Week of February 23, 1976

business insurance

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Losses may reach $300 million in Guatemala following an earthquake early this month. American International Underwriters (AIU) in Guatemala estimated its exposure at $130 million. Granai & Townsen, largest insurer in the Central American country, reported exposures of $170 million to $200 million. Over 100 U.S. corporations have subsidiaries and affiliates in Guatemala, among them Abott Laboratories and Philip Morris Inc. Spokesmen for both firms said damage was minimal. Del Monte Corp. estimated cost of restoring its banana properties at $1 million to $2 million from extensive damage to housing and utilities on plantations. Half of Del Monte's Central American banana production is from Guatemala. Seven Del Monte employes or family members were killed. More than 15,000 people died as a result of the quake. Total property damage was estimated at "something less than the $100 million" in the Managua, Nicaragua earthquake in December 1972.

Product liability problem is probed by federal agency

By PAUL R. MERRION

WASHINGTON—Efforts to contain the threat of a product liability crisis have reached the White House.

Acting on a five-page letter received in early January from a wood-working machinery manufacturer in Michigan, the presidential assistant for economic affairs, L. William Seidman, instructed the Commerce Department to perform a crash study of the product liability problem, *Business Insurance* learned.

Conclusions of the nearly two months long study—which included informal talks with state insurance commissioners, manufacturer and insurance industry trade associations, and the manufacturers and insurers themselves—will be presented soon to the Economic Policy Board, a top-level group that discusses problems facing more than one department.

Treasury Secretary William E. Simon is the chairman of the Economic Policy Board, with Mr. Seidman as its executive director.

The Commerce Department study is at this point only at the exploratory stage. Among the department's questions:

- Is it a national or a local problem?
- How serious is the problem in different industries?
- To what extent is it a workers' compensation problem?
- What has been the effect on rates for product liability insurance?

Answers to the last question produced some "horror stories," according to the study's coordinator, Don Jordan, assistant to the Deputy Under Secretary for Domestic Commerce.

He cited the case of one manufacturer whose product liability rates had increased 600%, effectively doubling the total insurance expense. He added, however, that most of the evidence on rate hikes seemed to be anecdotes rather than precise statistics.

Among the trade associations contacted for the study was the National Machine Tool Builders Assn., whose public affairs director, James Mack, said "we're delighted" that the Commerce Department is "responding the way it should."

He said his group has been discussing the product liability problem with the Commerce Department for some time, but it was the letter to Mr. Seidman that spurred the study.

The man who wrote the letter, Dr. Ralph Baldwin, is the president of Oliver Machinery Co. in Grand Rapids, Mi., and a longtime acquaintance of Mr. Seidman, who once had an accounting firm, Seidman & Seidman, located in the same city.

Dr. Baldwin said his trade group, the Wood-Working Machine Manufacturers of America, is hoping to present its opinions soon in Washington. He is a past president of the trade association.

His product liability problems are typical of small machinery manufacturers. "The last four lawsuits we've had involved machines shipped in 1946, 1942, 1926 and 1921," Dr. Baldwin said.

A reasonable statute of limitations would be a primary remedy of the problem, he said, along with a limitation of liability to the original purchaser only. Lawyers' contingency fees, he added, "should be eliminated or modified."

In addition to his five-page letter to Mr. Seidman, he included a 17-page documentation of the product liability problem.

Preliminary findings of the Commerce Department study, although very tentative, mainly serve to confirm what is already known about the threatening crunch in product liability insurance.

"It could be as serious as malpractice or more so," Mr. Jordan said. There are indications that the product liability insurance shortage is not limited to small

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Court award sets new state high for damage from on-the-job injury

By JOANNE GAMLIN

LOS ANGELES—A 27-year-old man, who five years ago was severely injured when he was struck by a 630-pound pipe, and his 25-year-old wife were awarded $4,735,996 in Los Angeles Superior Court on February 9, the largest California court verdict ever granted for an on-the-job injury.

The verdict, which went to Richard Rodriguez and his wife, Mary Anne, was described as historic because it granted $500,000 to Mrs. Rodriguez for loss of sexual relations with her husband and the loss of the ability to have children.

Therefore, the verdict for the first time extended damages to a woman in California for the "loss of consortium." Men in the state have always had the right to damages for such a loss.

Ned Good, who represented the young couple, had earlier won a key ruling in the case from the state Supreme Court that a woman could collect damages for the loss of consortium.

The $4.7 million verdict includes $4,235,996 for Mr. Rodriguez for lost lifetime earnings, medical bills, round-the-clock care, special therapy, plus pain, suffering and humiliation.

In a telephone interview with *Business Insurance*, Mr. Good said that the verdict will be paid on a 50%-50% basis by Norman Engineering Co., Los Angeles, and by Bethlehem Steel Corp.

The giant steel corporation is said to be self-insured for comprehensive general liability (CGL). At press time, a Bethlehem spokesman told this magazine that no decision had been made on further legal action.

Norman Engineering is insured for CGL by Commercial Union Assurance Co. for the primary level and by the Insurance Co. of North America (INA) for the excess layer.

This information was confirmed by a spokesman in the Los Angeles office of Commercial Union.

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Nobody wants to insure REITs

Bank D&O risks bring on jitters

By MARGARET LeROUX

NEW YORK—Publication of a list of troubled banks by the Federal Reserve Board and the Comptroller of the Currency is sending shock waves through the directors' and officers' liability market for financial institutions.

"The headlines have had a very damaging effect on the market," one insurance industry spokesman said.

The recent unfavorable publicity banks have gotten "has got to affect the market," noted a New York broker.

"The market has definitely tightened," another insurance industry spokesman said, "and premium rates for directors' and officers' liability are getting a lot higher." He predicted increases from 75% to 100% for smaller banks when their D&O policies come up for renewal. "The major commercial banks will have to be rated on an individual basis," he added.

When *Business Insurance* conducted a telephone survey of bank risk managers, D&O liability underwriters and brokers, few were eager to talk about the D&O market and those who did claimed anonymity.

Indications that banks are having trouble with D&O renewals came from one brokerage source

who has been spending a great deal of time with U.S. and London insurers trying to place bank D&O risks lately. Banks with real estate investment trusts (REITs), he said, are having a particularly tough time getting quotes from D&O underwriters.

This brokerage expert noted that he can still squeeze $10 million coverage out of the markets, but limits for banks higher than that are troublesome.

A risk manager for one large Southwestern bank told this magazine he knows of a bank looking for $5 million D&O coverage which is only able to obtain $1 million insurance.

The risk manager for a West Coast bank who renewed a D&O policy three months ago noted that the broker involved requested proposals from six insurance companies and was only able to get quotes from four. "And we're a very sound bank," the risk manager added.

In New York risk managers for two of the major bank holding companies on the "troubled" lists declined to comment on their

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Bank D&O risks . . .

Continued from page 1

D&O policies. One of them explained, "Our policy, underwritten by Lloyd's is up for renewal in April and so far our brokers haven't given us any indication that we won't be able to renew."

The risk manager for a major Midwestern bank reported with some relief, "We renewed our D&O policy last year and found a good market."

However, the market situation today, "is generally unfavorable," according to an assessment by a New York broker.

"We're undertaking a re-evaluation of all our bank underwriting," said a spokesman for one of the largest domestic insurers of financial institutions. The company participates in insurance for "between 400 and 500 banks and from 75 to 100 bank holding companies' " he said.

"Now we key in on the total assets, number of municipal holdings, loans to real estate investment trusts (REITs) that a bank has," the spokesman explained. "Unless we can have the policy the way we want it, we won't insure them."

There's definitely a relationship between the size of the bank's assets and its vulnerability to sizeable lawsuits against the board of directors, another D&O underwriter noted.

Not only the size, but the personality of a bank is a factor in underwriting, he continued. "Banks that are more involved in risk-taking may have difficulty getting D&O insurance because of this."

Capacity doesn't seem to be a major difficulty in the D&O liability market, sources say, "unless you want more than $15 million."

"Anywhere from $10 million to $20 million is readily available," said a Chicago-based D&O liability underwriter, but this capacity isn't going to help any of the problem banks," he added. ■

Bank trust departments excluded

NEW YORK—Though the availability of directors' and officers' liability insurance concerns a number of bank risk managers, a new exclusion in the bank D&O policy is grabbing more attention right now.

What's being excluded is the Employe Retirement Income Security Act (ERISA) exposure for bank trust departments. Prior to the signing of ERISA into law, bank trust departments were covered by the D&O liability policy for their fiduciary liability involving outside benefit plans and pension funds.

Now, however, underwriters virtually across the board are excluding the ERISA liability when D&O policies come up for renewal. The banks' alternative is to purchase more trust department errors and omissions coverage.

"We've excluded ERISA liability as of Jan. 1, 975," a Chicago based D&O liability underwriter told *Business Insurance*. "It took some of he other underwriters in the market a little longer to catch on, but now just about all of them exclude it too."

"We offer banks coverage for in-house plans on a buy-back basis," the underwriter continued, "but it's a separate coverage."

Another underwriter quipped, "Banks can buy in-house fiduciary coverage all day long, but nobody can get out-house coverage" on plans.

The problem with trust department E&O coverage is its expense.

"You're talking about a lot of money," another underwriter noted, "trust department E&O has been considered a luxury for banks."

What a number of banks have done to solve the problem of fiduciary liability for their outside plans is to self-insure.

"With the size of our trust department and the number of outside plans we're involved in, it was just cheaper to self-insure for E&O," the risk manager for a large Midwestern bank explained.

"Not many of the large commercial banks have trust department E&O," the risk manager for a New York bank said, "because of the prohibitive cost."

One underwriter of fiduciary liability warned against the practice of insuring both directors' and officers' liability and fiduciary liability with the same company.

"They're two entirely different risks," he explained, "Fiduciary liability, covering pension and trust funds is an area where there's no room to gamble," while in the case of corporate assets, "it's the business of directors and officers to gamble."

In many cases, you're dealing with two different sets of assets, but often the same people, the underwriter continued, "and I don't believe any smart buyer of insurance would combine the two coverages."

Since both D&O policies and fiduciary policies are written on a claims-made, annual aggregate basis, "You're diminishing the amount available for coverage in a given year," the underwriter said, "If a D&O suit arises, chances are a fiduciary suit will be filed too." ■

Small pension plans should dump ERISA

By ELISABETH M. WECHSLER

CHICAGO—A company whose pension plan is valued at less than $100,000 "should seriously consider" helping its employes set up individual retirement accounts (IRAs) instead, suggested Thomas H. Jolls Jr., vp of Towers, Perrin, Forster & Crosby, here.

"There are just too many small pension plans around that shouldn't be continued," he added. He was one of the panelists at a Bank Administration Institute conference here.

Employes in the engineering and scientific communities want the option of IRAs rather than company sponsored pension plans because they consider themselves highly mobile and (therefore) not likely to remain with one employer long enough to become fully vested, Mr. Jolls explained. He pointed to "substantial pressures" on companies to allow disparticipation in the corporate pension plan.

"Research-oriented companies will see this (IRA) option soon," he predicted, but warned that discrimination must be avoided so that the company pension plan remains a qualified plan under Internal Revenue Service laws.

Two companies mentioned as looking into the IRA option are the Educational Testing Service Inc., Princeton, N.J., and TRW Inc., Redondo Beach, Ca.

Mr. Jolls believes that traditional or paternalistic companies "will oppose a choice" between participation in a company plan and setting up an IRA.

Another panelist, Conrad M. Siegel, president of his own Harrisburg-based actuarial firm, seemed to agree that many small companies should consider the IRA alternative. "We've advised some clients to disband pension and profit-sharing plans, and we've advised others not set up a plan now because of the Employe Retirement Income Security Act," he said.

"An IRA can produce a reasonable retirement benefit," Mr. Siegel pointed out. He cited an example of an employe age 45 who made the maximum $1,500 annual contribution to an IRA for 20 years, which was invested at the current available rate of 7.5% and then converted it into an annuity. A monthly benefit of $740 would be available to this employe at retirement, he explained.

"If you consider a flat year of service, the benefit is equivalent to $25 a month per year of service," Mr. Siegel continued.

The advantages of allowing employes to set up their own IRAs, in Mr. Siegel's opinion, are the elimination of all Pension Benefit Guaranty Corp. rules and the fact that legal and actuarial services no longer would be necessary for retirement planning.

Among the disadvantages, he continued, are the fact that the $1,500 ceiling on an employe's annual contribution adversely affects a higher paid and more experienced workforce. Also, the IRA contributions are taxable to the employer for state, federal and Social Security purposes. ■

GUIDE TO FEATURES

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Guyana and Chile pay up

WASHINGTON—The Overseas Private Investment Corp. (OPIC) has received partial payments totaling more than $6.5 million from Chile and Guyana for nationalized properties.

OPIC, which insures investments in foreign countries against political risks, received more than $5.6 million from the Chilean government to compensate for the nationalization in 1971 of several properties formerly owned by U.S. companies, including International Telephone and Telegraph Co. and the Anaconda Co.

The government of Guyana paid $400,000 as an initial payment of compensation for Reynolds Metals Co.'s bauxite mine, which was nationalized last year.

The three corporations had previously received satisfactory settlements from OPIC under their expropriation insurance coverage. The government insurer then assumed the rights of the investor and negotiated satisfactory settlements with the respective governments. ■

Outlaws local restrictions on ability to vie for city insurance

By SUSAN ALT

JEFFERSON CITY, MO.—The state attorney general here has declared that the agents' committees and agents' associations which often control the insurance purchasing for some municipalities and other government bodies violate antitrust laws.

John C. Danforth issued tough guidelines for purchasing insurance after completion of an extensive investigation into the manner in which Missouri cities purchase coverage. The investigation began in late 1975. Attorney General Danforth declared that he views seven common practices as effectively excluding insurance firms or agencies from competing for a city's insurance business.

Whether adopted by regulation or by custom, Mr. Danforth said in his statement, these practices constitute an unreasonable restraint of trade, and violate state and federal antitrust laws and must be terminated.

The practices include:

- successively awarding insurance coverage to the same firms or agencies without affording other firms or agencies the opportunity to compete;
- splitting the award of insurance coverage among local firms or agencies;
- awarding insurance coverage to only local firms or agencies;
- utilizing competitive bidding but only allowing local firms or agencies the opportunity to compete;
- utilizing an agent of record system which permits only a local firm or agency to serve as the agent of record, under a system where the agent retains a percentage of the commission earned on the insurance premium with the remainder of the commission being split in a predetermined manner among other firms or agencies;
- awarding insurance coverage only through local insurance agents' associations or like committees of insurance agents;
- restricting those firms or agencies which can compete for a municipality's insurance coverage to firms or agencies which reside in, maintain an office in, or pay taxes in a particular locale or have some other form of localized contact with that municipality.

The Missouri attorney general's condemnation of uncompetitive insurance purchasing procedures in that state's cities caused a good deal of conversation among governmental officials attending a governmental risk management seminar in early February at the University of Arizona, Tucson.

These practices outlawed in Missouri are widespread, although insurance purchasing for government bodies is gradually becoming more professional and competitive, said Nestor Roos, chairman of the seminar and professor of insurance. "The majority of governmental entities I've come in contact with over the years have this sort of restrictive system, particularly using the local agents or the agents' committees," he told *Business Insurance*.

Mr. Roos noted that the Tucson area school district has such a restrictive system, and so does Phoenix. "Pima County had an agents' committee, but changed about two years ago" to a competitive system, he added.

During a session of the seminar, Mr. Roos queried the audience about their methods of purchasing insurance for their municipal and county governments. Six of those present, out of about 35, said their cities and counties have a noncompetitive system dominated by local agents.

