JUNE 13, 1983

business insurance

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update

Texas adopts law limiting use of risk retention groups

AUSTIN, Texas—The Texas Legislature has passed a bill that allows a risk retention group to fund only risks recognized as product liability risks under state statute. The bill uses the same language as in a model bill adopted by the National Assn. of Insurance Commissioners (*BI*, Oct. 25).

Critics of that model bill question whether it's the state or federal definition of product liability that applies

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Plaintiffs may target DC-9's manufacturer

By BILL DENSMORE

CINCINNATI—McDonnell-Douglas Corp., the manufacturer of the Air Canada DC-9 that caught fire during a flight earlier this month, killing 23 people, is a likely liability target in the accident, plaintiffs' lawyers say.

The attorneys say they may direct their claims against the aircraft manufacturer because an international treaty known as the Warsaw Convention limits an airline's crash liability to approximately $125,000 per passenger in international flights.

Many of the passengers on the Dallas-to-Toronto flight, which was forced down near Cincinnati after dense smoke filled the cabin, appear to have been Canadians, plaintiffs' lawyers say.

Unless the manufacturer—which is not covered by the Warsaw Convention—can be shown to bear some liability for the accident, the treaty's liability limitation could otherwise bar large damage awards, they say.

Moreover, plaintiffs' attorneys say McDonnell-Douglas could be vulnerable to charges stemming from the cause of the in-flight fire and the level of toxic fumes given off by plastic-based components in the cabin of the DC-9, which may have contributed to the victims' deaths.

Safety experts say passengers in an aircraft fire can sometimes become incapacitated by toxic smoke before they have a chance to reach an exit.

"The case has lots of products liability aspects," says Stanley Chesley, a Cincinnati-based plaintiffs' lawyer who has been active in litigating several recent mass disasters, including the MGM Grand Hotel fire in Las Vegas, Nev., the Beverly Hills Supper Club fire in Southgate, Ky., and last year's crash of a Pan American World Airways flight near New Orleans.

Mr. Chesley compared the deaths of the 23 passengers in the June 2 Air Canada accident with the fire at the Kentucky nightclub, which is located close to the Greater Cincinnati Airport in Florence, Ky., where the Air Canada jetliner landed. Toxic fumes from burning plastic apparently contributed to the fatalities in both disasters,

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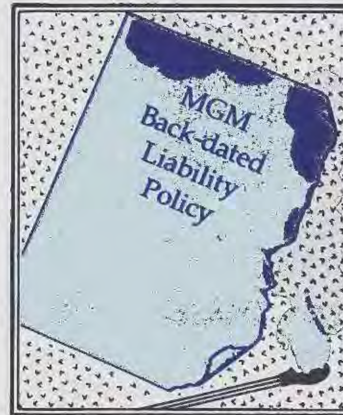
Hall, insurer ask court to void MGM coverage

By STEPHEN TARNOFF

LAS VEGAS, Nev.—The broker and the insurer on the first layer of the once-ballyhooed retroactive liability insurance placed for MGM Grand Hotels Inc. now want a court to void the coverage.

Broker Frank B. Hall & Co. Inc. and its subsidiary insurance company, Union International Insurance Co., are asking a Nevada state court to void the first $35 million of the retroactive liability insurance Hall arranged for MGM Grand Hotels after its 1980 Las Vegas hotel fire.

Hall, its Nevada affiliate, Frank B. Hall & Co. of Southern Nevada Inc., and Union International—responding to a demand for payment under the coverage by MGM Grand—charge that the hotel owner breached its brokerage and insurance agreements with them in its $75 million lump-sum settlement with fire victims. As a result, Hall says, MGM is not entitled to the coverage.



Graphic: Amy Palmer

MGM's back-dated coverage is aflame with controversy.

Hall and Union, in separate responses to MGM's suit, also seek unspecified punitive damages and more than $10,000 in compensatory damages on each counterclaim for MGM's alleged wrongful conduct. Two answers list four counterclaims and one lists five.

Three separate answers to MGM's suit were filed May 23 in Nevada state court by parent company Hall, its Nevada brokerage affiliate and its Union insurance company subsidiary. Each contends that the brokerage and insurance agreements are void and that Hall and Union are entitled to a recision of the contracts.

MGM's suit, filed in March, seeks payments under the retroactive liability insurance it needed when it found itself underinsured for the fire losses.

In the answers and counterclaims, Hall and its subsidiaries say MGM intended to use the retroactive liability insurance to cover punitive damages as well as compensatory damages in violation of the policies.

In addition, MGM intended to deceive and defraud Hall and Union through false representations relating to the procuring of the retroactive insurance, they add.

MGM was able to violate the conditions of the retroactive policies by gaining control of the settlements, Hall says.

As a result of these and other wrongful acts, the brokerage agreement with Hall and the retroactive liability insurance with Union International should be declared null and void, Hall and Union say.

If the court agrees with Hall and declares the first $35 million of the retroactive insurance coverage void, it is unclear what effect that would have on the remaining retroactive insurance of $130 million.

Hall arranged $165 million of retroactive liability insurance for MGM Grand a few months after the November 1980 fire killed 85 people and injured more than 700 others. MGM Grand had only $30 million of liability insurance at the time of the fire.

Hall, at the time, hailed the retroactive insurance as an innovative product requiring a knowledgeable estimate of the ultimate loss for it to be marketable.

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Two states approve unisex legislation

By JERRY GEISEL

WASHINGTON—Employers concerned about movements to ban sex as a factor in determining insurance premiums and benefits should watch their state legislatures.

Besides the federal unisex legislation that has been proposed, bills that would eliminate the use of sex as a rating factor have been enacted in two states and introduced in more than a dozen other states this year.

In Montana, Gov. Ted Schwinden signed a landmark measure, H.B. 358, that prohibits sex as a rating factor for pensions and all lines of insurance. That bill, passed after a bruising legislative battle, would apply to insurance policies sold and benefit programs formed after Oct. 1, 1985, the measure's effective date.

In Nebraska, the state Legislature passed a measure, L.B. 210, on the last day of its session that will require most state and county pension plans to provide equal annuities to male and female employees who retire after Dec. 31.

Meanwhile, other unisex legislation that could affect corporate benefit plans has been studied in state capitols from coast to coast.

In Massachusetts, unisex legislation H. 4958, proposed by Rep. Mary Jane Gibson, D-Belmont, already has attracted 15 co-sponsors, while in Michigan a unisex bill, H. 4209, will be actively considered by legislators, says state Insurance Commissioner Nancy Baerwaldt.

In California, a legislative panel will be looking into the unisex issue this fall and considering a pending bill, while in Florida a state Insurance Department task force set up by Commissioner Bill Gunter is weighing the pros and cons of unisex legislation. The task force will make its recommendations in March in time for next year's session of the Florida legislature.

However, only a handful of the measures introduced this year are still alive. Only California, Illinois, Massachusetts, Michigan, New Jersey, North Carolina and the District of Columbia still have pending unisex bills that would affect corporate benefit plans.

Meanwhile, in states like Connecticut, Maryland and Oregon, unisex bills were defeated at the committee level because of powerful opposition from insurance companies and their trade associations.

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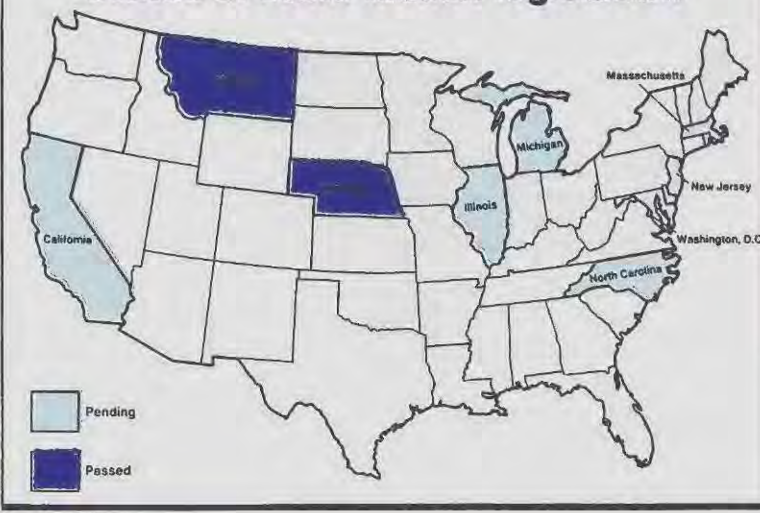

Map: Jim Bakasetas

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update

Texas passes risk retention law

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when a risk retention group seeks a charter.

Texas is believed to be the first state to adopt such a law since the enactment of the 1981 federal Risk Retention Act, which left implementation up to the states. However, the Texas bill does not specify how the state statutes define product liability risks and insurance staffers were unavailable for comment.

The controversy over whether the state or federal definition of product liability applies to a risk retention group came to a head in Delaware when the state commissioner refused to recognize the risk retention group formed by the The Home Owners Warranty Corp., a national home builders' association. He says the warranty risks that group's captive would cover are not product liability risks. Since then, HOW has taken its fight to the U.S. District Court in Wilmington, Del. (*BI*, May 30).

In the meantime, HOW has met opposition in Texas, which also refuses to recognize it as a risk retention group because it has not been certified in Delaware. The Texas State Board of Insurance says HOW is operating as an unlicensed insurer.

New Lloyd's conflict surfaces

LONDON—Lloyd's of London says new "conflicts of interest" have arisen within another Lloyd's underwriting syndicate.

Edward Williams Coutts & Co. Ltd., which manages Syndicate 235, advised its 600 names that Coutts directors and their wives had received benefits of more than $25,000 per year from two Coutts-controlled companies—Nicholas Reinsurance Ltd. and Orbells Ltd. —that had conducted reinsurance transactions with the syndicate.

Lloyd's will not take disciplinary action against the directors.

Nevada comp bill vetoed

CARSON CITY, Nev.—Gov. Richard H. Bryan vetoed legislation that would have allowed employers to purchase workers compensation insurance from commercial insurers beginning July 1, 1984.

S.B. 136, passed by the Nevada Legislature May 22, changed the 70-year-old exclusive state fund into a competitive fund (*BI*, May 30). Nevada is one of only six states with an exclusive fund.

The new law would not protect employees any better and would not lower employers' costs, Gov. Bryan said in his June 1 veto message. After his own investigation and after meeting with opponents and proponents of the bill, the governor concluded that the best system in Nevada is the current monopolistic fund. The Legislature is currently out of session, making a veto override unlikely.

Cost-containment proposals die

TALLAHASSEE, Fla.—A number of legislative proposals to curb rising health care costs died in the Florida Legislature last week.

The various bills would have given the state's Hospital Cost Containment Board the power to approve hospital budgets, required that every group health insurance policy sold or delivered in Florida contain a coinsurance provision and allowed the establishment of preferred provider organizations (*BI*, May 30).

B-U issues recovery plan

NEW YORK—Baldwin-United Corp., after a marathon meeting with state regulators and creditors, last week produced the first public plan to revitalize the insurance and financial services firm.

Victor H. Palmieri, Baldwin's recently installed president, says the plan focuses on improving the profitability of Baldwin's traditional insurance operations, including MGIC Investment Corp., and on disposing of some other assets, possibly including the debt of broker Bayly, Martin & Fay International Inc. (*BI*, June 6).

Separately, Baldwin said last week that it expected a first-quarter loss in excess of $100 million for the period ended March 31.

Arkansas to regulate METs

LITTLE ROCK, Ark.—The state Insurance Department is now studying how it will use its new powers to regulate self-funded multiple employer trusts and most self-insured health care plans in the state that are administered by a third party or reinsured.

The law is similar to one passed in California and Illinois last year to help regulators identify and regulate self-funded METs, but the Arkansas rule will also cover some self-insured employer health plans (*BI*, June 21, July 19, 1982).

The law, which went into effect in March, also will force self-insured plans operated by Arkansas employers to conform to state statutes, which means that plans may not exclude coverage for chiropractic, psychiatric or outpatient services.

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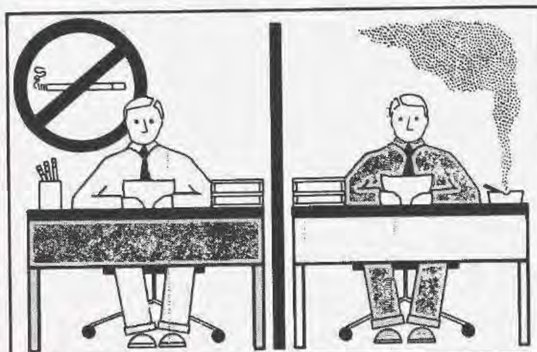
Smoking rule doesn't worry employers in San Francisco

By STEVE TARAVELLA

SAN FRANCISCO—Administrative officials at many of the city's major employers are organizing committees to study the possible effects of a new anti-smoking ordinance, which Mayor Dianne Feinstein signed June 3.

But, many companies are reacting to the law with what could be called passive resistance. Personnel directors at most of the larger employers in the area do not expect compliance to be either costly or inconvenient.


Graphic: Amy Palmer

City ordinance No. 298-83 requires that employers separate smoking employees from non-smokers in office areas where individual smoking disputes can be settled no other way. If this is not possible, smoking must be banned in the office area.

The law takes effect July 3, and companies have 90 days after that to develop a written smoking policy.

A spokesman for the Chamber of Commerce of San Francisco, which opposed the law, nonetheless concedes that the ordinance represents a plus for the health-conscious employee.

"It's a definite benefit to those people with health problems bothered by smoke," admits Bob Hayden. "But, in general, it's an intrusion of the government into business operations. In the vast majority of cases we know of, people are able to work things out in a courteous manner among themselves."

Mr. Hayden cites "the activist nature of San Franciscans" as a potential problem in incorporating the law into company policies smoothly.

"Because the ordinance was passed in San Francisco, we're probably running a greater risk of (an employee) taking action than in other places. They can demand that co-workers around them stop smoking or quit."

The public and business community have shown an overwhelmingly positive reaction toward the measure, according to Board of Supervisors President Wendy Nelder, who proposed the ordinance. She says representatives from many businesses have told her, "We can't come out for it because the Chamber of Commerce is opposed to it, but we won't come out against it."

Most employers contacted by *Business Insurance* say they don't expect to suffer any hardships or undue costs complying with the new law.

"I don't think it's going to cause us that big a problem. We've always tried to take the problems of non-smokers into consideration," says Bart L. Pagel, manager of personnel policy for Bechtel Power Corp. in San Francisco.

Bechtel—an engineering and construction company that, according to Mr. Pagel, has between 9,000 and 10,000 local employees—is exploring possible responses to the ordinance.

Bechtel's San Francisco offices include many large, open work spaces. Mr. Pagel says he is working with

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2 executives among those leaving A&A

By LEN STRAZEWSKI

NEW YORK—Two top executives are leaving their posts at Alexander & Alexander Services Inc. in the midst of continuing cutbacks.

William F. Farley, 39, A&A's chief financial officer since August 1981 and its lead financial spokesman during A&A's investigation into mismanagement of its Alexander Howden P.L.C. subsidiary, resigned last week from both his position as financial vp and as an A&A director, the brokerage announced.

Mr. Farley—who left A&A "to pursue other opportunities open to him," according to a company spokesman—will continue to advise the brokerage in selected financial areas and retain his position as chairman of the Banque du Rhone et de la Tamise in Geneva, Switzerland.

A&A took over the Swiss bank after it conducted an audit of Howden last summer. A&A alleges that former Howden officials used com-

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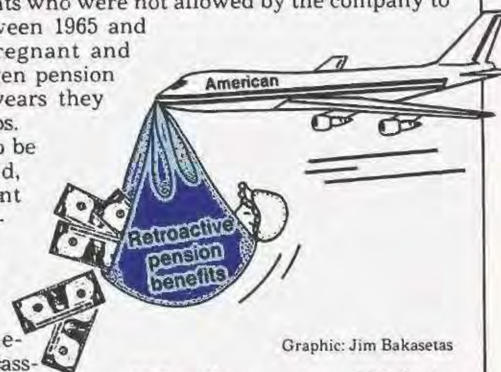
Stewardesses to get credit for pensions despite layoffs

By JERRY GEISEL

CHICAGO—About 175 to 200 American Airlines flight attendants who lost their jobs after they became pregnant are receiving a new bundle of pension credits.

U.S. District Court Judge Frank McGarr ruled last month that American flight attendants who were not allowed by the company to return to their jobs between 1965 and 1970 after becoming pregnant and giving birth must be given pension service credits for the years they were away from their jobs.



Graphic: Jim Bakasetas

The ruling, believed to be one of the first of its kind, follows a 1977 settlement between American Airlines Inc. and the flight attendants who lost their jobs because of their pregnancies.

Under that 1977 agreement, which settled a class-action suit, American agreed to pay $2.7 million to about 300 flight attendants. The stewardesses had sued the airline in 1972 charging that American violated the Civil Rights Act of 1964 by refusing to rehire them after they gave birth.

In addition to the award, American agreed to re-employ the flight attendants who could meet company requirements. The attendants also were given seniority and length-of-service credits they would

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Lloyd's adopts divestment rules

By STACY SHAPIRO

LONDON—Lloyd's of London brokers will be allowed to keep their members' agencies although they still must divest their underwriting managing agencies by July 1987, according to rules approved by the Council of Lloyd's last week.

Under the Lloyd's Act of 1982, the so-called Lloyd's self-regulation legislation, Lloyd's brokers must divest their underwriting agencies, which manage the affairs of the syndicates of Lloyd's members that underwrite risks at Lloyd's.

The council had earlier recommended that Lloyd's brokers also sell their members' agencies, which manage the affairs of Lloyd's members. However, the council dropped that requirement when it approved many of the recommendations by a Lloyd's working party under the direction of A.W. Higgins.

"We discovered that the best members' agencies were run by Lloyd's brokers," said Lloyd's Chief Executive Officer Ian Hay Davison, explaining that the council did not want to damage this successful system.

Mr. Davison added that it was unlikely that a conflict of interest would exist whereby a broker could force an

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Excess/surplus directory

Business Insurance will publish its annual directory of excess/surplus lines marketers and insurers in its Aug. 22 issue. To be included in this directory, you must return a completed questionnaire by July 18.

All E/S brokers, managing general agents, underwriting managers and E/S insurers that have not yet received a questionnaire should contact Diane Kastiel at *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611; 312-649-5398.

Public risk managers conference

Civil rights suits a menace for municipalities: Attorney

By SALLIE J. DRURY

ST. PAUL, Minn.—Civil rights litigation has public officials running scared.

And public risk managers are running behind them.

The horror stories some cities can tell about litigation they have been involved in send chills up the spine of every municipality. Some cases have involved:

- A police officer who arrested a young woman and then raped her.
- A police officer who entered the home of a black couple without a warrant and then beat them.
- A police officer who claimed to carry "killing gloves" to mask the evidence of his brutality. His activities were common knowledge in the department that employed him because no other officers would ride in the patrol car with him.

"Owens vs. the City of Independence, Mo., placed absolute liability (for civil rights violations), or liability against which there is no defense, in the arms of city government," an attorney told participants at the Public Risk & Insurance Management Assn's. fourth annual conference June 1-4 in St. Paul.

Mr. Schirott

In Owens vs. Independence, the court ruled that the city had violated the police chief's civil rights through stigmatizing statements made when the police chief was terminated.

"It's not a question of having to pay, it's a question of getting the most expeditious treatment of a case so you pay as little as possible," he said.

The words of James Schirott, an attorney with the Itasca, Ill., firm of Schirott & Elsner, were of little comfort to the public risk manager who is afraid the wildfire of civil rights liability lawsuits against public officials will spread to his city.

The first case in which a city was held liable for the actions of a police officer in a civil rights case came in 1961 in Monroe vs. Pape. The Supreme Court ruled that Chicago was liable when police officers broke into the home of a black family without a warrant and then beat them, Mr. Schirott explained.

Since that time, civil rights litigation has increased more than 1000%, with most cases involving actions of police.

A city opens itself to civil rights litigation when it hires an employee, trains an employee or fires an employee.

"It is not enough just to meet the state laws for the training and conduct of public officials," warned Mr. Schirott. That alone will not protect a city from civil rights liability.

While a police officer who shoots a fleeing felon is protected from criminal prosecution for his actions, he is not protected from civil liability.

"The person at the top will be held responsible as well," he added. "Courts have placed the ultimate responsibility on those

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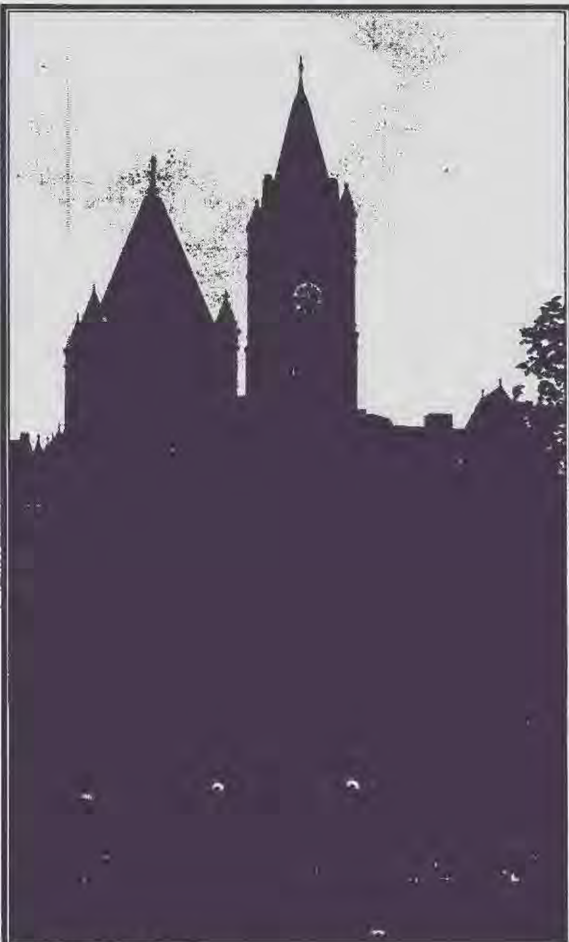

Photos: Sallie J. Drury

Juxtaposed against the sleek high-rises in St. Paul, Minn., is the Landmark Center where, by evening, public risk managers dined and danced during the Public Risk & Insurance Management Assn.'s fourth annual conference. By day, the risk managers added to their knowledge of traditional means of managing risks with seminars on futuristic technology. St. Paul itself is a tribute to risk management: The glass skywalks linking many of the downtown buildings—both the old and the modern—represent not only a link between past and present, but a practical way for pedestrians to get about safely in the icy Minnesota winters.

Public risk managers tell peers not to fear computers

By SALLIE J. DRURY

ST. PAUL, Minn.—What's the fastest way to change a roomful of ordinary public risk managers into byte-heads? Turn them loose on a dozen microcomputers and let them number-crunch to their hearts' content.

Risk managers had their eyes peeled and fingers poised on microcomputers at the Public Risk & Insurance Management Assn.'s fourth annual meeting this month. For some, the hands-on experience eliminated their fear of computers, which are finding their way into more and more risk management departments.

"I'll tell you right now that you can buy a microcomputer on your budget," said session moderator J. Craig Ellis, risk manager for the city of Lakewood, Colo. "But it's up to you where you hide it."

Despite shrinking state and municipal budgets, risk managers seem to be "hiding" computer purchases just fine. Many of those in attendance were at the session to understand the terminology and functions of micros because they plan to purchase systems soon; others were there to understand how to utilize the systems they already have bought.

Mr. Ellis

Both Mr. Ellis and co-moderator Allen Hyman, director of safety and risk management for the city of Corpus Christi, Texas, cited the common fears that grip managers when they face computers, no matter how "user-friendly" they are.

Mr. Ellis manages Lakewood's risks with computer assistance which features a customized program for his micro. Mr. Hyman, on the other hand, developed a risk management program using a micro and off-the-shelf software when he served as risk manager for the city of Evanston, Ill. He now uses a microcomputer and off-the-shelf software in Corpus Christi.

But although Mr. Ellis and Mr. Hyman are just two of many risk managers already using microcomputers, some risk managers remain skeptical of the popularity of these gadgets. Will they really be an important tool, as common as the pen and pencil, or are they just a fad?

