelists said.

In addition, the dramatic increase in the number of insurance company insolvencies is attracting the attention of regulators and state legislators, according to the panelists.

The panelists made their comments during a discussion of regulation and legislation at the National Assn. of Professional Insurance Agents' annual convention held recently in Reno.

"Insurance commissioners don't want to get involved in some of the business decisions of insurance companies, but we are being dragged into that posture by irresponsible activities on the part of the companies," said David A. Gates, insurance commissioner of Nevada.

An agent on the panel, however, stressed that insurance companies should not have to shoulder all the blame for the industry's current problems.

"All of us in the last six years sold price. We're all guilty," said Michael F. Conners, president of the PIA of New York and president of Conners & Reddy Insurance in Albany, N.Y.

By concentrating on the quantity rather than the quality of business during the soft market from 1979 to 1984, agents and insurance companies frequently ignored sound business judgment, according to Mr. Conners.

Now the insurance industry is suffering the consequences of those actions with insurer insolvencies and buyers are suffering through rate hikes, coverage restrictions or lack of insurance, the panelists agreed.

Commissioner Gates admitted that regulators also must share part of the blame.

"My basic philosophy on this is that the hard market had its genesis in the irresponsibilities of insurance companies in regard to their cash-flow underwriting, their relaxation of underwriting rules to get that business and, very pointedly, in the moral cowardice on the part of insurance regulators in that we did not step in and say they had to have adequate prices," Mr. Gates said.

"Given that situation, it's not appropriate to have the insurance consumer, who just bought the product, now pay for lack of judgment," he contended. "You must have your contractual commitments."

Mr. Gates said regulators often hesitate to tell insurers that the insurers don't know how to do their jobs.

But, he said, regulators can exercise considerable control over the insurers that operate in their states.

He explained that insurance regulators can "snatch a company away" from its management and close it, take it under conservatorship without removing the management or put it into rehabilitation, freezing litigation, claims and other activities and removing the company's management.

"The problem is trying to keep the insurers in business," the commissioner said.

'All of us in the last six years sold price. We're all guilty,' says agency president Michael F. Conners.

But, he said, "By the time the regulator can get in, many times it's too late to salvage the company," especially if the insurer fights the action.

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Regulators act

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According to Mr. Gates, state insurance departments too often are understaffed and underfunded, which makes it especially difficult for them to do a good job of regulating during the current chaotic market.

"We have some tools, but not enough; some information, but not enough; staffs that are good bond counters, but perhaps not knowledgeable enough about financial analysis," the commissioner explained.

Some agents on the panel added that even when state regulators take action, the action they take may not do much to improve a problem in the industry.

For example, Francis P. Gater, president of the PIA of New Jersey and president of J.S. Braddock Agency in Medford, N.J., said that emergency regulations imposed in New Jersey recently by Gov. Thomas Kean were designed to restrict insurers' ability to impose policy non-renewals, cancellations and midterm premium increases on their clients.

However, Mr. Gater said, the New Jersey regulations are "very difficult to understand and live with. Even the Insurance Department is so confused that it is giving different interpretations of the order daily."

One problem with the regulations, according to Mr. Gater, is that "many carriers have responded by saying, 'We don't like the climate in New Jersey. We're not going to write any new business there, and we're not going to quote anything."

Some of the New Jersey regulations have been made permanent, while others have been revised. And, other states are proposing regulations of their own.

In Connecticut, regulations have been implemented to deter wholesale terminations of agency contracts by insurance companies in that state.

Charles E. Crowley, Jr., legislative chairman of the PIA of Connecticut and president of Hemmingway-Lewis Insurance Associates in Southington, Conn., said that even after winning a "long and relatively positive victory to do away with agency contract terminations in Connecticut," the subsequent legislation "leaves very wide holes."

One problem with the regulations is that they require 90 days' written notice by the insurer to the agent if the insurer intends to terminate an agency contract, he said.

"The caveat under that is that within that 90-day period, the agent can neither write nor bind coverage without the written permission of the carrier," Mr. Crowley explained.

And, he added, that means the agent cannot even write or bind additions to an existing account without the permission of the insurance company.

Another problem is that the insurer is required to give an agency 18-month renewals on its existing business with the insurer after the date of termination.

However, any individual piece of business written by the agency may be terminated with 60 days' notice for "specific underwriting reasons." And the regulation does not define these reasons, Mr. Crowley explained.

Even good regulations will not cure all of the industry's woes, an insurer participating on the panel stressed.

Although regulations may curb excessive or unreasonable behavior on the part of insurers, they will not stop such behavior from occurring, he said.

"My personal opinion is that we cannot legislate, regulate or contract honesty and integrity when it comes to relationships between agents and companies," said Donald L. Walmer, vp of agency relations for Pennsylvania National Mutual Casualty Insurance Co. in Harrisburg, Pa., and chairman of the PIA's Company Advisory Council.

'We cannot legislate, regulate or contract honesty and integrity,' says Mr. Walmer.

"They'll find a way, if they don't have integrity, to circumvent any regulation or rule that we make," Mr. Walmer added.

The panel was moderated by Patricia A. Borowski, vp of government and industry affairs for the PIA. ■

Agency system healthy: Davies

By LINDA J. COLLINS

RENO, Nev.—Despite recurring threats of doom and gloom, the independent agency system is still healthy, according to the new president of the National Assn. of Professional Insurance Agents.

People have been predicting the demise of the American agency system for "as long as I can remember," PIA President James H. Davies told agents attending the PIA's annual convention recently in Reno, Nev.

But, "despite all these threats, and despite a dynamic marketplace, the American agency system remains the dominant system for marketing the protection offered today by the property and liability insurance industry," said Mr. Davies, president of the Davies & Associates agency in Murray Hill, N.J.

It was predicted that independent agents first would be beaten out of the market by direct writers, then by direct billing, mass merchandising, the federal government and finally by life insurers, he said.

"Now the focus is on banks and full financial service conglomerates," he noted.

Nonetheless, Mr. Davies said the agency system has many strengths that doomsayers fail to consider, including:

- Business people with an entrepreneurial spirit "and the ability to translate the theory of marketing into actuality."
- A marketing system "that stimulates and rewards the blending of knowledge, judgment, intelligence and hard work," while balancing the interests of the client, insurance company and agent.
- The combined resources and abilities of agents and insurers to address a client's needs.

If there are weaknesses in the independent agency system, "we must conclude the problems are inherent not in the system, but rather in its practitioners," Mr. Davies said.

Within any system it is possible to have "human mistakes and human failures." But the independent agency system remains dominant despite the "mistakes and failures of some companies and some agents" according to Mr. Davies.

Agents upset by problems in the system should not

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flee the system, but instead they should work to improve it and take advantage of its strengths, he urged.

To help improve the independent agency system, the PIA plans to "improve the expertise of the professional insurance agent and. . .through change, to regain greater control over our destiny as agents," he noted.

According to Mr. Davies, the association plans to:

- Develop an effective public relations program.
- Push "to speed up dramatically automation and communications systems. to avoid duplication, errors and poor response time, to cut company expense by at least 5% without cutting agent commission and also to reduce agent expense by at least 3%."

"Every year we're told the 'ultimate' in automation is 10 years away, and yet our competitors have used those same electronic tools for years to their benefit and to our detriment," he explained.

- Work toward reducing insurers' "constant changes and fluctuation in underwriting, commissions and contracts."
- Develop a national school to teach sales and sales management techniques.
- Work for change in the U.S. tort system.
- Continue to work with insurers that are willing to "let us retain equal control over our changing destiny."

"If these attempts at leadership fail, then we should study the feasibility of starting or purchasing a managing general agency or a property/casualty carrier for research and development purposes.

"The experience we would gain will give us a measuring stick for automation, commissions, consistency of underwriting and expenses, marketing programs and the changing business world in which we work," Mr. Davies stressed.

Agents also must acknowledge their need to automate, train and hire talented personnel, reduce the number of insurers with which they do business and develop comprehensive marketing plans. he added.

If agents combine their expertise with a strong local delivery system, they are able to provide clients with something other competitors cannot offer. he said.

"Direct writers cannot offer the range of products and choice of carriers the independent agency system can offer. And conglomerates and group service centers cannot offer the personalized service and sales expertise that independent agents can," he said.

In closing, Mr. Davies warned agents there is no room for complacency in today's marketplace.

The future "will demand superior products and prices, excellent underwriting, skillful and fair claim handling, aggressive marketing and sales, consumer education and counseling and personalized service.

"It simply asks all of us to do what we do best." ■

Aetna's Bailey urges civil justice reform

By LINDA J. COLLINS

RENO, Nev.—The insurance industry's future may look a little brighter, but independent agents cannot ignore the need for civil justice reform, an insurance company executive says.

The insurance industry's "economic temperature is improving, and so our short-term health is almost surely good," William O. Bailey, president of both Aetna Life & Casualty Co. in Hartford and the National Assn. of Casualty & Surety Executives, told agents attending the National Assn. of Professional Insurance Agents' annual convention held recently in Reno.

"You can look forward to steadily improving business conditions and resulting improved profitability," he said. "But let us not become complacent or too satisfied, lest we ignore the warning flags around us."

For instance, certain classes of business are "virtually uninsurable" in today's market, and other classes are experiencing unprecedented rate increases, he said. And, insurers are moving toward writing commercial liability insurance on a claims-made basis instead of using the traditional occurrence form.

Mr. Bailey said that "inaccurate explanations" of the insurance capacity shortage by critics such as consumer advocates Ralph Nader and Robert Hunter of the National Insurance Consumers Organization further aggravate the industry's woes.

These critics have accused insurers of "manufacturing this crisis through excessive reserving practices," Mr. Bailey said.

"You and I know that this is nonsense," he said. "With minor exceptions, the availability problem is not a problem created by our industry. It is first and foremost a problem with the civil justice system. And unless we deal with the real problem, we will only postpone and make worse the ultimate solution."

He acknowledged that the insurance industry for too long priced its products far too cheaply. "But the price wars only served to mask the fact that more adequate pricing would not have solved the real problem, only delayed its recognition," Mr. Bailey said.

Regarding Mr. Nader's and Mr. Hunter's charges of overreserving, Mr. Bailey said that all "responsible" studies conclude the industry actually is underreserved.

"The harsh fact remains that the increasingly unpredictable nature of the costs of the civil justice system makes some exposures virtually uninsurable," Mr. Bailey continued.

The United States suffers from "chronic fiscal schizophrenia," Mr. Bailey said. Despite the dangers presented by the growing national debt, federal spending continues to be tolerated, he explained, adding that society seems to have a similarly complacent attitude toward civil justice reform.

"Judges, jurors and legislators are creating even more liberalized notions of liability without regard for the economic consequences of their individual decisions. Somehow we seem to pretend that it is possible to spend without ultimately paying," Mr. Bailey observed.

Liberalized liability rules are doing more than making insurance more costly, he warned. "The system has, in some respects, become intolerably unpredictable."

And, not only have the courts increased insurers' liabilities for current and future losses, they have compounded the problem by making many of their rulings retroactive.

Although insurers thought they knew what exposures they were insuring when they wrote these policies, "judges, juries, legislators and regulatory agencies have rewritten the books on tort liability and contract interpretation," Mr. Bailey said. As a result, insurers are becoming "more careful players in this game" and are more hesitant to write certain classes of business.

Mr. Bailey stressed that "it would be sheer folly for insurers to contemplate returning as full players

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Civil justice reform

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—full providers of protection—in a game where we are being set up to be certain losers."

Mr. Bailey also pointed out that insurers must be aware that:

- The concept of proof of causation to establish liability has been eroded.
- The frequency and severity of awards for damages has increased.
- Courts have reinterpreted insurance policies to cover losses that were not intended to be covered, or were specifically excluded, in the policy provisions.

"We have, in my judgment, a runaway civil justice system, which has resulted in an inability to insure legitimate business or governmental operations, or to create a pricing climate of great stability, with real confidence in the adequacy or reasonableness of premium charges," Mr. Bailey said.

He predicted that various approaches could be taken to address the availability problem. State-mandated coverages might be imposed on insurers, or insurers could voluntarily begin writing coverages as profitability improves in hopes of being able to properly evaluate and price their exposures. Or, "we can address the real source of the problem—the civil justice system—and be a force for change and reform."

'We have, in my judgment, a runaway civil justice system, which has resulted in an inability to insure legitimate business or governmental operations, or to create a pricing climate of great stability, with real confidence in the adequacy or reasonableness of premium charges,' Mr. Bailey said.

Agents and insurers must actively work toward reform of the civil justice system, rather than rely on one of the other two solutions, he said.

"Agents can set the stage for reform by explaining to their clients and their communities the real cause of the insurability problem. Without better public understanding, we cannot possibly hope to stimulate support for change," he explained.

The industry first should obtain more data on court costs and awards from "an unbiased source whose research has high credibility," and then use those figures to push for reform.

In addition, he said, the industry should not necessarily rule out the ideas of legislators and others outside the industry who might offer workable solutions to problems faced by the civil justice system.

The industry also must establish a "more focused notion of what we'd like our tort system to be and not to be. That requires much study, much vision and an optimistic view that this country and those who govern it can still listen to and act positively upon a good idea," Mr. Bailey said.

However, he admitted that no one in the industry that he knows has the time to devote to this project. "We're all too busy fighting the brush fires, reacting to the latest horror stories and seeking very limited types of reform," he said.

Mr. Bailey said that the courts should be more realistic in their interpretation of insurance policies, and that when coverage questions arise, courts shouldn't automatically rule against the insurer.

This is especially true, he said, when "we've supplemented our contracts with brochures and other materials that show insureds what they have and don't have."

Agents and insurers "must work together to fashion and implement solutions which make the system workable and fair from the perspective of each of the parties involved," he noted.

"But, if we fail to take the time now to communicate to the public the real reason for high premiums and low availability, we will have shortened this time of improvement and we will surely enter the next cycle with little reform or real progress," he concluded.■

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THE HEALTH PLAN OF AMERICA

Agents urged to change with market

By LINDA J. COLLINS

RENO, Nev.—To remain viable players in the changing insurance marketplace, independent agents have to "take a long, hard and sometimes painful look at the problems facing the agency system," says the outgoing president of the National Assn. of Professional Insurance Agents.

To remain competitive, agents must have the courage to cast aside "old, rusty and corroded ways of thinking and doing business," William G. Bailey, president of George B. Bailey Agency Inc. in Dryden, N.Y., told agents attending the PIA's annual convention held recently in Reno.

Agents face stiff competition from direct writers, as well as a threat of competition from the banking industry, which is lobbying for legislation to allow banks to sell and underwrite insurance, Mr. Bailey explained.

Agents also realize that their relationship with the insurers through which they place business is changing, he said.

"Many companies have radically changed their pricing and selling philosophy as they try to recover from four years of self-destructive price wars," he explained.

The PIA has been encouraging dialogue between insurers and agents in an attempt to curb widespread cancellation and major revision of agency contracts by insurers, the outgoing PIA officer told the agents.

"The PIA discovered that many companies were planning substantial cuts in our commissions this year," Mr. Bailey said.

"And our markets were closing down and contracts being terminated almost overnight," he continued.

Insurers also have threatened to stop doing business with agents who are not automated or do not provide them with a substantial volume of business.

In the last year, PIA executives have met with insurers across the country to discuss these problems. The association also brought together agents and insurance company executives in a joint Congress last March.

"We said things that needed to be said, and I think both sides gained a greater understanding and respect for each other's views," Mr. Bailey explained.

The association agrees with insurers that agencies must automate if they wish to compete successfully.

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"The people who will rule the marketplace are those who can find information, store it and retrieve it to benefit society," Mr. Bailey believes.

Although independent agents are only beginning to realize the power of automation, their competition—the direct writer—has known it all along, he said.

And, he added that this lack of foresight on the part of independent agents has resulted in loss of market share and higher operating costs.

"Automation offers swift access to vast amounts of information direct writers can use to sell and service insurance at much less cost than we can," Mr. Bailey warned independent agents.

And, he added that since automation plays such an important part in agents' future, the PIA is dismayed that the insurance industry as a whole "has yet to join in support of a unified automation standard."

The PIA, in conjunction with other national producer associations, has forged ahead anyway, and this year drafted a position document detailing guidelines for standardizing agency automation and facilitating interface between insurers and agents.

The associations hope the standards will encourage computer vendors to develop automation products that more clearly meet insurance agents' needs.

In order to survive, agents must stay aware of industry trends and act on them quickly, he said.

"We must help shape these trends ourselves," he said.

"We must ignite the fires of change that will allow agents to control their own destiny instead of being controlled by forces beyond our grasp," he warned.

According to Mr. Bailey, the PIA has been trying to facilitate these changes.

During the past year, for example, the organization has concentrated on efforts to bring about U.S. civil justice reform.

Such reform is essential, Mr. Bailey said, because "commercial markets are going up in smoke. Companies would rather pull out of a market instead of risking almost certain financial suicide at the hands of the courts."

When the PIA saw that the civil justice awards were causing insurers to turn away from many commercial insurance markets, "we launched an intensive campaign to alert the industry and general public," Mr. Bailey said.

Association officers set up press conferences in major cities throughout the United States. Key PIA executives were interviewed by newspapers, wire services and radio and television stations.

PIA representatives have volunteered to speak before dozens of industry gatherings and have written numerous articles for the insurance trade press on the need for civil justice reform.

The association has also taped several public service announcements on the subject that have aired on BizNet news, a cable news network accessed by up to 80 million viewers, Mr. Bailey added.

And the PIA has has worked with trade groups such as the Insurance Information Institute and insurance company associations to "lay the foundation for a broad coalition to push for sweeping reforms of America's court system," he said.

In addition, the PIA has also made significant strides in its efforts to halt bank entry into the insurance arena, Mr. Bailey said.

Lobbyists for the PIA testified before Congress and federal agencies on the potential dangers of allowing banks to sell and underwrite insurance, Mr. Bailey said.

"We further reminded Congress that federal laws clearly prohibited the full-scale insurance activity that Citicorp was trying to foist upon the public." The bank has attempted to use loopholes in federal legislation as a way to enter the insurance sales and underwriting business, he added.

In addition, the PIA was called upon by Congress and federal agencies "to testify at hearings and to submit statements on issues ranging from the Motor Carrier Act to pollution liability to taxing employee benefits," Mr. Bailey noted. ■

Mr. Bailey urges tort reform because 'commercial markets are going up in smoke.'

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Agents: Beware of CGL

Communication can avoid legal problems in change to new form

By LOUIS H. CASTORIA

With the advent of the Insurance Service Office's new claims-made commercial general liability policy, the relative rights and duties of insurance companies, policyholders and insurance brokers in the event of a change in coverage will become a central issue in insurance coverage litigation.

Written communication with the insured is the broker's key to reducing potential errors and omissions claims arising from a change from occurrence to claims-made coverage.

ISO's new form differs from the 1966 CGL occurrence form in many ways. A few of the more important changes are:

- New form. Policyholders may not fully grasp that the new ISO form's coverage for bodily injury and property damage is different, particularly if the same insurer issued the expiring occurrence policy.
- Retroactive date. Some policyholders may not be familiar with retroactive dates. Changing to a claims-made policy creates no "gap" in coverage, as long as claims-made coverage is maintained continuously after the change, with a retroactive date that is the same as the termination date of the last occurrence policy.
- Notice provisions. While the trigger for coverage under the bodily injury and property damage sections of the new policy is a claim "received and recorded" by the insured, policyholders still are required to give prompt notice of any occurrence that may result in a claim, even if no claim has yet been made.
- Defense costs. ISO is planning to change its policies in July 1986 to include defense attorneys' fees within the applicable limits of insurance.

This modification could create an additional inducement for policyholders to reach early and economical settlements of claims in order to preserve liability limits.

By advising clients of these and other relevant CGL changes, the insurance broker may prevent unnecessary disputes between the policyholder and the insurance company.

From the viewpoint of an attorney who defends agents and brokers against errors and omissions claims, there are additional reasons that insurance professionals should advise clients of certain basic implications of the new claims-made CGL form.

Agents and brokers increasingly are becoming involved in insurance coverage disputes, both as parties and as witnesses. Seminars held for practicing attorneys now routinely teach that the insurance broker's file is a fertile source of information in coverage litigation.

'Written communication. . .is the broker's key to reducing potential E&O claims arising from a change from occurrence to claims-made coverage.'

For example, a 1984 course pamphlet published by the Practising Law Institute entitled "Insurance, Excess and Reinsurance Coverage Disputes, 1984" contains an entire section devoted to "The Insurance Broker in the Insurance Coverage Dispute."

When coverage disputes do arise, there is no substitute for a well-documented file. A broker's confirming letter may mean the difference between being a witness and being a defendant.

(This does not mean to imply that failing to confirm communications in writing violates the standard of care for agents and brokers. Written confirmation is an important evidentiary standard, though it may not be required by rules of professional conduct.)

Some courts have held that a significant change in an insurance policy upon renewal must be brought to the insured's attention in order to be enforceable.

While ISO also has proposed a modified occurrence-based CGL, it is unclear whether many insurers will offer both forms.

Claims-made policies have been common for professional liability risks since the 1960s, yet, as one court recently observed, "We assume there are vast numbers of professionals covered by claims-made policies who are unaware of the basic distinction between their policies and the traditional occurrence policy" (*Sparks v. St. Paul Insurance Co.*, Slip Op. in A-148 (NJ, July 25, 1985).).

Examples of policy changes requiring notice to the insured include endorsements added to renewals that delete coverage for former insureds (*GEICO v. United States*, 400 F.2d 172 (10th Cir., 1968).).

When an insured is told that coverage is being renewed on the same terms as an expiring policy, a new policy form cannot be substituted that contains an exclusion that did not exist under the prior policy (*Noyes Supervision Inc. v. Canadian Indemnity Co.*, 487 F.Supp 433 (D.Colo, 1980).).

An offer to renew a policy only upon materially changed terms has been held to be equivalent to a non-renewal or cancellation (*Kemmerer Engineering Co. v. Continental Casualty Co.*, 253 Cal.App.2d 188, 61 Cal.Rptr 94 (1967).).

Coverage litigation arising from the transition to claims-made from occurrence form is not new. Lloyd's of London medical malpractice liability insurance forms made such a transition in the mid-1960s. And, the litigation that resulted from that transition underscores the importance of written notice to the insured.

