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Update

Court allows health providers to sue employers under ERISA

WASHINGTON—The Supreme Court last week refused to review an Illinois Supreme Court decision that allows health care providers to sue employers under federal benefits law for unpaid fees.

The case involves five chiropractors who sued Moline, Ill.-based Deere & Co. for not paying $940,000 of fees the chiropractors charged for treating Deere employees.

The chiropractors brought suit under

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Insurers fight rate reforms in California

By GLENN HUNTLEY

SACRAMENTO, Calif.—The insurance industry is fueling a high-powered campaign in California to stall six proposed ballot initiatives that seek to slash rates from 20% to 50% in the nation's largest private-passenger automobile insurance market.

And, one of the proposals seeks to roll back all property/casualty insurance rates to 20% below November 1987 levels.

Part of the insurance industry's lobbying budget—which is starting at $8.5 million—also will be used to promote a plan to institute no-fault auto insurance as proposed by the Assn. of California Insurance Companies.

So far, the Insurance Industry Initiative Campaign Committee has collected $2 million, said John Crosby, who is on leave from his job as senior vp of the National Assn. of Independent Insurers to manage the campaign. The industry initiative also has the backing of the Western Assn. of Insurance Brokers and the Independent Insurance Agents of California.

The expense of the initiative campaigns worries many observers, who say the process can cost hundreds of thousands of dollars just to qualify a single petition for the November ballot. The costs could reach tens of millions of dollars if several proposals qualify.

Mr. Crosby said he hoped to keep the industry's initiative campaign expenses below $1 per voter. Some 12.1 million voters are registered in California, according to the state Election Division.

While most of the seven proposed insurance reform initiatives deal primarily with personal automobile coverage, one initiative proposes drastic premium cuts for all property/casualty lines that could send shock waves through the industry nationwide, observers say.

More than 600 insurers are based in California or do business there, and "it will affect all of them, whether they do personal or commercial lines," said Lowell Beck, president of the National Assn. of Independent Insurers in Des Plaines, Ill.

California accounted for more than 15%—or $26.5 billion—of the nation's total property/casualty premium volume of $176.1 billion in 1986, according to A.M. Best Co. in Oldwick, N.J.

California's auto insurance market—the primary target of six of the initiatives—accounted for $10.6 billion—or 14.4%—of the $73.4 billion auto insurance market nationwide. Of that $10.6 billion, $8.65 billion was paid in premiums for private passenger automobile insurance.

Furthermore, California is considered a bellwether state, and it is feared that if California clamps down on insurance prices, other states will follow suit.

The rising cost of personal automobile insurance is a growing issue nationwide. Late last month, USA Today devoted its entire editorial page to the issue.

Voters in California—particularly in the Los Angeles area—are up in arms over auto insurance rate hikes averaging 18% annually.

Insurers attribute the increases largely to a 29% statewide surge in lawsuits involving auto accidents during 1986. In Los Angeles County alone, the number of lawsuits increased a whopping 47.3% that year. Insurers also cite increases in the costs of medical care and auto repairs.

The initiative campaign marks the second time in two years the state has become a battleground for insurers. The insurance industry won a highly publicized battle in 1986 with the passage of Proposition 51, which eliminated joint and several

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Proposed loan regulations could hurt 401(k) plans
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Pollution

Insurer's proposal could cut EIL costs

By DEBORAH SHALOWITZ

HARTFORD, Conn.—The costs to businesses and insurers of cleaning up hazardous waste sites and paying related third-party bodily injury and property damage claims could be greatly reduced under a new proposal by an insurance company executive.

Under the proposal, a fund established with annual assessments from companies responsible for pollution incidents, insurers, reinsurers and the federal government would pay all costs to clean up hazardous waste sites and pay related third-party claims.

The annual assessment would cap participants' costs; they would have no further financial obligation for any pollution-related claim against them after they pay the assessments.

In addition, the no-fault framework of the plan could reduce litigation costs stemming from the increasing problem of hazardous waste damage and cleanup (see chart).

The voluntary fund concept, dubbed the Comprehensive Environmental Response Authority, was outlined earlier this month by DeRoy Thomas, chairman of Hartford Insurance Group of Hartford, Conn., a unit of ITT Corp.

"If CERA is established, the judicial system will be relieved of the burden of costly lawsuits that will be filed in the coming years by the (Environmental Protection Agency) against polluters, by corporations against their insurers and by people who are just now becoming aware of the toxic hazards to which they been exposed," Mr. Thomas said.

The proposal "would provide a safe harbor of reasonable and certain costs to American corporations and insurance companies" stemming from pollution liability, he asserted. "And it will consolidate the process under one system's set of rules, rather than relying on the current haphazard system that varies by insurance contract, by state or by the mood of an individual judge or juror."

CERA also is designed to meet the strict financial responsibility requirements imposed by federal law

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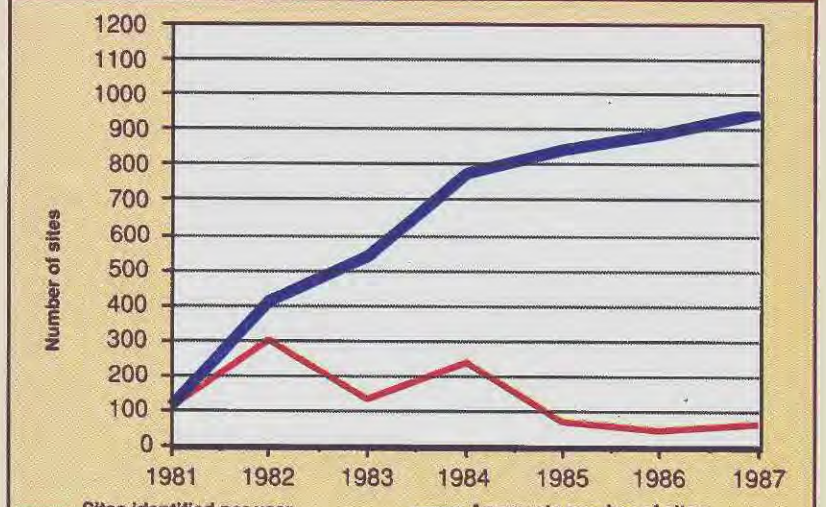
Superfund sites multiply



Source: Environmental Protection Agency

Oxy told to pay Love Canal cleanup

By DOUGLAS McLEOD

BUFFALO, N.Y.—Occidental Chemical Corp., held liable last week for cleanup costs at the polluted Love Canal landfill, will appeal the decision while also pursuing a lawsuit against dozens of its liability insurers for coverage for pollution-related losses.

U.S. District Judge John T. Curtin ruled last week that Occidental must reimburse the U.S. government and the state of New York for the costs of remedial action at Love Canal, where Occidental—formerly known as Hooker Chemicals & Plastics Corp.—disposed of thousands of tons of hazardous chemical waste between 1942 and 1953.

Occidental is liable under the Comprehensive Environmental Response, Compensation and Liability Act—better known as the Superfund Act—for government cleanup costs incurred both before and after the law took effect on Dec. 11, 1980, Judge Curtin ruled.

A separate trial will be held to determine damages.

An Occidental spokesman said the company will appeal Judge Curtin's ruling.

Meanwhile, Occidental last month received a New York state court's permission to file an amended complaint against Hartford Accident & Indemnity Co. and many other primary and excess liability insurers.

The suit seeks a ruling that the insurers are liable for defense and indemnification of claims related to Love Canal and six other polluted sites in the Niagara Falls, N.Y., area.

Several of the insurers have contributed to defense costs and settlements already reached involving some of the sites, though the insurers have made the payments under a reservation of rights, according to the lawsuit.

Occidental claims that the insurers' failure to pay defense costs and contribute to settlements and clean-up costs has cost it a total of $80.1 million in damages as of April last year.

Occidental had $320 million in liability insurance between 1963 and 1979, court papers show (*BI*, Jan. 21, 1980).

Occidental, a unit of Los Angeles-based Occidental Petroleum Corp., started using Love Canal as a waste disposal site in 1942 under an agreement with the Niagara Power & Development Co. The chemical firm bought the property in 1947 and sold it in 1953 to the Niagara Falls Board of Education.

During the 11 years it used Love Canal as a disposal site, Occidental dumped 21,000 tons of various hazardous chemicals on the property.

Contaminants from the site were found in 1978 to have leaked into an elementary school and dozens of homes adjacent to the property, and hundreds of residents were evacuated.

Ten years later, significant portions of the cleanup have yet to be completed, said New York Assistant Attorney General Eugene Martin-Leff.

For example, government agencies have prepared a plan to excavate and incinerate contaminated sediment at the

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Update

Suits for health care fees OK'd

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the Employee Retirement Income Security Act of 1974, which states that participants and beneficiaries of a plan may sue their employer under ERISA.

The Illinois Supreme Court ruled that health care providers are beneficiaries under ERISA but, moreover, that a patient assignment alone qualifies them to bring suit.

The decision "puts a tremendous burden on employers," said Hubbard Neighbour, Deere's attorney, with Bozeman, Neighbour, Patton & Noe in Moline, Ill.

Employers that do not want providers to become beneficiaries under their plans "could say, 'I'm not going to recognize an assignment,' and employees would have to apply for reimbursement from the company," Mr. Neighbour said.

Francis Van Hooreweghe, attorney for the chiropractors, with Van Hooreweghe, Fackel & Thuline in Moline, says that is unlikely.

The case now returns to the Circuit Court of Rock Island in Rock Island, Ill., to determine how much, if anything, Deere owes the chiropractors.

In a similar case, Misic vs. Building Services Employees Health & *Welfare Trust*, the U.S. Court of Appeals for the 9th Circuit in San Francisco decided a dentist could sue a welfare plan under ERISA but that the dentist was not a beneficiary.

Sedgwick revenues top A&A's

LONDON—The decreasing value of the U.S. dollar has pushed Lloyd's of London broker Sedgwick Group P.L.C. into second place in terms of worldwide brokerage revenues, moving ahead of Alexander & Alexander Services Inc.

Sedgwick last week reported gross revenues of 650.9 million pounds in 1987, only a 1.6% increase from 640.4 million pounds in 1986. However, in dollar terms at the appropriate year-end exchange rates, Sedgwick's revenues jumped 17% to $1.23 billion in 1987 from $1.05 billion in 1986. A&A reported 1987 revenues of $1.12 billion.

Nevertheless, Sedgwick's pretax profits dropped 25.4% to 101.1 million pounds ($191.1 million) from 135.5 million pounds ($200.5 million) in 1986.

Sedgwick Chairman Carel Mosselmans blames the softening property/casualty insurance market, particularly in the United States, and the dollar's decline for Sedgwick's lower profits.

Brokerage revenue also decreased 18% at E.W. Payne Cos. Ltd., Sedgwick's reinsurance brokerage arm, to 87 million pounds ($164.4 million) in 1987 from 106 million ($156.9 million) the prior year, partly because U.S. subsidiary Sullivan Payne Co. has lost business, Mr. Mosselmans admitted. He added that business is currently being replaced.

Revenues at Fred S. James & Co. Inc., Sedgwick's U.S. brokerage unit, increased 13% to 278 million pounds ($525.4 million) from 245 million pounds ($362.6 million) in 1986.

Sedgwick's London-based wholesale/retail broker, Sedgwick Ltd., was the largest contributor to the company's profits, even though brokerage revenue only marginally increased to 218 million pounds ($412 million) from 217 million pounds ($321.2 million) in 1986, Mr. Mosselmans said.

Liquidator charges contempt

JEFFERSON CITY, Mo.—The liquidator of Transit Casualty Co. has asked a Missouri court to find Pfizer Inc., a Transit policyholder, in contempt for trying to collect claims directly from Transit's reinsurers.

Pfizer, a New York-based pharmaceutical company, sued numerous Transit reinsurers and a former Transit managing general agent in Cook County Circuit Court in Chicago last October.

The complaint asked for a ruling that the reinsurers be held jointly and severally liable to Pfizer for an unspecified amount of losses and defense costs that Pfizer said should have been paid by Transit (*BI*, Jan. 4).

However, lawyers for Transit's receiver last week asked a Missouri state judge to hold Pfizer in contempt for violating the Missouri court's 1985 liquidation order enjoining any attempts to obtain judgments against Transit or its assets or to interfere with the liquidation, the contempt motion states.

Cole County Circuit Judge Byron L. Kinder has scheduled a March 21 hearing at which Pfizer must show cause why it should not be held in contempt.

Avis, Hertz sued over CDWs

CHICAGO—Two lawsuits filed this month charge two rental car companies with fraud and deceptive trade practices for failing to inform consumers that collision insurance for their personal automobiles may also cover damage to rented cars.

The nearly identical suits, filed in Cook County Circuit Court by an individual and a couple who paid an average $10.45 daily charge for collision damage waivers, seek unspecified damages and an injunction against Avis Rent A Car System Inc. and Hertz Corp.

The lawsuits, which seek certification as class actions, were filed on behalf of all similar U.S. consumers who rented a car from either company during the past three years. "Employers could be covered by the class," said plaintiffs' attorney Clinton A. Krislov P.C. of Chicago.

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Errors & omissions

● A story in the Feb. 15 issue did not note that Lawrence Wolther, president and founder of the National Chiropractic Review Service, is a doctor of chiropractic medicine. He was referred to as Mr. Wolther under editing guidelines established by The Associated Press.

Property insurer must pay for remedial action: Court

By STACY ADLER

SAN JOSE, Calif.—A property insurer has a duty to indemnify its policyholder when a covered peril threatens to damage insured property, even if no damage has occurred, a California appellate court says.

In what could be a far-reaching decision favoring policyholders, the California 6th District Court of Appeals ruled that a policyholder does not have to prove actual physical damage to its property to force an insurer to make the property as safe as it was before a covered peril occurred.

In fact, last week the decision, which involves Covenant Mutual Insurance Co., was suggested as a precedent in the coordinated asbestos coverage litigation under way in San Francisco (*BI*, June 1, 1987).

"The decision dramatically extends the liability of insurers beyond" the language of property insurance policies, says Royal Oakes, an attorney with Barger & Wolen in Los Angeles who represents insurers in coverage litigation.

Covenant Mutual is seeking a California Supreme Court review of the decision.

The decision involved a January 1983 storm that damaged sand dunes that protected the Cypress Grove Townhouse Project—an ocean-front townhouse complex in Santa Cruz, Calif.—from wave damage.

Emergency repairs were made to temporarily protect the townhomes from wave damage. Those costs were paid by Covenant Mutual, which wrote a difference-in-conditions insurance policy for the townhouse project.

The policy, which was in effect from January 1983 to January 1984, had an annual aggregate limit of $4 million.

The insurer also paid for minor damage to the townhomes. Altogether, Covenant Mutual paid $300,000 to the townhouse project following the storms.

But, the Cypress Grove Townhouse Project Committee argued that the emergency repairs would not withstand another storm and that the townhomes were in imminent danger of being damaged.

The committee asserted the insurer had a duty to erect a permanent structure that would protect the townhomes from future storms and sued Covenant Mutual in Santa Cruz County Superior Court, seeking indemnification for the cost of the permanent structure.

While the cost of the unbuilt structure has not been determined, it has been described as a "multimillion-dollar structure" by attorneys for Covenant Mutual.

In response to the committee's suit, Covenant Mutual argued that the DIC policy did not require it to make the buildings safe, but only to compensate the owners for actual property damage.

The trial court in 1985 issued a summary judgment in favor of the insurer. The committee then appealed to the state appellate court.

The three-judge appellate panel, in overturning the trial court's decision, unanimously ruled in December that although there was no subsequent property damage to the townhomes following the 1983 storms, the weakness of the temporary repairs put the complex in danger. Therefore, the court said, Covenant Mutual

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Risk retention group says Kentucky violated 1986 act

By JERRY GEISEL

FRANKFORT, Ky.—Two Kentucky state agencies are violating the Risk Retention Act by refusing to recognize that insurance written by an Indiana-domiciled risk retention group meets the state's financial responsibility requirements for motor carriers, the risk retention group charges.

The American Inter Fidelity Exchange, a risk retention group that hopes to write liability insurance for motor carriers nationwide, filed suit in U.S. District Court in Frankfort after the Kentucky Transportation Cabinet rejected AIF insurance certificates presented by motor carriers seeking to operate in Kentucky.

The Kentucky agency rejected the certificates because the group is not an authorized insurer in the state. Under a Kentucky statute, a motor carrier must, among other things, have liability insurance issued by an insurer authorized in the state.

The AIF complaint seeks a ruling that the Kentucky Department of Insurance and the Kentucky Transportation Cabinet accept certificates of insurance from risk retention groups.

AIF also has filed a similar suit against the Wisconsin Insurance Department and settlement discussions are under way in both cases.

AIF hopes to write liability insurance with up to a $1 million combined single limit and at least $150,000 of cargo insurance limits for motor carriers nationwide after the litigation with Kentucky and Wisconsin is resolved, said Vp Harold Antonson. In the meantime, the risk retention group is providing only cargo insurance to its six members, all of which are based in Indiana, he said.

AIF, which has about $1.4 million in capital and surplus, is organized as a reciprocal in Indiana. Its attorney-in-fact is American Inter Fidelity Corp. of Hobart, Ind.

At issue in the litigation is whether the federal Risk Retention Act pre-empts state laws that mandate the types of insurers that certain businesses must use to satisfy state-imposed financial responsibility requirements.

Congress expanded the 1981 Risk Retention Act in 1986 to allow risk retention groups licensed in one state to provide all types of commercial liability coverage, except workers compensation, to member-owners nationwide without being licensed as admitted insurers in other states or having to use licensed commercial insurers as a front.

This was extended under the 1981 act only to risk retention groups chartered to provide product

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Inside

Departments

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Loan regulations could hurt 401(k) plans

By DONNA DiBLASE

WASHINGTON—Proposed regulations governing loans from defined contribution plans may have a chilling effect on 401(k) salary reduction plan participation, employee benefit consultants say.

The regulations recently proposed by the Department of Labor appear to question whether the vested portion of an employee's 401(k) account balance can be used as security or collateral for a loan from the plan.

If account balances cannot be used as collateral, 401(k) plan loan options could be killed, consultants say.

"This would certainly potentially reduce either the contribution level or the rate of participation in 401(k) plans," said Robert H. Shannon, a principal in the New York office of A. Foster Higgins & Co., the benefit consulting arm of Johnson & Higgins.

Some companies are adding loan provisions to their 401(k) plans to build interest in the plans among lower-paid employees to ensure that their plans meet the stricter non-discrimination rules in the Tax Reform Act of 1986 (*BI*, Feb. 15).

In addition, many employers have offered loan features since the enactment of stricter regulations governing 401(k) distributions before employees reach age 59½ to provide employees with some access to their money.

The proposed rules 'would certainly potentially reduce either the contribution level or the rate of participation in 401(k) plans,' says Robert H. Shannon of A. Foster Higgins & Co.

"If loans were not available, in general this would have a chilling effect on 401(k) plans," said Fred Rumack, director of the tax and legal services division of Buck Consultants Inc. in New York.

"401(k) plans have been popular for a long time with lower-paid employees if they know they have some accessibility to the money, like through loans. Now that early (hardship) withdrawal involves a 10% excise tax, we've seen more interest in loan programs by employers," Mr. Rumack explained.

Besides affecting 401(k) plans in particular, the proposed regulations also would make administration of loan programs for all types of defined contribution plans more difficult, consultants add.

The proposed regulations clarify Section 408(b)(1) of the Employee Retirement Income Security Act of 1974, which permits pension plans to make loans to participants only if the loans meet certain criteria.

Employers have operated defined contribution plan loan programs under general guidance from the Labor Department since ERISA was enacted; final loan regulations have never been promulgated.

Under the Labor Department's proposed regulations, the five criteria that loans from defined contribution plans must satisfy would be:

- The loans must be available to all participants and beneficiaries on a reasonably equivalent basis. Plan fiduciaries could consider only those factors that would be considered by a bank in making a loan, like creditworthiness or financial need.
- The loans must not be made available to highly compensated employees, officers or shareholders in any amount greater than the amount made available to other employees. The maximum amount of a loan for all employees can be

Continued on next page

Liquidation is sought for mortgage insurer hurt by EPIC debacle

By JUDY GREENWALD

LOS ANGELES—The California Insurance Department is moving to liquidate TMIC Insurance Co. after finding that the mortgage insurer faces an estimated future deficit of close to $350 million.

TMIC, a unit of Los Angeles-based Ticor Mortgage Insurance Co., has been in rehabilitation for nearly two years. It had a 1987 year-end deficit of $169.5 million.

The California Insurance Department last week petitioned the California Superior Court in Los Angeles to liquidate TMIC. If loss projections are accurate, TMIC's insolvency would be one of the largest insurer insolvencies ever (*BI*, Nov. 16, 1987).

If TMIC is liquidated, its policyholders cannot seek coverage from state guaranty funds because the funds do not respond to mortgage insurance claims.

Among those facing losses because of TMIC's problems are the Federal National Mortgage Assn.; the Federal Home Loan Mortgage Assn., which purchased mortgages insured by TMIC, issued securities backed by the mortgages and sold them in the secondary market; and savings and loans.

The federal agencies would be responsible to their investors for any defaults because they guarantee the securities. But, buyers of TMIC-insured mortgage securities from savings and loans and S&Ls still holding the mortgages have no such guarantees and would lose if there were defaults.

The court set an April 6 hearing on the petition to give TMIC policyholders an opportunity to present alternatives to liquidation, said A. Harold Janken, an Insurance Department manager who is overseeing the TMIC rehabilitation.

"It's a possibility. Whether it's a probability or not, I can't say," Mr. Janken said.

TMIC had assets of $325.9 million and liabilities of $495.4 million—a deficit of $169.5 million—at year-end 1987, according to liquidation papers filed by the department.

A year earlier, TMIC had assets of $347 million and liabilities of $403.9 million—a $56.9 million deficit—court papers say.

TMIC's deteriorating financial condition caused the California department to stop TMIC from paying claims in January, which

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Post-contract collections subject to NLRB: Court

By STACY ADLER

WASHINGTON—The National Labor Relations Board—not the courts—has jurisdiction over suits filed by trustees of multiemployer benefit plans against employers that fail to contribute to the plans after labor contracts expire, the Supreme Court says.

In upholding an appellate court ruling, the Supreme Court ruled 8-0 that the intent of Congress when drafting the Employee Retirement Income Security Act of 1974 to leave such disputes to the NLRB "is so plain" that the trustees should appeal to Congress, not the courts.

A 1980 amendment to ERISA says that multiemployer plan trustees can file suit against an employer in a federal court only if the employer fails to contribute the negotiated amount due under a labor agreement. ERISA does not stipulate what course trustees can take when an employer fails to make contributions after a labor agreement expires and is being renegotiated.

"The decision will frustrate plan administrators from fulfilling their fiduciary duty," remarked Kenneth Camisa, a consultant in the New York office of Martin E. Segal Co.

The Supreme Court decision stems from a suit filed by the trustees of Laborers Health and Welfare Trust Fund and seven other northern California plans against Advanced Lightweight Concrete Co. The trustees sued Advanced Lightweight when the construction company stopped making contributions to the pension plan after the expiration of a labor contract on June 15, 1983.

The trustees had argued that they should be able to sue for damages in federal court. But the Supreme Court disagreed.

"Both the text and the legislative history of (ERISA) provide firm support for the Court of Appeals conclusion that this remedy is limited to the collection of 'promised contributions,' " not post-contract contributions, said the high court decision.

Blythe Mickelson, the attorney representing the trustees, pointed out several problems with seeking recourse through the NLRB, including the fact that the NLRB has discretionary oversight and can decide not to hear a case brought by trustees.

"The NLRB has in the past settled for less than full amount of contributions sought," she said. Furthermore, the NLRB does not have the ability to award attorneys' costs or punitive damages, said Ms. Mickelson, with the San Francisco firm of Van Bourg, Weinberg, Roger & Rosenfeld.

Blaine Bos, a consultant with A. Foster Higgins & Co. in Seattle, also noted the ruling does not address whether employers are obligated to make contributions while the labor agreement is being negotiated. ■

Photo: Lloyd's of London

Fireworks exploded overhead as the new Lloyd's of London building was specially illuminated to observe the market's 300th anniversary on Feb. 18.

Many Lloyd's syndicates won't use full capacity

By STACY SHAPIRO

LONDON—Many Lloyd's of London syndicates will only write 60% to 65% of their premium income capacity this year because of increasing competition in the property/casualty insurance and reinsurance business and the declining value of the U.S. dollar, says Lloyd's Chairman Murray Lawrence.

As a result, Lloyd's underwriting agencies probably will recruit "very few" new syndicate members in 1989, said Mr. Lawrence.

In an interview with *Business Insurance* last week, Mr. Lawrence explained remarks he made to Queen Elizabeth, the Queen Mother, during a Feb. 18 tour of Lloyd's.

The tour followed an extravagant ceremony to specially light the new Lloyd's building in commemoration of the market's 300th anniversary. The Queen Mother turned on the lights illuminating the new building and watched, with the rest of the market, a display of smoke, lights and videos inside Lloyd's atrium, followed by a fireworks display above the building.

Afterwards, while introducing the Queen Mother to people gathered on the ground floor of the new Lloyd's building, Mr. Lawrence explained to her that fewer

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401(k) loans

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set as either a dollar amount or as a percentage of vested accrued benefits.

- Loans must bear a reasonable rate of interest.

This is defined as a rate that provides an investment return to the plan commensurate with the prevailing interest rate charged by banks or other commercial lending institutions.

- The loans must be adequately secured.
- The loans must be made in accordance with specific provisions governing the administration of the loan program.

The provisions must be included in the plan documents and include the identity of the person or position authorized to administer the loan program; the procedure for applying for loans; the basis for approval or denial of loans; any limitations on the types or amounts of loans; the procedure for determining a reasonable interest rate; the types of collateral required; and the events constituting a default and the steps that will be taken to secure plan assets in the event of a default.

'The pension plan technically wouldn't be able to recoup the balance of an employee who defaults on a loan until the person would otherwise be leaving or taking a normal distribution at age 59½,' says Joseph Walshe of Coopers & Lybrand.

The regulations would be effective retroactive to Jan. 1, 1975. However, employers would have until Jan. 1, 1989, to update their plan documents with specific provisions governing administration of loan programs.