Many skeptics were convinced when Natalie Wasserman, PRIMA's executive director, was presented with a microcomputer at the awards luncheon held during the conference.

"We usually give Natalie flowers, but we thought this would last a little longer," Mr. Hyman quipped when he presented the computer.

Nevertheless, techniphobia persists.

"A lot of managers don't like computers because they have a keyboard, and they think anything with a keyboard is for clerical people," Mr. Ellis said. "That's a lot of malarkey."

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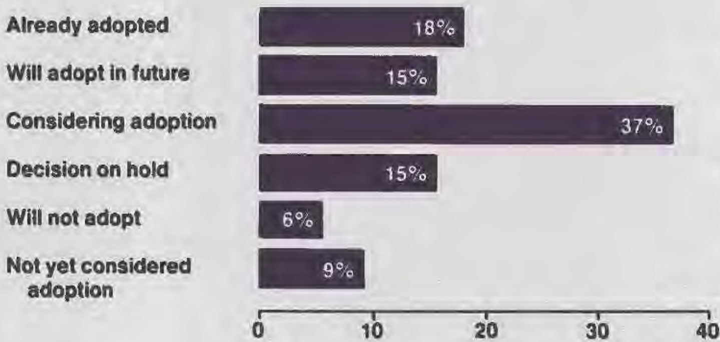
401(k) salary reduction plans interest majority of banks, large manufacturers

By JAMES M. BURCKE

Very few large employers have ruled out establishing a 401(k) salary reduction plan for their employees, according to a new study.

Eighteen percent of the manufacturing companies and banks polled by Hewitt Associates have already set up a 401(k) plan for their employees, while only 6% say they have definitely decided against setting up such a plan.



Another 15% of these companies say they will definitely adopt a 401(k) plan sometime in the future, and 37% say they are considering such a plan. Fifteen percent say they have put their decision on hold, while 9% have never considered forming a 401(k) plan.

Under a 401(k) salary reduction plan, employees may defer to a retirement savings plan a portion of their salary that would normally be paid in cash. If the plan qualifies with Internal Revenue Service regulations, employees are not taxed on contributions paid to the plan until the funds are withdrawn from the plan, cutting the employees' taxable income during their working years.

Some companies also will match employee contributions to a 401(k) plan as an incentive for retirement savings. Again, these contributions are not taxed until they are withdrawn.

Hewitt, an employee benefits consulting firm based in Lincolnshire, Ill., polled its 1,300-member Compensation Exchange on a number of current "hot topics" in retirement plans, including 401(k) salary reduction plans. Hewitt received 307 corporate responses, 54 from banks and 253 from manufacturers with at least $100 million in annual sales.

Besides discovering that few employers have actually rejected the concept of a 401(k) plan, Hewitt also learned that salary reduction programs are particularly popular with large manufacturers.

For example, 27% of the surveyed manufacturers with more than $2.5 billion in annual sales have already established a 401(k) plan, and another 26% of these companies say they will definitely form one.

In contrast, only 12% of the manufacturers with sales ranging between $100 million and $499.9 million have established a plan, and just 7% say they definitely will set one up sometime in the future.

Furthermore, 21% of the smaller manufacturers say they haven't even considered forming a 401(k) plan, while all of the large manufacturing companies say they have given the idea at least some consideration. Only 2% of these large companies have totally rejected the concept, while 5% of the man-

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Buyers not shaken by recent scandals, Lloyd's chief says

By RHONDA L. RUNDLE

LOS ANGELES—U.S. brokers and policyholders are confident of the security behind a Lloyd's of London policy, says the chairman of Lloyd's.

Sir Peter Green recently toured key U.S. cities to assess the psychological damage that a series of recent scandals at Lloyd's has inflicted on the venerable market.

Sir Peter talked with insurance company executives in Hartford, Conn., and with big brokers and their clients in New York and San Francisco. He also addressed the annual meeting of the American Assn. of Managing General Agents May 23 on the Hawaiian island of Maui.

Sir Peter

But, one of the principal reasons for coming to the United States this time was to see whether corporate presidents, treasurers or risk managers might be concerned about insuring with Lloyd's in view of recently adverse publicity, Sir Peter acknowledges. U.S. risks represent about 50% of Lloyd's business.

During the past 18 months, several underwriting syndicates at Lloyd's have uncovered evidence that key underwriting and brokerage officials may have profited from the reinsurance arrangements of the syndicates (*BI*, Dec. 13, 1982).

Despite the seriousness of these allegations, the U.S. insurance community remains confident of the security behind Lloyd's policies, Sir Peter stresses.

"No one anywhere was the slightest bit worried," he emphasized during an interview in Los Angeles late last month before returning to the United Kingdom.

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Aluminum firms offer early retirement option

benefit beat

The nation's three largest aluminum companies are offering certain members of the United Steelworkers of America and Aluminum, Brick & Glass Workers an "early-out" retirement option.

Aluminum Co. of America in Pittsburgh, Kaiser Aluminum & Chemical Corp. in Oakland, Calif., and Reynolds Metals Co. in Richmond, Va., reached similar agreements with both unions on the option.

For the next two months, workers age 60 or older with 30 or more years of service will be eligible for special early retirement incentives. In addition to their normal retirement benefits, the workers will receive $400 per month for a minimum of 12 months to a maximum of 21 months. The duration of the special payments depends on the worker's age at time of retirement.

A total of nearly 700 workers at all three companies are eligible for the early retirement program.

At Kaiser, retirement benefits are based on seven job classifications. Retirees receive an amount equal to their hourly pay each month, which ranges from $18.25 per hour to $22.85 per hour, multiplied by their years of service with the company.

A Steelworkers union official said the Alcoa and Reynolds retirement plans resemble Kaiser's.

HMO option

The Chicago-based American Hospital Assn. is offering its employees a modified health maintenance organization option that allows workers to use their family doctor for primary care.

This new program, called CHOICE, gives the AHA more control over the delivery and costs of hospitalization and referral care, like a typical HMO, but it allows employees to stay with their personal doctor, like traditional insurance plans.

The CHOICE program was developed last year by Aetna Healthcare Programs Inc., a unit of Aetna Life & Casualty Co.

The AHA, which has 800 employees, was facing a huge premium increase for its traditional health plan underwritten by Blue Cross of Illinois when it decided to include CHOICE is the plans it offers, said Dolores Bennett, benefits specialist with the association.

"We offered up to Feb. 1 of this year Blue Cross' very best coverage, but because of rate increases, we couldn't continue unless we passed on an additional cost of $100 (a month) to employees," she said, adding that the other option was to reduce benefits.

The AHA decided to alter the Blue Cross plan, eliminating first-dollar hospitalization coverage, though it now offers what was formerly optional major medical coverage to all employees. Employees currently do not have to contribute toward Blue Cross premiums.

Under the CHOICE option, which went into effect Feb. 1, employees receive a rebate from the AHA because the premiums for the program are less than what the AHA had budgeted for workers' health care. Employees opting for individual CHOICE coverage will receive about $5 a month, while those selecting famlily coverage will receive about $1 a month.

Some 50 employees joined the CHOICE plan, Ms. Bennett said, noting that 56% of the association's employees are in this plan or one of the five other HMO options offered by the association.

Employees opting for three of the HMO plans must contribute toward premiums while the others offer rebates, like the CHOICE plan.

The CHOICE program allows participants to use their own physician for non-emergency care. This primary care physician does not have to be affiliated with the CHOICE program, although many have joined.

Personal care includes coverage for minor non-occupational illnesses and injuries and preventive services like immunizations and certain physical exams.

The program pays the first $100 of charges by a family doctor ($200 for family coverage) and then 80% of additional charges until employees pay $500 out of pocket. Then, full coverage resumes.

The traditional health plan written for the AHA by Blue Cross requires a $100 deductible for individuals and a $300 deductible for families. The plan then pays 80% of all costs until an out-of-pocket cost cap of $1,000 for individuals and $2,000 for families is reached.

In the CHOICE program, employees that require services that can't be provided by personal physicians are treated by contracted physicians or at one of the three suburban Chicago hospitals.

The program pays the full cost without a deductible of all non-primary care, except for required co-payments on outpatient prescription drugs, certain care for mental and nervous illnesses and convalescent care.

The CHOICE program is offered only in the Chicago area, but Aetna plans to expand the program to California and Washington D.C., said David N. Young, vp, in Aetna's employee benefits division.

Excess plans

So-called ERISA excess pension plans are becoming more popular at large companies, according to a new survey by consultant Towers, Perrin, Forster & Crosby.

Seventy-one of the 76 large companies surveyed recently by TPF&C said they offered ERISA excess plans, compared with 64 that offered such a plan last year.

ERISA excess plans seek to restore pension benefits not payable because of ceilings imposed by the Employee Retirement Income Security Act. These ceilings, which were lowered by Congress last year (*BI*, Dec. 13, 1982), make it impossible for high-paid executives to receive the full pension benefits they are entitled to under pension plan formulas.

Seventy of the 71 firms offering excess plans said they use the plan to augment defined benefit plans. Ten of these employers said they also use their excess plans to augment defined contribution plans, while the remaining firm, which does not offer a defined benefit plan, uses its excess plan solely to supplement a defined contribution plan.

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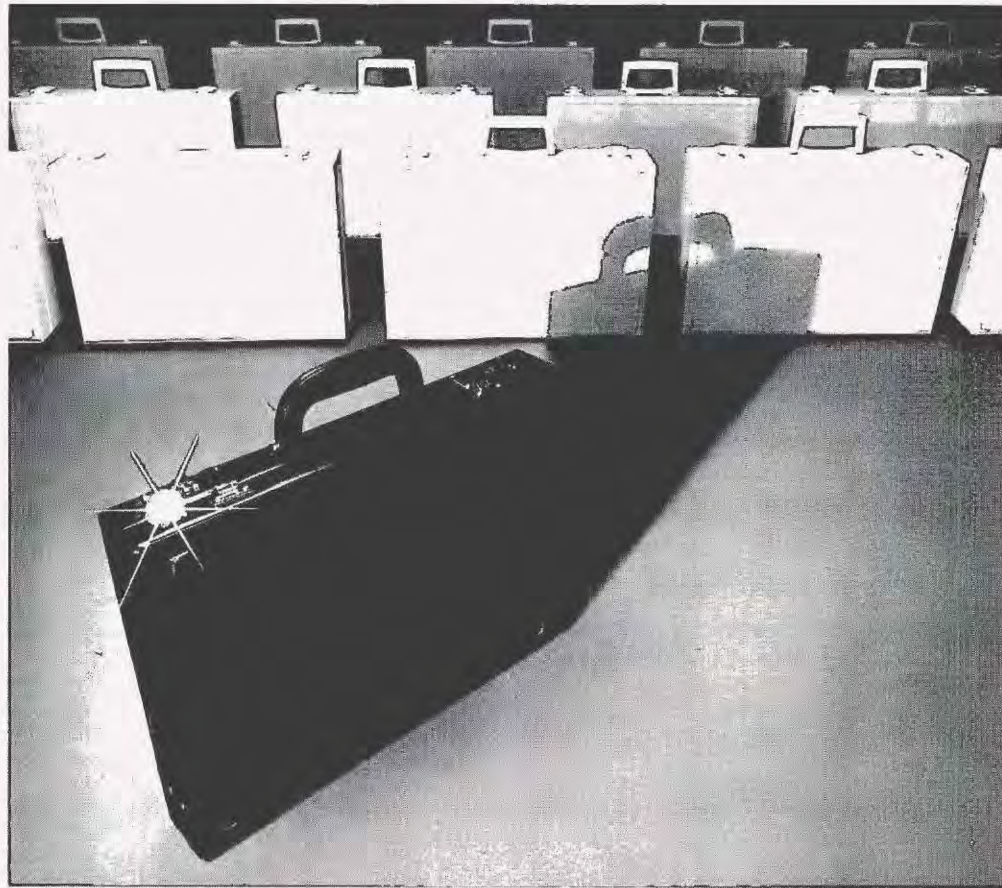

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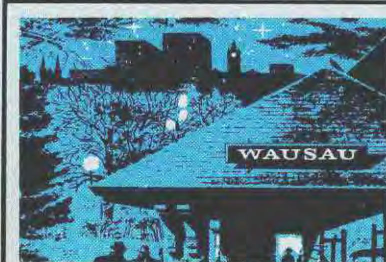

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States considering unisex legislation

Photo: Sheila O'Donnell
A volunteer in Chicago hands out fliers supporting unisex rating.

Continued from page 1

But experts say more bills could be enacted next year, especially if employers fail to take a more active role in the legislative battles.

"If you don't stop them (unisex bills) fast, all of a sudden they could be enacted in a lot of states," says George Bernstein, a Washington attorney who represents the American Insurance Assn.

In fact, whether sex should be considered in insurance ratemaking is not a new issue at the state level. At least four states—Hawaii, Massachusetts, Michigan and North Carolina—already prohibit insurers from basing auto insurance rates on the sex of the policyholder.

What is new is that the current state bills move beyond a personal insurance line and could affect employer-provided benefit plans.

For example, employers no longer could offer defined contribution plans that provide different levels of benefits to men and women through annuities that typically pay women smaller amounts per month on the assumption that they will live longer.

In addition, employers with defined benefit plans would have to amend any differences in joint and survivor benefit provisions, possibly increasing pension benefits to male retirees who choose the option.

Despite the impact on employer benefit programs, businesses—at least until now—have for the most part stayed out of the state legislative battles.

Until now, employers and insurers often have been paying closer attention to federal unisex legislation, H.R. 100, proposed by Rep. John Dingell, D-Mich., and S. 372, introduced by Sen. Robert Packwood, R-Ore., than to bills introduced in their own state legislatures (*BI*, May 16).

Insurers and employer trade associations, like the U.S. Chamber of Commerce, are opposed to the federal legislation and they say adoption of state unisex bills also could cause severe problems.

For example, employers with multistate operations would be confronted with conflicting state rules on whether they could use sex as a factor in setting benefit levels in their pension programs.

"There would be a horrendous administrative nightmare," said Mr. Bernstein.

But after the passage of unisex legislation in Montana this year—the first state to enact a law that eliminates sex as a rating factor for all lines of insurance and employee benefits—employers and insurers may no longer take state unisex bills lightly.

"Montana may prove to be a blessing if it increases awareness," said Tom O'Day, government relations officer at the Alliance of American Insurers, an industry trade group.

The Montana measure, proposed by Rep. Jan Brown, D-Helena, was backed by House Democrats. "There was a political aspect to it. . .The Democrats said, 'We are going to prove that we care more about women than the Republicans do,'" said Jack Ramirez, the House Republican minority whip.

In addition, insurers were slow to supply facts to legislators on the impact of the bill and rebut misinformation about the bill, said Mr. Ramirez.

"Insurers underestimated the force behind the bill," he said.

After the measure passed the House, the Senate did tack on amendments, originally suggested by Rep. Ramirez, to make the bill less costly to employers.

The most significant change was striking a retroactive provision that would have required adjustments to existing insurance premiums and benefits whenever there was a difference between what a man and a woman would pay or receive.

Instead, the new law will mandate unisex benefits for retirement and other benefit plans that are established after Oct. 1, 1985. It also requires that men and women pay the same amount for insurance policies after this date.

Some insurance industry sources say they hope to convince Montana legislators to repeal the law before it goes in effect in 1985.

Nebraska's unisex law is much more limited. It affects only about 16,000 people enrolled in state and county pension programs.

The measure does not apply to university professors who are covered by a separate pension program.

The state employees affected are covered by a defined contribution plan that offers the employee a choice of purchasing an annuity from Bankers Life Insurance Co. of Nebraska with the accumulated benefit.

Currently, if a man and a woman retire with the same accumulated benefit, the woman's annuity—purchased with the accumulated benefit—is about 10% smaller than the man's, since a woman is more likely to live longer and thus would likely receive a larger total amount if paid the same monthly benefit as a man.

Under the new law, no sex distinctions can be made in annuity benefits for male and female government workers that retire after Dec. 31. ■

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opinions

A public entity code of conduct

Towns, cities, counties and states are under increasing legal attack for violations of civil rights laws and may find themselves the subject of antitrust actions, too.

These were two chief concerns on the minds of risk managers for public entities who gathered late last month at the fourth annual meeting of the Public Risk & Insurance Management Assn. held in St. Paul (see stories beginning on page 3).

We can appreciate that government entities are beginning to feel a bit battered by these lawsuits, but we aren't going to quarrel with the premise that governments ought to be held liable when their actions injure the public.

We think the best advice for dealing with this increasing threat of litigation is: Be sure governments conduct themselves so as not to harm the public—individuals or businesses.

Sure, governments and their insurers preferred the former protection of sovereign immunity statutes that restricted lawsuits against public entities. But, losing that protection is not all bad—for public entities, their risk managers, or for the public at large.

The risk of having to pay damages to injured persons does put fear of the consequences into the minds of public officials and employees as they carry out their daily jobs.

Risk managers can use these increasing exposures to justify tougher policies that help keep public officials and employees on the straight and narrow.

And, in the end, the rights of the public are better protected.

Setting a standard

The new Pooling Section of PRIMA organized for risk managers involved in self-insurance pools for governments should pursue development of standards for the management of government risk pools.

And, the standards should be prepared with full awareness that they could be turned into regulations by state insurance departments.

Fear that standards could be turned into regulations has been raised as a reason not to even develop the guidelines. We hope that fear doesn't prevail.

There is clearly a need for standards for the management of government pools. And some state insurance regulators have expressed an interest in regulating these pools.

The Pooling Section of PRIMA should respond to these needs and interests with a set of standards that they believe could be applied fairly to all pools.

It's called taking the initiative.

letters

BIUA membership stands up to be counted

To the editor: Your editorial "Time to open the books" (*BI*, May 2) was discussed at the recent monthly meeting of the Bermuda Independent Underwriters Assn.

Our members agree with you that each Bermuda-based insurer and/or reinsurer should be judged by its own individual financial statements. This is, in fact, the best way to analyze the security of any company in any territory. Our association consists of only 31 companies out of the thousand or more which operate out of Bermuda. I enclose a list of our members to assist your readers (see below).

Our membership is small because our constitution provides that only companies with full-time underwriting personnel based in Bermuda be admitted. This excludes all companies under management and, generally, companies transacting only parent-related business.

In the normal course of their business, our members circulate their audited financial statements to those individuals and corporations with whom they wish to do business. There is no need for our association to act as a clearinghouse since annual financial statements, in general, are readily available from each company.

The question of consistent accounting is more difficult since some companies in Bermuda report on a U.S. statutory or generally accepted accounting practices basis, while others report according to Canadian GAAP (the Bermuda Institute of Chartered Accountants is affiliated with the Canadian Institute). Still other companies, particularly those with a heavy marine portfolio, prefer to report on a Lloyd's basis. All companies, however, have to file Bermuda statutory returns and we are presently awaiting publication by the Bermuda Ministry of Finance of the first annual statistical summary of these returns. This, we hope, will guide us as to any further disclosure that may be appropriate.

P.J. Jones
Chairman
Bermuda Independent
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■ *Members of the Bermuda Independent Underwriters Assn. are: Ancon Insurance Co. S.A.; Anderson Hill Insurance Ltd.; Aneco Reinsurance Co. Ltd.; Argus Insurance Co. Ltd.; Arion Insurance Co. Ltd.; Bayside Management Co. Ltd.; Belvedere Insurance Co. Ltd.; Bermuda Fire & Marine Insurance Co. Ltd.; Bluewater Insurance Ltd.; Cambridge Reinsurance Ltd.; Continental Reinsurance Corp. (Bermuda) Ltd.; Fairway (Bermuda) Ltd.; Fordingbridge International Underwriters Ltd.; Frank B. Hall Underwriting Managers Ltd.; General International Ltd.; General Re Services Ltd.; Heddington Insurance Ltd.; Horizon Insurance Co. Ltd.; Hudson Reinsurance Co. Ltd.; INA International Insurance Co. Ltd.; Insco Ltd.; Ivanhoe International Ltd.; Mentor Insurance Ltd.; National Underwriters (Reinsurance) Ltd.; Prescot Underwriting (BDA) Ltd.; Ramus Insurance Ltd.; Trenwick Ltd.; Universal Marine Insurance Co. Ltd.; Victory Reinsurance International Ltd.; Walton Insurance Ltd.; and Zurich International Ltd.*

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European rain damage largely uncovered

By STACY SHAPIRO

london line

LONDON—The rain in Spain and the rest of Europe is costing millions of dollars in ruined crops and canceled events with little insurance to cover the loss, sources in London say.

In France, the government is setting up an "insurance scheme" to help compensate the grape growers in some of the finest wine growing valleys in the world, which are now flooded, though details of the program have not yet been ironed out.

Vineyards are expected to lose millions of dollars because this year's vintage is not expected to be up to par due to the heavy rains.

There may also be some kind of compensation programs through commercial insurance companies in other parts of Europe, like Spain, for damaged crops, sources in London say. Pools of insurance companies sometimes help farmers in nations where heavy rain is unlikely and thus usually not covered, said Robin Harris, business insurance manager for the National Farmers Mutual Insurance Society in London.

However, there is no flood or weather damage insurance for crops in Britain, where rain fell each day for more than a month this spring, Mr. Harris said.

"We do not have crop insurance," he explained. "Nobody in their right mind would insure crop damage except for damage from hail" because of the great amount of rain that usually falls in Britain.

But London underwriters that write pluvious insurance for garden parties, sporting contests and other outdoor events say their business is booming.

Pluvious insurance will pay for the expenses and the estimated proceeds of an event that is canceled because of rain. And the unusually wet spring has washed out many cricket matches and garden parties, triggering an increase in claims, said Peter Chase, pluvious underwriter for Eagle Star Insurance Co. Ltd.

"But if claims are the cloud, then the public interest that comes from the bad weather is the silver lining," he said.

"There has been a substantial increase in the income from pluvious insurance because of the wet spring so far," he said. "People are worried about the pluvious insurance for the future because they have seen things washed out.

"Nature itself is the best advertising we have," he said.

However, Britain's major sporting events, like thoroughbred racing at Ascot and the Wimbledon tennis championship, are usually not insured against rain.

"Wimbledon is virtually never insured," said Mr. Chase. "The only ones who lose are the people with the tickets because if it rains and there are no matches that day, you are out of luck unless it is the final" match, which is rescheduled.

Warranty policies

Lloyd's of London has set up a special fund to settle outstanding claims from extended warranty insurance policies administered by Multi-Guarantee Co. Ltd., which went into liquidation last month.

Lloyd's is investigating allegations that some of the warranty policies marketed by Multi-Guarantee were illegally altered (*BI*, March 21). Underwriters earlier said that if the policies were altered, they would refuse to pay claims but Lloyd's says that negotiations are being held between underwriters and policyholders over claims settlements from the special fund.

The policies insured extended warranties offered by retailers and manufacturers on consumer appliances. Policyholders included Hoover P.L.C., the electrical appliance maker, and Telefusion P.L.C., a British discount retail chain.

Multi-Guarantee has denied it altered the policies.

Brokers closed

A large London bank, Midland Bank Ltd., is ceasing its Lloyd's of London brokerage operations because it disagrees with new Lloyd's rules on brokerage trust funds for American accounts.

Under the new rules, Lloyd's brokers must guarantee U.S. premiums they hold with their parent companies' assets. However, Midland refuses to use bank assets to guarantee its brokerage business. "We were asked to guarantee our bank subsidiary, which as policy the bank does not do," a bank spokesman said.

The bank will transfer the bulk of the business handled by the two Lloyd's brokers, Midland Bank Group Insurance Brokers Ltd. and Midland Bank Insurance Brokers Ltd., to its non-Lloyd's brokerage, Midland Bank Insurance Services Ltd. That broker will have go through another Lloyd's broker to place risks at Lloyd's.

Satellite claim

The Indian government is asking underwriters to pay $64.9 million, plus expenses, for the total loss of its INSAT satellite.

According to one of the insurers, a total loss claim for the malfunctioning satellite was made in April after underwriters tried to find out what happened to the satellite.

INSAT failed to achieve its proper geostationary orbit and failed to deploy a solar sail shortly after it was launched in April 1982. To correct the problem, much of the fuel that was to have powered the satellite for seven years had to be used.

