

business insurance

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update

TPF&C and Tillinghast to merge operations July 1

NEW YORK—Second-largest benefit consultant Towers, Perrin, Forster & Crosby is acquiring Tillinghast, Nelson & Warren Inc., the largest risk management consultant, *Business Insurance* has learned.

The independently owned companies will merge their operations as of July 1, with Tillinghast's 75 principals joining about 280 TPF&C principals.

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Firms can cut retiree health benefits: Court

By JUDY GREENWALD

NEW YORK—Employers can terminate health care benefits for retirees without violating any federal common law, according to a federal appeals court ruling.

In overturning a September 1984 U.S. District Court ruling against White Farm Equipment Co., a three-judge panel of the 6th U.S. Circuit Court of Appeals in Cincinnati said the Employee Retirement Income Security Act does not allow a federal judge to fashion common law providing for the mandatory vesting of retiree health benefits.

Congress, not the courts, should decide whether mandatory vesting of retiree health benefits is appropriate, the panel ruled April 21.

However, the panel returned the case to a lower court to determine if White Farm's benefit communications clearly stated that the company had the right to terminate the health plan and what impact, if any, other events stemming from the bankruptcy proceedings have on the case.

Employee benefit consultants welcome the appellate court ruling, saying it permits employers to amend their health benefit plans for retirees. The previous ruling, if upheld, would have severely limited employers' ability to change or drop their retiree health care benefits.

"I think this is really good news for employers," said Anna Rappaport, a principal with consultant William M. Mercer-Meidinger Inc. in Chicago.

Now employers can consider making changes in their retiree health care plans, she said. "Employers shouldn't assume without looking there's nothing they can do" about their retiree health benefits. But, she added, employers should be "super careful" in how they communicate retiree health plans.

The case stems from the September 1980 bankruptcy filing by White Farm, a subsidiary of White Motor Corp., which also filed for bankruptcy at the same time.

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Court limits duty to defend under former CGL policies

By STEPHEN TARNOFF

PHILADELPHIA—In a major setback for policyholders and excess insurers, a federal appellate court says a primary insurer's duty to defend an asbestos producer under pre-1966 policies ends with the exhaustion of policy limits.

The 3rd U.S. Circuit Court of Appeals ruled that Travelers Indemnity Co. did not have a continuing duty to defend asbestos defendant Pittsburgh Corning Corp. after the limits on pre-1966 policies—\$4 million—were exhausted by indemnity payments.

The three-judge panel, interpreting Pennsylvania law, ruled that Travelers could terminate its payment of defense costs even in the middle of defending asbestos claims, as long as it has made an orderly withdrawal from Pittsburgh Corning's defense.

The April 29 decision is a serious blow to policyholders who have contended—and found support in some court decisions—that a primary insurer's duty to defend is continuing beyond exhaustion of primary limits in pre-1966 policies.

In 1966, the insurance industry redrafted the standard comprehensive general liability policy to specifically end an insurer's duty to defend at the exhaustion of policy limits by indemnity payments.

As a result of the appellate court's decision, attorneys for Travelers say the insurer will not have to pay approximately \$100 million for defense costs that have piled up in 7,600 cases that were pending when Travelers stopped defending Pittsburgh Corning in 1981.

Pittsburgh Corning's excess insurers will have to pay

the \$100 million and cover future defense costs, much of which will come out of Pittsburgh Corning's limits of excess coverage, insurance attorneys say. Many of Pittsburgh Corning's excess policies include defense costs within policy limits.

Ironically, Travelers is also an excess insurer of Pittsburgh Corning, but the insurer is denying liability under those policies.

Pittsburgh Corning has the option of filing for a rehearing with the entire appellate court and, if that petition is denied, seeking review by the U.S. Supreme Court.

Travelers will not have to pay approximately \$100 million for defense costs that have piled up in 7,600 cases.

James Restivo, outside counsel for Pittsburgh Corning in the case, declined to comment on the decision.

Some attorneys for insurers contend that the decision is as important as the 1981 landmark decision in *Keene Corp. vs. Insurance Co. of North America*, which established broad coverage for defendants in asbestos litigation (BI, Oct. 12, 1981).

They say it is likely to be persuasive in other jurisdictions, especially in cases involving long-latent claims such as asbestos, DES and hazardous waste, where coverage under pre-1966 policies is at issue.

However, attorneys for policyholders, although not happy with the decision, say the effect will not be that significant. They contend that the ultimate impact will depend upon the language in the particular policies at issue. They also point out that the 3rd Circuit decision is binding only in Pennsylvania and that contrary interpretations of state law by either the U.S. Supreme

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Tort reform on the ballot in California

By ROBERT A. FINLAYSON

LOS ANGELES—The television screen dims. It's the dead of night and two men in protective clothing are pumping ominous-looking goo from a truck into a riverbed.

"I don't feel good about this," says a man in a business suit, watching the dumping. But another man in a business suit replies, "Don't worry, it makes sense to dump the stuff here in California. Even if we're caught, it won't cost us much." An announcer breaks in: "Vote no on Proposition 51."

Three beer-drinking teen-agers are throwing a late-night party on a closed city road. One of the young men staggers off into the bushes. He leans forward and slips over a 15-foot embankment and is severely injured.

"Merely because they own the land, San Francisco taxpayers end up paying a quarter of a million dollars in damages," says an announcer. "The outrageous deep pocket law allows this to happen. Vote yes on (Proposition) 51."

Tort reform is on the ballot in California, and coalitions on both sides of the issue are spending millions of dollars in a rough-and-tumble battle to win the hearts and minds of the state's electorate.

When California voters go to the polls June 3, it will

be the public's first chance to formally voice an opinion in the highly charged debate over civil justice reform. The outcome of this campaign could have a major impact on tort reform efforts nationwide.

California voters will decide whether to approve Proposition 51, a ballot initiative that would eliminate the application of joint and several liability to pain and suffering awards in third-party liability lawsuits.

The proposition would not alter the way the controversial legal doctrine applies to economic damages, permitting plaintiffs to continue to recover up to all their medical payments and lost wages from defendants who were only partially liable for the injury.

A major election victory would give businesses and local governments—and their insurers—a measure of relief in California courtrooms. And, it would give the proponents of tort reform a powerful tool that could be used to persuade state legislatures and even the U.S. Congress that the public wants the legal system changed.

But defeat would be a significant blow to judicial reform campaigns that are now being waged nationwide, signaling to legislators that the public does not support the business community's contention that the U.S. legal system is unfair and must be changed.

"I have to conclude that our tort reform efforts in

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TPF&C, Tillinghast to merge

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Officials of both firms declined comment.

Plans are for New York-based TPF&C to absorb Tillinghast's benefits practice and operate under the TPF&C name while the Tillinghast name will be used by the risk management consulting, life actuarial and casualty actuarial practices.

New York-based TPF&C is the second-largest consultant specializing in employee benefits, with \$180 million of \$250 million in gross revenues related to employee benefit consulting (BI, Dec. 23, 1985). It generated only \$750,000 from risk management consulting.

Atlanta, Ga.-based Tillinghast is the largest consultant specializing in risk management consulting, with \$9.8 million of its \$54.3 million in gross revenues from risk management consulting (BI, March 17). Its benefits consulting division generated \$15 million in revenues.

MIG offers to debtholders

LOS ANGELES—Mission Insurance Group debtholders who tried to place MIG into bankruptcy last January are now dropping that action per an agreement that will also reduce American Financial Corp.'s ultimate holdings in MIG.

The agreement extends two options to all MIG debtholders.

The bondholders, who are owed interest payments by MIG, can exchange their outstanding debt for MIG common stock and for the right to purchase a pro-rata share of \$50 million in preferred stock of Mission American Insurance Co. Those who exercise that right would also receive an undetermined amount of MIG common stock. MIG would have the option to pay the interest owed in cash or common stock.

Under the second option, debtholders would be paid the presently outstanding interest in cash and MIG could pay future interest in cash or common stock, at its option. They would also receive a pro-rata share of 7-year warrants for MIG common stock.

Regardless of which option the debtholders select, AFC's possible holding in MIG will decline to a maximum of 60% from a current possible ownership of 92%. AFC now controls 49.9% of MIG.

The agreement is expected to boost Mission American's capital by \$75 million, bringing its capital and surplus to more than \$250 million, said MIG general counsel Lawrence G. Becker.

The agreement, which the parties hope to seal by Sept. 30, needs the approval of the Securities & Exchange Commission and holders of at least 80% of MIG's 11½% notes due 1993 and 9% sinking fund debentures due 2002.

It is also conditioned upon final approval of a long-awaited reinsurance agreement that will spare Mission Insurance Co. from liquidation (BI, Feb. 17 and March 10). That agreement, tentatively approved by Los Angeles Superior Court March 6, is expected to be presented to the court for final approval by July.

Indiana to liquidate Allied

INDIANAPOLIS—The Indiana Insurance Department has filed a petition to liquidate Allied Fidelity Insurance Co.

The petition, filed April 28 in Marion County Circuit Court in Indianapolis, says the insurer is insolvent by about \$22 million, according to Insurance Commissioner Harry Eakin.

Allied Fidelity had been ordered into rehabilitation in March, Mr. Eakin said. The major reason for the insolvency was an estimated \$11.7 million shortfall in Allied Fidelity's reserves, which total about \$17 million, Mr. Eakin explained.

Meanwhile, the Texas State Board of Insurance plans to ask a state court on May 15 for a temporary injunction against Texas Fire & Casualty Co., a Dallas-based Allied Fidelity subsidiary placed under the department's control in April, according to Gail Allan, manager of legal services for the board's liquidation division.

Ruling exposes tobacco firms

BOSTON—Liggett & Myers Tobacco Co. is appealing a recent decision by a federal judge that says warnings on cigarette packages don't protect tobacco companies from suits contending they failed to adequately warn consumers that cigarettes are dangerous to their health.

Judge A. David Mazzone denied a request for dismissal by Liggett & Myers in a suit brought by the family of a Newton, Mass., resident who died in 1980 after 23 years of smoking.

The suit, seeking \$3 million in damages, alleges Liggett was negligent in failing to adequately warn about the harmful effects of smoking.

Judge Mazzone's decision comes shortly after a decision by the 3rd U.S. Circuit Court of Appeals in another tobacco case that said smokers are barred from bringing lawsuits based on claims that the warning on packages is inadequate (BI, April 14).

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Five men indicted for fraud linked to Kenilworth collapse

By DOUGLAS McLEOD

CHICAGO—Five men involved with the 1982 collapse of Kenilworth Insurance Co.—including convicted insurance con man Jack V. Goepfert—are facing fraud charges stemming from the insurer's demise.

A federal grand jury last week indicted Mr. Goepfert and four others on charges that they defrauded Kenilworth by diverting premiums or by arranging kickbacks of commissions retained by one of Kenilworth's California producers.

Chester Mitchell Jr., former president of Kenilworth, also is charged with bribing Robert Rasmussen, former manager of the Illinois Automobile Insurance Plan, in exchange for preferential treatment in the plan's assignment of auto risks to Kenilworth.

Along with Mr. Goepfert and Mr. Mitchell, the indictment names:

- Willard W. Hayne, former owner and president of Essex Insurance Brokers Inc., a San Diego agency that produced business for Kenilworth.

The California Insurance Department revoked Mr. Hayne's licenses in 1984 after Mr. Hayne admitted responsibility for premium trust account shortages at Essex and two related companies totaling \$1.2 million.

- Robert Patterson, a Chicago agent who produced business for Kenilworth.

- Joseph Cosentino Sr., another Chicago agent for Kenilworth.

The five men are scheduled to be arraigned this week in U.S. District Court for the Northern District of Illinois in Chicago, according to Assistant U.S. Attorney Joseph Duffy.

None of the defendants could be reached for comment.

Kenilworth was ordered liquidated by a Cook County circuit court judge in April 1982.

To date, insurance guarantee funds in seven states including Illinois have paid claims of \$10.6 million on Kenilworth policies and have set up reserves of \$2.3 million for unpaid claims, according to James W.

Schacht, chief deputy director of the Illinois Insurance Department.

Claims filed against Kenilworth that for various reasons are not covered by state guarantee funds amount to \$23 million, Mr. Schacht said.

An Illinois Insurance Department report released in December 1982 charged that Kenilworth had been bled into insolvency by a loosely connected group of agents and reinsurance intermediaries who funneled large volumes of high risk business through Kenilworth while stripping off excessive brokerage commissions (BI, Dec. 6, 1982).

Some of the illegal acts alleged in last week's indictment were previously outlined in the Illinois department's 1982 report.

The 23-count indictment alleges three broad schemes to defraud Kenilworth.

The first scheme—in which Messrs. Mitchell, Patterson, Cosentino and Goepfert are charged—involved the alleged concealment of the sale of Kenilworth shares to the latter three defendants and the alleged concealment of a managing general agency agreement with ROBCO Worldwide Facilities, a Chicago agency owned by Mr. Patterson.

Mr. Cosentino agreed in 1981 to buy a block of Kenilworth stock for \$250,000, paying \$50,000 of the total as "earnest money" on execution of the purchase agreement, according to the indictment.

Mr. Mitchell and Mr. Cosentino—knowing that the Illinois department, which must approve such stock transfers, would "scrutinize" a purchase by Mr. Cosentino—concealed it by executing a second agreement naming Mr. Mitchell as the purchaser, the indictment alleges.

Mr. Mitchell and Mr. Goepfert used \$200,000 in Kenilworth premiums to fund the balance due on the stock purchase and concealed their use of the premiums from Illinois regulators, the indictment charges.

The \$200,000 was transferred to the two men by B.F.G. Toomey & Associates, a now-defunct London.

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Policyholders, MGA sue Comstock for cancellation

By ROBERT A. FINLAYSON

LOS ANGELES—Several policyholders and a former managing general agent are suing Comstock Insurance Co. for attempting to cancel the policyholders' liability coverage midterm.

The outcome of the lawsuit could establish how much clout the California Department of Insurance has to back up its policy of opposing midterm policy cancellations by commercial insurers.

The suit, filed in Los Angeles Superior Court March 26, was brought against Los Angeles-based Comstock by Factory Insurance Service, which acted as an MGA for the insurer on a program that provided liability coverage to members of the Independent Garage Owners and Tire Dealers associations. Several owners of automotive service firms that purchased liability coverage from Comstock through Factory also are plaintiffs.

The plaintiffs sought and received a temporary restraining order against Comstock on March 26 from Judge Jack M. Newman. The order prevents Comstock from canceling any policies issued by the insurer through Factory until a May 16 court hearing.

Comstock, a subsidiary of Los Angeles-based Fremont General Corp., stopped writing new and renewal insurance policies for most lines of business in September 1985. However, the insurer announced at that time that it would not cancel any policies, allowing them to expire (BI, Sept. 2).

After Comstock began in January canceling the Factory-issued policies midterm, the insurance department asked the

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Latest tax bill palatable, say benefit experts

By DAVE LENCKUS

Employee benefit experts aren't happy with the employee benefit cuts contained in the tax bill reported out of the Senate Finance Committee last week, but they say "it could have been worse."

The proposed Senate legislation is more palatable than previous Senate proposals or the tax bill the House already has passed, employee benefit experts say.

In addition to the employee benefit cuts, the Senate bill would impose new taxes on property/casualty insurers that would generate approximately \$6.1 billion in additional taxes over the next five years. Those provisions would require insurers to discount loss reserves and include a portion of their unearned premium reserves in their taxable income over the next several years.

Most significant among the employee benefit provisions, the bill proposes slashing the maximum annual salary deferral

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Sen. Packwood

Directory deadlines approaching

Deadlines are rapidly approaching for returning questionnaires to be listed in two Business Insurance directories.

The deadline to be listed in the first employee benefit information systems directory is May 15. The deadline to be listed in the 15th annual agent/broker profiles issue is May 19.

The directory of software providers specializing in employee benefit information systems will be published in the May 26 issue, which also will include a directory of providers of software for computerized employee benefits communications programs.

If your company provides software for use by employee benefit managers or for use in communicating benefits to employees, we want to include you in this directory.

If you have not yet received a questionnaire, please request one immediately by calling 312-649-5279.

The 15th annual directory of agents and brokers will be published in the June 23 issue of Business Insurance. In addition to the directory, BI will also rank the 100 largest U.S.-based agents and brokers, and the largest 20 will be profiled. The 20 largest brokers worldwide also will be ranked and profiled.

Commercial agents and brokers that wish to be listed must complete and return a questionnaire supplied by Business Insurance.

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

There is no charge to be listed in either directory. ■

Brokers celebrate profitable first quarter

By LINDA J. COLLINS

The publicly held brokers' revenues and profits continue to climb, and for once all members of the brokerage fraternity have reason to celebrate.

For the first time in several years, none of the brokers' first-quarter earnings reports were marred by extraordinary losses due to discontinued brokerage, underwriting and non-insurance operations or unauthorized bond trading.

At the same time, the companies are posting double- and even triple-digit revenue and earnings gains as a result of new business growth and continued rate increases.

Analysts and brokers don't expect the happy days to end anytime soon.

"After talking to brokerage management and other analysts, I'm expecting rate increases at least through the end of 1987," said John E. Keefe, securities analyst with Drexel Burnham Lambert Inc. in New York.

"Although there are some pockets of capacity opening up—new captives being formed—and some legislative relief, by and large there is still need for higher premiums and a tighter market," he added.

Leonard M. Wilson, special limited partner with L.F. Rothschild, Unterberg & Towbin in New York, agreed: "I think rate hikes will continue this year and next year as well to a smaller extent. I expect that new business momentum will also continue for the brokers, but will diminish somewhat as capacity improves."

"I expect these kinds of results throughout the year," remarked Samuel J. Weinhoff, first vp with Shearson Lehman

1st quarter 1986 broker results (In thousands of dollars)

Broker	Gross revenues	% change	Net income	% change
Marsh & McLennan	\$444,200	37.9%	\$65,100	49.7%
Alexander & Alexander	249,800	18.7	22,100	67.4
Frank B. Hall & Co.	116,110	13.2	9,101	353.5*
Corroon & Black Corp.	80,681	30.6	10,210	114.7*
Crump Cos. Inc.	28,111	38.7	3,187	51.5
Arthur J. Gallagher	24,541	26.9	3,705	18.6
Emett & Chandler	13,663	30.5	1,039	42.7
Poe & Associates	8,213	34.9	1,197	130.6

*1st quarter 1985 results include extraordinary loss. Chart: Holly Seguire, Amy Palmer

Bros. in New York. "I'm very bullish on the whole group."

Michael J. Cloherty, vp of finance for Arthur J. Gallagher & Co. Inc. in Rolling Meadows, Ill., pointed out that some clients are going bare because of the tight market, which aids brokers like Gallagher that provide services for self-insurers.

"Much of our business coming in today is service and service only. There is a move to self-insurance, higher deductibles or going without some excess levels of coverage," he said.

Other brokers say that market conditions have improved somewhat over 1985, but they don't expect that to hurt their growth.

"We're fairly confident that companies are actually back to underwriting now. They are giving debits or credits based on

experience," said John F. McCaffrey, chairman and chief executive officer of Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y.

William F. Poe, chairman of Poe & Associates Inc. in Tampa, Fla., added that rate increases are beginning to taper off somewhat for certain lines of business. "On the liability side, clients still will have large, but tapering, increases. On other types of business, rates are tapering off now," Mr. Poe explained.

Sidney A. Stewart Jr., chairman and chief executive officer of The Crump Cos. Inc. in Memphis, Tenn., noted that when capacity again grows, brokers can place additional business to fill out gaps in existing coverage and to increase clients' limits.

"Then our growth will begin to come more from filling out existing accounts and writing coverages that were unavailable before than from rate increases," he explained.

It will be tough, however, for the brokers in the future to match their banner first-quarter results.

First-quarter gross revenues at Marsh & McLennan Cos. Inc., the world's largest brokerage, jumped 37.9% to \$444.2 million from \$322.2 million in the first quarter of 1985. Net income jumped 49.7% to \$65.1 million from \$43.5 million.

In addition, M&M last month split its stock 2-for-1 and increased its quarterly dividend.

"Overall, it was a very strong quarter with very positive results in all of our operations—insurance brokerage, reinsurance brokerage, employee benefits consulting, investment management and group associates. There was strength from

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Top 20 reinsurers expect turnaround after disappointing '85

By JUDY GREENWALD

Officials at the largest U.S. reinsurers say they anticipate improved underwriting results this year, following an almost three-point deterioration in their companies' aggregate combined ratio during 1985.

The 20 largest U.S. reinsurers posted a 128.6% combined ratio for 1985, according to a Reinsurance Assn. of America survey, compared with a 125.9% combined ratio in 1984 (see chart, page 34).

However, the U.S. reinsurance industry as a whole finished 1985 with vastly improved underwriting results. The industry posted a 121.4% combined ratio in 1985, compared with a 128.2% ratio for 1984.

The worsening underwriting results among the large reinsurers did not shock company officials.

"I don't think there were any surprises in the results," commented Edward J. Jamison Jr., chairman and president of the Buffalo Reinsurance Co. in Woodland Hills, Calif., the 14th-largest U.S. reinsurer.

He added that 1986 will be a better year, although precisely how much better will depend on how much each reinsurer feels it must strengthen loss reserves.

Several large reinsurers that reported higher combined ratios in 1985 attributed the deterioration to reserve strengthening.

The top 20 reinsurers posted a 89.7% loss ratio and a 38.9% expense ratio, while the industry as a whole reported a 92.8% loss ratio with only a 28.6% expense ratio.

One reason the expense ratio for the top 20 reinsurers was more than 10 points higher than for the industry overall is that the large companies include a number of reinsurers active in the facultative market, which is "more people- and paper-intensive," explains William D. Warren, chairman and president of National Reinsurance Corp. in Stamford, Conn.

Net reinsurance premiums written for the top 20 reinsurers increased 42% to \$7.1 billion, while net premiums for all companies surveyed increased 34% to \$10.1 billion.

Both the top 20 reinsurers and the entire industry reported increases of more than 27% in aggregate policyholder surplus.

The top 20's surplus increased 27.7% to \$3.8 billion, giving those companies an aggregate premium-to-surplus ratio of about 1.9-to-1, compared with 1.7-to-1 in 1984.

The industry reported a 27.3% increase in policyholder surplus to \$5.3 billion, which also resulted in a 1985 premium-to-surplus ratio of 1.9-to-1, vs. a 1.8-to-1 ratio in 1984.

According to the survey, 16% of the net reinsurance assumed by the industry was facultative and 84% was treaty, compared with 11% facultative and 89% treaty in 1984.

However, the RAA noted in its report that a few reinsurers known to write a substantial amount of facultative business did not complete this portion of the survey.

Of the treaty reinsurance assumed in 1985, 54% was property, 27% was casualty and 19% was other lines, including fidelity, surety and aviation. In 1984, the breakdown was 48% property, 29% casualty and 23% other.

Of the facultative reinsurance assumed last year, 28% was property, 69% was casualty and 3% was other lines. That compares with 39% property, 54% casualty and 7% other lines in 1984.

In addition, 66 organizations responding to the survey noted they paid \$53.3 million in net losses resulting from Hurricane Elena, which hit the Gulf Coast last September. Sixty-five organizations reported \$52.6 million in net losses from Hurricane Gloria, which

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Most employers will retain defined benefit plans: Study

By JAMES M. BURCKE

More than 70% of surveyed employers offer defined benefit pension plans to their salaried employees, even though more than half of the employers concede that a defined contribution plan would be a better choice—for both employer and employee.

However, most of the employers surveyed by benefit consultant A.S. Hansen Inc. say their defined benefit plans are working well and do not intend to terminate them or make major changes other than those required by regulation or law.

"In general, most defined benefit pension plans appear to be working quite well," the survey says. "They are well-funded, and the funds are performing at least up to the expectations of the plan sponsors."

"Employers seemed pleased with these programs and appear to have no intentions of altering them significantly or terminating them. . . . Where changes are planned, they will be to improve benefits first for active employees and secondly for retirees."

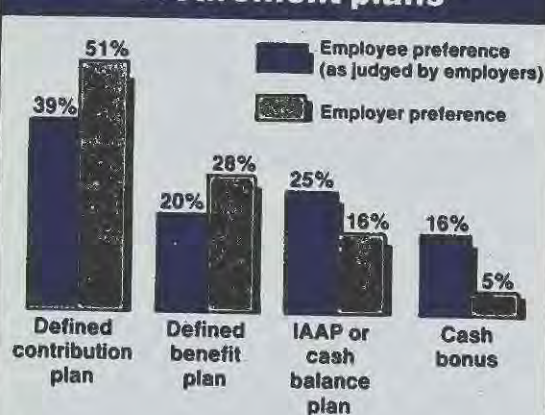
The Hansen study, entitled "Defined Benefit Plans and Retirement Practices," is the second in a series of six surveys on employee benefit plans, practices and policies. The first survey in the series, which examined health care benefits, was released earlier this year (BI, Feb. 17).

