Week of June 30, 1975

business insurance

the national newsmagazine for buyers of employe, property and liability protection and financial services

50¢ a copy; $12 a year

Airline accord has workers' benefits plan flying high

By PAUL R. MERRION

CHICAGO—Airline benefits kept flying upward in the new contract for the Air Lines Employes Assn. with North Central Airlines, a contract that will give an overall 41.3% increase in wages and benefits over the next 30 months.

Although a union survey showed pensions and wages to be the top priority items, other parts of the benefits package were also improved and a company-pays-all vision care program was instituted for union members.

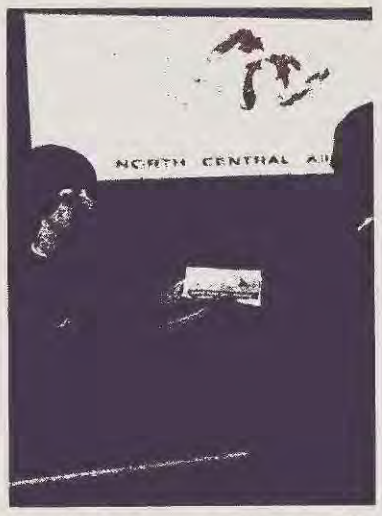
Coverage in the major medical plan was lifted to $50,000 from $25,000; dental coverage was extended to pay for 80% of normal costs up to a maximum of $1,000 per year for each patient; plus payment was instituted for 50% of orthodontic treatments, according to Gorman Condon, director of contract administration for the Air Lines Employes Assn.

The union represents 12,000 ground employes (1,500 at North Central) such as reservations clerks, ticket agents, clerical workers, flight simulator operators, etc.

The new vision care program pays for one set of glasses per year, allowing $40 for lenses, $7.50 for frames, and $12.50 for examination costs.

In the pension plan, the union scored three major changes: Full vesting was reduced to 10 years from 14 years; the retirement age without penalty was lowered to 62 from 65 after 25 years of service, along with deletion of a provision that alcoholism would disqualify a worker for early retirement; and the monthly benefit was increased

Continued on page 2



Benefits and wages will go up for this North Central Airlines employe.

Flintkote sues Lloyd's for refusing to pay D&O claim in price fix case

By MARIE KRAKOWIECKI

NEW YORK—Lloyd's of London is being sued in what could become a landmark case impacting the whole directors' and officers' liability market.

Flintkote Co., a White Plains building materials maker, filed a complaint in the state supreme court here earlier this month against Lloyd's for refusing to pay a D&O claim that involved legal fees in an antitrust price-fixing indictment to which Flintkote executives made pleas of nolo contendere ("no contest").

At issue is just how much coverage Flintkote actually bought in a three-year D&O contract with Lloyd's that was effective from May 11, 1971 to May 11, 1974.

Flintkote paid a $7,000 premium for the policy, which was brokered through J. H. Minet & Co. Ltd. of Canada. According to terms of the insurance contract, Lloyd's and more than a dozen of its syndicate members who acted as percentage participants on the policy were liable to pay 95% of each loss suffered by Flintkote in excess of $75,000 up to a maximum of $1 million.

Flintkote ran up costs of nearly $575,000, including fines, which are excluded. In January, it attempted to recover some of $474,458 (its costs minus fines on the case) from the Lloyd's policy number 035008000, the amount representing the 95% Lloyd's was liable for.

Lloyd's turned payment down cold on the grounds that the officers named in the Justice Department suit were not acquitted of criminal charges against them.

According to terms of the insurance contract, Lloyd's agreed to submit to the jurisdiction of a U.S. court in the event it would fail to pay any amount claimed to be due in the policy.

Mendes & Mount, a New York law firm is the Lloyd's attorney served with the suit. Mendes & Mount had not filed an answer to the Flintkote complaint last week, although they are required to have it in by June 29 unless a time extension is granted. Ralph V. Curtis is handling the case.

The Flintkote complaint, filed by attorneys Skadden, Arps, Slate, Meagher & Flom, also names these Lloyd's members as defendants:

Excess Insurance Co. Ltd.; National Casualty Co. of Detroit; Accident & Casualty Insurance Co. of Winterthur; National Casualty Co. of America Ltd.; Bermuda Fire & Marine Insurance Co. Ltd.; Accident & Casualty Co. of Winterthur No. 2A/C; Employers Surplus Line Insurance Co.; Turegum Insurance Co.; Stronghold Insurance Co. Ltd.; English & American Insurance Co. Ltd.; Andrew Weir Insurance Co. Ltd.; London & Edinburgh General Insurance Co. Ltd.; New London Reinsurance Co. Ltd.; Assicurazioni Generali of Trieste & Venice; and the Helvetia Accident Swiss Insurance Co. Ltd.

The lawsuit which triggered Flintkote's claim on its Lloyd's policy was entitled *U.S. vs. U.S. Gypsum Co., Inc. et al.*, Cr. No. 73-347. It was brought by the Justice Department against Flintkote and five other companies and certain of their officers for illegal price fixing on Dec. 27, 1973 in the Western District of Pennsylvania.

On Jan. 16, 1975, Flintkote's chairman of the board and its president pleaded nolo contendere to the indictment returned against them, and they were dismissed as defendants.

Lloyd's has been said to have paid a major D&O claim in a price-fixing case in which the insured was found innocent. It is Flintkote's position that its insurance contract covers expenses in its case, too, even though its officers were not acquitted.

Seymour Weiss, corporate risk, safety and insurance manager for Flintkote, was unavailable for comment. ■

Suit is filed for Saigon plane crash

WASHINGTON—Lockheed Aircraft Corp. stands ready to fight charges of negligence contained in a products liability class action suit asking a whopping $545 million, an amount far exceeding the amount of liability insurance held by the aircraft manufacturer.

Lockheed is covered up to $150 million for products liability, with the coverage 65% in the London markets and 35% in the U.S. with Associated Aviation Underwriters (AAU) and USAIG (*Business Insurance*, Jan. 7, 1974).

The suit filed in district court here seeks $245 million in compensatory damages and $300 million in punitive damages for next of kin and injured survivors of a C5A cargo plane crash over Saigon during the airlift in April,

Continued on page 8

State medical group sets liability captive

By MARGARET LeROUX

NEW YORK—The State Medical Society of New York formed a captive insurance company for malpractice insurance, the first of its kind to be established by a state group, *Business Insurance* learned.

The Medical Liability Insurance Co., the New York-based captive, is offering between $100,000 and $2 million coverage to any licensed physician in the state. A $1,750 contribution to the company's surplus fund plus premiums based on the amount in the fund are required of physicians insured by the captive.

Premiums will range from 15% to 20% more than what New York doctors have been paying to insurance companies, according to Donald J. Fager, president of the H. F. Wanvig brokerage firm, which manages the captive.

The mutual company began issuing policies last week, Mr. Fager said, and so far has a surplus of more than $16 million.

Other state medical societies in the process of setting up captives for malpractice coverage include Michigan, Maryland, and Indiana.

Once five state medical societies establish captives, a reinsurance facility with a $1.5 million fund, established by the American Medical Assn., will go into effect.

The association approved the reinsurance facility at its annual convention this month, based on a study by trustees. (*Business Insurance*, May 19, 1975).

The reinsurance company will handle up to 50% of the primary insurance premiums of captive companies.

Other recent developments in the malpractice issue include the activating of joint underwriting associations by New York and Rhode Island, a class action lawsuit by eight Rhode Island doctors and the unionization of more than 1,700 doctors across the nation in an attempt to increase their bargaining power.

The Rhode Island lawsuit seeks $100 million damages from four malpractice underwriters: St. Paul Fire & Marine Insurance Co., Aetna Life & Casualty Co., Travelers Indemnity Co. and Hartford Accident & Indemnity Co.

The lawsuit charges that the four underwriters established a monopoly and have denied Rhode Island physicians the opportunity to obtain coverage on an occurrence basis.

Local chapters of the Service Employes International Union, an affiliate of the AFL-CIO, are increasing their numbers with physician members.

More than 500 applications have been received from New York physicians, according to a union official. ■

An Amoco Production Co. official views efforts to cap a gas blowout on an oil rig off the Louisiana coast following a brief fire. "If we can cap the well, damage will be under $10 million," said Martin R. Flink Jr., risk manager for Standard Oil Co. of Indiana, the parent company. "If not, we'll have to continue drilling the relief well to stop it from blowing wild." Mr. Fink added that this could mean "killing the well" and extensive damage. The platform was not destroyed. Like all Standard Oil subsidiaries, Amoco, operator in this joint venture with Texaco, is uninsured. A $5 million retention per occurrence package policy, placed in London markets, covers physical damage, debris removal, fire fighting, control, redrilling and pollution cleanup expenses and lost production income. The rig is 80 miles off the La. coast.

Lawsuits over poison allege personal injury, clog Michigan courts

By ELISABETH M. WECHSLER

GRAND RAPIDS, MI.—Some 700 claims and lawsuits totaling over $340 million have been filed against Michigan Chemical Co., Northwest Industries Inc. and Farm Bureau Services Inc. since April, 1974 over alleged damages in property and personal injury stemming from the ingestion of a toxic fire retardant.

To date, all the claims and suits have been submitted by farmers who purchased livestock feed primarily from Farm Bureau. The fire retardant, polybrominated biphenyl (PBB), was inadvertently substituted for magnesium oxide, a feed additive, as reported (*Business Insurance*, May 19).

Michigan Chemical, as a major supplier of the feed nutrient and Northwest Industries, the parent company, are named along with Farm Bureau in many of the suits.

In another major lawsuit, Farm Bureau is suing Northwest Industries, its subsidiaries and insurers for more than $200 million on six different counts of tort liability. (*Business Insurance* incorrectly stated the total was over $1 billion, but each count of liability is considered an alternative rather than a cumulative sum.)

Representatives from Northwest Industries and Farm Bureau emphasize there is no "positive proof" that PBB caused personal injury suffering alleged in many of the suits. (Some of the suits and claims are for livestock and property damage only.)

"No specific damages were assigned to these claims," said Jim Knox, one of the attorneys representing Michigan Chemical.

Kenneth G. Jones, risk manager for the Farm Bureau, concurred. "Many (of the claimants) may believe their injury was caused by PBB but it may be hard to prove. There's no indication that people are having any difficulty that could be blamed on PBB," he said.

Mr. Jones said that a few of the lawsuits he is aware of do mention specific types of "pain and suffering," adding that he has no doubt some damages will be awarded as a result of the jury system. "All the claimant has to say is I ate PBB and I'm having problems and juries will be receptive," he said. "In cases involving personal injury where you can't nail it down, it's customary for a plaintiff's attorney to shoot for the moon."

Asked if the personal injury aspects might be settled out of court, Mr. Jones said "it's still too far down the road."

Among the lawsuits are two for $5 million and $8 million.

Mr. Knox said he is confident that no connection can be made between PBB and bodily injury to human beings, emphasizing that the state department of public health has investigated all reported incidents and has conducted extensive testing and examinations to determine the impact of PBB, with negative correlations.

"You can't blame the farmers," Mr. Knox said. "They're trying to get money," adding that many of the livestock damage claims already have been settled. ■

North Central benefits...

Continued from page 1

by $1 for each year of past and future service.

The new monthly benefit per year of past service is $10, up from $9, and for future service the benefit was raised to $14, starting Jan. 1, 1976.

Mr. Condon sees a general trend in the airline industry toward emphasis on pension improvements in contract talks.

"You're getting more interest from employes (in pensions) now that wages are at a relatively satisfactory level," he said. "Pensions have been one of the big items (in negotiations) lately and this held true on the last one at North Central."

The great number of people hired during the heydays of the airline industry in the 1950s are now nearing retirement age, Mr. Condon said. Almost all employes polled before the contract talks began said wages and pensions were the two most important items, with younger workers going for more money now and the older workers going for greater retirement benefits.

Contracts up for negotiation soon at other companies organized by the union are Frontier Airlines, Denver, and Air West, San Francisco. National Airlines is the largest company with ground employes represented by the Air Lines Employes Assn., with 3,200 members. Ground employes at the major U. S. airlines are not unionized, Mr. Condon said, although organizing drives are now underway at United Air Lines and Trans World Airlines. ■

GUIDE TO FEATURES

Vol. 9 No. 13—Business Insurance is published every other Monday at 740 Rush St., Chicago, Il. 60611. Application to mail at controlled circulation rates pending at Brookfield, Wisconsin.

Losses hit $12 million

Insured losses totaled an estimated $12,325,000 as a result of wind, hail, tornado and rain storms and floods covering a five-state area, June 9 to 17, according to the American Insurance Assn., New York. For Texas, the damage estimate totaled $5,350,000; Kansas $2,800,000; Oklahoma $2,775,000 (2 storms); Illinois $1 million and Arkansas $400,000.

Processing of 1,900 plan terminations awaits final rules

Pension insurer offers regs on covered benefits

By RICHARD L. GORDON

WASHINGTON—The "critical element" of the pension reform law's plan termination insurance program—defining what basic retirement benefits will be covered—was outlined in proposed regulations this month by the Pension Benefit Guaranty Corp. (PBGC).

Just what benefits PBGC will guarantee is crucial to determining the sufficiency of assets in a plan—and in determining the contingent liability of the plan's sponsoring employer or employers.

The pension reform law makes sponsors of defined benefit pension plans liable for up to 30% of their net worth in the event they terminate a plan with assets insufficient to meet these basic benefits.

"To the extent that the covered benefits are limited," said Steven Schanes, acting executive director of PBGC, "the cost is less and the implication of contingent liability is less.

"To the extent that the coverage is broad," he said, "that means we have acceded to the interests of the participants."

Settlement of the question of what benefits are guaranteed under the law is currently holding up the processing of about 1,900 plan terminations.

PBGC officials said about half of these pending cases were believed to have assets sufficient to pay the pension benefits promised by the plan sponsors, making these cases easy to dispose of.

The new government corporation said it hoped to process and close about 800 of these terminations with sufficient assets in about three months.

The remaining plans—those with insufficient assets to meet benefit promises—cannot be acted upon until the benefit coverage issue is finalized. PBGC said it would accept comments on the current proposals until July 5 and hoped to publish the final coverage rules by early August.

PBGC has proposed covering normal age retirement benefits, certain early retirement benefits, disability retirement benefits, and pensions for survivors of deceased plan participants.

Any benefits guaranteed by PBGC, however, are subject to the pension reform law's overall limitation on benefits which states that maximum guaranteed benefits may not exceed the value of a life annuity beginning at age 65 equal to the lesser of:

- the participant's highest average salary for a consecutive five-year period under the plan, or
- $750 a month, adjusted for increases in the Social Security benefit and contribution base (for plans terminating in 1975 the adjusted figure is $801.14).

Another limitation is that where a plan or an amendment has been adopted or made effective within the five year period before termination, the benefits provided by the plan are not immediately guaranteed in full.

New benefits and increases in benefits become guaranteed within a five-year period generally at the rate of 20% a year. For example, the guaranteed amount of a $100 monthly benefit increase which is two years old when the plan terminates would be $40.

However, a monthly benefit increase of $20 or less would be guaranteed after one year.

PBGC, for purposes of coverage, has broken down participants into two large groups—those receiving benefits at the date of termination and those not yet receiving benefits.

If an individual was receiving benefits at termination and had retired at the normal retirement age under the plan (or later), his pension would be guaranteed by PBGC as long as it did not exceed the benefit accrued for retirement at the normal age.

For example, an employe who retired with 30 years service and, under the plan's provisions, had accrued a monthly benefit of $10 for each year of service, generally would be receiving a plan benefit of $300, which would be guaranteed by PBGC and for which PBGC would hold the plan sponsor liable.

Early retirement benefits posed a problem for PBGC because many of these benefits are subsidized by the plan sponsor in order to eliminate the normal actuarial reduction in benefits.

Because of this problem, PBGC proposed two alternative coverage schemes.

Under PBGC's Alternative 1, if an individual had elected or was receiving early retirement benefits on the date of plan termination, the benefit would be guaranteed up to the amount accrued for normal age retirement *regardless* (PBGC's emphasis) of whether the election was made *before or after* the announcement of the proposed plan termination.

Under Alternative 2, if early retirement was elected after the announcement of the proposed plan termination, the amount guaranteed would be reduced actuarially to reflect the age of the participant at retirement unless the early retirement decision was the result of the fact that employment could not continue.

PBGC officials stressed that that was an important distinction. Unreduced early retirement benefits would not be guaranteed under this alternative unless the employer was shutting down operations as well as terminating the plan.

"We're in the business of guaranteeing pension benefits," a PBGC official explained, "not guaranteeing the continued operation of pension plans."

However, even under Alternative 2, if the election was made or benefits commenced *before* the proposed termination was announced, the benefit would be guaranteed, as in Alternative 1, up to the amount accrued for normal age retirement.

To illustrate the differences between the two alternatives, PBGC said consider a case in which a proposed plan termination on December 31 is announced on November 1. Employment opportunities will continue after the plan termination.

On November 30, an individual who is 55 years old and is entitled under the plan to an unreduced monthly benefit of $300 (the benefit for normal age retirement at 65) applies for early retirement.

Under Alternative 1, the full $300 would be guaranteed because the individual elected early retirement before the date of termination.

Under Alternative 2, the guaranteed portion of the $300 benefit would be reduced actuarially to reflect retirement at age 55 because the election was made after the date the proposed termination was announced.

PBGC said that where joint and survivor annuities are in pay status at termination, and had been offered on an unreduced, or subsidized basis, they would be guaranteed under the plan termination insurance program.

Supplementary payments that are made under some early retirement plans to make up for Social Security benefits that do not become effective until age 62 or 65 will not be guaranteed by PBGC, however.

"To cover such benefits would expose PBGC to serious financial risks," officials explained.

If an individual is retired under a permanent and total disability retirement provision when the plan terminates, the disability retirement pension would be guaranteed.

PBGC officials said that, rather than develop their own rules for what constitutes a disability, they would accept whatever definition the plan uses.

If a spouse or other dependent is receiving a survivor's pension because of a participant's death before retirement, and prior to plan termination, the pension would be guaranteed.

If the participant died after retirement, and prior to plan termination, the survivor's pension under the plan would be guaranteed up to the amount accrued for the deceased participant's normal retirement age.

Separate guarantee conditions apply to individuals not receiving benefits on the date of plan termination.

If an individual has a vested right to normal age retirement under the plan—that is, the individual has met the conditions under the plan which entitle him to a pension at the normal retirement age even if he were to be separated from the job sooner—the vested pension would be guaranteed

Continued on page 4

Manufacturing irregularities often crux of product cases: Attorney

CHICAGO — Manufacturers should pay close attention to any deviation between product specifications and actual manufacturing practice, advised Paul C. Nelson, attorney for International Harvester Co.

Plaintiffs' lawyers always look for inconsistencies in order to establish a sound case, Mr. Nelson told participants at the 38th annual Administrative Engineers Conference here.

He recommended product recall campaigns and the development of minimum safety standards to forestall the current "wave of consumerism on which product litigation is riding."

Most lawsuits involving products deal with poor design, a manufacturing or assembly defect, improper servicing or the failure of the manufacturer to warn the user of the danger in operating the product, he explained.

"Safety is not what you think is safe but what the average customer will think of as safe," Mr. Nelson said. To avoid problems he advised manufacturers to make products "idiot proof."

Many of the lawsuits could be eliminated if the insurance industry "would examine the insured's manufacturing and assembly activities, especially those involving safety critical components or systems," Mr. Nelson said.

He advised the industry to "look beyond the cosmetics of the product and examine the possible internal defects with the use of ultrasonics and x-rays with an eye on those parts where material failure is likely to cause a serious accident."

Warning decals are an "excellent means of alerting users" of a potentially dangerous appliance or machine, Mr. Nelson said, but added that the decals must last the life of the item to stand up in court as an adequate warning.

He advised manufacturers to keep "meticulous records of any accidents involving the product, learn how the consumer actually uses the product" and make sure any experts called to testify in court are "effective communicators before laymen juries." ■

Sears, Roebuck employe tests a flame-retardant finish used in a line of self-extinguishing cotton flannel nightwear for children.

Recordkeeping key to product recall program

CHICAGO—When an engineer's risk analysis indicates a safety problem may exist, a company should have a predetermined recall organizational structure which can be put on immediate alert, a retail executive said.

"Recordkeeping is the key factor in a successful product recall program," said Lowell Peters, manager of service engineering and service quality assurance for Sears, Roebuck & Co.

Safety has little value if the necessary follow-through is not accomplished, he warned. At Sears, a corporate product safety committee meets to assess the seriousness of the product hazard and to decide whether it should be recalled and replaced or located and repaired, he said.

If the potential risk of injury is small and the public's exposure to the product is minimal, a stop shipment order may be sufficient, Mr. Peters explained.

However, if the risk of injury were minimal but the exposure of the public to the product greatly increased by allowing those distributed to be sold, a stop selling order may be given, Mr. Peters added.

"If the decision is to recall, the communications system must deal with the action to be taken" which depends on advance planning, speed and accuracy, Mr. Peters said.