In an unreported decision, *Brander v. Caggiano*, Civ. No 75-2195 (D.N.J., March 29, 1978), a physician alleged that his Lloyd's malpractice coverage could not be changed from an occurrence basis to claims-made unless he was given specific notice of the change. The court found that it was the insured's burden to read his policies and found for the insurer.

Another insured, in a published opinion dealing with the same policy, *Brander v. Nabors*, 443 F.Supp. 764 (N.D. Miss., 1978), had signed a document acknowledging the differences between the two policy types and did not even raise the same contention. The two *Brander* cases reached the same result, but written notification to the insured in the *Nabors* decision foreclosed entire lines of argument to challenge the change in coverage.

In coverage disputes, 'a broker's confirming letter may mean the difference between being a witness and being a defendant.'

Whether the nation's courts will place the burden of reading claims-made CGL policies upon the insured, like the *Caggiano* court, or will require specific notification by the insurers remains to be seen.

Insureds also should know that even under the claims-made CGL, coverages other than for bodily injury and property damage are not on a claims-made basis.

Personal injury and advertising liability coverages, for example, are triggered by "an offense committed in the coverage territory during the policy period."

Thus, a claim alleging both personal injury and bodily injury may fall under two separate policies. ("Personal injury" refers to non-physical claims, such as false arrest and deprivation of civil rights, whereas "bodily injury" is limited to physical harm: e.g, *Grant v. North River Insurance Co.*, 453 F.Supp. 1361 (N.D. Ind., 1978).).

Claims-made policies with retroactive dates equal to their inception dates have been upheld by most courts that have construed them (e.g., *Brander v. Nabors* and *VTN Consol. v. Northbrook Insurance Co.*, 92 Cal.App.3d 888, 155 Cal.Rptr. 172 (1979).).

However, a very recent opinion by the New Jersey Supreme Court departs from this trend.

In *Sparks v. St. Paul Insurance Co.*, cited above, the New Jersey court held invalid a retroactive date that eliminated coverage for acts occurring before the inception of the insured's first claims-made policy, on the ground that the policy "does not conform to the objectively reasonable expectations of the insured."

In a companion case, the same court approved a claims-made form that provided unlimited retroactive coverage (*Zuckerman v. National Union Fire Insurance Co.*, Slip Opn. in A-112 (NJ, July 25, 1985).)

The *Sparks* case may prove to be anomalous, but it demonstrates the judicial scrutiny that retroactive dates may receive.

ISO's new pamphlet, "Introduction and Overview: Commercial General Liability," notes that if a claims-made CGL is renewed with another claims-made policy having the same retroactive date, "coverage continues without interruption."

If, however, the renewal policy has an advanced retro date, this is not the case, and the 60-day "tail" under the first claims-made policy is activated.

Would a court enforce an advanced retroactive date so as to preclude coverage for a claim made during the insured's second year of claims-made coverage, arising from an incident taking place durng the insured's first claims-made policy year? If so, whose responsibility would the resulting coverage gap be?

A recent Pennsylvania case sheds some light on these questions. *Industrial Valley Bank v. Dilks Agency* (Slip Opn. in 84-1001 (3d Cir., January 7, 1985)) concerned an insurance broker who allegedly advised his client, a bank, that the bank's claims-made errors and omissions policy through Lloyd's could be replaced by another insurer on the same terms but with a lower premium and a higher deductible.

In fact, the replacement policy had an advanced retroactive date, which eliminated coverage for a large claim that was made during the replacement policy's period but arose from activities taking place during the Lloyd's policy period.

The trial court entered a judgment against the broker, on the basis that the broker "breached its duty to IVB (the bank) by not fully advising IVB of the differences in coverage."

The Court of Appeals reversed on the ground that the bank was contributorily negligent in failing to give notice of the matter to Lloyd's during the Lloyd's policy period, which would have triggered coverage under the Lloyd's policy's "discovery clause." However, in jurisdictions where contributory negligence does not bar plaintiff's claim, a different result might have been reached.

As a result of pressure by buyers and others, ISO has filed a revised CGL form that allows a retroactive date to be moved forward only in the case of a change to a new insurer, a material change in the hazard insured, the insured's failure to provide adequate information about the insured's operations or consent by the insured (*BI*, Nov. 4).

Such a change may reduce, though not eliminate, retroactive date advancements, and thus the opportunity for resulting coverage gaps.

ISO also has revised its proposed claims-made CGL form so as to trigger coverage for a bodily injury or property damage claim when the insured "receives" and "records" the claim.

A verbal threat of suit thus could be considered a "claim" if the insured made a record of it.

The new CGL form states that the insured must notify the insurer promptly "of an occurrence which *may* result in a claim."

Insureds thus should not wait until suit is served or threatened before giving the insurer notice of potential claims.

Prompt reporting of potential claims is doubly important because ISO has included a type of "discovery clause" in its new claims-made CGL form, which it refiled with the state insurance departments for possible implementation as part of the new form in January.

The policy clause would provide coverage for a potential claim reported during te claim-made policy year or the 60-day "tail," if the claim actually is made within five years and if no other policy covers the claim.

If these tests are met, the claim will be treated as if it were first made during the term of the insured's most recent claims-made policy.

If ISO proceeds with its plans to include defense attorneys' fees within policy limits beginning in July 1986, insureds may be faced with new economic incentives in litigation.

Firstly, even if the insured's policy deductible is not applicable to defense costs, the insured will have an incentive to reach early and cost-efficient settlements of small-value claims so as to preserve policy limits in case there is a large claim.

Secondly, insureds may think twice before demanding separate defense counsel of their own choosing under decisions such as *San Diego Navy Federal Credit Union v. Cumis Insurance Society Inc.*, (162 Cal.App.3d 358, 208 Cal.Rptr. 494 (1984).).

The *Cumis* case holds that insureds have the right to select defense counsel when their insurance companies have reserved rights. Thus, the insurer may have to pay for two defense counsel, one of its own choosing and one of the insured's.

However, were the conflict between the insurer's and the insured's interests is largely theoretical, it may be to the insured's advantage not to appoint separate defense counsel.

In conclusion, the insurance agent or broker stands in a central, but not necessarily precarious, position during this period of transition from the occurrence to the new claims-made CGL policies.

However, misunderstandings best can be avoided through early and substantive communications with policyholders, followed by written confirmation of that communication.

And, in the absence of printed explanations of the new CGL form by insurers, brokers would be well-advised to include brief cover letters with 1986 CGLs. The cover letters should note the above changes in the form plus any others that might be of particular relevance to the individual policyholder. ■

Louis H. Castoria is an attorney in the San Francisco office of Wilson, Elser, Moskowitz, Edelman & Dicker, a national firm specializing in insurance defense and coverage litigation.

Continued from previous page
$49.50. For information write NAECHA, 1134 Chamber of Commerce Building, 15 S. Fifth St., Minneapolis, Minn. 55402.

Hazard communication

Two new products dealing with "right-to-know" laws have been released.

A new reference work on the new federal hazard communication standard and state right-to-know regulations has been published by Commerce Clearing House Inc.

"Hazard Communication—Federal and State Right-to-Know Laws" provides the complete text of the new hazard communication regulations from the Occupational Safety and Health Administration and various court interpretations.

The 660-page compendium also compares requirements in each state with the federal requirements. In cases where state requirements differ, the text of the state statutory requirements is provided and explained.

In addition, the volume includes implementation dates and information sources, sample forms for compliance programs and sample material safety data sheets. It also contains directions for determining whether a substance is hazardous, information on the protection of trade secrets and information on the establishment of effective employee training programs.

"Hazard Communication" costs $30 per copy. Quantity price quotations are also available.

To order, contact Cash Item Department, Commerce Clearing House Inc., 4025 W. Peterson Ave., Chicago, Ill. 60646.

Industrial Training Systems Corp. of Marlton, N.J., is offering an employee brochure that covers the five key aspects of the OSHA hazard communication standard.

The training tool discusses hazard evaluations, warning labels, material safety data sheets and written hazard communications programs. Descriptive photographs and illustrations are included to enhance the reader's understanding.

The brochure unfolds to depict both sides of an MSDS in which portions of the 10 sections of an MSDS are highlighted and explained.

The handouts cost $40 per 100 or $350 per 1,000. Quantity discounts are available for larger orders.

For information contact Tina Stover, Industrial Training Systems Corp., 20 W. Stow Road, Marlton, N.J. 08053; 800-922-0782.

Claims software

Insurance Technology Consultants has released a new risk management software system called C.L.A.I.M.S. Version 4.0.

C.L.A.I.M.S. (Complete Loss Analysis and Interactive Maintenance System) can maintain all information relative to claims filed and losses incurred. Eleven free-form, updatable lines of information are provided to fully describe each claim or loss.

The data base allows amendment of any or all statistical information stored in the system at any one time. An alphabetical search facility allows quick claim identification.

Another feature, an interface file creation process, allows claims data to be transferred to a LOTUS 1-2-3 program or other similar programs for analysis.

The software also includes a user-driven password/security system that controls the access of sensitive data.

C.L.A.I.M.S. is designed to run on the IBM PC, PC/XT or compatible machines.

The software costs $795. A demonstration diskette and a reference manual can be purchased for $35, which is refundable with the purchase of the software.

For information contact Insurance Technology Consultants, P.O. Box 6610, Fullerton, Calif. 92634; 714-773-1754.

Solvency monitor

Conning & Co. has released a new edition of its "Life Solvency Monitor," which is intended to assist pension plan sponsors, 401(k) plan managers, fiduciaries and others responsible for assessing the financial strength of life insurance companies that issue guaranteed investment contracts.

Each of the 60 companies covered in the publication is assigned a composite solvency rating on a scale with a high of 112 and a low of 59.

In addition, the publication includes separate financial profiles on each of the 60 companies monitored and additional statistical information to supplement the solvency ratings and permit further independent analysis. The actual profiles consist of five sections covering:

- Distribution of premium income.
- Operating experience.
- Measures relative to statutory surplus.
- Asset investment analysis.
- Conning's application of the National Assn. of Insurance Commissioners early warning tests.

The report concludes with a chapter on the Canadian companies profiled and the differences between U.S. and Canadian statutory accounting.

The "Life Solvency Monitor" is available for $2,500. To order, write, Robert A. Brian, Conning & Co., 41 Lewis St., Hartford, Conn. 06103. ■

NCR averts using claims-made cover

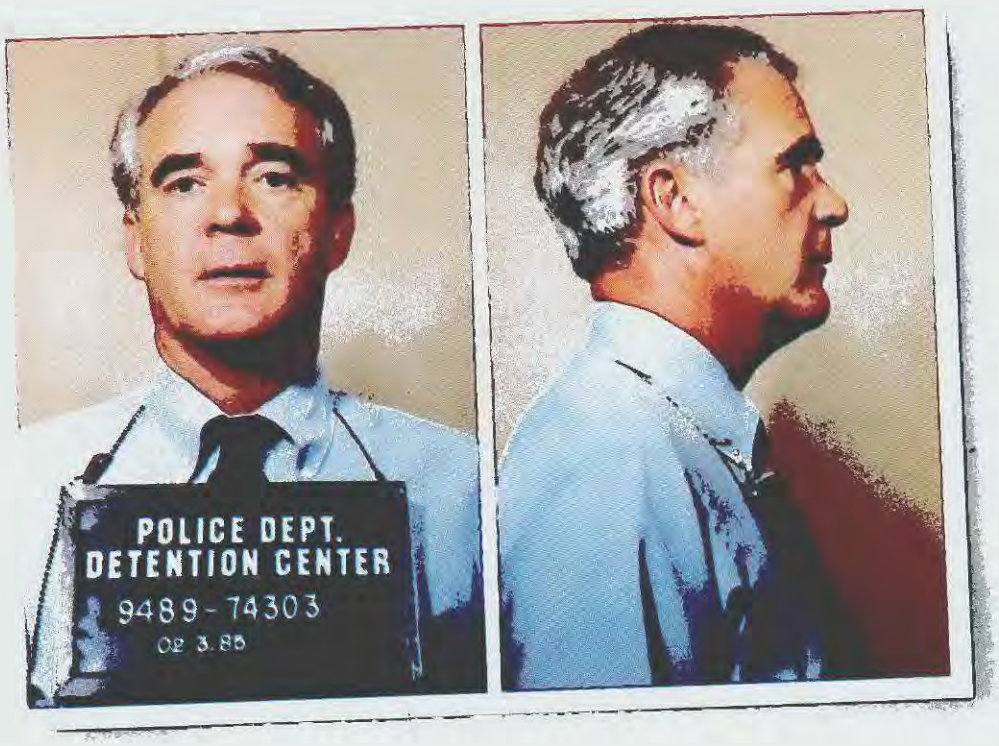
DAYTON, Ohio—At least one U.S. risk manager is insuring his company's liability exposures on an occurrence basis as long as he can.

Instead of waiting for Jan. 1 to renew its domestic casualty program, NCR Corp. canceled—and subsequently renewed—the coverage in September.

The move by the Dayton, Ohio, computer giant effectively sidestepped its insurer's Oct. 1 introduction of the claims-made liability form, explains Daniel W. Houston, director of risk management and insurance.

The coverage was renewed for a year for 20% more in premium by the same U.S. insurer, which Mr. Houston would not identify. He says the broker for the coverage is Rollins Burdick Hunter Co.

The move also enabled NCR to take advantage of casualty capacity that might not be available come January, Mr. Houston adds. ■



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Wisconsin task force to study insurance crisis

MADISON, Wis.—Insurance Commissioner Thomas Fox has formed a special task force that will study property/casualty insurance availability and affordability problems.

The task force—which will be composed of buyers, insurers, consultants, educators and government officials—will be chaired by Mr. Fox.

The panel will hold four public hearings around the state in the next two weeks to gather evidence on availability and affordability problems. The hearings are scheduled for today in Eau Claire; Tuesday in Madison; Dec. 11 in Milwaukee; and Dec. 12 in Green Bay.

The task force will hold its first meeting in January in Madison. It plans to issue a final report by next summer.

Mr. Fox noted that "Wisconsin has more stringent laws than in many other states regulating mid-tem cancellation of policies, mid-term rate increases and non-renewals, and these regulations have served Wisconsinites well during the past few months.

"However, there may be some other approaches that my office can employ to improve the insurance climate in Wisconsin so that an in-depth study of the problems and possible solutions should be very helpful," Mr. Fox said.

Regulatory actions

TOPEKA, Kan.—Nineteen property/casualty insurers doing business in Kansas were the target of regulatory action this year by Insurance Commissioner Fletcher Bell, and action still may be taken against additional insurers.

Of the 19 insurers, 16 have had their authority to do business in Kansas either suspended or revoked because of their potentially hazardous financial condition, Mr. Bell said.

None of the insurers is domiciled in Kansas.

The number of property/casualty insurers targeted this year far exceeds the total for the last two years, Mr. Bell noted. Six property/casualty insurers required formal regulatory action in each of the last two years, although only five of these 12 companies actually have been declared insolvent, Mr. Bell said.

"In addition, the number of companies we have initiated action on represents only a small fraction of the total number of property and casualty insurance companies doing business in Kansas.

"Nevertheless, even one financially distressed insurance company is a significant concern, and our surveillance activities have been reinforced accordingly," Mr. Bell said.

Mr. Bell said the increase in financially troubled insurers was due to years of poor underwriting results, which he said probably will affect insurers through 1986.

"The affects of the property and casualty insurance industry's operations over the last few years will continue to be felt by the public, probably well into 1986, in the form of increased premium rates, decreased capacity and an occasional insolvency."

Six of the 19 insurers that required formal regulatory action entered into a consent order of suspension of their certificate of authority: American Druggists' Insurance Co., Great Global Assurance Co., Paxton National Insurance Co., Rockdale Insurance Co., Ticor Mortgage Insurance Co. and Universal Reinsurance Corp.

Great Global reported a $30 million statutory insolvency as of June 30 and has stopped writing business, although it is not in formal rehabilitation (*BI*, Sept. 30).

The Pennsylvania Insurance Department suspended Paxton National's operations in July (*BI*, July 29). Ticor Mortgage Insurance Co. is one of the insurers of securities issued by troubled Equity Programs Investment Corp. of Maryland. And, Universal Re, an Armco Insurance Group unit, has stopped underwriting (*BI*, March 25).

An additional five insurers, all Mission Insurance Group Inc. affiliates, came under an emergency order of suspension of their certificate of authority: Mission Insurance Co., Enterprise Insurance Co., Mission American Insurance Co., Mission National Insurance Co. and Mission Reinsurance Corp. (*BI*, Nov, 11).

Mission Insurance Co. was placed in conservation by the California Insurance Department last month.

Three insurers had their certificate of authority revoked: Commercial Standard Insurance Co., Early American Insurance Co., and Ideal Mutual Insurance Co.

Ideal Mutual was ordered liquidated by a New York court in February (*BI*, Feb. 11).

Two other insurers were subject to an order of suspension of their certificate of authority: American Fidelity Fire Insurance Co., and Iowa National Mutual Insurance Co.

Iowa National was placed in liquidation in October (*BI*, Sept. 30).

Of the remaining three insurers, a hearing is scheduled Dec. 9 for IGF Insurance Co.; Professional Mutual Insurance Co. entered into a consent order to refrain from writing any new or renewal business, as well as make a special deposit in Kansas; and State Automobile & Casualty Underwriters agreed to reduce its writing in the state as well as obtain additional surplus.

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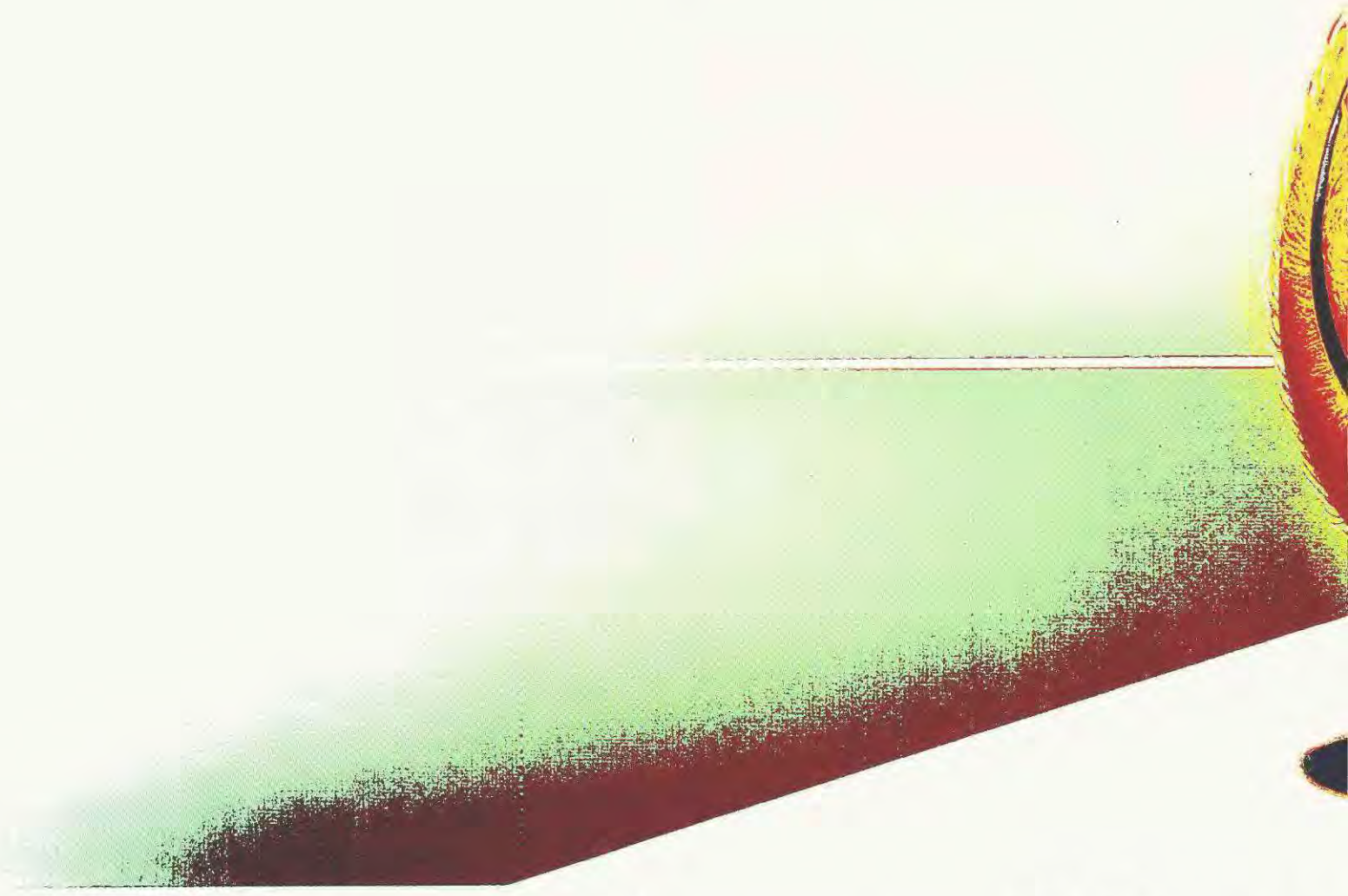
around the states



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Continued from facing page

N.J. comp rates

TRENTON, N.J.—On average, workers compensation rates in New Jersey will remain virtually the same for 1986.

It will be the fifth consecutive year that workers comp rates in New Jersey either have remained stable or have been decreased, even though benefits have increased annually, said Insurance Commissioner Hazel Frank Gluck.

"Nationwide, rate levels are on the increase, but in New Jersey, workers compensation insurance remains available and affordable, despite problems in other commercial lines of insurance," she said.

Ms. Gluck listed several reasons for the stability of workers comp rates in New Jersey, including continued favorable loss experience due to cost-saving reforms enacted in 1980 and effective administration by the New Jersey Compensation and Rating Bureau.

She also cited the continued growth in the state's economy and the shift in New Jersey industry away from manufacturing to service, research and high technology.

Although on average rates will not change in 1986, some rates within the 600 classifications will increase or decrease. Rates in some classifications will change as much as 25%, which is the maximum allowed, said Joseph Di Martino, vice chairman of the New Jersey Compensation and Rating Bureau. "Individual classifications changed all over the place," he said.

The new rates take effect Jan. 1.

Benefits also are slated to increase Jan. 1. The maximum weekly benefit will increase to $284 from the current $269. And the minimum weekly benefit will increase to $76 from the current $72.

Comp penalties

OLYMPIA, Wash.—The Washington Department of Labor & Industries wants to make sure that employers don't fire or penalize injured workers for filing workers compensation claims.

