

Benefit front: Bias ruling could force major pension overhaul

By JERRY GEISEL

WASHINGTON—Pension experts predict unequal benefits may be the next casualty now that the Supreme Court has made it unlawful for pension plans to require women to contribute more than men.

While the immediate impact of the court decision is extremely limited, the case may trigger a new round of legal battles that eventually could force most of the nation's pension plans to be overhauled.

"It is hard to see how the court could come to the conclusion that unequal contributions for the same benefit is wrong without also coming to the conclusion that equal contributions for an unequal benefit is wrong," observed Robin Holloway, senior actuary for Towers, Perrin, Forster & Crosby.

Some observers believe last month's decision already has made it illegal to pay women lower pension benefits than men. "The court was saying just as there can't be a sex-based difference in the amount contributed into the plan, there can't be a differential in benefits received under the plan," said Susan Ross, a staff attorney with the American Civil Liberties Union in New

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... Despite talk, few choose flexible benefits

By REBECCA A. FANNIN

NEW YORK—Flexible benefit programs, which allow employees to tailor their benefits to their needs, continue to spark a lot of talk but little action.

Only American Can Co. has recently followed the lead of TRW Inc. and Princeton-based Educational Testing Service, which introduced the innovative benefit program in 1974.

Interest in flexible benefit plans was dampened by the Internal Revenue Service ruling that offering cash in lieu of benefits meant both the cash and the benefits were taxable as income. Benefits are usually tax-free to employees.

"A lot of companies would like to offer employees a choice between cash and medical coverage, so this ruling has put a freeze on the plans," said Theresa B. Stuchiner, a partner with Kwasha Lipton.

Ms. Stuchiner noted, however, that President Carter's tax reform package would permit cash benefits to be excluded from gross income.

TRW, which already offers employees choices of benefits from four basic areas is frustrated that it can't expand the choices to include vacation, said Gary L. Swinhart, insurance manager for

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... Applause welcomes move to amend ERISA

WASHINGTON—The first comprehensive effort to overhaul the 1974 pension reform law draws high marks from members of the pension community as a major step toward reducing the administrative burden ERISA has imposed on employers.

"The bill is very well thought out and is a sound legislative response to ERISA problems," said Richard Fay, a Washington attorney and one of the architects of the Employee Retirement Income Security Act.

But while applauding the overall scope and intent of the legislation—which was introduced by the original authors of pension reform, Sen. Jacob Javits (R-N.Y.) and Sen. Harrison Williams (D-N.J.)—pension experts took exceptions with several key provisions of the proposal.

In addition, pension experts acknowledged, as did members of senators' staffs, that enactment of the far-reaching legislation (S. 3017) will not take place this year and final legislation probably

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The inside story

Lloyd's and U.S. brokers

Observers in London expect U.S. brokers to continue their efforts to tie a knot at Lloyd's. **Page 4.** But it's regrettable that the powers at Lloyd's don't understand the principles of free trade. Editorial, **page 6.**

Insurance liftoff

The availability of insurance and coverage for man-made satellites and other commercial payloads to be placed aboard the Space Shuttle could spell the difference between success and failure for the multi-billion dollar NASA project. **Page 13.**

Government risk managers

A national association for local government risk managers is germinating and

hopes are that it will burst into bloom this summer. **Page 14.**

Elsewhere:

- CHICAGO NEWSPAPER improves benefits, moves to Prudential. **Page 3.**
- FEDERAL WORK COMP evaluators have high claims. **Page 9.**
- ARIZONA ENACTS a statute of limitations with a 12-year time limit. **Page 10.**
- MALPRACTICE SUITS drop but product actions are up in Illinois. **Page 18.**
- INSURERS CROW, but swine flu claims trail company fears. **Page 19.**
- WYOMING ABOLISHES immunity for local governments. **Page 23.**
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- IRS MOVE perils many non-qualified deferred pay plans. **Page 32.**

Week of May 15, 1978

business insurance

the national newsmagazine of loss prevention, risk financing and employe benefit management

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N.Y. ponders free trade zone to deregulate special risks

By ELLIS SIMON

NEW YORK—A bill is pending in the New York legislature that could help restore New York's position as an insurance center by permitting underwriters to insure large or unusual risks without seeking prior approval on rates or forms from the state insurance department.

If passed, New York would become the first state to have an insurance "free trade zone" in which qualified insurers could write such risks in a relaxed regulatory environment. The bill was introduced this month by Gov. Hugh Carey on behalf of the insurance department.

It calls for exemption from rate and form regulation for policies with annual premium in excess of \$100,000 or for risks "of an unusual nature, a high loss hazard or difficult to place" as defined by a criteria to be developed by the state superintendent of insurance.

An insurer would have to maintain a \$4 million surplus, twice that required of qualified insurers in New York, to participate in the zone and would have to pay a \$1,000 annual licensing fee.

New York presently does not require prior approval for rates on certain lines of insurance, however, prior approval is required where there is a deviation from the traditional form of the policy.

The time involved in getting state consent could run as much as 30 days and it often encourages insurance buyers and their brokers to go elsewhere, explained insur-

ance superintendent Albert Lewis.

The superintendent hopes the free trade zone will reverse a pattern of insurance companies and premiums leaving New York. In recent years, the state's share of gross premium in the United States has dropped from 11% to 9%, he said.

Assuming total life and property/casualty premiums of \$65 billion,

that represents a loss of \$1.3 billion.

Much of that business has been lost to London, Mr. Lewis added. Approximately \$2.5 billion in premium goes to Lloyd's annually from the U.S. and "if we can tap it, we're well ahead," he added.

American International Group has been a principal supporter of

Continued on page 36



Power plant disaster

An inspector tours the wreckage inside a cooling tower at a power plant in West Virginia where more than 50 workers died when the scaffold collapsed. Although both the utility and subcontractor say they have adequate insurance, the existence of hold-harmless agreements and restrictions on suits by employees could result in a complicated liability tangle. **Page 2**

Scaffold crash lowers legal maze on W. Va. utility, 2 contractors

By REBECCA A. FANNIN

ST. MARYS, W. Va.—When the scaffolding inside the cooling tower of an unfinished West Virginia power plant tore loose from its concrete base, it dropped 51 workers to their death and lowered a legal maze upon the utility building the plant and its general contractor and subcontractors.

The collapse has also left Occupational Safety & Health Administration investigators, as well as investigators for insurers, unions and contractors, searching for the accident's cause.

Initial speculation indicated that the scaffolding may have given way because the concrete it was bolted to wasn't hard enough to support the scaffolding's weight.

An OSHA spokesman said the cause probably wouldn't be determined for up to three weeks. Three OSHA investigators are continuing inspection after a swarm of seven OSHA investigators, including OSHA director Eula Bingham, descended upon the construction site a day after the scaffolding collapsed. Previously, the cooling tower construction hadn't been inspected.

But the OSHA spokesman said the safety concern had inspected the overall construction site 13 times during a four-year period, with no investigations after April 1977. The disaster is the agency's worst single industrial accident since it was founded in 1972.

The scaffolding system of building the cooling tower was patented by subcontractor Research-Cottrel Corp. of Bound Brook, N.J. Scaffolding was bolted to the top layer of concrete poured usually the previous day. Concrete was being poured for the 29th layer when the scaffold broke free, peeling away

from the inside wall of the cooling tower.

All but two of the 51 workers, mainly steelworkers, carpenters and laborers, reportedly were employed by Research-Cottrel at the construction site, valued at \$677 million.

The New Jersey-based company was under a \$12 million subcontract to complete the building. It was hired by general contractor United Engineers & Constructors of Philadelphia which in turn was employed by the utility company, Monongahela Power Co. Monongahela and its parent company, Allegheny Power System, were building the tower as part of an expansion into the upper Ohio River Valley.

The relationship among the contracting parties is crucial to determining who will ultimately be held liable for the workers' deaths. Reportedly, the utility company has a hold harmless agreement with United Engineers to transfer all liability to the contractors. It couldn't be determined, however, if United Engineers also has the same sort of agreement with its sub-contractor, Research-Cottrel.

Experts said although the hold harmless agreement varies by negotiation, generally the general contractor attempts to transfer all liability to the subcontractor.

A Research-Cottrel spokesman said it is "adequately covered" by The Travelers Insurance Co. for such general liability exposures, but declined to name the limits of its insurance coverage.

Contractors and subcontractors are often insured along with the utility company under one insurance program covering all exposures. It couldn't be determined whether United Engineers and Research-Cottrel were covered un-

der a "wrap-up" program furnished by the utility company or whether they were insured separately. A spokesman for Allegheny Power said only its coverage is layered in three parts and is spread among three insurers.

While general liability, constructor's equipment and other constructor's risks are often folded into the wrap-up program, workers compensation is usually insured under a different policy.

Under West Virginia workers compensation law, surviving family members of the workers can only recover workers compensation benefits. While they can't sue their employer, Research-Cottrel, they can sue other parties involved.

Hold harmless agreements, however, may prevent liability of other parties.

Contractual liability experts said, however, if the party being sued was solely negligent, then a hold harmless agreement might not apply. But if jointly negligent, then the hold harmless clause would apply.

No lawsuits have been filed.

While Research-Cottrel had considered its unique method of building the cooling tower exceptionally safe and efficient, workers reportedly had complained that they were under pressure to speed up construction at the expense of safety.

They reportedly said that the concrete needs 72 hours of hardening rather than the 24 hours used to harden the concrete and support the scaffolding.

Research-Cottrel has suspended construction on four other cooling towers. The company declined to discuss the value of the delayed projects or when construction would resume.

Agent/Broker Questionnaire

The questionnaire sent to agents and brokers for inclusion in the annual Business Insurance Agent/Broker Profiles issue contains an error. Agents and brokers should provide information on premium volume, gross revenues, employes and percentage of commercial business for 1977 and 1976, not 1977 and 1978. Figures can be corrected by filling out the correct figures on the questionnaire that appears on page 26.

for your information...

Mass. girl wins \$4.5 million award, largest malpractice suit in state

BOSTON—A Massachusetts Superior Court jury has granted a \$4.5 million medical malpractice award to a 15-year-old Wrentham girl and her family. The award is believed to be the largest for malpractice in the state's history.

The St. Paul Cos., insurer for the defendant, Dr. Theodore J. Goodman of Canton, declined to reveal the limits of coverage since an appeal is pending.

The suit, filed in 1973, charged that Dr. Goodman, the child's pediatrician, failed to properly administer or did not administer tests when she was brought to him complaining of fever. Since that time the girl lost one kidney and more than 50% use of the remaining organ. She went on dialysis three times a week in April 1978.

The award is not expected to have a direct impact upon Massachusetts doctors since they are now covered through a state-run joint underwriting association, said John Messina, general manager of St. Paul's Boston office. However, the award could influence experience rating factors, he added.

Report may absolve plow in air crash

OTTAWA—A Canadian government report on the crash of a Western Airlines jet at Cranbrook, B.C., is expected to say that a snowplow was not on the runway as the airline claimed.

Forty persons died in the crash of the 737 jet, which overshot the runway while attempting to land in light snow in February. The government report is expected to say that the snowplow was off the side of the runway, said sources close to the investigation.

A public information officer for the Canadian transportation ministry declined to comment, saying it could be several weeks before the information was made public.

New work comp procedures planned

NEW YORK—The National Council on Compensation Insurance, under intense pressure from regulators to improve the methods it uses to set workers compensation insurance rates, is undertaking a new program to supplement its procedures.

"The existing data collection system had not been designed to capture casual factors in the detail now required," the NCCI admitted in making the announcement. "The new program will enable NCCI to investigate hospital and medical cost changes, increasing time lost from work, the extent of litigation" and other social and economic trends affecting workers compensation costs.

The NCCI files workers compensation rates in 39 states. Recent workers compensation rate hikes in several states were approved only after state officials warned further increases would be denied unless NCCI mended its ways.

Calif. seeks quake insurance info

SACRAMENTO—The California Insurance Department has proposed that all property insurers in the state report all earthquake liabilities written in California to the insurance commissioner.

The proposal would also require all insurers transacting property insurance in California to develop statistics on earthquake liabilities in accordance with instructions contained in the state's earthquake liability report form.

In addition, insurers must provide their reinsurers zone, construction, probable maximum loss (PML) and deductible information on the same basis and format as they submit to the insurance department for liabilities ceded under each reinsurance treaty other than catastrophe treaties. In turn, reinsurers must combine their information with their own facultative recordings for a total aggregate probable maximum loss estimate on their writings.

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errors & omissions

- The new "first layer" buffer policy being offered by NAS Ltd. is an umbrella policy, a fact inadvertently omitted in an April 17 story.

- The new errors and omissions insurance policy for risk managers available through Fred S. James is supplied by First State Insurance Co. of Boston. The word "State" was inadvertently omitted from a May 1 story.

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WORKERS' COMPENSATION SELF-INSURED PLANS BY GATES, McDONALD

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the benefit beat

Chicago Tribune improves benefits, moves to Prudential

CHICAGO TRIBUNE employees received improved benefits at no extra cost when their life and medical/dental insurance plans were transferred to The Prudential Insurance Co. from the newspaper company's subsidiary, Tower Life & Accident Insurance Co. The lifetime maximum benefit under the medical program for 3,500 employees was increased to \$150,000 from \$100,000 and the lifetime maximum benefit under the dental program was increased to \$5,000 from \$2,100. The annual maximum dental benefit was increased to \$1,000 from \$700 and the schedule of benefits was increased. Premiums remained the same with a single employee paying \$6.43 a month for his insurance and the company paying \$30.07 and a family plan costing the employee \$21.08 a month and the company \$100.08.

Under the new life program, active employees can buy more coverage at less cost than they could with Tower Life. The life and medical/dental business was transferred to Prudential, a company spokesman said, to provide for more efficient claims handling. In addition, the company's voluntary accident and long term disability program was converted to INA. LTD benefits were improved to provide for eligibility in the program after one year of service instead of five years and the monthly benefit was increased to 60% from 50% of salary with a \$5,000 monthly maximum.

ONONDAGA COUNTY (N.Y.) achieved cash savings of \$1.1 million for 1977 in the first year of a self-insured group health benefits program. The program, which provides coverage for 5,200 employees and their dependents, offers benefits identical to those previously provided through Blue Cross/Blue Shield and is administered by the Central New York BC/BS plan. The BC/BS program cost \$2.6 million. As a result of the program's success, a group dental plan for county employees will be converted to self-insurance by mid-year, said William R. Loehr, risk and insurance analyst. Last year Onondaga County was able to convert from using a surgical fee schedule to providing "usual, reasonable and customary" fee payments, he added. While it merely shifted payment from major medical to the surgical area, it eliminated the need for employees to pay deductibles and co-insurance in about 95% of the cases, Mr. Loehr explained. Onondaga County has excess stop-loss insurance placed on the London market with Thompson & Grant as lead underwriter and the Brougner Agency of Greenwood, Ind., as broker.

MADISON AND DANE County, Wis., plans to self-insure health benefits folded because of union opposition. Even though the unions had been promised the same benefits they now receive as members of the Wisconsin Physicians Service, an open panel HMO, the unions fought self-insurance as threatening altered benefits and too much management control over the programs.

CITIES, STATES and other public employers must offer the HMO option in their health benefit plans under a regulation announced last month by HEW. The regulation requires public employers providing health care benefits must offer the option if a federally qualified HMO is operating where at least 25 of the agency's employees live. Only private employers were subject to the HMO option require-

ments previously.

UNION CONTRACTS reached during the first three months of this year called for heftier wage and benefit increases than agreements negotiated in 1977, says the U.S. Labor Department. Wage and benefit gains in contracts in the first three months averaged 8.5% over the life of the contract compared to 6.2% last year.

ERISA WAS NOT a major factor in the decision of pension plans to terminate, the General Accounting Office found in a massive review of terminated plans. Only 17% (103 out of 595) plans cited ERISA as the major termination factor. Reasons that overshadowed ERISA in

the decision to terminate included adverse business conditions, high administrative (non-ERISA) costs and the inability of the plan to meet the employer and employee's needs. GAO also found that participants of terminated plans received or were about to receive almost all their vested benefits under existing plan provisions. About 41% of the sponsors of terminating pensions continued pension coverage for their employees through new or existing plans. Of the plans that continued employee coverage, about 46% were profit sharing and 15% were defined benefit. Money purchase, IRAs and thrift and employee stock ownership plans made up the other plans used to continue coverage.

CANCER CHEMOTHERAPY should be fully covered on an outpatient basis to preclude the hospitalization of cancer victims just so their treatment costs are reimbursed, says the American Society of Clinical Oncology (ASCO). It is urging all Blue Cross/Blue Shield plans to provide the coverage at no additional cost to policyholders as Blue Cross/Blue Shield of Michigan did in 1974. But only a few other plans include 100% reimbursement for outpatient chemotherapy and then it's under costly riders, ASCO charges. About 80% of Blue Cross/Blue Shield plans provide reimbursement to 80%, but plans in northeastern Pennsylvania, Connecticut and upper New York do not cover it all, ASCO

says. The society is also lobbying for Medicare to provide full reimbursement for outpatient treatment.