He underlined the importance of having one person oversee and coordinate the action and keep accurate records of action taken.

Sears requires all outlets to report quantities of a product returned or repaired via a coupon, Mr. Peters said.

"Prevention is far better than any recall," he emphasized. "However, if a recall is necessary, every manufacturer, distributor and retailer should have an effective system to handle the necessary action in a timely and routine manner." ■

Pensions . . .

Continued from page 3

up to the amount accrued for normal age retirement.

For example, if an individual has 20 years of service on the date the plan terminates and is fully vested in a monthly benefit of $10 for each year of service, the guaranteed benefit would be $200. He would begin to receive it when he reaches the normal retirement age specified in the plan.

If an individual is eligible for early retirement on the date of plan termination, and retires after the date of plan termination, the early retirement pension under the plan would be guaranteed up to the amount accrued for normal age retirement, actuarially reduced to the age at which he retires.

For example, if on the date of plan termination, an individual is age 55 and is eligible under the plan to retire early with a $300 monthly pension, which is the amount accrued for normal age retirement at age 65, for purposes of the guarantee, the $300 benefit would be actuarially reduced to reflect retirement at age 55.

If a retired participant dies after the date of plan termination (regardless of whether the retirement occurred before or after the plan termination date), a pension payable to a surviving spouse or dependent would be guaranteed up to the amount of the benefit the deceased participant accrued for normal age retirement.

If the survivor's benefit is payable solely in a single installment which is actuarially derived from a retiree's employed benefit, the value would be guaranteed.

Comments on these proposed rules should be sent by July 5 to the Office of the General Counsel, Pension Benefit Guaranty Corp., P.O. Box 7119, Washington, D.C. 20044. ■

Pension insurance cost same, 'til further notice

WASHINGTON—The cost of insuring private pension plan benefits through the Pension Benefit Guaranty Corp. will—until further notice—remain the same, it was announced this month.

That means that single employer, defined benefit plans will pay one dollar per participant for their next 12 months coverage and multi-employer plans will pay 50 cents per participant.

The rates are identical to those initially established when the Employe Retirement Income Security Act (ERISA) was signed into law last September 2.

The premium payments are due soon after the start of each new plan year.

The new government corporation indicated it is studying other rate formulas and expects to develop one for utilization at a future date.

The agency said the study will include the possibility of allowing plans to elect to use any new rate formula for premium payments that will cover their second full plan year under the new pension reform law.

For the fiscal year ending this June 30, the corporation said it expects to have collected $35.4 million in premiums from single and multi-employer plans. That amount includes a prorated premium for the remainder of any plan year in effect when the pension reform bill become law last September plus full 12-month premiums for plan years that began between September 2 and this June 30.

The corporation said it expected premium income for the fiscal year ending June 30, 1976, to be $28.1 million. The figure for the coming year is lower than for the fiscal year just ending because it does not include any prorated payments for partial years.

The corporation took a key step toward developing a new premium rate formula by proposing this month just what basic retirement benefits would be covered by its insurance program.

The definition of covered benefits is needed before any determination of risk for individual plans can be made. ■

Benefit chief: Soc. Security needs reform

WASHINGTON—A two-step program to ward off possible insolvency of the Social Security system—including a one percent increase in present tax rates—was urged this month by Walter Klint, director of employe benefits for Continental Can Co.

Mr. Klint testified before the Social Security Subcommittee of the House Ways and Means Committee as chairman of the National Assn. of Manufacturers and Task Force on Social Security.

The NAM proposal called for the one percent increase in tax rates to be legislated for 1976, with a second similar increase planned for 1980 or shortly thereafter.

The second part of the proposal would waive the present automatic increase formula of calculating old age benefits for future retirees in favor of "wage indexing" an employe's earnings record and utilizing a "new, dynamic benefit formula."

Mr. Klint said the two proposals would take care of the system's financing problems for at least the next decade.

He said the NAM's recommended solution to the problem is the "most responsible and equitable means of providing the needed flow of cash over the short range."

He emphasized that the NAM could not support other proposals calling for arbitrary expansion of the taxable wage base and transfer of funds from general revenues.

Mr. Klint said Dr. Robert Myers, NAM's consultant and former chief actuary of the Social Security Administration, found the recent report of the Social Security trustees to Congress understates the system's financing problems.

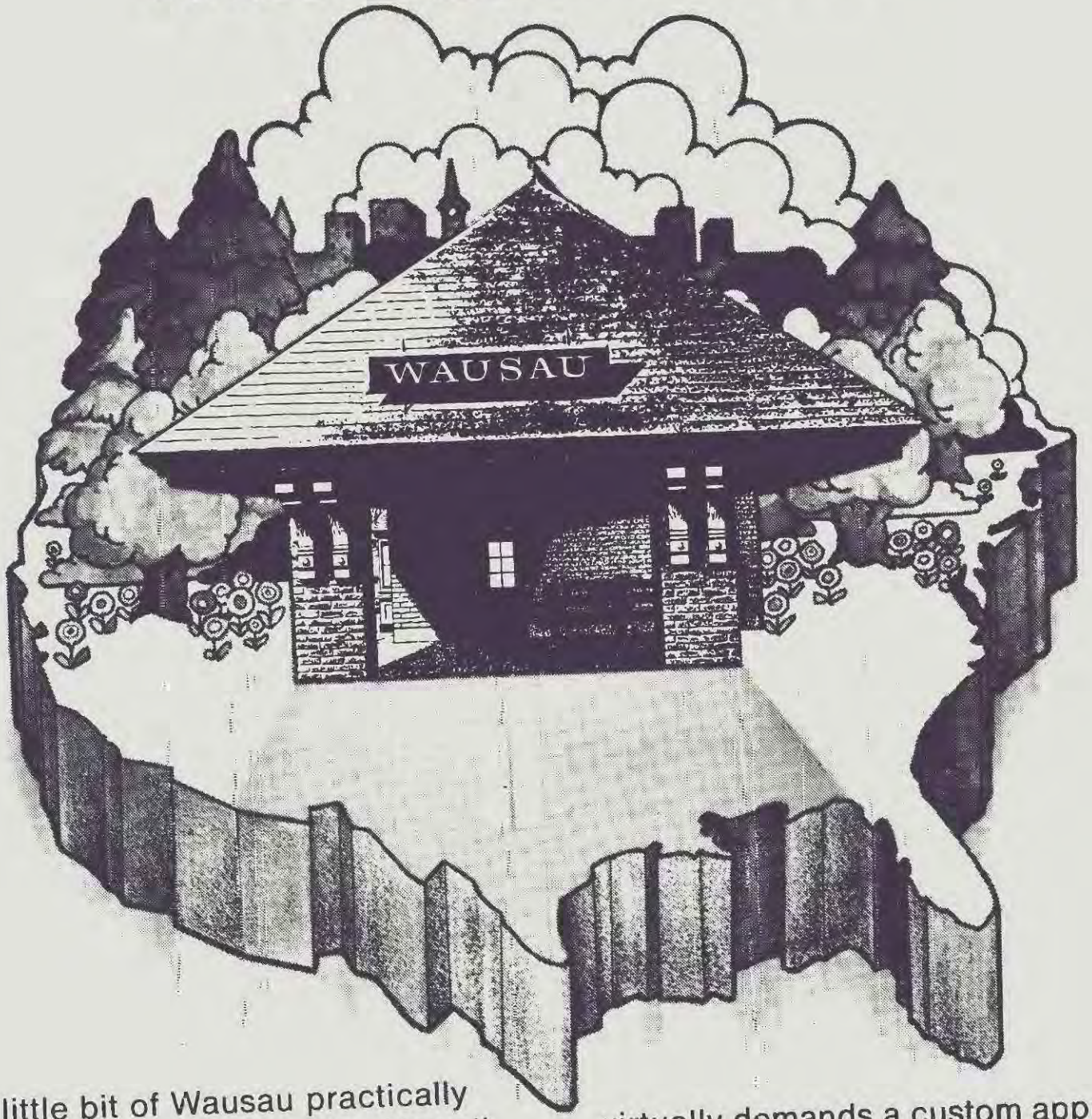
He said one table in the report indicates that the old age survivors and disability insurance trust fund will be exhausted in 1980 with a deficit, by 1983, as high as $26 billion; and the disability income trust fund will be drained in mid-1979 with a deficit, by 1983, as high as $5 billion.

He warned, however, that, realistically, the life expectancy of the two trust funds is even shorter. ■

Hairstylist protection

A single hairstylists' liability policy covering professional products and premises liability for professional beauticians and barbers is offered by Fireman's Fund American Insurance Cos. The policy covers malpractice claims from services such as hairstyling, shampooing, cutting, trimming, hair removal, coloring, tinting, bleaching, manicures and pedicures typically performed in beauty and barber shops.

Where is Wausau?



You'll find a little bit of Wausau practically everywhere in the country. Including Hawaii, Alaska and Puerto Rico. Even north of the border, in Canada. Because it's mighty helpful to have your insurance company doing business wherever you're doing business. Especially if you're located practically everywhere. Take, for example, the Pennwalt Corporation, headquartered in Philadelphia.

Pennwalt, a highly diversified firm, manufactures chemicals, health products and specialized process equipment. They have 17 divisions and subsidiaries operating 43 plants all across the U.S. and Canada. Each location virtually demands a custom approach to its insurance problems.

Any of our 228 offices can make available whatever type of specialist or service is required by any Pennwalt location. This keeps Pennwalt's whole insurance program in accordance with their corporate standards . . . and helps control costs as well.

Whatever your business insurance needs — look us up. We're the people who know business insurance like nobody else in the business. Just come to the sources . . . any of our 228 offices across North America.

COME TO THE SOURCE.
Get the Wausau Story

EMPLOYERS INSURANCE OF WAUSAU, Wausau, Wis.

washington watch

Cabinet officers rap Congressional attempts to amend retirement law

WASHINGTON—Treasury Secretary William E. Simon and Labor Secretary John T. Dunlop have condemned the first serious move to amend portions of the Employe Retirement Income Security Act (ERISA).

The amendment bill (H.R. 7597) was filed this month by Reps. John H. Dent (D-Pa.) and John N. Erlenborn (R-Il.) and quickly approved by Rep. Dent's House Labor Standards Subcommittee.

Action at the subcommittee level occurred so fast this month that the Labor and Treasury Departments—the two agencies in charge of implementing the law—were unable to comment on the amendments.

With the bill heading for action by the full House Education and Labor Committee this month, the two secretaries directed their displeasure at that committee's chairman, Rep. Carl D. Perkins (D-Ky.).

Rep. Perkins was told the proposed amendments "would result in an unwarranted and dangerous dilution of the protections which ERISA established for the employes covered by our nation's private retirement and welfare plans."

The two secretaries said that "as it stands, ERISA constitutes a balanced, workable statute" and that the proposed amendments were "both unnecessary and premature at this time."

The amendments would change the law in several areas, but the major features of the bill would:

- eliminate section 405 (a), which establishes co-fiduciary liability;
- require the Pension Benefit Guaranty Corp. (PBGC) to make available by September 1 some sort of contingent liability insurance for employers sponsoring pension plans;
- cut out of the law its controversial section 406 list of prohibited party-in-interest transactions;
- and take away from the Labor Department its authority to design forms for collecting information on tax-exempt employe benefit plans and give that exclusively to the Internal Revenue Service.

These sections of the law had come under strong criticism in late April and early May when Rep. Dent's subcommittee conducted oversight hearings to review the implementation of the law, which was enacted last September 2.

Elimination of Section 405 (a), the co-fiduciary liability item, apparently would not appreciably reduce the liability exposure of plan trustees and fiduciaries under the law.

Rep. Dent said dropping section 405 (a) would "make it clear that liability will be imposed on any fiduciary only to the extent he has undertaken to perform an act or function and has failed to perform in a prudent fashion.

"This change will eliminate those provisions that could be construed to impute a fiduciary liability for the misdeeds of another solely on account of their fiduciary status," he said.

Section 405 (a) states that a fiduciary will be liable for the breach of another fiduciary if:

- he participates knowingly in, or knowingly undertakes to conceal, an act or omission of another fiduciary, knowing the act or omission is a breach.
- by his failure to comply with his fiduciary duties in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled some other fiduciary to commit a breach.
- he has knowledge of a breach by another fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

A spokesman for the Dent subcommittee staff said eliminating 405 (a) would end the possible implication that fiduciaries had to "spy" or "snoop" on their co-fiduciaries in order to protect themselves from liability.

Availability of contingent liability insurance would help solve one of the major problems employers have with the law's plan termination insurance program.

Under that program, an employer sponsoring a defined benefit pension plan could be liable to PBGC for up to 30% of his company's net worth if he terminates his pension plan with insufficient assets to pay basic retirement benefits.

PBGC officials said they had no comment now on the proposal to make the contingent liability insurance available this year.

Curiously, the interest group that spoke most directly for the immediate need of contingent liability insurance for employers was the United Auto Workers union.

Melvin Glasser, director of the UAW's social security department, told the Dent subcommittee at its oversight hearings that contingent liability insurance should be available no later than next Jan 1.

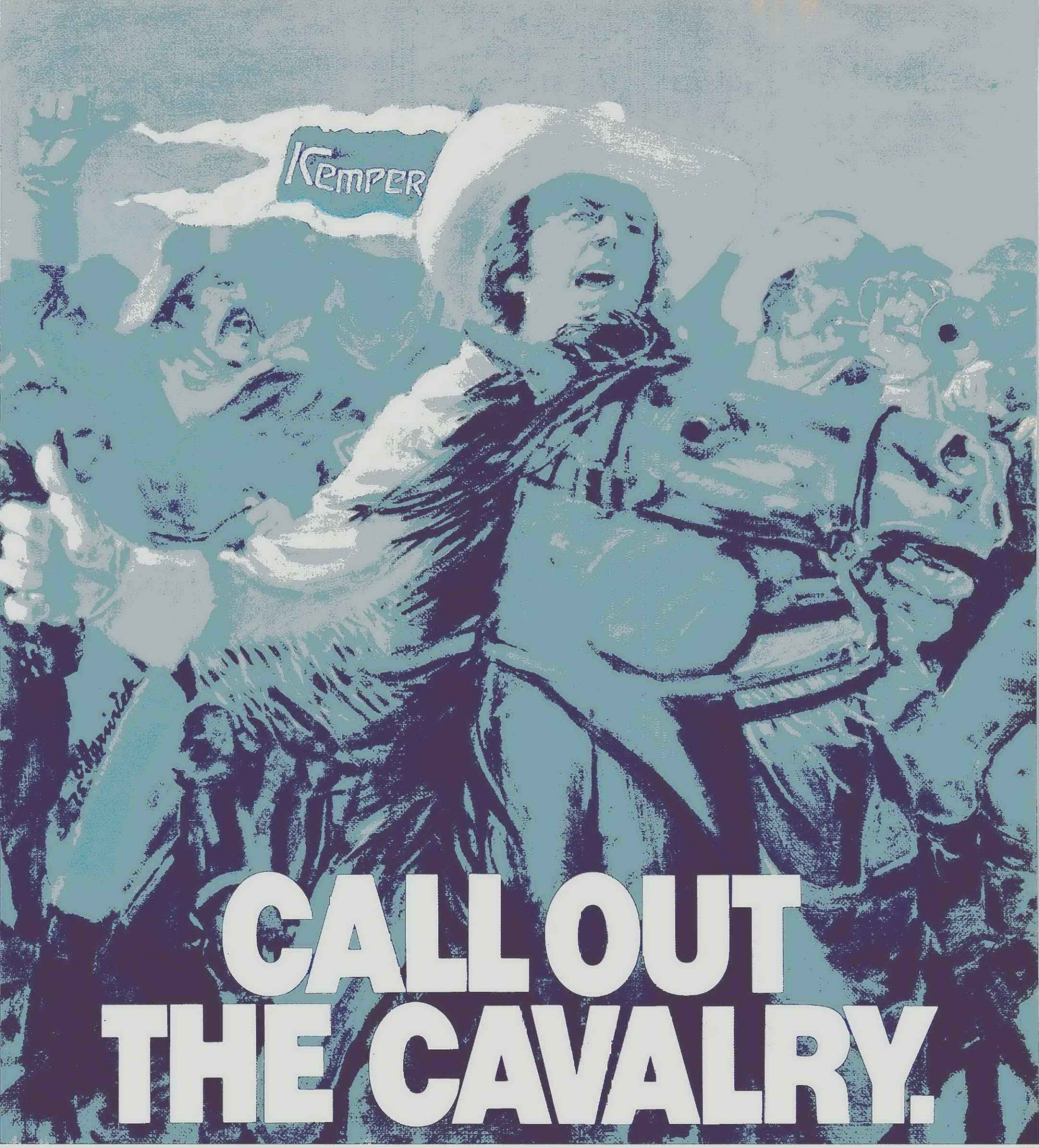
Mr. Glasser said that "In the absence of such reinsurance, many employers adamantly oppose any increase in pension benefits covering past years of service since it automatically increases the unfunded past service liability and therefore the employer's contingent liabilities in the event their plans terminate."

The decision to remove the section 406 prohibitions on party-in-interest transactions comes after a long wrangle led primarily by the National Coordinating Committee for Multi-Employer Plans.

The legislative problem of removing the section is a complex one, however, because the rule appears in both Title 1 of the law, administered by the Labor Dept., and in Title 2, administered by the Treasury Dept. The current amendments affect only Title 1.

Under Title 1, fiduciaries could be open to civil suits for violating the party-in-interest rules. Under Title 2, the party-in-interest involved in such transactions could be subject to special excise taxes.

The problem with the rule is that it imposes a blanket ban on all party-in-interest transactions except those specifically exempted by the Labor Department and the Internal Revenue Service. ■



CALL OUT THE CAVALRY.

If you take serious fire precautions, we'll save you serious money.

HPR. It's insurance on a Highly Protected Risk. And it's availab e to larger properties that are sprinklered. And either protected by watchmen or by supervised alarm service.

If you qualify, we're a good bet to save you money on your property insurance. And if you don't qualify, one of our professional fire protection engineers can show you what it takes.

We're the largest non-pool writer of HPR.

Ride with one of the strongest outfits in the business. Ride with the Kemper Cavalry.

Call the people who cover your territory. Your independent agent or broker who represents us. Or write Pete Standbridge, Sales Manager, Kemper Insurance Companies, Long Grove, Illinois 60049.

Kemper Insurance Companies

We're with you for the long ride.

Lockheed product liability suit . . .

Continued from page 1
in which between 150 and 200 persons were killed and about 100 others were injured.

The plaintiff in the action is the administrator of the estate of Joan K. Pray, whose attorney is Oren R. Lewis Jr. of Arlington Va. The question is whether Lockheed is liable to members of the class for damages caused by alleged negligence, alleged breach of warranty, and strict liability in tort for the design, manufacture, assembly, testing and sale of the aircraft in question, and for Lockheed's alleged failure to issue appropriate warnings regarding the alleged inherent defects of the aircraft. Mr. Lewis's firm also represents 14 of the plaintiffs in the McDonnell-Douglas Corp. liability case involving the crash in Paris of a DC10 jumbo jet, which killed 346 persons.

Lockheed, which is represented in this case by the Washington law firm of Haight, Gardner, Poor & Havens, has until July 23 to reply to charges, which include:

- that Lockheed knew, from a time early in the design of the C5A, that the rear cargo loading door and associated equipment would in the absence of adequate pressure venting, cause explosive decompression of the plane, and eventually its failure.
- that Lockheed's knowledge of the problem and of the gravity of the danger at a time "substantially prior to April 5" (the crash date) is evidenced by, among other things, its static testing of the C5A aircraft.

Lockheed, in its latest filing of a report with the Securities & Exchange Commission, acknowledged that the damages claimed are "substantially in excess" of the company's insurance coverage. But, the company added, it believes it has adequate defenses against the action, and that the damages claimed are "grossly excessive."

"For this reason, the company believes that any recovery against it would be covered by insurance, and the case has been referred to (the) insurance carrier to undertake defense of the action," Lockheed said.

Robert Butler, director of corporate insurance at Lockheed, told *Business Insurance* that it is Lockheed's position that it will not be the defendant because no evidence has been brought forward showing that it was a defect in the craft to act as proximate case of the accident. "There has been nothing developed to indicate there was a defect in the aircraft itself," he added.

Rather, Mr. Butler indicated that "there is a possibility that there was some failure among the air crew to see that the ramp latches were secured before takeoff." The plane belonged to the U.S. government, but the government was not named as a defendant.

He confirmed that USAIG has been asked to handle the defense.

In a news release dated June 24, Sen. William Proxmire (D-Wi.) accused the Air Force of covering up evidence of a safety hazard in the C5A cargo plane produced by Lockheed. Sen. Proxmire said he received information from one Don Whitt several weeks ago of evidence of a "serious design deficiency" and operational failures with the plane's cargo doors.

Mr. Whitt was described as having worked in the C5A program, and presently being employed as a program edit analyst responsible for preparing detailed instructions for the troublesome doors.

