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business insurance

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Banks are checking all walk-in customers

By ELISABETH M. WECHSLER

CHICAGO—Harris Bank & Trust Co., the third largest bank based here, instituted on January 26 a systematic check of customers' parcels and purses brought into its lobby in response to a major bomb threat.

A spokesman for the bank said he did not know if the procedure would become a common security practice in the future, nor would he comment on how long the security measure would be continued for this particular bomb threat.

Continental Illinois Bank & Trust Co., the city's largest bank, suffered bomb damage last year along with other companies here. Since then, it has set up a similar procedure to search parcels and hand bags brought into its lobby "when the circumstances indicate that extra precautions need to be taken," said a bank spokesman.

Harris Bank's lobby bustles with downtown crowds.

"The New York banks have been using strict entry procedures since the early 1970s on a consistent basis," he continued. "We believe we have set up reasonable standards for entrance to the building to protect ourselves and our customers."

One source observed: "For all I know the banks may go toward an airport-type security system, but we don't plan it."

The CNA Insurance building here, uses a control entry system in which visitors must sign in and receive passes before they are allowed upstairs. Employes have photo ID cards.

Director of Security Don Drever commented that several factors prompted CNA to set up controlled entry in June, 1975.

"Many floors are wide open when you get off the elevator and some records are accessible," Mr. Drever said. He estimates that theft and molesting crimes are reduced 70% with this type of controllec entry security system.

Still, he said he is hesitant to conclude that a security system like CNA's or like those in bank lobbies and airports deter crime by themselves.

"Crimes run in vogue. Because of stringent measures at airports, hijackings have stopped. But if someone wanted to hijack an airplane, he could hold a dinner fork to the stewardess' ribs and force a hijacking. Maybe the precautions deterred some hijackers but that's not the whole reason why they stopped," Mr. Drever pointed out.

He also cautioned against the feasibility of setting up a security system like CNA's in a building with many different corporate tenants. "It's very time-consuming and could turn tenant prospects away from moving into a buildirg with controlled entry. ■

A&A picks up Eastern account; risk mgr. leaves

By MARIE KRAKOWIECKI

NEW YORK—Eastern Airlines Inc. switched brokers on its valuable aviation hull and liability account, *Business Insurance* learned.

Effective February 8, Alexander & Alexander took over the business from Marsh & McLennan, which is said to have handled it for Eastern since the days of Eddie Rickenbacker, World War I flying ace who was Eastern's president in 1938, and later its chairman.

The shuffle, which sent shock waves through aviation brokerage circles, was not the only insurance-related change at Eastern. Richard V. Porrett, director of pensions and insurance, left the airline at approximately the same time the account was being moved in middle to late January.

He accepted a similar position with The Great Atlantic & Pacific Tea Co. (A&P). At this writing, there is no replacement for him at Eastern.

Eastern is in the process of moving its entire New York treasury division (to which Mr. Porrett's 15-member staff belonged) to Miami, and Mr. Porrett was reportedly unwilling to relocate. Mr. Porrett was vacationing in Germany at presstime, and could not be reached for comment either on his job change or the role, if any, he played in moving the aviation account to A&A.

The account was written on a two-year contract, and is worth a total of $17 million in premiums, split into two annual portions of $8.5 million each.

The aviation underwriter said to have the largest share of the risk is in the French market. It is Paris-based Robert Malatier. Also participating in the risk are Atlanta-based Southeastern Aviation Underwriters (SEAU) and the United States Aircraft Insurance Group (USAIG). Associated Aviation Underwriters (AAU) is not thought to have any significant piece of the business.

Observers said the switch was made because of a reduction in rates offered by Alexander & Alexander. But they pointed out that the process was heated up by pressure on Eastern from aviation underwriters during the bidding.

By presstime, Eastern treasury officials did not return calls to their offices, and a Marsh & McLennan official familiar with the situation was tied up in meetings and could not comment. Richard Lynn, A&A vp and account executive on Eastern's aviation account, would not comment.

So there was no "official" version of the events that led Eastern to sever its long-standing relationship with M&M. But according to aviation market sources, Eastern originally attempted to have both Marsh & McLennan and Alexander & Alexander handle bids on the aviation account.

Eastern gave limited letters of authority to each broker. M&M was authorized to approach AAU and the London market for quotes. A&A was authorized to approach the French market and USAIG.

But at that juncture, according to expert brokerage and underwriting sources, at least one major aviation underwriter balked at having two brokers working on the same piece of business.

They said for a risk that large, with vertical participation, they would work with only one broker for Eastern or they would not quote at all. Eastern was at a disadvantage in the face of such resistance, because of its recent loss experience which has been "unbelievably bad," according to a leading aviation insurer.

For instance, both AAU and USAIG have been involved in major disasters from Eastern air crashes within the past three years. AAU insured the largest share

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Health insurance cost control is possible by elective surgery curbs

By MARGARET LeROUX

NEW YORK—Requiring a second medical opinion on elective surgery could save group health plans millions of dollars, a House subcommittee investigating unnecessary surgery concluded.

The committee cited the study of a New York labor union pilot program of mandatory consultation on elective surgery in which it was found that 17% of the operations recommended by the first physician were discouraged by the consulting doctor.

Projecting this percentage to the approximately 14 million elective operations performed in acute-care hospitals in the U.S. in 1974, the subcommittee estimated that 2.4 million of them were unnecessary. The cost of the unnecessary surgery, the subcommittee said, was $3.9 million.

The labor union was just one of a number of group health plans in New York with pilot programs of surgery consultation.

Dr. Eugene McCarthy, on the staff of Cornell University Medical College, studied "nine or 10 groups" totalling approximately 400,000 subscribers, he told *Business Insurance*. In the groups where the consultation for elective surgery was on a voluntary rather than mandatory basis, he found a much higher rate—35% of surgeries—deemed unnecessary, he said.

Dr. McCarthy's findings have elicited interest in the elective surgery consultation program from groups in New Jersey and Delaware.

"We were impressed with the figures from the pilot programs in New York," said Arnold R. Olsen, director of insurance coverage for the state. "And at this point we're willing to consider any cost-containing measures," he added emphatically.

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Blasting Assn. eyes risk pool—Page 4

Ca. clinics' search for insurer ends at Glacier

By JOANNE GAMLIN

LOS ANGELES—Health clinics in California, including the 30 or so "free" clinics which are members of the Southern California Council of Free Clinics, have had their professional malpractice insurance placed with Glacier General Insurance Co.

The coverage, until the transfer, had been with Signal Insurance Co., which is currently in conservatorship.

The move to Glacier General was negotiated by Penn General Agencies in conjunction with Peter Sansome of the Sansome Agency.

Mr. Sansome, who said that it took months to put the new malpractice program together, has had long experience with insuring the clinics.

He told *Business Insurance* that the premiums under the new program are about 30% to 35% higher than they were with Signal Insurance.

A spokesman for one of the better known "free" health clinics in West Hollywood said that premiums on the group's malpractice coverage from Signal were expected to rise from $7,000 in 1975 to $26,000 is 1976, a percentage increase that rivals the 327% boost required of Southern California physicians by a unit of The Travelers Insurance Co.

Barbara Logsdon, administrator for the West Hollywood clinic, said that the boost was anticipated despite the fact that her clinic had had a good loss ratio. She said that since 1971 it has been named in only one lawsuit. That case, in which the clinic was one of many John Doe defendants, is still unsettled. ■

Eastern Airlines . . .

Continued from page 1

of the risk when an Eastern jumbo jet crashed in the Miami Everglades in December 1972, killing 101. AAU has already paid out a large percentage of some $32 million in settlements (*BI*, January 26).

USAIG had a large portion of the coverage for an Eastern Boeing 727 which crashed in high winds at Kennedy International Airport in July of last year, killing 113 (*BI*, July 14, 1975).

The result, from the description drawn by sources, was a seller's market, not a buyer's market, and Eastern was forced to go along with the one-broker arrangement.

One aviation insurer whose company deliberately stayed away from the Eastern business because it thought the broker situation "was so explosive," said he would consider it "folly" for a carrier to reduce Eastern's rates given its experience.

But, he added, somehow A&A's Mr. Lynn managed to come up with a slight reduction in rates from what M&M could offer. The financially-troubled airline, forced to choose just one broker, decided to go for the one with the pricing advantage, and A&A won the account.

Although it lost Eastern's aviation business, M&M still remains broker of record for much of Eastern's other insurance programs. And while its dealings with the airline have not gone untouched over the years, it has managed to hold onto the bulk of the business. A former M&M employe familiar with the Eastern account put it this way: "A while ago, Marsh had 100% of Eastern's business, including group life and health. Then, at one point, the bonds were moved to a local brokerage firm in Brooklyn.

"About a year ago, Eastern shifted its employe benefits to Johnson & Higgins. I don't know what happened there, but the benefits were subsequently moved back to Marsh & McLennan."

A&A's initial foot in the door with Eastern apparently can be traced to dogged efforts by Richard Lynn to capture the hull and liability account.

As with any large account, the Eastern aviation business was an attractive target, and other brokers have been courting the airline for years trying to win its business. But Mr. Lynn has been angling for it longer, or at least more persistently, than anyone else, aviation sources said.

"This is quite a feather in Dick's cap," a rival broker said, half enviously. "He's been knocking on Eastern's door for years, but nobody ever thought he would manage to walk away with the account. These things just don't happen in the aviation business."

A&A has a large Miami office which will handle some servicing of the account, but a source at the brokerage said the New York office will remain the principal point of contact for the account, through Mr. Lynn.

Eastern's hull and liability account is said to be the largest piece of aviation business A&A has picked up to date, although this was not officially confirmed. It is not the only aviation account A&A handles, however. Among the broker's other clients are American Airlines and McDonnell-Douglas Corp. ■

Earthquake risk in Japan up to $4 bill.

LONDON—Earthquake insurance cover for industrial risks in Japan now totals $4 billion, Shin Adachi, of the Tokyo Fire & Marine Insurance Co. told an insurance conference in London.

More than $1.3 billion of this is concentrated in the Tokyo area, where there is also more than $2.6 billion in extra cover carried under ordinary commercial fire policies.

Total exposure in Japan for earthquake damage to domestic property and contents now reaches $14 billion, with half of this in the residential zone around Tokyo.

Premium income for industrial quake risks is running at $22 million a year, he added, with the average rate for cover being 5.4%.

Mr. Adachi said: "Fifteen per cent of the original acceptances is kept in the Japanese market, and the rest reinsured overseas. This may cause criticism on the ground that the domestic retention is too low, but you should not lose sight of the fact that Japanese insurers have extra commitments under personal lines business.

"Earthquake cover for these household risks was introduced with the support of the government in 1966, when the Japan Earthquake Reinsurance Co. was formed to channel the program."

To cope with the demand for industrial cover, the Japanese insurance groups have split the country into twelve zones so as to control the accumulation of exposures. ■

Royal Industr. slates captive to underwrite products liability risk

SANTA MONICA, CA.—Royal Industries Inc. incorporated a captive insurance subsidiary, Arroyo Insurance Co., which was licensed to do business in Colorado January 28.

Royal Industries is a diversified manufacturer with 1974 sales of $214 million. The company has numerous divisions. It is a producer of truck trailers, tanks for transport and storage, railroad car equipment, automotive industry products and automotive service equipment, safety equipment including motorcycle helmets, vinyl traffic safety products, vinyl tops for autos, nuclear power equipment and other energy products, and farm machinery.

The captive, Arroyo, initially will be used to reinsure workers' compensation risks, auto liability, general liability (including products liability) and auto physical damage programs. According to records on file with the Colorado insurance commissioner's office, Arroyo will retain 95% of the first $250,000 loss for each occurrence up to a $1.25 million annual aggregate loss level.

Arroyo reported $1 million in assets as of January 21, and $5,000 of liabilities. Paid in capital was listed as $400,000, with $600,000 gross surplus.

"The primary reason we formed the captive was that we manufacture a wide variety of products, and the product liability markets are very difficult to get insurance at reasonable rates," Royal Industries' vp of finance Theodore Freedman, told *Business Insurance*. He believes the company will "partially solve" this problem with the captive insurance subsidiary.

The company has been buying liability insurance above sizeable deductibles from Gulf Insurance Co. (primary) and Pacific Indemnity Co. (first excess layer), through Frank B. Hall & Co. Royal also had several more layers of excess coverage.

Frank B. Hall's Denver office will manage the Royal Industries captive. With this new program, Royal is self-insuring a much larger portion of its casualty risks, said Mr. Freedman, who noted on January 30 that "we are working through (Frank B.) Hall to obtain excess covers. They are working with a number of markets. By next week we expect the captive to be in business."

Royal wants liability coverage up to $50 million limits, Mr. Freedman said.

Although he declined to disclose what premiums Royal has been paying for these various liability policies, he said the company is targeting substantial premium savings and cash flow advantages with the captive. Royal will be putting "in excess of $1 million annually" into the captive, he estimated.

"We've worked it out to be less cost, that's one of the reasons we're going into this. The main reason, though, is the state of the product liability insurance market today, and the fact that we can keep the cash in the consolidated corporate group," he explained.

"If you're going to self-insure, we think the captive is the way to go," Mr. Freedman believes. ■

errors & omissions

Robert Bussey retired from General Dynamics Corp., St. Louis, after 47 years as corporate insurance manager for the company. He was succeeded by Peter Butler. Typographical errors in our last issue resulted in an incorrect statement about this personnel change.

GUIDE TO FEATURES

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Tightened markets demand adept risk placement

By BERNARD J. DAENZER
president,
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Editor's note: Mr. Daenzer's remarks were delivered January 26 at the CPCU seminar on products liability in Tampa, Fl. Because his discussion of market conditions was so comprehensive, we believe our readers deserve the chance to read the speech in its entirety. This is the first of two parts. The second portion of Mr. Daenzer's speech will appear in our next issue.

IT IS VERY HARD to get an exact fix on the total amount of products liability premiums written or the distribution by carrier. Twenty years ago no one considered the possibility that miscellaneous liability as a class would become such a very big segment of the total property-casualty premiums written in the United States. As was found out in the investigations by public bodies of the malpractice crisis, there was very little refinement of the miscellaneous liability sub-classes in the reports available to the states. Some original research has been done and is now underway to get a better grasp of malpractice premiums and losses.

The big problem in the rating organization statistics is that a substantial amount of products liability premium is hidden in risks where the total liability coverage is placed on a basis of composite rating. Then there are manuscript policies where the products cover is mixed up with other covers. Another substantial chunk is lost in business owners' packages, SMPs and other mixtures of property and casualty protection in one policy. Then you have excess layers of products liability placed in reinsurance companies, specialty American markets and overseas markets.

A. M. Best estimates for 1975 that the stock and mutual companies combined wrote about $3.7 billion of miscellaneous liability premiums. I would judge that in this class there is another $300 million which is lost in the reported figures because of specialty companies, excess and surplus lines placements and various package arrangements. This would give us a total of about $4 billion and my educated guess would be that 60 percent of that would be products liability or $2.4 billion.

We know that during the last five years the aggregate loss for miscellaneous liability in the stocks and mutuals came to $2.5 billion. A very large part of that loss came from malpractice and products liability. While the loss ratio on malpractice liability came out higher than products liability in individual company studies, the total malpractice premium estimated for 1974 was only $500 million. Because of the much larger volume and the wider spread of companies writing products liability, the underwriting damage done by products liability has been much greater than malpractice. The extent of the damage may not be fully known.

There is a great deal of concern among insurance company stock analysts, actuaries and regulatory authorities that the full extent of incurred but not reported loss reserve deficiencies and inadequate loss development factors on known losses will continue to surface and plague the company results in 1976, 1977 and 1978.

Just as was said in malpractice, some senior company executives of large companies have stated publicly that the underwriting of products liability is hopeless. Many have said it can only be done on a cost plus basis; others have withdrawn from all but the most simple risks. Many reinsurers have cut the limits and added extensive exclusion lists for the products underwriters of primary writing companies. During the latter part of 1975 the withdrawal of recognized standard markets was enormous.

It is estimated that in the United States there are about 10,000 different kinds of products, some 200,000 manufacturing plants and 2 million retail establishments. Any solution here, such as a joint underwriting association, would mean the end of private enterprise in the miscellaneous liability field. The joint underwriting association on malpractice with inadequate rates and poor claims handling can only end up in a severe charge on the companies, just like the Fair Plans but much worse. The JUA on products could only lead to government insurance. The federal government's Consumer Products Safety Commission could be a federal instead of state vehicle.

The insurance industry (agents and brokers as well as the companies) has to be very clever in working out solutions. There has to be the courage to charge an adequate price. We should continue to innovate with various forms of dedutibles and different types of wordings for the tough classes. The claims handling has to be highly specialized with every effort made to fight fire with fire. Loss prevention techniques must be applied on a 12 month basis.

There must be a maximum utilization of all markets, admitted and non-admitted. Those who do placements must consider layering and in some situations where the exposure is very large, the quota sharing of the liability risk, the same proportional distribution amongst carriers which you would apply to a difficult property risk with total loss possibilities.

Any review of the marketplace is highly subjective. One must also keep in mind that overnight the president of an insurance company can be gone and also the head of the miscellaneous liability department. With this in mind, one might put down the following categories:

- *Strong products liability underwriters*—Aetna Casualty, Continental East, Hartford, Travelers, Employers Mutual of Wausau, Liberty Mutual, General Re and American Re.
- *Medium products liability underwriters*—CNA, Crum & Forster, Chubb, Fireman's Fund, Home, INA, Reliance, Royal, St. Paul, USF&G, Lumbermens Mutual, Employers Re, North American Re.
- *Light products liability underwriters*—Little Aetna, American General, Commercial Union, General Accident Great American, Gulf, Northwestern National, Ohio Casualty, Safeco, Security, Transamerica, Western Casualty & Surety, Zurich, Atlantic Mutual, Shelby, Utica, Allstate.

I have listed only about 20% of

Continued on page 34

Blasting Assn. explores risk pool as way of handling coverage difficulty

By MARIE KRAKOWIECKI

BOSTON—Excess and surplus lines insurance capacity is "almost stamped out" for contractors whose main line of business is blasting rock, a leading producer of blasting liability coverage said last week.

Partially in reaction to that situation, and partially from some members' complaints about difficulty in getting coverage, the American Blasting Assn. here may soon start looking at the feasibility of forming an assigned risk pool, *Business Insurance* learned.

James C. McNulty, executive director of the 64-member association, went to a meeting in Franklin, Ma. last month of mostly machine tool builders who were looking for ways to solve their product liability problems.