The issues of adequate security and reasonable interest rates are the most controversial points in the proposed regulations, consultants say.

The proposed regulations define adequate security of a loan as being something that "can be sold, foreclosed upon or otherwise disposed of in default of the loan."

In most cases, a participant's account balance now is used as collateral to back up the loan from a defined contribution plan.

In the event of default, the plan forecloses on the participant's account for the amount of the unpaid loan.

A defined contribution pension plan—which includes separate accounts for each participant—would lose nothing in such a transaction, since the participant uses his or her own allocated funds to secure the loan.

However, the proposed regulations say that if there are Internal Revenue Code restrictions on the "reduction or disposal of a participant's vested accrued benefit to satisfy the participant's outstanding (loan) obligation in the event of default," that portion of the account balance subject to the restrictions "may not be adequate" security.

While it is not clearly stated in the regulations, this provision would apply to 401(k) plans, since distributions are prohibited from a 401(k) plan, except for a hardship, before the participant reaches age 59½. Early distributions for hardships are taxed at the normal income tax rate plus a 10% excise tax.

So, "if a person defaulted while still an active employee, then there are several tax rules that say this would be considered a taxable early distribution," explained Mr. Rumack of Buck.

"The pension plan technically wouldn't be able to recoup the balance of an employee who defaults on a loan until the person would otherwise be leaving or taking a normal distribution at age 59½. Therefore, the DOL says that account balances are not adequate security," explained Joseph Walshe, a partner with Coopers & Lybrand's actuarial and benefits consulting practice in Washington.

If 401(k) account balances are not considered adequate security and if employers are required to have participants secure loans with other collateral, such as their automobiles or homes, most employers probably would not offer loan programs as part of their 401(k) plans, some consultants contend.

"Requiring participants to post other collateral, such as a car or a home, will create major problems for retirement plans. Consider the problems that would be created when a retirement plan would have to repossess an employee's home or car," said Gary Blank, chairman of the national defined contribution practice for The Wyatt Co. in San Francisco.

In effect, 401(k) plans would have to operate just like a bank "because of all the paperwork and staff that would be necessary to comply" with the proposed regulations, he said.

In addition to the issue of adequate loan security, some consultants say the requirement of and definition of a reasonable rate of interest will create problems for employers.

The proposed regulations regard a participant loan as a plan investment subject to the same ERISA standards as any other investment. Therefore, the regulations would require the plan, in acting as a lender, to assume these risks at a rate of return similar to those in the commercial lending market.

"This will be controversial for a number of pension plans, especially union plans," which attach a lower rate of interest to participant loans, said Mr. Walshe of Cooper & Lybrand.

According to Wyatt's Mr. Blank, most employers have charged an interest rate equal to the current rate on Treasury bills, plus 1% to 2%, or the prime interest rate plus 1% or 2%.

"The issue of a reasonable interest rate is the next most difficult area of these regulations. The Department of Labor seems to be applying a commercial standard here. But this wouldn't be appropriate because plan loans are unique," said Cheryl Prince, a technical consultant and attorney in the New York office of TPF&C, the benefits and actuarial consulting arm of Towers, Perrin, Forster & Crosby Inc.

The Labor Department is accepting comments on the proposed regulations, which some consultants say will start a dialogue toward acceptable final regulations.

"The regulations will get a lot of comments, so the Department of Labor will learn quickly what the concerns are here. I think the final regulations will indicate that the way a lot of pension plans have been operating with respect to loans is fine," predicted Buck's Mr. Rumack.

Comments on the Labor Department's proposed regulations may be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210. ■

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Sources for statistics: Employee Benefit Research Institute, 1985; National Underwriter, 1986.

Lloyd's capacity

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Lloyd's names will be allowed to join the market next year because Lloyd's already is suffering from overcapacity. He also told the Queen Mother that many syndicates would write only 60% of their premium income capacity this year.

Last week, in an interview in his office, Mr. Lawrence explained: "You have this appalling difficulty getting the capacity you think you need to reflect the capacity you eventually turn out to need."

Attempting to guess how much capacity the market actually needs is hindered by both the underwriting cycle and the currency cycle, the Lloyd's chairman said.

"You have the (underwriting) cycle, which is hard enough nowadays to call even if you are in the business like ourselves because it is getting so much more volatile," he commented.

Underwriting cycles now are far more difficult to predict, he added, because Lloyd's now writes more excess coverage than in the past when the market wrote more first-dollar primary coverage or coverage with tiny deductibles, said Mr. Lawrence.

Because it is more difficult to predict claims on excess policies than primary policies, syndicate loss ratios now fluctuate dramatically from 20% one year to 150% the next year, instead of varying between 55% to 85%, he said.

"So when you get a year like 1986 when all the rates were (high) and on top of that nothing happened, you get ridiculous loss ratios, which makes everyone think (underwriting) is the ultimate golden egg. . .You get these sudden swings."

The other cycle, which is more volatile and over which Lloyd's has no control, is the currency exchange cycle that forces the dollar up and down against the pound, explained Mr. Lawrence. Although Lloyd's capacity is calculated in pounds, between 70% and 80% of Lloyd's premiums are written in U.S. dollars.

Coupled with the underwriting cycle, currency fluctuations make it difficult for Lloyd's underwriters to predict how much capacity they need, Mr. Lawrence said, examining the swings of both cycles during this decade.

For example, in 1980, it cost $2.40 to buy one pound, so less capacity written in terms of British pounds was needed at that time to write business written in U.S. dollars. That year was also a year in which rates softened, so underwriters "only wrote 60%" of their underwriting capacity, said Mr. Lawrence.

Without an increase in premium rates, by 1983 underwriters found that they were writing 80% of their capacity just because the dollar was strengthening against the pound, he explained. Then, in 1984, the underwriting cycle began to harden and the value of the dollar continued to increase against the pound, meaning there was an automatic increase in Lloyd's premium volume calculated in pounds.

"Horror. Horror. How do we get more capacity?" was the question of the day at that time, Mr. Lawrence said.

In 1985, Lloyd's underwriters started the year writing at an exchange rate of $1.16 to the pound, which automatically increased the amount of premiums being written by Lloyd's underwriters when more expensive dollars were converted to pounds. As the market began to harden, Lloyd's underwriters desperately tried to recruit more members to increase their capacity because they were in danger of overwriting their premium income limits, he explained.

In fact, by 1986, several Lloyd's syndicates stopped writing early in the year and Lloyd's warned several syndicates that they were in danger of overwriting.

Underwriters were "desperate. . .to get more capacity for 1986, which carried on into 1987," Mr. Lawrence said. However, last year "we had an enormous increase in capacity (and) the dollar began to weaken again. . .and the (underwriting) cycle in 1987 suddenly went off midyear.

"Low and behold, we were suddenly into the 1988 account with the aviation market looking pretty dismal, the marine market feeling sorry for itself, the non-marine market cutting back and the dollar at $1.88 (at year-end 1987 exchange rates)," Mr. Lawrence said. "So we now have a situation that the (underwriting) agent is saying, 'I'm afraid I don't want any new names for 1989.'

"That is what I meant (when he told the Queen Mother) that we are having a holiday, because I think that the number of new names introduced for 1989 will be very, very few. . .I think many syndicates will be writing at no more than 60% to 65% of capacity in 1988."

Despite the apparent overcapacity at Lloyd's, the market's capacity rose about 10% this year to 11.2 billion pounds ($21.1 billion at year-end 1987 exchange rates) from 10.2 billion pounds last year ($15.1 billion at year-end 1986 rates), as 2,600 new members joined Lloyd's and old members increased their participation in the market. In dollar terms, the market increased its capacity more than 39% (*BI*, Jan. 11).

Lloyd's couldn't stop the flow of new membership this year and avert overcapacity problems because underwriting agents began to find new members in January and February of 1987, thinking that one pound would cost around $1.45 instead of $1.88.

"There's a lead time in getting new names," said Mr. Lawrence, adding that canceling new memberships for 1988 would have been "like turning an ocean liner in the middle of the Atlantic. When you turn the wheel it takes some time for the ship to move."

However, by changing the way Lloyd's stamp capacity is calculated, Lloyd's automatically reduced its capacity this year by 5% across the board by only allowing underwriters to write premiums equal to 125% of net capacity instead of 130% of capacity (*BI*, Aug. 31, 1987). Therefore, this year Lloyd's actually only increased its maximum permissible capacity by about 5%.

Meanwhile, 18 new syndicates started writing business this year, which "is surprising for the present climate. I wish them well," said Mr. Lawrence. ■

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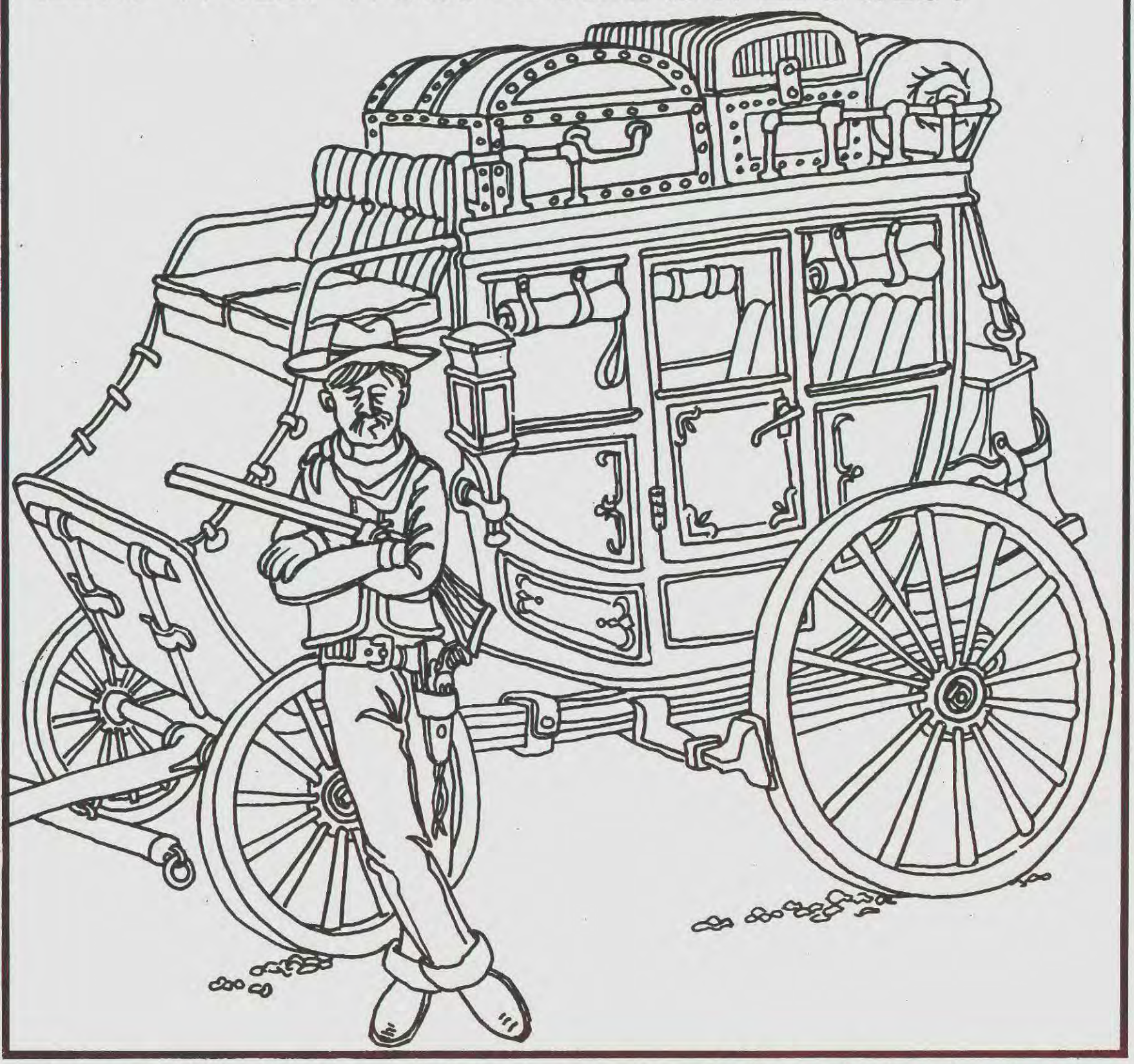

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Opinions

End pollution litigation

HATS OFF to DeRoy C. Thomas, chairman of Hartford Insurance Group, for his proposal to create a fund to pay for pollution damage in the United States (see story, page 1).

It's about time someone in the insurance industry took a leadership position offering a solution to this important problem instead of only fighting liability for pollution claims and sounding dire warnings that the insurance industry cannot afford to foot the bill for cleaning up polluted sites.

While many of the specifics of the proposed Comprehensive Environmental Response Authority are yet to be determined, Mr. Thomas' plan calls for insurers, excess insurers, reinsurers and polluters to create a fund to pay pollution damages and clean up polluted areas under a no-fault system. Federal funds also would be involved.

This makes sense to us because the plan would minimize litigation costs and direct money toward compensating victims and repairing damages. Securing federal funds in addition to funds from polluters and their insurers also makes sense because society consumed the products and services that created the pollution.

There will be many hurdles to overcome in the development of this plan and many contingencies to consider. Others in insurance and business must get involved now to hammer out the details.

The framers of CERA should analyze the operation of the Asbestos Claims Facility. In the famous words of George Santayana: "Those who cannot remember the past are condemned to repeat it."

Already, the CERA plan calls for the involvement of reinsurers, which the Asbestos Claims Facility failed to do. Framers of the CERA plan also should consider how they will keep the fund together in the face of unexpected developments. The Asbestos Claims Facility, for example, is struggling with how to handle the emergence of a new flood of asbestos claims from unanticipated sources.

CERA, or something similar to it, is needed to efficiently compensate victims of pollution and to repair pollution damage to our environment.

Off to a bad start

IF SEN. EDWARD Kennedy, wants more business support for his legislation to require employers to offer group health care coverage, he needs to change his tactics.

Sen. Kennedy, D-Mass., convinced the Senate Labor and Human Resources Committee to accept and pass a revised version of his mandatory health insurance bill that would add mental health care coverage as a mandated benefit (*BI,* Feb. 22).

In defense of adding this benefit to his bill, Sen. Kennedy said mental health coverage should be part of any basic health care package, noting that many firms now provide such coverage.

While the cost of mental health coverage would be modest—Sen. Kennedy estimates it at $42 per employee annually—adding mandated benefits is bound to exacerbate employer fears that legislators will tack on other mandates as the bill moves through Congress.

Sen. Kennedy himself assured employers, in a speech before a conference co-sponsored by the National Assn. of Manufacturers and the Washington Business Group on Health, that he would not expand the basic health care package that employers would have to offer.

That vow lasted just a few weeks, which can only leave employers wondering about Sen. Kennedy's commitment to resist pressures from special interest groups to expand the list of mandated benefits.

We have nothing against mental health coverage; we believe it is an important component of a health plan. But if Sen. Kennedy wants to get this legislation passed, he should be scaling back his measure so that it truly is what he says it is supposed to be: legislation requiring employers to offer a basic health care package.

Sen. Kennedy could start in that direction by making several changes. For example, most employers don't offer full health care coverage to employees working as few as 17.5 hours per week, as Sen. Kennedy wants. Extending coverage for part-time employees working at least 20 or 24 hours a week would be more in line with corporate practice. Another necessary change is lowering the amount of premium employers would have to pay for dependent coverage. Sen. Kennedy wants companies to pay 80% of the premium; we think 50% would be more reasonable.

By making such changes, Sen. Kennedy would give a message to businesses that he is sincere when he says he wants to mandate a basic health care package. But, even with these changes to the legislation, it's going to be difficult to win business support for the proposal, especially among small employers that contend they cannot afford to comply with such a benefit mandate.

Letters

Readers speak out on state regulation

The following letters are in response to a request in a Feb. 8 Business Insurance *editorial asking readers to share their comments to the National Assn. of Insurance Commissioners on state regulation:*

To the NAIC: After some 30 years in the business, I have the following thoughts on state regulation:

- State regulation is extremely uneven. There are 50 different laws pertaining to licensure, countersignature, non-residents, filings, approvals, rates and on and on. How can it be otherwise? Is Utah the equivalent of New York? Can West Virginia or Mississippi compete with California?
- The countersignature laws—plus fees, especially in the South—are relics of the Revolutionary War days when we were a confederacy; a tax on doing business across state borders. Why now? If any industry is national in scope—even international—certainly it is the insurance industry. People drive their cars in other than their home state and business operates world wide.

As an example, how does an out-of-stater do business in Texas? In Kansas? It

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Professional Liability and Specialty Insurance

Letters

Continued from page 8

is almost as if states like these are saying "all others, stay out."

• Knowing the cost limitations of the average state insurance department, I don't see any viable way that the majority of states can keep an accurate finger on the pulse of some 5,000 insurance companies, many of which are within their purview. Furthermore, an insurer doing business in all 50 states must furnish each department with, presumably, identical records, which is a burden on the insurers as well as on the states.

I'm not sure, at least now, if the answer is repeal of the McCarran-Ferguson Act with the consequent federal legislation that would ensue. Perhaps if a federal body were properly set up for intelligent regulation, that might be the answer. This is what is supposed to be happening with the banks, and they don't appear to be well regulated. But at least federal regulation would cut down on the enormous cost of duplication and general unevenness that now prevails.

I think the entire system needs an overhaul and a brand new look, perhaps something like a contribution of federal moneys if the states subscribe to certain minimum standards.

Paul Richard
Evanston, Ill.

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611.

To the NAIC: As a preface to any comments I make, I want it clearly understood that I favor state regulation over no regulation or *any* federal regulation.

However, one of the problems with state regulation has been wide variances in the regulation by each state. Thus, this lack of uniformity makes it difficult for insurance companies that operate in more than one state to keep all states' regulations clearly in mind.

The NAIC has assumed a greater importance because it seeks to bring more uniformity in the important areas of regulation. The adoption of model statutes has merit.

I have always felt that the principal responsibility of each state regulator was to make sure the insurance companies in his state are solvent. I'm sure most regulators feel the same as I do on this issue.

However, witnessing the large number of insolvencies that each state's guaranty fund is administering, something is seriously wrong with the current system. Administering the guaranty funds in many of the states is now big business. This wasn't intended when they were begun and shouldn't be today.

The guaranty funds aren't fair to the well-run companies that have to pick up the mistakes of the poorly run companies due to the failure of the state regulator to carry out his statutory responsibility.

The guaranty funds are a child of politics at the state level. They were brought about by the state legislators who caught a lot of flack from constituents because of insurer failures, so they created the guaranty fund. This put the responsibility on the regulators to set up the machinery and gave them a means of paying for insurer insolvencies.

However, it also was and is a "cop out" for both the regulator and the legislator, because "so what" if a company becomes insolvent: Now, we can pay the policyholders from the guaranty fund, so why be concerned with solvency?

State regulators pay much more attention to consumer complaints about claims handling, high rates and unfair rating than they do about the tough area of solvency. While these areas have some importance, they certainly should be secondary to the solvency of the companies.

Some states have JUA's or similar state-run pools that assess well-run companies for any shortfall in their plans. This, too, has become big business. For example, take the state of Massachusetts. They have a monstrosity today, which should never have become what it is. This is because politics rears its head and the insurers doing business in the state cannot get rates commensurate with their exposure. In this case, the regulators haven't met the responsibility to all concerned. Solvency may have become a secondary consideration, because they know they have a guaranty fund and a JUA or like pool to pick up the costs.

As a result, it becomes more difficult for the well-run, financially stable insurers to remain in that position because of the drain on assets caused by these state-run agencies that operate on assessments.

It is in these states where the NAIC and its members should expend their energy.

Charles D. Stis

'Reinsurance' is correct word

To the editor: I have reviewed carefully the letter to the editor concerning the Michigan Municipal Risk Management Authority from Stephen Michaels of Indianapolis (*BI*, Jan. 11).

Mr. Michaels expressed his opinion that the term "reinsurance" was used improperly in an article on MMRMA in the Dec. 21, 1987, issue of *Business Insurance.* Apparently Mr. Michaels is not familiar with Michigan law as it pertains to the operation of self-insured associations. The relevant Michigan law authorizes group self-insurance programs to "obtain excess insurance or reinsure risks and may assume and sell risk."

Thus, contrary to Mr. Michael's opinion, reinsurance is authorized by state law. Furthermore, our reinsurance is not excess insurance but is primary.

Mr. Michael's statement that the Michigan insurance commissioner concurs with his opinion needs to be verified.

We have always found Michigan's insurance commissioner and his staff to be completely aware of all provisions of the insurance code. I believe that the report written by Douglas McLeod used the term "reinsurance" properly as it pertains to the MMRMA.

Rufus L. Nye
Executive Director
Michigan Municipal
Risk Management Authority
Plymouth, Mich.

Comings & goings: Industry

EIM appoints Weaver chief operating officer

Gene L. Weaver has been appointed general manager and chief operating officer of Energy Insurance Mutual, a Bridgetown, Barbados-based excess liability insurer serving U.S. electric and gas utilities.

Serving as EIM's first full-time general manager, Mr. Weaver will oversee expansion of the insurer, including the planned opening of its first U.S. branch office in Tampa, Fla., early this year.

Previously, he served as senior vp of C.L. Frates & Co. in Oklahoma City.

Insurers

Thomas W. Waugh and **Arthur B. McHugh** named senior vps of both Zurich Insurance Co., U.S. Branch, and American Guarantee & Liability Co. in Schaumburg, Ill. Mr. Waugh is director of the insurers' products division and is responsible for management of all insurance products. Mr. McHugh is general manager of Zurich's excess, surplus and specialty business division.

Michael F. Cook promoted to senior vp of external operations for Blue Cross & Blue Shield of New Hampshire in Concord. In this position, Mr. Cook oversees the health benefits management, customer service and project administration divisions at BC/BS of New Hampshire. He previously was vp-customer service.

Richard E. O'Keefe named senior vp at American Accident & Health Insurance Co. in East Norwich, N.Y. Mr. O'Keefe will be responsible for underwriting, sales and marketing.

Thomas A. Hayes appointed executive vp of Great American Insurance Cos. in Cincinnati. Mr. Hayes is responsible for Great American's field operations. Previously, he served as president of subsidiary Great American Midwest Inc.

Carl B. Castoldi named senior vp and Southern regional manager for Continental Insurance Co. in Dallas. Previously, Mr. Castoldi served as resident vp of Continental's Glens Falls, N.Y., branch.

R. Daniel Massey named senior executive vp and head of the underwriting department at AMBAC Indemnity Corp. in New York. Mr. Massey previously was a vp at Citibank's Institutional Bank-North American Finance Group. He replaces **Nancy Newcomb**, who left AMBAC to become chief financial officer of Citicorp.

Agents/Brokers

Jeffrey L. Johnson promoted to president and chief executive officer at Molton, Allen & Williams in Birmingham, Ala. Mr. Johnson, who joined Molton in 1984, most recently served as executive vp-large accounts.

Bernard Mollod named senior vp of Frank B. Hall & Co. of New York Inc. Based in Manhattan, Mr. Mollod is responsible for managing new business development. Mr. Mollod, who joined Hall in 1968, most recently was a vp.

Warren Cheng Yiu Wah named director and general manager of Heath Hudig Langeveldt Ltd. in Hong Kong.

Bruce Guthart promoted to senior vp at Walter Kaye Associates Inc. in New York. Mr. Guthart joined Walter Kaye in 1979.

Reinsurance

Nigel Harley, chairman of Continental Reinsurance Corp. in New York, has assumed the responsibilities of president, following the resignation of **John Storey**. Mr. Harley will oversee Continental Re's New York and International operations as well as its Bayside Re unit in Bermuda. ■

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Risk retention group dispute

Continued from page 2

liability and completed operations coverage.

The expanded Risk Retention Act also pre-empts state laws that prohibit employers from purchasing liability insurance on a group basis.

However, the New York Insurance Department implemented a regulation last week that requires purchasing groups to seek coverage from authorized insurers before they purchase insurance from a surplus lines insurer (see related story).

AIF charges in its complaint filed in federal court in Frankfort that the Kentucky Department of Insurance and the Kentucky Transportation Cabinet are discriminating against the risk retention group by not recognizing its coverage.

"Kentucky is guilty of discrimination against AIF because it is making a prohibited distinction between an admitted carrier and a risk retention group," according to the AIF suit.

"Without a rational, legitimate basis for distinguishing between an authorized carrier and a risk retention group, Kentucky is prohibited from refusing to accept AIF's certificates," AIF asserts.

"In short, AIF is being denied the right to furnish a form of insurance coverage in Kentucky simply because it is a risk retention group. This is precisely the sort of discrimination Congress intended to prohibit" in expanding the Risk Retention Act in 1986, AIF's complaint says.

"Kentucky's refusal to accept AIF's certificates will undermine the basic goal of the Liability Risk Retention Act to establish an alternative, competitive insurance alternative in the motor carrier financial responsibility market," AIF court papers say.

AIF further argues in court papers that when Congress passed the Risk Retention Act, it intended that risk retention groups would not be subject to conflicting requirements from state to state.

To allow states "to exclude risk retention groups from the motor carrier liability insurance market within their borders would cause this system to collapse and would frustrate Congress' aim," AIF says in court papers.

'AIF is being denied the right to furnish a form of insurance coverage in Kentucky simply because it is a risk retention group,' American Inter Fidelity Exchange's complaint alleges.

"One of the purposes of the Risk Retention Act was to be sure that risk retention groups would not be subject to these varying state rules," said AIF attorney Christopher M. Hill, an associate with the law firm of McBrayer, McGinnis, Leslie & Kirkland in Frankfort.

If AIF attempted to become an authorized insurer in Kentucky, then every state might seek to impose such a requirement, Mr. Hill said.

"We did not want to set such a precedent," Mr. Hill said, adding that he hopes the litigation can be settled.

But the Kentucky agencies deny they are discriminating against the risk retention group, contending that language in the Risk Retention Act clearly allows states to retain their rights to specify how a financial responsibility requirement can be met.

The Risk Retention Act "specifically permits states to require persons seeking licenses or permits from a state to demonstrate financial responsibility by procuring liability insurance from an insurer licensed by the state, even if this would preclude a risk retention group from providing the coverage," the Kentucky Department of Insurance says in court papers filed in response to the AIF complaint.