To compile its latest survey, Hansen sent out 1,150 questionnaires in February. Some 808 employers responded by mid-March, for a response rate of 70.3%.

According to the survey, employers contend that not only would defined contribution plans be more popular with employees than defined benefit plans, but that defined contribution plans also would be best for the employer (see chart).

Thirty-nine percent of the surveyed employers said

Preferred types of retirement plans



Source: A.S. Hansen Inc. survey

Chart: Amy Palmer

defined contribution plans would be the most popular type of retirement plan with their employees. Another 25% said independent account pension plans, also known as cash-balance pension plans, would be most popular with employees, while only 20% said traditional defined benefit plans would be the most popular.

Sixteen percent said workers would rather have a year-end cash bonus than some type of employer-sponsored retirement plan.

Furthermore, 51% of plan sponsors felt defined con-

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Kennedy bill extends health benefits

By DAVE LENCKUS

WASHINGTON—Noting that the number of Americans without health coverage has jumped 43% in five years, Sens. Edward Kennedy, D-Mass., and David Durenberger, R-Minn., are sponsoring legislation to further extend employer health benefits to laid-off employees.

Terminated workers already are guaranteed extended health care benefits under provisions of the recently enacted budget reconciliation bill that go into effect July 1 (BI, April 14; March 10).

The new legislation, introduced May 1, would:

- Require that an employer extend health benefits to a laid-off employee for four months following the employee's dismissal. The employer and employee would continue to pay the same share of premium costs they paid before the layoff.

In addition, the employer would have to offer health care benefits to the former employee for another 18 months following the four-month period, but the former employee would have to pay 100% of the premium cost during this period.

Employees who are terminated for cause would not be eligible for the four-month extension of benefits

under the bill.

Under the budget reconciliation act, an employer is required to offer health benefits to a terminated employee for 18 months following the employee's dismissal, but the employee must pay 102% of the cost of the coverage.

- Require all states to form pools to write health insurance coverage for people unable to obtain coverage through other sources. Commercial insurers, self-insurers and Blue Cross/Blue Shield plans would be required to participate in the pools.

- Allow the owner of an unincorporated small business to write off as a business expense 50% of his or her own health insurance costs, as long as the business's employees are offered the same benefits.

In addition, this provision requires that the secretary of health and human services conduct demonstrations on how small businesses can minimize their health insurance costs.

- Require each state to establish a mechanism to finance charity and unreimbursed care provided by hospitals.

Sens. Kennedy and Durenberger each introduced a version of the bill.

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Duty to defend

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Court or Pennsylvania Supreme Court would negate the ruling.

In the meantime, asbestos producers that have signed the Wellington Agreement, which settled coverage disputes and establishes an asbestos claims facility, have negotiated broader defense coverage.

The issue of who will pay the enormous cost of defense coverage is of crucial significance for policyholders and insurers in asbestos and other toxic tort litigation.

According to a 1983 study by the Rand Corp., of \$1 billion spent in the previous decade on asbestos litigation, 60% went to defense costs and only 24% to injured claimants (BI, Aug. 1, 1983).

In the 7,600 cases at issue in the Pittsburgh Corning case, Travelers estimated it would have had to pay \$100 million in defense costs despite having written primary limits of only \$8 million between 1962

and 1970. Now, its total costs amount to more than \$9 million in indemnity payments and more than \$7 million in defense costs under the primary liability policies and premises-operations coverage.

The court's decision on the duty to defend arises out of disputes between Pittsburgh Corning, Travelers and Commercial Union Insurance Co. over coverage for thousands of asbestos lawsuits filed against Pittsburgh Corning.

Pittsburgh Corning began manufacturing and selling a high-temperature asbestos-containing pipe insulation product called "Unibestos" in 1962. It discontinued the product before July 1, 1972.

Travelers provided Pittsburgh Corning with primary comprehensive general liability coverage of \$1 million per year from July 1, 1962, until July 1, 1970. CU wrote \$74 million in first-layer umbrella excess coverage between 1959 and 1970.

Travelers also wrote \$60 million

in excess coverage over several years above CU, which it is now contending should not respond to asbestos losses.

Until 1981, Travelers defended asbestos claims on behalf of Pittsburgh Corning.

In May 1981, CU filed suit against Pittsburgh Corning, Travelers and other primary insurers on various coverage issues, including the duty to defend. A month later, Travelers notified Pittsburgh Corning and CU that it had exhausted its \$8 million limits and would no longer defend any claims, including the 7,600 that were pending.

With no defense forthcoming from Travelers or CU, Pittsburgh Corning filed a motion for summary judgment with the U.S. District Court in Philadelphia as part of CU's litigation.

The manufacturer asked the court to rule that Travelers had a continuing duty to defend asbestos claims despite exhaustion of the primary limits for policy years

1962-1966 and also under a 1976 agreement involving asbestos claims.

In a December 1981 opinion, U.S. District Judge James Giles ruled that under the pre-1966 policies, Travelers had a continuing duty to defend Pittsburgh Corning for asbestos claims even though the limits of the policies were exhausted.

However, under an agreement between Travelers and CU, CU began defending the 7,600 pending lawsuits, plus additional suits filed after that date. CU now says its \$74 million in limits have been exhausted.

Pittsburgh Corning, as a member of the Asbestos Claims Facility, is now receiving defense coverage under the terms of that agreement.

In May 1985, Judge Giles clarified his original decision, ruling that Travelers' continuing duty to defend on pre-1966 policies extended only to the 7,600 cases pending at the time its limits were ex-

hausted (BI, May 27, 1985).

Travelers and Pittsburgh Corning subsequently appealed this decision to the 3rd Circuit.

The main issue concerned the interpretation of the language of the pre-1966 policies that promised to indemnify Pittsburgh Corning for all liability due to personal injury up to the policy limit, and also, "with respect to such insurance as is afforded by this policy, to... defend any suit against the insured."

Judge Giles had ruled that the language was ambiguous since it could mean either the duty to defend ceases when the duty to indemnify ends, or that the insurer must defend "any suit" which might give rise to the type of liability to which the policy is directed.

As evidence of ambiguity, Judge Giles cited the insurance industry's redrafting of the standard CGL policy in 1966 to specifically end insurers' duty to defend at the exhaustion of policy limits, and to Travelers internal memoranda indicating that pre-1966 policies could be interpreted to require a continuing duty.

Since under Pennsylvania law ambiguities are construed in favor of coverage, the district court held in favor of Pittsburgh Corning.

In its decision, however, the court of appeals relied on a previous 3rd Circuit asbestos coverage decision, *AC&S Inc. vs. Aetna Casualty & Surety Co.*, and found that the language was not ambiguous (BI, June 24, 1985).

In the AC&S case, the court interpreted the phrase "with respect to such insurance as is afforded" to mean that if at the outset of a particular action it is shown that the insurer cannot possibly be liable for indemnification because policy limits have been exhausted, then the policy language does not impose a duty to defend that action under Pennsylvania law.

The court noted, however, that the AC&S decision left open the issue of whether an insurer could terminate its defense of a claim in midcourse.

"But the rationale of that case, and of other cases construing Pennsylvania insurance law, persuades us that the answer to that question can only be yes," the court said.

"The principle that... the insurer is not bound to defend where it cannot be bound to indemnify applies regardless of when the duty to indemnify comes to an end," the court said.

The court added that interpreting the policy in this manner leads to the most reasonable allocation of defense responsibilities.

An insurer obligated to pay for both defense and indemnification costs has an incentive to minimize its total liability and thus total costs arising from a claim, the court said.

However, severing the duty to defend from the duty to indemnify creates a serious conflict of interest with one insurer wishing to minimize litigation costs and the other intent on litigating even marginally contestable claims, the court added.

In addition, the court said that neither the Travelers internal memoranda nor the 1966 CGL redrafting of the policy created an ambiguity on the duty to defend.

"... These documents indicate at most that some Travelers employees, writing many years after the policies were drafted and issued, thought them ambiguous," the court said.

"The documents are not contemporaneous evidence of Travelers' intent... In our view, they do not, as a matter of Pennsylvania law, support the view that the language of these policies is ambiguous."

Rewriting the policy in 1966 to include language that insurers are not liable to defend claims "after the applicable limit of the company's liability has been exhausted by payment of judgments or settle-

Continued on page 6

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Duty to defend

Continued from page 4
ments" did not implicitly acknowledge a continuing duty to defend on pre-1966 policies, the court added.

"We think that this amendment merely makes even more explicit the extent of insurers' obligation in the context of its contractual duty to defend," the court said.

"We conclude, therefore, that the pre-1966 Travelers policies do not oblige Travelers to assume the costs of defending actions against its insured after its duty to indemnify has terminated by the payment of judgments or settlements and it has made an orderly withdrawal from the insured's defense," the court added.

Finally, the court found that the 1976 Intercompany Agreement among Pittsburgh Corning's primary insurers in which Travelers agreed to defend to conclusion all asbestos-related claims pending as of Jan. 1, 1979, did not impose a continuing duty to defend those cases.

James Killelea, counsel for Travelers, said the insurer is "very gratified" by the decision. "We really feel those subsequent costs ought not to be the responsibility of the primary carrier," he said.

Mr. Killelea also said that there is now a "controlling precedent" on the issue in the 3rd Circuit, which includes major litigation states of Pennsylvania and New Jersey.

It also could be persuasive in other jurisdictions and may have a particular impact in California, where Lancaster, Pa.-based Armstrong World Industries Inc. is litigating with its insurers over the duty to defend, among other issues.

There is the possibility Pennsylvania law will be applied in that case, Mr. Killelea said.

Another attorney representing Travelers said the decision was "extremely important."

"It's as important as any insurance case that's come down in the last five years," said Barry R. Ostrager, with the New York firm of Simpson, Thatcher & Bartlett.

"It vindicates a position Travelers has long felt was the appropriate position with respect to these policies," he said.

Attorneys for policyholders, meanwhile, acknowledged the decision was a setback, but they downplayed its potential impact.

They contended that the individual insured and the type of policies involved will determine the decision's effect.

"The decision is significant," said Peter J. Kalis, a partner with the Pittsburgh firm of Kirkpatrick & Lockhart, who represents policyholders in coverage litigation, including asbestos defendant H.K. Porter Co. Inc.

"From a policyholder standpoint, I believe it is unfortunate and does not accurately portray Pennsylvania law," he said.

Mr. Kalis emphasized that the 3rd Circuit is predicting how the Pennsylvania Supreme Court would interpret state law and that state courts, which have not directly addressed the issue, are not likely to agree.

"The final page on the continuing duty to defend has not been read yet," Mr. Kalis said.

Some attorneys suggested that linking defense costs to indemnity limits leaves open the possibility that an insurer might seek to avoid defense obligations in mass tort cases by settling enough claims to exhaust its policy limits. That would cut off its duty to defend and control its ultimate defense costs.

An attorney for PPG Industries Inc., a 50% owner of Pittsburgh Corning, noted there could be some merit in that argument. "There is an obvious economic incentive under the 3rd Circuit decision to have primary coverage consumed quickly," said David Armstrong

with the Pittsburgh firm of Dickie, McCamey & Chilcote. But, he emphasized that he does not believe insurers act in bad faith.

PPG has a substantial interest in the litigation since most policies in issue name both PPG and Pittsburgh Corning and to the extent Pittsburgh Corning uses coverage for costs of asbestos litigation, PPG's coverage is depleted.

There are other cases, however in which the potential impact of the decision might not be that significant, attorneys for policyholders pointed out.

For example, some policies contain language that requires the insurer to cover defense costs for pending cases even after the limits have been exhausted, one attorney said.

Also, some policies may not be subject to aggregate limits for certain coverages, which means that neither indemnity limits nor defense coverage would ever be exhausted by multiple claims. ■

Court overturns school class action

By STEPHEN TARNOFF

PHILADELPHIA—A federal appeals court has overturned a decision creating a nationwide mandatory class action for public and private schools that are suing asbestos producers for punitive damages. The suits involve costs associated with asbestos removal.

The 3rd U.S. Circuit Court of Appeals on May 1 overturned a U.S. District Court decision that authorized a mandatory class action for punitive damages in the school district property damage suits (BI, Oct. 8, 1984).

However, the appellate court decision affirmed that portion of the district court opinion permitting a voluntary class action for compensatory damages in which school districts could "opt-out" and bring separate suits.

The appellate court said the district court "abused its discretion" in authorizing the mandatory class action for punitive damages because "neither the record nor the court's findings are adequate to support the procedure The district court made no factual findings at all as to the potential amount and scope of punitive damages."

In addition, the court said a "critical flaw" in the district court's analysis is that the certified class action

does not include all property damage claimants and leaves out municipalities' and homeowners' claims.

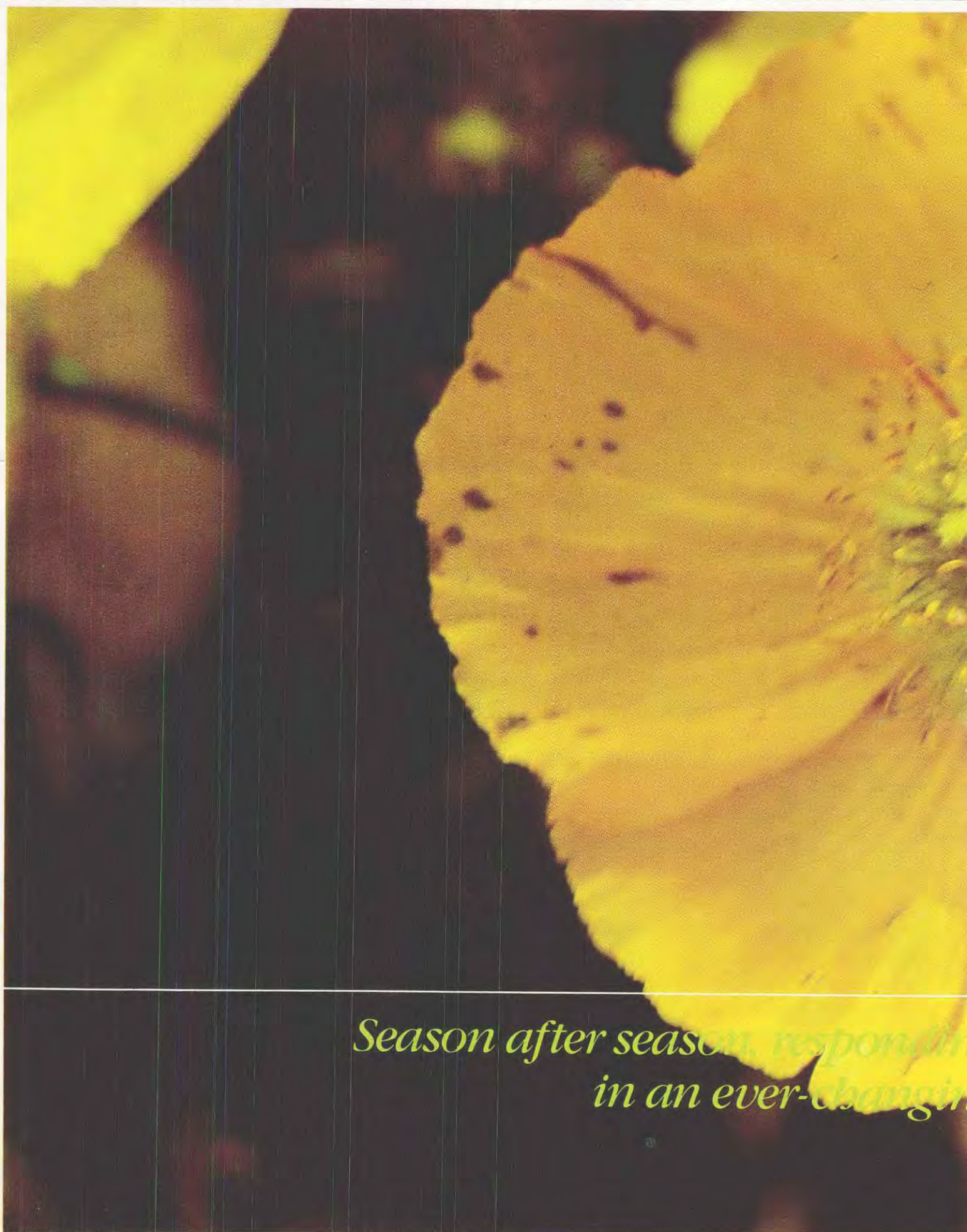
On the issue of a voluntary class action for compensatory damages, the appellate court said while it may be difficult to manage, it should not interfere with the district court's effort. "We acknowledge that our reluctance to vacate the . . . certification is influenced by the highly unusual nature of asbestos litigation."

"The district court has demonstrated a willingness to attempt to cope with an unprecedented situation in a somewhat novel fashion, and we do not wish to foreclose an approach that might offer some possibility of improvement over the methods employed to date."

"We're very pleased with the decision," said Herbert Newberg, an attorney for school districts in the litigation. "It will create maximum access for public and private schools to obtain relief nationwide."

Mr. Newberg added that the decision should remove all obstacles to proceeding to discovery and trial if the lawsuit is not resolved before then.

An attorney for Lake Asbestos of Quebec Ltd., which opposed certification of voluntary and mandatory class actions, said companies are considering whether to petition for rehearing or seek Supreme Court review. ■



*Season after season, responding
in an ever-changing*

Kennedy bill

Continued from page 3

The entire four-point program is included in Sen. Durenberger's bill, S. 2403, which went to the Senate Finance Committee. Sen. Durenberger is the chairman of that panel's health subcommittee.

Sen. Kennedy's bill, S. 2402, is before the Senate Labor Committee, of which Sen. Kennedy is the ranking minority member. S. 2402 would not grant tax deductions for small-business owners, though it includes the provision authorizing study of small-business health costs.

In the House, the bill, H.R. 4742, was sponsored by Fortney Stark, D-Calif., and Willis Gradison, R-Ohio., and is before the Ways and Means Committee.

A spokesman for Sen. Kennedy, citing Congressional Budget Office statistics, said the bill's provisions would provide 10 million uninsured Americans with health care coverage within a year after enactment.

Currently, more than 37 million Americans do not have health coverage, compared with 26 million uninsured Americans in 1980, said the spokesman, citing figures from the

CBO and the Health Care Financing Administration, part of the Department of Health and Human Services.

The spokesman also said extending health care benefits to a laid-off employee for four months will cost an employer an average of 0.07% of payroll, according to CBO projections.

Insurance industry observers are divided over the merits of the legislation's provisions.

The Washington-based Health Insurance Assn. of America supports the measure, particularly the provision that would require states to form pools for uninsured people.

The provision "corrects an error caused by Congress" when it passed the Employee Retirement Income Security Act of 1974, which exempted self-insurers from participating in risk pools, explained Jim Dorsch, Washington counsel for the HIAA.

"This guarantees that the private industry provides insurance for people under 65 rather than the federal government providing it as the insurer of last resort," Mr. Dorsch said. "So, we see this as enlightened self-interest."

Mr. Dorsch also noted that the provision requiring states to establish health insurance

pools mirrors a measure introduced last year in the House and Senate. Both bills, H.R. 1770 and S. 1372, still are pending.

Willis Goldbeck, president of the Washington Business Group on Health, said the WBGH supports the bill, but added that the bill also may serve as a "perverse incentive" for some middle- and small-sized companies to drop their health benefit programs.

"I certainly think the senators are correct in that there is a very significant and growing problem in this country that Americans are being left out," Mr. Goldbeck noted. He called the provision that would give the small-business owners a tax deduction for their own health care insurance costs "excellent" and "long-overdue."

Mr. Goldbeck also noted that a requirement that employers extend health care benefits to laid-off employees for four months is consistent with a position the WBGH took two years ago when a similar bill was introduced. He said the provision will affect small- to middle-sized companies rather than large companies, since large companies generally "are the ones with extended benefits."

However, Mr. Goldbeck said that employers should be allowed to charge laid-off

workers 102% of the premium, rather than 100%, for the additional 18 months of coverage, noting that the budget reconciliation bill allows employers to charge 102% of premium for extended coverage to cover their administrative costs.

And Mr. Goldbeck noted that the bill could have some negative effects.

"I think the real risk is that as more of these mandates are piled on, more companies are going to drop their benefits," he said.

"What is the clear incentive for middle- and small-size companies? The incentive is for them to drop their plans," he said, adding that "the biggest problem in this country is companies that provide no benefits."

David Klein, staff attorney in the legal and information services department of consultant A.S. Hansen Inc. of Deerfield, Ill., supports most of the bill's provisions, but calls the four-month extension of benefits to employees "too far-reaching."

Mr. Klein would prefer to evaluate whether terminated employees will purchase extended health coverage under the provisions of the budget reconciliation act before requiring employers to provide the four-month extension.

Equitable sued over property used as dump

The Labor Department is suing the Equitable Life Assurance Society of the United States for breach of fiduciary duty in allowing an Alabama property owned by the Teamsters' Central States Southeast & Southwest Areas Health & Welfare & Pension Funds to be used for hazardous-waste facilities.

New York-based Equitable also is involved in a dispute with the Central States fund in Chicago over the use of a New Jersey property for handling hazardous waste.

Both the Alabama property involved in the Labor Department suit and the New Jersey property were managed by Equitable on behalf of the Teamsters fund, when the insurer was the fund's fiduciary.

Officials of the Teamsters and the Labor Department separately contend that Equitable placed the nearly \$6 billion pension fund in jeopardy, exposing it to potential liability for damage and cleanup of the hazardous wastes.

In the Alabama dispute, Labor Secretary William E. Brock filed suit April 25 in U.S. District Court in Washington, D.C., charging Equitable "breached its fiduciary obligations" under the Employee Retirement Income Security Act.

The suit claims Equitable permitted Chemical Waste Management Inc., a unit of Waste Management Inc., both of Oak Brook, Ill., to sublease part of the Central States property as a facility for hazardous wastes.

The Labor Department cites Equitable in the suit for allowing the sublease without first conducting appropriate inspections and analyses.

In New Jersey, representatives of the Teamsters fund are negotiating with Equitable about the responsibility for removing 10,000 gallons of waste oil contained in 12 storage tanks on 235 acres of property sold in 1983.

George W. Lehr, Central States' executive director, said the fund has preserved its option to sue Equitable, while continuing to negotiate with the firm.

An Equitable representative declined to comment on either dispute.

Roger C. Siske, partner with the Chicago law firm of Sonnenschein, Carlin, Nath & Rosenthal, who is not involved in the cases, suggested the disputes demonstrate how pension funds might become vulnerable to liability claims if they own real assets, even though their holdings might be managed and occupied by other firms.

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opinions

Making an informed decision

WITH THE VOTE ON Proposition 51 less than a month away, we hope the debate over this important referendum extends beyond the 30-second television commercials now being aired.

Already, both sides are billing the June 3 results as the public's response to the entire issue of tort reform and not just repealing the application of joint and several liability to awards for pain and suffering. And, the impact of the voters' choice could extend far beyond California (see story, page 1).

While we are encouraged by any discussion of tort reform issues, we would like to see more focused debate on the specific reform addressed by Proposition 51. There's plenty to explain to the public for voters to make an informed decision.

Voters need to understand how joint and several liability is applied in damage awards—that a defendant can be forced to pay damages far exceeding his responsibility for the damages if one or more other defendants can't afford to pay their fair shares.

And, the voters need to understand the difference between economic damages, which are awarded for such monetary losses as medical costs and lost wages, and damages for pain and suffering, which are awarded in an effort to compensate someone for physical and emotional anguish.

Only after a voter understands these differences can he or she rationally decide if he or she believes it is appropriate to apply joint and several liability to pain and suffering awards.

The television commercials aired to date in California by those supporting and opposing Proposition 51 are too emotionally charged to accomplish this education. Now that both sides are getting the attention of the voters with these catchy commercials, there's no time to waste in presenting more information.

Both advocates and opponents of Proposition 51 have formed speakers bureaus to provide interested groups with commentators on the referendum. We urge members of the chapters of the Risk & Insurance Management Society, chambers of commerce and civic groups in California to organize meetings at which the public can hear both sides present their opinions.

Employers, individually or as groups, also should consider sponsoring meetings for employees.

Insurance companies that operate in California also could do much more to contribute to informed debate besides helping fund the drive to pass Proposition 51. Insurers should compile and release sound statistics on awards for pain and suffering handed down in California and how often those awards are paid by defendants out of proportion with their fault.

More important, insurers should attempt to quantify the impact of the joint and several exposure for pain and suffering awards on settlement negotiations. This may be difficult, but we believe it also could be very convincing because we suspect that settlements are increased substantially by this exposure.