The state-owned New Indian Insurance Co. insured the satellite, but ceded portions of the risk to British and U.S. insurance companies and reinsurers, including the Illinois Insurance Exchange (*BI*, July 19, 1982). ■

Illinois considers asbestos claim bill

SPRINGFIELD, Ill.—A bill that would impose a 25-year statute of limitations on workers compensation claims arising from exposure to asbestos was approved by the state Senate last month.

S.B. 1070, sponsored by Sen. George Sangmeister, D-Joliet, would bar benefits for employees who do not file for asbestos-related diseases within 25 years after exposure. The bill, sent to a House panel, applies to workers exposed to asbestos since 1958. ■

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Pension plan formation proceeds at record pace

By JERRY GEISEL

washington

WASHINGTON—Despite a sluggish economy, employers set up a record number of pension plans last year.

Some 70,200 defined benefit and contribution plans were established in 1982, up 16.8% from the previous year's record of 60,095, according to Internal Revenue Service figures.

Of the 70,200 net plans created last year (new plans minus terminations of existing plans), 23,146 were defined benefit plans and 47,054 were defined contribution arrangements.

"Retirement plans are growing faster than the economy," noted Sophie Korczyk, an economist and research associate at the Employee Benefit Research Institute, a Washington-based benefits think tank.

The sharp increase in the number of new retirement plans formed compares with a 1.8% decrease in the Gross National Product during 1982.

Meanwhile, in another retirement income development, EBRI estimates that between January 1982 and April 1983, some $54.3 billion was contributed to Individual Retirement Accounts and Keogh plans.

That is more than twice as much as the $25.7 billion that was contributed to IRAs and Keoghs between January 1975 and January 1982.

The major reason for that increase was the enactment of the 1981 Economic Recovery Tax Act, which made more than 40 million Americans eligible to open IRAs for the first time.

Prior to the law's enactment, only the self-employed or employees not covered by group pension plans were allowed to form IRAs.

Alliance dues

The Product Liability Alliance, a Washington-based group of more than 230 employers and trade associations that is trying to develop a business consensus on federal product liability issues, is now charging members dues to shore up its financial base.

Annual dues for the 40 members of the TPLA's steering committee, which sets policy, will be $3,000. Dues for other TPLA members will be $500 a year.

In another product liability development, Sen. James Abdnor, R-S.D., has become the 19th co-sponsor of S. 44, introduced by Sen. Robert Kasten, R-Wis., that would pre-empt state product liability laws with a uniform federal law.

Nearly all the co-sponsors of the Kasten legislation, which is pending in the Senate Commerce Committee, are Republicans.

Structured settlements

The Structured Settlements Co. is not entitled to register the term "structured settlements" as a trademark, according to the U.S. Patent Office's Trademark Trial and Appeal Board.

The board denied The Structured Settlements Co., a Los Angeles-based venture, proprietary rights to the use of the words because "structured settlements" is a "common descriptive term for the settlement of tort actions by way of periodic payments and not by lump sum and for the services offered in connection with those settlements."

The case arose when Walker, Sullivan & Co., a predecessor to The Structured Settlements Co., attempted to register the term "structured settlements" with the U.S. Patent and Trademark Office.

That action was opposed by Johnson & Higgins, the New York-based insurance broker and consulting firm, and The Hartford Fire Insurance Co. They argued that the term was only descriptive of the service being offered.

J&H noted, for example, that the term structured settlements is widely used by the insurance industry to describe a tort claim settlement in which periodic payments are made to a claimant to provide a steady flow of income.

The appeals board decision allows insurers, brokers and others to continue to use the term structured settlements in marketing their insurance products. ■

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Trenwick embarks on two U.S. ventures

markets

Trenwick Ltd., a Bermuda-based reinsurance company, is moving into the U.S.-licensed reinsurance market.

Pending regulatory approval, Trenwick and other investors will operate a New York Insurance Exchange syndicate and Trenwick will purchase majority ownership of a U.S.-licensed reinsurance company.

Trenwick, organized in 1979 by former employees of General Reinsurance Corp., owns Trenwick Reinsurance Co. Ltd., one of the leading reinsurance companies based in Bermuda. It underwrites primarily U.S. facultative reinsurance, while Trenwick Ltd. also provides financial and management services to insurance affiliates of U.S. corporations and U.S. self-insurers.

Formed with investments by U.S. and foreign insurance and reinsurance companies, industrial corporations, individuals and venture capitalists, Trenwick reported capital and surplus at year-end 1982 of nearly $29 million.

Apple Syndicate Corp., capitalized at $3.8 million by Trenwick and seven other investors, expected approval of its syndicate on the NYIE late last week. When approved, it will become the 36th underwriting member on the NYIE and the first to specialize in captive and self-insurance risk taking.

The syndicate will be managed by Trenwick Managers Inc., with operations expected to begin July 1 at the 59 John St. headquarters of the exchange.

Besides Trenwick, other insurers and corporations that own insurance subsidiaries that are investing in Apple Syndicate include Burlington Industries Inc., Continental Corp., General Telephone & Electronics Corp., Ideal Mutual Insurance Co., International Harvester Co., Kaiser Aluminum & Chemical Corp. and Moore McCormack Resources.

Trenwick also has reached an agreement in principal with Excess & Treaty Holding Corp. for Trenwick to obtain a majority interest in ETHC, pending approval of the New York State Insurance Department. ETHC owns Excess & Treaty Reinsurance Corp. (ETRE), a New York-domiciled reinsurer that is a licensed, authorized or approved reinsurer in 40 states.

If the transaction is approved, the names of the companies will be changed to Excess & Trenwick Holding Corp. and Excess & Trenwick Reinsurance Corp., but the acronyms remain the same.

If approved, the shareholders of ETHC, in addition to Trenwick Ltd., will include USF&G Corp., Hannover Ruckversicherungs A.G. and Copenhagen Reinsurance Co. Ltd.

James F. Billett Jr., chairman, president and chief executive officer of Trenwick Ltd., will become president and chief executive officer of ETHC and chairman and chief executive officer of Excess & Trenwick Reinsurance Corp. Mark W. Hinkley, senior vp of Trenwick Ltd., will be president and chief operating officer of the reinsurer.

ETHC is a private Delaware company organized in 1977 by U.S. and foreign insurance and reinsurance companies and individuals to underwrite reinsurance through ETRE as a participant in the Excess Casualty Reinsurance Assn. The St. Paul Cos. Inc. acquired the exclusive manager of ECRA in 1982, and it was disbanded in January.

The combined underwriting capital and surplus of ETHC and Trenwick pursuant to the agreement would be approximately $45 million.

Intermediary formed

Los Angeles-based broker Emett & Chandler Cos. Inc. has formed a new, wholly owned reinsurance intermediary called ECRIS Inc. to offer facultative and treaty reinsurance services.

Thomas B. Arney will serve as chairman of ECRIS. The new unit is headquartered at 529 Fifth Ave., New York, N.Y. 10017; 212-916-3185. A Chicago branch is located at 55 W. Monroe St., Chicago, Ill. 60603; 312-346-6667.

Ownership transferred

Getty Oil Co. has transferred ownership and control of a Bermuda insurance subsidiary, First Excess & Reinsurance Corp. (Bermuda) Ltd., to another subsidiary, Employers Reinsurance Corp.

Employers Re already owns First Excess & Reinsurance Corp. of Mission, Kan. The Bermuda subsidiary is managed by Victory Management (Bermuda) Ltd.

Bonding unit

Reliance Insurance Cos. has formed a new surety bonding management subsidiary, Reliance United Pacific Surety Managers. The new unit will coordinate the U.S. and Canadian bonding activities of Reliance Insurance Co. and United Pacific Insurance Co. of Federal Way, Wash., a Reliance subsidiary.

George T. Holbrook, corporate senior vp-bonding operations, will serve as president and chief executive officer of the new unit.

Acquisitions

Michigan Mutual Insurance Co. of Detroit has purchased an ownership interest in **California Reinsurance Management Corp.** of Pasadena, Calif. California Re, a treaty reinsurer, is jointly owned by 10 U.S. and foreign insurers.

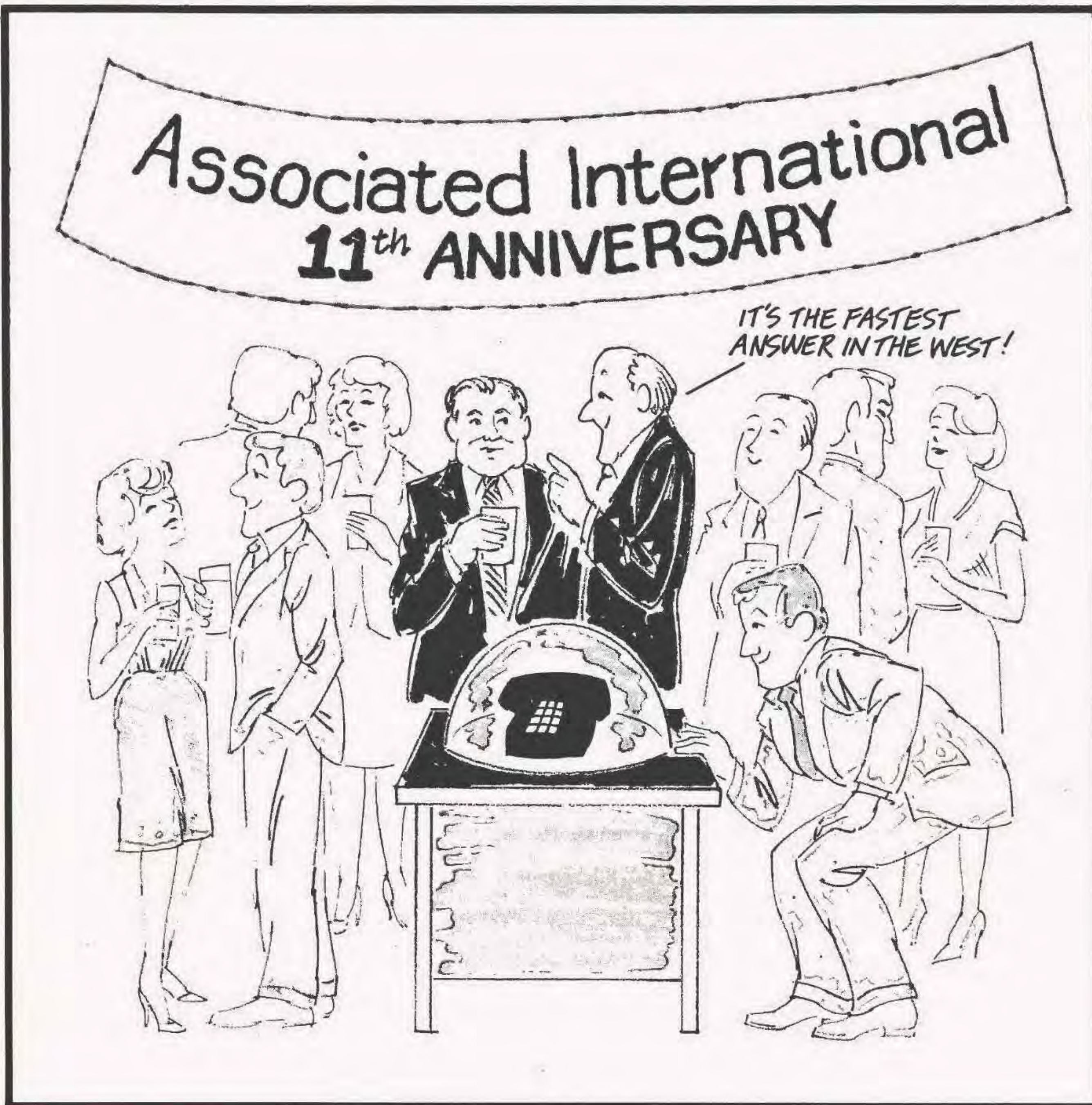
Nationwide Life Insurance Co. of Columbus, Ohio, announced its merger with **Second Plaza Corp.**, a newly formed corporation owned by Nationwide's parent company, **Nationwide Corp.** The purpose of the merger is to transfer Nationwide Life from public to private ownership.

New offices

Gulf American Health Trust, a group health insurer for small and medium-sized employers, has moved to new offices at 1173 N.E. Cleveland St., Clearwater, Fla. 33517; 813-447-2551.

The **Oakland Assn. of Insurance Agents Inc.** has moved to new offices at 1100 Broadway, Suite 200, P.O. Box 2039, Oakland, Calif. 94604; 415-832-4418.

CMA Consulting Group, an insurance management consulting firm that is based in Morristown, N.J., has moved its Western regional office to 70 Lansing St., San Francisco, Calif., 94105; 415-543-9656.



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Lawton-Byrne-Bruner names Peter Reeves executive vp

Peter C. Reeves elected executive vp of Lawton-Byrne-Bruner, a large St. Louis insurance brokerage.

Mr. Reeves

Mr. Reeves, previously a vp at Lawton-Byrne-Bruner, joined the company in 1964.

comings & goings: industry

Other agent/broker changes:

John L. Goodyear has been named national director of health strategies for Alexander & Alexander Services Inc.'s Human Resource Management Division, which specializes in employee benefits and information services. Mr. Goodyear will direct A&A's national consulting service on health care cost containment. He previously was managing vp of A&A's Bloomfield, N.J., office.

John A. Stough named managing vp at the Louisville, Ky., office of Alexander & Alexander Inc. He joined A&A after its merger with Nahm, Turner, Vaughan & Landrum Inc. in 1982. He had been senior vp at NTV&L.

John P. Soward has joined Lester Eckert & Co. in Houston, Tex., as vp. He will serve as the marine industry specialist at the company. Mr. Soward was previously with American Hull Insurance syndicate and Western Electric Co.

Mr. Soward

Insurers

John A. Gibson III named senior vp and chief actuary-casualty for Colonial Penn Franklin & Colonial Penn Insurance Cos. in Philadelphia. He was named vp and actuary of Colonial Penn Franklin Insurance Co. in 1980.

Mr. Gibson

Also, **Thomas R. Auvinen** named senior vp and chief actuary-life and health for Colonial Penn Franklin, Colonial Penn Life and Colonial Penn Insurance Cos. Prior to joining Colonial Penn in 1982, he had been president and consulting actuary of Auvinen & Associates Inc.

Wayne A. Gibson elected vp and general manager of The Beacon Insurance Co. of America and American Select Insurance Co. in Westerville, Ohio. He was most recently general manager-West Virginia for CIGNA Corp. before joining Beacon and American Select.

John Bruder promoted to vp-group sales at Minnesota Mutual Life Insurance Co. in St. Paul, Minn. He had been manager of the Chicago regional group office.

David L. Conway appointed vp in charge of property and inland marine underwriting at Fireman's Fund Insurance Cos. in Novato, Calif. He was previously an underwriting executive for rural areas in the Novato home office.

Reinsurers

James E. Roberts appointed vp of North Star Reinsurance Corp. in Stamford, Conn.

Excess/surplus

Robert E. Stalker joined Hull & Co. as vp and manager of the Chicago office. He will be in charge of production and underwriting for surplus lines in the Midwestern states. Mr. Stalker had been with Fred S. James & Co. Inc. and Capacity Managers International Inc. before joining Hull & Co.

Charles Conway named senior vp of the Western division of Delaware Valley Underwriting Agency Inc. in Hatboro, Pa. Mr. Conway will be responsible for the Pittsburgh, Charleston, W.Va., and Cleveland offices. **Robet Cohen**, a senior vp at DVUA, was reassigned to the Hatboro, Pa., office. He succeeds **Charles Ellman**, who will now be responsible for the Eastern and Western divisions of DVUA.

Other suppliers

H. Frank Lively, George N. Stone, Curtis G. Weakly and **Richard C. Lien** named vps at M.F. Bank & Co. Inc., an independent salvor and appraiser. Mr. Lively is also national marketing director, Mr. Stone is vp of the Southeast region, Mr. Weakly is vp in the central region and Mr. Lien is vp and branch manager of the Minneapolis office.

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Few large employers rejecting 401(k) plans

Continued from page 3
ufacturers with sales between $100 million and $499.9 million have.

More than three-quarters—76%—of all the banks and manufacturers surveyed by Hewitt Associates that have already set up 401(k) plans say they match all or part of their employees' contributions to the plans. However, according to the survey, small companies are about as likely to match employee contributions.

The most common formula that companies use to match employee deferrals to the plans is 50 cents for every dollar contributed by a worker. That method is used by 39% of the companies that have already set up a 401(k) plan.

Fifteen percent say they match employee contributions dollar-for-dollar, while 12% say they contribute less than 50 cents for every $1 their workers contribute.

The rest of the employers with 401(k) plans—34%—use some other contribution formulas. For example, employer contributions can be based on the company's profits or on the number of years an individual employee has participated in the plan.

Company contributions to a 401(k) plan prompt employees to contribute more of their own salaries, according to the survey. For example, the highest paid one-third of the eligible workforce at companies that matched employee deferrals contributed an average of 4.9% of their salary to the company's 401(k) plan. The same group of employees at companies that did not provide matching contributions deferred only 2.5% of their salaries to the plan.

Likewise, the lower paid two-thirds of the eligible employees at companies providing matching contributions deferred 3% of their salary, while these employees at companies that do not contribute to the plans deferred only 1.5% of their pay.

The employers that have decided not to offer a plan or those who have put their decisions on hold cite a number of reasons for their decisions.

Of the 6% that said they would not offer a plan, 31.3% cited the fact that they already offered a profit-sharing plan to their employees, 17.6% said they believed they would have difficulties in meeting the IRS anti-discrimination tests governing the plans (*BI*, Dec. 13, 1982) and 11.8% said they had not determined a need for a 401(k) plan.

Of the 15% that said they had put their decision on a 401(k) plan on hold, 23.4% cited the lack of final IRS regulations governing the plans as a determining factor, 8.5% cited poor economic conditions, another 8.5% said the plans could have an effect on their pension calculations and 6.4% said a 401(k) plan would burden their record-keeping capabilities.

Besides 401(k) salary reduction plans, Hewitt polled the employers on other "hot topics" in defined contribution retirement plans. For example, it asked employers that contribute to employee savings and thrift plans how much they put into the plans.

By far the most popular contribution formula is for a company to contribute 50 cents for every dollar the employee contributes, a method cited by 45% of the companies that match contributions to thrift/savings plans. Twelve percent said they matched employee contributions on a dollar-for-dollar basis, while 6% said they contributed only 25 cents for every $1 contributed by an employee.

Another 11% said that employee contributions varied according to corporate profits, while 2% said these contributions vary with the individual employee's length of service.

Some 23% cited some other contribution formula, such as one based on a dividend the company pays or the return generated by some investment vehicle.

Again, as with the 401(k) plans, employee contributions are affected by the amount the employer contributes to a thrift/savings plan.

Some 74% of employees at companies that match worker contributions dollar-for-dollar participate in thrift/savings plans, compared with 65% at companies that contribute only 50 cents for every $1 an employee contributes. Only 63% of employees participate at companies that contribute 25 cents for every dollar of employee contributions.

Furthermore, employees tend to contribute more money to plans in which the employer makes generous contributions. Seventy percent of employees at companies that match contributions dollar-for-dollar contribute the maximum amount allowed. Only 52% contribute the maximum allowed at companies that only contribute 50 cents on the dollar, while just 39% contribute the maximum at companies that donate 25 cents for every dollar of employee contributions.

Overall, 54% of the employees at all the surveyed companies with thrift/savings plans contribute the maximum allowed by the companies.

The most common maximum allowable employee contribution is 6% of pay, cited by 57% of the responding companies. Thirteen percent allow employees to contribute a maximum of 5% of pay, while another 18% have even lower maximum contributions. The rest of the companies cited a different maximum amount.

Although defined contribution plans—like thrift, savings, profit-sharing and salary reduction plans—are proving popular, the notion of allowing employees to borrow money from these plans is not, according to the survey.

Only 18% of the surveyed companies with defined contribution plans include a loan provision in their plans.

And, at the companies that do allow employees to borrow money from a defined contribution plan, very few employees are taking advantage of the option.

For example, 61% of the surveyed companies with a loan provision in the plans report that less than 5% of the plan participants currently have loans outstanding. None of the responding companies reported that more than 50% of plan participants have loans outstanding, while only 6% reported that between 25% and 50% of the plan participants are currently taking advantage of a loan provision.

•

Copies of the 39-page survey, "Hot Topics in Retirement Plans," are available for $25 from Greg Martin, Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60015; 312-295-5000.

AMERICAN
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The arson crisis:
putting the heat where it belongs

How big is the arson problem today?

One northeastern county with 69 municipalities identified 66% of structural fires as suspicious or incendiary in 1981. In 1982 this same county delivered 42 criminal indictments for arson and received 92 more confessions of arson.

No one knows how many fires are actually caused by arson. A leading property insurance company shows that over 43% of structural fires in 1982 were suspicious or incendiary in origin.

One of the country's best-known arson experts estimates that at least 50% of *all* structural fires are deliberately set.

*Source: National Fire Protection Association

Figures from the National Fire Protection Association show a 72.5% increase in costs associated with arson from 1977 to 1980. In 1981, however, the dollar loss declined slightly. Is this the effect of increased anti-arson activity? It is too early to tell.

What can be done about this growing problem? At American Re we decided to tackle it head on. We teamed one of America's foremost arson experts with one of the country's most respected arson attorneys to lead a series of anti-arson seminars. The seminars address such topics as:

- Whose problem is arson?
- What's the toughest problem in fighting arson?
- Working with local anti-arson squads
- Preserving evidence
- Identifying arson defense firms
- The role of the arson investigator
- Benefits of an anti-arson program
- How to set up a successful anti-arson program

At the seminars, small numbers of primary insurance company executives discuss their experiences with arson, and exchange ideas on how to cope with this

AMERICAN REDEF

Only 19% of firms offer lump-sum pensions

Although 401(k) salary reduction plans have received a great deal of attention in the past year because of their tax-saving features, benefit consultant Hewitt Associates says there are "hot topics" in the realm of defined benefit plans, too.

One of those issues, according to a Hewitt survey of banks and manufacturers, is allowing retirees to take the proceeds from a defined benefit retirement plan in a lump sum in lieu of an annuity.

Nineteen percent of the 284 surveyed employers with defined benefit pension plans offer employees this option, according to the Hewitt study.

Interestingly enough, companies report that the lump-sum option, when allowed, is either moderately popular or decidedly unpopular with retirees.

For instance, 41% of the employers that allowed retirees to collect their pensions in a lump sum in 1982 reported that fewer than 10% of the retirees opted for a lump-sum payout. On the other hand, 23% of the companies said that between 90% and 100% of their retirees opted for lump-sum payments last year.

Sixteen percent of the employers told Hewitt that between 75% and 90% of their retirees took a lump sum, 8% reported that between 50% and 75% took advantage of this option, 6% said between 25% and 50% wanted a lump sum and another 6% of the employers said from 10% to 25% of their retirees took their pension in a lump sum.

Sixty percent of the companies offering a lump-sum pension option require retirees wanting their pensions paid in full to meet certain conditions, like submitting proof of financial stability or having their request approved by a committee.

Also, some companies bar some classes of retirees from receiving lump-sum pension distributions. For example, only 41% of the employers offering the option allow disabled retirees to take their pensions in lump sums.

Employers are also helping retirees fight inflation by granting post-retirement increases in pension benefits, the survey shows, as 66% of the companies with defined benefit pension plans have hiked benefits for retirees at least once in the last five years.

Post-retirement benefit increases are more likely at large manufacturers and banks than at smaller manufacturing companies, according to the survey. Eighty-one percent of the banks surveyed and the same percentage of manufacturers with more than $2.5 billion in sales say they have hiked retiree benefits at least once in the last five years.

In comparison, only 45% of manufacturers with between $100 million and $499 million in sales report increasing retiree benefits in the last five years.

It's also clear from the survey that employers were prone to increase retirement benefits several years ago than they are today. For example, 43% of the employers surveyed said they increased retirees' benefits in 1980, 38% increased them in 1979 and 27% hiked benefits in 1978.

In 1981, 32% of the employers raised retiree benefits, while only 20% increased pension benefits for retirees last year.

