

business insurance

Reporting weekly for corporate risk, employee benefit and financial executives/\$1.50 a copy; \$52 a year

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Canada seizes assets of Northumberland Insurance

TORONTO—The Canadian Department of Insurance will decide within a few weeks whether to liquidate Northumberland General Insurance Co., a subsidiary of Ivanhoe Insurance Group Ltd. in Toronto.

The department seized the insurer's assets last week.

Northumberland had voluntarily stopped issuing new policies and paying claims late last month, said Robert

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25-year sentences in worker's death

By CAROL CAIN

MAYWOOD, Ill.—In sentencing three Chicago area corporate officials to 25-year prison terms for the cyanide poisoning death of a worker, a circuit court judge said the men were sentenced as individuals—not corporate officials—convicted of murder.

"No one seems to understand the ruling in this case. They were not convicted only as corporate officials. They were convicted as individuals, and individuals get convicted of murder every day of the week. It's a shame, but that's our society that we have," said Cook County Circuit Court Judge Ronald J.P. Banks.

"Granted, this is not the case of someone taking a gun and placing it to the head of a victim and shooting him. What we have here is the kind of case where you take a bomb and you put it in an airplane, and you turn around and run away somewhere, and a time bomb is ticking off."

"Every day these people worked there it kept ticking and ticking. All of a sudden on Feb. 10, 1983, the time bomb went off and Stefan Golab is dead. Therefore, all of the defendants are going to pay for that. They are going to pay for that harshly, because that is my feeling on the law."

The criminal case was brought by the Cook County state's attorney against the president, plant manager and assistant plant manager of defunct Film Recovery Systems Inc. of Elk Grove Village, Ill., after Mr. Golab, an illegal alien from Poland, collapsed and died at the plant after being exposed to cyanide gas.

Film Recovery used a cyanide solution to extract silver from used X-ray and photographic film (BI, April 22; Oct. 24, 1983).

The prosecution had argued before the judge that officials at the plant knew of the dangers of working with cyanide and knew the workers were suffering the ill effects of being exposed to the poison, but did not correct the situation.

"Most corporations are run properly," the judge said. "This one was not. This one was run at a complete danger to everyone who worked there. Every symptom (of cyanide poisoning), every possible symptom that could have occurred, as which was written on signs,

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ISO's defense-cost plan meets mounting criticism

By MICHAEL BRADFORD and LINDA COLLINS

NEW YORK—Commercial insurance buyers and most agents and brokers oppose the Insurance Services Office's recent decision to include the cost of legal defense of third-party claims within the aggregate limits of the new commercial general liability policy forms.

Insurance regulators, who must approve the policy form change before it can be implemented, for the most part are reserving judgment on the most recent change in the ISO forms.

Including defense costs within aggregate policy limits would force insurance buyers to purchase higher limits of insurance to maintain the same protection they have today under policies that do not include defense costs within policy limits.

ISO announced June 27 that it will begin filing the defense costs amendment to its CGL forms with state regulators in the fourth quarter of this year for an effective date of July 1, 1986.

The new CGL forms filed this year by ISO—one occurrence form and one claims-made form—are to take effect Jan. 1.

ISO decided not to seek a Jan. 1 effective date on the defense-costs amendment so as not to distract attention from approval of the new forms.

The new CGL forms so far have been approved for use in 27 states.

ISO files forms and rates on behalf of its member insurers, which then can use the ISO forms or file their own forms.

Including defense costs within policy limits will reduce overall legal defense spending, "help remedy the growing crisis in the country's civil justice system" and result in lower premiums for policyholders, said Richard R. Savage, ISO's executive vp, explaining ISO's decision.

But, many insurance buyers, agents and brokers aren't convinced this coverage change is necessary.

The decision to include defense costs in policy limits "has to be taken in concert with its relation to other ISO actions in the last eight months or year," says Richard

Hackenburg, president of the Risk & Insurance Management Society, which represents 3,700 corporations, institutions and governmental bodies.

"We're against it, within the context of ISO's other actions," he added, referring to ISO's overall plan to implement its new CGL policy forms.

RIMS has voiced strong objections to ISO's new claims-made and occurrence forms (BI, June 10).

Mr. Hackenburg, who is staff vp-risk management department at Allegheny International Inc. in Pittsburgh, said RIMS hopes to be able to "sit down with ISO in the near future" to discuss the new provision.

The Independent Insurance Agents of America is standing by an earlier joint statement with the Professional Insurance Agents that says the groups are "strongly opposed to the decision by ISO to include defense costs within the policy limits of the CGL policy. The association stands ready to ask disapproval of any filing incorporating such terms in all jurisdictions."

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Including defense costs within policy limits will 'help remedy the growing crisis in the country's civil justice system,' ISO says.

Public entity dilemma: Go bare or bust

By MEG FLETCHER

Dallas officials don't like it, but they are operating their city of 1 million residents without liability insurance.

They have chosen to "go bare" since May 1 rather than pay premium increases of at least 600% and as much as 1,000% for less liability coverage than the city previously had for police, public officials and city vehicles, said Risk Manager Mark Ferraro. He is hoping to replace the coverage by early fall.

Other public entities are also operating without liability coverage, either because they refuse to pay the price insurers are demanding or because their insurers have dropped them:

- Baton Rouge, La., with 450,000 area residents, has gone without primary and excess general liability insurance and excess auto liability insurance since April because officials there believe the rates quoted to them this year were too high.

Last year, the city paid \$116,490 for \$500,000 in primary general liability coverage above a self-insured retention of \$100,000 and \$50,000 for excess general liability and excess auto liability coverage up to \$10 million.

This year, Baton Rouge received a \$1.2 million quote from one insurer for about the same amount of coverage, but over a \$500,000 self-insured retention.

The city, which was already self-insuring its public official and police professional liabilities, does not expect to be able to



Next week: Rejected by commercial insurers, public entities join risk pooling groups to cover their risks.

renew its primary auto liability coverage in November either, said Risk and Insurance Manager Irvin F. Jones.

- Five Rocky Mountain state governments recently received non-renewal notices from the Colonial Penn Insurance Co. for their comprehensive general liability policies, which include coverage for police and public officials.

However, Colonial Penn is hopeful that an agreement on another contract can be reached with the states—Colorado, Idaho, New Mexico, Utah and Wyoming—before policies expire in September, said Cecil Munson, president of Public Entity Underwriters Ltd. in Denver, the underwriting manager for Colonial Penn.

- About 25 California counties were still waiting to hear last week if they would have excess liability insurance after July renewals.

The counties were struggling to put together limits of \$15 million this year, to replace \$30 million in coverage that they had up until July 1.

The counties, each of which self-insures the first \$500,000 of its liability exposures, purchase their excess coverage through a pooling arrangement set up through the County Supervisors Assn. of California Excess Insurance Authority in Sacramento.

Last year, Transcontinental Insurance Co. provided \$30 million in excess coverage above the counties' retentions, but this year it only agreed to write \$500,000 excess of \$500,000.

The counties' broker, Marsh & McLennan Inc. in San Francisco, was working last week to find insurers that would write part of a \$4 million excess of \$1 million layer on a quota-share basis, said Mike Fleming, risk management analyst for the

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Webber, president and chief operating officer.

The Insurance Department acted when the insurer failed to submit a final audited financial statement for 1984 and failed to increase its capital as the department had requested, said Robert M. Hammond, superintendent of insurance.

Northumberland had reported to the department \$191 million in gross premiums for 1984 and net written premiums of \$76 million. With net earned premiums of \$74 million, losses and loss expenses of \$70 million and general administration and acquisition expenses of \$6 million, the insurer's combined ratio was 102.5% for 1984, compared with 106.8% in 1983.

The insurer also had reported assets of \$123 million and liabilities of \$101 million, leaving capital and surplus of \$22 million.

The insurance department is auditing these figures.

Northumberland was an approved surplus lines insurer in almost all U.S. jurisdictions, writing major property and casualty accounts.

No insurance for deadly blast

HALLET, Okla.—No insurance was purchased by the company whose fireworks plant exploded June 25, killing 21 people and destroying the plant.

Aerlex Corp., owner of the plant, did not have workers compensation, general liability, property or business interruption insurance, said Mark Thomas, an adjuster with the General Adjustment Bureau in Stillwater, Okla., which was adjusting homeowners' losses in the area.

But, Aerlex Corp. was not an approved work comp self-insurer, according to Mary Lane, administrator of self-insurance for the state of Oklahoma's Workers' Compensation Court.

It is illegal to operate a business without workers' compensation insurance in Oklahoma, but since no one had complained, the Workers' Compensation Court was not aware of the violation.

The accident, the second of its kind to hit Aerlex in six years, was caused by sparks emitted from a pick-up truck parked near a loading zone where combustible materials were being loaded, authorities said.

Property damage is estimated at \$500,000, said Bob White, an investigator with the U.S. Alcohol, Tobacco, and Firearms Bureau.

The owner of the company, Alan Johnson, survived the explosion and was released from the hospital last Wednesday.

The explosion at the Aerlex plant six years ago was attributed to reflection of sunlight from an automobile mirror that investigators say ignited the fire.

No claims were filed after the first accident.

"There were no fatalities the first time. Most of the employees were family so Mr. Johnson probably paid for them out of his pocket," said Jim Fields, assistant director for government consumer affairs for the National Council on Compensation Insurance.

At least two victims of the June 25 blast were under the legal working age of 18 for this type of labor, said a spokesman for the medical examiner for Tulsa. They had been employed to help complete holiday orders.

Cox named consultant to ACE

NEW YORK—John R. Cox has been named special consultant to American Casualty Excess Insurance Co., a Cayman Island insurer that is being organized by Marsh & McLennan Cos. Inc.

Mr. Cox, a former executive vp of CIGNA Corp., recently resigned as American Can Co.'s executive vp in charge of financial services (BI, Jan. 14).

The consultant's position may or may not be temporary, Mr. Cox said.

"I've agreed to stay with this thing until it is going, until it is up and running, and if there is some continuing role for me after that, we'll talk about that later," he said.

He added that he won't be named to head the company since "it's offshore and I'm not moving."

ACE, which will write high-layer excess casualty risks of its corporate shareholders, now has commitments from 15 investors to contribute \$140 million in capital. A total of \$200 million in capital contributions is being sought.

Mentor liquidation ordered

HAMILTON, Bermuda—The Bermuda Supreme Court has ordered the liquidation of Mentor Insurance Ltd., the Bermuda-based captive insurance company owned by Ocean Drilling & Exploration Co. of New Orleans.

As expected, the court granted June 21 the "winding-up" petition filed by Registrar of Companies Verbena Daniels (BI, June 17, June 24). The petition cited the sections of the insurance law on insurance company solvency.

This is only the second time the Bermuda government has re-

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Supreme Court overturns ruling limiting use of RICO

By DOUGLAS McLEOD

WASHINGTON—A federal anti-racketeering law will be used more often in civil litigation involving many businesses, including insurers, following a U.S. Supreme Court decision last week.

The Supreme Court overturned a lower court ruling that would have limited the use of the Racketeer Influenced and Corrupt Organizations Act—RICO—in business fraud lawsuits.

RICO, aimed at combatting the infiltration of legitimate businesses by organized crime, was seldom cited in civil lawsuits for more than a decade after its passage by Congress in 1970.

But plaintiffs increasingly have invoked RICO in recent years in lawsuits alleging "garden variety" business fraud, attracted by the statute's provision for triple damages and attorneys' fees.

At least 400 civil RICO actions—and possibly many more than that—are now pending in federal courts, according to Andrew Weissman, a Washington lawyer who chairs the American Bar Assn.'s RICO task force.

Many of the civil RICO suits involve insurance companies either as plaintiffs or defendants.

While use of the statute in civil fraud actions is likely to increase, observers note that a proliferation of RICO suits could be curbed either by amendments to the act or by new narrower judicial interpretations of some of

its provisions.

Under the civil provisions, RICO allows a plaintiff to collect triple damages when injuries to its "business or property" are proved to have been caused by "a pattern of racketeering activity."

A "pattern," according to the statute, consists of at least two violations of federal criminal law, including mail, wire or securities fraud.

The case before the Supreme Court was an appeal of a July 1984 dismissal of *Sedima S.P.R.L. vs. Imrex Co. Inc.* by the U.S. Court of Appeals for the Second Circuit.

The appeals court had placed two limitations on the use of RICO in civil actions.

Noting the "extraordinary, if not outrageous" uses to which civil RICO was being put, the appeals court ruled that RICO defendants must have at least two prior criminal convictions for mail or wire fraud or other violations before a "pattern of racketeering activity" can be established.

The appeals court also ruled that a RICO plaintiff must prove a "racketeering injury" was caused by RICO violations in addition to the prior convictions used to establish the "pattern of racketeering activity."

Finding the plaintiff did not meet these tests, the appeals court dismissed the RICO allegations made by Sedima, a Belgian importer, against Imrex, a U.S. supplier

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Deadline nears for E/S listings

Business Insurance will publish its annual directory of wholesale marketers and the directory of surplus lines insurers in the Aug. 12 issue, which will contain a spotlight report on the surplus lines business.

If your company operates as a surplus lines insurer, or as a managing general agent, underwriting manager or surplus lines broker placing insurance for retail brokers, you are eligible to be listed.

Brokers, MGAs and underwriting managers are eligible to be listed whether they place insurance with admitted or non-admitted insurers.

Listings in the directories are free of charge. However, your company must fill out and return the appropriate *Business Insurance* questionnaire to be listed.

If you have not yet received a questionnaire, please request one immediately by writing: Marilou Jones, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611; or by calling 312-649-5279.

Hudson Insurance drops surplus lines business

By DOUGLAS McLEOD

NEW YORK—Hudson Insurance Co., a unit of Skandia America Reinsurance Corp., is no longer writing excess and surplus lines insurance.

However, Hudson will continue to assume quota-share reinsurance risks from its parent company, according to Thomas M. Tobin, senior vp, secretary and general counsel of Skandia.

Parent-related reinsurance has represented more than half of Hudson's gross premiums, totaling \$70.8 million in 1984.

"We intend and have intended for some time to focus our financial and personnel resources on the reinsurance business," Mr. Tobin said.

With the July 1 suspension of new and renewal surplus lines business by Hudson, Skandia now writes only reinsurance business in the U.S.

Last August, Skandia closed offices in Los Angeles and Houston, which housed Hudson special risk operations, and pruned Hudson's staff in the Chicago and Atlanta branches. Special risk operations had been centered in New York and San Francisco (BI, Aug. 20, 1984).

Some of the remaining Hudson staff and offices will be maintained to handle runoff of the direct business, a process that will take at least a year, Mr. Tobin said.

Skandia's other operations will absorb some Hudson staff, but some employees will be terminated.

Hudson recorded \$28.6 million in gross direct written premiums in 1984 and \$42.2 million in gross reinsurance premiums. The company booked net premiums of \$42.8 million.

Earned premiums in 1984 totaled \$37.2 million. Hudson suffered a \$14.6 million underwriting loss after recording \$35.5 million in losses and \$16.4 million in loss adjustment and other underwriting expenses.

Investment income totaled \$8.4 million in 1984, and Hudson booked a net loss for the year of \$5.1 million.

The A.M. Best Co. ratings for Hudson and Skandia were reduced to B-plus for 1985 from A-plus the year before.

Dart sued for PCB contamination

By ROBERT A. FINLAYSON

HARTFORD, Conn.—Emhart Corp. is suing the former owner of several manufacturing plants it bought in 1979, charging that the plants are contaminated with polychlorinated biphenyls, or PCBs.

The suit contends that Dart Industries Inc., a subsidiary of Dart & Kraft Inc., failed to notify Emhart of the extent of PCB contamination at the facilities at the time of the sale.

Emhart is asking the U.S. District Court in Hartford to require Dart to pay both cleanup costs and lost-business costs.

The suit was filed June 5.

Emhart, a Fortune 500 industrial and farm equipment manufacturer based in Farmington, Conn., closed one of the facilities last year because it was concerned that workers would be exposed to the PCBs.

Emhart shut down the Waynesboro, Tenn., plant in July 1984 to "halt further exposure of its employees to the dangerously high levels of PCBs detected in the Waynesboro plant and to avoid and/or mitigate criminal and civil liability with respect to the presence, use, disposal, and uncontrolled discharge of PCBs at the facility," according to the complaint.

Emhart says investigations are continuing at the other contaminated facilities, located in Glasgow, Ky.; Greencastle, Ind.; and Indianapolis. An earlier investi-

gation found PCBs on many surfaces in these plants, according to Emhart.

According to the complaint, Emhart discovered the PCB contamination last year when a waste-solvent recycler found PCBs in wastes from the Waynesboro plant.

Meanwhile, Dart has filed suit in federal District Court in Nashville, Tenn., asking for a declaratory judgment from the court that federal PCB regulations did not require the closing of the Waynesboro plant, and that Dart is not liable for Emhart's costs in connection with the closing of that facility or any cleanup costs related to the facilities it sold Emhart.

A spokesman for Dart said the company spent \$1 million in 1979 to clean up PCBs at the Waynesboro plant, and that Emhart and the federal Environmental Protection Agency accepted the cleanup work.

He would not discuss any possible insurance coverage available in response to Emhart's suit.

Emhart maintains in its complaint that, pursuant to the purchase agreement for the Dart plants, Dart agreed to indemnify and hold Emhart harmless for any loss or expense arising out of the presence of PCBs at any of the facilities.

Companies now often request environmental audits before purchasing older manufacturing facilities because of the possibility that they could inherit liability

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Prudential sues firms covered by Prudential Re

By STEPHEN TARNOFF

BOSTON—The Prudential Insurance Co. of America is suing eight asbestos producers for the cost of removing asbestos from its Prudential Center in Boston, even though a Prudential subsidiary wrote excess insurance for at least one of the defendants.

The subsidiary, Prudential Reinsurance Co., which is the fourth-largest U.S. reinsurer, also reinsured at least one insurer of defendants in the litigation.

As a result, Prudential Re could end up paying part of an award to its parent company, which is seeking \$75 million in compensatory damages and \$100 million in punitive damages from asbestos producers.

The lawsuit, filed in U.S. District Court in Boston in late May, is also believed to be the first filed by a private corporation to recover the costs of monitoring, detecting and removing asbestos.

"It's the first one that I'm aware of," said Floyd Knowlton, a vp with Travelers Insurance Co. and a longtime watcher of asbestos litigation.

So far, suits have been brought by more than 30,000 individuals claiming personal injuries from exposure to asbestos.

And, many other lawsuits have been filed by school districts, local governments and individual homeowners nationwide seeking to recover costs for asbestos removal.

"Usually you would think of insurance companies not trying to encourage this type of litigation," observed Irene Warshawer, an attorney with the New York firm of Anderson Russell Kill & Olick, who represents Keene Corp. in asbestos litigation.

Named as defendants in the Prudential lawsuit are Turner & Newall P.L.C. of Manchester, England; Turner & Newall, Ltd., also of Manchester; AC&S Co., of Lancaster, Pa.; Armstrong World Industries Inc., also of Lancaster; W.R. Grace & Co. of New York; Celotex Corp. of Tampa, Fla.; Dana Corp. of Toledo; and Keene Corp. of New York.

According to the suit, Prudential has implemented at its own expense a comprehensive program to monitor the air in its buildings, has removed some asbestos products and eventually "will face the expensive prospect" of removing most, if not all, asbestos products from its

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Taking their medicine

Employees accept health plan changes: Survey

By ALISON KITTRELL

Health care cost-containment measures implemented by U.S. employers over the last three years are saving companies money without, for the most part, alienating employees.

And, the better these health plan changes were communicated, the more likely employees are to accept them.

According to a survey conducted for The Equitable Life

Assurance Society of the United States by pollster Louis Harris & Associates, 79% of the employees whose group health plans had been changed somewhat in the last three years found the changes acceptable—34% said they found the changes very acceptable and 45% said the changes were somewhat acceptable.