While his membership's situation is distinctly different from that of the machine tool builders (*BI*, January 26), Mr. McNulty said he hoped to get some ideas on how to cope with a tightening up of markets.

Three blasters had complained to him that their insurance companies dropped their coverage. For blasters, that is serious business, because they need a bond to work for the Commonwealth of Massachusetts, and in order to get a bond, they must be insured for $1 million.

At the meeting in Franklin, Mr. McNulty said he was enroute to another meeting to assess how serious the insurance crunch for blasters is becoming.

As it turns out, there is no apparent emergency situation. Mr. McNutly found out that the three blasters whose carriers cancelled, all had claims last year that were in excess of the premiums they paid. It was not a matter of having been arbitrarily dumped by insurers.

However, the American Blasting Assn. is concerned enough to explore an assigned risk pool because there are so few insurers around who will write coverage for ledge rock contractors who deal exclusively in blasting.

CNA is apparently the leading provider of such coverage. Mr. McNulty's own blasting operation is insured by CNA through the Curtin Insurance Agency in Cambridge, Ma.

Charles Kimball of the Curtin Agency confirmed the excess and surplus lines for blasters are drying up.

"There are markets where the insurance company will provide coverage for a contractor if he only blasts incidentally. But there are very few excess markets left for contractors that do only blasting," Mr. Kimball explained.

"Commercial Union was a market, but it's practically all out of it now. Travelers will write it, but only on a specific basis with preengineering that is so expensive very few can afford it.

"Excess and surplus coverage for blasters used to be on a per-job basis with a per-job premium. But most domestic companies aren't receptive to writing the coverage any more because they don't have the engineers for it.

"Lloyd's will still do some blasting liability through Stewart, Smith, but the job site has to be virtually in the middle of nowhere," Mr. Kimball lamented.

The blasting contractors' own lack of expertise in looking for coverage is apparently to blame for the drying up of the excess and surplus lines coverage, Mr. Kimball suggested.

He said he didn't think many blasters over the years ever bothered to shop around for excess coverage, and that was the major contributing factor to its demise now.

While insurance premiums have risen steadily for blasters over the last five years, Mr. Kimball said the increases have not been as dramatic as in some other areas of liability.

He noted that the Curtin Agency, which provides coverage through CNA for contractors, but under a very disciplined program, has seen increases of 25% over the past five years.

"Not typical," he pronounced about a complaint from one Michigan blaster that his liability premiums are up 100% and that he can't get coverage for any more than a limit of $500,000.

"You've got to remember that for a blaster, the most serious problem in getting insurance is his track record," Mr. Kimball said.

At one time, the Curtin Agency provided coverage for some 19 blasters, but today the number is down to nine. Mr. Kimball says that is due mostly to lack of work, and he commented that he hasn't seen any coverages that offered limits of less than $500,000.

There is no hard and fast premium rate guideline that can be given for blaster's liability insurance, because every job is rated specifically on location, Mr. McNulty explained.

"They're putting in an interchange access roads in New Hampshire that will require taking out about 200,000 yards of rock. But there's nothing around the area. What the insurance costs to cover the blasting of those 200,000 yards is probably the same as you'd pay for blasting 20,000 yards in Boston," he explained.

Some blasters feel that the amount of liability insurance required of them by state law ($1 million in Massachusetts) is unreasonable for the exposures involved.

"I've never seen any such thing that required $1 million in coverage," the American Blasting Assn.'s Mr. McNulty stated emphatically.

"The biggest damage I ever had came to about $20,000 in a Polaroid plant where we damaged some of their chemicals. Probably the biggest exposure professional blasters have is a loss of service situation." ■

New organization

Employe benefit plan administration companies have formed a new organization called The American Society of Professional Administrators (ASPA). A first meeting was held in Chicago in December. ASPA's initial membership is 50 companies nationwide, a spokesman said. The organization wants to provide a forum for comments from member companies regarding ERISA, national health insurance, errors and omissions insurance and industry relations and to develop a code of professional ethics. Initial dues are $100. For more information write to ASPA, Suite 909, 10028 Connecticut Ave. NW, Washington, D. C. 20036.

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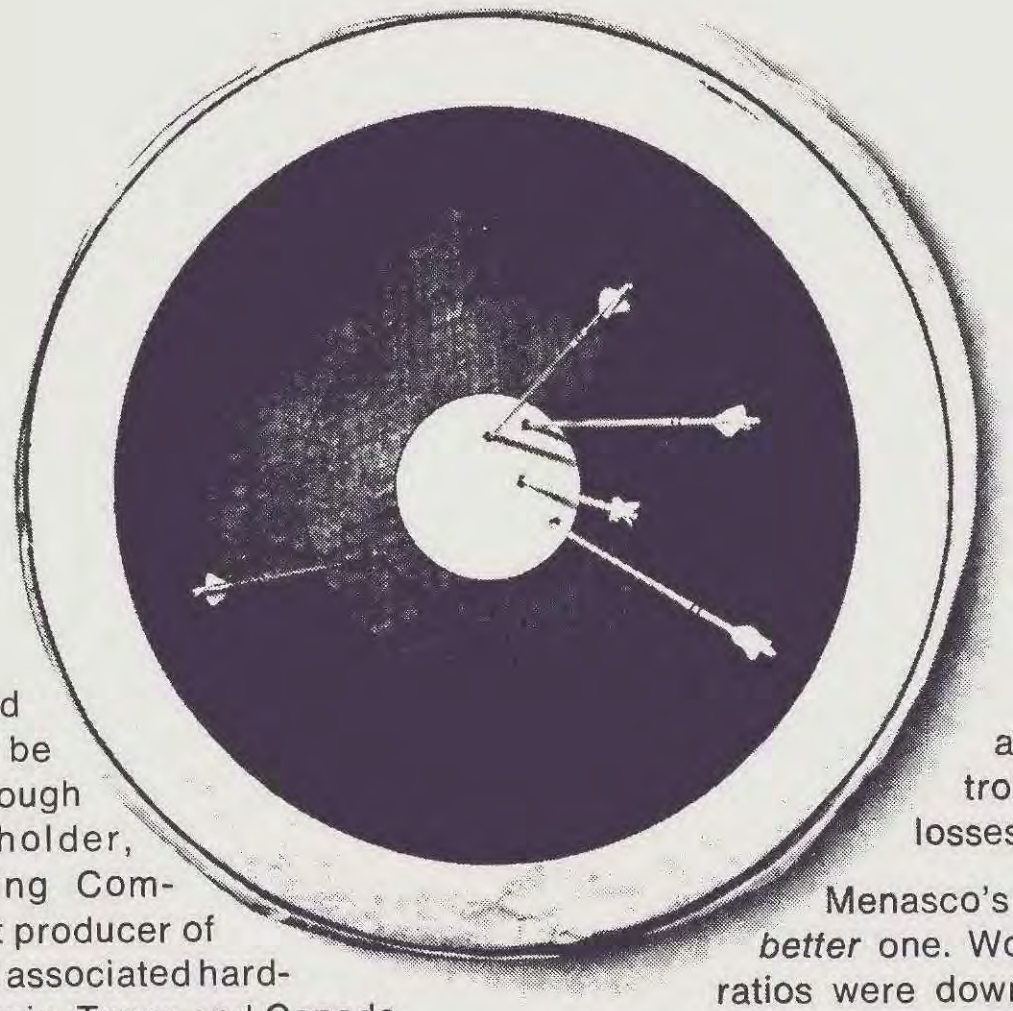

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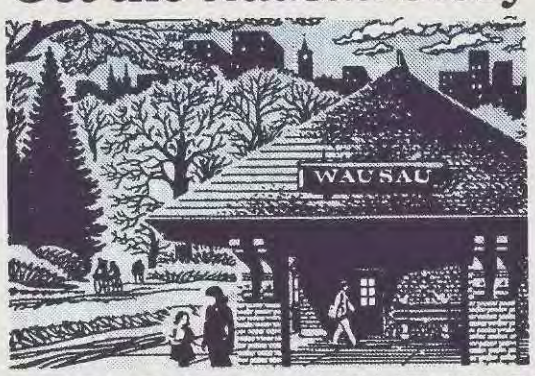

EMPLOYERS INSURANCE OF WAUSAU, Wausau, Wisconsin

UCLA manager's fine arts risks generate a real sense of adventure

By JOANNE GAMLIN

LOS ANGELES—Tracking a million-dollar shipment of medieval ceramics from Israel to France to Britain and then, at last, to his enormous Westwood campus is one reason why Myron M. Beil thinks fine arts insurance coverage can be fun.

Mr. Beil is the man who oversees claims and supervises certain insurance coverages for the University of California at Los Angeles (UCLA).

To be sure, main-line coverage, such as comprehensive general liability and all-risk property protection, are purchased by the insurance department in Berkeley. A Fred. S. James office, in fact, sits directly across from the Berkeley campus to broker the gigantic University of California account, a segment of which is handled by the institution on an in-house, self-insured basis.

That arrangement leaves Mr. Beil and other university insurance and risk management coordinators in the statewide educational system with what might be regarded as secondary coverage to handle.

But Mr. Beil, who allots about 30% of his time to claims handling, rates high the insurance responsibilities that come under his authority, including fine arts insurance, collection insurance, and personal property, all of which are brokered by Saylor & Hill Co., Oakland.

Fine arts insurance can generate a real sense of adventure, for one thing. Armed guards once were summoned to stand by as a $1 million art shipment was made ready to depart from Los Angeles International airport. At another time, a $2 million art shipment was planned for 16 months in advance of the shipment, according to Mr. Beil, recalling tedious roundtable conferences with airline representatives and Los Angeles police. Tops on his list of engrossing exhibits was one composed of seventh to 13th Century pots, vases and bowls contributed by a number of distant lands, including Israel.

Federal Insurance Co., a part of the Chubb/Pacific Indemnity Group, is the underwriter for the fine arts protection.

"Premiums are assessed on the basis of 3 cents for $100 of value per month," said Mr. Beil, whose business title is an elaborate one: Assistant administrator, business services and campus insurance and risk management coordinator.

A first cousin of fine arts is collection insurance. It is employed to protect works of art on permanent display. Mr. Beil pointed out during an interview with *Business Insurance* that UCLA possesses a piece of lawn entirely devoted to showing off about 50 pieces of sculpture. That coverage, too, is underwritten by Federal Insurance.

Personal property, the third category of insurance in which Mr. Beil can assume an underwriter's role, insures goods which are in never-ending motion. TV and motion picture equipment are candidates for Federal Insurance's personal property coverage; so are the costly recordings and photographic equipment which anthopology students take along on their digs half way around the world.

"We easily insure in excess of $2 million a year in personal property," Mr. Beil observed.

He explained that his semi-underwriter's role occurs when he must physically inspect exotic gear to determine premium values. "Our loss experience has not been so good," he admitted. "As a result, Federal has upped the premium rate from $1 to $1.15 per $100 of valuation."

When it is remembered that on a single trip UCLA transports between $30,000 and $40,000 worth of equipment, the rate hikes become substantial.

Despite that sizeable premium leap, it is doubtful that personal property will ever be a match for the university's malpractice insurance, required for UCLA's medical complex composed of a research hospital and clinics. Two million dollars a year are paid out for malpractice protection, which is provided by the Truck Insurance Exchange of the Farmers Group, Inc., a Los Angeles-based concern, said Mr. Beil.

He noted that the Farmers Group is the underwriter, too, for the statewide university's complete liability coverage. Farmers took over as the carrier from Hartford Insurance Co. in July, 1973, after successfully submitting the winning bid.

Next July, bidding will begin again, he asserted, noting that there is a possibility that he will be invited to the Berkeley meeting preceding the bidding in order to participate in a discussion of desired safety and engineering services.

Property insurance that embraces the entire university system also is bid every three years. The Insurance Co. of North America and Lloyd's of London are the current carriers.

Mr. Beil handles accidental at the center," remarked Mr. Beil. (AD&D) and medical expense coverage for the UCLA child care center. Continental Casualty Co. writes the policy on a first-dollar basis. Premiums are figured on the basis of $2 a participant. Benefits are slated at $10,000 minimum for dismemberment; $10,000 per injury under the medical expense coverage and $1,000 for accidental death.

Bruises and band-aids happen at the center," remarked Mr. Beil. "There is not much risk of accidental death."

He went on to disclose that an Out-Reach program in which youngsters are cared for in the homes of families in Westwood, and possibly later, in homes in the San Fernando valley, is under evaluation. If the idea should be adopted, he said that the AD&D and medical expense coverage would be linked up to the liability insurance now being provided by the Farmers Group.

That carrier also supplies primary coverage for the UCLA faculty center. The layer has a $500,000 limit. National Union Fire Insurance Co. provides the excess insurance up to a limit of $2.5 million.

Claims which make up a large segment of Mr. Beil's job are more numerous and more frequent than he might wish under the university's public liability coverage. Tumbles accompanied by aching limbs are not uncommon, especially among students at the UCLA extension school, which holds classes during the not too-well-lighted-hours from 7 to 10 p.m. ■

benefit tax slants

Statutes allow group plans to favor top executives, but IRS might not

By JOSEPH S. ROBINSON
Attorney-at-Law

THERE IS NO statutory barrier to group term coverage which favors the top brass as against other employes. But the rules limit benefits by how they define "group term life insurance." Thus, the regulations strictly limit group term status for plans under which some full-time employes are excluded and fewer than 10 employes get coverage. But the regulations allow plans covering fewer than 10 to exclude some employes, or give them smaller coverage, if this is done solely because of evidence of insurability in a medical questionnaire. That is, evidence of insurability may be a factor in eligibility or amount of insurance if determined "solely on the basis of a medical questionnaire completed by the employe and not requiring a medical examination."

Here's the latest Treasury pronouncement on the point:

A company with six full-time employes procured a group policy for all of them. Coverage was provided at triple the standard premium without a medical exam. However, the insurance carrier required releases of medical records and possibly a medical exam to determine if a lower premium was merited. I.R.S. held that premiums could not be fixed that way and still maintain tax-free status. (*Rev. Rul. 75-528*).

* * *

The Treasury's initial position, as expressed in its proposed regulations under ERISA concerning death benefits to beneficiaries of pension plans, created quite a stir. It said that where such payouts were made to two or more beneficiaries, the favorable tax treatment would be lost. However, it has since been announced that the government has switched its course and reversed its position on this point.

Final regulations, soon to come out, will allow multiple beneficiaries to be eligible for the special tax treatment normally available for lump-sum payouts of qualified plan benefits. So those who wish to split their pension death benefits among several members of the family are once again free to do so without incurring a heavy tax burden.

* * *

A Medical Reimbursement Plan sponsored by a company normally is allowed to favor certain classes of employes. But when it discriminates in behalf of stockholder-employes, the shareholders may be hit with a dividend tax according to a recent tax court decision.

A mother and son were the majority shareholders and principal executive officers of a small family corporation. When the mother became ill, the corporation adopted a plan to reimburse both her and the son for all medical and hospital expenses they incurred. All other employes were excluded. Later on, a plan was adopted covering all employes. Reimbursement under the plan was limited to one percent of base salary.

The Tax Court agreed with I.R.S. that the reimbursement payments were constructive dividends. The reasons: The plan discriminated among employes in awarding benefits without a rational basis for the discrimination. The taxpayer and his mother received over 70% of all payments under the plan. In the court's view, the plan adopted had been to use corporate earnings to meet the anticipated medical needs of the taxpayer and his mother. (*Leidy, T.C. Memo* 1975-340).

* * *

An executive compensation package must not only satisfy the executive's needs but must win I.R.S. approval to obtain the desired tax results. If the package is deemed unreasonable in amount the excess will be taxable to the executive.

In a recent case, the tax court was called upon to rule upon the reasonableness of an executive-stockholder's compensation set-up. In disallowing a big chunk of the package (salary plus bonus) the Court relied upon the following guidelines:

- The person's qualifications;
- The nature, extent, and scope of his work;
- The size and complexities of the business;
- A comparison of the salaries paid with the gross income and net income of the business;
- The prevailing general economic conditions;
- A comparison of salaries with distributions to shareholders;
- The overall salary policy of the business;
- The prevailing rates of compensation for comparable positions in comparable businesses; and,
- In the case of smaller corporations with a limited number of officers, a comparison of the compensation in question with that paid to him in past years.

Keep in mind that when applying these tests, don't forget that the total compensation packages include contributions to employe pension and profit-sharing plans. (*Miller Spring and Mfg. Co. T. C. Memo* 1975-323). ■

See savings with switch to Medicare

WASHINGTON—Congress, in a move that will save about $250 million this year has voted to make Medicare the primary benefits provider for retired civilian employes of the federal government.

Without the change, which was approved last month, the Federal Employes Health Benefit program (FEHB), would have become the only group health plan in the nation in which Medicare did not pay benefits to retirees before the group insurer did.

To accomplish the change, Congress had to rewrite a section of the Social Security Act which would have had the effect of making the FEHB program primary on January 1.

That would have aggravated an already bad cost situation by pushing premium costs even higher than the 35.3% increase which became effective this month. ■

info for buyers

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

• **Handbook & Standard for Manufacturing Safer Consumer Products,** published by the Consumer Product Safety Commission, outlines a step-by-step method to implement a product safety policy and procedures. Technical recommendations focus on design review, identification and evaluation of potential hazards, documentation of any changes in design, materials or production that could affect safety, safe production practices, maintenance of records and product safety audits. Single copies are available at no cost from the Commission in Washington, D.C. 20207.

• A specialized insurance protection program for brownstone houses, an **Endangered Species,** is described in a brochure from the Insurance Co. of the State of Pennsylvania. For a free copy, write to Brownstone Agency Inc., 11 John Street, New York, N.Y. 10038.

• National Union Fire Insurance Co. of Pittsburgh, Pa. is making available **Carefree Travel Insurance,** a brochure about a group program designed to provide overseas and domestic trip investment and personal insurance coverage. For a free copy, write to Allan R. Morris Assoc. Inc., 8 West 40th St., New York, N.Y. 10018.

• A revised and updated listing of all General Adjustment Bureau office locations, domestic and foreign, is available in the Bicentennial Edition of GAB's pocket size **Little Red Book for 1976.** The directory lists all district, regional and branch offices, with complete addresses as well as day and night telephone numbers. The guide also lists and describes various GAB services. Free copies are available by writing to General Adjustment Bureau, Management Services, 123 William Street, New York, N.Y. 10038.