Things look even worse for this year. Only 4% of the companies surveyed said they definitely planned to increase retirees' pension benefits this year, while another 2% said they probably would. Twenty-one percent said they had not yet decided, and 73% say they definitely will not hike the benefits.

Of the companies that did not increase benefits last year nor are expecting to in 1983, 33% cited the company's current financial situation as the reason. Twenty-two percent did not grant a benefit increase because inflation has moderated, while 5% said they have not been pressured by retirees to raise pension benefits. ■

Early retirement incentives popular

More than a quarter of the companies surveyed by Hewitt Associates have offered employees special early retirement incentives in the last three years.

Twenty-eight percent of the 305 banks and manufacturers participating in the Hewitt survey say they offered an "early retirement window" between 1980 and 1982.

Hewitt defines an early retirement window as an opportunity of limited duration for eligible employees to retire with higher benefits than would normally be provided to early retirees.

Such early retirement windows are becoming increasingly popular, the survey notes. Of the companies that have offered early retirement incentives, 16% offered them in 1980, 28% offered them in 1981 and 76% offered early retirement windows last year.

(The percentages add up to more than 100% since some companies offered the incentives in more than one year.)

But that popularity may have peaked, the survey notes. Only 10% of the respondents say they'll offer employees early retirement incentives this year. Seventy percent say they won't, while the other 20% haven't made up their minds.

Also, it appears that large manufacturers that have expressed desires to cut their costs in the recent recession are more likely to offer early retirement windows than banks or smaller manufacturers.

Exactly half of the surveyed manufacturing companies with more than $2.5 billion in sales report offering early retirement incentives over the past three years, compared with only 20% of the manufacturers with $100 million to $499.9 million in sales.

Only 10% of the surveyed banks offered early retirement windows.

Companies report they used a variety of methods to encourage employees to retire early. The most popular method, used by 72% of the companies that have offered early retirement windows, is to continue all or part of an employee's pay for a temporary period after he or she leaves the job.

Forty-nine percent of the companies offering early retirement windows tried to lure employees by eliminating or reducing the reduction in the company's pension benefits for retiring before the normal retirement age. Another 4% of the employers said they encourage early retirement by temporarily deferring the Social Security offset in their pension formula.

Other methods, including supplying temporary Social Security benefits or continuing benefits like health and dental insurance for free or at a reduced cost, were used by 22% of the firms. ■

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problem. Sessions in Santa Barbara, Kansas City, New York and several South American cities have produced astonishing results. It is evident that insurers are serious about working to reduce arson. The Federal Government has also shown its commitment by making arson a Class 1 felony.

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Expense account psychology isn't limited to executive lunches.

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It isn't enough, for example, to offer a second opinion on elective surgery.

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Employees have to know these things are available.

Even a high deductible and copayment aren't enough. Because all they supply is an incentive to reduce costs, not the means.

So we provide brochures, mailers, promotional material, videotapes, and advise our clients on how to use these to motivate their employees.

Not surprisingly, we've discovered most employees don't realize there are alternatives to long hospital stays.

When it's feasible, many would prefer a nurse at home to a week in the hospital.

And when they're offered, many are also willing to take advantage of preventive medicine programs such as blood pressure screening.

Of course, we're not suggesting that employee education is the single answer to a problem as serious as this one.

In fact, our programs cover a range of approaches. From funding business coalitions working to reduce local costs, to providing companies with data that allows them to track the effectiveness of their own cost containment activities.

But it remains true that even a plan as sophisticated as our cost containment package can't be completely effective unless employees are involved in the effort.

So if you'd like more information about reducing group medical expenses, please write to Connecticut General, Dept. A-141-A, Hartford, Connecticut 06152.

Or if you'd like to know how we can specifically help reduce your company's costs, please call your broker or your local Connecticut General representative.

After all, this may well be an area in which management could benefit from a little education, itself.

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perspective

INSURERS CAN GO DOWN THE DRAIN

Why it's important for buyers to check 'healthy' underwriters for insolvency

By Charles McAlear

INSOLVENCIES DO happen.

Insolvencies are not pleasant happenings.

Insolvent insurers are worth avoiding.

It is a sign of these innocent times that any discussion of the possible demise of a financial institution must be prefaced with a notice of the importance of the event. The relative infrequency and the limited impact of such events in the recent past lulled several generations into a false sense of security.

Bonds sold to finance commerce and industry are promises to pay. So are insurance policies.

Before buying a bond the investor carefully checks the issuer to be certain of the issuer's ability to make good on its promises. Bonds offering a return above market are perceived as speculative and shunned by the prudent investor.

A bond offered now to yield 25% annually advertises its riskiness. But the same investor, who would avoid buying the risky bond, will unhesitatingly purchase that other kind of promise, the insurance policy, from the vendor with the lowest price.

Such buyers have not learned that low premiums on insurance policies may be indicative of the same condition as high interest rates on bonds, a questionable ability to make good on promises.

The prolonged "soft" market is not caused by insurance companies selling their policies at too low a price. It is caused by buyers who continue to be willing to buy insurance from such companies. It is axiomatic that there is always a vendor willing to sell more shoddy merchandise at a lower price. What is surprising is that there continues to be a market for it.

Insolvencies are "probable," one authority says. "Some spectacular failures are likely," says another. Such talk would normally send buyers scurrying to check out their insurers. Upgrading would be the order of the day. But there is little movement. Buyers seem entirely comfortable, even though the word "spectacular" would imply that those very companies that enjoy much (perhaps misplaced) confidence are the ones doomed to fail.

If a buyer would check out a company, it is likely that the data found would be hopelessly outdated. The reference work is likely to be a book published by A.M. Best Co. Inc. It would be dated 1982 but would contain, at the latest, numbers generated in 1981. There has been a world of water under the bridge since then.

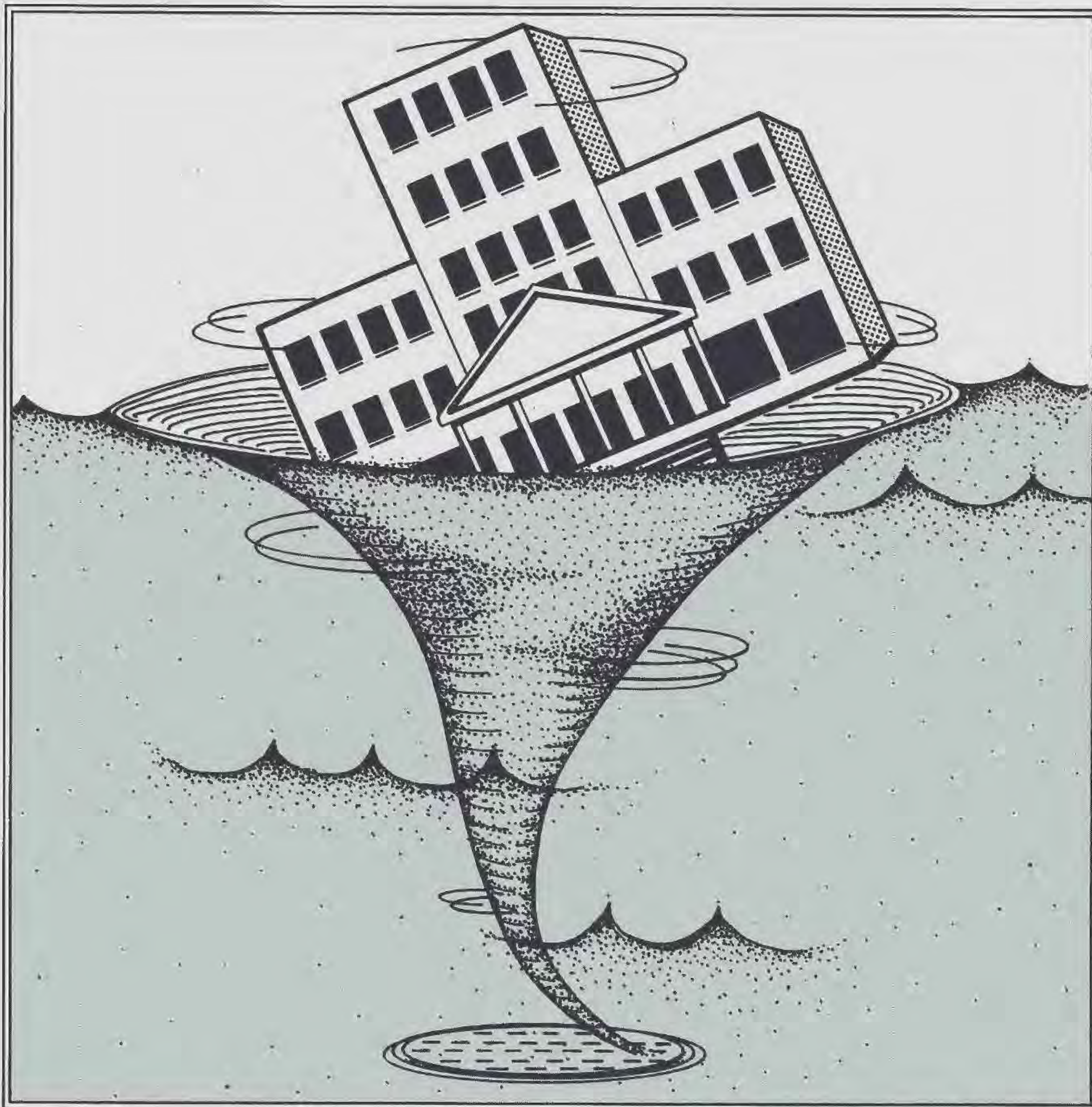
THE CHANGES in the balance sheets of some companies have been nothing less than revolutionary. As if to emphasize the increased speed at which adverse experience is affecting some companies, Best, for the first time in its history, has published volumes updating its data at six and nine months of 1982. The changes are startling. No fewer than six companies, half of which had enjoyed a rating of A-plus a year ago, no longer meet the security requirements of our offices.

"I am insured with one of the largest companies with an impeccable reputation," says one buyer to himself. A "spectacular" insolvency would involve just such a company; buyers should check the facts on all companies.

"I am insured with a licensed company, the insolvency fund will provide," thinks another. Such a buyer had best read the terms of such a fund very carefully. The buyer may not be eligible under the terms of the fund. The limits provided by a fund may be unrealistic with respect to the buyer's needs. The receiver may have long since closed the doors when the claim surfaces.

Moreover, if insolvencies are as substantial and widespread as some predict, their occurrence could trigger a domino effect: Insolvencies of one tier of companies costly enough to trigger the insolvencies of a second tier, and so on. Insolvencies that happen might be modified, especially regarding commercial insureds.

"My insurer is reinsured by a large secure company." Insurance is a promise to the buyer. Reinsurance is a promise to the seller. Ordinarily, there is no privity of contract between buyer and reinsurer. A good reinsurer cannot make the promises made by a poor insurer more collectable; the reinsurer cannot be counted on to take the place of the insurer.



Graphic: Amy Palmer

"My insurer is a subsidiary of a large parent corporation." There is no solace here. A non-insurance parent may be suffering from the same general economic malaise and would be unable to spare the cash. An insurance company parent may well be suffering from the same disease as the offspring and unable to help.

When an insurance company has solvency problems it is often because past sins are coming home to roost in the form of more and greater-than-anticipated losses. No one can tell whether a single infusion of additional capital will save the day. Should the parent company board member, with the duty to uphold stockholder interests, vote to infuse additional capital? Should the members vote to do so when it is believed that it is not an investment but merely throwing good money after bad? If it is less costly to the shareholder, doesn't the parent company board have the duty to let the subsidiary founder?

"Insurance companies are regulated by the states, they will prevent insolvencies." That is a lot to expect. In these times, state agencies scrap for every tax dollar. Regulators are the first to warn that they lack money, people and the expertise to do a first-class job of regulating for solvency. Their tools also need to be improved.

The Insurance Regulatory Information System, the early warning system of the National Assn. of Insurance Commissioners, is a developing program with the flaws of any such system. It alone is also extremely slow, since it is published only once a year, usually after a six-month delay.

The last 12 months have been witness to several spectacular bank failures. It is interesting that these failures have been detected by federal rather than state regulators. The failures involved the valuation of loan portfolios on which there were distinct differences of opinion. The valuation of loss reserves and the valuation of reserves for doubtful loans are not activities that are worlds apart. These federally-detected failures have led

Continued on next page

WORKERS' SLAYINGS NOT COMPENSABLE

legal briefs

When employees who are in a bunkhouse are killed by a third party's intentional act, are the deaths compensable under the workers compensation act? A California appellate court concluded that their deaths were not compensable.

Three workers were employed as dairy milkers by a company. Two lived in a bunkhouse provided by the company rent-free as added compensation. The individuals went to a garage sale where they met their eventual killers. Negotiations were begun for one of the workers to sell his automobile to one of the killers. Later, one of the killers gave the seller a forged check in purported payment for the automobile and took possession of it.

Subsequently, the killers sought out the workers with the avowed purpose of regaining possession of the forged check and, in addition, to rob and murder them. They accomplished their objectives at the bunkhouse. The survivors of the deceased workers sought and were awarded benefits. But the State Compensation Insurance Fund appealed.

The appellate court stated that injuries to employees in a bunkhouse are not per se compensable. According to the court, assaults on employees by a third party while in the course of employment arising from purely personal motives were not compensable unless some employment connection or contribution can be established. *State Compensation Insurance Fund vs. Workers, etc.*, California Court of Appeals, July 7, 1982 (*BI*/05/M.-$5).

The Perspective section, which is a forum for readers' opinions, is compiled and edited by Assistant Copy Editor Claudette Dampier. She can be reached at 312-649-5282.

Paid-up policies

A Maryland Court of Appeals ruled that there was no obligation on the part of an insurer to accept surrender of the paid-up portion of a group insurance policy and to pay out the case-surrender values merely because the master policy had been discontinued.

A company purchased a group life insurance policy for its employees from The Travelers Insurance Co. in 1961. The policy was discontinued in 1979. A dispute arose as to whether, upon termination of the group policy, the company's employees were entitled to discontinue their "paid-up" insurance and receive from Travelers the respective accumulated cash surrender.

Travelers asserted such entitlement arose only upon termination of their employment. The state Insurance Commissioner then determined that refusal constituted a violation of the law. However, a trial court reversed the commissioner's decision.

The appellate court noted the simple facts of the extraordinary inflation and abnormally high interest rates that had prevailed for the past several years. The paid-up insurance provided in this policy had ceased to be an attractive investment because of those factors.

But the court concluded that neither the insurance contract nor the state law permitted employees to surrender the policies for the cash value unless they, in fact, had terminated employment. *Southern Maryland Electric Co-op vs. The Travelers Insurance Co.*, Court of Special Appeals of Maryland, July 12, 1982 (*BI*/04/M.-$5).

Illegal act compensation

Knowingly operating a vehicle with defective brakes constituted a violation of the state law and, thus, precluded recovery of benefits under the Workers Compensation Act, according to New York's highest court.

David Reynolds was injured in an accident caused by faulty brakes on a vehicle he was driving for his employer. Mr. Reynolds knew and had known the car's brakes needed repair. He filed for and was awarded compensation benefits by the compensation board. However, an appeal to the courts resulted in a reversal of the award.

The Court of Appeals of New York noted that under state law perpetration by an employee of an illegal act, resulting in injury, barred the employee from recovery of benefits. The court pointed out that operating a vehicle knowing the brakes were in need of repair was prohibited by state traffic law.

Consequently, the court said since the illegal act was causally related to Mr. Reynolds' injury, he was precluded from receiving benefits. *Reynolds vs. Masick*, Court of Appeals of New York, June 8, 1982 (*BI*/02/J.-$5).

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

Check on those 'healthy' insurers

Continued from previous page

some to speculate that a rash of insolvencies could toll the knell for state regulation of insurance.

There are only two avenues to insolvency, and it can be determined before the fact when a company is on the road to ruin.

The first road leads through mismanagement or plain bad luck. For the most part, management produces numbers that it believes are correct. There may be a little fudging here or there, but within the span of divergent but honestly held opinions. When bad news surfaces it is usually passed on to stockholder, regulator and buyer.

It is not incumbent on management, however, to be overly frank. "Gee, we made a stupid marketing mistake a few years ago and losses are now pouring in. We don't know whether it's going to get worse," will not be the quote in the press release. The most one can expect is corporate grumbling about adverse weather conditions and some mumbling about their numbers "being within industry norms."

That kind of comment is not reassuring. It can be translated: "If we go down the tube, we'll have plenty of company." The numbers generated by such companies then can be carefully monitored. It will soon be determined whether it will continue on the high road to success or whether it has turned on to the slippery track to corporate oblivion.

The other road to insolvency involves fraud. Management, or others who may control aspects of the company, is driving the company to insolvency. It is a cash generator that will become expendable when enough losses catch up to it.

The numbers generated by such companies are unreliable as a measure of anything. These companies are simply to be avoided at all costs. The only way this can be done is to have high standards that insurance companies must meet and to conduct thorough investigations before accepting any new insurer.

There is an informal network of company watchers, a kind of grapevine, which can generally be relied upon to suggest companies worth avoiding. Elaborate rating systems are not their forte and written recommendations from it are out of the question. Yet a simple verbal suggestion may be worth considerably more.

The deterioration of balance sheet values during 1982 is without precedent. Yet the profit-and-loss figures published in the press are only half the story. Although changes on the balance sheets are not heavily publicized, for the buyers, that's where the real interest lies. The insurance buyer loves a rich company and only a balance sheet tells how rich (or poor) the company really is.

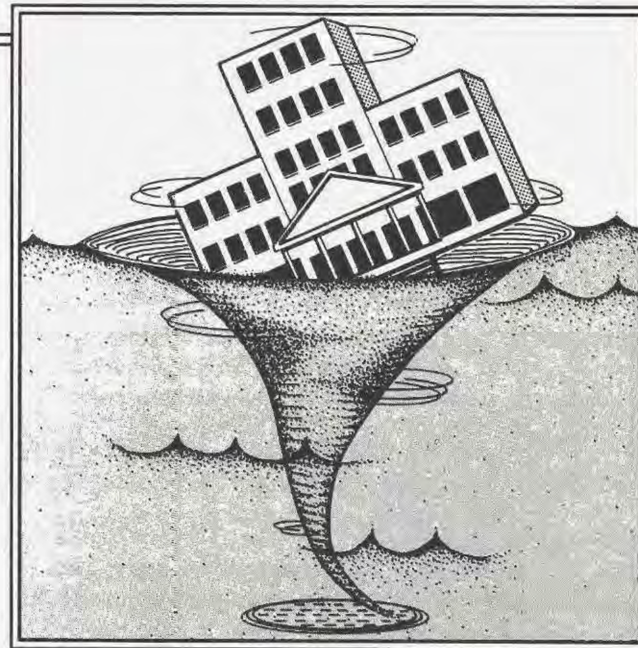
There are obvious signs of company distress that generally announce that the company is in an "interesting" phase. This is one from which it must escape if it is to survive. The simplest characteristics are:

- A decline in capital and surplus.
- Operating losses or a strong trend in that direction.
- Outstanding case loss reserves, which are a multiple of surplus.

Case loss reserves are a relatively new factor of importance in analyzing insurance companies. Traditionally, when more property business balanced the book, case loss reserves would be less than capital and surplus. Now it is not unusual to find these reserves to be a multiple of capital and surplus.

In recent years, case loss reserves have shown one trend. They are growing and at a high rate, from 10% to 20% a year. It can be expected that they will continue to grow this year and next.

When case loss reserves are increased, the money must come from somewhere, and if profits are generated, that is the source. If profits are not being generated, then such increases must come from capital and surplus—it becomes negative net worth.



So let's assume case loss reserves at three times surplus, which are increasing 20% per year. Assume also that no operating profits can be projected for 1983. Increases in loss reserves must come from capital and surplus.

With $1 billion in capital and surplus, $3 billion in loss reserves, a 20% increase is $600 million or 60% of capital and surplus. Few companies could survive such a loss, yet these ratios are not uncommon. The use of billions is to indicate that size is not protection when this kind of leverage gets out of hand.

The data required to monitor the performance of insurance companies are widely available and relatively inexpensive. No buyer, agent or broker should be without it. No one should fail to act upon adverse information as it develops.

There will be insolvencies.

They are not pleasant affairs.

Insolvencies can be avoided, but action is required to do so.

Charles McAlear is chairman of McAlear Associates Inc. in Grand Rapids, Mich. This article is a condensation of a speech delivered in early 1983 to the Surplus Agents of Ann Arbor, Mich., the Independent Agents of Johnson County, Kan., and the Independent Agents of Southeastern Michigan.

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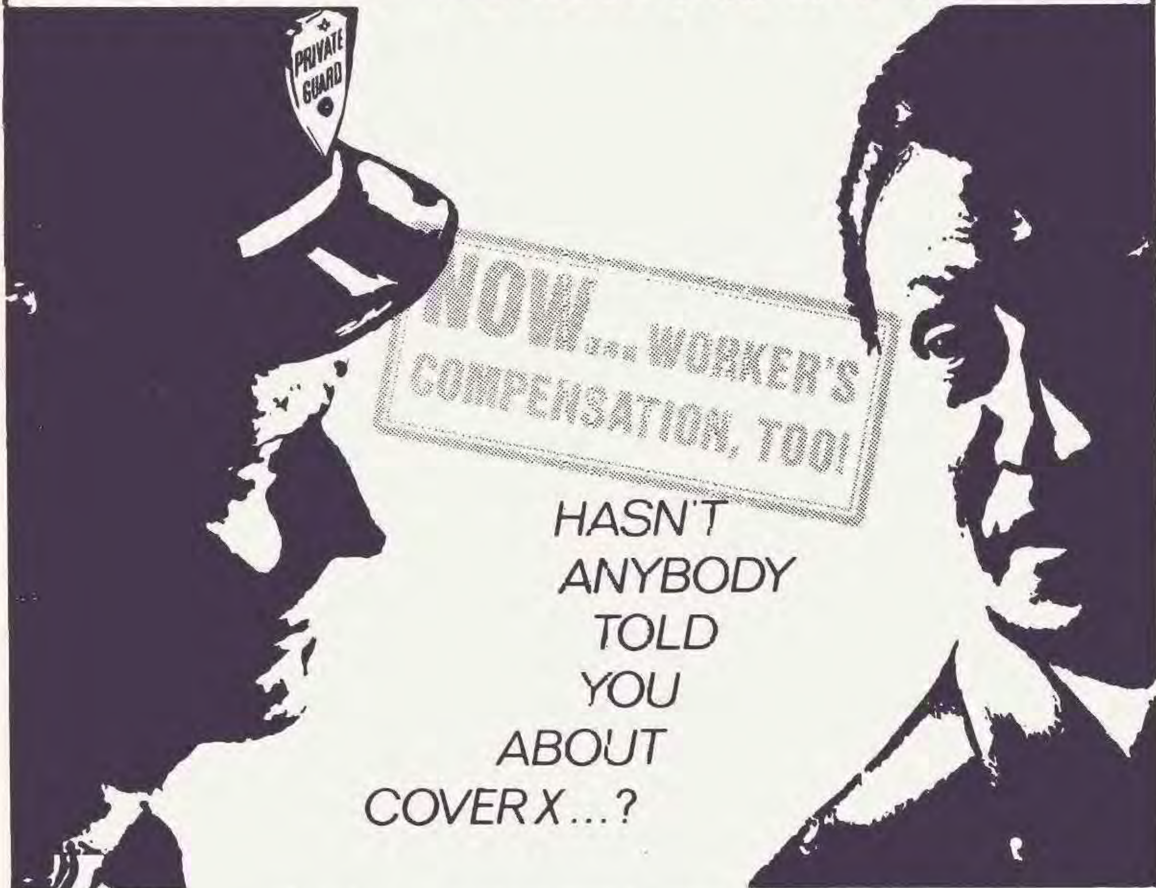

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JULY 10-15. Seventh Annual National Symposium on Workers Compensation in Orono, Maine, sponsored by the University of Maine; $375. Helen Thomas, 1721 Pine St., Philadelphia, Pa.; 215-735-0205.

JULY 11-15. Fundamentals of Modern Safety Management course in Seattle, Wash., sponsored by the International Loss Control Institute; $625. ILCI, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

JULY 11-15. Total Loss-Control Management seminar in Houston sponsored by the International Safety Academy; $585. ISA, 10575 Katy Freeway, P.O. Box 19600, Houston, Texas 77224; 713-932-9400.