SOCIAL SECURITY system could get a shot in the arm from legislation introduced by Sen. Gaylord Nelson to require that federal employees hired after this year be covered by the system. Currently, federal workers are exempt from Social Security and are covered under their own plan. The Wisconsin Democrat also introduced a measure that would require the Civil Service Retirement Fund to be placed on a financing basis that is actuarially sound and fair to the employees and taxpayers that sup-

Continued on following page

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benefit beat

Continued from preceding page port it. Currently, the Civil Service plan, which covers about 75% of all federal employees, has an unfunded liability of \$117 billion. In introducing the legislation, Sen. Nelson said it was unfair for workers and employers to pay the full cost of Social Security benefits, while federal employees only pay a fraction of the cost of their pension costs since the rest is financed by general revenues. Presently, federal workers' contributions to their retirement benefits only pay for about 24% of the cost of the system. If new federal workers were to be covered under Social Security, as Sen. Nelson has proposed, their benefits would drop sharply. For example, a federal employee becomes vested after five years. Under Social Security,

an employee is not vested until he or she has worked 10 years. In addition, under the Civil Service Retirement fund, an employee may retire at age 55 and receive full benefits. Social Security does not pay full benefits until age 65.

GROUP HEALTH insurance plans continue to pay an ever greater proportion of medical expenses, says the Health Insurance Assn. of America. Last year, individuals covered by group health insurance programs received reimbursement for 85% of all covered medical expenses, up from 80% 10 years ago. The HIAA study of 41,000 claims submitted to 65 health insurance companies also found that more than half the persons were reimbursed for 90% or more of their medical expenses while 75% were reimbursed for 80% or more of the cost. There was no marked variation in charges on a regional basis and the average claim in 1977 was \$354 compared with \$211 in 1967.

London experts say U.S. brokers to renew efforts to gain Lloyd's link

By JOHN H. MILLER

LONDON—The battle of large U.S. brokers for direct access to the Lloyd's market is likely to continue despite Lloyd's efforts to bar such moves, London observers say.

Last month Lloyd's turned back a bid by Frank B. Hall to purchase Leslie & Godwin, a London broker with direct access to Lloyd's. It was learned at that time that Marsh & McLennan, the largest U.S. broker, was also making overtures to several London brokers.

The Committee of Lloyd's also considered two other bids from unidentified U.S. interests, rejecting both because they meant that over-

seas interests would own more than 20% of a Lloyd's broker.

After fairly brief reflection, the Committee reasserted the attitude it adopted April 19: "We are still applying the rules which limit to 20% the share an outside insurance interest may hold in a firm wishing to continue as a Lloyd's broker."

But this decision is likely to be examined on many occasions in the coming months as the attraction of getting into the Lloyd's market becomes more apparent to overseas interests.

Ian Findlay, chairman of Lloyd's, has defended the ruling on the ground that Lloyd's "needs to stay independent" and specifi-

cally denies that he is in any way antagonistic to U.S. companies in this approach.

At the same time Lloyd's is seeking wider access to the European insurance market, where restrictions for underwriting business still exist, and hopes that directives by the Common Market will relax some of these guidelines.

So the obvious conflict of views between its desire to expand its own underwriting and to restrict foreign domination of its brokers will gain tremendous momentum in the future.

There are fears at the moment that profitability is slipping in the London insurance market and this may have its effect on those who would like to enter it in the coming months. But it is still a tremendous market with opportunities for development in many areas. Its attraction to U.S. insurance interests is unlikely to go away now that the scene has been set by major brokers.

Harsh comment on the Lloyd's decision came from the London Financial Times, which declares: "At a time when their business is not as buoyant as it has been in recent years, some Lloyd's broking firms undoubtedly feel threatened that if the take overs go ahead, U.S. companies will channel business through their proposed London subsidiaries at the expense of the independent firms."

"This might happen to some extent, but what a broker needs most is skilled placing power spread right across the market, which one of the would-be U.S. bidders promised would still take place."

"To debar broking companies of the size and strength of the two U.S. groups concerned in the talks seems nothing short of ridiculous. Lloyd's has been actively canvassing foreign capital for its underwriting capacity and an insurance market loses in efficiency if it limits the access of healthy participants."

However, comment in the London Sunday Times was: "To shut out two of the top five U.S. brokers is a brave and possibly foolhardy step which might ultimately lead to loss of business. U.S. brokers have not hitherto been internationally minded, but some of them are now gearing themselves to break this mold and, like bankers, invade foreign soil."

"Lloyd's broking firms might lose business that would go to newly acquired subsidiaries and there is no way that Lloyd's can retain its present character if the trans-Atlantic invasion comes about."

"But Lloyd's should be given the benefit of the doubt, for as well as being exclusive, independent and keen to run its own internal affairs, it is also sensible and pragmatic. If the next tide is the captive broker, it will continue to exercise practical judgments on the best way of controlling it." ■

NAS ups limit on legal expense

CHICAGO—Excess and surplus broker NAS Ltd. has raised the limit on its legal expense policy to \$25,000. Formerly the policy, designed to cover legal expenses for companies with less than 50 employees, was available with limits of either \$5,000 or \$10,000 annually.

The insurance is underwritten by Lloyd's of London and is available in most states. ■

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Collins & Hobbs recently completed this building for the Tennessee Temple Schools - Harrison Gill, architect.

"We'll take immediate action to get a quotation to the policyholder so it can be included in the bid."



The insurance "partners" at Chattem Drug's headquarters, Chattanooga, Tennessee.



Our Norm Keller, left, and Fred Shirley, chief estimator for Collins & Hobbs, on a current project

WAUSAU STORY

Employers of Wausau provides five lines of business insurance to Collins & Hobbs, Inc., general contractors in Chattanooga, Tennessee.

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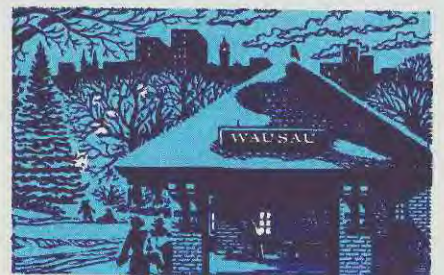


Left to right: Norm Keller of Employers Insurance and Selmon T. Franklin, Jr., architect for the Chattem Drug Executive Office Building.

Successful insurance partnerships don't just happen. They are the result of attention and effort by both partners.

Insurance costs are one of the few expenses in business that are controllable. And all the more worth investing the time and energy to control them. That's the Wausau story.

Come to the source



Employers Insurance of Wausau
Wausau, Wisconsin

editorial opinions

Lloyd's doesn't understand free trade

ARE LONDON BROKERS afraid to compete in an open market?

That's certainly the way it looks to us, in the wake of a decision by the committee of Lloyd's to prohibit U.S. insurance brokers from owning more than 20% of a Lloyd's brokerage firm.

All of the standard arguments supporting free markets could be cited in this situation. And they would certainly be appropriate, since Lloyd's would be furious if artificial barriers of any kind were erected in the U.S. to limit their freedom to handle U.S. business.

Executives of several brokerage firms here were justifiably angry when the committee of Lloyd's in effect denied U.S. brokers the right to have direct access to the Lloyd's markets. What's worse, the committee's decision was all the more disturbing because several of the big national U.S. and Canadian brokers already own large equities in Lloyd's brokers. Thus, to apply the rule now is to deny some U.S. brokers—on whom Lloyd's is, we might add, very dependent for business—the same competitive advantage their colleagues already have, merely because they got into the Lloyd's brokerage business before the London operators got worried about their future.

■ It's easy, indeed, to see why the Lloyd's brokers in London should worry. They've always had a monopoly on all business going to Lloyd's; they could effectively control commission rates charged and they've had a cozy relationship with the Lloyd's syndicates with whom they "negotiate" insurance deals for buyers. Dominance of Lloyd's brokerage firms by some of the highly competitive U.S. brokerage firms like Marsh & McLennan, Alexander & Alexander and Frank B. Hall would doubtless have meant tougher competition on commission rates and even underwriting terms.

More important, perhaps, was the threat posed for some of the largest Lloyd's brokers who now get sub-

stantial portions of their business through firms like M&M and Hall. Certain Lloyd's brokers stood to lose much, if not all, of that business should more U.S. firms have gained direct access to Lloyd's through subsidiaries.

The decision of the committee, moreover, came while Ian Findlay is chairman of Lloyd's. Mr. Findlay has spent his career as a Lloyd's broker with one of the firms that would be seriously affected by the inroads of the big U.S. brokers.

Statements by the committee about the basis for their decision implied that the London arbiters foresaw some unethical conduct arising out of the ownership of Lloyd's brokers by U.S. brokers. Words like "inconsistencies" and "pressure" were used to describe what might happen if U.S. brokers were allowed to operate as Lloyd's brokers. The committee, without being explicit, had the audacity to say that only by remaining "independent" can Lloyd's brokers best serve their clients at Lloyd's and the London companies.

■ Hogwash. The theory looks good on paper, but there's no way you can call Lloyd's brokers independent from outside pressure at the present time. In many cases, the Lloyd's brokers either own—or are owned by—the Lloyd's underwriters, or by the large merchant banks, or by both. Is that independence? The insurance business in London is as incestuous a business as you can find anywhere, with brokers and insurers frequently sharing the same bed, so to speak.

Since the object of this move was clearly to protect their own flanks, the members of the committee at Lloyd's would have done well to come right out and say so. But to pretend that their decision was made in order to protect the buyer of insurance defies credulity.

We regret that some of the most sophisticated people in London don't understand the principles of free trade.

Insurers should compete carefully

MUCH OF THE CONVERSATION at the recent RIMS Conference in New Orleans centered around the amazingly fast change in insurance underwriters' attitudes . . . casualty risks that went begging only six months ago are suddenly pulling a half-dozen premium quotes at rates that are 5%, 10%—and even a whopping 30%—below rates paid in 1976 and 1977.

Here we go again . . .

"Are we to endure another feast-and-famine situation?" buyers ask. On the one hand, they're glad to see a tempering of the insurance industry's earlier panic pricing of liability insurance, pushing rates up 100%, 500% and 1,000% for many commercial policyholders.

But wait a minute. Buyers have wanted to see insurers

moderate their views of potential liability losses. But even buyers are getting worried that the insurance industry, for all its talk about how it needs to be "responsible" and how a good lesson was learned from the last wild cycle, hasn't yet learned how not to overreact.

Don't get us wrong, we like to see healthy competition among insurance companies. For all the things that are supposedly wrong with the insurance industry, it shows itself at times like this to be surprisingly responsive to customers' needs, diving right in to compete.

But if 12 months from now the industry will go through a strangling contraction the way it did in 1974-76, we'd just as soon see the industry take things a little slower.

letters

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

Court woes

To the editor: Re: "A radical solution to court woes" by Peter Downes (April 17). This was an excellent article by a man with several attractive qualities; intellect, a controlled sense of humor and—most important of all—the unique ability to see the broad picture in realistic terms.

Obviously, Mr. Downes will always be frustrated with an industry and society unable to keep pace with his mind.

Jay Lavenson

Executive vp, Harlan Inc. of Pennsylvania, Philadelphia, Pa.

Swiss Pensions

To the editor: In your issue of Feb. 20, you published a brief article with respect to the expected legislation on mandatory pension plans in Switzerland.

We would stress that only the National Council, the equivalent of your House of Representatives, has completed its deliberations on the 2nd pillar but the Council of the States, the equivalent to your Senate, has not yet completed its discussions. Accordingly we cannot as yet say that the legislation on the 2nd pillar is completed. Considering the fact and the time-consuming legislative procedures in Switzerland the proposed legislation will not be effective prior to January 1, 1980. We would also advise you that the brochure "Employee Benefit Climate in Switzerland" by our consultant Michael Buchs, is available from Swiss Life in Zurich, free of charge.

M. Lochmann

Swiss Life Insurance & Pension Co., Zurich, Switzerland

Punitive damages

To the editor: The ISO's recent attempt to exclude coverage for punitive damages has stirred quite a debate. In your excellent presentation of it, several articles have suggested a particularly important point.

The point is that punitive damages fall more logically under criminal law than civil law. Their intent is to punish anti-social behavior rather than to compensate for injury.

What has not been clearly stated, however, is this: There is a major difference between our system of criminal law and our use of puni-

Continued on page 8

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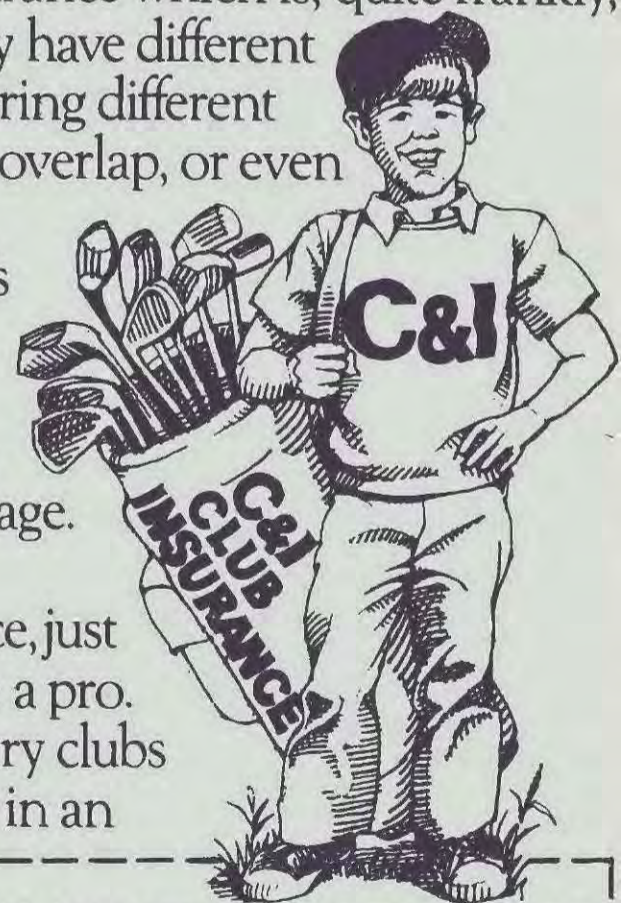
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letters

Continued from page 6

tive damage awards. The former has both written statutes and a large number of court decisions to define what is acceptable behavior; the latter has neither. As a result, no one really knows what actions should be punishable by punitive damages (or to what degree).

Perhaps a beneficial result of the ISO's action will be to illuminate this dilemma. Punishment by punitive damage payment may not be cruel and unusual, but it is certainly capricious. If states want to discourage negligent behavior by such means, they have an obligation to define that behavior.

Ron Hall

Work comp

To the editor: In reference to your opinion on workers compensation benefits in the April 17 issue. Being involved in the "thick" of things working for a manufacturing firm that is self-insured, I would tend to somewhat differ with your point of view. I interview employees immediately following an accident. I see them periodically during their rehabilitation period. I attend the hearings at the industrial commission and have interviewed some of the phoniest claims you will ever want to see.

The commission, sympathetic with the petitioners' phoney claims or not, should look at the situation more realistically and start handing out awards strictly by the act ("arising out of and during the course of employment") and not by some alleged situation that is remotely connected with the place of employment. In addition, I feel

dates for buyers

May 21-May 24. Executive dishonesty and related white-collar crimes will be the issues under debate at the **International Security Conference** to be held in Chicago. There will be a security product expo for which a business card is sufficient for entrance. Other workshop topics include disaster survival planning, industrial espionage countermeasures, executive protection computer security, retail security and premise protection planning. The fees range from \$25 to \$195. Contact: Bob B. Gelman, International Security Council, 2639 S. LaCienega Blvd., Los Angeles, Calif. 90034; phone (213) 836-5000.

May 21-24. **Washington Legislative Update 1978**, a conference for trustees, administrators and professional advisors who serve labor-management employe benefit plans. The conference is sponsored by the International Foundation of Employe Benefit Plans to be held in Washington, D.C. Meetings will be directed exclusively to the concerns of the Taft-Hartley pension and welfare trusts. Cost: \$225, members; \$285, non-members. Contact International Foundation of Employe Benefit Plans, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53005; phone 414-786-6700.

May 24-25. **Litigation under ERISA and other Pension Related Laws** is the title of a conference to be sponsored by Executive Enterprises Inc. and to be held in Arlington, Va. The conference will present an analysis of each regulatory agency—Department of Labor, SEC, PBGC, and IRS—its current interpretations of law, regulation standards, litigation and enforcement priorities. Cost: \$350. Contact Registrar, Executive Enterprises Inc., 10 Columbus Circle, New York, N.Y. 10019; phone (212) 489-2680.