• H. Clarkson (Overseas) Ltd., a London-based insurance broker sppecializing in construction risks, is offering a brochure on how it handles **Projects at Risk** around the world. Pictures of projects handled by Clarkson and a description of their brokering services make up the brochure, along with a list of their member companies around the world. For a free copy write to the firm at Ibex House, Minories, London, EC3N 1HJ.

• The **1976 Schedule of Conferences** of the International Safety Academy is available. The schedule describes each conference, with dates and locations, and registration details. Included are conferences on basic safety management, inspection training, total loss control, environmental health management, motor fleet management, scientific accident investigation with motor fleet orientation, machine guarding and machine accident investigation. For a free copy, write to Fred P. Smarro, director of marketing, ISA, #2 INA Tower, 1600 Arch St., Philadelphia, Pa. 19101.

• **Are you Receiving All Benefits Available Under the Law?** A brochure from Kemper Insurance Cos. ask this question in reference to a program that allows small employers having similar businesses and trade characteristics to take advantage of the "law of large numbers" to pool their results and reduce workers' compensation costs. For a free copy, write to Communications & Public Affairs Dept., Kemper Insurance Cos., Long Grove, Il. 60049.

• **Fire in America: Yesterday and Today** is a colorful red, white and blue folder from the National Fire Protection Assn. which opens into 11 by 7-inch size poster, a Bicentennial year publication about early fire fighting in America, and, on the reverse side, practical suggestions to prevent fire from claiming lives and property. It also includes topics for group discussion, case histories of typical recent fires, and a reading list. One free copy is available on request by writing to NFPA Publication Sales Dept., 470 Atlantic Ave., Boston, Ma. 02210.

• Insurance coverage for medium-hazard overseas boiler and machinery exposures is explained in a folio provided by AIG. **The Mark II Program** brochure contains class listing of qualifying groups; equipment guide by size range and type; policy declarations; sample of use and occupancy policy, both actual loss sustained and valued; a sample of consequential damage policy; and more. For a free copy, write Info for Buyers, American International Group, 102 Maiden Lane, New York, N.Y. 10005.

• **Consulting Actuarial Services** is a brochure available from Alexander & Alexander Inc. describing pension plan design aspects of benefit planning, and discussing actuarial projection considerations. For a free copy write to: Scott Taylor, vp-Communications, Alexander & Alexander Inc., 1185 Ave of the Americas, New York, N.Y. 10036.

• **First Colony Life Introduces Contingent Life** explains an insurance concept involving multiple lives on an individual basis where death benefits are paid on a first death basis with automatic continuance of coverage for survivors. Each person has an individual policy with total premium and nonforfeiture values allocated to the individual on a basis proportionate to individual premium participation. For a free copy, write to Lawrence L. Hoffman, senior vp, First Colony Life Insurance Co., P.O. Box 1280, Lynchburg, Va. 24505.

• **Smile Guard** is a brochure describing the preventive care approach to group dental programs. It is designed to help employes and their dentists understand how dental plans work, fully describing three different dental insurance plans and the features and options available under each. State Mutual Life Assurance Co. of America aims the brochure at companies with 10 to 250 employes. For a free copy write to: Bruce Crawford, vp, State Mutual of America, 440 Lincoln St., Worcester, Ma. 01605.

• A detailed discussion of federal pension reform, the Employe Retirement Income Security Act is offered by Manhattan Life Insurance Co. in its **ERISA Highlights.** The material provides a discussion of the old law and the new law, along with ramifications of changes. For yor fre copy write to: Kay Maunsbach, Manhattan Life Insurance Co., 111 West 57th St., New York, N.Y. 10019.

• **Risk Cost Stabilization** is a booklet published by National Loss Control Service Corp. which presents an alternative to the conventional loss and claim data reporting systems. Designed for risks that are insured, self-insured or non-insured. For a free copy write to: O. F. Browder, National Loss Control Service Corp., Long Grove, Il. 60049.

• Ebasco Services Inc. discusses the need for proper planning and evaluation of an organization's compensation program to produce an effective employe benefit and reward system, in its 40-page **Total Compensation Planning** booklet. The illustrated book outlines typical benefit options, competitive provisions and trends, and benefit components from base compensation to executive perquisites. For a free copy, write to John J. Flood, Manager of Services, Ebasco Services Ins., 100 Church St., New York, N.Y. 10007.

• **Construction Contract Bond Indemnity Agreement Provisions** are analyzed in a monograph from the Defense Research Institute. Research was based on the indemnity agreement forms of General Insurance Corp. of America, Globe Indemnity Co. and the National Surety Corp. In addition to a detailed study of 28 provisions of an indemnity agreement by a surety on a construction contract bond, a section of comments on a model general agreement of indemnity is included. The publication is available to DRI members for $2.50 and to non-members for $5, prepaid through the Institute, 1100 West Wells St., Milwaukee, Wi. 53233.

• The International Safety Academy, a division of ESIS Inc., an INA subsidiary, is offering a **Catalog of Safety & Training Films.** The films in the 28-page catalog cover safety management and supervision, safety training, material handling, fire and plant protection, hospital safety, construction, chemicals, first aid and many other subjects. To obtain a free copy, write to the International Safety Academy, P.O. Box 4365, 1021 Georgia Ave., Macon, Ga. 31201.

National Airlines sets retirement fund plan

By ELISABETH M. WECHSLER

MIAMI—National Airlines has set up a new retirement fund for its 1,271 flight attendants as part of the settlement reached on January 4, following a 127-day strike.

A new dental plan plus improvements in life insurance, medical benefits, vacation/leave and meal allowances are part of the benefit package. Wages were increased about 30% over the 46-month life of the contract, part of which was retroactive.

Under the new pension plan, the normal retirement benefit is $10 a month for every year of service prior to Jan. 1, 1976. Thereafter, the benefit is $12 a month, with normal retirement at age 65. One hundred percent vesting is achieved after 10 years of service.

An actuarially reduced benefit is available at age 55, according to Derek Tyler, National's supervisor of group insurance and pension administration. A fund manager for the defined benefit plan has not been officially selected yet, he said, but First National City Bank, New York, manages other company fund assets.

Another new benefit provided for flight attendants under the settlement is a dental plan, insured by the Travelers Insurance Co. Frank B. Hall & Co. Inc., Coral Gables, is the broker.

After paying a $15 annual deductible, employes receive scheduled dental benefits up to a maximum of $600 per person per year. Dependant coverage is available but must be paid by the employe. Orthodontia work is not included in the plan.

Mr. Tyler declined to give *Business Insurance* the cost figures for National's new and improved benefits.

Life insurance, previously paid by the employe, is now provided by National up to $12,500 coverage.

Hospital room allowances were increased to $50 a day plus 80% of the excess charge up to the hospital's average private room cost. The surgical schedule was raised from $300 maximum to $600 maximum. Major medical benefits went from a $15,000 maximum to $50,000 maximum per disability. Maternity benefits were also improved.

Once the $100 major medical deductible is paid, National's medical policy pays 80% of the employe's benefit. When the employe has paid $2,500 per individual per disability per year, the insurance company picks up 100% of the cost, Mr. Tyler explained. Dependent children are now covered up to age 24 if they are unmarried and are full-time students.

Vacation time was increased from 14 days for less than three years' service to 35 days for more than 21 years' service. The previous range was 14 days for less than four years' service to a maximum of 30 days for 15 years' service or more, according to Carolyn Y. Howard, labor relations analyst for National, who described this and the other benefits as "industry standard or above."

Sick leave now accrues at the rate of five hours a month up to a maximum of 500 hours. Occupational injury leave accrues up to 400 hours at the rate of four hours per month. Unlimited jury leave is permitted with no penalty, and the contract also extended bereavement leave.

An association leave of absence —a type of sabbatical leave for union work—is permitted for up to 180 days without penalty. Military leave of absence is also offered.

Flight attendants received a 30-cent increase in meal allowance for hours away from their base, effective January 4. On Aug. 1, 1976, the meal allowance increase will be raised to 35 cents per hour.

Moving allowances were increased to 9,000 pounds transported at National's expense when a flight attendant is moved to another base. In additional, employes are allowed nine cents a mile up to 375 miles per day when driving from one base to another. ■

editorial opinions

Let the negligent be held liable

WHEN MACHINERY MAKERS met in Massachusetts recently to thrash out their monumental product liability problems and launch efforts to change the tort liability system, they also came out strongly in support of federal workers' compensation reform.

A major part of the lawsuits against machine builders, they believe, can be attributed to workers' compensation statutes in some states providing benefits so low that an injured worker has no alternative but to seek additional recompense from the manufacturer of the machine that injured him.

Is this purely a products liability problem? We don't think so. Safety and employers' liability appear to us to be key issues. The vocal opposition to OSHA and federal workers' compensation reform lead us to believe too many employers aren't facing up to their responsibilities to create and maintain safe facilities, foster attitudes in workers which prevent injury, and compensate fairly for injuries when they do occur.

It's well known that lobbying by metalworking companies and other manufacturers forced amendment of OSHA, relaxing the requirements that safety equipment be installed on presses, among other things. Stampers and other metalworking firms pleaded that they couldn't afford to retrofit machines with safety equipment. They convinced the politicians in Washington that thousands if not millions of workers would be thrown out of work if employers' backs were broken by unreasonable government regulations.

What's happened is that political influence has prevailed over logic. The tort laws favor machine users, who outnumber machine builders and have more political clout.

Employers won't have enough incentive to operate safe plants until somebody holds them accountable, say the machine builders. The way the system presently works is that an employer, an injured worker and the work comp insurer profit by suing the machine builder. Their product liability charges ignore the employer's negligence, the worker's negligence, working conditions, age of the machine or any alterations of the machine over its useful life.

We've heard grisly tales such as one about an employer with fewer than 200 workers who racked up a tally of 9 disabling injuries in a couple of years. Then there's one about the company whose output was reduced by costly guards placed on all the old machines (partially paid for, incidentally, by the machine builder). The factory owner allegedly encouraged his foremen and workers to circumvent the safety devices and push productivity back up to earlier levels. A machine builder was held liable for a subsequent disabling injury to an experienced machine operator.

Whatever changes are going to be made, someone's ox is sure to be gored. Business is fighting business on this issue. Many employers don't want to see workers' compensation statutes reformed, because they stand to lose money if they are made to pay more for what happens in their workplaces.

The recent victories of the metalworking industry, which forced rollbacks in OSHA regulations and prevented workers' compensation reform, may be shortlived.

A broad spectrum of producers currently benefit from the services of a fragmented and highly competitive machinery industry. But if small, undercapitalized machine builders continue to be penalized, they may be forced out of business in greater numbers.

The net result will be a highly concentrated machine tool industry that can defend itself in court and cover its legal defense costs by making all machine buyers pay for the negligence of what we prefer to believe is a small minority.

We agree with many machine builders that they should be allowed better defenses through countersuits against negligent employers, and through changes in the tort system. And we agree with these machine builders that liability should be apportioned between the parties involved in these workplace injuries—the builders of machines, the users of machines, and the employes themselves—according to the negligence of each.

Recognizing the value of risk retention

KUDOS ARE DUE to insurance companies who've come out in favor of total risk management by encouraging companies to fund internally some of their losses. The shift away from the first-dollar insurance mentality indicates a healthy adaptation to economic realities, albeit one that was a long time coming.

It seems only yesterday we heard insurance buyers lament the reluctance of underwriters to accomodate hefty deductibles in corporate insurance programs. Self-insurance became such a loaded term that some insurers were said to refuse to quote on commercial risks which involved large amounts of risk retention.

We've heard it said the insurance industry had to be badgered into lowering premiums enough to adequately reflect the levels of losses that businesses were willing to pay out of their own pockets.

Suddenly, however, shrinking capacity and poor insurance market conditions are cited as reasons insurers don't want to write first-dollar coverage any more. They are encouraging bigger deductibles, and indeed are mandating them in some cases. Insurers are striving to avoid routine small losses which are highly predictable, so that their capacity to underwrite insurance is freed up for other areas.

Now that markets are tight, and now that insurers are enforcing bigger deductibles, there probably won't be any discounts offered to policyholders for retaining parts of their insurable risks. But at least the insurance industry has recognized the value of risk retention and self-insurance. Possibly the industry is even looking more kindly on their clients' use of captive insurance companies.

We think this is a healthy sign for insureds and insurers alike.

letters

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

Congratulations

To the Editor: In a matter of four months, I will be retiring; and, as time runs out, I might neglect to convey to you my congratulations on the place you have assumed in the field of insurance journalism.

When your paper was proposed, I was skeptical that it would find a receptive audience. In such a short period, it has come to dominate the insurance media.

During those years, you have been kind enough to quote me on numerous occasious. I would like to express my thanks to you for the fact that never has a *BI* reporter misquoted me, betrayed an off-the-record conversation, or quoted me when I asked not to be. Margaret LeRoux and Susan Alt have been professional, intelligent and full of integrity.

Best wishes for your continued success.

Waller B. Smith
Director of Insurance, United Airlines, Elk Grove Village, Il.

Split-dollar life

To the Editor: As a long-time subscriber and also as an advanced life underwriter, I particularly enjoyed your article regarding split-dollar life insurance (Taking a Second Look, *BI*, Dec. 15, 1975).

Naturally, when you research an article such as this, you undoubtedly must call upon the talent of "experts". As an advanced life underwriter, I am personally familiar with Mr. John Todd and also with Marsh and McLennan. I am not familiar with Towers, Perrin, Forster and Crosby, but assume they are management consultants. I would like to suggest that there were at least three items omitted from your article which would have a substantial impact on the comments of Mr. Allen wherein he indicated there were some basic drawbacks of split-dollar life insurance that agents don't usually explain. These items are as follows:

1. Mr. Allen fails to mention that the majority of the large life insurers offer an "exchange provision" which simply means that if an executive terminates employment before retirement that his contract may be exchanged on behalf of his replacement. This provision has the obvious advantage of reducing the financial cost to the corporation.

2. Mr. Allen makes no mention of post-retirement death benefits in his statement indicating that they had recommended group life

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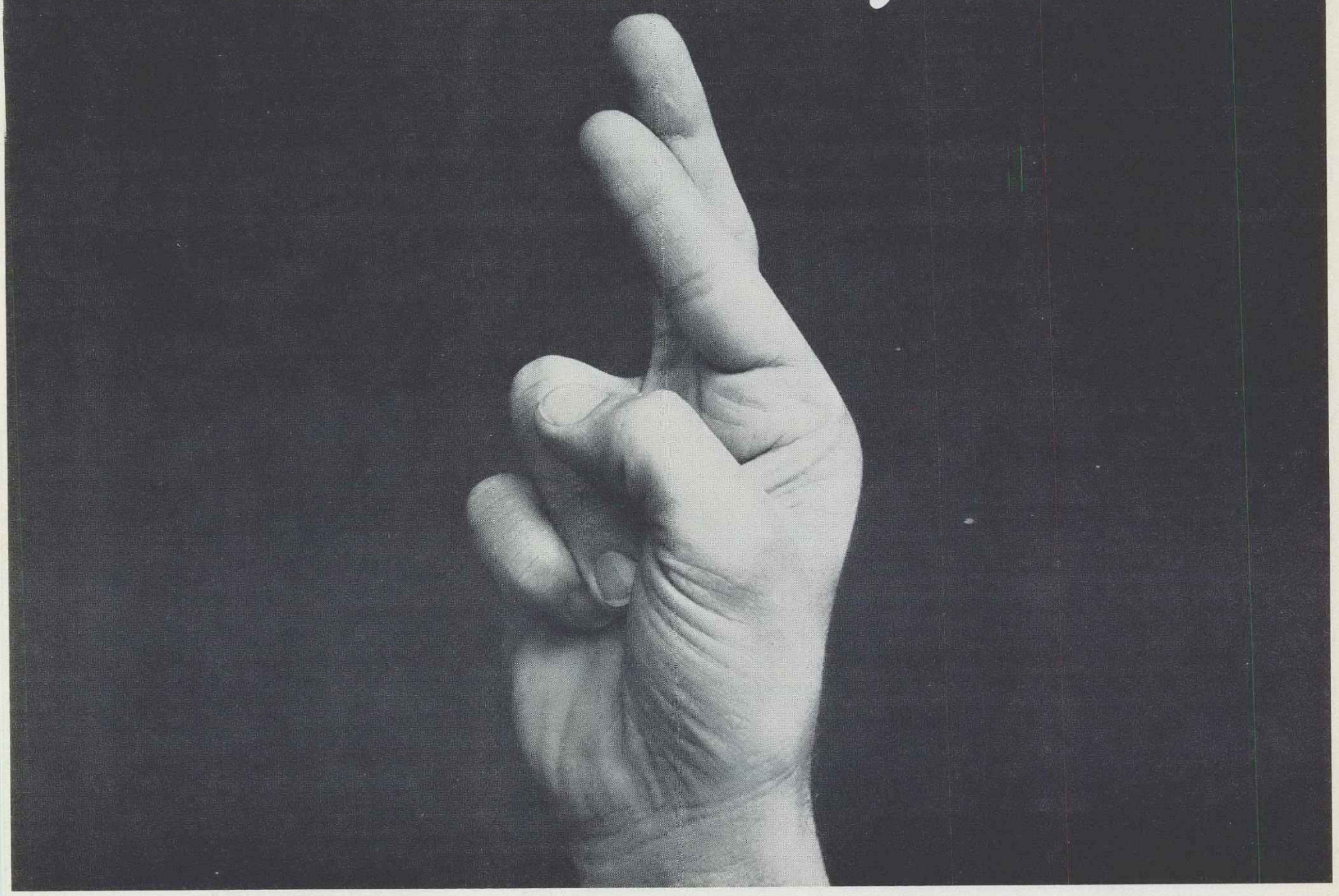

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letters

Continued from page 10

insurance as being more efficient on two large clients. If the corporation provides post-retirement group life death benefit utilizing conventional term insurance, it becomes much more expensive than utilizing split-dollar life insurance which may be changed to keyman life insurance at retirement thereby providing a paid-up policy with substantial financial benefits to the corporation.

3. Mr. Allen makes no comment of utilization of Section 79/group ordinary life insurance in lieu of split-dollar life insurance.

F. Duane Gartner
Duane Gartner & Co., Newhall, Ca.

Legal system at fault

To the Editor: Your December 19th issue had several articles relating to liability insurance problems. One thing is evident; regardless of whether the risk is a city, a ski area or a hospital, the problem is not where the attention is being focused.