We, of course, hope that informed voters would see the injustice in joint and several liability, especially as it is applied to pain and suffering awards, and vote for Proposition 51. But, at the very least, we hope to see a well informed electorate make their decisions based on facts, not rhetoric.

For further information on securing speakers on Proposition 51, contact:

- Advocates: Taxpayers for Fair Responsibility, 2049 Century Park East, Suite 415, Los Angeles, Calif. 90067; 213-284-8918.

- Opponents: Citizens Against Proposition 51, 1436 LaCienaga Blvd., Suite 10011, Los Angeles, Calif. 90035; 213-855-0394.

letters

Defense trial lawyers support changes in tort system

To the editor: Your editorial, "Wanted: Hard Facts" (BI, April 8), asking the insurance industry to support calls for tort reform with facts and analysis is both sound and highly relevant. What had been the parochial concern of a few has now become the focus of a major public debate and we should all heed both the responsibility and the opportunity of informing that debate.

Along these same lines, there is a misapprehension that needs correction. So often in discussion, including, for example, a letter on the same page as your editorial, it is stated or assumed that all trial lawyers are opposed to tort reform. That

is not correct. Defense trial lawyers have long called for corrections to the abuses and imbalances of the present tort law, long before the public became aroused and long before the insurance industry championed the cause.

Defense trial lawyers through the Defense Research Institute and other national defense lawyers organizations have formed the National Coalition for Litigation Cost Containment to seek responsible tort reform on the state level. The fact that a number of major corporations, insurers and insurance trade associations have joined the National Coalition underlines the great potential defense trial lawyers

have for constructive influence in this area.

To consign all trial lawyers to the category of the opponents on tort reform is to obscure an important fact. There are responsible lawyers who have direct knowledge of and professional involvement in the present tort system and who not only see the necessity of tort reform but are working for it. The defense trial bar welcomes all those who seek restoration of reason and balance to tort litigation.

Louis B. Potter
Executive Director
Defense Research & Trial Lawyers Assn.
Chicago

Liability insurance crisis caused by 'greed, ignorance and apathy'

To the editor: We are bombarded with articles, speeches, seminars and rhetoric on the reason for the current liability insurance crisis.

The insurance industry argues that the litigious attitude of the American public, along with a tort system that allows recovery of excessive awards, is responsible for the record-breaking loss ratios posted by most insurance companies over the past several years. The insurance industry argues it must increase premiums, in some cases by fantastic percentages, to offset future payouts in expected losses.

On the other side, lawyers and con-

sumer activists, groups and individuals facing steep increases in premiums point the finger of blame at the insurance companies. These advocates say that cutthroat marketing and selling practices at a time when the insurance industry thought it could offset losses with investment income on money collected at premium rates well below recommended underwriting standards caused "the crunch." These same groups also allege the industry is misrepresenting the severity of its losses by use of "accounting tricks."

With all the finger-pointing, accusations and counter-accusations, the average person doesn't know who is at fault for sudden premium increases for businesses, municipalities, recreational facilities, etc., for which the consumer ultimately will pay.

I can sum up the reasons for this phenomenon with three words: "greed, ignorance and apathy."

The American people have allowed themselves, private industry and their government institutions to operate in an atmosphere where the amount of profit to

be made is far more important than the quality of service and products produced.

There is also a disturbing attitude that if anything bad, unfortunate or inconvenient befalls an individual, it must be the result of some action or inaction by someone else and this someone else must pay in monetary compensation. This attitude allows a tort system to flourish where success in litigation is not measured by justice and equity, but by the size of the award.

Ignorance and apathy, both in the insurance industry and in state insurance regulatory agencies, allows practices such as cutthroat pricing and discount underwriting to make a buck today without considering the consequences tomorrow.

As long as the American people allow greed to dictate the quality of justice in the present tort system and fail to demand better service, quality and professionalism from the insurance industry, we can expect the present liability insurance crisis to be repeated over and over again.

Dennis R. McDonald
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Proposition 51

Continued from page 1

California will be picked up in other states," said Gene Livingston, a partner with the Sacramento-based law firm of Livingston & Mattesich and a spokesman for the Assn. for California Tort Reform, which helped get Proposition 51 on the ballot (see related story).

"Certainly, the decisions made by the California courts in the past, expanding theories of tort liability, have been followed by a substantial number of other states. I would hope that California's influence would extend to tort reform matters as well," Mr. Livingston said.

One California trial lawyer who asked not to be identified, put it more bluntly.

"If this thing is passed in California, the message will go straight to Washington, D.C., and that could mean God knows what kind of changes in our civil justice system," he said.

Just two weeks ago, the Reagan administration proposed a bill to establish a uniform federal product liability law, and Congress is considering a variety of other tort reform measures (BI, May 5).

In this highly charged political atmosphere, the supporters and opponents of Proposition 51 are doing battle.

Supporters of the initiative, who call themselves "Taxpayers for Fair Responsibility," include a broad-based coalition of large and small businesses, utilities, insurance companies, business and government trade associations, and city and county governments.

Richard Dyer, risk manager for the Lawrence Livermore National Laboratory in Livermore, Calif., said both the Los Angeles and the Golden Gate chapters of the Risk & Insurance Management Society Inc. support Proposition 51.

"From an insurance consumer's point of view, we feel that this is really very much in order; that it's a return to equity in the system," he said.

The opposition is principally championed by the 5,400-member California Trial Lawyers Assn., but includes a host of environmental and victims groups.

Major political figures in the Golden State also are squaring off over the initiative, with officials such as Gov. George Deukmejian and Los Angeles Council President Pat Russell supporting it, while Attorney General John Van de Kamp and Los Angeles Mayor Tom Bradley oppose it.

Basically, Taxpayers for Fair Responsibility is arguing that joint and several liability unfairly allows courts to make one defendant in a tort action pay for all pain and suffering damages even when the defendant was only minimally at fault. Passage of Proposition 51 would save cities, counties and taxpayers millions of dollars and help stabilize the property/casualty insurance market, the coalition contends.

However, the coalition does not offer any statistics regarding how much in pain and suffering has been paid under the doctrine of joint and several liability.

But Citizens Against Proposition 51 sees the initiative as a major erosion of the rights of plaintiffs seeking to recover damages for pain and suffering in tort cases. They say Proposition 51 will not save taxpayers a dime nor will it bring down the cost of insurance or increase its availability.

Political observers say they expect both sides to spend as much as \$10 million getting their message across to the California electorate, mostly through television advertising.

But the public, at least initially, has been disinterested in the issue of tort reform, judging from an early poll of California voters conducted by the Field Institute, an independent research group that has surveyed public opinion in California since 1947.

This poll, conducted in March before Proposition 51 TV ads began appearing, found that only about 28% of registered voters had heard of the ballot initiative while 72% had not.

Of the 28% who had heard of Proposition 51, 13% said they supported it, 3% opposed it and 12% said they were undecided.

Mark DiCamillo, a pollster with the Field Institute, said the public seems to view Proposition 51 as a battle between local governments and the insurance industry vs. the trial lawyers. As a result, he doubts there will be a large voter turnout.

The complexity of the issue is another important factor, he said, explaining that the public will almost always stick to the status quo when it can't make sense of an issue.

"It's highly legalistic," said Mr. DiCamillo. "The public usually leaves these kinds of issues to the legislature."

"One thing that is true on proposition races is that three out of four of them are voted down," Mr. DiCamillo said. "It's easier to vote no than to vote a new law in."

But the pollster notes that television can have a tremendous impact on the outcome of an initiative campaign.

"On proposition elections, we've seen reversals of a huge magnitude, especially where the issues had low saliency to the public; that is, they haven't really heard or formed an opinion on the issue prior to the campaign itself," he said.

However, unlike most proposition campaigns in which only one side has the money to buy television air time, both sides are spending money on the Proposition 51 campaign, Mr. DiCamillo noted.

"So the public will be exposed to both side's arguments. That being the case, it would be very difficult for me to predict what the effect will be. You just can't foresee it," he said.

The Field Institute will conduct another poll on the issue this month, and those results should reflect the impact on the public of the latest television advertising, Mr. DiCamillo said.

Both sides in the battle over Proposition 51 seem fully aware of television's influential power. Already, the proponents of Proposition 51 have spent nearly \$2 million on TV and radio air time, while the initiative's opponents have laid out a little more than \$1 million.

And both sides say they are planning major media blitzes over the next three weeks in what observers are predicting will be a vigorous media fight to the finish.

Arguments for and against the initiative are well known in risk management and insurance industry circles, but translating them into 30-second television spots has proved difficult. Much of the television advertising already aired is based on simplistic slogans or emotional appeals.

Both sides have harshly criticized the other's media campaigns.

"Their ads are just outright falsehoods," charged Richard A. Wiebe, regional director of public affairs for the Alliance of American Insurers, a member of the steering committee of Taxpayers for Fair Responsibility.

"They're trying to target the insurance industry as the bad guys and the behind-the-scenes supporters for this whole thing," Mr. Wiebe said.

"Taxpayers for Fair Responsibility will tell you that the insurance industry has contributed less than 20% of the campaign costs so far, and our participation will probably remain at that level," he said.

Campaign treasurer John H. Hodgson II says the insurance industry's contribution to the campaign likely will total 17% to 18% of total estimated contributions of \$6 million.

Most of the funding is from the business and professional community, Mr. Hodgson said, noting that doctors as a group may contribute as much as 30% of the total funding.

Businesses that have been hit with high insurance premiums want to support the effort, says Mr. Wiebe. "They are paying the bills for the abuses and excesses of the civil justice system. It's only logical that they bear the burden for trying to correct the problem," he said.

Further, Mr. Wiebe maintains that the contention presented in the television ads sponsored by Citizens Against Proposition 51, that passage of the initiative would encourage toxic polluters to dump chemicals in the state, is "utterly false."

He said Proposition 51 would require defendants in tort actions to be held liable for all pain and suffering damages they are found to have caused, including damages caused by toxic pollution. In addition, the polluter could be held liable for all economic damages connected with the pollution, even if caused by others.

Mr. Wiebe noted that Taxpayers for Fair Responsibility filed a complaint with the California Fair Political Practices Committee charging that the sponsorship identification of the television ads opposing Proposition 51 is not in accordance with state campaign

Continued on page 12



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Proposition 51

Continued from page 10
laws.

The ads are identified as sponsored by Citizens Against Proposition 51, Mr. Wiebe explained. But they also should include a mention of CTLA, according to Mr. Wiebe, because, he said, the trial lawyers group is substantially backing Citizens Against Proposition 51.

For their part, opponents of Proposition 51 say the complaint was nothing more than public relations. And they charge that the TV spots sponsored by Taxpayers for Fair Responsibility are false and misleading.

"I think the Prop 51 campaign is essentially dishonest at its very core," said Will Glennon, a San Francisco-based appellant attorney who serves as spokesman for CTLA on Proposition 51.

Mr. Glennon said the pro-Proposition 51 camp's TV spots are an attempt to play on the public's mis-

trust of lawyers—"you know, these sneaky, greedy lawyers are out to pick your pockets."

He said Taxpayers for Fair Responsibility has been successful at creating what he describes as a false impression that California cities and counties need Proposition 51 to save them from financial hardship.

"Prop 51 is really a relief measure for the professional defendants of California—the California Manufacturers Assn. members, the doctors, the dentists—all the people who do the real harm in personal injury cases, and all the people who are looking for a way to save themselves some money at the victim's expense," Mr. Glennon charged.

And, he defended the television advertisements sponsored by Citizens Against Proposition 51, which he acknowledges are based on an emotional appeal, saying that the issue of joint and several liability is too complex to explain in a 30-second commercial.

"To run television ads and say this is what the doctrine of joint and several liability is about and this is the way to change it would take 20 minutes instead of 30 seconds, and no one would pay attention to it," he said.

"What we've tried to do, and I think fairly successfully and with some integrity, is to fashion our ads in such a way that they tell an emotional truth," Mr. Glennon said.

"Regardless of what happens, I think the election is not going to reflect a very well-informed populace, to say the least," Mr. Glennon said.

Prop 51 backers began as lobbyists

LOS ANGELES—Proposition 51 is largely the brainchild of the Assn. for California Tort Reform, a coalition of manufacturers, retailers, utilities, chemical companies, insurers and local government entities.

The group began lobbying the California legislature for tort reform five years ago, and made significant headway in the Senate, where tort reform measures were approved in each of the past three years.

But the association's lobbying effort fell on deaf ears in the Assembly. The Assembly's Judiciary Committee bottled up the Senate-approved tort reform measures, effectively killing their chance for passage by the lower body of the legislature.

Both houses of the Legislature are controlled by the Democratic Party.

"There is no question in my mind that if the Assembly leadership would back off, that the full Assembly would approve significant tort reform legislation," maintains Gene Livingston, a partner with the Sacramento-based law firm of Livingston & Mattesich and a spokesman for the association.

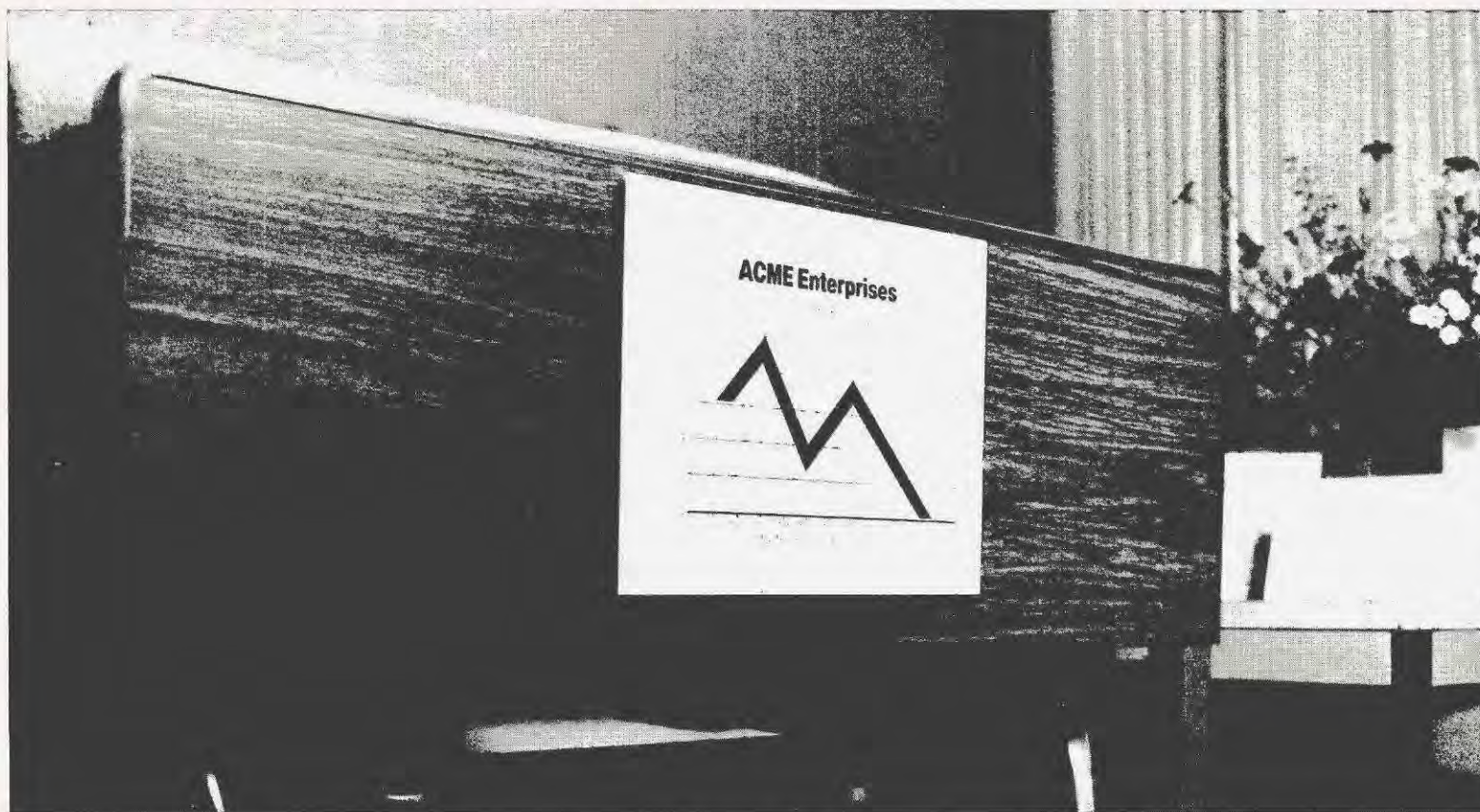
Late last year, members of the tort reform group decided it was time to take their case directly to the California electorate, Mr. Livingston said.

After some initial polling of the public on tort reform issues, he said the association selected the issue of joint and several liability as applied to pain and suffering awards as the basis for a ballot initiative.

The group then hired campaign consultant Woodward & McDowell of Burlingame, Calif., and began collecting signatures to qualify the initiative for the June 3 primary election ballot.

They were able to collect more than 650,000 signatures in 74 days, according to Mr. Livingston.

"We hope that the passage of Proposition 51 will demonstrate to the leadership of the Assembly that the public supports some tort reform," he said.



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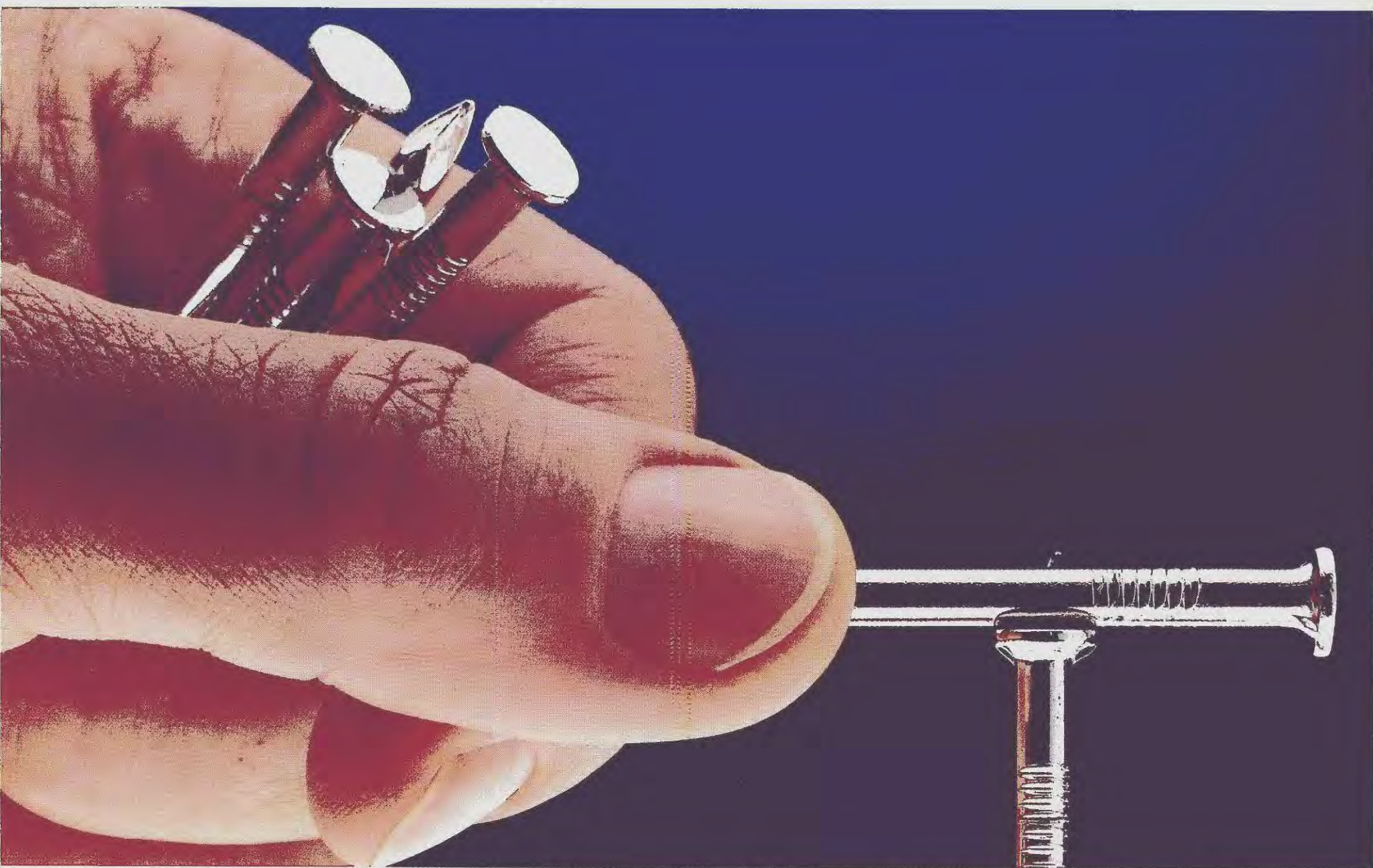
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Bradley proposes limits on rate increases

By STEVE TARAVELLA

LOS ANGELES—To ease the woes of California's insurance buyers, Los Angeles Mayor Tom Bradley is proposing a sweeping, 14-point plan that includes capping rate increases at the rise in the consumer price index for one year.

The mayor also wants a one-year across-the-board ban on policy cancellations to take effect immediately, forcing insurers to automatically renew policies for one year. An exception to the automatic renewal could be made if policyholders exhibit "poor safety records."

This yearlong freeze would give California consumers—both risk managers and personal lines insurance buyers—some "breathing space," contends Mayor Bradley.

The mayor, who has no regulatory authority over insurers, made these proposals in a speech last month to the Conference of California City Clerks. He called for the limit on rate increases and the freeze on cancellations as one of two short-term and 12 long-term solutions to the insurance crisis.

The second short-term proposal would require California Insurance Commissioner Bruce Bunner to hold hearings to determine if past rate increases were justified, and then "roll back" those judged to be unjustified.

Mayor Bradley, who is challenging Gov. George Deukmejian in the upcoming governor's race, charges the incumbent Republican's administration with protecting insurers, not consumers, in the current insurance crunch.

"We think the commissioner is part of the problem," says the mayor's press secretary. "They've had three years and have done nothing."

She said, for example, that the department has not yet responded to a proposal the mayor made recently to impose a six-month moratorium on rate increases and mid-term cancellations.

She acknowledged that the insurance department did ask insurers to voluntarily halt mid-term cancellations, but says department officials have not responded to questions from the mayor's office on how effective that request was.

"We don't know if they're shooting in the dark or if it's had any impact," she said.

Mr. Bunner, however, said in an interview that insurers have complied with the department's request to stop mid-term cancellations, and that this request is now being codified into state law.

He attributed much of Mayor Bradley's proposals to a poor understanding of the industry and said it is "political rhetoric."

The other 12 recommendations made by Mayor Bradley are long-term proposals. They are:

- That California's current open rating system be replaced with a file-and-use system, which would require insurers to file proposed rate changes with the department.

Insurers would then need to justify substantial rate increases, and the department could veto those increases deemed unreasonable.

- That California prohibit use of the claims-made commercial general liability policy form.

"We don't think it protects the consumer at all," the mayor's spokeswoman says of the controversial claims-made form. The plan would permit use of the claims-made form only when "necessary to ensure a sufficient market."

- That policy limits exclude defense costs, so that insurers are required to pay the cost of defending lawsuits against policyholders without depleting coverage for indemnity payments.
- That insurers be prevented

from canceling policies mid-term and from not renewing them with less than 60 days notice. Mid-term cancellations and short periods for notice of non-renewal are unfair trade practices, the mayor asserts.

- That insurers be required to submit comprehensive financial data to the department beyond what is now asked for in the annual statement so consumers can see whether underwriters are losing money or making money.

Chiefly, the mayor seeks line-by-line data on both losses incurred and rate increases imposed, and additional information on profits from investments, explains Michael Feuer, director of research and issues for the mayor's gubernatorial campaign.

- That amendments be made to the insurance code provisions that

establish standards for determining "excessive rates."

For example, the mayor maintains that an insurer's interest income and dividend payments are "directly relevant" to determining rate adequacy and should be taken into consideration when reviewing rates.

- That insurance companies be subject to state antitrust laws. This could be accomplished either by amending California's antitrust law, the Cartwright Act, to encompass insurer conduct, or by rescinding certain sections of the state insurance code (166C.1-2) that have been held to supercede that law, Mr. Feuer suggests.

- That insurance companies be required to join pools to provide coverage that is "especially expensive or hard to get."

This would presumably include liability coverage for home day care centers, taverns, asbestos removal businesses and corporate directors and officers. The insurance department would determine which lines of coverages would necessitate pooling, Mr. Feuer says.

- That the state strengthen the conflict of interest law applicable to the insurance commissioner.

The state's commissioner should be prohibited from having worked for an insurer for one year prior to appointment and for at least three years after holding office, the proposal states. Currently, the commissioner is only prevented from working for an insurer while in office.

