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UPDATE

Self-funded MET loses review by Supreme Court

WASHINGTON—A self-funded multiple employer trust struck out in its bid to have the Supreme Court overturn lower court rulings that it was not an employee benefit plan protected from state regulation by the pension reform law.

The Supreme Court last week let stand federal and appellate court rulings (*BI*, Aug. 3, 1981) that dismissed Insurance & Prepaid Benefit Trust's

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West Virginia bill would ease liability for workers' suits

By EILEEN NORRIS

CHARLESTON, W.Va.—West Virginia employers would be immune from injured workers' lawsuits under proposed legislation that provides protection for the safety-conscious company.

And, employers that could be held liable for "intentionally injuring" a worker could buy reasonably priced insurance coverage from a state Employers' Excess Liability Fund under the bill expected to be introduced this week.

The two-pronged bill is being heralded as a compromise by business and labor groups that have been haggling over the consequences of the Mandolidis court decision for more than a year.

It was in Mandolidis vs. Elkins Manufacturing Co. that the West Virginia Supreme Court in 1978 said injured employees who receive workers compensation benefits also can sue their employers if they can show the employer's "willful, wanton, and reckless disregard for safety" led to their injury.

The state high court ruled that a jury can infer an employer is intentionally harming a worker if the employer violates a safety rule and the employee is injured or killed.

But the proposed legislation, which was written by representatives of labor and business on the Mandolidis Commission, establishes a new stringent definition of "deliberate intent." Suits against employers would be dismissed if they fail to meet one of two tests.

In the first test, it must be proven that the employer acted with a "consciously, subjectively, and deliberately formed intention to produce the specific result of injury or death to an employee." This standard requires a showing of actual, specific intent and may not be satisfied by allegations, the bill says.

Or, in a second test, an employer would forfeit its immunity from a worker's lawsuit if all of the following were proven by

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Skywalk liability set at $100 million

By BILL DENSMORE

KANSAS CITY, Mo.—Liability costs arising from the Kansas City Hyatt Regency Hotel skywalk collapse will top out at about $100 million.

That is the net effect of state and federal out-of-court class settlements reached Jan. 6 and 10 among Hallmark Cards Inc., Hyatt Corp. and plaintiffs in the nation's worst structural building collapse.

Crown Center Redevelopment Corp., a Hallmark subsidiary, owns the Kansas City hotel, while Hyatt operates it.

More than $3 billion was originally sought in punitive and compensatory damage lawsuits filed after the July 17, 1981, disaster, which killed 114 and injured at least 200. But it is now estimated that liability claims will cost less than $100 million:

- Some $33 million in settlements was paid out to 220 plaintiffs last year mostly by insurers from the Hyatt line of coverage before any class settlements were negotiated.
- An estimated $45 million in compensatory damages will be paid out to persons who either opt for a flat $1,000 payment if they were merely in the lobby of the hotel when the skywalks fell but not necessarily injured, negotiate out of court with defendants for a full settlement of claims on any terms possible or seek a jury trial to determine compensatory damages, according to terms of both the state and federal class settlement.
- Up to $20 million from a special damages fund will be paid to participants in the state class settlement who take compensatory damage claims to trial rather than settle. In return for this additional compensation, plaintiffs will not sue for punitive damages.
- Up to $3.5 million from a special damages fund will be paid to participants in a federal class settlement who take compensatory damage claims to trial under terms similar to the state class settlement.

Neither the class settlement reached in Jackson County Circuit Court nor the one reached in U.S. District Court for the Western District of Missouri requires Hyatt Corp. to contribute to the special damage funds, but

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Courts deciding who will pay for Three Mile Island

By DOUGLAS McLEOD

MIDDLETOWN, Pa.—Almost four years after the crippling accident at the Three Mile Island nuclear power plant, a $4 billion question remains unanswered:

Who will pay?

General Public Utilities Corp., the holding company for the three utilities that owned the ill-fated plant, is suing the plant's manufacturer, Babcock & Wilcox Co., and the federal Nuclear Regulatory Commission for at least $4 billion each—the total amount GPU expects to lose because of the accident.

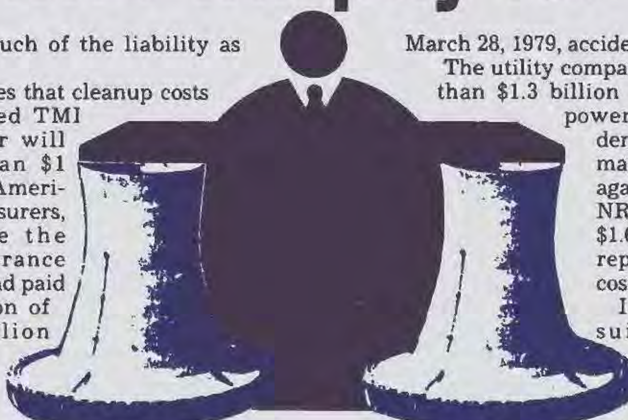
Meanwhile, Travelers Indemnity Co., Babcock & Wilcox's liability insurer at the time of the accident, has informed the company that it is reserving the right to deny coverage if Babcock is found to be at fault, sources say.

GPU has already filed a complaint against its former directors and officers liability insurer, City Insurance Co., as it prepares to defend a lawsuit brought by angry shareholders.

One major piece of the morass of litigation following the TMI accident has long since been settled. The indemnification of individuals and businesses near the plant was worked out in a class-action settlement in 1981 and payment of individual claims is about to begin shortly.

Given the enormity of the TMI loss, it isn't surprising that all parties involved are trying to escape as much of the liability as possible.

GPU estimates that cleanup costs at the damaged TMI Unit 2 reactor will cost more than $1 billion alone. American Nuclear Insurers, which wrote the property insurance for the plant, had paid out $260 million of the $300 million limit on GPU's policy by the end of 1982 and expects to pay the remainder this year.


Graphic: Amy Palmer

GPU will pay another $245 million of the cleanup costs, an amount financed by increased rates charged to customers, a GPU spokesman said. The rest would be shared by the federal government, the nuclear power industry and the states of New Jersey and Pennsylvania under a proposal by Pennsylvania Gov. Richard Thornburgh.

In addition to the cleanup costs, GPU is spending about $24 million a month to purchase power from other utilities to replace what would have been generated by TMI's twin reactors. The undamaged Unit No. 1 reactor has also been shut down since the March 28, 1979, accident.

The utility company has paid more than $1.3 billion for replacement power since the accident, a GPU spokesman says. In its suits against Babcock and NRC, it seeks about $1.6 billion to cover replacement power costs.

In the two lawsuits, GPU also seeks to recover:

- $430 million that GPU estimates it will pay to repair and refuel the damaged Unit No. 2 reactor.
- $950 million in lost revenues, representing the capital costs of the Unit No. 2 reactor, which GPU has not been allowed to pass on to customers in the form of higher rates.
- $40 million in increased borrowing of capital at higher interest rates, which was necessitated by the accident.

GPU's complaint against Babcock, filed in November 1981, went to trial in U.S. District Court in New York Nov. 1, 1982. The trial is expected to last until early February.

GPU contends that Babcock negligently failed to warn it of hazardous defects in the TMI plant and failed to issue adequate instructions to GPU's operators. The allegations rest in part on a similar accident that occurred on Sept. 24, 1977, at Toledo Edison Co.'s Davis-Besse nuclear plant near Toledo, Ohio, also built by Babcock.

In that accident, as was the case at TMI, a pilot-operated relief valve stuck in the open position, allowing water that cooled the reactor core to escape. In the control rooms at both plants, no instruments existed to directly indicate whether the relief valve was open or closed. Other instruments indicated that the water level in the coolant system was adequate.

In the Davis-Besse incident, however, operators discovered the open valve 20 minutes after the first alarms sounded and were able to restore adequate coolant levels before any damage occurred.

GPU's tort claims against Babcock include ordinary negligence, gross negligence and reckless misconduct in failing to warn it of possible dangers. Another claim based on strict liability was dismissed by U.S. District Judge Richard Owen on Nov. 30.

Babcock maintains that GPU was provided with sufficient information to prevent the accident, adding that GPU's operators were inadequately trained and failed to follow established emergency procedures.

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NEWSPAPER

UPDATE

MET loses high court review

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contention that it was an ERISA benefit plan.

The Tustin, Calif.,-based self-funded MET, which provides comprehensive health care benefits to about 5,400 participants, had been trying since 1979 to get court recognition that it is a benefit plan.

State regulators, who contend that most self-funded METs are unauthorized insurers and should be shut down, have been waiting for a court decision before taking action against the trust.

Court to review Silkwood award

WASHINGTON—The Supreme Court will consider whether companies handling nuclear fuel can be sued for punitive damages.

The court will review a $10 million punitive damage award to the family of Karen Silkwood, a laboratory analyst who died in 1974 in a car accident. She had been exposed to radiation while employed by Kerr-McGee Corp.

A federal appellate court overturned the judgment awarded to Ms. Silkwood's family by an Oklahoma jury, saying it encroached on the Nuclear Regulatory Commission's exclusive power.

Airline covered for claims

BRAINERD, Minn.—Republic Airlines Inc. carries liability insurance for any claims in the death of a passenger and the serious injury of a girl hit by a runaway propeller after a turboprop skidded Jan. 9 on an icy runway here and hit a snowbank. The claims will be handled by Air Claims Inc. of Bethesda, Md., under a vertical quota-share program led by Lloyd's of London.

Ford settles Pinto suit

SANTA ANA, Calif.—A secret $7.5 million out-of-court settlement, reached nearly a year ago but just surfacing publicly last week, ended Ford Motor Co.'s 10-year legal battle with Richard Grimshaw who was injured when a 1972 Pinto gas tank exploded.

A $12.4 million payment of a jury award in another case involving the brakes of a 1966 Lincoln Continental will not end that case. Ford intends to appeal the case to the Supreme Court, though the court denied Ford's request to delay payment pending the appeal.

In the Pinto case, a jury awarded Mr. Grimshaw $2.8 million in compensatory and $125 million in punitive damages, but an Orange County Superior Court judge reduced the award to $6.6 million.

Both Mr. Grimshaw and Ford appealed the decision, but settled last January. Ford's product liability insurance picked up the $2.8 million in compensatory damages, but California law prohibits insurance for punitive damages (*BI*, Feb. 20, 1978).

In the early 1970s, Ford maintained a self-insured retention of $1 million for product liability losses involving its automobiles and its liability limit was $50 million, placed primarily through the London market (*BI*, July, 24, 1978).

Later the giant U.S. automaker increased its retention to $2 million, increased its liability limits to $150 million and shifted from the London market to American excess/surplus insurers.

Pension equality supported

WASHINGTON—Women should get the same retirement benefits as men, the Reagan administration says.

The Justice Department, in a brief filed last week with the Supreme Court, said retirement plans that provide smaller pension benefits to female retirees than to male retirees are discriminatory.

The case involves an annuity plan through Teachers Insurance & Annuity Assn. & College Retirement Equities Fund that provides smaller benefits to women than men.

Bermuda insurer funds claims

NEW YORK—Dover Insurance Co. Ltd. of Bermuda, underwriter of medical malpractice insurance for more than 600 podiatrists here, has agreed to deposit more than $7 million in U.S. banks to avoid takeover by the New York Insurance Department.

Dover and the Insurance Department reached the agreement earlier this month during court proceedings on the department's plan to take possession of Dover's $1.6 million trust fund in New York.

Regulators sought the trust funds after complaints from U.S. policyholders and an investigation in Bermuda (*BI*, Nov. 29, 1982).

To avoid conservatorship, the insurer agreed to deposit $150,000 in a New York bank for the immediate payment of losses on policies issued in New York; deposit $5 million in a Federal Reserve bank member on or before Feb. 7 to pay additional losses in the United States; and deposit an additional $2 million within 90 days thereafter if the superintendent thinks it is necessary.

Meanwhile, Dover Chairman Irving Pfeffer resigned his post and announced an agreement to sell the insurer to five investors. The purchase price was not disclosed.

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Photo: Wide World

The huge gasoline tanks burn after a tremendous explosion at the Texaco facility located near Newark.

Texaco says it's covered for huge New Jersey blast

By JAMES C. LAWSON

NEWARK, N.J.—Texaco Inc. says it has adequate property and liability coverage to pay for damages caused by a massive explosion and fire at its Port Newark gasoline storage facility.

One Texaco worker was killed and 24 other people were injured by the inferno, which burned for more than 60 hours after three huge gasoline storage tanks at the facility exploded Jan. 7.

Texaco estimates the blast caused $10 million in damage at the facility, and Newark officials say damage to neighboring property could hit $25 million.

Company officials, however, say property damage and liability claims would have been much greater if a system of protective dykes at the facility had not stopped the fire from spreading to other tanks on the site.

Texaco purchases first-dollar third-party liability coverage from Insurance Co. of North America, a subsidiary of CIGNA Corp., says Robert Kreiling, manager of Texaco's insurance department. Mr. Kreiling would not detail the limits of the INA policy but said it would fully cover all claims.

INA officials say the insurer has reinsured the entire coverage. Reinsurers include Texaco's subsidiary Heddington Insurance Ltd. of Bermuda and London, Lloyd's of London and German reinsurers.

INA, which established a claims hot line for nearby residents and businesses whose property was damaged by the blast, has so far received more than 2,000 claims, officials say.

Most of the claims received were reports of broken glass by residents and small businesses and average about $150 each, Mr. Kreiling adds.

INA also underwrites Texaco's workers compensa-

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NAIC plans to review comp form

By EILEEN NORRIS

NEW YORK—The National Assn. of Insurance Commissioners plans to review a proposed revision of the standard workers compensation policy at a meeting in late March.

But the National Council on Compensation Insurance, which developed the proposed policy, still wants state insurance regulators to approve the new form by Feb 1.

So far, only two insurance commissioners—in Massachusetts and Hawaii—have approved the NCCI's new policy, which NCCI hopes will be implemented beginning Sept. 1.

Several state regulators said they haven't even received the proposed policy, which they say is a good indication that the new form won't be approved by all states by the Feb. 1 deadline set by the NCCI.

However, the NCCI says it has no plans to adjust its timetable and is

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Court says Posgate can resume underwriting

By STACY SHAPIRO

LONDON—Ian R. Posgate can resume underwriting at Lloyd's of London, a London High Court ruled last week.

The court said the Committee of Lloyd's had no power under the Lloyd's Act of 1871 to suspend Mr. Posgate as a member.

"In our judgment, there was no power in the committee to require the suspension of Mr. Posgate in such manner as would amount to suspending him as a member of Lloyd's," the court ruled. "This is in fact what they did. It was outside their powers."

Mr. Posgate

Although the court ruled the Lloyd's Committee did not have the power to suspend Mr. Posgate, the new Council of Lloyd's, which now governs the market under the Lloyd's Act approved by Parliament last year, does have suspension power, a Lloyd's spokesman said.

The council has scheduled a meeting this week to consider the Posgate matter, he added.

Mr. Posgate, formerly chief underwriter at Alexander Howden Group P.L.C., was suspended by Lloyd's Sept. 20 after he and four other ex-Howden officers were sued by Howden and its parent, Alexander & Alexander Services Inc., for allegedly diverting $56 million of company assets for their own benefit (*BI*, Sept. 27, 1982).

If Mr. Posgate does return to underwriting, he would probably

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Groups unite on multiemployer reform

By JERRY GEISEL

WASHINGTON—Business groups are uniting in a new effort to convince Congress to overhaul the Multiemployer Amendments Act.

About 25 different trade groups, including the National Assn. of Wholesaler-Distributors, the Food Marketing Institute and the Associated General Contractors of America, have for the first time agreed on a specific list of changes in the law.

The trade groups, which have formed the Coalition for Pension Reform, say Congress went too far in 1980 when it gave multiemployer pension plans the power to seek enormous payments from withdrawing employers to pay for unfunded vested benefits.

"We are not seeking to do away with withdrawal liability," said Steve Sacher, a Washington attorney who represents several members of the coalition. "But if you have withdrawal liability, it should be made as painless as possible," Mr. Sacher said.

Under the Multiemployer Pension Plan Amendments Act of 1980, withdrawal liability can be very painful. Some companies that went out of business and withdrew from the plans have been slapped with withdrawal liability claims that are more than double their net worth.

To reduce the pain of withdrawal liability as well as make the law work better, coalition members want Congress to enact several changes in the law, including:

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Reinsurers scramble after agency closes

By STACY SHAPIRO

LONDON—Seven international reinsurance companies are sorting out tens of millions of dollars in claims from business underwritten for them by agent Re/International Ltd. of Bermuda, which has ceased doing business.

It is not an easy task because the reinsurers cannot find Re/International's records. The Bermuda-incorporated reinsurance intermediary, which did most of its business out of London but also maintained an office in Los Angeles, stopped underwriting in May 1982. The reinsurers say they can only find documents kept by individual brokers for certain risks.

Seven of the fronting reinsurance companies, which gave Re/International authority to bind risks for them and then retrocede the risks, have joined the attempt to figure out what valid claims need to be paid on Re/International policies, which date back to 1975. They have formed a run-off office in Brussels, known as R.O.O.F., to handle the work.

One lawsuit involving Re/International and its reinsurers is scheduled for trial in London this month (see related story).

The activities of R.O.O.F. and the lawsuit provide another example of the costly administration problems and litigation that can entwine insurers and reinsurers years after insurance and reinsurance contracts are sold. These developments ultimately can restrict reinsurance capacity and markets available to insurance buyers.

The reinsurers participating in R.O.O.F are ADAS Insurance Co. of Romania, Pozavarovalna Skupnost Sava of Yugoslavia, Societe Anonyme D'Assurances Eurobel, Alte Leipziger Ruckversicherungs A.G. and Harold Ruckversicherungs Aktiengesellschaft of West Germany, Seguros America Banamex S.A. of Mexico and Lloyd Italico of Italy.

Through R.O.O.F., these companies also are trying to secure records from Re/International's president and founder, Warwick Feldman, who is thought to be living in Beverly Hills, Calif. So far, they have had no luck.

"But it is early days yet," said J.P. Duquenne, the manager of R.O.O.F., which was formed in September 1982.

Negotiations with Mr. Feldman by R.O.O.F. continue, Mr. Duquenne said.

Mr. Feldman told *Business Insurance* during a telephone interview, however, that he has never heard of R.O.O.F.

After May of last year, all signs of Re/International disappeared, fronting reinsurance companies say. The office in London shut down as did the contact office in Los Angeles, and the phones were disconnected.

Re/International's Bermuda offices have moved to Curacao in the Dutch Antilles, said Mr. Feldman, when *BI* found him through his Los Angeles attorney, Michael Harris. It is now call Re/International N.V.

"Re/International is not closed," said Mr. Feldman. "It has just ceased doing business."

Re/International ceased underwriting and administering policies for the pool of reinsurers because it was owed "several millions of dollars," he said.

In a letter sent to the fronting insurance companies on May 14, 1982, Re/International said it could not forward any premiums or commissions to the fronts because it had not been paid by its reinsurance buyers. The reinsurance intermediary, therefore, had to

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Reinsurance dispute goes to court

By STACY SHAPIRO

LONDON—A coverage dispute over one of the largest series of claims to hit 10 fronting reinsurers in the pool organized by Re/International Ltd. of Bermuda goes to trial Jan. 31.

The Home Insurance Co., which acted in London as the fronting insurer for AFIA of New York, is suing Re/International and 10 of its fronting reinsurers for more than $14 million in marine and aviation claims it says they owe.

The reinsurance company defendants include five of the seven participants in R.O.O.F., a venture formed by some of the reinsurers to sort out the business they accepted through Re/International (see related story).

The reinsurance defendants in The Home's suit that also are members of R.O.O.F. are ADAS Insurance Co. of Romania, Pozavarovalna Skupnost Sava of Yugoslavia, Alte Leipziger Ruckversicherungs A.G. and Harold Ruckversicherungs Aktiengesellschaft of West Germany and Seguros America Banamex S.A. of Mexico.