It is not the insurance industry that is at fault, it is the legal system, and public morality which today accept the *reward* rather than compensation philosophy. Recently in Washington, D.C. a jury returned a $250,000 verdict on a case with $108 in specials. Sure the jury was wrong, but what about the lawyer who turned down a more than reasonable settlement offer because he was banking on just such a jury. It is the lawyers that value a case on what a jury might bring, rather than what is reasonable and proper compensation, which have raised havoc with liability insurance.

The carriers have acted in their usual pattern of panic and are increasing rates on the profitable risks with good loss experience, as well as the high loss areas. For this they become a fall guy, and rightly so, but let's not lose sight of the cause of the problem.

R. K. Rappold,
Assistant Secretary, Peoples Drug Stores, Alexandria, Va.

Bad choice of pictures

To the Editor: Your lead article in the December 29th, 1975 issue, which discussed California Cities' problems in purchasing liability insurance, showed pictures of San Diego and Los Angeles. Presumably, according to the pictures' caption, these two cities are having trouble finding coverage.

Unfortunately, you picked the two California Cities that are self-insured. Los Angeles as far as I know has been self-insured since it was a pueblo. We, here in San Diego, foresaw the crunch now hitting the smaller cities, and opted for self-insurance in 1970, assuming a self-administered retention of ½ million per occurrence. This allows us to purchase excess coverage to 25 million at a very nominal cost. Administration is undertaken as part of a total risk management program and is run essentially like a carrier's claims operation. We have a claims manager and staff adjuster-investigators operating as part of city management.

The insurance market being what it currently is (and considering all our costs, direct and indirect), we estimate our present fiscal-year self-insured savings to be 1.5 million, a not insubstantial sum when considered in relation to a population of 780,000, an employe work-force of 6,500, and a current annual operation budget of 226 million.

A recent comparison study of The City of San Diego's self-insured delivery cost with the cost to the other 12 *insured* cities of San Diego County (all cities being served by the same courts, being sued by the same lawyers, and all having a similar population make-up) demonstrated that our self-insured liability management cost our citizens $1.11 per capita. The average cost to the other cities who use an insured delivery system was $2.39 per capita.

The City of San Diego also self-insures its workers' compensation program and its employe group medical indemnity plan and maintains a $10,000 deductible on its fire and extended coverage allowing us a 4 cents per hundred rate.

Robert G. Walters
Superintendent, Claims & Insurance Division, City of San Diego

Clarification still needed between two fiduciary liability approaches

NEW YORK—Liability of fiduciaries who manage pension or profit sharing assets can be interpreted two different ways under the new pension reform act, and the courts have yet to clarify which approach will prevail.

ERISA has created a virtual schism between the traditional common law interpretation of "prudence" which holds a fiduciary liable for individual investment decisions within a portfolio, and a more modern viewpoint which says the risk of individual investments should be weighed in the context of performance of the entire portfolio.

If buyers of fiduciary liability insurance thought they could look to the United States Labor Department for some clarification of these issues, they were wrong.

At a seminar here on the changing concepts of prudence and fiduciary responsibility, William Chadwick, Labor Department special consultant to the administrator of pension and welfare benefit programs, said the government would not try to clarify the definition of fiduciary responsibility.

Speaking before a group sponsored by the Financial Analysts Research Foundation, Mr. Chadwick said:

"Any hasty or ill-considered statement is bound to result in unnatural shifts in trust assets which will not be good for the economy or for pension funds."

Instead, the issues will essentially be decided by the courts over the next five years since it is Labor's feeling that any further regulation would be counterproductive.

The courts have already had some cases involving portfolio diversification as a basis for judging prudent investment.

Last year, the New York court of appeals had a case, Bank of New York vs. Spitzer, in which it denied a "total return concept" of fiduciary liability in which an imprudent investment in one security might be offset by an overall gain in all investments held by the fund.

The Bank of New York showed losses on four securities, but in the same period had gains from other securities in the same fund which exceeded the losses.

Although the court did not find the bank liable, it held that: "The fact that the portfolio showed substantial overall increase in total value during the accounting period does not insulate the trustee from responsibility for imprudence with respect to individual requirements. . . ."

As another speaker at the seminar pointed out, however, the court also looked at the context of the overall portfolio.

Robert W. Murphy, of Schiff, Hardin & Waite, Chicago, quoted the following ruling from the case: "The record of any individual investment is not to be viewed exclusively, of course, as though it were in its own water-tight compartment, since to some extent individual investment decisions may properly be effected by a consideration of the performance of the fund as an entity."

Three specific circumstances will usually bring criticism and possibly even litigation charging lack of prudence on the part of the trustee, Mr. Murphy said.

The first would involve any substantial loss to the trust by reason of a particular investment going sour.

The second would come up if the trustee has not anticipated the financial needs of the pension fund, causing the fund to be short of available funds when needed, forcing the premature sale of investments for which there may be a depressed market.

The third situation, although serious, Mr. Murphy stressed was still just a "possibility." That would be liability caused by the performance of the pension fund, including appreciation, being listed at the bottom of various rating agencies' comparison lists of performance of a number of funds.

"As to the third type of liability, a failure to keep up with the outstanding performance of the best pension trust managers, while it might be a good way to lose an account, it seems to me very questionable, short of outrageously poor performance almost to the point of gross negligence, that this would create legal liability," Mr. Murphy said. ■

Construction industry faces tight market

NEW YORK—Risk managers in the construction industry may face a tight market when policies come up for renewal, according to a panel of underwriting experts on contractor's equipment insurance.

Because of soaring costs of replacing equipment, "routine policy renewals could stand a second look," and "the extra premium developed as a result of a realistic upward appraisal of values at risk would far more than offset survey costs," Robert H. Smith, principal surveyor, Hull & Cargo Surveyors Inc. told a workshop session.

Mr. Smith was part of a panel including spokesmen on the underwriting, loss adjustment and engineering aspects of contractor's equipment insurance.

He said many future conflicts over such items as true value, coinsurance and depreciation allowance can be avoided in the case of a loss if an underwriter accepts a risk with an accurately valued schedule.

William L. Yocum, president of the appraisal firm of William L. Yocum Associates noted that if an underwriter "got out and looked at the equipment he is insuring, he might lose a few accounts, but he'd save a considerable amount of money."

He cited the case of a steel-handling crane being used in Greece that severed a boom cord and collapsed, resulting in a $65,000 loss. Added to the loss, he explained were the costs of getting replacement equipment from Milwaukee to Greece, the cost of repair in an area of scant professional help and down time on the crane.

Another panel member, Robert Milsop, assistant underwriting director, Hartford Insurance Group, commented on the high rate of loss resulting from vandalism to contractor's equipment.

He stressed that underwriters should make sure that lock caps, listed by manufacturers as optional are installed if equipment is to be left in the open. ■

Sullair Corp. models its benefits after IBM

MICHIGAN CITY, IN.—The Sullair Corp., undoubtedly one of the nation's most paternalistic corporations, has an employe benefit program modeled after IBM's benefit plan.

Sullair's executives consider IBM's employe benefit program to be one of the best in the country, and Sullair's is comparable, according to Gerald Seegers, vp of finance at Sullair, a producer of air compressors for tools.

Sullair's 600 employes receive dental and health insurance (basic and major medical), which are self-insured, and life insurance (accidental death and disability included) through Bankers Life Co. of Des Moines, Ia., which also administers the dental and health insurance policies.

The health plan covers all hospitalization and medical expenses, and the dental program is $50 deductible and takes care of everything except orthodontic work. Also included in the health plan is a paid prescription program that provides employes with free drug prescriptions.

The life insurance policy is scaled according to salary—the lowest salaried employe being insured for $10,000, and the highest salaried employe for $100,000.

All of these insured plans are fully paid by the company, with nothing deducted from the employes' salary.

Other major benefits at Sullair are an employe stock ownership trust (ESOT) and a cash profit sharing plan. The employe stock ownership trust was established in late 1974 after a $1 million loan was obtained from two banks, in New York and South Bend, In., also the administrators of the trust. Although the fund is technically a separate entity, Sullair guaranteed the loan which purchased 83,333 shares of Sullair stock at $12.00 a share (market value). Each year Sullair Corp. makes a contribution to the trust which presently has a balance of $200,000. That $200,000, worth 16,000 shares, is allocated to all employes' accounts, and will be given to them when they retire from the company. If an employe dies, his heirs receive his shares; if he leaves the company he receives what he has vested in the trust (10% a year).

The cash profit sharing plan is arranged so that each employe receives a limited amount of the company's profits based on a percentage of salary or a percentage of profits.

Sullair also provides a number of extraordinary fringe benefits including an assortment of free athletic facilities, gas at 35 cents a gallon, and 10% discounts at two local supermarkets.

Although Mr. Seeger could give no figures on how much is spent on the benefit program, he estimated that employe benefits—including fringes—rank third on the expense list, following material costs and salaries.

Since there are few elderly workers and the average age at Sullair is 38 years, there is no pension plan. Only one worker has retired from Sullair, and he is being paid $150 a month with continued health and life insurance. A regular pension plan may be decided upon later but Mr. Seeger said, "Nothing is on the burner at the moment." ■

Still writing malpractice in Oregon

PORTLAND, OR.—Oregon's Medical Assn. solved its medical malpractice insurance crisis. Continental National American Insurance Co. agreed to continue writing malpractice policies through 1977 at an average 31% premium increase for 85% of the state's 3,000 doctors.

Robert L. Dernedde, executive director of the association, said the agreement includes high risk premiums of as much as $15,796 a year, in the one year contract which will be signed prior to May 1.

The high-risk category, with coverages of $5 million, include obstetricians, anesthesiologists, orthopedic surgeons and neurosurgeons. Family physicians will pay as much as $9,473 and doctors with no surgery and an office practice only will pay $1,340 a year for $300,000 coverage.

The medical malpractice insurance for the 1,800 doctors involved will be written on an "occurrence" basis. This type of policy insures that a doctor covered by a 1975 policy would be insured against a malpractice claim filed in later years for any malpractice occurring during the policy year.

Most of the remaining Oregon physicians are covered as individuals by policies issued by St. Paul Fire & Marine Insurance Co. which writes policies selectively on a "claims made" basis.

The medical association, according to Mr. Dernedde, will ask the 1977 Oregon legislature for "substantial tort reforms to resolve the malpractice insurance crisis on a more permanent basis."

Early in 1975 CNA increased Oregon premiums for its medical malpractice insurance policies by 179%, jumping the cost for high risk categories from a prior $4,000 a year to $12,000 and more. ■

Gov. Brown calls for tort system reform

SACRAMENTO, CA.—Asserting that the medical malpractice crisis is only a symptom of deeper strains in the legal liability field, California Governor Edmund "Jerry" Brown has declared "there is a need to reform the entire tort system."

"Our old rules are creating runaway costs that will force us to reexamine basic values about how much risk we are prepared to accept, what level of compensation is reasonable and who should pay," he told state legislators during a brief, 11-minute state-of-the-state address.

"No one person or group is really to blame" for the crisis in malpractice insurance premiums, he continued. "It is a product of a set of incentives that have now become counterproductive. I think we can solve it but only if those affected are willing to sacrifice and accept fundamental reform."

Since the beginning of the year, Southern California doctors have been staging a work slowdown to protest gigantic increases in malpractice premiums. As a result of that action, about 2,000 hospital workers had been laid off as of January 8, the eighth day of the protest, and surgeries and patient occupancy rates were reported to be down dramatically. ■

Another call for reform of tort liability system

SAN FRANCISCO—The chairman and president of Fireman's Fund American Insurance Cos. has called for a dramatic restructuring of the nation's tort liability system.

Myron Du Bain, chairman and president of Fireman's Fund, told a meeting of the Western Assn. of Insurance Brokers that punitive damages must be abolished.

"They amount to a confiscation of property without due process of law," he said, "since it is a civil court that levies punitive damage awards and not a criminal court where constitutional rights can be properly protected.

"These windfall payments are clearly inequitable since the injured party should be compensated only for the loss," he declared.

Mr. Du Bain also advocated a limit to general damages for pain and suffering and mental anguish. He maintained that these awards cannot be objectively determined.

"Like punitive damages, they become windfalls, particularly to the heirs of the injured party," he elaborated.

"Society cannot afford to pay such high amounts to so many," he argued.

Attorneys' contingency fees also came under attack by the insurance company executive. Mr. Du Bain said that limits must be placed on the amount of money that lawyers can collect under this arrangement.

Similarly, he proposed that the collateral source rule be eliminated. "This rule makes it impossible to point out to a jury that, of the thousands of dollars in medical costs demanded by the injured party, insurance or the employer has already paid most of it," he went on. "The rule makes it impossible to point out that an injured party did not lose any income since he received a salary during a period of disability."

"It is plain that the collateral source rule enables injured parties to collect many times the amount it takes to restore them to the positions they were in before their losses," he said.

Mr. Du Bain also criticized the adversary system, pointing out that a full 30% of each general liability premium dollar collected by an insurance company is spent on legal defense costs. "We should take a good look at the idea of handling by arbitration many of the matters now being resolved through lengthy and expensive trials," he urged association members.

He suggested that consideration should be given to such trial streamlining measures as videotaping of depositions and expert testimony.

The insurance company executive, who early in his speech predicted that the country is heading toward economic breakdown, used the physicians' strike in Southern California to illustrate his fearsome prediction. Doctors are striking, he said, becase the chances are one-in-ten that they will be sued for malpractice if they practice medicine. Mr. Du Bain said that when physicians lose a lawsuit against them, jury awards can rise as high as $2 million and, occasionally, to $5 million to $6 million.

"Consider the impact of just one $10 million award upon a pool of 5,000 practicing surgeons and physicians in California," he continued. "The pure loss premium alone would be $2,000 for each of the 5,000 doctors. And that does not include insurance company operating costs, costly legal defense or the smaller losses."

Along with physicians, he said that veterinarians, engineers and architects are confronting rocketing liability premiums. As a result, he said that engineers and architects "are afraid to innovate."

Liability insurance "now accounts for as much as 10% of the costs of some products," he added.

Mr. Du Bain isn't the only prominent Californian to call for reform of the tort liability system this year.

In his state of the state address, Gov. Edmund G. Brown Jr. told legislators that the tort liability system has become counterproductive. ■

Work comp benefits may serve to deter emotionally disabled employes

NEW YORK—Providing workers' compensation benefits to emotionally disabled employes may act as a deterrent to rehabilitation, according to one medical spokesman.

"Compensation often prevents or prolongs rehabilitation," Dr. Alan McLean, area medical director at IBM told a meeting of the Self-Insurers Assn. in December.

"This is my concern," Dr. McLean said, "that the workers' compensation statutes as they read today do not truly help many emotionally troubled employes."

The doctor cited two legal precedents for paying such benefits. One was a 1960 decision by the Michigan Supreme Court awarding compensation to an employe for a psychotic illness said to have resulted from the emotional pressure in his daily work as a machine operator on an assembly line.

In a more recent case, Butler vs. the District Parking Management Co. in the District of Columbia, the court ruled that since the company was unable to disprove a casual relationship between the employe's job and a subsequent mental disorder, workers' compensation benefits were applicable and appropriate.

"There is, I think, a very real danger in liberalizing the legal concept of 'cause' to the point where anyone can successfully claim that regularly expected performance on the job causes mental disorder," the doctor commented.

He quoted from studies by another physician which considered why a number of patients, especially those injured in industrial accidents fail to improve within expectable periods of time, or fail to improve at all.

"Since the discomfort reported by the patient need not in any way, relate to objective physical findings, the physician often leaps to the conclusion that the patient, motivated by the hope of getting some financial reward, is malingering," Dr. McLean said.

This is rarely an accurate assessment of the situation, he explained. "Accidents and injuries occur to individuals who have a specific psychological set and emotional status prior to the injury, a psychological and emotional response to it, and who function within a social context which is inevitably altered by the accident."

Individuals are sometimes wholly or partly responsible for an accident, he continued, however, complicity in the causation of the injury does not mean connivance. Though it does occur, far more often the complicity is unconscious or a consequence of depression or anxiety, the doctor noted.

The chain of events following an industrial disability produces still another set of psychological consequences, Dr. McLean said. "Once the insurance company, the state workers' compensation agency and an attorney have entered the picture, an uncomplicated recovery becomes increasingly unlikely."

The doctor gave the following examples of the type of patient who fails to improve from an industrial disability:

- The depressed patient. Depression not only complicates recovery, it tends to predispose individuals to accidents. In depression, inattention, poor visual-motor coordination and low self-esteem all contribute to accident-proneness and to poor response to treatment.
- The hysterical personality. Hysterical persons are suggestable and often characterized by a need to dramatize themselves and their difficulties. They usually resolve major conflicts through the development of conversion symptoms that carry a symbolic representation of the conflict and its resolution through a physical disability.
- The dependent, immature person. Many people never develop the capacity to feel responsible for themselves, to accept other responsibilities and do not value self-sufficiency. They rapidly adjust to a lower level of subsistence once an accidental injury provides them with the opportunity to assume to patient role.
- The pseudo-self-sufficient person. There are many people whose need to maintain self-esteem through work and other manifestations of strength is in sharp conflict with a wish to escape responsibility and be cared for. When this uneasy equilibrium is upset by a period of enforced dependency created by injury or illness, they often have a prolonged convalescence.
- The aging worker. Construction workers and unskilled laborers reach a point in their 40s and 50s where their work situation becomes increasingly intolerable. Their physical capacity for work begins to decrease, the pleasure of working is replaced by weariness, sore muscles and the fear of unemployment. A low level of benefit-funded security protects them from the anxiety of attempting to re-enter the labor market.
- The socio-pathic exploiter. These are people who live by their wits. They like action, which means they tend to work in jobs where injuries are most likely to occur. For them, an injury can be used as a means to achieve guaranteed, though low level subsistence.

When malingering occurs, Dr. McLean said, it is in this group. "These patients are not all malingerers," he added, "but they do tend to exploit bona fide injuries to the limit."

Since industrial accidents are especially susceptible to psychological complications, the doctor explained, it is unwise to assume that patients who fail to recover in the expected period of time are malingering. This fails to take into account that accidents involve psychological, physiological, social and psychical environmental factors, he said.

"They are further influenced by the worker's relationship with his employer, his physician, the claims adjustor of the insurance company and the possibilities of financial reward and an escape from an unsatisfying work situation," he concluded. ■

Honorary member

The Risk and Insurance Management Society (RIMS) named James C. Cristy, retired insurance and pensions manager with Upjohn Co., its eleventh honorary member. Mr. Cristy was chairman of the RIMS education committee when the diploma program in risk management was instituted and was a principal architect of the program. In 1967, RIMS created the Cristy Award to honor the person receiving the highest grade average in the three exams leading to the associate in risk management diploma.