- That the insurance department create a salaried ombudsman position to provide consumers with

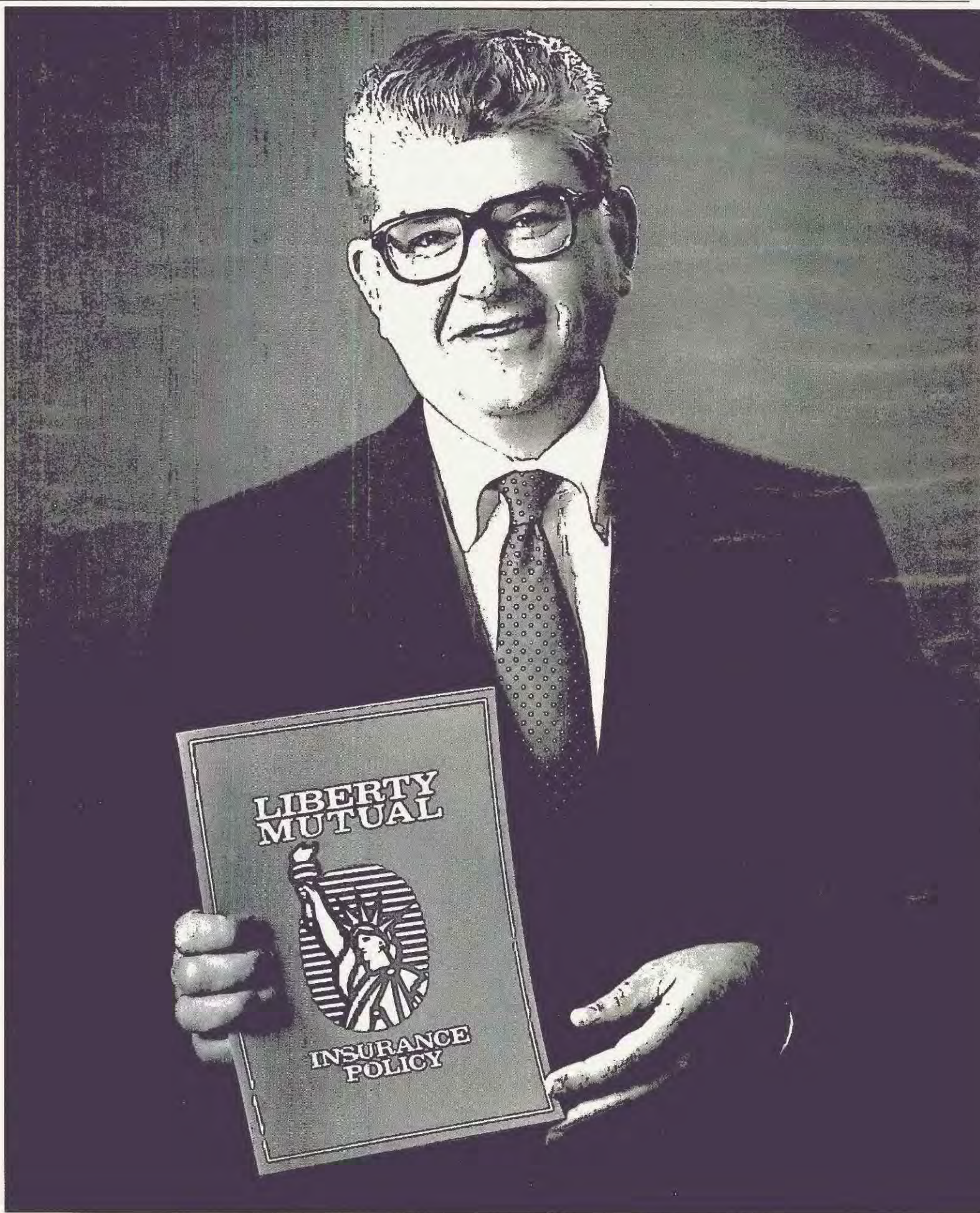
a "public advocate" on rate and availability issues.

This person could initiate litigation on behalf of consumers related to any insurance company practices he or she perceives harmful to the public interest.

The insurance department earlier this month did appoint an 11-member consumer advisory board (see related story, page 2).

- That the department make comparative rate information easily available to consumers by publishing monthly "fact sheets" about all major lines of insurance.

- That insurers stop the "absurd practice" of territorial rating of auto insurance; that is, by using ZIP codes instead of a driver's record. An exception could be made if insurers satisfy the department that rating by territory is justified. ■



Travelers subsidiary forms TPA network

markets

A new Travelers Corp. subsidiary is providing employee benefits services through a chain of local companies.

The Travelers Plan Administrators is marketing health care claims processing services to employers with 200 to 3,000 employees. Currently, five local companies provide services that include billing, eligibility screening and statistical reporting.

The TPA companies that are part of the network are Third Party Administrators of Sarasota, Fla.; the TPA of Pennsylvania in Philadelphia; Claims Administration Services Inc. of Illinois in Palatine; the TPA of Minnesota in Minneapolis; and the TPA of California in San Francisco.

William R. Horne, president of the TPA network, said he aims to

have nine local companies in the chain by year-end and expects to have an office operating in the southwest by mid-May.

The Palatine and Sarasota offices were existing operations that agreed to join the Travelers network. The other three local companies were put in place by the insurer, Mr. Horne explained.

"We believe this is the first national chain of true third-party administrator companies," said Mr. Horne. "It is certainly the first developed by a major insurer."

"While the TPA is a wholly owned subsidiary of The Travelers, each TPA operation is a separate company and profit center and has

its own management structure," he added.

Travelers decided to form the network after spending "quite a lot of time studying the phenomenon of TPAs," Mr. Horne said. "Over the last three to five years, they have grown and gained market-share very rapidly" at a time when employers are working to control benefit costs.

TPAs are looked upon as being "very flexible and willing to customize" products to fit clients' needs, Mr. Horne said.

Companies with branches in several cities will be able to coordinate employee benefits administration easier by using the network, he

added.

"I think you'll see more TPA networks in the future," said Mr. Horne.

TPA purchases

In a leveraged buyout valued at more than \$47 million, a Boston-based venture capital firm has acquired the health and accident administrative services operations of Employee Benefit Claims Inc. and four other third-party administrators, as well as the reinsurance operations of two insurance companies.

Summit Ventures did not, however, acquire the property/casualty operations of the firms, some of which feature common ownership.

Employee Benefit Claims is headquartered in Minneapolis. Its

sister company, Employee Benefit Administration, was not part of the transaction.

The other administrative-service companies involved in the acquisition are Employee Benefit Plans in Minneapolis; EBP of Oklahoma in Tulsa; Equitable Benefit Insurance Services in Walnut Creek, Calif.; and Equitable Benefit Plans in Miami.

The insurers acquired by Summit are Ebbtide Indemnity Ltd. in Hamilton, Bermuda, and First Security Insurance Co. in Minneapolis.

Richard Dunlap, president of EBP, serves as chief executive officer of the group of companies. He stressed that "no major changes in management or operating procedures are contemplated."

The move by Summit is part of a trend toward mergers and acquisitions among TPAs. Some experts are predicting a shakeout among the companies that will leave only a handful of major players in the marketplace (BI, Jan. 27).

Mr. Dunlap said the acquisition by Summit gives the companies access to substantial capital that can be used for further expansion and acquisitions.

"Summit has the experience and capital base for us to meet the changing needs of the marketplace," he said.

Last year, Employee Benefit Claims and Employee Benefit Administration together paid claims for self-insurers of more than \$350,000 and were ranked ninth by *Business Insurance* among claims administrators. The combined operation had more than 2,300 clients and 91% of the claims it handled were health-related. The remaining 9% of claims were workers compensation.

Consulting services

Environmental Strategies Corp. opened its doors May 1 in Washington, D.C., offering environmental consulting services, including risk assessments, environmental audits and compliance surveys.

The new firm was launched by Lynne Miller, Michael Murphy, Douglas Gladstone and Richard

Continued on next page

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update

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markets

Continued from previous page
Freudinberger, all formerly of Risk Science International, an environmental consulting unit of broker Frank B. Hall.

Ms. Miller, president of ESC, says the firm's professional staff has had extensive experience dealing with a wide range of environmental risk management problems.

In addition to offering environmental risk assessments and audits, Ms. Miller says ESC also will provide environmental assessments for companies involved in mergers and acquisitions and offer technical support for environmental claims.

Ms. Miller and Mr. Murphy, ESC's chief executive officer, launched Risk Science International for Frank B. Hall in 1980. RSI was one of the first consulting firms to offer environmental risk

assessments for companies seeking environmental impairment liability insurance.

RSI will remain in operation but replacement for the departed staff members have not yet been selected, the broker says.

For more information on ESC's capabilities, contact Ms. Miller or Mr. Murphy at Environmental Strategies Corp., 3050 K St., N.W., Washington, D.C., 20007; 202-333-8500.

Architect consultants

J.W. Terrill Inc., an independent agency in St. Louis, has formed a new insurance and loss control division that offers consulting services to architects and engineers.

"Architects and engineers have experienced staggering increases in the cost of their professional liability coverage over the past year and cannot obtain the levels of coverage they once had," said Cottrell Fox, executive vp of the firm.

He said Terrill intends to "slow that trend" by "bringing our expertise in loss control methods and cost control strategies to what has become a high-risk discipline."

Edward J. Pennington and Norman W. Williams have been named account executives in the new division.

'Partners' covered

Crown Life Insurance Co. will extend health and dental coverage to the domestic partners of employees who are covered under its group policies.

The coverage is available regardless of the sex of the partner, but the employee must prove to the company that a relationship exists between the two individuals.

"As long as the union was formed for reasons other than strictly getting insurance, we have no reason for turning that person away for dependent coverage," explains Herbert Kirschner, benefits analyst at Crown in Alexandria, Va.

Crown charges two premiums under its group policies, Mr. Kirschner explains: one for an employee covering only himself or herself, and one for employees whose coverage includes dependents.

An employee with dependent coverage pays the same premium regardless of the number of dependents he or she claims.

Since the insurer views an employee's domestic partner just as it does any other dependent—husbands, wives and children are considered dependents—Crown does not know how many domestic partners currently are covered under its group policies.

Plumer buyout

Rolling Meadows, Ill.-based Arthur J. Gallagher & Co. signed a definitive agreement with Lloyd's of London broker John Plumer & Co. Ltd. to acquire all of Plumer's outstanding capital stock.

Gallagher will exchange shares of its common stock valued at 17.5 million pounds for the Plumer stock, pending approval of Plumer stockholders and the Council of Lloyd's of London. The U.S. dollar amount will be figured on an average of the exchange rate 90 days prior to the closing. The brokers anticipate completion of the transaction in late August.

Plumer likely will be combined with Arthur J. Gallagher & Co. (U.K.) Ltd.

New offices

Rocky Mountain Insurance Brokers has relocated to 1380 Lawrence St., Suite 840, Denver, Colo., 80204; 303-629-5001.

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To provide you with maximum flexibility, we recently added Lifestyle Protection, innovative employee paid group life, to our portfolio of group life products. Now you can meet your clients' needs with basic or supplemental group life, payroll deduction group life or a combination plan.

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MAY 14. The New ISO Commercial General Liability Policies workshop in Plainview, N.Y., sponsored by the Society of Chartered Property Casualty Underwriters; \$125 for members; \$140 for non-members. Mari Jennings, Society of CPCU, Kahler Hall, 720 Providence Road, CB#9, Malvern, Pa. 19355; 215-251-2741.

MAY 14. Risk Management of PCBs in Electrical Systems seminar in Des Moines, Iowa, sponsored by Electro-Test Inc.; \$175; \$30 discount for cash payments. Also **May 15** in Minneapolis; **May 20** in Long Island, N.Y.; **May 21** in Clifton, N.J.; **May 22** in Niagara Falls, N.Y.; **May 28** in Baltimore; **May 29** in Harrisburg, W.Va. Electro-Test Learning Center, P.O. Box 159, 3470 Postoria Way, San Ramon, Calif. 94583; 415-866-8566.

MAY 15. Association Captives: Answer to the Insurance Crisis? seminar in Los Angeles, sponsored by Tillinghast, Nelson & Warren Inc.; \$350. Eileen B. Callahan, Conference Coordinator, Tillinghast, Nelson & Warren Inc., 722 Post Road, Darien, Conn. 06820; 203-655-9791.

MAY 15. Insurance Orientation Workshop program in Philadelphia, sponsored by the Insurance Society of Philadelphia; \$80 for members; \$95 for non-members. Insurance Society of Philadelphia, 743 Public Ledger Building, Philadelphia, Pa. 19106.

MAY 15-16. Workers Compensation: The Risk Management Perspective course in Los Angeles, sponsored by the Institute of Safety and Systems Management of the University of Southern California; \$325. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-Service Programs, Los Angeles, Calif. 90089-0021; 213-743-6523/6524.

MAY 15-16. How to Audit and Check Insurance Policy Costs and Coverages course in Burlington, Mass., sponsored by the American Management Assn.; \$675 for members; \$775 for non-members. Also **May 22-23** in Atlanta. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

MAY 16. Valley Forge Chartered Property Casualty Underwriter I-Day: A Commitment to Responsibility conference in King of Prussia, Pa., sponsored by the Carnet Agency; \$25. Carnet Agency, 351 Conestoga Road, Stratford-Wayne, Pa. 19087; 215-687-8710.

MAY 16. PPO—Friend or Foe teleconference in Birmingham, Ala.; Phoenix, Ariz.; Los Angeles; San Diego; San Francisco; Denver; Washington; Miami; Tampa, Fla.; Atlanta; Chicago; Kansas City, Kan.; Louisville, Ky.; Boston; Detroit; Minneapolis; St. Louis; New York; Cincinnati; Cleveland; Philadelphia; Pittsburgh; Nashville, Tenn.; Dallas and Seattle; sponsored by the American Assn. of Preferred Provider Organizations; \$100 for AAPPO members; \$165 for non-members. AAPPO, 101½ South Union St., Alexandria, Va. 22314; 703-683-4918.

MAY 16. Control of Legal Expenses Workshop in Philadelphia, sponsored by the Insurance Society of Philadelphia; \$90 for members; \$105 for non-members. Insurance Society of Philadelphia Inc., 743 Public Ledger Building, Philadelphia, Pa. 19106.

MAY 18. New York Cooperative Insurance Assn.'s 104th Annual Conference in Liverpool, N.Y.; \$65 for advance registration; \$75 for on-site registration; \$55 for spouses; \$95 for non-members. New York Cooperative Insurance Assn., 401 S. Main St., North Syracuse, N.Y. 13212; 315-458-7702.

MAY 18-21. Fifth Annual Employee Benefits Symposium in San Diego, sponsored by the International Society of Certified Employee Benefit Specialists; \$450 for members; \$525 for non-members who are ISCEBS graduates. International Society of Certified Employee Benefit Specialists, P.O. Box 209, Brookfield, Wis. 53005-0209; 414-786-8771.

MAY 18-21. 1986 Washington Legislative Update in Washington, sponsored by the International Foundation of Employee Benefit Plans; \$450 for members; \$525 for non-members. Registrations Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

MAY 18-21. Eighty-Eighth Annual Convention of the Independent Insurance Agents of Connecticut in Boston; \$220 for IIAA member (\$390 plus spouse); \$185 for IIAA members under 35 years old (\$330 plus spouse); \$290 for non-member (\$460 plus spouse). Independent Insurance Agents of Connecticut Inc., 30 Jordan Lane, Wethersfield, Conn. 06109; 203-563-1950.

MAY 18-23. American Industrial Hygiene Conference in Dallas, sponsored by the American Industrial Hygiene Assn. and the American Conference of Governmental Industrial Hygienists; \$75 for members; \$100 for non-members; \$15 fee for on-site registration. Kim Milush, AIHA, 475 Wolf Ledges Parkway, Akron, Ohio 44311; 216-762-7294.

MAY 19-20. Fifth Annual Principles of Petroleum Insurance conference in Evansville, Ind., sponsored by Professional Development Institute and Self-Insurance Resource Inc.; \$450. Also **May 21-22** in Wichita, Kan.; **June 3-4** in Pittsburgh. Mary Ann Crow, Professional Development Institute, P.O. Box 13288 NTSU, Denton, Texas 76203-3288; 800-433-5676; 817-565-3356 in Texas.

MAY 19-21. 56th Annual Meeting of the Inland Marine Underwriters Assn. in Skytop, Pa. Dora Rothman, Inland Marine Underwriters Assn., 14 Wall Street, New York, New York 10005; 212-233-7959.

MAY 20. Managing Your Broker seminar in Los Angeles, sponsored by Tillinghast, Nelson &

Warren Inc.; \$350. Also **June 3** in New York, **June 18** in Chicago. Conference Department, Tillinghast, Nelson & Warren Inc. 722 Post Road, Darien, Conn. 06820; 203-655-9791.

MAY 21. Insurer/Reinsurer Insolvency workshop in Fort Worth, Texas, sponsored by the Society of Chartered Property Casualty Underwriters and the Fort Worth Chapter of CPCU; \$110 for CPCU members; \$125 for non-members. Mari Jennings, Society of CPCU, Kahler Hall, Providence Road (CB#9), Malvern, Pa. 19355; 215-251-2741.

MAY 21. Purchasing Insurance in a Tight Market seminar in Los Angeles, sponsored by Tillinghast, Nelson & Warren Inc.; \$350. Also **June 4** in New York, **June 19** in Chicago. Conference Department, Tillinghast, Nelson & Warren Inc., 722 Post Road, Darien, Conn. 06820; 203-655-9791.

MAY 21-22. Financial Analysis for Risk Management Decisions program in Washington, sponsored by The College of Insurance; \$700 plus \$50 per organization. Also **June 11-12** in Chicago; **July 23-24** in Toronto; **Sept. 17-18** in New York. Laura McKeon, Professional Development Programs, The College of Insurance, One Insurance Plaza, 101 Murray St., New York, N.Y. 10007; 212-962-4111.

MAY 21-23. Hull and Protection & Indemnity Insurance course in New York, sponsored by the World Trade Institute, an activity of the Port Authority of New York and New Jersey; \$815; \$730 for additional registrants from the same organization. Registrar, The World Trade Institute, One World Trade Center, 55W, New York, N.Y. 10048; 212-466-3170.

MAY 22. Harold H. Hines Jr. Memorial Symposium in Chicago, sponsored by the Chicago Chapter of the Risk & Insurance Management Society and the Insurance School of Chicago; free. Insurance School of Chicago, 350 S. Wells St., Suite 202, Chicago, Ill. 60601; 312-427-2520.

MAY 22. Buying Insurance in a Hard Market course in Atlanta, sponsored by the American Management Assn.; \$375 for members; \$425 for non-members. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 513-891-0065.

MAY 23. The New Commercial General Liability Policies: Impact on the Insurance Buyer course in Atlanta, sponsored by the American Management Assn.; \$375 for members; \$425 for non-members. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

MAY 23. Elements of a Well-Managed Claim seminar in Rockport, Maine, sponsored by the Maine Council of Self-Insurers and the Maine Self-Insurance Guarantee Assn.; \$10; \$20 including lunch. Anree Tara, Maine Council of Self-Insurers, P.C. Box 327, Halliwell, Maine 04341; 207-625-4883.

MAY 27-30. Reinsurance Contract Writing seminar in Ossining, New York, sponsored by Robert W. Strain Seminars Inc.; \$1,295 (includes seminar lodging, meals and materials). Robert W. Strain Seminars Inc., Box 1000, Wingdale, N.Y. 12594; 914-832-9384; 212-677-5974.

MAY 29-30. The Role of Business in Health Cost Containment conference in Palm Beach, Fla., sponsored by the National Association of Employers on Health Care Alternatives; \$495 for members; \$595 for non-members. NAECHA, 1134 Chamber of Commerce Building, 15 S. Fifth Street, Minneapolis, Minnesota 55402; 612-338-4813.

MAY 29-30. Meeting Your Responsibility for Worker Training and Right to Know course in Los Angeles, sponsored by the Institute for Safety and Systems Management of the University of Southern California; \$400. University of Southern California, Institute of Safety and Systems Management, Office of Extension and In-Service Programs, Los Angeles, Calif. 90089-0021; 213-743-6523/6524.

MAY 29-31. Physician Insurers Assn. of America conference in New Orleans; \$225 for members; \$375 for non-members. Joyce Harbort, PIAA, Two Princess Road, Lawrenceville, N.J. 08648; 609-896-2404.

JUNE 1-3. Flexible Compensation for Non-Profit Employers/1986 workshop in Washington, sponsored by the Employers Council on Flexible Compensation; \$400 for ECFC members and

associate members; \$550 for non-members; \$95 for course materials only. Employers Council on Flexible Compensation, 1660 L St., Suite 715, Washington, D.C. 20036; 202-659-4300.

JUNE 1-4. Focus '86: Measuring the Results of Cost Containment Programs conference in San Diego, sponsored by MEDSTAT Systems Inc.; \$145. C. Irwin, MEDSTAT Systems Inc., 400 E. Eisenhower Parkway, Ann Arbor, Mich. 48104; 313-996-1180.

JUNE 1-4. New Health Care Systems: HMOs and Beyond conference in Minneapolis, sponsored by the Group Health Assn. of America Inc.; \$420 for members; \$480 for non-members; \$175 for members, one day; \$200 for non-members, one day; \$185 for students, retirees. Group Health Foundation, Group Health Assn. of America, 624 Ninth St. N.W., #700, Washington, D.C. 20001.

JUNE 2-3. New Techniques in Analyzing the Financial Strength of Insurance Companies seminar in New York, sponsored by Executive Enterprises Inc.; \$695; \$99.50 for meeting materials only. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010; 800-223-0787, 800-831-8333 in New York.

The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed.



JUDGMENT

Firm seeks to cut AIDS claims costs

By STEVE TARAVELLA

LOS ANGELES—The AIDS claims of about 250 U.S. employers that purchase their excess group health coverage from Lloyd's of London underwriter A.A. Cassidy & Others are now being managed by a California firm that stresses home health and hospice care.

The employers, in various parts of the country, have their health claims processed by any one of about eight third-party administrators.

The TPA will notify Cost Care Inc., a utilization review and cost management company in Huntington Beach, Calif., when it receives an AIDS claim and Cost Care will seek to reduce the cost of treatment for Cassidy.

Cassidy decided to hire Cost Care when it realized that AIDS hospitalization claims "could impact us severely," said Merna Galliford, a deputy underwriter in London.

Cassidy issues limits of up to \$1 million above the employer's deductible, which averages

about \$25,000, Ms. Galliford says.

The underwriter has so far been "very fortunate" regarding AIDS claims, she says. Of the six it has received so far, the largest medical bill incurred was \$129,000.

Under the new contract, Cost Care will monitor diagnoses of acquired immune deficiency syndrome (AIDS) or AIDS-Related Condition (ARC) among some 125,000 employees nationwide whose claims are processed by these TPAs.

The patients are treated through one of about 800 home health agencies on retainer with Cost Care nationwide. Medical personnel at these agencies are qualified to administer intravenous drug solutions, antibiotics and pain medication, as well as cope with the discomfort the AIDS patient may experience from outpatient chemotherapy treatment.

Benefit managers are finding home health and hospice care to be the most cost-effective and humane form of treatment for AIDS victims (BI, Sept. 30, 1985). These individuals

incur an average of \$147,000 in hospital bills.

According to the federal Centers for Disease Control in Atlanta, there had been 19,560 cases of AIDS reported in the United States through mid-April, and 10,316 of the victims had died.

Cassidy views the case management program as "a positive step in helping us control and manage the claims rather than let the dollars slip away," Ms. Galliford says.

Of the two AIDS claims received since the program took effect in January, one patient terminated his employment before any large medical bills were incurred and the other was enrolled in a plan that Cassidy lost to another insurer at renewal.

One of the claims was in Texas and one in Louisiana.

None of the approximately 50 persons with AIDS whose illness Cost Care has managed for other clients has incurred more than \$50,000 in medical bills over the course of their care, reports Sherry Reichle, Cost Care

program manager in Huntington Beach. Most of that amount reflects charges by the home health agencies.

Cost Care's fee for AIDS case management averages \$2,500-\$4,000 over the duration of the disease, she says.

The AIDS claims of Cost Care's clients—both insurers and self-insureds—are often handled under its 2-year-old catastrophic case management program, in which the employer selects the expenditure ceiling at which catastrophic care begins.

Some ask for it when a case has amassed \$25,000 in medical bills, but most use a \$50,000 cutoff, says Ms. Reichle.

Cassidy is the only party so far to purchase Cost Care's AIDS management program independently of its other health care programs (BI, Feb. 13, 1984).

To preserve confidentiality, the employer generally does not know the identity of the employee whose case management was prompted by AIDS, she says.