"Nothing in this act shall be construed to pre-empt the authority of a state to specify acceptable means of demonstrating financial responsibility where the state has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities," the department says in the response, quoting directly from the 1986 amendments to the Risk Retention Act.

The Insurance Department also cited remarks by Slade Gorton, who was a Republican senator from Washington state when the amendments to the act were debated in 1986: "In the state of Washington, for instance, many activities require proof of insurance by a carrier admitted to do business in the state. Such laws would continue to be valid, notwithstanding the fact that they might preclude participation in an out-of-state risk retention group for the purpose of meeting that requirement."

The department agreed that the Risk Retention Act prohibits a state from specifically discriminating against or excluding risk retention groups in laying out a financial responsibility requirement.

However, the department continues, risk retention groups are not singled out for exclusion by Kentucky's financial responsibility requirement "but are among several different types of unauthorized insurers whose coverage is not acceptable as evidence of financial responsibility for motor carriers."

Supporters of the Risk Retention Act say the law was designed to facilitate self-funding by allowing a risk retention group—after it was licensed in one state—to operate nationwide without having to meet licensing requirements in other states.

Others, though, say it is not clear to what extent state financial responsibility requirements were protected from the otherwise broad state pre-emption provisions of the Risk Retention Act.

Such laws may, for example, specify that coverage for a certain type of risk, such as liability coverage for motor carriers, be obtained through an insurance company that is licensed and authorized to do business in the state.

Through enforcing such laws, a state can exclude a self-insured group from operating unless the group uses a fronting insurer that is admitted in the state, according to Brady Young, a consultant with the Tillinghast division of Towers, Perrin, Forster & Crosby Inc. in Darien, Conn.

State financial responsibility rules can be a very practical problem standing in the way of operating a risk retention group, Mr. Young said.

"I'm not surprised we are having this problem," said Lana Batts, a vp with the American Trucking Assns. in Alexandria, Va., referring to the AIF suit. "States are dealing with something—risk retention groups—that they have not seen much of before." ■

New York department issues purchasing group regulation

By DOUGLAS McLEOD

NEW YORK—A New York Insurance Department regulation implemented last week requires purchasing groups to attempt to place coverage with authorized insurers before the groups can tap non-admitted markets.

Under the regulation, purchasing groups formed under the 1986 expansion of the Risk Retention Act will be treated like other insurance buyers seeking to use the surplus lines market, an Insurance Department spokesman explained.

The New York department says that the regulation is intended to clarify the limits of the exemption from state regulatory authority provided purchasing groups under the expanded risk retention act.

But Jon Harkavy, general counsel and director of governmental affairs for the Risk & Insurance Management Society Inc. in New York, charges that the new regulation subverts the intent of the Risk Retention Act.

Under the department's Regulation 134, purchasing groups must use surplus lines brokers in attempts to place the coverage with authorized insurers. These brokers must obtain three declinations from authorized insurers before they can place purchasing group coverages with unauthorized companies, the new regulation states.

Roughly 75% of the 132 purchasing groups that had notified the New York department by last Dec. 31 of their intent to do business in the state said they planned to place their insurance with unauthorized insurers, the spokesman said.

The new regulation also makes clear that authorized insurers must comply with state rate and form filing requirements on policies issued to purchasing groups.

A federal judge last year ruled that the state has the authority to regulate rates and policy forms on purchasing group coverages (*BI*, Oct. 5, 1987).

Insurance Co. of the State of Pennsylvania, a unit of American International Group Inc., sued the New York department last August, arguing that the federal act exempted purchasing group insurers from rate and form filing requirements (*BI*, Sept. 7, 1987).

An appeal of the ruling is pending.

The New York department has scheduled a public hearing for March 9 to allow interested parties to comment and propose amendments to Regulation 134.

There has been "considerable confusion about the extent to which the act pre-empts state law," the Insurance Department said in announcing the new regulation.

"The department is concerned that both licensees and non-licensees may be misinterpreting the pre-emptions of state law specified in the" Risk Retention Act, the New York department's announcement said. "Regulation No. 134 embodies existing New York laws and outlines the proper application of these laws in connection with purchasing groups and their members, their insurers, brokers, agents or excess line brokers."

However, Mr. Harkavy of RIMS strenuously objects to the new regulation.

"The New York department is making it absolutely clear by this regulation that they are trying to subvert the act and defy Congress. There's no other explanation for it," Mr. Harkavy said.

"It's not done to protect the consumer; it's done to protect the regulatory turf of the New York Insurance Department," Mr. Harkavy asserted. "If New York is successful in this, they have in effect gutted the purchasing group provisions of the Risk Retention Act."

RIMS has filed friend-of-the-court briefs supporting Insurance Co. of the State of Pennsylvania in its arguments against state rate and form filing requirements, Mr. Harkavy pointed out.

Such requirements defeat the Risk Retention Act's intent to attract insurers to write purchasing group policies by allowing them to operate nationally after obtaining the approval of just one state, RIMS has argued.

Mr. Harkavy also assailed the provision of Regulation 134 that requires purchasing groups to use surplus lines brokers and obtain declinations from authorized insurers before using unauthorized companies.

"It's a very cynical ploy to again regulate rate and form through the surplus lines agent," he said. "They are going to attempt to regulate groups indirectly through the agent in a manner that they can not do directly."

Mr. Harkavy also objected generally to the application of state surplus lines laws to purchasing groups, contending that the laws favor placements with authorized insurers—regardless of the cost—over placements with unauthorized insurers.

This preference again violates the intent of the Risk Retention Act, he said.

The Risk Retention Act also forbids states from imposing any requirements on purchasing group coverages that discriminate against non-resident agents or brokers, Mr. Harkavy said.

New York insurance law requires surplus lines brokers to be residents of the state.

However, the New York department will now allow out-of-state surplus lines brokers to become licensed in New York only for the purpose of handling purchasing group coverages, the Insurance Department spokesman said.

The spokesman also denied that the department is trying to subvert the provisions of the Risk Retention Act.

"There is no mistaking that we are not pleased with the Risk Retention Act," he said. "But, we think that this current regulation is well in keeping with the spirit and letter of the law." ■

Coles directs Revco's risk management

Thomas Coles, 37, has been named director of risk management at Revco D.S. Inc. in Twinsburg, Ohio. In this position he will oversee the drug store chain's risk management program, including loss control, safety programs, property/casualty insurance, claims control and processing and exposure analysis. He replaces **Alton Schexnayder**, who left Revco, and reports to Greg Raven, treasurer. Mr. Coles most recently served as corporate claims manager. He holds a bachelor's degree in business administration from Westminster College in New Wilmington, Pa. In addition, he is a deputy member of the Risk & Insurance Management Society and a member of the Ohio Assn. of Trial Attorneys.

* * *

Fred R. Haacker, 43, has been named director of risk and insurance in the Mayor of New York City's Office of Operations. In this position he is responsible for risk and insurance management policy and administration for 34 city agencies. He replaces

Comings & goings: buyers

Caroline Carangi, who joined the New York City Transit Authority as director of risk management. Mr. Haacker reports to Joel Copperman, assistant director of the Office of Operations. Previously, Mr. Haacker was manager of the Broome County, N.Y., Office of Risk Management. He holds bachelor's and master's degrees from the School of Management, State University of New York at Binghamton. In addition, Mr. Haacker is president of the New York State Chapter of the Public Risk & Insurance Management Assn. and is a deputy member of the Risk & Insurance Management Society.

Mr. Haacker

In addition, **Carol Childers** has been named manager of risk and insurance in the Mayor's Office of Operations. In this position she reports to and will assist Mr. Haacker. Previously, she was risk manager for Johnson County, Kan. She also served on the board of trustees for the Kansas Eastern Region Insurance Trust, a workers compensation pool. Ms. Childers holds a bachelor of arts degree in speech and English from the University of Kansas at Lawrence. In addition she is a member of the Public Risk & Insurance Management Assn. and the American Management Assn. and is a deputy member of the Risk & Insurance Management Society.

* * *

David Spence, 29, has been promoted to insurance manager at Syntex Corp. in Palo Alto, Calif. In this newly created position he is responsible for property/casualty insurance administration, budgeting and allocations for the pharmaceutical company. He reports to Jack Mantor, director of risk management. Mr. Spence, who joined Syntex in 1983, most recently served as senior risk and insurance administrator. He holds a bachelor of business administration degree from the University of Wisconsin at Madison. In addition, he holds the Associate in Risk Management designation and is past president and treasurer of the Santa Clara Valley Chapter of the Risk & Insurance Management Society.

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We'd like to report on staff changes in your company's risk management, safety and employee benefits departments. Just drop a note to Paul Winston, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, or call 312-649-5442. Please send a photograph.

U.K. storm claims grow to $1.5 billion

By CAROLYN ALDRED
and STACY SHAPIRO

London

LONDON—Property insurance claims stemming from last October's storm that battered southeast England with hurricane-force winds now amount to 835 million pounds ($1.5 billion at current exchange rates), according to the Assn. of British Insurers.

Claims eventually will probably exceed 1 billion pounds ($1.8 billion) for the United Kingdom, the ABI estimates. The storm also caused extensive damage in other western European countries, including France, Portugal and Norway (*BI*, Oct. 26, 1987).

British insurance companies have received more than 1.2 million claims and have settled 785,000, according to a survey compiled by the ABI last month.

Personal property claims accounted for 75% of the claims settled or 626.25 million pounds ($1.1 billion) and commercial property claims accounted for 25% or 208.75 million pounds ($365.3 million).

In addition, claims under automobile policies amounted to 25 million pounds ($43.8 million), the ABI said.

The largest insured weather loss in the United Kingdom before last October's storm was the severe snow and subsequent flooding throughout Britain in the winter of 1981-82, which resulted in claims totaling 327 million pounds ($389.1 million).

In addition, fire losses in the United Kingdom last year caused estimated damage of 460.5 million pounds ($869 million at year-end 1987 exchange rate), according to the ABI. The fire loss figure includes insured and uninsured losses but do not take into account business interruption losses, lost orders and exports, the association pointed out.

English & American

English & American Group Ltd. is reorganizing its operational structure to prepare for expansion and a possible listing on the London Stock Exchange.

"Public quotation has to be an option," said Deputy Chairman and Chief Executive Philip Evans. However, "we operate at the moment very happily on a private basis. There are no immediate plans" to go public.

The 60-year-old insurance company, which was called English & American Insurance Co. Ltd. prior to last week's restructuring, was sold in 1983 to senior management and Providence Capitol Ltd. by C.T. Bowring & Co. Ltd.

The restructuring of English & American divides the insurance group into several units:

- Underwriting management through English & American Underwriting Agency Ltd.

English & American Insurance Co. Ltd. is the leading underwriter of marine, non-marine and aviation underwriting pools managed by EAUA. The pools wrote a total of 350 million pounds in gross premium volume last year ($660.5 million at year-end 1987 exchange rate).

- Offshore captive and underwriting management through a Channel Islands subsidiary, Transglobe Underwriting Management (Guernsey) Ltd.

Transglobe is one of the largest captive managers in Guernsey. Captives under management have a gross annual premium income of more than 100 million pounds ($175 million).

Among Transglobe's clients are aviation captives Polygon Insurance Co. Ltd. and Sabre Insurance Co. Ltd.

- Runoff management through Trinity Square Services Ltd., which currently is handling the runoff of Ancon Insurance Co. (U.K.) Ltd. and Mentor Insurance Co. (U.K.) Ltd., among others.

English & American Group's profits reached 3.2 million pounds in 1986 ($4.7 million at year-end 1986 exchange rate). The company was only breaking even when it was sold by Bowring.

Private shareholders in English & American Group include Mr. Evans; Managing Directors Chris Keeling and Tony Taylor; two private shareholders who are directors of Providence Capitol; and a number of institutional shareholders that have had longstanding relationships with English & American.

Institutional shareholders include: Swiss bank Credit Suisse; KLM Royal Dutch Airways, Scandinavian Airline Systems and Swissair; and Schweiz Versicherungs, the direct underwriting subsidiary of Swiss Reinsurance Co. in Zurich.

Lloyd's redesign

To satisfy the critics, Lloyd's of London is appointing designers Fitch & Co. to modify the interior of the new Lloyd's building, which has come under strong attack since its opening in May 1986.

Lloyd's announced last week that Fitch will work jointly with the building's architect, Richard Rogers Partnership, "to prepare proposals for modifications to the interior of its building."

"Fitch & Co. has wide experience in dealing with the efficient movement of people within large buildings such as shopping malls and airport terminals," said Lloyd's. Fitch's recent commissions include Terminal 4 at Heathrow Airport, which is used for British Airways international flights.

The appointment of a new designer follows criticism of the Lloyd's building in a poll by Market & Opinion Research International, which found that 75% of the 271 Lloyd's underwriters and 171 brokers surveyed preferred the old Lloyd's building vacated in 1986.

The main areas of complaint were the speed of the elevators, eating facilities, visibility among underwriting boxes, ventilation and lighting (*BI*, Dec. 14, 1987).

Direct-writing proposal

It is not surprising that some Lloyd's of London underwriters want to deal directly with non-Lloyd's brokers rather than transact business through a Lloyd's broker, says Lloyd's Deputy Chairman Alan Parry.

"Underwriters are quite properly looking ahead and wondering where they can find new business and we would have reason to be concerned if they did not," he said.

However, the best method is for Lloyd's underwriters and Lloyd's brokers to work together, said Mr. Parry, non-executive chairman of Lloyd's broker Johnson & Higgins Ltd.

To bring in more business, at least two Lloyd's underwriting agencies—Merrett Underwriting Agency Management Ltd. and Murray Lawrence & Partners—have set up agencies outside Lloyd's underwriting room to deal directly with non-Lloyd's brokers for small risks instead of going through a Lloyd's broker.

"We have heard suggestions of underwriting rooms and service companies in Birmingham—United Kingdom and Alabama—before" from Lloyd's underwriters, he said at a Feb. 17 conference sponsored by Insurance Risk & Research Group.

"It was discussed way back in the '60s. In the end, underwriters realized that there is no better combination for producing and handling business than Lloyd's underwriters and Lloyd's brokers working together. It has been rather successful for 300 years, after all."

Proponents of "direct dealing"—allowing underwriting agencies to deal directly with non-Lloyd's brokers—have suggested that it is very difficult for provincial brokers to deal with Lloyd's brokers "who do little to earn their brokerage," said Mr. Parry.

However, in his role as an officer of Johnson & Higgins Ltd., which earned an additional 9 million pounds ($15.8 million) in premium volume last year from U.K. provincial brokers, Mr. Parry says this "is a general criticism and I refute it. Of course service from some brokers will not be so good, perhaps because they are not geared up to handle provincial broker business, but many are and it is not difficult for the provincial broker to find them."

Johnson & Higgins Ltd.'s additional U.K. business is "from U.K. provincial brokers where we take responsibility for the collection of the premiums in accordance with market practice and for the runoff of any of the business if there is a default. The performance of the producing broker is monitored and checked on a regular basis so the underwriter who accepts the business has the very real protection provided by the Lloyd's broker. We are not unique."

Merrett departures

Three executives are resigning from Lloyd's of London members agency Merrett Syndicates Ltd. for unrelated reasons.

Bill Goodyear, managing director of Merrett Syndicates, is joining the members agency of Janson Green (Holdings) Ltd. Mr. Goodyear was also managing director of Additional Underwriting Agency (No. 3) Ltd., which managed the runoff of the syndicates managed by PCW Underwriting Agencies Ltd. before Lloyd's bailed out the syndicate members last year and took control of the runoff.

Also, Graham White who helped run the New York operations of Merrett Syndicates to recruit U.S. members, is leaving Merrett. He will not comment on his future plans.

Mr. White, who before joining Merrett managed the PCW syndicates when they were managed by Richard Beckett Underwriting Agencies Ltd., returned to Merrett in London last October because Lloyd's syndicates do not need new members at the moment, according to Merrett Syndicates Chairman John Robson. Since then, Mr. White has helped parent Merrett Holdings P.L.C. prepare for a London Stock Exchange listing later this year.

In addition, John Warnaby, who developed Merrett's members agency in Atlanta, is leaving to pursue an acting career.

Lloyd Thompson

Lloyd's of London broker Lloyd Thompson Ltd. plans to add another team of specialist brokers to its expanding operation.

Derek Hacking, who resigned from Willis Faber P.L.C. in January following its merger with Stewart Wrightson Holdings P.L.C., has been appointed to establish a financial services division. Mr. Hacking will build a four- or five-member staff in the next year, said Ken Carter, chief executive of parent company Lloyd Thompson Group P.L.C.

Lloyd Thompson announced plans earlier this month to establish a non-marine casualty division headed by Dick Drain, a former Alexander Howden Ltd. director (*BI*, Feb. 8).

In addition, Howden is losing three more directors from its North American casualty division to Lloyd Thompson Ltd., a Howden spokesman confirmed.

Ian Donaldson, Paul Voller and Charles Pearch will also join Lloyd Thompson next month.

Lloyd Thompson's financial services division will work closely with the broker's political risk division, which in turn will be strengthened with the arrival of several former Hogg Robinson & Gardner Mountain Ltd. brokers next month, Mr. Carter said.

The division will offer a full range of insurance products for financial institutions.

Lloyd Thompson handles an annual premium volume of $300 million. ■

Risk retention roundup

LP gas industry forms risk retention group

DALLAS—A risk retention group chartered in Texas is offering up to $5 million in liability insurance limits to members of the liquified petroleum gas industry.

LPG Risk Retention Group Insurance Co., which has been granted a certificate of authority by the Texas State Board of Insurance, will write general liability and commercial automobile liability coverages for its 766 members.

The insurer is managed by Berkley-Nobel Risk Retention Group Managers Inc. in Dallas (*BI*, Sept. 21, 1987).

Charles Taylor, vp of underwriting for the insurer, said feasibility studies are being sent to other states to meet requirements for underwriting outside Texas. The Risk Retention Act of 1986 requires that studies be presented to insurance regulators in any state in which the insurer will write coverage.

"The majority of members are dealers" in the LPG industry, said Mr. Taylor, explaining that dealers generally have a "bulk facility" from which they supply gas to farms and other rural businesses.

In order to purchase coverage from the insurer, a member will undergo an on-site inspection and must meet certain loss control, safety and management standards outlined by the management company.

The risk retention group, with capital and surplus of $7.5 million, will write the general liability and auto liability coverage on the occurrence form developed by the Insurance Services Office Inc.

Oil firms' plans

DENVER—Petroleum companies throughout the world are considering forming a risk retention group that could cut their costs for excess liability insurance by half or more.

Oil company representatives decided Feb. 4 in Denver to pursue the proposed risk retention group, said C.R. Marshall, corporate risk manager for Denver-based Hamilton Brothers Oil Co.

Many oil company officials have expressed interest in forming an insurance company over the last two years, he said.

A survey last year of the 110 largest petroleum companies in the world found a core of 40 companies with an active interest in participating in a risk retention group, Mr. Marshall said. About 25 of the companies were represented during the Feb. 4 meeting and a total of 45 potentially will participate in the group, he said.

Oil company representatives expressed interest in a risk retention group writing liability limits of $19 million in excess of $1 million, Mr. Marshall said. They also are seeking occurrence rather than claims-made coverage, he said.

Major oil companies and smaller companies with average assets of $1 billion make up the core interest group, he said. Other companies have called since the survey to say they also might participate, he added.

According to a feasibility study conducted by Mr. Marshall, the risk retention group could substantially reduce the cost of excess liability coverage.

"The decision was to go ahead with the plan," Mr. Marshall said.

The study, conducted by Mr. Marshall, assumed a group of 40 oil companies with projected losses of $70 million over 10 years. With 10% added to cover expenses, the estimated cost would be $19,250 per $1 million of coverage. The estimate is about half the premium petroleum companies pay for the same coverage from commercial insurers, he said.

The group could lower the price even further if the participants have a better loss experience, Mr. Marshall added. If the companies decide to form the group, it could be operating as soon as late this year, he said.

The group has not yet decided how much capital to raise, he said.

—By Glenn Huntley

U.N. unit makes push for Hamburg Rules

Worldwide

GENEVA, Switzerland—The proposed Hamburg Rules would have minimal economic impact on shipowners, even though their liability for cargo would be increased, according to a report by the United Nations Conference on Trade and Development.

The UNCTAD secretariat makes a renewed pitch for the ratification of the Hamburg Rules of cargo liability in a recent report on the economic and commercial implications of enforcement of the controversial rules.

The rules, adopted in 1978 by 67 UNCTAD delegates—including the U.S. delegate—but still not ratified by the requisite number of U.N. countries to take effect, are due for discussion again at the annual meeting of UNCTAD's shipping committee, to be held March 14-24 in Geneva.

Despite an effort last summer by a group of shippers to force governments to ratify the Hamburg Rules, which are opposed by the insurance industry, only 11 nations —most of them non-maritime countries—have ratified them.

The rules must be ratified by the governments of 20 countries before they officially can take effect (*BI*, June 15, 1987).

And, sources predict another stalemate will occur at the March meeting.

In the meantime, the Hague-Visby Rules, which now date back more than 60 years, continue to govern liability for ocean-going cargo.

The Hamburg Rules, officially known as the United Nations Convention on the Carriage of Goods by Sea, would impose a standard of strict liability and a presumption of negligence on vessel owners for lost or damaged cargo unless the cargo carriers can prove they took all possible measures that could be reasonably expected to avoid the occurrence that led to the loss or damage of the cargo.

In sharp contrast, there are 17 defenses available to vessel owners when dealing with cargo claims under the Hague-Visby rules.

In addition, the Hamburg Rules also would increase the limits available for damaged or lost packages at 835 Special Drawing Rights ($1,127 at current exchange rates), up from 667 SDRs ($900) under the Hague-Visby Rules (*BI*, Aug. 10, 1987; June 15, 1987).

(SDRs are an "imaginary" unit of currency based on five actual currencies—the U.S. dollar, the West German deutschmark, the British pound, the French franc and the Japanese yen—used to avoid adverse fluctuations among single currencies.)

An UNCTAD spokesman said the latest report on the Hamburg Rules, released Feb. 8, pointed out that some opponents of the rules have contended that the rules could cause considerable disturbance in the marine transport industry.

However, shippers are uniting to press for the earliest effective date for the Hamburg Rules, the UNCTAD report states.

But, until the Hamburg Rules are actually in force, only assumptions can be made about their economic and commercial consequences. Lack of data from the insurance industry hampered the preparation of the UNCTAD report, the secretariat noted.

The UNCTAD secretariat concluded:

- The Hamburg Rules may lead to reduced cargo insurance prices, provided there is no increase in litigation.
- The increase in the liability of shipowners under the Hamburg Rules may result in a more cost-efficient insurance system, provided responsibility is accepted by cargo carriers without expensive litigation.
- The amount of additional litigation after the Hamburg Rules take effect is likely to be limited in the short term and may not increase in the longer term.
- The economic consequences of the enforcement of the Hamburg Rules for vessel owners will be minimal.
- The Hamburg Rules will result in better protection of shipper's interests compared with the present system, and once the rules are in effect there will be a rapid move away from the Hague-Visby Rules to the Hamburg Rules, which will promote uniformity in cargo liability.
- The Hamburg Rules will not diminish the need for cargo insurance.

—By John Parry

Product liability reform

ZURICH, Switzerland—The World Federation of the Sporting Goods Industry has established a special committee to try to find a way through the thicket of product liability laws around the world, according to Pierre Ryser, the federation's secretary general.

The committee intends to draft and recommend some uniformity in product liability laws worldwide, Mr. Ryser said. The committee plans to publish its report in early May.

The federation includes giant sporting good manufacturers like Nike Inc., Reebok International Ltd., Adidas Sportschusabriken ADI-Dassler Stiftug & Co. K.G. and Puma Sportschusabriken Rudolf Dassler K.G.

Mr. Ryser said the sporting goods manufacturers are concerned about the unclear state of product liability law in the United States, the world's single largest market for sporting goods and sportswear.

The committee, which was scheduled to meet for the first time at the Winter Olympics in Calgary, Alberta, earlier this month, plans to study:

- The use of international safety standards for product liability.
- Guidelines by legal product liability experts drawn from the insurance industry.
- The need to lobby for product liability reform legislation on a national basis.
- The assistance needed to promote legal test cases.
- The negotiation of terms and contracts with insurance companies.

Following meetings at the Winter Olympics, the committee plans to meet with insurance companies in various parts of the world to discuss how product liability laws can be harmonized so that manufacturers of sporting goods and sportswear are protected against mushrooming product liability litigation.

—By John Parry

Senate bill seeks oil tank regulation

By DEBORAH SHALOWITZ

Washington

WASHINGTON—In the wake of one of the worst oil spills ever in an inland waterway, two senators from Pennsylvania have introduced legislation that would require government regulation of above-ground oil tanks.

The bill, S. 2020, would require owners of above-ground tanks that contain at least 1 million gallons of oil and are at least 30 years old or have been relocated or reconstructed to show evidence of financial responsibility for costs arising from a potential oil spill and would mandate periodic inspection of these tanks.

The Environmental Protection Agency would develop regulations implementing the bill's mandates.

Sen. John Heinz, R-Pa., who introduced the proposal with Sen. Arlen Specter, R-Pa., said the purpose of the bill is to "prevent another environmental catastrophe like the one we have just witnessed in western Pennsylvania" when an Ashland Oil Co. tank ruptured in January and spilled about 1 million gallons of diesel fuel into the Monongahela River (*BI*, Jan. 11).

"Unfortunately, this environmental disaster made us aware of a gap in existing environmental regulation," Sen. Heinz said, pointing to the dearth of federal or state requirements to monitor the use of above-ground storage tanks.

State or local laws may require an owner or operator of an above-ground oil tank to obtain a permit for construction of a tank and to obtain an inspection of the tank after construction is complete, but "there is not a regular means of monitoring these tanks after these permits have been issued," Sen. Heinz said.

Reversions decline

The number of overfunded pension plan reversions and the amount of excess assets employers are recovering in the reversions is decreasing, according to the Pension Benefit Guaranty Corp.

A total of 169 overfunded defined benefit plans involving 159,822 participants were terminated in 1987, down from 263 plans involving 262,255 participants terminated in 1986, according to the PBGC. In 1985, 581 plans involving 690,774 participants were terminated.