Mr. Danforth said a survey was made of every Missouri city with a population over 500. A 90% response disclosed that nearly two-thirds of all the cities were using one or more of the restrictive procedures by regulation, ordinance or custom.

"Under the state antitrust law, a municipality which has such restrictions in existence is subject to prosecution by this office," said the attorney general. "The municipality is also subject to private treble damage suits and actions for injunctive relief by insurance firms or agents which have been refused the opportunity to compete for the municipality's insurance business."

Mr. Danforth said he feels the guidelines issued by his office should help assure the people in a city "that open competition is present in the purchase of insurance coverage for that city."

The problem, said Mr. Danforth in his guidelines, is that agents' associations have counseled municipalities and other political entities on insurance matters, but have in the process established monopolies on the business. "Some associations have abused their relationship with the local municipality by securing adoption of qualifications" which prevent competition for the insurance business.

A city is acting within its legal rights in assuring that the agent and the insurer "are reputable and will provide necessary service in both risk counseling before the implementation of the insurance plan and in follow-up service after insurance coverage is purchased," said the guidelines issued by the attorney general. There are several legal ways to accomplish this, including:

- requiring a designated Best Rating;
- making a financial and reputation check on the agent and the insurer which submit a proposal;
- requiring that the agent or underwriter have a designated number of years of prior service in a particular field for which it is proposing an insurance plan.

"A municipality may properly require that an insurance agent or firm be reasonably accessible to provide whatever continuing services are deemed necessary for an adequate insurance plan," said the attorney general. But he warned in his guidelines that "whatever type of restriction is established . . . cannot be a mere subterfuge" to allow a select group to monopolize the entity's business.

Competitive bidding Mr. Danforth stated, is a way municipalities can approach purchasing insurance which does not offend state and federal antitrust laws. But is not, he added, required by state or federal statutes. Where competitive bidding is employed, the political entity must take care to open the process up to all interested and qualified parties desiring to compete for the business.

Choosing an agent of record is another way to manage insurance programs, Mr. Danforth said. ■

Cities and counties are responsible for the acts of police officers, firefighters, teachers and other city employes.

Advises government risk managers

Market woes preclude bidding process for political entities

TUCSON—"The liability market has become so narrow that it is absolutely foolish to try to put your liability business out to (competitive) bid."

This is what C. C. "Bud" Griffin of San Francisco-based Warren, McVeigh, Griffin & Huntington told an audience of 50-odd governmental managers here. "It is best," Mr. Griffin told the municipal and county insurance officers, "to choose a capable, single broker to approach the liability insurance marketplace" in the current tightening conditions.

C. C. Griffin

Many municipalities and government entities give the insurance business to agents or brokers through outright appointment, said Mr. Griffin, citing Sacramento County, Ca. as one entity that does this by using a preselection system.

"Any route you take is going to be criticized by someone," he lamented. "But competitive bidding, I don't think, is always the right way to go," he noted, especially when the insurance markets are likely to be put into a state of turmoil by the fact that certain liability risks are included in a package. For example, Mr. Griffin explained, the markets for malpractice coverage are so narrow right now that the market can be turned upside down trying to get a proposal on a program that includes malpractice risks.

"I feel that you should look for quality, and that price should be the last consideration" in a municipal bid-insurance program, he said. The only type of municipal coverage which lends itself to competitive bids at the present time, said Mr. Griffin, a risk management consultant, is property, because "municipal property risks are generally pretty desirable."

But "liability insurance is getting so tough that we could see the primary markets dry up," he warned.

He advised the governmental insurance managers present to be sure to allow enough time for bids or proposals prior to policy renewal time. "Sixty to 90 days used to be enough. But you should try to allow more time now."

Insurance buyers should also try to get 60 to 90 day cancellation and non-renewal clauses in all liability insurance policies, Mr. Griffin advised.

"And if you are reasonably satisfied with your present carrier and the prices aren't going up that much, you may be best off to stay with that company," he told the city and county managers attending. "Don't bid during this market if you can possibly help it."

Mr. Griffin encouraged municipal managers to "get in there more, and work on determining the feasibility of more self-insurance, because this may be your only solution in the future" to the insurance industry's unwillingness to provide insurance for some municipal risks.

William Mortimer, vp of American Risk Management Co., backed up Mr. Griffin's advice to avoid bids in the current troubled insurance climate. "Be sure you get real friendly—as friendly as possible—with your present insurer, so that you can ask for extensions when you need them," he said.

H. Felix Kloman noted that he has moved "lowest direct cost" down to the fourth rung of his ladder of objectives in risk funding. "I think in too many cases this has been given the highest priority," which is a short sighted approach, said Mr. Kloman, a risk management consultant and president of Risk Planning Group.

"Too often what has happened is that the organization goes for the lowest cost and sacrifices the stability of cost," a more important objective, he added. ■

Orange County, Ca. to self-insure malpractice

TUCSON—Richard McElligott, risk manager for Orange County, Ca., plans to begin self-insuring the county's medical malpractice risks and all health and medical benefits for county employes, he told a governmental risk management seminar here.

In a session on liability insurance problems for political entities, Mr. McElligott noted that Orange County paid $1.2 million for medical malpractice coverage in the latest year for just one of the hospitals in the county. Other medical facilities in the county for which malpractice coverage is needed include a mental health department and a county health department office, with an adjoining clinic.

"We estimate it will cost us $700,000 next year for medical malpractice coverage" just for these latter exposures, without the hospital, he said. On July 1, the county is "getting rid of" the hospital risk, he added, because the hospital is being donated by the county to the state of California.

The hospital risk, if it were not being transferred to the state, would present a big enough exposure that Mr. McElligott would not self-insure medical malpractice, he said.

But with the "residual" malpractice exposures of the departments and the clinic, "we will, I am sure, go to self-insurance," Mr. McElligott stated. He estimated that cost savings will approximate $500,000 a year by self-insuring this risk for the county.

Employe health benefits will be changed to a self-insured plan as of July 1, he said. "The county board has already approved this. Our carrier was Prudential Insurance Co., and our account was a real money-maker for them. Pru will continue to administer claims" under an ASO contract, according to Mr. McElligott. Only health and medical coverage will be self-insured, but not disability coverage, he said. The program does not include a stop loss feature or excess coverage. ■

Medics end 'job action' by yielding and renewing; but problems remain

LOS ANGELES—The 35-day "job action" undertaken by many Southern California doctors ended Wednesday, February 4, with all the issues that triggered the work stoppage in the first place largely unresolved.

Indeed, at the moment he was announcing the end of the work slowdown, Dr. Richard Corlin, a spokesman for the United Physicians of California (UPC), the most militant of the physician protest groups, issued a threat that if the California legislature does not resolve the issues to his group's satisfaction, there may occur "another closing of doctors' offices within the next two months."

Most Southern California physicians who renewed their malpractice coverage in January with a unit of The Travelers Insurance Co. did so for only the first quarter of 1976. In paying the first quarter premiums, the doctors accepted the 32% premium hike put through by the insurance company.

Second quarter malpractice insurance premiums fall due April 1 or near the time that Dr. Corlin of UPC suggested there might be a second strike.

In the meantime, it was made public that the California Medical Assn. (CMA) is pondering an initiative that would seek public approval in abolishing a victim's right to trial in a malpractice case.

The initiative in California can be used as a way to bypass the legislature. Under state law, it requires the collection of 500,000 valid signatures to be put on the general election ballot in November.

One proposal being considered by the CMA would replace the tort system for the resolution of malpractice claims with a no-fault system similar to that employed in workers' compensation cases.

A second proposal would retain the tort system, but would substitute a board of arbitration for a jury.

On February 11, the House of Delegates of the CMA, meeting in San Francisco, voted to create a commission on tort reform. The commission, which will include outsiders as well as CMA members, will take proposals aimed at creating an initiative.

Both of the aforementioned proposals are now before the new commission.

Doubts have been expressed as to whether an arbitration system would reduce the number of malpractice claims filed and the size of awards. For one thing, the system can handle small claims more cheaply than can jury trial and so, say observers, more patients may be willing to engage in arbitration.

At least that is what happened for the Ross-Loos Medical Group, an organization of 150,000 members in Southern California, that has used arbitration since 1939. About one case in seven goes the full route to arbitration for Ross-Loos compared to a jury trial average of one case in ten in court malpractice cases.

Ross-Loos has also paid out awards as large as $96,000.

The sole state legislative measure to grab public notice since the slowdown began is the Berman bill, named for Assemblyman Howard L. Berman. The bill, which is still in the legislature along with a couple of other bills dealing with the malpractice situation, has been endorsed by Gov. Edmund G. Brown Jr. Gov. Brown, who earlier demanded that doctors donate a certain amount of free servicie to California's poor in return for a state effort to lower malpractice premiums, has backed away from that position which was harshly condemned by doctors.

However, the Berman bill has also been vehemently criticized by doctors, notably by the UPC. In particular, they denounce a provision in that bill that would boost premiums 15% in order to build a reserve fund.

One insurance source close to the malpractice situation told *Business Insurance* that this plan would fail because physicians would eventually be compelled to pay premiums as high as those now demanded by the unit of Travelers Insurance Co.

Assemblyman Berman, for his part, has said he is willing to amend that provision by limiting annual premium increases to cost-of-living hikes.

Another proposed bill dealing with the malpractice situation and sponsored by Sen. Alfred Song has also run into trouble.

Finance and legislative analyst A. Alan Post, who made an independent analysis of the bill, said that if a deficit developed in the voluntary state-wide malpractice insurance pool envisioned by the legislation, then taxpayers and injured patients would have to make up the shortfall. An initial average annual premium of $4,000 would be charged physicians.

Mr. Post is a respected figure in the legislature. The Song bill, unlike the Berman bill, is backed by a number of doctor groups, including the UPC. ■

See captives as choice for municipalities

TUCSON—Among the risk funding alternatives now being studied more closely by political entities are various pooling arrangements, including captive insurance companies, according to H. Felix Kloman, president of Risk Planning Group.

Mr. Kloman, a consultant, predicted here at a governmental risk management seminar that more municipalities will turn to captives in reaction to market tightness, and to improve cash flow.

He cited the experience of a successful French captive formed in June 1974 to provide insurance for cities in France with populations less than 5,000. Called the Societe de Mutuelle Des Collectivities Locales, it underwrites property insurance for theft, water damage, wind and fire, plus municipal civil liability risks.

This captive has been very fast growing since it was initially established, said Mr. Kloman. He noted that in 1976-77 the Societe "expects to go well over $1.5 million in premiums," up from an estimated $880,000 in 1975-76, and $270,000 in 1974-75.

Limits of insurance are $22,000 for any single occurrence, with rates established at 3.5 cents per resident of the municipality for cities under 5,000 population. For larger cities, the insurer uses the French tariff rate less 20%. ■

An unlikely way to cover an insurance claim?

A late January afternoon in Charlotte, N.C. Weather forecast: freezing temperatures overnight.

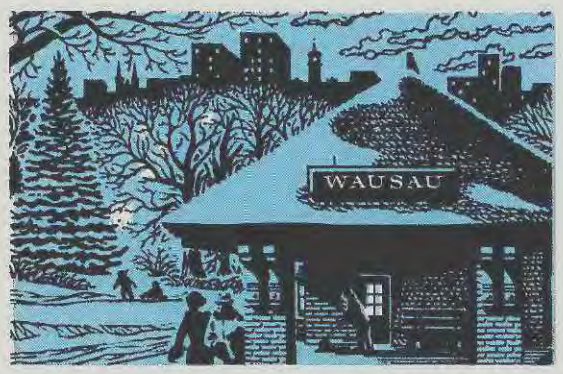
Charlotte Claims Office receives call from a nursery. A policyholder's truck has overturned, damaging greenhouse. Initial damage estimate: $4000. But loss of exotic plants now exposed to elements could drive potential claim as high as $20,000. Claims Office suggests moving plants to another greenhouse. None available. Thermometer begins to fall as night comes on. Claimsman Jim Mathison studies problem, drives to Greenville and buys rolls of heavy plastic sheeting and plenty of tape. Returns to nursery, covers and completely seals damaged greenhouse. Temperature drops below freezing. Inside, plants cozy, alive and well.

This case supports our assertion that there *are* major differences in insurers. Not just in price, but differences in *commitment* that greatly affect long range *cost*. The savings to us? Substantial claims dollars. To the nursery? A lot of unruffled customers and a whole lot of inconvenience. Savings to all our policyholders? A potential shared loss...that never occurred.

At the source, you'll find our objective is not only to provide protection, but to help all our policyholder-partners control loss. We're a little old-fashioned that way. Waste not, want not...the Wausau way.

COME TO THE SOURCE

Get the Wausau Story

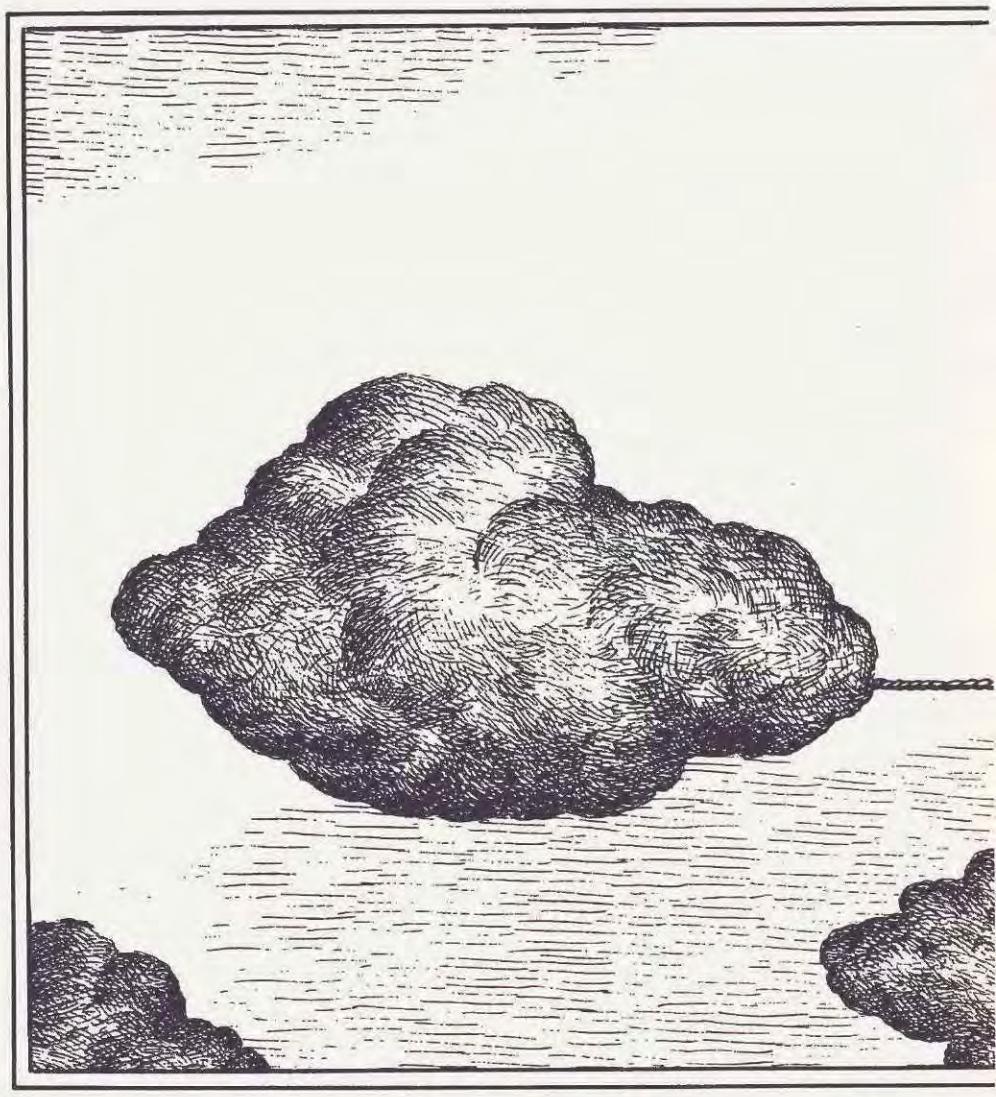


EMPLOYERS INSURANCE OF WAUSAU, Wausau, Wisconsin

Risk Man

To control all aspects of an organization's exposure to asset damage and loss, many companies have recognized the importance of a comprehensive function called corporate risk management.