Second Hines symposium set for May 22

CHICAGO—The second annual Harold H. Hines Jr. Memorial Symposium on insurance economics will be held May 22 in Chicago, sponsored by the Chicago Chapter of the Risk & Insurance Management Society and the Insurance School of Chicago.

The speakers at the symposium will be George R. Abramowitz, a partner with Sutherland Asbill & Brennan in its Washington, D.C., office; Edmond F. Rondepierre, senior vp and general counsel of General Re Corp. in Stamford, Conn.; and Bowen H. Tucker, senior litigating counsel for FMC Corp. in Chicago.

Mr. Abramowitz will comment on the formation of captive insurance companies; Mr. Rondepierre will discuss the current and future availability of reinsurance; and Mr. Tucker will discuss the financial impact of the tort liability crisis on the long-term competitive survival of U.S. companies.

A panel discussion will be moderated by Edwin S. Overman, president of the American Institute for Property and Liability Underwriters Inc. in Malvern, Pa.

The symposium is being held in memory of Mr. Hines, who had served in the commercial insurance business for 30 years.

At the time of his death in 1984, he was president and chief executive officer of Rollins Burdick Hunter Co., the retail brokerage subsidiary of Combined International Corp.

Previously, Mr. Hines had been president and vice chairman of broker Marsh & McLennan Inc.

The symposium will be held in The Union League Club at 65 W. Jackson Blvd., beginning at 3:15 p.m.

A cocktail reception will follow the symposium at 5:15 p.m., hosted by Patrick J. Ryan, president of Combined International.

There is no charge to attend the symposium, but space is limited. Invitations to attend should be requested by calling the Insurance School of Chicago at 312-427-2520.

In addition, copies of presentations at the first symposium are available from the Insurance School of Chicago free of charge.

Speakers at the first symposium included Robin A.G. Jackson, a director at Merrett Syndicates Ltd. at Lloyd's of London; Donald E. Harder, vp of the national accounts department at CNA Insurance Cos. in Chicago; and C. Arthur Williams, professor of insurance and economics at the University of Minnesota.

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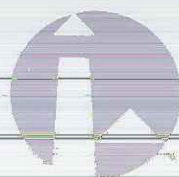
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ASK A BENEFIT MANAGER

How do supplemental pension plans work?

Q My company has a defined benefit final-pay pension plan that we periodically review to be sure it's competitive with those of other companies in the industry. I understand, however, that some of our competitors are adopting retirement plans that provide supplemental pension benefits for some of their executives. What is the purpose of these supplemental plans, how do they work and how are they funded?

A The Employee Retirement Income Security Act and subsequent legislation have imposed limitations on the maximum benefits that can be paid to individual employees under tax-qualified retirement plans.

The limitation ERISA originally imposed on these plans was 100% of an employee's final three-year average pay, or \$75,000, whichever is less. This dollar limit was automatically raised by increases in the Consumer Price Index and, by 1982, had risen to more than \$136,000. But it was rolled back in 1983 to \$90,000 and, in 1984, the CPI adjustments were deferred by the Deficit Reduction Act until 1988.

Legislation currently being proposed in Congress would restrict these limitations even further.

In response to these present and proposed limitations, many companies have adopted excess retirement plans. Basically, these plans provide pension benefits that otherwise would have been paid if not for the statutory limitations.

At the same time as excess retirement plans were being adopted, companies became concerned about the replacement ratio or the percentage of post-retirement

income being provided to their executives, as compared with their pre-retirement income.

Typically, the replacement ratio of retirement benefits, including Social Security, for married employees ranges from more than 100% for an employee earning \$10,000 to about 50% for an employee earning \$75,000. The replacement ratio declines for an employee earning more than \$75,000 because Social Security benefits are a declining part of the employee's total post-retirement income.

As a consequence, companies have adopted supplemental executive retirement plans, also known as SERPs, that not only pay benefits for key executives in excess of the statutory limitations, but also—by targeting a ratio of post-retirement income like 50% or 60%—they pay benefits that are greater than those provided by the basic tax-qualified defined benefit plan.

By granting additional age and service credits to designated executives, they also can be used to recruit executives who are in midcareer or to induce early retirement.

The major provisions of a typical SERP offered by an employer are:

- Eligibility: Executives in selected salary grades or with certain titles are eligible for the plan.
- Benefit Formula: 30% of the highest three years of earnings in the last 10 years, plus 1% of the highest years of earnings for each year of service between 10 and 30 years.
- Benefit offset: 50% of the executive's primary Social Security benefit, reduced pro-rata for less than 30 years of service, plus the basic retirement plan benefit.
- Normal retirement age: 65.
- Early retirement age: 50 with 15 years of service.
- Special early retirement benefit: Up to a maximum of 5 points at the discretion of the company. One point equals one additional year of service and/or the employee will be deemed to be one year older for calculating benefits.

Unlike qualified defined benefit plans, companies cannot take a tax deduction for non-qualified SERPs until the benefits are actually paid to the employee and the employee pays taxes on them. There are, however, a number of ways of funding for a SERP. For example:

- The company can purchase individual or group insurance contracts and cash in the value of the policies at the time of the executives' retirements to pay the SERP benefits.

- The company could set up an irrevocable trust administered by an independent trustee—a so-called "rabbi" trust—but subject to the claims of the company's creditors.

- Alternatively, the company could set up book reserves to pay the SERP benefits and, when they become due, simply pay the benefits out of current income.

Finally, you should carefully review both the design and the method of funding a SERP with your benefit consultants to make sure that the long-term objectives of both your company and its executives are satisfied. ■

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

Ask a Benefit Manager, Ask a Risk Manager, Ask a Benefits Actuary and Ask a Casualty Actuary answer written questions from readers on risk and benefit management issues and actuarial problems.



Mr. Duva

casualty field.

Columns by Mr. Duva and Mr. Perry appear alternately on the second Monday of each month. Mr. Miner's and Mr. Sherman's columns appear alternately on the first Monday of every month. Mr. Duva's next column will appear in July.

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

Current crisis affects nearly everyone

By Allan P. Waters

NEVER BEFORE HAS a crisis in the commercial property/casualty insurance market caused so much turmoil as the current crisis.

There have been major problems in the past—many of us recall the difficulties of the market in the mid-1970s—but past crises affected only segments of the market, like professional liability, product liability, government entities, etc.

The current market crisis seems to be affecting almost all buyers of insurance for almost all lines of coverage. There are exceptions, of course, but they are few.

Compounding the current dilemma is the pending introduction of the Insurance Services Office's claims-made commercial general liability policy to the insurance market.

These are difficult times, which demand a total risk management approach that members of the Society of Risk Management Consultants—which represents independent consultants who do not sell or broker insurance—are recommending to business, government and institutional clients.

At the SRMC's annual meeting in Toronto last October, members were polled as to what they thought were the three most important steps organizations

should take during the insurance crisis. The following are the consultants' consensus:

- First, do everything possible to improve your risk. Comply with all reasonable major loss prevention recommendations received from insurance companies. If possible, eliminate or reduce high-risk products or operations. This will allow you to approach the marketplace with a greater advantage.
- Second, consider your ability to assume risk through some form of retention. Soft market conditions made it attractive for many organizations to buy low deductibles and insure risks with low loss potential. In a tight insurance market, appropriate use of retention can help you to control overall insurance cost.
- Finally, start the policy renewal process early by working with agents, brokers or insurers to evaluate options. Make sure up-to-date risk and loss information is available and be sure to communicate with senior management that cost increases and coverage restrictions are likely.

In addition to these three basic guidelines, there are other points to be considered in coping with the difficult

speaking out

market:

- Don't count on coverages being renewed without firm indications, preferably in writing with renewal figures. Don't always place absolute faith in individual brokers or insurers. What happens if, at the last minute, they can't or won't produce?
- Check your notice of cancellation, non-renewal or adverse change on current policies. How much time will you have to replace critical coverage if your insurers provide only the minimum notice required?
- Don't be too willing to accept anything that's offered. Just because the market is tough is no reason to abandon hope for needed policy modifications. You will obviously have to be cautious and diplomatic in stating your desires, but at least ask for what you think to be essential.
- Although policy liberalizations are fewer, some insurers are still reasonable and will not delete needed protection through exclusions or restrictions. Review carefully sample forms that are submitted.
- Consider avoidance where risks associated with new ventures are difficult to control or finance.

- Consider greater use of contractual transfer of risk, but evaluate carefully the capacity of other parties to respond to their financial responsibility for loss. Review certificates of insurance very carefully for diminished coverages on renewal.

- In addition to consideration of self-insurance, consider captive insurance company alternatives.

- Smaller organizations should explore opportunities to participate in group insurance pools and/or association plans to the extent available.

However, care must be taken to investigate finances, reinsurance arrangements, management, etc., of such pools/plans.

Are they assessable? What are their dividend formulas? Are there any penalties upon termination of participation?

Although we understand and support the need for the insurance industry to return to a more reasonable pricing approach, insurers and reinsurers may be courting danger by being too heavy-handed in premium increases, deductible changes and coverage restrictions.

Buyers have long memories and are much more resourceful than in the past to deal with market problems.

Continued on next page

'Practical' guide lives up to its name

"Practical Self-Insurance: An Executive Guide to Self-Insurance for Business"

By John Boyce-Smith and Alan M. Pearce

Published by Risk Management Press, P.O. Box 670, Inverness, Calif. 94937

\$24.95, 181 pages hardback

By Dave Lenckus

BEGINNING FROM THE premise that only certain risks should be self-insured and only a certain level of losses retained, "Practical Self-Insurance, An Executive Guide to Self-Insurance for Business" examines how to evaluate current insurance programs to reduce one's dependence on commercial insurance coverage.

The book is written in layman's terms, and, because it does not assume that the reader has formal risk management training, it is useful for those interested in examining self-insurance options.

It also can help risk managers improve various elements of an existing self-insurance program or

Dave Lenckus is Business Insurance's assistant managing editor.

books & ideas

structure a new program.

The first two chapters—"Why Self-Insurance?" and "Conducting a Feasibility Analysis"—detail the criteria on which the authors believe a self-insurance program should be based.

For example, the authors note that self-insurance may be advantageous when:

- Loss experience is great enough to make accurate predictions of future losses.
- Exposures are widespread rather than concentrated only on certain risks.
- Loss frequency and severity is acceptable.
- Funding for anticipated losses will not burden normal operations.

Also included is a do-it-yourself guide for completing self-insurance feasibility studies.

Mr. Boyce-Smith and Mr. Pearson then walk the reader through the process of evaluating whether certain risks should be self-insured.

Chapters Three through Six tackle the following coverages: workers compensation liability, vehicle liability, general and product liability and property risks.

The authors often use case histories to explain how to evaluate whether risks should be self-insured.

Chapter Seven, "Excess Insurance," discusses how to decide on a self-insured retention and limits for excess insurance.

The authors note that some underwriters will incorporate excess coverage over a self-insured retention under an existing umbrella policy.

But, some underwriters require companies to purchase excess coverage above the self-insured retention before they will write umbrella coverage.

Chapters Eight through 13 may be as beneficial to the risk manager with an existing self-insurance program as they are for the risk manager implementing a new self-insurance program. The chapters cover "Administration—General Considerations," "Adjusting and Claims Management," "Accounting for Losses and Reserves," "Safety and Loss Control," "Alternative Risk Financing Techniques" and "Employee Benefit Programs."

The authors, who together have a total of nearly a half-century of experience in corporate finance and risk management, keep their explanations concise and often use examples and tables for reference.

That makes this hands-on reference a valuable tool for the risk manager or executive who already has completed exploratory reading on the subject, as well as for those contemplating starting a self-insurance program.

Current market crisis affects nearly everyone

Continued from previous page

As in the mid-1970s, many buyers who turn to individual and group self-insurance may find their new status quite satisfactory and may never come back to the fully insured market. Unfortunately, it is usually the better risks that leave the market to never return, thus compounding the problem.

A more moderate approach to renewal pricing and coverage by more insurers and reinsurers can only serve to better position the industry to regain lost goodwill when the market returns to normal.

Furthermore, while SRMC

understands the arguments for claims-made general liability policy forms as an alternative to occurrence policies, we are opposed to some intended claims-made form provisions and procedures and eagerly await changes that assure maximum protection for buyers.

It is our opinion that buyers should usually prefer occurrence forms of coverage and should be given a choice by insurers—in states in which claims-made general liability forms are approved and introduced—to purchase or continue with occurrence coverage.

Where buyers give serious

consideration to purchase of claims-made coverage, we cannot overemphasize the need to carefully review all policy forms, coverage limits, retroactive dates, defense provisions and extended discovery period options to guard against gaps or overlaps of coverage and to assure that aggregate limits are sufficiently large to afford needed amounts of coverage.

Further, it is critical to carefully evaluate problems presented by the purchase of umbrella or other liability policies that do not follow the policy form or which conflict with primary general liability coverage.

Finally, the SRMC suggests the various

associations within and outside the insurance industry that oppose the claims-made general liability form consider working cooperatively for desired improvements in claims-made liability.



Allan P. Waters, president of the Society of Risk Management Consultants, is principal of Waters Risk Management, a consulting firm in Seminole, Fla.

Emotional breakdown work-related: court

An emotional breakdown resulting from a layoff and transfer to another department constituted a compensable injury arising out of and in the course of employment, according to Massachusetts' highest court.

In August 1977, Helen Kelly's supervisor told her a company cutback would result in her being laid off from her department. She broke down, cried and was unable to compose herself. Ms. Kelly went home early and remained upset over the weekend.

When she returned to work Monday, she was told she could transfer to the cable department as foreman. She was not pleased with the transfer, became depressed, developed chest pains and was taken to a hospital and medicated. She remained out of work for six weeks.

When she returned to the cable department, she again developed chest pains and was hospitalized. Thereafter, she underwent psychiatric treatment for depression.

Ms. Kelly applied for compensation but was denied by the board. A trial court, however, awarded her benefits.

The appellate court said that it was clear that Ms. Kelly had suffered a "personal injury" within the meaning of the workers compensation act, because an emotional disability, if caused by employment, was a compensable injury.

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

legal briefs

But the key issue here, the court observed, was whether Ms. Kelly's injury arose out of and in the course of her employment to entitle her to benefits under the act.

The court concluded that the event that caused her disability was an incident of employment "in any of its aspects."

The court flatly rejected a contention that Ms. Kelly was not entitled to benefits unless her emotional disability resulted from an unusual and objectively stressful or traumatic event. *Kelly's Case*, Supreme Judicial Court of Massachusetts, May 6, 1985 (BI/04/A.—\$5).

Cancellation not termination

An insurer's cancellation of a group health insurance policy did not terminate benefits with respect to future treatment needed for diabetes contracted while the insured was covered under the policy, a Louisiana appellate court ruled.

Charles E. Cabibi Jr. was covered under a group health insurance policy issued to his law firm by Blue Cross. The policy constituted a continuation of coverage that was in effect when Mr. Cabibi was born in 1939, at which time his father was covered under the original policy.

Mr. Cabibi was diagnosed as a diabetic at age 7 and

had required continuous treatment over the years.

The current policy was issued on Jan. 1, 1981, and was canceled effective June 1, 1982. The termination provisions ended health care for services after the contract termination regardless of the cause of termination except for "admissions eligible for benefits beginning before the effective date of termination. . . ." Admissions was defined as meaning a period of uninterrupted hospitalization.

Mr. Cabibi sought a declaratory judgment that the insurer had to continue his benefits with respect to diabetes.

The trial court ruled for Mr. Cabibi.

The appellate court said that under the plain wording of the policy, it seemed that the insurer owed no further benefits to Mr. Cabibi, even though his diabetes was contracted during the policy term and future treatment was certain to be required.

However, the court said the law did not sanction, nor public policy condone, the right of the insurance industry to establish renewal criteria that would, in effect, deny those diagnosed during the policy period from their vested right to uninterrupted receipt of benefits.

Thus, the court said that the insurer here was responsible for continued benefits to Mr. Cabibi arising out of his diabetes. *Cabibi vs. Louisiana Health Service & Indemnity Co.*, Court of Appeal of Louisiana, Jan. 11, 1985, rehearing denied March 27, 1985 (BI/01/A.—\$5).

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london line

RICO lawsuit dropped against Minet, Bowes

By STACY SHAPIRO

LONDON—Re/International Ltd. and Warwick Feldman are dropping their suit seeking more than \$25 million in punitive and exemplary damages from Lloyd's broker J.H. Minet & Co. Ltd. and U.S. broker Bowes and Co.

The suit had been filed under the Racketeer Influenced and Corrupt Organizations Act.

However, litigation involving Re/International and Minet continues in the British High Court to determine who owns more than \$400,000 Minet has in escrow.

Both cases revolve around the defunct reinsurance pools of agent Re/International Ltd. of Bermuda, which ceased doing business in 1982. Since then, seven international reinsurers have been sorting out the tens of millions of dollars in claims from business underwritten by Re/International.

Reinsurers' inability to locate Re/International's records has made that task difficult (BI, Jan. 17, 1983).

Minet was the broker for the retrocessionaires of Re/International in Bermuda, a spokesman said. So far, Minet has found at least \$400,000 in retrocessions for the pool, but does not know to whom to pay it. Re/International believes the money belongs to its clients.

However, Lloyd's Italico and other reinsurers of the pool have filed a lawsuit in the High Court against Minet and Re/International, saying that the money in escrow belongs to them.

Mr. Feldman's attorney Michael Harris, a partner in Rogers & Harris, said his clients had asked the U.S. District Court for the Central District of California to dismiss the RICO lawsuit without prejudice because there was ongoing litigation in the United Kingdom, which was a more suitable venue.

The Feldman/Re/International lawsuit against Minet and Bowes had claimed that Minet and Bowes had devised a "manipulative scheme of the reinsurance brokerage market" and withheld funds owed to reinsurance companies that used Re/International's brokering services, totaling about \$2 million.

A Minet spokesman said that "Mr. Feldman's actions were ridiculous" and added that Minet believed there was no basis for a claim and had planned to defend it vigorously.

A second firm with the same name and ownership, Re/International in California, is still operating as an administrative and management company for offshore reinsurers.

Premium cutbacks

Lloyd's of London is forcing two syndicates at K.F. Alder (Underwriting Agency) Ltd. to cut back on the amount of premium income they write this year.

Last week, Lloyd's instructed non-marine syndicate 503 and aviation syndicate 950 to restrict their 1986 premium income to 85% of the syndicates' gross capacities. The syndicates are underwritten by J.C. Nevitt and managed by K.F. Alder a subsidiary of the Bellew Parry and Raven Group.

K.F. Alder's five other syndicates were not affected by this direction, Lloyds said.

The agency has 28 days to appeal to the Committee of Lloyd's.

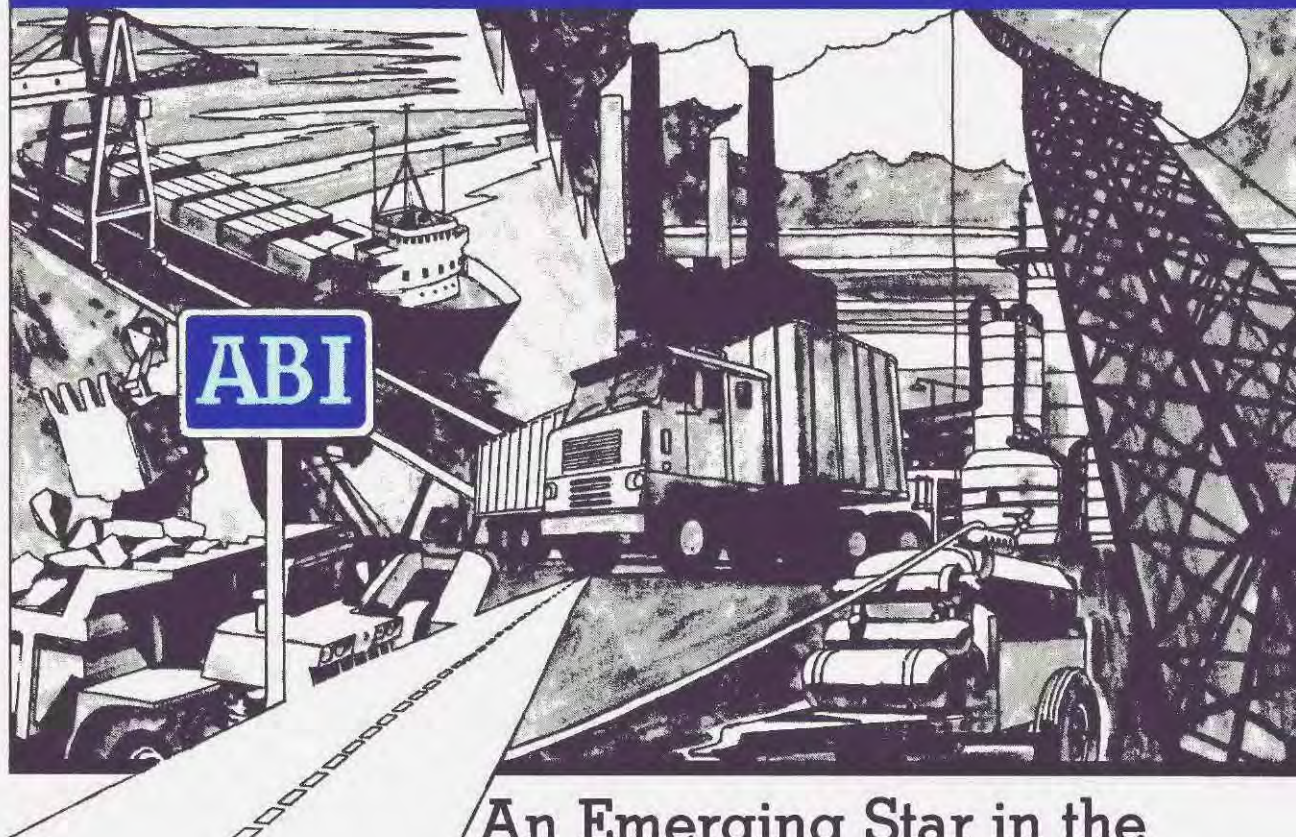
Meltdown coverage

London insurance market sources do not believe that there are any insurance or reinsurance consequences of the meltdown of a Russian nuclear power plant on April 26 near Kiev.

Russian risks are normally covered by the state insurance company Ingosstrakh, which previously was called Black Sea and Baltic General Insurance Co. Ltd. Ingosstrakh reinsures its risks in the London market, reinsurers say.

But, at least one reinsurer believes that nuclear risks in Russia are not insured.

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Pension plans

Continued from page 28

ers contributed between 4% and 6%; 18% of the employers contributed between 2% and 4%; and 7% contributed less than 2% of payroll.

The other 22% of the surveyed employers contributed nothing to their defined benefit plans in 1985, possibly because the plans were already adequately funded, Mr. Borleis says.

Sixty-eight percent of the survey respondents said their plans are overfunded, noting that there would be more than enough assets to purchase annuities to cover all accrued benefits. Another 9% said their plans are "sufficiently" funded to purchase annuities upon plan termination, while 23% said their plans were underfunded.

Larger employers' plans were usually better funded than those of smaller employers, the survey points out. For instance, 81% of the employers with 10,000 or more em-

ployees said their plans are overfunded, compared with only 63% of those with fewer than 500 workers.

While the survey shows that most employers are committed to their defined benefit plans, many of the respondents also offer some other form of retirement program, including defined contribution plans, to their salaried workers.

The 583 employers that said they offer defined benefit plans also offer a total of 903 defined contribution plans, or an average of about 1.55 plans per sponsor.

Conversely, the 225 surveyed employers that did not offer defined benefit plans offered 342 defined contribution programs, or an average of about 1.52 per employer.

Of employers offering other plans besides the defined benefit plan:

- 36.4% of the respondents offered 401(k) plans.
- 20% offered savings and thrift plans.
- 17.8% offered Payroll-Based

Stock Ownership Plans.

- 9.4% offered profit-sharing plans.

- 7.3% offered non-PAYSOP employee stock ownership plans.

- 9.1% offered some other type of plan.

An upcoming Hansen survey will examine issues concerning defined contribution plans.

Other subjects addressed by the Hansen survey on defined benefit plans include:

- Eligibility requirements. Twenty-five percent of the surveyed plans provided immediate enrollment, while 54% of employers have adopted the legally required minimum participation standard of age 21 with one year of service. Twenty-one percent have some other eligibility requirement.

Immediate eligibility was most prevalent among government entities, with 82% offering immediate enrollment in their defined benefit plans.

- Vesting. The vast majority—

79%—of employers use 10-year cliff vesting in their defined benefit plans. Employees fully vest in five years or less at 4% of the surveyed employers, with the other 17% using some other vesting formula.

Thus, most surveyed employers would be forced to amend their defined benefit plans if a proposal approved last month by the Senate Finance Committee to require five-year vesting becomes law.