Air Force sources, however, said that to their knowledge Mr. Whitt never worked for Lockheed or for the C5A program. Furthermore, when problems were discovered with the door back in 1969 before the plane was even cleared for flight testing, modifications were made in the latch system, the Air Force said.

There have never been any in-flight failures until the crash near Saigon in April. Ground failures in 1971 prompted the Air Force to develop an improved door system.

The Air Force said it believes Mr. Whitt worked for a firm that wanted to develop a technical instruction program for use in maintaining and operating the door system. The Air Force did not buy Mr. Whitt's company's program.

The Air Force said it appeared that three of the locks on the cargo pressure door failed in flight, creating a "dynamic overload" on the other locks and resulting in failure of the pressure seal and sudden decompression. Decompression caused several critical parts of the plane to strike the fuselage and sever control cables, resulting in the crash.

Of the 330 people on board the craft when it crashed, 247 were Vietnamese war orphans, of whom 98 were killed. Others killed included 11 air crew and seven civilians. The hull value of the C5A was put at $56 million. ■

(This report was compiled by Susan Alt with information from Richard L. Gordon in Washington, and Joanne Gamlin in Los Angeles.)

Tell agents of fiduciary responsibility

CINCINNATI—"A life insurance agent who introduces himself as a pension plan consultant and indicates that his function is to help select the best funding medium for the plan is going to have a difficult time showing he was not acting as an investment adviser," said George L. Powell, assistant general counsel for Prudential Insurance Co. of America.

If certain guidelines are followed, however, the agent can market pension plans without becoming a fiduciary under the Employe Retirement Income Security Act, he explained to a joint meeting of the Society of Actuaries and Conference of Actuaries in Public Practice here.

Mr. Powell advised life insurance agents to avoid giving the impression that they are selecting the best approach but rather to present all alternatives to the plan administrators so that they can make the decision.

"The agent's training, licensing and continuing education are factors which will cause people to see him as a quasi-professional," Mr. Powell said, adding that it is important to present oneself as a sales agent for a life insurance company though "it works against a reasonable person accepting him as a disinterested adviser."

Another precaution is for the agent to make a full disclosure of the benefits and values that will be accumulated at various durations of the contract, Mr. Powell advised. ■

Accountant argues for credibility in operating statements of carriers

QUEBEC—"Communicating something fairly means telling it like it is," said J. T. Arenberg Jr., a partner with Arthur Andersen & Co., a major national accounting firm.

"An accounting practice which understates surplus and causes earnings to be depressed in periods of growth or benefited when volume declines, is not telling it like it is nor communicating in a way that lends credibility to the stability of the industry," he told participants at the American Mutual Insurance Alliance conference here.

"We (accountants) acknowledge that there may be merit in the ultra-conservative manner in which capital is measured for regulatory purposes," Mr. Arenberg continued. "It tends to be a worst view approach, placing the emphasis on liquidity and solvency up to a point. In doing so, however, it does great violence to the meaningfulness of the operating statement," he added.

He went on to explain that accountants are "equally concerned with the fairness of their operating statement and the balance sheet" while regulatory agencies are more interested in the latter.

Accountants "believe that adjusted financial statements can serve all purposes," Mr. Arenberg said adding that he does "not think statutory financial statements meet this test."

Mr. Arenberg said accountants have not been able to justify the 2-to-1 rule in measuring the capacity of an insurance company. Empirical evidence has never been offered to "support the logic of the rule," he said.

"Regulators and (insurance) companies alike seem to be wringing their hands as ratios have risen to 5- or 6-to-1," Mr. Arenberg said. "In some companies volume is being curtailed to bring the ratio down. Over the long term curtailment can't be the answer because the public's demand for insurance coverage will be met by government if not by industry."

He said a study covering 45 years was conducted to evaluate how little capital was needed to operate an insurance company given its actual underwriting experience for that period. "For all the companies," he said, "the ratio ranged from 1.5-to-1 to 500-to-1 with the average being 50-to-1 and the median being 12-to-1."

Considering the 1974 stock market, Mr. Arenberg said he questions whether it "makes sense to measure capacity against unrealized appreciation particularly where the appreciation isn't even tax affected."

In addition, Mr. Arenberg questions whether companies should be allowed one capacity ratio for capital invested in bonds and a more conservative ratio for capital invested in equity securities.

"Do current rate setting procedures assure a fair return on the capital that is determined to be required?" he asked. "Is the return on capital vaild in the insurance industry particularly when so much of what is accomplished is based on investment income?

"Regulation can hardly be expected to control investment rates of return," he said. ■

P/C insurance study

Stanford Research Institute, Menlo Park, Ca., has been commissioned to evaluate current classifications in property and casualty lines. The report, expected to be released in nine months, will attempt to develop a better understanding of the various types of classification systems and criteria currently used. The study will also develop a conceptual framework for understanding the social and economic effects of using diverse individual and geographical classification criteria in insurance pricing.

CNA customers can expect changes in pricing and servicing of accounts

NEW YORK—Corporate customers of Continental Casualty Co. and the Continental Assurance Co., as well as other CNA Financial Corp. subsidiaries, can expect a number of changes in pricing and servicing on their accounts in the near future, according to the new chief executive officer of the CNA Insurance Cos.

Edward J. Noha, a former Allstate executive who took over the top slot at CNA when the financially-troubled Chicago firm was acquired by the Loews Corp. late last year, was in New York to unveil an overall reorganization of CNA's insurance operations.

For starters, customers can forget separate subsidiary names like Continental Casualty. They will be retained for legal purposes, but all dealings with subsidiary companies will be under the CNA logo, as part of the major goal of creating a single insurance writing, marketing, and servicing entity.

Highlights of Mr. Noha's announced reorganization of CNA, from the risk management and corporate insurance buyer's point of view include:

- The likelihood that CNA will be firming up—and standing behind—higher premium levels.
- A significant increase in the firm's reinsurance capacity.
- A decrease in certain lines of insurance CNA has found unprofitable, such as trade association liability insurance.
- A possible move by the corporation to offer risk management services on a fee basis in the future.

Corporate accounts of half a million dollars or more will continue to be handled by CNA's national accounts division, headed by J. R. Wiedemann; smaller commercial accounts will have their own division headed by Don Harder. Both will fall under the major lines department of the insurance operations group.

Mr. Noha said all premium pricing decisions would emanate from CNA's home office—which he heads. And he indicated his agreement with statements by some other large underwriters like the Insurance Co. of North America (*Business Insurance* June 2) that he intends to stick with higher insurance premiums that reflect inflation—even if it means losing some business initially.

"We've suffered the same thing INA has over the last six to nine months," Mr. Noha commented in response to a remark that INA has lost millions of dollars from commercial clients over the past two years due to its firm premium stance.

"Large commercial risks represent so much of our market that even if you want to turn your back on it you can't. Our industry as a whole has failed to reflect pricing cost realities on renewals. We'll have to make an overt effort to build an upward margin for inflation, to build in margins for the undeveloped portion of claims," he remarked.

One of the things CNA is doing in-house to meet its own risk exposures, presumably including business losses, was to set up a special loss prevention area in its new technical services department.

While Mr. Noha said his primary concern at the moment was to build CNA up from the inside, he said the firm would consider offering risk management services for a fee as "a logical extension" of its operations. He also said he would give some consideration down the line to acquiring a wholly-owned brokerage operation.

Loews Corp. pumped $40 million into CNA Financial Corp. effective April 1 this year, in reverse of the publicized situation of a number of holding companies which have been sucking funds from insurance companies they acquired, the CNA executive noted.

"And that's $40 million in cold, hard cash, it's not one of those deals with properties or foreign bonds," Mr. Noha emphasized.

Because of the Loew's boost (which also included some extraordinary dividends) CNA's surplus position was at least tripled and probably quadrupled, Mr. Noha said.

"Our ratios are now less than two-to-one," he said. (Two dollars of written premiums for every one dollar of surplus). Over the last six months, many large insurance companies have been struggling to bring their ratios below a four-to-one level, which is considered by some insurance experts to be the highest "safe" ratio an underwriting firm should operate with.

Reinsurance activities of CNA are currently at the $40 million to $50 million dollar range, and Mr. Noha said under the current corporate reorganization he expects a significant expansion of this market.

"We're still losing money on an underwriting basis, but we're starting to stabilize," he noted. He confirmed that CNA will be withdrawing from certain unprofitable markets.

"We're going to pre-select types and classes of business, and will definitely withdraw some. For instance, we had combination mortgage disability accounts for over 10 years, but we've dropped them.

"We're also being selective in our trade association businesses, like plumbers, scrap iron and steel associations and restaurant associations. We just cancelled a major restaurant association we held, as a matter of fact," Mr. Noha said.

CNA is one of the major underwriters of architects' and engineers' liability insurance, providing a program for the American Institute of Architects and the National Society of Professional Engineers through CNA's underwriting manager, Victor O. Schinnerer & Co., a Marsh & McLennan subsidiary in Washington, D.C.

According to Mr. Noha, CNA will remain committed to supplying errors & omissions coverage for this special group, even though the company "has lost a lot of money" on the business. Whether the AIA will stay with CNA in the face of very substantial rate increases over the last year (an average of 100% increase in most cases) remains to be seen. But Mr. Noha said CNA lost less business from architects after the rate hikes than it had expected to.

Mr. Noha emphasized that the one of the major reasons for CNA's reorganization, which will revolve around six departments with a single marketing strategy, would be to simplify points of contact and service for CNA's customers.

He also plans to initiate an account direct billing system by next year and to make the entire portfolio of CNA products available to its producers to simplify the buying process. ■

Call in the Marines.

(And benefit from a stable insurance market in an often unstable world)

It isn't easy to provide market stability. It takes skilled underwriting and an intimate knowledge of the market. It takes a long, hard look at the past and a sense of understanding to forecast the future. And in marine insurance, we think it takes a specialist.

Only a specialist has the in-depth knowledge and experience to rate a marine account realistically. To view individual risks in the light of company experience with the class. To make underwriting decisions that are as valid this year as next. To provide claims, loss control and other services through people who know marine insurance inside out.

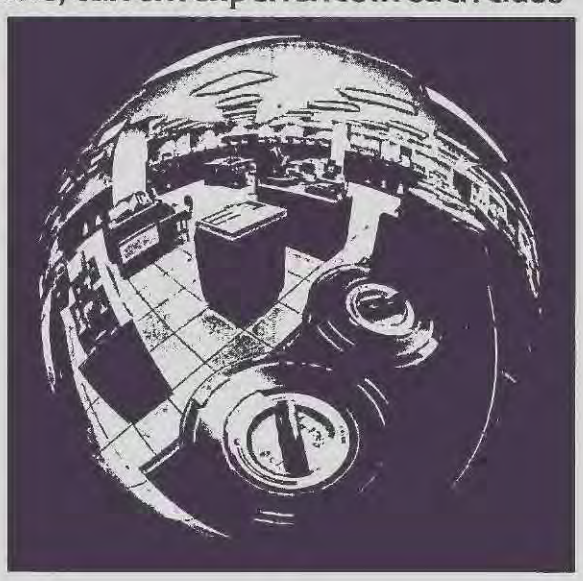
For a specialist, facts make all the difference.

At MOAC, marine insurance is our only business. And since 95% of it is judgment-rated, accurate, up-to-the-minute information about our worldwide book of business is vital. Not only to spot trends and problems, but to lay the foundation of a stable marine insurance market.

As a result, we've developed a sophisticated computerized reporting system. Called Data-Alert, it differs from computer systems in other companies in that its entire output is devoted to an analysis of ocean and commercial inland marine lines. Which is just what you'd expect from the world's largest commercial marine insurance company.

In-depth information leads to stable underwriting.

Data-Alert provides a continuous flow of needed information to our network of offices: breakdowns of major lines of business by office; experience figures for the preceding month and year-to-date; gross and net written premiums for each line; current experience in each class and sub-division of business. And more.



It's data like these that make the difference in reducing losses and stabilizing premiums over the long term. We don't believe in in-and-out underwriting. And judgments based on solid fact don't have to be changed overnight.

It's good business sense to come to a specialist.

There are many good reasons to place your marine business with us, but one of the best is the total specialization that results in market stability. From 51 MOAC offices throughout the U.S. and Canada. In each of which you'll find the same capacity, underwriting flexibility and broad overall view of accounts.

So when you want to call in the experts, you have one choice. And that's to call in the Marines. For a complete list of our offices, and a report on our operations, write James T. Kelley, executive vice president, MOAC, 80 Maiden Lane, New York, N.Y. 10038.

We know our business. And we want yours.

MOAC

editorial opinions

Evidence, please

AMID THE TONS of words we've seen surrounding the malpractice crisis, we have yet to see a meaningful compilation of figures that might explain the situation—and, yes, lend more credibility to the crisis—for the ordinary man.

What we're talking about is a national survey of all insurance underwriters writing malpractice coverage. The whole problem could be put into perspective if the underwriters would provide historical data company by company going back, say, 10 years. Simple stuff. Like how much XYZ Insurance Co. took in in premiums on the line in 1965, how much it has paid on claims covered that policy year, and what it is reserving for claims yet to be settled. The same could be done for 1966, and so on.

Many underwriters are probably justified when they say that today's malpractice claims are covered by policies that go back years, and that they are suffering losses not adequately covered by their reserves.

However, we're skeptical enough to worry whether or not some underwriters are riding this argument for all it's worth —like a thoroughbred pursuing the Triple Crown—without really having the evidence behind them. And we're made even more skeptical by the reticence of some to fully disclose what seems to us to be pretty basic information.

It's welcome news, then, to learn that the National Assn. of Insurance Commissioners (NAIC) is working with the Insurance Services Office (ISO) on a draft of a Uniform Statistical Plan for medical malpractice experiences.

Under the plan, underwriters would presumably disclose detailed figures on premiums received and losses paid, as well as reserves set aside for future losses. The new statistical plan is expected to be implemented Jan. 1, 1976.

The idea is a laudable one, though perhaps a year or two late to lend credibility to the crisis at hand.

While the NAIC and ISO are at it, perhaps they might anticipate future crises of the sort that has turned the medical profession on its ear and created a national health care emergency.

ERISA enforcement

IN THE Perspective section of this issue we have an article by William J. Kilberg, Solicitor of Labor in Washington, which attempts to give some insight into how the Labor Department will enforce the provisions of the Employe Retirement Income Security Act for which it has responsibilty.

We believe the article, which was adapted from a speech by Mr. Kilberg to the American Bar Assn., lends reason and logic to the discussion of ERISA, which has been the subject of much near-hysteria.

Mr. Kilberg indicates that the Department of Labor is approaching its task of interpreting and enforcing ERISA in a logical and thorough manner. It is, his article suggests, looking carefully at the intent of Congress in making its interpretations and rulings.

For example, he says that the one clear direction Congress gave about the new prudent man rule was found in the Conference Report, which declared: "The Conferees expect that the courts will interpret this prudent man rule (and other fiduciary standards) bearing in mind the special nature and purpose of employe benefit plans."

Says Mr. Kilberg: "If Congress expects the courts to interpret the prudence requirement in this way, you can rest assured that the Labor Department will do the same thing."

And he adds: "While there is no question that many fiduciaries will have to upgrade their operating procedures to comply with ERISA's prudence requirement, it is not because that rule is substantially more strict than the common law requirements, it is because the fiduciaries were not meeting the common law standard to begin with."

The article hints that if fiduciaries and others wish to understand or even anticipate Labor Department rulings, they would do well to read thoroughly the Conference Report on ERISA as well as the act itself.

Mr. Kilberg's article explains the thinking of Congress in the development of ERISA, as the Department of Labor understands it, and thus provides a key for understanding the Department of Labor's interpretation of the act.

We applaud the thoroughness and thought that the Labor Department is giving to the regulations for ERISA. And while we deplore the slow pace of this development, we recognize the man-power limitations under which the department is working.

Rail safety

SENATORS Harrison A. Williams (D-N.J.) and Jacob K. Javits (R-N.Y.) have introduced legislation that would move the Federal Railroad Administration into the Labor Department from the Department of Transportation.

Senate bill 1743, Washington observers feel, doesn't have much chance of passing, but it may light a few fires under chairs at DOT, which assumed responsibility for rail safety in 1967.

And well it should. The Department of Transportation has done an atrocious job with rail safety. In fact, since assuming the responsibility railroad accidents have increased 50%.

Last year, according to Sen. Williams, 140 rail employes were killed on the job and more than 15,000 were injured in 10,400 accidents. With 500,000 railroad workers, this works out to almost 30 employes killed per 100,000.

Earlier this year, the National Safety Council reported that there were 16 deaths per 100,000 workers nationwide, an all-time low.

True, it is not statistically advisable, strictly speaking, to compare a national figure that includes white and blue collar workers with a figure drawn from a worker population that is heavily populated by operating personnel, but the difference between the two figures is just too wide to ignore.

Rail workers are not covered under the Occupational Safety and Health Act. At the time the act was passed, it was presumed that rail workers had adequate regulation of their health and safety.

That does not appear to be the case.

letters

This column is a readers' forum. Letters are welcome. Address letters to the Editor of Business Insurance, 708 Third Ave., New York, N.Y. 10017.

Shocking story

To the Editor: Thanks for your shocking story of that $7 million award against ITT-Sheraton after a hotel diving board accident.

I gather that the whole story has not ended or been told. In these days of jumbo awards which are playing hob in the professional fields, more attention needs to be given such as this.

As the cast matures toward judicial review or appeal, may I ask that you try to follow and report further?

Chas. W. Ferguson
Dallas, Tx.

Consultant sought

To the Editor: We are interested in talking to an independent insurance consultant. Can you provide us with a list of consulatnts from which we can choose someone to analyze our insurance needs and help us realign our program?

Richard G. Taylor
President, DeSoto Hardwood Flooring Co., P.O. Box 1201, Memphis, Tn. 38101

Editor's note: Business Insurance's *policy is not to recommend or provide lists of "suppliers" to insurance consumers. Having printed this, however, we're sure you'll hear from many and will thus be able to make your own choice.*

Not 'special arm'

To the Editor: On behalf of the University Insurance Managers Assn., I wish to express concern over the statement appearing on page 23 of the May 5 issue of *Business Insurance*. The statement of concern is that "University risk managers already have their own special arm of the Risk and Insurance Managers Society (RIMS)."

Although the university insurance and risk managers have a very strong national organization designed to deal specifically with the problems of university risk managers, the organization does not view itself as a special arm of RIMS, nor does it consider itself in competition with RIMS.

As is the case with many organizations operating in this country today, universities and their insurance and risk management representatives have very special and unique problems which can most appropriately be dealt with in detail by an organization set up for that purpose and this is the

Continued on page 18

business insurance

the national newsmagazine for buyers of employe, property and liability protection and financial services

G. D. CRAIN JR.
founder (1885-1973)

MRS. G. D. CRAIN JR.
chairman of the board
RANCE CRAIN
president and editorial director

S. R. BERNSTEIN
chairman, executive committee
KEITH E. CRAIN
secretary-treasurer

ALFRED MALECKI, *publisher*

STEPHEN D. GILKENSON, *Editor (New York)*
SUSAN ALT, *Managing editor (Chicago)*
Washington editor: RICHARD L. GORDON. *Associates: New York*—MARIE KRAKOWIECKI, MARGARET LeROUX, *Chicago*—ELISABETH WECHSLER. *Los Angeles*—JOANNE GAMLIN. *Staff reporter: Chicago*—PAUL MERRION. *Editorial production chief: Chicago*—DIANE DeROCHER. *Editorial assistant: New York*—LINDA MOSKOWITZ. *Washington*—DINAH DAVIS. *Art director:* JOE FARACI. *Correspondents: Hartford*—ALLEN M. WIDEM (203-232-3101). *London*—JOHN MILLER (01) 946-4215.

DONALD A. WALSH, *Advertising director (New York)*
Advertising district managers: New York—CHARLES A. HORVATH, JACK FORREST. *Chicago*—ROBERT L. NIESSE. *Los Angeles*—DENNIS KOCH. *Production manager: Chicago*—JOHN JAMKA. *Promotion manager: New York*—RONNIE I. DRACHMAN. *Assistant to the publisher: Chicago*—CELIA MALOUHOS. *New York*—HOLLIS PIVOR.