A brief review by INA of an insurance topic of interest to business executives.



A company's assets may be valued in billions of dollars, or they may be much less—but all of those assets, in varying degrees, are exposed to continuing risks of damage or loss. By applying management techniques to the handling of such risks, threats to the company's earning power and even to its continued existence can be reduced or eliminated. Corporate risk management, in short, can enhance cash flow, shield profitability, and contribute to long-term growth.

The concept of risk management combines *risk control,* including loss prevention and reduction, and *risk finance,* the provision of funds at the lowest cost for financing possible loss.

Within a company, risk management often starts with painstaking identification of the possibilities of loss to which the firm is exposed. For example, a risk manager may conduct an extensive physical inspection of company facilities and operations. Such a survey may be reinforced by the use of standardized questionnaires intended to uncover hidden exposures common to many business firms. Examinations of flow charts and financial and other documents may suggest further hazards.

Ranking potential losses

The next step, risk measurement, establishes the relative importance of potential losses —their frequency, severity, predictability and probability. This is followed by determining the best technique for handling the firm's risks, whether through risk control, risk finance or a combination of both.

The cardinal rule is to obtain the greatest

agement

possible protection at the least possible cost to the company.

Under risk control, a decision might be made not to build a warehouse in a flood plain (risk avoidance). It might be to install guards on machinery to prevent employee injuries (loss prevention). It might be to install a sprinkler system in a plant (loss reduction).

Under risk finance, the decision is how to allocate the risks between risk *transfer,* usually insurance, and risk *retention,* with the company paying any losses from its own resources.

Insurance alone does not constitute total risk management, as insurance professionals have long pointed out.

Invariably, insurance is most useful and least costly when accompanied by all other practicable means for reducing exposure to loss.

Once risk management decisions have been made, the next step is implementation.

Here risk management's responsibility is primarily that of managing people, so that desired actions are taken. Finally, having put programs into action, results are constantly checked to see if the desired effects have been realized. At the same time, the risk manager remains alert to changes in loss exposures which may call for new approaches and strategies.

As a fuller discussion of risk management from an objective standpoint, INA has prepared a booklet entitled, "Risk Management: Some Professional Considerations." Copies may be requested by writing INA Corporation, 1600 Arch Street, Philadelphia, Pa. 19101.

* * *

The Insurance Company of North America was founded in Independence Hall, Philadelphia, in 1792. Today INA and its affiliated companies operate around the world with major interests in property and casualty insurance, marine insurance, life insurance, reinsurance and risk management services.

INA insurance products and services are made available through selected independent agents and brokers—professionals with a comprehensive knowledge of insurance needs and solutions.

INA

Insurance Professionals

Product liability . . .

Continued from page 1

businesses, and on the question of which industries are most affected, Mr. Jordan said, "It's probably a problem across the board."

He added, however, that small businesses have probably been hurt the worst so far, in terms of the cost and availability of insurance.

"It's basically a national problem, but it differs from state to state," Mr. Jordan said. One of the causes of the product liability problems, he said, is uneven workers' compensation benefits in different states, which leads to "workers trying to get more" from other sources because they cannot sue their employers under workers' compensation laws.

Another cause brought out in the course of the study is the number of unfavorable legal trends converging at this time, Mr. Jordan said. "Manufacturers are losing their defenses," Mr. Jordan said, especially in the areas of strict liability and privity.

Moreover, the problem of more lawsuits and generous awards is "exacerbated by the problem that insurance companies aren't making money," Mr. Jordan said. "Underwriting rules are getting tighter, there's more layering of coverage, and the excess markets are drying up," he added.

All the various manufacturers and their associations, and the insurers and their representatives, "admit there's a problem and they say it's getting worse," he said.

A 23-person committee, composed of representatives from the Commerce Department and the Small Business Administration, will mull over the facts gathered in the last two months and prepare a memorandum for the Economic Policy Board.

One of the board's options might then be to call for a meeting here between the manufacturers, the insurers, and top government decision-makers.

For now, Mr. Jordan is careful to say that no final conclusions have been reached. "It's very complex—you can make the mistake of promoting something before having the right information." ■

Toll free number

Argonaut Insurance Co. in Menlo Park, Ca. established toll free telephone numbers for use by injured workers who need to obtain workers' compensation claims information. Workers north of Bakersfield can call 800-652-1532. Those south of Bakersfield can call 800-252-9046.

On-the-job injury . . .

Continued from page 1

He said that Norman Engineering's half of the verdict exceeds the limits of the company's primary layer of CGL coverage.

He also said that he expects a motion to be made before Superior Judge Charles H. Older, who presided over the three-month civil trial, to reduce the verdict.

It has been reported that Mr. Good earlier turned down a $2,650,000 settlement in hopes of a higher award.

Mr. Rodriguez was badly hurt on Sept. 21, 1970, when, working in the McDonnell Douglas Corp., plant in Long Beach, Ca., as an apprentice sprinkler fitter, he was hit by the 630-pound pipe.

His employer at the time was Orvin Engineering Corp., which was found 10% negligent. The state compensation fund which has paid out $93,000 for Mr. Rodriguez' care, reportedly will move to recoup that money from Orvin.

Norman Engineering was held liable because it produced the building where the accident occurred.

Bethlehem Steel Corp. was held liable because the jury decided that it had cut the defective angle iron or brace that caused the weighty pipe to topple on Mr. Rodriguez.

Mr. Rodriguez, who made a short appearance at the trial in his wheelchair, has had 11 major surgeries and has had half of his stomach removed since the accident. ■

Captive is writing 25% for outsiders

NEW YORK—U.S. Industries has joined the ranks of companies whose captives are involved in writing outside business.

Diversity Insurance Co. Ltd., U.S. Industries' Bermuda captive, is currently writing 25% of its premiums in reinsurance treaties generated in the London market involving foreign insurance companies, according to S. Peter Law, vp, insurance.

The captive's total capital and surplus is approximately $4.5 million. Diversity is used "in all lines of U.S. Industries' insurance," Mr. Law said, "for reinsurance of workers' compensation, group health and a limited amounted of liability for property insurance."

The captive is involved in outside business, primarily to make money, Mr. Law noted, "though we were conscious of the Internal Revenue Service (IRS) view" on the relationship between U.S. companies and their Bermuda captives.

Though the IRS has not come out with a complete statement of its position on captives, it is known to be considering a position that would recognize the tax deductibility of premiums paid into a captive which does substantial outside business. (*Business Insurance*, Dec. 1, 1975).

Industry sources say the issue of captives' involvement in outside business is much discussed among risk managers, though at present little action is being taken. ■

Loss control seminar set for London

LONDON—Factory Mutual International will hold its second seminar on industrial loss control at Heathrow Airport Hotel here, April 6-8.

Last year 120 persons attended the seminar, which is presented simultaneously in French, German and English.

The seminar is open to all Factory Mutual System members and costs 150 pounds sterling. It focuses on the technical aspects of loss prevention, organizing and implementing a program and motivating employes to become an active part of the program.

For registration information, contact one of the U.S. Factory Mutual Cos. ■

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Progressive area health care firms portend extra challenge for HMO

By MARGARET LeROUX

NEW BRUNSWICK, N. Y.—Setting up a health maintenance organization (HMO) in an area where the two largest employers are in the health care field and pride themselves on the extensive health benefits they already provide for their employes, is an ambitious undertaking.

Yet Roger Birnbaum, director of the Rutgers Community Health Plan (RCHP) is confident the HMO, scheduled to begin operations this spring, will "offer an attractive alternative to present health care arrangements in the area."

The HMO will need more than $1.25 million in funds over the next three years and at least 32,000 members by that time "to break even in costs," Mr. Birnbaum told *Business Insurance*.

Since the university, including the medical school fulltime employes and dependents, provides only 15,000 and 18,000 potential members, the bulk of the HMO's membership will have to come from area employers. At this point, two of the largest of those employers, Squibb and Johnson & Johnson, are far from enthusiastic about the HMO.

"It hasn't even reached the point of making a decision on whether or not we're even considering the HMO," according to a spokesman for Johnson & Johnson.

"We've yet to see rates issued by an HMO that come near what we pay for comparable benefits," a spokesman for Squibb, whose subsidiary, E. R. Squibb & Sons, employ 4,000 people in the New Brunswick area.

The spokesman explained that insurance rates paid by the company for its extensive non-contributory medical plan 'are lower than what Rutgers is now paying for Blue Cross Blue Shield coverage"

Support for the RCHP has been voiced by the local United Auto Workers (UAW) union which represents 3,000 employes of a Ford Motor Co. assembly plant in neighboring Edison, N.J.

A representative of the American Federation of State, County and Municipal employes noted an interest in the RCHP "contingent on the rates they'll be charging." The union has about 2,500 potential members in the area the HMO hopes to cover.

Despite the lack of enthusiasm from Johnson & Johnson and Squibb at this point, Mr. Birnbaum is confident the HMO's membership goals can be met.

"We view our membership market as much broader than just the two major area employers," he explained, "there are 70 employers in the area with 500 or so employes each."

The RCHP director is also relying on legislative assistance, of sorts, in seeking membership in the HMO from area employers.

Once the HMO gets status as a qualified plan (it submitted its application in December of 1975 and hopes to hear in March on its qualification), employers with at least 25 employes must, under the Health Maintenance Organization Act of 1973, make the HMO option available to their employes.

To date only eight HMOs have been qualified by the Health, Education and Welfare (HEW) department. However, the department expects to qualify as many as 100 HMOs in the next year (*Businses Insurance*, Dec. 15, 1975).

For the Rutgers employes, membership in the HMO will make available a number of medical services not currently covered under the non-contributory Blue Cross Blue Shield plan provided by the university.

The cost to a Rutgers employe for a family membership in the HMO will be approximately $10 per month. The cost to employes will make up the difference in what the state currently pays for each employe's Blue Cross Blue Shield coverage, about $50 per month, and estimated monthly costs of the HMO.

In addition there will be a nominal per visit charge assessed members of the HMO.

"The HMO would completely cover routine physical exams and a whole range of out of hospital diagnostic services not covered by Blue Cross Blue Shield," Mr. Birnbaum explained.

The HMO will also cover maternity cases and surgery, which are both on a fee-scheduled basis under the Blue Cross Blue Shield plan. ■

Protest comp premium hike in Canada

TORONTO—Ontario construction companies are protesting legislation passed this summer which increases the assessment they must pay for workers' compensation following hikes in benefit levels.

The construction industry pays higher premiums for the coverage because of a greater incidence of injuries among its workers.

The latest premium increases average 50% over all categories of contractors.

Yet, industry representatives, backed up by the Construction Safety Assn. of Ontario, say statistics show accidents have declined in recent years.

The legislation will cost the workers' compensation board an additional $108 million per year.

This increase, because of its short notice, will hurt construction companies on fixed-price contracts, critics claim.

For example, S. C. Cooper, president of Pitts Engineering Construction Ltd., Toronto, said during an average year his company would pay about $10 million in wages and about $500,000 in benefits premiums to the workers' compensation board.

But under the increased premiums, Pitts will have to pay about $750,000 in premiums, with the additional $250,000 coming directly from profits, he claimed. ■

Forms Australian arm

Kemper International Insurance Co. plans to form an Australian subsidiary, Kemper Insurance Co. Ltd., in Sydney. "Initial efforts of the new company will be devoted to engineering-related business with particular emphasis on highly protected risk (HPR) coverages," C. F. Aldrich, president of the parent company and of Kemper Reinsurance. After that phase, the Australian subsidiary "will become active in the reinsurance market in Australia," he added.

San Diego saves tax dollars with self-insurance

By JOANNE GAMLIN

SAN DIEGO—Although many California cities may be up to their rooftops in liability and other insurance problems, the city of San Diego feels it is sitting pretty with its total liability/property insurance program.

Robert G. Walters, superintendent of claims and insurance for the city, told *Business Insurance* that his department has devised a self-insurance program which is saving the city a heck of a lot of taxpayer dollars.

"We have a self-insured and self-administered retention of $500,000 per occurrence for liability coverage," explained Mr. Walters. Above the retention is a $25 million excess policy which is brokered by Cravens, Dargan & Co. and underwritten principally by the London market.

"The cost of this program for blanket coverage is $53,000 a year," he said.

In addition, Mr. Walters said, there is a contingency reserve fund of $1 million which has been built up over the last six years.

The fund, he said, is brought into play when there are, say, two jury verdicts that exceed the claims budget but are within the retention.

He said the total program works out this year to $675,000 plus $53,000 for excess coverage. The $675,000 figure, he emphasized, encompasses everything, from losses paid to paper clips to salaries.

Mr. Walters went on to explain that the $675,000 figure compares well with the $421,000 spent during fiscal 1974-1975 and to the $200,000 paid out during fiscal 1973 to 1974 for claims and miscellaneous expenditures. It might be noted that the two figures do not include salaries while the $675,000 figure does.

Noting that the two figures do reveal that the city's liability claims load has doubled from 1973 to 1975, he disclosed that he has been informed that to insure the same program it would cost $2,200,000.

"I think it (the $675,000 figure) is neat," he understandably asserted.

As for exposures, Mr. Walters said that inverse condemnation is probably the claims leader, followed by false arrest and streets/roads.

He pointed out that one method he uses to hold down claims for false arrest is to ask the police department to bar plea bargaining in cases when the individual arrested moves to file false arrest charges.

"We also attempt to advise the police department to make their men understand that they must have secure grounds for an arrest," he added.

Turning to the city's property coverage, he said it has been self-insured in part since 1970.

San Diego maintains a $10,000 deductible per occurrence in property coverage, he explained, insuring up to $48.5 million with a number of underwriters. For this protection, a $18,000 premium will be paid in fiscal 1976.

"We've never had a claim higher than $2,000," noted Mr. Walters.

Workers' compensation for the city is self-insured at a cost of $1.5 million, he said, observing that the cost of this coverage has been on a relentless climb. The $1.5 million figure embraces salaries, claims and most everything else except reserves.

The bright side of the figure, he said, is the fact that, when he queried the State Fund about the cost of an insured program, he was told the price tag would read $4,055,000.

"So we figure we are saving $2.5 million a year," he continued, adding that one reason why the cost isn't higher is that "we administer the hell out of this program."

He added that "we" includes seven persons, both professional and clerical workers.

Making the self-insured facets of the city's insurance program work is a safety and loss program which has become "hyperactive" in the view of the claims and insurance superintendent.

He said the program, headed by Rick Cummings, had made an effect during the last several years to leave no portion of city life untouched.

He went on to observe that the current effort to reduce municipal services in order to hold down budgetary inbalances can only result in broader exposures for cities.

"Every park that isn't inspected regularly will mean another cut foot," he said.