- Employee contributions. Ninety percent of the respondents' plans were non-contributory. Contributory plans were most common again among government entities, with 65% of those employers requiring employee contributions.

- Lump-sum payments. Thirty-seven percent of the surveyed companies allow retirees to take their benefits as a lump sum, 4% do not allow lump-sum payments but are considering the idea and 59% do not allow lump-sum payments and are not considering it.

- Benefit formulas. Seventy-seven percent of the respondents offer final average pay plans, while 11% offer career average pay plans, 2% offer floor plans and 2% offer individual account or cash-balance plans. The remaining 8% offer some other variety of defined benefit plan.

- Social Security integration. By far the most popular form of integration among the surveyed employers was the offset method, used by 62% of the respondents. Another 22% did not integrate their defined benefit plans with Social Security.

Eleven percent used the "step rate method," in which the integration formula varies with income above and below the Social Security wage base. Two percent used the "excess" method, in which the integration is determined by the Social Security wage base over the working career of a retiree. Three percent used some other integration method.

- Benefit statements. Some 72% of the respondents voluntarily and regularly supplied employees with statements of accrued benefits and vesting status. Thirty-nine percent of the employers provided this in-

formation as part of a comprehensive statement including data on other types of employee benefits, while 33% issued an annual statement of retirement benefits.

In addition, another 26% of the employers said they issued benefit statements on request. Two percent were not sure of their policy.

- Pre-retirement counseling. More than half—53%—of the respondents offer some type of pre-retirement counseling. Twenty-three percent offer a full pre-retirement counseling program, 26% limit their program to explaining the defined benefit plan and 4% limit the program to financial concerns only. Forty-seven percent of the respondents offer no type of program.

- FASB requirements. Only 28% of the employers said they have performed calculations that will eventually be required under Financial Accounting Standards Board Statements 87 and 88. Forty-five percent said they have not performed the calculations, and 27% said they were not sure if the calculations have been performed.

FASB 87 requires changes in the way pension expenses are calculated and reported on a company's income statement and the way liabilities are reported on the balance sheet. FASB 88 specifies how a company must account for decreases in benefit liabilities or the purchase of annuities to cover plan liabilities.

Because of current conditions in financial markets, pension expenses will be lowered under the reporting standards contained in FASB 87, Mr. Borleis notes. "That makes it surprising that only 28% have calculated what the impact would be on their income statements."

The complete results of the study, "Defined Benefit Plans and Retirement Practices," are released only to companies that participated in the survey. Others can receive a free copy of an executive summary of the results by writing Mel Borleis, A.S. Hansen Inc., 1417 Lake Cook Road, Deerfield, Ill. 60017.



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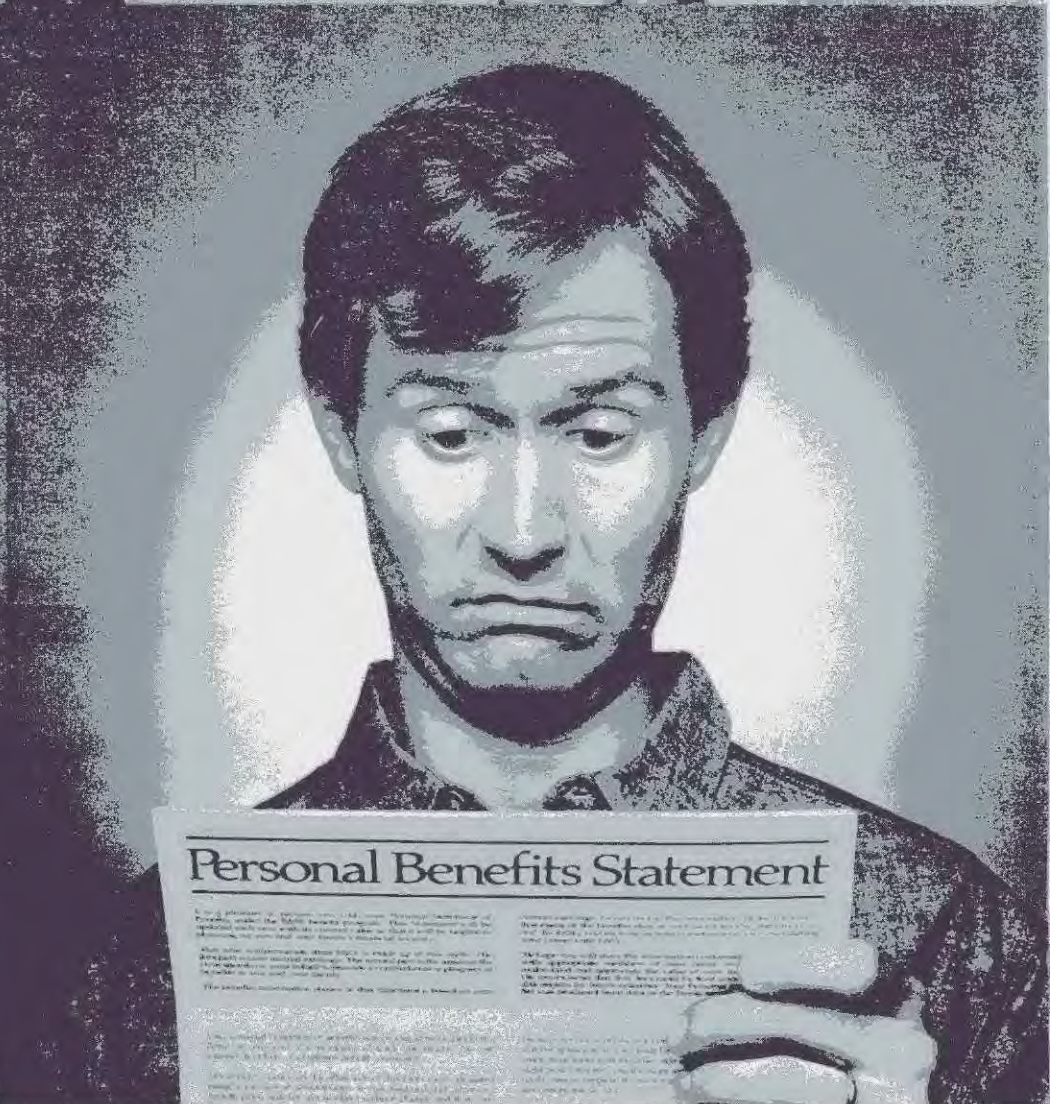
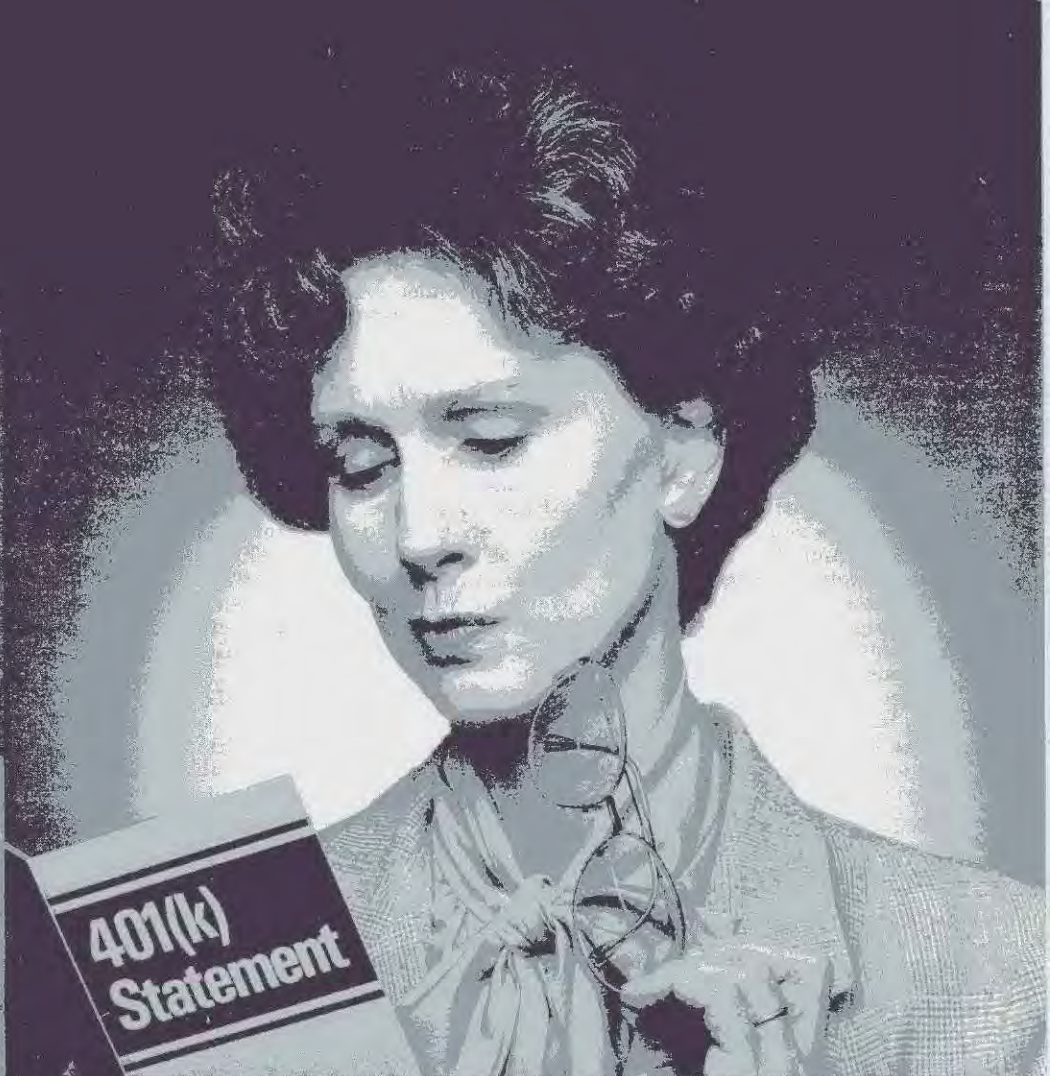
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May 1, 1986

Firms, workers should share pension responsibility: Survey

Employers and employees should share responsibility for providing retirement income, according to a new survey of employers.

Benefit consultant A.S. Hansen Inc. asked respondents to its survey on defined benefit plans and retirement practices to rank in order the parties that should take the most responsibility for providing retirement income to workers—employers, employees, the federal government and state and local governments.

According to the survey, employees are perceived as the party that should be most responsible for retirement income. Employees received 1,726 weighted votes, edging employers, which received 1,628

votes. There was a big gap to the federal government with 981 votes and state and local governments with 68 votes.

"We see the beginning of employers thinking the employee needs to take more responsibility for his ultimate fate than employers," explains Mel Borleis, vp and director of benefits consulting at Hansen in Deerfield, Ill.

"There's a trend away from paternalism to the employee being more self-reliant and taking more responsibility for his destiny."

"If you would have seen this in 1966 and 1967, you would have seen heavy weighting for employer and possibly the federal government," he says.

The survey also shows that employers believe that the federal government should take less responsibility for employee retirement income than in the past, Mr. Borleis says.

However, the Hansen survey also notes that most employees do not have a good understanding of their retirement benefits nor fully appreciate their importance until they approach retirement age, which could possibly indicate that employees would not be financially prepared for retirement if they are given more responsibility for providing retirement income.

Hansen asked employers to rate on a 1-to-5 scale how well employees understood their retirement plans and how important workers thought their pension benefits were. A grade of 5 means that employees understand their pension plan very well and think it is very important. A grade of 1 means benefits are not understood nor are considered very important.

For instance, employers gave employees under age 30 an understanding score of 1.72 and an importance score of 1.61, meaning employers believe that younger employees neither understand their retirement benefits nor consider them very important.

Scores gradually increase with age. For example, employees between ages 40 and 49 received an understanding score of 2.73 and importance score of 3.15, meaning that these employees had a general understanding of their pension benefits and thought they were somewhat important.

Employees age 60 and older received an understanding score of 3.78 and an importance score of 4.58, meaning they had a good understanding of their benefits and believed they were very important.

Fryer appointed to Texas board

AUSTIN, Texas—Catherine Brown Fryer has been named a member of the Texas State Insurance Board.

Ms. Fryer, 36, was appointed to the three-member board by Gov. Mark White last month. She most recently had been general counsel to the board since Nov. 1.

Ms. Fryer replaces Carole Rylander, who resigned earlier this year to run for Congress.

"This really came as a surprise to me," Ms. Fryer said, adding that her work as a board member will be a continuation of activities she began as general counsel.

She noted that dealing with the high cost and scarcity of general liability insurance, as well as approval of the Insurance Services Office's revised claims-made commercial general liability form, will be at the top of the board's agenda.

Ms. Fryer began her stint with the Insurance Board in June 1985, when she was hired as assistant general counsel. She also worked in the state attorney general's office, joining that staff in 1974 as a law clerk, and leaving in 1983 as chief of the insurance, banking and securities division.

Ms. Fryer has a bachelor's degree in education from Texas Tech University and was an elementary school teacher from 1971-1972. She earned her law degree from University of Texas Law School.

Ms. Fryer's appointment requires the confirmation of the Texas Senate, but the approval is expected when the Legislature reconvenes in January. The Legislature does not meet this year.

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Additional highlights include the 14th Annual EBC Competition Awards Presentation plus "You Be The Judge" — a look at how other companies communicate benefit programs to employees.

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Wadsworth named president of new Continental Corp. unit

Beverly B. Wadsworth has been appointed president of Continental Guaranty & Credit Corp., a newly formed subsidiary of New York-based Continental Corp. that will specialize in bond, credit and financial risk insurance. Ms. Wadsworth also is a vp of Continental Insurance, another subsidiary.

In addition, Ms. Wadsworth is the president and director of Continental Reed Stenhouse Management Co., another Continental subsidiary that provides underwriting services to two New York Insurance Exchange syndicates of which she is president and director: The Maiden Lane Syndicate Inc. and The South Place Syndicate Inc.

Before joining Continental in 1978, Ms. Wadsworth served as an assistant vp of financial operations and analysis for Home Insurance Co.

Also at Continental Guaranty & Credit Corp., **Wayne B. Fisher** appointed chairman. Mr. Fisher is a senior vp in Continental Insurance's Brokerage and Special Operations Group. And, **Michael J. Beernaert** appointed executive vp of surety and fidelity bonds, **Clifton J. Brown** appointed senior vp of financial risk, and **Stephen L. Taylor** appointed senior vp of credit insurance.

Other insurer changes:

James A. Stark elected president and chief operating officer of The North River Insurance Co. of Basking Ridge, N.J., a subsidiary of C&F Underwriters Group, which is a unit of Crum & Forster. Mr. Stark will be responsible for operations planning and analysis for all CFU units, as well as retaining his responsibilities for branch operations and underwriting, marketing and loss control for all CFU operations in the United States and Canada. Mr. Stark previously was executive vp.

George T. Van Gilder elected a senior vp of Chubb & Son Inc. of Warren, N.J., a subsidiary of Chubb Group. Mr. Van Gilder retains his responsibilities as national manager of Chubb Group's Executive Protection Department, overseeing directors and officers, commercial fidelity, fiduciary and extortion liability underwriting.

Hector Medina named vp of The Home Insurance Co. of New York, a subsidiary of The Home Group Inc. Mr. Medina will be responsible for major lines property and inland marine operations nationwide. He previously was an assistant vp.

Thomas Jewatt and **Leland R. Anderson** appointed regional vps at Wausau Insurance Cos. of Wausau, Wis. Mr. Jewatt is based in the Chicago office, succeeding **Robert E. Keefe**, who is retiring. Mr. Jewatt previously was regional sales manager for the Southeastern region. Mr. Anderson is based in the San Francisco office, succeeding **Harley C. Hoff**, who is retiring. Mr. Anderson previously was vp and treasurer for Wausau International Underwriters of San Francisco, a subsidiary of Wausau Insurance Cos.

comings & goings: industry

W. Arthur Betz appointed vp of Reinsurance Services for The Central National Insurance Group of Omaha, Neb. Mr. Betz most recently was vp and counsel at Hileman, Justice & Co. of Dallas.

Stephen A. Michener appointed senior vp of Minnesota Mutual Fire & Casualty Co. of Minneapolis, Minn. He previously was a division assistant vp and profit center manager for American International Cos.

Michael E. James named president of Golden Eagle Insurance Co. of San Diego, Calif. Mr. James pre-

viously was vp responsible for marketing and agency relations. Also at Golden Eagle, **Donald Baldwin** appointed executive vp. He previously was vp of Balboa Insurance Group.

Thomas M. Waugh appointed director of general liability for the Zurich-American Insurance Group of Schaumburg, Ill. Mr. Waugh now heads the newly formed product support group of the standard lines division, which will develop a wide range of automobile, general liability and umbrella liability products.

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Largest U.S. reinsurers' 1985 results

(All amounts in thousands of dollars)

(Ranked by net reinsurance premium written)

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General Re	\$1,087,727	53.0%	\$1,586,522	48.9%	\$1,313,724	\$1,113,978	84.8%	\$412,290	26.0%	110.8%	127.0%
Employers Re	539,754	22.8	760,380	56.1	614,581	565,377	92.0	181,254	23.8	115.8	116.9
American Re	288,876	(0.6)	730,224	65.4	567,469	463,378	81.7	252,987	34.6	116.3	127.5
North American/Swiss Re	224,262	(13.0)	587,666	18.4	519,283	486,276	93.6	216,923	36.9	130.5	129.5
Prudential Re Group	263,720	54.8	517,457	14.9	501,034	442,257	88.3	159,842	30.9	119.2	150.9
Munich Re Group	199,807	73.8	459,403	75.0	390,078	294,631	75.5	140,859	30.7	106.2	122.9
Kemper Re	147,137	43.5	295,327	45.2	265,739	250,065	94.1	60,175	20.4	114.5	120.0
National Re	121,024	105.8	220,301	92.2	180,812	168,941	93.4	46,072	20.9	114.3	128.5
INA Re	134,737	2.6	219,451	16.0	212,534	221,740	104.3	72,752	33.2	137.5	132.9
New York Insurance Exchange	194,081	6.3	201,132	(7.7)	199,111	225,711	113.4	78,243	38.9	152.3	137.3
Continental Re Corp.	95,886	24.6	198,499	67.8	189,950	161,867	85.2	55,174	27.8	113.0	115.8
Transatlantic Re	100,027	8.9	192,417	45.1	169,573	166,745	98.3	50,710	26.4	124.7	138.0
Skandia America Group	137,700	58.1	182,709	(28.6)	179,651	164,202	91.4	71,551	39.2	130.6	133.3
Buffalo Re	101,601	10.1	174,615	83.7	165,381	170,282	103.0	39,419	22.6	125.6	110.4
St. Paul F&M	N/A	N/A	160,483	145.0	125,476	102,971	82.1	46,030	28.7	110.8	134.4
Constitution Re	78,878	20.0	141,932	8.1	139,465	110,381	79.1	41,186	29.0	108.1	117.6
American Ind. Re	20,242	62.8	114,888	22.1	121,146	122,830	101.4	31,181	27.1	128.5	114.0
Fremont Re Co.	36,820	(24.0)	114,146	46.9	108,545	114,252	105.3	28,103	24.6	129.9	116.8
Continental Cas. Co.	N/A	N/A	114,092	121.8	79,750	71,064	89.1	29,424	25.8	114.9	123.2
USF&G Co.	N/A	N/A	109,112	202.9	63,759	58,887	92.4	20,330	18.6	111.0	107.6
Total for top 20	3,772,279	27.7	7,080,756	42.0	6,106,998	5,475,835	89.7	2,034,505	38.9	128.6	125.9
Total for all companies	5,250,227	27.3	10,119,193	34.0	8,978,574	8,333,329	92.8	2,892,260	28.6	121.4	128.2

Source: Reinsurance Assn. of America

Top 20 reinsurers

Continued from page 3

battered the Northeast last fall, while 25 reported \$28.1 million in net losses from last September's earthquakes in Mexico City.

Many reinsurance officials were not satisfied with the industry's 1985 results, though they admit the future looks much brighter.

Despite the improvement in the industry's overall 1985 combined ratio, it was still the second-worst in 11 years, noted LeRoy Simon, senior vp of Prudential Re Group in Newark, N.J.

He noted that the industry's 1985 combined ratio was nine points worse than three years ago and 20 points worse than in 1977. "It's not a satisfactory result," he said.

Mr. Simon added that Pru Re, which posted a 119.2% combined ratio last year, was "right on the money" with the industry aggregate, "and this, of course, is a very significant improvement over a year ago" when Pru Re tallied a 150.9% combined ratio.

"We're pleased, but not satisfied. Our results, and the entire industry's results, have to improve significantly, again, in order to be satisfactory."

N. David Thompson, president and chief executive officer of North American Reinsurance Co./Swiss Reinsurance Co. in New York, said that 1985 was a "disappointment" for the industry overall "because we found that the lag time for some kinds of reinsurance is significant."

The market is "taking more time to turn around than we anticipated and 1985 demonstrates that," he said, though he added there will be "very significant improvement" in

results in 1986.

North American Re/Swiss Re posted a 1985 combined ratio of 130.5%, compared with 129.5% in 1984. Mr. Thompson noted the reinsurer strengthened loss reserves by an extra \$50 million at year-end 1985 when it realized the tail for excess casualty business was continuing to lengthen. Reserve additions were made for each of the past 20 years, he explained.

This reserve strengthening alone added about 10 points to the combined ratio, he said. The company also was hurt by continuing poor casualty results and by poor surety results in 1985.

Mr. Thompson noted there already has been a "dramatic improvement" in 1986, with the company reporting a "very conservative" 112.4% combined ratio.

The 115.8% combined ratio for 1985 reported by Employers Reinsurance Corp. is better than the industry average, but "the results were still dismal," said Michael Fitt, chairman and chief executive officer. He noted, however, that Employers Re strengthened its loss reserves last year.

"We're looking for continued improvement through '86," he said.

Edward A. Collins, executive vp of American Independent Reinsurance Co. in Stamford, Conn., said the company's combined ratio deteriorated to 128.5% in 1985 from 114.0% in 1984 primarily because of a \$20 million boost in reserves for 1984 and prior years.

As for 1986, said Mr. Collins, "We anticipate continually improved results from an operating standpoint, and also expect to be able to add to policyholder surplus."

Mr. Jamison of Buffalo Re, which posted a 125.6% combined ratio for 1985, compared with 110.4% in 1984, noted the company strengthened its reserves by \$15 million at year-end. He predicted the company would generate a 110% to 115% combined ratio this year.

A spokesman for INA Reinsurance Co. in Philadelphia said the deterioration to a 137.5% combined ratio from 1984's 132.9% was largely the result of "significant reserve strengthening." He predicted a "dramatic" improvement in 1986.

Ronald E. Compton, president of American Re-Insurance Co. in New York, said the industry's 1985 results "were a very good turnaround from '84, but in an absolute sense, did not represent the kind of return on equity the reinsurance business will have to show." An investor could have done better investing his funds in the money market, he said.

The reinsurance industry must continue to strengthen its surplus and financial stability, he said, "and it's going to take more than '85 and '86 to do it."

New capacity is being formed this year, "some of which looks to be pretty responsible and some of which the jury is still out on yet," Mr. Compton remarked.

Some of the reinsurers that have withdrawn from the market should never have been in it in the first place, he added. The remaining players have been around a long time and behaved responsibly throughout all parts of the cycle, he said.

David B. Mathis, chairman and chief executive officer of Kemper Reinsurance Co. in Long Grove, Ill., said he believes the industry's year-end results "confirm what every-

one has been saying in the fact that profitability in the business has been disastrous."

In fact, the industry's true results are "probably worse" than the RAA survey indicates because of the companies that did not participate in the 1985 survey.

"I think the environment we're operating in now gives reason to believe that there will be a return to profitability," he said, noting that return will not occur overnight.

This is true of Kemper Re as well as the industry, said Mr. Mathis. "We'll definitely show an improvement in earnings" in 1986, "but it won't be satisfactory in our eyes."

Kemper Re's 1985 combined ratio was 114.5%, compared with 120.6% in 1984.

Mr. Warren of National Re, which posted a 114.3% combined ratio in 1985 vs. a 128.5% combined ratio in 1984, said "1985 was a transition year for us. We did improve our results over '84 significantly, but they weren't really a helluva lot better than the rest of the industry."

While Mr. Warren does not anticipate his company's premium volume will increase as much this year as last, when net premiums rose 92.2%, "we think there'll be continued improvement in our combined ratio in '86."

"Under the circumstances, we were satisfied that 1985 marked a turnaround. That's very obvious," said Bard E. Bunaes, chairman and president of New York-based Constitution Reinsurance Corp., which reported a 108.1% combined ratio, compared with 117.6% in 1984.

One problem facing the industry is obtaining recoveries due from retrocessionaires "and that's going to continue to hurt" and delay the industry's recovery, he said.