July 24-26. The **National Conference on Workers Compensation** to be sponsored by *Business Insurance* in Chicago. It will include six general sessions and seven concurrent sessions covering aspects of workers compensation regulation, insurance and self-insurance. One of the highlights will be a debate on the question of state versus federal regulation, featuring seven nationally recognized authorities. Among the topics to be considered will be proposed federal legislation, occupational disease, cumulative trauma provisions, the present system of establishing workers compensation benefits, self-insured programs, fraud in workers compensation, has the federal Longshoreman's & Harbor Workers Act gone far enough, administering safety and loss prevention programs, rehabilitation programs, working with state workers compensation regulators. Cost: \$385; 10% discount for companies sending more than one person. Contact Taylor Lewis, Crain Education Division, 740 N. Rush St., Chicago, Ill. 60611; phone 312-649-5245.

that what we need is two different rates. One for TT and a higher rate for permanent totals.

Name withheld on request

Property market

To the editor: Admittedly the property market has a soft belly and there are a variety of reasons for this condition (April 17).

Entrance into the market in recent times by carriers such as the Allianz has had little effect, if any,

on the trend toward reducing premiums. The Allianz is a sound, rather conservative property underwriter and can hardly fall into the "swinger" category. There are a lot of other markets around that are cutting prices which have more influence on the market.

The property-casualty business tends to fluctuate in cycles. During the years 1967-69 there was a severe constriction of property capacity which forced up rates. While the peak or bottom of the periodic cycles may flatten out quite quickly, it takes about 10 years for

the full cycle. We are witnessing the tail-end of the last property capacity crunch. While the property cycle is at the ebb point, the casualty carriers are riding the high point of the cycle. There is now an imbalance of premium income for the property-casualty carriers that they wish to balance. The fastest and easiest method to achieve this result is to be competitive by price cutting.

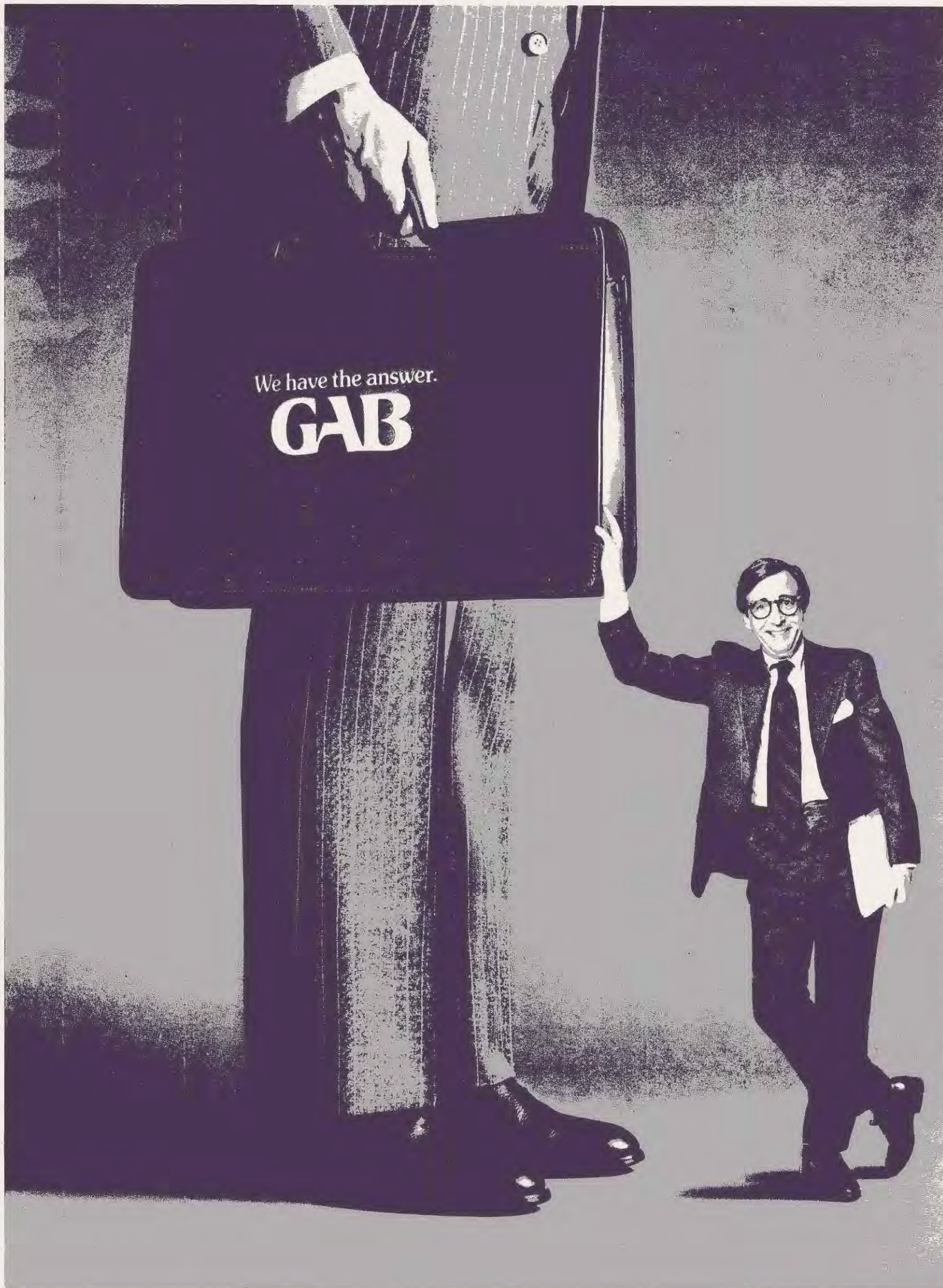
A substantial amount of premium has been written by the excess and surplus lines carriers and a major portion of their writings is

due to the fact that the E & S carriers tend to be innovative and able to provide the insured with coverages suiting his particular need.

In the last two years we have witnessed a proliferation of standard carriers jumping head long into the E & S field. There is price cutting within this specialized excess/surplus field.

H.P. Scalander

President, A & M Property Insurance Brokerage, Pasadena, Calif.



U.S. comp evaluators make more claims: GAO

WASHINGTON—The federal agency that evaluates workers compensation claims by disabled government employees paid 10 times more awards to its own employees than to other U.S. agencies of similar size, a House committee says.

That agency is the Labor Department's Office of Workers Compensation Programs, the administrator of the Federal

Employees Compensation Program that pays out benefits to government employees who become disabled because of their work.

Investigators for the House Appropriations Committee found that OWCP, which has a staff of 1,125, reported a total of 156 cases of employees who received benefits under the Federal Employees Compensation Act.

Five other agencies of compara-

ble size, average employment 1,431, had on the average 16 cases of employees receiving payments during the year, investigators found.

For example, the Federal Power Commission, with 1,363 employees, had only nine compensation cases, the Federal Communications Commission with 2,136 employees had 17 cases and three other small

agencies had between seven and 33 cases.

Committee investigators didn't explain directly why OWCP employees won such a disproportionate number of awards for themselves except to note that "there is a correlation between awareness of how the compensation program works and increased claims."

One source close to the investi-

gation said: "OWCP employees knew a good thing when they saw it and took advantage of it." A disabled employee, under the federal program, receives 75% of his salary, tax-free, during the period of disability.

Appropriations committee investigators, blasted the OWCP for its operation of the government-wide compensation program.

The OWCP has opened the gates wide open for "outright abuse" and a "plethora of frivolous injury reports" through such sloppy administration practices as "accepting the employee's allegations and the personal physician's statement even though the OWCP medical officer did not have the facts he needed to make a decision in 40% of the cases reviewed."

Investigators singled out compensation payments to air traffic controllers as an example, where the federal program has been abused substantially. Although air traffic controllers comprise only 40% of the Federal Aviation Administration staff, they accounted for about 75% of the claims.

According to investigators a controller was able to get 10 hours off with pay for a cut hand when a salt-shaker slipped and hit a table. Another controller received 165 hours of compensation for a slipped disc suffered while "picking up a purse."

Investigators noted that compensation costs for the program have soared at a time when the size of the federal workforce has remained stable. Compensation costs totaled \$190 million in 1972. This year, the federal program is expected to cost \$700 million, a 368% increase.

Destein leaves A&A's Anistics

CHICAGO—Joseph A. Destein resigned as president of the Anistics division of Alexander & Alexander to do consulting in the fields of risk management and insurance and to investigate possible new ventures. He expects to be involved in projects related to captive insurance companies and the emerging Bermuda markets.

Mr. Destein was a co-founder of Anistics eight years ago. A&A acquired the firm in 1972, making it part of the risk analysis and management group under Robert Gielow. Mr. Destein, whose headquarters have been in Palo Alto, Calif., expects to relocate near Los Angeles.

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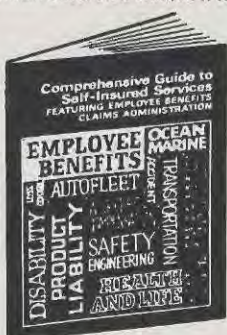
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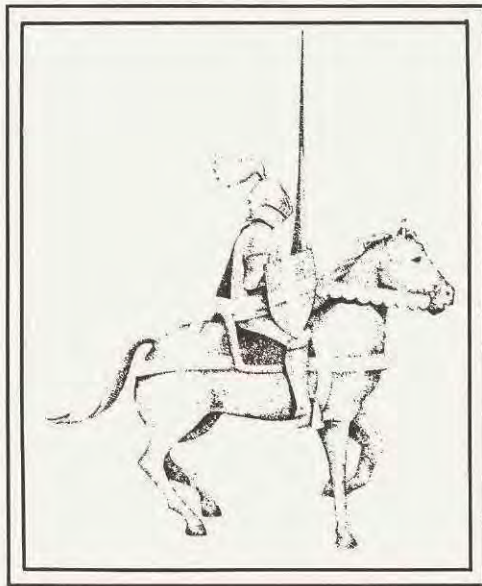
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Arizona OKs time limit on product injury suits

PHOENIX—Arizona has enacted a statute of limitations making it the eighth state this year to pass a major product liability reform bill.

Under the measure (H.B. 2215), a suit must be filed within 12 years after the product was sold to the first user. In addition, the bill requires suits to be filed within two years after the date of injury or accident.

The bill prohibits asking for specific damages. A plaintiff only can seek "reasonable damages."

Manufacturers and sellers are given a state of the art defense and liability is eliminated if product alteration or modification were the proximate cause of injury.

Recovery also is barred if the injury were the result of an unforeseeable misuse of the product or if the product were used contrary to express warnings or instructions.

Wholesalers and retailers cannot be held liable unless they had knowledge of a defect or if they modified the product.

The measure bars introduction of evidence in a product liability suit that reveals improvements in product design or testing since the time of manufacture.

The Arizona state senate and house passed the measure by overwhelming margins last month. Gov. Bruce Babbitt signed the bill late last month. The law goes into effect 90 days after the legislature adjourns.

Arizona Assn. of Industries executive director John Leonard said the unification of employer interests in working out a compromise bill with the state trial lawyers association was the key to success.

"It was a case of going to the legislature with a united position after we had done some pretty hard negotiating with the trial lawyers," Mr. Leonard said.

A major compromise reached between business groups and trial lawyers was increasing the time limitation on filing product liability suits from six years, as was originally proposed, to 12 years.

The seven other states that have passed product liability reform bills this year are: South Dakota, Indiana, Georgia, Tennessee, Kentucky, Minnesota and Nebraska.

In 1977, Utah, Colorado and Oregon enacted comprehensive measures. ■

300 comp laws enacted

WASHINGTON—In 1977, nearly 300 laws covering almost every aspect of workers compensation were enacted by state legislatures, the Chamber of Commerce reports in its annual survey of workers compensation.

Indemnity benefits were increased in 51 jurisdictions. Forty-two states now provide for annual automatic adjustment of benefits based on the state average weekly wage.

In 43 states, the maximum weekly benefit now equals or exceeds 66% of the average weekly wage for temporary total disability cases. Twenty-three states pay 100% or more of the average weekly wage.

In all jurisdictions, medical care is now unlimited. New Mexico deleted its \$40,000 limit and Tennessee removed its three-year limit.

Employers spent \$10.8 billion in 1976 to insure or self-insure workers compensation programs. That's a 22.5% increase or almost \$2 billion more than the 1975 cost of workers compensation.

Copies of the 1978 edition of the "Analysis of Workers Compensation Laws," may be obtained from the U.S. Chamber of Commerce, 1615 H St., N.W., Washington, D.C. 20062. Purchasers should request publication No. 5690. Cost is \$5 per copy. ■

AIA taps Bagnell

James W. Bagnell has been appointed counsel in the New England government affairs office of the American Insurance Assn. Mr. Bagnell formerly worked in government affairs at The Travelers Insurance Co.

Insurance liftoff key to Space Shuttle blastoff

By ELLIS SIMON

NEW YORK—The availability of insurance coverage for man-made satellites and other commercial payloads to be placed aboard the Space Shuttle could spell the difference between success and failure for the multibillion dollar NASA project.

The first space flight for the \$500 million craft is scheduled for mid-1979 and the first commercial payloads are scheduled to be carried a year later. Eventually five shuttlecraft will be in service, flying approximately 60 missions a year.

Although it will be used to conduct scientific experiments and for other government purposes, launching of satellites, both commercial and government, will be one of the shuttle's prime functions.

The shuttle represents a departure from earlier launching vehicles in that it can carry more than one payload and can be flown back to Earth for reuse. While the \$21 million cost of a shuttle flight is about the same as for more conventional satellite launch vehicles, its exposure to loss is much greater.

In addition to the value of the shuttlecraft itself, commercial payloads placed aboard it could represent an additional \$100 million exposure. At present, worldwide capacity for satellite launch insurance is only \$50 million.

However, capacity has grown significantly. In 1972, world capacity was \$10 million with a one failure deductible, noted Patricia A. Lertora, vp-international for Lexington Insurance Co., the principal American market for space insurance.

There is no deductible on the present capacity, she added. Lexington, an AIG subsidiary, has put together about one-fifth of that capacity, using American reinsurers. The remaining capacity is mostly in London.

Simplicity is NASA's intent in coming up with regulations regarding liability of shuttlecraft users, said George Baker, a staff engineer at NASA.

Unduly complicated liability rules could not only discourage potential users of the shuttle, but also interfere with NASA's ability to mix and match payloads, he explained.

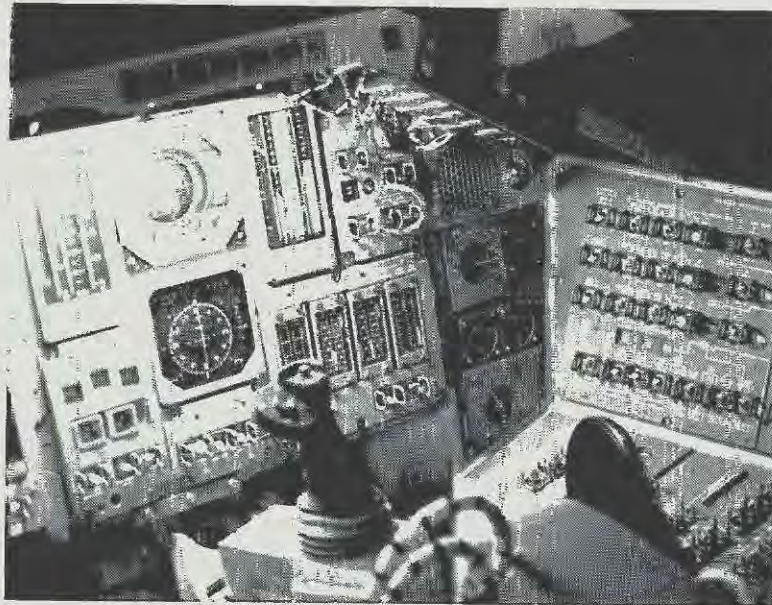
NASA has adopted a "no-fault" approach to liability of payloads on the launch. Otherwise, the user could be liable for the \$500 million shuttle plus the remaining payloads should it be responsible for any damage.

On property damage and injury to employees, the users will be asked to agree not to bring action against the government or each other or to indemnify all parties involved, Mr. Baker said.

"It's to NASA's advantage that users not be exposed to unreasonable liability," said Richard M. Nausch, president of Nausch, Hogan & Murray, a New York brokerage firm. "If they were, it could involve business risks beyond what anyone could self-insure or insure commercially."

NASA's attitude reflects what the market for space insurance probably will be, he added. Because risks will be limited to the value of the payloads, certain markets that have not participated in space risks up until now, such as the major marine cargo underwriters, could be persuaded to participate, said Mr. Nausch.

While the limited exposure could attract other insurers to the space field, Ms. Lertora believes



Mock-up of the controls on the NASA Space Shuttle.

many of them could be interested solely in insuring payloads while aboard the shuttle.

However, she added that the greatest need for capacity occurs while the payloads are aboard the shuttle because of the concentration of exposures. Once the payloads are launched from the shuttle, they become individual risks, Ms. Lertora said.