Only 16% of the employees said the changes were not very acceptable, and a mere 5% said they were not acceptable at all.

Furthermore, the survey shows that employers that did a good job of communicating benefit changes were more likely to encounter less resistance from employees.

Among employees whose health care plans have been changed at least somewhat in the last three years, 60% of those who rated their employers' communication efforts as "excellent" also said the changes were very acceptable, and 31% of those who rated the communications effort as excellent said

the changes were somewhat acceptable.

Only 8% of these employees said the changes were not very acceptable, and only 1% found them not acceptable at all.

This most recent Equitable survey—"The Equitable Healthcare Survey III: Corporate Initiatives and Employee Attitudes on Cost Containment"—is the third survey on health care issues conducted by Harris for Equitable. Earlier ones were conducted in 1983 and 1984 (BI, Nov. 28, 1983, and June 18, 1984).

The latest survey polled a nationwide cross-section of 1,253 employees, 1,250 corporate benefit officers, 200 senior executives and 200 senior human resource executives, all at companies with 500 or more employees.

In addition, 110 national and regional insurance brokers and consultants who work with group health plans also were polled.

More than 70% of the employers surveyed have changed their

health plans either "somewhat" or a "great deal" in the last three years to contain costs.

And, they estimate their health care costs will be 16% to 18% lower per employee in 1985 as a result of these cost-containment initiatives (see story, page 14).

Most frequently instituted cost-containment steps were increased deductibles, instituted by 50% of the respon-

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More health plan changes on the horizon

By ALISON KITTRELL

The future is likely to mean even more changes in employers' health care plans, a new survey says.

"The great majority of employers believe that they are only at the beginning of the process of containing their health care costs. By no means do they believe that they have yet done all that is necessary," says the survey, conducted for The Equitable Life Assurance Society of the United States by pollster Louis Harris & Associates.

The survey, "The Equitable Healthcare Survey III: Corporate Initiatives and Employee Attitudes on Cost Containment," polled a nationwide cross-section of 1,253 employees, 1,250 corporate benefit officers, 200 senior executives and 200 senior human resource executives, all at companies with 500 or more employees.

It also surveyed 110 national and regional insurance brokers and consultants who deal with group health plans.

Forty percent of the corporate benefit officers and 33% of the senior executives surveyed said they expect their companies will make more changes in their health plans within the next three years than they made in the previous three

years. And, 38% of the benefit officers and 41% of the senior executives say they expect to make about the same amount of changes in the next three years as they did in the past three years.

Only 20% of the corporate benefit officers and 23% of the senior executives said they expect to make fewer changes in their health plans during the next three years than they made in the previous three years.

Among brokers and consultants, the expectation for change is even greater. Some 51% of the brokers and consultants surveyed said they expect their clients to make more health plan changes in the next three years than they made in the last three.

Twenty-seven percent of the brokers and consultants expect about the same amount of changes, while 21% expect fewer changes.

The survey also found that most employees accept changes already made and are satisfied with their current health plans, meaning that companies may be encouraged to make more changes in their plans (see story, page 14).

About 79% of the employees surveyed said they are at least

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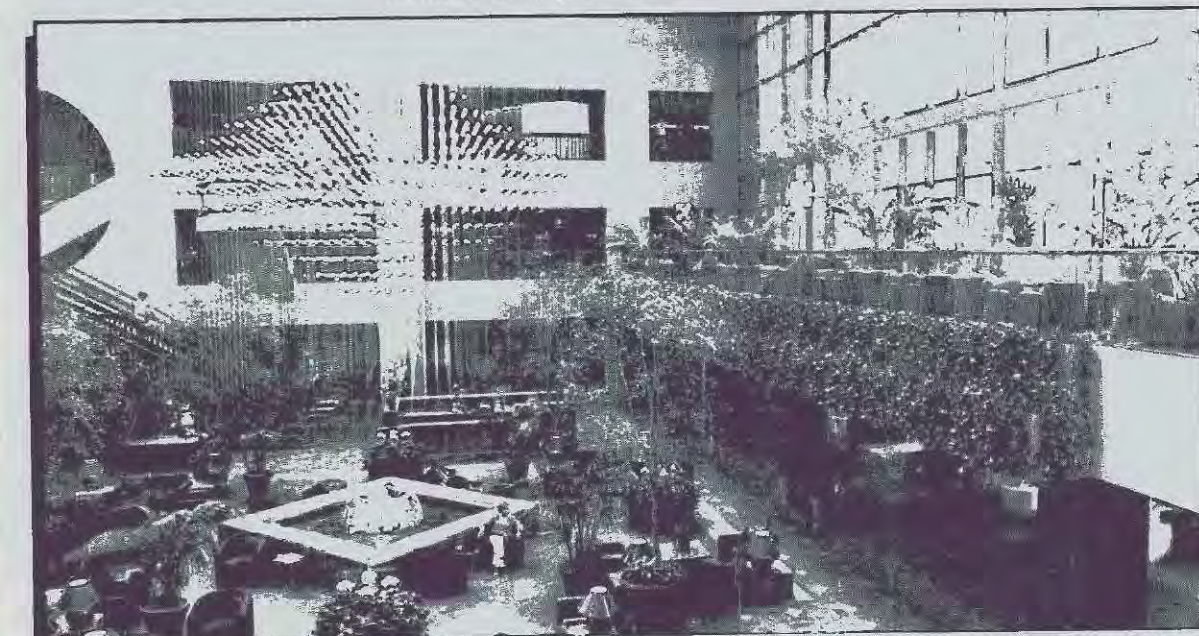


Photo: Carol Cain

Commissioners convene

The lobby of The Hyatt Regency in Kansas City buzzed with activity the week of June 9 when The National Assn. of Insurance Commissioners held its summer meeting at the hotel. Insurer solvency was the topic of several meetings throughout the week. Associate Editor Carol Cain's report on these sessions begins on page 20. To the right in this photo is the redesigned skywalk that was built in the hotel after two walkways collapsed in 1981, killing 113 and injuring 80.

Abortion clinics battle to maintain coverage

By STEVE TARAVELLA

LOS ANGELES—Abortion clinics, increasingly the targets of bomb and arson attacks, are paying tenfold premium increases to maintain their insurance—when they can find it.

Others are being forced to close for lack of insurance or go without the coverage.

In response to the attacks, believed to be spearheaded by anti-abortion activists, abortion providers are devoting greater energies to basic loss-prevention practices.

The attacks—128 so far this year compared with 29 in all of 1984, according to the National Abortion Federation—already have forced at least one facility to shut its doors after the property and liability insurance of both the clinic and its landlord were canceled by underwriters who feared a repeat performance (BI, Jan. 21). Neither party could find replacement coverage.

But, faced with the same predicament, others among the 380 abortion clinics in the United States have chosen to remain open with no insurance.

An abortion clinic in Santa Ana, Calif., for example, stayed open after its property and liability insurance program was canceled as of March 31, even though it had not at that time been a target of violence.

"As long as no one (at the insurer) took the policy out of the file and read that it said 'abortion clinic,' we were OK," says Laura K. Brown, director of the Feminist Womens Health Center, the Oakland, Calif.-based non-profit family planning organization that acquired the Santa Ana clinic just two weeks before the attacks began.

The clinic could not find replacement coverage and had gone bare for about three weeks when it was the victim of arson attacks on April 22 and

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Bill proposes self-funding of pollution risks

By JERRY GEISEL

Washington

WASHINGTON—Sen. Robert Stafford, R-Vt., wants to give employers another alternative for funding their environmental liability exposures.

Sen. Stafford is proposing that Congress give employers the regulatory freedom to set up risk retention groups to self-fund their pollution liability exposures.

Under a 1981 federal law, businesses have been able to band together to form risk retention groups—captive insurance companies designed to self-insure product liability exposures—with a minimum of interference from state regulators.

Risk retention groups that receive a charter from any state and meet at least one state's capitaliza-

tion requirement can operate in all states.

The groups do not have to be licensed in every state, nor are they required to use a fronting insurer to avoid run-ins with state regulators.

Sen. Stafford's proposal would allow risk retention groups to be used to fund pollution liability exposures, just as the groups now can be used by employers to self-fund their product liability risks.

The Stafford proposal will be introduced as an amendment to legislation, S. 51, reauthorizing the federal Superfund law.

The Senate is expected to consider the Superfund legislation later this month.

Termination halt urged

Rep. Edward Roybal, D-Calif., wants the Reagan administration to impose a nine-month moratorium on terminations of overfunded pension plans that result in asset reversions of more than \$1 million. The moratorium would apply to termination notices received after June 12.

During this moratorium, federal agencies and the General Accounting Office would study such issues as the impact of reversions of plan participants and the reasons that terminations of overfunded pension plans are on the rise.

Since Jan. 1, 1980, about 700 pen-

sion plans with total excess assets of \$6.6 billion have been terminated or are awaiting regulatory authority to terminate, the Pension Benefit Guaranty Corp. says.

That \$6.6 billion figure excludes the \$962 million in surplus assets United Airlines recently announced that it expects to receive after it terminates several salaried employees and union pension plans (EI, June 17).

Tax plan sales brisk

It won't show up on any best-seller list, but the book that is in heavy demand in Washington is the Reagan administration's tax reform package.

Since that package was unveiled in late May, the Government Printing Office has sold 22,000

copies.

Copies of the tax reform package, also known as President Reagan's Tax Proposals to the Congress for Fairness, Growth & Simplicity, are available at \$18 each from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Ask for document No. 048-000-00373-7.

Education benefits

Finance Committee Chairman Sen. Robert Packwood, R-Ore., says he will do everything in his power to make permanent the tax-free status of employer-provided educational assistance benefits.

In remarks made on the Senate floor late last month, Sen. Packwood said he would try anything to get Congress to pass legislation, S. 558, introduced by Sen. Patrick Moynihan, D-N.Y., that would make permanent Section 127 of the Tax Code.

Under Section 127, which expires on Dec. 31, 1985, employees taking part in an educational assistance program do not have to report as taxable income the first \$5,000 of tuition reimbursement they received from their employers.

Law reduces hike in malpractice rate

NEW YORK—New legislation in New York will cut almost in half a previously approved 52% rate hike for medical malpractice insurance and prevent further increases at least until Dec. 1.

The law, signed July 2 by Gov. Mario Cuomo, reduces a retroactive rate increase granted to the state's medical malpractice insurers by the New York Insurance Department earlier this year.

The new legislation permits rate increases of around 29% to 32%, said a spokesman for the governor's office.

Also, a medical malpractice insurer that had filed for an added 41% increase in rates to go into effect July 1 will not be allowed to raise its rates under the new law.

New York physicians also will have more coverage under the new law. Hospitals now are required to purchase \$1 million in insurance for their physicians, excess of \$1 million. The physicians are expected to purchase their primary coverage of \$1 million.

The new legislation also includes several measures to reduce fees paid to attorneys in medical malpractice lawsuits and will change the way awards are granted.

Lawyers' contingency fees, generally amounting to one-third of damages awarded to their clients, will be limited in medical malpractice cases. A sliding scale will permit attorneys to receive 30% of the first \$250,000 of an award, 25% of the next \$250,000, 20% of the next \$500,000, 15% of the next \$250,000 and 10% of anything above \$1.25 million.

Victims receiving awards will be given a lump sum up to \$250,000, with anything higher paid in annuities.

The new legislation also includes:

- A provision that eliminates "double recovery" by reducing awards by the amount of any future compensation a victim might receive.
- Procedural reforms that speed up the process of hearing malpractice lawsuits.
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- A requirement that hospitals adopt programs to screen physicians' credentials.

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Abortion clinics

Continued from page 3

Luckily, the clinic incurred only minimal losses in the fires, which only damaged the outside of the building in which it rents space, said Ms. Brown.

"It's like being under siege without armor," Ms. Brown says.

Ms. Brown is angry with the insurance industry and landlords who will not rent to abortion clinics. She charges that, intentionally or not, they are aiding the anti-abortion activists.

"I don't think we're victims of this," she says. "I think we're targets."

"This is a professional operation. We are not operating a dangerous business," she continues. "If we used explosives, we'd understand the insurers' position, but we're not doing anything like that."

"The insurers go to sleep at night thinking the only thing that counts is money. I sympathize with their assets, but the fact is that if women can't get legal or safe abortions, they're going to die."

"If we were talking about stylized T-shirts, that'd be one thing. But this is medical science," Ms. Brown asserts.

The Santa Ana clinic's canceled coverage was a package policy with liability coverage limits of \$1 million and property coverage limits of \$40,000. It was written by M&W Insurance Services Inc., a Van Nuys, Calif., managing general agency, on behalf of SAFECO Insurance Co. of America.

When Seattle-based SAFECO realized the type of risk the business represented, it asked the MGA to take it off the risk, according to Jerry Clark, who had been the M&W account executive. He did, but he couldn't find replacement coverage.

"I was shopping around like mad. I hit every wholesaler in town and could not get it placed anywhere," recalls Mr. Clark, who since has left M&W and become a life agent with Transamerica Occidental Life Insurance Co. in nearby Sherman Oaks, Calif.

"We'll pay anything to get coverage," Ms. Brown said shortly after the fires.

The organization's current broker, Lai Insurance Agents & Brokers in Berkeley, Calif., finally obtained \$135,000 in property, business interruption and extra expense coverage for the facility, which reopened at a new address in Santa Ana. The premium for the coverages was \$1,350.

These coverages are underwritten by Great Southwest Surplus Lines Insurance Co. of Scottsdale, Ariz., and various Lloyd's of London underwriters, according to Mary Lai, a partner in the brokerage.

The clinic's liability insurance was placed with Jefferson Insurance Co. of New York. Ms. Lai would not say what the limits for the coverage are.

The Feminist Womens Health Center, which takes in about \$1 million annually, runs four family planning clinics in Northern California, plus two in Southern California that it acquired March 29: the Santa Ana facility and another clinic in Hollywood.

On April 8, arson fire destroyed the Hollywood clinic, reportedly the first abortion clinic opened in the country after the U.S. Supreme Court's landmark 1973 decision legalizing the procedure.

The Hollywood clinic's loss was insured by Pacific Indemnity Co., a unit of Chubb Corp. But, Chubb notified the policyholder of its intent to cancel coverage, clinic officials say. The coverage was placed by Wise Insurance Agents/Brokers in Yuba City, Calif.

Jim Cox, a producer at Wise, explains that Chubb asked Wise to "voluntarily replace" the insurer on the risk, but did not issue a can-

cellation order.

Mr. Cox reports contacting five surplus lines insurers before finding one that would write the facility—at a 600% rate increase.

But, Wise didn't get the opportunity to replace Chubb as the insurer because Chubb asked to be removed from the risk at about the same time the clinic's brokerage business was shifted to Lai, in conjunction with the clinic's new ownership.

The Hollywood facility had had property limits of \$60,000, and one of Ms. Brown's first jobs at the newly acquired clinic was to increase those limits.

However, the clinic burned down before she had a chance to

get the limits raised.

The clinic also had business interruption coverage of \$10,000 monthly for three months, accounts receivable coverage of \$16,000, records reconstruction coverage of \$10,000, and extra expense coverage of \$10,000.

Ms. Brown expects the total damages to exceed \$250,000.

Police have not yet determined whether the Hollywood abortion clinic or an adjacent restaurant was the target of the arson.

Like the Santa Ana facility, the Hollywood clinic now is insured for property, business interruption and extra expense exposures with Great Southwest and Lloyd's, and its liability exposures with Jeffer-

son. It recently opened in new quarters on Wilshire Boulevard in Los Angeles.

Compounding these insurance difficulties, the Feminist Womens Health Center was notified March 1 that the property/casualty coverages at three of its four Northern California clinics would be canceled effective April 4. (Its fourth and newest clinic opened only last month in Richmond).

The three facilities were insured last December for a premium of \$2,850 by Great American Insurance Co. of Cincinnati, under one all-risk policy that provided:

- Business and personal property coverage of \$87,000 at the Oakland facility and \$50,000 each at the

Pleasant Hill and Santa Rosa locations. The policies provided coverage for lost property at its replacement value, with a \$250 deductible per claim.

- Business interruption coverage of \$140,000 at Oakland, \$75,000 in Santa Rosa, and \$70,000 in Pleasant Hill.

- Valuable papers coverage of \$50,000 in Oakland and \$20,000 each at the other locations.

- Extra expense coverage of \$12,000 at Oakland, \$10,000 at Pleasant Hill and \$5,000 at Santa Rosa.

- Accounts receivable coverage of \$8,000 at Oakland, \$4,000 in Santa Rosa and \$3,500 in Pleasant Hill.

Continued on next page



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Continued from previous page Hill.

After much effort, Lai managed to replace four of these coverages—for more than 2½ times the premium that had been paid for all six coverages. The family-planning organization is paying about \$7,500 annually for all but valuable papers and accounts receivable coverage, two inland marine coverages that Great Southwest does not write.

The insurance also was written under stricter terms and conditions, and now principally is with Jefferson, Great Southwest and the California Fair Access to Insurance Requirements Plan Assn., an association of admitted property insurers that provides coverage for

'Insurers go to sleep at night thinking the only thing that counts is money,' Ms. Brown says.

homes or businesses that cannot obtain coverage from the commercial markets in some parts of the state.

Of the \$7,500 premium, the organization is paying \$5,400 to Great Southwest and \$400 to the FAIR Plan for the property, business interruption and extra expense coverages written at actual cash value,

not replacement value. The property coverage now has a \$1,000 deductible, four times the previous \$250 deductible.

The remaining \$1,700 in premium is for liability coverage written by Jefferson. That coverage, which had no deductible when written by Great American, is now subject to a \$250 deductible per claim.

And, the experience of the clinics operated by the Feminist Womens Health Center is not an isolated one.

In April, the Routh Street Clinic in Dallas had to pay \$48,000 in annual premium to replace a property and liability insurance package that was canceled by CIGNA Corp.

in March, according to business manager Becca Crowell.

That was an increase of more than 1,000% from the \$4,000 in premium the clinic paid CIGNA last year.

The 30-day cancellation notice came only days after a clinic in nearby Mesquite, Texas, was destroyed by arson. But, the Routh Street Clinic had not been a target of violence and never had filed a claim under its CIGNA policy, says Charlotte Taft, director of the clinic.

"The insurance industry has not been responsive to women's interests," Ms. Taft says.

"It's a pretty serious problem for us. We just can't operate without

insurance, so I guess the \$48,000 is worth it," Ms. Crowell reasons.

But, the \$48,000 buys less coverage than the clinic had under the canceled CIGNA policy. The clinic was able to keep its liability limits of \$1 million per occurrence and aggregate, but it now must purchase its workers compensation coverage separately. Work comp had been included in the CIGNA package, Ms. Crowell says.

Routh Street's insurer is now Medical Assurance Ltd.

Metropolitan Family Planning Clinic in College Park, Md., also had difficulty maintaining its insurance.

Erie Insurance Co. in Erie, Pa., did not renew the clinic's \$200,000 in property coverage in January because the clinic presented "a very high risk," says Dr. A. Gohari, the clinic's director.

The College Park clinic has not been hit by violence, but in December the building housing an affiliated clinic in Suitland, Md., was damaged by a bomb.

It took a month, but Dr. Gohari's broker finally replaced the coverage with several insurers—for a tenfold premium increase, to \$4,000 in annual premium, from \$400.

But, the clinics are not sitting idly through these problems. The "vast majority" of the National Abortion Federation's 300 members, including clinics, family-planning centers and individual doctors, now are much more aware of steps they can take to avoid violent attacks, says Barbara Radford, the federation's executive director in Washington.

The clinics are installing electronic security systems, hiring security guards, improving parking lot lighting, keeping shrubs trimmed below window level and supporting neighborhood watch programs.