The five other fronting reinsurers being sued by The Home that are not among the seven participating in R.O.O.F. are Compagnie Mercantil de Seguros y Reaseguros S.A. of Panama, Mapfre Industrial S.A. of Spain, Seguros Bancomer C.S. of Mexico, Seguros la Territorial S.A. of Mexico and Re/International's former subsidiary, Compagnie Europeene de Reassurance In-

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All asbestos suits not stayed: Judge

By STEPHEN TARNOFF

NEW YORK—Manville Corp.'s bankruptcy petition does not stay lawsuits against other defendants in asbestos litigation, a federal bankruptcy judge ruled last week.

Two wide-ranging opinions handed down by U.S. Bankruptcy Court Judge Burton R. Lifland Jan. 10 could also make it more difficult for asbestos firms to defend those suits by placing restrictions on discovery proceedings, defense attorneys say.

Besides allowing the litigation pending against other asbesots defendants to proceeed, Judge Lifland also:

- Extended until March 1 the stay on litigation filed against 25 Manville directors, officers and key employees. Judge Lifland also prohibited any discovery proceedings involving these officials until that date.
- Refused to extend the stay to suits naming Manville's insurers, presumably allowing asbestos claimants' so-called "direct-action" suits against these companies to proceed in the handful of states where they are permitted.

Manville, the world's largest asbestos producer, filed for reorganization under Chapter 11 of the Federal Bankruptcy Act on Aug. 26, citing the tremendous number of claims and potential liabilities brought by victims of asbestos-related disease. The filing stayed all litigation against the company (*BI*, Sept. 6, 1982).

Since the petition was filed, however, various parties in the litigation have sought to broaden or restrict the stay to their own advantage.

For example, Manville sought to have the stay extended to include its

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Petition not in bad faith, ex-bankruptcy judge says

By STEPHEN TRANOFF

SCOTTSDALE, Ariz.—A former federal bankruptcy judge recently said that Manville Corp.'s reorganization petition will probably not be dismissed by a U.S. Bankruptcy Court for having been filed in bad faith.

Speaking at a conference on toxic tort litigation sponsored by the Defense Research Institute, Ezra H. Cohen, now in private practice in Atlanta, said Manville filed for bankruptcy because it genuinely was in trouble. "They never would have gone in there unless very significant damage could have been done to their entire business," he said.

Manville, the world's largest asbestos producer, filed Aug. 26 for reorganization under the Federal Bankruptcy Act of 1978, citing the burden created by thousands of lawsuits filed by workers claiming they have contracted asbestos-related diseases (*BI*, Sept. 6, 1982).

All litigation against Manville, including that brought by plaintiffs with asbestos-related diseases, has been stayed while it works out a reorganization plan in bankruptcy court. A motion brought by plaintiffs' attorneys to dismiss the petition on bad-faith grounds because the company is not insolvent will be considered this week in U.S. Bankruptcy Court in New York.

"Businesses hate Chapter 11," said Mr. Cohen, now a partner in the firm of Troutman, Sanders, Lockerman & Ashmore. "It is a very difficult and disruptive event. It is a very last resort and a very extreme measure."

He pointed out that a bankruptcy filing disrupts a company's relations with suppliers and that businesses rarely survive reorganization.

Another speaker, Sheila Birnbaum, associate dean of the New York University School of Law, said the fact that Manville was not insolvent when it filed the reorganization petition did not mean it acted in bad faith.

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No smoking

Employers say restrictions can cut costs

By CAROL CAIN

Restrictions on smoking in the workplace are being hotly debated by many employers around the country. But, when the smoke clears, the sign of the times may consist of just two words:

No smoking.

Surprisingly, many experts note, the main reason employers ban smoking in work areas is to save money rather than improve employees' health.

"It's the non-health costs and related costs that have proved to be much more significant," says Marvin Kristein, associate professor of economics at the State University of New York at Stony Brook.

Proponents of smoking bans say savings are gleaned from many areas like:

- A reduction in absenteeism.
- More efficiency through elimination of smoking breaks.
- Reduced need for janitorial services.
- Reduced ventilation costs.
- Reduced insurance costs.
- A reduction in early retirements due to disabilities (see story, page 24).

"There's a whole range of productivity losses (associated with smoking) that are well-documented, not so much in research literature as such, but in discussions about all the time wasted in smoking ritual, smoking breaks," Mr. Kristein said.

Photo: Mary Cairns

He also pointed to the waste smoking produces and additional cleanup and ventilation costs.

"A non-smoker workforce is a more productive one," noted William Weis, an associate professor of accounting at Seattle University and a smoking researcher.

"Smokers have a significantly higher absentee rate and a dramatically higher mortality rate," he said. "It doesn't make good sense to invest your money in a smoker."

Information gathered by Mr. Kristein and Mr. Weis and cited by such groups as the American Lung Assn., Action on Smoking or Health, better known as ASH, and the Group Against Smoking Pollution (GASP) shows no-smoking policies can save anywhere from $200 to $5,000 annually per smoker.

In 1980, productivity losses attributed to employee smoking cost $36 billion, according to figures released by The American Council of Life Insurance.

"It's very difficult to give you an exact number; industries vary, organizations vary," Mr. Weis said, adding: "If an organization banned smoking at the workplace and did not hire smokers, then I'm pretty comfortable in estimating that in the long run it will reduce costs by $5,000 for every smoker that was on the payroll before the policy was implemented.

"They're going to enjoy less absenteeism, significantly less maintenance costs and maybe a cut, if they negotiate, in insurance premiums," he added.

Companies that handle chemicals or potentially dangerous materials face premium increases if smoking is permitted, or in the worst case, "they might not be able to get insurance," said Arthur Blum, a vp at Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y.

Few insurers, however, offer reduced group health and life insurance rates if smoking is prohibited, added Suellyn Whittington, a sales representative at Alexander & Alexander Inc. in Chicago.

But, since group life and health rates are based on experience, rates may decrease for companies whose employees are healthier because they do not smoke or because smoking is restricted at the workplace, she explained.

One company Phoenix Mutual Life Insurance Co. of Hartford, Conn., does offer negotiable lower group life insurance rates to small employers who can prove that none of their workers smoke, a spokesman says.

Even though smoking bans may not result in premium cuts, companies that have implemented regulations cite other advantages and surprisingly few difficulties.

When Warren McPherson, president of Radar Electric Co. Inc. in Seattle, began a no-smoking policy about six years ago, he expected to lose 20% of his business and a few employees.

It didn't happen.

"I was prepared to pay (for a loss), but I think we gained business because of it," Mr. McPherson said.

Radar Electric is a wholesaler of electronic parts, but the company also maintains a retail business that serves more than 500 customers per day, Mr. McPherson said.

"Our customers were trained (as smokers)," he added, noting the no-smoking rule applied to them as well as employees.

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Liability costs in Hyatt disaster

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Hyatt will continue to share the cost of compensatory damage settlements and judgments.

However, while Crown Center led the class settlement negotiations and Hallmark's insurers will be tapped to bear the cost of the special damage funds, insurers in both the Hyatt $200 million line of liability insurance and Hallmark's $100 million line of liability insurance still disagree over how to contribute to settlements and now are asking the Jackson County Circuit Court to reconsider its earlier order (*BI*, Oct. 18).

Under both settlement agreements, Hyatt and general contractor Eldridge & Son Construction Co. Inc. agree in conjunction with Hallmark/Crown Center not to contest liability for compensatory claims—the actual damages suffered by individual victims.

Sources say an estimated $31 million in insurance written for about a dozen smaller defendants involved in hotel construction will be contributed behind the scenes toward the two class settlements. Details of these contributions are not known.

Plaintiffs are expected to drop their suits against more than a dozen other smaller defendants involved in building the hotel because they have few assets.

Theoretically, a handful of plaintiffs may choose not to participate in either class settlement, leaving them free to pursue compensatory and punitive claims against the defendants. But attorneys last week said they knew of no plaintiffs pursuing this route.

For both Hallmark and Hyatt, the class settlements eliminate the bad publicity that would be generated by a punitive damage trial attempting to fix blame for the skywalks collapse. Because of the settlements, legal blame for design flaws in the two suspended steel-and-concrete skywalks will never be determined.

The settlements also appear advantageous to the claimants. Plaintiffs' lawyers had identified Crown Center/Hallmark as their "target defendant" but admitted they only had at best a 50% chance of obtaining a jury verdict assessing punitive damages against either Hallmark or Crown Center.

"This is a very complex and involved case and the fact that it's settled is a wonder in itself," said U.S. District Judge Scott O. Wright, who approved the federal class settlement Jan. 10. "This is one of the biggest, if not the biggest, damage suits that's been handled in this country."

(A settlement earlier this month capped MGM Grand Hotel Inc.'s liability cost at $115 million for the 1980 Las Vegas fire that killed 84 people and injured 591.)

Judge Wright set a Jan. 20 hearing to decide if he will give final approval to the federal settlement tentatively reached Jan. 10 and dismiss a lawsuit against Hallmark, Hyatt and other defendants that was set to go to trial Jan. 10. In the meantime, he ordered all sides not to discuss the settlement.

The federal class settlement followed on the heels of a controversial state court class settlement that prompted Judge Wright to hold defendants in contempt of court for evading his court's supervisory authority and attempting to disrupt the skywalk litigation (*BI*, Jan. 10).

However, Judge Wright now has agreed to drop the contempt order.

The federal class settlement was announced by Judge Wright to a packed courtroom of prospective jurors and observers on Jan. 10, moments after a letter of intent to settle the federal class action had been signed in his chambers by attorneys for Hallmark and the federal class plaintiffs.

Jury selection for the federal trial had been scheduled to start that morning.

The tentative pact was hammered out by Hallmark lawyers in meetings over the weekend with Irving Younger, the lead federal class attorney and a member of the Washington law firm of Williams & Connolly.

The agreement follows a pattern established by the state court settlement, which was given final approval Jan. 6 by Jackson County Presiding Judge Forest W. Hanna.

But while the state settlement provides for a $20 million special damages fund to further compensate plaintiffs who sue for compensatory damages but agree not to sue for punitive damages, the federal settlement established only a $3.5 million special damages fund.

Attorneys say the intent of the agreements in both courts is to provide victims who take their compensatory claims to arbitration or trial an extra payment on top of any compensatory award equal to about half of that compensatory award.

In addition, Hallmark Cards Inc. agrees to contribute $6.5 million over the next four years to six Kansas City-area charities. At least three of the charities have been regular recipients of past Hallmark contributions.

Hallmark says its charitable contributions are not an admission of fault, but are a "healing gesture to help Kansas City to put the tragedy of the skywalk collapse behind it." Judge Wright called the charitable aspect of the settlement before him "unique and unprecedented."

Although the state settlement calls for a special damages fund of $20 million and the federal settlement $3.5 million, it is doubtful that those full amounts will be paid out in damages.

Under a complex formula established in the state settlement and copied in the federal agreement, the actual amount paid out could range from nothing to $20 million in the state case or from nothing to $3.5 million in the federal case.

It will all depend on how many plaintiffs settle out of court and how many go to trial (*BI*, Dec. 13, 1982).

For example, in the federal case, attorneys believe all 23 or 24 claims pending can be resolved for less than $500,000 in compensatory payments. That would require at most a contribution of only $250,000 to $500,000 from the settlement fund, according to the state settlement formula.

However, defendants do admit that plaintiffs that settle with them out of court will have settlements "sweetened" so some of the money saved by not tapping the special damages funds to their highest values will be paid out of other funds to those who settle out of court.

The special damages funds are tapped only for those who sue for compenstory damages or, in the federal case, sue or arbitrate for compensatory damages.

However, the federal special damages fund also will be tapped to pay the legal fees for Mr. Younger and other class attorneys. Various attorneys estimated that those fees, to be set by Judge Wright, could be about $1 million.

But, that would still leave $2 million of the $3.5 million federal special funds. According to the agreement, that money would also be contributed to a charity to be named later.

It is assumed that Hallmark cannot tap its insurers for any of the charitable contributions. ■

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BI-1

Insurer agreement to ease MGM settlement

By RHONDA L. RUNDLE and BETSY SHARKEY

PHILADELPHIA—An agreement reached last week between Kemper Group and attorneys representing victims of the 1980 MGM Grand Hotel fire is expected to propel a proposed settlement plan closer to completion.

The court-approved settlement calls for MGM Grand Hotels Inc. to pay $75 million and for 112 other defendants to contribute an undisclosed aggregate amount to close out about 450 remaining lawsuits arising out of the fire (*BI*, Jan. 10).

Any of the defendants that do not agree to the settlement will go to court Feb. 22 when the trial to decide liability and damages stemming from the fire is set to begin.

Finalization of the settlement is contingent upon two key activities: Most, if not all, of the claimants must accept the plan, and the 112 other defendants must contribute enough money to reach an undisclosed total figure.

The Kemper agreement removes a major obstacle to settlement with most of these defendants. Kemper, whose American Protection Insurance Co. unit has paid $92 million to MGM for property damage and business interruption claims, will not pursue subrogation efforts against the bulk of the defendants as part of its agreement with plaintiffs' attorneys.

However, Kemper will press subrogation claims against about 15 defendants and other companies not named in the plaintiffs' litigation that manufactured plastics and other material supplies that were responsible for the "excessively rapid spread of the fire," explained a Kemper attorney.

Kemper and the plaintiffs will share the proceeds of future recoveries against these defendants according to an undisclosed formula. In addition, the insurer and the plaintiffs' attorneys will cooperate to pool technical and investigative information to advance the subrogation claims.

"The Kemper agreement is extremely important to us," said Peter J. Arturo, an attorney for defendant California Electric Construction Co., a defunct unit of GK Technologies Inc. "This is one of the prime things that had to be settled before we could settle."

However, he said his client—like other defendants—is still reluctant to reach final settlement because they fear subrogation claims by other parties.

Besides Kemper, the most likely subrogation claims could come from insurers who provided coverage to small shops in the hotel that were destroyed by the fire.

Another part of the Kemper agreement releases the insurer as a defendant in the wrongful death and personal injury litigation upon receipt by the plaintiffs of a specific undisclosed amount of money in gross settlements.

The plaintiffs had alleged that Kemper, as property insurer for the hotel, had negligently inspected the premises. Kemper denied any lack of care.

The agreement between the Kemper Group and plaintiffs' attorneys was approved by U.S. District Judge Louis C. Bechtle, who is presiding over the litigation.

A handful of defendants is expected to resist settlement and will probably face the plaintiffs in court. They include Otis Elevator Co., Del E. Webb Corp., Schneider Sheet Metal Inc. and Johnson Controls Inc., according to Wendall Gauthier, co-chairman of the Plaintiffs' Legal Committee.

Final settlements reached with defendants last week include an agreement with Richard Hatfield Inc. doing business as Norm's Refrigeration & Ice Equipment for liability insurance policy limits of $500,000 and an $800,000 package to be paid by one insurer on behalf of NWS Construction Corp. Inc., Roberts Electric Inc. and Southwest Air Conditioning Inc.

Agreements also have been reached with the defendants including Nay Mechanical Inc. for $1.25 million, Taylor Construction Co. for $5.5 million and California Electric Construction Co. for $10 million. ■

Court says Posgate can underwrite

Continued from page 2

write for the Lloyd's syndicates managed by Posgate & Denby Agencies Ltd., an underwriting agency that is partially owned by Mr. Posgate.

"I would like to go back to underwriting," Mr. Posgate said after the decision was handed down. "I would be back tomorrow, but only if the (Lloyd's) chairman agreed to it," explaining that Posgate & Denby would ask Sir Peter Green for permission before reinstating Mr. Posgate as an underwriter.

Posgate & Denby held a board meeting last week after the court decision was handed down and a representative of the agency was to meet with Sir Peter last week, a spokesman said.

Mr. Posgate reiterated last week that he is innocent of the charges A&A and Howden have brought against him.

Although the court said that Lloyd's could not suspend him, the ruling did not affect A&A's decision to fire him. Mr. Posgate says that he was dismissed unfairly and is still pressing a court action against A&A to be reinstated at Howden.

The court also ruled that Lloyd's must pay his legal expenses in this case, which could exceed $100,000.

"I am also very pleased that somebody else is having to pay the costs," he said. ■

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OPINIONS

Snuffing out smokers

NO SMOKING.

The words strike terror into the hearts of cigarette smokers. Smokers will refuse the only cab to come by in a half-hour during a torrential downpour if the driver displays a no-smoking sign. Smokers trapped in no-smoking sections of airplanes move to the back of the plane to strike up a conversation with the flight attendants, and have a smoke.

Will a smoker quit his or her job if the employer hangs up no-smoking signs even where smoking doesn't create a fire danger? Some employers who have done it downplay the problems created and say good riddance to smoking employees. Employees who smoke cost more than they are worth, they say (see page 3).

We appreciate the sound health reasons for everyone to quit smoking but we bristle at the absolute policy of no smoking anywhere at work purely to increase productivity and cut cleaning costs. If these are the primary reasons for such a policy, then how about no coffee drinking, no candy eating and no snacking at work, all potentially messy and unhealthy habits?

There also is a fallacy in the promise of increased productivity from a reformed smoker. A smoker breaking the habit who isn't striking matches, dumping ashes and cleaning ashtrays is an employee who is biting nails, eating candy and wringing hands—at least for awhile.

A tale circulating among journalists defending their habit cites a successful critic who once churned out crisp, clean prose while puffing away at a cigarette. But when he sat down to write the first review after he quit smoking, the words wouldn't flow. As the deadline neared, the critic cried out in desperation for a cigarette. He lit it, took a few drags and poured out the review without missing a keystroke.

The tale may be exaggerated in the telling, but employers should recognize that the productivity lost to the ritual of smoking will not be immediately gained as addicted smokers wrestle with withdrawal.

We support a more moderate approach among employers. We suggest employers offer to send employees to no-smoking clinics, or even offer such clinics during working hours. Monetary awards to employees who quit smoking can encourage those with less willpower but a desire to quit. To accommodate non-smokers, no-smoking areas should be established and ashtrays that filter out smoke can be issued to smokers. Eventually, the smokers will quit.

In the meantime, however, *BI's* editor offers her office as a haven for smokers.

LETTERS

Speaking out on the Caymans

To the editor: I wonder what caused Albert Lewis, New York's insurance superintendent, to sound forth in such a derogatory fashion concerning the Cayman Islands when addressing the National Assn. of Insurance Commissioners' meeting in Dallas (*BI*, Dec. 12, 1982).

From his remarks ("State regulators should bar insurers and reinsurers based in some nations, like the Cayman Islands, that do not cooperate with investigators in the United States"), he is obviously speaking from a very uninformed position. Since the Cayman regulatory system came into being in mid-1980, this office has never received an inquiry from the superintendent or anyone else in the New York department.

So, who says Cayman does not cooperate? There are regulators in California, Florida, Texas, Illinois, New Jersey, to name but a few, with whom this office has established good relationships, and we have not yet experienced an instance in which we have not been able to cooperate to a satisfactory degree. (On the question of secrecy of shareholders, we have occasionally come up with the same problem in inquiries that we have pursued through the U.S. system.)

Furthermore, I now receive regular invitations to attend the NAIC meetings (how I regret I was not in Dallas!) and am hoping to develop a closer relationship with that body.

Cayman has a regulatory system which, although relatively new, is working very well to the satisfaction of those who properly understand the offshore industry and it is supported, in one way or another, by many of the top industrial and insurance operations in the United States and elsewhere. Our investigatory procedures involve controlling parties, shareholders, managers, fronting companies, reinsurers, banking arrangements and anything else considered relevant. All Cayman insurers are required to undergo an annual independent audit, and if a company is leaning particularly heavily on any one reinsurer, we may well additionally require a financial audit of that company, so it seems we may be rather ahead of the rest in that regard.

If wrongdoing is perpetrated anywhere at all by persons connected with a Cayman licensed company, there is absolutely no question of our willingness to cooperate to the full with those who may be bringing a prosecution.