The space shuttle's long-range effect on launch insurance should be to reduce rates, she added. Launch exposure obviously drops since the craft is manned and has a zero failure acceptability rate, she added. On traditional "expendable" launch vehicles a 10% rate of failure was considered acceptable.

To date, space insurance has been highly profitable for the industry. According to Gerald Frick, vp at Marsh & McLennan, \$45 million has been paid in space insurance premiums to date.

The only loss to date, however, was a large one—\$29.5 million on the European Orbiting Test Satellite which exploded in September upon launch from Cape Canaveral.

One question yet to be answered regarding launch insurance is that the rule will be concerning a payload that is jettisoned from the shuttle to save the shuttle and the remaining payloads.

In marine practice, general average is declared when cargo is thrown over to save a ship in peril. While Mr. Nausch said he felt general averages would be a good concept to apply to the Space Shuttle, NASA is opposed to the concept, according to Mr. Baker.

Space insurance concerns do not end with the launch coverage. In addition, there are satellite life and space liability lines.

Space life policies are normally written for 3 years, but cancelled after the first year and replaced by a new three-year policy, said Marsh & McLennan's Mr. Frick. The typical communications satellite has a seven-year life expectancy and the greatest risk occurs during the first and last years, he noted.

"If you make it through the first year, you know you're sound."

Satellite life also provides coverage on partial loss of an orbiter's facilities. Ms. Lertora said it is relatively easy to adjust for the loss of some of a communications satellite's transistor channel. Policies are often written with channel loss deductibles, she added.

Users of the Space Shuttle will be required to carry third-party liability insurance, currently available only through Lloyd's, said Mr. Baker.

Space Shuttle users are required to indemnify the government or name it as an additional insured for

third-party claims resulting from the user's payload after it has been separated from the shuttlecraft, Mr. Baker said.

Commercial use of space is expected to grow tremendously as the Space Shuttle program goes into full operation and its larger successors come on line. By the year 2000, revenues from space industries could exceed \$30 billion, predicted Mr. Frick.

Communications satellites will remain the major user of the shuttle during the next decade, but geological and meteorological satellites will also grow in use, he said. Construction of giant solar

power stations in space, as large as three miles square, is also technically feasible, he noted.

Such activities will require new forms of insurance such as space builders risk, workers compensation and property coverages, Mr. Frick said.

Will the insurance community be able to provide such coverages? According to Ms. Lertora: "It's our responsibility to learn about the product. I don't think it will be our desire to limit coverage."

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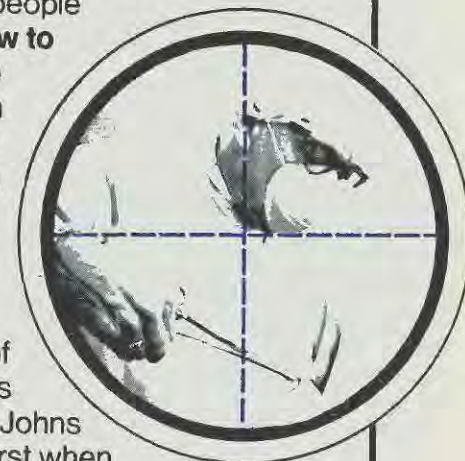
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Police insurance available

WASHINGTON—Republic Group of Texas will now insure police departments as part of the public officials liability insurance program it underwrites for cities and counties that are part of the International City Managers Assn. (ICMA) and the National League of Cities.

The program offers the best rates available for a line of insurance very few companies will underwrite, said Peter L. DeGroot, ICMA Public Service Center general manager.

He recalled that five years ago ICMA responded to public officials' concern about their personal liability because it was unclear if cities and counties would indemnify them for a judgment against them. ICMA hired the Wyatt Co. of Chicago to draw up specifications for liability insurance. But after circulating the specifications throughout the industry, ICMA heard from only a couple small insurers.

ICMA hopes that the program's history will convince the insurance industry that the risks are worth underwriting. In the meantime, once PRIMA is active, ICMA will ask for a panel to monitor the program to unload some of the work.

Public bodies' risk managers unite to insure information isn't a risk

By KATHRYN J. McINTYRE

WASHINGTON—A national association for risk and insurance managers of local governments and political subdivisions is germinating here and hopes are it will burst into bloom this summer.

The Public Risk & Insurance Management Assn. (PRIMA) was planted this spring to provide a "clearinghouse and information house" for public risk management concerns, said acting president Dennis Tweedale, risk manager of Madison, Wis.

The International City Management Assn. Public Service Center here is tending PRIMA's development, convinced the organi-

zation is needed.

The idea of a professional association strictly for the public servant risk manager has been floating around the country like milkweed in May. The public risk managers who met in industry sessions at the annual Risk & Insurance Management Society conference would wryly refer to themselves as GRIMS (Government Risk and Insurance Management Society), but they never organized.

At a University of Arizona seminar conducted last October by Nestor Roos, the concept floated by again. This time it found a fertile field in a group of people there: Sheldon Weinberg of Hermepin

County, Minn., Robert Bieber of Westchester County, N.Y., Mr. Tweedale and Peter L. DeGroot of ICMA.

Those willing tillers met in March at ICMA, along with Betty Conner of Memphis and James Banner of Clark County, Nev., and formed PRIMA, appointing Mr. Tweedale acting president and themselves to the first board of directors. Steven Webber, risk management chief for Jefferson County, Ala., and Robert Bowman, founder and president of the Public Agencies Risk Management Assn. on the West Coast, were also invited to join the board.

ICMA Public Service Center is aiding the development of PRIMA as an offshoot of its efforts to secure public officers liability insurance. In convincing Republic Group of Texas to underwrite its program, ICMA assured the underwriter "we would develop a risk management consciousness in local governments. The best way to do that is to create an institution," said Public Service Center general manager Mr. DeGroot, who is serving as the first executive director of PRIMA.

Mr. Tweedale added that ICMA as well as other government organizations, such as the National League of Cities and the National Assn. of County Officers, are often questioned about insurance and they are asking for a professional source to turn to for answers. It's believed PRIMA, which will eventually have its own office and staff in Washington, will fill that need.

"We will be a place for the smaller communities to turn to for information and for the more sophisticated risk managers we hope to have regional or national meetings," Mr. Tweedale said.

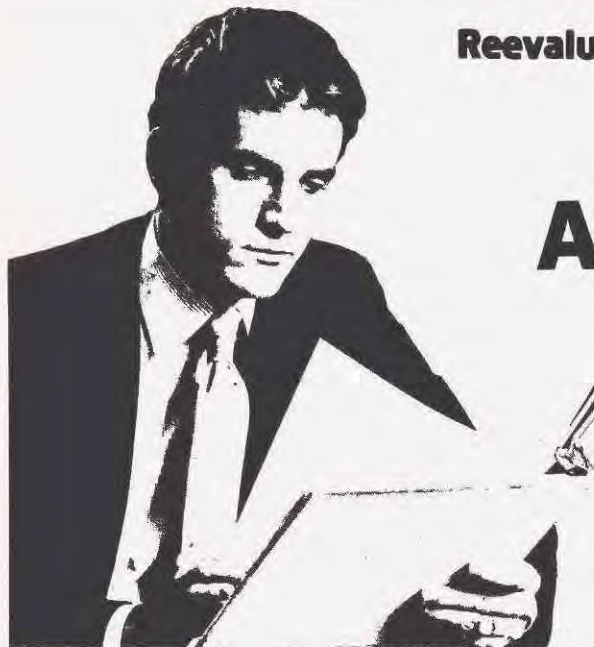
Mr. DeGroot sees PRIMA not only as a resource and forum for risk management principles but also as a tool for educating higher level government administrators about risk management.

Announcements introducing PRIMA to government entities are going out this month from ICMA and a membership drive among all local governments and political subdivisions should blossom this summer. National dues for institutional membership won't be more than \$50.

But PRIMA's breakthrough "is sort of like the chicken and the egg," Mr. DeGroot observed. "We can't have a membership drive without a newsletter and staff—an organization to offer." Anyone who wants to support the growth of PRIMA is welcome to join early, though Mr. DeGroot requested that inquiries be written to ICMA because he still doesn't have the staff to handle telephone calls.

Mr. Tweedale said that PRIMA "was not formed as an alternative to RIMS, but to make risk and insurance management more available to all government entities."

Mr. DeGroot suggested that PRIMA is finally taking root not only because risk management has become a more important function in local governments faced with higher insurance premiums and a shrinking market, but also because local governments are searching for ways to control costs in response to taxpayer pressure. The risk management function, Mr. DeGroot asserted, has certainly proved it is cost effective. ■



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Questions about PRIMA should be addressed to Peter L. DeGroot, ICMA Public Service Center, 1140 Connecticut Ave. N.W., Washington, D.C. 20036.



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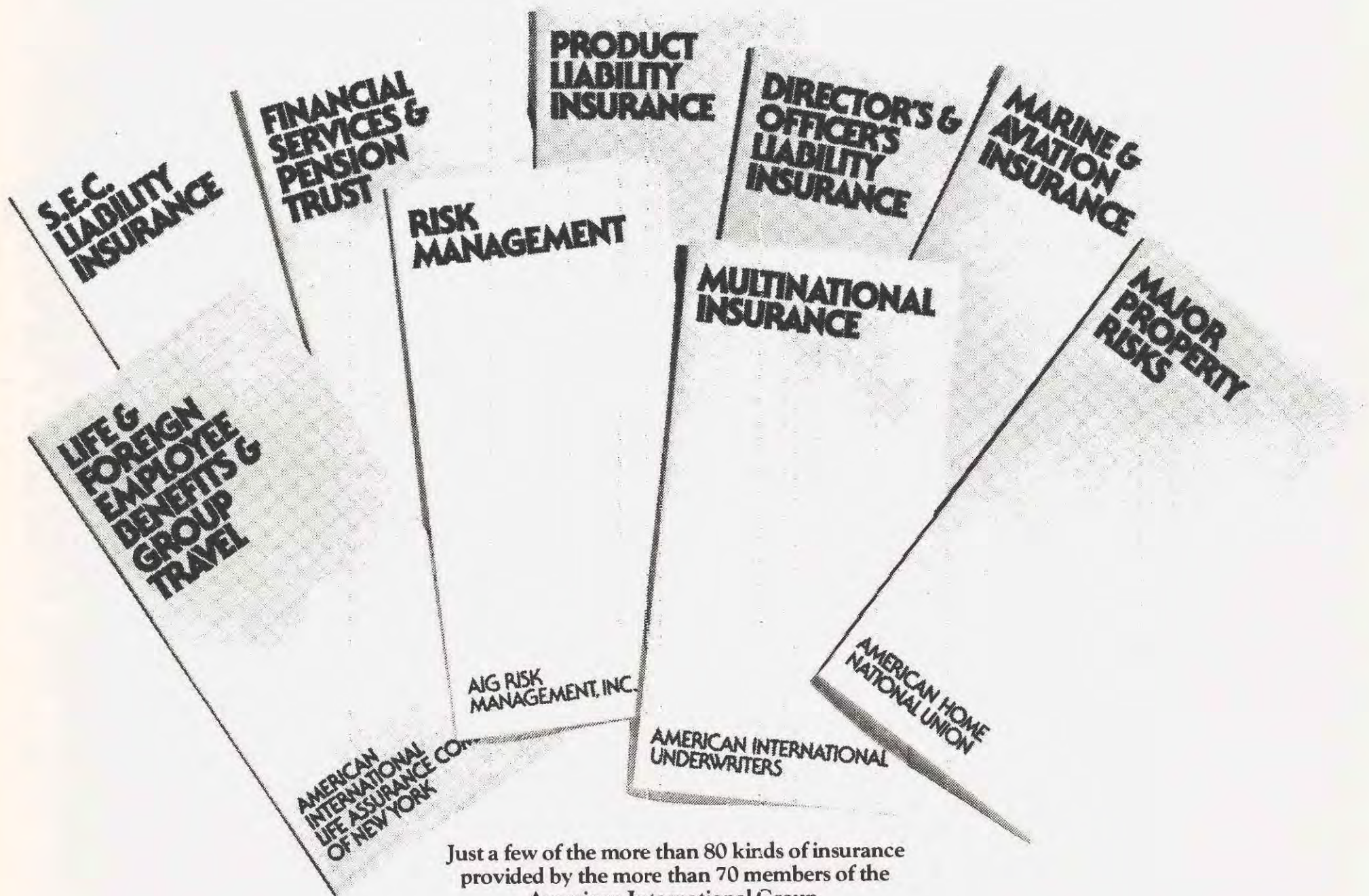


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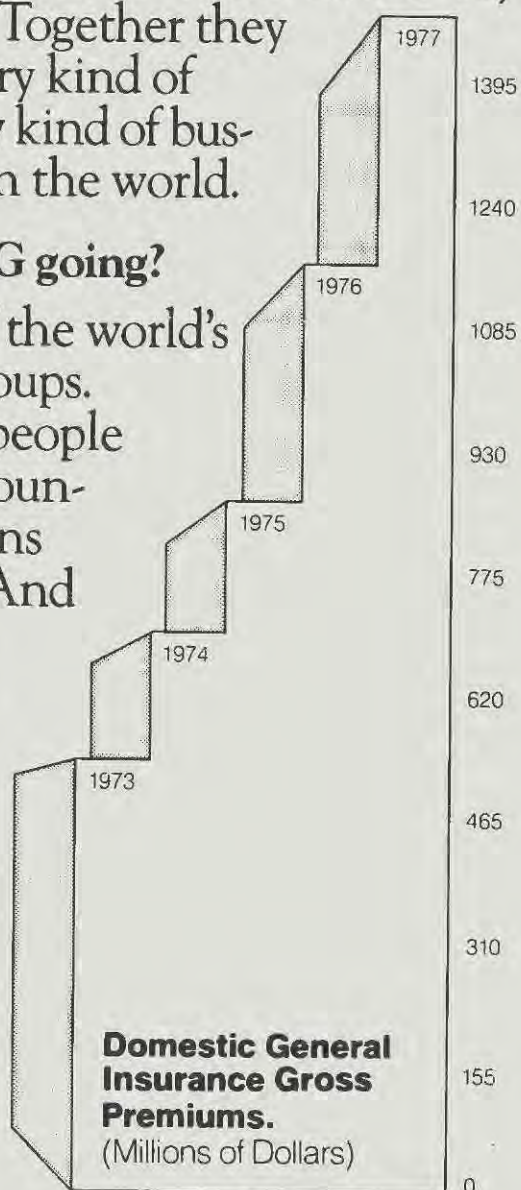
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Unique Illinois figures show

Malpractice suits drop, but product actions up

CHICAGO—The number of malpractice suits filed in Cook County, Ill., in 1977 dropped by 3% compared to 1976 but product liability litigation increased 14% for the same period.

The Cook County Jury Verdict Reporter says 830 malpractice suits were filed in 1977 compared to 856 in 1976, while 991 product liability suits were filed in 1977 and 868 were filed in 1976.

These results track the experience of 1976 compared to 1975 when the number of malpractice suits filed in Cook County decreased 25% from a record high of

1,141 in 1975 and the number of product liability suits increased 13% over the 769 filed in 1975.

In Downstate Illinois, product liability cases outnumber malpractice cases two-to-one with the average verdict per successful plaintiff in product liability suits running \$195,000, the Illinois Jury Verdict Reporter says.

In its mid-term report on personal injury awards in Illinois courts, the statistical arm of the Illinois Information Service said there was only one successful medical malpractice suit reported in Illinois outside Cook County for the six-month period September 1977 to March 1978. The award was \$35,000.

Much larger settlements, however, were reported. A woman whose ureter was ligated and bladder nicked during a 1969 hysterectomy settled for \$900,000. The family of a premature baby that had to be readmitted to the hospital with pneumonia and retrolental fibroplasia—when he had been released without blood gas tests—settled for \$645,000.

In sheer numbers, 32 fewer personal injury suits have been filed around the state so far this court term compared to last, 434 compared to 466. Cook County saw 29 fewer cases and downstate saw 13 fewer.

In dollars, the Cook County aggregate of personal injury awards is almost 10% less than a year ago, \$9.3 million for the first half of the current court term compared to \$10.2 million a year ago. Downstate, the aggregate is less than half of the \$5.8 million already awarded at mid-term a year ago, but last year one \$1.5 million verdict inflated the Downstate and statewide aggregates. Still, statewide, awards to date are down \$4.4 million from the same time last year, \$11.6 million now compared to \$16 million a year ago.

Keeping in mind the one large verdict last year, it is not as impressive as it may first appear that the statewide average verdict per successful plaintiff for this term to date is \$55,790 compared to \$70,249 a year ago. The statistics for Cook County indicate that the pattern here is about the same as last term, with the average award per successful defendant this term running at \$59,858 compared to \$60,331 at the same time last year.

The success rate of the defense is also about the same as last year, though Downstate the defense won 51% of the cases so far this court term compared to 49.1% during the corresponding period last year. In Cook County, the defense is winning 51% of the verdicts, only a shade better than the 50.4% won at the same time last year. Statewide, the defense is squeaking by the plaintiffs with 50.7% of the verdicts found in its favor compared to 50.2% in 1977.