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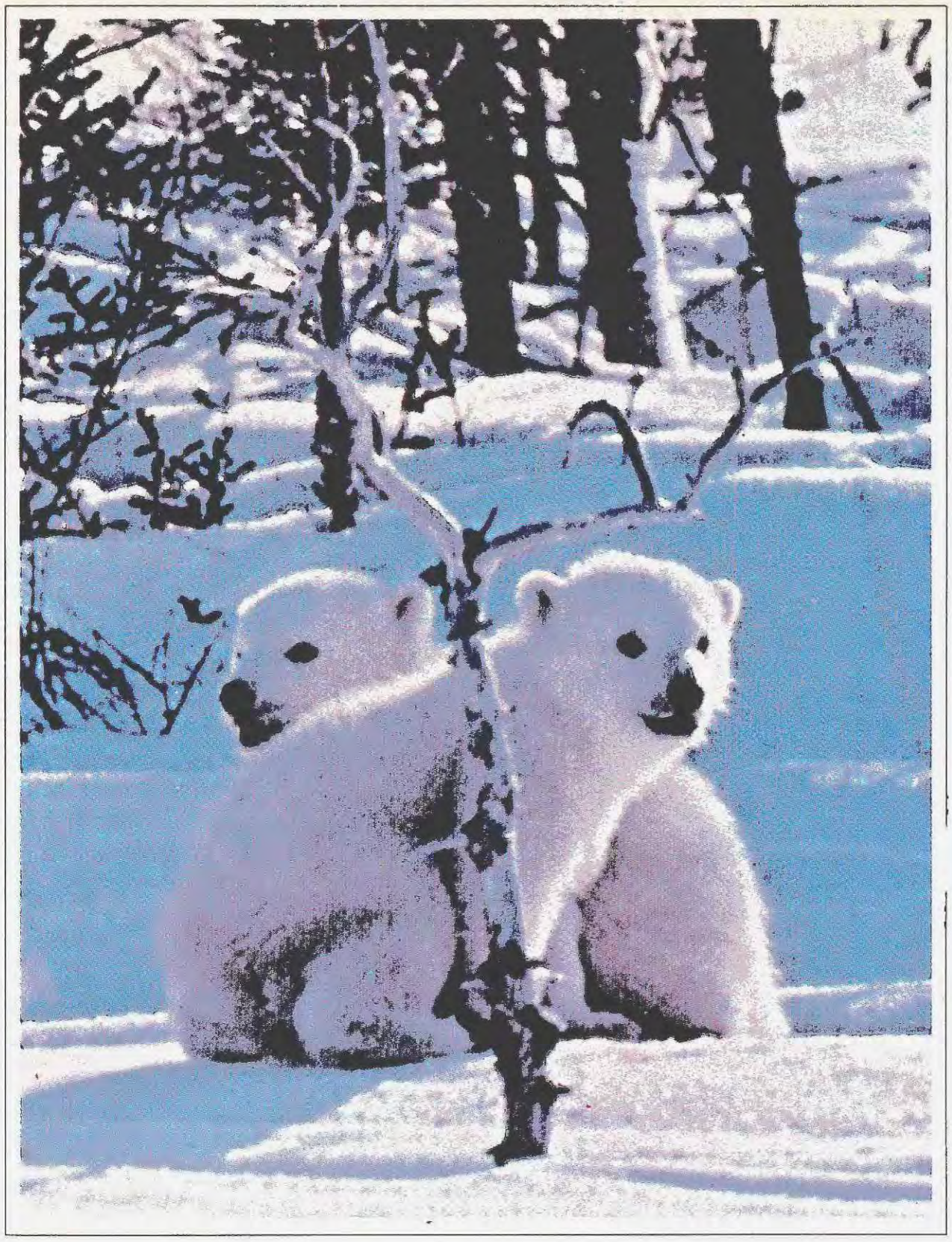

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PERSPECTIVE

Overview: Product risks for the wholesaler-distributor

By ROBERT L. LARSEN
President
Larsen Corp., Des Plaines, Il.

Editor's note: Mr. Larsen's remarks were delivered at the 1975 annual meeting of the National Assn. of Electrical Distributors. Mr. Larsen's company is an insurance brokerage and insurance administrator for a number of association insurance programs.

"PRODUCT LIABILITY" broadly means the legal responsibility of a manufacturer or seller of a product to compensate a consumer who has been harmed by the product.

The laws dealing with your legal responsibility have been changing rapidly in recent years and all of these changes have tended to increase the product liability exposure of firms engaged in wholesale distribution. Rulings by American courts have greatly expanded the circumstances under which a consumer can collect damages from a manufacturer or distributor for loss suffered as the result of a defective product.

The concept of products liability is not new, but never before was it the subject of such intense legal activity and in recent years the concept has developed dramatically—even explosively. Today product liability is probably the fastest growing area in the law and the various state laws are constantly changing and expanding the concept of "strict liability in tort" (which means simply that if a person uses a product for any reasonably intended purpose and is harmed, he has the right to recover from the seller of that product).

Too many distributors I have talked to about this subject fail to grasp the significance of the changes that have taken place. So often I hear that "This firm has been in business for 27 years and not once has been sued for product liability"; or, "My suppliers have provided a vendors endorsement which covers me for product liability if their products don't perform;" or "I carry liability insurance so I am fully protected."

There are so many fallacies associated with these statements that I could spend hours discussing them; but, briefly, let me point out:

- Whatever has been the history of your firm as respects product liability, forget it. It's a whole new ball game. The legal concepts we're concerned with here either did not exist in the past or have so expanded and accelerated today that they bear no resemblance to historical legal thinking.

- The so-called "vendors endorsement" continues to confuse just about all wholesaler-distributors and most insurance men. As best I can determine, a vendors endorsement simply extends to the wholesaler-distributor the product liability insurance maintained by a manufacturer. The endorsement is terribly fragile and by this I mean there are so many things a W-D can do to negate this protection that, as far as I am concerned, the only value of a vendors endorsement is the possibility of reducing the cost of your own product liability insurance. To think that you don't need your own product liability coverage because your suppliers provide vendors endorsements is almost like thinking you don't need automobile insurance because you're a safe driver.

- Those firms that do carry broad, comprehensive, high-limit products liability insurance should be aware of those areas of product exposure to which their insurance does not apply. More on this later.

Today, a wholesaler-distributor (W-D) can be sued for products liability either for negligence or for breach of warranty. The negligence can be on the part of the manufacturer and involve safety, product design, product quality, etc. over which the W-D has absolutely no control. Here we get into this theory of strict liability in tort where a party is injured and has the right to proceed against the seller of that product who can be the retailer, the W-D and/or the manufacturer. Unfortunately, the incidence of major suits against W-D's is in the ascendancy by virtue of the fact that the W-D can be and usually is substantial, local, poorly versed in defense techniques, and seldom maintains proper records relating to salesmen's recommendations and guarantees, age of products, etc.

Aside from the negligence area, a W-D can be sued for breach of warranty. This doesn't have to be the W-D's warranty, it can be the manufacturer's; but, again, the W-D is "Johnny-on-the-spot." For example if you say that a product meets certain specifications and it fails to perform as you stipulated it would, you could, at best, be required to pay for loss of profits due to production shutdowns, spoilage of raw material, and on and on.

Or perhaps you recommend a particular product and it proves defective and causes personal injury or property damage and, again, you can be brought to task. Suits in this area are usually in the hundreds of thousands and, many times, in the millions of dollars. Please recognize that if you modify a piece of equipment or if you do the engineering on a commercial project, you have assumed a new role since you are now both the manufacturer and the engineer along with being the seller of a potentially defective product.

"IN 1965 THE AVERAGE AWARD IN PRODUCT RELATED LAWSUITS WAS $11,644—IN 1973 THAT HAD JUMPED TO $79,940."

I could talk all day about hypothetical lawsuits, but let me turn to the question of product liability insurance and what it can and cannot do for you. Too many W-D's rely on product liability insurance to protect the firm from all third-party actions. This, of course, is a very fallacious and dangerous assumption so rather than discuss what a product liability insurance contract does protect you for, let's look for a moment at the risks you assume:

- First and most important of all is the fact that there is no coverage for the hazard of doing business—the "business risk concept." If the products that firms manufacture and sellers distribute do not perform as they were intended to; it is not now, and I am sure never will be, the domain of the insurance industry to indemnify manufacturers and distributors against poor judgment, improper design, poor workmanship, etc. Unless there is bodily injury or damage to tangible property, any other contingent loss is "your baby."

The expense of product recall, modification, and replacement is, and I think properly, the problem of the firm that made or sold a product that didn't perform as it was warranted to. If we ever get to the point where you could insure against products not working, we'll simply accelerate the general trend toward poor workmenship, inadequate engineering and poor product safety.

- If the product sold didn't do its job, the "contingent loss" that could evolve could be staggering. Think of production shutdowns, think of building modification requirements; think of product recalls! These are situations where the victim used to cry and then call you to seek help in remedying the situation. In the future, the call will come from the injured party's attorney and he won't be asking, he will be telling.

This situation comes about as a result of an exclusion in the standard product liability policy eliminating from coverage losses due to error in plan, specification, design or formula. I know of one bearing distributor who sold a roller bearing that broke down during operation causing a major production shutdown and the distributor is facing a $350,000 uninsured loss.

Another problem just coming on the horizon is the "hold harmless trap." Buyers for a number of major retail concerns have come up with a new "condition of sale" gimmick which is loaded with potential trouble. This is the "hold harmless statement" in which the vendor (manufacturer or distributor) is requested in effect to guarantee to indemnify the customer for virtually any loss, damage, or injury connected with the use or sale of a product. It threatens to fix the noose around the vendor's neck more tightly than ever in terms of product liability.

While this practice isn't widespread yet, I am convinced it is catching on fast. The organizations I have seen employing it are national and very influential in the market place. You had better be forewarned that you can expect major customers to request a "hold harmless agreement" from you, and I warn you to avoid doing so if at all possible.

The biggest nightmare associated with this new trend is the effect it will have on your insurance. Most liability policies include only incidental "contractual liability." In other words, any risk you assume by contract (other than routine rental and lease arrangements, etc.) will usually not be covered by your liability insurance. "Broad form blanket contractual liability" coverage is a recommended addition to your liability insurance. If you sign a hold harmless agreement, and it's not covered by contractual liability insurance, you may be putting yourself in jeopardy through exposure to an uninsured loss. The best ad-

Continued on following page

LIABILITY EXPOSURES

Distributors of electrical products which typically include consumer lighting sales, counter sales to contractors, and sales of bulk supplies for large commercial projects. Each operation can pose product liability exposures for the wholesaler.

PERSPECTIVE

Product liability risks . . .

Continued from preceding page
vice for now, pending further legal review, is: Don't sign a hold harmless statement if you can avoid it, and don't sign it under any circumstances before consulting your attorney and insurance consultant. If an important customer insists on such a statement, have your attorney draw up the agreement and include installation and maintenance conditions, proper inspection procedures, etc.

There were roughly 50,000 product liability suits in 1963; 100,000 in 1966; 500,000 in 1971; and it is estimated the number will top one million in 1975!

In 1965 the average award in product related lawsuits was $11,644—in 1973 that had jumped to $79,940! In 1965 some 43% of judgments went to the plaintiff; in 1973 that had risen to 54%.

December 1975 marked the end of the worst two-year period in the history of the insurance industry. Some can point with pride to the solvency of the industry as a whole since there have been few outright insurance company failures, in spite of the worst underwriting losses ever. It seems that 1974 -75 has seen the three external factors that can hurt a casualty insurance company all occur at the same time. Inflation! Stock Market Losses! Underwriting Losses! (the result of bloody price competition of 1971-73).

One insurance company after another is reporting underwriting losses in the tens and some in the hundreds of millions. Allstate, State Farm, CNA, St. Paul Companies, Travelers, Hartford; the list goes on and on concerning the staggering losses reported for fiscal 1974.

But you say, "what does this mean to me? Plenty! It means rates are going up. It means businesses in "marginal" areas, firms with big trucking or product liability exposures are going to see rates go through the ceiling and in many instances policies cancelled at renewal. As an example, we've already seen one distributor in New York have its general liability insurance costs go from $15,000 to $80,000 at renewal. In recent weeks we've seen umbrella liability premiums jump 300% and 400%.

Why such shocking increases? Well, the ability of any insurance company to write business (assume risk) is controlled by an allowable statutory ratio between the liabilities they assume and their capital and surplus. As the safety margin shrinks, the insurance company starts to cut back on new risk assumption. 1974/75 have clobbered the capital and surplus of most companies; hence, the rate increases (sc insurance companies can afford the higher reinsurance costs) and the cancellations.

Add to this dismal picture the alarming statutory increases in workers' compensation benefits (50% cost increases in some states), the runaway inflation in the health care delivery system (much of it due to incredible increases in malpractice insurance costs for hospitals and physicians) and you start to sense the impact this could have on your P&L! Remember the New York distributor—what would a $65,000 increase in insurance costs do to your bottom line?

How long can this continue—how high can insurance premiums go? The primarly answer lies, of course, in somehow controlling inflation. Also, the American Bar is

An electrical equipment wholesaler handles bulk contracting supplies.

going to have to assume the leadership in bringing our judicial process back to something approaching reality. Consumer advocacy, multimillion dollar personal injury awards, punitive damages, etc., all seem to have a positive effect on our nation and its people. But if in the process of redressing some very real corporate abuses, we instead interrupt the stream of commerce and bring financial ruin on businessmen and professionals—then who will have won?

I think we're at the point where an enlightened judiciary/bar can arbitrate between John Q. Citizen and the corporation. If, instead, the judiciary/bar sides with the so-called "consumer," then the sad trend I relate to you will continue until insurance becomes too expensive, and self-assumption of corporate and personal liability will, at that point, be unthinkable. Then, where are we?

The pendulum swings and never seems to stop in the middle of its arc. It's current swing threatens to loosen it from its mounting!

The thrust of what we have been discussing is that a new danger has arisen that requires the special attention of top management. The greatest experts on this subject are the heads of wholesaler-distribution firms that have just been sued for hundreds of thousands of dollars.

Why not become an expert before that happens. Here are some of the steps you can take:

- Make certain you have broad product liability protection written through a reliable insurance company by a knowledgeable agent or broker.
- Keep careful records as to items purchased.
- Caution your sales personnel not to overstate the capabilities of the items you sell.
- Contact your insurance company and/or legal counsel immediately following notification of a possible product liability suit.
- Pray a lot. ■

Indexing of policies, free floating rates seen curing industry 'ills'

By ROBERT C. TUETING
College of Business
Colorado State University
Fort Collins, Colorado

INFLATION OF THE virulent "vintage" prevailing today produces a variety of consequences that render difficult the maintenance of a stable environment for insurance.

The property and liability insurance areas are acutely susceptible to the devastating effect of rampant inflation. This is because premiums are accepted currently to pay for claims that will occur in the future when, if the profligate antics in Washington continue, the value of the dollar will be much less than it is today. That will severely complicate the ability of the insurance business to estimate how many dollars will be needed for future delivery of its service in the effective management of claims.

A schedule of rates may appear to be adequate at a particular time. But they may prove to be inadequate before adjustment can be initiated to provide for the accelerating prices of things—soaring bills for medical care, compensating an injury, and destroying or damaged property—for which insurance indemnifies.

During a period of galloping inflation to calculate probabilities based on previous losses incurred during a period of years in the past can be vastly inadequate for the actual losses as they occur. That is the situation today—the gap created between the payment of claims actually experienced and premium income on the other side.

The insurance industry, unlike other industries, does not enjoy freedom of pricing. It cannot pass on to the insured the increased costs of operation and must contend with the soaring cost of claims and settlement of claims at prices (rates) established in a prior period.

The fundamental feature of insurance requires stability of the dollar during a period of years. When the industry is in the unfavorable position that premiums collected do not provide a reserve adequate enough to pay losses, the resulting financial constraint threatens the ability of carriers to provide protection to the populace.

In a period of "airborne" inflation, conservative pricing of insurance is not sufficient to provide the needed balance between income from underwriting and costs of claims. To cope with the ravage of inflation, "major surgery" of rates looms as more of a necessity. For example, a sliding scale of rates might be considered by regulatory authorities whereby within specific limits of perhaps 5%-10% rates could be increased or decreased by the carriers to cope with inflation as the level of the CPI fluctuates.

This "indexing" would relate rates to the cost of living and render them more realistic to it. While this is not in any manner intended to serve as a gimmick it might provide some ephemeral relief and consequent easing of pressure on the declining reserves of many companies today. Neither is it intended to be a panacea because the critical need is to eliminate inflation and then the current system of pricing insurance would be as effective and adequate as it was prior to the devastating inflation plaguing the nation.

To prevent insurance from becoming another commodity the supply of which is inadequate to fulfill the demand for it, regulatory authorities may wish to consider "temporarily" allowing rates to be competitive and thus forego direct regulation for a period of time. That might permit the structure of rates to realistically anticipate inflation at a more deadly level in the future, if such anticipation is possible and tolerable, and thus provide more funds to cope with it.

Under this system the forces of competion would be allowed to control rates. When decreases in prices required lower rates, the rates could be reduced immediately. When increases in prices required higher rates, the rates could be adjusted at once and without any restriction as to the availability of insurance. In any case(s) of aberration where a rate was destructive discriminatory, or excessive, the regulatory authority would contain complete power to suspend or disapprove the rate.

"THE ABILITY OF THE INSURANCE INDUSTRY TO SURVIVE THE RECKLESS ASSAULT OF INFLATION IS WANING STEADILY."