Surplus pension assets recovered by companies terminating overfunded defined benefit pension plans fell 67% to $1.43 billion in 1987 from $4.29 billion in 1986. In 1985, companies recovered $6.67 billion in surplus pension assets from overfunded plan terminations.

The PBGC statistics include only those plan terminations where the reversion was at least $1 million.

Since 1980, a total of 1,634 overfunded defined benefit pension plans involving 1.8 million participants have been terminated. Total reversions during this period totaled $17.87 billion.

ERISA advisers

Six new members of the Labor Department's ERISA Advisory Council have been appointed to three-year terms.

David J. MacKenzie, executive director of Textile Rental Services Assn. of Santa Monica, Calif., will represent employers that contribute to multiemployer plans; D. Quigg Porter Jr., senior vp in the pension asset management division of the Northern Trust Co. of Chicago, will represent the corporate trust field; and Ronald J. Kublanza, director of operations and administration for the Central States, Southeast & Southwest Areas Health and Welfare Funds in Chicago, will represent employee organizations whose members are covered by multiemployer plans.

In addition, Myra R. Drucker, director-trust investments for International Paper Co. of Purchase, N.Y., will represent the investment management field; Michael S. Gordon, an attorney in private practice in Washington, will represent the general public; and William S. Hoffman, director of the Social Security Department of the United Auto Workers in Detroit, will represent employee organizations.

The 15-member Advisory Council on Employee Welfare and Pension Benefit Plans was established by the Employee Retirement Income Security Act of 1974 to advise the secretary of labor on various ERISA and retirement issues.

The council meets at least four times a year in Washington with all member expenses paid by the federal government.

401(k) definitions

The definition of highly compensated employees—used to determine if a 401(k) plan discriminates in favor of the top-paid workers—is higher for 1988 because the Internal Revenue Service is indexing the threshold to the inflation rate.

After indexing, the highly paid are defined in 1988 as:

- Employees who own more than 5% of a company, unchanged from last year.
- Employees earning more than $78,353 annually, up from $75,000 annually last year.
- Employees earning more than $52,235 annually, up from $50,000 annually, who also are among the highest-paid 20% of a company's workforce.
- Officers who earn at least 1½ times the maximum allowed contribution to a defined contribution pension plan. The maximum contribution to a defined contribution plan is $30,000, which means all officers earning more than $45,000 are classified as highly paid employees. This also is unchanged.

McCarran-Ferguson

The American Bar Assn. at its recent meeting did not vote on two proposals supporting repeal or revision of the McCarran-Ferguson Act, the 1945 law that gives insurers a limited exemption from federal antitrust law and grants primary regulation of the insurance industry to the states.

ABA delegates at the association's midyear meeting in Philadelphia earlier this month voted to send the proposals back to committees for further consideration (*BI*, Feb. 1). The proposals would:

- Limit the insurance industry's antitrust exemption to "essential collection activities."
- Allow states to continue to regulate insurance in almost all respects except pricing. ■

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Changing benefits

Survey workforce before new plan design is finalized

By Laurel Nicholson

ONE OF THE MOST effective ways to determine if changes to your benefit and compensation plans will meet their intended objective is to test the design changes *before* they are implemented. Depending on the type of change and the expected results, the importance of testing ranges from beneficial to absolutely critical.

In this context, testing means the use of survey questionnaires combined with supervised sessions of peer group interaction, or PGI. The PGI session can be composed of either random groupings or carefully selected segments of the employee audience, such as active employees with a certain number of years of service, retirees only, etc.

One area of growing interest is testing retirees along with older active employees to look at how better to design retiree health plans. Even as retiree health liabilities become a growing concern, it's disconcerting to see that most retiree health plans are not even geared to retirees. Instead, they are an extension of the active employees' plan. This fact remains, despite statistical evidence that shows active employees have temporary, acute medical care needs, while retirees have long-term chronic ailments.

Therefore, the issue of retiree liabilities can be best studied by looking at *a new type of plan* rather than an extension of the old plan. Incorporating long-term care options into a retiree plan is clearly innovative and appropriate.

Yet, with little or no historical data on retirees, a company may flounder when trying to design a cost-effective solution that is also beneficial to its retirees.

How comprehensive testing helped design such a sophisticated retiree plan is detailed on the front page of the Dec. 21, 1987, issue of *Business Insurance*.

Retiree health plans offer only one good example of the importance of testing in the plan design process. So let us take a closer look at surveys and PGI sessions to determine when testing is appropriate and what it can provide the benefits manager.

First, a benefit manager must determine when testing is a good idea and when it is fluff.

In general, keep in mind that employees think the concept of choice among benefits is a good idea. To test employee reaction to the introduction of flexible compensation can be a waste of money; 99% of the time they will like it. In the same way, an annual program of testing without a specific purpose may not be worth the dollars invested.

However, testing can be absolutely critical in many employer situations. For example, it can be particularly useful in the design phase of a flexible compensation program if the benefit manager's objective is to reduce medical costs by a certain dollar amount. A comprehensive testing program will reveal if the incentives are significant enough to induce employees to switch from their old medical plan into a high-deductible core plan.

In this type of situation, statistical reliability is critical. With remarkable precision, the testing process can determine how many employees will switch plans, providing the benefit manager with a close estimation of future cost savings.

Testing also will help determine which benefits are important to employees, what levels of coverage are perceived as necessary and how much employees will be willing to pay for what benefits.

When terminating or redesigning retirement plans, testing can play a key role in determining employee sensitivities and security issues. This can be especially useful when bargaining concerns are involved.

Changes in management, economic downturns, new benefit programs and cost savings are just a few of the many reasons to investigate the advantages of testing.

Once the need for testing is established, you must ensure that statistically valid results are obtained.

If you go by the book, every testing program is made up of a randomly selected group of employees. The number of employees is determined by the number of employees in the program's "universe" (your company). As a general rule:

Testing employees' reactions to flexible compensation can be a waste of money; 99% of the time they will like it.

- Smaller groups of 100 or fewer mandate that at least 30% of the total employee group be tested. Lower percentages are required as the size of the group increases.
- Once the sample size is determined, employees are chosen randomly by selecting every "Nth" name from a complete employee listing.

In some instances, you may wish to test specific groups of employees, for example those over 55 or those not participating in your 401(k) savings plan. In this case, you randomly select names from lists of these employees.

It is inevitable that not all employees selected will participate in the testing process. This is why even more employees should be surveyed so that the sample size is met.

- You need responses from at least half of the employees tested to guarantee statistical validity. For this reason, it is a good idea to administer the survey of PGI sessions during business hours so that employees understand they are expected to participate in the testing process.

This raises an important consideration. Sometimes, particularly when administering an employee questionnaire, it may be advantageous to test all employees and simply tabulate as many responses as needed to ensure a statistically valid sample.

This is particularly true in instances when employees might feel "left out" when they discover the company did not solicit their opinions and feelings.

Questionnaires provide you with statistical data to validate a plan of action. Because most testing programs want some form of statistical evidence, a survey is a useful tool. Once you have decided to incorporate testing, it is a good idea to consider:

Too many times money is spent to evaluate the success of an employee benefit program after it is implemented.

- What are you trying to accomplish.
- What do you need to know to meet your objectives?
- What will you do with the information after it is processed?
- Are there are restrictions on *who* is surveyed, *what* is asked or *how* the questions are asked?

But is a questionnaire enough, or should you also consider PGI sessions? The answer depends on whether you want quantitative information, qualitative information or both.

Basically quantitative information gives you numbers. This information tells you that X% of employees feel one way, Y% another. It cannot, however, tell you why people responded as they did, if there were questions not asked that they would have liked to answer or how strongly people felt when they were answering the questions.

Quantitative results are almost always obtained from written questionnaires. Such questionnaires lend themselves to computer analysis, which gives not only the response totals but also in-depth analysis of those responses by demographic categories.

Qualitative information, on the other hand, identifies the *range* of attitudes among the sample population, tells you why people act and feel the way they do and gives you a sense of the strength of those feelings. Qualitative information is usually gathered through PGI sessions.

Are statistically valid results always needed? If all you want is a general idea of how employees will respond, you can be far more flexible in determining the group dynamics and the statistical objectivity of the questions. For example, "sensing" groups, composed of carefully selected individuals, may be totally appropriate. Usually these individuals are highly verbal and give you a quick sense of a typical employee's response.

There are five rules to conducting a successful PGI session:

- Don't conduct the session yourself. Employees will tell an internal authority figure what they think they want to hear. If you're looking for objectivity, it's always advisable to have an outside consultant conduct the session.
- Remember that it is a *peer* group session. Attendees should come from the same level within the organization, although each session may represent a different management level. Mixed groups of employees from different management levels will interrupt the free flow of discussion.
- The ideal number of employees at each session is between eight and 10. If there are more than 10, a leader will generally emerge as group spokesperson, with the others sitting in silence. If there are fewer than eight, employees may feel that the session leader will remember—and tell management—who said what.

But if you have to err on either side, fewer employees is better than too many.

- It is a good idea to have two leaders conduct the session, one to act as the main facilitator—asking questions, probing and responding—and the other to record responses and note any conflict between verbal responses and body language, such as saying "yes, I understand" but looking confused.

Studies show the comparative importance of body language, words and voice inflection in interpersonal communications. Unfortunately, words have the least impact of all, trailing voice inflection and body language, which is most important.

The second session leader must be aware of body language clues to note understanding, tension and acceptance.

- Be sure to ask the same questions in the same way for each PGI session. Often, differences of opinion between several PGI groups can be attributed to inconsistencies in the way employee responses are elicited. Sometime without realizing it, the PGI facilitator can change the meaning of questions by slight variations in tone, presentation and so on.

Too many times money is spent to evaluate the success of an employee benefit program after it is implemented. That money would be better spent early on in the process. Testing during the plan design stage ensures that the process you implement and the communication program announcing the implementation addresses the issues and concerns of your employee audience.

Laurel Nicholson is a principal and practice leader of communications services for William M. Mercer-Meidinger-Hansen Inc. in Deerfield, Ill.

III explains industry's tort reform effort

Property/casualty insurance company executives are hitting the road to explain their business and insurers' position on tort reform efforts. The following speech was prepared by the Insurance Information Institute for insurance company representatives to deliver to groups of interested citizens. It is reprinted here, with the permission of the III, to provide food for thought for risk managers preparing speeches on these issues.

I AM GLAD to be here today to try and shed some light on a series of complex but pervasive insurance problems.

I represent an industry that touches the life of virtually every American. Its problems touch every American, too: businessmen, homeowners and consumers.

I want to try to explain some of what you are reading in the press about insurance problems. And, I want to propose some solutions. You have a stake in this, just as I do.

Let's be candid about the insurance industry. Consumers do not know what to believe. One group says insurers are profiteering, another group says the industry is on the verge of collapse and a third group says the problem is runaway costs in the civil justice system. A lot of people have serious questions about what is happening in the insurance business. Maybe I can answer a few of those questions.

First, let's look at what exactly insurance is since many people don't understand how insurance works. Insurance is a system of service. There is no product you can look at, like an appliance in your kitchen or furniture in your living room.

The only thing you have to show for the money you pay for your policy is a complicated legal document! You pay an annual sum that entitles you to thousands of dollars in coverage. What customers actually buy is protection beyond what they could afford to pay if they had to protect themselves using their own savings. The insurers take the risk.

Thousands of years ago a group of Chinese sailing merchants banded together to protect themselves from losing their cargos in treacherous river rapids along their trade routes. They simply divided their cargos among their several boats. Then, if one boat went down no one person would be ruined. They each would lose only a small portion of their goods. In effect, they spread their risk.

Insurance is like that. It minimizes the losses if a few by spreading the cost among many. So, you and I are charged premiums that pay for the accidents or catastrophes or court awards of someone else. Or that someone else could be helping to pay for your loss, should you have one. In order for insurance companies to have enough money to pay claims, they have to be able to predict with some certainty just which groups or individuals will have disasters and what it will cost. They also have to invest wisely to generate more capital. The must set aside funds for claims.

But, big problems have cropped up in the past few years that have put several insurance companies out of business and others on the brink of disaster or huge financial loss.

People who used to settle disputes over the back fence now expect the courts to solve their problem. In 1985, 16 million lawsuits were filed in courts. That's one lawsuit for every 15 Americans.

Let me give you a few other statistics. Various types of lawsuits have skyrocketed in number. Product liability suits filed in the federal district courts increased 758% between 1974 and 1985, according to the Administrative Office of the U.S. Courts. The American Medical Assn. reported that the number of medical malpractice suits increased to 16 for every 100 physicians in 1984, up from 2.5 per 100 in 1976.

The tort branch of the U.S. Department of Justice reports its case load increased from 4,000 cases in 1975 to 11,000 cases in 1985, a 175% increase.

And finally, a survey of 1,200 local governments found that claims against municipal and county officials increased by 141% between 1979 and 1983.

Unfortunately, the number of lawsuits is just one part of the problem. The number of million-dollar jury verdicts has risen at a disturbing rate. In 1962, there was only one verdict of more than $1 million. By 1985, the number of million-dollar verdicts had swelled to 488! The enormous costs of paying these judgments are borne not only by the insurance companies but by you and me! It is that sharing of the risk we were talking about.

We also pay the price in the form of increased costs for goods and services, higher taxes and a shortage of some products like vaccines.

The insurance industry also has faced another problem. Besides using up its reserves to make these huge payments, insurers are finding that courts are redefining what the policy should cover. So, insurers have been faced with having to pay awards they originally didn't contract to pay for. This has created uncertainty about how much money should be set aside for future claims. This is a costly and unpredictable way to do business.

Insurance is a pass-through mechanism. It distributes the costs of the civil justice system, which, in turn, reflects societal values. Society, through the courts and the legislative process, decides what injuries should be compensated, in what circumstances and in what amounts. Thus, the price of insurance is largely a question of how much we, as a society and as individuals, are prepared to pay for the compensation delivered through today's system of justice.

There are growing signs that we have reached the limit of what people believe we can afford to pay for compensation, not only in terms of the number and cost of awards but also in terms of the time it takes to process a case to trial and the cost of such litigation. Many legal experts believe the American court system is in urgent need of reform. These advocates include such eminent individuals as former Chief Justice Warren E. Burger and Derek Bok, president of Harvard University and former dean of the Harvard Law School. Such critics cite the growing number of lawsuits, especially unnecessarily prolonged lawsuits. In the words of the former chief justice, the nation is plagued "with an almost irrational focus—virtually a mania—on litigation as a way to solve all problems."

However, the picture isn't all bleak. There's hope for change. Dozens of states have enacted some form of tort reform already. This shows that the public sees this as a societal—and not just an insurance—issue.

So, you may ask, what can I do? Well, I know what I've done.

I've contacted my legislators. I spoke up for some arbitration instead of lawsuits. I said that victims must be compensated but in an adequate, fair and fast manner.

I encourage you to learn all you can about insurance problems so you can speak out for yourselves in your community instead of depending on some "advocacy" groups. You can join coalitions of business and professional groups as well as educators that support tort reforms. You can look into the American Tort Reform Assn., whose efforts are endorsed by 140 trade associations, and other national organizations representing thousands of companies and a broad spectrum of the professional and business communities.

In addition, by the way, ATRA is supported by the Boy Scouts of America, the Road Runners Clubs of America and other diverse groups.

Finally, you can questions figures thrown around by people calling themselves "consumer activists." You can question insurance representatives about this crisis. You're not powerless against high costs and loss of goods and services to consumers. You are where it's happening. The consumer who speaks for solid societal changes holds all the cards.

Good luck to you.

Minor may not circumvent work comp

Legal briefs

A minor may not, by virtue of his minority, avoid workers compensation coverage and seek a tort remedy, the Supreme Court of Nevada ruled.

Jean Borregard sued, on her own behalf and that of her son, James Haertel, the Sonshine Carpet Co., a school district and the Dow Chemical Co. for injuries James received while working as a laborer for Sonshine. James was working as a laborer in removing and replacing carpeting at some of the district's facilities. James was a minor.

The trial court dismissed his negligence suit.

On appeal, James argued that the exclusivity provisions of the workers' compensation law did not apply to him because he was a minor. But, the court said that a minor may not, by virtue of his minority, avoid the compensation law coverage. According to the court, coverage was automatic, even for minors.

Haertel vs. Sonshine Carpet Co. Supreme Court of Nevada, Dec. 23, 1986 (*BI*/02/0.-$10).

Lunchtime injury compensable

An injury to an employee on a lunch break and not en route to or from work was compensable, according to the Supreme Court of Tennessee.

Buford T. Holder, had worked for the Wilson Sporting Goods Co. for 33 years until September 1985, when he was laid off during a labor dispute.

On Jan. 10, 1984, Mr. Holder arrived at work, parked in the employee parking lot and clocked in for work at just before 7 a.m. His usual practice was to bring his lunch and eat at work.

As a routine practice, when Mr. Holder finished lunch he would take the container out to his car in the lot, clocking out before he left the building. He followed that routine on Jan. 10.

On his way to his car, some 10 feet from the door to the building, he slipped in the snow and fell, severely injuring his right shoulder. He underwent surgery at a later date. This claim followed.

Mr. Holder was awarded 50% permanent partial disability.

On appeal the employer argued, in part, that employees while coming to or leaving work do not come within the exceptions to the general rule that an employee is not compensated for injury in transit to or from work. They contended that Mr. Holder was on his own mission of convenience when the accident occurred.

But, the appellate court said that on-premises lunch-break cases do not form an exception to the en-route-to-work cases because the employee is no longer in transit and has reached his duty station or place of employment.

Furthermore, the court said that the fact that Mr. Holder was engaged in permissible, personal activities during the lunch break did not remove him from the protection of the work comp law.

Holder vs. Wilson Sporting Goods Co., Supreme Court of Tennessee, Jan. 5, 1987 (*BI*/03/N.—$10).

These abstracts were prepared by Cases Unlimited Inc. Copies of these decisions are available by sending a $10 check payable to Cases Unlimited to Business Insurance, *740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.*

Property damage

Continued from page 2

had a duty to make the building as safe as it was before the 1983 storm.

"When a policy insures a 'dwelling' or a 'dwelling building' against damage caused by earth movement, and such a peril damages or threatens the structures, the insurer has an obligation to pay for measures necessary to provide at least the same degree of lateral and subjacent support as existed prior to the earth movement," the court ruled.

The court said its ruling should apply to both commercial lines and personal lines risks.

In drafting its decision, the court relied heavily upon a 1962 ruling in *Hughes vs. Potomac Insurance Co.* In that case, a California Appellate Court refused to "conclude that a building which has been overturned or which has been placed in such a position as to overhang a steep cliff has not been 'damaged' so long as its paint remains intact and its walls still adhere to one another.

"Despite the facts that a 'dwelling building' might be rendered completely useless to its owners, appellant would deny that any loss or damage had occurred unless some tangible injury to the physical structure could be detected. Common sense requires that a policy should not be so interpreted in the absence of a provision specifically limiting coverage in this manner," the court ruled.

The decision in the Cypress Grove case "has created an implied in-law duty for property insurers to make the insured structure safe and habitable for its intended use, even where the structures have not been physically damaged," said Covenant Mutual attorney Thomas Fellows, with the firm of Robinson & Wood Inc. in San Jose.

In addition, Mr. Fellows says the appellate court extended a property insurance policy from one that specifically covers only a building into one that covers all the surrounding land as well.

In a Feb. 1 request for a review by the California Supreme Court, attorneys for Covenant Mutual argued that the appellate court ruling "fundamentally altered the very character of an insurance contract. It no longer is limited to a responsibility for compensating or indemnifying a known loss, when it occurs; the contract now encompasses a duty to prevent a predictable loss from occurring in the first place."

Robert Johnson, an attorney with Wyckoff, Richardson, Sanson, Allen & Locke-Paddon in Watsonville, Calif., who represents Cypress Grove, would not comment on the case while the petition for review is pending.

But in his Feb. 11 answer to Covenant Mutual's review petition, Mr. Johnson says, "The case. . .stands for the simple, fair and equitable proposition that when a covered loss has occurred, the insurance company has an obligation to repair the damage caused by the covered peril, up to the policy limits, and to replace the lost lateral or subjacent support, which was damaged by the insured event."

Attorneys representing insurers say the decision could have widespread impact on a variety of property coverage cases including those involving earthquakes, toxic wastes and asbestos property damage.

"For example, if a building that is insured for fire is damaged by a fire, does that mean the insurer has a duty to put in a sprinkler system to protect the property from future fires?" Mr. Fellows asked.

And, he questioned, wouldn't those sprinklers represent a betterment to the property?

Also, in California, where earthquakes are frequent, he cautioned that the ruling could be interpreted to mean that insurers have the duty to pay for steel reinforcement whenever a structure is moderately damaged by a quake.

"The long-term implications of this case are that people will extend the principle to more remote areas of law," said James Kraus, an attorney with Industrial Indemnity Co. in San Francisco, a subsidiary of Crum & Forster Inc.

Mr. Kraus pointed to an example in which the decision could impact cases involving coverage for toxic waste claims. "If the land underneath a building or next to a building is saturated with toxic wastes, making the building unsafe, under this theory the building's property insurers could have a duty to do whatever its takes to prevent future damage," he said.

"According to the court, damage to land which threatens the structure may be considered damage to the structure," he explained.

"I am concerned that the decision will be extended to circumstances where it's unwarranted," said Mr. Kraus, who has written to the California Supreme Court urging that it review the case.

The decision "threatens to establish a no-fault system of insurance for policyholders," said Mr. Oakes of Barger & Wolen. "The decision gives courts the license to render decisions that improve the lot of the insured, even though the policy does not provide relief."

In asbestos property damage litigation, "the courts, inspired by this decision, are going to aim to force the insurers to reinstate the status quo" in buildings that contain asbestos products, he said.

The Cypress Grove decision was offered last week as a precedent in the coordinated asbestos coverage trial in the San Francisco courtroom of state Superior Court Judge Ira A. Brown Jr.

Attorneys representing Armstrong World Industries Inc. argue that the Cypress Grove ruling proves that a policyholder does not have to show its asbestos caused actual damage to recover from its liability insurers for property damage claims, said Tom Freeman, an attorney with Brobeck, Phleger & Harrison in San Francisco, who represents Fibreboard Corp. of Concord, Calif., in separate asbestos litigation.

Armstrong is the only asbestos producer facing property damage claims still involved in the San Francisco trial.

Armstrong attorneys could not be reached for comment last week.

Armstrong's liability insurers are expected to finish arguing their case next week, and the trial is expected to be concluded in four to eight weeks.

Mr. Freeman noted that insurers in coverage disputes stemming from asbestos property damage claims contend that the presence of asbestos in a building does not constitute property damage. "But the Cypress Grove case is suggestive of a rejection of that premise," he said.

David Steuber, an attorney with Paul, Hastings, Janofsky & Walker in Los Angeles who represents policyholders in asbestos property litigation, agreed. "This is a case that we as counsel for insureds could use to show there is no requirement of actual physical damage."

Mr. Fellows, who represents Covenant Mutual said, said there is "reasonable probability" that if the state Supreme Court denies review of the Cypress Grove case it will grant decertification, meaning the case cannot be published and cannot be used as a precedent.

And, Mr. Johnson, in his answer to Covenant Mutual's petition for review, states: "If this court is concerned about the precedential value of the opinion and all the alleged insurance problems raised by respondents, then the opinion can always be decertified for publication." ■

Lawmakers hope to resurrect Cal/OSHA

SACRAMENTO, Calif.—State lawmakers are plotting the resurrection of the state's workplace safety program despite opposition from Gov. George Deukmejian, who killed the program by a veto last year.

The California Department of Occupational Safety and Health, also known as Cal/OSHA, was shut down in July 1987 after Gov. Deukmejian vetoed its funding despite support from both political parties, business and labor.

Workplace safety monitoring in California was then turned over to the federal Occupational Safety and Health Administration, even though state officials and others claimed the state was doing a more effective job (*BI*, Nov. 2, 1987).

A bill introduced earlier this month by state Sen. Cecil Green, D-Cypress, would resurrect Cal/OSHA and add $6.3 million to the state budget to fund it. The legislation is scheduled to be discussed by the Senate Budget Committee at an undetermined date, said Rocky Saunders, Sen. Green's legislative director.

The state Assembly went a step further in January and approved a bill sponsored by Assemblyman Richard Floyd, D-Hawthorne, that also would revive the state safety program. But, although that legislation calls for re-establishing Cal/OSHA, it does not specifically add money to the state budget to finance the agency's operations.

Legislators continue to press for a renewed state-run safety program despite "a probable veto" by Gov. Deukmejian if the issue reaches his desk again, said Jerry McFetridge, consultant to the state Assembly's Worker Safety Subcommittee.

"We continue to hope the governor will see reason and reason will prevail," Mr. McFetridge said.

Although Gov. Deukmejian has cited annual savings of about $8 million per year by transferring the state's safety program to the federal government, his critics have maintained that less stringent standards maintained by the federal agency ultimately cost more through higher accident and fatality rates.

When the workplace safety program was transferred from state jurisdiction in July, California joined 26 other states that do not have their own state workplace safety agencies and depend on federal OSHA to provide worker safety standards and enforcement.

Mr. Saunders said it is not known when the Cal/OSHA bill will emerge from the Senate committee, noting that would depend partly on the outcome of a court challenge to Gov. Deukmejian's veto of the program last year.

A lawsuit brought on behalf of six workers resulted in a decision by the state Court of Appeals in Sacramento to overturn the governor's Cal/OSHA veto. However, the state Supreme Court has agreed to hear Gov. Deukmejian's appeal of the lower court ruling.

—By Glenn Huntley

Around the states

Michigan liquor liability

LANSING, Mich.—Michigan liquor retailers, which received greater protection from liquor liability lawsuits under a 1986 state law, will be required to carry at least $50,000 of proof of financial responsibility before they can renew their liquor licenses for 1988.

The deadline for meeting the financial responsibility requirement, approved by Insurance Commissioner Herman W. Coleman in December 1987, is April 1.

Liquor retailers can meet the financial responsibility requirement by submitting to the state Liquor Control Commission proof of $50,000 of liability insurance, $50,000 in escrow, unencumbered securities, constant value bonds or coverage through one of the state's two limited liability pools, said John P. Schoonmaker, chief administrative law judge for the Michigan Insurance Bureau.