I submit therefore that Cayman as an insurance environment is as properly regulated as any to be found elsewhere, even in New York. Admittedly, we are learning as we go and some improvements to our first attempt at an insurance law may soon be the order of the day; it is nevertheless our intention to develop an ongoing industry which even the Albert Lewises of this world will one day treat with due respect.

May I also comment on the reported remarks of William Allen, special deputy to the Illinois insurance director, in the same issue concerning Kenilworth Insurance Co. and its alleged Cayman reinsurer, Universal Casualty & Surety Co. It should be said that Universal has never conceded the validity of the alleged reinsurance and indeed strenuously denies same. Also, in the light of my earlier remarks, it is interesting to note that Universal is audited annually by a New York accountant.

John E. Darwood
Superintendent of Insurance
Cayman Islands
George Town, Grand Cayman, B.W.I.

Remember the Blues

To the editor: Your report on cost-containment trends, "No health cost-containment method will cure all ills" (*BI*, Dec. 13, 1982), managed to include only a select group of insurance companies and consultants without a single reference to the cost-containment activities of Blue Cross/Blue Shield plans covering most of the nation's largest employers.

The fact is no one is doing more than the Blue plans to contain costs. Not only do we have all the programs Mr. Sherwood mentioned—pre-admission testing, ambulatory surgery, second opinion, etc.—but we have moved strongly into others:

- Plans across the country have negotiated budget-capping prospective reimbursement contracts with hospitals. In Michigan alone, this saved $15 million in 1981, and we expect 1982 savings to be higher. Except where mandated by law, no commercial insurance company has a prospective reimbursement agreement with hospitals.
- Forty-four Blue Cross and Blue Shield plans operate 55 health maintenance organizations, enrolling 1.1 million members. Attracted by competitive rates, more employers than ever are offering the HMO option. Because of lower hospital utilization rates, HMOs aren't hit as hard by spiraling hospital costs.
- The Medical Necessity Program launched by the national Blue Cross & Blue Shield Assn. denied payment for 85 surgical and diagnostic procedures that are outmoded, obsolete or of unproven value.
- Michigan's Customer Cost Analysis program is furnishing employers with the kind of specific experience data needed to devise effective containment programs. . .such as utilization by diagnosis and provider. Other Blue plans are implementing similar services for their customers.

In ignoring these and other Blue plan initiatives, Mr. Sherwood's otherwise informative article was unnecessarily myopic.

John C. McCabe
President
Blue Cross/Blue Shield of Michigan
Detroit

Don't give them ideas

To the editor: I read with dismay your article "Risk managers expecting fewer rate reductions in '83" (*BI*, Jan. 3).

I was so appalled at the blatant shortsightedness evidenced by this article that I felt compelled to write.

Numerous corporations are struggling through a particularly turbulent period in our economic history. Any article that implies, which yours certainly does, corporate insurance purchasers will acquiesce to rate increases can only serve to encourage insurers to increase rates.

In a publication such as *Business Insurance*—whose declared purpose is to assist corporate risk, employee benefit and financial executives—I can find no assistance in an article that screams out through its title that risk managers will be complacent about the cost of insurance in 1983.

Please remember that insureds are not the only people who read your magazine; insurers read it as well. Any indication that risk managers "expect" rate increases in 1983 makes my job more difficult—which is diametrically opposed to what *Business Insurance* should be trying to accomplish.

Joseph A. Alberti
Vp
First Wisconsin Corp.
Milwaukee

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611.

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Multiemployer reforms proposed

Continued from page 2

- Eliminating withdrawal liability for employers that are forced to leave multiemployer plans because of events beyond their control like a natural disaster, loss of a contract or death of partners.

"Withdrawal liability was needed to prevent abuses (such as the mass exodus of employers from a plan)," said Mr. Sacher, a former counsel with the Senate Labor and Human Resources Committee and now a partner with Pepper, Hamilton & Scheetz.

"There shouldn't be liability for involuntary withdrawals," Mr. Sacher added.

- Basing the premiums the plans pay to the Pension Benefit Guaranty Corp. for termination insurance on the ratio of plan assets to liabilities. The group believes such an amendment would encourage better plan funding.

The plans with the highest ratio of liabilities to assets would pay a bigger premium than well-funded plans. Currently, all multiemployer plans pay the PBGC an annual premium of $1.40 per plan participant.

- Requiring all plans to give an employer a "customized" financial statement, informing a company what it would owe the plan if it withdrew.

Currently, employers often don't know the amount of their withdrawal liability until they actually leave the plans.

- Requiring more consistency in the interest rate assumptions used by multiemployer plans. An interest rate assumption is an estimate of the rate of return of pension plan assets.

Mr. Sacher believes Congress is ready to consider changes to the Multiemployer Amendments Act, like the coalition's proposals.

"There is a recognition that the law is not working very well," Mr. Sacher said. For example, the fear of withdrawal liability is so great that new employers aren't joining multiemployer plans, he explained.

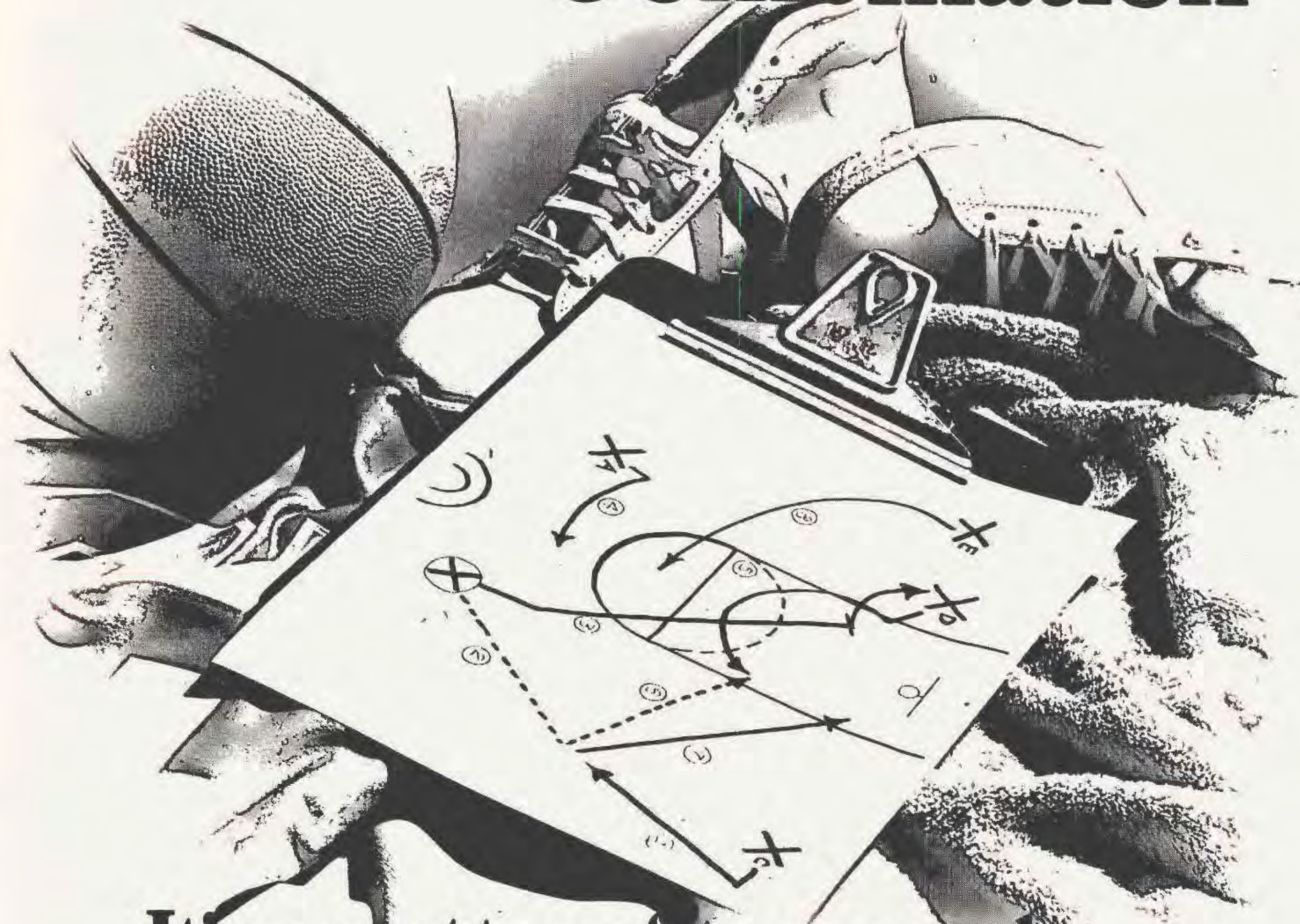
"That doesn't auger well for the future of some of the plans," Mr. Sacher said.

In addition, Congress may act to reduce the mountain of litigation the act has created. About 130 suits have been filed by employers around the country challenging the multiemployer law.

"A lot of money is now being spent on legal fees that could have been used to improve plan benefits," Mr. Sacher said.

"We hope Congress will act because of the pain the law is causing employers." ■

The Winning Combination



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Manville petition is valid: Ex-judge

Continued from page 3

Both Mr. Cohen and Ms. Birnbaum addressed a number of topics related to the Manville reorganization, including how the claims of asbestos disease victims will be ultimately determined and the current status of the bankruptcy action in light of a recent Supreme Court ruling.

They agreed that other defendants in asbestos litigation are taking a "wait-and-see" attitude toward the current bankruptcy proceedings involving Manville, Amatex Corp. and UNR Industries Inc. before deciding whether they should file a petition for reorganization.

"Other defendants are considering reorganization as a route," Ms. Birnbaum said. "If Manville is successful, there will be an avalanche of bankruptcy filings in other courts."

Ms. Birnbaum told the audience of approximately 200 attorneys that the bankruptcy court could estimate the contingent and unliquidated damage claims brought by victims of asbestos-related diseases against Manville.

Plaintiffs' attorneys say the bankruptcy court does not have the power to estimate the damage claims pending against Manville, especially ones that have not yet been filed.

The court's estimate will likely include the claims of current plaintiffs, those allegedly injured but who haven't commenced a lawsuit and those exposed to asbestos but do not yet have symptoms of the disease.

The word "claim" is broadly defined in the bankruptcy code allowing for inclusion of all such actions in the court's power, Ms. Birnbaum said.

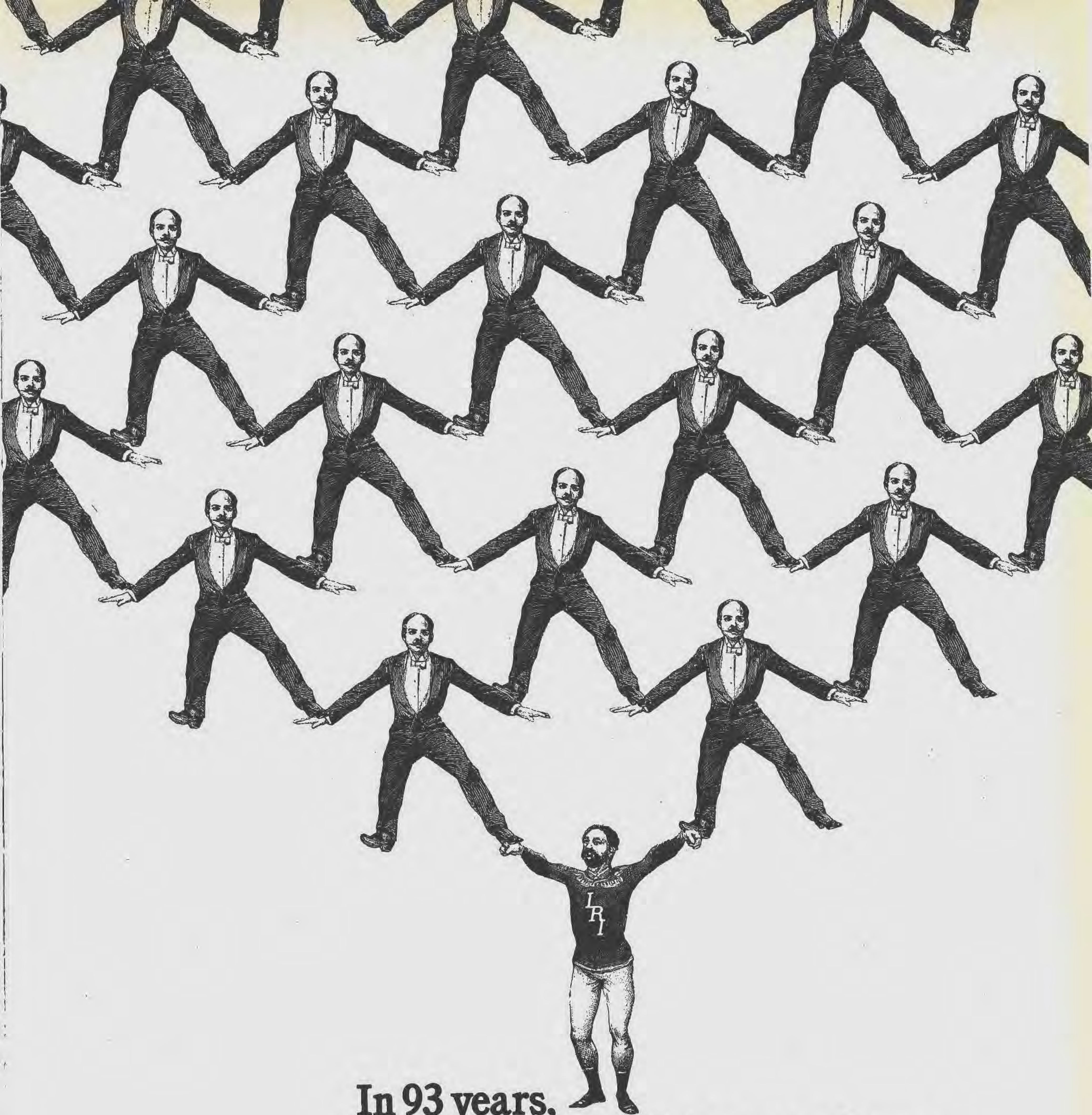
In addition, the legislative history of the Federal Bankruptcy Act indicates Congress meant to give the court broad power to estimate such claims, she added.

Mr. Cohen also said that the current uncertainty surrounding the bankruptcy law should be remedied by Congress soon, perhaps by next month.

Last June, the Supreme Court declared that certain powers given to bankruptcy judges under the act were unconstitutional and gave Congress until Dec. 24 to change the law.

Congress failed to pass legislation by the deadline and bankruptcy courts are currently functioning with interim rules.

"Bankruptcy court is alive but not very well," Mr. Cohen said, adding that Congress will likely act soon. "There's no doubt the bankruptcy portion will be cured," he said. ■



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Industrial Risk Insurers

Who will finally pay for Three Mile Island?

Continued from page 1

Babcock also contends that in its five contracts with GPU for construction and service of the plant and long-term training of the operators, GPU waives its rights of recovery against Babcock for property damage during a nuclear accident.

Babcock executives considered revising its operating instructions after the Davis-Besse incident, according to Robert B. Fiske, Jr., Babcock's attorney. There was a "reasonable difference of opinion" within the company on whether revised instructions were necessary, but Babcock eventually decided its instructions were complete, Mr. Fiske said.

Pennsylvania statutes are being applied in the case, so that state's comparative negligence rule will be used in determining fault for the accident, according to Jesse R. Meer, a GPU attorney. Thus, both GPU and Babcock could be found at fault for varying percentages of the loss.

However, if Babcock is found liable for any portion of the loss, it may find itself in a dispute with Travelers, the primary underwriter of a $100 million comprehensive general liability insurance package in force at the time of the accident, sources say.

Sources at Travelers maintain the insurer informed Babcock that the nuclear exclusion on its liability policy may preclude coverage if Babcock is found at fault. But no lawsuits have been filed against Travelers concerning Babcock's insurance coverage, a source at McDermott, Babcock's parent, said.

Both McDermott and Babcock were insured by Travelers when the companies merged in 1978, but McDermott renewed its CGL insurance with another underwriter in 1982. The switch had nothing to do with liability questions raised by the TMI accident, according to Raymond W. Stahl, a Travelers senior vp.

GPU's suit against the NRC was filed Oct. 1 in U.S. District Court in Philadelphia after the NRC denied a $4.01 million administrative claim that GPU brought against it.

GPU's claims against the NRC are similar to those made against Babcock: GPU contends that NRC negligently failed to warn it of hazardous defects in the reactor system following the accident at Davis-Besse.

A government motion to dismiss the case was denied last Nov. 24, but Judge E. Mac Troutman's decision is being appealed to the 3rd U.S. Circuit Court of Appeals.

GPU's case against the government is still in the pre-trial discovery stage, and a trial date has not yet been set, a court spokesman said.

While GPU attempts to shift some of the liability for the TMI accident, it is also preparing to defend itself and its directors against a class-action lawsuit brought by two shareholders.

The suit, filed in January 1980 in a U.S. District Court in New Jersey, is scheduled for trial April 4.

The two shareholders, who owned a total of 798 GPU shares, represent all those who held the company's common stock between Aug. 25, 1975, and April 1, 1979.

GPU estimates that shareholders have lost more than $1 billion as a result of the accident: $312 million in lost dividends and $765 million through decline in share value. The stock, which traded at between $16 and $21 per share during the class-action period, traded at $7.25 earlier this month.

The shareholders' suit alleges, among other things, that GPU and the 10 named directors failed to disclose "the hazardous nature of generating nuclear electricity" and the fact that an accident would have "profound consequences" on GPU shareholders.

The shareholders also charge that the GPU directors made false and misleading statements about the company's operations in several GPU prospectuses and shareholders' reports, "with intent to manipulate and artificially raise the price of GPU's common shares."

The shareholders seek to have their stock purchases rescinded, or to recover actual damages, along with "appropriate" interest, legal costs and an unspecified amount in punitive damages.

GPU and its directors deny the shareholders' allegations and assert that they acted in good faith, adding that they did not know of any misleading statements in the company's prospectuses or shareholders' reports.

If the shareholders win their suit, GPU will then become embroiled in a dispute with its former D&O insurer, City Insurance Co., a subsidiary of The Home Insurance Co.

After the shareholders' suit was filed in 1980, City informed GPU that it reserved the right to deny coverage in case GPU lost the lawsuit, according to James B. Liberman, GPU's general counsel.

GPU's policy with City carried a limit of $10 million, with a $5,000 deductible for each director or officer for each loss and a $20,000 aggregate deductible for each loss. The policy was in force from Jan. 7, 1978, until June 1979, when City cancelled it.

After City informed GPU that it might deny coverage, GPU's directors filed a third-party lawsuit against the insurer as part of the shareholders' suit, asking the federal court to require City to pay any judgment made against the directors under the terms of the policy.

In its answer to the complaint, City counters with the same arguments made by the shareholders: City claims that GPU misrepresented the safety of its TMI operations and the potential consequences of an accident. Citing the same GPU prospectuses, City seeks to have the D&O policy canceled from its inception.

If the shareholders are successful, the court will then consider the complaint against City, according to Stephen A. Weiner, GPU's trial counsel for the shareholders' suit. Mr. Weiner added that a finding of misrepresentation against GPU in the shareholders' suit does not necessarily mean that the same finding will be made against GPU's directors in the third-party complaint.