An emergency regulation was adopted by the Washington Legislature earlier this year giving the Department of Labor & Industries authority to initiate legal action against employers in Superior Court on behalf of workers who believe they have been discriminated against because they filed or planned to file work comp claims.

A hearing on making the emergency regulation permanent is slated for today by the department. If approved, the permanent rule would take effect Jan. 9.

The regulation allows workers to submit a complaint in writing to the department if they believe they were discharged or otherwise discriminated against by an employer because they filed or expressed an intent to file a work comp claim.

If the department finds the complaint is valid, it can initiate legal action to seek relief for the worker, such as rehiring or reinstatement with back pay, a department spokesman said.

Previously, Washington law had no such provision against discrimination, he said.

The hearing is scheduled for 9 a.m. today in the first floor conference room of the General Administration building, 11th and Columbia, in Olympia.

Connecticut rates up

HARTFORD, Conn.—Workers compensation rates are increasing in Connecticut by an average of 6.9%.

The new rates recently were approved by the Connecticut Insurance Department and retroactively apply to all policies purchased or renewed on or after Oct. 1.

The National Council on Compensation Insurance had requested an average increase of 12.4%, but only a 6.9% increase was granted by the department.

"The rate increase reflects, in part, the more recent unfavorable workers compensation loss experience in Connecticut," said Peter M. Burton, director of government, consumer and industry affairs in the Connecticut office of the NCCI.

A small portion of the hike—less than 1%—is due to a recent increase in maximum weekly benefits.

Civil justice reform

AUSTIN, Texas—A Texas coalition—and a similar panel in Alaska—are developing civil justice reform recommendations for their respective legislatures.

Both coalitions maintain problems with the justice system, not problems with the insurance industry, are responsible for skyrocketing liability insurance rates.

"The system has just gone berserk," says David McGuire, vice chairman for the Anchorage, Alaska-based Citizen's Coalition for Tort Reform.

For example, Mr. McGuire cited examples of Alaskan day-care centers that have seen their liability insurance costs soar to about $200 per child per month.

The Alaskan coalition, formed in October, intends to ready legislation for consideration by January.

In addition, when the Texas Legislature convenes in January 1987, the 70-member Texas Civil Justice Coalition is planning to push for legislation that will "hopefully put some kind of cap on the amount juries can award," said Forrest Roan, an attorney with the Austin law firm of Roan & Gullahorn. Mr. Roan is also Texas counsel for the American Insurance Assn.

Among the proposals that both coalitions are considering are:

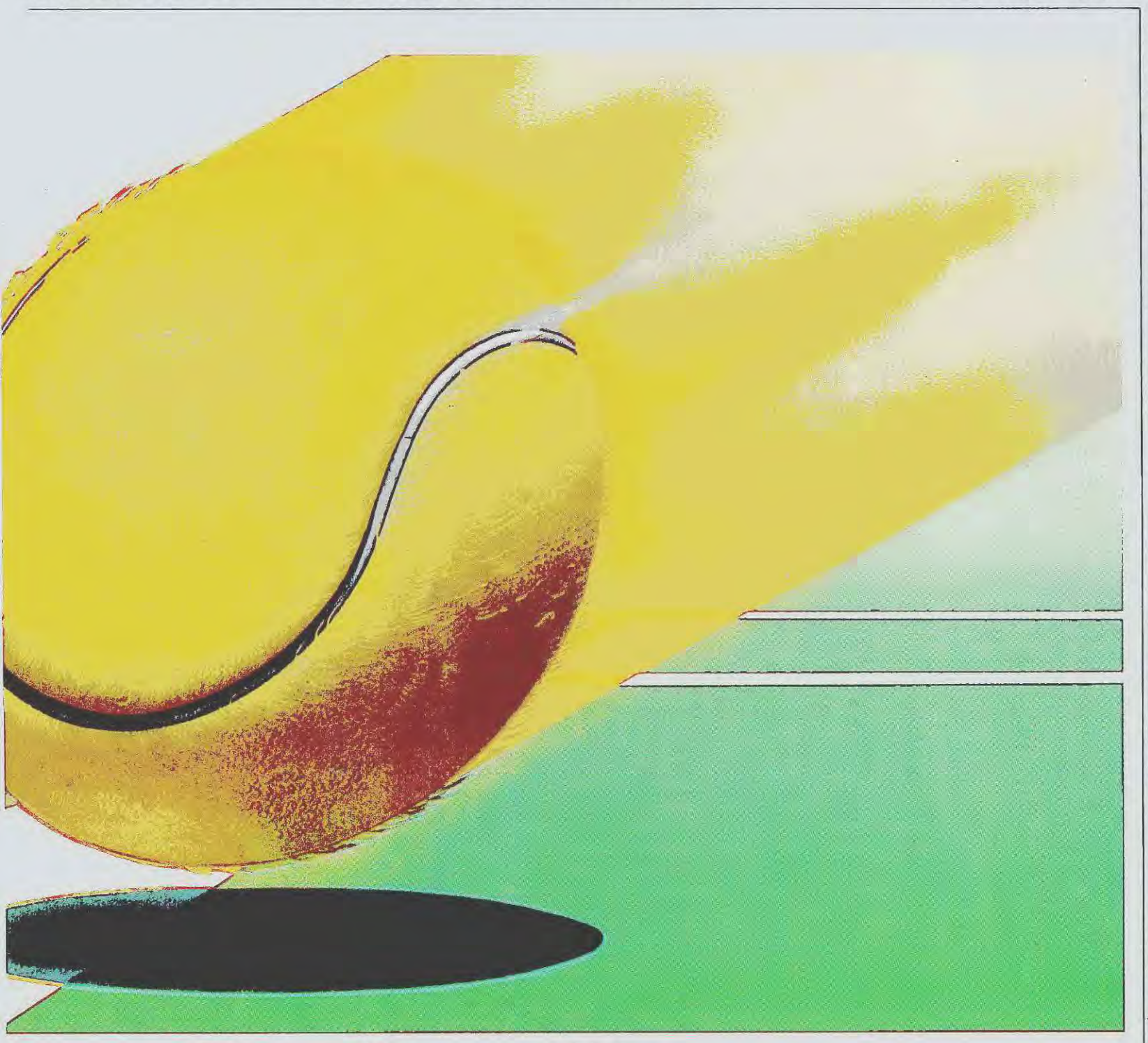
- The establishment of limits on attorneys' contingency fees.
- Reform of the joint and several liability doctrine.
- Placing a cap on the amount of non-economic awards that can be awarded to an accident victim.
- Mandating the use of structured settlements.

Lump-sum awards paid to plaintiffs turn the civil justice system into a "lottery and one that is not at all fair," said Mr. McGuire.

In addition, the Texas coalition is considering a proposal whereby punitive damages would no longer be payable to a plaintiff. Instead, one-half of a punitive award would be paid to state's Crime Victims' Fund, while the other half would go to the state's general revenues.

"Punitive damages are intended to punish the defendant. They shouldn't be a windfall for the plaintiff," said Mr. Roan.

Both coalitions include representatives from the insurance and business communities. ■



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• The New England Employee Benefits Council is offering a reference book for professionals involved in **designing and implementing employee benefit programs**. The 57-page "Employee Benefits Resource Directory" alphabetically lists associations and organizations, publications, educational programs, libraries, health care coalitions and other informational resources. The cost is $15, but free copies will be available to new members for a limited time. To order, contact Tica Williams, New England Employee Benefits Council, P.O. Box 2594, Boston, Mass. 02208; 617-423-6146.

• **Alternatives to litigation in settling insurance claims** are examined in "Breaking the Legal Logjam: Alternatives to the Courthouse." The 12-page illustrated-booklet, issued by The Socieity of Chartered Property Casualty Underwriters, examines the increasing volume and costs of settling insurance claims through the courts. The free booklet can be obtained by contacting Pat Coleman, Director of Public Relations, Society of Chartered Property Casualty Underwriters, 720 Providence Road, Malvern, Pa. 19355.

• **Thirteen insurance education programs** are outlined in "You Are Invited," a flyer produced by the American Institute for Property and Liability Underwriters and the Insurance Institute of America. The flyer briefly describes the Chartered Property Casualty Underwriter program; IIA programs, including Introduction to Property and Liability Insurance, Supervisory Management and the Program in General Insurance; and the nine associate programs in claims, management, risk management, underwriting, insurance production, premium auditing, research and planning, loss control and accounting and finance. The flyer can be obtained at no cost by contacting the American Institute for Property and Liability Underwriters and the Insurance Institute of America Field Services Department, 720 Providence Road, Malvern, Pa. 19355-0770; 215-644-2100.

• A new book that presents an overview of the **surplus lines market** is available from the American Assn. of Managing General Agents. "Surplus Lines Insurance: The Misunderstood Market," a 70-page booklet by Samuel H. Weese, is also co-sponsored by the National Assn. of Independent Insurers and the National Assn. of Professional Surplus Lines Offices. Chapters review the history of insurance, surplus lines insurance in the current market, applicable regulations, the surplus lines marketing structure, the surplus lines insurance industry and the future of surplus lines business. Copies are available for $6 each from the Assn. of Managing General Agents, Suite 800, 1001 Connecticut Ave. N.W., Washington, D.C. 20036.

• The 1986 Film Catalog, which lists **safety, training, fire, health, management development and motivational films**, is available from the Film Library of the National Safety Council's Los Angeles Chapter. The free catalog can be obtained by contacting the Film Library, 616 S. Westmoreland Ave., Third Floor, Los Angeles, Calif. 90005; 213-385-6461.

• The Insurance Information Institute has published a guide that outlines how businesses can **protect their employees and operations during an earthquake.** "How to Prepare for an Earthquake/A Guide for Businesses" covers the steps businesses can take to protect employees at the office and at home, office and computer facilities, operations and assets. The 66-page guide was written by John F. McCann, regional vp of the III's San Francisco office and a member of the California governor's Emergency Task Force on Earthquake-Preparedness. Single copies are $20, but discounts for multiple purchases are available. To order, contact the Insurance Information Institute, Publications Service Center, 110 William St., New York, N.Y. 10038.

• **Fire risks of essential electronic equipment** are analyzed in a new booklet published by Ansul Fire Protection. The booklet presents recommendations of both government and private authorities, the insurance industry and the Naitonal Fire Protection Assn. on protecting electronic equipment. Also included is information on water sprinkler, carbon dioxide and Halon 1301 (a colorless and odorless gas that extinguishes fire by disrupting the chemical reaction) systems; fire detection and control; and the role of Underwriters Laboratories in protecting electronics. The booklet is available at no cost. To order, contact Sara M. Lambrecht, Public Relations Manager, Ansul Fire Protection, One Station St., Marinette, Wis. 54143; 715-735-7411.

• **Flexible benefit enrollment software specifically designed for the microcomputer** is described in "Flexible Compensation Enrollment: The Wyatt System," a brochure from The Wyatt Co. The personal computer-based system, suitable for employers with 5,000 lives or less, is designed to meet flexible benefit plan enrollment recordkeeping demands. To obtain the free brochure, contact the Flexible Compensation Team, The Wyatt Co., 1990 K St. N.W. Washington, D.C. 20006.

• The complexities of **escalating health care costs** are explained in "Health Care Cost Containment: A Basic Guide," a new book from the International Foundation of Employee Benefit Plans. The book discusses factors that have contributed to the rise of health care costs, including third-party reimbursement, inflation, advances in medical technology and an aging population. Copies of the book are $25 each and can be ordered from the Publications Department, International Foundation of Employee Benefit Plans, 18700 W. Bluemound Road, Brookfield, Wis. 52008-0069; 414-796-6700.

• Rockwood Systems Corp. is offering publications to assist chemical companies in dealing with **environmental impairment liability.** The publications present methods for using water-based foaming agents to prevent the run-off of hazardous materials during fires. Free copies can be ordered from Rockwood Systems Corp., Department JS, P.O. Box 810, Lancaster, Texas 75146; 214-227-3100.

• Custom-tailored **plan documents and summary plan descriptions for self-funded health care plans** are offered by Hunter & Associates, a consulting firm. Samples of the plan documents and summary plan descriptions are available for $4.75. To order, write to Susan L. Waybourn, Vp-Marketing, Hunter & Associates, 8595 Aquarius Drive, San Diego, Calif. 92126; 619-578-7461.

• The **pros and cons of self-insurance** are among the topics discussed in "Practical Self-Insurance, An Executive Guide to Self-Insur-

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☐ Health care professionals
☐ Importers-Exporters
☐ Institutions
☐ Insurance Companies
☐ Mail Order Houses
☐ Nursing Homes
☐ Pharmacists
☐ Physicians
☐ Procurement agents for Sports and the Special Olympics
☐ Professional Press
☐ Professors
☐ Purchasing agents for hospitals institutions, clinics, specialists
☐ Purchasing agents for surgical supply stores
☐ Radiologists
☐ Rehabilitation Workers
☐ Researchers
☐ Schools
☐ Scientists
☐ Social Assistants
☐ Sports Stores
☐ Surgeons
☐ Surgical Device Distributors
☐ Teachers
☐ Therapists
☐ Trading Companies
☐ Unions
☐ Universities
☐ Voluntary and Private Agencies
☐ Wholesalers
☐ Other

Continued from previous page
ance for Business." The book outlines methods for conducting feasibility studies, provides advice on structuring a self-insurance program and tells how to implement an effective loss-prevention program. Copies are $24.95 from Risk Management Press, P.O. Box 670, Inverness, Calif. 94937.

• A sourcebook summarizing more than 100 articles, books and studies on **vocational rehabilitation** is now available from the Workers Compensation Research Institute. "Vocational Rehabilitation in Workers' Compensation: Issues and Evidence" covers the success of rehabilitation, the importance of early intervention and the interaction of rehabilitation and litigation. The book is free to institute members, $15 for nonmembers. To order, write to Workers Compensation Research Institute, 245 First St., Suite 402, Cambridge, Mass. 02141; 617-494-1240.

• "Arbitration Facts 1984-1985 Edition" is a 16-page booklet that details how insurers are turning to **arbitration to resolve claim disputes** rather than relying on costly litigation. The booklet describes how Insurance Arbitration Forums Inc., the nation's largest insurance arbitration organization, helped insurers settle disputes involving more than $335 million in claims in 1984. Insurance Arbitration Forums, a non-profit corporation supported by more than 1,100 insurers, currently administers 12 different arbitration programs. Single copies of the booklet are available free of charge from Insurance Arbitration Forums Inc., 200 White Plains Road, P.O. Box 66, Tarrytown, N.Y. 10591-0066.

• American Network Services Inc. is offering a videocassette training program to **prevent back injuries.** The "Freedom from Back Pain" program includes exercises and posture tips for developing and maintaining a healthy back in an effort to reduce losses resulting from back pain and injury claims. Products offered are "Relaxation Therapy Audiocassette," $12.95 each; a "Freedom from Back Pain Workbook," $4.95 each; and "Personal Concerns Inventory," $9.95 each. For information or to order, contact American Network Services Inc., General Offices, P.O. Box 3039, Idyllwild, Calif. 92349; 714-544-1398.

• Cassette recordings of the programs at the Seventh Annual Meeting of the American Society for Hospital Risk Management of the American Hospital Assn. are available for $12 each. Various aspects of **hospital risk management** are discussed by participants in the meeting, which was held Aug. 25-28. For information and to order, write Teach 'em Inc., 160 E. Illinois St., Chicago, Ill. 60611; 312-467-0424.

• An anti-arson brochure is available from American Re-Insurance Co. The publication, "Arson—A Burning Issue," was designed to increase the awareness of the **problems of arson** and offer suggestions to reduce the incidence of the crime. The brochure includes an underwriter's guide and a fire investigation guide. Copies of the brochure can be obtained by contacting Linda Macklin, Director of Communications, American Re-Insurance Co., One Liberty Plaza, 91 Liberty St., New York, N.Y. 10006; 212-618-7000.

• Designing and administering **association-sponsored benefit plans** is discussed in "Topics in Employee Benefits for Association Executives—1985," a book offered by the International Foundation of Employee Plans. The proceedings of the organization's 1985 Employee Benefits Institute for Association Executives are discussed in the 74-page book, including economic problems and their causes, political problems and "extras" the benefits plans can offer employees. The cost is $15 for IFEBP members and $25 for non-members. Copies can be obtained from the Publications Department, International Foundation of Employee Benefit Plans, 10700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069;414-786-6700.

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Peat Marwick offering adjusting services

Peat Marwick & Mitchell, a Big Eight accounting firm based in New York, now is offering adjustment services through an affiliation with Adjusters International Inc.

Adjusters International is a Utica, N.Y.-based adjusting firm that operates through 11 U.S. affiliates and affiliates in Puerto Rico, the United Kingdom and Canada.

Peat Marwick's role primarily will be to help assess business interruption losses for property/casualty policyholders. The firm also will provide feasibility studies, assistance in mergers and acquisitions, litigation support and recovery programs for data processing systems to companies that have suffered losses.

"We believe that valuing losses and assisting policyholders in obtaining fair settlements is an appropriate extension of our services," says Robert W. Beecher, Peat Marwick's deputy chairman.

Ronald A. Cuccaro, president of Adjusters International, said, "Our relationship with Peat Marwick will enable us to bring greater resources to bear in situations that involve complex business interruption losses."

Adjusters International's affiliates in the United States include:

- The Greenspan Co. in Los Angeles.
- Lucuarell Co. in Seattle.
- The Beneke Co. Inc. in Dallas.
- The Goodman-Gable-Gould Co. in Washington, D.C.
- Goldstein-Sommerfield-Midwest Inc. in Chicago.
- Basloe Levin & Cuccaro Ltd. in Utica, N.Y.
- National Fire Adjustment Co. Inc. in Buffalo, N.Y.
- Goldstein Affiliates Inc. in New York.
- L. Charles Auck & Associates in Cleveland.
- Midwest Fire Adjusters Inc. in Detroit.
- Gordon & Gordon Adjustment Co. in Boston.

Adjusters International's non-U.S. affiliates include:

- P.W. Bickford & Co. Ltd. in Vancouver, British Columbia.
- Martin B. Smith Public Adjusters in Puerto Rico.
- Signey Balcombe International Ltd. in the United Kingdom.

New legal practice

Rooks, Pitts & Poust, a Chicago law firm that represents defendants in insurance disputes, has formed a new risk management practice specialty.

The new practice area will serve clients that are self-insured or have purchased commercial insurance with large deductibles.

Among the services that the firm will provide to these clients are:

- Evaluation of cases and claims for disposition.
- Assistance in maintaining records of litigation.
- Assistance in evaluation of insurance coverage.
- Representation of clients in Illinois and Indiana. Most firm attorneys are licensed in those states.
- Assistance in the selection of counsel in other parts of the country. The firm has a network of contacts among legal specialists in areas outside Illinois and Indiana.

The new practice has evolved from the firm's experience in product liability and other casualty cases, says partner John G. Poust.

The firm notes that companies with high deductibles ordinarily are permitted or required by insurers to retain counsel and take responsibility for their own defense. As a result, the firm says it sees a need for policyholders to become more involved in overseeing litigation against them.

markets

Gen Re acquisition

General Reinsurance Corp. has acquired all of the stock of The Monarch Insurance Co. of Ohio.

Monarch, which is based in New York, specializes in underwriting treaty reinsurance. It reported net written premiums of $12.8 million in 1984 and has a year-end 1984 policyholder surplus of $8.5 million, according to A.M. Best Co.

Monarch is licensed in 49 states and the District of Columbia.

"Monarch will round out the facilities of the group," Gen Re Chairman Frank Munson said. "It will write specialty lines which require a direct licensed insurer."

Name change

INA Insurance Co. of Canada has been renamed **CIGNA Insurance Co. of Canada**. The French name of the company is now **CIGNA du Canada Compagnie d'Assurance**. Headquarters of the company have been moved to Suite 500, 100 Consilium Place, Scarborough, Ontario M1H 3E3; 315-797-3035.

Acquisitions

Burns & Wilcox Ltd., a Southfield, Mich.-based underwriting manager, has acquired **Governmental & Educational Insurance Inc.** and **Insurance Management Services Inc.**, both located in Birmingham, Ala. Both agencies will now be located at 3 Riverchase Office Plaza, Suite 104, Birmingham, Ala. 35244; 205-988-9650.

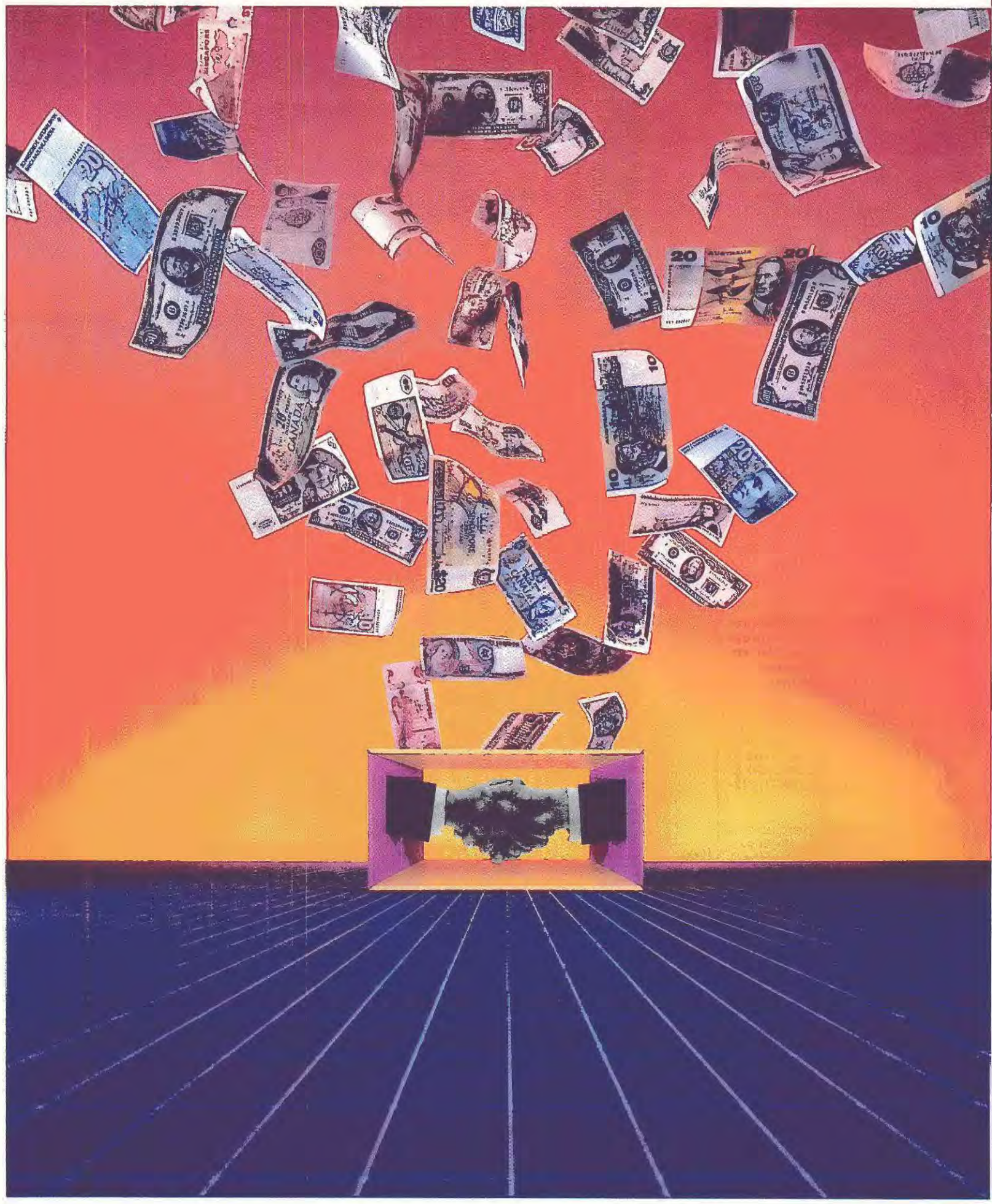
Bekins Co., the Glendale, Calif.-based moving and transportation company, has sold its **Adams, Clay Insurance Co. Inc.** brokerage unit to Adams, Clay General Manager **Robert C. Ritter Jr.** and **Paul P. Flynn**, an attorney in Thousand Oaks, Calif. Los Angeles-based Adams, Clay has offices in Texas, Florida and Illinois. The brokerage unit also has sales representatives in New Jersey.