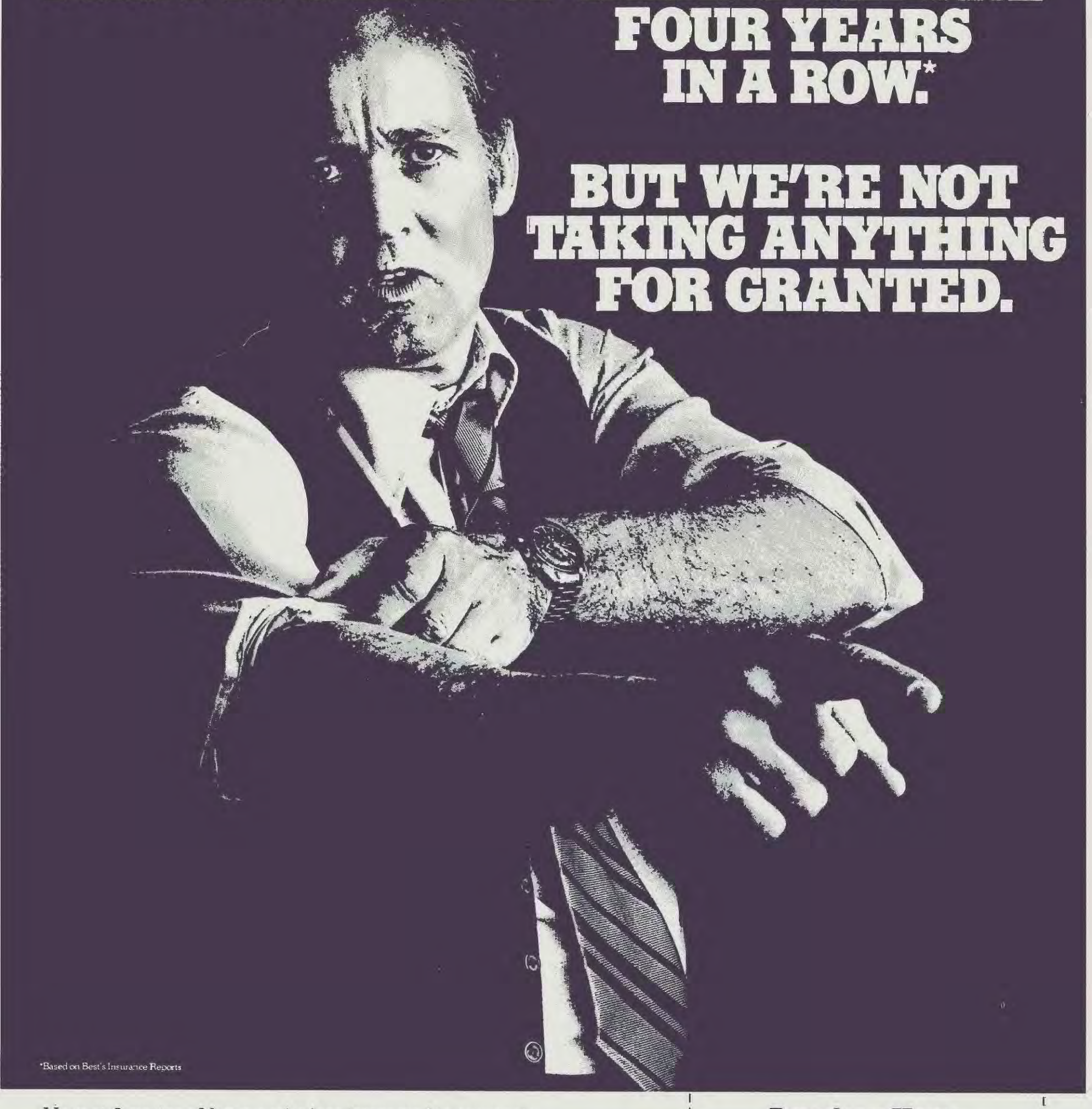
Published by Crain Communications Inc., Chicago, publisher of Advertising Age, Pensions & Investments, Industrial Marketing. M. A. HARTENFIELD, *executive vice president;* D. J. CLEARY JR., *senior vice president;* ALFRED MALECKI, J. J. GRAHAM, J. V. O'GARA, S. E. COHEN, LOUIS F. DEMARCO, WILLIAM STRONG, ROBERT W. KRAFT, *vice presidents;* MERRILEE P. CRAIN, *assistant secretary;* JAMES M. FRANKLIN, *director of finance and administration.* Cable address: *CRAINCOM*

Published biweekly at 740 Rush St., Chicago, Il. 60611 (312-649-5200). Offices at 708 Third Ave., New York, N.Y. 10017 (212-986-5050); Suite 1253 National Press Building, Washington, D.C. 20004 (202-638-5300); 6404 Wilshire Blvd., Los Angeles, Ca. 90048 (213-651-3710). 50 cents a copy. $12 a year in U.S. Elsewhere $4 a year additional. WILLIAM STRONG, circulation director. ROGER DEGREGORIO, subscription manager. Four weeks' notice required for change of address. Address all subscription correspondence to subscription manager, Business Insurance, 740 Rush St., Chicago, Il. 60611

BPA Member of Business Publications Audit of Circulation ☆ABP

FIRST IN SALES OF INLAND MARINE FOUR YEARS IN A ROW.*

BUT WE'RE NOT TAKING ANYTHING FOR GRANTED.



*Based on Best's Insurance Reports

Here at American Home, we're less interested in our past—
Than in your future.
What kind of cover do you need from our long, long list? Is there something *else* we can do for you?
Can we tailor a policy specifically to your requirements?
All it takes is this coupon.
Mail it today and we'll get started before the week is out.

INLAND MARINE: Accounts Receivable/Agricultural Machinery/Air Cargo (Domestic)/Appliance Dealers/Bailee Customers/Bridge Builders' Risks/Bridges and Tunnels/Cable TV/Camera And Musical Instrument Dealers/Cold Storage Lockers/Commercial Camera Floaters/Contractors' Equipment/EDP/Equipment Dealers/Exhibitions/Fine Art Dealers/Floor Plan/Garment Contractors/Installment Sales/Installation Floaters/Livestock Floaters/Logging Equipment/Mining Equipment/Motor Truck Cargo/Neon Signs/Oil and Gas Lease Property/Patterns and Dies/Pipelines/Processing Floaters/Radio—TV (Towers and Broadcasting Equipment)/Rigging/Rolling Stock (Railroad)/Salesmen's Samples/Scientific Equipment/Transmission Distribution Lines/Transportation Risks/Trip Transit Risks/Valuable Papers/Vending Machines/Voting Machines/Warehouseman's Legal Liability

American Home Assurance Company
Dept. BI065, 102 Maiden Lane New York, NY 10005

Please contact me about your Inland Marine Coverages.

Name _____
(please print)
Title _____ Phone _____
Company _____
Address _____
City _____ State _____ Zip _____

A Member Company of American International Group

We welcome inquiries from any licensed agent or broker.
You don't have to be a regular producer to place business with an AIG company.

Fire losses increase by 205% in 10 years

CHICAGO—Fires of known or suspected incendiary origin increased 205% in the last 10 years and total dollar losses rose from $35.2 million in 1963 to $320 million in 1973, according to James E. Troutman, assistant general manager of engineering, Factory Insurance Assn. (FIA).

Speaking at the 38th Administrative Engineers Conference sponsored by the Engineering and Safety Service of the American Insurance Assn., Mr. Troutman commented on an FIA study covering 637 fire losses between 1968 and 1974.

"Over 80% of the losses occurred in 15 states or localities—primarily those containing major metropolitan areas," Mr. Troutman said.

Occupancies involving storage were involved in some 75% of the losses, he said. Railroad cars, trailer trucks and vacant buildings are the primary targets.

Facilities which serve the public and include combustible storage such as hospitals, schools, department stores, other mercantile properties and warehouses are "vulnerable to incendiary fires," he continued.

"The source of ignition was not as important as the availability of fuel in an unattended or unsupervised area where the incendiarist may act unobserved and undetected," he said.

In order of frequency, the categories of persons known to have started fires are "intruders, employes, visitors and juveniles."

Of the 56 losses over $100,000, 77% of them had "major deficiencies in plan protection ranging from congested layout to lack of sprinkler protection," he said.

"Over 50% of the 736 losses studied involved some aspect of poor or inadequate preplanning for emergencies and 28% of the losses involved unsprinklered areas of buildings," Mr. Troutman said.

"When an incendiary fire occurs there is a strong chance that another will follow at that location," Mr. Troutman said, adding that of the 637 cases studied, 116 were repeat fires. ■

info for buyers

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

• Hewitt, Coleman & Assoc. is offering a descriptive brochure on their claims handling and safety programs for **Workmen's Compensation and Self Insurance.** For a free copy write to R. P. Hewitt, president, Hewitt, Coleman & Assoc. Inc., P.O. Box 3665, Greenville, S.C. 29608.

• Reprints are available of **Risk Management in a Tight Money Market.** The article, written by Joseph Boyle of Cameron and Colby Co., originally appeared in the Perspective section of *Business Insurance*. For a free copy write to Joseph S. Boyle, CPCU, assistant vp, Cameron and Colby Co., 60 Batterymarch St., Boston, Ma. 02110.

• A U.S. Government publication, **60 Surface Mine Fatalities,** is a collection of abstracts of investigations into mine accidents, with recommendations to avoid such accidents. The 73-page book is $1.35. Use order number 54E-024-019-00006-1 and write to Public Documents Distribution Center, 5801 Tabor Ave., Philadelphia, Pa. 19120. Make check payable to Superintendent of Documents; do not send cash.

• An illustrated, 240-page book published by the U.S. Printing Office presents papers from a symposium on **Fire Safety Research.** Topics include hazard analysis, flame chemistry, fire detection, flame spread, fire services, and many others. Cost is $3.10. Use order number 95E-003-003-01356-1 and write to Public Documents Distribution Center, 5801 Tabor Ave., Philadelphia, Pa. 19120. Make check payable to Superintendent of Documents; do not send cash.

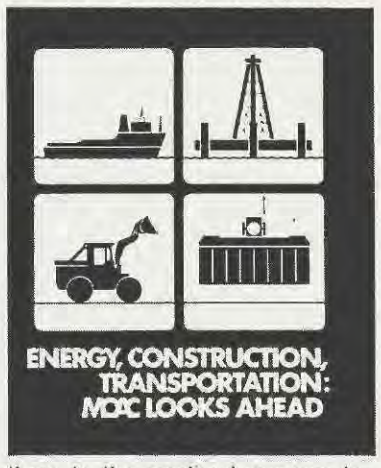
• Mass Insurance Consultants and Administrators Inc. is offering copies of a speech on **Cost Factors and Other Considerations in Welfare Fund Administration,** by Charles S. Mack, chief operating officer. It was given at the International Foundation of Employe Benefit Plans meeting in August, and includes an evaluation of administrative fees. For a copy write Mass Insurance Consultants and Administrators Inc., c/o Charles S. Mack, 209 So. LaSalle, Chicago, Il. 60604.

• Marshall and Stevens, multinational appraisers, has prepared a concise folder, **How To Insure Your Insurance,** that points out some of the "traps" in the corporate insurance policy. The folder digests more than 40 years of experience helping clients make sure they are covered, current and ready in case of fire. For a free copy write John Heath, Marshall and Stevens, 1645 Beverly Blvd., Los Angeles, Ca. 90026.

• **Multi/National Trends,** the bimonthly official publication of the Multi/National Business Assn., covers international business and multinational corporations. The November/December issue features articles on New Hebrides as a financial outpost, multinational corporations and pollution control and What Do they Want?, a unique "reader involvement" service. Future articles will include international insurance. The trial issue is $1.50; write to Richard E. Richter, executive director, Multi/National Business Assn., 10889 Wilshire Blvd., Los Angeles, Ca. 90024.

• **Self Funding,** a description of the modern answer to escalating cost and administrative workloads of group health and accident programs, is available from the National Health Care Corp. The brochure compares typical funding through insurance with a self funding program. For a free copy write Alvin J. Sims, president, National Health Care Corp., 45 Bromfield St., Boston, Ma. 02108.

• **Energy, Construction, Transportation: MOAC Looks Ahead** is a 13-page illustrated booklet available from Marine Office-Appleton & Cox Corp. (MOAC). This report describes the problems of these industries and how they affect both U.S. and world economies; relates



them to the marine insurance industry; and, where practical, attempts to supply short-term projections. A free copy may be obtained by writing: Ms. Phyllis, Meadows, Advertising Dept., MOAC, 80 Maiden Lane, New York, N.Y. 10038.

• **Fire Extinguishing Equipment** is a pamphlet distributed by the Safety First Products Corp. on its commercial kitchen system, dry chemical extinguishers, industrial dry chemical and SF 1301 Hanlon total flooding system. For a free copy write E. T. Robinson, Advertising Mgr., Safety First Products Corp., 3684 Meadow Lane, Cornwells Heights, Pa. 19020.

• B&K Instruments is offering a brochure on its **SP-321 Digital Data System for Noise & Vibration Analysis.** The system prints out mean value, standard deviation and psuedo-histogram of the statistical data. An additional program computes the Environmental Protection Agency's day-night average sound level. For a free copy write Bill Rhodes, director of communications, B&K Instruments Inc,. 5111 W. 164th St., Cleveland, Oh. 44142.

• **The Brown Brothers Adjusters Service Directory** lists all 48 branch offices of the company with addresses and day and night phone numbers of each office. A brief history of the chairman of the board, president, supervisory

staff and manager of each office is provided. Also included is a table of distances to the nearest Brown Brothers Adjusters' office. For a free copy write Vernon Neufeld, president, Brown Brothers Adjusters, 545 Sansome St., San Francisco, Ca. 94111.

• **Employe Information Systems Datapack** is published by Benefacts Inc., a subsidiary of Alexander & Alexander, as a discussion of problems encountered by personnel departments in gathering and compiling "need-to-know" information about large groups of people. The brochure explores the phenomenon of the corporate records explosion and its ramifications. For a free copy write Robert Eilerson, Vice President, Marketing, Benefacts Inc., Hampton Plaza, 300 E. Joppa Rd. Baltimore, Md. 21204.

• Northwestern National Life Insurance Co. is offering complimentary copies of **A Guide to Health Maintenance Organizations,** published in July, which answers such basic questions for employers as: What is an HMO? What are the advantages and disadvantages to the employer? To the employe? What laws govern HMOs? For a free copy, write to Alan Benson, Northwestern National Life Insurance Co., 20 Washington Ave. So., Minneapolis, Mn. 55440.

• National Loss Control Service Corp. has a brochure entitled **Toward a More Quiet Environment.** NATLSCO's noise and vibration consulting service is described along with examples of typical jobs and details of their complete sound laboratory. They are not affiliated with manufacturers of noise control products and so their consultants are able to choose the best solution for each problem. To obtain a free copy of this brochure write National Loss Control Service Corp., Long Grove, Il. 60049.

• Blyth Eastman Dillon & Co. Inc. provides verbal descriptions and facsimiles of **Fund Monitoring Services** consisting of fund audit, performance measurement and portfolio evaluation to assist employe benefit fund administrators and money managers in maintaining greater management control over their investing activities. For a free copy write Alexander Gould, Blyth Eastman, 14 Wall Street, New York, N.Y. 10005.

• **The New Sound of BABCO** printed by BABCO Alarm Systems Inc. describes an electronic burglar alarm system for trucks. Some of the componets are constant energy source, motion detector, magnetic sensors and electronic sound. For a free copy of the brochure, write W. E. Blatz, vp, BABCO Alarm Systems Inc., 1775 Broadway, New York, N.Y. 10019.

• Burns International Security Services publishes a brochure called **Five Disasters That Can Destroy Your Business.** The booklet summarizes how automatic electronic monitoring systems minimize threats from fire, explosion, water, sabotage and equipment failure. For a free copy write Ashley W. Burner, Burns International Security Services, 320 Old Briarcliff Rd., Briarcliff Manor, N.Y. 10510.

• Coats & Burchard Co. publishes **Fast "Facts",** a brochure describing the property data bank, a computerized property asset control system utilizing techniques of appraisal research, property economics and financial data to use in developing reports for accounting, insurance, proof of loss and other administrative services. For a copy write Coats & Burchard Co., 4413 N. Ravenswood Ave., Chicago, Il. 60640.

• A brochure on the Burns International Security Services, titled **Complete Scope of International Investigations** is now available. Special attention is given to investigative services for multinational companies for incidents of arson, fraud, sabotage, and other losses. For a free copy write Ashley W. Burner, Burns International Security Services, 320 Old Briarcliff Rd., Briarcliff Manor, N.Y. 10510.

• The American Appraisal Co. is offering **Continuous Service . . . For Property Control and Current values,** a description of its ongoing appraisal process. A reproduction of the Insurance Summary Report, which is produced after appraisal is made, is also included. For a free copy write E. J. Francione, American Appraisal Co. Inc., 525 E. Michigan St., Milwaukee, Wi. 53201.

letters

Continued from page 14

basis on which UIMA was initiated individually on both the east and west coasts and later combined into a national organization.

Although the scope of the UIMA organization is nowhere near the magnitude of RIMS, the services provided through association, discussion and mutual problem-solving clinics provides depth to the individual member. . . .

Irvin D. Nichols
President, University Insurance Managers Assn.

J&H tops this list

To the Editor: The May 19th issue of *Business Insurance* reported on the Fortune benefit survey of companies having 100 to 499 employes. In this article you named brokers in descending order depending on the survey responses as to familiarity with and "favorable" opinions of such brokers. Although we ranked high, we were not in first place.

The March 10th issue of *BI* reported on another Fortune study, this one of the top 1000 corporations. Here, no reference whatsoever was made of the position or ranking of brokers. We feel this is a significant omission. These top corporations can be presumed to be sophisiticated and knowledgeable about the best performers. According to this survey, benefit managers for the top 500 and the second 500 ranked Johnson & Higgins at the very top in negotiating employe benefit policies. The Fortune 1000 survey has full statistical credibility, unlike the "unexpectedly poor" response of the medium sized company survey.

In the interest of complete reporting, we would hope that you would print the actual ranking of brokers, as given on page 55 of the Fortune 1000 survey.

Kenneth K. Keene
vp and director, Johnson & Higgins, New York, N.Y.

Editor's note: Mr. Keene's point is well taken. We had intended to publish this in the March 10 story he refers to, but because of space limitations a paragraph ended up on the cutting room floor.

While the survey of the top 1000 Fortune companies was not strictly comparable in this regard, Johnson & Higgins led the list of five brokers identified by "weighted" scores of those expressing opinions about the capabilities of the brokers in negotiating employe benefit coverages.

Malpractice captive

To the Editor: We noticed the headline in the may 5 issue of *Business Insurance*, "Six Western Hospitals form Mutual Insurer".

Since we have been involved with this company, I was frankly a little disappointed that Risk Treatment Services were not mentioned in the article.

In fact this hospital group incorporated the first offshore mutual to write medical malpractice insurance in December of 1974 and the company is named "Multihospital Mutual Insurance Ltd." Our initial discussions with the group took place in November of 1973 and not May of 1974 as stated in the article. We had in fact done a considerable amount of work before Warren McVeigh Griffin & Huntington became involved, when that firm was requested by the Hospital Group to review our findings.

I am sure you will be interested to learn that no less than two mutuals and three joint stock captive insurance companies have now been incorporated in Bermuda to write physicians malpractice and hospital malpractice insurance. We are now working with other companies to set up further captives and it is not inconceivable that by the end of 1975 a dozen or more joint stock and mutual insurance companies will have been incorporated in Bermuda to write medical malpractice insurance.

I hope this information is of some interest to you and I might mention in closing that we have on file a favorable tax ruling from the United States Internal Revenue Service.

Michael F. Bott, A.C.I.S.
President, Risk Treatment Services (Bermuda) Ltd., Hamilton, Bermuda.

Winning contestants

To the Editor: *Business Insurance's* third annual Employe Benefits Communication competition has aroused the interest of some of our members. As a consequence of this, we have been requested to try to secure copies of the winning written employe benefit communications. As the Employers Assn. of Detroit serves its members in an industrial relations consultation capacity, innovation in benefits communication is one of our major concerns.

We would very greatly appreciate it if you would be so kind as to forward to us copies of the top three contestants' written communications in the booklets and the personalized correspondence categories. If this is not possible would you instead supply us with the winning contestants' addresses so we could communicate directly with them.

Keith McLeod
Research section, The Employers Assn. of Detroit, Detroit, Mi.

Editor's note: We don't have samples of winning entries available for distribution, but we're happy to supply a list of companies who received awards, their addresses, and a contact at each firm. Any other questions can be directed to Ms. Ronnie Drachman at Business Insurance, *708 Third Ave., New York, N.Y. 10017.*

Disapproves of story

To the Editor: We have no affiliation with either Alexander & Alexander nor Johnson & Higgins other than we accept business from both sources.

I am referring to your front page article of your June 2, 1975 issue and specifically, wish to express my disapproval of your article and most specifically the manner in which you have elected to cover it in your publication.

While I agree that it is news of some type, I believe that you have created a lot of ill will with many of your readers. It is unfortunate enough for one broker to lose an account to another broker without having the news blasted countrywide from coast to coast in a publication which is read by many risk managers. I sincerely believe that a small article on the inside would have done the matter more justice.

Thank you.

Dieter M. Hugel
President, Gulf Coast Marine Inc., New Orleans, La.

Patient no-fault

To the Editor: I noted your item about no fault insurance in the May 19 issue, and this brought up the thought, why not have no fault insurance for malpractice by physicians?

This would make the patient carry his own insurance and the lawyers could get after the insurance companies that have good attorneys of their own, instead of causing the poor doctors all that trouble.