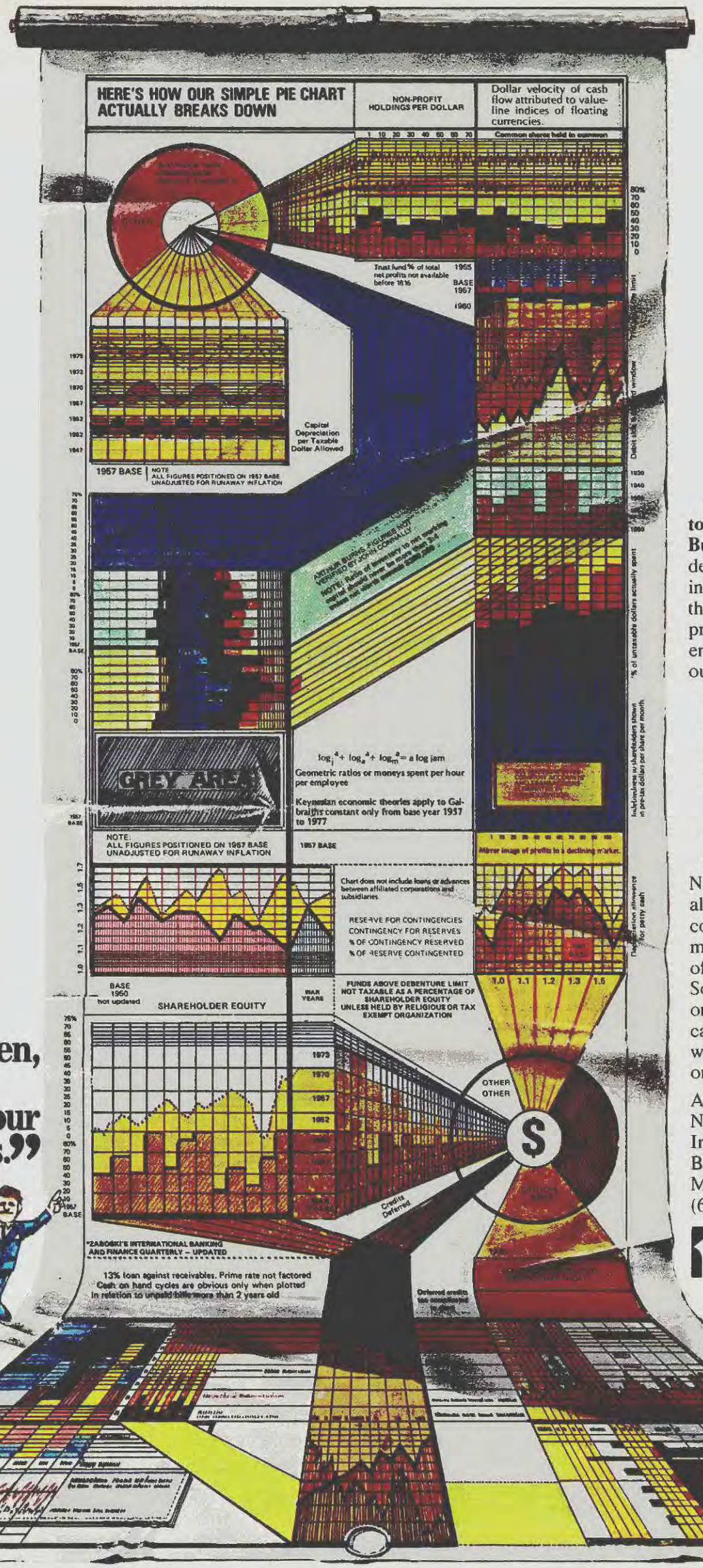
Competitively responsive rates usually result in greater availability of insurance and greater satisfaction by the public with the quality of it.

The choice is not between regulation alone and competition alone to protect the populace. Both are available and should be used in combination. For competition and regulation to reinforce each other to the maximum in manners relevant to current conditions, the time is propitious to allow competition to function with less restraint upon the market price of insurance. Competition in the market with hundreds of companies vying with each other for the business available would virtually assure the populace of the lowest price, most recent innovations, and availability of the product.

A serious problem confronting carriers today is that the increase in reserves for loss is occurring more rapidly than the increase in underwriting income while, simultaneously, surplus is declining. This situation portends decreasing capacity of carriers to provide protection and if continued the populace will suffer via greater difficulty in acquiring needed protection. The obvious "involuntary" alternative would be for companies to continue to function but in a manner that would pose a threat to solvency and stability. In that situation if increases in rates were not forthcoming companies would of necessity reduce the quantity of business and some would not survive.

The use of deductibles is impaired by inflation because the amount of claims is frequently in excess of the deductible. That increases the total payment of claims and the cost of operation of companies which increasingly impairs the ability of the industry to operate in a financially secure environment. Deductibles should be analyzed, reviewed periodically, and adjusted when conditions warrant. Perhaps a sliding scale could be established to "index" deductibles to cope with fluctuations in the CPI index and thus render the use of it more realistic in a period of insidious inflation. This might result in fewer claims exceeding the deductible and reduce somewhat the operating cost of companies.

The ability of the insurance industry to survive the reckless assault of inflation is waning steadily. Some of the factors discussed herein may enable the industry to temporarily cope with it. However, unless the industry relentlessly bombards the administration and congress with incessant demands that profligate spending be slashed drastically, any palliatives, remedial action, naught. A sane and stable fiscal policy is imperative for a vigorous and financially or anything done by the industry to endure inflation will be futile and for healthy insurance industry. ■



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Rates may be more competitive if law is repealed

NEW YORK—Repeal of the McCarran-Ferguson Act of 1945, which now grants immunity to insurers from federal antitrust action, could be "one of the few healthy insurance developments of 1975," a former Federal Insurance Administrator said.

It could result in a true competitive rating system across the country by eliminating the traditional roles state regulators have played in premium rate setting, he noted.

Speaking before the annual meeting of the Insurance Information Institute, on January 20, George K. Bernstein explained to industry representatives just how the repeal proposal now before the Justice Department could impact the property/casualty business.

Although he has been on both sides of the regulatory fence, as deputy insurance superintendent of New York as well as former Federal Insurance Administrator, Mr. Bernstein, who now practices law privately, was unsparing in his criticism of inept and politically ambitious regulators.

He blasted the National Assn. of Insurance Commissioners for skirting the issue of political ratemaking over the years, and charged that the short tenure of insurance commissioners—said to average less than two years—accounts in part for less than professional performance.

"Judging by results, the first question asked by too many insurance departments is not 'is the filing accurate?' but 'how will the legislature and the public react to an increase in premiums?' "

Regulators who didn't know what they were doing when they suppressed premium rates were at least partly responsible for losses in the property casualty businesses' worst underwriting year in memory, Mr. Bernstein told the audience.

He said it should be no surprise "that coming off a year which produced more than a $4 billion property/casualty underwriting loss, many many carriers who previously would have rejected any talk of even the most minute intrusion by the federal government are at least listening with interest to the proposals now being discussed in Washington."

Although Mr. Bernstein later admitted he was personally aware of only one carrier currently prepared to accept the Justice Department proposal, he predicted that ". . . the construction of a workable mechanism to substitute antitrust enforcement for rate regulation is a real possibility and in the absence of equitable and essential rate relief at the state level may well attract a growing number of advocates."

Again and again, Mr. Bernstein stressed the importance of competitive rating for insurers' economic survival.

Under the regulatory climate today, while the McCarran-Ferguson Act is still in effect, the competitive rating movement has come to a virtual standstill. All but 17 states still require prior approval of rates by insurance departments, and practice what Mr. Bernstein called "ratemaking by public debate."

Warning that without adequate rates a cycle of insurer insolvencies is a certainty, he continued: "It is in this context that we look at the implications of repeal or revision of Public Law 15. We should not be afraid to consider any proposal unless we accept the current regulatory system as the best of all possible worlds."

Mr. Bernstein's speech however, was not an across the board endorsement of repeal of the McCarran Act. He has some serious reservations, for one thing, about the Ford Administration's grasp of the situation, its deference to state autonomy, and the likelihood that the opportunity to present the advantages of competition over regulation will be lose to election year rhetoric.

The Justice Department also came under Mr. Bernstein's criticism. "The failure of Justice to appreciate so basic a fact that insurers today believe that competitive ratemaking is in their own economic interest, is enough to give one pause in weighing the wisdom of legislation that might subject the industry to more extensive antitrust regulation.

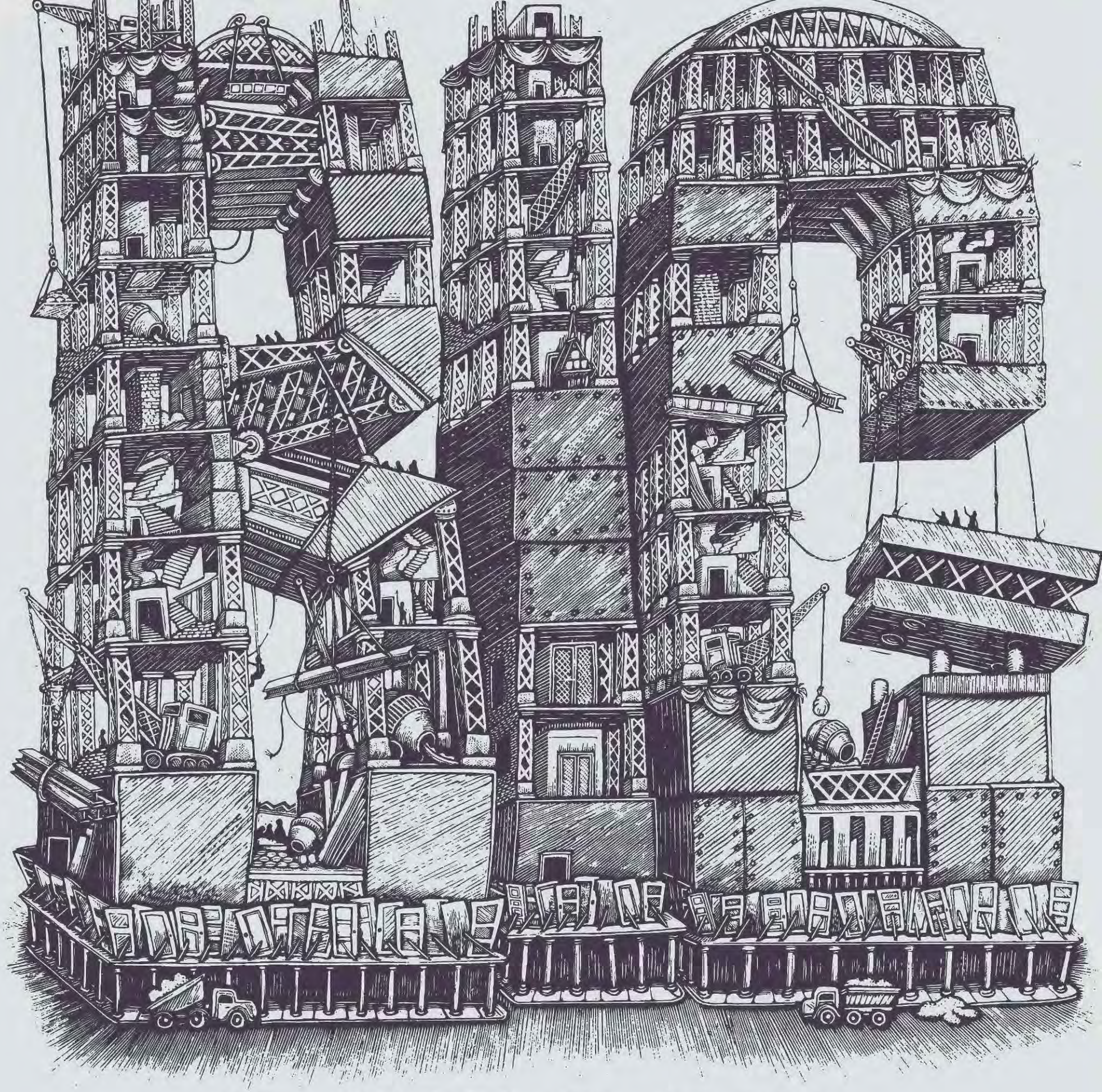
"Unless the realities of the insurance business are fully understood by those who would construct the regulatory system, there is no assurance that the industry would not end up in a more vulnerable position than it currently occupies.

"Moreover, the complexities of any antitrust deregulation package are monumental at best. Such vital issues as pooling of large risks, reinsurance, sharing of residual market exposure, and delineation between compilation of statistics and the antitrust concept of action in concert, require precise and explicit treatment," Mr. Bernstein said.

With those reservations, and reservations about the Ford Administration's position on antitrust and deregulation, the former Federal Insurance Administrator said he hoped no major insurance legislation will be introduced in Congress this year. ■

TPF&C acquires firm

Little, Church, & Chapin Inc., Pasadena, Ca., was acquired by Towers, Perrin, Forster & Crosby, an actuarial consulting firm, on January 1. TPF & C has 17 offices worldwide. The principals of Little, Church & Chapin joined TPF&C as principals. Formerly, they were partners of Coates & Crawford, successors to the firm of Coates, Herfurth & England.



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Benefit plan reviews by agency to increase

WASHINGTON—Employe benefit officials should brace themselves for a Labor Department much more active in reviewing and investigating pension and other employe benefit plans.

Ford administration budget estimates predict that the Labor Department will conduct 32,000 reviews and investigations in the 12 months ending Sept. 30, 1977.

That is still a small portion of the thousands of such plans in the country, but is a major jump from the 3,700 such reviews of investigations predicted for the 12 months ending this June 30.

In the ten months after enactment of ERISA in September 1974, Labor reviewed or investigated only 87 plans.

The painfully slow startup of the Labor Department pension reform program is also reflected in the fact that it spent only $3.2 million on pension reform from Sept. 2, 1974, when the bill was signed, until June 30, 1975.

For the 12 months ending this June 30 the Labor Department expects to spend $17.2 million.

And for fiscal year 1977—which won't begin until this October 1 under a new federal budget calendar—Labor predicts costs of $20.8 million.

The Internal Revenue Service—the other agency charged with supervising private pensions—expects fiscal 1977 costs to reach $30.4 million, up from an estimated $27.7 million in the 12 months ending next June 30. ■

Surpluses dropped to $2 billion in 1974

NEW YORK—A study of the financial position of 10 fire-casualty companies showed that their combined policyholder surpluses had dropped from $4.9 billion at the end of 1972 to less than $2 billion at the end of September, 1974.

Theodore J. Newton, Jr., vp of Blyth Eastman Dillon & Co. Inc. presented the study at the annual meeting of the Insurance Information Institute, as evidence too many carriers have been operating with an unhealthful equilibrium between premium and surplus.

He cited as the most serious problem of the insurance business the industry's absorption of record underwriting losses over the past two years at a time when its financial position was eroding.

At 1972 yearend, the ratio of premiums to policyholder surplus was 1.6 to 1 for the firms in Mr. Newton's survey. That is, there was a dollar in surplus for every $1.60 of premium.

But by Sept. 30, 1975, the ratio rose to 3.8:1, with the surplus seriously low for the amount of premium written, Mr. Newton demonstrated.

To put the figure in better perspective, he said:

"If you're writing 4 to 1 and you have a 10% underwriting loss, that means you will suffer a 40% loss in capital surplus."

Any surge in premium volume will put a further strain on surplus, he added.

"In 18 months, the industry lost all the capital surplus it had accumulated since 1960," the Blyth Eastman Dillon vp declared.

With the single exception of the Citizens Home Insurance Co., Mr. Newton said, no fire-casualty companies have been able to raise capital. Attempts to sell holding company debentures failed, and the indications are that only about eight or 10 insurance companies could raise any capital at all to improve their condition, he said.

The companies in the study prepared by Mr. Newton included Insurance Co. of North America, Aetna Life & Casualty, American Reinsurance, Continental Insurance, Government Employes Insurance Co., Ohio Casualty, Safeco, St. Paul Fire & Marine, The Travelers, and United States Fidelity & Guaranty.

Their total statutory underwriting losses for the first nine months last year were $686 million. ■

UAW criticizes Blues

United Auto Workers (UAW) vp Douglas Fraser recommended to Michigan Insurance Commissioner Thomas Jones that Michigan Blue Cross/Blue Shield should not be granted the 35% premium increase it requested. Citing hardships for unemployed union and non-union families plus "outrageous hospital cost increases," Mr. Fraser called for "real reforms," noting the Blues "have given no justification for a 35% raise . . . (when) national medical care costs will increase about 11% or 12% in the coming year."

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Unnecessary surgery . . .

Continued from page 1

Delaware's state employe health plan, with 23,000 subscribers, cost the state "in the neighborhood of $4.2 million," Mr. Olsen said.

The state's current contract with Blue Cross and Blue Shield of Delaware Inc. expires June 30 "and we've already gotten indications from Blue Cross that they will be seeking increases in the upper 20% range," the director of insurance noted.

A group health insurance committee comprised of Delaware's insurance commissioner, personnel director, treasurer and budget director has undertaken a study of means to contain the costs.

"The committee does not believe it can compare the experiences in New York against what might happen in Delaware," a spokesman said. "However, in the hope of even a minor containment of cost, they feel such a program might warrant a trial in this state."

In New Jersey, foot dragging on the part of the Blues is frustrating the insurance department's attempts to establish an elective surgery consultation program.

"Our board has instructed the staff to explore the possibility of a voluntary second opinion on elective surgery for some of our large, experience rated groups," a spokesman for Blue Cross of New Jersey said.

But according to New Jersey Insurance Commissioner James J. Sheeran, "the time for study is long since passed. It's time for action."

"I don't think any responsible person has any choice but to pursue this type of program," the Commissioner explained, "when you see how health care costs are increasing." He also cited a study done by the New York Times which discussed deaths resulting from incompetent and unnecessary surgery.

"I can also see how seeking a second opinion on elective surgery could, in the long run, help ease the malpractice crisis," Commissioner Sheeran noted. "If you could even eliminate 10% of unnecessary operations, you're cutting down on the number of potential malpractice situations that occur in hospitals."

A test program which began in Pennsylvania in January is giving "several thousand Blue Shield employes" the opportunity for a free second medical opinion when elective surgery is suggested according to a spokesman for the insurance department.

In keeping with its current policy, Blue Shield will not pay for the doctor's visit or consultation with a specialist which produces the initial recommendation of non-emergency surgery. However, once such a recommendation is made, the plan will pay for a second medical opinion to test the validity of the first.

The program will be expanded this summer to include approximately one million Blue Shield subscribers in the 19 county central Pennsylvania area which is serviced by Capital Blue Cross.

"We will soon have the broadest based, most definitive study of unnecessary surgery ever undertaken in the U.S.," said Robert Archer, director of health policy and operations at the insurance department.

"We will have facts rather than speculation about how much money, if any, might be saved through a more careful preliminary evaluation of proposed surgery." ■

Agreements, not insurance respond first

LOS ANGELES—Indemnification agreements, and not fiduciary liability insurance, should be the "first layer of defense" for individuals named as retirement plan fiduciaries.

Frederick J. Robbins, an attorney with the Boston firm of Goodwin, Procter & Hoar told an ALI-ABA (American Law Institute-American Bar Assn.) seminar, held at the Ambassador Hotel here, that he is cautious about the value of fiduciary liability insurance.