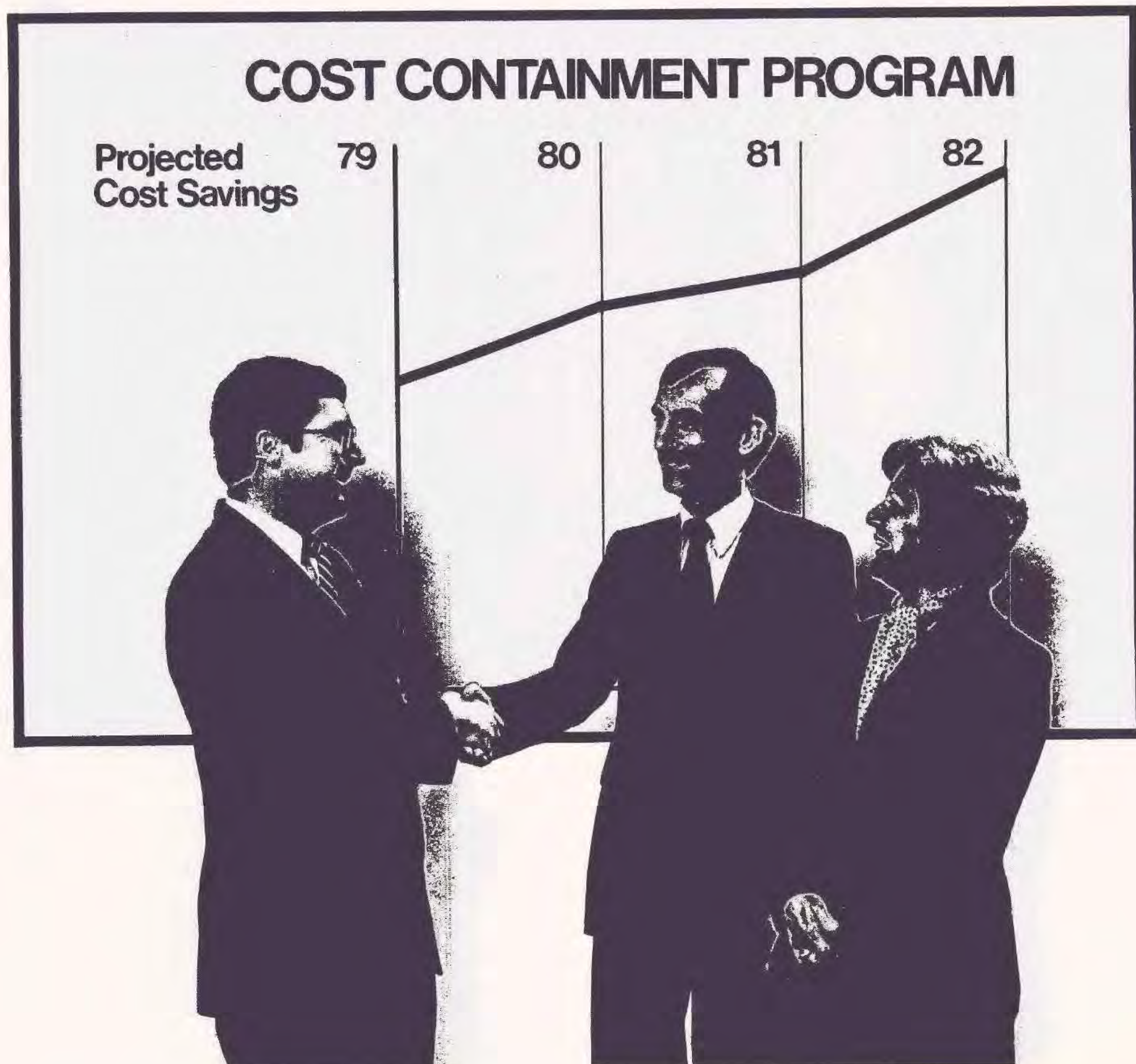
While the outcome of these cases is uncertain, one major lawsuit against GPU has already been settled and administration of that settlement is now under way.

On Sept. 9, 1981, U.S. District Judge Sylvia H. Rambo gave final approval to a $25 million settlement of a class-action suit brought on behalf of the 600,000 individuals and businesses located within 25 miles of the TMI plant.

The fund established in the settlement agreement included $20 million for the payment of economic loss claims and $5 million to

Continued on facing page

"THESE ARE JUST THE RESULTS WE HOPED FOR!"



Continued from previous page
fund public health programs in the area around the TMI plant.

Judge Rambo recently authorized $40,000 of the $5 million dollars to be used to fund a public symposium on nuclear power to be held in Harrisburg, Pa.

American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters paid the settlement under a $140 million liability policy.

GPU's current liability policy limit has been increased to $160 million, according to Jack Harward, an ANI claims vp.

Some 14,373 economic loss claims were ultimately received, falling into five categories:

- Wage and salary losses.
- Expenses incurred in evacuating the TMI area.
- Business losses.
- Damage to property or decline in property values.
- Other damage to personal property.

The bulk of the claims fell into the wage-loss and evacuation-expense categories, while business- and property-loss claims accounted for the largest dollar amounts.

A total of 10,904 wage-loss and evacuation-expense claims for $5.2 million represent 76% of the total number of claims filed, but only 5% of the total values claimed. Business- and property-loss claims number only 3,469, but seek $97.1 million in damages.

The wage-loss and evacuation-expense claims will be settled first under a proposal submitted by the Philadelphia law firm of Berger & Montague, which is acting as liaison counsel for all of the plaintiffs.

After review by an administrative committee composed of members of 10 law firms and an outside accounting firm, the wage-loss and evacuation-expense claims were reduced from $5.2 million to about $2.4 million, according to Daniel Berger, an attorney with the firm. Wage-loss claims of $2.1 million were reduced to $827,660, and evacuation expense claims of $3.1 million were reduced to $1.6 million.

"There were some who, instead of evacuating to Hershey, evacuated to Honolulu. We were duty-bound to make an adjustment there," Mr. Berger said.

Claimants objecting to the amount they receive can appeal first to the administrative committee and then to Judge Rambo, who set a hearing on the claims for Jan. 21.

Review of the business- and property-loss claims is still under way, but Mr. Berger said he hopes the claims can be adjusted and a payment proposal submitted to the court in 1983.

The wage-loss and evacuation-expense claims were paid first because of their large numbers and the relative ease of auditing them, according to Mr. Berger.

Also, because the amounts involved are relatively small, payment of the claims is not expected to result in any great drain on the funds available to pay the other claims.

The economic loss fund has increased to about $25 million through interest accrued since 1981, according to Mr. Berger.

Many of the business-loss and property-loss claims will be reduced after auditing, Mr. Berger said, and if there isn't enough money left in the fund to pay the approved claims, payments will be prorated.

In addition to the class-action claims, 379 personal injury claims remain to be settled. Most involve claims of increased risk of cancer due to the TMI accident, Mr. Berger said.

Judge Rambo refused to certify the personal injury claimants as a class and will hear each case individually. ■

Hospital settles malpractice suit for $1.6 million

By JAMES C. LAWSON

WASHINGTON—Columbia Hospital for Women and its insurer will pay almost $1.6 million in a structured settlement with a 28-year-old mother who claimed doctors failed to diagnose her breast cancer in time to save her life.

The Jan. 5 settlement, attorneys connected with the suit say, is believed to be the "most money paid on a cancer misdiagnosis case."

The settlement comes 11 months after Mary E. Erby of Alexandria, Va., filed a medical malpractice suit in U.S. District Court. A trial had been scheduled for June.

Mrs. Erby, who suffers from incurable bone cancer, has been given from three months to three years to live. She and her husband had originally asked for $7.5 million in unspecified damages, plus an additional $2 million claim for loss of marital services.

The hospital and its medical malpractice insurer, Columbia Casualty Co., a subsidiary of the Chicago-based CNA Financial Corp., will pay Mrs. Erby a $1.3 million cash payment as well as purchase annuities for each of her three children worth another $1.15 million over the next 23 years, explains Richard W. Boone, an attorney with Wilkes Artis Hedrick & Lane, which represents the hospital.

The annuities will provide each child $500 monthly up to age 18, then pay each $50,000 on their 18th, 19th and 21st birthdays. At age 25, each child will get $100,000. The children range in age from 2 to 6.

The hospital will pay the first $1 million of the settlement—its self-insured retention under its medical malpractice coverage—while Columbia will pay the rest of the cash payment and fund the annuities, which currently cost $289,000, explains Mr. Boone.

In her suit, Mrs. Erby alleged doctors failed to diagnose and conduct tests to determine whether a lump in the upper inner quadrant of her right breast was cancerous.

Mrs. Erby claimed she had reported the lump to doctors while undergoing pregnancy tests in July 1980. She said doctors told her at the time not to worry because breast lumps are common in pregnant women, explains her attorney, James M. Hanny.

She eventually underwent a mastectomy to remove the right breast, but not until after doctors had discovered that the cancer had spread to her bone tissue.

"They can hopefully contain it for awhile," he says, but "it's inevitable that she's going to die."

Mr. Boone, the hospital's attorney, says the institution had asked Mrs. Erby to return for further tests several weeks after she reported the lump but that she had failed to do so.

"She never came back until October 1980," he explains. "She came back because she was afraid she was going to have a miscarriage."

Doctors, while performing a prenatal checkup, conducted another breast examination but could find no lump, explains Mr. Boone.

Physicians later discovered a lump in the upper outer quadrant of her right breast when she returned for another checkup in March 1981, but contended that it was not the same lump she reported the year before.

"It was a different lump," Mr. Boone explains. "The other lump had resolved itself."

Despite reaching a settlement, "I don't think the hospital was liable or is liable," Mr. Boone says. ■

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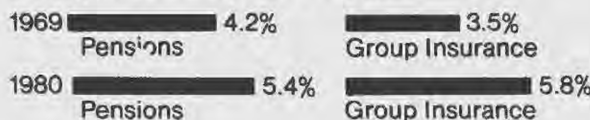

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ONCE AGAIN THE ANSWER IS AIG.

THE NEW NCCI POLICY

What the council hopes to implement in '83

Business Insurance is publishing the complete new workers compensation and employers liability insurance policy prepared by the National Council on Compensation Insurance (BI, Dec. 20). The explanatory memorandum and policy are published in this issue in their entirety. Next week, the retrospective premium endorsement rating options will appear in the Perspective section. The policy, exclusions and endorsements are copyrighted by the National Council on Compensation Insurance, 1982, and are used with its permission.

Memorandum

THE POLICY CONSISTS of a general section and six parts. Part one is statutory workers compensation coverage. Part two is employers liability coverage. Part three provides other states insurance. This was broad-form all-states coverage in the old forms manual. Part four shows the insured's duties in event of loss. Part five consists of all premium provisions, including premium calculation on cancellation. Part six shows the five conditions of the policy.

General section

A. The policy.

This identifies the components of the policy and identifies "you" and "we" as the insured and the insurer. The old changes condition is included in this paragraph.

B. Who is insured.

This identifies the insured as the employer named in item one of the information page. Partners are insured here. Members of joint ventures may be insured by endorsement.

C. Workers compensation law.

This law is defined as the law of a state or territory named in item 3.A of the information page. This includes law amendments in effect during the policy period.

D. State.

The definition of state does not include territories of the United States. Coverage may be provided in a United States territory only by naming the territory in item 3.A of the information page.

**Part one—
Workers Compensation Insurance**

A. How this insurance applies.

The coverage applies to bodily injury by accident and by disease. Accident and disease coverages are activated or "triggered" as in the standard policy. The accident must occur during the policy period; the last exposure to disease in the employment of the insured must occur during the policy period. This method is required by law in many states.

B. We will pay.

The company will pay "benefits," a term broad enough to include both compensation and medical benefits.

There are no exclusions in part one. Exclusion (a) of the 1954 policy, dealing with other insurance, will not be necessary. A divided risk endorsement (designated workplaces exclusion endorsement) is available to exclude exposures known to be insured elsewhere.

Exclusion (b) of the old policy, dealing with domestic, farm and agricultural workers, was eliminated because it is inoperable when coverage is required by law. The partners, officers and other exclusion endorsement is now available to exclude these workers where such an exclusion is relevant and lawful.

C. We will defend.

This establishes the right and duty to defend, and disclaims any duty to defend a not-covered claim. Reference to "groundless, false or fraudulent" is omitted as unnecessary.

D. We will also pay.

Claim costs are covered here. The 1954 policy includes a statement that the company has no duty to apply for or furnish bonds. This statement is omitted in the revised policy. No change in coverage is intended.

E. Other insurance.

This insurance, other insurance and self insurance contribute by equal shares to a loss covered by this insurance. This is generally consistent with the 1954 policy, but the reference to self insurance is new.

F. Excess benefits you will pay.

This provision was contained in the statutory provisions condition of the 1954 policy. It applies when the insured employer engages in certain conduct proscribed in the workers compensation laws. Two kinds of conduct were added to the revised policy. They are violations of safety and health laws that result in injury to the worker, and discrimination against a worker when that discrimination is prohibited by the workers compensation law.

G. Recovery from others.

Subrogation is shown here as recovery from others.

H. Statutory provisions.

Provisions required by law are listed here. These requirements have not changed since the 1954 policy. They apply in the jurisdictions that require them.

**Part two—
Employers Liability Insurance**

A. How this insurance applies.

Coverage applies to bodily injury by accident and to bodily injury by disease. Bodily injury includes resulting death. All references to bodily injury in both the policy and the endorsements automatically include resulting death. This provision combines parts of insurance agreements I-B and IV of the 1954 policy. Suits for damages must be brought in the customary "domestic" territory.

B. We will pay.

This is the company's agreement to pay damages for bodily injury to an employee of the insured. Coverage for care and loss of services, actions over, dual capacity and consequential bodily injury is reaffirmed or given here. The 1954 policy covered damages for action over, care and loss of services. Coverage was shown in the limits of liability condition. These important elements of coverage are more readily recognized by showing them in the agreement to pay damages.

Dual capacity and consequential injury claims are recent developments in the common law. Dual capacity claims occur in a few states when the injury arises "out of an in the course of" the worker's employment, but compensation is not the exclusive remedy.

A claim for consequential injury occurs if the worker's family suffers bodily injury solely because the worker is injured. This kind of claim is very infrequent.

The 1954 policy did not express coverage for dual capacity or consequential bodily injury claims. The revised policy recognizes that employers need protection against these losses, that they are insurable, and that the revised policy can provide the necessary coverage.

C. Exclusions.

The first four exclusions are found in the 1954 standard policy. Exclusion five (intentional injury) comes from the assault and battery definition. It is not limited to bodily injury by accident, but applies to bodily injury by disease as well.

Exclusion six is a foreign territory exclusion with an exception applicable to citizens and residents of the U.S.A. and Canada who are temporarily abroad.

Exclusion seven is new. It applies to injury arising out of wrongful discharge from employment, to coercion, and to discrimination in violation of the law. This is necessary because part one includes a reimbursement provision that applies to excess benefits payable if the insured discharges, coerces or discriminates against an employee in violation of the workers compensation law. If part two does not include a similar exclusion, some people may believe it covers these injuries. Part two does not cover them. Exclusion seven merely reinforces the absence of coverage.

The 1954 policy exclusion of disease claims brought later than 36 months after the end of the policy period is not in the revised policy.

D. We will defend.

The right and duty of the company to defend the insured are shown here. This provision expressly disclaims defense of not covered claims and defense of claims after the limits of liability have been exhausted. This provision also applies, expressly, to actions over and dual capacity claims.

E. We will also pay.

This tracks that provision in part one.

F. Other insurance.

This clause follows the 1954 policy and part one of the new policy by calling for contribution by equal shares. This means that each insurer (or self insurer) contributes equally with every other insurer until the loss is paid or the insurance is exhausted.

G. Limits of liability.

Separate limits of liability for accident and disease are shown on the information page and are explained here. Disease limits include a policy aggregate and a limit per injured employee. The 1954 policy definition of "bodily injury by accident; bodily injury by disease" is included in limits of liability because it serves to prevent two sets of limits (one for accident and one for disease) from applying to the same loss.

H. Recovery from others.

This was called subrogation in 1954 policy.

I. Actions against us.

This provision no longer states that a judgment creditor may sue the company; this right is created by law.

**Part three—
Other states insurance**

Other states insurance is new to the policy. It is a revision of the broad-form all-states endorsement.

This coverage applies on a designated state basis in order to respond to recommendations

Continued on next page

NCCI policy

The NCCI's new work comp policy form

Continued from previous page

made by regional carriers. It is designed to give the carrier the option of providing this coverage by showing a state in item 3.C of the information page. The exclusion of fines and penalties in the broad-form endorsement was omitted to avoid the suggestion that fines and penalties are covered in other parts of the policy that do not expressly exclude them.

Part four—Your duties if injury occurs

The 1954 policy conditions titled "Notice of Injury," "Notice of Claim or Suit" and "Assistance and Cooperation of the Insured" are combined in this part and captioned "Your duties if injury occurs." Prompt notice is emphasized. The specific duties listed in the assistance and cooperation condition of the 1954 policy were omitted because they are included in the general duty to "cooperate with us and to assist us."

Part five—Premium

A. Our manuals.

This establishes the importance of company manuals in determining premium, and that the manuals and the premium may change during the policy period.

B. Classifications.

This describes the function of the classification system. More importantly, it tells the insured that the classifications and rates shown on the information page may change if they do not accurately describe the work covered by the policy.

C. Remuneration.

Payroll as a premium basis is described here. It includes the remuneration of executive officers and the payroll of employees of uninsured contractors and subcontractors.

D. Premium payments.

The insured is responsible for the payment of all premium when due.

E. Final premium.

This provision tells the insured how final premium is determined. It explains why final premium may be different from the estimated premium; it shows how premium will be determined on cancellation of the policy.

F. Records.

This obligates the insured to keep records of information needed to compute premium.

G. Audit.

The company and authorized rating organizations have the right to audit the insured's records. The final premium may depend on the results of the audit.

Part six—Conditions

A. Inspection.

Inspection of the insured's workplaces, if conducted by the company, are not an undertaking by the company to make those places safe.

B. Long-term policy.

This condition makes the corresponding endorsement obsolete.

C. Transfer of your rights and duties.

This was the assignment condition of the 1954 policy. Notice of cancellation after death of the insured may be sent to the legal representative as insured.

D. Cancellation.

This condition differs from the old 1954 policy in that surrender of the policy is not shown as a way to effect cancellation. The employer should keep the policy as a valuable business record. This condition does not address premium. The condition conforms to workers compensation laws and insurance laws that regulate cancellation.

E. Sole representative.

This condition was added to the new policy to identify the insured, in a multiemployer policy, who is authorized to act on behalf of the other insureds.

The new policy form

General section

A. The policy.

This policy includes at its effective date the information page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in item one of the information page) and us (the insurer named on the information page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be a part of this policy.

B. Who is insured.

You are insured if you are an employer named in item one of the information page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers compensation law.

Workers compensation law means the workers or workmens compensation law and occupational disease law of each state or territory named in item 3.A of the information page. It includes any amendments to that law which are in effect during the policy period. It does not include the provisions of any law that provide non-occupational disability benefits.

D. State.

State means any state of the United States of America, and the District of Columbia.

Part one—Workers compensation insurance

A. How this insurance applies.

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.

2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last exposure to those conditions of your employment must occur during the policy period.

B. We will pay.

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We will defend.

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by the insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim proceeding or suit that is not covered by this insurance.

D. We will also pay.

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. Reasonable expenses, but not loss of earnings, incurred at our request.

2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance.

3. Litigation costs taxed against you.

4. Interest on a judgment from the date of the judgment until we offer the amount due under this insurance.

5. Expenses we incur.

E. Other insurance.

We will no pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Excess benefits you will pay.

You will reimburse us for any payments we must make in excess of the benefits regularly provided by the workers compensation law if the payments are required:

1. Because of your serious and willful misconduct.

2. Because you or your executive officer knowingly employ an employee in violation of the law.

3. Because you fail to comply with a health or safety law or regulation.

4. Because you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

G. Recovery from others.

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory provisions.

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.

2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.

3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.

5. This insurance conforms to the parts of the workers compensation law that apply to:

a. Benefits payable by this insurance.

b. Special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

Part two—Employers liability insurance

A. How this insurance applies.

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.

2. The employment must be necessary or incidental to your work in a state or territory listed in item 3.A of the information page.