And, while we are thinking of

no fault insurance, why couldn't we have it for a lot of other things, especially along the line of the new laws about responsibility for damages when an article we make breaks and hurts someone? Think of the money we could save on liability insurance.

L.D. Snyder
Treasurer, The Littletown Hardware & Foundry Co. Inc., Littletown, Pa.

Over-zealous

To the Editor: I have been reading *Business Insurance* Magazine since its inception a few years ago. During these few years it has always been my practice to recommend to "non-readers" that they subscribe because of the wide range of subjects covered in each issue.

However, at times it has been apparent that either over-zealous reporters or lack of research, or both, have led to inaccurate or misleading articles. The latest example is the front page article in your May 5, 1975 issue headlined "Claims filed for plant loss may be void in arson case." *The article following really has nothing in its to back-up the heading.* In my estimation, this is poor and misleading reporting.

I urge you to improve upon the accuracy of the magazine's content since I still believe *Business Insurance* can be the premier insurance publication available today for those seeking a broad spectrum of insurance information.

Joseph R. White Jr.
Assistant vp, Alexander & Alexander Inc.,
Greensboro, N.C.

Editor's note: You're right about the headline, Mr. Wright. Our headline writer was referring to policies which voids coverage in the event of fraud by the claimant. This provision could apply to the $62.6 million claim filed in the Shelton, Ct. case, insures hypothesized, because the president of the parent company and nine other persons were charged with arson.

Ethics question

To the Editor: In your May 5, 1975 issue there was an article concerning the wrath of consultant Edgar S. Clark, Vice President and Director of Risk Planning Group, Inc., said wrath being over the fact that allegedly Risk Planning Groug, Inc. had not been informed that the Swedish multinational firm AGA was in turn allegedly not informed that Skandia Insurance Co. was hiring Risk Planning Group, Inc. to do some of the risk management study that Skandia had promised to AGA.

I fully concur with Mr. Clark's feelings.

The ethical standards of the Insurance Consultants' Society does not preclude a risk consultant doing work for an insurance carrier, broker or agent providing that the source information for the work comes from the insured and a copy of the report goes to the insured, necessitating the insured's knowledge that the consultant is indeed working and providing the insured with the results of the consultant's work. According to the concepts of the Insurance Consultants' Society parameters reasonably preclude unethical practice by a consultant.

It strikes me, especially as a past president of the Insurance Consultants' Society, that this however is not the crux of the ethics question.

The Institute of Risk Management Consultants was founded by a group of consultants, many of whom had been members of the Insurance Consultants' Society but who chose to sever their relationship with ICS over the ethical question involved in this situation. Those Insurance Consultants' Society members that left felt that a consultant would be unethical doing work for an insurance company or insurance broker, whether the insured supplied the information or not or received a copy of the report. The essence of their disagreement with the Insurance Consultants' Society was that the taking on of such an assignment by a consultant could give the appearance of impropriety; and inasmuch as ICS did not agree with them, they left and became very instrumental in founding the Institute of Risk Management Concultants.

It strikes me that there is possibly some hypocrisy here inasmuch as the president (and possibly other members) of Risk Planning Group, Inc. is a member of the Institute of Risk Management Consultants. It strikes me that within the concepts of the ethical proclamations of the Institute of Risk Management Consultants, there is here the appearance of impropriety.

I bring this point out only for one reason: when the schism took place in ICS and a number of our most valued members departed because of this ethical question, there was significant publicity in the insurance press of the schism and the reason for the schism. We now find a firm whose president is a distinguished members of the Institute of Risk Management Consultants allegedly doing the very thing that caused what in my mind was a completely unnecessary and harmful schism.

In view of the publicity that the cause of the schism received at the time, I think that it is imperative that the Institute of Risk Management Consultants provide the profession with full disclosure of their point of view of the situation allegedly involving their member's firm.

There is no question in my mind that the risk management consulting fraternity is too small for two societies. Possibly this situation and the final outcome of it can prove useful in convincing the Institute's members that their ethical stand may have been too severe, possibly to the detriment of the public, for a strong risk management consulting society encompassing the whole profession can do so much more for the profession that can two groups who are in reality marching to the same drum.

Leonard J. Silver, CPCU
President, First Insurance Management Co., Wyncote, Pa.

Require help on languages

WASHINGTON—Pension and welfare plan participants who read only a language other than English must receive help in understanding the summary plan description they will receive under the pension reform law.

But the Labor Department modified its proposed rules this month specifying when plan sponsors must supply this aid.

Under the new proposal, help must provided when any plan has 500 or more participants who read only a language other than English. Help must also be provided when 50% or more of the plan participants read a language other than English.

An earlier proposal suggested that help be provided when a majority of the plan participants at a given facility could read only a language other than English.

Where only a small number of participants need help, it was suggested assistance could be in the form of oral counseling and need not involve written material. ■

Keeps wary eye on self-insurance in tight period

By HARRIET KING

SEATTLE—"In a dismal economy, there's a tendency to cut back by self-insuring more. But it's even more important to be prudent with our coverages. We can't leave ourselves open to anything that would blow the bottom line out the window. So when our company officials talk about corporate risk management, they mean it," says Charles K. (Chip) Hoins, risk manager at New England Fish Co., which is, paradoxically, based in the Northwest.

Founded in Gloucester, Mass. in 1868, the company's center of operations gradually shifted to the North Pacific and consequently, corporate offices were moved to Seattle in 1931.

The effects of a tight economy have been felt by seafood processers in general: They've seen profits adversely affected by consumer resistance to high fish prices, caused by declining seafood supplies at the same time demand was slumping because beef and other meats were getting cheaper.

Yet officials at New England Fish Co., an aggressive company with $116 million sales annually, hotly pursued their goals while watchful of that bottom line. "We expanded the living daylights out of ourselves. We wanted to get as big as we could, then go international, which we did two years ago," says Mr. Hoins. NEFCO became the nation's largest independently owned seafood processer.

"But as we expand domestically and into foreign waters, our risks increase; so I not only handle corporate insurance, but also have the managers of employe benefits, property, personnel and real estate development reporting to me."

The company operates 15 fish processing plants in Alaska, a handful in the Pacific Northwest, Canada and Florida, and has operations in the Caribbean, South American, Africa and Europe. Its products, sold under brand names such as Ship Ahoy, and Gold Seal, are sold in the U.S., Western Europe, Canada and Japan.

It also operates a fleet of 1,400 boats manned by nearly 6,000 fishermen and has 2,000 other seasonal employes, worldwide.

To cover the risks of the expanding company, "we did something that's frowned upon. We went out to competitive bids—but very carefully. We did it by asking three brokers to quote—but only on specified markets. If you do a competitive bid wrong, and they all go after the same markets, underwriters feel imposed upon, confused and can come up with big general numbers," says Mr. Hoins. "The way we did it, we didn't mess up the company or the insurance market as a whole." The bids went out over a year ago "because we were afraid that the market would tighten," he added.

The result: $600,000 premium savings. "Before that, the entire account cost $2.4 million for combination insurance premiums and self-assumed retentions," says the risk manager. In addition, the company previously paid over $200,000 a year in brokers' commissions, but now, since the commission is negotiated, NEFCO pays only $100,000. "Any company which spends over $100,000 a year on premiums should negotiate the commission. Otherwise, fees range from the sublime to the ridiculous, because risks change throughout the year," says Mr. Hoins.

Mr. Hoins knows firsthand how to deal with underwriters and brokers. In 1962, he began as a marine surveyor in the Marine Office of America in New York and in 1969 became senior underwriter of Marine Office of Appleton & Cox in Boston. He was soon transferred to MOAC's Seattle office as assistant manager, fell in love with the area and built an A-frame chalet on five acres. Recruited by a "head hunter," he was persuaded to join NEFCO two years ago.

Now, he oversees insured assets of $106 million in the firm's property program. Broken down, it includes $55 million in property, building and equipment worldwide, $25 million in stock insurance, inventories, etc., and $26 million in anticipated profits and overhead expenses, or business interruption..

The loss of profits coverage has paid off," says Mr. Hoins. A fire in 1972 destroyed NEFCO's Oceanside Cannery at Prince Rupert, British Columbia. The lost profits insurance claim was settled in 1974 and the firm recovered $1.01 million, before taxes.

Also insured are the 1,400 fishing boats, for $42 million. This includes general liability covered by a series of excess and umbrella policies for $25 million, including property and indemnity. "We have an amazingly good P&I record, considering we have nearly 6,000 fishermen covered. Yet, losses are infinitesimal compared to the exposure," says Mr. Hoins.

With the hull insurance in mind, New England last year formed its own reinsurance captive in Bermuda, called Grand Banks Insurance Ltd., named after the company's fishing grounds. Mr. Hoins is president and a director.

"Our first fiscal year for the captive ended April 1 and was quite successful. We had a 30% net savings over what we would have paid in a commercial market," says Mr. Hoins.

New England owns outright half of the 1,400 boats, with the re-

mainder owned by independent fishermen who are on contract or charter. Company-owned boats are insured by Aetna Casualty & Surety, "which cedes a substantial portion—$800,000—to our reinsurance captive. We also reinsure through our captive the 700 boats we don't own," says Mr. Hoins. "The captive also accepts reinsurance risks for outside companies and," he adds, "it's a very, very viable insurance company."

Yet, he feels that if a company only has U.S. risks, "The offshore captive is useless. If you have foreign risks like we do, then offshore captives are viable. But the concept of captives is so overblown: everyone thinks a captive is a panacea." The company had $900,000 worth of self-assumed losses last year.

Johnson & Higgins handles the majority of NEFCO's accounts. "But I always want two major brokers on an account; although I want the biggest share of the account with just one broker; otherwise, they would end up playing tennis with each other, arguing over who'd pay," says Mr. Hoins. "This way though, either one could step in and bail out the other. Otherwise, if you're locked in with one broker and another of his major accounts go sour, you could be in trouble if you have a serious loss."

Dougan, Eader and Wheeler, Inc. of Seattle handles the company's employe benefits and "we have our own claims department set up within the personnel section," says Mr. Hoins.

The company imported and exported $9 million worth of goods in 1974. The FDA, however, scrutinizes imports and if it determines that a shipment is not of a quality to be imported, "then this is not a risk covered under a normal ocean contract. For this, we buy rejection coverage," says Mr. Hoins. Reed, Shaw & Stenhouse Ltd. handles the ocean cargo and rejection insurance coverage.

Mr. Hoins notes that the London market previously "had a monopoly and charged exorbitant prices for this coverage. This certainly didn't help our balance of payments. Now, 90% is purchased and underwritten in the U.S. with very, very, substantial savings," he says. Ocean cargo coverage for NEFCO cost $90,000 last year.

NEFCO prices all cargoes it exports CIF—cost, insurance and freight. "But we import on a cost-plus-freight basis and we provide the insurance. This is so we have more control. If we have a loss, we just walk to our broker on the corner and say 'here it is.' If we had CIF and had a rejection loss for imports, then lots of luck would be needed to recover, especially if imported from an underdeveloped country.

"Right away there's difficulty: If the settling agent for that country is in the U.S., then you're off to a good start. If none is based in the U.S., then we have to write a blind letter to a small insurance company and finally get our money six to 10 months later. This hurts cash flow."

The company is insured for all the inherent risks that abound when processing food. Product recall insurance covers the cost of getting the product back from the supermarket and other recall expenses such as advertising. "Unfortunately, insurance doesn't cover loss of brand integrity. A recall can kill a small or medium sized brand. The only way for a manufacturer to recover is to start over with a different brand," says Mr. Hoins.

Product liability insurance covers potential problems like botulism. "It's virtually impossible to get botulism from a professionally manufactured product. The risks are not there that are present in home canning," says Mr. Hoins. "And if you did create conditions for botulism to grow, even under the wildest circumstances, the can will explode. Products are retorted (heated) at 242 degrees Fahrenheit. Our scientists determine how long it takes to make the product safe—and then as a safety factor, we double that time," he says.

When consumers complain, for whatever reason, "I want to see the letters first," says Mr. Hoins. "If we have a potentially real problem, we can then take care of it right away. About 999 letters out of 1,000 are of a non-serious nature—the can won't open, the fish doesn't look right, etc. But everyone gets a reply, and we'll replace the can or do whatever is necessary."

Once a consumer contended that his lower digestive tract had been damaged by a harmless crystal that looks like glass and sometimes forms when seafood is being processed. The claim did not worry Mr. Hoins long: "The crystal is harmless and dissolves in vinegar and liquids. It's impossible to be hurt by it," he says.

An umbrella policy covers the product liability claims. "Insurance men often wonder what their liability claims should be. My policy is not to buy what you think you need now, but buy for three to four years hence when claims will be settled. By the time a 1972 claim is settled in 1976 or 1975, settlement costs could be much higher than anticipated since courts have gone bananas lately on consumer complaints," says Mr. Hoins. In the last 2 years, NEFCO's highest claim settlement was $79; the average is $25.

It's important to buy smart, too, he says. The year before he joined NEFCO, "A broker sold our company on a depressed standard for casualty, a bad thing to do, at $285,000. By the time the numbers finally came in, losses were more like $350,000 to $400,000. We really got clobbered on retro and audit," says the risk manager. ■

Georgia acquisition

Speir Insurance Agency Inc., based in Forest Park, Ga., acquired the insurance business of Grayson Corporate Insurance Management Co., Atlanta, as well as the insurance division of Berger & Co., Atlanta.

Federal no-fault seen lowering rates by 12%

WASHINGTON—State Farm Mutual Insurance Co. said it could reduce its motor vehicle insurance liability rates by 12% nationwide under the minimum standards proposed by S. 354, the Senate's no-fault auto insurance bill.

The figures were released by Sen. Frank E. Moss (D-Ut.), a principal sponsor of the bill, who had asked State Farm to price out the cost savings of S. 354.

Sen. Moss said the State Farm figures were in sharp contrast to claims by Allstate Insurance Co. that it would have to raise the cost of its insurance by 17% if S. 354 became law.

The State Farm cost estimates are based on the minimum benefit plan called for by S. 354, including unlimited medical expense benefits, $1,000 of funeral expense, $15,000 of wage loss, and $5,000 survivors benefits.

The percentage changes are relative to State Farm's current average rates, as of Dec. 31, 1974, for a typical policy holder for bodily injury liability, uninsured motorist, and medical payments coverages.

Sen. Moss said a change in the proposed legislation accounted for some of the difference between the State Farm and Allstate figures.

Allstate's projections assumed that most cost savings would go to commercial vehicles because of the subrogation provisions of the bill as passed by the Senate last year.

The bill now being considered by the Senate, which State Farm used for the study, provides for subrogation between commercial vehicles and private passenger cars, so that both classes of vehicle owners can realize savings, the senator said.

State Farm said the biggest estimated savings on premium costs would be in Texas, where the company projected that premiums for all types of vehicles might drop as much as 28%. Private passenger car premiums could drop by 26%, the company said.

Other states with big potential premium cuts for State Farm policies would be Alabama, 20%; Arizona, 20%; District of Columbia, 23%; Louisiana, 20%; and Maryland, 19%.

Some states, however, would face increases in the cost for motor vehicle insurance from State Farm under S. 354.

The biggest potential boost would be in Massachusetts, which already has a no-fault statute, although it does not meet the standards that would be imposed by S. 354.

Premiums on State Farm coverage for all types of vehicles were projected to increase 12% in Massachusetts under S. 354, State Farm said. Private passenger car premiums would be up 15%.

Only three other states—Florida, New Jersey, and New York—would face price increases for State Farm motor vehicle coverage under S. 354, the company said.

Sen. Warren O. Magnuson (D-Wa.), chairman of the Senate Commerce Committee and a sponsor of S. 354, said this month the federal government stood to save about $7.4 million a year under S. 354.

The Postal Service, Sen. Magnuson said, would save $3 million to $4 million a year. The Department of Justice said the federal government would save more than $4.4 million in tort claims and legal costs under S. 354. ■

Salvage integration

Underwriters Salvage Co. of New York was merged into The Underwriters Salvage Co. of Chicago, forming an integrated salvage operation in 28 established locations and additional satellite functions across the U.S., said Harold J. Junge, chairman-chief executive officer of the combined organization. Both operations were founded (New York, 1893, and Chicago, 1905) by insurance companies to provide salvage services for goods damaged by an insured peril. The two organizations now comprise damage appraisal matters for 387 insurance companies.

"We were discussing ways to prevent losses and someone asked if our insurance company belongs to the Factory Mutual System."

Factory Mutual System

Allendale Insurance
Arkwright-Boston Insurance
Philadelphia Manufacturers Insurance
Protection Mutual Insurance
System Associates
Factory Mutual International
FM Engineering and Research

Rent/lease firms back Senate's no-fault bill

WASHINGTON—The Senate's no-fault, minimum standards auto insurance bill (S. 354) for bodily injury coverage has received solid support from the Car and Truck Renting and Leasing Assn. (CATRALA).

In written testimony filed with the Senate Commerce Committee, J. Michael Payne, executive director of CATRALA, said, "As consumers of insurance, we are interested in seeing that we get the best possible coverage for the premium dollar.

"Our present system," he said, "where less than half the premium is returned to the consumer is simply not a good buy. We know that we can receive a better return on our dollar from almost any other type of insurance."

He said S. 354 would provide: Uniformity in that the states for the first time will share a common philosophy and language; benefits to the consumer by the elimination of waste; the elimination of delay in receiving payments, and the reduction of costs while increasing benefits.

Mr. Payne criticized the position taken by Transportation Secretary William Coleman last month that the change to no-fault be at the state level where "instructive experimentation" could be undertaken.

"What experimentation is needed?" he asked. "S. 354 allows those states which have already enacted no-fault legislation four more years to experiment and bring their laws in line with the minimum standards set by S. 354.

"With the passage of S. 354," he said, "all states continue to be free to experiement in a wide variety of other areas. They include: Property loss; the limits on work loss benefits; deductibles and waiting periods; replacement service loss benefits; survivor's loss; restrictions on tort lawsuits; plans to assure the availability of required coverages; supplemental liability insurance; no-fault pain and suffering insurance; procedures for qualifying as a self-insurer; cancellation and non-renewal of insurance; exemption of no-fault benefits from garnishment, etc.; and non-reimbursable tort fines."

He explained there was little room for experimentation in three specific areas: Allowable expense, work loss, and tort liability.

"Without an unlimited allowable expense, those people who are catastrophically injured will continue to be uncompensated," he said. "In the absence of unlimited allowable expenses, the severely injured person will not only continue to be denied compensation for his economic loss, but he will not be given the best opportunity for a full physical recovery."

The bill's $15,000 minimum wage loss coverage standard is not an exorbitant figure "in today's inflationary society," he said.

"In S. 354 the states are allowed to increase this amount upwards if they desire, or an individual may further protect one's wage loss by buying optional insurance. Is there a need for 'instructive experimentation' in this area? We say no." And a tight tort threshold, he said, is an absolute necessity when one desires cost savings.

"In states where access to the courts is only slightly restricted," he said, people are continuing to abuse the system with costly court action. Thus the system is not working to the full benefit of the consumer.

"If one agrees that the goal of S. 354, and no-fault, is to provide more benefits at reduced costs, then further 'instructive experimentation' with tort liability is surely not needed." ■

Petrol firms in Oklahoma now serviced by exchange

DALLAS—The first reciprocal insurance company to be formed in the oil and gas industry has expanded its services into Oklahoma.

United General Insurance Exchange, previously operating only in Texas and owned by its member oil well service contractors, boasts average savings of about 40% on high risk coverage for mobil oil rigs, according to Kenneth Callaway Sr. president of the Exchange.

One of 47 reciprocals operating in the U.S., the Exchange was formed in December 1973 in Texas by a group of contractors who had trouble getting reasonable insurance coverage. The group sought to overcome problems of "extremely high insurance costs, slow payment on claims, policy cancellations on 10 days' notice and low rig appraisals," Mr. Callaway explained.

He credits the Exchange's success in Texas in meeting its objectives with the decision to expand into Oklahoma.

"We have been able to reduce insurance costs for our members from 10% to 65%," Mr. Callaway said, adding that the average was 40%. Claims are paid "within 48 hours of receipt of bills from the repairer and a representative is on the site within 10 hours of notification," he said. "This contrasts with payment delays of anywhere from 60 days to one year."

A profit of 11.6% was distributed to member contractors at the end of the first year. The combined loss and expense ratio was 75.1%, with a 24.9% underwriting profit and investment income for the year, Mr. Callaway said.

Mr. Callaway said the average growth of the Exchange in 1974 was 70% and the number of insured rigs increased 64%, with their values up 96%. The number of member contractors in Texas is more than 75, he said.

Day to day management is provided by United General Insurance Agency, based here. ■

See little incentive for hospitals to cut costs

ATLANTA—An estimated $750 billion could be saved each year in the U.S. if hospitals were financially "rewarded" for increasing efficiency and reducing costs, according to Health & Institutional Consultants (HIC) based here.

Hospitals have "almost no incentive to save money," states HIC in this month's newsletter, adding that they "are victims of a system that actually pays them to be inefficient."