Similarly, he said the pressure for increased social services can only translate, for persons in his position, into new claims. ■

Suffers fire damage of $1 million

ELKHART, IN.—Accra-Pac, a packaging company based here, may or may not be adequately insured for damages caused by an estimated $1 million explosion and fire last month.

No one at the company or at Shultz Insurance Agency, its insurance brokers, would comment but *Business Insurance* learned that Accra-Pac's property coverage is with Insurance Co. of North America (INA). One building, a combination warehouse and production facility, was virtually destroyed.

The cause of the blast was not established last month. Local officials believe it was caused by a propane leak but other reports indicate it might have been butane. It is not yet known what ignited the explosion.

Two employes were killed and 19 others were injured. Five were hospitalized at a special burn center in Ft. Wayne, Ind., while four of the 19 were hospitalized here.

Accra-Pac's workers' compensation insurance is underwritten by Aetna Casualty & Surety Co., and its business interruption coverage is with Aetna Insurance Co., a division of Connecticut General. ■

Fire losses

Fires in the U.S. in November 1975 caused losses estimated at $284 million, an increase of approximately $22 million over fire losses in November 1974, according to the Insurance Services Office.

info for buyers

To receive literature listed in Info for Buyers write directly to the name and address accompanying each item, mentioning that you saw the offering in *Business Insurance*. Readers are welcome to submit items for possible inclusion in the column. All items that are free and have informational value to readers are eligible. The column will also consider items for which there is a modest handling charge. Send literature to Info for Buyers, *Business Insurance*, 740 Rush St., Chicago, Il. 60611.

• Two new brochures are available from Automation Business Equipment. The brochure **Self-Insurance** describes the operation of a self-funded employe benefits program, focusing on A.B.E. doing the claims administration. The second brochure **On-Line Computerized Claims Administration System,** explains techniques in the administration of medical, dental, drug, vision and life claims, using A.B.E. systems. For a free copy of either brochure write to, Herbert Schaffer, vp/marketing, Automation Business Equipment, 221 East Walnut Ave., Suite 271, Pasadena, Ca. 91101.

• **Catalog of Standards for Safety,** published by Underwriters Laboratories Inc., is designed to be a quick reference guide to UL's 357 published "Standards for Safety." The catalog lists published standards alphabetically and in numerical order. Also provided is information for each standard and UL's proposed standards. For a free copy of the catalog write, Attn: National Standards Stock, Underwriters Laboratories Inc., 333 Pfingsten Rd., Northbrook, Il. 60062.

• The Factory Mutual System has published loss control publications in French, German, Dutch, and Spanish. Available are: P7045- Controlling the Power of Flammable Liquids (Fr., Ger., Dt.), P6814- Cutting and Welding Hazards and Precautions (Fr., Ger.), P66805- Foamed Polyurethane (Fr., Ger., Dt.), P7133- How to Control the Shut Valve Hazard (Fr., Ger., Dt.), P7120- Property Conservation Means Action (Fr., Ger., Dt.), P7136- Now-Protection for Rack Storage Up to 25 feet (Fr. Ger., Dt.), P7304- Recovery Plan (Fr., Ger., Dt.), P7306- Safeguarding Electronic Computers (Fr., Ger., Dt.), P6601- The Story of the Factory Mutual System (Fr., Ger., Dt.), P6923- The Well Protected Plant (Fr. Ger., Dt.). For samples and a complete catalog, write to the Public Information Division, Factory Mutual, 1151 Boston-Providence Turnpike, Norwood, Ma. 02035.

• **Safety Program Practices in High Versus Low Accident Rate Companies** describes the questionnaire phase of a U.S. government occupational safety project. The project attempts to define whether there are distinguishable differences in safety program practices, and other related factors, in companies with low accident rates versus companies with high accident rates. Copies of this publication can be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The stock number is 1733-00090 and the price is $2.70 each.

• The Defense Research Institute has published a 22 page booklet, **Products Liability—Corporate Awareness.** The booklet features two articles, "What to do before the subpoena comes" and "Product liability: After the summons." The booklet is available for 50¢ each, and 35¢ each for bulk orders of more than 100 copies through the Institute, 1100 W. Wells St., Milwaukee, Wi. 53233.

• **Excess of Policy Limits,** published by Underwriters Adjusting Co., discusses the principles as to what an insurer must do or not do to avoid excess judgments. "Since the insurance company bears the burden of judgment and the cost of defense it must have the right to control the defense of the suit," the booklet says. "This right to control the defense carries with it the legal obligation to use due care or good faith respecting the interests of the insured." For a free copy, write to Underwriters Adjusting Co., Sylvia T. Jurkovich, director of communications, 224 S. Wacker Dr., Chicago, Il. 60606.

• **Your Employes: Do They Know All You're Doing for Them?** This brochure from Synerconsultants discusses current problems and solutions in communicating employe benefits. It focuses on a cafeteria approach to benefits communications, including computerized benefits booklets, statements, audio-visual presentations and monthly benefit reminders. For a free copy write to: J. F. Swygert Jr., President, Synerconsultants Corp., 95 White Bridge Rd., Nashville, Tn. 37205

• Highlights of General American Life's **Deposit Administration Side Fund Contract** are discussed in a 48-page brochure. Interest guarantees, alternative purchase rates and expense charges for individual policy pension trust plans are treated. For a free copy, write to Mr. K. R. McCaffrey, Director of Group Marketing, General American Life, 1501 Locust St., St. Louis, Mo. 63103.

• **Loss Prevention: The Best Way To Protect Your Assets** is a promotional brochure from Philadelphia Manufacturers Mutual Insurance Co. that describes how you can protect your business against loss by identifying and correcting potential hazards. Also included is an outline of the company's approach to meeting the insurance needs of large, well-protected facilities. For a free copy, write to J. G. Richardson, Mktg. Dept., Philadelphia Manufacturers Mutual Insurance Co., P.O. Box 824, Valley Forge, Pa., 19482.

• **Businessowners Policy,** introduced last year by the Insurance Company of North America, is designed to provide property and liability protection for selected classes of retail trade. The policy is in booklet form, is easily read and contains a table of contents and glossary. For a copy of the policy and a promotional brochure, write to Gary Dascenzo, Insurance Co. of North America, 1600 Arch St., Philadelphia, Pa. 19101.

• **Product Liability Litigation** by Arthur D. Little Inc. describes how lawyers and others involved in litigation can use the consultant's services as expert witness and technical support in product liability actions. A few case histories are presented. For a free copy, write to Irving J. Arons, Product Technology Section, Arthur D. Little Inc., Acorn Park, Cambridge, Ma. 02140.

Pension guarantor sets ceiling on its liability

WASHINGTON—The Pension Benefit Guaranty Corp. has set a limit on the amount of benefits it will guarantee if a plan terminates.

A final regulation issued February 11, effective immediately, puts the maximum benefit at the participant's highest average monthly salary for a consecutive five-year period under the plan, or $750 per month (adjusted for increases in the Social Security benefit and contribution base), whichever is less.

Participants and beneficiaries may receive additional benefits only if plan assets are sufficient to cover them.

This regulation is one of four crucial regulations needed to make a decision on whether a terminating plan has enough assets to pay off its vested benefits. An employer may be liable for up to 30% of his net worth if there is a shortage.

More than 3,000 plans, out of the more than 5,000 which have terminated so far, cannot be processed until the package of regulations is complete. PBGC has already determined that the assets of 1,390 plans are sufficient to cover benefits, and it estimates that more than 75% of the rest will also be found sufficient.

Expected shortly is another regulation—on allocation of assets—which would determine the distribution of assets among employe sub-groups, such as retirees, active participants, etc., according to six priorities, including the extent to which the assets come from voluntary or mandatory contributions.

Two more rules—valuation of benefits and valuation of plan assets—were discussed at the PBGC board of directors meeting in late January, and are still under consideration.

The $750 per month maximum guaranteed benefit has already been adjusted up to $801.14 for plans that terminated in 1975. For plans that terminate this year, the figure is $869.32.

The maximum benefit is figured as the actuarial value of a straight life annuity payable in monthly installments at age 65. Adjustments for those who retire before age 65 are included in the regulation.

Also included in the ruling is the coverage of new or increased benefits. A five-year phase-in period is used to protect PBGC against assuming liabilities for increases that were added in anticipation of a plan termination.

For each year of the phase-in, PBGC will guarantee 20%, or $20, of the benefit, whichever is greater.

The phase-in rule also applies to changes in the value of a benefit, such as liberalization of vesting provisions. PBGC received comments objecting to this part of the regulation, but decided not to adopt any changes because the five-year phase-in rule would be "largely negated." ■

Report more D&O with higher limits

NEW YORK—More companies are providing directors' and officers' liability insurance for their outside directors and the limits of coverage are higher than ever before, according to a study by The Conference Board.

Surveying 987 U.S. companies, a cross section of business, the Board found that 77%, or 763 companies provide directors' and officers' liability insurance, an increase over the 62% of companies surveyed in 1972 that provided the coverage.

Of the companies that do have the coverage, 93% pay all of the premium and another 6% pay between 90% and 99% of the premium.

Limits of coverage range from a low of $1 million, provided by 48 companies, to $50 million, provided by six companies.

The most common limit of coverage for directors' and officers' liability coverage was $10 million, the study found, with 237 companies having this amount. Limits of $5 million for directors' and officers' liability were reported by 213 companies.

These figures represent an increase over liability limits reported in the Board's 1972 study. At that time, the maximum coverage was $30 million and the median and most frequent coverage was $5 million.

The companies studied did not generally provide the same benefits to outside directors as for corporate executives. Travel insurance, is the most common benefit offered non-employe board members, but it was reported by 17% of the companies in 1975, compared to 23% in 1972.

Accidental death and dismemberment insurance was provided for outside directors by 9% of the companies surveyed in 1975, compared to 2% in 1972.

Outside directors were provided with group life insurance by 9% of the companies surveyed, while 4% provided group medical and hospitalization. ■

Establish captive

National Medical Care Inc., Brookline, Ma., is reportedly in the process of establishing a Colorado captive insurance company to underwrite the professional liability insurance for its outpatient dialysis treatment centers. The captive has been incorporated as National Medical Insurance Co. although the application for licensing is not likely to be final for serveral months.

editorial opinions

A welcome addition

WHO EVER DREAMED that groups of captive insurance companies would launch ships? It's not only possible, but has already taken place. Eight captives have underwritten a minor—but we think, important—part of the insurance (9.5% total) for the $20 million Norwegian cruise ship M.S. Kungsholm.

An interesting venture, indeed. A vp of J. H. Blades & Co., which manages offshore captives in Bermuda, sees the joint venture as "the way American companies can put . . . muscle into the insurance industry."

There are several fascinating aspects to this operation. The eight captive insurance companies, six of them subsidiaries of U.S. corporations, are working with the London market and the American Hull Insurance Syndicate to underwrite the ship's insurance. This is, perhaps, a precedent for a new level of cooperation between captive insurers and established insurance markets.

Furthermore, the captives may provide part of the solution to the problem of much-needed new insurance capacity in the world. The recurring questions about the insurance industry's ability to provide the underwriting capacity necessitated by more risks of mammoth size may be on their way to an answer.

It's exciting to see insureds providing new insurance markets, first for themselves, now for other companies with risks to be shared.

A valuable lesson

OUR READERS MAINTAIN that the stories they find most interesting are those related to specific news events which result in losses involving commercial properties, or result in liabilities for some company.

At the risk of appearing ghoulish or sensation-seeking, we spring into action immediately upon hearing news having a commercial insurance or risk management angle. Our object is to ascertain how the people in charge anticipated the loss, and planned for recovery from it. Knowledge of how organizations plan for contingencies helps others in their risk control and financial planning.

But in the wake of events which are unhappy or which produce unpleasant publicity, insurance buyers and other corporate officials sometimes are wary of revealing their programs of insurance and other recovery techniques.

We've never felt that disclosing these facts—the presence of insurance (or its lack) and the dollar limits of coverage —could be a bad thing. In fact, straightforward answers to questions about public events which involve companies and other entities should result in a very positive view of the organization affected.

A recent case in Chicago illustrates our point. Early in January two Chicago Transit Authority rapid transit trains were involved in a rush-hour collision, causing one death and hundreds of injuries. Within hours, Thomas Buck, manager of public affairs for the CTA, was asked to appear on television news shows to answer questions about the wreck. *Business Insurance* carried a story about the collision in its January 26 issue.

"I wouldn't sit there—broken rung!"

As might be expected, one enterprising newsman on a leading network station queried Mr. Buck about insurance coverage maintained by the CTA covering such disasters. Without hesitation, Mr. Buck responded by carefully outlining the extent of the CTA's self-insurance program. The train crash and injuries would, he stated, be paid out of the CTA's own pocket through this self-funding program, to the tune of $2.5 million, should the loss go that high.

Thus, he continued, transit users and taxpayers of Chicago would ultimately bear the burden of the loss. Above the self-insured retention, the CTA is insured for another $20 million, he added.

Between the lines, we read more into Mr. Buck's statements. Indeed, we believe he accomplished a valuable objective with forthright answers about liability coverage. He may very well have helped to hold down the number and extent of eventual claims, by thoroughly dispelling "the deep pocket of the insurer" myth, for one. We all know that one: it's based on the theory that all insurance companies are rich and can afford to pay for everybody's losses, trumped up or genuine.

As spokesman for a public agency, Mr. Buck operates on the philosophy that he must be as open as possible because the public has a right to know all the details about goings-on in the agency. Beyond that, though, Mr. Buck helped create an image of responsible management at the CTA; management with the foresight to plan for the conceivable "disaster" but paying its own way on smaller accidental losses.

As Mr. Buck expresses his beliefs, "Credibility is the most important asset any institution can have today. Your best way to deal with the public is to be completely above board."

We commend the Chicago Transit Authority, and Mr. Buck, for their enlightened view of full disclosure. Corporations as well as other public agencies could profit by following Mr. Buck's example.

The general public will be less likely to vent angry emotions against the business establishment as more organizations deal with honest questions by providing straightforward answers such as those Mr. Buck offered.

letters

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

Phone alarm system

To the Editor: I would appreciate any and all relevant information you may have regarding a "phone alarm system" installed in Costa Mesa, California. The system was described in an article in your publication of January 12, 1976 on page 8.

The alarm industry is most interested in following these developments.

Garis F. Distelhorst
Executive Director, National Burglar & Fire Alarm Assn., Washington, D.C.

Orville Amburgey, director of communications, City of Costa Mesa, responds: First of all, the Class I rating we received was the alarm portion of ISO grading, the city received a Class II overall rating. I feel the Class I alarm rating was attained because we would not accept the feeling that there were typical inherent deficiencies in a telephone-provided system. I feel some of the following are reasons for our Class I rating:

1. We have a centralized communications thereby having additional dispatchers available for any major emergency.

2. We have a 15 minute daily in-service training for all communications officers.

3. We have an active call box installation and maintenance program.

4. We are very adamant about keeping adequate records of repairs and maintenance to the system. These records helped to substantiate that we received the same prompt service from the telephone company during a strike situation.

Informative

To the Editor: For some time we have been thinking of writing to you so that we could tell you how much we enjoy "Business Insurance".

We find your articles to be so very interesting and informative. We occasionally take an issue to our customers so that they can better understand what is happening in the insurance world. Some of them have subscribed and they have commented on how much they enjoy it.

We wonder if you could help us with a problem. We have lost our last issue. It was so good. It had an article on the front page telling how much insurance has gone up. We want to take this out and show it to our customers so they can see it is an industry wide problem and not just our agency increasing

Continued on page 18

business insurance

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First hospital-owned captive formed in U.S.