Ms. Radford notes that the National Abortion Federation is discussing with insurance company representatives the possibility of setting up an association-sponsored program for property and liability exposures.

The federation already has an association program for medical malpractice coverage. And, more than half its members, including the clinics directed by Ms. Brown, purchase malpractice coverage through the program.

The malpractice program is underwritten by Constitution State Insurance Co., a Traveler's Corp. company in Hartford, Conn. ■

Emhart lawsuit

Continued from page 2
for toxic chemical contamination caused by the prior owner.

The spokesman for Dart says environmental audits were not routinely done in 1979 when it sold the manufacturing facilities to Emhart, and it is unlikely that such an audit was performed.

Dart purchased the Waynesboro plant in early 1979 from P.R. Mallory & Co. Inc., which was part of Duracell Inc. Dart then sold the Waynesboro plant and several other plants owned by Mallory to Emhart in July 1979 and retained Duracell Inc., a manufacturer of batteries for consumer products.

The Waynesboro plant manufactured capacitors, devices used in electrical equipment to store electrical charges.

PCBs were widely used in electrical capacitors for nearly 60 years, until Congress passed legislation in 1976 requiring the U.S. Environmental Protection Agency to ban the manufacture of PCBs and severely restrict their use. That action was based on concern over tests that showed PCBs cause cancer in laboratory animals and do not break down in the environment.

EPA did not issue regulations implementing the law until mid-1979. ■



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opinions

When a death is murder...

THE ILLINOIS statute on murder reads:

"A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death, knows that such acts create a strong possibility of death or great bodily harm to the individual or another."

Never before had the statute been used against corporate executives. But, when presented with evidence about the facts surrounding the cyanide poisoning death of a worker in a Chicago area plant, Cook County State's Attorney Richard Daley brought murder charges against three executives of the now-shuttered plant.

He was right to do so.

Nowhere in the Illinois murder statute does it say "excludes workplace deaths." And it should not.

People are responsible for their actions, whether they are reckless drivers of automobiles, wielders of deadly weapons or owners or managers of plants where deadly fumes are knowingly allowed to kill workers.

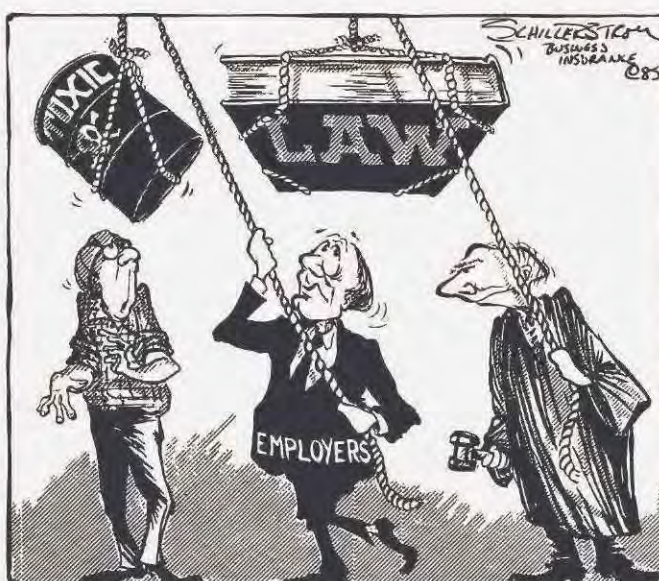
The murder convictions and stiff sentences handed down in the case punish the guilty (see page 1).

And, the case serves as a deterrent to others, which is a purpose of criminal prosecution.

We don't know how many plants in this country are the death traps that this plant in Chicago was found to be, but we encourage state's attorneys in all states to act as Mr. Daley did. Corporate executives cannot be allowed to jeopardize workers' lives with impunity.

And, we suspect that this prosecution and convictions will heighten management awareness of the responsibility to maintain safe workplaces in companies where safety may only be paid lip service now.

We also do not view this prosecution and these convictions as a threat to the workers compensation system, as others say they are (BI, June 24).



Criticism of this Chicago prosecution as an unwarranted intrusion into the purview of workers compensation laws carries the concept of no-fault compensation for workplace injuries to a ludicrous extreme.

Of course, not every broken leg is cause for assault charges nor is every workplace death reason to prosecute corporate executives for murder. We trust state's attorneys to distinguish injuries and deaths caused by accidents from those caused by dangerous conditions that were allowed to persist by managers aware of the possible consequences.

When there is evidence that supports a charge of murder against corporate executives, charges must be brought. And, we trust judges and juries to assess the evidence and impose sentences.

The business community should not only endorse but also demand such enforcement of the law.

letters

New CGL forms will only add to insurers' problems

To the editor: While not wanting to drag the debate regarding the new Insurance Services Office commercial general liability policy on ad infinitum, I am compelled to write a reply to the letter of James A. Robertson (BI, June 24).

Mr. Robertson's characterization of testimony by Jon Harkavy, director of governmental affairs for the Risk & Insurance Society, to the New York Insurance Department concerning the new ISO CGL policy as exaggerated indicates a lack of awareness of the "real" world of insurance marketing and underwriting, or at least a strong bias in favor of the insurance industry, which may be inferred from the name of his firm.

Any clear-thinking and reasonable risk manager realizes that the U.S. legal system has serious shortcomings and has played a significant role in the evolution of the current dilemma facing the insurance industry. However, the industry itself, in its shortsighted "cash flow" cyclical pricing policy, its inadequate training of underwriters and its poor actuarial work, has contributed in equal measure to the problem.

Now the insurance industry proposes to lay the entire blame for the problem at the feet of the courts and the effect on the backs of its customers.

What is the benefit to the public, other than the stockholders of the insurers, of a solvent, healthy insurance industry that

does not assume risk? Of course, the insurance industry feels that the current CGL policy has been shot full of holes by the liberal court interpretations. What makes them think that the new ISO form will fare any better?

The industry talks of uncertainty in regard to the current CGL form. I submit that there is very little uncertainty in the current form. The courts have told us how to interpret the form for the past 20 years. If there is any uncertainty, it exists in the new ISO CGL form, which has yet to undergo the scrutiny and interpretation of a court.

What the insurance industry is faced with is an actuarial problem, not a policy language uncertainty problem.

Contrary to Mr. Robertson's assertion that there is no pollution liability coverage available, or that all insurers have excluded pollution coverage, I wish to advise him that our insurers have not excluded the coverage. The new ISO CGL policy purports to exclude pollution coverage, which will then be available on a "buy back." Of course, Mr. Robertson fails to state that it will be available on a "buy back" only if the insurers choose to sell it. To whom do you think they will sell it—those of us who have an exposure? What happened to the basic tenets of spreading the risk, adverse selection, etc.?

Mr. Robertson claims that a buyer would not be locked into any one insurer. He claims that we simply have to ask our new insurer to use the same retroactive date that appeared on our present coverage. If Mr. Robertson believes that, I have some ocean-front property in Arizona I would like to talk to him about.

I certainly do not want to institutionalize insurer instability, nor poor buyer and broker habits. On the contrary, I have constantly and continuously emphasized reasonable pricing of insurance, as well as carefully thought-out and planned insurance and risk-financing practices. However, I cannot accept Mr. Robertson's assertion that the new CGL form is the answer. It appears to me that the new CGL form is an attempt—ill-conceived I might add—on the part of the insurance industry to take advantage of an admittedly difficult financial situation and to change the rules.

I hope Mr. Harkavy will continue to testify at each and every opportunity offered, and I hope that my risk management colleagues will continue to support him and RIMS 100%. Right on, Jon.

Thomas D. Lewison
Corporate Risk and Insurance Manager
Degussa Corp.
Teterboro, N.J.

Premium-to-surplus ratio can measure capacity

To the editor: Peter B. Walker's comments on industry ills in the article "Consultant dreams up cures for industry's ills" (BI, June 10), were most informative and thought-provoking.

Mr. Walker's statement that a flaw exists in the basic premium-to-surplus measure of capacity in the insurance industry is true. However, the flaw existed during the soft market, and it is now correcting itself.

Since underwriters are again practicing their profession, the premium-to-surplus ratio will become a valid measure of capacity.

Instead of capacity being understated in today's market, capacity was grossly overstated in previous years.

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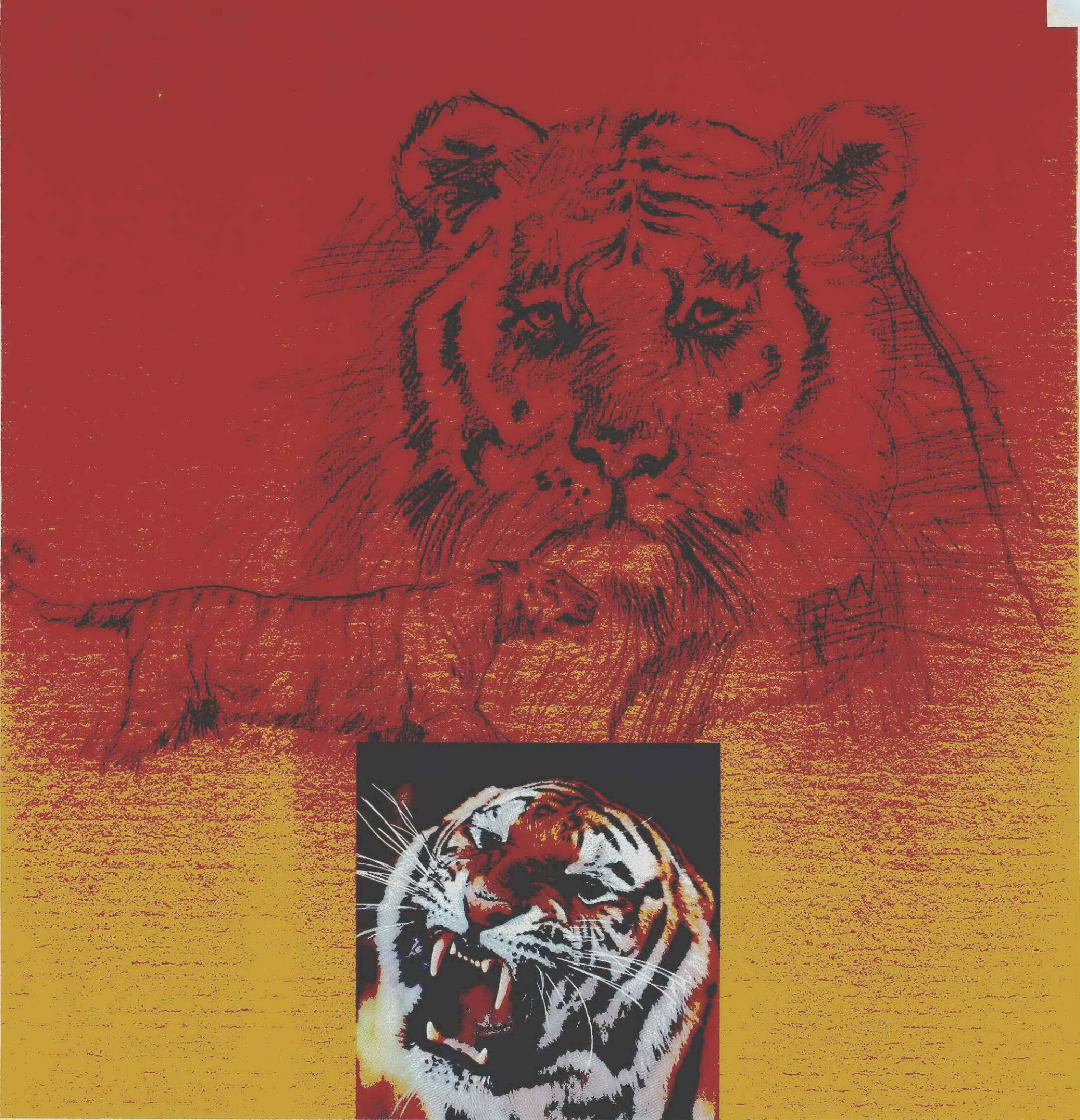
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Changes accepted

Continued from page 3
dents, and second surgical opinion programs, instituted by 54%.

"Most employers have been able to make changes in their health plans in order to get costs under control without provoking a substantial backlash from their employees," the survey's authors note.

The survey results suggest that one reason employees have accepted many of the changes, even those involving more cost to them, is that they believe the changes were necessary.

Fifty-seven percent of the employees whose cost-sharing has increased a great deal or somewhat said that it was necessary for their employers to make the changes to control health care costs.

Low-income workers and union workers are least likely to think the changes were necessary. Only 51% of workers earning \$15,000 or less a year said the changes were

necessary, compared with 59% of those earning \$15,001 to \$25,000, 60% of those earning \$25,001 to \$35,000 and 61% of those earning more than \$35,000 a year.

And, only 47% of union workers surveyed said they believed cost-shifting was necessary for employers to control health care costs, compared with 60% of non-union workers who believed the changes were necessary.

Overall, non-union employees are slightly more accepting of cost-containment changes than are union employees: Thirty-six percent of non-union employees found overall changes to health care plans very acceptable, compared with only 25% of the union employees. However, 54% of the union members found the changes somewhat acceptable, compared with 42% of the non-union workers.

Seven percent of the union workers said the changes were not acceptable at all, compared with only 4% of the non-union employees.

Employees also often don't even realize changes have been made to their health plans, which also could explain why employers are not hearing complaints about the changes.

For example, only 22% of the employees surveyed said their health care plan had changed a great deal in the last three years, while 41% of the benefit officers said their plans had changed a great deal. However, 52% of the brokers and consultants said they believed companies' plans had changed a great deal in the last three years to control health care costs.

"The most interesting finding here," the survey said, "is that employers and brokers/consultants perceive a greater magnitude of change than do employees. This would suggest that many employees are not all that sensitive to changes in their plans—or at least to changes that have been made so far—perhaps because only a minority are affected."

Also, the changes that were the most acceptable to employees were those that did not involve cost-shifting.

For example, 97% of the employees whose companies had instituted wellness programs said that change was very or somewhat acceptable, and 92% of those whose companies had begun to offer a choice of two or more health care plans found that change acceptable.

"The high level of acceptance of most of the listed changes which do not involve increased cost-sharing indicate that most employers will find it relatively easy to introduce these elements into their plans. . . . Indeed, many of these changes will be perceived not as constraints or reduced benefits, but as additional benefits," the survey says.

But, the level of employee acceptance was not as great for changes that involved increased cost-sharing by employees, although a majority of the employees surveyed still accepted these changes.

For example, 59% of the employees whose companies had introduced deductibles thought the change was very or somewhat acceptable, and 54% of those whose employers had increased a previous deductible found the change acceptable.

As might be expected, the changes that employers said were most effective in controlling health care costs were the ones that employees found least acceptable.

Most of the changes employers consider effective involve cost-shifting to employees, resulting in immediate savings for the company.

For example, while only 59% of employees said the introduction of deductibles was very or somewhat acceptable, 82% of corporate benefit officers said this change was somewhat or very effective in control

Continued on page 12

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Changes accepted

Continued from page 10
ling costs.

Likewise, although only 52% of employees said the introduction of co-payments was acceptable, 81% of the benefit officers said it was effective.

And, only 48% of workers whose companies had increased co-payments found the change acceptable. But, 78% of the benefit managers said it was effective in controlling costs.

Conversely, 98% of the employees said that instituting incentives for health and safety procedures was acceptable, but only 58% of the benefit officers said it was effective at controlling costs.

And, 80% of the employees said their companies' decision to offer a health maintenance organization option was acceptable, but only 49% of the benefit officers said such a change was cost-effective (see chart below).

Overall, however, employee and employer respondents report that plan changes made in the last three years have involved little or no increase in cost-shifting to employees.

Some 26% of the employees and 24% of the benefit managers said cost-sharing had not increased at all during the last three years, while 23% in each of those groups said cost-sharing had not increased much.

Only 16% of the employees and 18% of the benefit officers said cost-shifting had increased a great deal, and 34% of each group said it had increased somewhat.

However, only 2% of the brokers and consultants interviewed said that cost-shifting had not increased at all at client companies, and 17% said cost-sharing had not increased much.

Some 37% of the brokers and consultants surveyed said cost-sharing had increased a great deal, while 44% of them said it had increased somewhat during the last three years.

But, regardless of the nature of the health plan changes instituted, the survey concludes that communicating changes effectively to employees is the key to their acceptance.

While 60% of those who rated their employers' communication efforts as "excellent" also said the changes were very acceptable and 31% said they were somewhat acceptable, only 12% of the employees who rated their employers' communication efforts as "poor" said the changes in their health plans were very acceptable.

Fifty percent of those who said communications were poor said changes were somewhat acceptable, 25% said they were not very acceptable and 12% said they were not acceptable at all.

Among employees who said their employers did a "good" job explaining plan changes, 34% found the changes very acceptable, 51% found them somewhat acceptable, 15% found them not very acceptable and fewer than 0.5% said they were not acceptable at all.

And, workers whose employers did a good job communicating the benefit changes were more likely

to believe the changes were needed.

Sixty-six percent of those who rated their employers' communication efforts as "excellent" said they felt the changes were necessary, as did 68% of the employees who rated the communication efforts at their companies as "good."

In contrast, however, only 53% of those who believed that their employers did a "poor" job communicating the benefits changes believed that those changes were necessary.

"The results...leave no doubt, therefore, that the acceptability to employees of increased cost-sharing is highly correlated with the quality of corporate communications, regardless of the extent of the changes made.

"Any employer who does not do a first-class job of communicating both the changes, and the reasons for them, can expect to encounter a great deal of employee resistance," the survey said.

But, communicating health care plan changes to employees is not always an easy task, the survey showed.

Although 59% of the corporate benefit officers surveyed said it was easier to gain employee acceptance of health care plan changes than they had expected, almost half the benefit officers surveyed said they found it difficult to communicate the health plan changes to their employees.

Seven percent said it was very difficult, and 40% said it was somewhat difficult. Only 15% said it was very easy, while 37% said it was somewhat easy.

"The fact that most employers found it easier than they had anticipated to win employee acceptance of increased cost-sharing is further confirmation that most employees are willing to go along with such changes, and that employee resistance to them can be addressed successfully by employers," the survey says.

"However, the finding that so many employers...found it very or somewhat difficult to communicate these changes underlines the importance of using the best communication techniques.

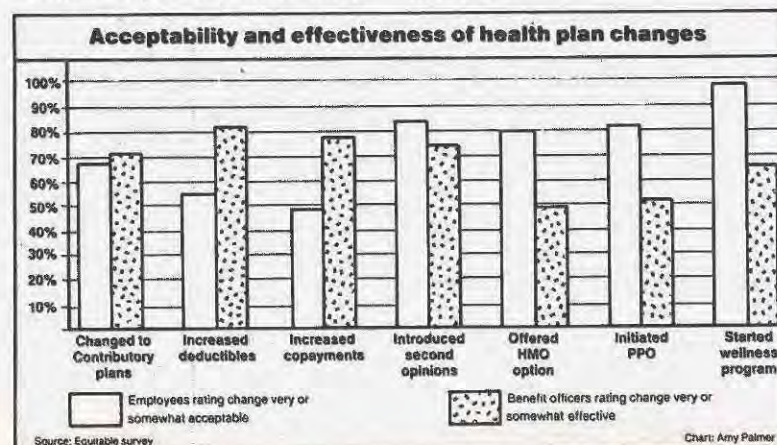
"It would seem that there is much to be learned from employers who have done this successfully," it concludes.

In the end, despite all the changes to health care plans over the last few years, employees are still generally satisfied with their group health benefits, the survey points out.

Overall, 50% of the employees said they were very satisfied with their health plan, and an additional 30% said they were somewhat satisfied.

"The level of satisfaction with health plans indicates that steps taken so far by employers to control their health care costs have not, as yet, triggered any substantial backlash among most employees," the survey says.