New offices

Corroon & Black Corp. has opened a new office at the Financial Centre, 695 E. Main St., Stamford, Conn. 06901; 203-359-0010. The new mailing address is P.O. Box 10338, Stamford, Conn. 06094. In addition, the new office will also accommodate **Corroon & Black Actuarial Services Inc.**, which was formerly located in Harrison, N.Y.

Managing general agency **Insurance General Agency Inc.** has moved to 7975 N. Hayden Road; Scottsdale, Ariz. 85258; 602-483-3400.

Kelter-Thorner Inc., an independent insurance agency based in Southfield, Mich., has expanded its California offices to better serve its increasing clientele in northern California. The expanding West Coast site is located at 2342 El Camino; Redwood City, Calif. 94063; 415-369-1003. ■



Workplace deaths, injuries increasing

By JERRY GEISEL

WASHINGTON—More employees are dying or are injured in workplace accidents, statistics show.

Some 3,740 workers were killed in workplace accidents last year, up 20.3% from 3,100 in 1983, according to an annual Bureau of Labor Statistics survey.

The survey, which covers employers with more than 10 employees, also found that the number of workplace injuries and illnesses increased 13.9% to 5.4 million last year from 4.74 million in 1983.

Labor Secretary William E. Brock said he was "deeply concerned and disturbed" about the sharp increase after four years of decline.

He attributed part of the increase to the economic recovery, which led to a workforce expansion of 4.2 million employees in 1984.

"More people working, and people working more hours, contributed to the problem. Increases in employment also result in larger numbers of new and less experienced workers, who according to BLS studies, account for 48% of all injuries," Mr. Brock said.

While these facts may explain part of the increase, "They certainly don't excuse it," he added.

Other findings in the BLS survey include:

- Some 41.92 million lost workdays resulted from work-related injuries, up 15.3% from 36.37 million in 1984.
- The number of injuries involving lost workdays increased to 2.4 million, up 14.3% from 2.1 million.
- Insurance, finance and real estate had the lowest occupational and illness rate: 1.9 per 100 workers, down from two per 100 workers in 1983.
- The construction industry had the highest injury and illness rate: 14.8 per 100 workers, compared with 15.5 in 1983.

Meanwhile, in another occupational safety issue, government sources confirm that John Pendergrass, an industry hygienist at Minnesota Mining & Manufacturing Co., is the Reagan administration's choice to be the new chief of the Occupational Safety and Health Administration.

The position has been open since earlier this year.

OPIC legislation

A congressional conference committee will meet this month to resolve differences in legislation passed by the House and Senate to extend the underwriting authority of the Overseas Private Investment Corp.

OPIC is the federal agency that provides political risk insurance to U.S. companies investing in less-developed countries.

The chief difference in the two bills is that the Senate bill, S. 947, proposes an 18-month underwriting extension, while the House bill, H.R. 3166 calls for a four-year extension.

Until Congress passes a final bill, OPIC has suspended writing new policies, but it will honor coverages in policies now in force.

Pregnancy coverage

The Supreme Court has declined to review and thus let stand a lower-court decision requiring an employer to pay retroactive pregnancy benefits for male employees' wives.

The case involves a 1983 decision by U.S. District Court Judge G. Ernest Tidwell requiring Atlanta Gas Light Co. to pay pregnancy claims incurred by wives of male employees between April 29, 1979, and June 20, 1983, the day the utility overhauled its dependent health care plan to treat pregnancy just like any other disability (*BI*, Jan. 16, 1984).

The lower-court decision later was affirmed by the 11th U.S. Circuit Court of Appeals.

Pension guarantees

The Pension Benefit Guaranty Corp. next year will boost the maximum pension benefit it will guarantee participants of terminated single-employer pension plans.

For plans that are terminated in 1986, the new monthly maximum guarantee per participant will be $1,789.77, up from $1,687.50.

The maximum guaranteed amount is adjusted annually according to a formula prescribed by law and is based on data from the Social Security Administration.

The PBGC pays benefits to workers and retirees whose pension plans terminate with insufficient assets to pay guaranteed vested benefits.

The agency pays a monthly average benefit of about $200 to participants of terminated plans.

Meanwhile, the PBGC reports that premium charges for multiemployer plans are adequate and can remain at levels set by the Multiemployer Pension Plan Amendments Act of 1980.

Multiemployer premiums now are $1.80 per participant per year, with a scheduled increase to $2.20 for plan years beginning on or after Sept. 27, 1986. The rate moves to $2.60 on Sept. 27, 1988.

In contrast to the single-employer termination insurance program, which has a deficit of more than $1 billion, the multiemployer program had assets of $60.8 million and liabilities of $43.6 million as of Sept. 30, 1984.

Finally, the Supreme Court on Dec. 2 will hear oral arguments in a pending case that challenges the constitutionality of the Multiemployer Amendments Act.

Plaintiff Woodward Sand Co. argues that withdrawal liability provisions of the act are an unconstitutional taking of private property without just compensation (*BI*, Oct. 21).

Flood, crime cover

Congress has approved legislation that extends until Dec. 14 the statutory authority of both the Federal Crime Insurance Program and the National Flood Insurance Program. Permanent authority for both of the programs had expired on Sept. 30; Congress earlier approved a temporary extension that expired on Nov. 14.

The Reagan administration favors termination of the crime insurance program, which mainly serves small employers in the New York City area. The administration backs a six-year continuation of the flood program. ■

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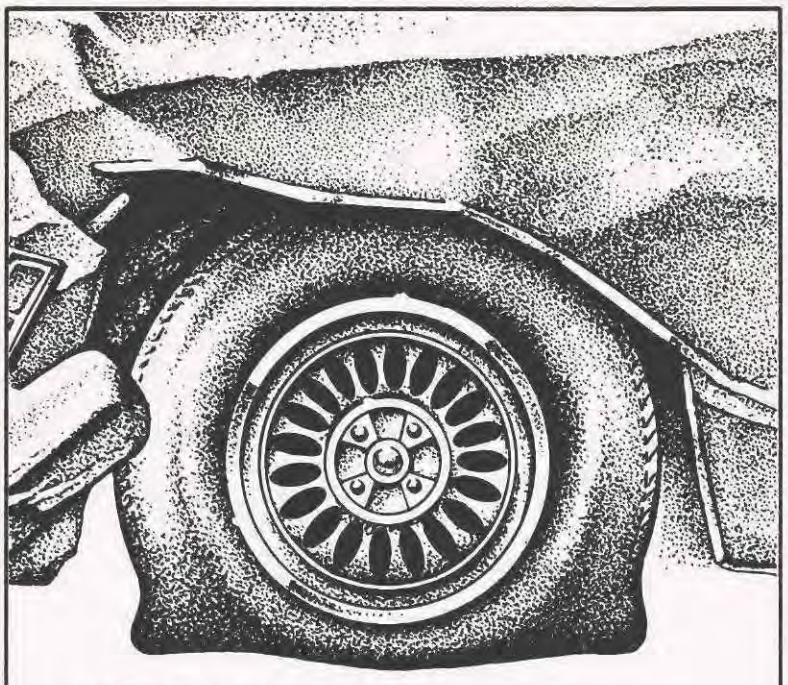

The Mystery of the Lethal Front Tire

The tire company was served with a major lawsuit. A fatal accident occurred when a car swerved into oncoming traffic. Failure of the front left tire was alleged to have been the culprit.

Countrywide investigators grew suspicious when they discovered that the skid marks ended prior to impact. Would the driver deliberately let up on the brakes? Then came expert testimony that the deflated tire was caused by the impact. A check of the brakes revealed a contaminant in the brake fluid! The lawsuit was dismissed.

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Insurance Corp. of Ireland tries to recover from 11 reinsurers

By STACY SHAPIRO

london line

LONDON—The Insurance Corp. of Ireland, which was taken over by the Irish government in March, is trying to retrieve money from its reinsurers to pay outstanding claims of 164 million Irish pounds ($196.8 million) net of estimated reinsurance.

ICI has begun arbitration proceedings in Dublin against 11 of its reinsurers, said David McIntosh, attorney for Davies, Arnold & Cooper, London counsel for ICI and for the company's administrator.

Mr. McIntosh said that ICI began arbitration earlier this year to resolve the disputes surrounding its quota-share reinsurance.

He said the 11 reinsurers, which he did not name, had declared their commitment under their treaties with ICI to be void.

However, "We are confident the treaties will be held valid and of integrity and those due to pay will find themselves legally obligated to pay," Mr. McIntosh said.

"We expect ICI to fully rehabilitate itself."

Mr. McIntosh declined to comment on the amount involved under the disputed reinsurance contracts.

"It would be quite wrong to guess at figures," he said. "It would be merely speculating on speculations."

ICI was taken over by the Irish goverment in March after ICI's parent company, Allied Irish Banks Inc., discovered "major losses" for 1984 (*BI*, March 25).

A subsequent Irish government review showed that those losses totaled 164 million pounds net of estimated reinsurance recovery.

ICI's losses resulted primarily from North American risks written through the company's London office.

The Irish government said at the time it took over ICI that it would continue to pay claims and write new business, including North American risks.

Mr. McIntosh said that ICI has "more than 60 other reinsurers who are meeting their obligations to ICI or are reserving their positions." He said he does not anticipate litigation or arbitration proceedings to be brought against these reinsurers.

ICI is not involved in other litigation or arbitration in Great Britain involving its reinsurers, Mr. McIntosh said.

John Powell, an attorney at Homan, Fenwock & Willan in London, confirmed that his firm represents one of the reinsurers in the arbitration in Dublin, but declined to comment further.

Underwriters hired

Two former underwriters for Lloyd's of London syndicates controlled by PCW Underwriting Agencies Ltd. who recently were suspended by Lloyd's are now working as underwriters for Chancellor Insurance Co. Ltd.

Colin Davies, a former director and underwriter for syndicates controlled by PCW and managed by WMD Underwriters Agencies Ltd., is now excess-of-loss underwriter for Chancellor, Mr. Davies confirmed.

And, Adrian Hardman, a director of PCW and active PCW underwriter, is now the general marine underwriter for Chancellor, according to Mr. Davies.

Mr. Davies said that Chancellor is a newly formed non-Lloyd's insurer approved by the Department of Trade and Industry.

He said the company, which is owned by a Canadian holding company, has authorized capital of 20 million pounds ($29.2 million) and paid-up capital of more than 10 million pounds ($14.6 million).

Both Mr. Davies and Mr. Hardman were suspended recently by the Council of Lloyd's for benefiting from the misappropriation of millions of dollars in syndicate funds. The misappropriation was masterminded by their bosses, Peter Dixon and Peter Cameron-Webb, according to the disciplinary report by the Lloyd's Council (*BI*, Nov. 18).

Lloyd's expelled Mr. Dixon and fined him a record 1 million pounds ($1.46 million) for his role in the misappropriation of 39 million pounds ($56.9 million at current exchange rates).

Lloyd's does not know Mr. Dixon's whereabouts.

The Council could not act against Mr. Cameron-Webb because he no longer is a member of Lloyd's. Mr. Cameron-Webb is now an underwriter for Usher Syndicate Ltd. at the Insurance Exchange of the Americas in Miami (*BI*, Sept. 2).

Mr. Hardman faces a two-year suspension from Lloyd's for benefiting personally from dishonest quota-share reinsurance schemes put together by Mr. Dixon and Mr. Cameron-Webb, according to the Lloyd's report.

The report says that, among other things, Mr. Hardman received from Mr. Dixon more than 70,000 pounds ($101,500 at current exchange rates) in cash plus various interest-free loans that he knew came from the dishonest reinsurance.

However, the Lloyd's report stressed that "Mr. Hardman is an extremely skillful, talented and hard-working underwriter who conducted his own defense in these proceedings with a degree of skill and judgment of which many members of the legal profession would have been proud."

The report adds, "The Committee had every reason to believe that, but for his involvement with Messrs. Cameron-Webb and Dixon, he would have had a highly successful career at Lloyd's."

But, the report continues, "His readiness to accept personal bene-

Continued on next page

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Continued from previous page

fits which he knew to have originated from syndicate funds represents a very grave degree of culpability on his part."

Mr. Davies was reprimanded by Lloyd's and suspended for one year from the Lloyd's market.

According to the Lloyd's disciplinary report, Mr. Davies also benefited from the reinsurance scheme concocted by Mr. Cameron-Webb and Mr. Dixon.

The report says that when Mr. Davies received an interest-free loan and 1,000 pounds ($1,460) in cash from Mr. Dixon, Mr. Davies did not ask where the money came from, although he suspected it came from misappropriated funds.

In assessing the penalty, the Lloyd's report said: "Throughout his career, Mr. Davies had tended to regard Messrs. Cameron-Webb and Dixon as having complete control over him. He took instructions from them on all important matters and was content to accept without question that whatever they wanted him to do was inherently acceptable and not anything he could seriously question."

Lloyd's continued, "Because of his unquestioning acceptance of what they decided, he had little detailed information about any of the schemes or origins of his benefits."

Mr. Davies said he does not think the action by Lloyd's will affect his new position with Chancellor. But, he would not comment further on the Lloyd's action, saying he was required by Lloyd's to take an oath of confidentiality before the disciplinary proceedings began.

Aviation market

The London aviation insurance market faces losing customers if the market cannot provide the coverage and service that the customers need, warns Tony Bolton, chairman and chief executive of Bowring Aviation Group.

A major problem, he said, is a lack of capacity. And, although some say that the capacity crunch is a good thing for underwriters, Mr. Bolton disagrees.

"It surely cannot be right. . .to rejoice in a condition which cannot satisfy our customers," he told a recent meeting at the Insurance Institute of London.

If London underwriters cannot find the insurance capacity that customers seek, then the customers will go elsewhere, he said.

Mr. Bolton suggested that the capacity crunch could be eased if underwriters would reinsure on a pro-rata basis instead of on an excess-of-loss basis.

And, he continued, the brokers and customers feel it takes too much time to settle claims.

He said the market might benefit from a change to the U.S practice, in which underwriters can deal directly with buyers.

Mr. Bolton urged underwriters to work to prevent the "year-end renewal paralysis."

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Some information for this column was contributed by Melissa G. Zoccolillo, a free-lance writer.

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update

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Munich Re in the black despite loss

By JOHN PARRY

MUNICH, West Germany—Despite suffering heavy losses from the Mexico City earthquakes and Hurricanes Elena and Gloria, Munich Reinsurance Co. expects to maintain its 18% dividend to shareholders during the current fiscal year, the company's chief executive officer told Munich Re's annual meeting last month.

The Mexican disaster alone could cost as much as $63 million, the amount paid out by Munich Re last year for damage caused by a freak hailstorm in southern West Germany, said Chief Executive Horst Jannott.

Munich Re also expects to incur heavy losses stemming from last summer's wave of aviation disasters and from various losses under other commercial property and liability contracts, he said.

Most of these losses occurred outside West Germany, he added.

These losses mean that Munich Re again will suffer a reinsurance underwriting loss in the 1985-86 fiscal year, Mr. Jannott said. However, the company expects healthy profits in other areas, particularly investment income, guaranteeing that the company will finish the year in the black and maintain its dividend, he said.

Munich Re's losses on reinsurance business alone in the fiscal year ending June 30 rose 3.4% to 445.9 million deutschemarks ($169.5 million) from 431.23 million deutschemarks ($163.99 million) in the previous fiscal year, the company announced.

Premium income in the 1984-85 fiscal year rose 9.9% to 11 billion deutschemarks ($4.18 billion). Mr. Jannott attributed this sharp increase primarily to the strength of the U.S. dollar.

Profits from other areas rose 19.6% to 609 million deutschemarks ($231.5 million) from 509 million deutschemarks ($193.53 million) in the 1983-84 fiscal year, increasing Munich Re's overall net profit 1.1% to 44.8 million deutschemarks ($17 million) from 44.3 million deutschemarks ($16.8 million).

Munich Re sharply increased its profits in the West German domestic market and would have been in the black domestically for the first time in many years had it not suffered the hailstorm-related losses, Mr. Jannott said.

Munich Re is continuing to be highly selective in the new business it will write and is also attempting to increase its rates in the direct insurance market, he added.

In a related development, Cologne Reinsurance Co., another major West German reinsurer, also says it will maintain its 18% dividend and will increase its premium volume.

But, Chief Executive Richard Wiedemann warned that the West German reinsurance market still faces problems, adding conditions are "very unsatisfactory."

Mr. Wiedemann told Cologne Re's annual meeting last month that the company would continue to stress earnings strength rather than simply premium growth.

Like Munich Re, Cologne Re expects its results will be adversely affected by the Mexican quakes, hurricanes in the United States and the various aviation disasters around the world, he said.

Mr. Wiedemann explained that Cologne Re expects to lose as much on its reinsurance underwriting as it did last year—$31 million—but he added that profits from general business should enable the company to maintain its current 18% dividend rate. ■

Wamsley named risk manager at Toyota U.S.A

comings & goings: buyers

Gwen Wamsley has been named national risk manager at Toyota Motors USA Inc. in Torrance, Calif. In this newly created post, Ms. Wamsley is responsible for the property, casualty and workers compensation exposures of the Japanese automaker's U.S. operations. She also serves in an advisory capacity to Toyota's captive insurer, Toyota Motor Insurance Corp., managed by Becher & Carlson Management (Vermont). Ms. Wamsley had been risk manager at Elixir Industries in Gardena, Calif. Ms. Wamsley, 34, reports to Doug West, associate general counsel and manager of Toyota's products litigation department. She received a bachelor's degree in business administration from the University of Iowa in Iowa City.

* * *

Lea Sirota has been named risk manager at Elixir Industries in Gardena, Calif., succeeding Ms. Wamsley. Ms. Sirota will be responsible for all the risk management, safety, and employee benefit programs at Elixir, which produces parts used in the mobile home, trailer and manufactured housing industry. She is also executive vp at Garden Insurance Co. of Vermont, Elixir's recently formed captive, which insures most of the company's exposures. And, she is executive vp at Garden Insurance Services, an agency that writes workers compensation, automobile and products liability and property coverages for the manufactured housing industry. She reports to Elixir Chairman Mort Firestone. She had been assistant treasurer at Newhall Land & Farming Co., a real estate development firm in Valencia, Calif. Ms. Sirota has a bachelor's degree from the University of California at Los Angeles and a master's in business administration from Pepperdine University in Malibu, Calif.

* * *

Dick Smith has resigned as director of risk management at Cedars-Sinai Medical Center in West Hollywood, Calif., to take a consulting position with Towers, Perrin, Forster & Crosby in Century City. No one has been named yet to replace Mr. Smith. Mr. Smith, 49, will start at TPF&C Dec. 9 and will report to Russ Nash, primary consultant. Mr. Smith, who worked at Cedars-Sinai for three years, will serve primarily as a consultant to hospitals and health care facilities. He received a bachelor's degree in business administration from Arizona State University in Tempe.