TRENTON, N. J.—A captive insurance company and a reinsurance pool are two components of an attempted solution to the malpractice problems of New Jersey hospitals.

Formed by the New Jersey Hospital Assn. (NJHA), the captive is providing a $1 million fund for malpractice insurance for its member hospitals that are unable to obtain coverage in the commercial market. The captive is the first hospital-owned malpractice insurance facility in the U.S.

The captive, called the Health Care Insurance Exchange, has $25,000 to $75,000 limits of liability available at present. As of March 1, however, it is expected that the captive will be able to provide excess limits of $1 million per occurrence, and $3 million annual aggregate.

The additional limits depend on the activation of a reinsurance pool, made up of the approximate 400 casualty insurance underwriters in the state.

The pool was legislated into existence as part of New Jersey's medical malpractice liability insurance act, signed by Governor Brenden Byrne early this month.

Under the law, all licensed casualty underwriters in the state must belong to the pool and those underwriters that write malpractice insurance elsewhere in the U.S. can elect to provide malpractice insurance to any of the NJHA's 106 member hospitals.

If an underwriter volunteers to be a provider of malpractice insurance, it can cede 100% of the pure risk into the reinsurance pool and retain that part of the premimium necessary to meet expenses, a source involved in establishing the pool told *Business Insurance.*

In effect, the insurance department is trying to encourage underwriters to provide malpractice insurance for the hospitals.

"The department is telling underwriters 'You can't lose money by being part of the pool,'" the source commented, "but I haven't noticed any companies lining up to provide malpractice coverage," he added.

Indeed, the market for malpractice insurance for hospitals has all but disappeared in New Jersey since the Withdrawal of the Argonaut Insurance Co.

Federal Insurance Co., member of the Chubb & Son Group, picked up coverage for Argonaut's insureds.

St. Paul Fire & Marine Insurance Co. provides coverage on a claims made basis for the 39 NJHA members.

Federal Insurance Co. will provide insurance company services for the NJHA captive on an administrative services only (ASO) contract basis.

The insurance department has yet to rule on premium rates the captive will charge for its claims made policies, but a rate of $348 per bed per hospital has been proposed by the Insurance Services Office (ISO). The curent ISO rate for $25,000 to $75,000 limits of coverage is $54.50 per bed for hospitals in the state.

At present, three NJHA members have signed binders with the captive for coverage. ■

Rapid growth for insurer of architects

SAN FRANCISCO—Design Professional Insurance Co. (DPIC), a firm offering professional liability coverage to engineers and some architects, has become a unit of a new holding company set up to furnish additional capital to the rapidly growing insurer.

The holding company, Design Professional Financial Corp., was established in December, 1975, to take control of the assets of DPIC.

Organized in 1971, DPIC has expanded to the point where it will probably write approximately $8 million in professional liability coverage by the end of 1976, according to a spokesman for the new company. He said DPIC has policyholders in 40 states.

"Most of these are engineers," he continued, "although a pilot program offering liability coverage to architects has been put into effect in four jurisdictions, namely California, Washington, Oregon and Hawaii."

What distinguishes DPIC from other carriers is the fact that, while it is a stock company, it is principally owned by its policyholders who are required to pursue vigorous loss control programs.

Some of the ways in which the insured engineers move to protect themselves from losses are by creating internal testing and auditing programs, the spokesman said.

He noted that the insureds strive to become more realistic in their relationships with their clients, refraining, for one thing, from promising more than they can deliver or from exaggerating their services. ■

Marmon Group discloses premiums in proxy

CHICAGO—The Marmon Group Inc. (Michigan) disclosed in a lengthy proxy statement released late last month that "certain companies," including Marmon, in which the Pritzker family holds beneficial interests paid $3,777,000 in premiums for blanket property, casualty and group insurance.

Of this amount, $2,700,000 was paid by Marmon alone, according to the proxy statement. These premiums were for calendar year 1974.

By using blanket coverages for the property, casualty and group insurance, the cost of each risk insured is reduced "because of the spreading of the risk," the statement said. "The premium payable by each insured company is determined by the insurance broker or insurance company as if such company were independently insured," it added.

The proxy also revealed that the Pritzker family, as principal shareholders in Marmon and other firms, have an option to buy an insurance company from Cayman Assurance Co. Ltd., "to which premiums of approximately $1,140,000 were paid for the year ended Dec. 31, 1974 by certain of the companies referred to . . . including $900,000 paid by Marmon."

This acquisition is contingent upon "obtaining a ruling from the Internal Revenue Service on certain income tax aspects of the acquisition," said the statement.

"It is expected that in the event such insurance company is acquired," the statement continued, "the business relations with such companies will continue, and the types of coverage and the amounts of premiums may be expanded and increased. The premiums for all risks insured by such insurance company are presently competitive with those available from other unaffiliated insurance companies, and it is anticipated that in the event of consummation of the acquisitions, the premiums will continue to be competitive."

The Marmon proxy statement was issued relative to the Pritzker family's takeover and proposed merger of Cerro Corp. and Marmon into Cerro-Marmon Corp. The proxy details plans to consolidate the companies and restructure the organizations. Marmon is wholly-owned by the Pritzker family of Chicago through their ownership of GL Corp. All Pritzker family firms are privately-held.

Company officials declined to disclose any further details about the insurance programs or the proposed acquisition of an insurance company, until after Cerro shareholders vote on the proposed merger of the organizations. Cerro is a publicly-held company, which caused Marmon to abide by Securities and Exchange Commission regulations on the filing of information related to public corporations. ■

Wyatt Co. to release bank survey

CHICAGO—Over 3,800 banks with a minimum of $1 million net worth in the central U.S. were asked to participate in a survey of their insurance coverage by The Wyatt Co. Results are expected to be released in May, according to Warren G. Brockmeier, director of risk management services, based here.

The data collected from the confidential questionnaires is expected to answer questions such as: How do your bankers blanket bond premiums compare with others in terms of cost per million of deposits and cost per employe? What are the principal causes of loss and with what frequency can losses of serious magnitude be expected?

The survey also asks for information about trust department errors and omissions (E&O) coverage and fiduciary liability insurance carried.

The report will not identify participating banks in the 17 North Central and South Central states surveyed.

The Wyatt Co. has surveyed major corporations for the last three years concerning their directors' and officers' insurance. ■

Storm damage

The storm which swept up the East Coast early this month caused insured damages estimated at $4.2 million, according to the Property Claims Services of the American Insurance Assn. Wind, ice and freezing snow caused $1.5 million damages in New Jersey. Other losses included: $900,000 in North Carolina, $750,000 each in Maine and Massachusetts and $300,000 spread throughout Connecticut, Delaware, the District of Columbia, Maryland, New Hampshire, New York, Rhode Island and Virginia.

letters

Continued from page 14
their premiums. This is the January 12th issue. Could you please send us three copies?

Wally Peck

Editor's note: The issues are on their way.

Broker-consultants

To the Editor:

Mr. David Warren's illustration on the conflict of interest problem in your January 26 letters column was most intriguing, but I do not consider it pertinent to the issue. I do not believe that many broker-consultants around the company will be employed by an insurer to do any kind of job, much less one for a "client", whom I assume to mean a policyholder. However, should that unlikely event occur to me, it would certainly not affect my determinations during simultaneous or subsequent evaluations of another program including policies of the insurer.

For one thing, it is seldom that a given company writes the whole of an insurance program unless it is a direct writing company with salaried salespeople, and we can safely assume they will not employ a broker-consultant with diametral interests to critique one of their programs. Under other circumstances, the broker of record has usually determined the needs of the insured, and the company has written policies as specified by the broker, although the underwriters may have made some suggestions. Adverse findings relating to the specifications would reflect on the broker, not the company, and should limitations of coverage be the negative factor, the consultant would have to so state. The fact that you may or may not like a given insurer does not alter policy wording and the need for professionalism.

William W. Dintleman, CPCU
Associated Underwriters Inc.,
St. Louis, Mo.

Morality cover?

To the Editor: Our congratulations to you for publicizing on page 20 of your January 12th, issue, the information for buyers in connection with the Frelinghuisen Live Stock Agency, Inc. It is always a pleasure to read about new products and this agency, along with thousands of others, I am sure, have never head of live stock morality insurance.

It is great to know that there are coverages available in a tightened market, which can be placed for clients.

Philip J. Braun

Editor's note: That's probably the most interesting typographical error we've ever had in Business Insurance. It should have been 'livestock mortality' for those readers who hadn't guessed.

NCR liability account to direct writer

CHICAGO—National Cash Register Co. (NCR), Dayton, Oh., switched insurance carriers for at least part of its casualty program, involving some $2 million a year in premiums, *Business Insurance* learned from highly reliable sources.

The largely workers' compensation and general liability account is now being underwritten directly by Liberty Mutual Insurance Co. Previously, the coverage was placed with Continental Insurance Co., New York, through the office here of broker, Marsh & McLennan Inc.

Marsh & McLennan reportedly remains NCR's broker for other coverages, however.

None of the principals involved —NCR, Liberty Mutual or Marsh & McLennan—would comment officially on the matter. The official reason for the account change was not learned. But indications from insurance industry sources were that Liberty Mutual's premium quote afforded National Cash Register substantial cost savings, allowing the direct writer to pick up the account. Liberty Mutual has also reportedly bid successfully on several other large corporate casualty accounts in recent months, at a time when other casualty insurance companies have been pulling back from commercial liability risks. ■

Broker buys London firm

Handsel Services Corp., New York-based general insurance brokers, specializing in marine insurance, acquired Cockrill Leeds International Ltd., a London-based adjusting firm. The marine adjusting business will now be handled under a new name of Handsel Adjusting Services Ltd.

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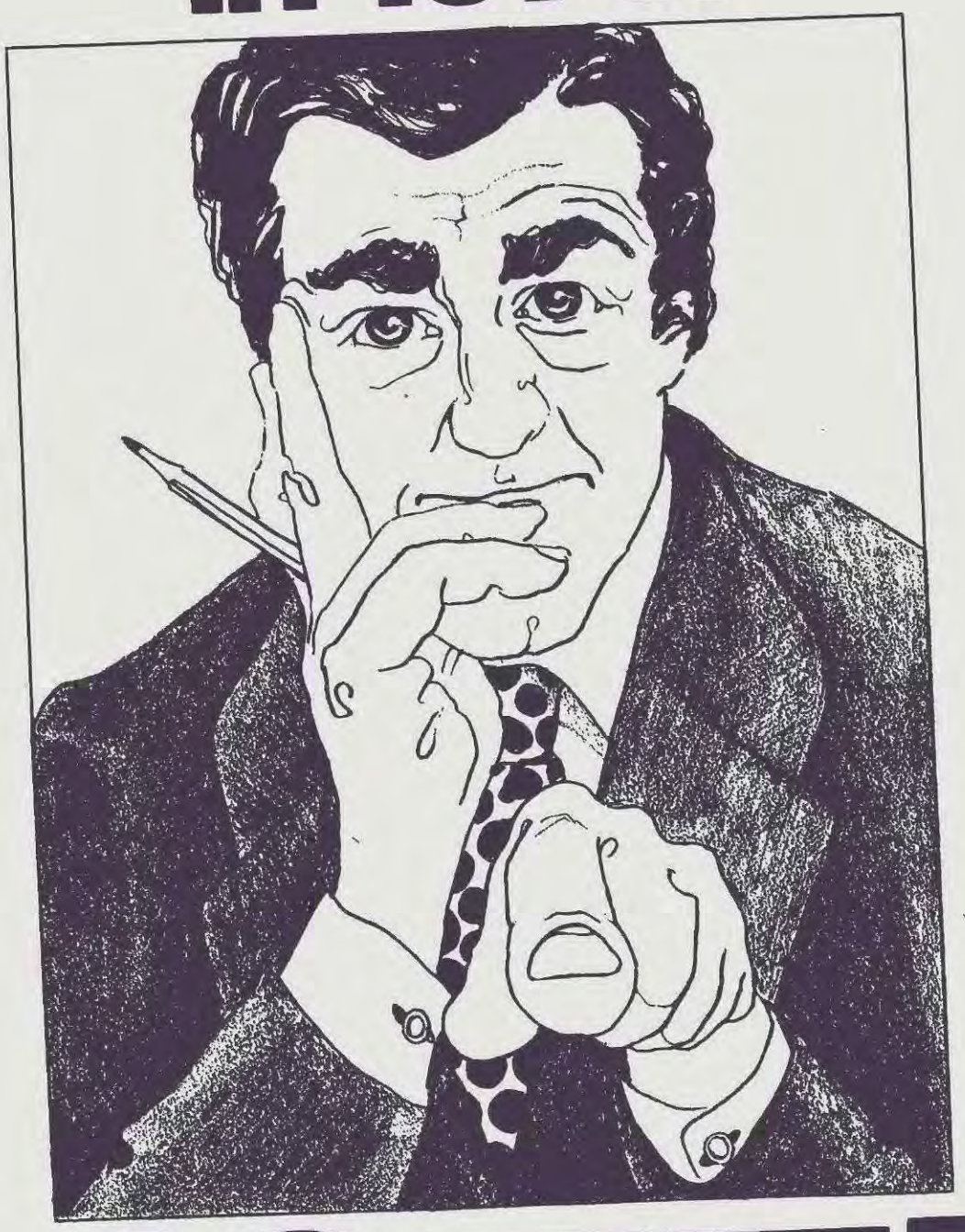

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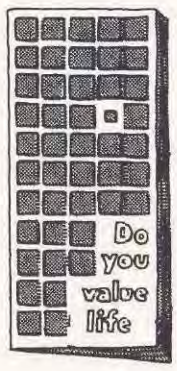

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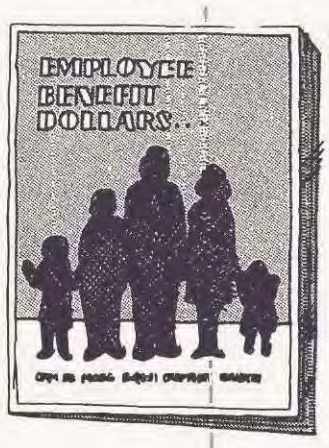
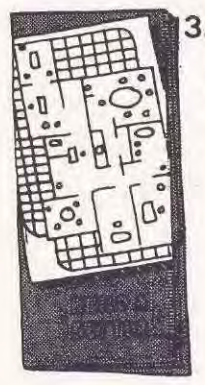
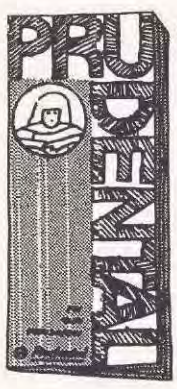


2. Group Survivor Benefits and Life Brochure explains insurance tailored to individual needs.



3. Personal Accident Insurance Booklet details the options that help you design a benefit plan.



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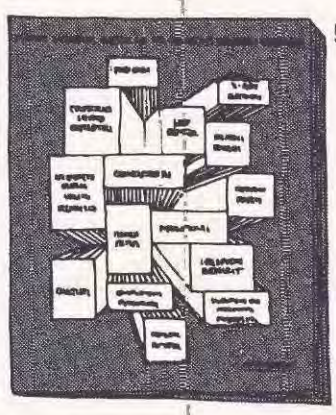

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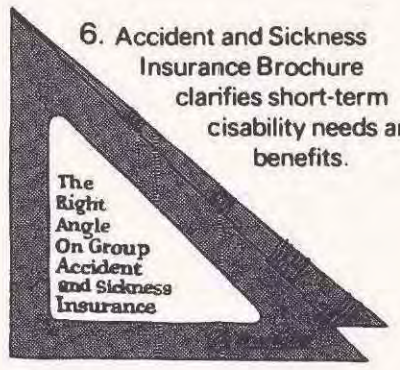

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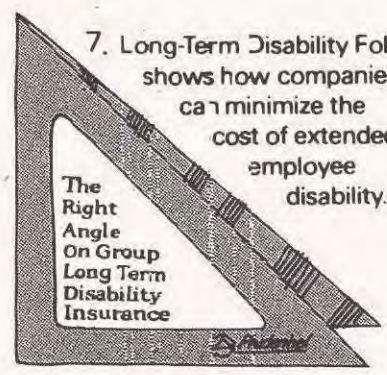

7. Long-Term Disability Folder shows how companies can minimize the cost of extended employee disability.

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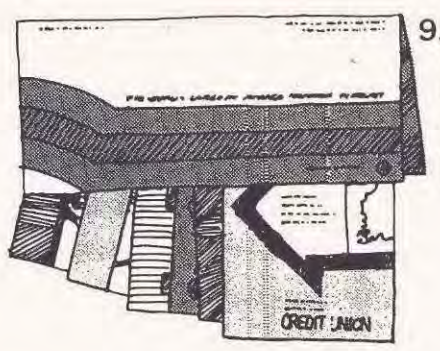

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PERSPECTIVE

Assessing a captive's potential value as a financial control tool: Tax expert's opinion

By MARIANNE BURGE, partner
Price Waterhouse & Co.