Michigan's 1986 liquor liability law reduced liability for owners of taverns, restaurants and stores selling liquor. Under the act, only an injured party can sue a liquor retailer. Previously, both the injured party and the defendant could sue the retailer, Mr. Schoonmaker pointed out.

The act also establishes a "last bar" rule, making only the last tavern that served an intoxicated defendant liable.

In addition, plaintiffs filing suit against a liquor retailer must notify the retailer before taking legal action. And, in the event a jury rules against a liquor retailer, the judgment against the retailer will be offset by the amount the plaintiff receives from collateral sources, Mr. Schoonmaker said.

Mr. Schoonmaker estimates that the 1986 act will reduce liquor retailers' liability losses between 30% and 70%.

Before the 1986 law was passed, two insurers wrote 96% of the state's liquor liability coverage, according to Mr. Schoonmaker. But because the coverage was expensive and difficult to obtain many liquor retailers went without coverage.

However, a study conducted by the Insurance Bureau last October, 15 months after the 1986 law limiting liquor retailers' liability had been in effect, indicated that the number of insurers willing to write liquor liability insurance in the state had grown to 21.

The study also determined that, on average, a liquor retailer could obtain the required liability insurance at a cost of 3% of gross liquor sales, Mr. Schoonmaker said.

—By Laura Mazzuca

Aetna reports 21.5% increase in operating earnings in '87

HARTFORD, Conn.—Aetna Life & Casualty Co. reported operating earnings increased 21.5% last year to $867.4 million from $714.3 million in 1986.

Net income, however, declined to $920.6 million from $1.04 billion the previous year, primarily due to sharply lower capital gains during 1987.

Total premium volume grew 9.3% to $16.7 billion in 1987 from $15.3 billion in 1986.

"Our property/casualty results were impressive, and our group insurance results, while not satisfactory, were considerably better than much of the industry's," said Aetna Chairman James T. Lynn.

Aetna's Commercial Insurance Division reported 1987 operating earnings of $321.5 million last year, up 82.2% from $176.5 million in 1986. The division's combined ratio was 107.5% for both years.

Operating earnings from Aetna's Employee Benefits Division fell 19.2% to $267.7 million in 1987 from $331.1 million the previous year.

Arthur J. Gallagher

ROLLING MEADOWS, Ill.—Arthur J. Gallagher & Co. has declared an increased quarterly cash dividend of 12 cents per common share, up from the previous 10 cents per share. The dividend is payable April 15 to shareholders of record as of March 31.

CIGNA Corp.

PHILADELPHIA—CIGNA Corp.'s operating income from continuing operations rose 24.1% last year to $616.5 million from $496.8 million in 1986.

Including discontinued operations, CIGNA's operating earnings rose 27.4% to $681.3 million in 1987 from $534.9 million the previous year.

Net income, however, fell 10.9% to $728.3 million in 1987 from $817.3 million the prior year, largely because of lower realized investment gains and smaller benefits from tax loss carryforwards.

"While we achieved extremely good, in fact, record earnings from operations in 1987, the effect of the 1987 escalation of health care costs, continuing investments and losses in HMOs and a more competitive property and casualty environment will constrain 1988 earnings," said Robert D. Kilpatrick, CIGNA's chairman and chief executive officer.

CIGNA reported that operating income from its property and casualty division rose 162.2% to $408.5 million in 1987 from $155.8 million the prior year. CIGNA's GAAP combined ratio was 105.1% in 1987, compared with 109.2% in 1986.

However, operating earnings from CIGNA's employee life and health benefits unit declined 53% to $80.1 million last year from $170.3 million in 1986. Operating losses related to prepaid health care plans last year totaled $78.7 million compared with a loss of $16.3 million in 1986.

Financial briefs

NAC Re

GREENWICH, Conn.—NAC Re Corp.'s operating earnings rose 210.2% to $10.5 million in 1987 from $3.4 million the previous year.

The company's net income rose 81% to $11.1 million last year from $6.1 million in 1986.

NAC Re also reported that net written premium volume grew 26% to $154.5 million in 1987 from $122.7 million the previous year.

The company's combined ratio improved to 107.8% last year from 109.9% in 1986.

Fireman's Fund

Fireman's Fund Corp. has increased its regular quarterly dividend to 12.5 cents pre share of common stock from 10 cents, payable March 23 to shareholders of record March 2.

In addition, the insurer's board of directors has authorized the repurchase of up to 6 million common shares. The company has about 57 million shares outstanding. Based on the Feb. 24 selling price of $29 per share, repurchase of the full 6 million shares would cost the company $174 million.

General Re

STAMFORD, Conn.—General Re Corp.'s board of directors has authorized a program to repurchase up to $250 million of its common stock. The purchases will be made from time to time, depending on market conditions.

"The program is part of our ongoing policy of effectively managing capital to enhance shareholders' value," said Chairman Ronald E. Ferguson. "The shareholders' equity and statutory surplus each increased by over $150 million during 1987, even after taking into account the $300 million share repurchase program announced in June and substantially completed by the end of the year.

At year-end 1987, Gen Re's shareholders' equity stood at $2.56 billion, while surplus totaled just more than $2 billion.

Gen Re also has declared a quarterly dividend of 30 cents per share of common stock, a 20% increase over the previous quarterly dividend. The new dividend will be payable March 31 to shareholders of record as of March 22. ■

Datebook

MARCH 2-4. Captive Insurance Companies conference in Brussels, Belgium, sponsored by Management Centre Europe; 64,100 Belgian francs (approximately $1,923) for members; 72,000 Belgian francs (approximately $2,160) for non-members. Management Centre Europe, Rue Caroly 15, B-1040, Brussels, Belgium 32/2/516.19.11.

MARCH 2-4. Annual Worker's Compensation & Multiple Employer Welfare Assn. conference in Jacksonville, Fla., sponsored by the Florida Assn. of Self-Insurers; $175 for members; $200 for non-members. Florida Assn. of Self-Insurers, 123 Live Oak Ave., Daytona Beach, Fla. 32014; 904-255-8545.

MARCH 3. Designing Hospital Retirement Plans Under Tax Reform seminar in Salisbury, Md., sponsored by Yaffe & Co. Inc.; no charge. **Also March 10** in Lancaster, Pa. Yaffe & Co. Inc.; 301-332-1166.

MARCH 3-4. Seventh Annual Occupational Health Nursing Principles and Certification Review Course in Arlington, Va., sponsored by the Occupational Health Consulting division of Fireman's Fund Risk Management Services Inc.; $275. **Also March 17-18** in Cambridge, Mass. Annette B. Haag, Director, Occupational Health Consulting, Fireman's Fund Risk Management Services Inc., 4040 Civic Center Drive, Rafael, Calif. 94912; 415-492-4708.

MARCH 3-5. Business Reorganizations Under the Bankruptcy Code course in Tampa, Fla., sponsored by the American Law Institute-American Bar Assn. Committee on Continuing Professional Education; $400; $40 for course book only. Professional Education, Registrar, ALI-ABA, 4025 Chestnut St., Philadelphia, Pa. 19104.

MARCH 7-9. Designing a Flexible Benefits Program workshop in San Francisco, sponsored by the American Management Assn. Human Resources Division; $745 for AMA members; $850 for non-members; $90 discount if three or more registrants from same organization. **Also April 20-22** in Washington, D.C. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

MARCH 7-9. International Benefits Conference in San Francisco, sponsored by the International Foundation of Employee Benefit Plans; $605 for IFEBP members, $680 for non-members. Registration Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

MARCH 7-9. Employee Benefits-Concepts and Planning course in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $495 for RIMS members; $595 for non-members. RIMS Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-986-9716.

MARCH 7-11. Modern Safety Management course in Atlanta, sponsored by the International Loss Control Institute; $675 for ILCI members; $750 for non-members. **Also March 21-25** in Calgary, Alberta. International Loss Control Institute, Highway 78, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

MARCH 8. 401(k) Plan workshop in San Francisco and Los Angeles, sponsored by the National Institute of Pension Administrators; $75 for members; $95 for non-members. **Also March 9** in Irvine, Calif. National Institute of Pension Administrators; 714-731-3524.

MARCH 8. 23rd Annual All-Industry Day Conference: "New Directions" in Seattle, sponsored by the Washington chapter of the Risk & Insurance Management Society; $45 before Feb. 28; $55 at door. Tom Scherting, The Boeing Co., P.O. Box 3707, MS 13-57, Seattle, Wash. 98124-2207; 206-223-4900.

MARCH 8-9. Buying and Selling Reinsurance in Today's Marketplace conference in New York City, sponsored by Executive Enterprises Inc.; $895; $795 for each additional registrant from the same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 within New York.

MARCH 8-9. Agency Clustering seminar in Nashville, Tenn., sponsored by the Independent Insurance Agents of America Inc.; $155 for IIAA members; $200 for non-members. Independent Insurance Agents of America Inc., 100 Church St., New York, N.Y. 10007; 212-258-4280.

MARCH 9-11. Fire Protection for Safety Professionals course in Long Grove, Ill., sponsored by the National Loss Control Service Corp.; $495. **Also May 11-13** and **Sept. 7-9.** National Loss Control Service Corp., Long Grove, Ill. 60049; 312-540-2400.

MARCH 9-11. Ninth Annual Petroleum Insurance Conference in Dallas, sponsored by Professional Development Institute; $495. Professional Development Institute, P.O. Box 13288, Denton, Texas 76203-3288; 800-433-5676.

MARCH 10. Building Defenses Against Errors & Omissions Claims workshop in Orange, Calif., sponsored by The Society of Chartered Property & Casualty Underwriters; $130 for CPCUs; $160 for non-members. **Also March 31** in Oak Brook, Ill., **April 7** in Denver, **April 26** in Minneapolis. The Society of CPCU, Kahler Hall, 720 Providence Road, CB No. 9, Malvern, Pa. 19355-0709; 215-251-2728.

MARCH 10. Personal Computer Seminar and Demonstration for the Insurance Industry in Chicago, sponsored by the Insurance Society of Chicago; $65. Insurance School of Chicago, 330 S. Wells St., Suite 202, Chicago, Ill. 60606; 312-427-2520.

MARCH 10. Demystifying Insurance Defense seminar in Chicago, sponsored by the Insurance Law committee of the Young Lawyers section of the Chicago Bar Assn.; $25 for Chicago Bar Assn. members; $30 for non-members. Chicago Bar Assn. 29 S. LaSalle, Chicago, Ill. 60603; 312-782-7348.

MARCH 10. Building Defenses Against Errors and Omissions Claims for the Professional Insurance Producer, Risk Consultant and Staff workshop in Orange, Calif., sponsored by the Society of Chartered Property & Casualty Underwriters; $130 for Society of CPCU members; $160 for non-members. **Also April 7** in Denver, **April 26** in Minneapolis. Bonnie Kinsley, professional services coordinator, The Society of CPCU, Kahler Hall, 720 Providence Road, CB No. 9, Malvern, Pa. 19355; 215-251-2735.

MARCH 10-11. Ninth Annual Petroleum Insurance Conference in Dallas, co-sponsored by Self-Insurance Resource Inc. and Professional Development Institute; $495. Professional Development Institute, North Texas State University, P.O. Box 13288, NT Station, Denton, Texas 76203-3288; 800-433-5676; 817-565-2483 within Texas.

MARCH 10-11. Managing Intergovermental Pools seminar in Orlando, Fla., sponsored by the Public Risk & Insurance Management Assn.; $175 for PRIMA members; $275 for non-members. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

MARCH 11. Medicare PPO: Threat or Opportunity? conference in Washington, sponsored by the American Assn. of Preferred Provider Organizations; $225 for AAPPO members; $295 for non-members. AAPPO, 111 E. Wacker Drive, Suite 600, Chicago, Ill. 60601; 312-644-6610.

MARCH 13-16. 27th Annual Personnel Workshop in Miami Beach, Fla., sponsored by the National Assn. of Independent Insurers; $300 for NAII members; $375 for non-members. National Assn. of Independent Insurers, 2600 River Road, Des Plaines, Ill. 60018-3286; 312-297-7800.

MARCH 14-15. International Reinsurance: Asbestos Claims conference in London, sponsored by the Insurance & Reinsurance Law International; $795. Kluwer Law Publishers, 1 Harlequin Ave., Great West Road, Brentford, Middlesex, TW8 9EW.

MARCH 14-16. Issues in Employee Benefits: Advanced Course in New York City, sponsored by the American Management Assn. Human Resources Division; $695 for individual AMA members; $800 for non-members. **Also April 13-15** in Atlanta, **April 18-20** in Chicago and **April 25-27** in Boston. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

MARCH 14-16. "Working and Learning" Practical Aspects of Consumer Affairs conference in New Orleans, sponsored by the Insurance Consumer Affairs Exchange; $195 for ICAE members; $245 for non-members. LOMA, Operations and Systems Division, 5770 Powers Ferry Road, Atlanta, Ga. 30327; 404-951-1770.

MARCH 14-16. Fundamentals of Insurance course in Chicago, sponsored by the Risk & Insurance Management Society Inc.; $495 for RIMS members; $595 for non-members. **Also May 18-20** in Denver, **Sept. 26-28** in New York City, **Dec. 5-7** in Charlotte, N.C. Risk & Insurance Management Society Education Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

MARCH 15. Preparing for Uncertainty and Change: All-Industry Insurance Day symposium in Bethesda, Md., sponsored by Rohr, Morgan & Cheves Inc., $30 in advance; $35 at the door. Rohr, Morgan & Cheves Inc., 121 S. Alfred St., Alexandria, Va. 22314; 703-683-5880.

MARCH 15-17. Hazardous Materials Management conference and exhibition in Rosemont, Ill., sponsored by Hazardous Materials Management Conference & Exhibition/Central; $90 for one day; $140 for two days; $180 for three days. Tower Conference Management Co., 800 Roosevelt Road, Building E-Suite 408, Glen Ellyn, Ill. 60137-5835; 312-469-3373.

MARCH 16-18. Hazard Communication II: Material Safety Data Sheets Are a Communicaton Tool symposium in Williamsburg, Va., sponsored by the American Society for Testing Materials; $125. Accounting department, ASTM, 1916 Race St., Philadelphia, Pa. 19103; 215-299-5546.

MARCH 16-18. Eighth Annual Employee Benefits Conference in New York City, sponsored by The Conference Board; $630 for Conference Board associates; $695 for non-associates. The Conference Board Inc., P.O. Box 4026, Church St. Station, New York, N.Y. 10261-4026; 212-759-0900.

APRIL 17-22. 26th Annual Risk Management and Employee Benefits conference in Washington, sponsored by the Risk & Insurance Management Society; full week: $695 for members; $795 for non-members; partial week: $575 for members; $675 for non-members. Risk & Insurance Management Society Conference Department, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

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The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the price, if any, of the meeting and information on registration for interested readers. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed.

River Plate liquidators contest plan

HAMILTON, Bermuda—The former directors of Argentinian-owned River Plate Reinsurance Co. Ltd. have no authority to take the insolvent property/casualty reinsurer out of liquidation, its provisional liquidators say in a letter to creditors.

Bermuda-based River Plate was wound-up by a Jan. 4 order of the Bermuda Supreme Court. However, late last month the company's former directors based in Argentina wrote to creditors offering them an alternative to liquidation (*BI,* Feb. 1).

Under their proposal, the directors intend to take the company out of liquidation and pay creditors of the company, which has more than $20 million in outstanding liabilities, 10% of liabilities in cash and 40% in promissory notes or shares in a Uruguayan-based bank that is owned by River Plate.

However, because of a moratorium placed on all banks by the Uruguayan government, none of the assets in the bank or the goodwill value attached to the bank can be released for eight years.

In a letter sent to River Plate's creditors on Feb. 12, joint liquidators David Lines and Michael Jordan of Coopers & Lybrand's Bermuda office point out that the proposal has been submitted without the liquidators' approval or authority.

In addition, the use of the company's name and letterhead by the former directors in writing to creditors "has been entirely unauthorized," the joint liquidators say.

Under the Bermuda court appointment, the provisional liquidators "are the only persons lawfully empowered to direct the affairs of River Plate and manage the company's assets," the liquidators contend.

"The recent communications dispatched on River Plate's letterhead do not represent proposals from the company but rather appear to represent proposals from the company's shareholders and former directors," the liquidators' letter continues.

Any shareholder proposals should be put forward at the first River Plate creditors' meeting, to be held Tuesday in Bermuda, Mr. Lines and Mr. Jordan say, adding that "at the present time the joint provisional liquidators have insufficient information available to them concerning the affairs the River Plate to enable them to make any considered comment upon the proposals made to date."

—By Carolyn Aldred

Independence study

Independence from Britain will not have a "negative effect" on the political stability of Bermuda, says a British-born executive of two Bermuda insurers.

Bermuda briefs

The speech earlier this month by Quentin Jackson came less than a month after the Bermuda government won approval to begin exploratory talks with foreign powers on the subject of independence.

Mr. Jackson is president of Nuclear Mutual Ltd., a primary property and builders risk insurer for U.S. utility companies, and Nuclear Electric Insurance Ltd., a mutual that writes liability, excess and replacement power insurance for nuclear utilities.

Mr. Jackson gave what he called his personal view of the impact of independence on Bermuda-based international companies, a highly controversial topic usually given the widest possible berth by non-Bermudians working here on government-issued permits.

The island's attractions as an offshore domicile include geography and climate, communications facilities, standard of living, political stability, tax-free business environment, a highly developed service infrastructure, an educated workforce and the government's regulatory attitude, Mr. Jackson said.

The only factors that could be affected by independence are Bermuda's political stability, its tax structure and the way it establishes and enforces regulations, Mr. Jackson said.

"As far as taxation and regulations are concerned, Bermuda has all the independence she needs right now. While I am concerned about the potential for government increasing its revenues from international companies, I believe it is sensitive to the need to contain costs in this area," Mr. Jackson said.

"I do not believe that the cost to international companies of doing business in Bermuda will be increased as a result of Bermuda becoming independent," he added.

Mr. Jackson, who has worked on the island for the past 15 years, warned that tax and regulatory changes in other jurisdictions pose a far greater threat to Bermuda's international businesses than independence from Britain.

Because tax authorities in the United States and the United Kingdom are paying closer attention to captives, Mr. Jackson said, "We must expect to get more nasty surprises like the 1982 Tax Equity and Fiscal Responsibility Act and the 1986 Tax Reform Act.

"Combine this with cyclical insurance markets and dramatic currency fluctuation and it can be seen that external factors will have a far greater effect on our existence than likely changes in the Bermuda tax and regulatory climate."

Nor, he argued, will the political stability of Britain's oldest colony suffer in the aftermath of independence.

"Politicians from all three parties in Bermuda recognize the importance for tourism and international companies of maintaining political and social stability and I am confident that this mature view will continue to prevail," he said.

Mr. Jackson said that he had deliberately avoided saying whether he thought Bermuda should seek independence from the United Kingdom.

"That is none of my business," he told the insurance institute meeting. "In due course, Bermudians will decide whether or not to take that step."

Mr. Jackson's speech was delivered after Premier John Swan received a clear parliamentary mandate to begin independence fact-finding talks with the governments of Britain, the United States and Canada. The premier has repeatedly insisted that his administration will not take the island independent unless its people favor it.

But the mandate, which followed a vote in Bermuda's House of Assembly, where the ruling United Bermuda Party holds a strong majority, allows him to begin investigative talks with the three foreign powers.

The first round of discussions is expected to take place in the spring with the British Government's Foreign and Commonwealth Office in London.

—By Roger Scotton

New financial secretary appointed

Career civil servant Walwyn Hughes is the new financial secretary of the Bermuda Finance Ministry, a key government post that includes responsibility for supervision of Bermuda's insurance industry.

Dr. Hughes, 56, replaces Jim Brock, who has joined a local bank as personnel manager.

Dr. Hughes is a entomologist who started his civil service career in 1954 as a pathologist with the Bermuda Agriculture and Fisheries Department.

He most recently was permanent secretary to the Environment Ministry.

Even though he is a scientist with no financial background, Dr. Hughes is quick to point out that the last two financial secretaries—Mr. Brock and David Saul—also assumed the post with no financial background. And, he said, what he lacks in financial knowledge is offset by his expertise as a skilled administrator.

Dr. Hughes added that he does not know how long he will stay in the finance post. "I don't yet know how many more years I'll have in the civil service, but I think that within the next 12 months I'll have to settle the question of whether I'll be spending them in the Finance Ministry," Dr. Hughes said. ■

UR firm to grow via acquisition

HealthCare COMPARE Corp. of Downers Grove, Ill., last week executed a letter of intent to acquire Affordable Health Care Concepts Inc., a Sacramento, Calif.-based health care cost management company.

Affordable Health Care Concepts is a privately held company that specializes in the design and implementation of cost-containment strategies. It also provides health care data collection services.

HealthCare COMPARE, which provides utilization review services to self-insured employers, insurers, union trusts, health maintenance organizations and third-party administrators, reported $11.6 million in gross revenues in 1987.

"The proposed merger reflects HealthCare COMPARE's continuing strategy to provide a full range of services to clients nationwide, including more sophisticated data analysis to document actual cost savings," said Dr. Robert J. Becker, HealthCare Compare's chairman.

"We believe that with the strength of Affordable's management, the future prospects of the company and the potential opportunities created through the proposed merger, the combination will create a stronger, more competitive company in the managed health care industry," Dr. Becker added.

The merger is subject to the execution of a definitive merger agreement and the approval of the board of directors of both Affordable Health Care Concepts and HealthCare COMPARE.

Affordable Health Care Concepts will continue to be based in Sacramento following the merger and will operate under its present management as a HealthCare COMPARE subsidiary.

Joint venture

The New England, a Boston-based diversified financial services organization, and The Great-West Life Assurance Co. of Denver are considering forming a joint venture to market group life and health insurance.

Under the proposed joint venture:

- Great West will provide The New England, parent of New England Mutual Life Insurance Co., with a complete range of group marketing services including underwriting, policy issuance, administration and claims payment.
- Each company, through its own sales organization, will continue to independently distribute its own group life and health products.
- The companies will jointly share in the profits and risks of the book of business sold by representatives of the The New England and administered by Great-West under this arrangement.

Together, the two life insurance companies generate approximately $1 billion in group insurance revenues, said Kevin P. Kavanagh, president and chief executive officer of Great-West.

He said the joint venture will enable both companies to lower their operating costs and, in turn, stabilize the financial results of their group life and health insurance business.

"It is becoming increasingly important for group insurers with smaller market shares—such as The New England—to combine forces," Mr. Kavanagh said.

"Through this joint venture, The New England can maintain its role as a full-service provider in the employee benefits business on a much more favorable financial basis," he said.

Markets

Comp specialist

Farmington, Conn.-based Orion Group will restrict is commercial package policy business, including the writing of commercial multiperil insurance, to concentrate on workers compensation insurance.

Orion Group's Regional Operations Division, which had written package policies, will now write workers compensation insurance. However, Orion Group's Reinsurance/Special Programs Division will write package policies and related coverage for special risks.

And, the action will not affect business written by Design Professionals Insurance Co., an Orion unit.

Orion said it is limiting its commercial package policy business because of poor profit projections. Mounting competition and high reinsurance costs also contributed to the decision, an Orion spokesman commented.

The business accounted for less than 10% of Orion Group's net written premium volume, the company says. All Orion units reported $405.2 million in net written premiums in 1986.

Sports cover market

The Lawrence Group Inc. of Schenectady, N.Y., has launched a new facility dedicated to brokering sports risks.

The sports insurance facility will specialize in tailored coverage for athletic associations, a spokesman said, adding that most of the business will be underwritten by United Community Insurance Co. in New York, a sister company.

Bill Mather, chief marketing officer for the Lawrence Group, will coordinate all sports insurance marketing efforts out of the Albany, N.Y., office.

"It seemed like an area of need no one was addressing," said Mr. Mather. "Many sports groups need insurance custom-designed."

Joan Reed, sports marketing manager, will head the sports facility's office in Lake Placid, N.Y. Lake Placid was chosen for the office because it is the home of the Winter Olympics Training Center, the spokesman said.

Currently, the Lawrence Group's is brokering property/casualty insurance coverage for the U.S. Yachting & Racing Union, the U.S. Slow-Pitch Softball Assn., the Canadian Bob Sleigh and Luge Assn. and the Commercial Dog Sledders Operating in the Lake Placid Region.

Steven Black, executive director of the U.S. Yachting and Racing Union, said, "The Lawrence Group is the first insurance company in the United States that has taken the time to get involved with insuring sailing schools."

In addition, Lawrence placed a portion of the coverage for the 1980 Winter Olympics in Lake Placid.

"Over the next five-year period we would anticipate writing $20 million in premium volume in the sports marketing division," Mr. Mather said.

For more information, contact Janet Lawrence, 33 Elk St., Albany, N.Y. 12207; 518-465-0457.

Marine/cargo broker

Joel Klenart, former manager of the marine department at BRI Coverage Corp. in New York, has opened his own marine brokerage firm in Montvale, N.J.

Klenart & Co. specializes in placing retail and wholesale marine and cargo insurance, according to Mr. Klenart.

In addition to placing risks with most major U.S. insurance companies, Mr. Klenart has access to a Lloyd's of London line slip that will provide $10 million in limits

Continued on next page

Continued from previous page
for any one shipment and $20 million in limits for any one location.

Mr. Klenart said he also can place up to $20 million in furrier's coverage in the London market.

Klenart & Co., which started writing business on Dec. 1, 1987, has about a dozen accounts on the books, Mr. Klenart said.

For more information contact Mr. Klenart, Klenart & Co., 28 W. Grand Ave., Montvale, N.J. 07645; 201-930-9229.

Administrative pact

The Mutual Life Insurance Co. of New York (MONY Financial Services) and Pacific Mutual Life Insurance Co. have formed Employee Benefits America Administrations Co. to handle the administrative and claims management of both companies' group insurance business.

"Our arrangement with Pacific Mutual is a creative solution to a problem impacting many companies today: generating favorable financial performance in an extremely dynamic and competitive marketplace," said James A. Attwood, MONY chairman and president.

New dental PPO

Golden West Health Plan of Camarillo, Calif., has developed a dental preferred provider organization to serve clients throughout California.

The provider network, which includes 350 dentists, began operations in September 1987, and so far has 1,000 enrollees.

"I would expected that we would have 10,000 to 20,000 enrollees within the next 12 months," said Karl H. Lehman, executive director of Golden West Dental Plan.