Copies of the survey can be obtained at no charge by writing to Gilbert M. Reich, the Equitable Life Assurance Society of the United States, 1285 Sixth Ave., New York, N.Y. 10019.



Employers say cost-containment steps work

By ALISON KITTRELL

Most employers believe the health care cost-containment steps they have taken in the last three years are paying off in lower corporate health care costs, according to a recent survey.

The survey, conducted for The Equitable Life Assurance Society of the United States by pollster Louis Harris & Associates, polled a nationwide cross-section of 1,253 employees, 1,250 corporate benefit officers, 200 senior executives and 200 senior human resource executives, all at companies with 500 or more employees.

The survey also polled 110 national and regional insurance brokers and consultants who work in the area of group health plans.

Some 41% of the corporate benefit officers and 31% of the senior executives surveyed said the changes made in the last three years have been very effective in controlling health care costs. And, 52% of the benefit officers and 58% of the senior executives said the changes have been somewhat effective.

Only 23% of the brokers and consultants surveyed said the changes companies have made in the last three years have been very effective at controlling health care costs. But, 70% said the changes have been somewhat effective.

Corporate benefit officers estimate that their 1985 per-employee health care costs will be 17.2% lower because of the cost-containment measures they have taken during the last three years than they would have been without the measures.

Senior executives say the per-employee cost will be 16.3% less, and brokers estimate it at 15.4% less.

The companies involved in the survey have instituted a wide variety of cost-containment measures in the last three years.

The most popular change, a second opinion program, was instituted by 54% of the respondents. Fifty percent reported they had increased the health care deductibles employees must pay.

Other changes include: changing to a contributory plan, instituted by 21% of the respondents; introducing deductibles, 24%; introducing copayments, 22%; increasing copayments, 27%; introducing plans to discourage hospitalization, 47%; introducing pre-admission review, 28%, and initiating utilization reviews, 27%.

Also, offering a health maintenance organization option, 34%; initiating a preferred provider organization, 9%; starting a wellness program, 26%; instituting incentives for health and safety procedures, 12%; starting a health-advisory service, 6%; starting a medical case management program, 10%; offering a choice of two or more health plans, 8%; introducing a disability case-management program, 12%; and introducing a plan to base deductibles on the size of the employee's salary, 7%.

The changes perceived to be most effective were those that involved cost-shifting to employees. For example, 82% of the benefit managers said that increasing or instituting deductibles was at least somewhat effective at controlling costs.

But, they also were pleased with the results of changes that did not involve increased cost to the employee. Seventy-three percent said that pre-admission review programs were effective at controlling health care costs, 73% also said second surgical opinion programs were effective and 67% said starting a wellness program was effective.

'However, it is evident that no single health care cost-containment mechanism is a panacea, and that to be really effective, a cost-containment program needs to include a substantial number of different elements,' one survey respondent said.

The only changes that less than half the benefit managers said were effective in controlling costs were offering an HMO option and starting a health advisory service, each considered effective by 49%; offering a choice of two or more plans considered effective by 48%; starting a medical case management program, considered effective by 46%; and introducing a salary-related deductible program, consid-

ered effective by 39%.

When asked to choose the one plan change that has been most effective, benefit officers could not agree.

Seventeen percent said increasing deductibles was most effective, and other plan changes were rated most effective by fewer than 10% of the benefit managers surveyed.

The survey points out this may reflect the different judgments of

individuals or the different experiences of different companies.

"However, it is evident that no single health care cost-containment mechanism is a panacea, and that to be really effective, a cost-containment program needs to include a substantial number of different elements."

The survey included an interesting finding on the importance of adding benefits as a way of winning employee acceptance of other health-plan charges.

Some 55% of employees and 78% of benefit officers said it was very important or somewhat important to add benefits as a way of gaining employee acceptance of other plan changes.

However, only 30% of the employees surveyed said their employers had added benefits, while

55% of the benefit managers surveyed said they had added benefits to their plans.

"The significant discrepancy between the replies of employers and employees almost certainly reflects more than the difference between the two samples," the survey says.

"It strongly suggests that many employees are scarcely or not at all aware that they have received additional benefits."

The survey concludes: "While these data show that additional benefits do, indeed, help to win employee acceptance for changes, it should be noted that it is by no means essential in every case. Replies to a number of other questions show generally favorable, or at least accepting, reactions to the changes, even when no new benefits were added."



Future changes

Continued from page 3

somewhat satisfied with the changes made in their health care plans in the last three years.

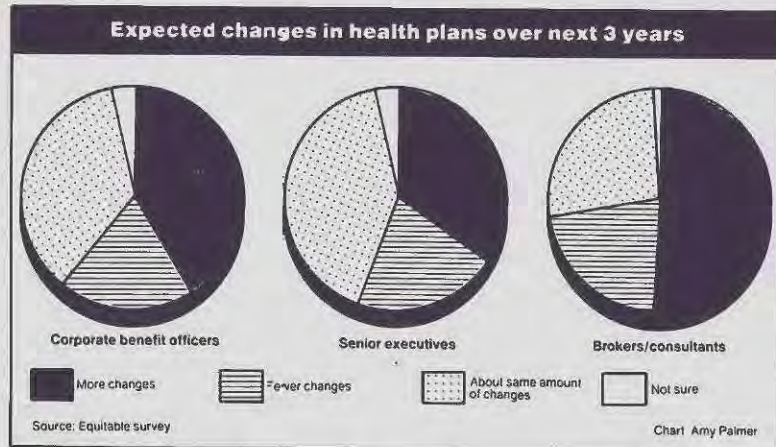
And, 80% of the employees surveyed said they are at least somewhat satisfied with their current health care plan.

"The relatively high level of satisfaction with health plans... suggests that there is considerable room for employers to make further changes in their plans," the survey says.

And, employers and consultants perceive that they still have a way to go to contain health costs.

Only 10% of the benefit officers and 9% of the senior executives surveyed said health care costs are completely under control. Only 3% of the brokers and consultants thought that costs were completely under control.

Sixty-eight percent of benefit officers, 60% of senior executives and



70% of consultants said health costs are somewhat under control.

But 19% of benefit officers, 28% of senior executives and 26% of consultants surveyed said that, despite the changes of the last three years, health care costs remain somewhat out of control.

The survey concludes: "It is nec-

essary to be cautious when making forecasts of future behavior from current expectations.

"However, it is reasonable to interpret the replies as indicating that the rate of change is unlikely to be any slower in the immediate future than it has been in the recent past, and may well be faster." ■

comings & goings: buyers

Chevron Corp. restructures employee benefit department

Chevron Corp. has restructured its benefits department and created new areas of responsibility, incorporating some employees from Gulf Oil Corp., which Chevron acquired last year.

John J. Ranslem, 42, has been named manager of benefits planning and analytical for Chevron. In this newly created position, Mr. Ranslem is responsible for the design of all benefits plans as well as the purchase of all insurance for those plans. He also will serve as benefits consultant to foreign affiliates. He reports to Alex Ross, manager of benefits. Previously, Mr. Ranslem was general manager of

corporate human resources for Gulf. He received a bachelor of science degree in business administration from the University of California, Los Angeles, in 1964.

Hal Levister, 47, is staff analyst for Chevron Corp. In this newly created position, he will analyze and assist in the merging of the benefits plans of Chevron and Gulf. He reports to Mr. Ranslem. Previously, Mr. Levister was Gulf's director of group insurance. He earned a bachelor of arts degree in mathematics from Lincoln University in 1964.

Philip E. Lintner, 55, has been named manager of processing and services for the benefits department of Chevron. In this newly created position, Mr. Lintner is responsible for the administration of all benefits plans, including pension plans, for Chevron. He reports to Alex Ross, manager of benefits. Previously, Mr. Lintner was manager of compensation and benefits administration for Gulf. He received a bachelor of science degree in accounting from the University of Pittsburgh in 1954.

Joan N. Bardez is manager of benefits administration and communication for Chevron. In this newly created position, Ms. Bardez is responsible for all benefits communications with Chevron's active employees and retirees. She also reports to Alex Ross. Previously, Ms. Bardez was assistant manager of stock and savings plans for Chevron. She received a bachelor of arts degree in mathematics from Pomona College in Claremont, Calif., in 1963 and a master's degree in business administration from Golden Gate University in 1980.

Thomas Southworth, 40, has been named chief of the risk management division of Montgomery County, Md. Mr. Southworth is responsible for the county's self-insurance, property/casualty, employee safety and loss-control programs. He reports to Max Bohnstedt, director of finance, and replaces **Robert Peter**, who retired. Previously, Mr. Southworth was risk manager for the state of Maryland's National Park & Planning Commission. He received a bachelor of arts degree in economics from Hobart and William Smith Colleges in Geneva, N.Y., in 1967 and a master's degree in business administration in 1976 from Temple University in Philadelphia. He also has the Associate in Risk Management designation.

Michael E. Murkey, 36, has been promoted to director of risk management for the Hilton Hotels Corp. in Beverly Hills, Calif. He is responsible for administering the company's property/casualty insurance programs. He replaces and reports to **John S. Surabian Jr.**, who recently was promoted to vp of risk management. Mr. Murkey had been risk manager for the Hilton, a position whose responsibilities he will retain. He earned a bachelor of science degree in business administration from California State University and a master's degree in business administration from Pepperdine University.

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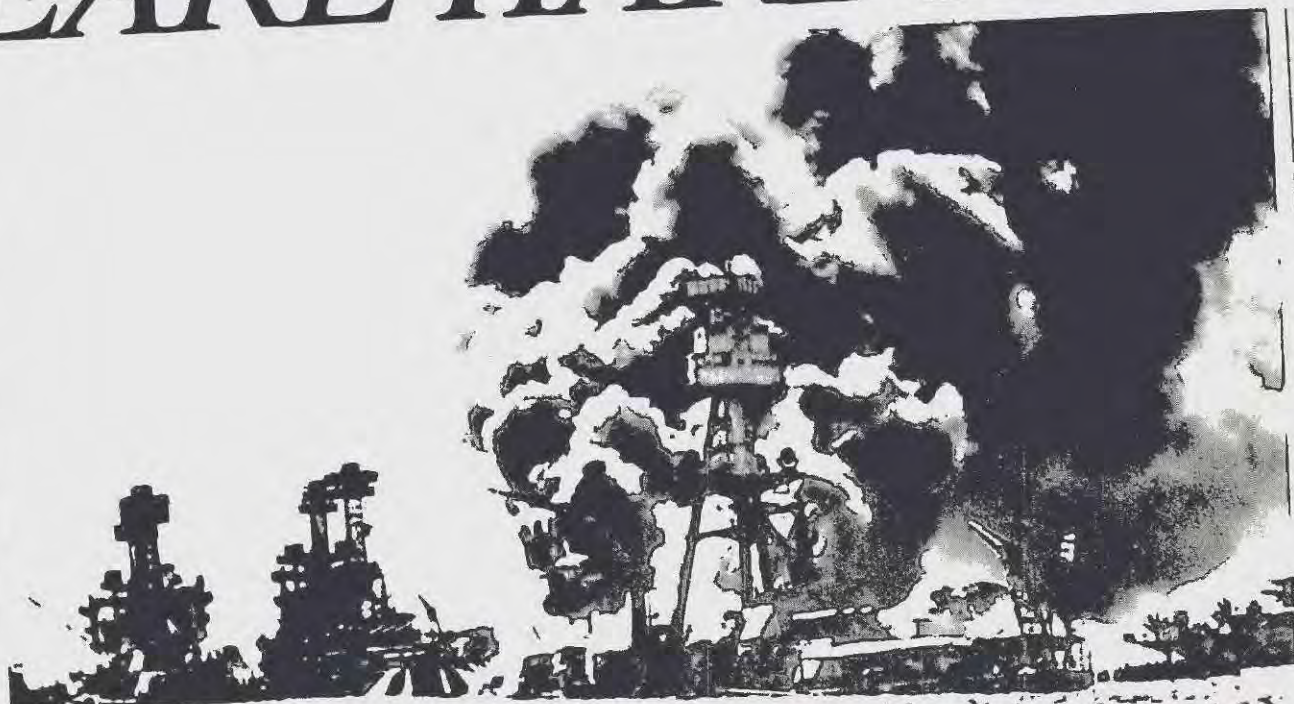
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OLD GLORY FLIES AT HALF STAFF above devastation caused by Hurricane Alicia on Galveston Island, Texas.

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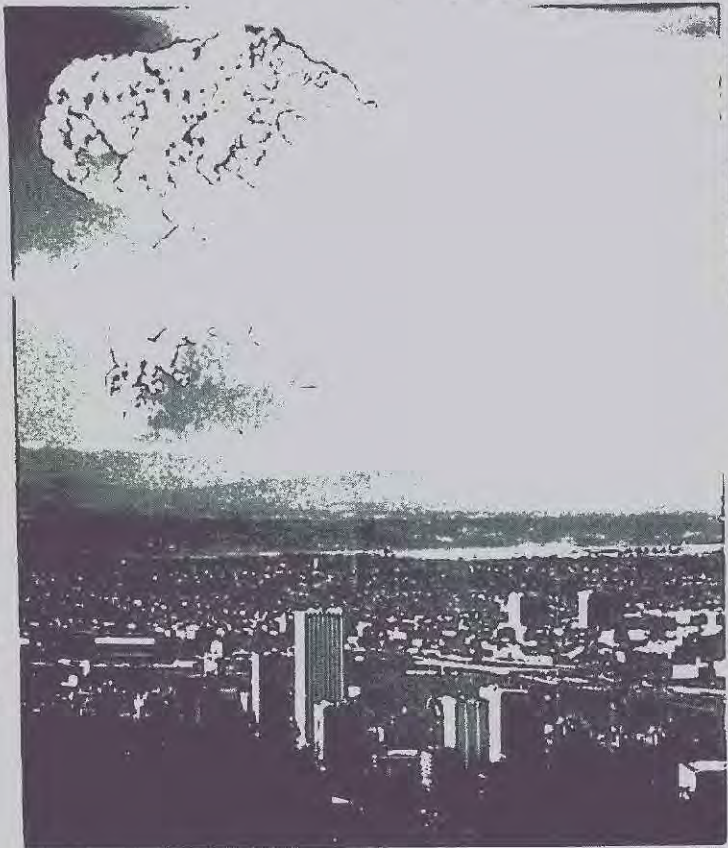
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WATER BLANKETS NEW ORLEANS as May 3 deluge delivers 13 inches in two hours.

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WHERE WILL IT FALL? An ominous banner of ash laden clouds unfurls during July 22 eruption of Mt. St. Helens.

Ash cloud of 'black snow' engulfs Yakima

YAKIMA - Twilight and then darkness came to Yakima Sunday morning.

ness. Cars drove with headlights and emergency flashers on, often slowing to five miles per hour as

of ash the trip took them 2 hours. The thunderstorm

Near Nuclear Arms Plant



A MOTHER HELPS CHILDREN SAFELY CROSS STREET in wake of nuclear scare at Three Mile Island plant.

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ASK A BENEFIT MANAGER

401(k) plans will suffer under Reagan tax plan

Q The 401(k) savings plan implemented by my company last year has proven to be very popular with employees, even among the younger participants. I understand that President Reagan's recent tax proposal to Congress, unlike the original Treasury Department tax proposal, does not call for the repeal of these plans but does propose certain limitations on them. Would you describe these limitations, and do you think they will severely restrict the growth of these plans?

A The major provisions of President Reagan's tax proposals affecting 401(k) plans are:

- Employee contributions to a 401(k) plan would be limited to \$8,000 per year, less the employee's contribution (up to \$2,000), if any, to an Individual Retirement Account.

- A new, more-restrictive non-discrimination test would replace the current Average Deferral Percentage (ADP) "one-third/two-thirds" test. The new ADP test would redefine the upper one-third as the prohibited group of employees and would include, among others, any employee earning \$50,000 per year or more. In addition, the new test would require the ADP of each employee in the prohibited group to satisfy the ADP test, rather than requiring the average ADP of the entire prohibited group to satisfy this test.

- Distribution of an employee's 401(k) contributions to a savings plan would be allowed only on separation from service, death, disability or plan termination. Distributions before age 59½ would be subject to a 20% excise tax, plus the ordinary income tax; distributions used to pay college expenses, to buy a first residence or replace unemployment insurance would be subject to an excise tax of 10%. The current rules for in-service distribution that permit tax-free recovery of aftertax contributions first would be reversed.

- The capital gains and 10-year averaging treatment on lump-sum distribution and the special treatment for unrealized appreciation on employer securities would be eliminated.

- The \$50,000 limit available for loans would be reduced by the highest outstanding balance owed by the employee during the preceding 12 months.

There are several other features in the president's proposal affecting the contribution limits, eligibility and employer matching provisions of 401(k) savings

plans. These are consistent with the thrust of the proposal, which is to lower individual and corporate tax rates by broadening the tax base and eliminating special preferences.

Fortunately, the employee benefits community appears to have been successful in convincing the administration of the social worth of 401(k) savings plans. Unfortunately, we apparently have not convinced the administration these programs should be allowed to develop and grow as they have in the past.

The "bottom line" of the proposal is that it will stop the growth of 401(k) plans. It restructures these plans more toward retirement than toward savings, and thus is biased against younger employees.

I believe these employees, who increasingly must bear the financial burden of supporting the Social Security and Medicare systems, can argue legitimately that the achievement of their financial goals during employment is just as significant a social "good" as the goal of older workers in providing for retirement.

One way to overcome this "generation gap" is to adopt a loan provision for 401(k) plans. Loans are permitted under the president's tax proposal, subject to the restrictions noted above, and undoubtedly will become even more important to the plans.

The president's proposal also restricts the effectiveness of the plans as retirement supplements by placing an annual cap of \$8,000 on employee contributions, and unnecessarily complicates the non-discrimination tests applicable to these plans, making them more costly to administer.

In summary, the proposal eliminates the attractiveness of 401(k) plans for younger employees, for highly paid employees and for the company.

Hospice care benefits aid patients, employers

Q There has been much discussion in the media recently regarding the care of the terminally ill patient. Have companies made any special provision in their medical benefits programs for the care of these patients?

A Many companies have recognized the changing public and professional attitudes regarding the terminally ill patient, and the need to provide employees and their families with an alternative to the traditional aggressive surgical, medical and in-hospital therapy usually continued during the final weeks of life for

these patients.

These companies also are concerned with their employees who have to care for a terminally ill spouse or child and, at the same time, struggle to cope with their job.

Accordingly, many employers have added a hospice care expense benefit provision to their medical expense benefit plan that provides reimbursement up to scheduled amounts for the services of hospice care programs.

Hospice care programs have developed from a few dozen in the 1970s to more than 1,340 in 1984. Basically, they provide medical care at home or in a hospice care facility, focusing on keeping the patient free of pain and comfortable, and on enhancing the quality of life for the patient and his or her family.

Their strength lies in being able to provide a wide range of services, and consequently to adapt to the unique needs of each patient. Hospice-team members, for example, usually include at least a physician, a nurse, a social worker, a volunteer and a member of the clergy. Others, like a home health aide or a physical, occupational or speech therapist, are available if the need arises.

A hospice care program often means the terminally ill patient can receive more comfortable care in a restful, home environment or in a hospice care facility. In addition, professional counseling is available to family members.

Generally, the cost of caring for these patients under a hospice program is less than the cost of inpatient hospital care.

Your insurer or employee benefits consultant can advise you on how hospice care benefits can be incorporated into your current benefits program.

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

Ask A Benefit Manager and Ask A Risk Manager answer written questions from readers on risk and benefit management issues.

This month's column, on employee benefit issues, is written by Joseph Duva, director of employee benefits and compensation at SCM Corp. in New York. Next month, Ralph F. Perry Jr., vp and director of risk management at Amfac Inc. in San Francisco, answers risk management questions.

Mr. Duva's and Mr. Perry's columns appear alternately on the second Monday of each month.