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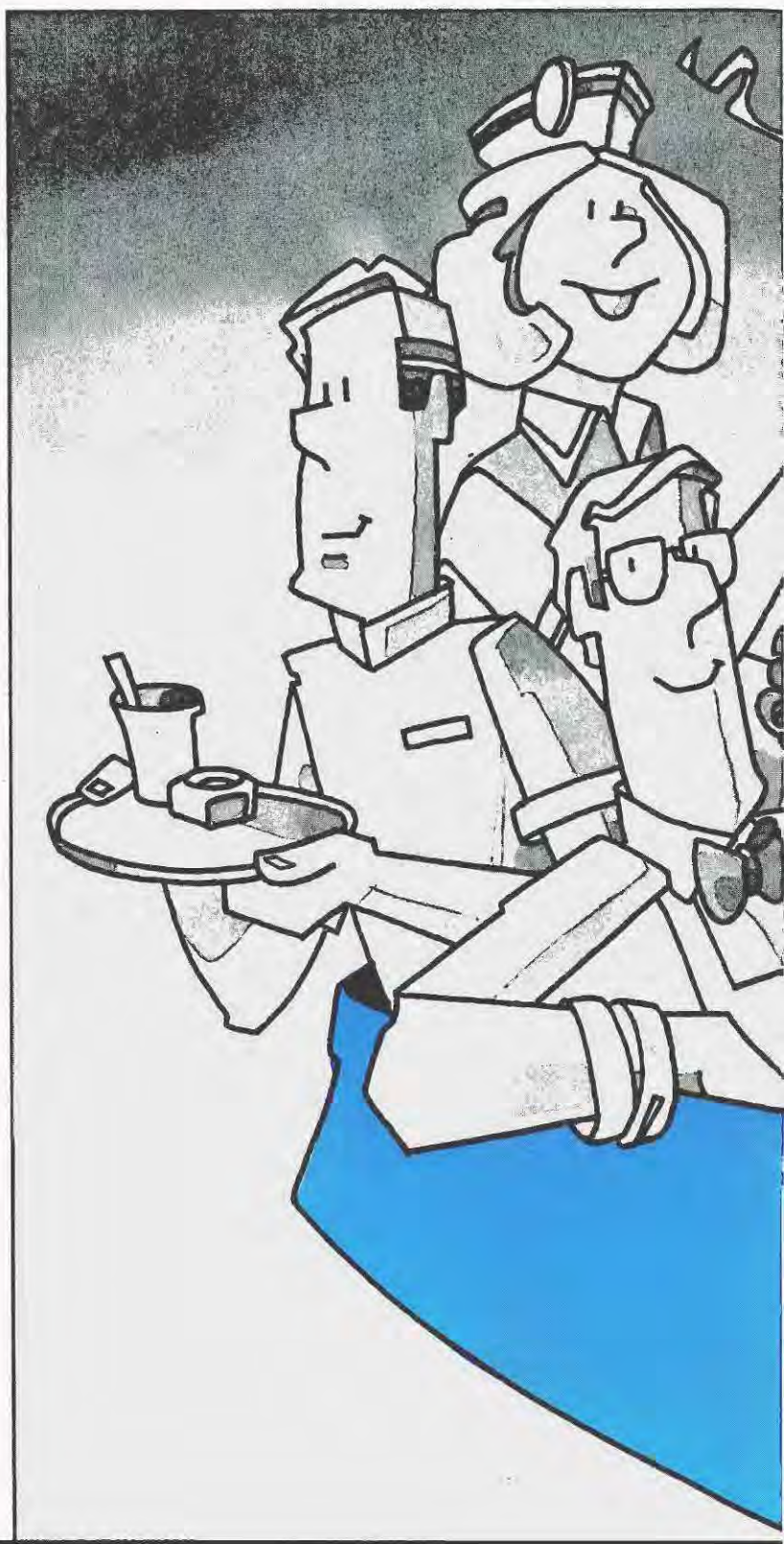

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Claims-made 'an abomination': Attorney

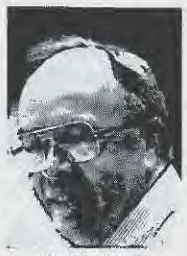
By MICHAEL BRADFORD

NEW YORK—The Insurance Services Office's revisions to its commercial general liability claims-made policy form only make a bad situation worse, according to an attorney who is trying to derail the new form.

"Technically, this new form is an abomination, and the recent amendments filed by ISO make bad even worse," said Eugene Anderson, a New York attorney with Anderson, Russell, Kill & Olick.

"I have not heard a substantive criticism of this contract anywhere," countered ISO Senior Vp Richard R. Savage.

"I submit once again, it is ready for the marketplace. It will tend to provide the markets that all the insureds, producers, and everybody wants it to provide. Certainly insurance companies are in the business of providing insurance and they want to continue in that role from this time forward," Mr. Savage said.


Mr. Savage

Mr. Anderson and Mr. Savage debated the claims-made form at a luncheon sponsored last month by the New York chapter of the Society of Chartered Property & Casualty Underwriters.

"It's said that a camel is a racehorse designed by a committee. I will tell you that you don't improve that camel's time on the track by shortening or lengthening the tail," Mr. Anderson said, referring to the revisions ISO filed with state regulators in late October concerning the claims-made form.

Those revisions included changes to "tail" coverage made available to policyholders to cover claims filed after a contract expired that relate to occurrences during the policy period. The revisions provide automatic tail coverage for claims made within five years of the policy period related to occurrences reported during the policy period—if no other insurance is applicable.

Endorsements also were withdrawn that would have allowed insurers to restrict the availability of unlimited tail coverage.

In addition, revisions to the form make it possible for aggregate policy limits to be reinstated for tail coverage, change the trigger of coverage to include coverage for claims made verbally as well as in writing during the policy period and limit conditions by which an insurer may advance the retroactive date of a policy.

Mr. Anderson

Mr. Anderson, whose clients include corporate policyholders with coverage disputes against insurers, frequently has spoken against the claims-made form. He also has urged regulators to delay approving the form at least until underwriting results for 1985 are compiled, suggesting insurers' results will help determine if the new form is needed.

ISO, however, continues to press for a Jan. 1 implementation of the form. As of mid-November, only Mississippi, Montana and Utah had approved the revised forms, and most major insurers were saying they would not be ready to use the format by Jan. 1 (*BI*, Nov. 18).

Mr. Anderson attacked the language of the new form: "This new form continues in the claims-made portion to use the occurrence concept. The words 'occur' and 'occurrence' are still there and are undefined, and the reason they are undefined is because ISO doesn't know what they mean.

"The new form requires notice of occurrence. Now, since no one knows what an occurrence is, no underwriter and no risk manager knows when to give notice or what to give notice of," he said.

"It is an outrage that a concept about which the entire property and casualty industry has complained for 15 years would again be visited upon insurance buyers," Mr. Anderson charged.

Mr. Savage countered that "Occurrence is defined as an accident including continuous and repeated exposures and harmful conditions."

Mr. Anderson said insurance buyers need coverage for losses incurred but not reported. "They need a risk-spreading mechanism, and the persons injured by the activities of policyholders need a source from which they can get compensation."

The ISO CGL form doesn't provide that, he says. "This new program results in a massive reduction in limits."

London underwriters of umbrella and excess coverages are "going to be pretty surprised at how soon the primary layers are exhausted and insurance buyers get into the excess limits," he said.

Mr. Savage, however, said London underwriters have "applauded" the proposed use of the ISO claims-made form for U.S. risks that may seek umbrella and excess coverages in London.

Mr. Savage further defended the claims-made form: "When you insure, you want to know what the playing ground looks like. That playing ground continues to change. See our court system and what has happened to the playing ground in the last 20 years.

"When you insure, you want to know what your maximum potential liability is. You don't know that today. You will tomorrow."

The new ISO program provides a continual, reliable scope of coverage for the insured, he said.

Mr. Savage referred to the enormous expense of current asbestos-related litigation in California.

He asked, "Was it about liability? Absolutely not. Is it about compensating people? Absolutely not. It's trying to decide which policy applies to a claim for damages, and that's all it's about.

"And that case has been going on, and they aren't anywhere near completion of it."

If a claims-made form had been in force, that litigation never would have happened, said Mr. Savage.

Plaintiffs' attorneys have benefited from writing risks on an occurrence basis, said Mr. Savage.

But, he added: "Nothing says there has to be insurance available for every type of risk. Nothing says that asbestos products manufacturers have to have insurance. Nothing says there has to be insurance for the tobacco manufacturers."

Mr. Anderson replied: "This industry makes its living off automobile accidents, and it makes its living by insuring companies and institutions that somehow cause bodily injury or property damage." ■

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Pension plan reversions total $9.45 billion since '80

WASHINGTON—Companies with pending or approved pension plan terminations reaped $9.45 billion in surplus assets since May 1980, data from the Pension Benefit Guaranty Corp. shows.

In addition, the average size of the plan terminated and the average asset reversion has increased, the data shows.

However, companies only recovered 33% of total pension assets from plans that were terminated during the third quarter of 1985, compared with a reversion of 45% of the assets of plans terminated during last year's third quarter, the PBGC says.

Since May 1980, corporations have grabbed 41% of total available assets through completed and pending terminations with reversions of $1 million or more. Those plans had total assets of $22.78 billion.

Reversion as a percentage of total plan assets skyrocketed to 63.7% after the third quarter of 1984, but has begun to decline this year.

Excluded from the PBGC data is Chicago-based FMC Corp., which announced Nov. 8 that it intends to recapture between $250 million and $400 million through the termination of its pension plans. The plans have $900 million in assets.

William H. Schumann, director of investments for FMC, said the company has yet to decide how much of the surplus it will recover. "We are contemplating leaving in enough assets to adequately fund the future accrual of benefits to reduce future contributions," he said.

The reversion would represent 28% to 44% of FMC's pension assets.

According to the PBGC's statistics, 82 notices with termination dates during the third quarter of 1985 were filed for plans with total assets of more than $6.5 billion. The average plan terminated had $79.3 million in assets.

Sixty-five notices were filed for plans with termination dates during the third quarter of the previous year. These plans had total assets of $1.7 billion or an average of $26.2 million per plan.

Plans with termination dates during the third quarter of 1985 had an average reversion of $26.5 million, compared with $11.7 million in the corresponding period of 1984.

The third-quarter 1985 statistics were skewed by UAL Inc.'s $962.2 million reversion from the termination of five plans with total assets of $1.6 billion and Union Carbide Corp.'s reversion of $500 million from the termination of its $2.8 billion plan.

If those terminations were excluded, the average reversion among plans terminated in the third quarter would have been only $8.9 million.

Among recent termination applications filed with the PBGC:

- Michelin Tire Corp. in Lake Success, N.Y., wants to terminate a plan with assets of $134.1 million and a surplus of $53 million.
- Phibro Salomon Inc. of New York wants to terminate a plan with assets of $70 million and a surplus of $33 million.
- Penn Mutual Life Insurance Co. of Philadelphia wants to terminate a plan with assets of $76.4 million and a surplus of $33 million.

The increase in the number of employers terminating plans in the third quarter could be indicative of the urgency under which some plan sponsors are operating to reap the benefits of pension plan reversions. Companies are terminating now rather than risk the possibility that Congress could impose regulations that would make such terminations less profitable.

Several attempts have been made in Congress—primarily by Rep. Edward R. Roybal, D-Calif., and Sen. Howard Metzenbaum, D-Ohio—to impose a moratorium on asset reversions. The Reagan administration strongly opposes such a moratorium.

In addition, the Treasury Department's tax reform proposal suggests that a 10% excise tax be placed on surplus asset reversions.

—Crain News Service

Reinsurance brokers consider new group

CHICAGO—Reinsurance brokers want an official voice in the reinsurance marketplace.

A group of about 30 brokers responded to an invitation from Los Angeles-based reinsurance broker RFC Intermediaries Inc. and its vice chairman Mac Henderson to attend a meeting during the recent conference of the National Assn. of Independent Insurers to discuss the possibility of forming an association of reinsurance brokers. Currently, there is no such association of reinsurance brokers.

Joseph A. Zaffarese, president of Frank B. Hall Re of New York Inc. in New York, was selected as chairman pro tem of the fledgling organization, which has not yet been named. ■

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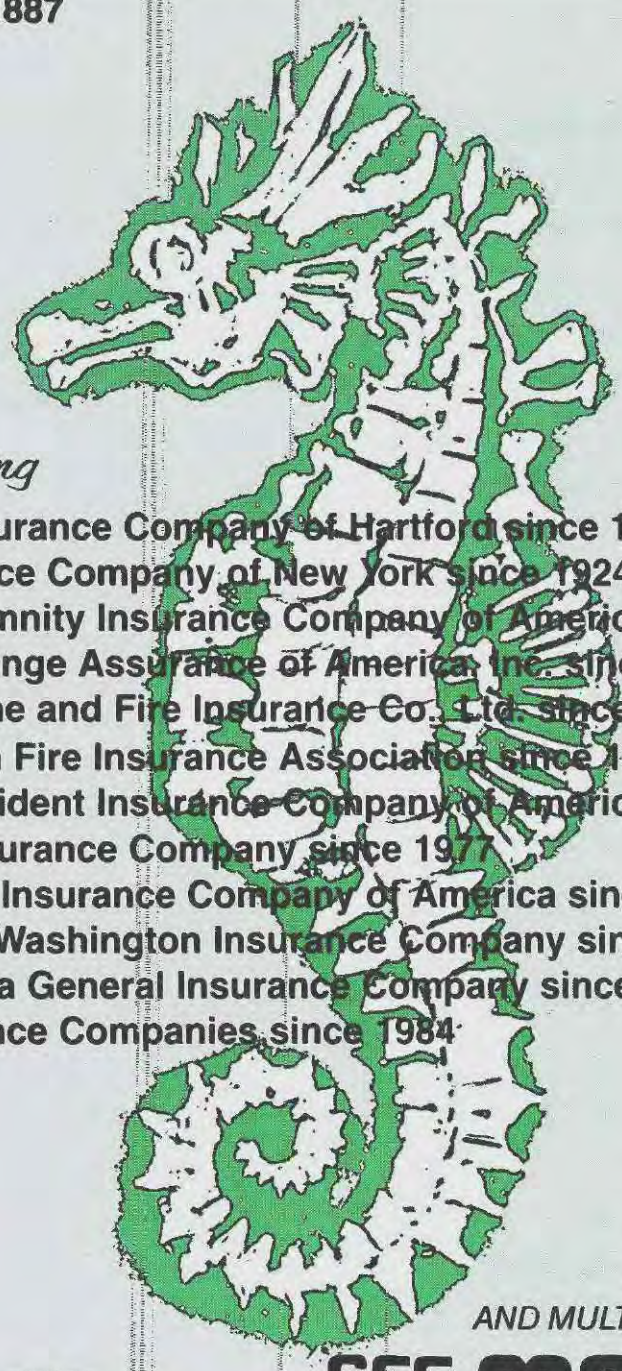

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Commercial market getting worse: Survey

The commercial insurance market is even tighter than it was at the start of this year, according to a recent survey.

The survey, by the Washington-based Machinery & Allied Products Institute, is an update of a similar survey released in March.

MAPI says that when the first survey was released, "the long-predicted tightening of the commercial insurance market had occurred and many were finding or were anticipating greatly increased premiums and a lack of capacity."

MAPI says the recent survey, of 81 manufacturing companies nationwide, shows "that price increases and a capacity crunch continue to accelerate and that the insurance path indeed appears to be leading to what one survey respondent characterized as 'a total debacle effective Jan. 1, 1986.'"

The survey found that manufacturers were reporting significantly higher premiums, higher deductibles, lower capacity and more-restrictive policy wordings.

The respondents rated a shrinking of the reinsurance market as the most-important factor in the tightening commercial market.

Trends in liability law was ranked as the No. 2 cause, followed by an increasing number and level of claims and lower standards of underwriting in the past.

Survey findings in specific lines of coverage included:

- Premiums for liability coverage. Some 73% of the respondents said that the premium for their most-recently negotiated general liability coverage was higher than for their previous coverage. The median increase reported was 40%. Only 27% said their premiums remained the same.

For excess liability coverage, all respondents reported an increase, with a median hike of 250%.

For directors and officers liability coverage, 72% reported an increase in premium, and the median increase was 300%. Some 26% reported no change in premium.

For environmental liability coverage, 94% reported a premium increase, and the median increase was 60%.

For product liability coverage, 95% said they had a premium increase, with a median jump of 116%. The remaining 5% reported no increase in premium.

And, for other liability coverages, 87% reported a premium increase, with a median of 40%. The remaining 13% reported no change.

- Premiums for property coverage. For fire and extended property coverage, 78% reported an increase, with a median jump of 35%. Nineteen percent reported no change, and 3% reported a decrease.

For property difference-in-condition coverage including earthquake coverage, 95% reported a premium hike, with a median of 70%. Five percent reported no change.

For property DIC excluding earthquake coverage, 100% of the respondents reported an increase, with the median increase 45%.

Some 64% of the respondents reported higher premiums for other property coverages, with a median increase of 20%. Thirty-one percent reported no change, and 5% said their premium decreased.

- Available limits on liability coverages. For general liability, 85% of the respondents said they could get the same limits of coverage in their most-recent policy as in their previous policy. Thirteen percent said their available limit was lower; 2% said it was higher.

But, for excess liability coverage, only 31% reported the same available limits. For 66%, the limits had dropped; 3% reported higher available limits.

For D&O coverage, 70% reported the same limits available, 27% reported lower limits and 3% reported higher limits.

No respondents reported higher available limts for property DIC, with or without earthquake coverage. For DIC including earthquake coverage, 58% reported lower limits and 42% reported no change. For DIC excluding earthquake risks, 60% reported lower limits and 40% reported no change.

coverages. For fire coverages, 90% of the respondents reported the same available limits, 7% reported lower limits and 3% reported higher limits.

No respondents reported higher available limts for property DIC, with or without earthquake coverage. For DIC including earthquake coverage, 58% reported lower limits and 42% reported no change. For DIC excluding earthquake risks, 60% reported lower limits and 40% reported no change.

- Deductibles in liability coverage. For general liability coverages, 34% of the respondents reported that their current policy has higher deductibles than their previous policy, while 66% reported the deductible was unchanged. In this and all the liability and property classes, in some cases the insurers would not quote at a lower deductible, and in some cases the company accepted a higher deductible to get the coverage it sought.

For excess liability coverage, 75% reported the same deductible and 25% reported an increase.

For D&O coverage, 49% reported deductibles had increased and 49% reported no change; 2% reported lower deductibles.

For EIL and product liability coverages, 50% reported higher deductibles and 50% reported no change.

- Deductibles for property coverage. For fire coverage, 74% reported the same deductibles and 26% reported higher deductibles.

For property DIC including earthquake, 57% reported higher deductibles and 43% reported no change. For DIC excluding earthquake, 62% reported no change and 38% reported an increase.

- Exclusions for liability coverages. Overwhelmingly, the respondents reported increased exclusions in all the lines of liability coverage. Increased exclusions were reported by 89% of the respondents for EIL coverage, 95% for D&O coverage, 96% for excess liability coverage, 97% for primary liability coverage, and 100% for product liability and for other liability coverages.

- Exclusions for property coverage. The vast majorty also reported stricter wording on property coverage. Increased exclusions were reported by 82% of the respondents for DIC including earthquake, by 83% for fire and for other property coverages, and by 100% for DIC excluding earthquake.

In summing up the experiences in the current market, one respondent said, "To quote Sabatini, I am glad that 'I was born with the gift of laughter and the sense that the world's gone mad.'"

●

Copies of the survey, "MAPI Memorandum G-194," are available for $15 for MAPI member company officials and $25 for others, from the Machinery & Allied Products Institute, 1200 18th St. N.W., Washington, D.C. 20036.

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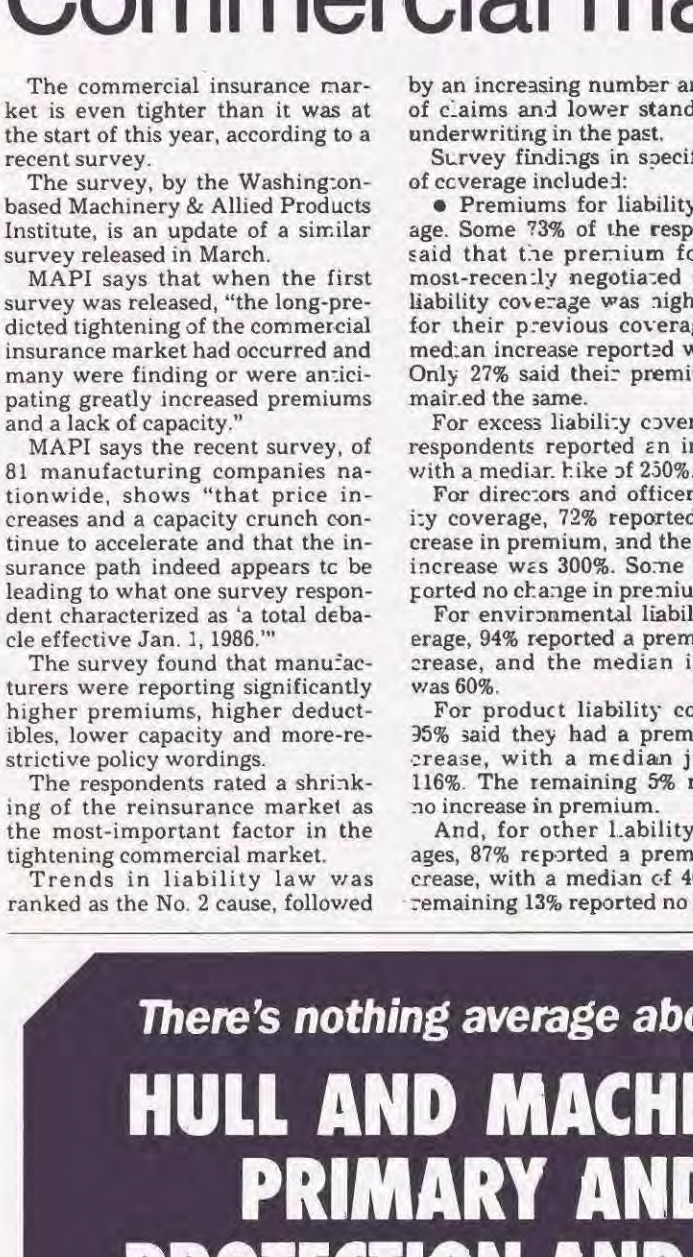

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Officials cope with fiduciary liability hikes

By STEVE HEMMERICK and TRUDY RING

Fiduciary liability insurance, which is purchased by 80% to 90% of private pension plan sponsors and many sponsors of public pension plans, costs 50% to 500% more than it did six months ago, market observers say.

However, most pension plan managers will continue to buy the coverage as a necessary cost of doing business and because of an increasing number of fiduciary liability lawsuits, they add.

"Most people that do buy (fiduciary liability insurance) now have made a conscious decision to buy it and will stay with it," said Ron Boggs, a consultant in the Chicago office of The Wyatt Co., which publishes a survey on directors and officers and fiduciary liability insurance (*BI*, Jan. 21).

According to Wyatt's 1984 survey, premiums for fiduciary liability coverage decreased an average of 13% to 14% from 1982 to 1984.

"But I firmly believe that 1985 premiums will be significantly higher than 1984," Mr. Boggs said. "It will be carried with the tide."

Lawsuits charging breaches of fiduciary duty have increased, notes Albert Salvatico, a managing director at Marsh & McLennan Inc. in New York. These suits are often triggered by the underfunding of a defined benefit pension plan or by an employer's attempt to recover assets by terminating an overfunded plan, he said.

For instance, two pension plan participants have already sued Wheeling-Pittsburgh Steel Corp. in Pittsburgh, seeking to hold company officials, as well as the United Steelworkers of America, responsible for the underfunding of the company's pension plans.