The Illinois Jury Verdict Reports is a unique service of the Illinois Insurance Information Service, drawing on the statistics compiled by the Cook County Jury Verdict Reporter for Cook County and the reporting of its member companies and cooperative defense attorneys for downstate Illinois.

\$13 million damage

Insured losses of \$13 million are estimated from a storm that swept parts of Texas and Arkansas in late April.

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Insurers crow, but flu claims trail predictions

By KATHRYN J. McINTYRE

WASHINGTON—The Insurance Information Institute is crowing "we told you so" regarding the number of claims that would be generated by the swine flu immunization program. But the numbers don't quite stack up.

A recently widely published III press release said, "Early fears of the insurance industry that the federally sponsored swine flu immunization program of 1976 could result in an epidemic of liability claims are now proving well founded." The release said over 1,000 claims have been filed.

Actually, 1,363 claims had been filed as of last month. But the release failed to mention that in 1976 insurers had told Congress "there could be anywhere from 3.8 million to 10 million in colorable (genuine) claims and perhaps the same number of spurious claims against manufacturers for adverse reactions."

Leslie Cheek, the American Insurance Assn. (AIA) lobbyist who offered those figures in 1976, said, "I can't defend the III on the number of claims. For them to have emphasized that aspect was too bad for the insurance industry. Far more important would have been to point out the problems that haven't been resolved."

The former vp of federal affairs at the AIA, who now holds the same position with Crum & Forster, explained that drug manufacturers are still subject to the same liability exposure in public immunization programs as existed for the swine flu program until the federal government stepped in on the one-time basis. Drug manufacturers have a duty to warn in public immunization programs under strict liability, he said.

A provision of the law that relieved manufacturers of this duty to warn, and in fact all liability except for negligent acts, also required the Department of Health, Education and Welfare to issue a white paper on the liability issue in future immunization programs.

HEW has not issued such a document. Instead, HEW wants to handle the manufacturer's duty to warn in public flu immunization programs as it does in the children's vaccination programs, said James L. Kimble, counsel of the AIA in Washington. HEW will centrally purchase the flu vaccines and as part of the contract will assume the duty to warn, he said.

Vaccine manufacturers and their insurers have been satisfied with this arrangement in the children's vaccine program and HEW assumes it will work for the high risk immunization program that in the last six months of 1978 is expected to vaccinate 9.2 million persons against three strains of flu, Mr. Kimble said.

Though this high risk immunization program is not of the magnitude of the swine flu program, Mr. Kimble observed, it is different from the children's vaccination programs that the public is accustomed to.

"I'm not sure this is acceptable," Mr. Kimble said, "but it seems to be up to this point." He noted that Merck & Co. said at a House commerce health subcommittee hearing recently that its insurer is satisfied with the arrangement. But two other manufacturers, Connaught (of Canada) and Wyeth Laboratories, said they haven't negotiated their insurance policies in light of this provision.

"You cannot suggest the liability issue is totally resolved," Mr. Kimble cautioned. "We are waiting to see if this works with no liability problem."

Assessing claims experience in

the swine flu immunization program, both Mr. Kimble and his former boss, Mr. Cheek, stressed that federal assumption of liability probably held down claims. The Federal Tort Claims Act, under which claims are being processed, limits lawyers' contingency fees to 20% and provides for an administrative settlement of a claim before a jury trial.

"But for Congressional action, the number of claims would have been substantially greater," Mr. Cheek maintained. And only 25% of the population was vaccinated

instead of the 200 million persons as had been intended. "It's hard to tell what would have happened if the whole population would have been immunized," Mr. Cheek said.

Insurers did underwrite \$220 million of liability insurance for the manufacturers for \$8.4 million to protect them against allegations of negligence. The federal government, which will pay all claims it finds valid, can sue the manufacturers for recovery of claims paid if the manufacturers are thought to have been negligent.

"To date we have not paid any claims warranting that kind of ac-

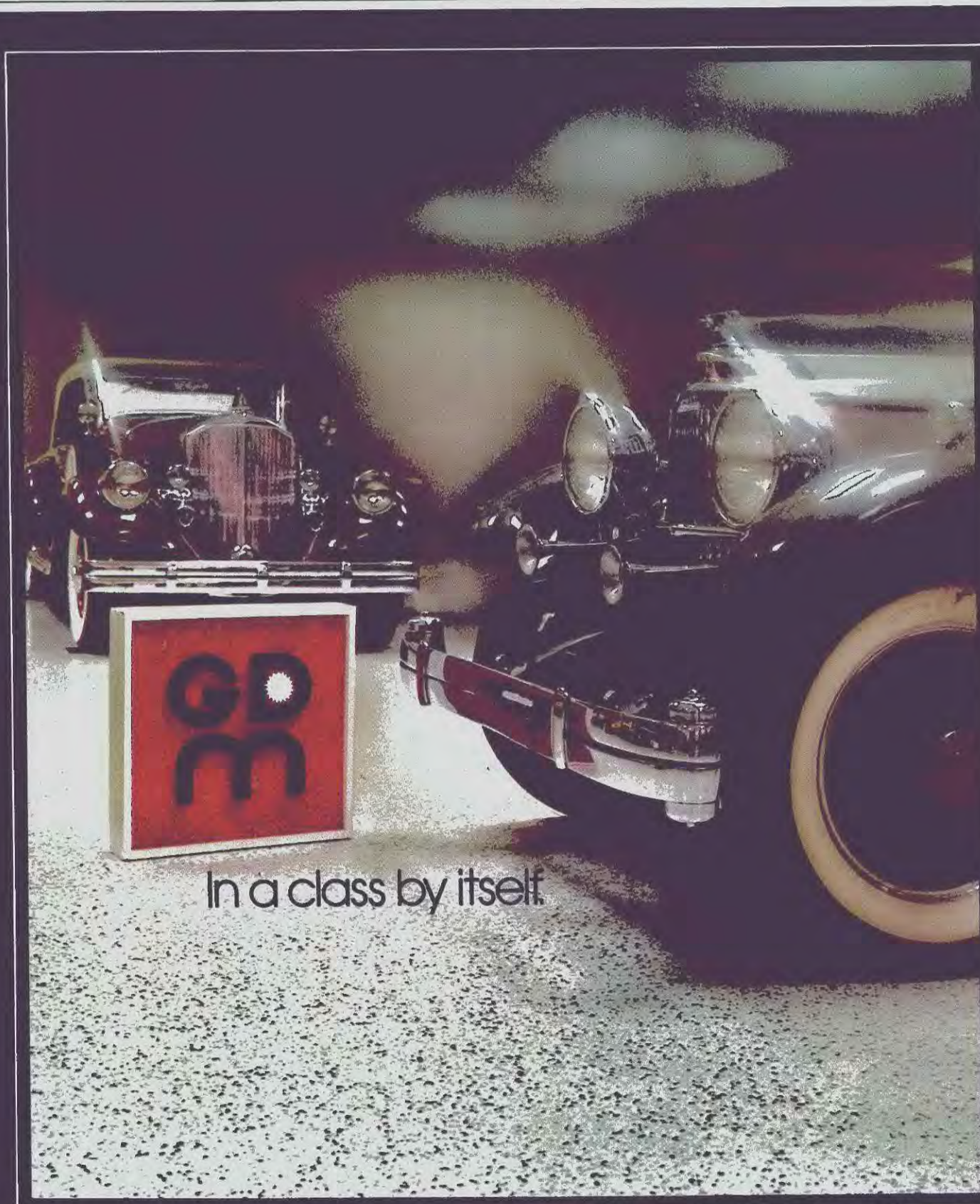
tion," said Justice Department tort section chief Jeffrey Axelrad. Only three claims totaling \$363 have been paid so far. In all, the 1,363 claims filed request \$700 million in damages. That's \$999 million less than it would have been if a claimant hadn't changed a claim for \$1 billion for the death of her son to \$1 million. Sixty-five suits pending seek \$102 million in damages.

Without federal assumption of liability except in the case of negligence, insurers would have charged more than the \$8.4 million they collected on \$220 million of

insurance, Mr. Kimble conceded. Still, looking at claims for \$700 million in damages, Mr. Kimble agreed with Mr. Cheek that, "I think it's safe to say that we would have lost our shirts absent the federal statute."

But the trial lawyers recall that they said in 1976, "We are confident that the American public will not make improper, excessive or frivolous claims."

Looking at the same numbers, the trial lawyers are standing by that statement as strongly as the III maintains the insurance industry's fears were proven justified. ■



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PERSPECTIVE

Your detailed guide to the little understood, but not-so-harmless world of hold-harmless

By Ron Almquist

Regional Underwriting Superintendent
St. Paul Fire & Marine Insurance Co.
St. Paul, Minn.

THE ASSUMPTION or avoidance of liability by contractual agreement may result in very serious, sometimes catastrophic loss—not only to the indemnitor but to the indemnitee as well. While liability by contractual agreement has been around a long time, it has been surrounded by mystique and misunderstanding. It has been approached with naivete by indemnitors, a false sense of security by indemnitees and casualness by insurance underwriters.

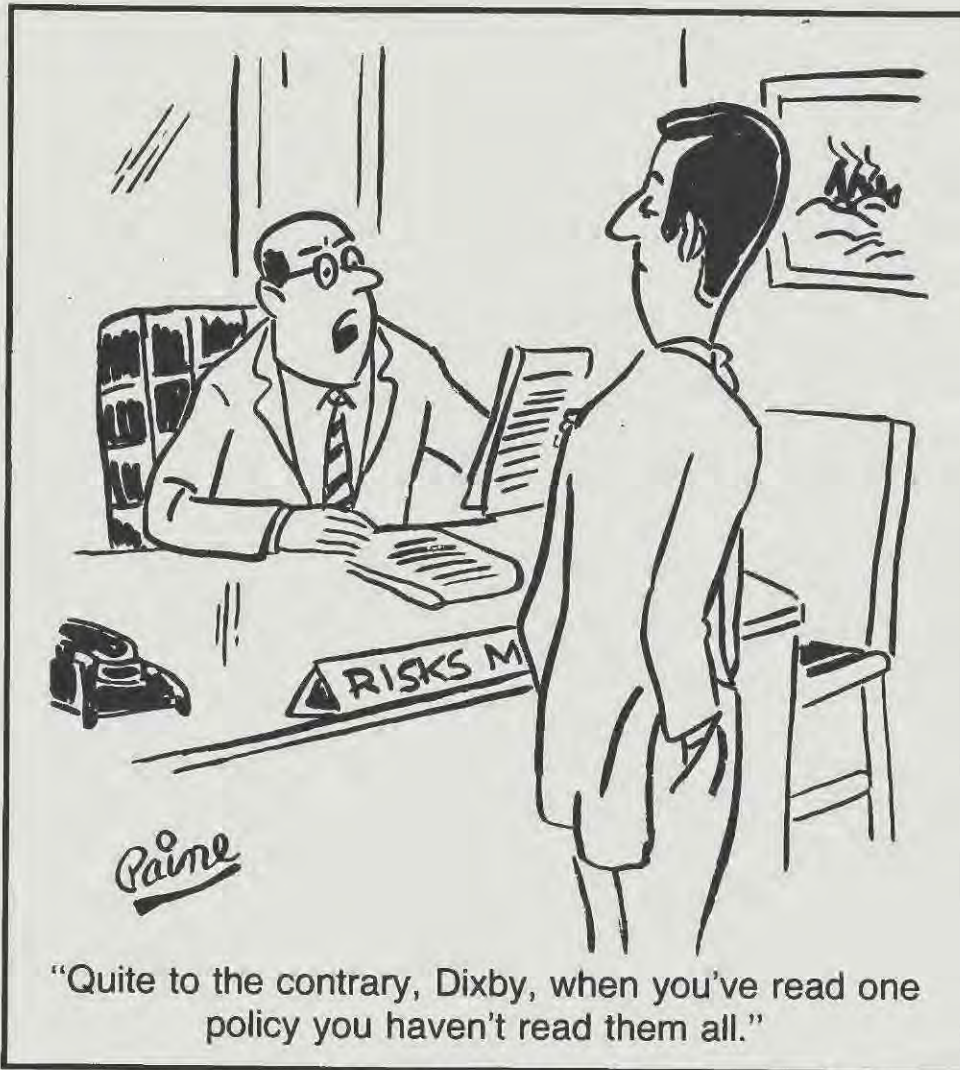
The avoidance of unexpected loss requires a thorough review and understanding of contractual terms and their potential implication. Mystique and misunderstanding must be replaced with a familiarity of contractual hold-harmless agreement "jargon," the scope of the agreement, an analysis of exposure and a reasoned evaluation of action alternatives.

Contractual liability is, simply stated, the assumption of the liability of another under contract or agreement. These contracts, called "hold-harmless" agreements, may be written or oral. The liability assumed covers the waterfront, ranging from no more than that which the assuming party already has under laws of negligence to "absolution."

Hold-harmless agreements do a number of things, either singly or in combination. They:

- Reinforce already existing liability imposed by law, either common or statutory.
- Transfer liability from one party to another, thereby reversing the effect of common or statutory law. This can involve the elimination of contribution under the doctrine of contributory negligence to the transfer of the sole liability of one party to another.
- Relieve a claimant from proving negligence. Liability is established under rules of contract, thus avoiding the burden of disproving contributory negligence.
- Extend the statute of limitation. Generally the time in which a legal action may be commenced is longer under law of contract than tort.

Hold-harmless agreements may be found in virtually every phase of business endeavor and in a myriad of ways. They are so common and found in so many everyday business forms they very often go unrecognized. Consider just some:



- Purchase and sales orders.
- Servicing agreements.
- Leases of premises and other property.
- Municipal permit agreements.
- Railroad sidetracks and crossings.
- Easements.
- Performance bonds.

Essential to removing some of the mystique is a familiarity with the "jargon" of hold-harmless agreements. An indemnitor, for example, is the party who has assumed the liability or obligations of another; the insured under a contractual liability insurance policy. An indemnitee is the party being held harmless.

An incidental contract refers to the five types of hold-harmless agreements for

which liability insurance policies provide at least qualified protection on an automatic basis without additional charge. These are:

- Lease of premises.
- Easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad.
- Agreement to indemnify a municipality as required by municipal ordinance, except in connection with work for the municipality.
- Sidetrack agreement.
- Elevator maintenance agreement.

Blanket contractual coverage is the automatic pick-up and coverage for all non-incidental contractual agreements under a liability insurance policy without them

being specifically scheduled. This automatic coverage may be for either written or oral agreements, but most often limited to written agreements for obvious reasons. Some insurance policies have this "built-in" while in others it may be added by endorsement on request. The important thing here is to read your policy carefully or get the advice of a knowledgeable insurance agent, broker or consultant.

Hold-harmless agreements may be classified by the extent of the liability assumed, being:

• **LIMITED**—under this form of contract the indemnitor is merely affirming his own legal responsibilities. In effect this agreement says, "If you (the indemnitee) incur any liability or legal expenses for actions which I (the indemnitor) am solely responsible for, I will make you whole."

• **INTERMEDIATE**—The indemnitor under this form of contract gives up any recovery he may have under laws of contributory negligence by agreeing to indemnify the indemnitee for all liability and legal expenses jointly caused. It makes no difference that the indemnitee is 1% or 99% at fault. This may be accomplished through elaborate wording detailing the responsibilities of the contracting parties or merely exempting the indemnitor for the sole negligence of the indemnitee.

• **BROAD**—In this class, the indemnitor agrees to hold the indemnitee harmless for all liability no matter who is at fault.

• **SUICIDAL**—This form holds the indemnitor absolutely responsible for all loss, however and by whomever caused. It is not limited to legal liability of any party, but includes even acts of God such as earthquake, wind and rain. While formerly reserved to industry giants who were able to get away with such insidious terms because of their economic muscle, it is now the standard form of agreement.

We have seen the many areas in which hold-harmless agreements may be encountered. Everyone in the organization must be alert to such agreements and procedures established for referral to the legal department for review. Without adequate control procedures, embarrassing losses are going to occur and the negotiating process made more difficult or the insurance more costly.

While it is necessary to determine the degree or type of hold-harmless it does not necessarily follow that a broad form agree-

Continued on following page

Lean self-insurers foresee growing future

By Gilbert Waters

Administrator
Florida Construction, Commerce and
Industry Self-Insurers Fund

Mr. Waters delivered his remarks at the fourth annual Workmen's Compensation Self-Insurance Seminar in Sarasota. He is also secretary-treasurer of the Associated Self-Insurers of Florida.

DO WE REALLY HAVE A FUTURE? Of course, the answer is yes. But why? This question forces me to examine what we do that's right and presumably what we do better than our commercial insurance friends who are also offering coverage to employers to meet their statutory requirements for workers compensation.

The unique advantages of self-insurance (and many of these points cover individual self-insurers as well as funds) are manifold.