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



Mr. Duva

Ambiguous wording construed in favor of insured

The word "cause" in a group insurance policy that treated periods of disability separated by less than six months of uninterrupted active employment as continuous, unless such periods arose from "different and unrelated causes," was ambiguous, an Illinois appellate court ruled.

Thus, the court concluded that the provision would be construed in favor of the insured to refer to the accident, not

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

legal briefs

the resulting injury.

Santiago Herrera worked as a machinist for a railroad. He injured his spine and legs on the job on Oct. 24, 1977. His physician diagnosed a herniated disc in January 1978 and advised him not to return to work until he had fully recovered.

Mr. Herrera was covered under a group insurance policy issued by Benefit Trust Life Insurance Co. He collected a monthly sickness benefit under the policy. Mr. Herrera was released to return to work in May 1978, subject to restrictions on lifting. But, since there was no work available within his capabilities, it was not

until July 11, 1978, that he was able to return to active work.

He was reinjured on the job on July 21, 1978, rendering him totally disabled.

Mr. Herrera filed for monthly accident benefits, but Benefit Trust concluded that he did not qualify because of a policy exception for intermittent periods of disability separated by less than six months, which was considered as one continuous period unless they arose from different and unrelated causes.

Mr. Herrera sued and won in the trial court, although his claim for attorneys' fees and punitive damages for delay in settling were denied.

On appeal, Benefit Trust argued that the word "cause" in the policy exception referred to the "disabling condition" that precipitated the period of disability, which in this case was the herniated disc. The court rejected Benefit Trust's argument that the exceptions provision was merely a variation on commonly designated "recurrence disability" provisions, which have been found to be uniformly clear and unambiguous.

The court emphasized that the policy failed to define the pertinent terms. The award was affirmed, but the court agreed there was no basis for a punitive damages award for unreasonable delay in settling the claim. *Herrera v. Benefit Trust Life Ins. Co.*, Appellate Court of Illinois, June 29, 1984 (BI/01/Ju.-\$5)

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NAIC is prepared to monitor insurers' solvency: Foudree

By CAROL CAIN

KANSAS CITY, Mo.—The National Assn. of Insurance Commissioners has the resources to effectively regulate insurers for solvency, its president says.

"We now have an enhanced Insurance Regulatory Information System, a dedicated examiner team and an examination peer-review system that have put teeth in state regulation for financial solvency of insurers," declared Bruce Foudree in an address at the NAIC's summer meeting in Kansas City, June 9-14.

"Financial information is now being obtained, exchanged and analyzed at a much faster pace. Computerization of the analysis and communication functions has allowed us to create a network for pinpointing troubled companies far sooner and more accurately," said Mr. Foudree, who also is Iowa's insurance commissioner.

In the past, the NAIC has been criticized for being too slow in



Mr. Foudree

identifying financially troubled insurers in order to prevent insolvencies.

"The NAIC may be 114 years old, but it has never been intellectually, physically and financially healthier," Mr. Foudree said.

"You will not see pessimism or negativity among regulators here in these next few days, but rather confidence, optimism and a willingness to confront our challenges directly," he said.

The NAIC meeting attracted 1,182 registrants. NAIC task forces and committees held almost 100 meetings and working sessions.

The solvency of insurers was the subject, directly or indirectly, of several sessions.

The NAIC examiners delivered their preliminary report, showing that nearly 400 insurers are facing immediate financial problems.

And, an insurance advisory committee recommended severely restricting the coverage afforded by property/casualty insurance guaranty funds.

Other task forces and committees dealt with nuts and bolts regulatory concerns involving environmental impairment liability insurance, workers compensation rating, surplus lines, preferred provider organizations, managing general agents and coordination of benefits.

Final action on model laws was taken involving surplus lines, MGAs and coordination of benefits.

Work continues on the other issues, and reports are due at upcoming meetings of the NAIC.

The next zone meeting of the NAIC will be held in Syracuse, N.Y., Sept. 9-11. The next full meeting of the NAIC will be held in Reno, Nev., Dec. 8-13.

Reports on the activities of several task forces and committees of particular interest to corporate insurance buyers follow:

Examiners' report

The short-term survival of almost 400 insurers is threatened, according to the preliminary report of the NAIC team of examiners.

Another 276 insurers may face financial problems in the future, the examiners found.

Of 3,782 insurers—2,083 property/casualty and 1,699 life insurers—the financial reports of 2,937 passed a preliminary scan against financial ratios.

Of 845 insurers audited further, 178 insurers do not require additional regulatory attention, according to the examiners.

But, 667 either were identified as in need of immediate attention or targeted regulatory attention.

An insurer is identified as requiring immediate regulatory attention when the analysis indicates that the insurer's short-term survival is threatened. The examiners found some 186 property/casualty insurers and 205 life insurers were in need of immediate attention.

An insurer is identified as requiring targeted regulatory attention if part or all of its operation appears to adversely affect the insurer's long-term financial condition. The examiners found 171 property/casualty insurers and 105 life insurers were in need of this attention from regulators.

These reports are turned over to state insurance departments for appropriate action.

The examiner team found that many of those insurers with potential financial problems used crea-

tive accounting techniques in their annual statements, including:

- Questionable reinsurance transactions.
- Exchange of assets between affiliated companies at questionable values.
- Adjustments to the valuation of real estate.
- Sale and lease-back of home office buildings, also usually with affiliated companies.
- Sales or other discounting of loss and loss adjustment expense reserves.
- Overall inadequacy of loss reserves.
- Unusually large assets of a questionable nature.
- Substantial investments in affiliates at inflated or questionable valuations.

Guaranty funds

A draft of proposed amendments to the model law governing the operation of state guaranty funds would limit guaranty fund protection.

The amendments were presented to the NAIC's Guaranty Fund Task Force by its insurance advisory committee.

The amendments are designed to preserve the financial strength of guaranty funds by limiting the coverage provided by guaranty funds to those types of insurance deemed essential to individuals and small businesses, the advisory committee said.

Guaranty funds pay claims when licensed insurers become insolvent and cannot pay claims.

Illinois Insurance Director John Washburn, who chairs the task force, characterized the proposed amendments as a "radical departure" from the current Post-Assessment Property & Liability Insurance Guaranty Assn. Model Act.

The draft amendments list those types of insurance to be covered by guaranty funds, thereby excluding all other kinds of insurance from guaranty fund protection.

The draft proposal would provide guarantee fund protection only for the following types of insurance:

- Workers compensation.
- Non-fleet coverage for damage to automobiles used in business.
- Fire and allied lines.
- Agents errors and omissions.
- Third-party bodily injury or property damage liability under general liability and professional liability policies.
- Personal umbrella policies.
- Homeowners and property damage coverage on personal property used for non-business purposes.
- Private passenger automobiles and motorcycles used for nonbusiness purposes.

By their omission from this list, fleet auto insurance policies, for example, would not be covered by guaranty funds if the insurer of these policies became insolvent and could not pay claims.

"It is also recommended that no guaranty fund coverage be provided for claims by a captive insurer's owner," the advisory committee said.

"One of our goals is to avoid covering large commercial enterprises at the expense of personal lines insureds," the advisory committee said.

Under this proposal, it appears, a workers compensation policyholder's claims would not be paid

Continued on page 22

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NAIC meeting

Continued from page 20

by a guaranty fund if its workers compensation insurer had reinsured the risk with the policyholder's captive insurer.

Comments on the proposed amendments and possible changes will be presented to the task force at the September meeting of the NAIC, with final action expected at the December meeting.

Pollution coverage

The NAIC appointed representatives of employer groups, insurers and state insurance regulators to serve as an advisory committee to the NAIC's Environmental Liability Task Force to study environmental liability coverage and insurance for asbestos removal.

The advisory committee will be chaired by George M. Mulligan, senior vp and associate general counsel with the American Insurance Assn. in New York.

Peter W. Gillies, Connecticut's insurance commissioner and chairman of the task force, said the group will study the history of environmental coverages, current market conditions and the insurance industry's responsibility and ability to respond to needs.

Mr. Gillies said the study will address the issue of availability from the perspective of insurance buyers, including generators and transporters of hazardous substances, owners/operators of sites handling of toxic wastes, contractors engaged in the removal of asbestos and in hazardous-waste site cleanups and municipalities.

The advisory committee will consider the role that should be taken by those directly responsible for the generation, transportation and handling of hazardous substances, their insurers and the general public in dealing with these matters, Mr. Gillies said.

The study also will review problems that arise from environmental liability and asbestos removal claims and will recommend solutions.

Commissioners on the task force urged the committee to move rapidly on the study, which is expected to take several months.

Besides Mr. Mulligan, members of the advisory committee include representatives from insurance companies, industry associations and other organizations.

Insurers represented include Aetna Life & Casualty Co. in Hartford, Conn.; Allstate Insurance Co. in Northbrook, Ill.; CIGNA Corp. in Philadelphia; Hartford Insurance Group in Hartford; Liberty Mutual Insurance Co. in Boston; Royal Insurance Co. of America in Chicago; Wausau Insurance Co. in Wausau, Wis.

Industry groups represented are the National Assn. of Professional Insurance Agents in Alexandria, Va.; Reinsurance Assn. of America in Washington; Independent Insurance Agents of America in New York; National Assn. of Independent Insurers in Des Plaines, Ill.; National Assn. of Insurance Brokers in Washington; Alliance of American Insurers in Schaumburg, Ill.

Also represented are Cummings & Lockwood, a law firm in Hartford; National League of Cities in Washington; Chemical Manufacturers Assn. in Washington; Safe Buildings Alliance in Washington; American Petroleum Institute in Washington; Asbestos Research Group Inc. in Houghton, La.; and the Sierra Club in San Francisco.

Work comp rating

The NAIC adopted a resolution "firmly" supporting the contention

that jurisdiction over states' work comp rating systems "lies with the state insurance regulator" and not with state legislatures.

The resolution was in response to lobbying efforts by some employers before state legislatures for laws switching the base for rates to the number of hours worked by employees from the traditional payroll base.

Employers in the construction industry particularly favor basing rates on hours worked because their payroll is so high.

Only one state—Washington—uses a man-hour-based system. This rating method has been used in Washington since the inception of its work comp system in 1911.

Workers compensation insurance rate-makers contend that switching the rate base in other states now would be confusing and costly (BI, March, 26, 1984; April 16, 1984; Sept. 24, 1984).

Several state legislatures have discussed or introduced proposals to change the work comp rating system over the past two years. However, the bills were tabled or killed in anticipation a study by the National Council on Compensation Insurance, a national workers compensation ratemaking and research organization based in New York.

Using information from construction industry employers in Oregon as a basis for the study, the NCCI recommended against changing the method of calculating work comp premiums and suggested instead that additional credits and debits should be worked

into the ratemaking formula to reward employers with a good loss experience and penalize those with a poor track

record.

This system, which is used to calculate work comp premiums in construction classifications, took effect July 1 in Oregon, Illinois and Maryland. Other states are discussing its potential with the NCCI (BI, May 13).

In the NAIC resolution, the organization noted that determining rates is related directly to pricing of insurance, "a complex and inter-related issue, which historically has, and continues to be, a major responsibility of state insurance regulators."

Surplus lines

The NAIC model surplus lines law now includes the requirement that surplus lines brokers forewarn policyholders in writing that their insurance will be placed with a non-admitted insurer and not an insurer protected by a guaranty fund.

The model law was amended to clarify that state guaranty funds will not respond to claims not paid by insolvent surplus lines insurers. The amended version of the model surplus lines law was adopted by the NAIC.

The amendment requires surplus lines brokers to declare in their affidavit filed with state insurance departments that a potential policyholder "was expressly advised in writing prior to the placement of the insurance" that the insurer is not licensed in the state and not subject to supervision. Thus, in the event that the insurer becomes insolvent, the state guaranty fund is protected from having to pay the losses.

"This is going to place the responsibility on the providing broker," said Tharpe Forrester, the acting insurance commissioner in Alabama.

"This amendment is a clarification of our intent from the beginning," said Donald J. Greene, an attorney with LeBoeuf, Lamb, Leiby & MacRae in New York. Mr. Greene chairs the insurance indus-

Continued on next page

Continued from previous page
try advisory committee that drafted the NAIC's model surplus lines law, which was adopted in 1983.

PPO regulation

The NAIC will study the issue of regulating preferred provider organizations and may draft model PPO legislation.

The NAIC is responding to concern by employers, legislators and state insurance regulators that PPOs are largely unregulated, and in some states are even prohibited.

The NAIC's State & Federal Health Insurance Legislative Policy Task Force will form a subgroup to investigate the need for PPO regulation.

"The pressure on regulators is coming from both ends," said Jonathan Neipris, assistant to Pennsylvania's acting insurance commissioner, William R. Muir. Mr. Muir chairs the health insurance task force.

The NAIC task force has studied the issue of PPO regulation, but it has not taken any action, Mr. Neipris said.

"But today it is enough of an issue" to reconsider PPO regulation, he said.

Model law on MGAs

The NAIC adopted a model law setting uniform guidelines for state insurance departments that want to regulate actions of managing general agents that cede reinsurance or assume it on the part of an insurer.

The model law ultimately may be adopted by individual state legislatures. Or, the section of the model that sets minimum guidelines for a contract between an MGA and an insurer may be used as a part of the Examiner's Handbook, used by state insurance examiners in their review of insurers' solvency.

The model law is designed to establish minimum guidelines for regulating MGAs that have the authority to issue policies of direct insurance for an insurer and only in cases where the MGA's contract with the insurer does not contain a prohibition against ceding or assuming reinsurance.

The model regulation does not apply to an MGA that is under common ownership with the insurer or that is the MGA of the U.S. branch of an alien insurer.

The minimum guidelines first were presented to the NAIC's Reinsurance & Anti-Fraud Task Force in 1983 (BI, Nov. 12, 1984).

COB guidelines

Easier-to-read coordination-of-benefits guidelines are now ready to be put into use following action by the NAIC.

The NAIC first developed the guidelines in the early 1970s to serve as a uniform standard for coordinating payment of health care benefits when more than one payor is involved.

The COB guidelines, formally known as "Regulations and Guidelines Relating to the Use of Overinsurance Reduction of Benefit Provisions in Group Health Insurance Policies and Group Service Plan Corporation Contracts," were revised last summer.

At that time, a birthday rule was substituted for the male/female rule in the guideline pertaining to the order of benefits of claims for dependent children (BI, June 18, 1984).

Also at that meeting, an insurance industry advisory committee was asked to rewrite the guidelines to make them more understandable.

An exposure draft of the new language was unveiled at the NAIC meeting last December (BI, Jan. 7) and the final version was adopted last month.

Car-rental waivers

The Market Conduct Surveillance Task Force will study whether collision damage waivers sold to rental-car customers should be defined as insurance and regulated by states.

Car-rental agencies sell collision damage waivers to their customers to cover the deductible in case the vehicle is involved in an accident.

The task force's insurance industry advisory committee reported at the meeting that it believes CDWs are not insurance because there is no transfer of risk.

However, Tony Schrader, a deputy insurance commissioner in Iowa, has asked the NAIC to adopt a model law that calls for CDWs to be subject to premium taxes, unfair trade practice codes and rate regulation.

The average charge for a CDW is \$3.50 to \$6.50. Someone who is

Continued on next page

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The Medical Malpractice Joint Underwriting Association of Massachusetts is seeking bids from insurers to operate the facility, beginning in 1986.

The St. Paul Fire & Marine insurance Company is the present servicing carrier and is expected to bid on the renewal.

This JUA, in business since July, 1975, insures about 11,000 physicians and surgeons and 120 hospitals, with premiums estimated at \$70 million in 1985.

Those interested in bidding may obtain specifications from Richard W. Moore, Executive Director, 40 Broad St. 11th floor, Boston, Ma. 02109.

NAIC meeting

Continued from previous page
charged \$5 per day for a year will pay out a total of \$1,825. "That means you've got to have one loss a year to break even as a consumer," Mr. Schrader pointed out.

And, he stressed, "In point of fact, insurance departments regulate a lot of non-insurance items, like health maintenance organizations and motor clubs."

A report from the study group is expected to be presented at the NAIC's fall zone meeting.

The task force is expected to present its recommendations to the full NAIC for possible action at the December meeting.

Cash-flow plans

Members of the NAIC's Commercial Lines Committee and an advisory committee will study commercial premium payment plans to determine if any of these

plans are currently or potentially injurious to the public.

The advisory committee will include risk managers and representatives of insurance companies.

Existing state laws and regulations governing these plans also will be reviewed to determine whether there is uniformity or whether there is a need for uniformity.

"Whether some or all of these arrangements should be sanctioned, prohibited or just regulated more closely has been the subject of discussion and disagreement," observed Kentucky Insurance Commissioner Gil McCarty.

Some states have elected to liberalize their rules governing the operation of commercial premium payment plans, but a few states have adopted a more restrictive attitude toward these plans, he said.

"As a result, there is no consistent and uniform standard throughout the United States for the multistate purchaser of insur-

ance," Mr. McCarty said.

Commercial premium payment plans are known by such names as cash flow premium plans, deferred premium collection plans, paid loss retro plans and compensating balance arrangements, Mr. McCarty told members of the committee.

These plans grew popular, particularly for workers compensation, as large insurance buyers sought to reduce their immediate cash flow and expenses by forming captive insurance companies and self-insuring their risks.

Commercial insurers, trying to maintain market share, introduced premium payment plans as an alternative risk financing method.

Generally, the premium charged for one of these plans closely tracks the policyholder's loss experience and the insurer allows the policyholder to hold the premium until losses are due or gives the policyholder credit for investment income earned by the insurer. ■



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AMBAC bond business sold

NEW YORK—The municipal bond insurance business of AMBAC Indemnity Corp. has been sold to an investor group led by Citibank N.A. and including Xerox Corp., Stephens Inc. and AMBAC management.

The sale is the realization of the last major goal of the Special Masters' Commission set up by state courts in Arkansas and Indiana to separate MGIC Investment Corp. of Milwaukee from the financially troubled Baldwin-United Corp. AMBAC was a subsidiary of MGIC.

H. Russell Fraser, president and chief executive officer of AMBAC, said, "It is not anticipated that any substantial changes in the present management, personnel or operations of AMBAC's municipal bond insurance business will result from the sale."

He added he is looking forward to "the support of AMBAC's new investors in restoring AMBAC to its leadership position in the financial guarantee market."

New York-based Citibank, which is leading the investor group, is the world's largest banking institution.

Xerox Corp., based in Rochester, N.Y., is a leading office products and information processing company. And, Stephens Inc. is an investment banking firm in Little Rock, Ark.

The Special Masters' Commission is chaired by Thomas P. Fox, the Wisconsin insurance commissioner. Other members are the Indiana and Arkansas insurance commissioners, the chairman of Baldwin-United Corp., and a representative of the group of banks that financed Baldwin-United's acquisition of MGIC.

AMBAC pioneered municipal bond insurance in 1971, and it was the first company to insure new municipal issues as well as the bonds held in unit investment trusts, mutual funds and municipal portfolios. All bonds insured by AMBAC are rated Triple-A by Standard & Poor's Corp. ■

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Ruling on RICO

Continued from page 2

of electronic components accused of inflating its bills with nonexistent expenses.

However, the Supreme Court, in a 5-4 vote, overturned the Second Circuit decision last week, finding no support in the wording of RICO or in its legislative history for the limitations the lower court had imposed.

Associate Justice Byron White, writing for the majority of the court, noted that RICO requires that a pattern of racketeering activity be established only by prior "violations" of federal law and that "the word 'conviction' does not appear in any relevant portion of the statute."

"The only specific reference in the legislative history to prior convictions of which we are aware is an objection that the treble damages provision is too broad precisely because 'there need not be a conviction under any of these laws for it to be racketeering,'" Justice White wrote.