THE HEYDAY OF setting up captive insurance companies was in the early '70s. Since then, the IRS has dampened the ardor of some people, but I still receive many calls from major companies who want to explore the feasibility of establishing their own insurance subsidiary and I am sure that you as consultants also are asked to evaluate the practicability of a captive for a client. So you might be interested to know how I respond as a consultant on the financial and tax side rather than the insurance side which is your specialty. Am I selling or unselling the captive insurance concept?

My approach is to ask for certain basic information about a company and to advise according to their circumstances. If I see some of the following features, I would suggest a captive might be useful:

A captive could be useful if the company has substantial foreign operations. A good premium level for foreign risks would be a minimum requirement for a wholly-owned captive because the U.S. tax rules *at their best* are not too helpful in purely domestic risks.

A captive could be feasible if the company is large enough to generate premiums (preferably foreign) of at least $500,000. Otherwise, the running expenses are too large to warrant the effort.

A captive could be essential if there is a lack of capacity in the regular insurance market or a possibility that the regular market might disappear altogether, as in the case of malpractice insurance or if certain coverages are not available at all in the market. By building up reserves in its own captive, the corporation will have some capacity of its own when the outside market becomes too expensive or thin.

A captive should be considered when there is a substantial increase in premiums and deductibles. Through a captive it may be possible to reduce premium expense. This could be done by using the captive to insure directly in the reinsurance market, recapturing commissions, or simply by buying worldwide insurance in bulk as opposed to each subsidary buying its own.

A captive could be a useful tool for the risk manager who wants to improve the loss prevention techniques for his company and who wants to do this on a worldwide basis. This could be different in a multinational group where the subsidiaries have a fair amount of autonomy. By using a separate entity for the risk management function worldwide, you have separated to some extent the insurance function from the parent company.

A captive could have many financial advantages. The premiums remain within the group and thus enhance the group's financial statements. With respect to the captive's retained risks, its overheads and expenses are lower than a regular insurance company and thus more of the premium dollar is kept by the group. The captive also retains the investment income on its reserves and unearned premiums.

Very significant tax advantages can be obtained if the circumstances are right and if the Internal Revenue Service does not succeed in its attacks on the captive concept, which I am going to discuss in some detail. If the foreign affiliates pay premiums to the captive, and those premiums are considered deductible for foreign tax purposes, then savings of foreign taxes can be achieved. This is very useful for most multinationals, because they can credit against their U.S. income.

So, without going into too much technical detail as to how the foreign tax credit system works and how it is being whittled away by the IRS and by proposed legislation in Washington, I would like to emphasize the importance to a multinational group of reducing its foreign taxes.

Another related advantage of a captive might be the use of premiums as a way of repatriating funds out of subsidiaries in countries which have limitations on the dividends that can be paid to foreign parent companies. However, there are considerable limitations on this sort of thing.

One of the problems of using the captive to reduce foreign taxes is that the IRS has in recent years decided to treat the payment of premiums to the captives as if it were a dividend from the foreign subsidiary to the U.S. parent. This dividend would be taxable, but a foreign tax credit would be allowed against the U.S. tax.

Finally, a captive might be considered to insure U.S. risks. But the advantages from a tax standpoint are limited, even if the IRS does not succeed in its current approach. This is because under the Subpart F rules, the net income of a captive incorporated outside the U.S. is taxable as if it were a U.S. insurance company. This means that although the parent company deducts the premium for U.S. tax purposes (IRS willing!) it also pays tax on the net income of the captive. Thus only the reserves escape U.S. tax. Nevertheless, there may be multinationals which have so much excess foreign tax credit that they can offset these credits against the U.S. tax on the U.S. risk income of the captive.

Before discussing the tax picture in more detail, I would mention that the sort of company that should probably not consider a captive is a U.S. corporation with little or no foreign activities and a low premium volume. If such a company feels the need for something like a captive to cover difficult-to-place risks or to build up taxfree reserves, they should consider the possibility of joining with others in an association captive or industry captive. ■

Marianne Burge, a leading expert in international taxation matters, is the author of all the material on these two pages. She delivered her remarks at a meeting of the Insurance Consultants' Society, in a speech on the current status of captive insurers.

The IRS's view of a captive during an audit

IT APPEARS TO ME from what I have seen and heard, that the IRS is in fact pursuing its audit instructions. Many of the captives which were set up in the early-'70s are now under IRS audit along with the audits of the parent companies. A fairly consistent pattern is beginning to emerge.

In some cases the agent had started the audit with numerous questions, appropriate to the audit process. For example, they asked for information about how the company was operating, asked for copies of policies and binders, asked for correspondence with the insurers concerning the policies, asked to see evidence that foreign affiliates were being charged for their share of the premiums where applicable. However, at some point in the audit, the agent would generally make it clear that the answers to these questions were not really relevant to the case because the premiums would have to be disallowed anyway under their instructions.

The most common adjustment proposed by the agents is the disallowance of the premium on the U.S. risks. Where the captive is reinsured, only the net premium is disallowed and the portion which goes to the outside insurer by whatever route is allowed, there were differences in the treatment of losses. In some cases the premium is netted against loss claims and the net disallowed.

The treatment of foreign risk premiums paid by foreign subsidiaries varies. In some cases the agents have not followed the manual supplement procedure which requires them to treat such payments as dividends. However, in many if not most cases the premiums paid to the captive by the foreign subsidiary are being treated as dividends and as contributions to the capital of the captive.

The treatment by agents of investment income of the captive is not too clear. To the extent it is attributable to U.S. risks I would expect it to be treated as taxable to the U.S. parent under the Subpart F rules, although I know that some people hoped that this was not the rule, since it is not entirely clear in the law.

I have the impression that in some cases the agents do not seek to treat the investment income as taxable, and in many cases the amounts involved are not large. In this connection, I might mention that not many captives are pursuing a very aggressive or active investment policy and I even wonder whether some captives were receiving their premiums somewhat late in the year, so that their funds available for investment would be kept to the minimum.

Many smaller captives seem to keep their cash in the bank or in certificates of deposit and use these deposits to satisfy compensating balance requirements of the parent company.

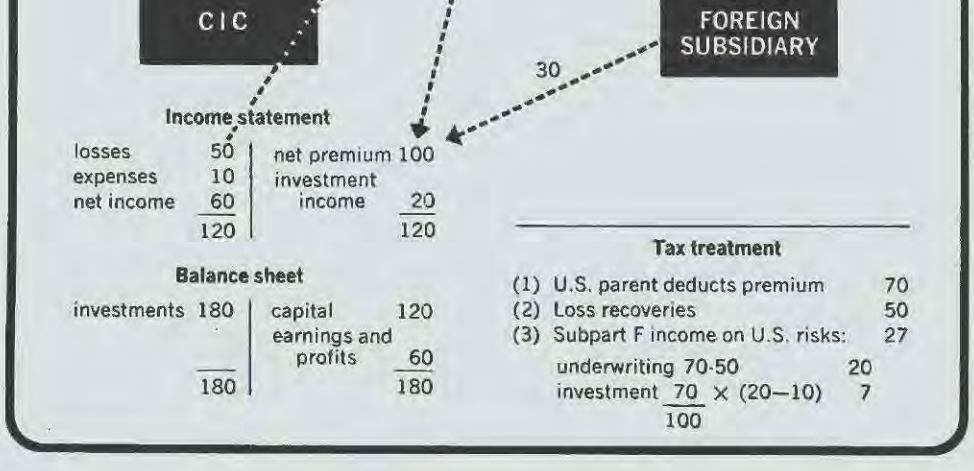
If the agent disallows the premium, what happens to the captive's income statement and what happens to its expenses? All the supplement says is that the U.S. payer will not be able to deduct the premium. It does not nullify the receipt of the money by the captive and the question is, how do you categorize that money.

Let's look at some numbers to see how the captive's results would look for U.S. tax purposes if the IRS pursues its approach. Example I shows that we would expect the premiums of 100 to be treated as income of the captive and payments of losses to be treated as loss recoveries. The foreign risk income is retained as nontaxable earnings and profits by the captive, and the U.S. risk underwriting and investment income is treated as Subpart F income and taxable, even though the earnings remain in Bermuda.

Under Example II, the IRS has said that the payments are not for insurance provided to the payer. Since the captive has received them without providing anything in exchange, the payment must constitute a gift, which in corporate language is called a contribution to capital. Of course, I am talking now of the financial statements as recorded for U.S. tax purposes. None of this would be reflected on the actual books.

The net result is that the premium is disallowed in the U.S., the investment in-

Continued on following page



IRS has 'thumbs down' view of captives

WHEN A U.S. CORPORATION which is not itself an insurance company sets up a reserve for self-insurance, it is not treated as a tax-deductible expense under the Internal Revenue Code, because it does not represent an expense or loss actually incurred. No deduction is allowed for losses until such time as the amount of the loss can be determined. On the other hand if a premium is paid to an insurance company, the premium is tax-deductible as an expense incurred in the ordinary course of business.

When you set up an insurance subsidiary to insure risks which might otherwise be insured with an unrelated insurer you would expect to obtain the same tax treatment as when you pay a premium to an unrelated company. This is really the key issue which we have: we want payments to our insurance subsidiaries to be treated in the same way as payments to outside insurers. The Internal Revenue Service takes the position that these payments are going from one pocket to another in the corporate group and are more akin to self-insurance reserves than to insurance premiums.

A second important tax feature of a captive insurance company is that it is hardly ever set up as a U.S. corporation, because of the costs and difficulties in qualifying under state insurance law. Bermuda has generally been selected as a place of incorporation, because it has been an insurance center for many decades and the necessary management and reinsurance services can be found there. Bermuda imposes no income taxes so the earnings of a Bermuda insurance company are not subject to income tax there. Thus the tax advantages of using a Bermuda captive as opposed to self-insurance are that a tax deduction can be obtained for the premium and the earnings of the insurance subsidiary can be accumulated for future losses without reduction by income taxes.

These advantages are generally limited when the risks insured are located in the U.S. Under the so-called Subpart F rules, any net underwriting profits and investment income which are attributable to U.S. risks are treated as if they were a dividend received from the Bermuda company and subject to U.S. tax. In addition, there is an excise tax of 1 percent on reinsurance premiums for U.S. risks which are paid to foreign insurance company. Some U.S. corporations who pay substantial foreign taxes abroad can however offset other foreign taxes against the Bermuda income from U.S. risks, under the rules of the foreign tax credit.

As regards foreign risks, the premiums on these are normally paid by the foreign affiliates whose risks they are and so no U.S. tax deduction is claimed. The deduction would be claimed by the foreign affilate. In some cases the U.S. parent pays the premium on a worldwide policy, but in that case, the foreign subsidiaries should reimburse the U.S. parent for the allocated amount. As far as foreign risks are concerned, the Bermuda insurance company is permitted to accumulate the net underwriting income and investment income in Bermuda without the payment of U.S. taxes until such time as the earnings are repatriated to the U.S.

Although most captives were formed for a variety of business reasons, nevertheless there were available in addition these tax advantages which I have just enumerated. Since the business reasons were not always easy to understand by those who were not familiar with insurance markets and practices, there were some people at the IRS who felt that the captives were basically tax-motivated. I believe the IRS became concerned by the proliferation of captives in 1970 and 1971. In January 1972 the Internal Revenue Service issued new instructions to its agents on the auditing of captive off-shore insurance companies. These instructions were issued as a manual supplement which in those days, before the Freedom of Information Act, were confidential and not available to the public. However, copies of this manual supplement did become available and circulated very quickly.

The instructions had several features. They specified how captive offshore insurance companies should be treated on audit. They required that the issues listed be raised for all open years and that they be raised as early as possible in the life of the captive in order "to establish a strong litigative position". The agent's reports must be sent to the IRS national office. The instructions require the agent to pursue the issues listed and do not give him any authority to settle on the basis of specific facts or circumstances. In other words, although the agent may in the course of his audit ask the usual questions to determine how the company operates, in practice the answers are not really relevant in settling the audit. The agent's hands are bound.

The main thrust of the manual supplement is that payments to a captive constitute self-insurance, and self-reinsurance does not meet the requirement of shifting of risk to third parties. Consequently, any premium which is retained by the captive, whether paid by a U.S. or foreign affiliate, whether paid through the intermediary of a regular insurer or directly, is a self-insurance expense. The U.S. tax treatment of the premium residing in the captive will depend on who pays the premium.

If the premium is paid by the U.S. parent, the expense is to be disallowed on the grounds that self-insurance is not deductible.

If the premiums are paid by a foreign affiliate, they are to be treated as dividends received by the U.S. parent and as loans advanced to the captive.

Another approach suggested is that the payments are not at arm's length and that under Section 482 commissions should be directed to the U.S. parent.

Thus, since January 1972 we have been warning that the IRS would not treat the payments of premiums to an affiliated insurance company as a premium on the grounds that there is no shifting of risks to a third party. We have also been warning that the agents would not be permitted to listen to arguments and reasoning on the subject, but are required to pursue the issue, report cases to the national office, with a view to finding suitable cases for litigation.

Since the issue of the manual supplement, there have been various rumors that the IRS was about to issue a ruling on the subject. A published ruling is the interpretation of the Internal Revenue Service of the tax law as it applies to given set of circumstances. A published ruling is generally issued after a taxpayer has asked for private ruling on a transaction or proposed transaction. If the IRS considers the subject to be of general importance and interest, it will officially publish a private ruling, taking out the names and any facts which are extraneous.

A ruling does not change the law, it is merely interpretative and the interpretation can be overturned by the courts. However, in the case of the captives, many people were concerned that an unfavourable ruling would damage the operations of many existing captives, which included many very old and substantial insurance subsidiaries.

At some time in 1973 or 1974, a document started to circulate which looked very much like the draft of a ruling on captives. It looked as if a ruling might have been requested by a food producer with operations throughout the world. The company had set up a captive in Bermuda to insure the world-wide risks and the facts specified that the captive had not accepted "substantial" risks from outside parties. The "phantom" ruling, as we called it at the time, held that the premiums were not deductible because "no element of risk-shirting or risk distributing from the affilated group has occurred".

The phantom ruling states that the conclusion is equally applicable to a domestic captive, which seemed to take care of any hopes of better treatment for Colorado captives.