HIC suggests a system of "shared savings" to give both hospitals and insurance companies an incentive. The firm estimates that an average savings potential for a medium-to-large hospital would be $170,000 to $240,000 a year.

If extended to the 3,700 hospitals with more than 100 beds in the nation, savings could reach $750 billion, HIC stated.

The greatest hindrance to efficient hospital operations, according to HIC, is the third party reimbursement system in which hospital bills are paid by the patient's insurance company.

"**Hospitals are** reimbursed for these costs after they occur, instead of agreeing on a fee in advance," the firm said. "This creates an open invitation to inefficiency and higher costs on the part of hospitals."

Physicians are handed some of the blame too because of their pressure on hospital administrators for the latest equipment. "Many cost problems can be traced to the fact that physicians have no direct interest in the finances or cost effectiveness of the institutions in which they practice," HIC continued.

"If a hospital's costs go up, it can usually pass most of the extra expense along to the government (through Medicare and Medicaid) and insurance companies. However, if a hospital administrator saves money through greater efficiency, his hospital is penalized by having to refund most of the savings to the government and insurance companies," according to HIC.

"Typically, a hospital keeps only 15 to 20 cents out of every dollar it saves and must cover only 15 to 20 cents of each additional dollar it spends," HIC stated.

"Obviously, there is little incentive for hospitals to cut costs or increase efficiency," HIC reported. ■

Warn against over-selling safety service

CHICAGO—Insurers were urged not to over-promote their safety services in order to stimulate business because it could create an impression that such services would guarantee absolute safety at an insured's plant.

Speakers at an American Insurance Assn. Engineering and Safety Service conference also suggested that insurers take special efforts to encourage their clients to take recommendations of safety engineers and to keep insureds from being lulled into complacency by a false sense of complete security.

David H. Elliott, counsel for Aetna Life & Casualty Co., and James E. Reik, assistant general counsel, Hartford Insurance Group, both commented that the courts have not ruled unfavorably to insurers since 1964 unless they are directly responsible for the increased danger of a facility or employe injuries as a result of relying on an engineer's information.

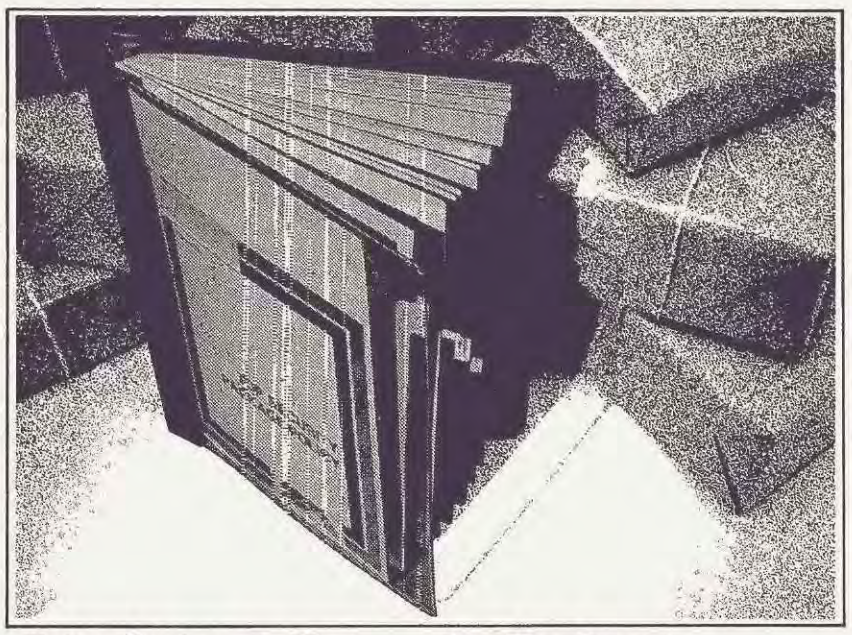
Mr. Elliott referred to *Nelson* vs. *Union Wire Rope Corp.*, the 1964 case, in which the Illinois Supreme Court held the insurer liable for negligent inspections even though it had not increased the danger nor been relied upon by the plaintiff. But in the last decade nothing similar has been ruled, he said.

Legislatures in more than 40 states have given immunity from liability to insurers in workers' compensation cases, although they still are liable in other cases. ■

Introducing the Unpackaged Package: the Top Security Policy

Z-A's Reason Why

The Top Security policy unpackages the package policy by basing the price of coverage in many states on the individual characteristics of each risk rather than applying an across the board package policy credit, increasing coverage flexibility, and providing extended protection.



Z-A calls the new Top Security policy the unpackaged package. Why unpackaged?

Unpackaged – because instead of a flat package credit, in many states the new Top Security policy provides pricing modifications based on the individual characteristics of the risk. As a result, for the risk that deserves it, the Top Security policy often offers savings that exceed those for regular package policies. On the other hand, isn't it good to know that Top Security protection can be made available at an appropriate price to a greater number of risks because of this pricing flexibility?

Unpackaged – because, in many states, only a single mandatory coverage is required. That's flexibility.

Unpackaged – because many coverages are built-in, eliminating the need for those bundles of endorsements. That's what Z-A calls extended protection. For example, replacement cost for buildings and/or personal property is granted as an option at the time of loss.

Available with the Top Security policy is Z-A's Extended Earnings and Expense form which eliminates the coinsurance clause and provides a single limit for both gross earnings and extra expense losses.

And you'll find this feature of interest: agreed amount coverage – available under certain conditions at no additional cost in many states – which eliminates the coinsurance clause and avoids post-claim haggling over values.

Also available with the Top Security policy is Z-A's Inflation-Check coverage to keep values of commercial buildings and stock abreast of inflation.

For many reasons, the Top Security policy is a "special delivery" package, when compared to the standard "bulk-rate" package. Write for Z-A's brochure: "Introducing the Top Security Policy: the Unpackaged Package" to learn more.

ZURICH-AMERICAN INSURANCE COMPANIES

Available from the American Guarantee and Liability Insurance Company in most states and pending in others. Check with your local Z-A agent or broker for availability. (Not available in Hawaii, Texas, Alaska, North Carolina and Mississippi.)

Z-A's REASON WHY

Zurich-American Insurance Companies
Communications Department/111 West Jackson Boulevard/Chicago, Illinois 60604

Yes, I think the Top Security approach to multi-peril insurance is worth learning more about. Send me a copy of "Introducing the Top Security Policy: the Unpackaged Package."

Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

BI-03B-06b

business insurance

PERSPECTIVE

ERISA fiduciary responsibility requirements will prove sound

"The prophets of doom are crying that the legal standards imposed on fiduciaries by the act are too onerous, greatly increasing liability and costs for those covered, and bemoaning the uncertainties engendered by the act."

William J. Kilberg

By WILLIAM J. KILBERG
Solicitor of Labor, Department of Labor, Washington, D.C.

SEVEN YEARS AGO, the Section of Corporation, Banking and Business Law held its famous institute on the implications of the *Bar Chris* decision on the practice of securities law. *Bar Chris* was the landmark case defining the scope of Section 11 of the Securities Act of 1933. It examined the liabilities of officers and directors of an issuer of securities, the underwriters of the issue and the accountants and attorneys involved in the issue, where the securities were sold by means of a false and misleading prospectus.

At the time that the institute was held, many securities firms, and the attorneys who advised them, considered the *Bar Chris* decision to be a revolutionary change in securities law, one which would tremendously increase the liabilities for those who engaged in the issuance of securities and for those who advised them, and which would greatly increase the costs of doing business. Others believed that the decision was merely an expression of pre-existing law, as embodied in the Securities Act of 1933, that the opinion was a proper one, and that parties involved in an issuance of securities who had been exercising proper due diligence prior to the case would not encounter any significant increase in either liability or costs.

Now the ABA institute on fiduciary responsibility is considering a topic with even more widespread implications than those considered by the *Bar Chris* institute—namely fiduciary responsibility under the Employe Retirement Income Security Act of 1974. Even more than in *Bar Chris*, the prophets of doom are crying that the legal standards imposed on fiduciaries by the act are too onerous, greatly increasing liability and costs for those covered, and bemoaning the uncertainties engendered by various sections of the act. The ABA institute will perform the same function as the *Bar Chris* Institute did: shed light on the topic, where formerly there was heat. I expect that, when people look at ERISA seven years from now, they will be able to say, as they can say with respect to the standards imposed in the securities field by *Bar Chris*, that the requirements of the new law have proved to be reasonable, the increase in liability and costs for those covered has not been onerous, and the upgrading of standards which resulted was both proper and necessary.

The Department of Labor is acutely aware of the uncertainty which ERISA has created in various areas. It must be expected that any law this complex, which was the result of compromises between and among four different congressional committees, and which, despite its long gestation, was effectively born during one long hot Washington summer, would contain a goodly share of anomalies, ambiguities and inconsistencies. To the maximum extent possible, we hope to utilize our powers under the act to clarify the law and reduce the uncertainties.

ERISA can be described very differently depending on the nature of one's interest. The plan administrator may well focus on the record-keeping aspects of the new law, including the reporting and disclosure provisions, the employer may be intensely concerned about the funding requirements, the participant most interested in the minimum participation and vesting rules.

But there is a university of interest in one aspect of ERISA: the fiduciary responsibility provisions impact to some degree on virtually everyone who has any concern with, interest in, or relationship to employe benefit plans. In fact, it is hard to overstate the wide swath cut by these fiduciary rules. Private employe benefit plans control assets that have an enormous aggregate value. They deal regularly in the securities and real estate markets and are volume purchasers of insurance and major customers of banks.

They also procure and provide services of all kinds: they are in constant need of professional services, from plan consultants, contract administrators, investment advisers, insurance agents and brokers, securities brokers and dealers, lawyers, actuaries, accountants, and, like other businesses, they deal regularly with office goods suppliers, purchase and lease data processing equipment, and so forth. Some plans supply services, such as computer time and staff assistance, to other plans, to contributing employers and to sponsoring unions.

These facts may not be surprising news. But to note them is essential to an understanding of Congress' rationale in constructing the fiduciary provisions the way it did and they are a key to understanding both the perspective and the role of the Labor Department regarding these provisions.

Insofar as it was concerned with social welfare objectives (as opposed to revenue concerns), Congress seems to have had two major goals in mind with ERISA.

Up front, the legislators were responding

Continued on following page

Product liability suits easier for plaintiff now

By LYMAN J. BALDWIN JR.
Vice President
The Hartford Insurance Group

WITH THE POSSIBLE exception of the Great Depression, the American marketplace has been altered more radically by social and legal developments during the past decade than at any time since the Industrial Revolution.

One of the most powerful instruments of change is the tort system of legal liability, which is itself a by-product of the Industrial Revolution. Under the early tort system, a person who caused injury to another was not normally held liable unless it could be proved that he acted negligently or was somehow at fault. In practice, this freed factory owners from responsibility for much of the accidental death and destruction brought on by introduction of heavy machinery and mass production.

In recent years, however, there has been a dramatic reduction in the price that society is willing to pay for industrial progress. Tough new standards have been mandated for occupational health and safety, the environment, and consumer protection. Workers' compensation laws in many states have been upgraded to indemnify more fully the victims of work-related injury and disease. The tort system itself has been reshaped by a series of landmark court decisions over the past dozen years. This, in turn, has exposed manufacturers to a startling increase in the number and severity of personal injury suits, particularly in the area of products liability.

At one time the plaintiff in a products liability suit could collect damages only if he succeeded in proving negligence or a breach of warranty. Increasingly, however, manufacturers have been held strictly liable for damage resulting from the use or even misuse of defective products. The user is simply required to establish that the product was in some way defective and that this was the cause of injury.

The doctrine of strict liability has been successfully applied against subcontractors, assemblers, distributors, retailers, building developers, even members of a manufacturers association. The product itself may be free of manufacturing defects and yet be ruled hazardous because of improper design, labeling, or packaging. In some cases, misleading advertising claims and exaggerated statements by salesmen or service personnel have resulted in successful product liability suits against the manufacturer.

Estimates of the total number of products liability suits filed last year run as high as 600,000, which if accurate would rival auto accident cases as a source of civil litigation. According to the Defense Research Institute, the average award in U.S. courts increased from $11,644 in 1965 to $79,940 in 1973. During roughly the same period, the percentage of cases decided in favor of the plaintiff rose from 49% to 52% and will undoubtedly climb further as courts continue to expand the grounds for recovery of damages.

The average award in U.S. courts for product liability suits has increased from $11,644 in 1965 to $79,940 in 1973.

Illustration courtesy of M&M Protection consultants

The rising volume of products liability cases, combined with the trend toward ever-higher settlements, has contributed to the huge losses of casualty insurers already hard hit by inflation and declining surplus. The remedy thus far has included higher premiums and deductibles, self-insurance, and a general tightening of underwriting and loss control standards. The immediate outlook is for more of the same, with the possibility that certain small manufacturers may eventually be forced out of business altogether because of skyrocketing insurance costs and stringent product safety standards.

Yet to be determined is the full impact of the Consumer Product Safety Act, which has accurately been described as one of the broadest pieces of legislation ever enacted by Congress. The new law created an independent federal agency with unprecedented authority to protect the public from consumer products which present an "unreasonable risk of injury" to users. The Consumer Product Safety Commission is empowered to establish and enforce comprehensive safety standards governing more than 10,000 different products. Manufacturers are required to report substantial product hazards within 24 hours of discovery, and if necessary the Commission can order the recall or outright ban of unsafe products from the marketplace.

Whether the new legislation will succeed in reducing the number of products liability claims is far from certain. Improved design, testing, and quality control standards will undoubtedly result in safer products on the whole. But the resulting publicity about hazardous products and product recalls may also stimulate greater public awareness of

Continued on following page

business insurance PERSPECTIVE

ERISA . . .

Continued from preceding page
to a long-felt need for comprehensive, reform legislation to protect the interests of employes in the pension and welfare plans and programs established for their benefit by employers, labor unions or both.

Another goal, much less publicized, but of great importance, was to maintain a climate in which the plans themselves might flourish. Obviously, the two goals are both mutually reinforcing and inconsistent at the same time, and that tension provides another key to the perspective and role of the Labor Department.

To accomplish the first goal—protection of employes' interests in their benefit plans—Congress employed three mechanisms.

The first was the establishment of a series of minimum standards for plans. The best examples are the minimum participation and vesting rules, and the minimum funding requirements. Several aspects of this mechanism are noteworthy. First, these minimum standards all relate to retirement plans. Second, they relate to matters which can be fixed and determined in documents establishing or amending a plan. They are matters which are finite and may be quantified: so many years of covered service to attain a nonforfeitable right to accrued benefits in a retirement plan; so many dollars necessary to fund to enable the plan to pay what it owes when retirement benefits come due. Third, these quantifiable, minimum standards are, under ERISA, the primary concern of the Internal Revenue Service.

Congress might have legislated no further, at least as regards retirement plans. However, establishing critical minimum standards to help make certain that the promise of a retirement benefit would not be lost due to participation or vesting rules that are unduly harsh, or because of a failure to fund sufficiently, would not have accomplished Congress' first goal. Of course, the minimum participation, vesting and funding standards are meaningless in the context of welfare plans. More significantly, experience had shown that something more was necessary for all plans, whether welfare or retirement: rules of conduct were necessary to set limitations on the dealings of persons who controlled or had influence over plan management and plan assets, and, to a lesser extent, on transactions between plans and persons having certain relationships with the plans.

Reporting and disclosure had been tried, since 1958, under the Welfare and Pension Plans Disclosure Act. By 1974, there had been over 15 years of experience with the WPPDA, and two things seemed evident. Filings with the government and disclosures to plan participants were helpful in shedding light on some types of errors and certain, relatively unsophisticated, kinds of sharp dealings. The filings and disclosures had also been instrumental in uncovering some outright frauds and embezzlements.

But all through those years, the Labor Department, which administered the WPPDA, and its members of Congress themselves, were constantly on the receiving end of complaints relating to matters which either didn't show up in the relatively simple reports, or, even when they did, were not actionable under federal law because they related to fiduciary conduct and there were no federal fiduciary standards.

So, in addition to beefing up the reporting and disclosure provisions, Congress added a second new mechanism—the fiduciary rules. Unlike the minimum participation, vesting and funding standards for plan performance, the fiduciary provisions deal with human performance. For the most part, these rules are not quantifiable and will not be directly reflected in plan documents.

Finally, Congress added the third mechanism intended to achieve the goal of protection of employes interested—enforcement provisions. As you all know, ERISA provides for enforcement of its substantive provisions in the federal courts by the government and by plan participants, beneficiaries and fiduciaries.

The ways in which Congress sought to achieve its second goal is another complete discussion in itself. Suffice it to say for the moment that heavy reliance was placed on the Labor Department and the Internal Revenue Service to administer the new law in a manner which would foster and maintain a healthy environment for private employe benefit plans. Right now, I'd like to focus on the fiduciary provisions of Title I, Part 4 as we in the Labor Department see them. I could probably summarize our view in two words. The words would be "healthy respect," but let me elaborate.

The heart of these provisions consists of three parts. First, there are the general fiduciary responsibility provisions, including the exclusive purpose rule and the prudence requirement, the diversification rules and the injunction to follow the directions of plan instruments.

Second, are the prophylactic prohibited transaction restrictions: the ones against party in interest dealings and the ones against self-dealing.

Third, there are statutory exemptions from the restrictions of the prohibited transactions, and the authority in the Labor Department and the Internal Revenue Service to consider additional, administrative exemptions and to grant exemptions if certain statutory conditions are met.

Supporting these keystones are a series of ancillary provisions. Chief among them are the requirement that plan assets be held in trust, the rules on co-fiduciary and co-trustee responsibility and liability, and the provision which renders exculpatory clauses null and void.

Part 4 also contains certain provisions which have independent operation, such as the five-year prohibition against employment with a plan by a person convicted of one of a series of listed crimes, and the bonding requirement. Finally, there are the structural provisions, requiring, among other things, that the plan be described in a written instrument, that there be a named fiduciary, that the plan instrument provide a procedure for establishing and carrying out a funding policy, and so forth.

The cement that binds the fiduciary provisions together consists of two critical definitions: fiduciary and party in interest, and, of course, the general rule of fiduciary liability in Section 409 of the pension reform law.

It is said that every individual is the product of all of his or her experiences. The same thing might be said of institutions, and the experiences of the Labor Department under the Welfare and Pension Plans Disclosure Act and in connection with certain other laws and our involvement with the Congress over an eight-year period as comprehensive reform legislation was being developed have contributed to shaping our perspective. Most important, of course, have been our experiences over the past nine months, since Labor Day, 1974, when President Ford signed ERISA into law.

As I mentioned, during our administration of the WPPDA, we often experienced the frustrations of learning about abuses taking place in connection with employe benefit plan administration and fund management, and being powerless to take any action. We have always recognized that most plans are reasonably well managed, that most funds are prudently invested, and that most people involved with plans, whether managing them or dealing with them, are both honest and conscientious. And yet the number of plans is exceedingly large, over a million and three-quarters. That's a very big universe and it has its share of both cupidity and ignorance. Like other industries, it also has its share of traditions, of methodology; its own gestalt. This over-all ambiance of the pension industry needs to be examined if one is to fully understand the basis for the fiduciary provisions.

Before ERISA, there were state prudent man rules, there were state diversification

continued on page 30

Liability . . .

Continued from preceding page
the problem. Thus it is quite conceivable that the volume of consumer lawsuits may actually increase despite substantial improvements in product safety.

Anticipating the worst, a handful of observers are predicting that the tort system may eventually have to be abandoned in order to avert a serious market dislocation. One proposal discussed by Jeffrey O'Connell, law professor at the University of Illinois, is to establish a public compensation program under the aegis of the Social Security system to indemnify victims of product-related injury for lost wages and medical expenses. However, Prof. O'Connell concludes that the cost at this point would be unrealistically high and suggests that a system of private no-fault coverage might be a better alternative.

There is ample precedent for this kind of approach, beginning with the first workers' compensation laws passed in 1911. Until then injured employes were required to establish negligence in order to collect damages. The high toll of industrial accidents during the late 19th century and the resulting backlog of court cases led finally to development of a no-fault system financed by employers as a normal cost of production.

No-fault auto insurance is a much more recent innovation, although the concept as such dates back more than fifty years and was actually implemented outside the United States as early as 1946. Prof. O'Connell was among the first in this country to give serious consideration to the idea. His 1965 book on the subject, co-authored with Robert Keeton of the Harvard Law School, was instrumental in the subsequent passage of no-fault laws in 23 states.

No-fault guarantees that the victim of an accident will collect for his out-of-pocket loss (medical bills, lost wages) but in theory bars compensation for such intangible losses as pain and suffering, disfigurement, and disability. Because there is no determination of fault, the accident victim need not gamble on the outcome of a judicial process which is both costly and cumbersome. Furthermore, the savings in legal and claim adjustment expenses results in a higher net recovery of benefits.