The appeals court had noted that requiring prior convictions would avoid the danger of RICO defendants being stigmatized as "racketeers" and would avoid the problem of developing standards by which previous violations would be proved.

In a footnote to its opinion, the Supreme Court noted that the appeals court's ruling "is not without problematic consequences of its own," including the fact that lawbreakers are often not convicted and that criminal convictions are often limited to a "small portion of the actual or possible charges."

The appeals court ruling also would create an incentive for criminal defendants to plea-bargain to charges that could not be used under the RICO statute as "predicate acts" for establishing a pattern of racketeering activity, thus avoiding potential liabilities for civil damages, the Supreme Court said.

The Supreme Court also rejected the appeals court's requirement of a "racketeering injury" resulting from acts other than those used to

prove a pattern of racketeering activity.

"If the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim" under the statute, the opinion reads. "There is no room in the statutory language for an additional, amorphous 'racketeering injury' requirement."

The opinion also noted that the appeals court had attempted to apply principles of antitrust law to RICO in its "racketeering injury" requirement.

The court observed, however, that Congress had rejected adding "RICO-like" provisions to the Sherman Act because it would burden plaintiffs with requirements that made sense only in antitrust cases.

"In borrowing its 'racketeering injury' requirement from antitrust standing provisions, the court below created exactly the problems Congress sought to avoid," the opinion says.

The court also noted the appeals panel's objection that RICO, instead of being used against mobsters and organized criminals, has become a tool in fraud cases against "respected and legitimate enterprises."

But "Congress wanted to reach both 'legitimate' and 'illegitimate' enterprises," the opinion reads. "The former enjoy neither an inherent incapacity for criminal activity nor immunity from its consequences."

The Supreme Court's opinion will probably increase the use of RICO in civil fraud litigation, lawyers agree.

"I assume that every securities fraud case will include a RICO count," Mr. Weissman said.

Noting the opinion's statement that "RICO is to be read broadly," Mr. Weissman predicted that "eight out of 10 civil RICO suits in the future will quote that."

"It's a real debacle for defendants and a real boon for plaintiffs," he observed.

In addition to new suits, many cases that had been dismissed based on the now overturned appeals court's decision could be refiled, Mr. Weissman noted. Others that had been stayed not will proceed, he added.

However, some observers say the increase in RICO litigation will not be severe.

"Much of the concern about RICO is being blown out of proportion," said G. Robert Blakey, a law professor at Notre Dame University and consultant to Congress on the drafting of RICO.

About 65% of pending RICO cases would be in federal court on other grounds without the RICO allegations, Mr. Blakey pointed out.

The decision also may increase insurers' defense costs in negligence lawsuits filed against policyholders, according to David Spector, a lawyer with the Chicago firm of Isham, Lincoln & Beale.

"The stakes in fraud litigation are going to go up, and since fraud allegations are usually appended to negligence claims, the cost of these actions will rise for insurance companies," Mr. Spector said.

He added that errors and omissions and directors and officers liability insurers also will need to consider whether their policies will

cover treble RICO damages. General liability policies probably would not cover such damages since they typically exclude losses from intentional acts of policyholders, he explained.

The Supreme Court's opinion doesn't represent an endorsement of RICO so much as a strict interpretation of its language, critics of civil RICO actions say.

"Ultimately, (this was) an exercise of judicial restraint," Mr. Spector observed.

"I certainly don't think that the Supreme Court was giving a stamp of approval to RICO," he said.

"The Supreme Court is very concerned about opening the floodgates of civil fraud cases in federal court."

Any spread of civil RICO suits will now have to be contained by an amendment to the act in Congress, observers say.

"This puts us in the position of forging ahead on the legislative front," said Bill Larsen, senior counsel for the American Insurance Assn. in Washington.

The American Insurance Assn. joined with several others—including the Alliance of American Insurers, the American Council of Life Insurance, the National Assn. of Independent Insurers and State Farm Group—in a friend of the court brief supporting the Second Circuit's ruling in the Sedima case.

Mr. Weissman added that lower courts may limit civil RICO actions by developing new narrower definitions of what constitutes a "pattern of racketeering activity."

The Supreme Court may have offered a signal on this point when it noted a failure of Congress and the courts to adequately define such a pattern, he said.

"You may allege a bunch of criminal acts, but they (may not) constitute a pattern," Mr. Weissman said.

He added, though, that the Supreme Court opinion may hinder the passage of RICO amendment that adopts the Second Circuit's "prior criminal conviction" standard.

The Supreme Court commented that such a standard "would be inconsistent with Congress' underlying policy concerns," since it would "severely handicap potential plaintiffs."

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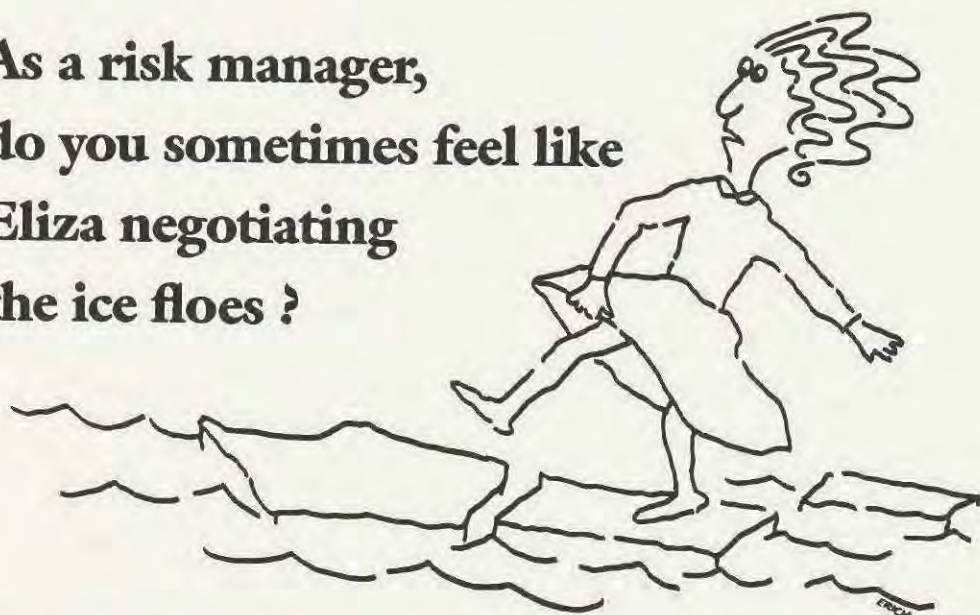
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Other high court rulings

Before adjourning last week, the Supreme Court also ruled:

- The Employee Retirement Income Security Act of 1974 does not give employees the right to seek punitive damages for the alleged mishandling of a disability claim.

"There is a stark absence—in the statute itself and in its legislative history—of any reference to an intention to authorize the recovery of extra-contractual damages," said Justice Paul Stevens, who wrote the decision.

The 8-0 ruling overturns a 9th U.S. Circuit Court of Appeals decision that said Section 409 of ERISA gave courts "wide discretion" to award damages.

The decision involved a suit by an employee of Massachusetts Mutual Life Insurance Co. of Springfield, Mass., who said the insurer mishandled her claim for disability benefits.

- Non-residents can be included as plaintiffs in class-action suits in state courts.

In an 8-0 ruling last month, the justices said a state court can have jurisdiction over a class-action suit, even though the vast majority of the plaintiffs are residents of other states.

"Most of the plaintiffs would have no realistic day in court if a class action were not available," Justice William Rehnquist wrote.

The ruling came in an case involving Phillips Petroleum Corp., which has said it was unconstitutional for a Kansas court to handle a class action involving natural gas royalty payments because only 2.7% of the class members were state residents.

- The First Amendment does not protect defendants against punitive damages for libelous statements that don't concern "matters of public concern."

In a 5-4 decision, the justices rejected arguments by Dun & Bradstreet Inc., which supplies business credit information, that it is entitled to the same protection from punitive damages that is afforded to newspapers, magazines and the electronic media.

"There is simply no credible argument that this type of credit reporting requires special protection" from punitive damages, Justice Lewis Powell Jr. wrote for the majority.

"We have long recognized that not all speech is of equal First Amendment importance," Justice Powell added.

Dun & Bradstreet had been sued by Greenmoss Builders Inc., a central Vermont construction company, for publishing an erroneous report that the company had filed a voluntary bankruptcy petition (BI, Oct. 8, 1984). Dun & Bradstreet published a correction, but a jury later awarded \$350,000 in damages to Greenmoss.

Prudential suit

Continued from page 3
Boston buildings.

"This lawsuit seeks to recover the money spent and to be spent to insure the safety of the Prudential Center for the general public and tenants, as well as other losses and damages suffered and to be suffered as a direct and proximate result of the various acts or omissions of defendants herein," the suit says.

"We felt that despite the fact that there might be exposure down the road for Prudential Re, we owed it to our policyholders to pursue any remedies we could," said William Bonn, assistant general counsel for Prudential Insurance in its Newark, N.J. headquarters.

Prudential is a mutual insurance company owned by its policyholders.

"Even though Prudential Re has an interest in the case, as long as the bottom-line recovery of Prudential exceeds what Prudential Re pays, the case was worth it," he added.

Prudential's suit charges that the defendants are liable under the theory of strict liability, and also are liable for negligence and wanton misconduct, breach of express and implied warranties, fraud and misrepresentation, nuisance, restitution, intentional tort, concert of action and conspiracy.

It alleges the defendants were negligent and engaged in wanton misconduct because they failed to properly warn Prudential, to adequately test the products, to develop alternative products, to offer safe alternative products and to correct or remedy the conditions created in the Prudential Center buildings.

Prudential included a demand for \$100 million in punitive damages "after quite a bit of soul-searching," said Mr. Bonn.

"It was not done cavalierly," he added.

Prudential also seeks to take advantage of the "concert of action" theory, which says that if it can't identify all of the asbestos products or their manufacturers or sellers, all the defendants should be liable for damages.

Prudential "has suffered damage and has expended, and will in the future expend, various and sub-

stantial sums of money for the monitoring, detecting, and control of the asbestos materials and products within plaintiff's buildings, to protect those persons frequenting their property, and to comply with governmental regulations," the suit adds.

"Plaintiff has also suffered and will continue to suffer in the future a diminution of value of its property, loss of full use and enjoyment of its property, including but not limited to interruption and loss of rental income, all as a result of defendants' acts and omissions set forth above."

A spokesman for Prudential Re, also based in Newark, said the reinsurer has written reinsurance or excess coverage for more than one defendant, but declined to elaborate.

"We do have coverage—either reinsurance or direct excess coverage—with those manufacturers named in the suit," said the spokesman.

He said he knew that some treaty coverage was involved as well as direct excess insurance.

However, it is known that Prudential Re wrote excess coverage for Keene Corp., which is one of the defendants in the Prudential lawsuit.

A recent lawsuit Keene filed against its post-1977 excess insurers names Prudential Re and Gibraltar Casualty Co. as a defendant and alleges it wrote four excess insurance policies for Keene from 1977 to 1980.

In its suit, Keene asks that all the defendants including Prudential Re, and Gibraltar defend and "pay in full... Keene's legal liability for all building lawsuits."

"It could be an interesting development if Pru Re decides to deny coverage on a suit by their parent against Keene," said Charles Foster, director of risk management for Keene.

Other defendants contacted said that Pru Re did not write excess insurance for them.

Several insurers of the defendants declined to identify their reinsurers or did not return phone calls.

Travelers does reinsure with Prudential Re, but a spokesman for Travelers said a facultative agreement for AC&S risks for the years

1983 and 1984 had an exclusion for asbestos or asbestos removal as named perils.

If any of the defendant's insurers that reinsured with Prudential Re are called upon to pay a claim involving Prudential, "Prudential Re would act as it normally acts in a reinsurance situation," said a spokesman.

He noted that Prudential Insurance is a large company and the interests of its subsidiary Prudential Re do not necessarily dictate what approach the parent will take on issues.

"We're separate companies and each is operating in its own environment and sometimes things like this happen," the spokesman said.

"Certainly whether or not we're involved as a reinsurer will not determine what Prudential does and how it should operate.

"That's what happens when you have companies operating independently to a certain extent," he added.

"They're the parent and have chosen to do it."

Prudential Re may not have been notified before Prudential filed the suit.

"I believe they were contacted, but I didn't place the phone call. I'm sure they must have been," said Mr. Bonn of Prudential.

Prudential Re, with net written premiums of \$450 million, lost \$130 million in 1984. A major contributing factor was the need to increase reserves for asbestos-related claims and deteriorating conditions in the excess and surplus lines market, according to The Prudential's annual report.

The Prudential Re spokesman would not comment on the amount of Prudential Re's reserves for asbestos claims except to say it was a "substantial amount."

"We put up reserves for asbestos exposure in both reinsurance lines and excess and surplus lines activities," he said.

"We feel we are very adequately reserved for asbestos liabilities," he added.

In addition to Keene, Prudential Re has written excess insurance for other asbestos producers not named in Prudential's suit.

These include Manville Corp., Eagle-Picher Industries Inc., The Flintkote Co. and GAF Corp. Gibraltar Casualty Co., a subsidiary of Prudential Re, also wrote excess insurance for Manville.

The defendants in the Prudential suit have until Aug. 1 to file an answer or other court papers in lieu of an answer.

A spokesman for W.R. Grace & Co. said "based on the best information we have available, we don't understand why we're in the lawsuit because we didn't supply the product to Prudential."

Spokesmen for other defendants declined to comment.

Film Recovery officials sentenced

Continued from page 1

on the material safety data sheet, was observed by the three defendants standing before me in this court, and they ignored it."

The judge also commented on the use of illegal aliens at the plant: "My feeling is no illegal alien should work in this country. They should be sent back to where they came from, whether it's Mexico, Poland, or anywhere else, if they are illegals. But, needless to say, once they are here, and whether they are illegal or not, there are certain humane treatments that must occur to all workers."

The case is believed to be the first time officials of a United States corporation have been found guilty of murder in the death of an employee (BI, June 24). The three officials—Steven O'Neil of Helena, Mont., president of Film Recovery and one of its two parent companies, Metallic Marketing Systems; Charles Kirschbaum of Des Plaines, Ill., plant manager; and Daniel Rodriguez of Waukegan, Ill., assistant plant manager—were found guilty of murder and 14 counts of reckless conduct on June 14 after an eight-week bench trial.

On July 1, each defendant was sentenced to 25 years in prison on the murder charges—five years above the 20-year minimum set out in Illinois law—and fined \$10,000, plus \$70 for court costs and \$25 under Illinois' Crime Victim Assistance Act.

Each also was sentenced to 364 days on each count of reckless conduct. This 14-year sentence will run concurrent with the 25-year sentence, Judge Banks noted.

Under Illinois law, there is no parole for persons sentenced on murder charges, said Jay Magnuson, chief of the criminal prosecution bureau of the state's attorney's office. However, the defendants could be released on good behavior after serving 12½ years, he noted.

The \$2,500 bond for each defendant was revoked twice by Judge Banks—first when the verdicts were issued and then at sentencing—but each time defense attorneys were able to have the bond reinstated by an Appellate Court panel. The three defendants spent several hours in the county jail both of those times, but were released after posting \$250 bail.

The state's attorney's office was expected to go to the state Supreme Court late last week to ask that the bond be revoked or raised to a limit more in accord with a murder conviction and a sentencing of 25 years in prison.

Also found guilty on charges of involuntary manslaughter and 14 counts of reckless conduct were the corporation itself and one of its parents, Metallic Marketing Systems.

Each was fined \$10,000 on the involuntary manslaughter charges, plus \$70 for cost and \$25 for the state's crime victim program. The corporations each also were fined \$14,000—\$1,000 for each of the 14 counts of reckless conduct. The judge stayed the fines for 90 days for Film Recovery Systems, citing the corporation's bankruptcy status.

Defense attorneys filed a notice to appeal shortly after the sentencing.

During the trial and at the sentencing, defense attorneys verbally painted pictures of the defendants as classic examples of middle-class America: hardworking, religious, family men.

One of the defense attorneys noted that his client's name has been in practically every major metropolitan newspaper and several magazines, in which a "callously" painted picture was presented.

Another defense attorney compared the proceedings to the Salem witch-hunt trials and said he was confident that through the appellate process "the errors of this court will be corrected."

Judge Banks responded to the one defense attorney's statements by saying: "I heard the words like 'witch-hunt,' gross injustice by this court, but I didn't hear a word from anyone saying, 'What about Stefan Golab?'"

"There is no one in this courtroom, aside from maybe me and the prosecution, (who) is even sorry Mr. Golab is dead. I have never heard that. That is the gross injustice we have in this case."

Some employers and legal experts throughout the country who have watched this case closely fear it will spark similar cases that may not be justified.

At issue is whether incidents involving workers' safety that can be proven to show a lack of due care by corporate officials will be automatically interpreted as "intentional" criminal conduct, said Sam Roth, associate manager of employee relations for the U.S. Chamber of Commerce in Washington.

"Let's not forget the innocent risk manager, safety manager and workers compensation administrator," Mr. Roth said. "You're exposing a whole class or job of people to criminal charges."

Health cover rights studied

Twenty-three of the 50 states have laws giving employees the right to continue group medical coverage after termination or separation from service, according to a recent study by Hewitt Associates, a consulting firm in Lincolnshire, Ill.

Under these laws, the employee must pay the entire premium for medical coverage, rather than just the employee's share. But, group rates still typically make this coverage less expensive than individually purchased medical insurance.

The states with continuation laws are Arkansas, Connecticut, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, West Virginia and Wisconsin.

According to the Hewitt study, which includes a chart summarizing the state laws, 19 of the 23 laws apply to companies with insured plans only. However, in New Hampshire, Ohio and South Dakota, the laws also cover self-insured plans. And, Iowa decides the issue on a case-by-case basis.

The maximum length of time that an employer must offer the continued coverage ranges from four weeks, in Kansas and South Carolina, to about 77 weeks, in West Virginia and Wisconsin. The

average is 29 weeks.

In most states, the law applies to medical plan contracts written in the state. Therefore, an employee could work in another state and still be covered under a continuation rights law because his or her employer's medical plan was written in a state with such a law.

Most of the laws cover all employees who leave an employer. But, the Iowa law covers only employees on layoff or approved leave.

And, in Massachusetts, Nebraska, Ohio, Rhode Island and West Virginia, the law covers only employees who have been involuntarily terminated.

In addition to the 23 states with broad continuation rights laws, Louisiana and New Jersey have more narrow laws, the study says.

Louisiana's applies only in the case of the death of an employee with a spouse aged 50 or older, and New Jersey's covers only employees who leave a company because of disability.

And, the survey notes that 61% of the laws were passed since 1980, when layoffs became common.

Copies of the survey, "Continuation of Group Medical Coverage—A Study of State Laws," are available for \$25 from Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60015. Attention: Greg Martin; 312-295-5000.

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CEBS in Canada

A Certified Employee Benefit Specialist program will be introduced in Canada early next year.

The program is co-sponsored by the International Foundation of Employee Benefit Plans and Dalhousie University of Halifax. Like its U.S. counterpart, it will consist of 10 university-level courses.

The courses will cover key areas

of benefits in Canada, and individuals who pass all 10 examinations will receive the designation of Certified Employee Benefit Specialist. Twenty testing centers will be set up across Canada.

IFEBP President Henry S. Hunt said Dalhousie University will be responsible for the academic content of the program, and the IFEBP will handle administration.

The program director at Dalhousie

will be Greg Trask, senior associate of the university's Advanced Management Centre. An internal advisory committee of academics will help with program development, and an external committee of benefits experts throughout Canada—including members of the IFEBP's Canadian CEBS Subcommittee, will act as consultants.

The first two courses to be introduced in the Canadian program

will be Management Principles and Investment Analysis and Portfolio Management. Study materials will be available for these two courses early in 1986, and the first examinations will be offered in June.