JULY 18-19. Computer Security workshop in New York, sponsored by the Computer Security Institute; $495. Computer Security Institute, Department IP, 43 Boston Post Road, Northborough, Mass. 01532; 617-845-5050.

JULY 18-20. Safety for the Oilfield seminar in Houston sponsored by the International Safety Academy; $395. ISA, 10575 Katy Freeway, P.O. Box 19600, Houston, Texas 77224; 713-932-9400.

JULY 18-22. Basic Safety Management seminar in Chicago sponsored by the International Safety Academy; $570. ISA, 10575 Katy Freeway, P.O. Box 19600, Houston, Texas 77224; 713-932-9400.

JULY 18-22. Safety Training Methods course in Chicago, sponsored by the National Safety Council; $495 for members; $620 for non-members. Also **Sept. 20-24** in Chicago. NSC, 444 N. Michigan Ave., Chicago, Ill. 60611; 312-527-4800, ext. 283.

JULY 18-22. Safety Evaluation for Single Location Personnel conference in Seattle Wash., sponsored by the International Loss Control Institute; $625. ILCI, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

JULY 21-23. Labor-Management Trustees and Administrators institute in Toronto, sponsored by the International Foundation of Employee Benefit Plans; $390 for members; $465 for non-members. Also **Aug. 15-17** in Seattle. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

JULY 25-28. An Ergonomics Approach to Materials Handling basic and advanced seminars in Houston, sponsored by the International Safety Council; $375. ISA, 10575 Katy Freeway, P.O. Box 19600, Houston, Texas 77224; 713-932-9400.

JULY 25-29. Fundamentals of Modern Safety Management course in Atlanta, sponsored by the International Loss Control Institute; $625. ILCI, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

JULY 27-29. Risk Management in Environmental Health & Protection summer institute in New York, sponsored by New York University; $400. Summer Institute in Risk Management in Environmental Health & Protection, Graduate School of Public Administration, New York University, 4 Washington Square N., New York, N.Y. 10003; 212-598-3133.

JULY 27-30. Corporate Benefits Management conference in Monterey, Calif., sponsored by the International Foundation of Employee Benefit Plans; $470 for members; $545 for non-members. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

JULY 28-30. Florida Surplus Lines Assn. annual convention in Boca Raton, Fla.; $125 for members and associate members; $150 for non-members. Philip R Cree, Florida Surplus Lines Assn., P.O. Box 343800, Coral Gables, Fla. 33114; 305-448-2211.

AUG. 3-6. Public Employees conference in Seattle, sponsored by the International Foundation of Employee Benefit Plans; $390. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

AUG. 4-6. Public Sector Pension and Health and Welfare Benefit Plans conference in Seattle, Wash., sponsored by the International Foundation of Employee Benefit Plans; $390. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

AUG. 8-12. Basic Safety Management seminar in Houston, sponsored by the International Safety Academy; $570. ISA, 10575 Katy Freeway, P.O. Box 19600, Houston. Texas 77224; 713-932-9400.

AUG. 8-12. Loss Control Management course in Atlanta, sponsored by the International Loss Control Institute; $625. ILCI, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

AUG. 9-12. Employee Assistance Programming fifth biennial Canadian conference in Toronto, sponsored by Humber College; $100 per day or $235 for entire conference. Input '83 Headquarters, Professional and Management Development, Humber College, Box 1900, Rexdale, Ontario, Canada M9W 5L7; 416-675-7420.

AUG. 15-19. Professional Consulting in Safety and Loss-Control course in Atlanta, sponsored by the International Loss Control Institute; $625. ILCI, P.O. Box 345, Loganville, Ga. 30249; 404-466-2208.

SEPT. 11-14. Society of Chartered Property and Casualty Underwriters 39th annual meeting in New York; $225. Society of CPCU, Kahler Hall, Providence Road, CB #9, Malvern, Pa. 19355; 215-648-0440.

SEPT. 12-14. Techniques of Risk Management conference in Chicago, sponsored by the Risk & Insurance Management Society; $345 for members; $445 for non-members. Editorial Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

SEPT. 21-23. Reinsurance Concepts conference in Chicago, sponsored by the Risk & Insurance Management Society; $445 for RIMS members; $545 for non-members. Editorial Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

SEPT. 21-24. International Benefits seminar in San Francisco, sponsored by the International Foundation of Employee Benefit Plans; $470 for members; $545 for non-members. IFEBP, Box 69, 18700 W. Bluemound Road, Brookfield, Wis. 53005; 414-786-6700.

SEPT. 25-28. International Assn. of Industrial Accident Boards & Commissions 69th annual convention in Atlanta, sponsored by the association; $160 for members; $220 for non-members. James C. Pullin, IAIABC Convention-83, c/o Georgia Workers Compensation Building., 100 S. Omni International, Atlanta, Ga. 30335; 404-656-2048.

SEPT. 25-29. National Association of Life Underwriters annual convention in Chicago, sponsored by the association; $125; $105 before Aug. 1. NALU Convention Registration, 1922 F St. N.W., Washington, D.C. 20006; 517-372-5148.

SEPT. 26-28. Valuation seminar in Long Grove, Ill., sponsored by the Kemper Group; $300. W.P. Thomas Jr., NID (HPR) A-1; Long Grove, Ill. 60049; 312-540-3380.

SEPT. 27-OCT. 1. Safety Management Techniques course in Chicago, sponsored by the National Safety Council; $545 for member; $680 for non-members. NSC, 444 N. Michigan Ave., Chicago, Ill. 60611; 312-527-4800, ext. 283.

SEPT. 29-OCT. 1. Sixteenth Annual Canadian Conference in Lake Tahoe, Nev., sponsored by the International Foundation of Employee Benefit Plans; $390 for members; $465 for non-members; optional preconference programs offered at an additional charge. IFEBP, 18700 W. Bluemound Road, Box 69, Brookfield, Wis. 53005; 414-786-6700.

OCT. 3-5. Techniques of Loss Control conference in Chicago, sponsored by the Risk & Insurance Management Society; $345 for members; $445 for non-members. Editorial Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

OCT. 3-7. Property Conservation course for property owners in Long Grove, Ill., sponsored by Kemper Group; $400. Also **Nov. 7-11** in Long Grove, Ill. W.P. Thomas Jr., (HPR), A-1, Long Grove, Ill. 60049; 312-540-3380.

OCT. 9-12. EDP Institute in Palm Springs, Calif., sponsored by the International Foundation of Employee Benefit Plans; $390 for IFEBP members; $465 for non-members. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53005; 414-786-6700.

OCT. 17-19. Fundamentals of Insurance conference in Toronto, sponsored by the Risk & Insurance Management Society; $345 for members; $445 for non-members. Editorial Department, RIMS, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292. ■

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Manufacturers to benefit from Illinois court decision

By STEPHEN TARNOFF

SPRINGFIELD, Ill.—Manufacturers sued under Illinois law will benefit from a recent decision by the state Supreme Court that extends the doctrine of comparative negligence to strict liability tort suits.

But defendants will still have to face another legal doctrine they oppose—joint and several liability—even in comparative negligence situations, the court said.

Under comparative negligence, also known as comparative fault, juries apportion liability according to the relative fault of the parties. Illinois approved the doctrine in negligence actions in 1981 but had yet to rule on its application in strict liability suits.

Under strict liability, a manufacturer or seller that puts a product into the marketplace in a defective condition and that is unreasonably dangerous to consumers is subject to liability for injury the product causes. Attention is focused on the product rather than the conduct of the defendant.

In joining with the majority of states that favor the use of comparative negligence in strict liability, the court said that the basis for strict liability suits would not be undermined.

"The manufacturer's liability remains strict," the court said. "Only its responsibility for damages is lessened by the extent the trier of fact finds the consumer's conduct contributes to the injury.

"We believe that equitable principles require that the total damages for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and plaintiff's conduct proximately caused them," it added. "Accordingly, we hold that the defense of comparative fault is applicable to strict liability cases."

The manufacturer in the case, J.L.G. Industries Inc. of McConnellsburg, Pa., argued that if comparative negligence were adopted in negligence situations, it should also be available in strict liability actions.

It was opposed by the estate of the plaintiff as well as the Illinois Trial Lawyers Assn., which argued that applying the doctrine in strict tort liability situations would give an unfair advantage to manufacturers.

According to the court, five states—Colorado, Nebraska, Oklahoma, Rhode Island and South Dakota—have said comparative negligence will not apply in strict liability actions. Eighteen others have said it is applicable.

With respect to the court's decision on joint and several liability, the court said it would be unfair to plaintiffs to abolish it.

Under joint and several liability, an injured plaintiff can sue all, some or just one of the defendants responsible for an injury for the full amount of the damages.

"Were we to eliminate joint and several liabiity as the defendant advocates, the burden of the insolvent or immune defendant would fall on the plaintiff," the court said.

"In that circumstance, plaintiff's damages would be reduced beyond the percentage of fault attributable to him. We do not believe the doctrine of comparative negligence requires this further reduction."

The court, citing 17 states, said the "vast majority" adopting comparative negligence have retained joint and several liability.

The case originated when Clifford M. Jasper died as a result of injuries that occurred in January 1978 in Peoria, Ill., while he was operating a hydraulic aerial work platform manufactured by the defendant. His estate sued the defendant under the state's survival and wrongful death acts based on a strict product liability theory.

The defendant argued that both the plaintiff and the plaintiff's employer, V. Jobst & Sons Inc. of Peoria, were guilty of comparative negligence.

A spokesman for the Illinois Manufacturers' Assn. said manufacturers were gratified that the court decided to change strict liabiity rules.

"On balance it was a good decision," the spokesman said. But he disagreed with the court's upholding of joint and several liability, which he called "an abomination as applied in some cases."

The case, Coney vs. J.L.G. Industries, will now continue in a state court in Peoria. ■

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Proposed Illinois comp changes unlikely

By CAROL CAIN

SPRINGFIELD, Ill.—An attempt to change a section of the Illinois Workers' Compensation Act that requires the Illinois Industrial Commission to prepare written decisions appears to be dead.

Capitol observers say the measure, which was tabled May 27, could be tacked on as an amendment to some other bill before the end of the session tentatively slated for June 30. But, they add that's unlikely because labor and management still disagree about the provisions of the bill.

The bill also would have extended a cap on permanent partial disability benefits to April 1985. Those benefits are now frozen at the current level until Dec. 31.

H.B. 2172, sponsored by Rep. E.J. Giorgi, D-Rockford, would have eliminated the requirement that commissioners and arbitrators hired by the Industrial Commission prepare written decisions, to detail the reasons behind those decisions and include findings of fact and conclusions of law.

The commission has only been required to write detailed decisions since 1980. Before then, arbitrators and commissioners filled out a form that stated the decision, but gave no explanation.

According to statute, the written decisions must be published and are used as precedents in subsequent cases, said Michael E. Rusin, an attorney with Rooks, Pitts, Fullagar & Poust, a Chicago-based law firm with a specialty in workers compensation. Mr. Rusin made his comments during a workers comp seminar last month in Medinah, Ill., which was co-sponsored by the law firm and the Illinois Manufacturers' Assn.

'In some instances, the case decisions are extremely helpful in pinning down the value of a particular case. In others, they are worthless,' attorney Michael E. Rusin says.

"A body of case law is forming upon which we should be able to rely in evaluating cases. In some instances, the case decisions are extremely helpful in pinning down the value of a particular case. In others, they are worthless," Mr. Rusin said.

"Part of the problem is that the commission has not clearly established what factors are most important in the evaluation of a case. For years, we have proposed that the commission adopt or the Legislature enact a set of medically recognized standards to evaluate disability. However, neither has done so."

Representatives from management and labor met several times in recent weeks trying to arrive at an agreement on the language of the bill, but were unsuccessful.

Employers believe that if commissioners and arbitrators must give reasons for their decisions, there will be fewer outrageous awards, said Steven Rosenbaum, assistant manager of labor relations for the Illinois Chamber of Commerce.

One possible compromise to the stalemate discussed by labor and management would eliminate the written decision requirement but allow either side to ask and receive answers to five questions.

Another proposal would make the written decisions discretionary, while still another would have required the written opinions only when either side made that request. This last proposal would have preserved the integrity of formulating precedents, but would have eliminated the routine and repetition on minor cases, said William Dart, director of government affairs with the Illinois Manufacturers Assn.

Proponents of the legislation note that lengthy and time-consuming written decisions are a contributing factor to the backlog of cases at the Industrial Commission.

Norman Brown, acting chairman of the commission, said it would be inappropriate to comment since labor and management still were negotiating a compromise. But he noted that there were several factors contributing to the backlog of cases at the commission, explaining the requirement for written decisions was just one of them.

Another commissioner, Ralph W. Miller, who supports written decisions, said the backlog stems from the resignation of former Commissioner Rebecca Schneiderman. Not only were all the cases she was hearing turned over to the remaining commissioners, but the full commission is now short one vote to expedite cases, he said, explaining that each decision required the vote of three members of the five-member commission.

The volume at the commission is quite heavy, Mr. Miller said at the IMA conference. Thirty to 60 cases are set for oral argument each week, he said.

Written decisions give guidance to the commission's 24 arbitrators, he said, noting that each has a different style and there's no uniformity.

Written decisions made by an arbitrator that go to a commissioner for review will give that commissioner an idea about what the arbitrator was thinking, Mr. Miller said. Decisions that are written by commissioners will provide background in cases that go on to trial, he added.

"This is the first time that the deciders have to think about what they're deciding," Mr. Miller said. "I'm concerned that there not be a weakening of the written decision.

"If we lose or severely weaken the written decision, it will detract from the quality of decisions and would take a long time to be restored."

Before the 1980 amendment to the Workers Compensation Act requiring the written detailed decisions, Illinois was an oddity compared to neighboring states and other industrial states. Indiana, California, New York, Wisconsin, Michigan, Minnesota, Iowa, Oregon and Washington are among states surveyed by *Business Insurance* that require workers compensation authorities to write reasons for their decisions, including findings of fact.

"I can't think of a major industrial state that doesn't require it," a spokesman for the Wisconsin Workers Compensation Division said. Decisions are "articulate and informative," he added. ■

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Civil rights suits threaten all cities: Attorney

Continued from page 3
who hire the police officer."

Cities' response to this increased civil rights exposure has been to tighten hiring, firing and training processes.

"There was a time when a police officer was hired because he was Billy Bob's cousin," Mr. Schirott said, "and received no firearm training. That just won't cut it anymore."

Mr. Schirott went on to say it is "irresponsible to hire a police officer without administering a psychological test."

To protect itself from civil rights litigation, Mr. Schirott recommended that the police department have a rigorous screening program. Then it should mandate not only an initial training program for officers, but also continuing education through videotaped sessions.

The department should also keep a record on each officer that shows the training programs that officer has attended.

"This is very important in litigation," Mr. Schirott said. "You can reduce by 70% an adverse decision in a civil rights case by proving you gave the officer proper training. In fact, the case may not get to trial, which is exactly what you want."

And after a public entity hires and trains an employee only to discover he is causing trouble that will result in civil rights suits, firing him is not necessarily the solution. In fact, such an action could prompt a lawsuit.

"It is a violation of the Civil Rights Act if a man's good name is besmirched," Mr. Schirott said. "If a police officer is fired and claims his name is tarnished such that he cannot get another job in the public sector, he will file a civil rights suit.

"And the press will always want to know why you let such and such an official go," he added. "That's where you get in trouble. It's OK to say, 'Well, it just didn't work out.' But it's not OK to say, 'The official was dishonest—we found his daughter had driven a municipal-owned vehicle 300 miles away.'

"If a statement is made like 'dishonest,' you've definitely got a civil rights case," he said.

Whenever the good name of a public official is called into question, the city should have a name-clearing hearing.

"The law says that a man has the right not to have his good name taken away without due process. So you should concern yourselves with due process," Mr. Schirott advised.

A name-clearing hearing is the Supreme Court "out" in these types of firing instances, he said. "What you are doing is making a record for a lawsuit."

Often a name-clearing hearing will mean that a civil rights case filed by a public official never makes it to trial.

According to Mr. Schirott, the ingredients for a good name-clearing hearing are:

- Expediency. Part of the essence of due process is swift action. Notify the official by registered mail that a hearing is planned. This way he can't deny receiving notification. Give him every opportunity to call witnesses on his behalf.
- Make sure a court reporter is present. You want an accurate record of the hearing so there is no question that the official was given adequate opportunity to defend his good name.
- Let every concern come out in the hearing. Don't let your attorney object on the grounds of relevancy. Again, if the official is given an excellent chance to clear his name, he cannot sue.
- Make sure the official knows his rights to appeal.
- Remember you are not there to have conclusions of law rendered, and do not ask for such. The hearing is just for the record in case of trial.

"Then, if a lawsuit is filed asserting that the official was stigmatized, I assure you you will be in good stead," Mr. Schirott said.

In any civil rights action that comes to trial, the municipality should consider the possibility of settling out of court.

"The victory that came with stonewalling a case that would have cost $5,000 to settle out of court will not be very sweet when you have to pay $45,000 in court fees," Mr. Schirott said.

Mark Ferraro, risk manager for the city of San Antonio, agreed. "We evaluate how much it costs in attorney fees and then usually just settle out of court," he said.

"Also, if you offer to settle out of court and the plaintiff rejects your offer," Mr. Schirott said, "the plaintiff will have to pay all legal expenses you incur after the offer is rejected if the judgment is less than your settlement offer.

"There is no advantage to stonewalling," Mr. Schirott said. "The most important factor in determining whether there is going to be a multiplier applied to attorney's fees is the length of the trial. It's imperative that you not let litigation go on too long. If you must go to court, get the case out as quickly as possible.

"But, if you are good risk managers and make sure your officials are well-trained, and if you see to the expeditious treatment of cases, neither you nor your public officials will be running scared," Mr. Schirott concluded. ■

Carefully study all exclusions on public liability forms: Broker

By SALLIE J. DRURY

ST. PAUL, Minn.—The gasps were audible as some public risk managers realized they had not thoroughly read their public official liability policies.

"Read the policies yourself," said Kurt T. Foerster, an account executive with Markel Service Inc. of Richmond, Va. "Policies range from excellent to pathetic; it appears not many people are reading them."

With the increasing number of lawsuits naming municipalities and their officials as defendants in public official liability cases, Mr. Foerster's session was one of the most widely attended at the Public Risk & Insurance Management Assn.'s annual conference.

In the session, Mr. Foerster guided participants through a point-by-point scrutiny of a hypothetical public official liability policy.

"Read the exclusions very carefully," Mr. Foerster said. "They are the most important part of the policy. There are lots of exclusions in a standard policy that you can change for little or no premium increase, and that you had better change."

Mr. Forester

Mr. Foerster demonstrated through the hypothetical policy some of the exposures commonly excluded. A public risk manager with a sharp eye will have these exposures included immediately, he said.

"Coverage for claims against (public entity) attorneys and other professionals while in the scope of their professional duties and police while in the course of their official duties is rapidly disappearing on policies, but can and should be added in," he said.

"Also, an action by another political subdivision against the insured alleging improper use of funds is often excluded, but with the growing number of JPAs (joint powers authorities), such an exposure should not be left open.

"An underwriter also will try to exclude liability for interruption of the electrical fuel, power or water supply.

"Every 'or,' 'and,' comma and semicolon has meaning," he warned. "Are there exclusions on your policy that, when enumerated, mean tough luck on wrongful acts? Check with your underwriter. And when environmental pollution is excluded, you want to make sure accidental and sudden is covered," Mr. Foerster added.

One other common exclusion was termed "an underwriting revenge" by Mr. Foerster.

"Excluding failure on the part of the insured to effect and maintain insurance is an underwriter's way of revenging risk management," he said.

After carefully reading the exclusions, risk managers must then be sure they read the rest of the policy carefully, too, Mr. Foerster said.

"A risk manager has more control over what is in his policy than you might realize," Mr. Foerster said. "Deal directly with your underwriter and even with the claims people. The more information you tell your underwriter, the more it affects your premium (for the better)."

The first step in looking at a public official liability policy, Mr. Foerster said, is to determine whether it is occurrence or claims-made.

"If the policy is claims-made, most states require that it be stamped in red on the top of the policy," he said. "The good ones even have it stamped on the cover, although that's not common.

"But be careful," he admonished, "because not every policy has 'claims-made' stamped on it anywhere. I saw one policy that noted it on the last line of an addendum stapled to the back page."

Next, Mr. Foerster said, examine the language of the insuring agreements. "Do you see the word 'indemnify' in your policy, as in 'The company will indemnify the insured...'? That means your underwriter is saying, 'When you have a claim, you pay and then get back to us. Then we'll let you know if it's covered.'"

Another important part of the policy is the extension it may or may not grant on the discovery period of a claim. What this section of the policy says can be very important to a risk manager when he converts from a claims-made policy to an occurrence policy.

If the insurer only offers you a 12-month extended discovery period, you don't have to settle for that, says Mr. Foerster. "Many policies will give you up to three years for the same cost."

Mr. Foerster recommended risk managers carefully scrutinize what the policy says it will cover. "Are your volunteers included in the policy? You may have a volunteer fire or police service. That could be a major exposure.

"And if your school board has a tendency to sue you, you will want to keep them on a separate policy. So communicate your own unique needs to your underwriter."

Also important to review are the policy limits. Mr. Foerster urged risk managers to look for two items in particular.

"First, look for stacking," he advised. "If the limits read that the deductible is applicable to each claim whether arising out of one loss (occurrence) or not, that could mean that your $30 deductible, when applied to 1,000 people injured in one loss, is actually $30,000. Is that crooked? I'm not sure."

Mr. Foerster also recommended that the policy have a clause specifying that the insurance company cannot settle a claim without the consent of the policyholder, he said.

The hypothetical policy Mr. Foerster used said that the insurer could "at its sole option and without the consent of the insured" settle any claims or suit involving the limits of liability. Further, the policy stated that "the insured shall promptly reimburse the company for...retained limits and the amount in excess of the limits...paid by the company on the insured's behalf."

"Look out!" Mr. Foerster said. "Don't let anyone do this."

"That's on my policy!" the risk manager of a Northern California county gulped when he realized he had let someone "do this" to him.

Mr. Foerster also pointed out that risk managers must know what constitutes a bona fide claim according to the policy and what the cancellation provisions are.

"The solution to adequate coverage is simple: Read the policy, ask questions, and don't let an agent or underwriter push you around," he said.

"Then, once you know what is and isn't covered and are satisfied, remember these street tips:

- "Try to get the highest limits you can. Premiums will continue to drop for a while, so get broad coverage.
- "Have a list of markets and get lots of quotes.
- "Make sure you read your umbrella form—it may not cover any more than your other policies.
- "If you have an occurrence form, the problem of tails is taken care of if you have good limits. But if you have a claims-made form, there is a problem with conversion and prior acts. For a claims-made form, get as broad coverage as possible for prior acts.
- "Consider separate policies for specialty areas for the best overall coverage." ■

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PCBX

Municipalities must be heard on legislation: Pool director

By SALLIE J. DRURY

ST. PAUL, Minn.—If members of public self-funded insurance pools don't want adverse legislation and regulations forced on them, they'd better speak up.

"The only way to have an effective impact on legislation is for every member (of a pool) to stand up and be heard," David C. Epps, executive director of the Missouri Intergovernmental Risk Management Assn. in Columbia, told a session of the Public Risk & Insurance Management Assn.'s fourth annual conference June 1-4.

"It has an impact because it puts the heat on," he said. "Legislators don't like to hear from the people at home because they have to listen to them. The people back home put those legislators in office."

Mr. Epps noted there are at least seven legislative areas that should concern municipal pools today: workers compensation, governmental immunity, statutes of limitation, public purchasing, antitrust, public safety and pool regulation. And, above all else, pool administrators are worrying about regulation.

"Regulation can make or break us," Mr. Epps said. "We would rather have input into regulation than have it foisted on us."

To be able to have that input, pool members must be ready to slug it out with the pros—the lobbyists and politicians who make a career of the legislative process.

First pool members must understand the legislative process to know when the bill is most receptive to change.