Assuming that this document did emanate from somewhere in the IRS, you can see what I mean about the IRS attitude, namely that they have an uneasy feeling that the whole thing is a tax gimmick, they don't think it is insurance, but they cannot quite put their finger on an objective argument. The writer makes the point that he does not wish to comment on the tax consequences if the captive insures substantial outside risks, nor do they comment on companies owned by unrelated shareholders.

So we are not dealing with "profit-center" captives, where non-captive business is substantial. And we are not dealing with association captives. Since that time I believe a number of captives have joined pools and sought some outside business. I don't know how much one would need to make it sufficiently "substantial" to constitute a distribution of risks. ■

IRS audit . . .

Continued from preceding page

come of the captive is taxed to the U.S. parent one way or another and the premium paid by the foreign subsidiary is subject to U.S. tax as a dividend. The foreign tax savings from the foreign premium deduction could be reduced by reducing the foreign tax credit.

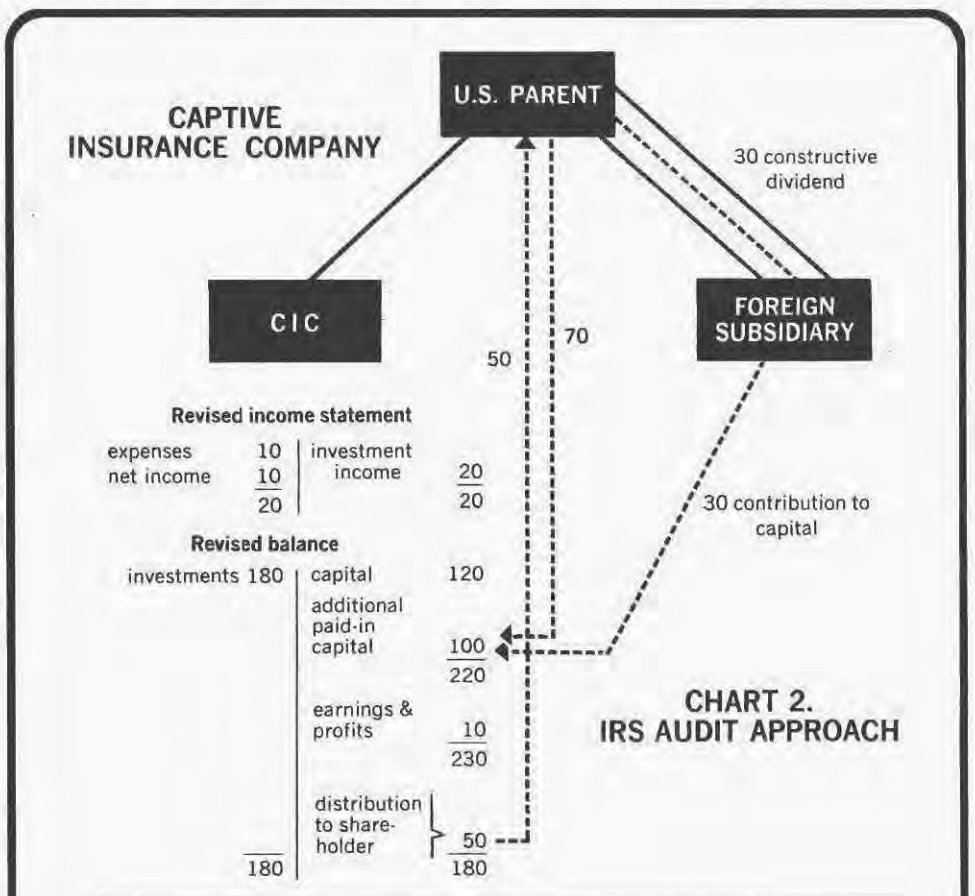
The overall result of these adjustments is that the captive is treated as a "non-entity".

The parent companies of captives are in general not settling the audits on this issue, because it is known that the issue will be litigated. I understand that one of the larger captives has a tax case docketed in the Tax Court that will be heard shortly. Thus, the issue is whether the premiums paid by the foreign subsidiaries are to be treated as constructive dividends to the U.S. parent. This would seem to be a better situation than that of a company which is insuring purely U.S. risks and it is fortunate perhaps that a case which looks favorable to the taxpayer will be heard first.

When you litigate a lot depends on the fact situation which is presented to the judge. If I were asked to give some general advice as to how a company with a captive should proceed while the situation is as unclear as at present, I would say that you should try to present a good fact picture. Here are some of the points one would try to demonstrate:

- The CIC is a separate entity, chartered to transact insurance business.
- The regulations in its jurisdiction of incorporation may require it to maintain a minimum capital (e.g., Bermuda) and reserves.
- The CIC has separate management, often a management company, which is obligated to operate the CIC as an insurance company.
- Surplus can only be made available to the parent by dividend and if management appropriates the earnings for loss claims, dividends would not generally be payable.
- The investments representing reserves are held by a separate entity with responsibilities and cannot be used for general corporate purposes of the parent company.
- Thus, the winner in a fight will be able to demonstrate that the insurance subsidiary has independent management and is not merely "another pocket" of the parent company.
- The winner will be adequately capitalized in relation to the risks assumed.
- The captive should be able to show that there is a "distribution of risks" through a geographical spread of risks.

The assumption of outside risks seems to influence the thinking of the IRS, although I don't know how significant this will be to a court. I believe the courts will have to decide on the basic issue of whether an affiliate can or cannot provide insurance coverage to its affiliates. ■



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Place product liability coverage more carefully

By BERNARD DAENZER

Editor's note: This is the second part of a two-part series which began in the Feb. 9 issue of Business Insurance.

UNFORTUNATELY, a lot of products liability over the last 10 years has been placed rather casually. If the company underwriters were not asking too many questions, why should an agent or broker spend an inordinate amount of time in fact gathering? If he gave too much information, the underwriter might refer it to the home office or turn it down.

With the tightening of the market we are back to rigid placement rules. Many a brokerage firm now selects one person internally who is going to be the expert on products and knows the right questions to ask. There is no point in going back to the client 15 times for more and more additional information, whether on a new placement or a renewal, if the full story is not gotten the first time around.

The advantage of a detailed application form and some guide lines in the office for product liability proposals is that the agent or broker can start on his risk management control devices at the same time he is doing his fact gathering. The insured learns what he has to look out for as the right questions are asked for underwriting purposes. If there is a big danger area, you can zero in on that one problem and work on it before some company tells you to work on it.

In making up your products liability submission to underwriters, consider the following factors:

Background information

In addition to current corporate names and trade names, financial information, age of the business, also give prior names and business conducted then, plus all information on mergers and acquisitions. Consider where the manufacturer stands in his field: Has he a reputation for keeping abreast and informed on the standards and customs practiced in his field? What are the current levels of scientific and technical knowledge in the field? Can the product be made more safe within the current state of the art? What are the attitudes of top management in this regard?

Locations

In addition to going into where the factories are located, the storage points and the distribution points, give some idea of sanitation and neatness standards, what are the chances of foreign substances being introduced, what is the caliber of the employes—any minority groups, any race problems where there would be serious problems about supervision and control, what is done to avoid conflicts.

Description of products

In addition to a complete description of each product and its components, recognize the fact that your underwriters in the companies are lay people. Technical descriptions which include highly sophisticated jargon peculiar to the industry should be interpreted by an engineer or some evaluation made by outside testing companies so that the key dangers are quickly known. There can be no secrets in this; all the pluses and minuses must come out for each product. There isn't time to make it a guessing game.

Even though you expect to get a broad American products wording, there should be an understanding that any material changes in the products will be reported. There have been very serious cases where corners have been cut in mid-production and the substitute material has produced a long run of losses before the underwriter could act. Once this happens the line may become marketless especially under present conditions.

Functions performed by insured

Here you will normally give information as to whether or not the insured manufactures the complete product, any components he purchases, whether he assembles the product. If suppliers are held harmless, copies of such contracts are needed. If the supplier is financially related to the insured, this must be fully explained.

The pyramiding of limits of liability in any suit brought against the main manufacturer and the component manufacturer is a serious problem to the liability underwriter and to the reinsurance companies. This became a fantastic problem in aircraft products.

A real breakthrough has taken place with respect to the Concorde. This is the first craft where subcontractors and suppliers coverage for products liability was all put into one package deal for the manufacturer of the aircraft itself. It follows the same wrap-up principle in large projects for contractors, eliminates the mad world of internecine warfare, of cross-liabilities in subrogation. It stops the nightmare of pyramiding limits for the insurance industry. It may be that in other large and inherently dangerous products, a similar approach may have to be made.

Keep in mind that if the insured maintains or services the product, then the standard written service contract and receipts from this source must be presented. Be very clear as to what products are distributed in bulk to wholesalers without being put in any original containers and what products are distributed in original containers for direct consumption by the consumer. If the product has to be installed, is the original installation of the product made by the insured or his employees? If the installer is someone else, does he supply any parts? Is there a contractual relationship between the installer and the manufacturer?

Design review

This should not only be for the review of all new products prior to sale, but the re-evaluation of designs of existing products, especially in the light of today's standards and codes. Is there a specific review committee which includes people from manufacturing, engineering, sales, legal and the finance division? Does the design review take into consideration not only the intended use of the product but also possible misuse of the product? How may a loss occur during transportation? How may a loss occur during disposal? What can happen in storage? How can the product deteriorate? What is the design life and what can happen after the intended design life is ended? What is the company's philosophy with respect to product design? Is it a formalized policy in writing and published? Does the company help in establishing "all industry" standards and codes of design? Are all inherent uncontrolled hazards clearly identified?

Quality control

The underwriter will want a brief outline of such procedures. Is quality control separate from manufacturing? If there are outside testing programs, these should be fully documented and made available for claim department use. This would include any check of components by outside sources. Records have to be kept forever in this business. Microfilming may be necessary, especially where there is a long life to the products man-

ufactured.

There must be a complete inventory of shipments and deliveries to consignees with serial numbers, batch numbers, invoices, so that the date of manufacture of each product can be identified by the numbers used. It is frustrating if the insurance company cannot identify the supplier of the component because of no records, even though there is a third party who should be paying the claim and not the insurance company's insured. Samples must be retained from the quality control procedures. Old instruction and operation manuals cannot be thrown away on products which stay alive over the years.

Distribution system

First of all, the underwriter is interested in the percentage distribution of the product by area—east coast, west coast, southwest, southeast, midwest, foreign. Then how does the product reach the public? Is it through a distributor, a dealer, multiple vendors, the insured's own sales force? Are there conditional sales contracts which could trigger a collection problem? Just as in malpractice the bill can be the cause for the allegation of a defect in the product.

What has been done by the company to get a proper attitude in the sales people so that they are fully armed with knowledge of the products potentials, proper use or misuse, instructions, warnings.? What has been done about the proper attitude between the manufacturing division and the sales division? There are terrible examples of the seller blaming the manufacturer and the manufacturer blaming the sales division which only creates more public harm.

What has been done to avoid over-selling, over-enthusiasm, unrestrained puffing, so that such terms as: tamper proof, comprehensive, completely, totally, fully, entirely—are recognized as being out in today's consumer world? The underwriter will want copies of all sales material, labels, instructions, brochures, guarantees, contracts of performance, container items, precautions, restrictions, package inserts.

What has been done to simplify language for the reading ability of the consumer? What has been done to consider other languages spoken in the trade area: What has been done to give clear explanations, diagrams, instructions, serial numbers, identification plates, to avoid consumer unhappiness and initial bad response?

If the insured holds dealers or distributors harmless, copies of the forms are required. The vendors can be included in the manufacturers policy but only subject to the same policy conditions, so that expressed warranties unauthorized by the manufacturer are excluded, sale or distribution for purposes unauthorized by the named insured are excluded, any changes, any failure to make an inspection or a test, any vendor's acts of servicing are excluded. It could be that some claim arises from the repackaging or relabeling by the ultimate vendor. With such gaps the vendor needs either a DIC products liability policy or he avoids any described acts that would put in peril his cover. Remember that products recall may be written for the benefit of the manufacturer and the actual vendor regardless of who may be at fault.

If there are foreign sales, always advise your client that the standard cover only applies to suits in the United States and Canada. If your client sells here and the product gets outside the United States, then there is the same protection if the suit is brought in the United States or Canada. The policy does not cover suits actually made outside the USA or Canada.

Once you get outside of the United States there is no such thing at all as a standard products liability policy. There are individual wordings in each country. Some of the Common Market companies have some code liability provisions with all kinds of exclusions with respect to willful acts of directors or foremen, restrictions on loss of use coverage. There is a question of what triggers the foreign coverage, the error or omission or the claim made. If there is local cover, a backup DIC may be needed in one worldwide cover. The excess and surplus lines product liability underwriter has to look at the whole risk and more often now on a world wide basis.

Sales figures

A breakdown is needed for sales and number of units by principal product. Normally these have to be broken for the last five years. In some cases where there is considerable longevity to products, a breakdown may be needed for a longer period. It is very important that information be given as to what products are no longer manufactured so that the information on sales of these are given for the underwriter to get an idea as to how much is still in the market place and exposed to loss.

A projection should be given as to what products are to be marketed during the next twelve months and what projections there are for the sale of replacement parts.

If your insured is an importer of products into the United States, these sales will have to be broken down with very full information as to the manufacturer or supplier and what efforts have been made in the country of origin to comply with the safety standards in the United States.

A recent ruling of the Consumer Product Safety Commission has made the importers responsible for any merchandise brought into the United States. Since the importer is the one who determines which foreign products will be shipped in, he is the one the Consumer Product Safety Commission says should bear the responsibility. He will have to do everything which a manufacturer would have to do with respect to tests, inspections, warnings, distribution, etc. This class of products liability will become very difficult to provide insurance for.

Continued on page 26

Product liability . . .

Continued from page 23

Claims history

The underwriter will want the record for the last five years of claims paid (number and amount), the number of claims closed no payment and claims expenses. In addition it would be helpful if there is any information about cause of loss studies. There is a danger that information which is important stays in the claims file and doesn't get to quality control or to the sales people.

In addition there should be some comment on the handling of incident reports. The history of the business has shown that incident reports can be sleeping dogs. The first warning of trouble is the fact that no actual claims have been made but incident reports have been going to the sales people, the distributors, which indicate that there will be trouble brewing and actual claims made eventually.

Marketing and sales people should report all complaints and allegations promptly; what has been done to get the sales people to realize how important it is to comment on whether or not the product itself was defective or not defective; whether there was some proximate cause of the accident other than the product of the insured; whether the product itself was in the same condition as it was at the time it was sold; whether there was any wrongdoing on the part of the claimant as to how he used the product. In other words, in going into the claims history it is useful to comment upon what cooperation has existed or is planned in working with the claims department.

Limits and deductibles

In your placement proposal make sure you declare initially how high a limit you will need and what deductible you will be willing to take at the bottom if needed for placement or desired by the insured. A surplus lines firm will want to know the top limit needed so that the organization of the market place may be done from the very beginning. While most underwriters are either primary or excess, some can be used in either role and a proper foundation must be laid to reach the ultimate goal of the top limit. Keep in mind that in some difficult placements it may be necessary that the limit provided will be a limit for both settlements and claims expense, one limit one aggregate.

The same is true of deductibles; they can be for claim payments only or for claim payments plus claims expenses. If there is a desire to do a substantial self-retention on the bottom and handle one's own losses, then the underwriter on the top will want to know in great detail who will be handling the claims, how they will be reported and how the records kept, at what point there will be a joinder of counsel where the loss could go over the limit or the aggregate. There may be some very difficult case where there would not only have to be a deductible at the bottom but a self-retained participation above the deductible up to a certain aggregate limit and then a fixed insurance above that amount.