He offered as one reason for his caution the termination provisions in fiduciary liability policies. These policies are usually written on a claims-made basis, he pointed out, while ERISA carries a three to five year statute of limitations.

The attorney indicated that in his view there are "big gaps" in many fiduciary liability policies.

Noting that directors' and officers' (D&O) liability insurance underwriters have assumed the position that these policies do not cover fiduciary liability, Mr. Robbins pointed out that ERISA does not prohibit indemnification.

"Indemnification agreements are contracts under state law and thus they are not affected by ERISA," he asserted.

Mr. Robbins went on to suggest that an indemnification provision might be written into a plan or trust document in this way: "The company shall idemnify and hold harmless each of the trustees from any and all claims, loss, damages, expenses (including reasonable counsel fees approved by the company), and liability (including any reasonable amounts paid in settlement with the company's approval) arising from any act or omission of such trustee, except where the same is finally adjudicated to, be due to the wilful misconduct of such trustee."

Mr. Robbins turned negative on the the question of whether professional money managers, including banks and insurance companies, that are acting as pension fund managers, should be given indemnification by the plan sponsor.

He said there is plenty of errors and omissions (E&O) insurance on the market that can be had by these parties. ■

Hockey stars get free cover with headgear

TORONTO—Hockey players in Canada and the United States using headgear from CCM will be insured for free.

CM announced an arrangement it made with Seaboard Life Insurance Co. of Canada to underwrite $2,000 worth of dental coverage. $2,500 loss of sight indemnity, and $5,000 accidental death insurance for every eligible player.

The insurance will be in effect during every supervised practice or game anywhere in Canada or the U.S., for players using CCM's full headgear, including helmet, eye shield and lower face protector.

The program is called the "Parsons policy" after CCM vp George Parsons, who lost an eye in a National Hockey League game for the Toronto Maple Leafs. ■

Outboard Marine seeks new product liability insurer amid legal tangles

WAUKEGAN, IL.—Outboard Marine Corp. disclosed in its just-released annual report that it is involved in litigation over two alleged products liability cases which is creating even more controversy with the company's insurers, who argue that the outcome of the cases may not be covered by insurance.

Details of the cases and the resulting arguments with insurers were contained in two pages of the annual report which were directly from the corporation's 10-K report filed with the Securities & Exchange Commission.

Although company officials declined to disclose any additional insurance details, reputable sources familiar with the lawsuits said Outboard Marine had its liability insurance with Liberty Mutual Insurance Co. for many years until Jan. 1, 1974. The company then switched to Commercial Union Insurance Co. through Johnson & Higgins, to achieve substantial premium savings.

The company is now seeking another liability carrier, however, because Commercial Union has notified it of non-renewal.

According to the company's report, Roy Howarth sued Outboard Marine Feb. 15, 1974 in California, on behalf of a class of some 3,000 to 4,250 persons who may have already suffered damages, or might suffer them sometime in the future, as a result of owning or selling faulty products supplied by Outboard Marine. The suit seeks exemplary and punitive damages of $27 million.

This case is a sequel to an earlier personal injury case, Outboard Marine said, called Sabich versus Outboard Marine. This case was tried in the same California court, and a jury awarded $600,000 in actual damages and $1,254,000 in punitive damages to Mr. Sabich.

Plaintiff Sabich had allegedly been injured in a Cushman Trackster produced by Outboard Marine. Although the two cases are intertwined and very complicated, the facts of each make it apparent that Mr. Sabich was a passenger in the Trackster that Mr. Howarth was driving. The Sabich case is being appealed by Outboard Marine.

The fuzzy areas of the cases involve insurance. In its report, Outboard Marine states: "Some portion, if not all, of the damages which may ultimately be determined to be payable in the Sabich case is covered by product liability insurance. However, insurance coverage of the principal claims in the Howarth case is in dispute."

In the Howarth case, *Business Insurance* learned, it's unclear which insurers are involved, because the complaint is so general in its charges that no one really knows if there is an "occurrence" at a point in time, from which to determine whether the insurers from 1971—the time of the accident—or 1974—the time charges were made—will cover the losses.

In the Sabich case, the insurer involved is definitely Liberty Mutual, with whom Outboard Marine had coverage for $1 million of aggregate loss, $500,000 per person and $1 million any one occurrence. Outboard Marine had excess liability coverage with four or five umbrella carriers for another $20 million. One of those excess carriers was The Home Insurance Co., on the first excess layer above the primary coverage.

Outboard Marine says in its report that it sued the primary and excess insurers involved in the Sabich case, to secure reimbursement for damages in that case, and for indemnifications against possible liability for ordinary and punitive damages in the Howarth case. The suit was dismissed, partly as premature, but Outboard Marine continues its legal action.

Further complicating the disagreement between Outboard Marine and its previous and present insurers is the matter of punitive damages. Outboard Marine notes that "it has become fairly common practice in some jurisdictions, notably California for plaintiffs in personal injury cases to seek substantial punitive damages in addition to compensatory damages. There are at the present time pending against (Outboard Marine) four such cases, including the Sabich case, claiming punitive damages of $9,754,000.

"In certain jurisdictions, again notably California, it appears that it may be against public policy to insure against liability for punitive damages. As noted, this subject is in controversy with (Outboard Marine's) former excess insurance carrier."

The insurer is denying coverage for the Sabich award because of California statutes, but Outboard Marine is contending that the excess insurance contracts were written in Illinois and are governed by the laws of Illinois, which do not prohibit insurance against punitive damages.

Outboard Marine did not include the damages sought in the Howarth case in its total of punitive damages being claimed, because the case does not involve a personal injury. All the others do.

The Howarth case is creating so many problems because the complaint does not clearly specify damages already suffered which would be covered by insurance. In that case, the class of plaintiffs consists of purchasers or owners of Tracksters, alleging that the Trackster was negligently designed or manufactured and was unsafe for its intended use.

The report notes: "Howarth alleges that he purchased a Trackster in 1971 on the alleged representations made to him that the Cushman Trackster was designed to operate within the parameters of various described specifications and that these representations were false and the company knew they were false. The most serious alleged defect of which Howarth appears to complain is that a Trackster capable of climbing a given grade would, in coming down the same grade, roll over forward and possibly kill or injure the user or passenger of the Trackster."

The $27 million damages sought are for this alleged negligence. But further damages are sought because "Howarth and the alleged class members relied on the representations of the company and that these representations were made to deceive purchasers and induce them to purchase Tracksters, that Howarth and alleged class members suffered monetary damages in the amount of the purchase price of the vehicles purchased by them, and unspecified damages arising out of the potential liability each user of a Track-

Continued on page 32

Outboard . . .

Continued from page 31

ster may have insured or might hereafter insur in the even of injuries to others caused by Tracksters."

The second group of allegations appear to have been dismissed.

Outboard Marine is defending the Trackster as property designed, manufactured, assembled and inspected. "It does and will perform safely when driven with reasonable prudence," Outboard Marine maintains. The report notes from the time the Trackster was introduced in 1970, 4,000 units have been sold at prices ranging from $2,600 to $3,300.

Outboard Marine says it "realizes . . . some of the earlier advertising materials for the Trackster may have overstated certain . . . operating capabilities." But the company acted to correct this by issuing a revised owner's manual early in 1975 (which included limitations of the vehicle) along with a letter urging all owners to return vehicles to dealers for inspections and addition of safety equipment. "The letter also made an offer to repurchase Tracksters from owners who determined from a reading of the manual that they cannot safely use the vehicle for the purpose for which it was purchased," the company said.

Six months later, 200 vehicle owners had shown interest in repurchase and about 800 vehicles had been inspected and fitted with safety equipment. These steps, Outboard Marine believes, conform to the requirements of the California Consumer's Legal Remedy Act and "should furnish a defense to the claims in the case." ■

Schanes resigns post at pension agency

WASHINGTON—The Pension Benefit Guaranty Corp.'s executive director, Steven E. Schanes, resigned effective February 14. No successor has been named yet.

Mr. Schanes said he was resigning because of his wife's health, which has kept her at their home in San Diego, Ca., since he came here to head the Labor Department agency in November, 1974.

Although he hopes before leaving, to finish the basic regulations needed to process terminating pension plans, Mr. Schanes said, "I'm not overly joyed at what we've achieved. I thought we'd be a lot further down the line."

Important decisions still await PBGC, including the establishment of contingent employer liability insurance, which will insure sponsors of terminating plans for their liability of up to 30% of the company's net worth.

PBGC expects to determine in the coming year whether that program will be mandatory or voluntary, and whether it will be offered by the government corporation directly, by private insurers or by both under a joint program.

Also, a regulation on non-basic benefits must be formulated, and it must be decided whether to offer a non-basic benefits insurance program.

Mr. Schanes said he has no personal future plans. Earlier in his career, he was the director of the New Jersey State Division of Pensions and before that, a vp for Martin E. Segal Co.

In leaving, Mr. Schanes said that despite the delays in forming regulations, "It's been an excellent experience, setting up an agency and dealing with a new law."

The area of accomplishment that pleased him most, he said, "was the non-case area" to working with employers to solve problems with plans in order to prevent them from becoming termination cases.

The government corporation has already taken over the trusteeship of 15 plans out of the more than 5,000 notices of termination received since ERISA was enacted. PBGC is now paying monthly benefits of approximately $225,000 to about 1,700 retirees of those plans.

Also, PBGC has identified 1,221 terminating plans as "clearly sufficient to provide guaranteed benefits."

The rest of the plans will be processed when the four key regulations are put in final form. They are: asset allocation, insurance limits, valuation of plan assets and valuation of plan benefits. Once they are in place, a PBGC spokesman said, "we will see the number of trusteeships rise rapidly."

PBGC expects to book about $75 million in liabilities between February, when the regulations are expected to be finished, and the end of the fiscal year on June 30, 1976, according to the PBGC spokesman.

The government corporation will assume about $20 million of that amount with the rest coming from company assets. ■

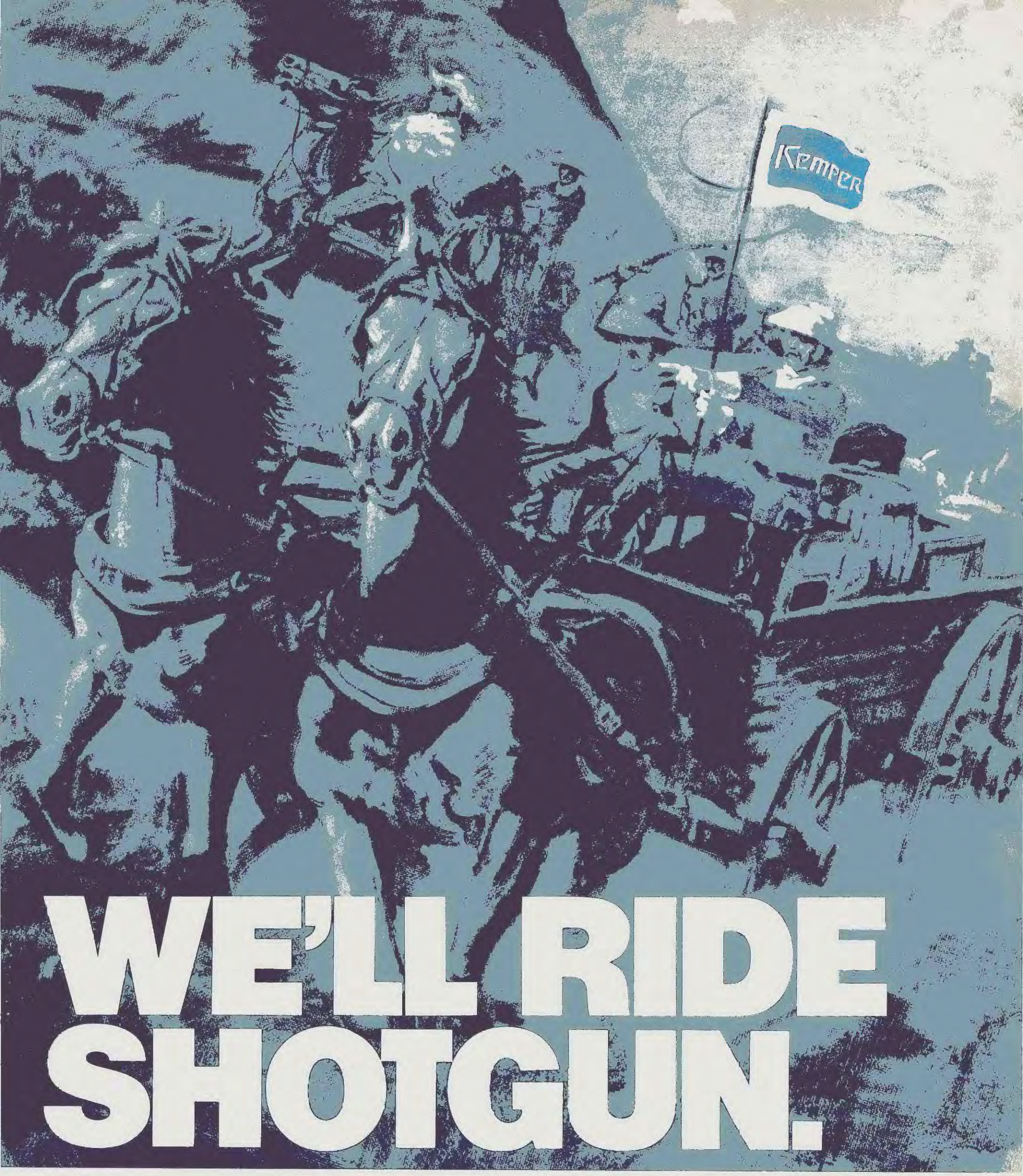
RIMS meet speakers told

NEW YORK—Syndicated columnist Jack Anderson and author Eliot Janeway are scheduled to speak at the 14th annual Risk and Insurance Management Society (RIMS) conference to be held in Los Angeles, April 25-30.

Mr. Anderson will address the conference's April 28 luncheon, while Mr. Janeway will speak at the employe benefits luncheon on April 26.

Mr. Janeway, who addressed the RIMS conference in Dallas last year, was invited back by popular demand.

This year's five day meeting is divided into property/casualty, employe benefits and industry sessions. In addition, an extra day will be devoted to a general business management program presented by the University of Southern California's Graduate School of Business. ■



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Daenzer . . .

Continued from page 3

the companies who write miscellaneous on an admitted basis in the United States. The other companies may be highly localized or write only the most innocuous forms of products liability. On occasion of course a favorite account may be written with special reinsurance or just a net layer for excess placements in the surplus lines market to finish off the limits required.

There are a number of American companies operating in only one state and on a non-admitted basis in other states. They may be the subsidiaries of larger American companies or the subsidiaries of some industrial firm. Some of these are strong in the products liability field: California Union, Bellefonte, Admiral, Columbia Casualty, Harbor, Interstate, International Surplus Lines.

There are any number of small excess and surplus lines companies. As in the malpractice field, one must be very careful that the company chosen has high marks on the early warning system with respect to the key factors used today in appraising American companies. Agents and brokers are very wise in their marketing if they use a good size surplus lines firm which is known for its stability and credibility where they do a very careful analysis of markets. As in malpractice liability, you want the company to be around for a products claim 10 years hence or more.

Some agents and brokers like to go to one or more specialty companies themselves and then go to a surplus lines firm for the rest. This doesn't make sense and can be counter-productive. With the way reinsurances are done in the excess and surplus lines you are in danger of doubling up a company on the primary side or a reinsurer which will trigger a cancellation and a redoing of the placement at a later time. Where a placement has to be layered, it takes the sophisticated surplus lines licensee who is spending full time every day in the market place to know what companies he has to reserve for the upper layers and what he has to do to get a good primary going which will be respected by the upper layers and the reinsurance companies. Proper knowledge of rating, scrutiny of underwriting data and setting up correct claims handling are an essential part of the placement process by a surplus lines firm. Recognition of this expertise has a lot to do with the ability of a client to get the top limit desired. There is also the danger of non-concurrencies in fragmented placements.

Large brokers have access of course not only to Lloyd's but a great number of companies who have come into the London market to hand over the pen in an underwriting pool and a Lloyd's-type rate can be secured on products liability placements.

Some American companies have created a subsidiary in the U.K. to participate in this market. A great number of Continental companies have established a presence: French, German, Italian, etc. Of course the Japanese companies have established a U.K. presence in recent years.

Here again the agent or broker and his client has to look to a surplus lines licensee to make sure that the security used satisfies the laws of the state. Over half the states have very rigid qualifications for an approved listing as a non-admitted carrier. There are the trust funds required. Again it gets down to a matter of relying on a large firm who can do the analysis work for proper security and make sure of the legality of the placement.

While many times a Lloyd's placement is made for products liability following the American style form, one must be aware that during the last five or six years a substantial portion of the Lloyd's market has been following the F.H.S. products wording. This is a very restricted wording. There is nothing wrong with it as long as the agent or broker explains fully the wording used so that the insured understands how it differs from the standard "bureau" form. It must be recognized that a products liability line is very often shopped considerably before it reaches the Lloyd's market.

There may be some sense in the years to come in having two wordings available in the American market, one for standard risks and another for sub-standard risks. Many of the standard writing companies in the United States are putting out prohibited lists. A typical one might include such classes as: aircraft products, animal and poultry feed, antifreeze, anhydrous ammonia, bottling risks, caterers, celluloid and pyroxline, chemicals of a hazardous nature, compound 1080 T.E.P. and the like, cosmetics, detergents and soaps, electrical equipment which is applied to the body, eyelash dyers, lipsticks, suntan lotions, hair dyers, removers, restorers and straighteners, ladders and scaffolds, lacquers and paints, power driven lawn mowers, hedge cutters and the like, products containing more than 5% D.D.T., cutting machines, tobacco products, toys, drug and pharmaceuticals, automobiles and motorcycles, ship building and repairing, firearms and ammunition.

Some of these classes during the next few years may not only require a high price, but underwriters will impose some of the restricted language used in the F.H.S. 1970 products wording. The principal differences between the F.H.S. wording and the standard wording are as follows:

It is a "caused by accident" contract, not an "occurrence" contract.

Coverage only applies to products listed in a schedule attached to the policy.

It has a retroactive date stated in the schedule. No coverage is afforded for any claim caused or alleged to be caused, to any extent or degree, directly or indirectly, by any of the insured's products prior to the retro date.

It is therefore a "claims made" form. Immediate notice must be given in accordance with the policy conditions. A claim made by one person or corporation shall be deemed to have been made solely on such claimant's behalf and not on behalf of any other person or corporation.