Furthermore, a pool must know who can most effectively voice its interests before the legislature.

Finally, a pool must at all times be informed of legislative activities so it knows when bills that affect pool activities are being considered.

"The first area where a bill can be influenced is when it comes into the House and is assigned to committee," Mr. Epps explained. "It can be hard to find out when the committee hearing is held, so be persistent.

"After that, the bill is placed on a perfection calendar before it is passed on to the Senate—another key area where it can be influenced."

The best place to influence a bill is in the house of origin. "Amendments have to be referred back to the bill's house of origin before the bill can be passed," he said. "And sometimes the bill will just die."

Once a bill passes the House and Senate, "chances are practically nil that you can impact on it when it gets to the governor," he said.

To effectively influence the bill at these key points requires knowledge, Mr. Epps said. "Get a directory of state, district and county officers, if one is available in your state. Get the official manual of your state with a biographical sketch of every official."

Pool managers want to pinpoint the legislators who are residents of communities using the pool. These officials are a pool manager's best bet in supporting the pool's concerns.

"Local government officials are the best way to carry your concerns to the legislators because they will listen to you and they carry some weight," Mr. Epps said. "Professional lobbyists have a briefcase full of bills, and if something more interesting than workers compensation comes along, they likely won't work as hard for your concerns."

"A paid lobbyist who travels to the state capitol does not have the same impact as an elected official who volunteers his time for your cause," agreed Bradley K. Harmes, deputy director of the Virginia Municipal League.

Mr. Epps also urged pool managers to prepare their representatives well. "Don't let them get up there to argue for your interests without any ammunition," he said.

"We like to get copies of the bill to the working folks (pool members)," Mr. Harmes said. "If it's on workers compensation, we like to get copies to all the benefit managers.

"Then don't just leave a bill with your staff. Give your representatives a tick sheet and a summary of concerns. Be resourceful for them."

Another method of utilizing local officials to lobby for a pool's cause is to find out how all legislators voted on a bill. "That can have a tremendous impact," Mr. Epps said. "The success of our letter campaigns (in Missouri) is unbelievable."

As important as knowing who can influence a bill is to know when a bill will come before a hearing. "You must keep daily tabs on what the legislature is doing," Mr. Epps said.

"A bill eroding sovereign immunity bill slipped through because we didn't know what the legislative schedule was," he said. "It had been taken out of order and had passed the Senate before we knew what had happened." It hasn't passed the House yet.

Mr. Epps suggested that pools subscribe to a private legislative service to know when bills are slated to come before the House and Senate, and subscribe to a digest of legislative activity. "The digests and schedules helped us tremendously," he said.

When a pool is prepared to take legislative action, it must gauge whether that action will be active or passive. "If your pool is part of a municipal league with strong institutional backing, you can be more aggressive," Mr. Harmes said. "If you are independent, you must be more careful. Work on building coalitions first so you have that strong institutional backing."

Also, how aggressively a pool should pursue its cause with legislators depends on the political climate in the pool's state.

"Determine whether a special law for pools would be beneficial or restrictive," Mr. Harmes advised. "Also determine whether you are dealing with a strictly legislative problem or whether you have a whole other battle to fight on the administrative side. How politically sensitive are your administrative officials?"

"We found one of the things that made our lobbying effective was our loyalty; we attended hearings every time a bill came up and showed our interest," said Janis P. Scott, director of insurance for the Kentucky School Boards Assn. in Frankfort. "We also have the approach 'Let's do what's fair,' not 'Let's do what's best for management or labor.'" ■

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Benefits experts favor rewards for workers delaying retirement

BROOKFIELD, Wis.—Social Security benefits should be increased for employees who delay retirement beyond 65, benefit experts say.

But, they oppose the provisions in the Tax Equity and Fiscal Responsibility Act that shift primary health coverage of older workers from Medicare to employer-sponsored benefit plans.

Those are just two of the opinions expressed by the majority of 114 employee benefit plan administrators, trustees and advisers answering the latest National Opinion Panel survey conducted by the International Foundation of Employee Benefit Plans.

Sixty percent of the respondents said Social Security benefits should be increased for those who retire after 65. On the question of shifting health coverage, 58% said coverage should not be moved from Medicare to private plans.

On other issues, 49% of the respondents are against the Reagan administration recommendation to require employers to offer catastrophic protection as part of workers health insurance benefits. Forty-one percent are in favor of the recommendation.

Sixty-six percent think employer-paid health insurance premiums should not be considered part of an employee's taxable income, regardless of the coverage level. Yet, more than half the respondents felt that the availability of such tax-free coverage levels is a major cause of health care inflation.

On health care inflation, 62% of the administrators believe deductibles should be raised or employees' portion of health insurance premiums should be increased to contain health costs.

Of those responding to the survey, 19% were management benefit plan trustees, 17% were plan administrators, 14% labor trustees, 12% attorneys and the remaining 38% were benefit plan consultants, accountants, actuaries and investment counselors.

The National Opinion Survey is conducted quarterly to measure the attitudes of employee benefits experts on issues affecting that field. ■

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New PRIMA unit established for municipal pool members

By SALLIE J. DRURY

ST. PAUL, Minn.—Self-funded insurance pools for public entities now have an association to represent their interests.

The Pooling Section of the Public Risk & Insurance Management Assn. was approved, its bylaws ratified and officers elected at the PRIMA conference earlier this month.

The new section, which had 29 members in attendance at the first meeting, will plan educational programs for pool managers, promote the use of pools and have a voice in legislation and policymaking, according to Bradley K. Harmes, president of the section and administrator for the Virginia Municipal Group Self-Insurance Assn. in Richmond.

"We don't have to sit back anymore and hear statements issued in our behalf that we didn't have any input for," Mr. Harmes said.

"I look at this group as trying to address the day-to-day concerns of pool managers and administrators. We are not interested in the pros and cons of pooling," he continued. "We are in the business and we want to stay in the business and we want to help each other on a practical basis."

In addition to the ratification of bylaws and election of officers, the section also considered voluntary pool management standards that had been drafted by a committee. Consultants were asked to comment on the standards.

However, reactions to the voluntary standards were mixed.

"I think this is just the kind of thing this group should be coming out with so those of us who are just getting into this can have some guidelines," one pool manager said.

"You need these standards to protect your own interests," added Bud Griffin, chief executive officer of risk management consultant Warren, McVeigh & Griffin Inc. in Newport Beach, Calif. "There are pools out there that are going to fail soon because they don't have adequate reserves. As soon as these pools fail, they'll slap regulations on all of you unless you can prove you have standards."

"I for one feel this (set of proposed standards) could cause considerable problems," countered Gregory Berg, vp of Connecticut Interlocal Risk Management Agency.

"A copy of this could get into the hands of the independent (insurance) agents or the office of the insurance commissioner or even prospective members when we are marketing our pools and they could demand we meet everything outlined here. So, it could cause considerable problems even as an advisory."

The standards were returned to committee for redrafting and will be reviewed at the next section meeting, to be held at the 1984 PRIMA conference.

One of the section's major goals for the upcoming year will be communication, Mr. Harmes said. "We would hope to get about 50 managers of pools that are in PRIMA to take an active role in our section," he said. "And there are a number of public sector pools that are not in PRIMA. We are going to keep them on our mailing list and maybe they will see a benefit to coming to next year's conference (since there is now a pooling section), even if PRIMA never appealed to them in the past."

Besides Mr. Harmes, the newly elected board of directors for the section includes David C. Epps, executive director of the Missouri Intergovernmental Risk Management Assn., who was elected vp.

Elected to two-year terms on the board were Eugene Berrodin, administrator of insurance services for the Michigan Municipal League in Ann Arbor; Frank James, general manager of the Redwood Empire Municipal Insurance Fund; and Ronald Rakich, executive director of the Texas Assn. of School Boards in Austin.

Elected to a one-year terms were: Elizabeth Puddington, executive director of New Hampshire School Boards Insurance Trust Inc. in Manchester, and Edward D. Hansen, risk manager for Intergovernmental Risk Management Agency in Downers Grove, Ill.

Further information on the new section can be obtained by writing PRIMA, 1120 G St. N.W., Suite 707, Washington, D.C. 20005. ■

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B-6/13

GMD Benefits the World

Some risk managers still skeptical of computers

Continued from page 3

Another reason risk managers don't like computers is because they don't understand the buzzwords, Mr. Hyman said. He went on to define bits and bytes and ROMs and RAMs.

(Bits and bytes are pieces of computer information; ROM stands for read-only memory, or what is permanently stored in a software program; and RAM stands for random-access memory, the memory created when a risk manager stores information in the system.)

Others don't like computers because they don't understand how they work. To eliminate this, Mr. Hyman held up a silicon chip—which acts as the computer's memory—and partially disassembled a computer to reveal a box containing only a few wires and several chips.

But the most comforting words Mr. Hyman and Mr. Ellis had were that risk managers do not have to turn into "Silicon Valley guys." Writing programs and conversing in computer languages are not necessary skills for operating micros, Mr. Hyman proved.

In less than 30 minutes, the session participants had "booted up" their machines, or loaded memory diskettes, and were inputting hypothetical claims data. Many of the risk managers were amazed at how easily they could instruct the machine to replicate a stream of numbers with a single command, and with what speed the information was filed.

"See how much easier and faster this is?" Mr. Hyman asked. "Imagine if these (hypothetical numbers) were incidence formulas."

Although Mr. Ellis said there is no software on the market today that is particularly designed for risk managers, much of it is applicable to risk management functions. "There is ample software off the shelf today so that you should be able to fulfill nearly all, if not all, your needs," he said.

If a risk manager is already a byte-head, or computer freak, and knows how to write programs, he may want to create his own software so that it is custom-tailored to his risk management program. Other risk managers may work with specialists in data processing departments who can write programs and who have access to mainframe computers.

However, some risk managers expressed reservations about using data processing departments and mainframe computers.

"The risk management department can't get its job high enough on DP's priority list," said Mark Ferraro, risk manager for the city of San Antonio, Texas. "I think we're slated to have DP time in 1984."

While computers will allow risk managers to do a more thorough job faster, Mr. Ellis pointed out some things a computer won't do.

"A computer will not make your organization run right," he said. "It will enhance the things you do right, but it will also make your screw-ups more evident.

"It also will not solve every problem or run itself," he continued, "because computers don't think yet. It will also not always be right—the old garbage in, garbage out situation.

"It will not protect itself, which makes security necessary, and it will not meet its own needs in other ways; you have to install a cooling fan and protect it from dust and static."

But with all that computers will and won't do, can a risk manager save his organization money by using a computer?

"The computer is not going to directly save you any money," Mr. Ellis said. "You've got to lay out some cash for it."

However, one risk manager disagreed because it allowed him to operate a risk management department with fewer people on the payroll. "For me, there's been a hiring freeze for about five years, and I'm about 1½ people short. We're totally self-administered, and I need (the computer) to free some time up," he said.

"I agree with that point," Mr. Ellis said. "But you cannot walk into your city manager's office and say 'Buy me a computer because it will save me $20,000 as soon as I get it.'" The savings may accrue over a period of time, he said, but the sizable start-up expense "is a cost no matter how you look at it."

Mr. Ferraro of San Antonio concurred. He says in his city they have real dollars and unreal dollars. "The (unreal) dollars are what you send your internal EDP people to write you a program. They're budgetary dollars that don't really go anywhere. But the $3,000 you go out and spend on a microcomputer represent real dollars that you have to take out of the city treasury."

Mr. Ellis noted one of the benefits his city reaped. The data provided by the computer enabled Lakewood to cut workers compensation losses by 75% over two years.

Once a risk manager has decided how he or she can deal with the initial cash outlay for a microcomputer—and Mr. Ellis referred to a book called "Fifty Ways to Hide a Personal Computer"—he or she will have to know how to shop through the myriad types of hardware and software.

"First of all," Mr. Hyman said, "know what your applications are and find out if the hardware and software are compatible with your needs. Tell the computer dealer what you want to be able to do with the computer, and find out which computers will do that for you.

"Then, find a user group and talk to computer freaks."

Mr. Hyman also advised the risk managers to stick with major manufacturers because service and software will be easier to obtain.

Once the hardware is purchased, Mr. Ellis urged participants who choose to buy packaged software to try it before buying it. "Read the documentation that accompanies the software and make sure you understand it and can use it for your needs. If a company doesn't let you look at and try the software, don't buy it."

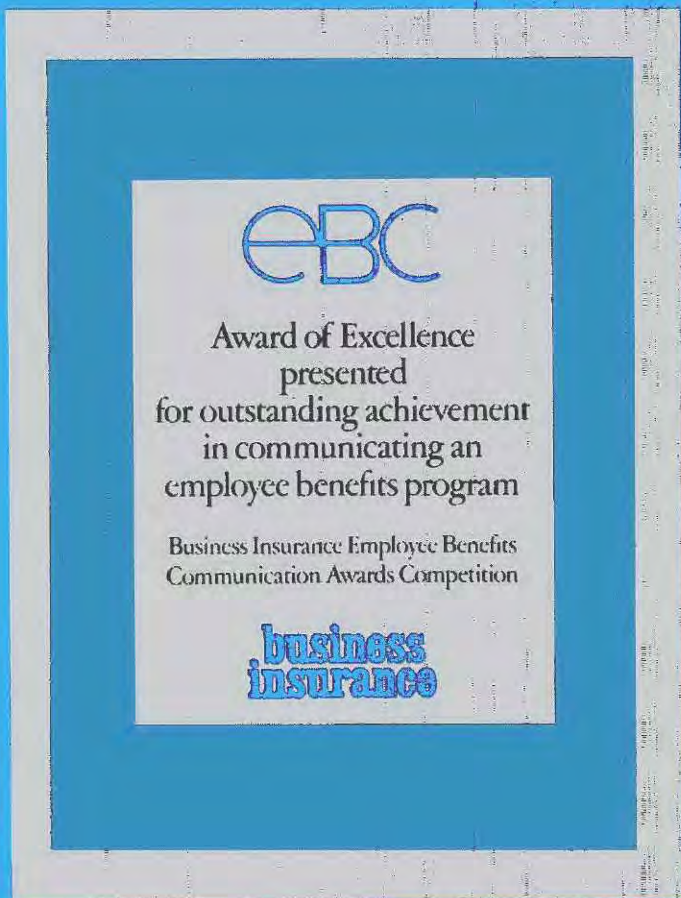
A risk manager will also have to decide where to buy the computer.

"Buy from a mail-order house," Mr. Hyman advised. "You will save 40% to 50%."

"Yes, you will save initially from mail-order," Mr. Ellis agreed. "But there is a certain value to establishing rapport with a dealer. The speed of repair you can get with a computer dealer you've established a business relationship with can save you more money and grief in the long run."

"And when you get equipment for it, you'll want to get some joysticks and paddles to play games too," Mr. Hyman quipped.

"But if your organization is concerned about your need for a microcomputer, I wouldn't leave the paddles out on the desk." ■



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Antitrust risk can be cut, attorneys say

By SALLIE J. DRURY

ST. PAUL, Minn.—The risk of antitrust suits, a growing concern among public risk managers, can be minimized by careful planning, attorneys say.

Normal actions of the city, such as zoning, licensing and contracting for city services, may not at first signal restraint of trade. But cities are no longer immune from antitrust suits and in today's litigious society, such ordinary items of government business can bring more than one trip to court.

"When you do go to court, the jury may find there are good governmental reasons for the city to do what it is doing," said Michael J. McCauley, city attorney for Mankato, Minn.

"To prevent adverse decisions, a municipality should perform a survey with the assistance of antitrust counsel, determine where they are acting in a governmental function and where in a proprietary function, and then they will see where their exposures are.

"Also, a municipal body should have a very detailed statement of facts whenever it passes a resolution," he said. "Carefully listed reasons behind passing a resolution could fend off an (antitrust) suit."

Mr. McCauley was one of three attorneys who spoke at a session on antitrust risks at the Public Risk & Insurance Management Assn.'s fourth annual conference June 1-4.

"A risk manager must weigh his city's antitrust liability before it occurs," said Edward Starr, city attorney for St. Paul, Minn. "And it may not be an overt liability."

For example, a city could disseminate data across the city on services offered by three different suppliers. If those who read the data choose to act uniformly, based on the data, it could also be construed as a contractual agreement. It would be an antitrust exposure.

Once a risk manager studies the exposure and plans the city's approach to potential antitrust action, he would be wise to seek legislation that would shield the city's action, the attorneys advised.

"If the municipality decides to actually restrain trade, such as in a monopoly situation, (the municipality) is on thin ice, but could still be safe," Mr. McCauley said. "It's better not to take the chance."

"In that case, I would go to the legislature to get authority permitting (the restrained trade)," said Stanley Peskar, general counsel of the League of Minnesota Cities.

"But there is no model state legislation to protect you," he said, and added that national legislation would be ideal "if we were lucky enough to get it."

"The legislation should be specific," Mr. McCauley said. "And if you do go to court, back away from the immunity defense and cooperate. Let (the court) first determine if the activity is actually an antitrust violation.

"Most of the time it will not be a question of whether you are going to pay, but of how much," he said.

Mr. Peskar pointed out things public risk managers should avoid to prevent antitrust lawsuits:

- Don't participate in acts that belie government purpose; deal with prearranged agencies and keep a record of all business.
- Avoid any conflict of interest, i.e., governmental vs. proprietary.
- Avoid any unreasonable and inexplicable action.
- Use specifications that all potential bidders can comply with.
- Advertise well for bids and don't make unreasonable bond demands. ▪

PRIMA now boasts about 800 members

ST. PAUL, Minn.—"The letters, P-R-I-M-A, stand for more than the name of your association," said C. Arthur Williams Jr., who delivered the keynote address to attendees of the annual Public Risk & Insurance Management Assn.

"PRIMA also stands for the public risk manager's function."

Mr. Williams, professor of economics and insurance at the University of Minnesota School of Business in Minneapolis, elaborated on the acronym for the 200 members attending:

"P stands for protecting against loss; R, for reducing worry; I, for improving the city's relationships with its citizens, employees and suppliers; M, for minimizing the cost of risk; and A, for assisting other government officials."

PRIMA was formed in 1978 so that risk managers for public entities around the country could assist one another. Now the national association has 12 local chapters and is about 800 members strong, according to Natalie Wasserman, PRIMA's executive director.

"PRIMA has grown and the conference has grown," Ms. Wasserman said. "We had 27 sessions last year; this year we have 34.

"And we approved the new Pooling Section of PRIMA at the conference," she said, "which is very big, very important" (see story, page 31).

In addition to planning next year's conference, Ms. Wasserman said publishing is high on the list of this coming year's priorities.

"We are also going to put out our first major publication soon, and plan to develop our publishing ventures," she said. The first venture will be a basic risk management manual.

Responsible for the planning of these upcoming projects are the new PRIMA officers, who were installed at the conference.

Elected president was Don LeMond, risk manager for the state of Missouri. He will hold office until the 1984 conference.

New vps for two-year terms are: Mary Lou Emmert, risk manager for the city of Arvada, Colo.; Fred Marshall, risk manager and benefits administrator for Arlington County in Virginia; and Barbara Yeager, insurance coordinator for Johnson County in Kansas.

Remaining on the board as vps are: Betty Conner, insurance coordinator for the City of Memphis, Tenn.; David C. Epps, executive director for the Missouri Intergovernmental Risk Management Assn.; Allen F. Hyman, director of safety & risk management for the City of Corpus Christi, Texas; and James O. Patterson, insurance manager for Suffolk County, N.Y.

Past President Robert J. Ellis, Pinellas County Board of County Commissioners risk manager in Clearwater, Fla., will remain on the board for two years as a consultant.

Additional information on the association can be obtained by writing PRIMA, 1120 G St. N.W., Suite 707, Washington, D.C. 20005.

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Employers not worried about smoking law

Continued from page 2

the Federated Employers of the Bay Area, an employer coalition, to determine the conditions under which the new law mandates these open areas would have to be sectioned-off to satisfy non-smoking employees.

"Obviously putting partitions up is expensive," he notes, but he says any changes Bechtel eventually might make "will probably not be exceptionally costly."

The ordinance will probably not change business operations at Levi Strauss & Co., which employs about 2,000 people in San Francisco.

"At this point, we have no plans to do anything different than we are right now," says Gail Hale, manager of research and policy development.

Levi Strauss routinely works to accommodate employees who are uncomfortable in smoking situations, she says. This has included moving employees to different sections of an office area and placing air purifiers in the work space, moves Ms. Hale considers relatively inexpensive.

The solutions that Levi Strauss have found to solve the smoking dilemma are precisely the kind that the law's proponents say the ordinance was designed to encourage: those that are not costly.

Diana Parker, an aide to Ms. Nelder, says the ordinance was worded in such a way that employers "are not expected to have to spend any money." The employer must provide a smoke-free work environment "using already available means of ventilation, or separation or partition of the office space."

An employer "is not required to make any expenditures or structural changes to accommodate the preference" of non-smoking employees, she says.

Ms. Parker suggests that businesses look into inexpensive solutions, like distributing air filters, maintaining ventilation systems properly, rearranging desks and even opening windows to comply.

"The reason this is designed specifically to apply to office workplaces is that people just don't have the luxury of moving around at work," Ms. Parker says. The ordinance mandates that in an office situation in which a smoker and non-smoker cannot resolve their differences, "the rights of the non-smoker will prevail."

> 'People aren't going to quit their job because they can't smoke a cigarette,' Ms. Bragg says.

Tom J. Owen, a deputy city attorney, says the ordinance applies to office workplaces at "primarily clerical, professional or business services."

The law defines "office workplace" as including, but not limited to, office areas in office buildings, medical offices, waiting rooms, libraries, museums, hospitals and nursing homes.

Exempt from the regulation are offices in areas owned or leased by the state or federal government or offices in which two different firms share an open work area.

Also exempt are offices in private homes and private, enclosed offices occupied exclusively by smokers, even if the office is visited by non-smokers.

The law will be enforced by the Department of Public Health, Ms. Parker says, but inspections will only take place when the department receives a complaint. She says the department will initially issue warnings to companies that do not comply, but fines may later be assessed of "up to $500 a day for each day that the rights of the non-smoker are violated."

The penalty, she says, means "it's in the interest of the employer to comply, but it's really not expected that it will ever even reach the fining stage."

"The employer must establish a policy," Ms. Parker adds. "Whether or not he waits until an employee complains is up to him, but it's doubtful any employer would wait until a non-smoker complains to comply."

Ms. Nelder says she proposed the ordinance when she became increasingly aware of "objective medical evidence that indicates secondhand smoke is harmful to your health." She says substances from secondhand smoke, like nicotine and carbon monoxide, can affect psychomotor skills to the extent that a person's work productivity may be reduced as much as 15%.

"There's been kind of an ongoing confrontation between smokers and non-smokers (here) for a long time, but the only thing this really changes is that when there's a dispute, the non-smoker has to be satisified," sayd Dr. Harold I. Griffeath, corporate medical director for Castle & Cooke Inc., a food processor. "I don't see this as much of a problem because we have a number of people in private offices."

"Things of this sort are good from a health standpoint, in that they further emphasize the hazards of smoking," he observes. "Maybe this will help others quit."

Some say the ordinance could have significant effects. The Chamber of Commerce's Mr. Hayden says, "Being a heavy smoker, if I had to quit my smoking at work, I'd quit my job, even in tough times like these."

But others aren't as certain that it will have that drastic of an effect.

"With the job market today, people aren't going to quit their job because they can't smoke a cigarette," says Jane Bragg, assistant in the personnel department at United States Leasing International Inc., a commercial and industrial equipment leasing firm headquartered in San Francisco. The company is currently surveying its approximately 600 employees to receive feedback on the ordinance, she says.

Marvin Krasnansky, vp of corporate relations for Foremost-McKesson Inc., the San Francisco-based drug, food and health care manufacturer, agrees. "Anybody who quits a job because he wasn't able to smoke is either wacky or really hooked on nicotine. I can't see that happening."

Mr. Krasnansky says he is surprised at how few of the company's approximately 600 San Francisco employees smoke.

"I just don't think it's going to be a major problem in our facilities. People are increasingly respectful about others' sensibilities about their health."

Like other large businesses, Foremost-McKesson has formed an in-house committee to study the situation "because it's so new that we haven't had a chance to handle it yet."