Aneco Reinsurance Underwriting Ltd. reports profit for first quarter of '86

Bermuda-based Aneco Reinsurance Underwriting Ltd. earned an underwriting profit of \$368,074 for the first quarter of 1986, compared with suffering an underwriting loss of \$585,160 for the first quarter of 1985.

In addition to the 1986 first-quarter underwriting profits, the insurer's results were improved by the effect of a loss portfolio transfer that occurred during the period.

Aneco Reinsurance Underwriting sold \$5.4 million of net aggregate loss reserves related to its discontinued casualty and multiperil lines. As a result, losses were reduced by \$5.4 million, underwriting income was increased to \$2 million and capital and surplus were increased.

Considering the effect of the loss portfolio transfer, Aneco Reinsurance Underwriting reported net income of \$2.3 million for the quarter, and including realized gains, \$2.9 million.

As of March 31, Aneco Reinsurance Underwriting reported capital and surplus of \$9.2 million.

In addition to the loss portfolio transfer, Aneco Reinsurance Underwriting purchased \$1 million of additional rein-

surance protection that will respond if the reinsurer's retained reserves on the discontinued business prove to be inadequate, noted Jonathan J. Crawley, president.

Aneco Reinsurance Underwriting released its year-end 1985 results the same time as its first quarter 1986 results because the sale of the loss reserves occurred too late to include the impact on its 1985 financials, said Mr. Crawley.

At year-end 1985, the company reported a \$2.7 million loss, after realized gains, primarily attributable to loss development on the discontinued casualty and multiperil business, Mr. Crawley said. Aneco wrote gross premiums of \$20 million and net premiums of \$13.5 million in 1985.

In the first quarter, Aneco wrote gross premiums of \$4.9 million.

Commenting on the first quarter underwriting profit apart from the sale of loss reserves, Mr. Crawley said, "We see no reason we shouldn't maintain that profit."

Aneco Reinsurance Underwriting specializes in underwriting reinsurance for captive insurance companies.

Measure sets financial guarantee insurer criteria

NEW YORK—Insurance companies specializing in financial guarantee insurance would be required to have a minimum capitalization of \$75 million under a bill recently introduced in the New York State Legislature by Sen. John R. Dunne.

Currently, there are no capitalization requirements for financial guarantee insurers in New York state.

Philip J. Harrington Jr., a special assistant to Sen. Dunne, said a model bill proposed by the National Assn. of Insurance Commissioners calls for a minimum capitalization of only \$50 million.

Mr. Harrington said the Dunne bill also proposes only monoline companies be allowed to write all types of financial guarantee insurance, while multiline insurance companies would be restricted to writing only municipal bond insurance policies.

The proposed legislation also provides for the establishment of special reserves that would be drawn upon if a company experiences incurred losses from financial guarantee insurance that exceed 35% of earned premiums in any one year.

The bill also would require that an insurer not assume a risk from any single entity that would exceed 10% of the combination of its policyholder surplus and these reserves.

Retiree benefits

Continued from page 1

Two months later, White Farm was sold to White Farm USA Inc., a subsidiary of Dallas-based T.I.C. Investment Corp., under a transaction approved by the bankruptcy court.

White Farm USA entered into an agreement with White Motor under which it assumed, under certain conditions, White Motor's obligations to White Farm employees and retirees under the welfare benefit plan. That plan provided company-paid life and health insurance and coverage for prescription drugs and hearing aids to retirees and eligible dependents.

White Farm's president sent a letter to the company's retirees assuring them their free post-retirement medical, life and prescription drug coverage would continue.

But on March 31, 1981, White Farm notified retirees that their welfare plan would be discontinued effective May 1. Retirees were told identical coverage would be made available to them, but they would have to pay for it.

In response, 850 non-union retirees sued in bankruptcy court for restoration of their benefits.

However, the bankruptcy court found company documents gave White Farm the right to terminate or amend the plan, and granted a summary judgment in White Farm's favor.

The retirees appealed to U.S. District Court and two years later, in September 1984, U.S. District Court Judge Ann Aldrich ruled that ERISA, the federal law that protects workers' and retirees' pension benefits, also gives courts the authority to fashion common law to protect welfare benefits, including health care coverage.

Judge Aldrich held that welfare benefits become vested upon retirement and cannot be terminated, even if plan language unequivocally authorizes the employer to do so.

But, the appellate panel said in its decision last month that

ERISA's vesting requirements for pension plans should not be extended to include welfare plans. "We find that the statutory scheme of ERISA, though silent on this issue, counsels against the imposition by this court of an absolute rule effectively requiring mandatory vesting at retirement of retiree welfare benefits under these circumstances."

"Congress," it continued, "expressly exempted employee welfare benefit plans from stringent vesting, participation and funding requirements. Congress recognized the differences between welfare benefit plans and pension plans, and we discern no basis for finding mandatory vesting in ERISA of retiree welfare benefits."

"We believe that the legislature, rather than the courts, should determine whether mandatory vesting of retiree welfare benefits is appropriate."

In addition to deciding welfare benefits were vested upon retirement, Judge Aldrich also ruled that the bankruptcy court had been wrong in deciding the plan had an unambiguous termination clause. The bankruptcy court should have held a hearing to decide whether this was the case, she said.

The appeals panel agreed with Judge Aldrich, and has sent the case back to bankruptcy court for a hearing on this issue.

"Because we believe the documentary evidence is subject to interpretation to ascertain its meaning and intent, we conclude that the bankruptcy court also erred in granting defendants' motion for summary judgment," the panel ruled.

However, the panel pointed out in its ruling that employers and employees can agree among themselves "by agreement or by private design, as set out in plan documents, whether retiree welfare benefits vest or whether they may be terminated."

The White Farm retirees—who have not received company-paid welfare benefits since 1981 and last year lost the opportunity to pur-

chase coverage—have petitioned for the case to be heard by the entire appellate court, said the retirees' attorney, Russell Brown of Stoplestad, Brown & Smith in St. Paul, Minn.

But attorney John Parks of Squires, Sanders & Dempsey in Cleveland, who represented White Motors, said it would be "most unusual" if the court agreed to hear the case.

Employee benefit consultants praise the appellate panel's decision, pointing out its effect on all employers.

"The idea individual judges can fashion their own version" of federal common law "to decide how to handle this question appears to be squarely rejected by this decision. That is definitely good news," said Peter Hutchings, a partner with Kwasha Lipton in Fort Lee, N.J. Employers need no longer fear that no matter how clear their plan documents, they cannot change retiree benefits, he said.

Because this is an appellate level decision, it will serve as a precedent for future cases, noted Dan Klein, a staff attorney with A.S. Hansen Inc. in Deerfield, Ill. "This is obviously a very important decision as a precedent for future decisions," he said.

This is also the first decision in a while to favor the employer, and to encourage both employer and employee to "work out their own deal," instead of establishing rules that must be followed, said Mr. Klein.

The decision says the terms of

the contract between employer and employee "should not be disregarded," pointed out Frederick Rumack, director of tax and legal services at Buck Consultants Inc. in New York. And it also is significant because it affirms that if retiree benefits are to be vested, the action should be taken by Congress, and not the courts, he said.

The earlier decision, said Mr. Klein, had indicated that a program, once given, was "fixed in time" and could not be flexible. "A lot of employers were scared off by that," he said.

For instance, employers may have been reluctant to offer retirees a health maintenance organization option because they were afraid it would have been construed they had a vested right to the existing plan. "That flexibility was limited by White Farm."

The appellate court realized that ERISA recognized flexibility was important in the dynamic health care field, but relatively less important in the pension planning area, when measured against the need to maintain a guaranteed income, said Mr. Klein.

But consultants warn the decision by no means gives employers carte blanche to change their retiree health care benefits.

Mr. Hutchings, for instance, referred to the appellate court's decision that the plan language did not unambiguously state the employer had the right to terminate the plan. This indicates, he said, that "a substantial burden of proof" may still have to be met before an employer

can terminate a plan.

"It may be that judges will continue to try to find ways to make it difficult for employers to terminate retirement benefits" by focusing on plan language, he said. As a result, the "whole class of questions" that includes "what did the documents say, and were the documents clear about the employer's right to terminate" must still be answered before changes in retiree health care plans are made, he said.

Ms. Rappaport agreed. In spite of the decision, "it's really clear there's a new standard in the last year or two in terms of what's acceptable" when altering retiree health care benefits.

The appellate ruling establishes that if documents clearly state the employer's right to change a retiree welfare benefit, the employer probably would not have legal problems making revisions, said Mr. Rumack. But, if the plan documents are "not that well-worded, or not worded at all" then an employer could have "considerable problems," he said.

In the case of Bethlehem Steel, for instance, the documents "weren't supportive," said Mr. Rumack. In that case, a U.S. District Court Judge John T. Elfvin ruled that because of ambiguous plan language as well as extrinsic evidence, including promises made to retirees, Bethlehem Steel did not have the right to reduce retirees' health benefits.

The steel company eventually reached a settlement with its retirees (BI, March 18, 1985).

PRIMA calls public entity risk managers 'to arms'

By MEG FLETCHER

WASHINGTON—The Public Risk & Insurance Management Assn.'s annual conference, "Risk Management: Spirit of '86," is calling public entity risk managers "to arms" June 8-11 in Boston to find ways to cope with the current liability insurance crisis.

"The insurance crisis is a national emergency for public agencies in their struggle to provide services to their constituents and still survive the threat of liability exposure without adequate insurance coverage," said Natalie Wasserman, PRIMA executive director.

"Today, as the insurance crisis deepens, the need for independent action through sound risk management practices has become a necessity," she said.

The central theme of the conference is dealing with the realities of the disappearing marketplace.

Following a reception June 8, a panel of insurance industry and risk management experts will open the conference June 9 with an overview of the current market and discussion of alternatives and solutions being tested by public entities across the United States.

Following the opening session, conference participants will be able to choose from more than 40 concurrent sessions covering a wide range of topics including bonding, schools' liability, environmental risks, police liability, structured settlements, accident investigation and cost allocation.

Loss prevention will be high-

lighted with sessions on the psychology of safety, quality circles and workers comp loss control.

Employee benefit issues will be considered in sessions on health care plan design, communicating benefit changes and wellness.

Sessions also will focus on intergovernmental pooling issues, and PRIMA's pooling section will hold its annual meeting.

Newcomers are offered an all-day program June 9 on the basics of risk management, including sessions on how to establish or fine-tune a program.

The conference ends with dinner and entertainment at Quincy Market, although space is limited. Continental breakfast, luncheons and coffee breaks will be included in the conference registration fee.

Individual fees for public entity registrants are now \$300 for the first representative of a member government and \$225 for each additional registrant. The fee for non-member public entities is \$375, which includes PRIMA's membership fee.

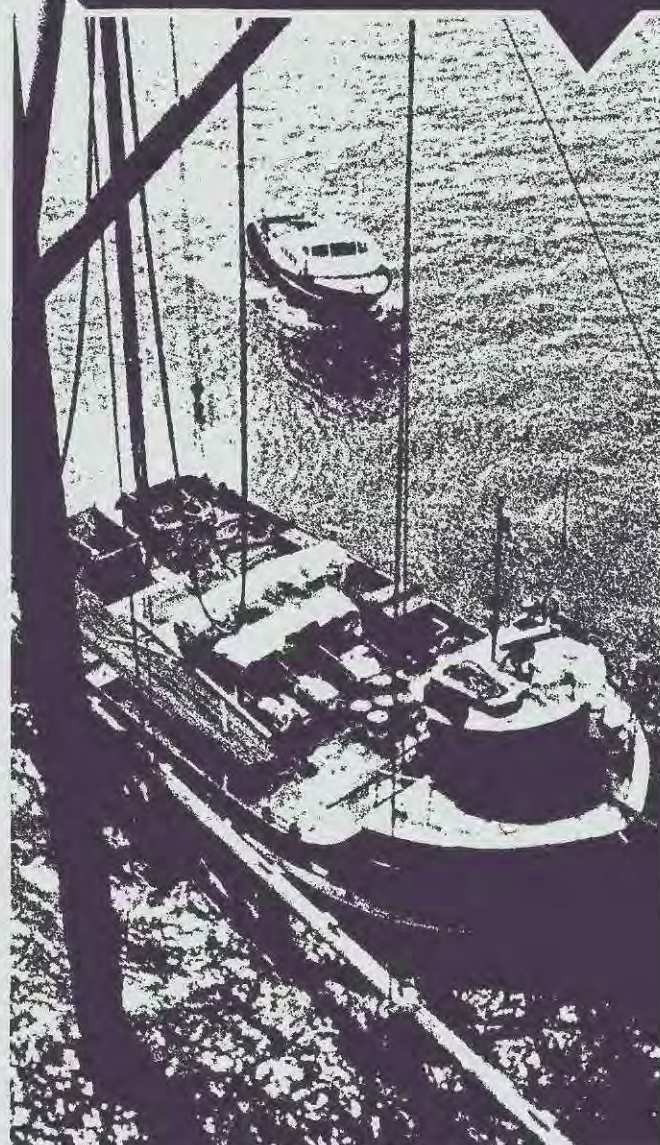
Fees for a representative of an industrial affiliate member is \$450, or \$400 for each additional registrant from the same organization. The fee for a non-member from the private sector is \$500, or \$450 for each additional registrant.

Additional programs are being offered for a fee, although space is limited.

For information, contact PRIMA at 1120 G St. N.W., Suite 400, Washington, D.C., 20005. Or, call Lynn Armstrong at 202-626-4650.

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Business Insurance Circulation Breakdown* Commercial Consumers

Administrative:
CEO's presidents and owners...2,983
Vice-presidents, general managers and other administrative personnel...2,758
Financial:
Chief financial officers and vice-presidents of finance...2,018
Secretaries, treasurers, controllers and other financial personnel...6,484
Risk/employee benefits:
Vice-presidents, directors, managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations...8,111
Sub-total...22,354
Associations...483
Government, unions and educational institutions...1,252
Commercial Consumers
Sub-total...24,089
Insurance agents and brokers 10,285
Insurance companies...6,739
Financial institutions...748
Actuaries, attorneys, adjusters, appraisers and consultants...3,808
Others allied to the field...1,308
TOTAL...46,977
* Source: Business/Occupational breakdown of qualified circulation, Nov. 25, 1985 issue, as submitted to BPA for December 1985 BPA Publisher's Statement.

Indictments

Continued from page 2

based agency that produced business for Kenilworth, according to Mr. Duffy and the Illinois department report.

The defendants also concealed an agreement under which Mr. Mitchell was to sell Mr. Patterson, Mr. Cosentino and Mr. Goepfert each 25% of his Kenilworth stock.

The Illinois department would have prohibited Mr. Goepfert's involvement with Kenilworth, the indictment says, noting that he was a convicted felon who was then under indictment for insurance-related fraud in U.S. District Court for the Southern District of New York.

Mr. Goepfert was recently released from Allenwood Federal Prison Camp in Allenwood, Pa., after serving five years of a 10-year sentence for defrauding the Sasse Syndicate at Lloyd's of London.

The four defendants also agreed to conceal from Illinois regulators the MGA agreement awarded to ROBCO, the indictment alleges.

Mr. Patterson "improperly converted" premiums received by ROBCO on business written for Kenilworth, and distributed the money to Messrs. Mitchell, Cosentino and Goepfert, according to the indictment.

The three men concealed the premium diversions by having the money paid to relatives, the indictment charges:

- Mr. Mitchell directed the payment of \$34,000 to his son, Clay Mitchell.

- Mr. Cosentino directed payment of \$31,000 to his wife, Judith Gibbs.

- Mr. Goepfert directed payment of \$47,000 to his wife, Catherine Sergel.

A second scheme to defraud Kenilworth—in which Messrs. Mitchell, Goepfert and Hayne are charged—involves alleged kickbacks of commissions retained by Essex Insurance Brokers on business produced for Kenilworth.

On Feb. 5, 1982, Mr. Mitchell authorized an increase of four percentage points in the commission rate allowed Essex on business it produced, the indictment says.

Essex's agency agreement had allowed it a 22.5% commission before the increase, according to the Illinois department report.

Messrs. Mitchell, Goepfert and Hayne had agreed to split this increase, according to the indictment, and Mr. Hayne later sent a \$22,000 check to Mr. Mitchell representing Mr. Mitchell's and Mr. Goepfert's share of the 4%.

Mr. Mitchell concealed this payment by depositing the check in a bank account opened in the name of B.F.G. Toomey, the indictment charges, adding that Mr. Goepfert later withdrew the money.

Mr. Hayne received \$7,300 as his share of the deal, the indictment says.

Mr. Hayne's insurance licenses were revoked by the California department on April 6, 1984, after he admitted responsibility for \$1.2 million in shortages from premium trust accounts maintained by Essex Insurance Brokers, Paragon Insur-

ance Brokers Inc. and Essex Insurance Managers Corp., according to California department documents.

Licences of the three brokerage firms and a fourth company—Pegasus Insurance Brokers Inc.—were revoked in August 1982 when the firms were taken over by the California department.

In administrative proceedings to revoke Mr. Hayne's licenses, the California department charged that Essex Insurance Brokers had placed surplus lines business with Kenilworth and Amherst Insurance Co. without a license to act as a surplus lines broker; and that Essex Insurance Managers had done the same, though it held no license at all from the California department.

The department also charged that Mr. Hayne and another agent, John Nicolosi, arranged in 1981 for Wells Fargo Bank to finance \$189,880 in premiums due under a purported Kenilworth policy issued to the Valle Verde Truckers Assn. of San Diego through Essex Insurance Brokers.

Essex—which deposited the Wells Fargo checks in a trust account—made six payments on the premium loans but failed to pay a balance of \$69,474. Wells Fargo then moved to have the policy canceled for non-payment in May 1982, according to insurance department documents.

Department investigators later found that Valle Verde was a fictitious association whose address listed on the premium finance agreement was a post office box rented by Mr. Nicolosi, department documents say.

Essex had voided the policy purportedly issued to the association and returned it to Kenilworth, the documents say.

Mr. Hayne, while admitting the trust account shortages, denied the department's other charges.

In the third scheme to defraud Kenilworth, Mr. Mitchell alone is charged with paying money for the benefit of Mr. Rasmussen in exchange for favorable treatment by the Illinois Automobile Insurance Plan between June 1979 and March 1982.

While the plan is supposed to assign auto risks on a random basis to member insurance companies—which are not allowed to refuse the risks—the indictment alleges that Mr. Mitchell arranged for Mr. Rasmussen to select above-average risks for Kenilworth, increase the assignment of risks to Kenilworth and allow the insurer to reject certain high-risk applications.

In return, Mr. Mitchell authorized payments totaling \$47,000 to Mr. Rasmussen's daughter, who was placed on Kenilworth's payroll but was not required to do any work, the indictment alleges.

Mr. Rasmussen pleaded guilty last year to mail fraud and tax evasion charges stemming from the scheme. He was sentenced to one year and one day in jail and five years probation and fined \$6,000, court records show.

The indictment also charges Mr. Cosentino with failing to report gross income totaling \$87,025 on federal income tax returns for the years 1981, 1982 and 1983. ■

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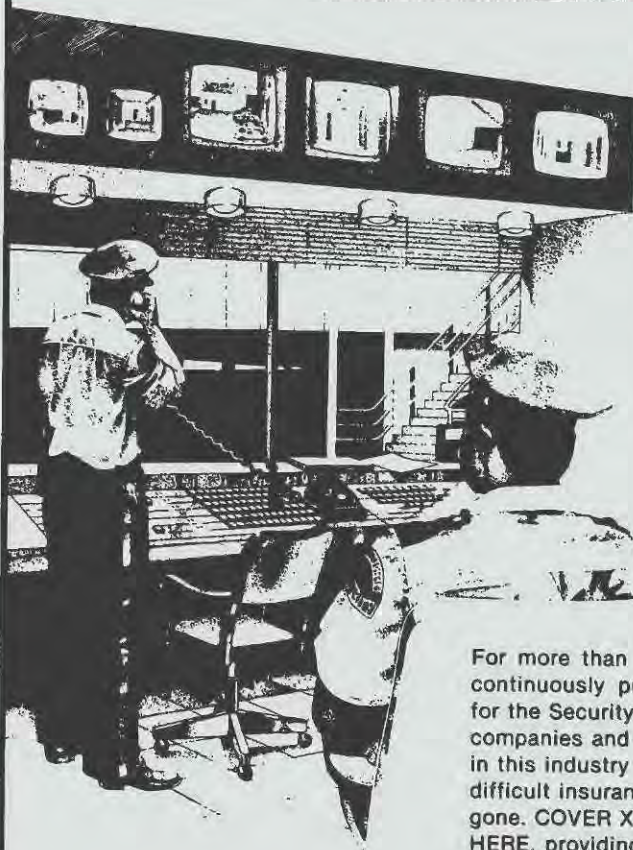
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Jeep plaintiffs seek \$1.8 billion

SOUTHFIELD, Mich.—Plaintiffs suing American Motors Corp. here for accidents involving their Jeep CJ vehicles have filed lawsuits seeking more than \$1.8 billion in punitive and compensatory damages.

Information on the \$1.2 billion in punitive damages and the \$640 million in compensatory damages being sought was released in AMC's annual 10-K form filed with the Securities and Exchange Commission.

The report further noted that the company also has received a "substantial number" of claims that have not yet resulted in lawsuits.

AMC has been hit with more than 1,000 Jeep-related product liability lawsuits since the 1970s. Several studies conducted since 1980 have found that the vehicles are more prone to rollover accidents than other vehicles (BI, Oct. 28, 1985).

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Tax bill

Continued from page 2

to a 401(k) plan to \$7,000 from \$30,000, although the committee had earlier appeared to favor a \$12,000 limit.

The \$7,000 limit is identical to that set by the House's tax bill. However, under the Finance Committee's proposal, the 401(k) limit would rise the same percentage as increases in the Social Security taxable wage base.

The Finance Committee proposal, which was spearheaded by Committee Chairman Bob Packwood, R-Ore., does retain the related discrimination rules it had agreed to in April that are less restrictive than those in the House tax bill, H.R. 3838 (BI, April 28).

The committee also retained a provision in its earlier proposals that allow tax-exempt entities to establish 401(k) plans. But, the bill would prohibit state and local government entities from establishing such plans. Those entities with 401(k) plans as of March 1 would be granted a grandfather exemption.

In a surprising development, the Finance Committee's bill would radically alter the tax treatment of contributions to Individual Retirement Accounts. The bill would subject to current taxation contributions to IRAs by employees covered by qualified pension plans, although the interest earned in those IRAs still would be tax deferred.

Under earlier Finance Committee proposals, the limit for 401(k) plans was \$12,000 and employee contributions to IRAs would be reduced dollar for dollar for 401(k) deferrals exceeding \$10,000. Under H.R. 3838, IRA contributions would be reduced by any amount deferred to a 401(k).

Other changes under the Finance Committee bill include:

- Capping the maximum pension benefit under a defined benefit plan at \$90,000. The maximum defined contribution limit would remain at the current \$30,000 level.

In addition, the maximum benefit would be available only to an employee who retires at age 65, compared with age 62 under current law. The benefit would be reduced actuarially if an employee retires earlier than age 65, and the current minimum benefit of \$75,000 would be eliminated.

For example, under the committee's proposal, an employee who retires at age 62 would be entitled to \$65,000 in benefits, instead of \$90,000 under current law, according to Frederick Rumack, director of taxes and legal services at Buck Consultants Inc. in New York.

The House bill would cut the maximum de-

finer benefit and defined contribution limits to \$77,000 and \$25,000, respectively.

- Phasing out tax provisions that allow employees to withdraw already taxed funds they have contributed to a plan within the first three years they begin drawing payments.

Under the bill, an employee could draw only 50% of those already taxed funds in 1987 and 1988. Beginning in 1989, the non-taxable portion of the benefit would be paid to the employee prorated based on life expectancy.

For example, under current law, assume an employee contributed \$21,000 in after-tax funds to the plan. If his annual benefit under the plan is at least \$7,000, each \$7,000 withdrawal could be excluded from the employee's taxable income for the first three years the employee draws benefits.

Under the Finance Committee bill, the employee could exclude from taxation only \$3,500 of those benefits in 1987 and 1988. And, in 1989 and after, the exclusion would be based on the employee's life expectancy.

In addition, if the employee lives beyond his life expectancy, the exclusion would end once the employee recovers all of his already taxed contributions to the plan.

Under current law, an employee who can't recover all of his contributions to the plan in three years receives the benefit based on his life expectancy. But, if the employee lives beyond his life expectancy, the annual tax-exempt benefit continues.

Earlier Senate proposals that were left intact in the Finance Committee bill include provisions requiring employers to adopt new, faster vesting schedules and new rules governing integration of pension plans with Social Security.