The plan is being offered to health maintenance organizations, insurance companies, employers with commercial insurance, self-insured employers and third-party administrators.

The PPO's fee schedule represents a discount from the standard fees charged by the dentists, Mr. Lehman explained. However, he would not specify how large the discount is. "The PPO offers a very significant cost savings to the claims paying organization," he said.

As an incentive to use the PPO, employees' copayment is reduced or their deductible is waived, Mr. Lehman said. "We prefer to have the deductible waived, and in most cases it is," said Mr. Lehman.

For more information contact Mr. Lehman, Golden West Dental Plans, 888 W. Ventura Blvd., Camarillo, Calif. 93010; 805-987-8941; 800-223-8165.

Reinsurance unit

Chase Insurance Holding Corp., the parent of Ranger Insurance Co., has launched a new reinsurance subsidiary in Houston.

Chase Reinsurance Management Inc. will write up to $1 million in reinsurance per risk on behalf of Ranger, according to Dennis R. Brand, who has been elected senior vp and chief underwriting officer of Chase Re. Previously, Mr. Brand was chief domestic underwriter with Continental Corp. in New York.

The company's claim department will be directed by Philip J. Quirin, assistant vp. Previously, Mr. Quirin was head of claims at Transprotection Service Co., the claims operation for Vanliner Insurance Co. in St. Louis.

President Thomas H. Friedberg said he plans orderly growth. "We will not seek rapid early growth through a volume of business, which may offer more problems than opportunity," Mr. Friedberg said. "Instead we intend to build a quality organization by exercising careful underwriting practices and sound management. Our purpose is to provide the insurance industry with quality reinsurance."

For more information contact Chase Reinsurance Management Inc., P.O. Box 2807, Houston, Texas 77252; 713-622-6500.

Name changes

Patterson & Associates, a Washington, D.C., agency, has changed its name to **Patterson/Smith Associates.**

Hanna Insurance Management Ltd., which was purchased by Skandia American Group last October, has changed its name to **Skandia International Risk Management Ltd.**

Mergers/acquisitions

Alternative Health Care Systems Inc., a managed health care firm in Naugatuck, Conn., has signed a letter of intent to acquire 48% of **Columbia Management Co.**, a Bloomsburg, Pa.-based life insurance holding company.

G.A. Mavon & Co., a Hinsdale, Ill.-based agency, has merged the wholesale insurance division of **O'Malley & McKay Inc.** in Des Plaines, Ill., into its operations. Jerry Mavon, president of G.A. Mavon & Co., said the merger will increase his company's total writings by more than 50%.

Hilb, Rogal & Hamilton Co. of Richmond, Va., the nation's 12th largest broker, acquired **Crawford & Mitchell Insurance Services** of Dallas. Terms of the acquisition were not disclosed. The addition of 20 employees brings to 520 the total number of Hilb, Rogal employees.

Near North Insurance Agency Inc. in Chicago, the nation's 32nd largest broker, acquired **Capital Planning Inc.**, also of Chicago. Robert L. Agnone, formerly president of Capital Planning, was named a vp of NNIA.

Royal Insurance of Charlotte, N.C., acquired **Milbank Insurance Co.** of Milbank, S.D. Milbank's $80 million in annual premiums are split between commercial and personal property/casualty insurance.

Corroon & Black Corp. of New York, the nation's sixth-largest brokerage, acquired **W.K.P. Wilson & Son Inc.** of Mobile, Ala., in an exchange of shares. The purchase price was not disclosed. Wilson, a retail property/casualty agency, had revenues of $7.7 million in 1986.

New Offices

Caronia Corp. of Long Island, N.Y., opened four new offices:

- 11811 N. Tatum Blvd., Suite P195, Phoenix, Ariz. 85028; 602-953-0105.
- 1275 Market St., Suite 1300, San Francisco, Calif. 94103-1424; 415-552-1315.
- The Ashland Building, 12700 Shelbyville Road, Suite 5, Louisville, Ky. 40243; 502-245-3043.
- 116 Wilson Pike, Suite 200B, Brentwood, Tenn. 37027; 615-371-8297.

Medical Review Corp. has relocated to 237 South St., Morristown, N.J. 07960; 201-267-2233.

International Technology Corp. added a new office at 3018 U.S. Highway 301 N., Suite 300, Tampa, Fla. 33619; 813-622-7174.

Lockwood, Dipple & Green Inc. opened a new office at 561 Seventh Ave., New York, N.Y. 10018; 212-921-5689.

PCS Inc. opened a new regional headquarters office at 7101 College Blvd., Suite 730, Overland Park, Kan. 66210; 913-661-2191.

Environmental Risk Ltd. opened a branch office at Suite 1F, 1187 Main Ave., Clifton, N.J. 07011; 201-772-3332.

The Prudential Insurance Co. opened a group marketing office at 200 E. Lexington St., Baltimore, Md. 21202; 301-783-2900. ■

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NOTICES

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT,
CHANCERY DIVISION
IN THE MATTER OF THE REHABILITATION OF AMERICAN MUTUAL REINSURANCE COMPANY
NO. 88 CH 1595
NOTICE OF PROPOSED PLAN OF REHABILITATION

TO: ALL INSURANCE COMPANIES WHICH HAVE CEDED REINSURANCE LIABILITIES TO AMRECO, ALL INSURANCE COMPANIES WHICH ASSUMED REINSURANCE LIABILITIES FROM AMRECO AND ALL OTHER INTERESTED PARTIES.

PLEASE TAKE NOTICE, that on February 22, 1988 AMERICAN MUTUAL REINSURANCE COMPANY ("Amreco") was placed into Rehabilitation by Order of the Honorable Harold Siegan, Judge of the Circuit Court of Cook County, Illinois. John E. Washburn, Director of Insurance of the State of Illinois, is the statutory and court affirmed Rehabilitator of the Company.

TAKE FURTHER NOTICE, that on February 22, 1988 the Rehabilitator has prepared and filed a Plan of Rehabilitation as and to Amreco. This Plan, inter alia, contemplates the modification of Amreco's net retained liabilities, as defined in the Plan, and the payment of such modified liabilities in three or more installments; contemplates the continued payment by Amreco's solvent reinsurers of their respective share of Amreco's liabilities to Amreco's pool related cedants in the form of special dividends; and contemplates a moratorium upon the payment of claims by Amreco until further Order of the Supervising Judge of the rehabilitation proceedings of Amreco in the Circuit Court of Cook County, Illinois.

TAKE FURTHER NOTICE, that the Rehabilitator has requested a hearing upon, and approval of, the aforesaid Plan of Rehabilitation by the Honorable Harold Siegan who has set such hearing to be held March 24, 1988 commencing at the hour of 2:00 p.m. in Room 2206, Richard J. Daley Center, Chicago, Illinois.

TAKE FURTHER NOTICE, that any objections you may have concerning the Plan must be submitted to counsel for the Rehabilitator in writing on or before March 18, 1988 at the below address.

Questions concerning the Plan may be referred to any of the following:

Roy J. Hammond, Chief Executive Officer, American Mutual Reinsurance Company, In Rehabilitation, Telephone: (312) 963-2580

Donald Mrozek, Esq., Hinshaw, Culbertson, Moelmann, Hoban & Fuller, Counsel to Amreco, Telephone: (312) 630-3230

Ken Smith, Deputy Director of Insurance, Illinois Department of Insurance, Telephone: (217) 785-1791

Garry L. Smith, Esq., Counsel for the Rehabilitator, 446 E. Ontario Street, Suite 700, Chicago, Illinois 60611, Telephone: (312) 915-4700, Telefax: (312) 915-4727

John E. Washburn, Director of Insurance of the State of Illinois as Rehabilitator of American Mutual Reinsurance Company:
By Frank J. Csar.

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Circulation Breakdown*

Commercial Consumers

Administrative:
CEO's Presidents and Owners 2,779
Vice-Presidents, General Managers and Other Administrative Personnel 3,155
Financial:
Chief Financial Officers and Vice-presidents of Finance 2,732
Secretaries, Treasurers, controllers and other Financial Personnel 5,585
Risk/Employee Benefits:
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations 10,021
Sub-total 24,272
Associations 481
Government, Unions and Educational Institutions 972
Commercial Consumers
Sub-total 25,725
Insurance Agents and Brokers 10,697
Insurance Companies 7,644
Actuaries, Attorneys, Adjusters, Appraisers and Consultants 4,311
Others Allied to the Field 1,982
TOTAL 50,059

* Source Business/Occupational breakdown of qualified circulation, Nov. 30, 1987 issue, as submitted to BPA for Dec. 1987 BPA Publisher's Statement.

California initiatives

Continued from page 1

liability for non-economic damages (*BI*, June 9, 1986).

The no-fault initiative represents a defensive position by the insurance industry, which feels under attack on the price issue, said Henry Bachrach, risk manager for the County of Los Angeles and legislative director for the Los Angeles Chapter of the Risk & Insurance Management Society.

The initiative would cut auto insurance premiums an average of 20% as the result of a new no-fault system. It also would limit attorney fees to 33% of the first $50,000 of an award, 25% of the next $50,000 and 15% on amounts more than $100,000.

"The whole issue comes down to the industry wants to find the lesser hit that it knows is coming," Mr. Bachrach said.

An initiative sponsored by Access to Justice, a Santa Monica-based consumer group, would be the most hard-hitting. The initiative, dubbed "Voter Revolt to Cut Insurance Rates," calls for rolling back property/casualty insurance rates for one year to 20% below November 1987 levels. However, the initiative does include an emergency provision allowing earlier rate hikes if the insurer can prove serious financial hardship. After the rollback, insurers would be subject to a modified prior approval system.

For example, commercial lines rate increases or reductions of more than 15% would have to be approved by the Insurance Department. Personal lines rate adjustments of more than 7% also would be subject to prior approval.

Currently, California is one of 14 states that formally sanction open rating. Property/casualty insurers were barred from using advisory rates from rating organizations on Jan. 1, 1987, under a directive issued by Insurance Commissioner Roxani M. Gillespie. The Insurance Services Office can provide only loss cost information in California (*BI*, Oct. 26, 1987; June 29, 1987).

The initiative also eliminates insurer exemptions from state antitrust and consumer protection laws and allows state-chartered banks to enter the insurance business.

In addition, the measure would transform the insurance commissioner's position, now an appointed post, into an elected job.

Besides the insurance industry and Access to Justice proposals, petitions are circulating supporting the following ballot initiatives:

- The Good Driver Rate Reduction Initiative, sponsored by the California Trial Lawyers Assn., would cut premiums 25% for "good drivers" on Oct. 31, 1988.

The initiative would ban no-fault auto insurance and prohibit limits on lawyer fees in auto cases. It also would impose one-year suspensions of driver licenses for minors convicted of drunk driving.

- The Motor Vehicle Insurance Rate Reduction Initiative, submitted by Assemblyman Richard Polanco, D-Los Angeles, would slash auto insurance rates in half and limit non-economic damages in lawsuits involving auto accidents to 25% of losses for bodily injury unless the accident-related injury is serious and permanent.
- The Burton Initiative sponsored by Los Angeles resident Adam Burton would give the Insurance Department authority to regulate auto insurance rates. It also would roll rates back to July 1987 levels and prohibit insurers from charging rates based on where policyholders live. Mr. Burton also proposes the insurance commissioner be elected and that insurers be subject to state antitrust laws.
- The Insurance Consumers Action Network plan would mandate a minimum 20% discount for drivers with good records and roll back personal auto rates to 20% below January 1988 levels. It also would require prior approval for rate changes that exceed 7.5% for personal lines and 15% for commercial lines. The initiative also calls for repeal of insurance company exemptions from state antitrust laws.
- The Consumers Union Initiative also would remove insurers' antitrust exemptions and create a state-administered automobile liability insurance program financed by fees collected with vehicle registrations.

However, the group has not received the financial help needed to launch a statewide campaign and may withdraw its petition, said Nettie Hoge, a Consumers Union staff attorney. Consumers Union may give its support to another initiative, she said.

Supporters of the Access to Justice initiative, which has been endorsed by consumer advocate Ralph Nader, say it may emerge as the major challenger of initiatives sponsored by industry, attorneys' and other groups.

Despite the group's meager financial backing compared with business-supported efforts, Access to Justice may play a role through November, said Harvey Rosenfield, the group's executive director.

"I don't have any doubt about winning," Mr. Rosenfield said. He said the initiative has received "unprecedented" public response, but declined to say how many signatures the group has gathered.

Sponsors of each petition must submit at least 372,128 valid signatures of registered voters for the initiatives to appear on the Nov. 8 ballot. Deadlines to gather signatures vary from late April to May, depending on when each petition was filed with the state.

Although industry representatives say that rate regulation could inhibit business, it was the insurers themselves that sparked the reform campaigns through practices such as charging rates based on ZIP codes, Mr. Rosenfield said. "They know the free reign is over. I think that's the issue," he said.

The prospect of rate restrictions on commercial lines already has sent a chill through California brokers and insurers.

"We're concerned about availability" of coverage if voters approve rate controls, said Richard Cowan, vp of Fred S. James Co. of California. "If insurance companies believe they can't get a reasonable rate, they won't write a particular line," he said.

The Agents and Brokers Legislative Council, representing several industry groups, finds serious problems with nearly all of the proposed initiatives unless they include provisions to limit liabilities and other costs along with rates, Mr. Cowan said.

"Without a trade-off, we believe there will be a problem with availability," he said.

While insurers have not yet indicated that they are ready to pull out of the California market if rate limits are imposed, "it would not surprise me that in time we would see some have to," said Mr. Beck of the NAII.

"Prudent managers" at insurance companies will look closely at where they invest their surplus when confronted with rate limitations, said Gerald Isom, president and chief executive officer of Transamerica Insurance Group in San Francisco.

That could mean some Californians will find they cannot purchase some lines of insurance, he said. "It becomes an availability issue then, rather than an affordability issue."

"It's rather unfortunate" that some of the initiatives appear to help consumers by lowering rates initially, but "in the end the consumer will be worse off," he said.

Mr. Isom said the end of antitrust exemptions, proposed by four of the initiatives, would prohibit the industry's collective effort to gather loss information. Small insurers could be particularly hurt if they lack sufficient data to formulate rates, he said.

The California insurance reform movement has been gaining momentum since November when legislative debate stalled over a proposal to institute a "flex rating" system for all lines of property/casualty insurance.

Representatives of insurance companies, lawyers and consumer groups held discussions through much of last year, but talks broke down when insurers could not decide which reforms they could live with, said Wil Glennon, legal analyst for the California Trial Lawyers Assn.

The chances of the differences being resolved by the time the Legislature adjourns in June are "highly unlikely," said Mr. Rosenfield of Access to Justice.

"I've heard indications insurers are willing to sit down, but I haven't heard any indication they are willing to bite the bullet" and agree to significant reform, he said.

But the insurers say the problem is caused by the trial lawyers association, which refuses to negotiate measures to reduce the amount of claims paid by the industry, said George Tye, executive director of the Assn. of California Insurance Companies.

Mr. Tye characterized the Access to Justice initiative as "irrational, irresponsible" in its broad approach to rate cutting. The consumer group has not listened to the insurers' pleas for a balanced program of rate and cost control measures, he said. "They don't seem to be amenable to any logic or fact. They have refused to meet with us."

Risk managers contacted by *Business Insurance* said they were monitoring the insurance reform developments, but generally were not taking sides.

While Richard H. Dyer, risk manager for Lawrence Livermore National Laboratories in Livermore, Calif., and president of the Golden Gate Chapter of RIMS, acknowledged a need for auto rates in California to be adjusted, he was skeptical of any positive outcome from the elective process.

The Access to Justice initiative particularly seems to raise more questions than it answers, he said. "I doubt whether Ralph Nader has the interest of the consumers at heart."

D. Michael Enfield, managing director of broker Marsh & McLennan Inc. in San Francisco, said the issue of insurance reform has grown beyond reasonable bounds and threatens to create conditions that may not be acceptable to the insurers and, ultimately, the consumers.

"I favor reform of insurance, but this is not reform. It's revolution without purpose or form," he said.

The intent of several initiatives apparently is to control prices without acknowledging the sensitive balance between price and costs, he said. "There's nothing the law can do about the law of supply and demand."

Mr. Enfield said he has not seen an initiative among the current crop that he could support. All are "fatally flawed" in some way, he said, adding that only the initiative sponsored by state Assemblyman Polanco makes an effort to limit potential losses while cutting automobile insurance rates.

The entire initiative process is "counterproductive" and could have been avoided if state lawmakers had dealt directly with the issue, he added. "I don't blame the people for crummy laws. I blame the Legislature for forcing a bad process on the taxpayers of California." ■

Donations to scholarship fund total $64,000

NEW YORK—Contributions this year to the Robert S. Spencer Memorial Foundation scholarship program total $64,000 as of Feb. 23, announced foundation President Anita Benedetti.

And, a substantial contribution by Marsh & McLennan Cos. Inc. prompted the creation of a new "Golden Circle" contributor category for donors of gifts larger than $12,000, she added. Previously, the largest contributor category was that of "Sponsor" for those that donated $5,000 or more.

The Spencer Foundation coffers will be filled even further with the proceeds from the Second Annual 5K RIMS Run slated for Wednesday, April 20. The 5-kilometer race will be held in Washington, D.C., during the 26th Annual Risk Management and Employee Benefits Conference sponsored by the Risk & Insurance Management Society Inc.

The race, which is sponsored and financed by Frank B. Hall & Co. Inc., was introduced at last year's RIMS conference in Las Vegas.

This year, however, the competition will be limited to individual runners. The organizers decided to drop the team competition, which included three to five runners each, because too few teams registered in certain categories and "it just got overly complicated," according to Ms. Benedetti.

Registration fees for individuals participating in the race are $20, payable by mail or when registering at the RIMS conference.

The race, which begins at 7 a.m., will be held in Rock Creek Park. All individuals who participate will receive race T-shirts. In addition, awards will be given to the fastest male and female finishers—in both the under-40 and over-40 age groups—in each of the following categories:

- Risk management.
- Insurance company/reinsurance company.
- Broker/consultant.
- Service company/exhibitor.
- Spouse of conference registrant.
- Overall fastest male and female participant.

The overall fastest male and female runners will be announced during the RIMS conference luncheon on the day of the race.

As a result of the 5K RIMS Run and other fund-raising efforts, the Spencer Foundation will award $2,500 general fund scholarships this year to five of the 31 students that submitted applications. The awards will be announced during the Sunday night "Beach Party" that will kick off RIMS' April 17-22 "Capital Conference." Pledges and donations to the Spencer Foundation will be accepted during the fundraiser, which will feature boardwalk games and beach party music.

Last year, the foundation awarded seven $1,250 scholarships from a field of 25 applicants.

The scholarships are larger this year thanks to the growing size of the fund, which is invested in certificates of deposit, Ms. Benedetti explained. The size and number of scholarships are determined annually based on the interest accrued to the principal in the foundation's account, she said.

The foundation's fund balance stood at $278,000 as of year-end 1987, up from the $208,000 at year-end 1986.

"We also want to give a substantial contribution to these students," Ms. Benedetti pointed out. "It's a bigger impact to give a $2,500 contribution than a $1,250 contribution."

Eventually, the foundation would like to award even larger scholarships. "By 1993, our goal is to give out 10 $10,000 scholarships," Ms. Benedetti said.

The Spencer Foundation was established in 1979 by the Atlanta Chapter of RIMS in honor of Robert S. Spencer, an exemplary risk manager and former RIMS president, to assist students of risk management, insurance and employee benefits.

In addition to the general fund scholarships, eight RIMS chapters will participate in the matching funds scholarship program this year, which means eight scholarships will be awarded in addition to the general fund grants.

The RIMS chapters participating in the matching fund program include: Atlanta, the Carolinas, Cleveland-Akron, Minnesota, New York, Northeastern Illinois, Rocky Mountain and South Florida.

In addition to Marsh & McLennan, other major contributors to the Spencer Foundation this year include:

- Sponsors that have donated $5,000 to $11,999: American International Group Inc.; the Atlanta Chapter of RIMS; *Business Insurance*; and Fred S. James & Co. Inc.
- Benefactors that have contributed $2,500 to $4,999: Hartford Steam Boiler Inspection & Insurance Co.; Johnson & Higgins; Liberty Mutual Insurance Group; the Minnesota Chapter of RIMS; and the Washington Chapter of RIMS.
- Patrons that have contributed $1,000 to $2,499: ARM Group Inc.; CIGNA Special Risk Facilities; GAB Business Services Inc.; Information Inc.; the Rocky Mountain Chapter of RIMS; the South Florida Chapter of RIMS; C.J. Spivey Associates Inc.; Crawford & Co.; the New York Chapter of RIMS; and H.S. Weavers (Underwriting) Agencies Ltd.

Contributors of $250 to $999: American Greetings Corp.; Donald T. Browne; CONTEL Corp.; CUNA Mutual Insurance Group Charitable Foundation Inc.; the Dallas-Fort Worth Chapter of RIMS; General Reinsurance Corp.; Hausman Belding Foundation; the Houston Chapter of RIMS; Peat Marwick Main & Co.; Michael L. Smith; the St. Louis Chapter of RIMS; Towers, Perrin, Forster & Crosby Inc.; the Western Michigan Chapter of RIMS; and Industrial Risk Insurers.

Friends of the foundation that have contributed $100 to $249 include: Reginald E. Beane; Anita Benedetti; Arthur P. Bostwick; Norman B. Chanzis; Jerome N. Clauser; Collinsworth-Alter & Associates Inc.; the Florida Central Chapter of RIMS; Michael F. Grace; P. Richard Hackenburg; Cheri J. Hawkins; John Robert James; Ron Judd; Edith Lichota; Alfred Malecki; Michael B. Maliavsky; James C. Newton Jr.; Siemens Corporate Research & Support Inc.; James W. Smirles; Dick Smith; Safety Services of America Inc.; South Central Bell; United Banks of Colorado Inc.; and Anne M. Zug.

In addition to the larger contributors, the foundation gratefully acknowledges the many individuals who contributed gifts in amounts less than $100.

"Contributors of any amount are welcome," Ms. Benedetti stressed.

For more information about the Robert S. Spencer Memorial Foundation Inc., call the Risk & Insurance Management Society Inc. at 212-286-9292. Questions also can be addressed at the RIMS booth during the conference. ■

Property insurers to reword pollution exclusion

By CAROLYN ALDRED

LONDON—Lloyd's of London non-marine underwriters plan to tighten the wording of the pollution exclusion endorsement contained in property insurance policies written for U.S. buyers because of massive pollution claims filed in U.S. courts against property insurers.

Property underwriters hope the reworded exclusion will make clear to U.S. courts the exact risk the underwriters intend to cover and, thus, prevent the courts from extending coverage to policyholders that underwriters never intended to provide.

However, the reworded exclusion is meant only as a clarification and will not restrict the scope of coverage for pollution incidents that Lloyd's underwriters provide under property policies, underwriters say.

In addition, the Assn. of British Insurers, which represents non-Lloyd's underwriters, is introducing a pollution exclusion endorsement to U.K. property policies to clarify insurers' coverage intentions.

Lloyd's and other London property underwriters are among the mass of property and casualty insurers being sued by several U.S. businesses—including Westinghouse Electric Corp. and United Technologies Corp.—for the defense and indemnification of massive hazardous waste claims pending against the companies (*BI,* Feb. 1; June 15, 1987).

The Lloyd's property insurance seepage, pollution and contamination exclusion endorsement, known as the NMA 1999, was first drafted by Lloyd's Non-Marine Assn. two years ago to, among other things, make it clear that property insurance policies are not intended to cover third-party seepage and pollution cleanup costs, underwriters say.

The endorsement, which is included in Canadian as well as U.S. property policies, excludes coverage for seepage and pollution or contamination cleanup costs other than the cost of first-party property damage and debris removal from the insured property if caused by an insured peril like fire, lightning or an explosion.

In addition, the costs of cleanup operations ordered by federal or local authorities, such as the Environmental Protection Agency, are excluded under the endorsement.

However, many underwriters now believe the exclusion needs further clarification, partly because of the increasing number of pollution liability claims filed against property insurers.

Also, some brokers claim that they and policyholders find the wording of the exclusion ambiguous.

"The London market is very nervous, and underwriters are anxious to eliminate any ambiguities in the existing form, which has not been tested in court yet," said one Lloyd's broker who did not wish to be named.

"The problem is trying to define a wording that gives the cover intended by insurers without creating ambiguities," said Lloyd's property underwriter John W. Pryke, who underwrites for syndicates managed by Cuthbert Heath Underwriting Ltd.

"We are not trying to take away cover that has always traditionally been given in the London market. We are trying to clarify what the cover is and always has been," Mr. Pryke explained.

Lloyd's is still in the process of redrafting the exclusion, the final version of which probably will not be ready for a few months, according to Lloyd's underwriter Bob Edwards, who is chairman of the NMA committee responsible for redrafting the exclusion.

Meanwhile, the redrafting is creating considerable controversy in the London market, sources say.

For example, some underwriters fear that changing the wording may make the original wording more vulnerable to wide interpretation by U.S. courts.

In addition, some brokers fear that a revised endorsement may restrict coverage.

But Mr. Edwards emphasized the reworded pollution exclusion will not restrict coverage. "We are only trying to eliminate any possible inconsistencies in interpretation," he maintained.

In addition, underwriters, concerned about recent pollution spills outside the United States and fearful of court interpretations of non-U.S. policies, are redrafting the wordings of non-U.S property insurance policies.

For instance, the Assn. of British Insurers is introducing pollution exclusion clauses for industrial and commercial property insurance policies in the United Kingdom.

"It has been found necessary to revise certain policy wordings in view of doubts which have arisen as to insurers' intentions regarding pollution or contamination," said a statement accompanying the new clauses.

The recommended policy language, circulated to member companies late last month, specifically excludes coverage for damage to commercial and industrial property by pollution or contamination except when the damage is caused by pollution or contamination resulting from an insured peril, such as fire, lightning or an explosion.

The new clauses also exclude the cost for cleaning up debris on a third party's property, except for the cost of cleanup at the site of property adjacent to damaged insured property.