The remaining courses, which will be phased in through mid-1987, are Government-Sponsored Benefit Programs, Life, Health and Other Group Benefit Programs; Pension Plans and Other Retirement

Arrangements; Contemporary Legal Environment of Employee Benefit Plans; Accounting and Information Systems; Personnel and Labor Relations; Employee Benefits and the Economy; and Contemporary Benefit Issues and Administration.

For more information, contact the CEBS Department, IFEBP, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

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Financial:

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Secretaries, treasurers, controllers and other financial personnel 7,167

Risk/employee benefits:

Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations 8,206

Sub-total 22,627

Associations 1,081
Government, unions and educational systems 944

Commercial Consumers

Sub-total 24,652

Insurance agents and brokers 9,524
Insurance companies 5,867
Financial institutions 556
Actuaries, attorneys, adjusters, appraisers and consultants 3,265
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TOTAL 45,007

* Source: Business/Occupational breakdown of qualified circulation, Nov. 5, 1984 issue, as submitted to BPA for Dec. 1984, BPA Publisher's Statement.

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Defense costs

Continued from page 1

The PIA also is standing by the statement. William G. Bailey, president of the national PIA, said the group has not had time to study the defense-cost proposal. "So, we don't know yet what problems may result from it. We really have to deal with the concerns of all of our state associations in regard to their support or non-support of the situation."

The IIAA and PIA have also expressed a willingness to meet with ISO to discuss the issue.

Bruce T. Wallace, executive vp of the National Assn. of Casualty & Surety Agents, which represents national and regional brokers, said the group has "grave concern over the concept and what it will do to the limits of coverage for our clients."

Mr. Wallace said, "We have not taken a position per se because ISO's decision is so new."

Similarly, the National Assn. of Insurance Brokers, which represents many of the largest U.S. brokerages, has not yet taken a position. "We are aware that there are several grave concerns about the entire new policies," said David Lambert, executive director of NAIB. "Our committee is reviewing the defense-cost provision now."

The defense-cost provision is not a shoo-in among states that have approved the new CGL forms. In Louisiana, where the forms were recently approved, Insurance Commissioner Sherman Bernard said, "I would assume we are not going to go along with it."

Mr. Bernard said he is concerned that defense costs would use up entire policy limits, leaving nothing for indemnification.

Bruce Foudree, Iowa insurance commissioner and president of the National Assn. of Insurance Commissioners, said his department will study the proposal closely. He noted that he is aware of the opposition and concern regarding inclusion of defense costs within policy limits.

"We're absolutely sympathetic to the need to control defense costs, but before any policy is approved in this state, I want to know what impact it will have on the policyholders," said Mr. Foudree, whose state approved the new CGL forms.

The new CGL forms have faced a stiff fight for approval in North Carolina, where officials have disapproved them twice and are still considering the proposed forms. A spokesman for the state's insurance department said the defense-cost provision would "make a big difference in coverages. We're still studying it."

In addition to the new CGL forms, the new defense-cost provision applies to ISO's monoline and commercial package policies, but not to its business-owners policy, which is a commercial package for small businesses and includes property, liability, and multiperil protection.

The business-owners policy was not included in ISO's defense-cost study. But, it will be reviewed in the future as will other areas, like personal lines, to determine if defense costs can be included in limits for those coverages.

Defense costs also will be included within policy limits under miscellaneous liability policies such as liquor and pollution liability.

Some ISO policies already include defense costs within policy limits, such as ISO's policy for lawyers' professional liability insurance.

The cost of defense would be applied under the general liability policy to the appropriate aggregate limit: the aggregate for products and completed operations or the aggregate for all other coverages.

ISO is proposing discounts on advisory rates for products and completed operations liability coverage, as well as for premises and ongoing operations coverage when defense costs are included within policy limits.

ISO recommends premium reductions of 2% to 16% for premises and ongoing operations coverage, depending on the aggregate limit, according to an ISO spokeswoman. For products and completed operations, the savings would range from 2% to 36%, she said.

The premium for limits of \$100,000 per occurrence and a \$100,000 aggregate, for example, would be discounted 7% for premises and ongoing operations and 21% for products and completed operations.

Other discounts have not yet been determined, but ISO said it will issue an advisory circular as soon as new advisory rates are set.

While including defense costs within policy limits, an optional endorsement will be available for the policyholder and the insurer to share defense costs above a set "floor" amount.

All defense-cost payments up to the floor amount will be charged against policy limits.

"The floor will typically be set high enough so defense expenses usually won't go through it," Mr. Savage said. Unless otherwise specified, the endorsement would provide a \$15,000 floor.

Costs exceeding that floor would be shared 80% by the insurer and 20% by the insured, but amounts paid by the insurer above the floor would also be included within policy limits.

By choosing the endorsement, policyholders could reduce their premium costs, but ISO has not determined how much the endorsement will save policyholders.

In announcing the new defense-cost provision, Mr. Savage contended that several benefits would be realized, including:

- A reduction in legal-defense spending because the policyholder will have incentives to eliminate unnecessary and wasteful expenditures.

- A reduction in taxpayers' cost of operating the civil justice system as courts handle fewer and shorter cases.

- Lower premiums for insurance buyers for the same policy limits.

- The ability to use the savings on lower premiums to purchase higher policy limits.

- An easing of rising defense costs that will result in lower future premium increases.

- Faster payments to injured parties because unnecessary legal maneuvers will be reduced.

- Larger shares of the amount of money now spent on processing

and settling claims will go to injured parties.

Agents and brokers are questioning ISO's claim that buyers will see a reduction in premiums as a result of the defense-cost measure.

NACSA's Mr. Wallace said, "My reaction is that there would be expectations for premium rates to be reduced." However, he noted, "We can't realistically expect that there are going to be substantial reductions."

Nelson Green, senior vp of Poe & Associates in Tampa, Fla., said, "Practically, I would certainly expect a reduction in premium. Whether this will in fact occur remains to be seen."

Earl Lanning, vp of Crump Cos. Inc. in Memphis, Tenn., suggested that while premiums would not be reduced, they would not rise as much as without the amendment.

"There used to be a 5% adjustment in premium costs to account for defense costs," said Mr. Lanning. "Now they represent about 12% of the costs an insurance company faces."

In some cases, he added, like medical malpractice and directors and officers liability lawsuits, defense costs can add up to 50% of the cost of a claim.

Donald Thomas, executive vp at Crump, said the defense-cost provision could lower premiums for policyholders that do not choose to raise policy limits. But, because rates in general are rising, the reduction "may be hard to see," he said.

Both Mr. Lanning and Mr. Thomas endorsed the coverage change.

"Frankly," Mr. Thomas remarked, "except for tradition, it doesn't make sense to limit the amount of risk on a policy and have unlimited defense coverage."

"I don't know of anyone else that does that. Many manufacturers will limit their warranty to the cost of the product."

Policyholders will have to increase their limits to maintain the same coverage they have today, brokers agree.

Mr. Green of Poe & Associates said the inclusion of defense costs within policy limits "will very definitely limit the amount of coverage a client has. It could be a vast limitation in the professional liability area, such as for lawyers and doctors."

He said policyholders will need an average of 25% more coverage for defense costs, "or you could blow your limits on one case."

Mr. Lanning of Crump suggested that the amount of additional insurance needed will vary with the type of coverage. Professional liability risks needing 25% to 50% more coverage and general liability "in the neighborhood of 12% to 15%."

There is some support for ISO's contention that including defense costs within policy limits will muster more support for civil justice reform. "This might rally a much broader base of the populace to add to the hue and cry for changes in the civil justice system," said Mr. Thomas of Crump.

However, there does not appear to be much support for ISO's contention that including defense costs within policy limits will provide an incentive for policyholders "to control spending for defense by giving the policyholder a financial stake in how defense money is spent," as Mr. Savage said.

The IIAA and PIA have said limiting defense costs merely shifts the cost of legal defense to the policyholder. "The consumer will be penalized in some circumstances by having to pay a portion of defense costs," their statement reads. "The requisite study has not been done to confirm that such coverage changes in fact would contain defense costs, rather than just shift these costs to insureds and potentially increase litigation."

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Jun 3	May 21
Jun 10	May 29
Jun 17	Jun 5
Jun 24	Jun 11
Jul 1	Jun 19
Jul 8	Jun 25
Jul 15	Jul 3
Jul 22	Jul 9
Jul 29	Jul 17
Aug 5	Jul 24
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Aug 19	Aug 7
Aug 26	Aug 13
Sep 2	Aug 20
Sep 9	Aug 28
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Sep 23	Sep 11
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1986

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update

Mentor liquidation ordered

Continued from page 2

quested an insurance company liquidation and the first time it has moved against a captive owned by a major U.S. corporation.

In ordering the liquidation, the judge also ordered that the winding up costs be paid out of Mentor's assets.

Charles Kempe, a Bermuda chartered accountant, and Mrs. Daniels were appointed provisional liquidators.

New syndicate approved on IIE

CHICAGO—NUA Syndicate Inc. is expected to begin doing business on the Illinois Insurance Exchange later this month or early in August.

IIE approved the new syndicate—the fifth addition this year to the exchange—last month. It is expected to be capitalized at no less than \$10 million, which is more than the total capitalization of the other four new syndicates combined (BI, April 22).

NUA Syndicate Inc. is a subsidiary of NUA Holdings Inc., based in Chicago, which is a subsidiary of London United Investments Ltd. The London company also owns H.S. Weavers (Underwriting) Agency Ltd., an underwriting agency in London. In an earlier Business Insurance article, Weavers was mistakenly identified as a Lloyd's of London syndicate.

The new syndicate will be managed by NUA Management Inc., the successor to National Underwriting Agency Inc., said Dick Foss, president of both the new and old management agencies, as well as president of the new syndicate. NUA Syndicate is planning to write excess liability insurance—excluding professional liability insurance—and some property insurance, Mr. Foss said.

Plan administrator pleads guilty

LOS ANGELES—A pension plan administrator has pled guilty here to embezzling \$338,000 from two pension funds he managed and could face additional charges for ignoring a court-ordered restitution plan.

Morton Finkelstein pled guilty to two counts of embezzlement and one count of mail fraud July 1 in the U.S. District Court in Los Angeles. He is scheduled to be sentenced Sept. 16 and faces a maximum of 15 years in prison and a \$21,000 fine, according to Walter Kuiland, an investigator in the U.S. Department of Labor's criminal case against Mr. Finkelstein.

Mr. Finkelstein was charged with embezzling \$236,931 in assets from the pension fund of the now-defunct Pioma-Ciocca Enterprises Inc. in Arcadia, Calif., and \$101,000 from the fund of Malouf Industries Inc., a garment manufacturer in Burbank, Calif.

Mr. Finkelstein owned and operated National Research Administrators Inc., a Canoga Park, Calif., administration firm that was also known as Nationwide Pension Planners Inc. and National Research & Concepts Inc. (BI, Nov. 7, 1983).

In a separate action related to a civil suit filed in October 1983, the Labor Department is pursuing contempt-of-court charges against Mr. Finkelstein relating to an August 1984 court order to repay two of his clients, another investigator says.

The court had given Mr. Finkelstein 180 days to pay Malouf \$170,154, the amount the trust would have held if managed properly. He also was ordered to pay York Engineering Inc. in Eagle Rock, Calif., \$55,490, a projection of what the company's plan was to have earned if funds had been invested properly.

Mr. Finkelstein has made no attempt to repay the businesses, according to the Labor Department.

Municipal woes

Continued from page 1
county supervisors' association.

After filling out that layer, it was not expected to be a problem to find insurers for layers between \$5 million and \$15 million, Mr. Fleming said.

M&M expected to have coverage lined up by the end of last week, said D. Michael Enfield, managing director of M&M in San Francisco.

These are only a sampling of the many public entities that are having difficulty finding liability coverage, especially for police and public officials liability risks.

The market for public entities' liability coverages is "extremely limited" and "diminishing to nothing," said Bruce Henriksen, assistant vp at L.W. Biegler, an underwriting manager in Chicago for International Surplus Lines Insurance Co. in Chicago.

"Available capacity has dropped significantly" over the last 12 months, agreed Randall Goss, president of Dallas-based Unimark Special Risks Inc., underwriting manager for Republic Insurance Co. and Vanguard Insurance Co., which are also based in Dallas.

A *Business Insurance* survey of the market found that three more insurers have stopped underwriting liability coverage for public entities since the beginning of the year and another plans to stop writing the coverage by Aug. 1. That brings to 12 the number of insurers that have stopped writing the coverage in the last two years.

Fleeing the market within the past six months were Aetna Casualty & Surety Co., Home Indemnity Co. and INAPRO, a CIGNA Corp. subsidiary.

Aetna ceased writing all new municipal liability insurance last December and stopped renewals Jan. 1 (*BI*, Dec. 3, 1984).

On April 1, Home canceled all of its public official and police professional liability policies, which had generated about \$6 million in premiums in 1984, after its reinsurance treaties were not renewed.

INAPRO stopped writing new or renewal public official liability coverage in February.

And, beginning Aug. 1., Utica Mutual Insurance Co. will not renew any public entity general liability policies now in force, 95% of which are held by cities and counties in New York (*BI*, May 20).

These four follow at least eight insurers that stopped writing liability coverage for public entities in 1983 and 1984 (*BI*, Oct. 8, 1984).

They are Ideal Mutual Insurance Co. in New York; Great Southwest Fire Insurance Co. in Scottsdale, Ariz.; Compass Insurance Co. in New York; Cherokee Insurance Co. in Nashville, Tenn.; Guaranty National Insurance Co. in Englewood, Colo.; Canadian Indemnity Co. of Winnipeg, Manitoba, Canada;

United National Insurance Co. of Philadelphia, Pa.; and Transit Casualty Insurance Co. in Los Angeles.

Ideal Mutual is in liquidation in New York, Cherokee is in rehabilitation in Tennessee, Compass is running off its business and Transit Casualty has temporarily suspended underwriting.

And, several regional insurers have dropped out of the market, including some Midwest mutual companies, said Robert C. Vogt, underwriting manager for Markel Service Inc., a broker and managing general agent in Richmond, Va.

The remaining 12 insurers in the market are raising prices and tightening underwriting terms, including moving to a claims-made policy form from an occurrence form for police professional coverages.

The reasons for the crunch: Insurers fear the growing losses resulting from the erosion by the courts of governmental immunity.

And, insurers don't like the way public entities seek competitive bids for insurance, which is often mandated by statutes. Insurers can't win renewals if another insurer underprices them.

Furthermore, reinsurers are refusing public entity risks, forcing primary insurers to retain more of the risks they underwrite.

"There is virtually no reinsurance available in the open marketplace," said Keith Limbo, vp at Imperial Casualty and Indemnity Co. in Omaha, Neb.

A year ago Imperial Casualty ceded all but 10% of the public entities' business it underwrote to reinsurers; this year it is keeping 80%, Mr. Limbo said.

"There is no reinsurance in the world," said Biegler's Mr. Henriksen.

Lack of reinsurance forced two insurers to temporarily stop writing liability coverage for public entities earlier this year.

Forum Insurance Co. in Schaumburg, Ill. stopped underwriting public officials liability coverage for three months until this summer when it found reinsurance in London.

The Forum coverage is accessed through surplus lines broker Stewart Smith Mid America Inc. in Chicago.

Current limits are only \$2 million for new business and up to \$5 million for renewals. Previously, new policyholders also could secure \$5 million in coverage.

The coverage also will be limited to entities whose total budget does not exceed \$50 million and whose population does not exceed 300,000 for counties and 200,000 for cities, villages and towns. State and federal entities are excluded.

Calvert Insurance Co. in New York City also quit writing public entity liability coverages in January after losing its reinsurance, but resumed underwriting July 1 after securing reinsurance, said

City loses suit and insurance

By DANA DAVIS

TORRINGTON, Conn.—The city of Torrington, hit with a \$2.6 million award for police negligence last month, also has lost its liability insurance.

A federal court jury last month awarded \$2.6 million to a Torrington woman and her son in a lawsuit charging that city police failed to protect the woman from an attack by her estranged husband.

When the lawsuit was filed in February, Torrington had \$6 million in liability coverage with two CIGNA Corp. subsidiaries.

However, both Pacific Employers Insurance Co. and California Union Insurance Co. have since filed reservation of rights notices with Torrington. And, when Torrington's three-year liability policies expired June 30, the two insurers did not renew them.

"They told us they weren't going to renew. We weren't surprised. Lots of insurers are getting out of the municipality business," said Dino Borghese, city comptroller.

Pacific Employers had provided a \$1 million per occurrence primary policy with a \$10,000 deductible, and California Union provided a \$5 million excess of \$1 million umbrella policy.

In February, Tracey Thurman sued Torrington and 29 of its policemen for \$3.5 million, claiming the police officers violated her rights by failing to protect her from an attack by her estranged husband.

The attack left Mrs. Thurman scarred and partly paralyzed; Charles Thurman stabbed his wife 13 times in a June 10, 1983 assault.

Mr. Thurman is now serving a 15-year prison term for the assault, which allegedly took place while a Torrington policeman watched but did nothing until other policemen arrived on the scene.

Mrs. Thurman claimed the police refused to seriously consider her previous complaints of "repeated threats of violence" by her husband because

she was a woman and because it was a domestic dispute.

The Thurmans are now divorced.

While the jury decided Torrington did not discriminate against complaints made by women, it did conclude that 29 Torrington police officers, half of the city's force, were negligent in handling the case.

The jury awarded \$2.3 million to Mrs. Thurman and \$300,000 to her 3-year-old son, who witnessed the attack.

"We will appeal the case," said Jesse Frankl, the attorney for the officers.

Spokesmen for Pacific Employers, California Union, and CIGNA refused to comment on the case.

Meanwhile, Gordon C. Todd of the Burns, Brooks, and McNeil agency, is still trying to replace Torrington's expired policies.

Mr. Todd, who anticipated difficulty placing the coverage because of the diminishing market for public entity liability coverage (see story, page one), has been working on new coverage for five months.

"I started hunting for underwriters back in February. Few insurers want to cover municipalities anymore so you really have to look around."

"Three years ago we managed to save the city \$278,000 by getting a three-year plan with a guaranteed fixed rate," he said of the expired CIGNA program. "We couldn't do that this time around."

So far, Mr. Todd has lined up the Hartford Insurance Group and The Travelers Indemnity Co. to split a \$1 million primary layer. "All the other lines will come from all over the place," he said.

The city will keep its \$10,000 deductible and will have pollution liability coverage, but probably won't be able to lock in rates for a three-year policy term or keep the same limits.

"The \$5 million umbrella will probably be reduced to \$3 million and this particular three-year plan will be re-rated annually," Mr. Todd said.

President and Chief Executive Officer John H. Walton.

Coverage up to \$5 million for public official liability risks and \$1 million for police professional risks is now available. However, defense costs are now included within policy limits and punitive damages are excluded.

"Our terms are dictated by our reinsurers," he commented.

Other current markets for public entity liability risks include:

- For either public official or police professional liability policies: Jefferson Insurance Co. of New York in New York City; National Casualty Co. in Southfield, Mich.; Scottsdale Insurance Co. in Scottsdale, Ariz.; and Republic and Vanguard.

- For package policies that include both coverages: Colonial Penn and International Surplus Lines.

- For public officials coverage only: Tudor Insurance Co. in Ramsey, N.H.

- For police professional coverage only: Western World Insurance Co. Inc. in Ramsey, N.J. and Imperial Casualty.

Some of these insurers also offer general liability, property and umbrella coverages for public entities.

The insurers still in the market are very choosy.

"Underwriters are picking and choosing the cream of the crop and charging exorbitant rates," said David McGurn, division vp with broker A.J. Gallagher & Co. in Rolling Meadows, Ill.

"Insurers will go to the cream puffs before they go to the tough ones," said Dallas' Mr. Ferraro.