First, of course, is that's all we do. We specialize. We worry with it on a day-to-day

'Self-insurers do more useful work for the dollar than anybody else . . . If everyone starts with the same premium dollar, then we save money by not having big buildings, large expensive staffs . . .'

—Gilbert Waters

basis. The self-insurance administrator is very close in the chain of command to the actual insured and to the servicing process. In an insurance company there appear to be layers of insulation between the injury and the claims analysis and between the safety inspection and the carrier's action process.

Thus, if self-insurance is to have a real future this advantage must continue to be preserved and emphasized in the future.

Next, there is a series of self-insurers' advantages that can best be summed up by

using my favorite economics word—productivity. Self-insurers do more useful work for the dollar than anybody else. Why? I call ours a bare-bones operation. If everybody starts with the same premium dollar, then we save pennies by not having big buildings, large expensive staffs, costly advertising, big sales costs and large acquisition costs. So while it costs a commercial insurance company over 50 cents in overhead to deliver nearly 50 cents in benefits, we think it costs us less than 40 cents to deliver over 60 cents in benefits.

In addition, funds have fixed fee arrangements with service companies; they carefully control their investments so as to always protect principal and provide the maximum safe rate of return. Therefore the future should see a preservation of this emphasis on productivity and conservatism that results in more service for the dollar and more savings.

Self-insurance also offers better control of the insured. This is axiomatic in an independent self-insured. Funds, too, have this asset. Our fund tries to be a "preferred risk" program. We screen every applicant. Our principal criterion is safety history! We scrutinize at least three years of loss experience; we look at credit; we look at net worth; we look at size and reject applicants under a certain amount.

Once accepted, members of our self-insurance fund are subject to regular safety inspections and pre-employment questionnaires are required to assist in uncovering previous injuries and preparation for possi-

Continued on page 26

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DEADLINE
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The annual Profiles issue has become a year-round reference source for corporate executives interested in services provided by insurance brokers. It is the most complete list anywhere of insurance brokers specializing in commercial accounts.

The special report will provide detailed looks at the 20 largest U.S. brokers and the largest Canadian firms. This year, in addition to information on revenues, employees, acquisitions and future plans, *Business Insurance* will publish the salaries of the chief officers of the publicly held brokers. Information on gross revenues, employees, acquisitions and officers is also provided on more than 300 other agents and brokers in the U.S. and Canada.

Many agents and brokers listed in previous Profiles issues have already received the questionnaire in the mail. The questionnaire on this page should not be filled out if you have already completed the questionnaire you received in the mail.

To qualify for the Profiles issue, an insurance broker or agent must deal directly with insureds, must have an annual premium volume of \$1 million or gross revenues of at least \$150,000 and must generate at least 50% of its business from commercial accounts. Profiles will not be included without information on gross revenues and the number of employees.

If you have any questions, call or write Greg David, Managing Editor, *Business Insurance*, 740 N. Rush St. or call 312-649-5279.

DEADLINE for returning the questionnaire is JUNE 30.

Self-insurers . . .

Continued from page 23

ble second injury cases. We have specific cancellation requirements for those who don't pay and discounts for those who pay promptly.

The years ahead will see more selectivity in the acceptance of self-insurance members and more constructive monitoring after acceptance. Additionally, we must control claims, reserves and litigation. These age areas in which we, through our service operations, can properly investigate and speedily pay off deserving claims, help select proper medical help, ferret out malingerers and unjustified claims, contest the avaricious and let it be known to attorneys and claimants that we are not a pushover for the undeserving.

This is a long, rocky road, but I think independent self-insureds solve it better than group funds because they are closer to the scene and can act with more personal knowledge. It may well be that we will have to come to a policy in which the insured himself will have to pay his own bills for the emergency room or the isolated doctor's charge of say, up to \$50. We know it costs more to have the insurance carrier process the bill and we tend to lose control, establish reserves and have the injured employe possibly think it's okay to be sick a few more days because the insurance company is taking care of it.

Safety is another area of great importance. In our FCCI Fund we have often heard members say they have never had an insurance company safety program before. Such a program seems to me to be of paramount importance. If 60% of every premium dollar or more is spent for claims and emphasis on safety can reduce that percentage, we're talking about big dollars. We've saving employer's productivity and most important we're saving lives, pain and suffering. Today our fund inspects every member's jobs from once to four times a year. Our office reviews reports and we have inspectors call back to see if discrepancies are corrected. We conduct—with the excellent help of the department of commerce safety division—three-day statewide safety seminars. We plan cash safety awards for safety supervisors of no-loss members—special safety bonuses to member companies that have low loss years.

These four factors—specialization, productivity, control of insureds and safety—sum up the present unique assets of self-insurance.

I haven't mentioned the problems. They are mostly difficulties inherent in achieving a high degree of success in these four major areas plus one more—excess insurance.

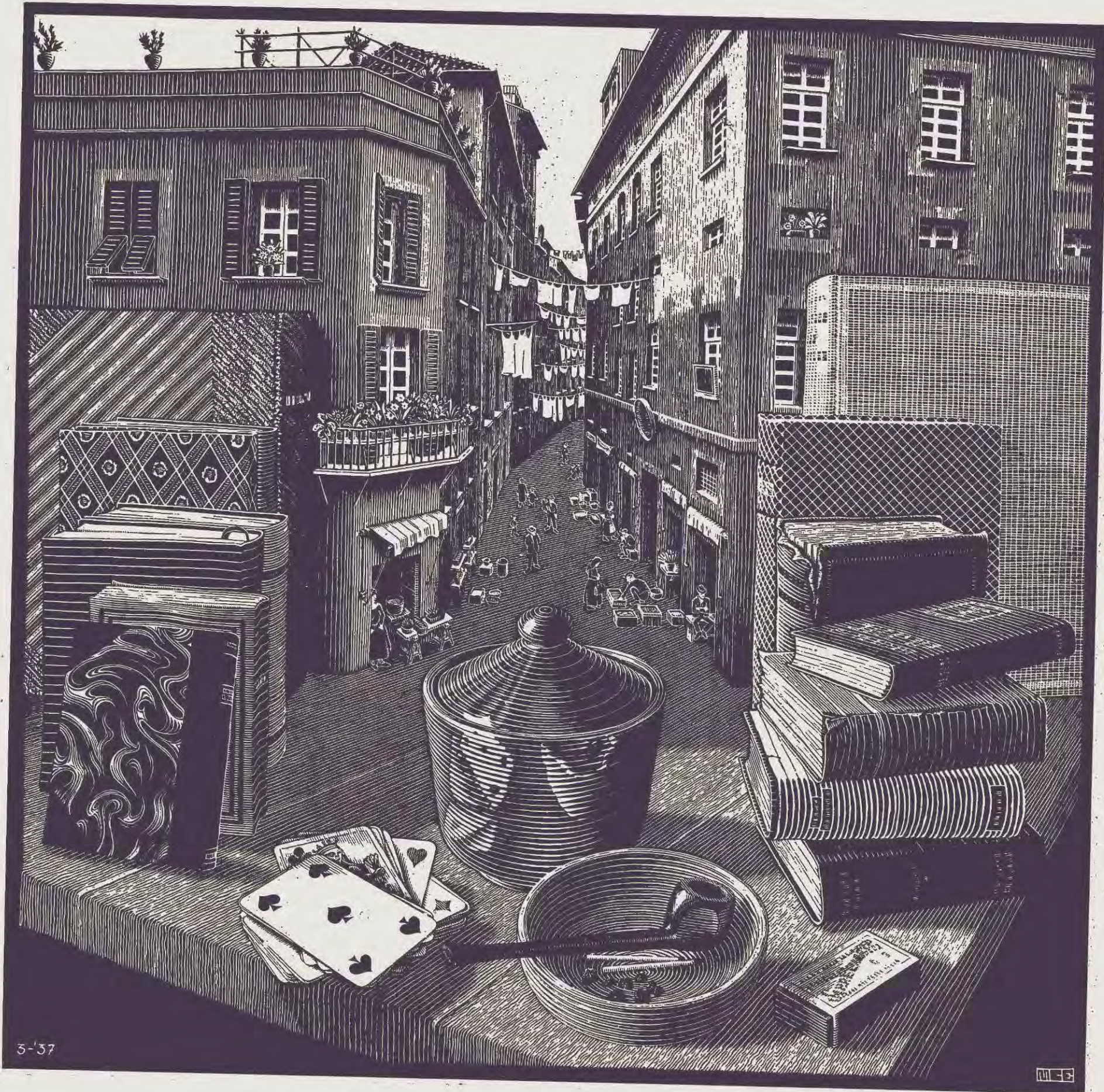
Our most critical present problem is sharing losses and providing excess coverage. This situation hit rock bottom in 1976 and hasn't really improved much since. All the information I've received in the past 18 months shows that excess insurers want to get further and further from the losses—therefore, we will see higher retentions and more selectivity in providing excess insurance.

This also will mean that funds will have to build up their own reserves or merge. Or it will mean innovative new ideas. My associates and I have been exploring ways of forming a captive insurance company to provide a layer of reinsurance to make our stop-loss requirements more attractive to reinsurers. I am very close to a definite excess program which will be applicable to funds that have had decent histories of performance. This is highest priority for the future, as stop-loss coverage represents life and death for our funds. It affects our refund policy, our choice of service programs and our ability to develop financial strength.

A future direction for self-insurers funds is to move closer to participating in the insurance industry ratemaking process, and the experience modification reporting procedure. In these areas we have a timely need for loss runs and experience modification information. The Florida Rating Bureau will eventually feel the push of rising costs and a smaller share of the market to assess for operating budgets. We should be ready to provide financial support for these vital insurance functions.

Finally, looking ahead to the future, we come to our insureds. I see us as a more "preferred risk" program—accepting employers at manual rates or better, or reviewing their loss histories carefully. We should have cancellation policies based on two years' loss experience in our funds and we should have variable discounts, just as we have variable refunds based on safety records. ■

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around the states

Wyoming abolishes municipal immunity

CHEYENNE—The Wyoming supreme court says that local governments in the state can be sued for damages.

On an appeal of a traffic accident, the court ruled unanimously that persons can sue for damages caused by counties and municipalities. It pointed out 36 other states have eliminated legal immunity for local governments.

The court didn't say whether the state can be sued for damages. However, justice Robert R. Rose Jr. said in a separate statement that the ruling "may be broad enough" to make the state liable for damage claims.

However, the court postponed

any other effect of its decision until July 1, 1979, because of "certain problems which must be considered and proper arrangements made" by governments.

"Although at one time there was a clear majority of jurisdictions which recognized the application of the doctrine of immunity of states and local government entities," the court said, "it would appear that this is no longer the case and there is a steady march to eliminate it."

Suing parents

TOPEKA—Kansas Gov. Robert Bennett has signed into law legis-

lation allowing damages to be collected from parents whose children destroy property or inflict bodily injury. It would allow lawsuits against parents for actual property damages of up to \$1,000 or actual medical expenses. The suits could go beyond the \$1,000 limit if the court finds that the damage was the result of parental neglect.

S.C. rate hike

COLUMBIA—A 29.2% increase in workers compensation rates was approved by the South Carolina insurance commission, which then called for a full examination of the

workers compensation assigned risk plan as well as a yearly audit of the state reinsurance facility.

The National Council on Compensation Insurance told the commission in January that workers compensation experience in South Carolina has deteriorated badly and requested a 45.4% overall increase.

State insurance commissioner John W. Lindsay told the commission that the "data provided indicates a deterioration to some degree. But our actuaries say this is not in the magnitude they claim it to be."

The increase breaks down by industry groups to 32% for manufac-

turing, 11.5% for contracting and 40.2% for all other. The increase applies to policies issued or renewed after June 1.

Minn. rate hike

ST. PAUL—Minnesota insurance commissioner Berton Heaton approved increases averaging 30.5% in rates paid by Minnesota employers for workers compensation insurance.

The insurance industry last fall asked for a 67.5% increase in workers compensation rates. The industry said it could not afford to continue offering the insurance in Minnesota under the old rate schedule after the 1977 state legislature increased benefits (BI, Sept. 19, 1977).

Maximum benefits, which are tied to the average weekly wage in the state, are now \$197 a week, up from \$145 a week in early 1977.

Under the new schedule, total annual workers compensation premiums paid by state employers will increase by \$66 million to \$279 million. Large portions of the increases will be retroactive to Oct. 1, 1977.

Nationwide appeals

TRENTON—Nationwide Insurance Co. is appealing a ruling by a New Jersey judge that the company cannot continue to not renew automobile insurance policies.

Nationwide, citing heavy losses, earlier said it was pulling out of the state where it wrote auto fire and commercial insurance policies. Under an agreement with the state insurance department, the company is offering policyholders one additional renewal.

Nationwide said it would continue its policy of pulling out of business in commercial and homeowners policies.

W. Va. benefits

CHARLESTON—Gov. Jay Rockefeller has signed into law legislation requiring medical payments while a workmen's compensation claim is under court litigation.

Gov. Rockefeller termed it a "dramatic and beneficial change."

It raises benefits from 66-and-two-thirds of a claimant's weekly paycheck to 70%. Another provision calls for a 5% disability, or 20-week benefit rate, for any worker suffering from white or black lung.

Increases also were prescribed in benefits for hearing disabilities and dependent children who are still in school.

Oklahoma veto

OKLAHOMA CITY—A controversial workers compensation bill has been vetoed by Gov. David Boren of Oklahoma.

The measure would have dismantled two major provisions which will become effective July 1 under the Workers Compensation Reform Act of 1977. It would have restricted workers compensation coverage to employees working in hazardous occupations and would have wiped out a new definition of disability with what Gov. Boren called an outmoded manual labor definition.

The manual labor definition would mean that an injured worker's disability would continue to be rated on his ability to perform manual labor, even if the job he held when injured did not involve manual labor.

Arbitration upheld

BALTIMORE—The Maryland court of appeals upheld a state law requiring that malpractice claims be submitted to non-binding arbitration before a lawsuit may be filed. The appeals court reversed a lower court ruling.

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Sponsored by Business Insurance July 24-26

Faceoff on work comp regulation keys conference

CHICAGO—A faceoff on the question of state versus federal regulation, featuring seven nationally-recognized authorities, will be one of the highlights of the National Conference on Workers Compensation being sponsored by *Business Insurance* July 24-26.

The two-and-a-half day conference will be held at the Continental Plaza Hotel in Chicago. It includes six general sessions and seven concurrent sessions covering nearly every aspect of workers compensation regulation, insurance and self-insurance.

The entire morning on Wednesday will be spent debating the merits and demerits of proposed federal legislation on workers compensation. Donald E. Elisburg, assistant secretary of Labor, will focus on the need for federal regulation, being joined by Norman A. Weintraub, chief economist for the International Brotherhood of Teamsters and John H. Lewis, an attorney from Florida who has studied the need for a federal workers compensation law.

Taking the position that state regulation of workers compensation should be retained will be Harry W. Dahl, an attorney from Des Moines, Robert B. Collyer from a Washington lobbying group called the UBA and William J. Moshofsky, vp of Georgia Pacific Co. in Portland, Ore.

Setting the pace for the conference Monday morning will be three widely-respected authorities discussing occupational disease and its relationship to workers compensation. Dr. Thomas Mancuso from the University of Pittsburgh will speak on management's responsibilities for the past and the future, a subject expanded upon by Dr. Peter Barth of the University of Connecticut and by Anthony Mazzochi, vp of the Oil, Chemical & Atomic Workers International Union.

Now that cumulative trauma provisions are proposed and under discussion in at least a half-dozen states, California's experience with its cumulative trauma law will be the subject of presentations by Richard Robinson, an assemblyman from California who had a great deal to do with that

state's law, and Alan Tebb, general manager of the California Workers Compensation Institute.

What's wrong with the present system of establishing workers compensation benefits? Will the wage-loss concept ever supplant the present method of setting benefits? And would the wage-loss concept solve any problems? These questions will be tackled by Ron Conley, acting director of the office of policy research and analysis for the U.S. Department of Health, Education & Welfare, by Clarence G. Johnson, executive vp of Employe Benefits Insurance Co. and by Joseph E. Markey, legislative advocate for the California Self-Insurers Assn.

Gary J. Bausom, director of risk management at Esmark Inc. and Edward R. Lloyd, director of insurance for Dan River Inc., will share their experiences in planning and administering the shift from insured workers compensation programs to self-insured programs.

A broker and a self-insurance administrator—John F. Milliken, vp of Alexander & Alexander, and Dan W. Huggins, regional vp of R. L. Kautz & Co.—will present an overview of the environment in which companies who are self-insuring must set out to obtain fronting services and excess insurance coverage for their self-funded programs.

There have been a handful of major investigations into the problem of fraud in workers compensation. Because employers face increasingly difficult problems on uncovering illegal claims, three experts on fraud will present their views of how to document fraud, the extent of the problem and what employers can do to prevent fraud. Sharing his New York experiences will be Salvatore J. Camp, assistant counsel for the investigative unit of the Waterfront Commission of New York. Joining him is Charles F. Murphy from the state of Washington's department of labor and industries, along with William W. Johnston, chairman of the industrial commission for the state of Ohio.