Although underwriters say commercial property insurance policies were never intended to provide gradual or third-party pollution coverage and decontamination costs, U.S. court decisions and recent environmental disasters have alerted British insurers to the possibility of pollution liability claims being filed under property insurance policies, said Ron Hazell, secretary of the ABI's property committee.

The ABI wordings are recommended for use by member companies for all British commercial and industrial property risks, Mr. Hazell said.

According to an explanation of the clauses sent to member companies, "considerable concern has arisen over the extent of property insurers' liability to pay for damage caused by seepage, pollution or contamination and the costs of cleanup or decontamination of the environment." ■

TMIC liquidation sought

Continued from page 3

in turn caused lenders to declare $485 million in home mortgages insured by TMIC in default. These mortgages involved properties sold by the now defunct real estate syndicator Equity Programs Investment Corp., a subsidiary of Community State Savings & Loan Assn. of Bethesda, Md. EPIC's collapse in April 1985 is blamed for TMIC's demise (*BI,* Sept. 2, 1985).

TMIC insured about 20%, or $95 million, of the principal amount of the EPIC loans.

In all, TMIC, which was a major mortgage insurer before the EPIC collapse, insured 23% of $16 billion in loans, or a total of $3.7 billion, according to California Deputy Attorney General Mark Richelson.

TMIC's 2-year-old rehabilitation effort failed because good risks found other insurers, leaving TMIC only with poor risks, according to liquidation papers filed by the California Insurance Department.

The papers state that New York-based TPF&C, a division of Towers, Perrin, Forster & Crosby, reviewed the status of the rehabilitation plan as of Dec. 31, 1986, and found a "dramatic change in the figures from their assumptions a year earlier. While their projections on the losses were about the same, their original projections on future premium income were drastically lowered."

The lapse rate on renewals exceeded earlier projections. "It appears that the 'good risks' were able to obtain mortgage insurance elsewhere," court papers say.

The improved economy in 1986 and 1987, plus falling interest rates, also permitted borrowers to refinance their loans at lower rates, and mortgage holders either no longer needed mortgage insurance or they found the coverage elsewhere. "The bad risks stayed with TMIC," the court papers say.

At the same time, "oil states such as Texas, Oklahoma and Alaska, continued to suffer economically to the detriment of the company, with high rates of defaults and foreclosures in evidence," the department's liquidation petition says.

The California Insurance Department retained another actuarial firm, Pasadena, Calif.-based Milliman & Robertson, to update the status of the rehabilitation plan as of Oct. 1, 1987, after concluding TPF&C's projections were "overly optimistic."

Looking at just non-EPIC business, M&R estimated that written premium income runoff beginning Oct. 1, 1987, would be $119 million, while estimated claims payments would be $373 million, leaving an "estimated future cash deficiency of $254 million."

When this total is added to the $95 million in estimated total losses from the EPIC properties, the possible deficit increases to close to $350 million, said Jim Wade, acting president of TMIC while it is in conservation.

However, Mr. Wade stressed that the $254 million figure is only an estimate.

TMIC's troubles surfaced with the collapse of EPIC. EPIC had sold tax shelters to about 10,000 doctors, lawyers and others through 352 partnerships that bought about 22,000 homes, many in the Southwest.

But with the collapse of oil prices and the domino effect on the rest of the economy, the $1.4 billion in mortgages on the properties could not be repaid, and the partnerships filed for bankruptcy in August 1985.

Under a workout plan agreed to in April 1986 by the EPIC mortgage insurers and the lenders who had purchased the insurance, EPIC's lenders agreed to accept reduced interest rates on their loans if their mortgage insurers continued to make payments on the insurance policies they had issued.

Under the arrangement, many of the properties were rented out by management firm Skyline Financial Services Corp. in Falls Church, Va., and the rent payments were turned over to the lenders. The insurers paid the lenders the difference between the rents and mortgage payments the lenders were owed.

Also, some of the properties were sold.

But the agreement with TMIC was terminated in January after California Insurance Commissioner Roxani M. Gillespie ordered all TMIC claims payments to be stopped in light its deteriorating financial condition.

Ms. Gillespie's order led the lenders to declare 6,600 TMIC-insured mortgages in default.

Two other primary mortgage insurers that insured the mortgages the lenders issued EPIC are still paying: Milwaukee-based MGIC Investment Corp. and Republic Mortgage Insurance Co., a unit of Old Republic International Corp. of Chicago.

Mr. Janken said it is unclear how much of the $95 million in estimated losses stemming from the EPIC loans will be recoverable if either TMIC is liquidated or a new rehabilitation plan is approved.

Among the approximately 100 EPIC lenders were:

- Fannie Mae, which had an undetermined amount of EPIC-related loans, a spokesman said. About 1.5% of its conventional mortgage loans in its portfolio and mortgage-backed securities outstanding, or about $3 billion, are insured by TMIC.
- Philadelphia-based Meritor Financial Group. A Meritor spokesman said that under a "best guess" estimate is that TMIC owes between $14 million and $16 million on its $64 million of EPIC loans.
- CityFed Financial Corp., based in Palm Beach, Fla., which has an exposure of $38 million and has established reserves of about 20% of this amount, or about $7.6 million. "At the present time, we have no reason to anticipate any impact," said a spokesman on the proposed TMIC liquidation.
- Buffalo, N.Y.-based Empire of America. Empire loans to EPIC totaled between $25 and $30 million. "We're fully reserved," said Myles Hannon, executive vp.

Some observers believe a TMIC liquidation would not have a major impact on the mortgage or mortgage-backed securities market.

The Federal Home Loan Bank Board, which regulates mortgages, stipulates mortgage loans must be insured if the down payment on the loan is 10% or less.

However, a board spokeswoman said in at least some cases, mortgage holders have repaid at least 10% of their principal, eliminating the need for mortgage insurance.

Lending institutions also could find replacement insurance for the loans that still must be insured, she said.

The Fannie Mae spokesman said the "vast majority" of its conventional mortgage loans are being paid as scheduled. He added that slightly more than 2% of its conventional loans covered by insurance were foreclosed in 1987, resulting in insurance claims.

"We are working on a number of ways to see what we can do to keep the insurance in effect," said the spokesman. He said these plans could include saving TMIC from liquidation, "but not necessarily."

A Federal Home Loan Mortgage Corp. spokeswoman said Freddie Mac is still in the process of gathering information on how much of its mortgages were insured by TMIC. She noted, though, that Freddie Mac is one of the "bigger players" in the secondary market, and its charter requires mortgage insurance if a down payment is less than 20%.

Tom Gillis, senior vp at New York-based Standard & Poor's Corp., who analyzes privately issued mortgage-backed securities, said the impact of TMIC's financial problems occurred with the EPIC collapse. At that time, S&P reviewed any mortgage transactions that were dependent on TMIC coverage and adjusted their ratings accordingly, he said.

Those institutions that are still rated highly do not need to rely on any payment from TMIC, Mr. Gillis said.

Mr. Gillis also noted that many major savings and loans institutions don't buy mortgage insurance now, in part because of TMIC's financial problems.

In addition, many transactions are being structured so that mortgage insurance is not needed.

S&P has given TMIC Insurance a "C" rating for its claims-paying ability and says it will lower this to a "D" if it is placed in liquidation.

Thomas W. January, a mortgage credit analyst with St. Louis-based Citicorp Mortgage, a Citicorp unit, said that about 1% of Citicorp Mortgage's 500,000 loans are insured by TMIC. He would not provide any details on its exposure in the event of TMIC's liquidation.

Citicorp Mortgage does not use insurance any more on the bulk of its new loans, he pointed out. Instead, it charges a slightly higher rate to compensate for the risk of default.

J. Robert Taylor, an attorney with North American Mortgage Co. in Houston, said the impact of TMIC's liquidation will vary depending on the size of the institution. A large institution with $1 billion in assets will be more readily able to absorb any losses than a smaller one, he said.

North American had obtained insurance from TMIC in connection with its mortgage loans, then sold the loans in the secondary market. As a result, "we are not directly impacted financially by the failure," Mr. Taylor said.

However, he added that his firm was unhappy "from a corporate standpoint" that it had arranged insurance with an insurer than can't pay now.

TMIC's liquidation will have a particular impact on savings and loans that issued mortgages in Texas, where there have been many defaults, according to Michael J. White, an attorney with Leff Thornton Katz Rees & Mocciaro in Los Angeles, who has two clients that were insured by TMIC.

Savings and loans as well as insurers that keep TMIC's heavy involvement in EPIC in mind "are less likely to put all their eggs in one basket again" as a result of the mortgage insurer's problems, predicted David Hochstim, an analyst for Shearson Lehman Hutton in San Francisco.

In addition, Ticor faces a suit filed by the First National Bank of Maryland, a unit of First Maryland Bancorp, which is the trustee for holders of EPIC securities.

The suit, filed in federal court in Los Angeles, claims that after EPIC's problems emerged, Ticor transferred TMIC's stock from its Ticor Title unit to the parent company to protect the financially healthy Ticor Title from losses. The suit also says funds were drained from TMIC to limit its ability to pay claims.

No specific dollar amount is sought in the suit.

"The suit is totally without foundation," said Erich Everbach, Ticor's general counsel. "It is also without merit and it will be defended vigorously by the Ticor companies."

Mr. Everbach said also Ticor had already injected $10 million into TMIC as of Dec. 31, 1986, and that it has agreed to inject another $10 million both this year and next year, a plan that will not be affected if TMIC is liquidated. ■

CERA proposal

Continued from page 1

on companies that treat, dispose or store hazardous waste.

A leading attorney who represents policyholders in coverage disputes supports the concept, noting it takes into account some potential problems not dealt with in the Wellington Agreement, which established the Princeton, N.J.-based Asbestos Claims Facility to help resolve the massive asbestos litigation problem (*BI*, April 9, 1984).

Insurance industry groups that will comment on the proposal say it's too early to pass judgment on the idea but say it is worth evaluating.

However, an EPA official who had not seen the proposal said the Comprehensive Environmental Response, Compensation and Liability Act of 1980, better known as the Superfund Act, already gives the agency sufficient resources to clean up hazardous waste sites.

So far, only 23 of the 950 Superfund sites that the EPA says need immediate attention have been cleaned up. While the average cost of cleaning up a hazardous waste site is $8 million, the range of cleanup costs is wide, said an EPA spokeswoman.

In addition, litigation over insurance coverage for government-ordered waste site cleanups has been increasing and is expected to continue, according to attorneys for policyholders and insurers (*BI*, Feb. 1).

For example, suits have already been filed by Shell Oil Co., Westinghouse Electric Corp. and United Technologies Corp. against hundreds of property and liability insurers, whose original policies date back decades and involve coverage for many sites in numerous states.

Because of the massive pollution claims filed in U.S. courts against property insurers, Lloyd's of London non-marine underwriters are planning to tighten the wording of the pollution exclusion endorsement in U.S. property insurance policies (see story, page 28).

But, by having "a single point for cleanup, property damage and bodily injury claims and instituting a procedure for quick and full payment from polluters, the proposed CERA program would offer a greatly improved system," Mr. Thomas said in a speech to the Connecticut Chapter of the Society of Chartered Property & Casualty Underwriters earlier this month.

"If even some percentage of the money which is currently spent on lawyers and the court system is instead funneled to the cleanup of dangerous sites and the needs of injured, innocent victims, I will consider it a success," he said.

Mr. Thomas

The amount of money policyholders, insurers, reinsurers and the federal government would contribute to CERA "obviously would be a sticky point" and "would take a great deal of discussion."

Mr. Thomas made the following suggestions for CERA's operation:

- If a policyholder and its insurers participate in the fund, CERA would reimburse the insurer for any legal costs.

If a participating policyholder's insurers are not fund participants, CERA would have subrogation rights against the insurers to seek defense costs.

- Alternative dispute resolution techniques could be used to negotiate settlements between fund participants and claimants.
- CERA would operate two funds: one to cover cleanup costs and one to respond to bodily injury and property damage claims.

Polluters that willfully violate federal environmental statutes would not be covered by CERA, even if they are CERA members.

- CERA would seek reimbursement for its costs to clean up hazardous waste site and to indemnify property damage and bodily injury claimants from non-members of the facility. CERA would be able to seek damages from non-members on a joint and several basis.

In addition to providing for hazardous waste site cleanup costs and victim compensation, Mr. Thomas said that CERA would fulfill the strict financial responsibility requirements of companies that treat, dispose or store hazardous waste imposed by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid

Continued on next page

Love Canal ruling

Continued from page 1

Love Canal site at a cost of between $26 million and $31 million, he said.

However, Occidental has proposed taking over roughly half the project at its own cost, according to Mr. Martin-Leff, who said the proposal currently is being reviewed.

The federal government estimates the Love Canal cleanup will cost federal and state agencies $250 million to $300 million.

The federal government sued Occidental, the city of Niagara Falls, Niagara County and the city school board in U.S. District Court for the Western District of New York in 1979. The suit, amended in 1983, sought to recover $45 million spent to relocate families, raze contaminated homes and monitor the site. The suit also asked that Occidental be required to establish a trust account or post a performance bond of $65 million to cover future costs (*BI*, Dec. 19, 1983).

Separately, the state of New York and a state agency sued Occidental and the city, county and school board in 1980, seeking $665 million in restitution and punitive damages.

New York and the state agency—UDC-Love Canal Inc., created to purchase contaminated homes near the landfill—were later made plaintiffs in the federal action.

The federal and state governments filed a partial summary judgment motion for a ruling that Occidental, as owner or operator of the Love Canal landfill, is strictly liable under CERCLA for their costs in responding to the pollution disaster. Occidental, however, argued that it should be relieved of liability under a provision of CERCLA that exempts corporations that can prove pollution damages are caused solely by third parties.

Occidental contended that the city, county and state caused the contamination by building around the Love Canal site after Occidental deeded the property to the local school board.

Construction of the elementary school, roads, sewers and an expressway near the site disturbed the clay cover that encased the chemical wastes and altered the drainage pattern on the site, allowing contaminants to spread into adjacent neighborhoods, Occidental argued.

Occidental also said it should not be held liable for disposal or release of pollutants that occurred before CERCLA became effective on Dec. 11, 1980, or for any governmental costs incurred at the site before that date.

Judge Curtin, however, found Occidental liable for response costs both before and after CERCLA's effective date.

"While CERCLA contains no unequivocal statement that its liability provisions apply retroactively, CERCLA's legislative history suggests that the statute was enacted as a means of compelling the waste disposal industry to correct its past mistakes and to provide a solution for the dangers posed by inactive, abandoned waste sites," Judge Curtin wrote.

The judge also rejected Occidental's argument that CERCLA's third-party defense should be applied in the case.

Under CERCLA, such a defense cannot be used when the third party allegedly responsible for pollution is an employee, agent or party with a direct or indirect contractual relationship with the defendant, the judge noted.

Occidental's sale of the Love Canal property to the local school board, and the school board's subsequent transfer of part of the property to the city of Niagara Falls, created such contractual relationships, he concluded.

Occidental "was able to control the acts of these subsequent purchasers because of the nature of its relationship with these defendants," Judge Curtin ruled.

The judge added that he would have thrown out the third-party defense even if Occidental had no contractual relationship with the school board or city.

"It is beyond dispute that (Occidental's) disposal practices were at least partially responsible for the release or threatened release of the chemicals from the Love Canal Landfill during the subsequent years," he wrote.

New York Attorney General Robert Abrams hailed the decision as a "resounding defeat" for Occidental, noting that it places the liability for Love Canal "squarely on Occidental's shoulders, where it so clearly belongs."

In a statement, Occidental said the ruling "contradicts the resolution of these problems by amicable adjustment reached in other actions involving Occidental Chemical Corp."

Occidental and some of its insurers have settled numerous personal injury, wrongful death and property damage claims brought by individuals in the Love Canal area, as well as claims brought by the federal and state governments related to two other polluted sites in the Niagara Falls area (*BI*, Jan. 16, 1984; Oct. 17, 1983).

In its statement, the chemical company also said, "Although we believe we are protected by insurance, we intend further to protect our rights by appealing this extraordinary decision."

Occidental, however, is still trying to determine the extent of its insurance coverage in court.

Last month, the company was given permission to file an amended complaint against Hartford and dozens of other primary and excess liability insurers in New York State Supreme Court for Niagara County in Niagara Falls.

The complaint seeks a declaratory judgment that the insurers must indemnify Occidental for defense costs and judgments and settlements connected to pollution at Love Canal and six other sites in the Niagara Falls area.

In addition to Hartford—Occidental's primary casualty insurer from 1942 to 1973—the suit names Continental Insurance Co.; Highlands Insurance Co.; National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc.; and Insurance Co. of North America, a CIGNA Corp. unit.

Hartford wrote a peak limit of $10 million in primary coverage, while Continental wrote a $100,000 primary layer in policy years between Dec. 1, 1973, to May 1, 1976; Highlands wrote $50,000 in primary coverage in the May 1, 1976 to April 1, 1978; and National Union wrote a $1 million primary liability policy in the 1978-1979 policy year.

The suit also names about three dozen excess insurers, including Lloyd's of London and other London market underwriters, several other AIG units and numerous additional U.S. insurers.

In addition to the federal and state actions against Occidental, the chemical company has faced cross-claims from the city of Niagara Falls and more than 1,000 personal injury claims from individuals living in the Love Canal area, the coverage suit notes.

In January 1985, Occidental settled 1,334 of the individual claims for about $20 million (*BI*, Jan. 7, 1985). An additional 87 individual claims were settled in July 1987.

The settlements exhausted the primary limits provided by Continental and Highlands as well as low-layer excess limits written by Argonaut Insurance Co., which reimbursed Occidental for $2.6 million of the $5.9 million the chemical company contributed to the settlements, the lawsuit says.

About 300 additional individual Love Canal claims are still pending.

Primary and excess insurers contributed to these settlements under reservation of rights, Occidental's lawsuit notes.

Some of the primary and excess insurers have also contributed to defense costs incurred on the individual and governmental lawsuits stemming from Love Canal, though the insurers made these contributions while reserving their right to deny coverage later, the suit says.

Occidental charges that the insurers have breached the conditions of their policies by, among other things, failing to provide an unconditional defense.

As of April 7, 1987, Occidental had suffered damages of at least $9.4 million as a result of the alleged failure of primary insurers to contribute to defense costs, while the failure of numerous excess insurers to contribute had resulted in damages of at least $2.7 million, the suit charges.

Occidental also charges that nearly all of the primary and excess insurers have breached their policies by refusing to unconditionally contribute to settlements and agree to indemnify Occidental for future judgments and settlements.

Hartford, meanwhile, is separately accused of misrepresenting the terms of its coverage.

Hartford wrote to Occidental in 1942 confirming the extension of general liability coverage to the Love Canal landfill, and two years later issued an endorsement to Occidental's policy continuing coverage for the landfill during its use as a disposal site under license from the Niagara Power & Development Co., the suit says.

In 1952, Hartford, through Occidental's broker, Marsh & McLennan Inc., confirmed it would cover any liabilities arising from Love Canal after its sale to the local school board. In 1957, the insurer also confirmed that it would cover any liabilities from the site if the school board sold part of the property to real estate developers, Occidental says.

Because of these representations, Hartford should be barred from denying coverage for Love Canal defense and indemnity claims, the suit says.

However, the insurer has breached its policies by failing to agree to cover these costs unconditionally, and Occidental had suffered resulting damages of $15.3 million as of last April 7, the suit charges.

In addition to allegations related to Love Canal, Occidental's lawsuit also charges that primary and excess insurers have breached coverage agreements at other contaminated sites in the Niagara Falls area. These include:

- The Hyde Park landfill, where Occidental disposed of chemical wastes from 1953 until 1974.

Under a 1982 settlement, Occidental agreed to undertake a containment and cleanup program and to monitor the site for 35 years. The chemical company guaranteed $10 million for construction work at the site and $5 million to cover monitoring and maintenance costs, the suit says.

Occidental had suffered $8.6 million in damages as of last April 17 as a result of the primary insurers' refusal to contribute unconditionally to defense costs related to the site, the suit charges. Occidental also had suffered damages of $17.6 million as of the same date because nearly all of the primary and excess insurers would not unconditionally agree to indemnify the chemical company for the cost of the settlement, the suit says.

- The 102nd St. landfill, where Occidental disposed of chemical wastes from the 1940s until the 1970s. Occidental has been sued by the federal government, state of New York and several individuals for pollution at the site.

Primary insurers have refused to contribute to defense of the cases, resulting in losses of $3.6 million for Occidental as of last April 7, the suit says. Nearly all of the primary and excess insurers have denied any obligation to cover defense costs or any judgments or settlements reached in any of the suits, Occidental charges.

- The so-called "S-area landfill," where Occidental disposed of wastes from 1947 to 1961. The federal and state governments sued Occidental for cleanup of the site, and a settlement was reached in 1985.

Under the settlement, Occidental agreed to pay the city and state a total of $6.1 million and to guarantee $20 million for cleanup costs and $10 million for operational costs connected with the cleanup.

Primary insurers refused to defend Occidental in the S-area litigation, resulting in losses to the chemical company of $5.4 million as of last April 7. Nearly all of the primary and excess insurers have also refused to reimburse Occidental for settlement costs, the suit charges.

- Occidental's Niagara plant site, which the state has sued Occidental to clean up. Primary insurers have refused to defend the company, resulting in losses to Occidental of $5.6 million as of last April 7, and nearly all primary and excess insurers have denied any obligation to cover defense costs, judgments or settlements, the suit alleges.
- Occidental's North Tonawanda plant, where the company disposed of wastes from 1955 until the mid-1970s. The state also has sued Occidental for cleanup of this site.

Primary insurers have refused to defend the company, creating losses to Occidental of nearly $4 million, while nearly all primary and excess insurers have denied defense or indemnity coverage connected with the site, Occidental charges.

- The Solvent Chemical plant, formerly owned by the U.S. government and operated by Occidental under goverment contract between 1951 and 1953.

In 1983, the state of New York sued Solvent Chemical Co., ICC Industries Inc. and Mader Corp., owners and operators of the plant since 1972, to clean up contamination at the site, and the three companies filed third-party complaints against Occidental.

Primary and excess insurers have refused to cover defense costs and have denied coverage for defense and indemnification, Occidental charges.

None of the primary or excess insurers has yet filed an answer to Occidental's amended complaint. ■

Pollution facility

Continued from previous page
Waste Amendments of 1984.

Under EPA rules, a company that treats or stores hazardous waste must secure insurance for sudden or accidental environmental impairment with limits of at least $1 million per occurrence with a $2 million aggregate.

Companies that also dispose of hazardous waste must buy gradual environmental impairment liability coverage with limits of at least $3 million per occurrence with a $6 million aggregate.

As an alternative to insurance, the EPA allows a firm that treats, stores or disposes of hazardous waste to demonstrate it has net working capital and tangible net worth of at least six times the required amount of coverage required.

Eugene Anderson, a partner with Anderson Russell Kill & Olick P.C., in New York, which represents policyholders in coverage litigation, said he would "wholeheartedly" support the concept of CERA and recommend that his clients consider such an alternative.

Mr. Anderson estimated that legal fees represent about 56% of the total dollar amount spent on environmental matters.

The Risk & Insurance Management Society Inc. has not yet evaluated the proposal.

But Cornelius C. Smith Jr., vp of community and employee health, safety and environmental protection for Union Carbide Corp. in Danbury, Conn., said CERA is "an idea which stimulates thought" and is "worth looking into."

However, Mr. Smith observed that since good data on how well the current pollution liability claims system is working is unavailable, a fair judgment on whether an alternative is necessary cannot be made.

Insurer groups are eyeing the proposal with interest.

Andre Maisonpierre, president of the Reinsurance Assn. of America in Washington, said he supports the concept and views the proposal as a "very good working document."

"If a proposal of this nature was adopted, one would see a substantially larger amount of funds going for cleanup without more funds being expended in total," he said.

Joseph Kopsick, vp of the National Assn. of Independent Insurers in Des Plaines, Ill., has not seen the CERA proposal. But, he agrees that while substantial sums are being spent on litigating pollution liability cases, "there's been very little of a dent made in actually cleaning up" many hazardous waste sites.

T.C. Anderson, chairman of Skanco International Ltd. in Scottsdale, Ariz. and president of the National Assn of Professional Surplus Lines Offices Ltd., added that he is "delighted to hear that somebody is coming up with some suggestions to solve this problem."

Tom O'Day, associate vp of the Alliance of American Insurers in Washington, D.C., said the group does not yet have an opinion on the proposal but that it "certainly looks like something that needs to be looked at."

However, Robert Mason, chief of the guidance section in the office of waste programs and enforcement of the EPA, said that Congress has given the agency adequate tools to handle cleanups of hazardous waste sites.

Under the Superfund Act, the EPA may order property owners or users to clean up a hazardous waste site. Alternatively, the EPA can conduct its own cleanup activities at sites and then sue companies to recover the expense of the cleanup.

The cleanup of hazardous waste sites involving unidentifiable or insolvent polluters is financed by the federal government.

The costs for cleanup of the "orphaned" sites for the first five years of the Superfund program were covered by a $1.6 billion trust fund. But, in October 1986, Congress enacted the Superfund Amendments and Reauthorization Act, which increased the size of the trust fund to $8.5 billion.

While the EPA's Mr. Mason said he had not seen the CERA plan, he said it sounds similar to proposals made by the insurance industry but rejected by Congress during its two-year debate on Superfund reauthorization.

Mr. Thomas admitted adoption of CERA would require "amending Superfund legislation to put this in to channel the liability."

Eugene Anderson, the policyholders' attorney, observed that if the CERA concept is adopted, "policyholders and the insurance companies could gain valuable lessons from the Wellington experiment," referring to the Asbestos Claims Facility.

In June 1985, 50 insurers and policyholders involved in asbestos litigation signed the Wellington Agreement. The expressed hope of Asbestos Claims Facility members was to resolve more fairly and efficiently the huge backlog of asbestos lawsuits and the new lawsuits filed each month.

The agreement settled insurance coverage disputes stemming from bodily injury claims and provides a joint defense against claims brought by asbestos victims.

Each asbestos producer in the facility agreed to pay a specified percentage of all asbestos injury claims settled through the facility. Those percentages, which are a closely guarded secret, were based on the producers' past settlement and litigation history.

However, plaintiffs' attorneys have criticized the facility, contending it was set up primarily to reduce defendants' costs and to encourage litigation rather than settlements.