In some kinds of products there is a constant run of small losses where payments are really a matter of public relations on behalf of the company rather than true third-party liabilities. It is very hard to distinguish. For customer relationship there may be a replacement of products or gifts given when the customer is unhappy, thus there may have to be an underlying deductible which doesn't contribute to the underlying aggregate retention which is for insurance record purposes, self insured, and then full insurance above that amount.

The insurer, of course, is very interested in the financial solvency of a manufacturer who takes on a self-insured retention. There can be a grave problem if the insurer cannot collect the deductible amount from the insured. Some courts may hold that the agreement on the deductible is a private matter between the insurer and the insured and as far as the public is concerned the insurance company will have to make the victim whole. If there is a refusal by an insured to consent to a settlement, then the insurer should be able to put the amount of the proposed settlement forward and the insured will be responsible for everything in excess of that settlement. If there is to be a deductible program all understandings have to be made clear to the insurer.

If, as it looks now, the trend will continue to be bad in products liability with more frequency, more severity, then the cooperation of the agent or broker in doing a good submission job and a risk management approach to the problem is absolutely essential. The premiums involved will be considerable and it will warrant specialization.

We have left products liability as part of miscellaneous general liability too long. Someone in the agent's office will have to be a marine specialist or an aviation specialist. It is a complex field and the reward for handling this kind of insurance properly so that there is continuity of protection year in and year out will be great. ■

Report acquisition

Corroon & Black Corp. acquired all of the issued and outstanding stock of Norsworthy-Mohle & Co. Inc., a Houston insurance brokerage firm which specializes in marine insurance and which reported revenues of approximately $400,000 in 1975.

HMO option interests big corporations

MINNEAPOLIS—The largest U.S. companies have demonstrated a marked increase in setting up health maintenance organization in the last year, according to the Twin City Health Care Development Project here.

Out of 400 of the nation's 500 largest publicly-owned companies, 33% say they may offer the HMO option and 8% actually are working on offering it, the survey found.

This result compares with companies responding in March, 1975, in which 9% indicated they were interested in offering the option. At that time, 73% of the responding companies had adopted a wait-and-see attitude, preferring to take no action until the regulations were published.

Other findings show that:

- 56% want a summary of the HMO Act, its regulations and their impact on employers;
- 55% want written information about specific HMOs in areas where they have employes;
- 20% want general information concerning HMOs; and
- 22% said they could use consultations with HMO experts.

The survey pointed out that the sudden interest in HMOs is "undoubtedly due to publication in October of the final dual choice regulations for the federal HMO Act of 1973."

The Twin City Health Care Development Project is a consultant to local employers who are offering the HMO option. ■

legal brief

Insurer obligated to defend policyholder

A NEW YORK COURT has ruled under the provisions of a comprehensive general liability insurance policy requiring an insurer to defend any suit against the insured within the scope of coverage that even if the suit is groundless, false or fraudulent, the insurer is obligated to handle the defense where there is an alleged state of facts covered by the policy.

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

The court thought this to be true regardless of whether the allegations squared with objective truth or were utterly false and groundless.

This suit was brought by Fisher Governor Co. Inc., seeking to have the court declare that a general comprehensive liability policy issued by Liberty Mutual Insurance Co. to Scovill Manufacturing Co. offered coverage to Fisher under a vendor's or products liability endorsement on the policy. This litigation arose out of a major fire which occurred at the Sucrest Corp. refinery. Sucrest sued Fisher for more than $3.5 million contending Fisher's negligence in the manufacture, sale and distribution of a service line shut-off valve with excess flowcheck. Fisher brought the Scovill Co. into the lawsuit alleging that it was Scovill's negligence in the design and manufacture of the machine forging that caused the accident and resulted in the fire.

Scovill's comprehensive general liability policy contained an endorsement extending coverage "to any person or organization with respect to the distribution or sale in the course of business of any merchandise or product manufactured, sold, handled or distributed. . ." by Scovill. It was under this vendor's provision that Fisher requested Liberty to defend the original suit brought by Sucrest. Liberty refused either to assume the defense or to indemnify Fisher.

Later, after protracted legal proceedings, the Sucrest suit was settled against all defendants for $535,000, with Fisher assuming $265,000 as its contribution. This action was then brought by Fisher against Liberty seeking to recover the $265,000 plus attorneys' fees and costs of the Sucrest suit as well as attorneys' fees and costs in pursuing this suit.

Liberty contended that since Sucrest's main suit did not allege negligence of design or manufacture of the machine forging by Scovill, that coverage within the terms of the policy issued by it never arose. The court pointed out that the duty of an insurance company to defend may arise at a time subsequent to the start of the action. Thus, under the facts of this case, the court believed that Fisher's complaint against Scovill placed Liberty on notice of its liability to defend Fisher since at that time "it appeared from the allegations in the negligence action that the injury was within coverage of the policy."

The ultimate validity of the allegations is irrelevant, the court noted. "The test of the existence of the duty," the court emphasized, "is not whether the allegations pleaded are true, but whether sufficient facts are stated so as to invoke coverage under the policy."

Consequently, the court ruled that Liberty had a duty to defend Fisher in the Sucrest suit. The court also held that the $265,000 Fisher paid in settlement was reasonable under the circumstances of this case. The court ordered Liberty to pay the $265,000 Fisher had paid in the settlement which it found to be reasonable plus attorneys' fees and costs which Fisher had incurred in defending the Sucrest suit. But the court ruled that with respect to coverage Fisher could not recover the expenses in prosecuting this action. *Sucrest Corp.* v. *Fisher Governor Co. Inc.*, Supreme Court of N.Y. County, June 5, 1975, Fein, J., 371 N.Y.S.2d 927 (BI/03/J.-$3)

Excess liability

A federal district court has ruled that the settlement of claims exceeding the amount of a primary policy covering a securities brokerage firm "exhausted" coverage under the primary policy and would permit recovery on an excess policy even if the amount paid by the primary insurer was less than the primary policy limit.

McDonnell & Co. Inc., a securities brokerage firm, carried a primary policy issued by the Fidelity & Casualty Co. of New York. The policy protected McDonnell against certain claims for which it might be liable under the provisions of federal or state securities law. This policy contained a $50,000 deductible provision and provided coverage for the next $250,000 of such claims. McDonnell also had an excess policy held by a group organized by Lloyd's of London which provided coverage for the next $750,000 of such claims. The latter policy provided liability "only when the Primary Policy in the amount of $250,000 . . . has been exhausted."

McDonnell's receiver brought this action against both insurers alleging losses in excess of $4.5 million. Fidelity settled the claim against it for a cash payment of not more than $135,000. Following the settlement, the Lloyd's group sought a summary judgment contending that since the limits of the primary policy had not been exhausted by the settlement no liability could arise under the excess policy.

But the court pointed out that by raising this argument the Lloyd's group was asserting that the phrase "has been exhausted" meant "have been actually paid." The court considered this construction of the language "unnecessarily stringent." Requiring absolute collection of the primary insurance to its full limits, the court stated, "would in many, if not most, cases involve delay, promote litigation, and prevent an adjustment of disputes which is convenient and commendable."

Consequently, the court denied the summary judgment noting, however, that McDonnell still had to prove its losses and their nature at a trial. *Stargatt* v. *Fidelity and Casualty Co. of N.Y.*, United States District Court for the District of Delaware, July 16, 1975, Stapleton, J. 67F.R.D. 689 (BI/02/J.-$3) ■

(Copies of the entire decisions described in this column may be obtained by writing to Business Insurance, *attn. Managing Editor, 740 N. Rush St., Chicago, Il. 60511. Please enclose a $2 check made out to Cases Unlimited Inc., for each case, and specify the code number of the opinion, which is at the end of each brief.)*

people

Gibson takes Carling post

Carling National Breweries Inc., Baltimore, named **Nelson C. Gibson,** 47, director of insurance and taxes on February 11 to replace **John V. K. Helfrich,** 57, who is retiring. Mr. Gibson formerly was director of taxes for Allegheny Airlines, Washington, D.C. He reports to the senior vp-finance at Carling and said he expects taxes to be the predominant part of his job. Mr. Gibson sees insurance as a natural partner to taxes because of the regulatory aspects of each. Mr. Helfrich plans to return to work as an independent accountant in the Baltimore area. He is a former national treasurer of the American Society of Insurance Management.

* * *

Thomas P. Troy, 58, was promoted to vp-personnel at Combustion Engineering Inc., Stamford, Ct., in January. It is a newly-created position in which he will be responsible for the development and administration of the company's employe benefit programs and personnel policies. Mr. Troy has worked for Combustion Engineering since 1943 and for the past 25 years has held various managment positions in the benefits area. He reports to the vp-administration in his present position. Mr. Troy is a trustee of the Council on Employe Benefits.

* * *

Richard V. Porrett, 41, joined The Great Atlantic & Pacific Tea Co. (A&P), Montvale, N.J., on February 2 as director of insurance and pensions. He formerly held a similar position at Eastern Airlines, which is moving its New York-based treasury deparment to Miami, effective April 1, as reported (*Business Insurance,* February 9). Mr. Porrett did not want to make the move to Miami and his position has not been filled as yet. At A&P, he reports to the vp-legal and is responsible for the entire risk management function, including group insurance and pensions as well as property/casualty risks. A&P never had a risk manager, as such. **J. W. Van Vliet** retired from being manager of insurance in July, 1973 and since that time **A. J. Wilgar** has handled insurance matters in addition to his responsibilities as director of audits. A&P has 86,000 employes and its annual sales more than $7 billion.

* * *

Carborundum Co., Niagara Falls, N.Y., created the position of compliance manager-corporate personnel division and hired **Kenneth Skarka,** 26, effective February 23. Mr. Skarka, who has a law degree, reports to **Hayden L. Hankins,** manager of compensation and benefits. His primary responsibility is working on ERISA compliance, which for Carborundum involves some 40 pension plans and approximately 50 other qualified plans. Mr. Hankins said he specifically wanted an attorney for the position; he has been handling compliance matters himself up to now. Previously, Mr. Skarka worked on compliance for Peat, Marwick, Mitchell & Co., the accounting firm, in Albany, N. Y.

* * *

As of February 2, **Richard W. Zeitler,** 37, joined Johnson & Higgins of Colorado Inc., Denver, as assistant vp and manager of the commercial department. He previously was director of insurance at Johns-Manville Corp., Denver, and was replaced there by **Walter Curtner** (*BI,* Dec. 12, 1975).

* * *

Minneapolis-based Control Data Corp. hired **Joe St. Anthony,** 30, as pension manager, effective February 16. He reports to the corporate employe benefits manager in this newly-created position. His responsibilities include design, administration, compliance and communication aspects of Control Data's new pension plan. Mr. St. Anthony previously worked in the pension area for William M. Mercer, Minneapolis, the benefit consulting division of Marsh & McLennan Inc.

* * *

John E. W. Nygard was named to the newly-created position of manager, process review department, for American Hospital Supply Corp., Evanston, Il. Mr. Nygard reports to the director of quality assurance for the company and is responsible for auditing the manufacturing processes for compliance with internal and federal regulations. He formerly was with Hollister Inc. in a similar position. Although Mr. Nygard does not control or purchase any commercial property or casualty insurance, he said he expects to have a close working relationship with American Hospital Supply's insurance department. The job involves maintaining a dialogue on all product complaints with the insurance and legal departments and the company's underwriters. It's Mr. Nygard's job to analyze complaints, review products and the causes of problems, and manage preventive procedures.

* * *

SCM Corp., New York, appointed **Michael Raub,** 25, thrift plan administrator on February 9 to replace **Ronald Mirra,** 30 who was transferred to another division. Mr. Raub held a similar position at Bankers Trust Co., New York. In his new position, Mr. Raub reports to the manager of corporate compensation and is responsible for the monthly processing and recordkeeping of the company's thrift plan. Mr. Mirra was named manager-personnel administration for the Consumer Products Division of SCM, New York, in which he will have some employe benefit administration responsibilities. He reports to the director of employe relations there.

* * *

Richard V. Anderson, 43, was named manager of safety at Admiral Merchants Motor Freight Inc., Minneapolis, where he previously worked for 21 years. Most recently, however, he was director of driver training at Indian Head Truck Lines, St. Paul, Mn. Mr. Anderson reports to **Glen Brett,** director of claims, safety and insurance, who formerly held the position (*BI,* Dec. 15, 1975). Mr. Anderson is responsible for all safety facets at Admiral Merchants and its southern division, Jack Cole & Dixie Highway Express. He is a national accredited safety director.

* * *

The B. F. Goodrich Co., Akron, promoted **John H. Baker,** 30, to the position of employe benefits administrator, reporting to the director of employe benefits. Mr. Baker replaces **Elliott E. Burd,** who now works for Borden Inc., Columbus (*BI,* January 26). Mr. Baker's primary responsibility is to act as staff assistant to his boss; his first job is ERISA compliance matters. Previously, Mr. Baker was supervisor, special benefit programs, in the compensation department. He is replaced in that spot by **H. C. (Bud) Busby,** 50, who previously was a counselor in the company's employe affairs center. That position may not be filled, it was learned. Mr. Busby's primary responsibility in his new job is B. F. Goodrich's employe stock purchase plan.

* * *

The New York-based United Presbyterian Church in the U.S.A. appointed **Dorothy P. Romaine** insurance manager on January 1. She replaces **Evelyn Hwang,** who was transferred to another department. Mrs. Romaine previously was office manager for Lyon & Lyon Inc., Ridgewood, N. J., an insurance agency.

* * *

Virginia M. O'Grady, 49, was promoted to benefits supervisor at Suburban Propane Gas Corp., Whippany, N. J., an energy service company. She will implement employe benefit programs in health, life, AD&D, long term disability and pensions for the parent corporation and its subsidiaries nationwide. Mrs. O'Grady reports to the manager of personnel. Previously, she was administrative assistant and has worked in various capacities for Suburban Propane since 1961. It is expected that her former position will be filled. ■

Business Insurance *wants to know of readers moving into new or different risk management, employe benefit or safety/loss positions. We are interested in administrative, staff and support positions as well as managerial level jobs. If you or anyone you know is on the move, please contact our Chicago office, 312-649-5279.*

Serious issues raised in product liability field

LA COSTA, CA.—"Availability and price are now serious issues" affecting the products liability insurance market, an insurance executive told a meeting of the Federation of Insurance Counsel.

"Premium increases in recent years are multiplying rapidly and the market is tightening, with special hardship for small manufacturers," Melvin L. Stark, senior vp for government affairs, American Insurance Assn., said.

With product liability claims reaching almost one million annually and with increasing availability problems. "Sooner or later the growing demands of the public and their elected representatives will force the entire business of insurance to reevaluate the future of the tort system and its interdependence with the casualty insurance mechanism," Mr. Stark noted.

The executive warned that the Consumer Products Safety Improvements Act, under consideration by both houses of Congress, "contains onerous requirements that would obligate insurers to give notice to the Consumer Products Safety Commission of any 'substantial hazards' we would believe or have reason to believe, exist with policyholders' manufacturing operations."

"We regard this as an intolerable burden which impinges harmfully on our relations with insureds," Mr. Stark continued.

The function of insurance, the executive explained is to prevent and deter the production of unsafe products or products which can give rise to an unreasonable risk of injury.

"Risk control and loss prevention represent the key to ultimate perfection and a diminution of claims and litigation," he said. ■

errors & omissions

Iowa Beef Processors Inc. is based in Dakota City, Nb. The headquarters was incorrectly listed as Madison, Nb. in our last issue in an item about Gary Felt, the new corporate risk manager for Iowa Beef.

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