Wheeling-Pittsburgh told the Pension Benefit Guaranty Corp. in October that it intends to terminate four plans that have $475 million in unfunded liabilities (*BI*, Nov. 4).

Besides the increase in fiduciary liability claims, observers also blame the rate increases on decreasing capacity.

M&M's Mr. Salvatico says at least one market no longer writes fiduciary liability coverage, while many others have cut capacity.

The limited capacity for fiduciary liability coverage means that it may not help buyers to shop around for the best price, says Gary Swinhart, director of risk management for California Portland Cement Co. in Los Angeles.

"Shopping around is worthwhile. . .but I would caution anyone against shopping just for the cheapest price," adds Dennis E. Hoffman, president of John Deere Insurance Group Inc. in Moline, Ill.

"You have to look at the stability of the company, whether it will be there to service your need," he said.

Richard Inserra, director of risk management at American Can. Co. in Greenwich, Conn., said employers might be better off trying to negotiate the best deal with their current insurer rather than looking to switch companies.

He noted American Can avoided the 1985 rate hikes by renewing its fiduciary liability coverage for a three-year policy period in 1984.

Despite the large increases, some point out that fiduciary liability insurance is not a huge expense for an employer.

"It's a relatively small part of the total insurance budget for a large corporation or even a small corporation," said James Talley, deputy national manager of the executive protection department of Chubb & Son Inc. in Warren, N.J.

Another pension-related property/casualty coverage—errors and omissions coverage for investment or money managers—is also becoming more costly.

'I would caution anyone against shopping just for the cheapest price,' says Mr. Hoffman.

Rates for E&O coverage for money managers are generally rising 200%, but rate hikes can range as high as 2,000%, underwriters and brokers say.

About 55% of investment managers, including mutual fund managers, now purchase E&O coverage, says Bill Baker, an account executive with Baltimore broker Tongue, Brooks & Co.

Mr. Baker noted that a money manager could be sued for negligence if the company's investments underperformed the market by a number of points. Even though such charges would be difficult to prove, a client could still sue and the manager would need coverage for defense costs, he said.

One investment consultant, Doug Dorn, a principal with Dorn Helliesen Inc. in Larkspur, Calif., said he has been told the one reason behind the increase in E&O rates is the number of frivolous suits filed against money managers.

"I don't know what (money managers) are going to do," he said. "They are at the mercy of the insurance companies."

However, some money managers are not affected by the E&O increases because they do not buy the coverage.

Fred Denman, a sales representative for Ariston Capital Management in Bellevue, Wash., which manages about $12 million in tax-exempt assets, says he never has thought about having errors and omissions coverage.

Mr. Denman said clients give his company the authority to invest their money and Ariston has promised to make a best effort. When a client makes an investment decision, he or she accepts the risk of that decision, he explains.

Mr. Dorn agreed, noting that any investment involves risk. "What is an error in the investment business?" he asked.

However, Michael Gordon, a Washington pension attorney, said he finds it "very troublesome" that an estimated 45% of money managers do not buy E&O coverage. He said he would be uncomfortable about a client hiring a manager that does not have E&O coverage or strong financial resources.

A pension plan fiduciary, he said, could be held responsbile for not checking to see if a money manager for the plan was adequately insured or had the finanical resources to self-insure its E&O exposures.

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GroupFacts, ClaimFacts, ImpleFacts

COIL conference

Continued from page 2

"Next to water, commercial liability insurance is probably the hottest legislation issue in Arizona," said S. David Childers, Arizona's director of insurance.

Arizona, like several other states, has a select legislative committee studying the affordability and availability of liability coverage, as well as a commission appointed by Mr. Childers.

In addition, COIL adopted a resolution calling for the formation of a task force to review the results of the various state studies and to make their findings known to COIL members.

The COIL task force also will meet with representatives of the National Assn. of Insurance Commissioners to develop a coordinated response to current insurance market conditions.

"We will cooperate with COIL or anyone else on this problem," said Josephine M. Driscoll, vp of the NAIC and Oregon's insurance commissioner. Ms. Driscoll is expected to be elected president of the NAIC Dec. 11 at the group's winter meeting in Reno, Nev.

Ms. Driscoll told the COIL meeting that amendments to the NAIC's model law on guaranty funds also are expected to be considered for adoption during that meeting.

The amendments, suggested by an NAIC task force, would permit only companies with a net worth of less than $10 million to recover from guaranty funds if their insurers go broke and can't pay claims (*BI*, Nov. 25).

Ms. Driscoll

The amendments also would exclude certain types of coverage, like financial guarantees and professional liability insurance, from guaranty fund reimbursement, she said.

"There's just not the capacity out there to cover everything," Ms. Driscoll told members of a joint NIAC/COIL committee.

"I believe this probably will be a battle fought in the legislatures. . . .That's where we're going to need your expertise," she told the lawmakers.

Ms. Driscoll said that the insurance industry is usually blamed whenever there are coverage affordability or availability problems. But, recent coverage problems for municipalities, she pointed out, were caused by the removal of sovereign immunity statutes that protected public entities.

Increasing judgments against insurers and high jury awards also are compounding the problem, Ms. Driscoll noted.

Civil justice reform is the single most important topic to address if there is to be stability in the marketplace, Ms. Driscoll said.

Legislators must weigh the testimony presented by the insurance industry and other groups to make decisions on civil justice reform, she said.

North Carolina Rep. R.D. Beard, who is the new president of COIL, agreed change is necessary in the tort system "because the public needs it, not because the insurance industry needs it. We have to be careful of our slant."

However, some of the current problems may solve themselves, added Rep. Beard, D-Fayetteville. He cautioned COIL members not to over-legislate.

"I'm one that believes the least government is the best government," he said.

New Hampshire Insurance Commissioner Louis E. Bergeron noted that tort reform must be addressed by regulators and legislators "if we're ever going to solve the problems we now face."

He did not advocate any particular reforms, but he noted that when the New Hampshire Legislature reconvenes in January, "we'll see at least 15 different measures addressing it."

An Arizona risk manager also labeled the civil justice system as "the root cause" of the current insurance problems.

Norman L. Cocanour, risk manager at Arizona Public Service Co. in Phoenix, wants to see a return to the time when insurance can be written on a quantifiable, predictable exposure.

Mr. Cocanour

"From my perspective, the insurance industry is in total shambles," he said.

Mr. Cocanour noted that insurers are limit ing the scope of coverage in several lines, are limiting capacity and are issuing multiple policy forms with which risk managers must cope.

"Each carrier has its own claims-made form. . .its own exclusion approach," he said.

However, William S. Gibson, vp and director of government affairs with Continental Insurance Cos. in New York, replied, "The insurance industry is *not* in a total shambles."

He pointed out that workers compensation insurance, a major commercial property/casualty coverage, doesn't have major affordability and availability problems. The availability of property insurance also is not a serious problem, he said.

"Basically, we're talking about liability insurance. . . .Major insurers recognize we get into these periods because of cyclical needs," he said.

"We will work—those of us that are still solvent—with the local authorities in every state to meet the legitimate market problems," Mr. Gibson pledged. However, he explained that does not mean insurers will write environmental impairment liability risks.

"It would be insane for an insurer at this present time to cover these kind of risks. . . .You have to develop forms that are 'judge-proof,'" he said, referring to the need for civil justice reform.

Civil justice reform also will be a major focus of legislation next year, according to the COIL survey.

Some 60% of the lawmakers responding to the survey said they were drafting civil justice reform legislation, Mr. Davis said. Some said their proposals would call for caps on damage awards.

A large percentage of the respondents also said they see more buyers turning to self-insurance, particularly municipalities.

"And, they won't go back to insurers," Mr. Davis said.

Those employers that decide to self-insure usually are good risks, noted Arkansas Rep. David E. Roberts, D-North Little Rock. Mr. Roberts was COIL's president in 1984-85.

The COIL survey also asked lawmakers to rank the coverages that were most difficult to obtain in their states. Medical malpractice was ranked first, followed by municipal liability; health care liability, which includes coverage for day-care centers and nursing homes; and liquor liability.

Pollution liability was "pretty far down on the list," Mr. Davis said. He added that directors and officers liability coverage, as well as errors and omissions coverage, did not appear to be a problem. ■

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Mission bailout plan

Continued from page 1

The California department has been negotiating with representatives of AFC since the MIC conservation order for money to bail out MIC. The current agreement was reached in principle last Monday.

"This is the best solution at the moment. If anyone has a better one, we'll listen to it," California Insurance Commissioner Bruce Bunner says of the proposal.

The plan must be approved by Mr. Bunner, AFC, MIG's debt holders and Los Angeles Superior Court.

Mr. Bunner also says support from MIC's ceding companies is key to the success of the plan.

Many of MIC's ceding companies also provided MIC with reinsurance on its direct business. Mission American wants to be assured that it will be able to collect on this reinsurance regardless of the ability of MIC to pay its obligations to these companies as reinsurance policyholders. Mission American does not want these companies to offset reinsurance payments due Mission American with claims owed them by MIC.

The California Insurance Department appears to be lobbying for MIC reinsurance policyholders to accept the plan.

MIC's reinsurance policyholders would benefit from the plan because most of them write direct business and would be subject to assessments from guaranty funds if Mission were liquidated as an insolvent company, says Joe A. Morton, California deputy insurance commissioner and chief of conservation and liquidation.

And, these ceding companies would not be able to collect on any claims from guaranty funds and would be considered unsecured creditors in liquidation.

If the proposed agreement falls through, California likely will proceed with liquidation of MIC, Mr. Bunner says.

"This plan is really a boon to the insurance industry," Mr. Morton says. "It will make the whole industry breathe easier." Forcing insurers to pay assessments to guaranty funds to pay claims if MIC were liquidated "would really be back-breaking," he says.

Under the proposal, AFC would infuse $125 million into Mission American, MIG's principal underwriting arm since July, in exchange for shares of preferred stock in Mission American, according to an AFC spokeswoman in Cincinnati. Mission American could not support the infusion of business from MIC without this additional capital, the spokeswoman said.

'This is the best solution at the moment. If anyone has a better one, we'll listen to it,' California Commissioner Bunner says.

AFC agreed to that transaction only if all the direct property, liability and workers compensation policies written by MIC and its subsidiary insurers would be transferred to Mission American, leaving only reinsurance-assumed business in MIC, she said.

MIC's reinsurance-assumed business includes reinsurance contracts written by MIC and its subsidiary Mission Reinsurance Corp. through two affiliated underwriting managers, Pacific Reinsurance Management Corp. and Mission Reinsurance Management Corp. The underwriting managers are now being sued by reinsurers that also contracted with them for underwriting services. The reinsurers are charging mismanagement and are asking that their contracts be rescinded.

MIC's four insurance subsidiaries taken over last week by the California Insurance Department were found insolvent by $133 million. These insurers, now in conservation in California, are: Enterprise Insurance Co. and Mission National Insurance Co., both domiciled in California; and Mission Reinsurance Corp. and Holland-America Insurance Co., both domiciled in Missouri.

California has the authority to take conservation action against any company licensed in the state with significant assets. Missouri, which seized Transit Casualty Co. last week, did not object to California's action against the Mission insurers domiciled there.

Mission Insurance Co. of Texas Inc., domiciled in Texas, also was placed into conservation by the Texas department but was not declared insolvent.

Texas regulators also have placed Holland-America Lloyds, an MIG affiliate, under state supervision and have set a Jan. 21 hearing in Austin to determine further action. ■

Damage estimate for Gloria revised

NEW YORK—The estimate of insured property damage from Hurricane Gloria has been revised upward to $418.75 million from $340 million, according to C.E. Hermanson, vp of the Property Claim Services division of American Insurance Services Group Inc. in New York.

Hurricane Gloria struck New York, Connecticut and sections of New England on Sept. 26-27 (*BI*, Oct. 7).

Primarily responsible for the revised estimate were increases in the damage estimates in New York —to $170 million from $130 million —and in Connecticut—to $90 million from $55 million.

However, millions of dollars of damage to electric power lines in the Northeast were not covered by insurance, electric utilities reported.

The hurricane has been assigned Catastrophe Number 82 by Property Claim Services. ■

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Punitive damages

Continued from page 1

The impact "would be dramatic" if the court decides in the insurers' favor, says Jack Goodman, an attorney for the plaintiffs with the Washington firm of Pierson, Ball & Dowd.

However, several other issues besides the constitutionality of punitive damages are involved in the case, so the Supreme Court could issue a ruling without ruling on the constitutionality of punitive damages, attorneys caution.

Or, since the court deferred ruling on jurisdiction until it heard the merits, the case could be dismissed for a lack of jurisdiction.

The case before the Supreme Court involves the partial denial of a medical claim filed by the wife of a Mobile, Ala., city employee covered under a group health and medical insurance policy written by Aetna.

In 1977, Margaret Lavoie was admitted to a Mobile hospital for 23 days. The bill for treatment, hospitalization and tests totaled $3,028.

However, Aetna paid only $1,378 of the insurance claim. It refused to pay $1,650 for the tests and hospital room and board.

Aetna contended Mrs. Lavoie could have been treated as an outpatient and that the tests were not "usual and customary" procedures for a patient with her symptoms, which included both physical and psychological disorders.

In 1978, Mrs. Lavoie sued Aetna for the remaining portion of the bill, plus punitive damages.

However, because Alabama did not have a law recognizing recovery for an insurer's bad-faith failure to pay an insurance claim, the issue of whether Mrs. Lavoie could recover from Aetna went back and forth between the trial court and the state Supreme Court. Finally, in October 1981, the Supreme Court ruled that there was a tort for bad faith and that punitive damages were recoverable.

The Lavoie case subsequently went to trial and on Nov. 4, 1982, the jury awarded Mrs. Lavoie the $1,650 remaining on her insurance claims and $3.5 million in punitive damages.

The total award, which is more than 2,000 times the $1,650 Aetna refused to pay the Lavoies, was subsequently affirmed by the Alabama Supreme Court.

"The plaintiffs were able to show the dark shadows of fraud and conspiracy enveloped each and every aspect of Aetna's actions regarding the handling of the Lavoie claim from the instance of the first denial and continued throughout the trial itself," the state Supreme Court said.

Aetna appealed the case to the U.S. Supreme Court.

In addition to whether punitive damages violate the Eighth and 14th Amendments, the issues before the Supreme Court include:

- Whether Aetna's right to a fair, unbiased hearing of its appeal to the state Supreme Court was denied because one of the justices on the Alabama Supreme Court was involved in a class action against an insurer that sought punitive damages for the insurer's alleged bad-faith failure to pay insurance claims.
- Whether Aetna's liability for punitive damages was a violation of the contract clause of the U.S. Constitution because it imposed a new, unanticipated obligation on Aetna's insurance contract with Mrs. Lavoie years after the contract was executed and performed.
- Whether an Alabama statute that imposes on defendants that appeal a damage award a penalty equal to 10% of the award is unconsititutional under the equal protection clause of the 14th Amendment because a similar penalty is not assessed defendants that are not ordered to pay a monetary judgment.

However, it is Aetna's argument that the awarding of punitive damages in the Lavoie case violates the "excessive fines" clause of the Eighth Amendment and the "due process clause" of the 14th Amendment that has drawn the attention of the insurance industry and the plaintiffs' bar.

Traditionally, the Eighth Amendment protection against excessive fines has been applied only in criminal proceedings. However, Aetna, tracing the history of the excessive fines clause to the Magna Carta and the English Bill of Rights, argues that the clause also applies to punitive damages in civil proceedings.

"The sources of the Eighth Amendment—Magna Carta and the English Bill of Rights—would have applied the principles embodied in the Excessive Fines Clause directly to control punitive damages," Aetna says.

Moreover, Aetna contends that the $3.5 million award is clearly excessive. "The only available measure of proportionality is to compare those contract damages (the $1,650 not paid to the Lavoies) with the $3.5 million punitive damages award," the brief says. "The ratio is about the same as four hours bears to one year.

"A bar graph showing the punitive damage award as the height of this page (of its brief) would have a small, virtually invisible speck (seven one-hundredths of one sixteenth of an inch) on the bottom of the page to represent the actual damages."

In addition, Aetna says that if it had been found guilty of business fraud under the state's criminal statute, the penalty would have been only $3,000. And, if it had been found guilty of a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), the remedy would have been 700 times smaller than the award in the Lavoie case.

If the high court decides the case on these issues, it would the first time that the court has ever addressed the constitutionality of the excessive fines clause of the Eighth Amendment, attorneys say.

"As far as we know, the excessive fines clause has never been argued before the court in any form," says Larry L. Sims, an at-

Continued on next page

Leap in punitive damages cited

WASHINGTON—In criticizing the excesses of punitive damages and the havoc it has created for American busineses, insurers in the *Aetna Life Insurance Co. vs. Lavoie* case point to the tremendous growth in punitive damages.

Since Jan. 1, 1983, juries in California have awarded punitive damages in a least 240 cases with verdicts totaling about $450 million, says a brief filed by insurance trade organizations and property/casualty insurers.

In 118 of these cases, the punitive damage award was $100,000 or more, and in 38 the award was $1 million or more.

In the first six months of 1985, five California juries alone have awarded $242 million in punitive damages.

In Cook County, Illinois, the average punitive damages award (measured in 1984 dollars) increased to $489,000 in 1980-1984 from $4,000 in 1960-64, the brief points out.

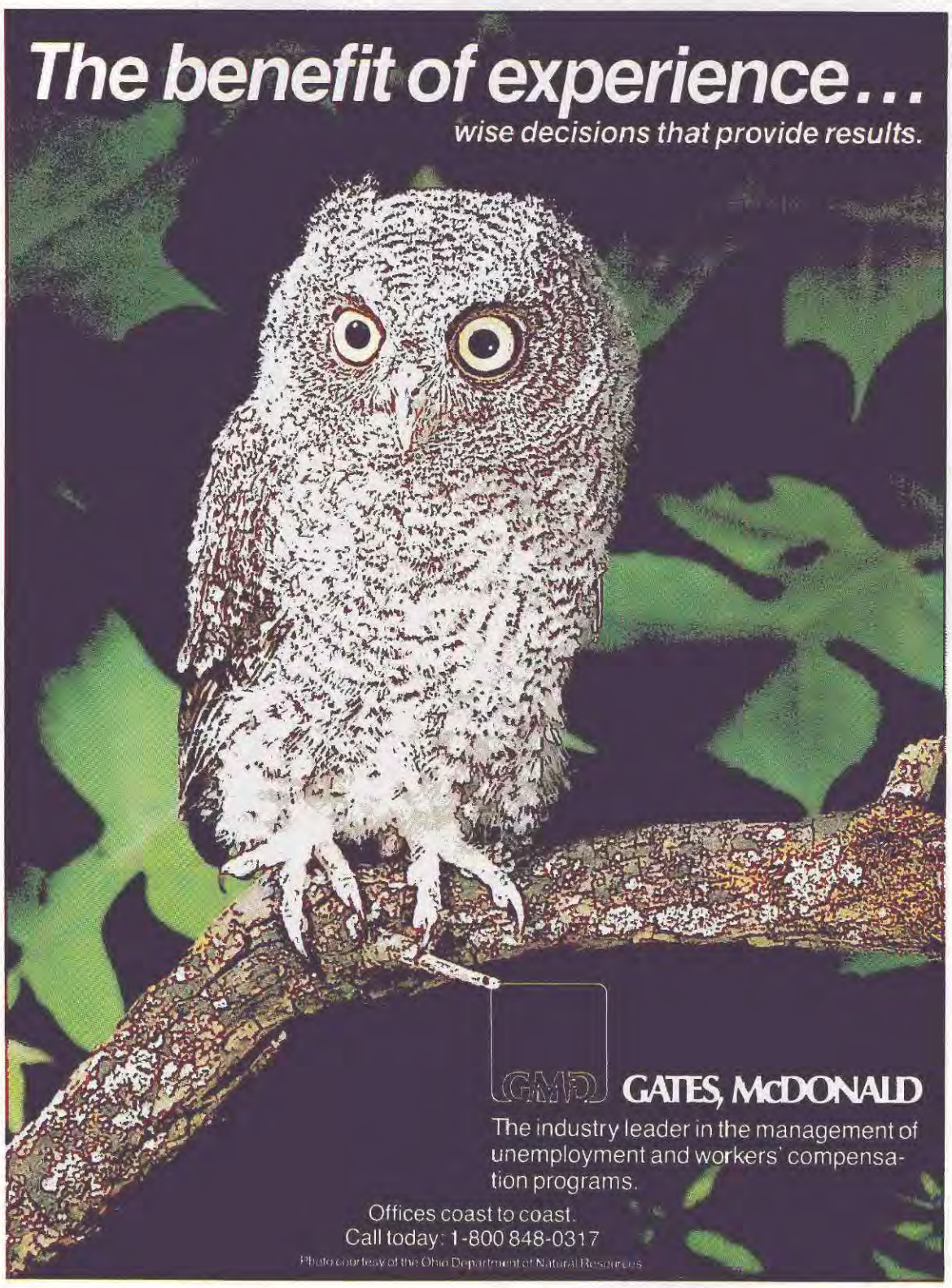
In its brief, however, the plaintiffs' bar contends that the statistics cited by insurers reflect corporate misdeeds and, therefore, restricting punitive awards would invite misconduct.

"The one certainty that can be gained from the amici presentation of statistics is that there is a great deal of tortious and unconscionable conduct which is being exposed and deterred," a brief filed by the Assn. of Trial Lawyers of America and the Assn. of California Trial Lawyers says.

"The fact appellants and their amici are seeking the present requested relief tends to document the fact that the therapeutic value of these verdicts is starting to take effect."

"If more criminals are convicted and punished this year, should we increase the prosecutor's burden and afford the defendants greater protection next year?," the brief asks.

It is also pointed out that the insurers' brief does not reflect the large percentage of verdicts that are reduced by trial or appellate courts.



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Continued from previous page
torney for Aetna with the Washington office of the firm of Gibson, Dunn & Crutcher.

Aetna also argues that the punitive award violates its rights under the due-process clause of the 14th Amendment of the Constitution "because it confiscates a large amount of Aetna's property and transforms it into an extraordinary monetary windfall to the appellees (Lavoies)."

Aetna argues that it was held to a standard of conduct that was not delineated until 14 years after the execution of the insurance contract and four years after performance of the contract.

The brief says the due-process clause of the 14th Amendment prohibits imposing punitive damages where there is an absence of a fair warning that such damages might be imposed; an absence of a rule of conduct by which Aetna could have avoided liability; and an absence of a state interest outweighing the irrational impact on business that punitive damages cause.