3. Bodily injury by accident must occur during the policy period.

4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last exposure to those conditions of your employment must occur during the policy period.

5. If you are sued, the original suit for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We will pay.

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this employers liability insurance.

The damages we will pay include:

1. Damages claimed against you under the legal theory of dual capacity.

2. Damages claimed against a third party who then tries to recover any of the damages from you by bringing a claim or suit against you.

3. Damages for care and loss of services.

4. Damages for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee.

Provided that these damages are a direct consequence of bodily injury covered by this Employer Liability insurance.

C. Exclusions.

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that you work will be done in a workmanlike manner.

2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law.

3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers.

4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law.

5. Bodily injury intentionally caused or aggravated by you.

6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries.

Continued on facing page

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7. Damages arising out of the discharge of, coercion of, or discrimination against any employee in violation of law.

D. We will defend.

We have the right and duty to defend at our expense any claim or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims and suits.

We have no duty to defend a claim or suit that is not covered by this insurance. We have no duty to defend after we have paid our limit of liability under this insurance.

E. We will also pay.

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim or suit we defend:

1. Reasonable expenses, but not loss of earnings, incurred at our request.

2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance.

3. Litigation costs taxed against you.

4. Interest on a judgment from the date of the judgment until we offer the amount due under this insurance.

5. Expenses we incur.

F. Other insurance.

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of liability.

Our liability to pay for damages is limited. Our limits of liability are shown in item 3.B of the information page. They apply as explained below.

1. Bodily injury by accident. The limit shown for "bodily injury by accident-each accident" is the most we will pay for any damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily injury by disease. The limit shown for "bodily injury by disease-policy limit" is the most we will pay for any damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for any damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

H. Recovery from others.

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions against us.

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy.

2. The amount you owe has been determined with our consent or by actual and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

Part three—Other states insurance

A. How this insurance applies.

1. This other states insurance applies only if one or more states are shown in item 3.C of the information page.

2. If you begin work in one of those states and are uninsured for that work, the policy will apply as though that state were listed in item 3.A of the information page.

3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to the persons entitled to them.

B. Notice.

Tell us at once if you being work in any state listed in item 3.C of the information page.

Part four—Your duties if injury occurs

Tell us at once if an injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services if and as required by the workers compensation law.

2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.

3. Promptly give us all notices and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.

5. Do nothing after an injury occurs that would interfere with our right to recover from others.

6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

Part five—Premium

A. Our manuals.

All premium for this policy will be determined by our manuals or rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications.

Item four of the information page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration.

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. Premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your officers and employees engaged in work covered by this policy.

2. All other persons engaged in work that could make us liable under part one (workers compensation insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials is the premium basis. This paragraph two will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium payments.

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final premium.

The premium shown on the information page, schedules, and endorsements is an estimate. The final premium will be determined after the policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by the policy.

If this policy is cancelled, final premium will be determined in the following way unless our manuals provide otherwise.

1. If we cancel, final premium will be calculated pro rata based on the time the policy was in force. Final premium will not be less than the pro-rata share of the minimum premium.

2. If you cancel, final premium will be more than pro rata; it will be based on the time the policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

Part six—Conditions

A. Inspection.

We have the right but not the duty to inspect the workplaces we insure. If we inspect, we may report to you the conditions we find and recommend changes. Whether or not we inspect, report or recommend, we have no duty to you, your employees or anyone else, to make your workplaces safe or healthful or to make them comply with any law, regulation, code or standard.

Insurance rate service organizations have the same rights we have under this provision.

B. Long-term policy.

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of your rights and duties.

Your rights or duties may not be transferred under this policy without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation.

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than 10 days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in item one of the information page will be sufficient to prove notice.

3. The policy period will end on the day and hour stated in the cancellation notice.

4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with that law.

E. Sole representative.

The insured first-named in item one of the information page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

The National Council on Compensation Insurance is located at One Penn Plaza, New York, N.Y. 10119.

Forgery, not fraud, determines bank coverage

LEGAL BRIEFS

A BANK MUST prove forgery in order to recover under its bankers blanket bond coverage, the 6th U.S. Circuit Court of Appeals ruled. Conversely, the court held that where the policy had an express exclusion for losses caused by forgery, the burden to prove the forgery and, therefore, the exclusion of coverage, was on the insurer.

A bank's claim for recovery under a blanket bond arose from a fraudulent sale and lease-back transaction for heavy equipment that the bank financed. The bank purchased the conditional sales contract for $363,317. Included in the documents given to the bank was a bill of sale for the equipment that bore the signature of the alleged owner. Subsequently, the lessee defaulted on the lease and the bank discovered the equipment did not exist.

The bank carried a bankers blanket bond that covered losses from instruments with forged signatures. But, the policy excluded losses resulting from default upon loans procured through fraud. The insurer refused the claim and the bank sued. The trial court ruled there was coverage.

On appeal, the insurer, while not disputing that there was a fraud on the bank, maintained that unless the fraud was accompanied by a forgery "as to the signature of the maker," the loss was not covered by the bank's blanket bond.

The court agreed that the trial court had erroneously placed the burden of proving a forgery on the insurer. The court was satisfied that the bank had failed to prove a forgery because it did not establish a lack of authority to sign the sales contract as an element of forgery. *Farmers Bank Co. vs. Transamerica Insurance Co.*, 6th U.S. Circuit Court of Appeals, March 29, 1982 (*BI*/01/N.-$5).

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

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Firms ban smoking to cut costs

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Mr. McPherson, a former smoker, implemented the ban over a period of time. He said he realized that rules like these often were viewed as punitive actions, so he created a reward system and offered a 25-cent-per-hour increase to those who quit smoking.

As a further reward and to increase employee fitness, Radar workers could spend a half-hour of company time three days a week at a health club.

Ninety days after announcing the incentives, the company's 60 smokers dwindled to 21. "At that point, I called (the smokers) into my office and announced that within the next 30 days there would be no smoking allowed on the premises. I told them I would fire no one, but those 21 were the bulk of my management and I told them I would not promote anyone who smoked," Mr. McPherson said.

When the no-smoking policy was finally announced, three or four employees became closet smokers and the customers slowly began to realize that the policy was not a passing trend.

Mr. McPherson said he initiated the program after watching his mother die slowly and painfully from lung cancer. "I did it to help my employees," he said.

But, in retrospect, he has seen his janitorial bills shrink and production increase, although he does not have specific figures.

Another company president, Oscar Austad, also cites costs savings as a result of a restrictive smoking policy. The Sioux Falls, S.D., firm that bears Mr. Austad's name is a wholesale distributor of recreational equipment that employs 125 people.

"We know we've saved money. We're self-insured for medical (costs) on the first $15,000 out of a $1 million policy. We've been told our loss ratio is way under the average," Mr. Austad said.

Reduced absenteeism and the elimination of damage to carpets, drapes, merchandise and desks from "flicking ashes all over" were the other advantages of the program cited by Mr. Austad.

The no-smoking rule at Austad's began when the company was founded in 1963. "I thought that breathing pure air was important to everybody: me, the employees, the customers. I also didn't want merchandise damaged," he said.

"When we started (the policy) we were very unusual... and timid to enforce it," he notes. Initially, when customers asked why smoking was prohibited, "We blamed a fire insurance regulation or something, but not anymore."

Another enterprise that banned smoking for both employees and clients is the Non-Smokers Inn in Dallas. This 134-unit motel opened in March 1982 and showed a profit after six weeks, said owner Lyndon Sanders.

Each guest that stays at the motel must sign an agreement stating he will pay the management $100 if he smokes in the room or allows anyone else to smoke.

"And, we won't hire anyone that's smoked for the past six months," Mr. Sanders said. Employees also must sign an agreement stating they will not smoke while employed by the motel.

"It costs $90 more a week to hire a smoker than a non-smoker,' Mr. Sanders said. "It not only harms their health, but co-workers' health. It doesn't make any sense to smoke or to hire smokers."

So far, no one has even been fired for smoking. The employees monitor the employees, and the guests monitor the guests.

"I wish you could read my mail," he said, citing letters from all over the world. The letters include notes of praise from guests or from workers at other firms asking how to demand a smoke-free workplace.

Although some companies enacted a total smoking ban immediately, others implemented their programs gradually.

"In the beginning, we couldn't smoke the first hour or the last hour of the day," said Cindy Todd, production supervisor at Kessler-Ellis Products in Atlantic Highlands, N.J., an electronics manufacturer that employs 90 people.

Last month, "we could smoke only between 10 and 11 in the morning and 2 to 2:40," she said, adding that since the beginning of the year smoking is only allowed in lunch and coffee break areas.

To help the smokers cut down gradually, each employee was given 10 tickets a month. To smoke during a non-designated time, the worker had to cash in a ticket, she explained.

Smoking regulations are not limited to small companies. Some of the nation's largest companies, as well as universities and state and local governments, banned smoking in the workplace.

Campbell Soup Co. in Camden, N.J., has traditionally banned smoking in production areas because of the possibility of contaminating food products with cigarettes, said Dr. Roland Wear, corporate medical director.

However, what's fair for the production worker is fair for the office worker, Dr. Wear explained, adding that the 120-year-old policy eventually was extended years ago to ban smoking at desks.

Smoking at Campbell's is only allowed in break areas and cafeterias. When the company relocated its headquarters some 30 years ago, employees were polled about the no-smoking restrictions and an overwhelming majority voted to keep the same regulations in force.

At IBM Corp. in Armonk, N.Y., smoking is prohibited in common areas, like elevators and photocopying rooms, a spokesman said.

If smoking is permitted in meeting rooms and classrooms, separate areas exist for smokers and nonsmokers. If smoking is not permitted in these areas, smoking breaks are provided.

IBM's cafeterias have smoking and non-smoking sections.

"On a more personal level, employees may put no smoking signs on their desks or at their workplace and smokers have to honor it," the spokesman said.

Although uniform smoking policies do not exist at major employers like American Telephone & Telegraph Co. or Dow Chemical Co., individual plants and divisions within both companies have implemented restrictions.

"There is a general concern... trying to keep up with the times and make the quality of the workplace better," said Rebecca Parkinson, program manager for employee health promotion at AT&T. Policies are under continuing review, she added, noting that the company wants to respect the rights of both smokers and nonsmokers.

Dow's Texas divisions, based in Freeport, Texas, not only have separate smoking areas in cafeterias, but certain units within the plants have worked out their own smoking standards, said Dr. William Fishbeck, medical director.

Although employees at many corporations have readily gone along with non-smoking regulations, some companies' policies have had to survive grievance procedures and arbitration.

About 10 years ago, Boyd Coffee Co. in Portland, Ore., implemented a policy that prohibited smoking anywhere in the facility, including the parking lot. Workers were allowed to smoke only in their cars.

However, the plant's Teamsters local filed a grievance, citing that the company unilaterally took away a condition of employment. When it went to arbitration, the arbitrator sided with the company, but recommended that employees be allowed to smoke in the parking lot. The company agreed.

Smoking never was permitted in Boyd's production areas but previously was allowed in the lobby and lunchroom, said Executive Vp Richard Boyd. However, when the 82-year-old company relocated a decade ago, management decided to institute the new policy to promote a healthy environment.

"We have customers who tour the facility and we wanted a clean image," he explained.

Local 1547 of the International Brotherhood of Electrical Workers in Juneau, Alaska, filed a similar grievance when Juneau-Douglas Telephone Co. initiated a no-smoking policy in 1980.

"We went to arbitration and the arbitrator said we had a right to set certain areas for smoking and non-smoking," said Dale Higgins, a customer service manager.

The policy at the Juneau facility, which is a unit of Continental Tele-

Continued on facing page

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com, based in Bellevue, Wash., was established not only for the health of non-smokers, but to reduce fire hazards, said Ms. Higgins, noting the company uses an abundance of paper products and is self-insured.

Unions feel the need to protect the right of smokers, said Mr. Austad, "but they also should think about non-smoker rights."

Other employers' smoking policies stress flexibility. Harvard University in Cambridge, Mass., has a year-old policy, instigated by the faculty and staff, that states that smoking standards should be worked out among personnel, but when there is a conflict, the smoker must give way to the non-smoker, said Daniel Cantor, Harvard's director of personnel.

Likewise, the Kansas Department of Health and Environment, which is charged with cleaning up chemical wastes, decided to clean up its own act. Through a program called VOTE, employees decide which areas of their workplace will be designated for smoking.

Since its no-smoking restrictions went into effect this summer, the department has worked with more than 80 local health departments and several corporations throughout the state to develop similiar no-smoking policies.

"We're also working on (Gov. John Carlin) to adopt a no-smoking policy at his office," said Virginia Lockhart, director of the state Bureau of Health Education.

Currently, a Kansas law prohibits smoking where posted in public places. However, the state Health Department wants to amend the law to mirror Minnesota's Clean Indoor Air Act, which prohibits smoking in public places unless it is specifically allowed.

Cities are also taking action. Smoking will be prohibited this month in San Diego in public places like retail stores, service establishments, restaurants, theaters, waiting rooms, educational facilities and on public transportation.

In June 1984, the law will expand to include private corporations. Employers will be required to show a good-faith effort to provide smoke-free environments, said George Story, director of citizen assistance and information.

"But they won't have to spend money to do so," said Mr. Story, explaining that employers will not be required to make structural changes to accommodate non-smokers.

The San Diego law is similar to regulations opposed by The Tobacco Institute, a Washington-based trade association that lobbies on behalf of tobacco companies.

"Our problems come when some legislature or city council passes a (blanket) law," said Walker Merryman, the institute's vp and director of communications. He cited a county board in Maryland that was considering a law that would have required every employer to either halt smoking completely or segregate all worksites, "no matter what the consequences."

Local businesses met with the board to discuss the financial obligations of such actions and it was not passed, Mr. Merryman said.

A different type of municipal policy was adopted in Alexandria, Va. City firefighters, police officers and deputy sheriffs are prohibited from smoking, even when they are off-duty.

The policy was initiated after a 1977 profile showed that all 14 employees on disability for heart and lung ailments were smokers, said Fire Chief Charles Rule.

"We don't know yet whether it's reducing the number of disabled," noted Jack Lindsay, deputy director of personnel, adding that was the goal of the regulation. He also added the regulation was a result of a Virginia law that presumes heart and lung disabilities in public safety officers are job-related. ■

Where there's smoke, there's ire, lawsuits show

Employees have a right to a reasonably safe workplace, according to common law. Six years ago, a New Jersey judge interpreted that to mean a smoke-free workplace.

The suit involved Donna Shimp, a New Jersey Bell employee. Ms. Shimp was allergic to cigarette smoke and requested a smoke-free environment. After several relocations and an offer of a position at a lower salary, Ms. Shimp went to court and won.

Ms. Shimp stills works for New Jersey Bell, but she also advises several anti-smoking groups and employees attempting to secure smoke-free environments.

A similar case in St. Louis involves Paul Smith, a 50-year-old engineering associate at Western Electric Co. In that case, filed last fall, a doctor testified that Mr. Smith experienced severe chest pains, dizziness, headaches, loss of memory and other maladies because of smoke.

A state appellate court ruled in September that Mr. Smith has the right to sue his employer to gain a smoke-free environment. Western Electric is appealing that ruling to the Missouri Supreme Court. If the appeal fails, the case it will return to Circuit Court for trial.

Initially, Ms. Shimp tried to help Mr. Smith work with Western Electric to obtain a smoke-free work environment. After he failed, he went to court.

In another ruling, an appellate court in San Francisco recently said an attorney who was fired for demanding a smoke-free workplace can sue his former employer.

The attorney, Paul Hentzel, was employed at a computer subsidiary of Singer Co. He alleged that he was dismissed in retaliation for an attempt to obtain a smoke-free environment. He said instead of providing a smoke-free workplace, the company relocated him to an area with greater smoking concentration.

The state Court of Appeals ruled Mr. Hentzel could sue his former employer for intentional infliction of emotional distress.

However, at least one court has ruled against a no-smoking policy

A California Superior Court judge issued a preliminary injunction Dec. 16 against the city of San Mateo, which a year ago decided to require its new firefighters to pledge not to smoke on or off the job.

Deputy City Manager James Linenberger said the policy was implemented in an attempt to cut down on the number of firefighters that take disability retirement. Some of the disabled men were younger than 40, he noted.

However, the firefighters' union sued, saying the policy violates the state constitution by requiring public employees to take an oath.

The court ruled the city was required to negotiate with the union before it changes any job terms after an employee is hired. But, it also said the city had a right to negotiate a no-smoking policy.

"We are considering whether to take the case to trial," Mr. Linenberger said.

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Trend toward smoke-free offices growing

By CAROL CAIN

The trend toward smoke-free work environments is growing, experts and researchers say.

"There's no question in my mind. There's a definite shift toward non-smoking," said Bob Beck, executive vp of Bank of America in San Francisco.

Mr. Beck was chairman of the Smoking in the Workplace work group during the National Conference on Smoking or Health held in November 1981.

"Because we pay the health bill, we have a vested interest in helping our employees understand about the hazards of smoking," he said, adding that the goal of the conference was to find ways to improve employees' health.

The conference was initiated and underwritten by the American Cancer Society and co-sponsored by 20 non-profit organizations like the American Lung Assn., American Heart Assn. and the federal Department of Education.

"At most of these conference meetings, you get all excited, but then the issue drops. We didn't want it to drop. We wanted two or three of the recommendations done," Mr. Beck said.

Members of Mr. Beck's work group are currently developing a model corporate smoking policy to distribute nationwide.

"We want to take all of those pieces of what's out there and publicize them," Mr. Beck said.

During the conference, 34 barriers to implementing smoking policies and programs were identified and categorized into five major areas:

- Employers' lack of knowledge of the health and economic impact of smoking and opportunities for smoking control.
- Perceived conflicts in labor-management relations.
- Program costs and lack of information on cost-effectiveness.
- Lack of evidence of smoking-control program effectiveness.
- Inadequate resources.

Another survey shows that smoking restrictions vary from segregating areas in cafeterias to total bans on smoking in the workplace and a policy of not hiring smokers, said Regina Carlson, executive director of the New Jersey Group Against Smoking Pollution (GASP).

Such programs sometimes anger smokers, she said, "but most smokers say they want to quit and are grateful for such restrictions."

And, she added, many companies go out of their way to offer help to smokers when such a program is initiated.

She cited one company that stocked a refrigerator with celery and lettuce to help smokers.

Other studies show the problems that smoking causes employers. Statistics show that smokers have twice as many accidents as non-smokers. Smoking increases maintenance costs and the likelihood of fires. Also, more smokers than non-smokers are prone to take early disability retirement.

Absenteeism and numerous breaks are other "built-in" costs associated with smoking, she said.

Absenteeism is the first company statistic to show improvement when health promotion and no-smoking policies are implemented, said.

"Assign whatever dollar value you wish to a day of absenteeism and calculate the savings," he said, adding that the average smoker is absent two days per year more than the non-smoker.

Time-and-motion studies in the office environment show that a half-hour per day is wasted in smoking rituals, said William Weis, an associate professor of accounting at Seattle University. "In manual jobs, the estimate is much, much higher."

He referred to examples of painters and drywall installers who wasted 15 to 30 minutes per hour with smoking rituals.

Marvin Kristein, an associate professor of economics at the State University of New York at Stony Brook, uses a single minute per hour for smoking rituals as part of a calculation to put a cost value on smoking at the worksite. He multiplies the time lost each day by 250 workdays per year. If an employee earns $40 per day, the company loses $166 annually for each smoker.

That figure does not count the additional health care costs of smoking plus added maintenance, janitorial and ventilation costs.

Air-conditioning engineers estimate, for example, that six times as much air exchange is needed to keep the atmosphere clear in a worksite where smoking is permitted than in an office where it is banned, Ms. Carlson said.

Although employers can save a hefty amount by restricting smoking in the workplace, many have the false impression that smoking bans violate equal opportunity regulations, Mr. Weis said.