At first glance, no-fault would seem to offer an attractive solution to the products liability dilemma. Lawsuits involving defective products tend to be even more complex and liability far more difficult to determine than a typical auto accident case. Prof. O'Connell points out that the plaintiff must "run the gamut of countless legal and practical pitfalls" with no ultimate certainty that he will be justly compensated for his loss. At the same time, the casualty insurer is faced with substantial loss adjustment expenses regardless of whether the product is finally judged defective.

But would the savings in legal and claim expenses outweigh the added cost of compensating accident victims for out-of-pocket loss regardless of fault? Exposure to products liability varies widely from manufacturer to manufacturer, and in many cases a pure no-fault system would clearly be too burdensome. Prof. O'Connell readily acknowledges as much and proposes a system of elective no-fault which allows the manufacturer himself to decide what risks, if any, would be covered. Where there is a prior guarantee of no-fault payment for certain types of injury, claims based on fault or product defect would be precluded.

How would claims be handled in which the product was only incidentally involved in the injury? Under the tort system, the defectiveness of a product is only part of the legal groundwork which must be laid in order to recover damages. The plaintiff also must show that the product was in fact the cause of injury. This latter requirement does not enter into consideration when payment is made on the basis of no-fault. Yet it obviously affects the final cost because of the large number of product-related injuries which are not actually caused by the product itself.

If a person falls off a bicycle, is he entitled to compensation from the manufacturer under no-fault? Does falling down the stairs or walking into a door constitute grounds for no-fault recovery from a building contractor? Is a furniture maker liable for injuries sustained by a small child or an elderly person who falls out of bed?

Each of these examples involves a product which is statistically among the nation's half-dozen most hazardous as reported by the Consumer Product Safety Commission. But it is hard to imagine a manufacturer voluntarily assuming liability for the tens of thousands of injuries which arise from such circumstances every year. In the absence of a mechanism for determining cause, there is every indication that elective no-fault would be least applied to those products which are most inherently dangerous. And if that is the case, what impact would no-fault have on the products liability problem to make any real difference?

Another question worth considering—indeed, perhaps the most important—is whether no-fault would ultimately serve the best interests of those who are victimized by unsafe products.

Although no-fault may distribute more benefits to greater numbers of claimants, it necessarily denies full recovery for pain and suffering to accident victims who might be entitled to it under the tort system. Unless a threshold is established for the recovery of general damages, a person could suffer a permanent total disability through the willful negligence of a manufacturer and yet be barred from collecting damages beyond out-of-pocket loss for medical bills and lost earnings. Existing no-fault auto laws allow recovery of tort damages if medical costs exceed a threshold amount. However, thresholds are contrary to the no-fault principle and could conceivably push costs well beyond existing levels.

Under the elective no-fault system proposed by Prof. O'Connell, the decision to allow or disallow tort claims is left to the sole discretion of the manufacturer. In practice, this could mean that a consumer injured by Brand X would be entitled to damages for pain and suffering but not if he were injured by Brand Y. Complicating the situation is the fact that a consumer who is arbitrarily denied full recovery from Brand Y's manufacturer might then turn around and file suit against a distributor or retailer who shares liability but may not be similarly protected by no-fault.

The problems which would be encountered under no-fault are not necessarily insurmountable and may in fact prove less troublesome than the well-documented difficulties of the system it was intended to replace. Until more concrete proposals are forthcoming, any judgment must be limited only to theoretical considerations.

Much ultimately will depend on what happens to the whole notion of accident compensation based on fault. The weight of recent legal and social opinion in this country has placed growing strain on the tort system. If present trends continue, the system may not be salvagable in any form, and some program of public or private no-fault compensation may become virtually inevitable. ■

Lyman J. Baldwin, Jr., is vp of property and casualty underwriting at The Hartford Insurance Group. Before joining The Hartford in 1973, Mr. Baldwin served successively as president of the California Union Insurance Co., a surplus lines subsidiary of INA, and the Martin Insurance Co., a surplus lines insurer based in Los Angeles.

C&I's Business Interruption Insurance.

It makes up for lost time.

Lost time is what no company can afford in these *tough* times.

Business is too hard to find. Competition is too fierce. Profit margins are too narrow. And no executive who wants to stay in business can afford to lose even one day's earnings.

That's why Commerce & Industry's Business Interruption Insurance is so important today.

It enables executives to maintain earnings in case fire—or other insured peril—shuts down their operations. It also helps them to cope with on-going expenses such as salaries for key personnel. And it covers certain expediting expenses thus giving them a better chance to re-establish their company's position in the market.

Direct property damage insurance doesn't cover these areas, of course.

But C&I's Business Interruption does.

It does the job on a *"reporting form basis,"* so that within policy limits both coverage *and premium* adjust to the ups and downs of the particular insured's operation. And that's important in today's rapidly changing economy.

C&I has developed individualized policies for manufacturers, wholesalers, and retailers—each policy geared to the cash flow pattern of that business. And to its operational quirks.

All of these policies have special features and advantages you should know about. *One* of them is just right for your needs.

So mail the coupon today. We'll send you the facts.

We welcome inquiries from any licensed agent or broker. You don't have to be a regular producer to place business with C&I.

Commerce and Industry Insurance Company

Dept. BI065, 102 Maiden Lane
New York, NY 10005

Please send me more information about your *Business Interruption Coverage.*

Name _____ (PLEASE PRINT)

Title _____ Phone _____

Company _____

Address _____

City _____

State _____ Zip _____

A Member Company of American International Group

ERISA requirements . . .

continued from page 28

requirements, there were both state and federal criminal laws respecting frauds, embezzlement and kickbacks in connection with employe benefit plans, but there were also certain ways of doing things and thinking about things which constantly operated to reduce or nullify the protections offered by these laws. For example, exculpatory clauses were common and were frequently held to be valid by the courts. Now, the creator of a private trust for the benefit of a spouse and children may wish to appoint as trustee a friend, someone who knows the family well, may wish to limit the extent of the trustee's liability through use of an exculpatory clause, and there may be persuasive social policy ends served by sustaining the validity of exculpatory in that context.

But arguments favoring the exculpatory clause simply do not hold up when the context is the employe benefit plan, where the beneficiaries are not a few relatives but rather a thousand or a hundred thousand employes and the assets may top the billion dollar mark.

As another example, the exclusive purpose rule—deemed so important by Congress that it was inserted twice in Part 4—is often ignored. Plan sponsors, large and small, management and labor, often used plan assets for their own purposes. They borrowed them; lent them to individual and corporate friends and associates; pledged them as collateral; used them for corporate and personal financing. Sometimes, the funds were returned to the plan with interest, but often they were not. Sometimes, plan funds were lost when an employer went into bankruptcy and the plan assets were subject to creditors' claims. So Congress said that plan assets must be held in trust, must never inure to benefit any employer and must be used exclusively for the purpose of providing benefits and defraying reasonable administrative expenses. Then, to be sure the message got across, the exclusive purpose rule was repeated as the first of the general fiduciary responsibility rules.

The requirement that a fiduciary discharge his or her duties in a prudent fashion and the diversification requirement both were intended to insert a federal rule where numerous, sometimes inconsistent, state laws had been. There was no intent, as far as I know, to require a higher degree of prudence than has been generally required under state trust laws. The one clear direction Congress gave is found in the conference report, where we find this sentence.

"The conferees expect that the courts will interpret this prudent man rule (and the other fiduciary standards) bearing in mind the special nature and purpose of employe benefit plans." If Congress expects the courts to interpret the prudence requirement in this way, you can rest assured that the Labor Department will do the same thing.

We think that a great deal of apprehension which is being expressed in terms of the prudence standard is really a reflection of several other elements: the elimination of exculpatory clauses; the requirement that plan documents must be followed by fiduciaries (and thus be relied upon by fiduciaries), but only to the extent they are not inconsistent with the requirements of Title I, including, of course, the fiduciary provisions; and the enforcement rights given to participants, beneficiaries and fiduciaries in Part 5 of Title I.

While there is no question that many plan fiduciaries will have to upgrade their operating procedures to comply with ERISA's prudence requirement, it is not because that rule is substantially more strict than the common law requirements, it is because the fidcuiaries were not meeting the common law standard to begin with.

The prohibited transaction rules have been a subject of great debate and were strongly criticized during the recent House Labor Standards Subcommittee oversight hearings. As you know, the conferees had before them a very clear choice regarding the party in interest prohibited transaction rules. The House bill contained some strictures against fiduciaries dealing with parties in interest, but such dealings were permissible if the plan paid not more than, or received not less than, adequate consideration. The Senate bill contained absolute prohibiitons.

The conferees chose the Senate provisions, along with cer-Senate provisions, along with certain statutory exemptions and authority for the government to consider administrative exemptions. It is no secret that the administration favored the Senate version. We did so with good reason.

We have on record scores of cases of abuse that arose prior to ERISA, involving party in interest dealings. We were convinced, and we remain convinced, that the transactions which led to these abuses would not have been preclude by an adequate consideration test. Many of them began as innocuous arrangements which, for a variety of reasons, slid over into the area of abuse. A lease turned unfavorable, a loan was defaulted on, services were continued to be provided after the need had ended or had changed. Other transactions were disadvantageous to the plan from the start.

There is no question that the prophylactic rules are causing some discomfort. But here again, it is important to recognize that much of the discomfort stems from factors other than the prohibited transaction restrictions. The definitions of fiduciary and party in interest are broad and contain their share of ambiguity, and the threat of third-party litigation looms large in the minds of some. The co-fiduciary responsibility and liability provisions extend the sweep of the prohibition.

Accordingly, we are now devoting considerable efforts to clarifying the definitions, and to reconciling some of the ambiguities and inconsistencies in these other provisions. At the same time, we are examining the prohibition against parties in interest supplying services and the questions about multiple services to see whether some flexibility can be provided.

Our role is complex. Our paramount priority is to assist people to understand the law, because understanding is essential if chaos is to be avoided. Our assistance cannot be confined to participants and beneficiaries, although they are our primary focus and concern. We must also stand ready to help all concerned persons, whether management or labor, large institution or solitary individual, those who administer plans or those who deal with plans. ■

As solicitor of Labor for the past two years, William J. Kilberg has been responsible for all the legal activities of the Labor Department, as well as its legislative program. This article by Mr. Kilberg has been adapted from a speech he gave late last month.

You are invited
to become an advertiser
in the fourth annual
Agent/Broker Profiles issue
to be published by
Business Insurance
Date: July 28, 1975
R.S.V.P. by July 16, 1975

Once again, on July 28, the editors of BUSINESS INSURANCE will present their exclusive special issue devoted to profiles of this country's leading commercial insurance agents and brokers.

The profiles will contain valuable information about the size, scope of operation, number of employes, income, premium volume and special services of insurance brokers and agents who have responded to a specially prepared questionnaire.

This publishing exclusive—which last year was an advertising sell out—is sure to attract the largest number of buyer/seller readers ever assembled as an audience of an insurance publication. The profiles will serve as reference for buyers, underwriters, sellers and others for at least one year, in making it a long-lasting selling opportunity for your services.

WHO WILL BE READING THIS ISSUE?

- Over 58,000 corporate insurance buyers in the 16,500 most important U.S. corporations (employing over 45 million workers)
- Over 26,000 insurance agents and brokers
- Thousands of financial, association, union, consultant, and government readers

This means that thousands of corporate insurance buyers and financial executives will be reviewing these profiles while they are in the process of looking for brokerage services, and thousands of insurance agents and brokers will be reading their own profiles and those of their competitors. Many other readers involved in risk management, employe benefits and other asset conservation functions will be using this issue as an important buying guide.

Your advertising message—dominant and well directed to this influential Business Insurance audience—is sure to bring you reader attention and buyer action.

Remember, the profiles appear on July 28; ad closing July 16.
Take advantange of this invitation to reserve your ad space now.

business insurance

the newsmagazine that just had to be.

NEW YORK: 708 Third Avenue, (212) 986-5050 CHICAGO: 740 Rush Street, (312) 649-5275 LOS ANGELES: 6404 Wilshire Blvd., (213) 651-3710

london line

Underwriters working on new rates for renewed traffic through Canal

LONDON—Uncertainties over insurance rates for traffic passing through the Suez Canal are now being resolved in London where underwriters from both Lloyd's and the company market have been studying the situation.

Business Insurance made checks in various sectors of the market to determine what insurance arrangements will be made. Edwin D. Rainbow, chairman of the Institute of London Underwriters, predicted, as he was about to leave for Egypt to watch the re-opening of the canal, that there will be every co-operation between both shipping and canal interests.

Speaking for many U.K. companies engaged in marine insurance, Mr. Rainbow, who is himself with the Commercial Union group, said:

'Generally speaking, marine underwriters will welcome the Suez Canal being re-opened to commercial shipping. One of the reasons is that the availability of tugs, salvage assistance and repair yards is much better in the Mediterranean and Red Sea areas than on the Cape of Good Hope route around the foot of South Africa.

"From an insurance point of view, underwriters will naturally be cautious to start with. But I see no reason why normal rates should not apply for marine risks for both hulls and cargoes to cover the ordinary navigational hazards such as accidental grounding.

"The levels to be set by the London market for war risk cover is inevitably a question that has still to be settled, but that is the only issue remaining to be clarified.

"Underwriters will watch with great interest the potential developments likely to accrue from the proposed 'free zone' legislation for the Suez area, linked with plans for construction of industrial complexes there."

Egypt and other Middle East countries have asked marine insurers not to impose unnecessary high war risk premiums for vessels using the canal.

Lloyd's has been keeping more than normally silent on this aspect as it has to tread the path of underwriting experience while extending reasonable facilities to all those European and other operators who will be encouraged to use the canal if rates are right.

Fixtures of 25 cents per $100 as a special war risk surcharge for cargoes, which covers unexploded mines or other hazards, will only persist until it is clear all obstacles have been cleared. Hull war risk ratings are more flexible.

Re-opening of the canal coincides with the release of nearly all the fifteen ships, trapped there since the 1967 conflict. They are now moving to various ports for discharge of their cargoes.

Insurance groups in Britain have paid out more than $35 million for these ships in the past eight years.

Most of the vessels have been accepted as total losses, including the two U.S. ships African Glen and Observer, with compromise settlements that returned possession to their original owners.

No cargo risk is thought to have been involved in the London market on the U.S. vessels, as one was in ballast and the other was carrying government aid wheat to India.

There is still substantial interest, however, being taken by Lloyd's underwriters, as well as the company market, in cargoes discharged from other vessels.

These cargoes can be re-sold with possible benefits to the marine market, which has paid out more than $12 million on the materials they were carrying, ranging from raw materials to domestic commodities.

* * *

Premium capacity is moving steadily upwards at Lloyd's as more members take advantage of the new financial rules which were planned last year for this purpose.

There is also an encouraging hike in the list of new applicants to join this famous London market, where $2.5 billion of world business is written in the year.

Most of the new names are British, since there is now a special category which allows U.K. citizens to join with a lower "show of wealth" financial backing than overseas names.

But many of the long-established Lloyd's members, including some from the U.S., have decided to make use of the facility for extending their risk which was enshrined in the new rules (*Business Insurance*, Dec. 9).

This allows graduated increases of premium business ranging from the region of $360,000 a year, on proof of $240,000 "show of wealth" backing, to $720,000 based on a $570,000 show.

By the start of 1976, when applicants elected during the current year can begin to operate within their selected syndicates, there are likely to be the record total of more than 8,000 names at Lloyd's.

Business will expand to keep in step with inflation and the growing demand of world industrialists for cover at Lloyd's.

* * *

More than $3 million in war risk cover was carried on the seized U.S. ship Mayaguez by leading underwriters at Lloyd's. The extent to which any claims may have to be settled, in the event of damage to the hull during the action, will be clarified in due course.

But sources at Lloyd's point out that "piracy", which was one of the words President Ford used to denounce the Cambodian seizure, is usually covered these days in the standard war risk policy, so that any claim for damage might well be brought to the attention of the London market.

The hull value of the Mayaguez is put at $4.5 million, of which Lloyd's war risk market covered two-thirds, and other insurers handled the remaining one-third. Normal marine hull risks for the vessel are covered in Britain to the extent of 47%. There are no disclosures in the London market regarding cargo risk cover, however, so further information is awaited on this risk which may be carried elsewhere.

* * *

Risks managers are studying the findings of a public tribunal which has been probing the big $100 million explosion at the

Nypro U.K. chemical plant at Flixborough, Lincoln County, last year (*Business Insurance* June 24, 1974).

The failure of a modification to an internal pipeline linking reactors in the cyclohexane-oxidation section is blamed for the blast, which killed 28 people.

But lack of guidance at the management level is also included in the criticisms, which point out that, although Nypro U.K. was safety conscious, there were temporary gaps in overall control because some personnel had left the company and their replacements had not arrived.

So, says the Government report: "The disaster was caused wholly by the coincidence of a number of unlikely errors which are unlikely ever to be repeated. There was no defect in the basic design of the plant as originally conceived, and no one thought that a major disaster of this kind could happen instantaneously. But it's clear now that such a possibility exists in places where large amounts of potentially explosive material are processed or stored."

Stronger laws are now being introduced in Britain to ensure there is regular plant control by publicly-appointed safety experts, especially in the chemical industries.

Insurers in Britain now estimate that the cost in claims against them might be lowered to $70 million because final assessments may exclude portions of the plant from having to meet the full costs

* * *

British politician John Stonehouse, who sits in Parliament for Walsall City, has been accused of trying to swindle insurance companies out of $300,000 by faking his death off Miami Beach, Fl. last Nov. 20.

The insurance companies never paid any claims because Mr. Stonehouse up in Australia after an international police hunt. He claimed he had been suffering from mental stresses.

He vanished from Miami under suspicious circumstances after his clothing was found on the shoreline. Prosecution authorities claim it was all part of a fictitious plot to pretend he was dead. Mr. Stonehouse was short of money and had defrauded some of his business associates in the U.K.

* * *

Government sources in Belfast, Northern Ireland estimate that the civil troubles here since 1970 have cost $400 million in fire and bomb damage to property. This includes at least $30 million compensation for personal injuries, with another $20 million to come in future payments, and $250 million in fire damage or similar claims, with a further $100 million in the pipeline.

The cash is paid to victims by the government after claims are made through insurers.

One of the most heavily-bombed buildings is the Europa Hotel, which has served as a center for visiting U.S. press correspondents and other people with major business interests in Ulster. The hotel has been hit nearly 30 times since it opened three-and-a-half years ago.

R. Harper Brown, its general manager, told *Business Insurance:* "There have been so many bomb attacks on the hotel since 1971 that the cost of repairs is well over $2.5 million. Many insurance companies are involved with our claims, and mostly liability is distributed by our brokers.

"We employ our own loss assessors S. Balcombe & Co., and they in turn work with loss adjusters employed by the insurance companies. As accounts are received from our main contractors, we get payments from our insurers, who in turn are reimbursed by the public funds in due course."

Mr. Harper Brown was recently decorated by the Queen at Buckingham Palace for his skill in keeping the hotel open in spite of the bomb attacks. "We've had 2,000 warnings of bomb threats, but some of them are either hoaxes, or are made in the belief we will evacuate the hotel even if no bomb has been planted," he said.

"The hotel, which is part of the Grand Metropolitan group, is the Belfast center for much of the international press, and when I get an alarm call I order a complete check of the hotel. This takes around 12 to 15 minutes, and if a bomb is located I order the hotel to be cleared at once.

"One bomb placed by the elevator cost more than $1 million in damage, but we were open again within two hours of the blast. But in general I don't order an evacuation unless I feel positive there's trouble. Otherwise the hotel would have closed long ago." ■

Congressional push to amend HMO Act to reduce employers cost burden

By RICHARD L. GORDON

WASHINGTON—A bipartisan push is on to amend the Health Maintenance Act of 1973 to reduce the burdens it places on employers and cut the cost of the eventual benefit programs health maintenance organizations (HMOs) must offer.

Identical bills to amend the law were filed this month in the Senate (S. 1926) by Sens. Richard S. Schweiker (R-Pa.), Jacob K. Javits (R-N.Y.), and Walter F. Mondale (D-Mn.) and in the House (H.R. 7847) by Reps. James F. Hastings (R-N.Y.) and Paul G. Rogers (D-Fl.).

The Ford Administration is expected to file its own amendments to the law any day, spokesmen said.

The only apparent item of any controversy among the amendments now on file in Congress is a move to extend to state and local governments Section 1310 of the act—which requires employers to offer an HMO as an option to regular health insurance.

That one will raise some Constitutional questions.

"Our position on this kind of issue is that the 10th amendment of the Constitution precludes federal legislation that would require state and local governments, in their personnel functions, to comply with standards for industry or other sectors of the economy," said Mal Bergheim, deputy executive director of the U.S. Council of City Health Officers.

"I personally am in favor of the dual option," he said, "but my feeling is that if this is done by state and local governments, it should be done voluntarily."

State and local government officials even now are fighting a federal attempt to impose federal minimum wage requirements on state and local governments.

The rest of the amendments appear to recognize the validity of many employer complaints about the bill and also acknowledge that the admittedly "rich" benefit package required of HMOs could make them so expensive that they will be unable to compete with conventional health insurance programs.