Aetna asks that the judgment against it be set aside and the case be sent back to the Alabama courts for entry of a judgment for only the amount of compensatory damages awarded in the case.

The amicus brief filed by the insurance industry with the court contends that punitive damages as presently constituted in most states are indistinguishable from criminal fines.

As a result, companies facing punitive damages should be entitled to some additional procedural safeguards traditionally applied in criminal cases.

"When the civil law inflicts punishment through punitive damages, it acts as the surrogate of the criminal law," the insurers' amicus brief says.

"Accordingly, a defendant facing punitive damages should be entitled to the constitutional safeguards which due process demands whenever punishment is meted out in the criminal system."

The insurers argue that plaintiffs should have to show that a defendant is liable for punitive damages by a higher burden of proof such as "clear and convincing evidence" or "beyond a reasonable doubt." Currently, most states only require plaintiffs to prove "beyond a preponderance of the evidence" that the defendant is liable for punitive damages.

In addition, the insurers argue in their brief that there should be a split-trial procedure in which punitive damages are not examined until the judge or jury has determined that punitive damages are warranted.

Insurers also argue that in Alabama and the majority of other states, there are no meaningful standards governing the amount of a punitive penalty, and thus they are unduly vague and in violation of due process.

"Even if punitive damages properly could be considered civil in nature (they cannot), the present reality of enormous awards—far in excess of any fine which can be levied under existing criminal laws—means there is no room to tolerate vagueness," the brief adds.

"The consequences of imprecision, albeit financial, are frequently draconian."

In their arguments, however, attorneys for the Lavoies and the Assn. of Trial Lawyers of America argue that the Eighth Amendment does not apply to civil proceedings and that punitive damages are not a criminal penalty subject to the Eighth Amendment.

Moreover, they argue the punitive damages awarded in the Lavoie case are not excessive.

"Simply put, the mathematical ratio between a penalty and the victim's monetary recovery is irrelevant under the Eighth Amendment," the Lavoies' brief says.

"The punitive damage award against Appellant manifestly serves and in turn is justified by the historic purposes of punitive damages in civil cases to punish the wrongdoer and deter that party and others from engaging in the same conduct in the future," it adds.

"Especially when the defendant has substantial economic resources, the award must be sufficiently large to have the desired admonitory and behavioral impact," the brief says.

The Lavoies also contend that punitive damages were not assessed against Aetna in violation of due process.

The position taken by Aetna and the insurers "is simply another attempt to shelter tortfeasors by taking away one of the strongest deterrents to tortious conduct, punitive damages," the trial lawyers' brief says.

"The attempt at withdrawal of this remedy shows once again that the insurance industry is more concerned with the profitability of the tortfeasor than the wrongful and tortious misconduct exhibited by these entities."

While the court has not indicated which issues, if any, it will address in the Lavoie case, some believe it is doubtful the court will rule on whether punitive damages are constitituional.

Mr. Horvitz, representing insurers, said, "The odds are the court will not address this issue." He points out that the high court has not addressed the issue before—despite having opportunities to do so—and other issues in the case might be of greater interest to the court.

But he also speculated the Supreme Court might consider the constitutionality of some aspects of punitive damages because of the widespread and increasing problems punitive damages have caused insurers, businesses and the general public in recent years.

Among those that joined the insurers' amicus brief are the American Insurance Assn., the National Assn. of Independent Inurers, Farmers Insurance Exchange, Fire Insurance Exchange, State Farm Insurance Cos., Truck Insurance Exchange, California Insurance Cos. and California State Automobile Assn. Inter-Insurance Bureau.■

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Circulation Breakdown*

Commercial Consumers

Administrative:

CEO's presidents and owners . . . 2,531
Vice-presidents, general managers and other administrative personnel 2,547

Financial:

Chief financial officers and vice-presidents of finance 2,075
Secretaries, treasurers, controllers and other financial personnel . . . 6,886

Risk/employee benefits:

Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations 8,048

Sub-total 22,087

Associations 804
Government, unions and educational systems 1,030

Commercial Consumers

Sub-total 23,921

Insurance agents and brokers 9,548
Insurance companies 6,089
Financial institutions 536
Actuaries, attorneys, adjusters, appraisers and consultants 3,464
Others allied to the field 1,320

TOTAL 44,878

* Source: Business/Occupational breakdown of qualified circulation, May 6, 1985 issue, as submitted to BPA for June 1985. BPA Publisher's Statement.

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- **Evaluation of design, financing and administration of clients' group insurance programs.**
- **Analysis of alternative funding arrangements and carrier underwriting practices.**
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- **Design of effective cost-containment programs.**

Qualified candidates will have a degree (preferably in business or insurance) and a minimum of 4 years of experience as a Group Actuary or Group Underwriter. Candidates must also possess outstanding oral and written communication skills.

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Tax overhaul proposal

Continued from page 1

kicked in the teeth," added Fred Rumack, director of tax and legal services at Buck Consultants Inc. in New York.

There were some losses on the welfare side of the employee benefit ledger, too.

For example, the Ways and Means Committee earlier voted to revoke the tax-exempt status of Blue Cross/Blue Shield plans, a move that could make it more difficult for small employers to obtain affordable health care coverage (*BI*, Nov. 25).

In addition, the committee approved non-discrimination rules for welfare plans, a move that—pending further clarification—could lead to the disqualification of hundreds of employer-provided plans.

But benefit experts, for now, are reserving judgment on these non-discrimination rules. The rules—written in the last chaotic hours of the closed-door Ways and Means Committee drafting session—are so ambiguous and confusing that experts are waiting for the committee's report before evaluating them. That report is expected in the next two weeks.

"No one can make sense of the non-discrimination rules. They can be read in a number of ways," said Terry Stuchiner, a partner at Kwasha Lipton in Fort Lee, N.J.

The tax bill passed by the Ways and Means Committee also contains provisions that could increase the cost of insuring property/casualty risks.

In a move that could affect captive insurance companies, the Ways and Means Committee tightened the use of foreign tax credits and, in general, made it more difficult to shield foreign income from U.S. taxes.

These provisions could further reduce the few remaining tax advantages of offshore captives, but the precise effect also won't be known until the committee's bill and the committee report is published.

The Ways and Means legislation also would raise an additional $4.8 billion in tax revenues from the property/casualty insurance industry over the next five years. Under these provisions, property/casualty insurers would be taxed on a portion of their tax-exempt and unearned premium income; face a new minimum or alternative tax; and face restrictions on their use of tax losses from a property/casualty affiliate to offset profits generated by other affiliates. That new tax burden almost certainly will mean higher prices for commercial buyers, industry lobbyists say.

The victories won in the committee on welfare benefit issues were due far more to labor unions' and, to a lesser extent, the insurance industry's lobbying efforts than employer efforts, Washington observers admit.

"It is clear that the labor unions played a key role" in the defeat of the proposed tax on group health and life insurance, said Edward Davey, vp-technical analysis at Johnson & Higgins in New York.

Unions were tireless opponents of taxing group health and term life benefits since their members would be so directly affected, said Dallas Salisbury, president of the Employee Benefit Research Institute in Washington.

By contrast, lowering maximum benefits available under defined benefit pension plans and reducing the limit on employer contributions to defined contribution plans have little effect on union members, whose pension benefits usually are well below the maximum limits.

Similarly, restricting 401(k) plans does not affect many union members since 401(k) plans are more often offered to salaried than union employees.

One benefit lobbyist noted that Ways and Means Committee Chairman Daniel Rostenkowski, D-Ill., knew that taxing group health and life insurance would almost certainly guarantee union opposition to the entire tax package, so he dropped a staff proposal to tax those benefits in favor of another proposal to slightly increase basic tax rates for employers. ■

Lobbying to focus on pensions

The House Ways and Means Committee proposal to limit pension benefits and profit-sharing contributions under qualified plans is expected to be the prime focus of lobbying efforts as the new tax bill moves through Congress.

The Ways and Means Committee proposal calls for lowering the maximum annual benefit provided by a defined benefit pension plan to $77,000 from the current $90,000 and reducing the maximum annual contribution an employer can make to a defined contribution pension plan to $25,000 from $30,000.

These limits would be frozen until 1991. And, the defined contribution limit could not be raised until the defined benefit limit reaches $100,000, something that is not expected to occur until 1994 or 1995.

After that, the maximum defined contribution limit would be 25% of the maximum defined benefit.

As more and more employees are affected by these limits, employers increasingly will have to turn to so-called excess pension plans to provide benefits that exceed the maximum limits.

Excess plans, unlike qualified plans, are not advance-funded. Contributions and tax deductions are taken only at the time benefits actually are paid, which makes them less secure. If a company goes broke, employees can lose benefits to be provided by an excess plan.

Lowering the maximum benefit and contribution limits directly clashes with the Employee Retirement Income Security Act, which was intended to make pension benefits more secure, said Sylvester Schieber, director of The Wyatt Co.'s research and information center in Washington.

Lobbying against some of the new provisions affecting 401(k) plans also is expected.

Those proposals include lowering the maximum annual salary deferral to a 401(k) plan to $7,000 from $30,000, reducing the maximum deferral by the amount an employee contributes to an Individual Retirement Account and imposing a 15% excise tax on employees who withdraw 401(k) funds before age 59½, even in the case of a bona fide hardship like a catastrophic medical bill.

In addition, the committee approved a new, more restricted and complicated non-discrimination test for 401(k) plans.

Under the test, plan discrimination would be tested by comparing deferrals made by highly compensated employees with deferrals made by lower-paid employees. Highly-paid employees would include:

- Employees who own 5% or more of a company.
- All employees earning more than $50,000.
- The 10% of employees with the highest salaires, excluding those earning less than $20,000 and those earning less than $35,000 who are not among the top 5% in compensation.
- Family members of the 10 highest-paid employees.

This lengthy, complex definition of highly compensated employees contrasts with the current non-discrimination test, which simply compares deferrals made by the highest paid one-third of a company's employees to deferrals made by all other employees.

In addition to expanding the definition of highly-paid employees, the committee approved making the actual deferral test stricter.

Under the tests adopted by the panel, the average salary deferral elected by highly compensated employees could not exceed the greater of two amounts:

- 125% of the average deferral percentage (ADP) of the lower-paid employees.
- The lesser of 200% of the ADP of the lower-paid workers or the ADP of the lower-paid employees plus 2%.

Under current non-discrimination tests, the average deferral by the higher-paid one-third cannot exceed the greater of:

- 150% of the ADP of the lower-paid two-thirds.
- 250% of the average deferral among the lower-paid two-thirds as long as the difference between the average deferral of the two groups does not exceed 3%.

Gerald Uslander, a principal with William M. Mercer-Meidinger Inc. in Louisville, Ky., labels the Ways and Means Committee proposal a "triple hit" on 401(k) plans, citing the lower deferral limits, offsetting deferrals with IRA contributions and stricter and more complex non-discrimination rules.

"Companies, particularly small employers, will be asking whether it will be worth offering the plans since their advantages will be reduced, but the administration will become much more difficult," said Edward Davey, vp-technical analysis at Johnson & Higgins in New York.

Others say employers could live with the new $7,000 401(k) deferral limit, but not the complex non-discrimination rules.

They say employers should lobby the Senate—assuming the full House passes the tax package—on the non-discrimination rules rather than on the salary deferral limit.

Transit Casualty seized

Continued from page 1

director, refused to comment on the possibility of a liquidation of Transit.

Mr. Jourdon said that "a very large portion" of Transit's deficit is related to business that was produced by two of the insurer's managing general agents, Donald F. Muldoon & Co. in New York and Miro & Associates Risk Management Inc. in Dallas.

On most of this business, Transit acted as a fronting insurer for offshore captive reinsurers.

Transit is suing the two MGAs and three offshore reinsurers, charging among other things that Miro failed to report $68 million in premiums that should have been collected on policies it had written (*BI*, June 10).

Some of the $12.6 million statutory deficit reported as of Sept. 30 reflects losses on the Muldoon/Miro business, Mr. Jourdon said.

However, experience on much of the MGA business was not included in Transit's nine-month statement, he added.

The Transit statement notes that "premiums and losses originating on business written through the Donald F. Muldoon & Co. agency are in the process of being reconciled by the company and its independent auditors."

Inclusion of all of the Muldoon/Miro losses "would only multiply the deficit," Mr. Jourdon said. He would not comment on how much the insolvency would increase with the addition of these losses, but said the increase would be "substantial."

Numerous claims arising from the Muldoon/Miro business apparently never were reported to Transit, Mr. Jourdon added.

"The company did not know about them. They didn't know the extent of their exposure," he explained.

Mr. Jourdon added that Transit, Muldoon and Miro have filed claims with the two MGAs' errors and omissions insurers.

He would not name the insurers—who separately insured Muldoon and Miro with limits totaling $25 million—or comment on the status of the claims.

Officials of Transit could not be reached for comment.

Transit, a Missouri-domiciled company that is headquartered in Los Angeles, announced last January that it would cease writing excess and umbrella liability coverage and captive insurance and reinsurance programs produced by MGAs. The move left Transit writing only public transportation risks.

In April, the insurer discontinued all underwriting while awaiting the results of a Touche Ross & Co. audit of the Muldoon-produced business.

In its nine-month statement filed with the Missouri Insurance Division, Transit reported earned premiums of $62.1 million, compared with earned premiums of $50.7 million for all of 1984.

Losses and loss expenses in the first nine months of 1985 amounted to $71.1 million and other underwriting expenses totaled $22.3 million, leaving Transit with a net underwriting loss of $31.3 million as of Sept. 30.

Transit's net underwriting loss for all of 1984 was $23.6 million.

Investment income for the first three quarters of this year totaled $5.4 million.

After adding other income and taxes, Transit's net operating loss amounted to $11.3 million for the first nine months.

Transit's policyholders surplus—which stood at $21.9 million at the end of 1984—was drained not only by the net loss but by a $24.1 million increase in the insurer's liability for unauthorized reinsurance.

The increase in this liability reflects reinsurance with companies that have become insolvent as well as reinsurance for which adequate letters of credit were not provided, according to Mr. Jourdon.

Despite a net capital gain and change in non-admitted assets totaling $873,046, the operating loss and unauthorized reinsurance liabilities reduced Transit's policyholders surplus to negative $12.6 million as of Sept. 30.

Starting in 1978, Transit branched away from its original transportation insurance business into captive insurance programs, excess and umbrella liability insurance and reinsurance.

Direct written premiums—excluding assumed reinsurance—grew to $227.2 million in 1984 from $90 million in 1979.

Meanwhile, however, Transit reinsured a larger percentage of its business, retaining less on a net basis. Net written premiums—including assumed reinsurance—amounted to only $60.5 million in 1984, compared with $75 million in 1979.

Mr. Jourdon noted that Transit suffered poor results on other business besides that produced by Muldoon and Miro, though in the other cases it had a clearer picture of its loss experience.

Transportation business remained profitable for the insurer, Mr. Jourdon added.

"They went away from their specialty," Mr. Jourdon observed.

Transit was owned by Beneficial Standard Corp., which liquidated its assets last May 15. Seventy-nine percent of Transit's stock was placed in a liquidating trust for Beneficial Standard shareholders, while the remaining 21% was transferred to Benequity Holdings, a publicly traded California real estate limited partnership. ■

Carbide to pay $5 million in aid to Bhopal survivors

NEW YORK—A federal judge has approved a plan under which Union Carbide Corp. will pay $5 million for interim relief to survivors of a poison gas leak in India last December that killed at least 1,750 people.

The interim aid does not constitute an admission of liability by Union Carbide and could be credited against any future judgment or settlement, according to a spokesman for Union Carbide.

An earlier offer of $1 million in relief has already been accepted by the Indian government, he said, adding that an additional $840,000 offer is pending.

The spokesman also said the interim relief payments probably will be paid by Union Carbide, rather than by its insurers. The company has an estimated $200 million in liability insurance to cover claims from the Bhopal disaster (*BI*, Dec. 24-31, 1984).

The interim relief, to be administered by the Indian Red Cross under International Red Cross guidelines, will provide medical aid and other assistance to thousands who remain ill from the disaster.

Under the relief plan, International Red Cross officials will make periodic payments to the Indian Red Cross, which will then outline their expenses and make reports on the operations. ■

Reinsurers' results improve for first nine months of 1985

WASHINGTON—The U.S. reinsurance industry posted a 37.6% increase in premium volume along with vastly improved underwriting results in the first nine months of 1985, according to a recent report by the Reinsurance Assn. of America.

The 67 reinsurers responding to an RAA survey reported net written premiums of $6.06 billion during the nine-month period, compared with a volume of $4.4 billion in the first nine months of 1984.

The reinsurers also reported a nine-month aggregate combined ratio of 119.3%.

That represents a 7.7 percentage-point gain over the 127.0% combined ratio posted in the first nine months of 1984 by a similar but not identical group of reinsurers, according to the RAA. ■

Insurer results

Continued from page 2
things looks real good."

"You're still a long way from home, but it's getting better," comments Myron M. Picoult, senior vp and senior insurance analyst with Oppenheimer & Co. in New York.

"It just looks like 1986 will be remarkably better. The industry is on the way back," agrees Frederick V. Hill, a principal with Derby Securities in New York.

Besides the rise in operating income, the recovery by the insurers surveyed by *Business Insurance* is illustrated by:

- A 20.6% increase in net premiums written to almost $43 billion in the first nine months of 1985 compared with the corresponding period of 1984. This compares with a 17.6% year-to-year increase at the end of the first half and a 15% hike at the end of the first quarter.
- A 4.7% increase in underwriting losses in the first nine months to $7.2 billion. This also is an improvement over the 6.9% year-to-year increase in underwriting losses registered at the end of the first half and the 12.5% increase tallied at the end of the first quarter.
- An aggregate combined ratio of 117.4%, a 3.7 percentage-point decrease from the 120.1% aggregate combined ratio at the end of the third quarter of 1984. The insurers reported a 119.0% combined ratio at the end of the first half of 1985 and a 119.4% combined ration at the end of the first quarter.

Despite this improvement, Hartford Steam Boiler Inspection & Insurance Co., with a 94.8% combined ratio, is the only insurer with an underwriting profit over the nine-month period.

- A 10.7% increase in investment income to $5.8 billion in the first three quarters, an improvement over the 9.5% rise in investment income generated during the first half and the 10% increase reported in the first quarter.
- A 17.6% increase in policyholder surplus to $15.6 million among the 22 insurers reporting this data, down only slightly from the big 18.1% increase generated during the first half and much better than the 1.4% increase reported in the first quarter.

Property/casualty insurers continued to make public stock offerings to raise capital, analysts point out. Those insurers included:

- CNA Financial Corp., which raised net proceeds of about $251 million from a common stock offering of 4.6 million shares. As a result, its policyholder surplus increased 12.2% to $1.2 billion.
- Travelers Corp., which completed an offering of 3.9 million shares of common stock. Travelers boosted its policyholder surplus 23.1% to $1.3 billion.
- American International Group Inc., which netted $287 million when it sold 3.45 million shares of common stock. AIG does not release quarterly data on its consolidated policyholder surplus.
- USF&G, which raised $94.2 million in a stock offering. The company boosted its policyholder surplus 18.8% to $833.6 million.
- General Re Corp., which generated proceeds of $278.7 million from the sale of 3.45 million shares of common stock. It boosted its policyholder surplus 57.3% to $1 billion.
- Fireman's Fund Corp., which raised $906.4 million in the largest initial public stock offering in U.S. history. It boosted its policyholder surplus 54.6% to $1.1 billion.

Despite these offerings, the insurers' aggregate net premium-to-surplus ratio for the nine-month period rose to 2.3-to-1, compared with 1.4-to-1 at the end of the first half. But, analysts said they consider this ratio well within the "safe" range.

Most analysts expect insurers to continue to go to market because of the companies' concern about maintaining adequate surplus to support increased premium volume.

"It's a good way to raise capital," says E.F. Hutton's Mr. Lewis.

"Where else are they going to get the capital?" asks Oppenheimer's Mr. Picoult. "Their needs have not yet been satiated, that's for sure."

David Seifer, vp at First Boston Corp. in New York, says it's a good idea for companies to go to market in light of the very high rates of return now available in the market. "It won't go on forever, but it's certainly true now."

"The time to sell stock is when the market is at a very high level," agrees Sean Mooney, an economist with the Insurance Information Institute in New York.

"It would not surprise me if every company that has gone to market is considering going back," says James B. Stradtner, a general partner with Alex. Brown & Sons in Baltimore.

But one analyst, who asked that his name not be used, says he does not expect many insurers that have raised capital through public offering to attempt a repeat performance. "I think the big guys might wear out their welcome if they did," he says.

John H. Fitzpatrick, director of financial relations for Kemper Corp., which raised $150 million through an April offering of 3 million common shares, says that "given the business plans that we have in place, we don't foresee going to market."

He adds, however, it is "conceivable" that if Kemper finds an "attractive opportunity" it will return, but adds that funds raised in a subsequent offering would not go toward Kemper's already "well-capitalized" property/casualty operations. Kemper's net premium-to-surplus ratio at the end of the nine-month period was 1.8-to-1.

Derby Securities' Mr. Hill believes the need for more capital also could lead to more mergers in the property/casualty industry. A company that cannot finance its growth may have to look at all options, he says, "including selling out to a parent company with a lot of money."

In the meantime, insurers' net premium-to-surplus ratio will continue to deteriorate through the next year as premium volume rises, observes Mr. Picoult.

Until insurers post major earnings surges, the industry will either remain undercapitalized or be faced with capital constraints, adds E.F. Hutton's Mr. Lewis.

Paine Webber's Mr. Callaghan says, however, a strained net premium-to-surplus ratio is not necessarily negative because it forces insurers to follow tighter pricing and underwriting disciplines.

"If a company is underwriting at a profit, nobody really cares what the premium-to-surplus ratio is," says First Boston's Mr. Seifer, who says a more accurate measure of an insurer's financial condition is the ratio of underwriting losses to surplus.

While the net premium-to-surplus ratio will deteriorate as the premiums increase, it won't be a "real" deterioration because it is caused by increased rates, not increased exposures, says the III's Mr. Mooney.

A company could double its prices tomorrow and go from a 2-1 ratio to a 4-1 ratio, says Mr. Mooney. "But what's wrong with doubling your prices? That's good."

After a while, the increased premium volume will translate into surplus "and the apparent deterioration will disappear," he says.