"Smokers have no rights, only those given by the employer," he said. "If that false perception breaks down, we'll see a wave of restrictions (on smoking in the workplace)," he said.

"The real problem is that there are many people in positions of importance who simply wish to smoke and don't give a damn about what happens to anyone else," Mr. Kristein said.

"I think that as publicity rises and as companies become more productivity-oriented and they realize that this is an obvious way to save money, there will be more of this (smoke regulation) done," he said. ■

Stereotype shattered

The stereotype of a top executive with a fat cigar in hand may no longer hold true.

Statistics gathered in 1976 by the National Center for Health Statistics noted that blue-collar workers are much more likely to smoke than top managers. For instance, 30% of the nation's male professional and technical workers smoke, compared with 39.9% of the sales personnel, 40.4% of the clerical workers and 50.4% at the blue-collar level.

"Smoking is negatively correlated toward achievement, toward education, toward salary," said William Weis, associate professor of accounting at Seattle University.

Mr. Weis says he believes a survey would show only 8% to 12% of top management at Fortune 500 companies smoke.

"Most of the really strong innovative (non-smoking) policies have come down from the top," he said.

IMMEDIATE ACCESS TO INDUSTRY INFLUENTIALS

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SELF INSURANCE/FINANCIAL SERVICES	JAN 31	Jan 18
	FEB 7	Jan 26
	FEB 14	Feb 2
RISK MANAGEMENT SERVICES	FEB 21	Feb 8
Employee Benefits Board Survey	FEB 28	Feb 15
	MAR 7	Feb 23
EMPLOYEE BENEFITS: CONTROLLING COSTS	MAR 14	Mar 1
	MAR 21	Mar 9
SPECIALTY RISKS	MAR 28	Mar 15
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Trial to begin

Continued from page 3

ternationale S.A. of Belgium.

The Home wants the fronting reinsurers to pay claims from two quota-share retrocession contracts Re/International accepted on the reinsurers' behalf.

The reinsurers are refusing to pay, arguing that The Home's underwriting agent, Frank Elger & Co. (Alpha) Ltd. in Canada, and Elger's London broker, Eamon Baird (Reinsurance) Brokers Ltd., misrepresented the risks.

What gets paid and by whom will be decided in the High Court, Queen's Bench. The case is complex, involving reams of writs, points of claims and counterclaims, affidavits and pleadings.

ADAS and seven other fronting companies have filed points of claim and a counterclaim. Those that did not join in that action are Re/International, Compagnie Europeene and Compania Mercantil de Seguros y Reaseguros S.A. of Panama.

The counterclaim drags into the case The Home's underwriting agent, Elger, broker Eamon Baird and the dozen Re/International retrocessionaires that accepted parts of the risk. Neither broker is now in business.

The trial will trail one of Re/International's largest contracts from the risk to its reinsurers. So far, court documents reveal the following history.

In 1977, The Home Insurance Co., acting as a front for AFIA, gave binding authority for AFIA to C.E. Heath & Co. (International) Ltd. Heath, in turn, named Frank Elger & Co. (Alpha) Ltd. as the managing agent for The Home. Elger, which had its main office in Toronto, was allowed to issue insurance policies of up to $500,000, provided Elger found a fronting insurance company for The Home.

Elger found one. It became the underwriting agent for Great Atlantic Insurance Co. of Delaware strictly to front for risks going to The Home via Elger. Great Atlantic insisted on keeping 10% of each risk, which it later reinsured.

Elger and other subsidiaries, including International Marine Underwriters Ltd., retroceded 90% of all of Great Atlantic's ocean marine, inland marine and aviation business to The Home. Elger received a 25% commission, Great Atlantic received a 5% commission and Heath got a 2.5% commission.

In March 1979 and again in June 1980, Elger & Co. retroceded 95% of all ocean marine and inland marine accounts underwritten by Great Atlantic on The Home's behalf to Re/International. Elger used broker Eamon Baird (Reinsurance) Brokers Ltd. in London to place the reinsurance with Re/International.

This arrangement ran for 2½ half years until The Home terminated it in June 1980. By that time, losses from the policies Elger underwrote exceeded $10 million, according to court documents.

The Home refused to pay the losses to Great Atlantic, saying that Great Atlantic was never licensed to conduct business in Toronto where Elger is based. The fronting agreement was also misrepresented and Heath had no authority to pass over binding authority to Elger, The Home says.

Great Atlantic sued The Home in in London in 1981 and won its case. The Home was ordered to pay losses on the business fronted by Great Atlantic. The Home is now trying to recover 95% of these losses from Re/International's pool of fronting reinsurers based on the reinsurance placed by Elger.

The 10 fronting reinsurers agree there were two 95% quota-share retrocession arrangements under which the pool would pick up the portfolio transfer of 1977 and 1978 account years and the 1980 account.

The fronting reinsurers, however, say that they retained only 26% of the business and not the full 95%. They are counterclaiming to their retrocessionaires in Re/International's pool.

They also believe that the contracts were grossly misrepresented. They claim that:

- Elger and/or Eamon Baird said that Great Atlantic would retain part of the business when, in fact, it had an excess-of-loss treaty to pay for losses on its percentage.
- They were told The Home was retroceding to Re/International to change the present retrocessionaires, which were then represented by Gerald Herbert & Co. Ltd., because The Home "was dissatisfied with its security arrangements."

In fact, according to the fronting reinsurers, The Home did not know who its retrocessionaires were until Elger told them they were Re/International's fronting companies in March 1979. The Home asked previously who its retrocessionaires were, but Elger had not given The Home a reply.

- The reinsurers accepted business in 1979, including business written in 1977 and 1978, because they were told that the business was profitable. They were given statistics by Elger for the years 1977 and 1978 for the 1979 contract and for the year 1980 for the 1980 contract. The figures looked good.

Little did they realize that the figures were inaccurate because figures for year-end 1978 were not given, which showed that the business "seriously deteriorated."

The statistics did not include incurred-but-not-reported losses. There was no indication of reserves, if there were any. And the premiums were shown before deduction of a 32.5% commission. Elger and/or Baird did not mention that Great Atlantic's account—and hence The Home's account—was in deficit in late February or early March 1979, about the time Re/International accepted the business.

Further, the reinsurers claim that Elger failed to retrocede to The Home certain items of profitable business. These, they claim, were diverted to "Maritime Assurance Corp. Ltd., a body incorporated in the Virgin Islands carrying on business from the Cayman Islands and owned by Frank Elger personally."

The fronting reinsurers also claim that information was kept from them that would have changed their minds about accepting the contracts. Elger and/or Eamon Baird did not tell Re/International that Elger's underwriting record had been poor over the last five years. They did not mention that Commonwealth Insurance Co. of Vancouver, British Columbia, had canceled a marine underwriting agreement with Elger in 1977 because Commonwealth was dissatisfied with the poor quality of the underwriting. Nor did they mention that Elger picked up the Great Atlantic after Commonwealth refused to insure the business from Elger.

The Home asks in its suit that if the Re/International reinsurers do not have to pay on the policies, Re/International should return the undisclosed premium paid for the reinsurance.

Mr. Feldman may be asked to testify in the upcoming trial, say sources in the fronting reinsurance companies. Re/International, however, has no lawyer representing it since attorneys Lovell, White & Kind of London resigned as Re/International's lawyers on Aug. 18. The law firm would not comment on its resignation.

In addition, Mr. Elger may also be asked to testify, sources close to the case said.

AFIA President Paul Butler is confident that The Home will win the case. "If we do not get satisfaction in London courts, we may go elsewhere," Mr. Butler said. "But the contracts were made in London, so we decided to start there." ■

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Reinsurers scramble after agency closes

Continued from page 3

"suspend business," the letter said.

When it is paid what it is owed, Re/International will do business again, Mr. Feldman said.

Re/International, founded in 1975, had at least 10 reinsurers at a time that it could use as fronting reinsurers. More than a dozen reinsurers acted as retrocessionaires, reinsuring the fronting companies. Re/International acted as an underwriting agent, administered claims and forwarded premiums and commissions.

Re/International had authority to accept risks on behalf of reinsurers if the reinsurers agreed to a fronting agreement in Re/International's standard management underwriting contract. Most of the reinsurers agreed to the following:

"The company agrees to front or be fronted for or by other companies when, at the sole discretion of the manager, such fronting is necessary. The company hereby agrees that when being shown or named as the fronting or issuing company that the company assumes full liability for the limits shown on any reinsurance contract or retrocession contract and that any liabilities that are in excess of the company's limits of liability. . .shall be amounts due the company from either of the other companies participating in the manager's facilities and/or common account protection arranged by the manager."

Re/International owned one reinsurer used as a fronting company, Compagnie Europeene, until July 1981, said Compagnie Europeene Chairman Norman W. King. Licensed to underwrite insurance in Belgium, Compagnie Europeene is now owned by Carrivest N.V. in Curacao by a group of undisclosed shareholders.

Mr. Feldman says that Re/International and Compagnie Europeene are not now owned by the same interests, although they are both located in Cucacao.

Re/International and Compagnie Europeene have other common links, however. James Gotts, once employed by Re/International, is now a director of Compagnie Europeene, according to court papers and a letter from Compagnie's lawyers in London. Also, Re/International used Compagnie's London contact office, Cerisa Ltd., to receive messages that were then relayed to Los Angeles just after the two companies parted.

"That is now terminated," said Mr. Feldman.

Compagnie Europeene is not involved in R.O.O.F., said Mr. King, Compagnie Europeene's chairman.

Re/International was similar in structure to Promotora De Occidente de Panama, S.A., better known as POSA, a Panamanian reinsurance intermediary that is now under investigation by federal and state authorities.

Re/International, with its incorporation in Bermuda, was not subject to any regulation in the United States and is not known to be under investigation by any regulatory authorities.

Both POSA and Re/International underwrote reinsurance on behalf of reinsurers and retrocessionaires whose capacity generally was not otherwise tapped by other intermediaries.

In offering this untapped capacity during the tight insurance markets of the mid- to late 1970s, both intermediaries underwrote reinsurance for many well-known primary insurers and their business often overlapped.

Both Re/International and POSA were named in a court case involving a claim from the Insurance Corp. of Ireland in 1978 concerning a loss on a North Sea oil rig.

> Re/International ceased underwriting and administering policies for the pool of reinsurers because it was owed 'several millions of dollars,' Mr. Feldman says.

Both Re/International and POSA accepted the Insurance Corp of Ireland's risk on behalf of ADAS Reinsurance Co. of Romania, which was a fronting reinsurer for both intermediaries. ADAS paid the portion of the claim that came through Re/International's policy, but disputed the claim that came through POSA, court documents show (*BI*, Aug. 30, 1982).

Both reinsurance intermediaries also reinsured risks for Lloyd's of London syndicates managed by Alexander Howden (Underwriting) Ltd. Chairman Ian Posgate before he was fired for allegedly misappropriating reinsurance funds of his syndicates (see story, page 2).

ADAS again was the fronting reinsurer used by both Re/International and POSA for the syndicates and is refusing to pay claims to Mr. Posgate's former syndicates, court documents also show (*BI*, Dec. 6, 1982).

Also, Re/International and CJV Associates, one of POSA's reinsurance producers, acted as reinsurance intermediaries for the now-defunct Sasse Syndicate at Lloyd's, according to reports from the Illinois Insurance Department, which has investigated the demise of the Kenilworth Insurance Co.

Both intermediaries accepted reinsurance risks from Sasse's underwriting agency, Den-Har Underwriting Agencies.

According to court documents, Mr. Feldman founded Re/International in 1975, shortly after he left First International Group, which is now defunct and has been the subject of numerous lawsuits in the United States. Mr. Feldman had been president and chief executive officer of First International Insurance Co. Ltd. in Bermuda (FIAC), First International Managers Inc. and First International Underwriters, according to court documents.

None of these companies is now in business. FIAC is now in liquidation involving litigation in New Jersey.

First International Group and its subsidiaries are being sued in a California Superior Court in Los Angeles by Utica Mutual Insurance Co., which used First International Underwriters as a managing general agent. Utica Mutual is suing the group for bad faith, breach of fiduciary duty, breach of contract, fraud and conversion. The case has not yet gone to trial because so far First International has not answered the complaint.

One of the insurance companies that procured reinsurance from Utica Mutual through First International was Argonaut Insurance Co. Last September, Argonaut was awarded a judgment against Mr. Feldman and Utica Mutual in a case in which it alleged that Mr. Feldman either fraudulantly or negligently misrepresented the coverage.

The jury ordered Mr. Feldman to pay Argonaut $78,000 and Utica Mutual was ordered to pay $44,115.90 of the $400,000 that Argonaut hoped to recover.

The judge, however, offset the jury verdicts with a previous settlement paid to Argonaut by another intermediary in the transaction, and neither Mr. Feldman nor Utica Mutual had to pay any money.

Argonaut has filed a notice of appeal, hoping for a new trial. It is dissatisfied with the amount of the jury awards and the offset of the awards against the earlier settlement.

Mr. Feldman also is appealing the decision, arguing that the statute of limitations had expired and that he as an individual officer could not be held accountable for the actions of the corporation from which he did not personally benefit, said his attorney Mr. Harris.

Mr. Feldman testified at the trial of Argonaut vs. Utica Mutual that he was one of the founders of First International. Mr. Feldman was asked to take a leave of absence by the First International board in February 1975, "so they could bring somebody else in to examine the company's situation," he said.

Mr. Feldman was never asked to return to First International, nor did he seek to, Mr. Harris added. ■

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NAIC to review comp form

Continued from page 2

still asking regulators to approve the form by Feb. 1.

The NCCI, which represents workers compensation insurers in a majority of states, says the policy was revised to bring the current 1954 form into a "plain English," or easier-to-read, format. The group contends coverage is not substantially changed (*BI*, Dec. 20, 1982).

But Section B of the policy, which covers employers liability risks, adds to, excludes and clarifies some coverages.

(A copy of the new workers compensation policy is printed in this week's Perspective section, beginning on page 19. Next week, *Business Insurance* will print the retrospective rating endorsements to the proposed form.)

A discussion of the proposed NAIC policy has been placed on the agenda of the NAIC's meeting to be held March 27-30 in Baltimore, says Arizona Insurance Commissioner Michael Low, chairman of the NAIC's workers compensation task force.

"If any of the commissioners have a problem with the form, we will want to focus on that at the meeting," Mr. Low said.

"I don't want to say. I was surprised when I heard about this new form, but it was a fairly new development that I wasn't aware of," Mr. Low expained. He said he hasn't yet seen the NCCI form, which he must approve as Arizona's insurance commissioner.

Robert Heisler, deputy director of the Illinois Insurance Department, said regulators generally look favorably on attempts to broaden coverage and are tough on attempts to restrict or reduce coverage. However, Mr. Heisler added that he hasn't seen the new NCCI form yet.

Several groups representing insurance buyers, which had earlier said they had not seen the final version of the policy, are deciding if they should formally evaluate the form.

For example, the Risk & Insurance Management Society said it doesn't know if it will take a position on the NCCI form.

"I don't know if we could do anything if we had problems with the form at this point," conceded Jon Harkavy, the society's governmental affairs director. "But we do have people looking at it."

The Public Risk & Insurance Mangement Assn., which represents government risk managers, says it has taken a number of calls from members interested in knowing more about the proposed policy, PRIMA Executive Director Natalie Wasserman said.

"There's a feeling among our members that we should look into it," she said, adding that PRIMA may decide to set up a committee to evaluate the policy or possibly work with the NAIC.

Another industry group, the Independent Insurance Agents of America, has assigned its commercial lines committee to review the form. The IIAA hopes to offer its recommendation on the policy before the September implementation date, said Reginald Beane, the group's vp of government affairs.

The National Assn. of Independent Insurers has no position on the proposed form and says it has no problem with the added coverage the policy offers employers.

The employers liability section of the revised form adds coverage for damages claimed against employers under the "legal theory of dual capacity."

Under this theory, employees in some states can sue their employers for work-related injuries by charging that the employer was also acting in another capacity, such as the manufacturer of a product, and thus was not protected from lawsuits by workers compensation law.

The new form also adds coverage for employers in subrogation actions in which a third party tries to recover damages assessed against it from the employer. And, it eliminates an exclusion that stated occupational disease claims had to be filed within 36 months of the expiration date of the policy.

In addition, the NCCI form:

- Adds coverage for consequential bodily injury to the family of the injured employee.
- Specifically excludes co-employee lawsuits as a covered exposure for insured employers.
- Specifically excludes coverage for damages arising from a retaliatory discharge of an employee or in cases where an employer discriminates against a worker to prevent the employee from bringing a workers compensation claim against the employer. ■

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Bill would ease liability for workers' suits

Continued from page 1

the worker:

- That a specific unsafe working condition existed in the workplace and presented a high degree of risk and a strong probability of serious injury or death.
- That the employer had a subjective realization and an appreciation of the existence of the unsafe working condition and the high degree of risk and the strong probability of serious injury or death presented by the unsafe working condition.
- That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the employer's industry or business.
- That notwithstanding the existence of the above facts, the employer nevertheless intentionally exposed an employee to the specific unsafe working condition.
- That the employee, as a result of that exposure, suffered serious injury or death as a direct and proximate result of the specific unsafe working conditions.

The seriously injured employee or the survivors of a killed worker would be able to collect for damages in court only if all of those conditions were proven to the satisfaction of a jury.

The bill also allows punitive or exemplary damages only in lawsuits based on an injury caused by an employer that acted with a "consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee," the bill says.

The Mandolidis Commission was appointed last March to find a legislative or judicial remedy to prevent workers from filing frivolous lawsuits because of the Mandolidis court decision.

Since that decision, West Virginia employers have been besieged with at least 250 lawsuits seeking more than $5 billion from injured workers who receive workers compensation benefits and then seek additional compensation through the courts (*BI*, Aug. 30, 1982).

"We've got a three- to four-page incomplete list of ongoing litigation and suits are still being filed every day," says Edwin Wiles, chairman of the Business & Industry Council in West Virginia.

The Mandolidis Commission approved the proposed legislation Jan. 11, one day before the West Virginia legislature reconvened for its annual 60-day session.

The portion of the bill that creates a Employers' Excess Liability Fund was added just a day before.

Commission members are hoping that the compromise package will become law before the session ends March 12.

The legislative services office that assisted the Mandolidis Commission says it is being inundated with letters supporting the legislation and lauding the commission for "doing something about the black eye on the face of West Virginia," as one employer put it.

"We have bought $1.5 million in employers liability insurance to cover future claims, but unless some legislation is enacted, we plan to close our small business permanently," wrote Charles N. Adkins, general manager of Fayette Block & Supply Co. in Summersville. "Even with the insurance, we do not feel like taking the risk or having to worry about lawsuits."

"Frankly, I'm scared to do business in West Virginia since the Mandolidis decision and I have been active in business in Charleston for over 46 years," wrote Charles L. Kerstein, president of Kerstein Engineering Co. Inc.

"The Court has opened the floodgates," Hunter F. Armentrout, president of Mineral Resources Inc. of Buckhannon, wrote. "If Mandolidis is allowed to stand, the coming flood shall surely engulf us all."

"While this proposal does not revert the workers' posture back to pre-Mandolidis days, its does provide some means of protection to industry from frivolous cases and/or enormous jury awards, which have been prevelant in recent years," said S.P. Davis Jr., president of Kanawha Manufacturing Co. in Charleston.

"This case has had a negative impact on both new and old industry in our state and it has definitely been part of the negative perspective the rest of the country has of our state," said Mr. Davis.

West Virginia has an exclusive state fund for workers compensation that does not provide employers' liability coverage, which is included in insurer-provided workers compensation policies.

Since June 1981, West Virginia employers have been buying endorsements to their comprehensive general liability policies to cover Mandolidis-type exposures, says Charles S. Morton, president of McDonough Caperton, a broker in Beckley, W. Va.

"Our firm introduced the first insurance policy specifically designed to insure the Mandolidis exposure," said Mr. Morton.