Last April, employers complained to the Health Education and Welfare (HEW) Department that major administrative costs would result from the law's requirement that a qualified HMO be offered to all employes of companies with 25 or more workers, even at locations where as few as one employe was stationed (*Business Insurance*, April 7, 1975).

That rule was the "single most serious problem raised by the act," said General Motors vp Robert F. Magill.

The amendments would change that requirement and make the HMO option required only where at least 25 employes resided in the service area of the HMO.

In another area of interest to employers, the amendments would decriminalize the penalties for failing to offer the HMO option where required by law.

The amendments would drop from Section 1310 language that states that an employer's failure to offer the option where required would be a violation of the Fair Labor Standards Act of 1938.

Violation of that statute could result in criminal fines or even a jail term.

The amendments have substituted for this a civil penalty of up to $10,000 that can be assessed by the Secretary of HEW and collected in a civil action brought in federal district court.

The amendment requires the government to notify an employer it finds in violation of the law and give him an opportunity to present his side of the case.

It also states that any penalty eventually agreed upon should reflect "the gravity of noncompliance and the demonstrated good faith of the employer in attempting to achieve rapid compliance after notification by the Secretary of noncompliance."

The current amendments also would restructure the benefit package in a number of ways aimed at bringing the cost down.

"The present law mandates the offering of benefits which are too comprehensive and expensive for many groups currently receiving services from HMOs," Rep. Hastings said in introducing the amendments, "and for many groups which might consider HMO membership."

HMOs are required by the law to offer two sets of benefits—a basic benefits schedule and, where manpower is available, a supplementary benefits schedule.

The amendments have shuffled some benefits from the "basic" category to the "supplemental list, made the supplemental category optional even where health manpower is available, and eliminated some benefits entirely.

The law now lists required basis benefits as: 1) physician services, 2) inpatient and outpatient services, including consultant and referral services by a physician, 3) medically necessary emergency health services, 4) short term (not to exceed 20 visits) outpatient evaluative and crisis intervention mental health services, 5) medical treatment and referral services for the abuse and addiction to alcohol and drugs, 6) diagnostic laboratory and therapeutic radiologic services, 7) home health services, 8) and preventive health services.

The amendments would make the programs for alcohol and drug abuse and for home health services a supplementary rather than a basic benefit.

Preventive health services, while still a basic benefit, would no longer include preventive dental care for children.

While children's dental care is dropped, the amendments would add to preventive health services the following: immunizations, well child care from birth, and periodic health evaluations for adults.

In a major move to bring HMO costs down, the amendments would postpone the requirement for HMOs to use community rating.

The delay in using the community rate system would be for five years "or more" after an HMO becomes federally qualified.

"When you use community rating, everybody is in the same pool," said Victor Zink, employe benefits manager for General Motors.

"How is an HMO to compete for a group with good experience when a commercial carrier or the Blues can come in and use experience rating and quote a rate that is substantially lower?" he asked.

The amendments would also allow HMOs more flexibility in

Continued on page 37

Work comp carriers may increase liability

CHICAGO—Most states are likely to follow the lead of Texas in requiring insurance companies underwriting workers' compensation to provide safety engineering services, according to Ralph J. Vernon, professor of industrial hygiene and safety engineering at Texas A & M University.

As head of the committee which formulated the state's requirements, Prof. Vernon acknowledged that they "probably would increase the legal liability of workers' compensation carriers."

Guidelines for service "which are fair to the industry, acceptable to the state board of insurance and within the letter of the law" are being developed, Prof. Vernon told participants at the 38th annual Administrative Engineers Conference of the American Insurance Assn.'s Engineering and Safety Service.

Prof. Vernon said he thought that the insurer's "certification" of such facilities would be adequate evidence of compliance at least initially.

The only states that probably would not follow the Texas pattern were those with state workers' compensation funds, he said.

The Texas requirements are described as "stringent" and call for "highly professional loss prevention personnel and services." The requirements for field safety representatives, already approved by the Texas Insurance Board, consist of credits based on college education, field experience, professional certification and a special exam.

Insurance companies can comply either by using their own personnel or employing professional outside help, Prof. Vernon said. "Such facilities need not be located in Texas," he said, referring to the required adequate accident prevention facilities.

Outlining other Texas requirements, Prof. Vernon said that workers' compensation carriers need "to evaluate each policyholder, identify and confirm the high hazard exposures, determine and prescribe a plan to service the policyholder, record that plan in the risk's file and record evidence of implementation of that plan."

Noting a "paucity of data" regarding occupational safety and health exposures, Prof. Vernon suggested the formation of a research forum similar to the Insurance Institute for Highway Safety and funded by a percentage of the earned workers' compensation premium.

"One half of 1% of this premium. . .could make tremendous inroads into the prevention of losses," he said. ■

Bank risk seminar

The American Bankers Assn. (ABA) is sponsoring its third insurance-oriented risk management seminar from July 14 to 16 in Boulder, Co. The purpose of the seminar is to provide bank executives with practical working knowledge of insurance. Topics include bankers blanket bond coverage, directors' and officers', fiduciary and trust department errors and omissions and safe deposit liability. For information contact E. Armstrong, ABA, 1120 Connecticut Ave., N.W. Washington, D.C. 20036.

HMOs . . .

Continued from page 36

setting their fees by allowing them to build in the differing market costs incurred when selling to individuals, small groups, or large groups.

It also eliminates the requirement that HMOs must offer immediately an open enrollment period once a year for the general public.

"The law enacted in the 93rd Congress was excellent in concept but has not satisfactorily met the economic realities of trying to create HMOs in the present medical care environment," Sen Schweiker said.

He noted that only 23% of the existing HMOs have sought financial assistance under the law and that HMOs are divided on whether or not to seek certification under the HMO act.

"Even though federal certification as an HMO under the existing law could greatly expand their potential market (employers are only required to offer qualified HMOs as an option) HMOs are approaching the prospect slowly because of the stringent requirements in the law as the price for such certification and eligibility for assistance," he said. ■

Amendment gets support

WASHINGTON—A move to amend the Health Maintenance Act of 1973 has drawn support from the Health Insurance Assn. of America and a "consensus group" of health maintenance organizations.

The consensus group is led by the Group Health Assn. of America and is composed of such organizations as the Blue Cross Assn., American Assn. of Foundations for Medical Care, and insurance companies which have made commitments to HMO developments.

At the present time more than 50 insurance companies are to some degree involved in more than 70 HMO developments, the Health Insurance Assn. said. Twenty of the companies are actively participating in 23 operating HMO's, the association said. ■

people

Publisher creates benefits position, names Macdonald

McGraw-Hill Inc., New York, promoted **Alan Macdonald** to vp-employe benefits, a newly-created position. Mr. Macdonald will continue to design and administer the company's benefit program and will continue to serve as secretary of the retirement plans committee. He joined McGraw-Hill as manager of employe benefits in 1964 and was previously with the Univac division of Sperry Rand and the Martin E. Segal Co. Mr. Macdonald, 50, reports to the senior vp in his new position.

* * *

Keith Dennis McElwain was named corporate insurance manager at General Cigar Co. Inc., New York. Mr. McElwain's former position was director of insurance for International Telephone & Telegraph Corp., New York. In his new job, the 49-year-old manager is responsible for property/casualty insurance, employe benefits, pensions, safety, cargo and fire prevention. At ITT Lawrence J. Salerno was hired to replace Mr. McElwain, as reported (*Business Insurance*, May 19). Mr. McElwain replaces Norman Lang, corporate risk manager for General Cigar since 1972 who left the company. Mr. McElwain reports to Henry Whitehall, vp-secretary.

* * *

Named as assistant treasurer at Baker Industries Inc., Parsippany, N.J., is **James A. Meer**, 29, formerly at UMC Industries Inc., New York. Mr. Meer reports directly to the chairman of the board and has responsibility for property and casualty insurance as well as financial duties. He replaces **Joseph M. Ahearn**, who held the title of director of insurance, and now is assistant vp and account executive for Marsh & McLennan in Morristown, N.J. Mr. Ahearn is broker of record for Baker Industries. UMC Industries has not yet filled Mr. Meer's position.

* * *

John L. Doering was promoted by Peoples Gas Co., Chicago from coordinator of insurance and pensions to director of that responsibility. He replaces John J. O-Connell Jr., who died last month. Mr. Doering is in charge of property/casualty insurance and financial matters for employe benefits and pensions. He said he's still looking for someone to fill the position of coordinator—his former job. Mr. Doering has been with Peoples Gas for 23 years.

* * *

Tandy Industries Inc., Tulsa, officially named **Donald D. Campbell** insurance manager, who along with the jobs of controller and secretary of Tandy took over insurance matters about a year ago when John Barry left the company. Mr. Barry works for Marsh & McLennan Inc. in Tulsa and "acts as our account executive," Mr. Campbell said. Mr. Campbell reports directly to the president and has been with Tandy for 15 years.

* * *

W. R. Grace & Co., New York, named **Jeffrey D. Mamorsky** benefits counsel, a newly created position, in May. Reporting to the vp-corporate administration group, Mr. Mamorsky is responsible for preparing documents and related material dealing with employe benefit plans. He also assists the industrial relations division on ERISA compliance. Formerly, Mr. Mamorsky was benefits advisor-legal for Mobil Oil Corp.

* * *

Mobil Oil Corp., New York, hired **Christopher O'Flinn**, 31, to be benefits advisor-legal in March to work with Jeffrey D. Mamorsky, who left Mobil to join W. R. Grace in May. Mr. O'Flinn's responsibilities include providing legal support to the employe relations group. He worked as a legal counsel at George Buck Consulting Actuaries, New York, for two years before going to Mobil.

* * *

Rank Xerox, London, England, named **D. J. Farthing** risk manager on June 1. Formerly, Mr. Farthing worked for Keith Shipton Developments Ltd., London. He is an ex-chairman of the Assn. of Insurance and Risk Managers in Industry & Commerce.

Engineers told to 'sell loss control'

CHICAGO—Loss control has become the key to a successful insurance business, speakers told participants at the 38th annual Administrative Engineers Conference here.

"Safety engineering has become a major operating department sharing equal weight with the marketing, sales, underwriting and claims functions," said Edward H. Budd, senior vp, casualty-property commercial lines, the Travelers Insurance Co.

According to Arthur Spiegelman, vp for Engineering and Safety Service of the American Insurance Assn., "good underwriting based on adequate risk evaluation is the key to a profitable insurance business."

He told conference participants that they must "become innovators, not merely caretakers of past performance, remain flexible and develop a high quality of technical expertise in their loss control departments.

"Become enthusiastic spokesmen," he advised. "Sell loss control to top management." ■

dates for buyers

July 7-10: An institute for printing and publishing industry funds will focus on common problems faced by these funds such as worker turnover and plan administration. Sponsored by the International Foundation of Employe Benefit Plans, the sessions will be held in Minneapolis. For more information, contact the foundation at P.O. Box 69, Brookfield, Wi. 53005.

July 14-16: The American Bankers Assn. will hold a Risk Management in Banking Seminar at the University of Colorado, Boulder. Designed to provide a working knowledge of premium saving techniques and insurance coverages and markets, the seminar should provide an increased ability to reduce losses and premium costs. The seminar, including study materials and room and board, will cost **$245**, and it is limited to 50 participants. For information, write to Ed Armstrong, assistant director, insurance and protection division, American Bankers Assn., 1120 Connecticut Ave., NW, Washington, D.C. 20036.

July 15: Information Science Inc. will hold a one-day seminar on Compliance With Employment Laws Through the Computer, in Pittsburgh and other cities later in the summer. The human resource systems firm will show how to avoid violation of EEO, ERISA and OSHA regulations by organizing, storing and maintaining employe information in a computer system. For additional information, write: Information Science Inc., 95 Chestnut Ridge Road, Montvale, N.J. 07645. Att: Debbie Miller.

July 15-18: The International Foundation of Employe Benefit Plans will hold an institute for new trustees, advanced trustees and administrators of Taft-Hartley Plans, in Denver. For more information, write to the foundation at P.O. Box 69, Brookfield, Wi. 53005.

July 21-25: INA Corp.'s International Safety Academy will hold a total loss control management conference in Tarpon Springs, Fl. Experienced loss control managers, risk and insurance managers, and safety personnel are encouraged to attend. Tuition is $395. For more information, write to the academy at 1021 Georgia Ave., Macon, Ga. 31201.

July 24: The 1975 System Safety Conference, a one-day session for lawyers, engineers and managers concerned with product safety, will be held at the Bahia Hotel in San Diego. Legal issues of product safety, medical dangers, design-induced human error and hazard-free toys are among the topics. Write to System Safety Conference, Brian Moriarty, P.O. Box 2444, Huntington Beach, Ca. 92646.

Aug. 11-15: R & R Newkirk and Business Seminars Institute will hold their fifth annual pension and profit-sharing seminar: "Complying with the Pension Reform Law in 1975." The seminar will be at Fairleigh Dickinson University, Madison, N.J. Fourteen nationally prominent pension experts—including officials of the Pension Benefit Guaranty Corp.—will be the featured speakers. For further information, write to Bill Spencer, Business Seminars Institute Inc., 428 Old Hook Road, Emerson, N.J. 07630.

Aug. 19-22: The sixth annual Product Liability Prevention Seminar, sponsored by the New Jersey Institute of Technology, will be held under the auspices of the College of Engineering in Newark. All professionals involved with product liability are invited. In addition to the in-depth technical seminar, optional evening workshops on specific liability prevention techniques will be offered. Tuition is $300 for members of sponsoring organizations; $325 for non-members. For more details, write to Martin Post, Newark College of Engineering, 323 High St., Newark, N.J. 07102.

classified advertising

RATES AND CLOSING TIME: *$2.75 per line, minimum charge $11.00. Cash with order. Figure all cap lines (maximum—two) 30 letters and spaces per line; upper & lower case 40 per line. Add two lines for box number. Replies are forwarded daily. Closing deadline: Copy in written form in Chicago office not later than noon, Monday, 7 days preceding publication date. Published every other Monday. Display classified takes card rate of $23.50 per column inch, and card discounts on size and frequency. Mail ads to Business Insurance, classified advertising dept., 740 N. Rush St., Chicago, Illinois 60611.*

HELP WANTED

RISK MANAGER

Large West Coast manufacturer needs experienced Risk Manager trained in modern insurance techinques to manage its Corporate Insurance function.

Box 645, BUSINESS INSURANCE
740 Rush St., Chicago, Ill. 60611

VP GROUP PENSIONS

Prestige consulting firm in Northwest seeks individ., strong in plan design, ERISA, and consulting, to manage dept. and develop business. Salary $30,000+. Contact, in confidence, Howard Associates Agency, 160 Sansome St., S.F., CA. 94104 415/391-7815. All Fees Paid.

UNDERWRITING MANAGER

Large commercial lines insurance broker is looking for an Underwriting Manager with a knowledge of coverages, rating and markets for propetry and casualty insurance and who is also an innovator.

Duties will include supervision of underwriters, placers and market selection. Company benefits include Major Medical, Long Term Disability and Pension.

State details of experience and salary requirements in your reply to:

Box 640, BUSINESS INSURANCE
740 Rush St., Chicago, Ill. 60611

Someday 12 wonderful people could destroy you.

Meet your jury of peers.

They decide if you owe, and how much, when someone sues.

If you are a professional or top echelon executive good luck.

In the absence of good luck, what you need is Top Brass, a good personal liability coverage from The St. Paul.

Top Brass can cover you for up to $5 million against almost any kind of liability imaginable. From personal injury to libel and slander.

It pays the cost of your defense and out of court settlements.

And Top Brass is relatively inexpensive. Approximately $75 a year for a million dollars of coverage, depending on how much you have to lose.

One stipulation. This is excess liability. You must already have $100,000 or so of personal liability protection.

Top Brass is also available on a group basis at lower rates. So maybe it's worth bringing up at your next management meeting.

Either way, make your own luck With Top Brass from The St. Paul, the company that's been helping folks out of tight spots since before the Civil War.

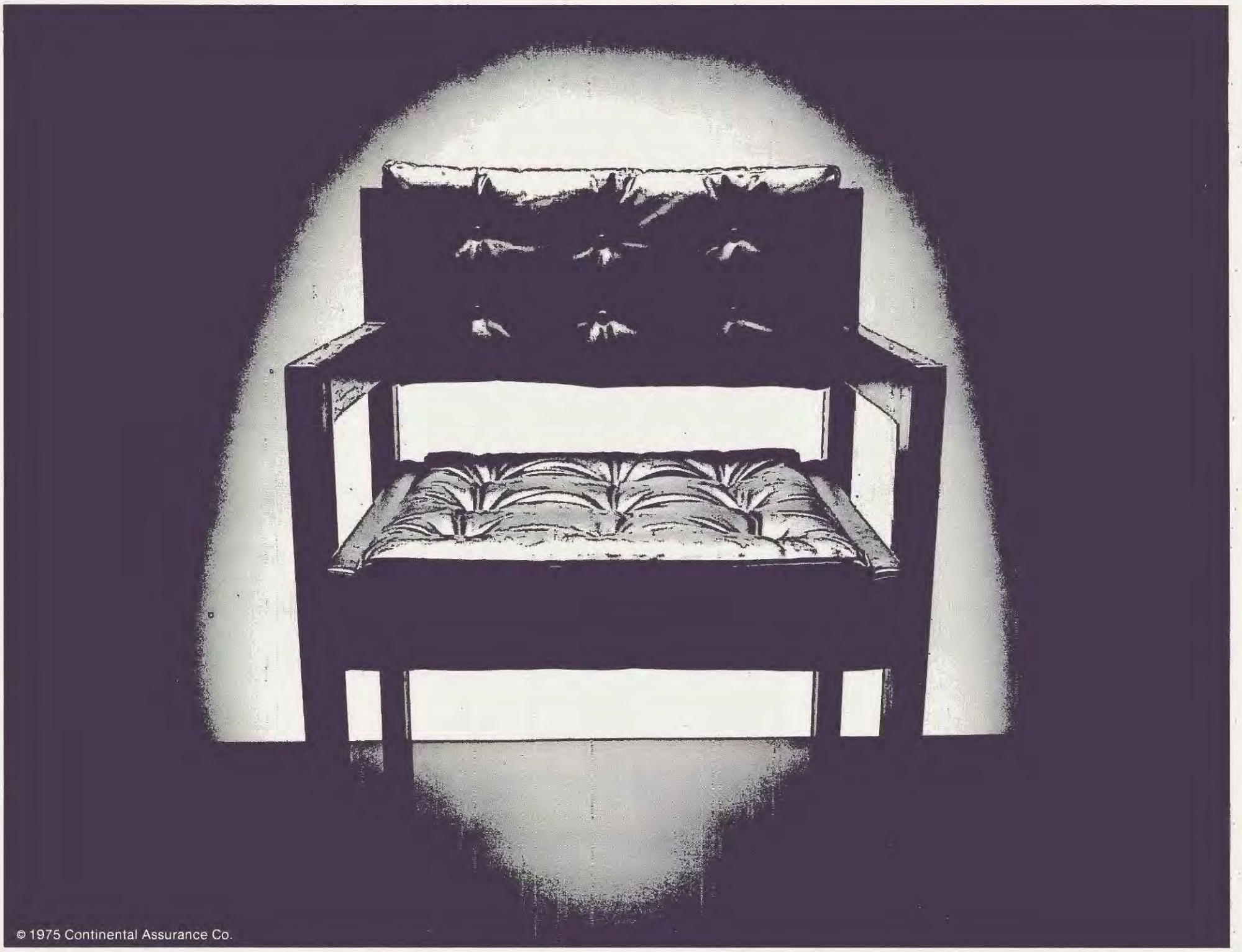
Talk to an independent agent for The St. Paul today. He's in the Yellow Pages.

THE ST. PAUL
COMPANIES

Serving you around the world... around the clock
St. Paul, Minnesota 55102

St. Paul Fire and Marine Insurance Company, St. Paul Mercury Insurance Company, The St. Paul Insurance Company.

The Group Insurance hot seat.



There's probably one in your office.

It's where you seat the account executives who come to sell you group insurance.

And then you start asking some tough questions.

That's where you *really* notice the difference in insurance companies . . . and in account executives.

Some people may squirm and shuffle in your hot seat
But not your Continental Assurance Account Executive
He'll bat 1000 on those tough questions. With straight-from-the-shoulder talk.

That's because we gave him complete bottom-line responsibility for handling your account. *And* the decision-making authority to carry out that responsibility. The authority to make decisions on underwriting, rates, everything affecting the service you receive.

So call your Continental Assurance Major Group office.
And put one of our Account Executives in the hot seat.
We know he'll keep his cool.

At Continental, when you buy group, you deal with an individual.

Continental Assurance Co.

Major Group and Pension Services

Call your nearest Continental Assurance Co. Major Group Office: Atlanta, Boston, Chicago, Dallas, Detroit, Indianapolis, Kansas City, Los Angeles, Milwaukee, New York, Pittsburgh, Salt Lake City, San Francisco, Washington D. C.