Cresecent Wharf & Warehouse Co. in Los Angeles set a precedent when it won a battle with the Inter-

nal Revenue Service over deductions taken for incurred workers compensation losses. But there were only a few issues resolved in that case and some equally important questions were left unresolved. The leading tax attorney in the country on the subject of accounting for so-called IBNR's is Arthur B. Willis, an attorney in Los Angeles who won the case for Cresecent Wharf. He'll share his views and expertise during a session of this conference.

The question of whether the federal Longshoreman's & Harbor Workers Act has gone far enough or is going too far will be debated by Ralph M. Hartman of the U.S. Department of Labor, by Dennis Lindsay, an attorney from Oregon who has represented the stevedoring industry, and by John J. Runzer, a Philadelphia lawyer.

Administering safety and loss prevention programs, the critical element in controlling workers compensation costs, will be tackled by a trio of experts, including Richard Wilkins, manager of industrial relations and safety at Rockwell International Corp., Walter Pfeiffer, director of corporate safety at Coca-Cola Bottling Co. of Los Angeles, and Harold V. Hodnick, safety consultant with Reed Shaw Stenhouse of California.

Rehabilitation programs present both problems and opportunities for employers, particularly in those states where legislation mandates that injured workers be vocationally rehabilitated. Addressing this complex subject will be Edwin L. Scharlau of 3M Co., George T. Welch of International Rehabilitation Associates, and Linda Abernathy, director of rehabilitation services for Fred S. James & Co.

Documentation of health status and cumulative injury presents employers with a question of how much to test, the cost-effectiveness of periodic testing and the relationship of health and hearing tests to workers compensation claims. Dr. Joseph LaDou of the Peninsula Industrial Medical Clinic in Sunnyvale, Calif., will speak on these

subjects, along with Dr. David Lipscomb of the department of audiology at the University of Tennessee.

A nuts-and-bolts session on the problems and solutions to working with state workers compensation regulators will be moderated by Thomas S. Sprentall, manager of workers compensation for Eastman Kodak Co., and by Henry Wi-

dick, regional vp of Gates, McDonald & Co.

The registration cost is \$385. For companies sending more than one person to the conference, the registration fee is 10% less per person.

Inquiries and registrations should be directed to Taylor Lucas, Crain Education Division, 740 N. Rush St., Chicago, Ill. 60611, or call (312) 649-5245.

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benefit tax slants

IRS move perils non-qualified plans

By JOSEPH S. ROBINSON
Attorney-at-Law

MANY NON-QUALIFIED deferred pay plans will be outlawed if the Treasury has its way. Here's the story:

On Sept. 7, 1977, the IRS announced the suspension of rulings dealing with the income tax treatment of certain non-qualified deferred compensation plans established by state and local governments and other employers in order to permit the IRS time to complete a review of this subject. On Feb. 3, 1978, the IRS issued proposed regulations that were designed to reflect the conclusions reached as a result of its review of these non-qualified deferred compensation plans.

The proposed regs would virtually eliminate the tax advantages of deferred compensation arrangements, other than qualified plans. The proposal provides that if a taxpayer (whether or not an employee) individually chooses to have payment of some portion of his or her current compensation or an amount of an increase in compensation deferred and paid in a later year, the amount will still be treated as received by the taxpayer in the earlier tax year. (Proposed Reg. Sec. 1.61-16(a).)

The reg won't affect qualified pension, profit sharing or stock bonus plans, qualified bond purchase plans or employe annuities. But it will apply to any other deferred compensation arrangement even if the taxpayer's rights in the deferred amount become forfeitable as a result of exercise of the option to defer payment.

If the proposed regs become final, they will represent a switch in the IRS position on deferred compensation arrangements. Treasury says that a number of rulings (Rev. Rul. 67-449; Rev. Rul. 68-86; Rev. Rul. 69-450, and Rev. Rul. 71-419) that permitted deferral of tax on deferred compensation would no longer be applied. In addition, IRS acquiescence in *Oates*, 18 TC 570 and *Robinson*, 44 TC 20, would be reconsidered. A number of other rulings would also be re-examined to determine whether the deferral was in fact at the individual option of the taxpayer.

An exception to the general rule noted above provides that the proposal would not apply to the amount of any payment which the employe has chosen to defer under a plan or arrangement in existence on Feb. 3, 1978, if the amount would have been payable but for

the employe's exercise of the option to defer receipt before a date 30 days after publication of final regulations.

For purposes of this exception to the general rule, the proposed regulations indicate that a plan or arrangement in existence on Feb. 3, 1978, which is significantly amended after such date will be treated as a new plan as of the date of such amendment. Cited as examples of significant plan amendments are the extension of coverage to an additional class of taxpayers or an increase in the maximum percentage of compensation subject to the taxpayer's option.

At this time it is uncertain when final regulations will be issued by IRS or whether they will differ to any extent from their proposals. Benefit managers involved with plans affected by the proposals should, however, be aware of the uncertainties involved in the establishment of or modification to such plans subsequent to Feb. 3, 1978.

Pension loans

Employes can borrow their pension benefits before they retire, according to final IRS pension rules. Pension plans will not lose tax qualification by lending funds to

an employe that equal the amount of pension benefit or profit sharing he has a right to. Otherwise, pension benefits cannot be assigned before employe retires.

Limits increased

IRS has announced cost-of-living adjustments to the dollar limitations on benefits and contributions under qualified pension, profitsharing and stock bonus plans. As of January 1978, the ceiling for the annual benefit under defined benefit plans is \$90,150. For a defined contribution plan, the limit for the annual addition is now \$30,050.

Business meals

Under a long-standing rule, an employe who voluntarily works overtime at his office is not taxed on supper money received from his employer. But now the IRS says it's another story when he goes on extended one-day trips that do not keep him away from home overnight. In such a case, the employe is liable for taxes on meal reimbursements unless those meals otherwise qualify as business "entertainment" because he dines with clients or customers. Moreover, the employer must withhold income and social security taxes on reimbursements.

Example: Suppose, a Chicago salesman flies to Washington to see a customer, eats lunch by himself, contacts the customer and then eats dinner by himself before he catches a flight back to Chicago that same day. According to the ruling, he is taxed on his reimbursements for his two meals. ■



GAO says U.S. neglects arson

WASHINGTON—Although arson losses now exceed \$2 billion annually, the federal government still does not consider arson-related crimes an enforcement priority, according to a report by the General Accounting Office.

The GAO report found that since the government does not consider arson to be a major problem, it not too surprisingly lacks a unified program to prevent, detect and investigate arson.

This lack of a concerted federal effort to combat arson, comes at a time when the number of incendiary bombings increased 200% between 1975 and 1976, the GAO said.

In San Francisco, arson fires have jumped 800% in the past 12 years, while in Chicago 621 persons were killed by fires in the last three years. ■

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Colds, flu, and strained backs don't just disable workers. They can also disable companies. When too many workers are home sick, productivity suffers.

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We may recommend simple preventive health measures such as an immunization program. Or

Court ruling . . .

Continued from page 1
York.

But a spokesman for the American Council of Life Insurance said the decision didn't deal with equal benefits. "A lot of people have been reaching for the assumption that because the court said you can't have unequal contributions, you can't have unequal benefits," he said. "But that is not the case at all."

The Council spokesman added, however, that there is certain to be litigation in the future that will tackle the unequal benefits issues head on.

Defined contribution plans may only need patchwork, but defined benefit—that vast majority of U.S. pension plans—might need major surgery to be put back in order in the wake of the decision, some pension experts said.

In the landmark decision, the court ruled that the Los Angeles Department of Water and Power violated the federal civil rights act by requiring female employees to contribute more than male employees into a mandatory pension plan. The water department contended that since women on the average outlive men, women receive more benefits and should be required to contribute more into the plan.

The court rejected that argument in ruling that the 1964 Civil Rights Act prohibits treating individuals simply as members of a racial, religious, sexual or national class.

Annuities

The statute's focus on the individual is "unambiguous," wrote

Justice John Stevens. "Even a true generalization about the class is an insufficient reason for disqualifying an individual to whom the generalization does not apply."

Defined contribution plans could be affected since the plans often purchase annuities when participants retire that pay women lower monthly benefits than men.

A solution to this problem would be for the plan to turn over the accrued benefits to the employees and let them purchase individual annuities, said Harrison Givens, vp and actuary for the Equitable.

The court specifically allowed this option as Justice Stevens wrote that the Civil Rights Act involved only employer-employee relationships.

An individual receiving a lump sum payout from a retirement plan would have to purchase the annuity within 60 days of receiving the benefits or the worker would have to pay taxes on the benefit.

There is, however, a hitch from

switching annuity purchases from the plan to the individual. Due to higher acquisition and administrative costs, individually purchased annuities often give a lower return than plan purchased annuities, said William E. Chapman II, 2nd vp at Connecticut General Life Insurance Co.

Defined benefit pension plans may be set up "for the next hammer blow" as Mr. Chapman puts it. The challenge to those plans will be to using sex as a basis for calculating joint survivors benefits.

Survivor benefits

Defined benefit pensions do not consider sex in determining benefits since an individual's monthly payment is usually based on salary and years of service.

Currently, survivors benefits have sex distinctions. For example, a male employee entitled to \$500 a month at 65 may choose to have the benefit reduced to \$400 so

that his wife can get a \$200 survivors benefit if he dies.

But if a working wife, also entitled to a monthly \$500 pension benefit, exchanges her full pension for a joint survivors benefit, she might only receive \$350 per month, with the spouse picking up \$175 when she dies.

"A woman is bound to say: 'This isn't as good a deal you give a man. The joint survivors benefit is part of the pension and the pension plan cannot be contaminated by sex distinctions under the Civil Rights Act,'" said Mr. Givens.

Employers may have to put more money into defined plans to equalize male and female benefits, if the courts outlaw actuarially-based joint survivors benefits, said Richard Sears, a partner at Kwasha Lipton of Englewood Cliffs, N.J.

Few experts expressed surprise at the court decision. "It is in line with what I would have expected them to come out with," said Joseph J. Stahl II, deputy director of the human resources management group at Alexander & Alexander in New York.

'Inconsistencies'

But one pension authority blasted the court for its inconsistencies. "The justices say they don't want to affect actuarial structures," said Kenneth Keene, senior vp at Johnson & Higgins. "Yet they are introducing an actuarial distortion since everyone knows women live longer than men."

But Susan Ross of the American Civil Liberties Union praised the court for championing a "further erosion of the whole notion of the legitimacy of classifications based on sex."

Ms. Ross said she was surprised by the decision since the same court ruled in December 1976 that the civil rights act does not require employers to pay disability benefits to pregnant employees.

Justice Stevens, who wrote the 6-2 decision, said the two situations were different. In the pregnancy case (General Electric vs. Gilbert), the plan only discriminated on the basis of a disability not on the basis of class as the Los Angeles pension plan did.

The court emphasized that it did not want to "revolutionize" the insurance and pension industries. Insurance companies can still determine the sexual composition of an employer's work force in determining the rates it charges.

And for individual policies, women still may be charged more than men. But down the road, Johnson & Higgins's Mr. Keene believes "it is not too unlikely that we will have a true unisex approach in profit sharing and pension plans and in terms of what insurance companies are allowed to charge for bearing risks."

New company

Kansa Cos., one of Finland's leading insurance groups, has formed Kanda International Insurance Co. Ltd. in Hamilton, Bermuda. The Blades Management Co. will manage and underwrite for the new insurer, which will participate in the Blades U.S. and international pools.



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Flexible benefits . . .

Continued from page 1

TRW systems and energy division in Redondo Beach, Calif.

The company plans to expand flexible benefits from the California division to corporate headquarters in Cleveland. "But first we have to wait for legislation that would clarify how vacation and cash will be treated by the IRS," said Ray Olsen, director of compensation and employe benefits for TRW.

TRW, however, does offer employes up to \$2 a week in cash in-

stead of credits to be applied toward other forms of benefits. This action is permitted under ERISA, which permits changes such as allowing cash payments if a flexible plan was in existence before June 27, 1974.

Despite such difficulties, Thomas H. Paine, a partner with Hewitt Associates, expects flexible benefits to spread. "We foresaw a lot of problems originally, but we have worked enough with these problems that we know they can be solved," he added. Hewitt Asso-

ciates consulted on both the American Can and TRW program.

Mr. Paine noted that some concerns about flexible benefits plans centered on whether workers would select good choices and whether the company would be liable if it gave bad advice. Those problems were solved at American Can and ETS by clearly communicating with employes and giving them two chances at enrollment, he said. In addition, whenever ETS thinks an employe has made a mistake in selection, it sends the worker a "reasonability statement" to allow the employe a second look at his selections.

Time & money

The "cafeteria approach" to employe benefits takes a strong commitment both in time and dollars, Mr. Paine said. He estimated that implementation of a flexible benefit program would cost \$500,000 and would take one to two years.

Thomas E. Kenney, corporation director of compensation and benefits at Becton Dickinson & Co., is among those who say that flexible benefits is a good idea but involves too many problems.

Mr. Kenney said the flexible plan would be a tough concept to sell to management since the prime concern in benefits is the high cost of providing insurance coverage.

"To add this (flexible benefits) to the whole benefits will make the problems enormous," he said.

Also compounding problems with the cafeteria approach is that it creates a "bureaucratic nightmare" and that it takes "unlimited computer resources" to administer the program Mr. Kenney added.

Regardless of the administrative problems, high costs and large amounts of money to add flexibility to plans, TRW, ETS and American Can said they are pleased with the results of their efforts.

As far as cost is concerned, Mr. Paine said, companies think that their efforts pay off because employes look at the company as a good place to work and because employes like an imaginative company. "Overall," he said, "it contributes to a sense of good will among the employes and the company."

American Can's program consists of required core benefits and optional benefits above the core level. Using flexible credit dollars,

employes select optional coverages that add up to the company's traditional program. Employes can select coverages from medical, life, vacation, disability and retirement/capital accumulation benefits. (BI, March 6).

Currently, American Can is testing its program with 760 employes but plans to expand it by Jan. 1 to salaried employes at 164 different locations.

TRW's program is of lesser scope in both the number of locations used and in the variety of choices offered to employes. But it is used for approximately 12,000 employes in California.

It offers choices in hospital/medical insurance, either a standard plan, improved or low-benefit plan. Eight choices are available in employe life insurance, ranging from one-half annual salary up to five times salary. Employes can also buy dependent life insurance in the amount of \$1,500. Coverage for dependent children from age 11 days to six months is \$100.

ETS plan

Six plans are available in supplemental accidental death and dismemberment. Amounts range from \$25,000 to \$250,000 and varying amounts of coverage are available for spouses and dependent children.

ETS introduced its flexible program as an improvement in benefits. The amount of flexible benefits employes can buy is based on the number of years served and salary. An employe with one year of service can buy benefits up to 3% of his salary while an employe with 10 or more years service could buy benefits up to 6% of his salary.

Coverage above basic benefits can be bought in life insurance, travel/accident insurance, Blue Cross/Blue Shield medical insurance, dental or for an annual physical exam. Tuition aid can also be purchased.

Armed with extensive communication efforts, complex computer systems and strong commitments to implement flexible bene-

fits properly, the three companies have found much success.

TRW was able to overcome the cost and administration problems of starting its flexible benefits since the company was already in the process of computerizing its payroll system. ETS and American Can also had the advantage of computerized systems already in place before adding the flexible benefit program to the overall computerized system.

"It's a complex system but once it's in place it's as successful as any computerized system," said TRW's Mr. Olsen.

TRW plan

In fact, the only major problem TRW had with its new plans is that some employes selected low level plans yielding credits that weren't used to purchase other flexible benefits. This left a balance and either the employes had the option of changing their choices or defaulting to their previous insurance coverage.

The company said 200 employes were in this situation and that many didn't view the program as very flexible for their particular situation.

Regardless, an employe attitude study in 1976 found approximately 87% of employes were satisfied with the flexible benefits program.

TRW and American Can told of pressures in implementing such a program. TRW said the employe benefits department received 4,000 calls from employes in a three-month period preceding implementation of the program.

Robert Bogart, director of salaried benefits for American Can, said "we would have liked to have had more time to get everything done. We were rushing to get the communications and printing jobs finished."

Mr. Bogart said a staff of three worked almost a year and a half to complete design of the program and communication with reviews from Hewitt after the initial decision was made to go ahead with the program. ■

Wyatt consultants mailing 1978 D&O questionnaire

CHICAGO—Wyatt Co. is in the process of mailing questionnaires for its 1978 directors and officers liability insurance study. The study wasn't conducted in 1977, but is being resumed with final results scheduled to be ready in mid-September.

Wyatt's director of risk management services, Warren Brockmeier, said the mailing will go out to about 11,000 different companies, asking them about their purchasing practices regarding D&O insurance. They will also be asked to provide claims data.