"My reaction is the Senate proposal just starts off from House Bill 3838 and makes liberalizations from the employers' view that are better administratively," Mr. Rumack said.

"I think it's a better proposal than the House bill, better thought-out. But, I still think it has areas that need improvement," he added.

Mr. Rumack predicted that few changes will be made on the Senate floor or in the Senate-House conference committee. However, he believes the House will insist on some changes, such as different effective dates and including a 15% excise tax on an annual retirement benefit exceeding 120% of \$90,000, which the Finance Committee bill does not include.

Other observers believe a few changes are probable in the Senate.

"The debate certainly is not over even in the Senate," predicted Frank McArdle, director of education and communications at Employee Benefit Research Institute in Washington. He be-

lieves there may be further changes in the IRA and pension provisions.

Stuart J. Brahs, executive director of the Assn. of Private Pension & Welfare Plans in Washington, noted that the limit on benefits under defined benefit pension plans may be changed perhaps re-establishing the \$90,000 maximum that can be drawn at age 62 and the \$75,000 minimum that is provided under current law.

However, the Finance Committee's bill "could have been worse," he said. "It's better than 3838 and earlier Senate proposals," he said.

Of the provisions in the bill that would increase taxes on property/casualty insurers, the most significant provision would require insurers to discount their loss reserves to reflect the investment income they will earn prior to paying claims.

Insurers would be required to use a discount rate of 5% on 1987 loss reserves. Then, beginning in 1988, the discount rate would be based on 75% of the midterm applicable federal rate, which is the market rate of return on U.S. government obligations with remaining maturities of between three and nine years.

The rate eventually would be based on a five-year rolling average of the AFR, beginning with a rate in 1988 of the average AFR rate over the preceding 24 months.

Except for medical malpractice and workers compensation lines, insurers generally would have to assume a 10-year payout for long tail lines—those listed on Schedule P of the convention statement they file with state insurance departments, according to Robert B. Shapiro, a lawyer with the Washington, D.C., firm of George K. Bernstein. A three-year payout would be assumed for short-tail lines—those listed on Schedule O of the convention statement, he said.

Medical malpractice and workers compensation lines probably would be subject to a 15-year payout assumption, Mr. Shapiro said. However, the exact discounting period still has to be worked out between the Finance Committee's technical staff and the Treasury Department.

Under another provision, property/casualty insurers would be required to include in their taxable income over the next 7½ years 20% of their unearned premium reserves as of Jan. 1, 1987. In addition, insurers would have to include annually in their taxable income 20% of the increase, if any, in unearned premium reserves.

Earlier, the Finance Committee had proposed requiring insurers to include the 20% of their unearned premium reserves in their taxable income over a 10-year period.

In addition, the minimum corporate tax provisions could result in taxation of income from tax-exempt bonds.

Comstock sued over midterm cancellation

Continued from page 2

insurer not to do so, but the insurer defied the request, according to Charles Fowler, a branch chief with the department's bureau of consumer affairs.

Mr. Fowler said the department is awaiting the outcome of the lawsuit before taking further action against Comstock.

Just what action the department can take against Comstock or any other insurer that cancels commercial insurance policies midterm is unclear because the California Insurance Code does not address the issue.

And, because commercial insurance policies usually contain cancellation provisions, the department has said it would be difficult to define as an unfair trade practice a contractual right to which both the insurer and policyholder have agreed.

Mr. Fowler noted that the impact the case will have on the department's efforts to stop insurers from wholesale midterm cancellation of classes of business will depend on how broad the court's ruling is in the case.

Midterm policy cancellations continue to be a "big problem" in California, Mr. Fowler noted. While most insurers have reinstated coverage after prodding by the insurance department, other companies, including Comstock, have "resisted" the department's requests.

In a July 1985 letter sent by California Insurance Commissioner Bruce Bunner to 675 insurers in the state, the commissioner warned insurers that "indiscriminate" policy cancellations would likely result in lawsuits and draw the attention of

the state legislature (BI, Aug. 12, 1985).

Factory and the other plaintiffs in the suit allege that Comstock "verbally assured" the MGA that the special multiperil insurance it wrote for the insurer would be issued on a three-year term basis.

Further, the suit says, the insurer agreed that the policies would not be canceled during the three-year term, unless an individual policyholder proved to be an unreasonable underwriting risk, failed to pay premiums or materially changed its business.

The suit says that the non-cancellation assurances given by Factory, based on representations allegedly made by Comstock, were a "significant factor" in inducing companies to purchase the coverage.

Contrary to representations, Comstock began "indiscriminate mid-term, unilateral purported cancellation of policies of insurance issued through Factory" to members of Independent Garage Owners and Tire Dealers associations, the suit continues.

These cancellations took the form of a notice of non-renewal "whereby Comstock purported to exercise a right to decline to renew such policies of insurance after the expiration of a one-year policy term, notwithstanding the stated term of three years on each such policy of insurance," the suit says.

The lawsuit asks the court for a declaration of the rights of both the plaintiffs and Comstock with respect to the insurance policies at issue in the action. It also seeks on behalf of Factory an unspecified amount for actual damages for breach of covenant of good faith

and fair dealing, intentional interference with advantageous business relationships, and fraud. The suit also asks for \$15 million in punitive and exemplary damages on behalf of Factory.

On behalf of the policyholder plaintiffs, the suit asks an unspecified amount for actual damages for breach of contract, breach of covenant of good faith and fair dealing, breach of fiduciary duties, breach of statutory duties, fraud, negligent

misrepresentations, and promissory estoppel. The suit further seeks \$20 million in punitive and exemplary damages on behalf of the policyholder plaintiffs.

The suit also seeks attorneys fees on behalf of all plaintiffs.

A spokesman for Comstock referred questions to its outside counsel, Paul Richler of the Los Angeles-based law firm of Hahn, Cazier, Smaltz, who was unavailable for comment.

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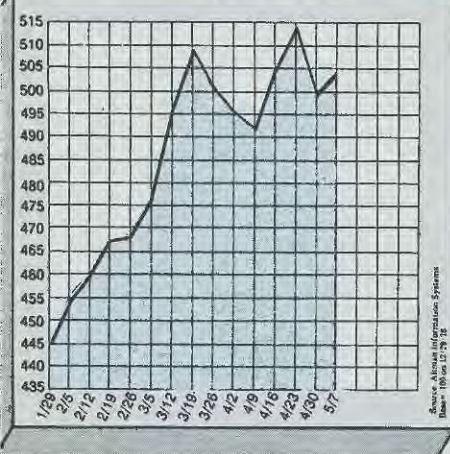
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BI Insurance Index



The Business Insurance stock index started to climb again after a recent plunge. The BI index of insurance stocks closed at 504.5 points on May 7, which was up 3.5 points from 501.0 points recorded on April 30. The BI index had reached a record high of 514.0 points on April 3. During the most recent trading period, a total of 33 stocks rose, 20 fell and seven remained unchanged. The biggest gains were set by United Fire & Gas Co., up 15.6%; Home Group Inc., up 9.5%; Tokio Marine & Fire Insurance Ltd., up 9.5%; Baldwin & Lyons Inc., up 9.2%; Northwestern National Life Insurance Co., up 7.2%; and Old Republic International Corp., up 6.5%. The biggest losses were recorded by Aneco Reinsurance Ltd., down 6.1%; Arthur J. Gallagher & Co., down 7.8%; Statesman Group Inc., down 7.1%; Liberty Corp. S.C., down 6.1%; Crown Life Insurance Co., down 5%; and American Indemnity Financial Corp., down 4.7%. The BI index rose an average of .69% for the trading period, while the New York Stock Exchange composite rose 1.24%. The Dow Jones 30 Industrials fell .49% during the same trading period.

British Issues

6 May	Price	P/E	Div.	Yield	1 Week
Companies	pence		pence	%	High-Low
Comml Union	329	29.9	16.9	5.1	332-329
Genl Accident	892	16.2	31.4	3.5	897-889
Gdn Royal Exch	933	20.3	40.7	4.3	943-930
Royal	914	16.7	36.7	3.9	924-917
Sun Alliance	763	25.4	23.6	3.2	763-743

Brokers	Price	P/E	Div.	Yield	1 Week
	pence		pence	%	High-Low
CE Heath	640	8.6	36.0	5.5	640-635
Hogg Robinson	310	10.3	13.4	4.3	314-310
JH Minet	250	9.3	10.7	4.2	252-250
Sedg Grp	373	13.8	15.7	4.2	373-360
Stew Wrightson	403	12.8	15.7	3.8	403-400
Willis Faber	466	17.3	12.5	2.6	466-448

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

Brokers reap profits

Continued from page 3
top to bottom," an M&M spokesman said.

"The main thrust of all of our operations was basically new business development. Our growth was particularly good in investment management, based on new business and the level of the securities market. We may have benefited a little bit from price increases in our reinsurance brokerage operations," but price increases did not play a major factor in M&M's results, the spokesman stressed.

Drexel Burnham's Mr. Keefe noted M&M "is involved in five or six different lines of business and everything is going in the right direction at the same time. It's really phenomenal."

Expenses at M&M grew during the quarter, the company spokesman pointed out, but they "have not gone up nearly as much as our revenues." Increasing expenses were caused by the addition of new professional staff, increased marketing and communications expenses and the effect of the strength of the British pound on M&M's U.K. operations.

First-quarter gross revenues at New York-based Alexander & Alexander Services Inc. totaled \$249.8 million, up 18.7% from a restated \$210.5 million reported in the first quarter of 1985. The results were restated to include figures from Reed Stenhouse Cos. Ltd., which A&A acquired last July.

A&A's net income jumped 67.4% in the first quarter to \$22.1 million from a restated \$13.2 million.

Rothschild's Mr. Wilson noted A&A's results lagged behind other brokers' because A&A's mix of business has shifted with the acquisition of Reed Stenhouse "and its international business is not growing as fast as domestic business because of lower premium rates elsewhere."

But, Mr. Keefe adds that "A&A's domestic operations were up 27%, so they weren't too much off the other brokers, just slightly under."

He also pointed out that the most recent quarter was A&A's "first quarter in a long time without an unusual item or discontinued operations charge."

Shearson's Mr. Weinhoff says his "concerns about A&A boil down to the Alexander Howden situation. I don't know if we have seen an end to these problems," he said, referring to discontinued Howden underwriting operations that have continued to be a drain on A&A's profitability. For instance, A&A took a \$33.8 million charge in the final quarter of 1985 to strengthen the operations' reserves (BI, March 24).

Frank B. Hall, which also has been haunted by losses from discontinued operations since 1984, had "its best first quarter in years," Mr. McCaffrey pointed out.

Hall's first-quarter gross revenues increased 13.2% to \$116.1 million in 1986 from \$102.6 million in 1985, while net income rose

'The market is still conducive to gains like this. I would be surprised if we continued to gain at this level throughout the year, but we might,' says Sidney A. Stewart Jr., chairman and chief executive officer of The Crump Cos. Inc., adding that the brokerage acquired seven agencies during the first quarter.

353.5% to \$9.1 million from \$2 million.

First-quarter 1985 net income includes losses from discontinued operations of slightly more than \$3 million, while first-quarter 1986 earnings include a \$2.7 million gain from carry-forwards relating to the discontinued operations.

Hall received more good news earlier this month when The New York Stock Exchange, which had started delisting proceedings against the brokerage, dropped them. The exchange considered delisting Hall because it did not obtain stockholder approval before the sale of 1.85 million shares of Hall stock and \$25 million in subordinated debt to Reliance Group Holdings Inc. last year. Shareholders approved the transaction Feb. 21.

Mr. McCaffrey says Hall is beginning to put its problems behind it "and we will now have the time to really focus on getting back to the insurance brokerage business. I think you're looking at a company that has recovered. We're in a production mode and our people are in good spirits."

"We faced some very difficult problems, but our insurers stayed with us, our clients stayed with us and our employees have worked very hard. It would have been very difficult to do without the support of the Reliance people. They've been most helpful."

Mr. Wilson points out that Hall's new business growth has not been as strong as the other brokerages "because Hall has been focusing on taking care of its problems."

"To the extent that management can re-focus on managing its brokerage business, we should see some improvement in its new business growth," he said.

Mr. Keefe is more skeptical about Hall. "Hall's expenses are below their revenues, but their profitability is still relatively low and they're not showing the growth of the other brokers," Mr. Keefe said.

"Looking at just its brokerage business all by itself, I still think Hall stock should be sold, but the stock market is strong and stock in general is going up," he added.

But Mr. Weinhoff is recommending clients buy Hall stock. "It is my belief that Hall's problems are behind it now—they have solved them or are resolving them," including the "apparent loss of market share."

At New York-based Corroon & Black Corp., first-quarter gross revenues increased 30.6% to \$80.7 million in 1986 from \$61.8 million in 1985. Net income increased 114.7% in the first quarter to \$10.2 million from \$4.8

million in 1985. The 1985 figure included a \$2 million extraordinary loss.

Also, Corroon & Black stockholders have approved a 2-for-1 stock split payable May 20, and the brokerage has increased its quarterly dividend by 30%.

"Our results exceeded our expectations by a bit," said Stephen A. Crane, senior vp and chief financial officer. "We are showing great strengths in our retail property/casualty brokerage operations and still better strengths in our wholesale and specialty programs. Our reinsurance brokerage growth was a bit disappointing, but otherwise we are having a good year."

"Corroon & Black's specialty sales group did really well," agreed Mr. Wilson, adding that the brokerage exhibited new-business growth across its operations.

"Corroon & Black had a really good quarter and showed a lot of strength in its wholesale programs," Mr. Keefe added.

Crump's gross revenues rose 38.7% in the first quarter—the biggest jump of any of the brokers—to \$28.1 million from \$20.3 million in the first quarter of 1985. Net income jumped 61.5% to \$3.2 million from \$2 million.

"The market is still conducive to gains like this. I would be surprised if we continued to gain at this level throughout the year, but we might," Mr. Stewart said, adding that the brokerage acquired seven agencies during the first quarter to increase its presence on the West Coast and in the South.

The acquisitions were made on a purchase basis, so some of these agencies' first-quarter revenues are reflected in Crump's results.

Mr. Weinhoff said that since Crump divested itself of non-insurance-related business early in the 1980s, "it went into the up-cycle squeaky clean."

"Crump had a good quarter in both revenues and income," Mr. Wilson said.

Arthur J. Gallagher's gross revenues increased 26.9% to \$24.5 million from \$19.3 million in last year's first quarter. Net income rose 18.6% to \$3.7 million from \$3.1 million.

Mr. Cloherty said Gallagher's growth did not match some other brokers' because "unlike other brokers, 40% of Gallagher's income is from fees."

Fees provide "a much more stable base of income generation," which will show up throughout 1986, he said.

"The industry environment is helping us better sell our full range of risk management products," Mr. Cloherty said. "From our point of view, our results are right on track with where we want them to be."

Analysts do not follow results for Gallagher or the other smaller publicly held brokers.

Los Angeles-based Emmett & Chandler Cos. Inc., whose merger with Jardine Insurance Brokers Inc. should be finalized later this month, reported a first-quarter revenue gain of \$13.7 million, up 30.5% over the \$10.5 million last year. Net income jumped 42.7% to more than \$1 million from \$728,000.

James L. Sobieski, vp of administration for the brokerage, attributes the gains to "rate increases and our continuing success in new-business growth."

He added: "I don't see rate reductions in the near future or a tapering off of rate increases."

Emmett & Chandler shareholders will vote on the proposed acquisition by Jardine May 15 and, if approved, the transaction will be completed shortly thereafter (BI, Feb. 3).

Poe & Associates' first-quarter gross revenues increased 34.9% to \$8.2 million from \$6.1 million. Net income soared 130.6% to \$1.2 million from \$519,000 in 1985's first quarter.

In addition, Poe's previously announced 3-for-2 stock split was effective last week.

Mr. Poe, the brokerage's chairman, attributed the company's growth to a blend of rate increases and new business, but "heavy on the rate-increase side. About 80% of the gain is due to rate increases."

"We're looking forward to the next nine months in the marketplace," he said. "Every new day is interesting because of all of the changes that have been happening. Things are very positive at this point in time, and we're enjoying a really good year. We're in a posture to groom for continued growth."

BI Industry Stock Report

May 7, 1986

5/1/86 thru 5/7/86

Brokers		Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)			Price	% Chg.	P/E	\$ Div.	% Yld.	High	Low	Vol.(000)										
Alexander & Alexander Svcs	NYSE	36.50	0.3	0.4	1.00	2.7	36.63	36.38	379.2	Continental Corp	NYSE	45.88	3.7	0.0	2.60	5.7	45.88	44.63	940.1										
Baldwin & Lyons Inc	OTC	106.00	8.2	53.3	0.80	0.8	106.00*	98.00	2.6	Crown Life Ins Co	OTC	285.00	-5.0	17.2	0.00	0.00	300.00	285.00	0.4										
Corroon & Black Corp	NYSE	69.00	1.8	21.9	1.30	1.9	67.88	122.9		Durham Corp	OTC	48.00	0.0	13.2	1.36	2.8	48.25	48.00	15.1										
Crump E H Cos Inc	OTC	24.88	-0.5	21.1	0.25	1.0	25.25	24.75	134.8	Farmers Group Inc	OTC	81.75	3.2	14.7	2.00	2.4	81.75	79.00	530.1										
Emmett & Chandler Cos Inc	OTC	18.75	0.0	25.3	0.00	0.0	19.00	18.75	2.2	Fairmont Finl Inc	AMEX	24.75	0.0	20.6	0.00	0.0	24.75	23.50	42.5										
Gallagher Arthur J & Co	OTC	47.00	-7.8	20.3	0.40	0.9	50.00	47.00*	39.2	Fireman Fd Corp	NYSE	38.25	2.7	0.4	0.30	0.8	39.00	37.13	415.5										
Hall Frank B & Co Inc	NYSE	21.88	-3.8	0.0	0.00	0.0	23.50	21.88	263.6	Freemont Gen Corp	OTC	27.75	2.3	0.0	0.48	1.7	28.00	27.75	322.5										
Marsh & McLennan Cos Inc	NYSE	107.38	-2.2	24.1	3.00	2.8	108.75	107.38	139.4	Great West Life Assurn Co	OTC	650.00	0.0	6.5	18.00	2.8	650.25*	650.00	0.1										
Poe & Assoc Inc	OTC	19.50	0.0	0.0	0.80	4.1	19.50	19.50	3.2	Home Group Inc	AMEX	27.50	9.5	0.0	0.00	0.0	27.50	25.88	522.4										
			=====			=====				Honover Ins Co	OTC	62.00	-2.4	39.0	0.56	0.9	62.25	61.75	46.4										
AGENTS/BROKERS	AVERAGE			4.5		1.7																							
Conglomerates & Holding Cos.																													
American Express(Fireman's Fd)	NYSE	59.38	-1.2	13.9	1.36	2.3	61.00	58.25	4,350.2	Hartford Steam Boiler Insnptn	OTC	79.50	-1.3	12.6	2.00	2.5	79.50*	78.00	17.5										
Anderson Clayton(Ranger/PanAm)	NYSE	50.50	-1.0	28.9	0.00	0.0	50.88	50.50*	305.2	Kans City Life Ins	OTC	33.25	2.3	13.1	0.87	2.6	33.25*	32.50	38.1										
Arco Inc	NYSE	9.75	-3.7	0.0	0.00	0.0	10.13	9.75	627.5	Keapier Corp	OTC	93.75	0.8	16.6	1.80	1.9	94.00	93.50	294.8										
Berkley W R Corp	OTC	48.13	1.9	37.2	0.36	0.7	48.13	46.50	676.9	Liberty Corp S C	NYSE	40.75	-6.1	17.2	0.72	1.8	42.50	40.75	14.3										
CIGNA Corp	NYSE	63.75	2.0	0.0	2.60	4.1	64.75	63.38	1,261.6	Lincoln Natl Corp Ind	NYSE	55.25	0.7	12.5	2.00	3.6	55.25	54.50	329.5										
CNA Finl Corp (CNA)	NYSE	63.75	-0.2	21.2	0.00	0.0	64.25	63.25	213.3	Mission Ins Group Inc	OTC	3.63	0.0	0.0	0.00	0.0	4.38	3.63	242.0										
General Re Corp	NYSE	117.50	3.8	36.2	1.76	1.5	117.63	116.75	516.4	Monumental Corp	OTC	39.38	-3.7	14.0	1.40	3.6	41.25	39.38	17.7										
ITT (Hartford) Corp	NYSE	47.50	0.8	25.8	1.00	2.1	47.50	46.25	2,041.8	Nac Re Corp	OTC	37.25	4.2	0.0	0.00	0.0	37.25	36.75	83.6										
Sears Roebuck & Co. (Allstate)	NYSE	44.63	2.6	12.9	1.76	3.9	44.63	43.13	4,045.6	Nobel Ins Ltd	OTC	17.00	6.2	22.4	0.25	1.5	17.00	16.38	578.0										
Teledyne Inc (Argonaut)	NYSE	340.25	-1.7	8.2	0.00	0.0	347.00	340.25	99.9	Northwestern Natl Life Ins	OTC	29.88	7.2	14.8	0.86	2.9	29.88*	28.00	326.6										
Transamerica Corp (Occidental)	NYSE	33.75	-3.6	16.1	1.68	5.0	34.38	33.75	868.6	Ohio Cas Corp	OTC	84.50	5.3	19.6	3.00	3.6	85.00	81.38	148.8										
			=====			=====				Old Rep Intl Corp	OTC	39.13	6.5	14.3	0.78	2.0	39.63	36.63	510.0										
CONGLOMERATES/HOLDING COS.	AVERAGE			17.4		1.2				Orion Cap Corp	NYSE	36.00	5.1	0.0	0.76	2.1	36.00	34.25	202.5										
Insurers																				Protective Corp	OTC	22.75	-1.1	12.4	0.70	3.1	23.25	22.75	190.1
Aetna Life & Cas Co	NYSE	60.38	-0.4	13.3	2.64	4.4	60.88	59.63	1,817.8	Provident Life & Acc Ins Co	OTC	28.25	-0.9	9.8	0.84	3.0	28.75	28.25	428.6										
American General Corp	NYSE	39.38	1.9	12.2	1.12	2.8	39.38	38.38	1,228.2	St Paul Cos Inc	OTC	92.38	-3.5	27.9	3.00	3.2	93.25	92.25	598.7										
Ameri Heritage Life Invst Co	NYSE	40.63	-1.8	14.9	1.32	3.2	41.00	40.63	4.5	SAFECO Corp	OTC	58.50	1.7	15.8	1.60	2.7	58.50	57.13	360.0										
American Indty Finl Corp	OTC	20.25	-4.7	0.0	1.12	5.5	20.75	20.25	48.1	Sri Corp	OTC	22.00	-1.1	0.0	0.80	3.6	22.75	22.00	132.9										
American Intl Group Inc	NYSE	124.25	3.8	25.4	0.44	0.4	127.75	122.63	661.5	Seibels Bruce Group Inc	OTC	19.63	6.1	0.0	0.80	4.1	19.75	18.75	139.3										
Aneco Reins Ltd	OTC	2.13	-26.1	0.0	0.00	0.0	2.75	2.13	8.6	Statesman Group Inc	OTC	6.50	-7.1	0.0	0.05	0.8	6.75	6.50	36.5										
Avenco Corp	NYSE	41.25	0.6	15.3	0.75	1.8	41.50	41.25	4.5	Tokio Marine & Fire Ins Co	OTC	356.00	9.5	67.0	1.05	0.3	356.00	325.00	19.5										
Business Mens Assurn Co Amer	OTC	28.25	0.0	13.1	1.10	3.9	28.75	28.25	109.0	Torchmark Corp	NYSE	32.13	0.8	14.0	0.60	1.9	33.00	31.50	468.3										
Chubb Corp	NYSE	73.13	6.9	143.4	1.56	2.1	73.38	70.38	473.5	Travelers Corp	NYSE	48.88	-2.0	12.3	2.16	4.4	50.13	48.88	1,416.1										
Combined Intl Corp	NYSE	60.75	1.7	12.6	2.24	3.7	61.25	60.25	319.5	United Fire & Cas Co	OTC	28.00	15.6	650.0	0.80	3.1	26.50*	23.25	283.6										
										United States Fid & Gty Co	NYSE	41.88	0.6	0.0	2.32	5.5	42.00	41.25	1,646.8										
										USlife Corp	NYSE	41.75	2.5	11.1	1.12	2.7	41.75	40.25	204.0										
										Washington Natl Corp	NYSE	34.25	1.1	15.6	1.08	3.2	34.38	33.75	65.4										
										Zenith Natl Ins Corp	OTC	28.00	-3.4	0.0	0.80	2.9	28.75	28.00	156.7										
										INSURANCE COMPANIES	AVERAGE				=====														
																2.2													



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