A spokeswoman for Wells Fargo Bank in San Francisco, a subsidiary of Wells Fargo and Co., expresses similar frustrations. "It's really complicated at this point. It's hard to even judge what is or isn't going to happen.

"Anything is a possibility. We haven't really put our policy together yet, and haven't even started to consider all the ramifications."

The spokeswoman says the ordinance is applicable to about 50 buildings in which Wells Fargo operates offices, including the corporate headquarters. An employee survey conducted within the past two years revealed that 30% of the company's approximately 6,000 workers smoke.

"There's a bit of a trend away from smoking and part of the cutting back is not smoking in the office," notes the safety and benefit manager for a San Francisco-based national drug and beverage manufacturer employing about 76 people in this city. He prefers to remain anonymous since the company is not planning to draft a formal policy.

"If we ever get into a situation in which smoking and non-smoking employees can't get along, we'll just have to ban smoking. We're so tight on space here that unless a smoking employee opened up his office to other smokers, they'd have to go to the park outside for a smoke," he says.

Although the ordinance requires employers to develop a written policy for handling employee smoking disgreements within 90 days after it takes effect, many businesses will simply wait until a non-smoker complains.

The benefit manager who wishes to remain anonymous says he has a "wait-and-see-what-happens attitude because structurally, in our office, there's just nothing we can do."

"If the issue comes up, we will then take action," says the spokeswoman at Wells Fargo. "But we'll let it be employee-initiated. We'll act according to the grievances as they come up."

"We're still studying it, but we expect our position to be that we're not going to do anything to accommodate it," sums up Paul Sahlin, personnel manager for C&H Sugar Co.

"We'll abide exactly by the law and not make it easier for people to smoke, but we're not going to spend a dime moving walls around." ▪

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Lloyd's chairman

Continued from page 3

Nor is Lloyd's suffering from a shortage of members—known in the market as names—who are willing to accept insurance risks with unlimited personal liability. The number of applications by private individuals to start underwriting next year is the same or possibly a few more than last year.

"The main restriction is the ability of underwriters to find sufficient high-quality business to feed the new names coming forward."

There were 21,601 names at Lloyd's at the beginning of the year, including 1,471 Americans. Typically, an individual must show personal assets of at least 100,000 pounds—about $160,000 given today's strong dollar—to meet Lloyd's "means test" requirement for membership.

Lloyd's recent troubles have forced closer internal and external scrutiny of the way it conducts business. The Council of Lloyd's—the market's top governing body—already has approved initial requirements for the disclosure of reinsurance arrangements and will soon consider rules covering the what information should be relased to names on a syndicate.

"Up until 10 years ago (Lloyd's) really was not a terribly big place and those who worked in the market—by gossip, surmise, the ability to read upside down and by having extremely long ears—were pretty well aware of what everybody else was up to," Sir Peter recalls.

This loose self-regulation worked because most of the names in those days were friends or acquaintances of underwriting agents, he continues. They met frequently at dinner parties or over a golf game. If they wanted to know what was going on, they just asked.

With the expansion in the market and in the number of names over the last decade, that close relationship has broken down "without any of us really realizing the extent to which it had broken down," Sir Peter says. "When people are aware of what you're up to, you don't really need so many regulations to deal with it."

Proposed disclosure will not be to the public at large but to Lloyd's itself and to the names to the extent that they are interested, Sir Peter explains. He believes that most names will be content to leave the self-policing to their underwriting agents and the Committee of Lloyd's, a panel of working names who supervises Lloyd's operations on a day-to-day basis.

Collecting information is getting easier all the time through the use of computers and Lloyd's, like other businesses, is eyeing opportunities to expand and upgrade its automated information systems.

"With a new building now rising rapidly, much thought is being given to how we can best harness electronic data handling to our needs," Sir Peter told the managing general agents at their annual meeting in Maui.

"Our aim is to eliminate the tedium of routine repetitive handling of data by paper with all its attendant errors and put in its place a network which links Lloyd's central systems, the broker and the underwriter into a common data handling system."

Richard Ellington, head of systems and communications and adviser to the Committee of Lloyd's on financial matters, is the manager in charge of "bringing us into the electronic age by the end of this century," says Sir Peter.

Lloyd's already has one of the 10 largest computer installations in the United Kingdom, which is used primarily for accounting between underwriters and brokers. Smaller computers hold all of Lloyd's membership records. Many brokers and underwriters have their own individual systems linking them to Lloyd's and to each other.

Computer-transmitted information is more accurate and less prone to error than are paper records, but Sir Peter does not believe that Lloyd's is going to become a completely electronic market that bypasses U.S. correspondents to provide direct market access to buyers and retail brokers.

"We really don't see an alternative to the present system of eyeball-to-eyeball when it comes down to the really important negotiations in a major contract," he says.

The evolution of computer technology makes late payment of claims increasingly intolerable to policyholders and Lloyd's is evaluating alternatives to speed up the claims process. Regulators in the United States and elsewhere are imposing stricter time limits on the payment of claims after proof of loss is submitted.

"We at Lloyd's are acutely aware of this and I am sure a solution is not beyond our ability, but it will require an unprecedented degree of cooperation by all parties," Sir Peter says.

The present routine involves passing payment through as many as five or six hands from underwriter to wholesalers to retail broker before it reaches the policyholder.

Unless all elements of the Lloyd's market can find a way to speed up the payment of claims, either Lloyd's will lose business or the Council of Lloyd's will have to impose a solution in the overall interest of the whole Lloyd's market, he added.

Lloyd's has recently initiated direct settlement of claims for Kentucky livestock risks. The innovation is working well and could be regarded as a pilot scheme for the future, he said. This particular area was selected as a guinea pig because it historically has been plagued by slow claims payments.

It's the small risks that have endured the long delays, says Sir Peter. And yet, "a $50,000 claim may be more important to a small business than a $20 million loss to a major airline," he points out.

Another matter on Sir Peter's mind in recent months has been the issue of ownership of Lloyd's brokers by insurance companies, a practice that Lloyd's has traditionally frowned upon because of fears that it could interfere with the broker's primary responsibility to serve its clients.

"In the past when we heard that a Lloyd's broker might be bought by an insurance company, we would usually drop a hint in the way those things happen in England and the hint was taken and the deal didn't go through," explains Sir Peter.

Lloyd's can't prevent The St. Paul Cos. Inc. from purchasing the stock of a public brokerage company, like Minet Holdings P.L.C., Sir Peter notes. But Lloyd's does have the right to deny entry to the market to any firm or individual (*BI*, May 16).

"So, I suppose this is the ultimate sanction. But, it would be a very difficult and serious step to take...and it would lead to a confrontation on all sides in a way that we've tried to avoid confrontations."

Sir Peter says he would prefer to see the British Parliament or the U.S. Congress deal with the dilemma of insurers taking control of brokers.

Since Parliament opposed ownership links between Lloyd's brokers and underwriting agencies in the Lloyd's Act of 1982, the Council of Lloyd's finds it hard to understand how parallel relationships between commercial insurance companies and brokers can be inoffensive, he explains.

Sir Peter has been Lloyd's chairman since 1980 and has been returned to office three times. His current term expires at year-end, but the council could choose to re-elect him this autumn. ■

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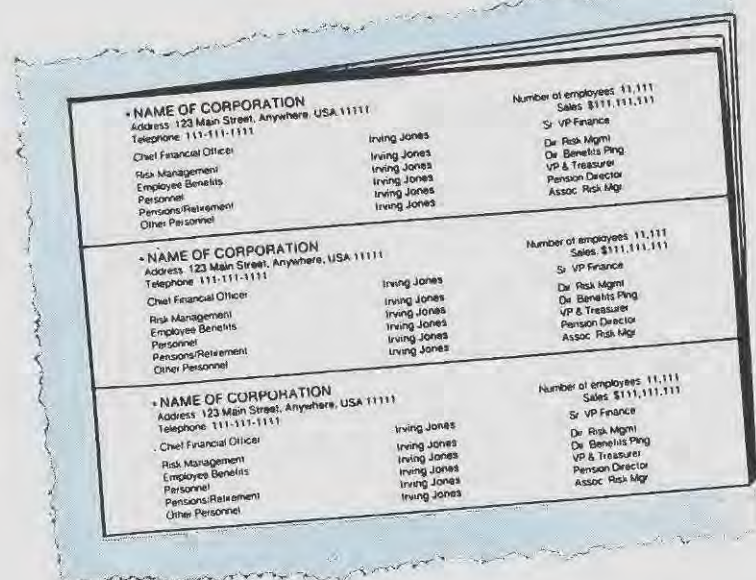

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Laid-off stewardesses win pension credits

Continued from page 2

have accrued had their employment not been terminated.

But American did not count the years the women were laid off toward the company's retirement plan's vesting requirements.

By not giving pension credits to flight attendants who returned to their jobs after the 1977 agreement, American violated the terms of the settlement, according to Local 500 of the Air Line Stewards & Stewardesses Assn., which asked Judge McGarr to rule on the issue.

An American Airlines spokesman said the 1977 settlement was silent on the issue of pension credits for the rehired employees. He added that the provisions of the settlement were fully followed by the airline.

But, Judge McGarr disagreed. He noted in his May 20 decision that a paragraph in the 1977 agreement explicitly provides that each "re-employed class member shall be credited with the amount of company seniority and length of service to which she was entitled at the date on which her employment was terminated. . . ."

American's retirement plan is one of the benefits American Airline employees enjoy, Judge McGarr noted. "Clearly, the phrase 'credited with. . .company seniority and length of service to which she was entitled' means that (lead class plaintiff (Darlene Burmeister) and the retiring class members are entitled to the benefits of the plan consistent with their credit for length of service.

"In order to avoid discrimination, plaintiff and the returning class members must be awarded all of the benefits they would have received had they not been discharged. Clearly, the plan is part of those benefits," Judge McGarr said.

The ruling only applies to the 175 to 200 American flight attendants who returned to their jobs after the 1977 settlement.

Under the ruling, credits toward pension vesting must be given from the time a flight attendant began working until the 1977 settlement. For example, if a flight attendant was hired in 1964, let go in 1965 after she became pregnant and then rejoined the airline in 1977, American would have to include the period between 1965 and 1977 as years of service when calculating the employee's pension.

Judge McGarr's ruling could mean $5 million in additional pension benefits for the women, attorneys for the flight attendants estimate.

American, which in 1970 stopped laying off flight attendants after they became pregnant, already has asked Judge McGarr to reconsider his ruling.

"We believe the decision is totally wrong," an American Airlines spokesman said.

In recent years, disputes involving pregnant employees have decreased because the Pregnancy Discrimination Act, enacted in 1978, gives pregnant employees job and benefit equality (*BI*, Oct. 30, 1978). ▪

Two top executives leave A&A

Continued from page 2

pany assets to purchase the bank (*BI*, Oct. 11, 1982).

Mr. Farley could not be reached for elaboration on his future plans.

Gerard Curtis, A&A's senior vp in its IMPACT special marketing program, also left the brokerage effective June 1, the company confirmed.

Although A&A made no public announcement of the matter, Mr. Curtis, 55, elected early retirement, according to an A&A spokesman.

A&A executives maintain that these two personnel changes are not part of a corporate exodus and that the company's previously announced plans for staff and salary reductions to reduce a drain on corporate finances are virtually complete. However, sources both inside and outside A&A branch offices say that layoffs may continue.

"It varies from office to office, so all the information we get is secondhand, but some people are being encouraged to take early retirement and others are being let go. Almost none of these is being replaced," one A&A branch office executive remarked.

"The annual report says we had 10,400 employees last year," another A&A employee noted, "but we've got to be below 10,000 now and certainly below that by the end of this month."

A&A Chairman John A. Bogardus Jr. told reporters after the company's annual meeting last month that the company reduced its overall staff by "300 to 400" over the last year but had virtually completed its review of economy and productivity in its branch offices.

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Insurance Management: vps, directors, managers of insurance, risk, benefits, compensation, safety, security, etc.	5,299
Government, Associations, Unions, Educational Institutions	1,034
Commercial Consumers Sub-total	**22,954**
Insurance Agents & Brokers	9,771
Insurance Cos.	5,217
Financial Institutions	352
Actuaries, Attorneys, Adjusters, Appraisers & Consultants	2,603
Others allied to the field	937
TOTAL	**41,834**

*Source Business/Occupational breakdown of qualified circulation, November 1, 1982 issue, as submitted to BPA for December 1982, BPA Publisher's Statement.

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Hall, insurer want MGM coverage voided

Continued from page 1

It was intended to provide MGM Grand with a tax deduction for the premiums paid and to protect the company from a qualified audit report.

Auditors nevertheless have qualified MGM Grand's financial statements. The tax consequences have not become an issue (*BI*, Feb. 9, 1981).

MGM denies that its $75 million settlement last January includes any consideration for punitive damages.

"The settlement was only for compensatory damages, not for punitive damages," Bernard Segelin, MGM Grand vp and general counsel, reaffirmed last week.

"We think this ($75 million settlement) is an excellent settlement and encompasses only compensatory damages. It does not encompass punitive damages."

Because it has not been able to recover under its retroactive liability insurance policies, MGM has had to borrow $70 million through loans from six banks to cover the settlement with claimants.

MGM's suit filed in March against Hall and 22 other insurers charges them with failing to respond under the back-dated liability policies and asks the court to rule on the extent of coverage provided by the back-dated liability insurance (*BI*, Mar. 21).

Hall Vp and General Counsel Thomas G. O'Brien III said the two main issues in the litigation are whether the MGM settlement involves any punitive damages and whether MGM completed the necessary steps prior to making claims with insurers on the policies.

Last January, MGM agreed to pay $75 million for its share of the settlement with all claimants. Since then, the settlement fund has grown to approximately $140 million with contributions from other defendants (*BI*, May 9).

People were talking about $60 million to $80 million as a total settlement in the fire, notes Hall and Union attorney George N. Tompkins Jr. with the New York firm of Condon & Forsyth.

"There's got to be an element of something other than compensatory damages. The plaintiffs here are getting a bonanza."

Three law firms have analyzed the various claims for Union, Mr. O'Brien says, and even if claims were settled on the high side, the value would come to less than $40 million.

However, MGM's Mr. Segelin said that at a recent court hearing, testimony from a major plaintiffs' attorney in the litigation put the total value of compensatory damages in the case at $350 million.

MGM was able to control the settlement through an agreement with its primary insurer Insurance Co. of North America, Hall and Union contend. MGM bought out its $1 million primary policy with Insurance Co. of North America and released INA from its obligations under the policy, the suit says.

"Thereafter, plaintiffs commenced a program of settling claims at any cost, thereby converting to their own use and for their own purposes funds received from various companies and insurers and in so doing acted in bad faith," Hall and Union say in court papers.

"Plaintiffs have made settlements of claims which are unreasonable in amount and which contain an inherent element for plaintiffs' punitive damage liability and also have incurred litigation expenses with respect thereto which are not reimbursable to plaintiffs by defendant under the provisions of said agreement and policy," a Union counterclaim adds.

In addition, Union claims that MGM breached the agreement by not obtaining Union's prior consent to the settlements.

MGM said in its suit that the broker and insurers were informed of the settlement proceedings, the nature of the negotiations and were given copies of the settlements and proposed settlement agreements.

They were also invited to participate in settlement negotiations with the plaintiffs and numerous demands were made upon the insurers to propose, agree and bring about a settlement on the liabilty, the MGM suit says.

"Our position is that we had the consent of Union to go forward and make settlements," Mr. Segelin added last week. "They repeatedly told us to settle the litigation."

In the suit filed in March, MGM also made numerous allegations against Hall and the other insurers of the back-dated insurance, contending that they had no intention of paying any significant settlement sums until several years from now.

It charged that Union and Hall failed to reserve adquate funds to pay claims and that they demanded that MGM agree to contribute millons of dollars and their own funds to bring about a settlement within the policy limits.

Union International is believed to have entirely reinsured its $35 million exposure with General Reinsurance Corp.

Attorney Mr. Tompkins and Hall's Mr. O'Brien have confirmed that the reinsurance agreement included a payout schedule between Union and General Re that allowed Gen Re to earn investment income on the premiums before paying all losses.

The payout schedule was central to how the insurance worked, Mr. O'Brien added. When Union made advance payments to MGM to cover costs of litigation, the payout schedule was amended to accelerate payments to Union, he added.

Because of the acceleration, and because of General Re's loss of use of the money, the amount of the payments from Gen Re to Union was reduced, Mr. O'Brien added.

MGM knew of the payout schedule when the retroactive insurance was placed and knew the insurers needed time to earn enough investment income to cover the ultimate net losses.

MGM paid $38 millon in installments for the the $165 million in retroactive insurance. The total premium included $25 million for the first $35 million excess of $30 million, $7 million for $35 million excess of $65 million and $2.5 million for $25 million excess of $100 million. All but $10 million of the $25 million excess of $100 million is needed to cover MGM's portion of the $75 million settlement with the fire victims.

MGM essentially ignored the fact that there was a payout schedule after U.S. District Court Judge Louis C. Bechtle in a surprise move set a liability trial date for January. MGM decided to settle the cases quickly rather than go to trial and face punitive damages, Mr. O'Brien said.

Hall's response to MGM's suit opens the way for discovery proceedings to begin in the litigation, Hall and Union attorneys say. Subpoenas and requests for various documents of Hall, Union and General Re have already been made. ■

Stricter Bermuda regulations sought

CHICAGO—The chairman of a leading Bermuda-based insurance company is calling for stricter regulation of commercial insurance and reinsurance companies operating in Bermuda.

J. Douglas Higley, chairman of Mentor Insurance Ltd., wants the Bermuda government to impose "a separate designation and reporting responsibility for those companies in Bermuda primarily engaged in underwriting unrelated risks."

These insurance and reinsurance companies should be required to file a financial return for public consumption meeting the requirements of insurance regulations in the United States, Great Britian or Canada, Mr. Higley says. The insurer could choose the domicile of its ultimate parent company, he suggests.

In a speech last week to a meeting of executives of First Trust, a Chicago-based risk pool for nonprofit institutions that Mentor reinsures, Mr. Higley predicted that "professional insurance and reinsurance companies will encourage the Bermuda authorities to have a separate designation and reporting requirement for those companies that are primarily in the business of writing non-related risks."

Mentor, the insurance subsidiary of Ocean Drilling & Exploration Co., is one of the largest insurance companies underwriting unrelated risks operating in Bermuda. It had $55 million in written premiums against $57.6 million in capital and surplus at year-end 1982.

Mr. Higley said he would not suggest how the government define "primarily in the business of writing non-related risks." He leaves that to "the industry to work on," he told *Business Insurance*.

Currently, insurance companies in Bermuda file only one financial return to the government in Bermuda to comply with its insurance regulations. That return is kept confidential by the government.

Publicly available financial returns prepared in a fashion familiar to other insurers and reinsurers "would be a positive marketing tool for companies domiciled in Bermuda," Mr. Higley predicted.

If a Bermuda company reports its financial data differently from those a ceding company is accustomed to seeing, the ceding company may not want to take the additional time needed to analyze the data, Mr. Higley said.

"If you are a harried executive, as most are, you follow the path of least resistance." The path of least reistance is dealing with insurers whose financial reports are presented in a familiar format, he explained.

All Bermuda-based insurers accepting risks from around the world should prepare these statements "because if Bermuda as a domicile does this, it will help the individual companies in Bermuda," Mr. Higley said.

In his address, Mr. Higley also noted, "We at the Mentor Group of insurance companies do not believe that a Bermuda domicile needs defending any more than any other jurisdiction in which we have a presence."

Mentor is opening on July 1 an admitted insurance company and an excess/surplus lines insurance company in Louisiana, both carrying the Mentor name. ■

RIMS forms new committee

NEW YORK—The Risk & Insurance Management Society has formed a new committee to help members understand insurance industry proposals to change existing coverage forms and products.

The Product and Services Committee will review, analyze and comment on proposed industry changes that fall within risk managers' areas of concern, RIMS said.

The chairman of the seven-member panel is Jesse Pagonis, director of corporate insurance at Engelhard Corp. of Edison, N.J.

Among the items RIMS currently is reviewing are proposals from the Insurance Services Office to completely rewrite existing comprehensive general liability and commercial property forms. An ISO Liaison Committee, chaired by Norman Chanzis of American Standard Inc. of New York, will become a subcommittee of the new panel, RIMS said.

Additional subcommittees composed of RIMS members and industry representatives will be formed as they are neeeded.

Besides Mr. Pagonis, other members of the Products and Services Committee are Don Cherry of The Sperry & Hutchison Co.; Eugene Flory of BATUS Inc.; Rachel Garcia of Castle & Cook Inc.; James Goode of Baker International Corp.; Howard Helberg of The Pillsbury Co.; and Dick Hinds of Florida Power & Light Co. ■

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Plaintiffs may target jet's maker in fire

Continued from page 1
he says.

McDonnell-Douglas says it is premature to comment on the cause of the Air Canada accident and, thus, its potential liability.

Aviation consumer groups, as well as pilots' and flight attendants' unions, have for at least a decade urged the U.S. Federal Aviation Administration to adopt standards limiting the flammability and toxicity of materials used in aircraft interiors and seats. The FAA has studied the problem but has not yet acted.

Aircraft manufacturers and the airlines have told Congress they are working on the problem voluntarily. But they say their efforts have been hampered by the lack of commercially available materials that would reduce the hazard and yet still be no heavier than the plastic and metal components currently used.

For example, McDonnell-Douglas testified in 1979 that adding less than a pound of weight to the typical airline seat would mean that an additional 7.5 million gallons of jet fuel would be burned annually by U.S. airlines.

Also, the airlines and manufacturers say, the principal focus of the FAA should be on avoiding accidents in the first place, with secondary emphasis on making aircraft fires more "survivable."

However, the incident is rekindling congressional concern about smoke, flammability and toxicity. Rep. Elliott Levitas, D-Ga., wants to know why the FAA has refused to order installation of smoke detectors or automatic fire extinguishers in aircraft lavatories.

Rep. Levitas says that as aircraft become better able to withstand crash impacts, it becomes more important to protect passengers from the effects of smoke and fire.

Hearings on those subjects are scheduled for the week of July 11 by the Oversight and Investigations subcommittee of the House Public Works and Transportation Committee, a subcommittee spokesman says.

The three major aircraft manufacturers—McDonnell-Douglas, The Boeing Commercial Airplane Co. and Lockheed-California Co.—have all testified before Congress about their cabin-safety efforts.

McDonnell-Douglas, for example, testified in April 1979 that it had conducted flammability and toxicity tests on various seat covering materials. But the company noted that it didn't make airliner seats and that airlines picked and paid for the seats when they ordered new aircraft.

In its testing, McDonnell-Douglas says it discovered that the urethane foam seats with a wool-and-nylon covering typically used in aircraft could be made to produce dramatically less toxic gases upon burning with the addition of a ¾-inch layer of a substance called neoprene between the fabric and foam.

The heavier neoprene, the manufacturer said, apparently acted as a fire barrier, turning into char and preventing complete burning of the urethane—which gives off toxic hydrogen cyanide and carbon monoxide.

Lockheed, in its 1979 testimony, noted that it is quite difficult to stop the spread of flames or toxic smoke aboard an aircraft. It noted a typical cabin interior containing 14,000 pounds of non-metallic materials would ordinarily be filled with 3,500 pounds of "highly flammable" passenger clothing and carry-on bags.

"A small change in the flame or smoke characteristics of cabin interior materials will have little to no effect on the total flammability of an aircraft cabin," Lloyd E. Frisbee, vp-engineering and operations for Lockheed-California, told the House subcommittee.

Authorities say crew members aboard the DC-9 actually didn't see any flames until after the craft landed, but that thick smoke billowing from an aft lavatory forced the emergency landing near Cincinnati.

Hand-held fire extinguishers were used twice and a recently installed automatic heat-sensing Halon extinguishing system discharged, but both failed to stop the flow of smoke.

All Air Canada jets have the automatic extinguishers in the lavatory waste receptacle, despite the lack of an FAA requirement.

The U.S. National Transportation Safety Board is expected to hold public hearings on the Air Canada accident, focusing on the possibility that an electrical short near the rear lavatory of the twin-jet may have caused the fire.