The survey includes a new question this year, relating to D&O policy exclusions added in the last year or so. "We want to know how prevalent some of the new exclusions are, such as the exclusion of

antitrust violations, illegal payments to officials, political contributions, the acts of advising or financing any real estate investment trust and the exclusion of all acts giving rise to prior or pending litigation," said Mr. Brockmeier.

All participants in the Wyatt survey will be sent a summary report of the results. In previous years, Wyatt has sold a detailed report based on the survey. This report has been eliminated in favor of a series of two-day seminars around the country costing \$325, at which people from Wyatt will present in detail the findings.

Also speaking at the seminars will be William E. Knepper, a lawyer who is the author of a text on the liability of corporate directors. ■



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ERISA proposal . . .

Continued from page 1

will look a great deal different than the bill introduced this month.

Still, "this is going to be the leading bill in the Senate. As far as legislation that calls for changes in ERISA, this is going to be the horse that everyone is going to be keeping their eye on," said Washington attorney Michael S. Gordon, who helped draft ERISA while a Senate staffer.

Highlights of the bill include creation of a single agency to enforce ERISA, simplification of reporting requirements, tax incentives to improve plans and reversing the now-famous Daniel decision.

At the very core of the bill, which Sen. Javits calls the ERISA Improvements Act of 1978, is the elimination of the current tripartite system of administration.

A new federal agency, the Employee Benefits Commission, would be created that would take over the present ERISA-related responsibilities of the Labor Department, the Internal Revenue Service and the Pension Benefit Guaranty Corp.

The commission would have five members. The chairman would be selected by the President from a list of nominees prepared by the secretary of Labor while the vice chairman would be chosen from nominees prepared by the Treasury secretary. The remaining three commission members would be selected from a list drawn up by the Labor Department and Treasury.

The one agency regulatory approach was described by Atlanta attorney Stanley Hackett as a major step toward eliminating the enormous delays and duplication that he said is a natural by-product of dual jurisdiction.

But a Washington, D.C., attorney said a new agency only would transfer, not solve, ERISA-related problems. "I don't think it (ending dual jurisdiction) would get rid of the mass incompetence at the Labor Department," he said. "That incompetence would just be transferred en masse to the new agency."

Employers would be encouraged to offer improved pension plans, through the use of tax credits. Plans that have "significantly earlier participation and significantly more rapid vesting rules" than ERISA's minimum standards would receive a 5% tax credit of plan contributions in addition to the normal tax deduction.

Tax credits also would be permitted for five years for small employers that establish new qualified plans. The credit would be equal to 5% of the deduction allowed for the first year, 3% for the next two years and 1% for the fourth and fifth years.

Mr. Williams and Mr. Javits also have proposed "special master plans." Under the concept for defined contribution plans, employers could join plans sponsored by financial institutions such as banks and insurance companies.

The financial institutions would handle reporting and disclosure requirements, communication with federal agencies, claims by participants and asset management. As plan administrator, the institution, rather than the employer, would have fiduciary liability for the plan.

All that would be required of the employer would be to furnish the institution with workforce data and "timely contributions."

Mr. Gordon saluted the master plan concept as one of the best features in the bill. "It provides a more feasible way of enabling small business plans to get started and be maintained with a minimal amount of administrative costs

and a minimal amount of ERISA compliance," he said.

The bill takes direct aim at the paperwork and reporting burdens that many administrators said have been a factor in plan terminations. Summary annual reports no longer would have to be distributed to employees though an employee still could request a copy.

Instead, an administrator simply would be required every 10 years to provide a summary plan description that includes all plan amendments.

The elimination of the summary report requirement and other reporting requirements that are "costly, confusing, useless and driving everyone crazy" will be a boon to employers, said Richard Fay, an attorney with Reed, Smith, Shaw & McClay in Washington, D.C.

But Karen Ferguson of the Pension Rights Center said, "We think it is absolutely essential that employees be told in a meaningful way what is being done with their money."

The bill also would give the proposed Employee Benefits Commission authority to exempt benefit plans from existing paperwork requirements.

Employee pension benefits would be improved under the bill. For a participant who is 50% vested, the pension plan would have to provide a survivor's benefit to the spouse that would begin on the annuity starting date. In addition, welfare plans would be forbidden to reduce disability benefits to compensate for Social Security increases to participants.

The legislation would reverse the Daniel decision in which courts held that pension funds are subject to the antifraud provisions of the security laws.

Bill would tackle trusts

The proposed legislation would fill the legal vacuum that has permitted the unregulated growth of self-funded multiple employer trusts by defining whether or not federal or state regulation would apply.

If participants in the plan have a commonality of interest with respect to their employment relationship, the plan would be considered an ERISA employee benefit plan and regulation would be at the federal level. However, if the plan participants lacked this commonality of interest, ERISA would not preempt state law and the plans would be subject to state regulation.

In addition, the legislation calls for the establishment of solvency and reserve requirements for uninsured welfare plans.

The Pension Rights Center's Ms. Ferguson blasted this section of the bill as a "total sellout to George Meany (president of the AFL-CIO) and big business." In proposing to overturn Daniel, Sen. Williams and

Sen. Javits are disregarding the interests of workers, Ms. Ferguson added.

The administration has not taken a position on the bill and hearings have not been scheduled. ■



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New York proposal . . .

Continued from page 1

the trade zone concept. AIG president and chief executive officer Maurice R. Greenberg first called for its establishment over a year ago.

"The regulatory climate doesn't move fast enough to deal with the

large corporations," he told *Business Insurance*, "These corporations want to sit down and design a program and get it fast" rather than wait for departmental approval.

A regulatory climate that is conducive to doing commercial business faster will aid New York in-

surers seeking to increase their business, Mr. Greenberg added.

Risk managers and brokers interviewed generally supported the proposal. "I'd be in favor of anything that loosens up the insurance marketplace and to the degree that this bill does it, risk managers could favor it," said Fred W. Ingham, corporate director of insurance at Union Carbide.

Edith Lichota, assistant treasurer for Carborundum Corp. and chairman of the RIMS government affairs committee, said the proposal could be the forerunner of a "Lloyd's bill" that would reduce regulation on a wider range of risks and policy sizes.

Further deregulation could produce a "Lloyd's-type market" and lead not only to increased underwriting in New York, but also have a positive effect on the U.S. balance of trade with Great Britain, she explained.

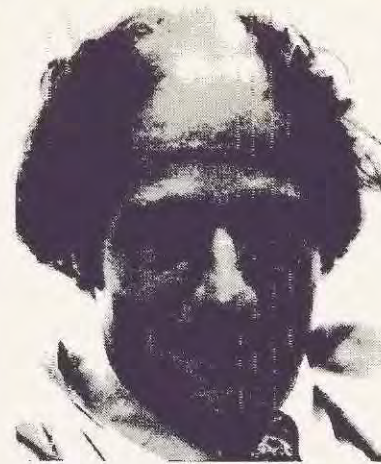
"It is something that should have been done 35 years ago," said Marsh & McLennan executive vp Robert Clements. Since brokers share their clients' concerns regarding inadequate market capacity, brokers will welcome this move, he predicted.

"What attracts business to London is that it is the center of capacity and talent," Mr. Clements noted. "If this law attracts capacity and talent to New York, it will build New York as a competitor to London."

"Anything that makes it easier for insurance companies to work tends to bring more capacity," added Richard E. Lynn, senior vp with Alexander & Alexander. "Where there is a lot of capacity, it



EDITH LICHOTA of Carborundum says the bill could be the forerunner of a Lloyd's bill that would reduce regulation on a wide range of risks.



ROBERT CLEMENTS of M&M says the N.Y. proposal "is something that should have been done 35 years ago" and brokers will welcome the move.

becomes competitive capacity and it tends to affect price."

Other states are considering the possibility of establishing free trade zones, he noted. The more states establishing such zones, the greater the benefits that will accrue to insurance buyers, Mr. Lynn said.

It is no secret that many commercial insureds secure their insurance from London because the regulatory process limits coverage available here, said Henry Katz, senior vp for government affairs with The Home Insurance Co. The Home supports the free trade zone concept and is studying the particulars of the bill, he proceeded to add

Whether the regulatory reform

proposal will lead to an expansion of capacity among New York underwriters depends upon whether that business can be written economically and profitably here, Mr. Katz said. "Capacity goes where it can be used profitably."

The New York state senate insurance committee will hold a public hearing on the trade zone bill and other proposals for easing the regulatory climate regarding commercial insurance May 19 at New York's World Trade Center. The hearing is scheduled to begin at 10 a.m.

An aide to committee chairman John Dunne (R-Garden City) said the senator has not taken a position on the bill but is conducting the hearing to learn about various proposals and their workings. ■

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people

Continued from page 38

Donald J. Jennings, who previously handled Chicago-area claims, is in charge of claims for both Chicago and Phoenix.

* * *

Judith L. Schroeder has been named risk manager for the city of Aurora, Colo., where she administers the city's self-insurance programs in property, liability, workers compensation and safety program. She reports to safety department head Robert Dorsey. Ms. Schroeder, formerly senior safety coordinator for the University of Arizona, has been replaced by **Dr. James Glaze**. Dr. Glaze whose new position was effective May 1 was previously employed in the environmental health and safety department at the Urbana campus of the University of Illinois where he hasn't been replaced.

* * *

Susan K. Backus at age 22 is one of the youngest risk managers in the U.S., after recently joining Goodpasture Inc. in Houston. Goodpasture, operators of terminal grain elevators, experienced a major loss of \$26 million when one of its elevators exploded in 1975. Ms. Backus is currently seeking to obtain coverage on a newly built elevator. As a 1977 graduate of the University of Georgia with a degree in risk management, Ms. Backus's first job was as assistant risk manager for Federal Mogul Corp. in Southfield, Mich. She worked under corporate risk manager Ronald W. Stasch for approximately seven months; her former job hasn't been filled.

* * *

Charles H. Harry, 43, has joined National Tire Dealers & Retreaders Assn. as director of insurance, a new position reporting to executive vp Philip P. Friedlander. Previously, Mr. Harry worked for Dynallectron Corp. in McLean, Va., as corporate insurance manager. **James A. Stuart** has filled that position as assistant vp of risk management.

* * *

People's Gas Co. of Chicago has realigned its insurance and pensions department into three areas of responsibility, each headed by an administrator. The administrators are **Howard E. Hight**, pensions and benefit plans; **Fred J. Rudow**, fund analysis and control, and **George Schuitema**, risk management. All report to John Doering, director of insurance and pensions. Mr. Hight will handle non-financial aspects of employee pensions and benefit plans, Mr. Rudow will concentrate on financial responsibilities of such plans, and Mr. Schuitema will specialize in corporate property and casualty insurance. Mr. Hight, who joined the company in 1954, transfers from employee relations. Mr. Rudow most recently was coordinator of insurance and pensions and has been with the company since 1966. Transferring from insurance and pensions specialist is Mr. Schuitema, who joined the company in 1967.

* * *

Betty Ann Moravek, 28, has joined Squibb Corp. in New York as insurance analyst. She reports to insurance director John B. Heekin. Previously, Ms. Moravek was an account representative for Marsh & McLennan in New York. She replaces **Raymond Steinbach III**, who as reported joined Foster Wheeler Energy Corp. in Livingston, N.J.

* * *

The position of assistant insurance manager has been created at Schering-Plough in Kenilworth, N.J. Effective May 1, **William M.**

specialist at BASF Wyandotte Corp. in Parsippany, N.J., where he hasn't been replaced.

* * *

The new director of human resources at Norwich-Eaton Pharmaceuticals in Norwich, N.Y., is **W. Gilmore McKie**, 50. He's responsible for personnel functions and administrative service departments, reporting to senior vp of administration Jean J. Intes. Mr. McKie's new position follows the promotion of **Hugh C. Marx** from human resources in the Norwich subsidiary to vp of human resources at Morton-Norwich Products Inc. in Chicago. Mr. McKie previously was director of employee relations at the Link division of Singer Co. in Binghamton, N.Y.

* * *

Charles W. Hoffman, 50, has joined Revlon Inc. in New York as director of safety, a new position. He reports to Dr. Abraham Mizrahi, vp and director of health and safety. Previously, he was corporate manager of safety for Inmont Corp. in New York, where he hasn't been replaced.

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Charlie Groves, 69, a former risk manager and the man who almost singlehandedly engineered the passage of the Colorado Captive Insurance Company Act in 1972, died in late April in Denver after a long series of illnesses and heart attacks. A native of Nebraska, he served for many years as vp-general counsel in charge of insurance and labor relations for a Denver-based company now known as CF&I Steel Corp. In the late 1960s he joined Frank B. Hall & Co. as a consultant, spearheading the Colorado captive movement in the early 1970s and managing until 1975 Hall's Denver captive management operation, which is the leading manager of Colorado-based captive insurers. Mr. Groves worked closely for many years with J. Richard Barnes, the insurance commissioner of Colorado. In the last few years, Mr. Groves had continued to consult on special projects for Frank B. Hall of Colorado. He leaves a widow, Frances, two sons and a number of grandchildren.

Carazo, 33, was named to the position with duties in casualty insurance. He reports to Spencer Rankin, director of insurance and risk management. Previously, Mr. Carazo was senior insurance

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AmEx ups post, names O'Connell vp

American Express Co. in New York has upgraded its employee benefits function and has promoted **Robert E. O'Connell**, 39, from director of benefits to vp of benefits. Mr. O'Connell, who reports to senior vp of personnel Harry Olson, is responsible for employee benefits programs and planning. He joined American Express in 1976 and previously held positions in personnel, employee benefits and compensation at W.R. Grace & Co. in New York.

At Ingersoll-Rand Co. in Woodcliff Lake, N.J., **Jack W. Lyon**, 43, has been named director of insurance effective mid-May. He replaces John P. Olsen, who as reported joined Fred S. James & Co. in New York as a vp. Mr. Lyon reports to vp and general counsel Norman Pacun at Ingersoll-Rand. Previously, Mr. Lyon was insurance manager at Babcock & Wilcox Co. in New York, where no plans for a replacement have been made due to Babcock's merger with J. Ray McDermott & Co. Inc.

William J. Parisi, 37, has been promoted to insurance manager from assistant insurance manager at Texasgulf Inc. in Stamford, Conn. Mr. Parisi reports to office manager Charles J. Gillem, who previously handled both insurance manager and office manager duties. Mr. Parisi has been with the company since 1975 as insurance manager.

A health care department has been created at Motorola Inc. and **John R. Keating**, 51, has been appointed department manager in Phoenix. He is responsible for implementation of health maintenance organizations and development of programs designed to cut health care costs. Mr. Keating reports to Ray Orth, corporate director of employee benefits in Chicago. Mr. Keating's previous position as manager of self-administered group insurance coverages in Phoenix has been consolidated with a similar position in Chicago.

Continued on page 37

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Box 132, BUSINESS INSURANCE
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To service existing accounts of major consulting firm in Midwest. Considerable travel involved. Position requires knowledge of casualty/property large lines, self-insurance and RM principles. Income potential excellent. Resumes invited.

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DIRECTOR

For Insurance Center, Drake University. Person with broad-based insurance industry background is desired to direct activities of the Center. Responsible for planning and directing all insurance programs, including research projects, continuing education, student internship and scholarship programs, industry liaison, student recruitment and supervising assistant director. Ph.D. is not a necessity. Salary open. Send confidential resume: Dean Richard Peebler, Drake University, Des Moines, Iowa 50311.

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A career opportunity exists in a progressive company located in Madison, Wisconsin for a professional with 3-5 years of generalist personnel experience. We require a minimum of two years experience in benefits administration with preference given to individuals with a working knowledge of ERISA. The position entails the planning and administration of long term employee benefits. We offer a competitive starting salary and excellent fringe benefits. Candidates send resume including salary history to:

Employment Supervisor
P.O. Box 192
Wisconsin Power and Light Company
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Ideal applicant will have:

- Bachelor's degree, preferably in business area
- 2 to 3 years experience, corporate or small broker
- background in negotiating and evaluating proposals with underwriters

Send resume with salary history in confidence to Department C,

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HOW DO YOU KNOW IF YOU HAVE THE RIGHT FIDUCIARY LIABILITY POLICY?

THE INSURANCE BUYER'S ERISA QUIZ

- Does your policy limit coverage to persons defined as fiduciaries?
- Does your policy limit coverage to wrongful acts of insureds only?
- Does your policy provide defense costs within the limits of liability?
- Does your policy limit loss to damages by definition, and exclude non-pecuniary claims?
- Does your policy by definition exclude employee benefits liability losses?
- Does your policy include outside persons as insured fiduciaries?
- Does your policy contain a limited retroactive acts exclusion?
- Has your policy been purchased without the advice of competent legal counsel who has rendered an opinion in writing as to which contract he felt offered the broadest coverage?

If the answer to *any* of the above questions is "Yes," the chances are you have probably purchased the wrong policy. And the real problem is that you will probably never know until you have an uninsured loss.

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