Generally, rate increases for public officials coverage range up to 400% and increases for police professional coverages have been 50% to 200%.

But some public entities have found the situation even bleaker.

Dallas for example, had a choice of a 600%, 958% or 1,128% increase during renewals in April.

One insurer offered Dallas a package that included lower liability limits but increased property coverage and claims administration services. But, while Dallas paid only \$157,023 for its expiring liability coverage, the new package coverage would have cost 1,128% more.

Another insurer quoted premium increases of 958%, or 600% if Dallas increased its retention to \$5 million per occurrence from \$2 million. However, the insurer added eight new exclusions including auto liability, pollution and employment discrimination.

"It wasn't much of a deal," said Mr. Ferraro.

Dallas' greatest exposure is its auto fleet, and it was "ridiculous" not to have that covered, he said.

Depending on the size of a public entity and its taxing powers, going bare may or may not present a major risk. Indeed, many large cities with a large enough tax base do self-insure their liability risks.

"A really big city is not as threatened by going bare as a small one would be," said Allen Hyman, risk manager for Corpus Christi, Texas.

It is riskier for a small public entity to go bare than a large one because a small public entity may not have the tax base necessary to raise funds to pay an uninsured judgment, said Frank Gardner of Casper, Wyo., who is risk manager for Natrona County.

But, "going bare" has serious implications for a fiscally conservative city like Dallas, which prefers that insurance costs be a known quantity that can be itemized in its \$794.7 million operating budget, said Mr. Ferraro.

Dallas also could conceivably face short-term cash-flow problems if it does not reserve enough funds to pay uninsured losses.

Operating without insurance causes city officials to worry about the cumulative effect of claims and the potential for multiple claims, especially with a fleet of 5,000 vehicles, Mr. Ferraro said.

Other smaller cities also have faced huge premium increases.

Fremont, Calif., with a population of 150,000 residents, paid \$44,000 last year for a package that included comprehensive general liability coverage (including coverage for public officials, police, pollution risks) and workers compensation coverage. It retained \$250,000 on the primary layer and purchased \$19.75 million in excess coverage.

The renewal premium jumped 1,157% in April to \$509,000 for about the same general liability

limits but with workers compensation and pollution excluded. In addition, its self-insured retention doubled to \$500,000, said Fremont Risk Manager Joseph Tonda.

"It was rather upsetting," he said.

And, a county in Colorado that previously had paid about \$12,000 for \$5 million in general liability coverage, including police professional insurance, was quoted a premium 383% higher for only \$1 million in coverage, according to its broker.

Besides raising rates, insurers also are cutting back on limits and imposing other restrictions.

For example, International Surplus Lines has reduced limits on public officials coverage by 80% to \$5 million from \$25 million.

Republic and Vanguard have generally reduced limits for both public officials and police to \$500,000 from \$10 million, but they hope to increase their limits in the early fall.

In addition, Western World has reduced its limits on police professional coverages to \$500,000 from \$1 million.

Insurers, which have generally written public official liability coverages on a claims-made basis, are now moving to a claims-made form for police professional coverages.

International Surplus Lines has already adopted a claims-made form for police liability coverage, and Forum began July 1 to seek approval of a claims-made form from state insurance departments.

Other insurers are moving in the same direction and some expect the claims-made form to be the norm, perhaps as early as December.

Insurers also are demanding bigger deductibles and self-insured retentions.

For example, first-dollar coverage that had been available last year for small police professional risks has been replaced by coverage with deductibles of \$1,000 to \$25,000, said Markel's Mr. Vogt.

Meanwhile, deductibles on public officials policies have increased to \$1,000 from \$500, he added.

Forum increased its minimum \$250 deductible to \$1,000 earlier this year for public officials liability coverage, said Chris Schroedel, commercial property/casualty program manager.

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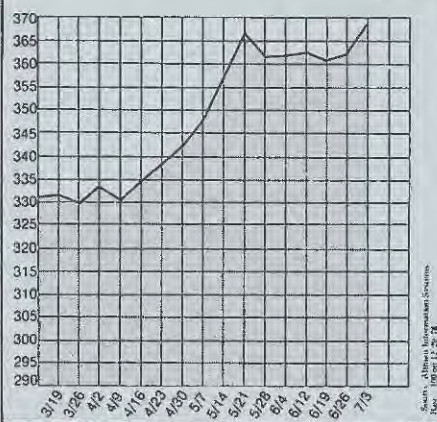
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BI Insurance Index



The Business Insurance index of insurance industry stocks closed at 368.1 points on July 2, up 5.2 points from the 362.9 points on June 26. The index also set a new record high, up 5 points, or almost 1.4%, from the previous high of 363.1 last May 21. In all, 33 stocks were up, 15 stocks closed down and 10 stocks remained unchanged. The biggest gains were by Great West Life Assurance Co., up 32.8%; Zenith National Insurance Corp., up 6.9%; Washington National Corp., up 6.5%; Continental Corp., up 5%; and Farmers Group Inc., up 4.8%. The biggest losses were by Mission Insurance Group Inc., down 5.3%; Tokio Marine & Fire Insurance Ltd., down 2.6%; American Indemnity Financial Corp., down 2.3%; Frank B. Hall & Co. Inc., down 2.2%; and Fremont General Corp., down 1.8%. The BI index rose 1.4% for the period. In comparison, the New York Stock Exchange composite rose 1% and the Dow Industrials rose 0.7%.

British Issues

2 June Companies	Price	P/E	Div. pence	Yield %	1 Week High—Low
Comml Union	202	N/M	16.9	8.3	204—202
Genl Accident	605	102.5	28.6	4.7	613—605
Gdn Royal Exch	700	20.3	37.1	5.3	710—700
Royal	647	N/M	33.9	5.2	660—640
Sun Alliance	448	2.15	21.1	4.9	455—445

Brokers	Price	P/E	Div. pence	Yield %	1 Week High—Low
CE Heath	580	9.5	30.0	5.2	610—580
Hogg Robinson	250	14.3	11.4	4.6	250—229
JH Minet	166	10.8	8.9	5.4	174—166
Sedg Grp	353	15.5	14.3	4.0	375—353
Stew Wrightson	562	14.8	25.7	4.6	583—562
Willis Faber	630	21.6	18.6	2.9	643—628

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

Tax changes will be felt in insurers' bottom lines

By MYRON M. PICOULT
Special to Business Insurance

THE PROPERTY/CASUALTY insurance industry works hard at not paying taxes. This is a function both of planning and of stupidity.

The former seemingly relates to incisive tax planning with respect to investment decisions—such as the purchase of tax-exempt vs. taxable bonds—while the latter relates to the industry's underwriting performance over the past few years.

Revisions in the manner in which property/casualty insurers are taxed was due to come up this year, even if no comprehensive tax reform proposals were forthcoming, following the General Accounting Office's report on the taxation of the industry (BI, Dec. 17, 1984). Now the industry faces the proposed tax law changes that were outlined by President Reagan in May (BI, June 3).

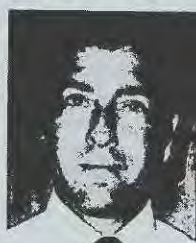
There are four tax proposals affecting the property/casualty industry, all of which would take effect Jan. 1, 1986.

The proposals, if enacted, would:

- Revise the methods currently used to establish loss reserves to include a discount factor.
- Repeal deductions now taken by mutual insurers for additions to protection against loss accounts.
- Repeal special tax exemptions, tax rate reductions and deductions for small mutual companies. This proposal would be phased in over five years.
- Limit mutual companies' deductions for policyholder dividends.

Under other proposals, which we will not cover here, workers compensation and black-lung benefits would be included as taxable income to employees.

Myron M. Picoult is senior up and senior insurance analyst with Oppenheimer & Co. in New York. He is the past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts. His column appears the fourth Monday of every month.



Mr. Picoult

Another proposal relates to a per-country limit on the use of excess foreign tax credits, which could affect captive insurance companies.

The latest tax reform proposals omit prospective changes involving the allocation of deferred acquisition costs. Currently, the National Assn. of Insurance Commissioners permits the immediate expensing of acquisition costs, which has been incorporated into the current tax code.

The initial Treasury Department tax revisions called for the allocation of expenses as related revenues were recognized. This would have increased the amount of taxable income.

Furthermore, President Reagan's tax proposal omits any reference to the General Accounting Office report that also proposed the discounting of loss reserves, but with some modifications that appear somewhat less onerous to the industry and would be easier to implement.

The reason for the Reagan administration's proposals on the taxation of property/casualty insurers is quite simple: It wants to raise tax revenues from the industry.

The key proposal deals with the discounting of reserves. The Treasury Department proposes setting up a "Qualified Reserve Account." The ultimate reserve would be discounted at a property/casualty company's after-tax rate of return on its investment assets, which is an insidious way to tax municipal bond interest.

Furthermore, the accretion of the yearly discount cannot be taken as a deduction. (This relates to the interest income added to the reserve.)

By way of contrast, the General Accounting Office approach uses a pretax rate of return as the discount factor and the accretion of the discount can be taken each year as a deduction.

Of the two methods, it appears the GAO approach would be more palatable to the insurance industry, in terms of discount used and because of the fact that it appears to be much less cumbersome to administer.

The discounting process would apply only to a property/casualty company's tax books. There would be no required change in the way reserves are set on either statutory books, for regulatory purposes, or shareholder books according to generally accepted accounting principles.

However, it should be noted that the statu-

tory and shareholder books ultimately would feel the effect of reduced cash flow, which would impinge on the growth of statutory surplus and investment income growth.

While the discounting process likely would return property/casualty companies to a taxable position somewhat sooner than otherwise would be the case, the abundance of loss carryforwards precludes any real cash payments to the Treasury for years to come.

This raises the prospect of a premium tax, which we consider unlikely, or the implementation of some type of minimum tax that couldn't be offset with carryforwards.

Yet another possibility would be the curtailment of tax consolidations for life and property/casualty companies.

The fragmentation of the industry is seen in its relatively weak lobbying effort, which increases the prospect of new tax levies.

The bottom line of all this is that cash flows ultimately will be affected because of actual cash payments and higher administrative costs associated with the new tax methodologies, particularly the QRA approach, if it is enacted. Our guess right now is for a modest-to-moderate impact.

It would seem companies with "short-tail exposures," such as property coverages and personal lines coverages, would fare better under discounting. The greatest impact would fall on insurers with large portions of their books centered in long-tail lines.

This is because property and personal lines losses are paid over relatively short time frames—usually one to three years, compared with seven to 10 for liability coverages. The margin for error on discounting would be greater the longer the time frame.

From our vantage point, it seems that the industry is on the spot to come up with alternatives to ultimately produce some "real" cash payments to the Treasury.

Wouldn't it be ironic for companies to begin to argue against discounting on the basis that you cannot discount that which is already deficient?

FGIC capital infusion

The owners of FGIC Corp. in New York have added \$45 million to its capital, bringing the total to almost \$169 million. The additional capital will be used to support the growth of an FGIC subsidiary, the Financial Guaranty Insurance Co.

FGIC Corp. is owned by General Electric Credit Corp., General Re Corp., J.P. Morgan & Co. Inc., the Kemper Group, Merrill Lynch & Co. Inc. and Shearson Lehman Brothers Inc.

This is the second capital infusion for FGIC Corp. this year. Additional capital is expected to boost the company's capitalization to more than \$200 million by the end of 1985.

Home proposed offering

The Home Insurance Co. has filed a registration statement with the Securities & Exchange Commission related to the proposed offering of 10 million shares of cumulative preferred stock.

It is expected that this preferred stock will have a liquidation preference of \$20 per share and will not be redeemable before Sept. 1, 1990. The dividend rate on the stock will be determined immediately before its issuance, expected in late July.

Merrill Lynch Capital Markets will act as underwriter for the proposed offering.

Net proceeds will be added to The Home's general funds and be available to support the growth of its property and casualty business; to increase its investment portfolio; and for general corporate purposes.

Lincoln National dividend

Lincoln National Corp. declared a quarterly cash dividend of 46 cents per share on the corporation's common stock, which is payable Aug. 1 to shareholders of record July 10.

Also, a quarterly cash dividend on Lincoln National's \$3 Cumulative Convertible Preferred Shares, Series A, will be payable Sept. 5 to shareholders of record Aug. 15.

BI Industry Stock Report

July 3, 1985

6/27/85 thru 7/3/85

Brokers	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
Alexander & Alexander Svcs	NYSE 29.75	-0.8	0.0	1.00	3.4	30.00	29.63	808.5
Baldwin & Lyons Inc	OTC 64.00	1.6	11.5	0.80	1.3	64.00	63.00	0.0
Corroon & Black Corp	NYSE 46.00	2.2	0.0	1.00	2.2	46.00	43.63	151.1
Crump E H Cos Inc	OTC 32.13	-2.3	24.2	0.50	1.6	33.25*	32.00	117.7
Emett & Chandler Cos Inc	OTC 24.50	1.0	116.7	0.00	0.0	24.50*	24.25	5.9
Gallagher Arthur J & Co	OTC 41.75	-5.1	25.0	0.28	0.7	44.00	41.00	44.2
Hall Frank B & Co Inc	NYSE 28.00	0.4	0.0	1.00	3.6	29.13	27.75	1,775.5
Marsh & McLennan Cos Inc	NYSE 72.50	2.1	20.1	2.40	3.3	73.25*	70.25	553.1
Poe & Assoc Inc	OTC 8.00	0.0	0.0	0.80	10.0	8.00	8.00	0.9
Reed Steinhilber Cos Ltd	OTC 21.88	0.6	28.4	0.00	0.0	22.00	21.63	110.1
AGENTS/BROKERS	AVERAGE		44.5		2.1			
Conglomerates & Holding Cos.	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
American Express(Fireman's Fd)	NYSE 47.38	1.9	16.2	1.28	2.7	48.38*	46.50	7,942.6
Anderson (Layton/Ranger/PanAm)	NYSE 39.88	7.0	34.4	1.32	3.3	39.88	37.13	181.0
Araco Inc	NYSE 8.50	0.0	0.0	0.00	0.0	8.50	8.38	677.4
Berkley W R Corp	OTC 14.75	-0.8	0.0	0.32	2.2	15.25	14.75	174.6
CIGNA Corp	NYSE 58.88	3.7	84.1	2.60	4.4	59.50*	56.88	1,449.0
City Investing Co. (Home Ins.)	NYSE 33.25	0.0	5.5	0.00	0.0	35.38	33.13	610.5
CNA Finl Corp (CNA)	NYSE 58.50	10.6	22.5	0.00	0.0	59.00*	52.88	198.9
General Re Corp	NYSE 84.75	2.4	55.8	1.56	1.8	85.00	81.75	1,209.3
ITT (Hartford Group)	NYSE 31.25	1.6	9.8	1.00	3.2	32.13	30.88	4,073.0
Optimum Hldg Corp	OTC 0.50	0.0	1.6	0.00	0.0	0.50	0.50	2.1
Sears Roebuck & Co. (Allstate)	NYSE 37.88	-0.3	9.4	1.76	4.6	38.75	37.88	4,495.4
Teledyne Inc (Argonaut)	NYSE 258.13	0.8	5.6	0.00	0.0	258.25	252.88	269.6
Transamerica Corp	NYSE 31.25	-1.6	15.3	1.64	5.2	32.38*	31.25	2,016.1
(Occidental & Fred S. James)	NYSE							
CONGLOMERATES/HOLDING COS.	AVERAGE		11.1		1.6			
Insurers	Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)
Aetna Life & Cas Co	NYSE 46.38	1.1	23.5	2.64	5.7	46.75*	45.88	2,680.5
American General Corp	NYSE 34.75	1.1	11.3	1.00	2.9	34.88	34.13	1,184.4
Ameri Heritage Life Invst Co	NYSE 34.25	0.7	10.2	1.20	3.5	34.50*	33.75	7.3
American Indty Finl Corp	OTC 21.00	3.7	0.0	1.12	5.3	21.50*	20.75	55.2
American Intl Group Inc	NYSE 85.38	2.1	22.0	0.44	0.5	85.38	84.38	776.9
Aneco Reins Ltd	OTC 1.50	0.0	0.0	0.00	0.0	1.50	1.50	4.7

	Price	% Chg.	P/E	\$ Div.	%Yld.	High	Low	Vol.(000)
SE	28.50	-0.4	13.2	0.60	2.1	28.88	28.38	19.7
C	26.25	-4.5	7.2	1.04	4.0	27.75	26.25	91.5
SE	74.13	5.9	16.7	2.20	3.0	75.00*	70.88	314.2
C	49.00	3.2	9.6	2.16	4.4	49.00	47.00	431.3
SE	44.13	2.6	22.5	2.60	5.9	44.13	42.00	1,831.9
C	150.00	2.7	9.0	0.00	0.0	150.00*	146.00	1.1
SE	39.00	2.0	7.3	1.28	3.3	39.75	38.25	38.5
C	65.63	6.7	11.5	1.76	2.7	65.63*	61.38	896.3
SE	26.75	5.4	0.0	0.48	1.8	27.25	25.25	507.9
C	499.50	32.8	12.8	0.00	0.0	499.50*	376.00	0.7
SE	45.50	6.4	77.1	0.56	1.2	45.50	43.00	152.0
C	46.50	0.0	20.0	1.60	3.4	46.75	45.00	67.8
SE	24.50	-1.0	9.6	0.87	3.5	24.50	24.00*	22.0
C	59.25	3.7	25.5	1.80	3.0	59.25	58.25	159.8
SE	30.13	-0.8	14.1	0.72	2.4	30.50	29.88	19.5
C	42.25	-1.5	11.0	1.84	4.4	45.75	41.38	502.6
SE	6.63	-7.0	0.0	0.00	0.0	7.63	6.50	231.0
C	31.25	0.0	20.7	1.30	4.2	31.50	31.00	69.3
SE	10.50	0.0	13.8	0.25	2.4	10.50	10.00	85.0
C	29.50	4.0	7.1	0.80	2.7	29.50	28.63	334.3
SE	62.25	3.7	23.1	2.80	4.5	62.25*	60.13	203.8
C	35.25	0.0	8.5	0.74	2.1	35.25	34.25	363.5
SE	26.63	5.4	0.0	0.76	2.9	26.63	25.88	58.1
C	20.88	2.7	7.4	0.66	3.2	21.25	20.00	341.0
SE	23.50	2.2	6.6	0.76	3.2	23.50	22.75	605.2
C	71.75	1.6	0.0	3.00	4.2	72.50*	70.50	665.3
SE	40.63	-1.5	14.5	1.60	3.9	41.38	40.38	297.8
C	19.25	4.1	91.7	0.68	3.5	19.38	18.63	1,143.1
SE	19.50	1.3	0.0	0.80	4.1	19.50	18.75*	81.5
C	5.00	2.6	0.0	0.15	3.0	5.00	4.75	122.3
SE	185.00	-3.6	32.0	1.05	0.6	189.88	185.00	38.4
C	48.75	7.1	10.8	1.00	2.1	49.00	45.00	554.0
SE	46.88	2.7	11.3	2.04	4.4	47.00	45.63	2,354.3
C	22.00	0.0	0.0	0.80	3.6	22.00	22.00	0.4
SE	37.00	0.3	39.8	2.20	5.9	37.38	36.50	1,271.1
C	35.88	-0.7	8.2	1.04	2.9	37.00	35.63	345.3
SE	24.50	4.3	7.2	1.08	4.4	24.50	22.88	163.2
C	19.25	19.4	0.0	0.68	3.5	19.25*	16.25	402.4
SE	AVERAGE		19.3		2.2			

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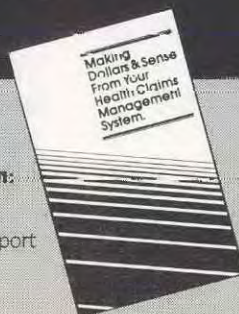
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