Although analysts agree that insurers' surplus is generally adequate, they point out that reserves remain inadequate.

"We think that the industry is about 10% to 11% underreserved," says Mr. Callaghan, noting that is one reason that insurers have acted to significantly boost rates. Typically, companies use increased rates to restore reserves, he explains.

However, analysts say they are unsure of precisely when insurers will move to build their reserves.

Insurers may decide to make major additions to reserves in the fourth quarter and "start off 1986 with a clean slate," says Legg Mason's Ms. Vogel.

"In general, my feeling is people want to have adequate reserves, and therefore they would move as fast as possible to have adequate reserves," says Mr. Mooney.

David O'Leary, director of research at Fox-Pitt, Kelton in Hartford, Conn., believes the reserve buildup will not come all at once. The industry, which Mr. O'Leary says is about $5 billion to $6 billion underreserved, will strengthen its reserves by about $2 billion to $3 billion during the fourth quarter, and by another $2 billion to $3 billion in 1986, he says.

Reserves will be adequate by the end of 1986 or sometime in 1987, he says.

Mr. O'Leary adds that reserves for 1984 business are "relatively adequate," though there is a "real

Continued on next page

Excess casualty facilities

Continued from page 2
ways to attract additional participants. Tillinghast projects that at least 20 participants will be needed to make the project work efficiently, Mr. Stauffer notes.

Chemical companies would have to commit themselves to the facility by January, Mr. Rosenbaum says. The insurer's startup is targeted for March, with coverage retroactively effective in January.

Some are using the CASEX limits as a means to American Casualty Excess Insurance Co. Ltd., the investor-owned insurer organized by Marsh & McLennan Inc. to write liability cover excess of $100 million.

Although CASEX primarily intends to write limits of $50 million excess of $50 million, it may consider attaching coverage at a point higher than $50 million.

Although participants could pay an annual premium as low as $600,000 for the full $50 million in coverage from CASEX, Mr. Rosenbaum says the average annual premium will be about $1 milllion.

The cost to each participant is expected to be based on an underwriting formula devised by Tillinghast. In the first year, each company will be charged a two-part premium: One portion will be a flat amount while the other will vary according to the revenues of the company. In later years, the second portion of the premium will reflect each company's loss experience.

Coverage will be written on a five-year claims-made policy, endorsed annually and requiring a four-year notice of withdrawal.

Losses will be paid first with premiums collected. Members can be assessed additional funds if needed, but assessments are limited to five times a company's annual premium and will be spread over five years.

Initial capital will come from $40 million contributed by members. Half will be paid up front, while the other half will be guaranteed by letters of credit.

CASEX is committed to write sudden and accidental pollution risks, Mr. Rosenbaum says. The policy will cover a pollution incident if the "discharge, disbursal, escape or release" meets four criteria:

- The incident must begin after the policy takes effect and end after 14 days of its onset.
- Containment efforts must begin after 72 hours.
- The incident must be reported to CASEX within 60 days.
- Third-party victims have 36 months to make their first claim against the CASEX member.

Coverage written by CASEX will specifically exclude gradual pollution claims; asbestos-related claims; and insured-vs.-insured D&O claims in which a corporation files suit against its own directors and officers.

The CASEX Project is also expected to establish a separate D&O "subpool," which probably will write limits of $25 million excess of $25 million, Mr. Rosenbaum said. Coverage written by the subpool would be rated separately from the principal company.

While CASEX is proceeding with its plans, a task force of financial institution risk managers is embarking on a similar project for the banking industry.

A study by The Wyatt Co. in Chicago, financed by 50 leading U.S. banks, proposes creation of a Bermuda-based mutual insurer to provide both D&O coverage and bankers blanket bonds (*BI*, July 22; Oct. 28).

About 35 to 40 of the banks are expected to take part in the facility, says Edith F. Lichota, chairwoman of the study committee and senior vp-risk management at Irving Trust Co. in New York.

The task force is now proceeding with securing a charter from Bermuda officials. In addition, the banks must obtain approval from the Federal Reserve Board before the bank-owned insurer opens for business.

Like CASEX, the banks' facility, tentatively dubbed Bankers' Insurance Co. Ltd., would not compete with the commercial insurance market, but would aim to complement it, Ms. Lichota says. BICL hopes to offer capacity of up to $25 million for both D&O coverage and bankers blanket bonds, she says.

The coverage also would carry an insured-vs.-insured exclusion. And the D&O coverage also would restrict the ability of regulatory agencies, like the Federal Deposit Insurance Corp., to use insurance proceeds to pay depositors of a failed bank. The policy will only pay out 10% of its limits for such claims.

Premiums will vary according to the size and exposure of each bank.

Ms. Lichota projects initial capital and surplus of more than $100 million, if 35 to 40 banks take part.

And, Wyatt's Washington office was to present the American Bankers Assn. last week with the results of its study on establishing a captive to write D&O coverage and bankers blanket bonds for members.

And, about 60 electric utilities are "moving right along" in their study of alternative ways to obtain excess liability coverage, says Darla Tarletz, manager of insurance and loss prevention at Virginia Electric & Power Co. in Richmond. ■

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Summary of major property/casualty insurers' nine-month results

(All amounts in thousands of dollars)

(Ranked by change in aftertax operating income)

		Corporate			Property/casualty operations									
Rank 1985		Consolidated revenues 1985	Aftertax[1] operating income 1985	Percent increase (decline) 1984-1985	Combined[1] ratio 1985	Combined[1] ratio 1984	Net premiums written 1985	Percent increase (decrease) 1984-1985	Pretax underwriting income (loss) 1985	Percent increase (decline) 1984-1985	Pretax investment income 1985	Percent increase (decrease) 1984-1985	Policyholders surplus 1985	Percent increase (decrease) 1984-1985
1	CIGNA Corp.	11,964,976	154,821	6,380.6	120.6[2]	129.8[2]	3,496,553	12.6	(756,282)	18.6	487,286	13.8	1,340,000	20.2
2	Kemper Corp.	2,084,287	36,278	411.9	115.3	122.5	536,738	11.4	(79,740)	31.0	55,136	(5.8)	300,851	0.3
3	Hartford Steam Boiler	228,927	19,215	353.1	94.8	115.8	177,564	50.0	7,647	141.2	17,945	18.6	133,937	19.5
4	Reliance Ins. Co. & subs.	1,163,135	17,327	334.5	113.5[2]	113.6[2]	1,094,604	14.4	(105,906)	13.7	135,130	6.4	N/A	N/A
5	Royal Group (U.S. subs.)	N/A	2,200	102.6	114.8[2]	121.5[2]	1,200,000	25.8	(195,100)	5.6	140,000	(7.9)	417,788	3.3
6	The St. Paul Cos. Inc.	1,922,200	1,691	101.8	121.8[2]	128.9[2]	1,641,442	19.4	(319,570)	17.7	274,119	16.4	687,041	20.9
7	Aetna Life & Casualty Co.	13,437,200	268,600	80.0	116.1	117.6	3,606,800	20.4	(494,300)	(5.4)	430,000	10.0	1,078,434	8.8
8	CNA Financial Corp.	3,297,600	122,400	65.6	123.8	126.0	1,989,400[2]	41.7	(508,600)[2]	(30.5)	404,200[2]	18.4	1,155,300	12.2
9	Chubb Corp.	1,830,400	63,200	60.8	111.5	114.9	1,365,500	30.8	(82,200)	(2.2)	142,100	25.2	665,121	60.1
10	Mission Insurance Group	292,262	(70,256)	31.1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
11	Continental Corp.	3,650,567	57,031	18.6	114.6	114.3	2,219,939[2]	13.3	(310,097)	(13.7)	259,134	(1.9)	905,146	(1.4)
12	Ohio Casualty Corp.	850,451	23,434	16.4	110.2[2]	113.5[2]	808,007[2]	21.5	(80,496)	8.1	88,672	17.4	348,032	1.2
13	American General Corp.	4,233,000	319,000	14.7	111.9	126.8	886,000	14.6	(84,000)	57.1	98,000	1.0	609,000	12.6
14	General Re Corp.	1,509,593	103,589	6.0	112.7[2]	117.2[2]	1,103,820	42.2	(120,196)	3.9	205,131	31.5	1,009,166	57.3
15	Travelers Corp.	11,204,500	237,700	5.5	114.5	115.5	3,143,500	23.0	(448,700)	(13.6)	207,400	(4.2)	1,338,800	23.1
16	Hartford Insurance Group	4,863,410	89,370	4.5	113.6	122.2	3,147,986	32.6	(407,790)	19.4	336,603	(2.7)	1,452,701	14.0
17	Old Republic Int'l (inc. life)[3]	609,300	44,100	(0.2)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
18	American International Group	3,946,526	265,167	(5.2)	106.1[2]	106.1[2]	2,976,456	64.5	(181,326)	(59.0)	274,112	12.6	N/A	N/A
19	SAFECO Corp.	1,723,000	86,883	(9.6)	111.2	109.3	875,440	19.9	(89,990)	(39.1)	92,662	12.4	433,806	0.5
20	Fremont General Corp.	431,573	(15,110)	(70.9)	130.8	129.2	341,496	50.5	(95,824)	(53.5)	57,336	55.1	110,776	(13.8)
21	USF&G Corp.	2,642,900	(25,400)	(128.4)	120.9	123.3	2,040,900[2]	24.1	(442,500)[2]	(9.5)	375,800	16.3	833,600	18.8
22	Fireman's Fund Corp.	2,975,787	(33,031)	(201.5)	126.4	120.1	2,202,771	3.3	(563,412)	(30.2)	346,386	15.6	1,055,904	54.6
23	Sentry Insurance Cos.	412,061	(21,432)	(239.4)	118.4	115.7	666,147	3.8	(122,104)	(12.6)	75,262	4.2	142,790	(19.9)
24	Crum & Forster	1,833,946	(32,230)	(283.7)	125.8	120.9	1,706,942	4.1	(551,903)	(57.3)	273,642	11.9	458,825	4.1
25	The Home Group Inc.	1,453,000	(102,000)[3]	(700.0)	138.3[2]	131.7[2]	1,299,000	11.2	(471,000)	(39.8)	238,000	(1.3)	704,000	23.1
—	Liberty Mutual Ins. Co.	N/A	N/A	N/A	116.2	117.9	3,008,190	34.1	(392,265)	(24.9)	441,966	11.1	N/A	N/A
—	Commercial Union Ins. (U.S.)[2]	N/A	N/A	N/A	122.5	121.2	719,000	(27.5)	(157,200)	24.8	118,400	(10.1)	364,700	(4.2)
—	Wausau Insurance Cos.[2]	N/A	N/A	N/A	123.6	124.7	718,364	(15.3)	(181,853)	12.9	184,596	60.8	N/A	N/A
	Cumulative	78,297,601	1,612,547	22.6	117.4	120.1	42,972,559	20.6	(7,234,707)	(4.7)	5,759,018	10.7	15,545,718	17.6

[1] After dividends. [2] Statutory. [3] Net income. N/A—Company did not provide data.

Continued from previous page

shortage" for the years 1980-83.

Also, larger insurers with exposures to chemical and other environmental impairment risks will add to their reserves for policy years prior to 1976, he says.

First Boston's Mr. Seiffer says insurers will build their reserves gradually.

"I think they'll be building reserves over the next three, four years, but I don't think there's going to be any given quarter or a given time period when they do it. I think it's going to be an ongoing proposition," Mr. Seiffer says.

Companies, in general, are continuing to invest dollars in higher-yielding taxable investments because the insurers' previous tax losses still can be used to offset taxable investment income.

But Mr. Stradtner says, "I see companies shifting very rapidly to tax-exempts." He explains that tax-exempt yields are now competitive because of the large supply of municipal bonds available on the market.

Also, many insurers feel they can obtain good capital gains from tax-exempts, he says, because if proposed federal tax changes are enacted and the supply of municipals dries up, their price will go up.

But other analysts disagree. Insurers now have "no choice" but to remain with taxable investments, says Oppenheimer's Mr. Picoult. With their previous underwriting losses, it makes "no sense" for them to return to tax-exempts because of their need for taxable income.

Many analysts predict a gradual shift back to tax-exempts as underwriting results improve.

"I don't think there'll be a mad rush," says Paine Webber's Mr. Callaghan. Instead, Mr. Callaghan predicts, companies will invest in tax-exempt instruments as funds become available.

Meanwhile, with the increased cash flow generated by increased premium rates, "investment income should do very well," observes Derby Securities' Mr. Hill. ■

BI Industry Stock Report

November 27, 1985 11/21/85 thru 11/27/85

Brokers		Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol.(000)
Alexander & Alexander Svcs	NYSE	31.63	0.0	0.0	1.00	3.2	32.75*	31.63	323.5
Baldwin & Lyons Inc	OTC	62.00	1.6	13.7	0.80	1.3	62.00	61.00	0.0
Corroon & Black Corp	NYSE	57.50	0.0	77.7	1.00	1.7	58.25	57.50	67.7
Crump E H Cos Inc	OTC	19.88	3.9	21.4	0.25	1.3	20.00*	19.00	72.6
Emett & Chandler Cos Inc	OTC	17.50	12.9	30.2	0.00	0.0	18.25*	17.50	112.4
Gallagher Arthur J & Co	OTC	47.25	0.5	23.2	0.28	0.6	47.25	46.50	200.9
Hall Frank B & Co Inc	NYSE	27.75	-0.9	0.0	0.00	0.0	28.00	27.63	413.9
Marsh & Mclennan Cos Inc	NYSE	79.50	0.0	19.0	2.68	3.4	79.50	79.25	179.9
Poe & Assoc Inc	OTC	14.00	0.0	0.0	0.80	5.7	14.00	13.75	17.1
AGENTS/BROKERS	AVERAGE			145.1		1.9			
Conglomerates & Holding Cos.									
American Express(Fireman's Fd)	NYSE	48.50	1.0	15.5	1.36	2.8	49.25*	48.25	7,006.1
Anderson Clayton(Ranger/PanAm)	NYSE	47.25	-1.6	32.8	1.32	2.8	48.25*	47.25	56.0
Amaco Inc	NYSE	8.88	0.0	0.0	0.00	0.0	9.00	8.75	353.1
Berkley W R Corp	OTC	25.50	-3.8	79.7	0.32	1.3	26.00	24.13	429.1
CIGNA Corp	NYSE	61.25	0.4	29.7	2.60	4.2	62.00	61.00	522.3
CNA Finl Corp (CNA)	NYSE	61.75	-0.4	19.3	0.00	0.0	62.13	61.75	81.2
General Re Corp	NYSE	100.00	0.9	108.7	1.56	1.6	100.00*	99.25	349.7
ITT (Hartford Group)	NYSE	33.88	1.9	10.6	1.00	3.0	33.88	33.38	2,114.5
Sears Roebuck & Co. (Allstate)	NYSE	37.38	0.7	10.5	1.76	4.7	38.00	37.38	3,544.1
Teledyne Inc (Argonaut)	NYSE	279.38	-0.0	6.1	0.00	0.0	279.38	278.38	150.4
Transamerica Corp (Occidental & Fred S. James)	NYSE	33.63	0.4	16.3	1.68	5.0	33.75*	33.50	305.5
CONGLOMERATES/HOLDING COS.	AVERAGE			11.4		1.6			
Insurers									
Aetna Life & Cas Co	NYSE	51.88	0.5	19.5	2.64	5.1	52.75	51.50	1,123.2
American General Corp	NYSE	33.00	1.5	10.0	1.00	3.0	33.75	32.88	770.6
Amern Heritage Life Invt Co	NYSE	36.88	1.7	10.6	1.20	3.3	37.00*	36.88	3.5
American Indty Finl Corp	OTC	18.50	4.2	0.0	1.12	6.1	18.50	18.25	18.9
American Intl Group Inc	NYSE	99.38	1.0	24.8	0.44	0.4	99.50	99.25	319.0
Aneco Reins Ltd	OTC	1.00	6.6	0.0	0.00	0.0	1.00	1.00	18.3
Aveaco Corp	NYSE	36.75	1.0	14.6	0.60	1.6	37.00*	36.63	5.2
Business Mens Assurn Co Amer	OTC	28.75	-1.7	8.1	1.04	3.6	29.25	28.75	29.9
Chubb Corp	NYSE	53.38	1.7	19.3	1.56	2.9	53.88	52.00	194.3
Combined Intl Corp	NYSE	50.38	0.5	9.2	2.16	4.3	50.50*	50.00	231.2
Continental Corp	NYSE	45.88	-1.3	22.7	2.60	5.7	47.75*	45.88	478.3
Crown Life Ins Co	OTC	250.00	6.4	15.1	0.00	0.0	270.00*	235.00	0.1
Durham Corp	OTC	40.50	0.0	7.5	1.28	3.2	40.75	40.50	1.8
Farmers Group Inc	OTC	70.00	1.6	11.8	1.76	2.5	70.13*	69.13	596.5
Fireman Fd Corp	NYSE	31.25	2.5	0.0	0.30	1.0	32.00*	31.25	918.8
Fremont Gen Corp	OTC	23.88	-3.0	2.3	0.48	2.0	24.63	23.50	153.9
Great West Life Assurn Co	OTC	431.00	0.0	11.1	1.60	0.4	431.00	431.00	0.0
Home Group Inc	AMEX	25.00	4.2	0.0	0.00	0.0	25.88*	24.88	1,053.1
Hanover Ins Co	OTC	51.50	1.5	53.6	0.56	1.1	51.50*	51.00	19.9
Hartford Steam Boiler Inspctn	OTC	57.50	-0.4	13.6	2.00	3.5	58.25	57.50	5.1
Kans City Life Ins	OTC	28.50	3.6	11.2	0.87	3.0	28.50	28.00	16.8
Kemper Corp	OTC	54.50	1.0	18.6	1.80	2.8	64.75*	64.00	136.3
Liberty Corp S C	NYSE	32.25	-0.4	14.0	0.72	2.2	33.00*	32.25	9.1
Lincoln Natl Corp Ind	NYSE	49.38	-2.0	11.7	2.00	4.1	51.50	49.38	149.2
Mission Ins Group Inc	NYSE	4.00	39.1	0.0	0.00	0.0	4.00	3.13	793.0
Monumental Corp	OTC	36.13	-3.0	12.2	1.40	3.9	36.88	36.13	8.4
Nobel Ins Ltd	OTC	12.00	9.1	15.8	0.25	2.1	12.75	11.50	77.2
Northwestern Natl Life Ins	OTC	26.00	1.5	6.8	0.80	3.1	26.25	26.00	101.5
Ohio Cas Corp	OTC	72.38	4.7	24.4	2.80	3.9	73.00	71.75	164.6
Old Rep Intl Corp	OTC	33.63	2.7	9.1	0.74	2.2	34.38	33.25	151.1
Orion Cap Corp	NYSE	29.63	-0.4	0.0	0.76	2.6	30.25	29.50	39.2
Protective Corp	OTC	22.00	2.3	8.2	0.66	3.0	22.25	22.00	61.7
Provident Life & Acc Ins Co	OTC	26.88	4.4	7.2	0.76	2.8	26.88	25.63	521.9
St Paul Cos Inc	OTC	78.50	1.5	0.0	3.00	3.8	79.00	78.25	307.0
SAFECO Corp	OTC	44.88	0.8	15.9	1.60	3.6	45.50	44.88	141.6
Sri Corp	OTC	19.00	-0.7	633.3	0.80	4.2	19.00	18.75	205.4
Seibels Bruce Group Inc	OTC	22.38	-0.6	4.6	0.80	3.6	22.75	22.38	145.8
Statesman Group Inc	OTC	4.13	0.0	0.0	0.05	1.2	4.13	4.00	64.4
Tokio Marine & Fire Ins Co	OTC	224.25	1.2	42.2	1.05	0.5	225.00	223.25	19.4
Torchmark Corp	NYSE	24.50	-3.9	9.6	0.60	2.4	26.13	24.25	626.7
Travelers Corp	NYSE	46.63	0.0	11.3	2.04	4.4	46.88	46.25	487.9
United Fire & Cas Co	OTC	25.50	0.0	11.9	1.20	4.7	25.50	25.50	1.3
United States Fid & Gty Co	NYSE	37.75	0.3	0.0	2.20	5.8	38.13	37.50	723.3
Uslife Corp	NYSE	39.25	2.6	8.8	1.12	2.9	39.75	39.25	294.4
Washington Natl Corp	NYSE	26.38	1.0	9.1	1.08	4.1	26.88	26.38	133.2
Zenith Natl Ins Corp	OTC	22.75	-2.2	0.0	0.68	3.0	23.50	22.75	334.0
INSURANCE COMPANIES	AVERAGE			17.0		2.1			

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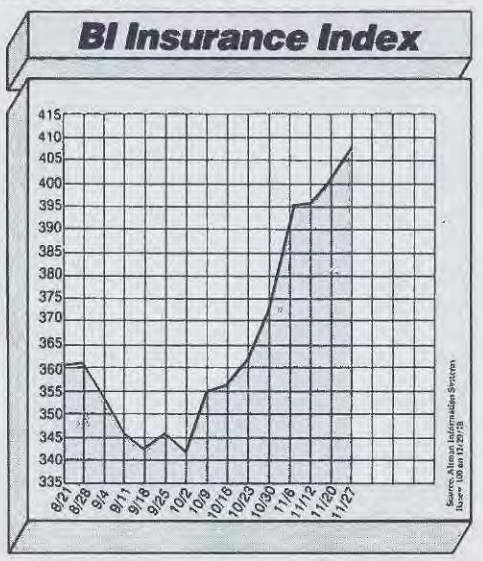
BI Insurance Index



Insurance industry stocks continued their surge last week as the *Business Insurance* stock index posted a record high for the third consecutive trading period. The *BI* index rose 7.4 points during the period ending Nov. 27 to 408.4 points from 401.0 points. Thirty-five issues posted gains, 14 declined and nine were unchanged. The largest gains were reported by Mission Insurance Group Inc., up 39.1%; Emett & Chandler Cos. Inc., up 12.9%; Nobel Insurance Ltd., up 9.1%; Aneco Reinsurance Co. Ltd., up 6.6%; and Crown Life Insurance Co., up 6.4%. The largest declines were by Torchmark Corp., down 3.9%; W.R. Berkley Corp., down 3.8%; Fremont General Corp., down 3.0%; Monumental Corp., down 3.0%; and Zenith National Insurance Corp., down 2.2%.

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