"Everyone's writing the coverage," adds Thomas R. Tinder, executive vp of the Independent Insurance Agents of West Virginia. He said companies are writing endorsements at rates 5% to 10% higher than those charged in neighboring states because of the lack of experience with Mandolidis-type claims.

"There are employers that want it (the coverage) and there are agents writing it," he added, declining to give specific limits or costs because of the varying exposures.

When McDonough Caperton starting writing the coverage, standard rates were 10% of paid workers compensation premium for limits of $100,000 per occurrence or 16% for a $500,000 limit on all classes except coal, said Mr. Morton.

Coal was 4% for $500,000 limits because workers compensation insurance rates for coal miners are so much higher than other classes of business, he added.

"I would estimate that 65% to 70% of our customers have purchased Mandolidis coverage," said Mr. Morton.

"But I question if there is enough premium base in West Virginia to make this class of business attractive to the insurance industry in the long run," he said.

"I personally want to see the law go back to workers compensation being the sole remedy open to the injured worker."

But the problem, Mr. Morton said, is that there are still a lot of employers "without the coverage out there."

That prompted the Mandolidis Commission to address the issue of insurance availability and affordability in the legislation.

Under the bill, employers can voluntarily subscribe to the Employers' Excess Liability Fund to cover damages awarded in addition to workers compensation benefits.

Employers would pay premiums into the fund based on a percentage of their payroll and the nature of the work. The state's workers compensation commissioner would administer the fund and set the lowest rates possible while keeping the fund solvent.

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Commercial Consumers Sub-total	**23,083**
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Financial Institutions	314
Actuaries, Attorneys, Adjusters, Appraisers & Consultants	2,408
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*Source: Business/Occupational breakdown of qualified circulation, May 3, 1982 issue, as submitted to BPA for June 1982, BPA Publisher's Statement.

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Insurers pay $5 million to settle with youths

By LAURENCE H. GROSS

DENVER—Four insurers are paying about $5 million toward a structured settlement for five boys who were seriously burned in a methane gas explosion underneath a Denver-area landfill more than six years ago.

James W. Buchanan, a Boulder, Colo., attoney representing the boys, said the settlement will pay the youths at least $14.5 million during the next 30 years. The maximum value of the settlement is estimated at approximately $50 million.

Under the settlement, the insurers will contribute $4.9 million. Part of the money will be used to purchase annuities for the claimants, according to attorneys for the insurers.

Mr. Buchanan says the five boys, who ranged in age from 6 to 12 at the time of the August 1976 accident, will immediately collect $2.025 million.

The boys will receive payments ranging from $1,225 to $3,100 per month for the rest of their lives, he said, adding that this amount will increase by 6% annually.

Four of the five boys will also receive lump-sum payments ranging from $250,000 to $1 million apiece when they each reach the ages of 28, 38 and 48.

The settlement was negotiated with insurers for the Denver Board of Water Commissioners, the city of Sheridan, Waste Management Inc. of Oakbrook, Ill., and Colorado Disposal Inc., a Waste Management subsidiary.

The water commission and the city of Sheridan jointly maintained a drainage pipe in which the boys were playing when the blast occurred. The water commission also owned the landfill, which was operated by Waste Management Inc. and its subsidiary.

The water commission carried a $1 million first-dollar general liability policy with Liberty Mutual Insurance Co. and a $20 million excess policy underwritten by C.V. Star Insurance Co., a subsidiary of American International Group Inc., sources close to the case said.

Although the terms of the settlement were not released under a court order, the sources said Liberty Mutual paid the entire limits of its policy, while Star paid about $1 million.

The entire $300,000 of first-dollar liability coverage carried by the city of Sheridan was also paid toward the settlement. The coverage was underwritten by Fireman's Fund Insurance Cos.

Waste Management carried a $500,000 primary policy with Fireman's Fund and $5 million in excess liability coverage with Stonewall Insurance Co. Its subsidiary, Colorado Disposal, maintained a $1.3 million primary policy with Reliance Insurance Co.

Neither the Fireman's Fund nor the Reliance policy required a deductible, sources say.

Fireman's Fund and Reliance paid the full limits of their coverage, the sources say, while Stonewall paid just less than $1 million.

Mr. Buchanan, the boys' attorney, said the five youths had been plying near the 48-inch storm drainage pipe under the landfill. The pipe began near their homes in Sheridan and extended about a quarter-mile to the South Platte River in Denver.

The explosion was triggered after one of the boys lit a candle while exploring the drainage pipe, igniting methane gas that was produced by the landfill overhead.

All five boys were seriously burned, with then-6-year-old Ronald Vigil of Sheridan suffering second- and third-degree burns over 45% of his body.

The other youths who will receive payments are Randolph M. Salazar, who was 12 at the time of the explosion; Juan D. Salazar, who was 6; Kenneth L. Salazar, who was 9; and Lawrence R. Ball, who was 7 at the time of the accident. All of the youths are residents of Sheridan. ■

Winter storm damage

NEW YORK—Storms that struck portions of the Midwest, South and West Dec. 22 through Jan. 4 caused $38 million in insured property damage, the American Insurance Assn. reports. ■

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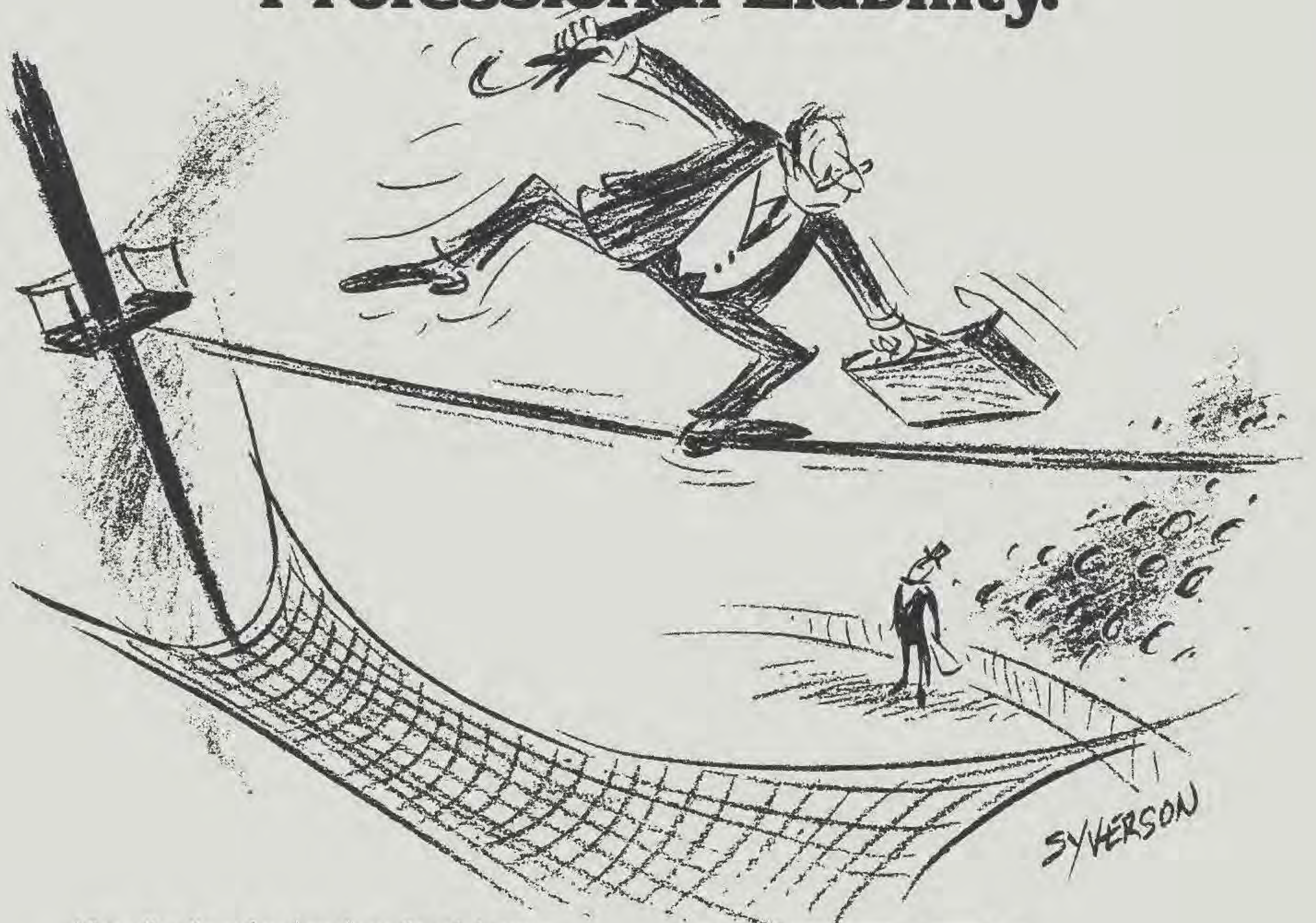

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Texaco says it's covered for huge gasoline blast

Continued from page 2
tion coverage.

Texaco's property coverage is underwritten by Star Technical Risks Agency Inc., a New York managing general agent and an affiliate of American International Group Inc. specializing in oil, gas, chemical and petrochemical risks.

The property policy carries a $100,000 deductible, Mr. Kreiling said, but he would not disclose the limits of the coverage.

Texaco officials say the blast destroyed a garage, an office and the three floating-roof fuel storage tanks.

Officials investigating the accident blamed the blast on an undetected overflow of gasoline in one of the storage tanks, which formed a highly flammable vapor cloud that was ignited by an incinerator burning at a nearby Central Steel Drum Co. plant.

That blast hurled two flaming 55-gallon fuel drums into one of the three huge gasoline storage tanks, igniting all three tanks.

Texaco officials say about 3.3 million gallons of gasoline were stored in the tanks at the time of the explosion.

The system of fire-resistent dykes at the facility, explains Mr. Kreiling, kept the fire from spreading to other storage tanks. The system, he says, has allowed Texaco to maintain a "tremendous loss history," qualifying it for insurance premium credits and discounts.

"You don't want to sound smug with the type of loss we're going to have, but you want to design these things to reduce the potential for loss," explains Mr. Kreiling.

Firefighters had first tried to extinguish the 2,000-degree fire, but later decided to let the fire burn itself out while keeping nearby tanks and structures cool.

Extinguishing the blaze, fire department officials say, could have created hazardous vapors that could have triggered yet another blast.

Despite Texaco's safeguards. the National Fire Protection Assn. said the explosion proved a need for stricter standards for the detection and prevention of fuel storage tank overflows.

Disasters like the Texaco blast, association officials contend, probably could be minimized if overfill-monitoring and automatic-shutoff devices are required on all fuel storage tanks.

The tanks at the Texaco facility were not equipped with such devices, officials say.

Maine comp rate increase proposed

AUGUSTA, Maine—Workers compensation insurers in Maine are requesting an average 27.5% rate increase.

The National Council on Compensation Insurance, the rate-making group representing the insurers, says insurers need the hike because claims and benefit costs have risen substantially.

The NCCI said its review of Maine's loss experience points to the need for a 109% rate increase, but added that an enormous hike could cripple employers.

The superintendent of insurance will not rule on the request until after a public hearing, Feb. 1. ▪

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Manville petition doesn't stay all asbestos suits, judge rules

Continued from page 3
officers, directors and employees, while other asbestos defendants claimed the stay should also apply to litigation pending against them.

Plaintiffs' attorneys have asked the bankruptcy court to dismiss Manville's petition entirely, claiming that it was filed in bad faith because the company is not insolvent (see related story, page 3).

An attorney for Manville said last week the company was still studying Judge Lifland's rulings.

"We're still going over the ramifications," said Barry Seidel of the New York law firm of Levin, Weintraub & Crames. But he indicated that Manville has questions about certain aspects of the rulings.

For example, Mr. Seidel indicated the judge may have misinterpreted various arguments by Manville when he allowed plaintiffs' claims against Manville's insurers to proceed.

Manville had hoped the stay would include these suits since any awards paid directly by the insurers could reduce the company's available insurance coverage.

Attorneys for Manville's co-defendants in the asbestos litigation said the temporary stay on lawsuits and discovery involving key Manville employees would hamper their efforts to defend asbestos cases.

Anthony J. Marchetta, an attorney for asbestos defendant GAF Corp., said that "a number of problems immediately surface" from the decision. He noted that the discovery restrictions could hurt defendants' efforts to prepare their cases.

"Somewhere, somehow it will have to be resolved," said Mr. Marchetta of the Newark, N.J., law firm of Hannoch, Weisman, Stern, Besser, Berkowitz & Kinney.

However, C. MacNeil Mitchell, an attorney for Lake Asbestos of Quebec, said the ruling was significant for defendants since it only affected discovery involving 25 Manville employees and only delayed those proceedings until March 1.

"Explicitly and implicitly the judge felt the formulation of an appropriate (Manville reorganization) plan is the No. 1 priority of the whole proceeding," said Mr. Mitchell, with the New York firm of Breed, Abbott & Morgan. "The primary criterion was aiding the formulation of a plan."

Plaintiffs' attorneys said they were satisfied with the rulings.

"Overall, we're very pleased with the decision," said Robert Rosenberg of the New York firm of Moses & Singer. "It represents a 95% victory for the plaintiffs."

Plaintiffs never realistically expected Judge Lifland to lift the stay on litigation against Manville, but had argued against extending the stay to co-defendants. "He absolutely refused to do that," Mr. Rosenberg said.

Although the orders did temporarily block suits filed directly against Manville's officers and directors, "It by no means is a major setback," he noted.

Mr. Rosenberg said he anticipates that defendants will ask state and federal courts to stay all asbestos litigation until discovery against Manville's officers can continue. "They will probably have as little success as they had in the past" when trying to stay litigation, he said. "But they certainly will try it."

The decision allowing claimants to directly sue Manville's insurers will benefit the plaintiffs in the handful of states where such suits are allowed, he said.

But, he added, that decision could be unfair to other plaintiffs because it would allow the claimants suing the insurers to win awards from Manville's insurers before others.

In restricting the lawsuits against Manville officers and employees, Judge Lifland cited the automatic stay provision of the bankruptcy law as well as prior case law.

Such suits really constitute a suit against the company, he said.

"In the instant case, in great measure the suits being pursued against Manville's officers and employees are in reality derivative of identical claims brought against Manville," the order read.

"Manville has established through its affidavits submitted herein that because there is an identity of interests between itself and these officers and employees, the stay must be extended for limited purposes for a short period of time only to cover some of these related entities or persons.

"Manville has demonstrated, at this point in time only, that the continuation of the actions against these related entities would directly interfere with the debtor's estate and/or with its chances for a successful reorganization.

"It is my conclusion that the interests of all concerned will be most ably protected by permitting this short breathing spell so as to remove the obstacle to a plan of reorganization that the continuance of these suits against these specific employees and agents presently represent," Judge Lifland ruled. ▪

Regulator rules damage waivers aren't insurance

DES MOINES, Iowa—Collision damage waivers sold by car-rental companies in Iowa are not insurance, according to a declaratory ruling issued earlier this month by Iowa Insurance Commissioner Bruce Foudree.

The Iowa Insurance Department initiated an administrative action last year against Hertz Corp. of New York and Avis Rent A Car System Inc. of Garden City, N.Y., and their local affiliates after Deputy Commissioner Tony Schrader and his staff recorded car-rental agents referring to CDWs as insurance during sales (*BI*, Oct 18).

If the Iowa department had decided the collison damage waivers were really a form of insurance, it would have had the power to regulate what car-rental agencies charge for the protection. However, the department decided that, according to state law, CDWs are not insurance.

"I think we lost on the Iowa law, but I don't think that (must affect) every state," Mr. Schrader commented.

State insurance regulators as far away as Hawaii have been watching the Iowa case.

In letters sent to Hertz and Avis attorneys this month, Mr. Foudree notes the action was dismissed due to a lack of jurisdiction, but added that the department could take administrative or judicial action if the agencies referred to CDWs as insurance in the future. ▪

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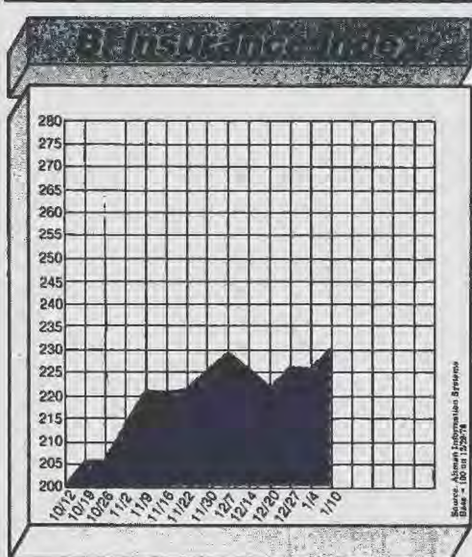


Stock prices are zooming again, and insurance industry stocks are no exception. The *Business Insurance* stock index set a record high last week, closing Jan. 10 at 230.9, up 4.7 points. The previous record of 229.7 had been set on Dec. 7. Leading the charge was Frank B. Hall & Co. Inc., up 13.5% (see related story). Other strong gains were posted by Seibels Bruce Group Inc., 11.8%; Corroon & Black Corp., 11.5%; Northwestern National Life Insurance Co., 9.0%; and American General Insurance Co., 8.8%. The greatest losses were suffered by Poe & Associates Inc., 4.8%; USF&G Corp., 4.0%; The St. Paul Cos. Inc., 3.7%; Reed Stenhouse Cos. Ltd., 2.7%; and Preferred Risk Life Insurance Co., 2.0%.

British Issues

11 Jan Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	136	22.7	16.86	12.4	139—131
Eagle Star	347	13.9	21.43	6.3	362—347
Genl Accident	384	12.8	23.21	6.0	390—364
Gdn Royal Exch	380	10.9	25.00	6.8	390—364
Phoenix	300	15.8	24.00	8.0	306—298
Royal	452	11.0	36.07	8.4	455—440
Sun Alliance	960	16.0	61.43	6.4	960—915
Brokers					
CE Heath	305	8.7	18.71	6.1	308—282
Hogg Robinson	100	7.7	8.57	8.6	101— 97
JH Minet	108	9.8	5.43	5.0	111—106
Sedg Grp	201	11.5	8.57	4.3	201—181
Stenhouse Hldg	100	9.3	7.86	7.3	103—100
Stew Wrightson	250	8.9	18.57	7.4	252—240
Willis Faber	517	12.9	21.43	4.1	520—498

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

Does Sears want Hall? Rumors indicate it does

By LEN STRAZEWSKI

PICK THE ONE that doesn't belong: Dean Witter; Coldwell Banker; Allstate; Northbrook; Frank B. Hall.

If you chose Frank B. Hall & Co. Inc., the nation's third-largest commercial insurance brokerage, you're right. Hall is not part of Sears, Roebuck & Co.'s growing financial services family. . .at least not yet.

A number of industry observers and many small investors, however, believe that Hall may be open to an offer and could soon announce a merger with the conglomerate that brought stocks and bonds, real estate, personal insurance, dry goods and appliances under the same retail roof.

And, that may be exactly what Sears wants them to believe.

Serious speculation began Jan. 5 when Hall's shares went wild on the New York Stock Exchange, trading its largest volume in months and jumping nearly three points to a high of almost $34, more than $10 over its 52-week low. The stock was holding steady near $33 a share at midweek.

The rumor that triggered the trading was a report that "a major financial service company" had sealed its preliminary bid of $52 per share for about 51% of the company. Such a bid would have cost the buyer more than $600 million, or an unprecedented 20 times Hall's earnings.

Hall responded to the trading by saying that it knew of no reason why the stock began to move and that it was not involved in any merger discussions.

Buyers seemed to be small purchasers instead of large commercial suitors, the company later announced.

Hall Executive Vp John McCaffrey told *Business Insurance* that Hall executives were busy running the company and planning for the future as an independent.

The corporate posture that rebuffed an alleged takeover attempt by Ryder Sytem Inc. a year ago was "substantially unchanged," he explained.