Last April, a class-action suit was filed on behalf of all current and future asbestos claimants against the facility, accusing it and its members of unlawfully combining to eliminate competition in settling asbestos cases and to impose arbitrary limits on members' liability (*BI*, April 27, 1987).

The lawsuit is still pending, according to an official of the 52-member facility.

Furthermore, several producer-members have threatened to withdraw from the facility, claiming they are paying an unfair portion of the asbestos injury claims settled by the facility.

And, reinsurers worldwide are disputing the extent to which they should be liable for claims paid by the facility since they never were a party to the Wellington Agreement that created the facility and are not bound by the terms under which the facility pays claims to the extent the terms fall outside the scope of the reinsurance contracts (*BI*, Nov. 16, 1987).

Eugene Anderson said that CERA's inclusion of reinsurers could help prevent this problem.

Another problem with the Asbestos Claims Facility is it "had an extraordinarily difficult job finding a strong manager," he said. Mr. Thomas' proposal to have the EPA manage CERA is an "A-1 good suggestion," he added. ■

Update

Hertz, Avis sued over CDWs

Continued from page 2
A Hertz spokeswoman declined to comment because the litigation was pending. An Avis spokesman also declined to comment.

The National Assn. of Insurance Commissioners is studying CDWs and other rental car issues in the wake of an NAIC subgroup report in December that strongly criticized insurance practices in the rental car industry (*BI*, Dec. 21, 1987; March 9, 1987).

Britain eyes class-action suits

LONDON—The head of the judiciary in England and Wales is recommending the government allow plaintiffs who receive government-provided legal aid to take part in multiple-party litigation for the first time.

Lord Mackay of Clashfern last week submitted amendments to the Legal Aid Bill "designed to establish a new procedure by which the legal-aid aspects of actions raising common problems might be handled more effectively," said a statement from the Lord Chancellor's Department.

The amendments, which would allow class-action suits in the British courts, are due to be debated this week in the House of Lords, Parliament's upper house.

Suit against Ideal dismissed

NEW YORK—A shareholder suit brought three years ago in U.S. Distict Court in the aftermath of Ideal Mutual Insurance Co.'s liquidation has been dismissed.

Judge Charles Haight Jr. dismissed the suit because the charges against the defendants were not specific enough to allow them to defend themselves, according to a spokesman of the New York Insurance Department.

The suit was brought by Meyer Kimmel, a stockholder in Optimum Holding Corp., Ideal's downstream holding company that was 51% owned by Ideal and 49% publicly held (*BI*, Feb. 11, 1985).

Named as defendants were Ideal Mutual, Optimum, its directors and officers and accountant Arthur Andersen & Co. The Insurance Department was brought into the suit as Ideal's liquidator.

Mr. Kimmel accused the defendants of violating federal securities laws and artificially inflating Optimum's common stock price, among other charges.

Judge Haight ruled that the suit can be refiled, although Ideal should not be named as a defendant because its liquidation status protects it from being sued.

Mr. Kimmel's attorney could not be reached for comment about whether he intends to refile the suit.

California toxic warning law

SAN FRANCISCO—California business owners that use potentially harmful chemicals face increased liability if they fail to comply with a tough new law that took effect last week.

Proposition 65, approved by California voters in 1986, forces all businesses in California employing 10 or more people to issue "clear and reasonable" warnings if they expose their employees or the public to any one or more of 29 chemicals that pose a significant risk of cancer or birth defects. The chemicals requiring warnings include: arsenic, benzene, chromium compounds, ethylene oxide, vinyl chloride, lead and asbestos.

And, beginning in eight months, businesses will be required to reduce the levels of listed chemicals they release.

Businesses convicted of violating the requirements can be fined up to $2,500 for each day of violation.

And, some groups contend that if a company fails to issue adequate warnings, it could be forced to pay damages even if a claimant does not show that he or she was injured by exposure to the toxic substance.

Plaintiffs "just have to show a willing exposure," said Nancy Hayes, assistant counsel for San Francisco-based Environmental Working Group, a coalition of agriculture firms and businesses that has worked with state officials on implementation of the new law.

She also said that some of the allowable levels of the listed chemicals were "absurdly low." For example, the permissible levels of asbestos are below the ambient levels in the atmosphere in urban areas, she said.

But Al Meyerhoff, senior attorney for the Natural Resources Defense Council in San Francisco, says the law should not launch a flurry of suits. "I don't think you will see too many frivolous lawsuits because frankly this type of litigation is very expensive," he said.

The cost to state and local agencies of enforcing the new law could exceed $1 million annually, according to a study by the state legislative analyst's office. Part of the costs would be paid by fines collected under the measure.

Grocers, gas station owners, manufacturers and other retailers in California have begun to post signs warning workers and clients about toxic wastes.

EC critical of British directive

LONDON—Lord Cockfield, vp of the European Community Commission, has warned Britain's Trade and Industry Minister that the U.K. Consumer Protection Act is not in line with the EC's product liability directive, a spokesman from the Department of Trade confirmed last week.

The Consumer Protection Act takes effect tomorrow, making Britain the first European Community member to enact the EC directive that imposes strict liability on manufacturers.

However, Lord Cockfield said the wording of Britain's version of the legislation provides manufacturers with a more lenient state-of-the-art defense than intended in the EC's directive.

If the defense is not reworded, Britain could be challenged in the European Court of Justice, an EC lawyer says (*BI*, Oct. 5, 1987).

Tax reform, other factors to pinch insurer cash flow

By MYRON M. PICOULT

Special to Business Insurance

It seems rather obvious that management commentaries about a 'renewed commitment' to underwriting has some gaps. While many of the executives at the corporate level apparently want and believe in such a commitment, it has not been uniformly transmitted to the people in the trenches.

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It is somewhat ironic that almost since the beginning of the last property/casualty underwriting upturn, industry bulls and bears argued about the longevity of the underwriting cycle. For the most part, the debate centered on whether 1988 or 1989 would be the peak of the tight commercial insurance market.

It now appears that both factions were wrong.

Mr. Picoult

Based on a review of the fourth-quarter results for most of the major property/casualty insurance companies and preliminary data from A.M. Best Co.'s yearly Review and Preview report, it appears that the peak of this last underwriting cycle occurred in 1987!

From our perspective, the cycle seems to have aborted about six months sooner than we expected.

However, we have and continue to believe that the downturn in this cycle will prove to be more in line with past trends and will not be a mirror image of the last debacle that ended in 1984.

A multitude of factors, primarily the changes related to the property/casualty insurance industry's tax position, the tone of the reinsurance market, the ticking time bomb of reinsurance recoverables and a lower interest rate structure all should serve to rein in the industry's propensity for lunacy.

However, we were clearly disappointed with the industry's 1987 fourth-quarter numbers. The disenchantment covers premium gains (or lack thereof) and "soft" underwriting results. It seems rather obvious that management commentaries about a "renewed commitment" to underwriting has some gaps. While many of the executives at the corporate level apparently want and believe in such a commitment, it has not been uniformly transmitted to the people in the trenches.

Furthermore, there is obviously some discrepancy between the pricing trends articulated by insurance company managements, the doomsday scenarios laid out by some brokers and the interim results reported by the insurers.

Few property/casualty insurers seem to be writing much new business. Queries on who is writing new business basically draw blanks. With respect to renewal business, it also seems obvious that many underwriters are being more aggressive on pricing in their zeal to retain existing business than they admit.

In short, everybody is in the water up to their ankles and it is rising quickly to the midcalf area. We still believe some insurance company managements will have the intestinal fortitude to really shrink their volume meaningfully if pricing is sloppy. Others will wallow in the muck.

Today's price levels seem to be palatable given the past or the traditional industry operating environment. However, when the effects of the new tax law are factored in, we believe that current price tags are deficient. Our models indicate that tax payments (on an annual basis) will average from 5% to 20% of a company's operating cash flow. Those are big numbers by any standard.

But, before we discuss why we see a severe cash-flow squeeze for the property/casualty industry, we thought some insights into our updated industry earnings model would be fruitful.

Our original prognostications called for "flat" stock industry earnings in 1988 and 1989 relative to the final 1987 figures. The fourth-quarter numbers have resulted in a revision. We now anticipate a 6% decline in property/casualty insurers' 1988 operating earnings and a 20% decline in operating earnings in 1989. While these earnings are below what we originally hoped to see, the real problem facing the industry is a severe cash-flow squeeze.

As previously noted, the biggest impact is going to come from the full implementation of the Tax Reform Act of 1986, which will result in tax payments severely squeezing annual cash flow. In fact, for some property/casualty insurers, mostly small- to medium-sized entities, their tax bills actually could exceed statutory income.

Other factors that will pressure cash flow in the months ahead include higher retentions, the prospect of more normal catastrophe loss experience, slowed premium growth, assessments from guaranty funds and assigned risk losses and a lower yield curve.

Increased retentions worked very well as long as losses did not appear. Insurers are now finding the flip side of the equation as the losses surface. This will have even more meaning down the road as reinsurance recoverable problems become increasingly evident.

With respect to catastrophe losses, everyone acknowledges that losses over the past two years were unusually low. It should be noted that in January 1988 catastrophe losses totaled $88 million, compared with only $10 million in January 1987 and $86.5 million for the entire first quarter of last year.

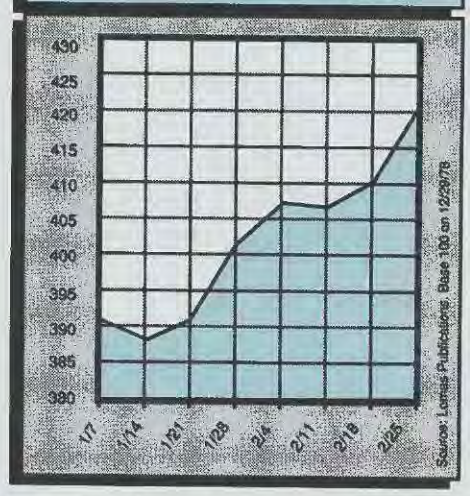
More attention also must be paid to insolvency problems and assigned risk losses facing the industry. Our guess is that this "due bill" could amount to almost $2.8 billion in 1988 for the industry as a whole. This translates into about 1.6 points added to the industry's loss ratio.

Finally, lower yields will pressure investment income growth.

The industry's integrity is obviously spotty. If managements do realistically face up to the cash-flow pressures we envision, integrity could quickly take a back seat to insolvency headlines. ■

Myron M. Picoult is senior vp and senior insurance analyst with Oppenheimer & Co. in New York. He is the past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts.

BI Insurance Index



Insurance industry stocks advanced last week as the *Business Insurance Index* jumped 10.6 points to 420.8 on Feb. 25, from 410.2 on Feb. 18. Advancing issues were led by: Belvedere Corp., up 12.1%; Provident Life & Accident Insurance Co., up 10.1%; SCOR U.S. Corp., up 10%; Hilb, Rogal & Hamilton Co., up 9.6%; Baldwin & Lyons Inc., up 9.1%; and Argonaut Group, up 8.6%. Declining issues last week were led by: SAFECO Corp., down 3.8%; Zenith National Insurance Corp., down 3.5%; Travelers Corp., down 3%; American International Group Inc., down 2.6%; Aetna Life & Casualty Co., down 2.4%; and Farmers Group Inc., down 2.3%. Issues showing the most activity during the period were: Farmers Group Inc., 4.5 million shares traded; Sears, Roebuck & Co. (Allstate Insurance Group), 3.8 million shares traded; Continental Corp., 3.4 million shares traded. The *Business Insurance* Index gained 2.6% for the period, performing ahead of the leading market indicators: the Dow Jones 30 Industrials gained 31.2 points, a 1.6% rise; the New York Stock Exchange Composite climbed 2.2 points, a 1.5% rise; and the Standard & Poor's 500 rose 3.7 points, a 1.4% increase.

British Issues

Feb. 25 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	323	13.2	17.8	5.5	328—312
Gen! Accident	878	11.6	38.3	4.4	881—839
Gdn Royal Exch	892	13.1	46.6	5.2	896—874
Royal	403	10.1	21.2	5.3	406—389
Sun Alliance	891	13.9	32.2	3.6	894—837
Brokers					
CE Heath	377	14.0	34.5	9.1	378—375
Hogg Robinson	140	10.8	9.6	6.8	141—140
JH Minet	478	17.4	12.9	3.0	478—475
Sedg Grp	209	13.1	16.4	8.1	213—209
Willis Faber	218	12.5	14.8	6.8	222—218

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

BI Industry Stock Report

FEBRUARY 25, 1988 — 2/19/88 THRU 2/25/88

BROKERS		Price	Weekly % change	Year to Date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt/Bk. value
Alexander & Alexander Svcs	NYSE	20.88	5.7	17.6	32.00	15.88	264	1.00	4.8	13.6	3.61	5.78
Baldwin & Lyons Inc.	OTC	15.00	9.1	25.0	27.00	12.00	1	0.20	1.3	5.7	16.40	0.91
Corroon & Black Corp.	NYSE	33.25	7.7	17.7	37.50	22.00	150	0.84	2.5	15.8	6.82	4.88
Gallagher Arthur J & Co.	NYSE	14.75	3.5	-7.8	31.00	13.88	31	0.48	3.3	10.2	4.81	3.07
Hall Frank B. & Co.	NYSE	3.25	0.0	12.8	19.00	2.50	131	0.00	0.0	10.2	0.00	N/A
Hilb, Rogal & Hamilton	OTC	11.38	9.6	16.7	11.75	7.25	39	0.00	0.0	10.2	0.00	N/A
Lawrence Ins. Group	AMEX	8.88	-1.3	31.6	14.75	6.25	3	0.32	3.6	10.0	3.40	2.61
Marsh & McLennan Cos. Inc.	NYSE	50.75	3.3	2.5	72.00	43.75	480	2.40	4.7	12.5	7.27	6.98
Poe & Assoc Inc.	OTC	7.00	3.7	0.0	13.25	6.75	0	0.40	5.7	6.8	0.57	12.28
BROKERS	AVERAGE		5.3	10.6					2.8	10.7		
CONGLOMERATES & HOLDING COMPANIES												
Berkley W.R. Corp.	OTC	27.50	3.8	14.6	37.00	18.75	176	0.28	1.0	6.9	13.72	2.00
Berkshire Hathaway Inc. DEL	OTC	3100.00	0.0	5.1	4400.00	2510.00	84	0.00	0.0	19.5	62.53	3.22
CIGNA Corp.	NYSE	46.63	-2.1	6.3	69.50	41.25	1368	2.96	6.3	5.7	50.12	0.93
CNA Fin'l Corp.	NYSE	57.50	-1.3	3.4	66.50	47.00	198	0.00	0.0	8.8	42.71	1.35
General Re Corp.	NYSE	53.13	-1.2	-4.9	68.88	46.00	904	1.20	2.3	11.1	26.60	2.00
ITT (Hartford Group)	NYSE	46.13	0.3	2.5	66.38	41.88	2643	1.25	2.7	9.0	44.08	1.05
Sears Roebuck & Co. (Allstate)	NYSE	35.75	-0.7	6.3	59.50	29.75	3753	2.00	5.6	8.2	32.94	1.09
Transamerica Corp.	NYSE	33.25	-1.1	11.8	51.38	22.63	1035	1.84	5.5	6.1	30.32	1.10
CONGLOMERATES	AVERAGE		-0.3	5.6					2.9	9.4		
INSURERS												
Aetna Life & Cas Co.	NYSE	46.25	-2.4	2.2	68.13	43.50	966	2.76	6.0	6.2	44.75	1.03
American General Corp.	NYSE	33.88	-1.1	6.7	44.75	27.25	907	1.40	4.1	8.9	27.13	1.25
Amer Heritage Life Invt	NYSE	24.88	0.0	2.6	34.00	23.00	7	0.96	3.9	11.6	21.70	1.15
Amer Indty Fin'l Corp.	OTC	9.50	4.1	5.6	19.00	7.75	5	0.56	5.9	11.6	20.30	0.47
American Int'l Group	NYSE	56.50	-2.6	-5.8	83.75	53.50	1680	0.30	0.5	10.5	29.02	1.95
Aneco Reins Ltd.	OTC	3.25	0.0	-3.8	4.38	2.13	5	0.00	0.0	10.5	1.93	1.68
Aon Corp.	NYSE	26.50	4.4	15.8	29.88	20.50	361	1.20	4.5	9.5	15.23	1.74
Argonaut Group	OTC	41.25	8.6	38.7	52.13	21.00	475	0.00	0.0	7.4	27.54	1.50
AVEMCO Corp.	NYSE	23.25	6.9	18.4	25.25	13.25	103	0.28	1.2	12.0	8.50	2.74
Belvedere Corp.	AMEX	5.75	12.1	31.3	9.13	4.00	20	0.04	0.7	13.7	7.65	0.75
Business Mens Assurn Co.	OTC	27.50	4.8	2.8	48.25	25.25	80	1.20	4.4	74.3	27.39	1.00
Chubb Corp.	NYSE	60.50	-1.7	8.3	73.50	50.88	463	1.88	3.1	7.3	39.52	1.53
Continental Corp.	NYSE	39.50	0.6	1.9	54.88	30.50	3381	2.60	6.6	7.3	41.62	0.95
Durham Corp.	OTC	27.75	1.8	29.1	34.00	20.00	37	0.92	3.3	23.7	26.93	1.03
Farmers Group Inc.	OTC	59.00	-2.3	46.6	63.25	37.75	4464	1.44	2.4	15.2	22.15	2.66
Fireman's Fd Corp.	NYSE	28.50	0.4	9.6	42.75	24.13	716	0.50	1.8	31.3	29.81	0.96
Fremont Gen Corp.	OTC	12.00	2.1	24.6	20.50	7.88	179	0.60	5.0	31.3	16.75	0.72
Home Group Inc.	NYSE	13.13	0.0	10.5	24.88	10.50	228	0.20	1.5	2.7	17.65	0.74
Hanover Ins Co.	OTC	25.50	0.0	9.7	37.25	21.38	70	0.36	1.4	5.4	21.16	1.21
Harleysville Group Inc.	OTC	15.75	-1.6	20.0	19.38	12.00	30	0.55	3.5	7.7	15.12	1.04
Hartford Steam Boiler Insp	OTC	28.25	2.7	22.8	36.63	20.25	97	1.00	3.5	10.8	11.87	2.38
Kans City Life Ins	OTC	27.00	0.9	2.9	31.50	21.50	0	0.00	0.0	10.8	0.00	N/A
Kemper Corp.	OTC	22.00	-1.1	7.3	38.75	19.25	1082	0.72	3.3	6.9	27.11	0.81
Liberty Corp. S.C.	NYSE	38.63	0.7	8.8	53.00	32.50	8	0.80	2.1	14.7	20.90	1.85
Lincoln Nat'l Corp.	NYSE	47.13	4.7	17.4	60.50	35.75	365	2.36	5.0	9.1	44.85	1.05
NAC Re Corp.	OTC	22.25	2.3	25.4	32.25	17.50	14	0.00	0.0	15.3	19.43	1.15
Nobel Ins Ltd.	OTC	8.50	3.0	-2.9	18.50	7.75	26	0.40	4.7	40.5	9.37	0.91
Northwestern Nat'l Life	OTC	27.38	0.5	19.7	32.38	20.75	234	0.96	3.5	7.4	35.18	0.78
Ohio Cas Corp.	OTC	36.75	7.3	1.4	49.25	33.50	455	1.88	5.1	8.5	30.94	1.19
Old Rep Int'l Corp.	OTC	24.63	0.0	23.2	33.63	18.88	88	0.74	3.0	5.4	19.80	1.24
Orion Cap Corp.	NYSE	15.63	0.8	15.8	31.00	11.00	77	0.76	4.9	5.4	9.39	1.66
Phoenix Re Corp.	OTC	8.00	3.2	23.1	14.63	5.00	86	0.00	0.0	5.0	10.15	0.79
Protective Corp.	OTC	14.50	6.4	18.4	21.25	11.38	102	0.70	4.8	14.2	16.51	0.88
Provident Life & Acc Ins Co.	OTC	21.75	10.1	39.2	28.75	14.25	553	0.84	3.9	54.4	27.00	0.81
St. Paul Cos. Inc.	OTC	46.25	-2.1	0.5	60.00	40.25	1315	2.00	4.3	6.8	36.34	1.27
SAFECO Corp.	OTC	25.50	-3.8	-8.1	38.00	24.38	1522	0.96	3.8	8.2	22.33	1.14
SCOR US Corp.	OTC	8.25	10.0	-10.8	16.25	5.00	126	0.00	0.0	6.3	8.08	1.02
Seibels Bruce Group Inc.	OTC	13.25	8.2	17.8	19.00	9.75	77	0.80	6.0	8.8	12.88	1.03
Selective Ins Group Inc.	OTC	20.75	-1.2	9.2	27.50	17.25	165	1.08	5.2	5.5	19.47	1.07
Statesman Group Inc.	OTC	4.63	2.9	-1.3	3.50	1.69	209	0.05	1.1	5.5	5.19	0.89
Tokio Marine & Fire Ins	OTC	80.50	3.5	22.2	103.38	50.75	55	0.19	0.2	68.2	0.00	N/A
Torchmark Corp.	NYSE	29.75	3.5	21.4	36.75	21.75	395	1.00	3.4	10.0	13.01	2.29
Travelers Corp.	NYSE	36.25	-3.0	3.2	52.63	30.75	680	2.40	6.6	8.8	46.68	0.78
Trenwick Group Inc.	OTC	11.00	8.6	7.3	19.13	8.88	66	0.00	0.0	10.5	14.65	0.75
United Fire & Cas Co.	OTC	24.25	-1.0	-6.7	33.00	20.25	175	0.96	4.0	6.5	18.32	1.32
United States Fid & Gty	NYSE	33.00	1.5	15.8	48.75	26.25	1427	2.48	7.5	6.7	22.36	1.48
UNUM Corp.	NYSE	22.50	4.7	21.6	31.38	15.50	239	0.40	1.8	12.9	28.84	0.78
USLIFE Corp.	NYSE	34.88	3.7	22.4	47.63	26.75	191	1.28	3.7	8.9	43.09	0.81
Washington Nat'l Corp.	NYSE	27.25	1.9	14.1	37.88	19.25	15	1.08	4.0	21.5	32.80	0.83
Zenith Nat'l Ins Corp.	NYSE	17.25	-3.5	15.0	24.00	13.50	175	0.80	4.6	8.3	12.26	1.41
INSURERS	AVERAGE		2.2	13.2					3.2	14.5		
ALL COMPANIES	AVERAGE		2.3	12.0					3.1	13.5		

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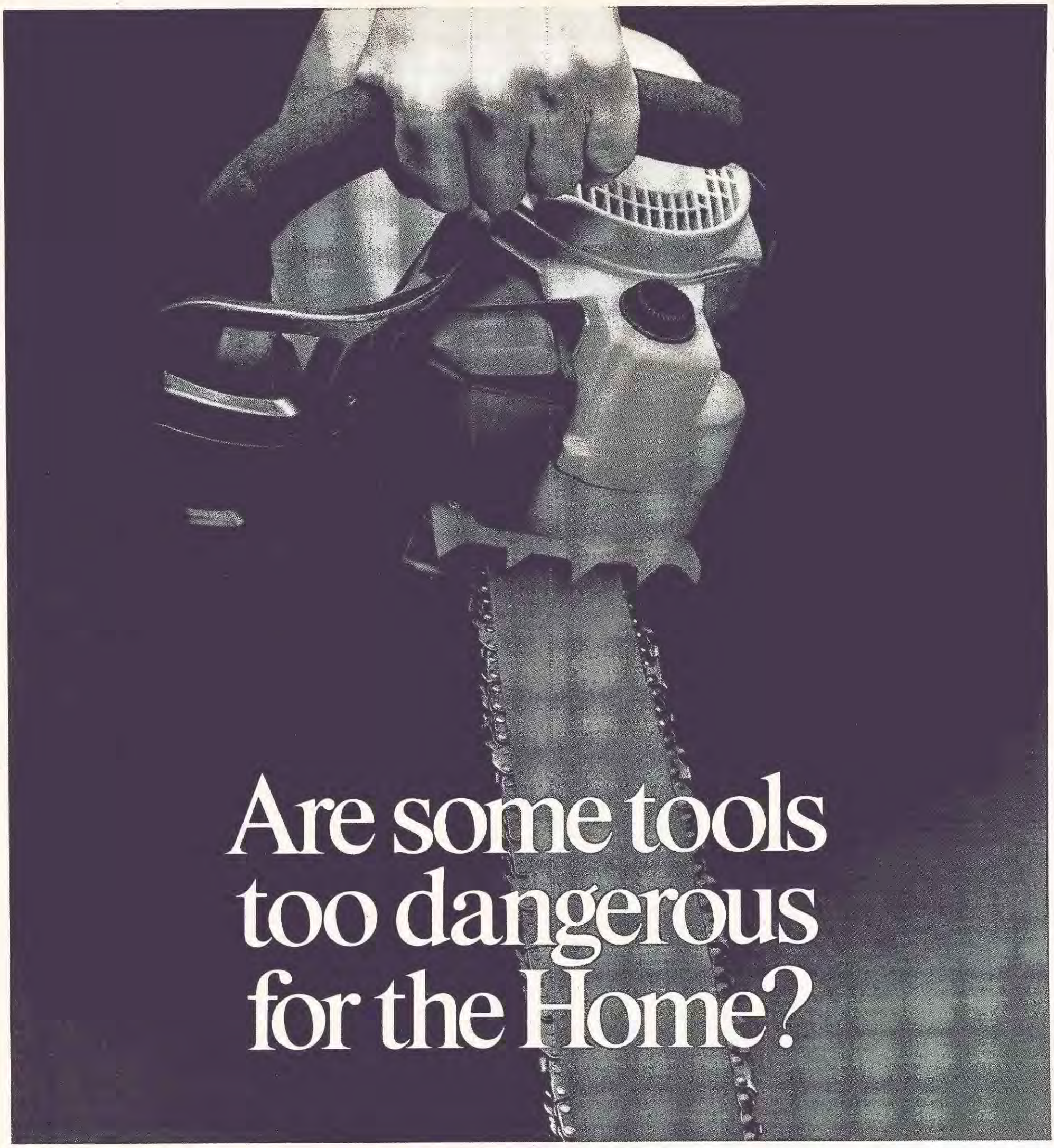

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