One theory is that the pump motor for the toilet burned out, spreading a smoldering fire among numerous wires running through the area. Although not ruling it out, authorities are now skeptical that a lit cigarette discarded in the fire-protected waste bin could have been responsible.

The plane successfully landed at the Cincinnati airport 15 minutes after the fire's discovery, but the jetliner had already filled with acrid, blinding black smoke. The plane caught fire shortly after it had landed.

Three circuit breakers had tripped in the cockpit before the fire was reported and the pilot reported most electrically driven flight instruments failed shortly thereafter. The craft was directed to the airport by air traffic controllers following its radar blip, guiding the pilot via radio.

When three cabin attendants and passengers opened exit doors, 18 passengers managed to scramble or crawl to safety. Others, apparently incapacitated by the toxic fumes, sat in their seats or couldn't find exits and perished in the ensuing fire.

The NTSB said neither the hydraulic nor fuel lines were pierced by the blaze and did not contribute to the smoke or fire.

Ironically, risk management lessons learned from fires like the blaze at the MGM Grand Hotel (see story, page 1) may have helped save the lives of many of the passengers aboard Air Canada Flight 979.

Authorities say flight attendants moistened and distributed wet towels to passengers as the plane rapidly descended toward a landing, adding that those who held the towels to their faces to screen the toxic smoke were among survivors.

The safety director of Canada's 6,000-member flight attendants' union said the procedure was never spelled out in training or flight safety rules. Rather, flight attendants—who must spend many nights in hotels—were told of the wet-towel procedure by the union and airline as a way of surviving hotel fires.

"When the crew was asked how they got that idea, they said from a memo that either we or the company sent around," says Barbara M. Dunn, of the Vancouver, B.C.,-based Canadian Air Line Flight Attendants Assn. "Those memos were issued over the last few years as a result of the various hotel fires."

Air Canada's insurance is a typical airline program with a combined single limit for third-party liability of $500 million in Canadian dollars, approximately $405 million in U.S. currency. The DC-9-30 hull destroyed by fire after the landing had an insured value of $6.4 million Canadian, about $5.2 million in American dollars.

The government-owned airline's lead claims underwriter is Canadian Aircraft Insurance Group, which is managed by U.S. Aviation Underwriters of New York. CAIG also assumed 20% of losses on a quota-share basis, according to documents filed by Air Canada's insurance broker with the Civil Aeronautics Board.

The broker, Alexander & Alexander Inc., said 50% of Air Canada's coverage is with Lloyd's of London and other London underwriters; 15% is with Normand Insurance Co., a Canadian-based affiliate of La Reunion Aerienne of Paris; 10% is with Associated Aviation Underwriters Inc.; and 5% is with the American Home Insurance Co. affiliate of American International Group Inc.

Air Canada's London broker is Stewart Wrightson (North America) Ltd., and the policy was effective Nov. 1 of last year.

London sources say the major British underwriters are the Ariel Syndicate at Lloyd's and the Orion Insurance Co. Underwriters are said to have already advanced $1 million to assist accident victims with early expenses.

McDonnell-Douglas' product liability coverage, for an undisclosed amount, is also led in London by the Ariel Syndicate.

The accident comes as major aviation underwriters are preparing to quote the July 1 renewal of Pan American World Airways Inc., Northwest Orient Airlines Inc. and possibly other commercial airlines. Traditionally, July 1 has been the date on which most major U.S. air carriers renew their hull-and-liability coverage, though since last year the airlines have attempted to stagger their renewals.

Pan Am's insurers are believed to be bearing at least 50% of an estimated $60 million in liability costs of last year's crash of a B-727 during a takeoff from the New Orleans airport during a thunderstorm. ■

Lloyd's adopts divestment rules

Continued from page 2
underwriter to accept certain risks by threatening to remove Lloyd's members from his syndicate.

Some Lloyd's members and legislators successfully advocated that brokers be forced to divest their underwriting agency because of a conflict of interest between providing both brokerage and underwriting services to the same clients.

By retaining their Lloyd's members' agencies, Lloyd's brokers may be able to keep some of the profits tallied by the underwriting agencies that they must sell.

Top executives to large Lloyd's brokerages had said prior to last week's council action that a new system of remuneration between members and underwriting agencies could be arranged if the brokers were allowed to retain the members' agencies.

"A fair amount of (underwriting) earnings may be available to us (through members agencies), though we will not control our managing agencies," said John Hogg, deputy chairman of Hogg Robinson P.L.C. "The commission between members and managing agencies is not defined" in the proposed rules, he added.

A change in commission arrangements between the members' and the underwriting agencies is "likely to happen but it is very sophisticated accounting," explained David Palmer, chairman of Willis Faber P.L.C.

"It is quite possible that remuneration between members and managing agencies might be modified," said Tony Keys, group development director for Stewart Wrightson Holdings P.L.C. "But we separated members' and managing agencies some years ago. We may wish to retain members' agencies or sell them; I do not know."

Representatives from the large Lloyd's brokerages also said last week that they were generally pleased with the Higgins working party rules adopted by the council last week.

"I think now we will get value for whatever we divest," said Mr. Palmer. "The way is now open to devise a plan to sell our managing agencies."

Under the new rules, which still much be formally ratified as a bylaw by the council, all underwriting agencies must be under the management and control of members of the Lloyd's community after they are divested by the brokers, "which is most important," said Mr. Davison.

According to the rules, two-thirds of the agencies' voting shares must be owned by working or external Lloyd's members. No one member can own more than 40% of these shares.

No limitation is set on ownership of non-voting shares, but anyone owning more than 10% of either voting or non-voting shares must be approved by the council.

For example, the council could decide in the future that commercial insurers cannot own more than a 10% interest in an underwriting agency, Mr. Davison said. ■

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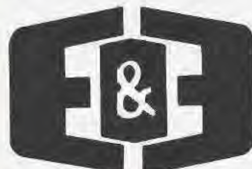

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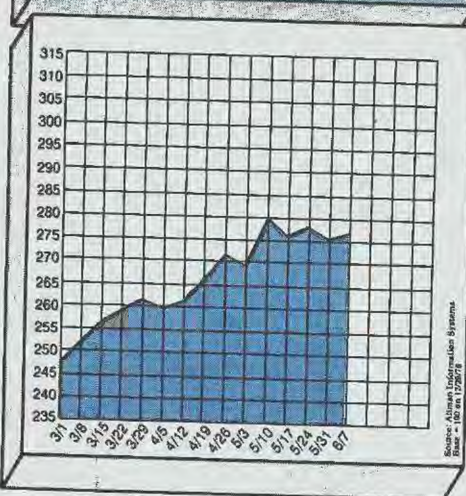

Insurance industry stocks gained ground in the week ending June 7 as the *Business Insurance* stock index rose 1.7 points to 277 from the mark of 275.3 posted on May 31. Twenty-nine issues posted gains, 25 closed down and 10 were unchanged. The largest gains were posted by Excelsior Insurance Co., 19.3%; Alexander & Alexander Services Inc., 8.5%; Corroon & Black Corp., 8.2%; Poe & Associates Inc., 7.7%; Frank B. Hall & Co. Inc., 6.1%. The largest losses were posted by American General Corp., 5.6%; American National Insurance Co., 5.0%; Continental Corp., 4.4%; Travelers Corp., 4.0%; and Statesman Group Inc., 3.3%. The *BI* index posted a 0.6% increase, more than the 0.3% increase reported in the New York Stock Exchange composite over the same period.

British Issues

7 June Companies	Price pence	P/E	Div. pence	Yield %	1 Week High—Low pence pence
Comml Union	164	49.7	16.86	10.3	164— 159
Eagle Star	396	15.8	24.29	6.1	411— 396
Genl Accident	426	13.6	24.29	5.7	426— 411
Gdn Royal Exch	453	12.0	27.86	6.1	453— 441
Phoenix	328	17.9	25.00	7.6	328— 316
Royal	481	12.4	37.86	7.9	481— 468
Sun Alliance	1119	15.3	68.57	6.1	1119—1093
Brokers					
CE Heath	310	8.4	21.07	6.8	313— 310
Hogg Robinson	107	8.2	8.57	8.0	110— 105
JH Minet	126	12.0	6.50	5.1	126— 120
Sedg Grp	210	12.0	10.00	4.8	213— 209
Stenhouse Hldg	111	10.4	7.86	7.1	112— 111
Stew Wrightson	253	9.2	20.43	8.1	253— 246
Willis Faber	520	13.7	25.00	4.8	523— 518

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

Switch to fees from commissions won't occur overnight for brokers

By LEONARD M. WILSON

Special to Business Insurance

SECURITIES ANALYSTS are sometimes a kind of lightning rod for events that occur within the industries that they follow.

At Marsh & McLennan Cos. Inc.'s annual meeting, M&M Chairman John M. Regan Jr. made what seemed to be cogent, but innocuous, remarks about gradually shifting insurance brokerage compensation from commissions to fees. This was a reiteration of a train of thought publicly expressed on other occasions. But, somehow, a write-up in a financial publication conveyed an air of the dramatic that elicited a rash of investor inquiries.

Mr. Wilson

Maybe investor reaction reflected almost inevitable skittishness in the current environment of decelerating earnings progress for insurance brokers. Having experienced the negative operating leverage of declining premium rates, some observers were concerned that the advent of fee compensation would nullify the upside leverage when premium rates finally begin to rise.

Compensation in property/casualty insurance has long been a hybrid proposition. Negotiated commissions, straight commissions, contingent commissions, fees and even investment income are compensation modalities. Most publicly owned brokerages have typically received a sizable proportion of revenues in the form of negotiated commissions from jumbo accounts.

A negotiated commission has the characteristics of a fee. Compensation varies to a degree with the services provided to the client. In fact, push negotiated commissions to a logical extreme and you have unbundling of brokerage services.

Negotiated commissions ostensibly should have insulated the brokers, at least in part, from the adversity of lower premium rates. In point of fact, we find little visible evidence that brokerage revenues have derived any meaningful protection from the underwriting cycle. Realizations from renewal have eroded consistently since the advent of rate competition over the past four years.

The depth and duration of the current cycle have prompted brokers to examine the issue of compensation. The broker's obligations to the client do not diminish when premiums are reduced. Yet, the cumulative dollar realizations per insurance unit, or other physical measures of activity, have likely declined about 30% to 40% since 1979. Over the same period, current dollar expenses, spurred by inflation, have advanced 35% to 40%. Now, there is concern that the market may remain soft for several years longer.

Moving from fees to commissions, though, cannot be accomplished overnight. Brokerage compensation practices are entrenched. There is a quadruple tier of education required. Risk managers, the broker's own staff, insurance companies and, in some instances, regulators must perceive a shift as constructive before it can happen widely.

The premise that an insurance broker, like other professionals, should have compensation linked directly to work performed seems eminently rational. But the parties to the arrangement do not necessarily have an identity or interest or a quick perception of immediate gains.

Moreover, the commission system has worked. It has exposed the broker to fluctuations in insurance pricing, but what is lost on the downside of the rate cycle has been recouped on the recovery in commercial premiums. Inherently conservative, most public brokers would likely prefer a "go-slow" posture to change.

There is another aspect as well. Whether they admit it or not, risk managers have benefitted in this cycle from the commission system. The corollary of the decline in broker realizations per unit of insurance is a rather sizable reduction in the client's cost of brokerage, whether measured in constant dollars or in dollars per insurance unit. This zero-sum game means that the broker's shortfall has been the client's gain.

It may seem as if the client and the broker are on opposite sides of the question of fees vs. commissions. In reality, they are in the same corner. The client needs a range of brokerage services, while the broker must be adequately compensated if staff and service levels are to be maintained. The broker's compensation structure evolved to reflect these client requirements and, simultaneously, allow a reasonable profit.

Alexander & Alexander Services Inc.'s recent disclosure of significant staff reductions is food for thought. Recent rate reductions have badly pinched brokers' profitability. At what point do staff cuts lead to curtailed client services? Compensation formulas that lead to impairment of client service and create earnings disarray for the brokers are in nobody's interest.

For better or worse, commissions will remain the prevalent mode of brokerage compensation for a long time. An easing in premium rate competition might defuse the issue temporarily. But, insurance brokerage has held to a steady course of professionalism for a generation. Ultimately, perhaps in the 1990s, professionalism may be more compatible with fees than commissions.

In the meantime, investors need not fear a modification in compensation that will eliminate the brokers' positive operating leverage from rising premium rates. The only question is when it will happen. ■

Leonard M. Wilson, a vp of L.F. Rothschild, Unterberg, Towbin in New York, specializes in insurance brokerage stocks. He is a member of the New York Society of Security Analysts.

BI Industry Stock Report

JUNE 7, 1983 — 6/1/83 THRU 6/7/83

Insurance Cos.

Company	Exch.	Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol. (000)
Aetna Life & Cas Co	NYSE	41.75	-0.9	7.3	2.64	6.3	42.75	41.75	602.4
American Bankers Ins Group	OTC	14.13	-0.9	11.1	0.50	3.5	14.13	14.00	123.3
American Gen Ins Co	NYSE	21.00	-5.6	8.0	0.80	3.8	22.13	21.00	615.2
American Indty Finl Corp	OTC	20.75	0.0	15.4	1.12	5.4	20.88	20.75	8.6
American Intl Group Inc	OTC	73.00	0.3	12.6	0.44	0.6	73.50	71.00	465.8
American Natl Ins Co	OTC	19.00	-5.0	7.9	0.84	4.4	19.63	19.00	43.9
American Sts Life Ins Co	OTC	31.50	-1.6	8.8	0.88	2.8	32.00	31.50	2.2
Aneco Reins Ltd	OTC	3.75	3.4	125.0	0.00	0.0	3.75	3.63	46.8
Avemco Corp	AMEX	16.38	0.8	9.8	0.58	3.5	16.38	16.13	26.3
Banks Iowa Inc	OTC	46.00	3.4	12.2	1.52	3.3	46.00*	44.50	6.4
Bitco Corp	OTC	37.00	0.0	7.7	2.00	5.4	37.50	37.00	5.0
Carolina Cas Ins Co	OTC	8.25	0.0	10.9	0.32	3.9	8.25	8.25	1.0
Chubb Corp	OTC	62.00	5.3	9.6	2.92	4.7	62.75*	59.88	805.4
Combined Intl Corp	NYSE	33.63	0.0	11.2	2.00	5.9	33.63	32.75	159.4
Continental Corp	NYSE	30.13	-4.4	16.6	2.60	8.6	30.50	29.88	281.8
Crawford & Co	OTC	23.50	1.1	17.0	0.60	2.6	23.50	23.50	8.6
Crown Life Ins Co	OTC	110.00	0.0	7.2	3.10	2.8	110.00	110.00	0.0
Employers Cas Co	OTC	41.00	0.0	8.4	1.20	2.9	41.00	41.00	1.9
Equifax Inc	NYSE	32.00	-0.4	14.6	1.40	4.4	32.38	31.13	52.1
Excelsior Ins Co	OTC	13.50	19.2	8.7	0.70	5.2	13.50*	11.00	3.6
Farmers Group Inc	OTC	41.00	2.2	10.8	1.36	3.3	41.00	40.13	536.4
Foremost Corp Amer	OTC	51.75	-2.8	15.9	1.24	2.4	53.00	51.75	8.1
Fremont Gen Corp	OTC	27.75	2.3	925.0	0.48	1.7	27.88	26.88	202.1
Great West Life Assurn Co	OTC	200.00	0.5	10.9	10.00	5.0	200.00	200.00	0.0
Hanover Ins Co	OTC	59.25	-2.1	7.4	0.88	1.5	61.75	59.25	26.8
Hartford Steam Boiler Insptn	OTC	55.00	-0.9	12.1	3.00	5.5	55.00	54.50	9.6
Jefferson Natl Life Ins Co	OTC	47.00	0.0	14.7	0.76	1.6	47.50	47.00	6.2
Kemper Corp	OTC	49.00	1.0	9.2	1.80	3.7	49.38	47.88	96.0
Lincoln Natl Corp Ind	NYSE	49.25	0.5	9.0	3.00	6.1	49.88	49.00	128.0
Mission Ins Group Inc	NYSE	38.75	-1.9	10.7	1.00	2.6	40.25	38.75	182.4
Nationwide Corp Ohio	OTC	41.75	0.0	15.3	0.70	1.7	DID NOT TRADE		
Northwestern Natl Life Ins	OTC	35.38	2.2	23.4	1.50	4.2	35.38	34.63	55.1
Ohio Cas Corp	OTC	54.25	1.6	10.3	2.52	4.6	54.38	53.63	64.5
Old Rep Intl Corp	OTC	30.38	0.8	7.4	0.90	3.0	30.50	30.00	47.9
Orion Cap Corp	NYSE	25.25	-1.0	12.8	0.66	2.6	25.25	24.88	42.5
Preferred Risk Life Ins Co	OTC	33.00	-1.5	9.1	1.00	3.0	33.25	33.00	4.0
Provident Life & Acc Ins Co	OTC	61.00	-1.6	8.7	2.60	4.3	61.00	61.00	39.8
St Paul Cos Inc	OTC	64.75	1.6	6.6	2.80	4.3	64.75	63.50	422.3
Safeco Corp	OTC	58.13	2.9	12.1	2.40	4.1	58.38	56.63	203.6
Sri Corp	OTC	44.50	-1.1	8.3	1.12	2.5	45.25	44.50	29.5
Seibels Bruce Group Inc	OTC	27.88	8.8	15.3	0.80	2.9	27.88	25.63	50.0
Statesman Group Inc	OTC	11.13	-3.3	8.2	0.15	1.3	11.38	11.13	51.4
Tokio Marine & Fire Ins Co	OTC	97.75	-2.0	15.7	0.92	0.9	99.50	97.75	7.5
Travelers Corp	NYSE	29.63	-4.0	7.9	1.80	6.1	30.25	29.63	1,278.6
United Fire & Cas Co	OTC	33.00	0.0	9.8	0.88	2.7	33.00	33.00	4.8
United States Fid & Gty Co	NYSE	53.75	0.9	12.6	3.84	7.1	53.88	53.25	118.0
United Svcs Life Ins Co	OTC	22.75	0.6	6.8	1.00	4.4	22.75	22.50	16.9
Uslife Corp	NYSE	24.50	2.1	6.8	0.88	3.6	24.88	24.50	136.1
Washington Natl Corp	NYSE	32.38	-3.0	14.7	1.08	3.3	33.00	32.38	184.8
Zenith Natl Ins Corp	OTC	24.25	-3.0	11.8	0.80	3.3	24.50	24.25	14.2
INSURANCE COMPANIES	AVERAGE			10.3		3.7			

Agents/Brokers

Company	Exch.	Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol. (000)
Alexander & Alexander Svcs	NYSE	23.88	8.5	0.0	1.00	4.2	24.63	23.38	999.8
Baldwin & Lyons Inc	OTC	41.50	0.0	7.6	0.80	1.9	41.50	41.50	0.1
Corroon & Black Corp	NYSE	24.63	8.2	13.1	1.80	7.3	24.88	23.00	42.9
Crump E H Cos Inc	OTC	11.75	1.1	17.0	0.40	3.4	11.75	11.63	3.5
Emett & Chandler Cos Inc	OTC	10.25	-1.2	0.0	0.00	0.0	10.38	10.25	8.6
Hall Frank B & Co Inc	NYSE	32.50	6.1	18.5	1.70	5.2	32.50	30.38	1,573.1
Integrated Res Inc	AMEX	41.13	-0.3	16.1	0.00	0.0	41.13	40.25	119.5
Marsh & Mclennan Cos Inc	NYSE	41.50	2.5	12.0	2.20	5.3	41.75	41.25	490.6
Poe & Assoc Inc	OTC	7.00	7.7	0.0	0.40	5.7	7.00	6.75	3.2
Reed Stenhouse Cos Ltd	OTC	16.00	-2.3	16.0	0.60	3.8	17.00	16.00	5.8
AGENTS/BROKERS	AVERAGE			16.9		3.6			

Conglomerates/Holding Cos.

Company	Exch.	Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol. (000)
American Express(Fireman's Fd)	NYSE	67.00	-4.1	14.0	1.92	2.9	70.63	67.00	1,561.6
Anderson Clayton(Ranger/PanAm)	NYSE	32.00	2.8	21.3	1.32	4.1	32.00	31.00	28.1
Armco Inc	NYSE	18.00	-5.3	0.0	0.40	2.2	18.88	18.00	524.7
City Investing Co. (Home Ins.)	NYSE	36.00	6.3	8.6	1.80	5.0	36.00*	34.38	458.1
CNA Finl Corp (CNA)	NYSE	22.38	1.7	8.9	0.00	0.0	22.38*	22.13	37.2
Control Data (Comml. Credit)	NYSE	57.63	1.1	14.5	0.60	1.0	58.50	57.00	784.8
General Re Corp	NYSE	60.00	1.7	12.7	1.28	2.1	61.75	59.75	693.0
Gulf Utd Corp	NYSE	27.00	-1.8	8.4	1.32	4.9	27.38	27.00	627.0
Cigna Corp	NYSE	49.13	-0.3	7.1	2.48	5.0	49.63	48.50	1,397.8
ITT (Hartford Group)	NYSE	38.13	-2.2	8.2	2.76	7.2	39.25	38.13	1,041.4
Optimum Hldg Corp	OTC	7.88	1.6	12.9	0.00	0.0	7.88	7.75	4.5
Sears Roebuck & Co. (Allstate)	NYSE	38.88	1.0	14.2	1.52	3.9	39.63	38.50	1,433.2
Baldwin Utd Corp	NYSE	11.63	-8.8	5.5	0.00	0.0	13.63	11.63	2,040.7
Teledyne Inc (Argonaut)	NYSE	158.63	5.0	13.7	0.00	0.0	158.63*	152.50	683.8
Transamerica Corp (Occidental & Fred S. James)	NYSE	31.25	2.5	10.3	1.50	4.8	31.25*	30.25	430.4
CONGLOMERATES/HOLDING COS.	AVERAGE			13.4		2.6			

*Record high/low since Jan. 1, 1983

System design: Altman Information Systems

Financial briefs

Industry results

U.S. property/casualty insurers reported net aftertax operating earnings of $1.99 billion in the first quarter, a 116% rise over the $922 million in earnings reported in the first three months of 1982.

Insurers also posted better underwriting results in this year's first quarter, according to statistics gathered by the Insurance Services Office and the National Assn. of Independent Insurers. The industry reported underwriting losses of $2.51 billion, compared with $2.77 billion a year earlier.

Written premiums totaled $26.03 billion, an increase of 2.4% over the $25.41 billion written in the first quarter of 1982.

Frank B. Hall

Frank B. Hall & Co. Inc. has a new minority owner: Reliance Insurance Co.

After almost two years of legal battling, Ryder System Inc., the truck-leasing company, sold its 9.14% interest in the nation's third-largest insurance brokerage to the unit of Saul Steinberg's privately held Reliance Group Inc. Ryder, which acquired the stock gradually at around $25 a share, sold its stake in Hall for $31 a share on June 3.

Reliance Group also owns close to half of E.H. Crump Cos. Inc., another major insurance broker. In both cases, Reliance describes the positions as for investment purposes only.

Ryder's attempts to acquire additional shares of Hall were frustrated when Hall purchased Ryder's financially ailing competitor in the truck-leasing field, Jartran Inc. Hall also filed suit in January 1982 in U.S. District Court in Chicago, claiming Ryder was barred for antitrust reasons from acquiring any more Hall stock (*BI*, July 28, 1982).

The court ruled July 12 that Ryder must give advance notice to the court before acquiring any more Hall stock. The suit is still pending.

Emett & Chandler

Emmet & Chandler Cos. said Old Republic Insurance Co. had boosted its stake in the Los Angeles-based broker to 9.58% from 8.08%.

Old Republic is principally a writer of coal-mine workers compensation coverage but is part of the multiline Old Republic International Corp.

Both Reliance and Old Republic have small stakes in Corroon & Black Corp., another broker, but have reduced those holdings in the last year. In response, C&B shareholders added anti-takeover provisions to the company's corporate bylaws (*BI*, May 16, 1982). ■

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H. Barton Cotter
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A Division of Northbrook Property and Casualty Insurance Company
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