Sears, however, was much more coy about the rumored offer that brokers and analysts attributed to the merchandising giant.

A corporate spokesman refused to comment on the rumor or confirm that Sears was in the market for a commercial insurance brokerage.

But instead of ending the conversation, he continued:

"We have already said that we want to offer a full line of financial services. Look at it yourself. Would an insurance brokerage fit into this picture?"

It would. So would have Crum & Forster, the commercial property/casualty insurer recently acquired by Xerox Corp., and Fred S. James & Co. Inc., the nation's fifth-largest commercial brokerage that was purchased last fall by Transamerica Corp.

In both cases, Sears was firmly rumored to be the leading contender. But in each case, Sears did not appear when it came down to the final bidding.

Was Sears trying to raise the stock price for its competitors? Was the company trying to generate additional publicity for its one-stop financial services concept? No one knows for sure, but this time the rumor could be for real.

What makes the rumor of a Sears-Hall link more substantial than the others? Financial analysts say the high price, among other things.

"I can't really say what's going on," remarks Leonard M. Wilson, a vp and insurance industry analyst at L.F. Rothschild, Unterberg, Towbin in New York. "And I don't know why Sears seems to be dropping hints, except that they probably are in the market for a broker and may be having discussions.

"If the price was right, I think Hall would have to look at it."

Alice L. Cornish, insurance specialist at Lehman Brothers Kuhn Loeb in Chicago, agrees, but doesn't think Frank B. Hall could be forced into anything less than a friendly merger.

"I don't think (Hall Chairman) Al Tahmoush can be forced into anything," she says.

"It will all depend on how Tahmoush sees the company's future. If he thinks he can bring the stock up to $52 or whatever the offer is during the year, he won't want to sell."

Unlike the other brokers acquired last year (Fred S. James and Rollins Burdick Hunter Co., which was acquired by Combined International Corp.), Hall has kept up with the rest of the major brokerages in geographic and service diversification, expanding internationally and broadening its services to include consulting, underwriting, reinsurance and specialty brokerage.

Failing a need for expansion capital, "independent is always better," Ms. Cornish adds.

Philosophy could be another factor in favor of a Sears/Hall merger. Both companies have developed a one-stop shopping philosophy that has dictated merger policy. "If a guy wants a cow, give him a cow," Hall's Mr. McCaffrey once told *BI* in explanation of the firm's broad-based insurance services design (*BI*, June 28, 1982).

That notion could be stretched to: "If a guy wants to buy commercial insurance with homeowners insurance, stocks and hardware, give him Sears."

Although personal lines agents and commercial brokers rarely get along and questions about a conflict of interest between brokers and insurers continue to loom, earlier mergers successfully ignored those issues without a consumer revolt.

Jartran Inc., Hall's truck-leasing subsidiary, also raises some interesting questions about a merger. When Hall purchased the bankrupt company, purportedly as a defensive manuever against Ryder, observers went to great pains to explain the similarities between leasing and brokerage—to no one's satisfaction.

Although both Ms. Cornish and Mr. Wilson consider Jartran unimportant to Hall's value as a merger target, it seems logical that Jartran's consumer-oriented business fits better with a retailer than an insurance brokerage.

Sears probably agrees, since it already leases trucks under an agreement with Budget Rent-A-Car Co.

If Sears fails in its rumored bid to acquire Hall, American Express Co. or Merrill Lynch & Co. Inc. may be waiting to grab the brokerage on the rebound for their family of financial service providers, stock watchers and industry sources say.

Of these two, American Express, which also denies an interest, is the leading candidate. Like Sears, the financial service conglomerate's subsidiaries include insurers (Fireman's Fund Insurance Cos.) and a stock brokerage (Shearson/American Express), but it lacks a producer of commercial insurance business.

It also was one of the losers in the bidding for Fred S. James, industry sources add.

Merrill Lynch also has the cash to purchase Hall, but seems committed to its insurance agents franchise scheme, ISU Cos., which now has member agencies in 47 states following a merger with another California-based agency assistance organization.

ISU/Insurors Group, as the combined company is now called, begins promoting its franchises in Chicago and New York this week. ■

BI Industry Stock Report

JAN. 10, 1983 — 1/5/83 THRU 1/10/83

Insurance Cos.		Price	% Chg.	P E	$ Div	% Yld	High	Low	Vol. (000)
Aetna Life & Cas Co	NYSE	37.13	4.2	6.1	2.52	6.8	37.13	34.63	3,030.1
American Bankers Ins Group	OTC	10.63	2.4	8.3	0.50	4.7	11.13	10.63	187.0
American Gen Ins Co	NYSE	60.13	8.8	8.3	2.20	3.7	60.88*	56.13	290.0
American Indty Finl Corp	OTC	23.25	0.5	17.7	1.12	4.8	23.25*	23.13	4.1
American Intl Group Inc	OTC	79.75	1.9	11.8	0.24	0.3	79.75	78.25	464.8
American Natl Ins Co	OTC	16.13	7.5	7.1	0.84	5.2	16.13	15.00	319.9
American Sts Life Ins Co	OTC	24.00	4.3	7.2	0.88	3.7	24.00*	23.00	2.1
Aneco Reins Ltd	OTC	2.63	0.0	0.0	0.00	0.0	2.63	2.63	13.9
Avemco Corp	AMEX	16.75	5.5	9.6	0.58	3.5	16.75*	15.63	7.2
Banks Iowa Inc	OTC	42.00	0.0	10.3	1.48	3.5	42.00	42.00	3.1
Bitco Corp	OTC	29.50	0.0	4.8	1.92	6.5	29.50	29.50	3.2
Carolina Cas Ins Co	OTC	7.38	0.0	8.9	0.32	4.3	7.38	7.38	0.1
Chubb Corp	OTC	50.13	1.0	8.1	2.92	5.8	50.13	49.50	118.1
Combined Intl Corp	NYSE	28.88	5.0	8.7	2.00	6.9	28.88	27.63	468.5
Continental Corp	NYSE	29.38	0.4	9.3	2.60	8.9	30.13	29.38	903.3
Crawford & Co	OTC	17.00	4.6	12.4	0.56	3.3	17.00	16.25	36.4
Crown Life Ins Co	OTC	88.38	-0.4	5.8	3.10	3.5	88.75	88.38	0.3
Crum & Forster	NYSE	55.38	1.6	11.4	1.76	3.2	55.38*	54.00	960.9
Employers Cas Co	OTC	32.50	2.4	14.8	1.20	3.7	32.50	31.75	2.9
Equifax Inc	NYSE	27.00	-0.9	14.3	1.32	4.9	27.50	26.75	48.2
Farmers Group Inc	OTC	35.88	2.9	10.0	1.24	3.5	35.88	34.50	764.0
Foremost Corp Amer	OTC	38.75	0.6	11.8	1.12	2.9	38.75	38.50	26.5
Great West Life Assurn Co	OTC	190.00	0.0	15.5	10.00	5.3	190.00	190.00	0.0
Hanover Ins Co	OTC	35.50	7.6	5.2	0.88	2.5	35.75	33.25	37.8
Hartford Steam Boiler Insptn	OTC	41.50	5.7	8.8	2.80	6.7	41.50	39.75	13.3
Jefferson Natl Life Ins Co	OTC	43.50	3.6	12.2	0.76	1.7	44.50*	43.50	9.7
Kemper Corp	OTC	38.75	3.0	7.4	1.80	4.6	38.75	37.75	60.2
Lincoln Natl Corp Ind	NYSE	44.25	-0.6	8.0	3.00	6.8	44.88	43.75	111.9
Mission Ins Group Inc	NYSE	27.38	2.8	6.5	0.80	2.9	27.38	26.63	89.2
Nationwide Corp Ohio	OTC	40.50	0.0	12.0	0.70	1.7	40.50	40.50	2.0
Northwestern Natl Life Ins	OTC	31.75	9.0	17.3	1.50	4.7	31.75*	29.75	43.0
Ohio Cas Corp	OTC	44.75	4.1	8.4	2.36	5.3	44.75	43.25	52.8
Old Rep Intl Corp	OTC	23.63	-0.5	5.5	0.92	3.9	23.63	23.63	10.9
Preferred Risk Life Ins Co	OTC	24.00	-2.0	7.1	0.92	3.8	24.50	24.00	7.6
Provident Life & Acc Ins Co	OTC	50.00	0.0	7.6	2.44	4.9	50.00	50.00	16.1
St Paul Cos Inc	OTC	58.13	-3.7	7.2	2.60	4.5	60.13	58.13	408.9
Safeco Corp	OTC	51.63	-0.2	8.9	2.40	4.6	51.63	51.38	113.3
Sri Corp	OTC	37.00	2.8	7.7	1.12	3.0	37.00	36.25	72.6
Seibels Bruce Group Inc	OTC	23.63	11.8	21.7	0.80	3.4	23.63	22.50	48.4
Statesman Group Inc	OTC	7.38	1.7	6.6	0.15	2.0	7.38	7.25	8.3
Tokio Marine & Fire Ins Co	OTC	109.00	-0.2	17.5	0.92	0.8	109.00	106.50	10.8
Travelers Corp	NYSE	25.25	3.6	6.9	1.80	7.1	25.25	24.00	1,020.9
United Fire & Cas Co	OTC	31.25	-1.6	8.4	0.88	2.8	31.75	31.25	2.7
United States Fid & Gty Co	NYSE	42.13	-4.0	10.3	3.60	8.5	43.75	42.00	198.0
United Svcs Life Ins Co	OTC	20.50	0.6	6.6	1.00	4.9	20.50*	20.25	18.8
Uslife Corp	NYSE	23.75	3.3	5.2	0.88	3.7	23.75	23.13	247.1
Washington Natl Corp	NYSE	23.75	0.5	11.7	1.08	4.5	24.00	23.63	50.2
Zenith Natl Ins Corp	OTC	17.75	1.4	8.9	0.80	4.5	17.75	17.27	65.3
INSURANCE COMPANIES	AVERAGE			9.1		4.2			

Agents/Brokers		Price	% Chg	P E	$ Div	% Yld.	High	Low	Vol. (000)
Alexander & Alexander Svcs	NYSE	24.25	1.0	10.9	1.94	8.0	24.25	23.50	406.4
Baldwin & Lyons Inc	OTC	39.00	0.0	6.4	0.80	2.1	39.00	39.00	0.0
Corroon & Black Corp	NYSE	29.00	11.5	14.3	1.80	6.2	29.00	26.88	96.1
Crump E H Cos Inc	OTC	10.00	0.0	16.9	0.40	4.0	10.13	10.00	58.8
Emett & Chandler Cos Inc	OTC	10.13	2.5	33.0	0.00	0.0	10.13	9.88	6.4
Hall Frank B & Co Inc	NYSE	33.63	13.5	14.5	1.70	5.1	33.63*	32.50	1,156.2
Integrated Res Inc	AMEX	35.25	5.2	10.6	0.00	0.0	35.38	34.63	110.5
James Fred S & Co Inc	NYSE	33.25	0.0	16.8	1.60	4.8	33.25	33.25	0.0
Marsh & Mclennan Cos Inc	NYSE	42.13	2.7	13.1	2.20	5.2	42.25	41.25	185.7
Penncorp Fincl Inc	NYSE	13.38	4.9	8.3	0.16	1.2	13.38*	12.88	1,444.2
Poe & Assoc Inc	OTC	10.00	-4.8	9.8	0.80	8.0	10.50	10.00	1.0
Reed Stenhouse Cos Ltd	OTC	13.50	-2.7	13.4	0.60	4.4	13.50	13.50	3.4
AGENTS/BROKERS	AVERAGE			11.4		4.1			

Conglomerates/Holding Cos.		Price	% Chg	P E	$ Div	% Yld.	High	Low	Vol. (000)
American Express(Fireman's Fd)	NYSE	65.50	4.2	11.2	2.40	3.7	65.50	63.25	1,309.0
Anderson Clayton(Ranger/PanAm)	NYSE	26.75	0.5	7.4	1.32	4.9	28.00	26.75	86.2
Armco Inc	NYSE	18.50	7.2	34.9	1.20	6.5	18.50	17.00	1,547.1
City Investing Co. (Home Ins.)	NYSE	30.38	2.5	9.4	1.70	5.6	30.38*	30.00	348.3
CNA Finl Corp (CNA)	NYSE	17.63	0.7	6.9	0.00	0.0	17.63	17.13	133.4
Control Data (Comml. Credit)	NYSE	39.25	4.3	9.7	0.55	1.4	39.25	37.75	1,008.2
General Re Corp	NYSE	63.38	2.2	13.9	1.08	1.7	64.75*	62.25	498.1
Gulf Utd Corp	NYSE	27.38	-0.5	9.6	1.32	4.8	27.50	27.38	440.1
Cigna Corp	NYSE	44.38	3.2	6.5	2.30	5.2	44.38	42.88	909.1
ITT (Hartford Group)	NYSE	32.25	4.5	7.3	2.76	8.6	32.25	30.38	1,296.0
Optimum Hldg Corp	OTC	8.50	0.0	8.2	0.00	0.0	8.50	8.50	9.2
Sears Roebuck & Co. (Allstate)	NYSE	28.88	-3.7	13.1	1.36	4.7	30.00	28.88	2,817.3
Baldwin Utd Corp	NYSE	31.88	1.2	6.2	0.88	2.8	31.88	30.25	438.9
Teledyne Inc (Argonaut)	NYSE	131.38	4.3	10.4	0.00	0.0	131.38	125.00	890.1
Transamerica Corp (Occidental)	NYSE	23.38	-1.1	8.1	1.50	6.4	23.75	23.38	400.4
CONGLOMERATES/HOLDING COS.	AVERAGE			9.4		3.1			

*Record high/low since Jan. 1, 1983

System design: Altman Information Systems

Financial briefs

Travelers

The Travelers Corp. declared a quarterly dividend of 45 cents per share, payable March 10 to shareholders of record Jan. 31. The dividend is a 4-cent increase over Travelers' previous payout.

Nationale-Nederlanden

Nationale-Nederlanden N.V., the largest insurance company in the Netherlands, reports that revenues in 1982 grew an estimated 19% to approximately $4.1 billion. The company's revenues grew at a 17% clip in 1981.

However, the company preliminary report did not say if it attained the 5% increase in earnings that it had forecast earlier.

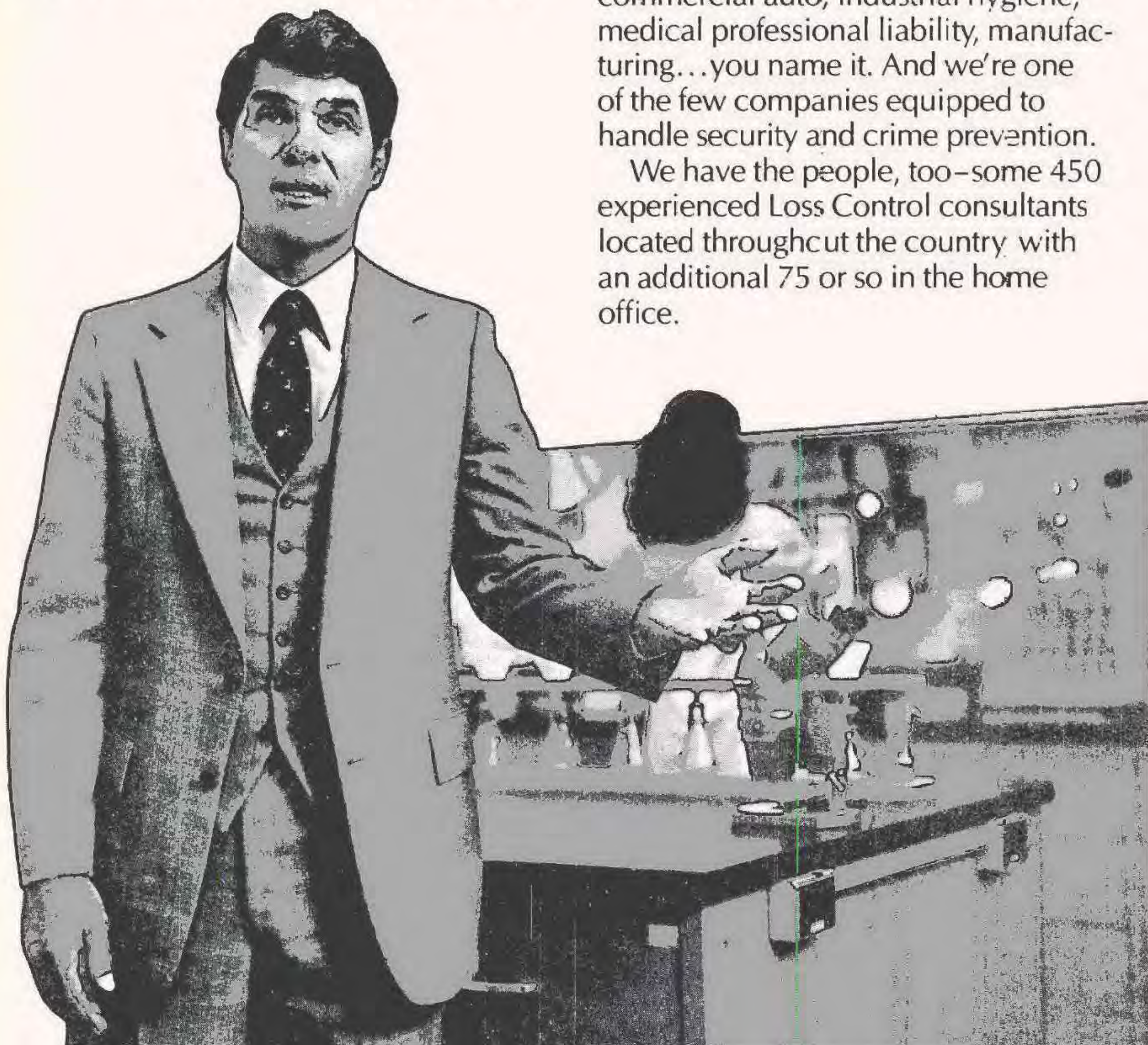
The company also stated that nearly 60% of its premium income last year was derived from international operations, compared with 53% in 1981. Nationale-Nederlanden owns several life and property/casualty insurers in the United States. ■

"The Hartford will even do a Loss Control analysis before it quotes the business."

An interview with Bill Nebraska, Vice President, Loss Control Department, The Hartford.

Q. How can a Hartford prequote Loss Control analysis cut business insurance costs up front?

A. Our Loss Control professionals will research the company and help develop a program tailored to the situation. We'll show how The Hartford can help the company control losses. By coming in before we make a quote, we can explore ways of reducing losses up front to help customers control their insurance costs.



Q. What is the scope of The Hartford's Loss Control capability?

A. Our range of Loss Control services is one of the broadest in the industry. It covers construction, fire protection, commercial auto, industrial hygiene, medical professional liability, manufacturing...you name it. And we're one of the few companies equipped to handle security and crime prevention.

We have the people, too–some 450 experienced Loss Control consultants located throughout the country with an additional 75 or so in the home office.

Q. Is that tremendous capability available to companies across the country?

A. Absolutely. We're ready to respond on an "as-needed" basis anywhere in the U.S. And we'll bring in whatever level of expertise the situation demands.

Q. Is it available to big risks on an unbundled basis?

A. Yes, through our subsidiary, Hartford Specialty. Some of the largest corporations in the country currently take advantage of The Hartford's Loss Control capability on an unbundled basis.

Q. It sounds like The Hartford has made a major commitment in the Loss Control area.

A. Yes. And an ongoing commitment. We're always trying to improve the scope and quality of our Loss Control services. For example, we recently doubled the size of our industrial hygiene lab and added sophisticated new equipment to increase our effectiveness in this key area.

Q. How can insurance buyers find out more about The Hartford's Loss Control capability?

A. By contacting their broker or independent agent who represents The Hartford.

Don't make a decision on business insurance without a quote from The Hartford.

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