There is a discovery period in the event of cancellation or non-renewal which provides for a 12 months period with respect to B.I. or P.D. caused solely as a result of an accident sustained after the retroactive date in the schedule and prior to the expiration or termination date.

It is agreed that an increase in premium is not deemed a refusal to renew the policy to trigger the discovery period and if there is a succeeding insurance which has a retroactive date the same as the original Lloyd's cover, the 12 months discovery clause is inoperative.

The exclusion with respect to liability assumed by the insured under contract or agreement, oral or written, does not have the American standard language with respect to insurance coverage allowed for warranties of fitness or quality.

There is an exclusion with re-

Continued on page 36

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Continued from page 34

spect to any criminal act or any act committed while in violation of any law or ordinance.

There is also an exclusion with respect to any bodily injury or property damage caused by any person employed by the insured in violation of law as to age or under the age of 16 if there is no age limit.

There is a specific exclusion with respect to the manufacture of any material intended for use as an explosive.

Any article or product manufactured, handled or sold or distributed in known violation of any law, statute or ordinance, federal, state or municipal is excluded. Also claims based upon a written or oral expressed warranty of the insured. Also claims arising out of, involving or connected with the insured products dispensed by or purchased through a vending machine or other mechanical vending or dispensing device.

Also excluded are claims for damages resulting from inspection, maintenance or repair of the insured's products or of work completed by or for the named insured or any property of which such product or work form a part.

Punitive or exemplary damages are excluded.

Loss of, damage to, or loss of use of property, directly or indirectly resulting from subsidence caused by sub-surface operations of the insured.

The agent or broker should be alert to the fact that if any of the exclusions mentioned in this apply to this clients, they will have to get an amendment of the F.H.S. wording or try to get coverage elsewhere. Full disclosure of policy limitations is essential to avoid any possible producer E&O claim.

Whether restrictive products contracts are drafted in the United States or in London, there will be difficulties in the courts.

As it is, the lawyers have had a field day during the last 10 to 15 years on such questions as to what constitutes a single claim, damage to the insured's product itself, loss of use or delay, performance failure. If we do end up with two policies in the United States, one for very simple risks and another for very difficult risks, the policy drafting committees will have to be very careful to make sure that the restrictions stand up. There is no doubt that a lot of underwriters in the market place feel that we have gone too far in constantly broadening the CGL wording over the years. A man can have produced ladders up until three years ago and have two million ladders on the premises of potential claimants throughout 50 states but currently have a policy which would cover him for any claim made with no sales reported. The policy as drafted permits him to start up any new product or to change the components of any existing products without notice to the carrier.

There has been a great increase in the number of risks where the products liability coverage is layered. This has always been a common approach for the very large risks where 50 or 100 million of coverage was needed, but now some very simple risks have to be so structured.

First of all the inadequacy in the excess limits table has been more and more realized during the last five years, both by the primary underwriter and his reinsurer. Special rules are being made as to what will have to be left out of the treaty. It never made sense that the cost in reinsurance could be so cheap under a treaty when a separate placement would have cost 25 or 30 times the amount hidden in the treaty.

Another movement which is having a marked effect on layering is the requirement by the umbrella underwriter today that there be at least 300,000 or 500,000 in the underlying for products liability before the umbrella applies. There are some umbrella underwriters today who want a million of products, just as they want a million of malpractice before they will entertain a cover. A very usual practice is to require 500,000. The primary carrier may only want a million of malpractice before they will entertain a cover. A very usual practice is to require 500,000. The primary carrier may only want to write 100,000 so as not to expose his treaty or violate any underwriting rules set up internally in the home office. This means that the agent or broker has to get a "buffer" layer of 400 excess of 100 before going to his traditional umbrella underwriter.

A tremendous amount of business such as this is now being written in the excess and surplus lines market.

It is a very wise move for the agent or broker if he can keep his favorite company on the primary and also keep his traditional underwriters on an admitted basis doing the umbrella. He may want to try the non-admitted market for the umbrella and the buffer layer, but normally the charge for the umbrella itself will be cheaper if available in the admitted market. If the agent or broker can get at least 100,000 or more in his underlying carrier, he then can negotiate the broadest wording and he can ask the upper layers to follow form.

Remember that the whole liability program should start on the same day so that everything, the primary, the buffer layer and the umbrella come up on the same anniversary date. You avoid any chance of a change in carrier on a change in cover which would not be notified to the excess. The underwriter on the buffer layer or the umbrella layer may be relying on the claims department or expertise of the primary and not anyone else. He not only worries about the claim department of the primary, but also today whether or not the carrier is on a list of collapsible insurance companies. No one wants to be over a bankrupt company.

By placing everything at the same time the agent or broker avoids the terrible problem of nonconcurrency where there is an exhaustion of underwriting limits. Wherever there is an aggregate in a primary the excess layer has to come down at the time of the exhaustion of the limit. If you have any overlap of dates there is no way to calculate how and when the underlying is exhausted.

If there is any high-low program or any retro arrangement on the primary, make sure the underwriters above understand fully the primary rating. If any of the excesses are done as a percentage of the underlying, then they will have to be adjusted and adjusted as the primary calculation changes from time to time. The best approach is to get a fixed premium on the excess if it can be negotiated.

If you have an association or a group where all of the products are being negotiated in one placement because of underwriting difficulty or better pricing, beware of the aggregate problem. If you run out of cover, how do you settle a loss? Do you pay the claims first come first served or wait until the end and pay everybody so much on the dollar? Here you must buy tremendous limits all the way to the very top beyond any conceivable aggregation of losses for your full membership. ■

Ford penny-pinching won't slow OSHA efforts

By PAUL R. MERRION

WASHINGTON—More Labor Department activity in the areas of occupational health and pension reform is envisioned despite cutbacks and overall penny-pinching in President Ford's proposed fiscal 1977 budget.

Diseases of the workplace gain major target status this year as the Occupational Safety and Health Administration (OSHA) gets an extra $2 million in the proposed budget to hire 95 people to develop and enforce job-related health standards, including 60 more health inspectors.

In addition, the proposed budget gives Labor an additional $2.1 million to start training OSHA's 1,300 current safety inspectors so they can also spot violations of complex health standards.

OSHA's overall standard-setting program will cost $11.2 million in the next fiscal year, an increase of about 66% over fiscal 1976 estimates.

Enforcement of the entire law is also expected to increase. The proposed budget estimates there will be 115,000 inspections by federal OSHA agents and 160,000 inspections at the state level during the coming fiscal year, which begins October 1 under a new budget calendar.

Employers, especially small businesses, will get some help coping with the 1970 OSHA law with a $19.6 million allotment for a proposed educational and consulting program, designed to assist voluntary compliance.

A relatively new program to conduct studies of the environmental and economic impact of proposed standards will get an additional $4 million, bringing it to a total of $6.3 million in the proposed budget. The object of the program is to "ensure that new OSHA standards not only protect workers but also take account of related economic costs and technological feasibility factors, according to the Department.

Ford Administration budget planners also foresee greatly expanded enforcement of the Employe Retirement Income Security Act (ERISA) by the Labor Department. An estimated 32,000, or almost nine times as many reviews and investigations will be conducted in the coming fiscal year, compared to the 3,700 estimated for this year, ending June 30.

Those figures reflect the gearing-up process in a relatively new part of the federal bureaucracy: In the 10 months following enactment, only 87 plans were reviewed or investigated.

The Department is also beefing up its investigations staff. The proposed budget includes slightly more than $3 million for 50 new positions in the pension reform enforcement area. Those new positions will include 22 investigators, 20 financial analysts and eight clerical workers, mostly located in the field, according to a Department official. That will bring the total staff for investigations to 170, he added.

The total proposed bill for pension matters comes to $20.8 million for fiscal 1977, compared with a projected $17.2 million for the year ending this June 30, and only $3.2 million for the 10-month start up period.

The Internal Revenue Service, the other federal agency that supervises retirement plans, is also expected to spend more on ERISA matters. The proposed budget allots $30.4 million to the IRS, up from $27.7 million projected for the 12 months ending June 30, 1976.

All of these figures are subject to review and approval by Congress, which so far has reacted with the hostility that could be expected of the Democrat-controlled body. Despite the President's intention to balance the budget in three years, the most vocal Democrats have ripped the $394.2 billion outlay for the coming fiscal year, largely because of cutbacks in Medicaid and other socially popular programs.

The budgeting process will be different this year, with new House and Senate budget committees having more responsibility for the final outcome than ever before. Whether the new system will lead to a more politically popular rearrangement of priorities, and its ultimate effect on the Labor Department's share of the pie, remains to be seen. ■

United Air workers get benefit gains

ELK GROVE VILLAGE, IL.—Some 52,000 hourly and salaried employes at United Airlines began receiving improved medical, dental and life insurance benefits on January 1.

The only exception were flight attendants who did not receive the improved life insurance base because life insurance is not part of their contract, explained David B. Walker, manager of group insurance programs for United.

For other employes, the life insurance base was raised from $5,000 to $10,000. Up to that amount, United pays for the benefit.

Basic hospital coverage was increased from $90 a day to $100 a day. Charges listed as hospital extras were increased from $1,000 per confinement to $1,500 per confinement.

The relative value surgical schedule was increased $1, from $8 per factor to $9 per factor up to a maximum of $1,800 for heart surgery. The former maximum was $1,600 for heart surgery, the highest cost item on the schedule.

A new emergency sickness benefit pays 80% of outpatient emergency treatment up to $100 per person per year.

Dental benefits were increased from 75% of the schedule to 80% of the schedule.

Pregnancy benefits were raised to $600 from $500.

"For the benefits mentioned, United is extremely competitive with other airlines," Mr. Walker commented. ■

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Judge for benefits competition is chosen

NEW YORK—Alvin Kracht, senior vp at Warwick, Welsh and Miller, a New York advertising agency, has been named to the panel of judges for the fourth annual *Business Insurance* Employe Benefit Communication Awards Competition.

Mr. Kracht is account management supervisor on two Seagrams divisions at his agency.

Prior to his appointment at Warwick, Welsh and Miller, Mr. Kracht was vp and media director and later president of J. M. Mathes, Inc., advertising agency. He also worked with Fuller, Smith & Ross in New York before this.

Other judges named to the panel for the competition include Edward Moore, manager, executive compensation, CBS; George Bernard Finnegan III, vp-public affairs, McGraw-Hill; Roy W. Lawrence, CLU, manager, employe benefits, Ciba-Geigy Corp.; Bruce R. Abrams, vp and director of public relations, The Continental Insurance Cos. and The Continental Corp.; and Robert Vivian, vp-corporate communications at Crum & Forster Insurance Cos.

Over 300 requests for entries have been received for the competition to date. Awards will be presented on April 27 at a luncheon at the annual Risk and Insurance Management Society (RIMS) conference, to be held in Los Angeles this year.

For more information, contact Ms. Ronnie Drachman, promotion manager, *Business Insurance*, 708 Third Ave., New York, N.Y. 10017, or call her at 212/985-5050. Closing date for entries is February 23. ■

people

Grahn named at Esmark Inc.

Esmark Inc., Chicago, named **Donald E. Grahn,** 50, risk manager to replace **Arnold J. Saret,** who left the company last fall. Mr. Grahn said he held the position once before for a year, unofficially. His previous position at Esmark was insurance group administrator for the diversified company's two major life insurance subsidiaries, an employe benefit subsidiary and three insurance agencies—Youngberg-Carlson Co. Inc. and Scarborough & Co. (Chicago), and Yarchin & Co. (Boston). As risk manager, Mr. Grahn reports to the president of GSI, one of five major Esmark subsidiaries. He has worked for Esmark since 1972.

* * *

Iowa Beef Processors Inc., Madison, Nb., named **Gary Felt,** 33, corporate risk manager to replace **Gary W. Rohlf,** who left the company in August, 1975. Mr. Felt reports to the vp and treasurer of Iowa Beef. Previously, Mr. Felt held several positions at Boeing Co.'s Wichita Division in Wichita, Ks., the most recent one being in cost analysis and business planning. He also served as corporate insurance analyst, savings plan supervisor, pre-retirement counselor and retirement assistant. Mr. Rohlf, 41, left Iowa Beef to form Midwest Risk Management Inc., Sioux City, Ia., a consulting firm.

* * *

On January 26, **Norman Goldman** joined General Dynamics, St. Louis, as manager of employe benefits-insurance. He reports to the director of employe services and replaces **Paul R. Allgire,** who left the company. Mr. Goldman formerly was director of group underwriting at CNA Insurance, Chicago.

* * *

Peter B. Joyce, 27, was hired as supervisor of insurance administration at Otis Elevator Co., New York, replacing **Peter G. Viscardi,** who joined Studebaker-Worthington Inc., New York (*Business Insurance*, Oct. 20, 1975). Mr. Joyce is responsible for all property, casualty, benefits and general insurance administration. He reports to **Leslie Schroeder,** 64, acting director of corporate insurance (*BI*, Nov. 17, 1975), who is expected to retire soon. Prior to joining Otis, Mr. Joyce was senior analyst in the insurance department at Arlen Realty Inc., New York.

* * *

The Budd Co., Troy, Mi., appointed **James W. Webb,** 27 assistant manager of insurance, last month. His responsibilities include property/casualty risks and he reports to the manager of corporate insurance. He replaces **Ronald W. Stasch,** who now works for Federal Mogul Corp. (*BI*, January 12). Mr. Webb previously was corporate insurance analyst for Masco Corp., Taylor, Mi.

* * *

The State of Illinois department of finance decided to make **Robert J. Walsh,** 31, a long term "acting" risk manager to replace **Don Schieck,** who joined Alexander & Alexander last summer (*BI*, June 2, 1975). Mr. Walsh, who also is administrative assistant to the director of finance, manages a department of nine persons. He has worked for the department since June, 1973. ■

Reader option now available

CHICAGO—Crain Communications Inc., publisher of *Advertising Ave, Industrial Marketing, Business Insurance* and *Pensions & Investments,* has formed a direct marketing division utilizing mailing lists of various Crain publications.

Selected companies will have the availability of promoting their products or services, by mail, to subscribers of Crain publications, plus the use of other specialty compiled lists. No telephone or personal solicitations will be permitted. Crain will have the option of rejecting any mailing the company feels is not suitable.

Subscribers of the various Crain publications have the opportunity of exercising a "positive" option of declining to have their names used in list rental activity. On this page is a notification which readers can clip, attach to the issue label and return to Crain's circulation department if they wish to prohibit the use of their names for mailings by companies now affiliated with Crain Communications.

Hereafter, all new and renewal order forms will contain an opportunity for readers to exercise this option.

MDC/List Management, 41 Kimler Dr., Hazelwood, Mo. 63043 will be the Crain list manager. Orders and inquiries should be directed to Hal Roberson at MDC/-List Management. ■

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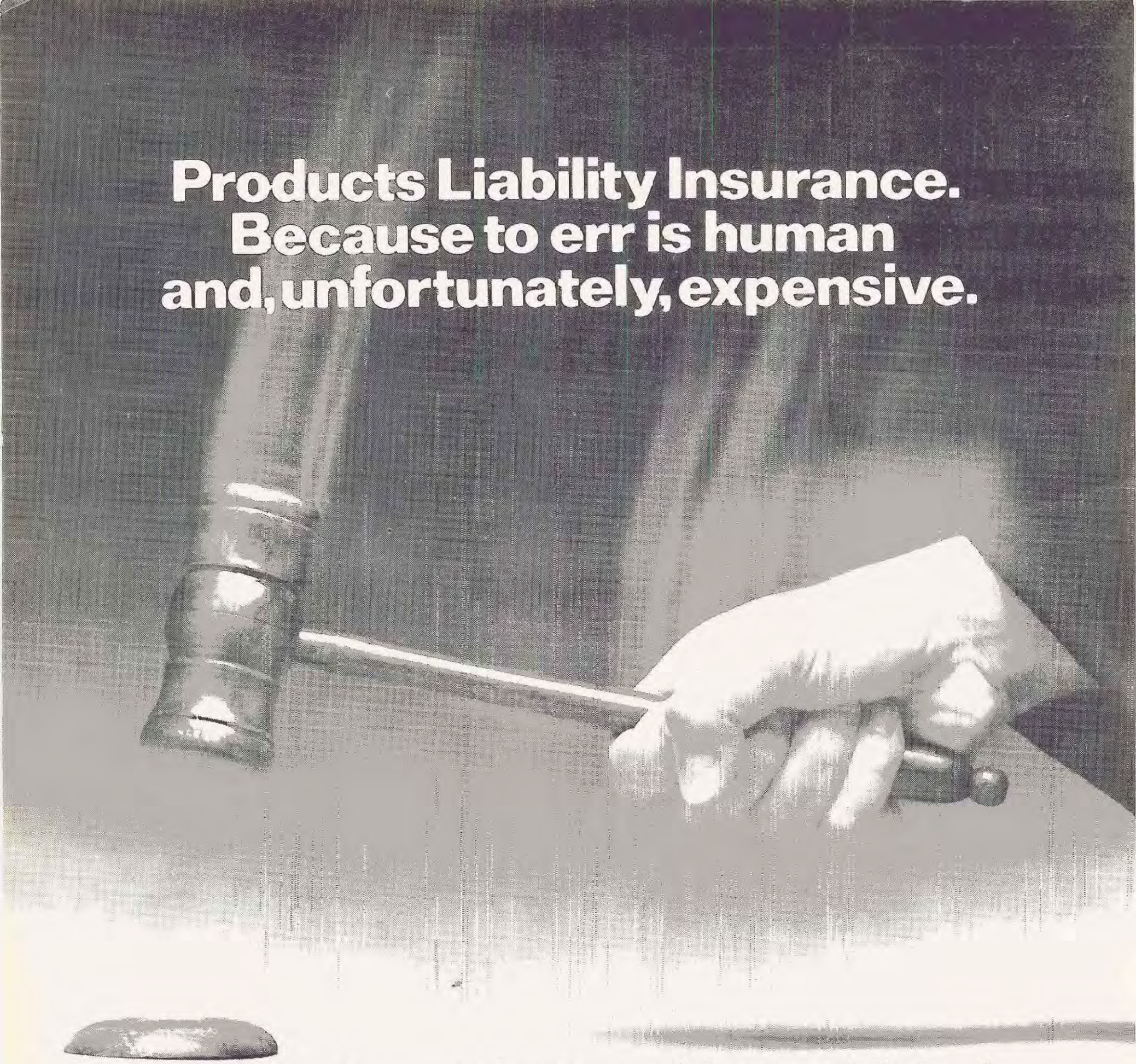

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